

JUSTICE AND HOME AFFAIRS COMMITTEE

Wednesday 4 October 2000
(Morning)

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JUSTICE AND HOME AFFAIRS COMMITTEE

30th Meeting 2000, Session 1

CONVENER

*Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)

DEPUTY CONVENER

*Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)

Phil Gallie (South of Scotland) (Con)

*Christine Grahame (South of Scotland) (SNP)

*Mrs Lyndsay McIntosh (Central Scotland) (Con)

Kate MacLean (Dundee West) (Lab)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Pauline McNeill (Glasgow Kelvin) (Lab)

Michael Matheson (Central Scotland) (SNP)

*Euan Robson (Roxburgh and Berwickshire) (LD)

*attended

WITNESSES

Micheline Brannan (Scottish Executive Justice Department)

Dr Eric Clive (Scottish Law Commission)

Stuart Foubister (Scottish Executive Office of the Solicitor)

Brian Hamilton

Alistair Rennie (Registers of Scotland)

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

THE FOLLOWING ALSO ATTENDED:

Mr Adam Ingram (South of Scotland) (SNP)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Fiona Groves

LOCATION

Committee Room 3

Scottish Parliament

Justice and Home Affairs Committee

Wednesday 4 October 2000

(Morning)

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

The Deputy Convener (Gordon Jackson): Let us make a start. Members will need to share microphones, so they should ensure that they direct their remarks towards the nearest one. We have received apologies from Phil Gallie and Michael Matheson, who presumably have some reason for not attending. I welcome our new member of the committee, Alasdair Morgan.

Convener

The Deputy Convener: Following the resignation of Roseanna Cunningham, item 1 on this morning's agenda is the choice of a new convener. We are obliged to choose a member of the Scottish National Party, and willingly do so. I await nominations from SNP members with bated breath.

Christine Grahame (South of Scotland) (SNP): You need bate your breath no longer, convener. I nominate Alasdair Morgan.

The Deputy Convener: May I confirm formally Alasdair Morgan's willingness to accept the position?

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): I accept.

The Deputy Convener: I therefore ask the committee to give its agreement to Alasdair Morgan becoming our convener.

Alasdair Morgan was chosen as convener.

The Deputy Convener: I hand over the chair to Alasdair Morgan. I welcome him and hope that he will enjoy his position. This is a good committee. We have enjoyed it and I hope that he will enjoy working with us. I will take my wee name tag and go.

The Convener (Alasdair Morgan): Thank you, Gordon. I know that my selection owes more to the d'Hondt formula than to any talent that I have shown so far, but I thank the committee for choosing me none the less.

I apologise for the cramped circumstances in

which we are meeting, especially given the number of witnesses, some of whom are waiting downstairs and watching us on a monitor.

We will move to item 2 on the agenda, which is to agree that at our next meeting, we will consider our draft report on the Protection of Wild Mammals (Scotland) Bill in private. Are we agreed?

Members indicated agreement.

Budget Process

The Convener: The next item on our agenda is stage 2 of the budget process. I welcome Jim Wallace, the Minister for Justice, to our meeting. I believe that he would like to say a few words.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): It would be appropriate for me to begin by congratulating you, convener, on your elevation to office as convener of the committee. I can say without fear of contradiction from anyone in this room that this is the most hard-worked committee of the Parliament. I am conscious of the amount of legislation and other work with which the committee has already dealt. It is a tribute to your predecessor, Roseanna Cunningham, and to the committee members that they managed to get through so much work before the summer recess. I cannot promise that the pace will let up, but I hope that you will enjoy—if that is the appropriate word—your office. My colleague Angus MacKay and I very much value the constructive relationship that we have had with members of the committee. I am sure that that will continue under your convenership.

Last Wednesday in Parliament, I set out the draft budget for the next financial year and the spending plans for the subsequent two years for Scottish justice. I welcome the opportunity to meet the committee to discuss those plans.

The spending review has brought an additional £488.5 million to justice spending programmes in the period 2001-02 to 2003-04. As I announced last Wednesday, the increases are £87 million in the next financial year, £172 million in 2001-02 and £229.5 million in 2003-04. That will enable further progress towards the Executive's commitment to a safer and fairer Scotland. My statement gave details of the increases for individual services. By now, members should have received copies of the supporting table for justice, which illustrates the new baselines to level II, with cash and real-terms percentages for the departmental expenditure limit and for total managed expenditure.

The coming year brings a number of changes in the way in which Government departments budget and account for their money, moving away from cash accounting to accounting on an accruals basis. Members should have received an explanatory note about the changes, but if they have any further queries, I or—probably more appropriately—my finance officer will deal with them afterwards.

I know members were keen to have the level II figures broken down further. I regret that that is not yet possible. Before finalising the detailed police

allocations, both in central Government and local government fields, I need further discussions with local authority representatives. I shall announce the level III details as soon as they become available.

In its invitation to me, the committee asked for information on whether we had accepted any of the recommendations made by the committee at stage 1 of the budget process. Angus MacKay wrote to Roseanna Cunningham in response to the committee's report to the Finance Committee and explained our thinking on the points raised, which included victims issues, prisons, courts and legal aid. I hope that members will find it helpful if I address some of the points that were of concern to the committee.

I know how interested the committee is in victims and witness issues, especially in Victim Support Scotland. As members will be aware, I plan shortly to launch a strategy for victims, which will be supported by increased funding. In this spending review, we have secured continuing funding for the witness support service in the sheriff courts, which is already playing an important role in helping victims and witnesses.

Last week, the Lord Advocate told the committee of his plans for a complementary service for victims, based in procurator fiscal offices. I have announced that we had taken on board the committee's point that the VSS grant offered should match the published baseline provision. I hope that we can work with VSS to develop a plan for improving its services and access to them. Funding will be available to meet the costs of that plan for next year. As part of an overall strategy, funding is also in place to improve overall co-ordination of services for victims of crime.

We are increasing the funding of the Scottish Prison Service by £50 million over the three-year review period—£7 million next year, £14 million the year after that and £29 million in 2003-04. That represents a real-terms increase of 6.2 per cent over the current year's funding. The new provision for the SPS will allow it to continue with programmes that address offending behaviour—for example, sex offending—cognitive skills and anger management. The provision will also allow the implementation of a new raft of initiatives, such as the introduction of a sex offender programme for young offenders, and the setting up of key links with community agencies to work on issues of housing, alcohol abuse, parenting skills, domestic violence, health promotion, and employability of young offenders and women prisoners.

The increases announced last week of £2 million, £4 million and £4 million over the three-year period are earmarked for work with prisoners with a drug problem. That will help the SPS in

working to reduce the level of drug misuse in Scotland's prisons. The SPS will also be able to accelerate the modernisation of the prison estate, creating appropriate places to cater for the projected long-term rise in prisoner population and providing access to night sanitation. As all members will know, the SPS is conducting an estates review to develop options for the modernisation of the prisons estate. The outcome of that review will be known by the end of the year.

The additional funding for courts in the spending review, of £2 million next year, £4.5 million the year after and £5.5 million in 2003-04, will meet the continuing cost for the additional judicial posts created by the Executive since July 1999—5 supreme court judges and 19 permanent sheriffs—as well as the costs for part-time sheriffs to assist the permanent sheriffs in meeting the demands of the courts programme. It will also meet the cost of establishing the office of the public guardian, which arose as a result of the Adults with Incapacity (Scotland) Act 2000 and which entails the recruitment of some 40 staff and the costs of accommodation and essential computer equipment. That should allow the office to become operational from 1 April 2001.

The past 10 years have seen an extensive programme of courts refurbishment and considerable improvement has been made in the facilities available to court users as a result. The major capital project for the future is the redevelopment of the supreme courts at Parliament House, which is long overdue. However, the Scottish Court Service will continue with its investment in the remainder of the court estate to keep it up to standard and maintain its operational effectiveness. In his letter of 14 September to the previous convener of this committee, Angus MacKay told members about the Scottish Court Service's proposed review of its estate during 2001-02. The results of that review will allow us to determine future requirements and to decide whether any additional funding will be necessary to service those requirements.

The legal aid baseline increases to £134.8 million in each of the three review years—that is £2 million more than in the current year. The increase was secured in the comprehensive spending review to enable the Scottish Legal Aid Board to cope with the additional pressures that are expected to arise through increased court activity on matters involving the European convention on human rights. No additional funding was granted in the spending review 2000 for legal aid because, over the past two years, spending has fallen significantly below provision. There was a £3.6 million underspend in 1997-98, an £8.2 million underspend in 1998-99 and a £9.8 million underspend in the past financial year. We are aware that additional pressures for legal aid are

likely in the coming period but, given the previous years' underspends and the fact that the baseline is rising, we considered that there was sufficient provision in the baseline to accommodate forecast requirements. However, we shall continue to review the legal aid fund requirements in the light of policy proposals and the latest trends in case numbers and costs. Of course, this is a demand-led area and, if demand increases, provision must match it.

As I said last Wednesday, the spending review 2000 settlement is the best ever spending package for justice. Spending on justice will reach record levels. I believe that that can and will make a real difference to the people of Scotland. I hope that the committee will be able to support the proposals.

The Convener: I will start by considering that final topic—the legal aid expenditure. In the real-terms figures in "Making a difference for Scotland", the forecast expenditure for legal aid falls by £7.5 million by 2003-04. I understand that there is an underspend in the current year, but given what you say about additional pressures, how can you explain that fall?

09:45

Mr Wallace: As I said, over the past two years, legal aid expenditure has dropped significantly below baseline—the underspend was £8.2 million in 1998-99 and £9.8 million in 1999-2000. We consider that the current baseline provision for legal aid for the spending review period will be adequate for forecast requirements. It is on that basis that the figures in the table are calculated. Actual expenditure has been below the baseline, so a margin for increase is built into the forecasts, which continue to be baseline figures. Given that the expenditure is demand led, we would have to make provision if there were a change in the numbers and the cost.

The Convener: You reduce the baseline in year 4, so you are assuming that the margin will not be taken up. The figures in real terms are £129.9 million for the current year and £122.4 million for 2003-04.

Mr Wallace: That is a reduction in real terms. Although there is a baseline reduction, if one were to compare actual current spending with forecast spending, one would see that there is still a margin for spending to increase.

The Convener: A similar point about how the figures are expressed was raised in the meeting with the Lord Advocate last week. Page 29 of "Making a difference for Scotland" says:

"Central Government Fire spending will increase by £7.6 million over the three year period".

I would say that it is increasing either by £2.6 million or by £14.7 million. Either of those would be accurate. You could have done more service to yourselves had you taken the total expenditure over the three years. If you say that expenditure is increasing over the three years, surely you take the total expenditure over the three years rather than adding up the cumulative increases. That seems a curious and slightly misleading way of presenting the figures.

Mr Wallace: This is a good opportunity to offer an explanation, because I think that there is sometimes confusion. In my statements to Parliament last week and to the committee today, I have been careful to be specific in my claims. I will not take an example from the figures in the document. For the sake of argument, if for a particular function there were a baseline in the original plan of £10 million over the next three years, the expected expenditure would be £30 million—£10 million in each year. If I increase that by £5 million next year, £10 million in the following year and £15 million in the year after that, by year 3 expenditure would be £25 million. One might call that a £15 million increase. On the other hand, rather than spending £30 million over these three years, we are spending £15 million plus £20 million plus £25 million, which if my arithmetic is correct is—

The Convener: It is £60 million.

Mr Wallace: Therefore £30 million more is being spent than what was originally planned, so that is a fair measurement of the additional resources that are being brought into play. If one compares only the figure for the final year of the spending review period with the figure for the current year, one takes no account of the additional expenditure in the intervening years. A qualification to that is that we must be clear, as I have tried to be throughout, about precisely what the claim is that we are making: are we giving the total additional expenditure over three years or giving the increase for a specific year?

The Convener: I am sure that we will pore over those figures in the *Official Report*.

Mr Wallace: I have an explanatory note about this, which I am happy to share with the committee.

The Convener: It would be helpful if the committee had that.

Mr Wallace: We will make it available.

Gordon Jackson (Glasgow Govan) (Lab): In the absence of Phil Gallie, I will ask about prisons. I am sorry, Lyndsay.

Mrs Lyndsay McIntosh (Central Scotland) (Con): That is quite all right.

Gordon Jackson: I am sure that it is encouraging that Mr Wallace said that there would be—however one does the accounting—more money for the Scottish Prison Service in the next few years. He gave us the figures. People have a slight worry because there was huge contention before over money that had gone into the SPS. Apparently, it did not spend the money, which was clawed back—I describe the situation loosely, but there was some unease at the time, as you know. Can we assume that the money now going to the SPS and the increased figures are not likely to suffer the same fate?

Mr Wallace: The expectation is that the money should not suffer the same fate. It is important to remember that, although we clawed back £13 million of accrued end-year flexibility, I think we still left some money in the Prison Service. In my initial statement to the committee, I listed the items of expected additional prison activity on which the additional expenditure would go. It is impossible to get the figures spot on, but it is certainly our intention that the Prison Service should benefit fully from the additional resources.

Gordon Jackson: The other issue is the ending of slopping out. I know that you share my view on that. Does your budgeting give any further information about a timetable under which we can expect that Dickensian process finally to go? *[Interruption.]* This time, it is not my phone that is ringing. I turned mine off. Convener, you must realise that we take it in turns to have our phones go off.

The Convener: I see that. We could have a game of musical chairs.

Mr Wallace: I think that I have the gist of Mr Jackson's question. I want to bring about an end to slopping out at the earliest possible date. My visit to HM Prison Edinburgh yesterday reinforced that view. As I have said, it will not be possible to set a time scale until more information is available. That information will be forthcoming as part of the estates review, which we hope and expect to have by the end of this year, as I said.

Slopping out ended at HM Prison and Young Offenders Institution Dumfries in the spring of this year. When A hall in Perth prison is completed next spring, there will be an additional 150 places with access to night sanitation. New house blocks that are proposed for Edinburgh and HM Young Offenders Institution Polmont will, during 2002, provide a further 550 places with access to night sanitation. Those projects are already in train, or in the case of Dumfries, completed. They will make a difference. Additional funding is intended to develop the prison estate further and we hope and expect that it will accelerate the provision of night sanitation. However, until we have the outcome of the estates review, I cannot give the committee

the details of the expected time scale. Obviously, when we can do that, we will.

Gordon Jackson: As you know, we are delighted by what you are saying, but Barlinnie is the blot on the landscape. It would be nice if we had some idea of when its problems will be solved. Are you saying that we will not get that?

Mr Wallace: I cannot give that information today. No decision has been taken about Barlinnie. It would be wrong for me even to speculate, because the information will not be available to me until the estates review is completed.

The Convener: In our previous report, we said that the SPS targets were not available. Do you have any idea when its targets for the coming year will be available? As its expenditure has already been determined, will it have to change its targets to fit in with that?

Mr Wallace: Angus MacKay addressed that point in a letter to Roseanna Cunningham. The SPS is implementing changes to its strategic planning processes and several targets are set for the service. I recall that, in a written answer to a question that Maureen Macmillan asked—S1W-8536—I set out the outturns for previous years and indicated the targets for the current year.

Christine Grahame: It would have been helpful if we had had a copy of your statement. You mentioned several figures and I found it hard to keep up. Gordon Jackson raised a point about Barlinnie. Clive Fairweather made it clear that that was a matter of extreme urgency and I am a bit unhappy that we still have no prospect of an end to slopping out in Barlinnie.

“Making a difference for Scotland” says:

“We will provide the Scottish Prison Service with an additional £50m to address the needs of the rising prisoner population and the modernisation of their estate.”

Is that additional £50 million not incorporated in the table entitled “Resource in real terms”?

Mr Wallace: Yes, it is in there.

Christine Grahame: Right. If that money is intended to

“address the needs of the rising prisoner population and the modernisation of their estate”,

is it ring-fenced for that purpose?

Mr Wallace: That money is available to the Scottish Prison Service, which has made some proposals. As I indicated in my opening remarks, we want the SPS to continue and to develop programmes such as those in cognitive skills and anger management. We look forward to the SPS meeting the targets that have been set in relation

to those programmes.

As I said last week, we have provided £10 million extra capital funding—that figure is included in the £50 million—to accelerate the provision of night sanitation across the SPS estate. Any savings that the SPS makes will be allocated to capital. The SPS has a clear commitment to address the capital programme.

Christine Grahame: I want to be clear. Is that £50 million ring-fenced for the modernisation of the SPS estate?

Mr Wallace: No. It is not ring-fenced just for the modernisation of the estate. There are several programmes, including those that I have just mentioned, which will take up some of the money.

Christine Grahame: It is discretionary.

Mr Wallace: It is discretionary in so far as the SPS makes proposals to ministers. However, as I have mentioned, included in the £50 million is £10 million in extra capital funding. Moreover, any savings that the SPS manages to make will augment the capital programme. If the capital programme is Mrs Grahame’s concern, I assure her that the SPS takes its commitment to modernising the estate very seriously. That was the whole point of the estates review.

Christine Grahame: My concern is Barlinnie. Clive Fairweather’s message could not be stronger: this has been delayed long enough. What is the cost of completing the programme to end slopping out in Barlinnie? I understand that one hall is completely closed, which could be reopened. Why is there a delay and what is the cost?

Mr Wallace: One reason for the delay in the estates review is that a number of costs and options are being considered. I would be misleading the committee if I sat here and gave you figures that had been plucked out of the air. The whole point of conducting the estates review is to be able to come up with the answers to perfectly pertinent questions, and I have said that the results should be available by the end of the year.

Christine Grahame: Could I also ask—

The Convener: I must ask you to be quick.

10:00

Christine Grahame: When Roseanna Cunningham was convener, she allowed us to have a second bite at questions, but I shall be as quick as possible. There are lots of things that I want to ask about, but I shall confine myself to legal aid. I am concerned that you say that actual spending has fallen below the target figures.

Solicitors are of the view that it is getting more difficult to get legal aid. I am concerned at the drop in the legal aid budget when citizens, quite rightly, are making more and more demands for access to justice. As I understand it, you are undertaking a review to consider extending the forums in which legal aid might be available, yet there is a fall in the budget. How can that be reconciled?

Mr Wallace: The fall in the budget is fact. There has been an underspend over the past two years. Legal aid is demand led, and you will recall that, when I gave the committee an overview of the justice department programme last month, I indicated that the Scottish Legal Aid Board was about to examine the reasons for the fall in civil legal aid and whether eligibility issues were raised. The committee will be interested in the outcome of that work, as I will be. The underlying causes of the fall in legal aid are being examined and we will share the outcome of the review when it becomes available.

I emphasise that we are dealing with what has been a factual outcome. Therefore, in planning for the future, there is an increase of £2 million for the next year, which is continued through in the baseline. That represents an increase of more than £2 million over the actual outcome for last year but, as I said in my statement, legal aid is demand led. If trends change, the figures must be addressed. If demand rises, we will have to find the appropriate resources.

Christine Grahame: I accept that we have to await the outcome of the investigation to find out why the levels have fallen. There may be more applications that are not being processed or are not succeeding. If that is one of the reasons for the fall, that will be interesting.

I would like you to address a related point about the extension of legal aid into other forums, such as tribunals, which I believe is under review. I think that you mentioned that before. I would also like to know how many more people may begin to submit applications now that the European convention on human rights has kicked in. Is there a built-in provision in your forecast for the next four years to put more in the pot for that?

Mr Wallace: Provision has been made for a possible increase as a result of ECHR challenges. The new ECHR bill, which we will publish shortly and which the committee will no doubt have adequate opportunity to examine in detail, also makes provision for the possibility of extending the forums in which legal aid can be made available.

Christine Grahame: My final question is about your justice support to local government. Does that include justice support to local authorities that are being challenged on ECHR issues?

Mr Wallace: No. Justice support to local

government covers such things as police and fire grant-aided expenditure.

Christine Grahame: Thank you. I just wanted to clarify that.

Euan Robson (Roxburgh and Berwickshire) (LD): The biggest real-terms increase is in the miscellaneous column; I assume that that is where the £17.8 million for various consultation exercises and reviews is put. Will that £17.8 million be enough for all the areas that might crop up? Some are not listed in the last paragraph on page 29 of the document; the cost of judicial appointments is one thing that comes to mind.

I have two questions. First, is the £17.8 million included in the miscellaneous heading or does it come under other budget headings? Secondly, is there sufficient contingency to meet a number of demands that will probably arise?

Mr Wallace: The step change in the miscellaneous line—between what is planned for the current year and the next financial year—is already in the programme, which the committee has examined previously. Contingency is an appropriate word—it could be for challenges through the ECHR and other legislative requirements that come before the Parliament.

As I indicated to Mr Robson in the chamber, in setting our budget we have taken account of the establishment of the office of the Scottish information commissioner, which will flow from our freedom of information proposals. Funding has been secured to allow for expenditure following various consultation exercises, such as the exercise on police complaints, Lord MacLean's report on violent and sexual offenders and the working party commission that is considering the law of charities. I would not envisage the judicial appointments consultation necessarily having any significant cost implication, but if there are any costs associated with it, the contingency is there to meet them.

Euan Robson: How expensive will the office of the Scottish information commissioner be?

Mr Wallace: It is difficult to say at this early stage. We are trying to make comparisons with places such as the Republic of Ireland, which I visited recently. The office will be demand led, so it is not dissimilar to legal aid. A more appropriate comparison might be with the Scottish Criminal Cases Review Commission, where the level of demand cannot be anticipated. Demand for the information commissioner might be quite substantial at the outset, then reach a level at which it will plateau.

Euan Robson: Will the expenditure on the independent police complaints body come from that budget heading?

Mr Wallace: That expenditure is earmarked under central police funds—the column heading is “Police Central Government”. There is speculation about how much that will be, but we have been conscious of it when putting together plans.

Pauline McNeill (Glasgow Kelvin) (Lab): I apologise for missing the beginning of your statement, minister.

My first question is similar to the question from Christine Grahame on criminal injuries compensation. Under previous Governments, that was vulnerable as a target for abolition. Why will it be reduced?

Mr Wallace: It is demand led. This is an opportunity to clarify what lies behind that. Criminal injuries compensation schemes are administered on a Great Britain basis by the Criminal Injuries Compensation Authority, which is funded primarily by the Home Office, to which the Scottish Executive remits the Scottish share of the costs. The Scottish share, in turn, is based on the average of the number of Scottish cases over the previous three years. That gives us some indication of what the likely cost will be. We believe that the baseline is sufficient to cover the estimated cost for the period of the spending plan.

Pauline McNeill: My second question, on legal aid, has been covered partly by Christine Grahame. I heard you say that there will be challenges, especially on fixed fees. The question is whether that may be detrimental to the defence, when the prosecution is not bound by an upper limit. I am concerned about no-win, no-fee schemes—I have heard that people are being exploited by firms of solicitors. I am concerned that the civil legal aid budget is being reduced because people have no faith that they would achieve anything through the system. If the committee, having considered that matter, were to make good suggestions about how access to justice might be increased, would you consider those suggestions, even if they would increase your spending?

Mr Wallace: I would certainly consider them. I welcome the fact that the committee would pursue that matter. That might complement the Scottish Legal Aid Board's work on identifying reasons for the drop in civil legal aid applications.

I am concerned about access to community legal services in general. I am interested in pursuing ideas about that matter, about which I hope to be able to say more in the near future.

The Convener: On that point, Angus MacKay indicated in his letter to Roseanna Cunningham that he had asked the Scottish Legal Aid Board to consider pilot schemes for providing legal services in the community.

Has a specific budget been allocated to those

pilots? What if they turn out to be successful? I presume that their success would have a knock-on effect in future.

Mr Wallace: Angus MacKay indicated that we would have discussions with organisations such as Citizens Advice Scotland and the Scottish Consumer Council, and that the Scottish Legal Aid Board had been asked

“to devise and introduce pilots”.

I hope to be in a position to make further announcements about the pilots in the not-too-distant future.

The fact that this issue is very much in our minds means that we have given some consideration to the cost implications.

Mrs McIntosh: I apologise for my late arrival, minister. I am grateful for the copy of your statement, which I have flicked through quickly. I thank Gordon Jackson for asking questions on behalf of Phil Gallie—Phil will be surprised about that.

Can you give us an idea of the current thinking on the review of the Scottish Prison Service estate and new build plans for prisons? I know that prison officers are concerned about that issue, about which statements have been made. What is the latest position?

Mr Wallace: I indicated in my opening remarks that I expect to have the outcome of the estates review before the end of the year, which will give us a much clearer picture of the options at least. It would be unwise for me to speculate before then.

Mrs McIntosh may not have arrived when I gave an indication of some plans that are already in place, which will help to reduce levels of slopping out at Perth prison by spring of next year, and at Polmont and Edinburgh by the following year.

Mrs McIntosh: I heard that much.

Needless to say, the amount of slopping out that goes on at Barlinnie causes concern to most of us, as Christine Grahame stated. You will know that that was the subject of a debate in the Parliament.

I will move on briefly to the Scottish Court Service. I understand that you are also examining district courts, which come under the wing of local government. Is there room in the figures for refurbishment, as some of the district courts are in a shocking state?

Mr Wallace: No, because that is a local government function and district courts often double up by using council offices. Refurbishment of district courts is not included in the justice provision.

Mrs McIntosh: Is it envisaged that such money might come under the Scottish Court Service?

Mr Wallace: We are in the process of preparing proper consultation on that issue, in which all interested groups will be involved. There will be adequate opportunity for the Justice and Home Affairs Committee to contribute to that consultation and I hope that the committee will take that opportunity. In advance of the publication of a consultation document, I do not want to give any particular steer, although what you suggested is a clear option.

Gordon Jackson: You were asked about new build, which is related to the number of prison places required. Concern about that issue was raised when prisons were being shut down.

We are planning with a view to how many prisoners we will need to look after. As you know, that is an equation into which different factors are entered. Some of us take the view that one answer would be to send fewer people to jail. We should devise methods of cutting the prison population, which should be factored into the debate about how much money is spent on creating prison places. Do you have a comment on that? Are we joining up the two issues of proper planning for cutting places and planning for housing the numbers of prisoners that we might need to house?

Mr Wallace: We try to take account of those factors as best we can. It is fair to say that it is notoriously difficult to predict prison populations, which are extrapolated from previous figures.

As of last Friday, the total accommodation available was 6,276 places. Because of refurbishment, 495 places were out of use, which left a balance of 5,781. The prisoner population last Friday was 5,811, which meant that there was a shortfall. Some accommodation is due to be returned to use shortly: 50 places at Cornton Vale; 56 at Greenock prison; and 60 at Friarton prison. When the comprehensive spending review that was announced in 1998 was being put together, it was estimated that the prison population in 2000 would be 6,500. It is an inexact science.

10:15

I take Mr Jackson's point about reducing the number of people for whom custodial sentences are thought appropriate and I assure him that that is part of our thinking. However, because the science is inexact, some provision must be made for the figures that are projected. I draw the committee's attention to a line of the budget that relates to criminal justice social work provision, which includes the funding that we are earmarking for alternatives to custody. That features prominently in the Executive's thinking on the justice system.

As the committee will be aware, we are

continuing our dialogue with the Convention of Scottish Local Authorities with the aim of establishing in mainland Scotland—through the amalgamation of local authority services—11 units for the delivery of criminal justice social work services to ensure greater consistency across Scotland and the quality of alternatives to custody that will give the public and the judiciary confidence in the disposals.

I am sure that Mr Jackson would be the first to accept that planning on the basis of what judges might or might not do will not deliver exact results.

Gordon Jackson: I do not entirely accept that, but I accept that we cannot tell what judges will do and we cannot tell who will commit crime.

I want to know that the Executive has a definite strategy—on a broad basis—that is aimed at cutting the prison population. I want to know that it judges that certain steps can or cannot be taken to make political decisions on whether certain categories of people can go to jail. The great bee in my bonnet is the treatment of fine defaulters. Sending fine defaulters to jail is an incredibly stupid waste of money. Do we have any definite strategies to remove certain categories of offender from prison? That would not enable us to arrive at exact numbers, but it would result in far fewer people going to prison.

Mr Wallace: I cannot go so far as to say that we will withdraw the option of prison sentences in any categories, but the Executive is pursuing a range of options such as diversions from prosecution, the drug treatment and testing orders that have been piloted in Glasgow and Fife, and electronic tagging, on which we are about to launch a consultation. It will not surprise anyone that we want feedback on that. At the moment, electronic monitoring is confined to three sheriff courts as an alternative to custody. We want to know whether electronic tagging could be used as part of bail conditions—that would reduce the number of remand prisoners, which the chief inspector of prisons had something to say about—or whether, as happens south of the border, there is scope for early release of some short-term prisoners if they are being monitored electronically. That range of proposals would lead to a reduction in the prison population. We want to do determined work on that.

Gordon Jackson: I accept that, but should not we treat this matter with real urgency? I am frightened that, if we lag behind, we will end up with an estates review that concludes that 7,000 places are needed. When we start to implement that recommendation, your sensible proposals might kick in, which would mean that we would no longer need those places. The other daft scandal is to build prisons that we no longer actually need. We must marry those two issues urgently.

Mr Wallace: I accept that point and assure you that we have tried to address the matter. However, the difficulty is that projections for future prison population are very inexact. We would be in even more difficulty if we were cavalier about things and decided not to believe our statisticians' claims that the prison population is liable to reach X and to do nothing about the situation. If the population then reached X, the committee would certainly have something to say to me.

We must strike a balance between the provision that we make, bearing in mind the fact that it is impossible to predict the figure accurately, and the alternatives to custody that are being developed. For example, the spending plans make provision for the increased number of supervision and attendance orders to meet the problem of fine defaulters. I cannot be any more exact—that would be impossible—but I assure Mr Jackson and the committee that we are trying to marry together aspects of the issue as best we can. That said, it would be wrong not to take some cognisance of our statisticians' information.

Pauline McNeill: There is a multi-dimensional question to be answered about the number of places that should be set aside for the prison population. As I said to the Lord Advocate at last week's meeting, I have received several representations from solicitors who say that the prison population is being artificially controlled because fiscal fines have been used for categories of crime such as repeat offending and assaults on the police that would usually carry custodial sentences. I can let you see evidence on such cases. If that allegation proved to be true, you would have to include that in the equation for prison population numbers. I do not expect an answer from you today, but you should know that several of us are worried about that situation.

Mr Wallace: You have properly addressed that point to the Lord Advocate, who is responsible for prosecution policy. Under the Scotland Act 1998, ministers cannot comment on such policy.

However, you have underlined some of the variables in connection with the issue. We must also take into consideration the increasing number of people who are serving longer sentences. Although that situation is partly historic, it still feeds through and raises the baseline figure. Even if we use alternatives to custody to reduce the number of people with short-term sentences, we still have an increased number of people who are serving longer-term sentences. That simply illustrates the difficulty of trying to plan out the matter. I can only assure the committee that I revisit those issues with officials and, given the inexact nature of the science, we pitch the figures as best we can.

Maureen Macmillan (Highlands and Islands (Lab): In the "Making a difference for Scotland" document, you have lumped together in the spending plans criminal justice social work services and victim issues. Will there be specific funding for those aspects, or will you merge the funding? If the funding is to be merged, what implications will that have for victim issues?

Mr Wallace: Those aspects will be separated—I think that they will be one of the line three divisions. However, we must take certain issues into account. For example, Victim Support Scotland has not yet applied for grants under section 10 of the Social Work (Scotland) Act 1968, so it would not be appropriate to grant the organisation an advance. There will be separate allocations to local authorities for criminal justice social work services.

Maureen Macmillan: Presumably the victim issues include the pilot studies in Aberdeen. I was amused when you said that although there was a pilot study in Aberdeen, there should also be a study in an urban area. I have always thought that Aberdeen was an urban area.

Gordon Jackson: Not if you live in Glasgow. *[Laughter.]*

Maureen Macmillan: Aberdeen is not what I think of as rural.

Mr Wallace: It was the Lord Advocate, not me, who said that.

Maureen Macmillan: Perhaps it was the Lord Advocate. I am sorry to impute that to you.

The Lord Advocate went on to talk about the difficulties of victim support in rural areas. I would like a pilot scheme to be set up in a truly rural area to see how the system would work.

Mr Wallace: I will check that. I do not know whether you count Stonehaven as being properly rural.

Maureen Macmillan: Absolutely not.

The Convener: You said in your statement that you would work with VSS to increase awareness of support services. Will the stage 3 budget show an increase in its allocation of funds to reflect that?

Mr Wallace: There will be an increase in the allocation for victim services.

As I have explained to the committee in the past, members will be aware that the problem is not only about resources; there is a legal problem in respect of data protection. We continue to try to resolve that, in conjunction with the Home Office. We are anxious to do so. The police have that information; the difficulty lies in them passing it on in a way that would benefit people.

Christine Grahame: Gordon Jackson raised a valid point, which I do not think you have addressed. He said that too many people are being sent to prison and that you are working with figures that are based on that trend continuing.

Clive Fairweather spoke about the number of women who are in prison and on remand. That figure is increasing, despite what Mr Fairweather said in previous reports. In his view, the women who are imprisoned are mostly very sad and are themselves victims. I hope that that view will be connected up with your projections on prison population and that we will see fewer women being sent to prison. Is that matter being addressed?

I also want to make a point about the depressed budget for legal aid. Before I do so, I will point out that the view out there—by “out there”, I mean solicitors and people who are trying to get legal aid—is that there are tighter controls over the viability of a case when it is being submitted. We come back to the low financial eligibility, which has been depressed for years. The Scottish Legal Aid Board is carrying out a review of the fall in the number of successful applications. Is SLAB also consulting the profession and advice bodies, such as citizens advice bureaux and debt advice counselling bodies, or is it simply conducting a review of the SLAB position?

Mr Wallace: On the last part of that question, I am not sure to what extent SLAB is consulting. I would have thought that it ought to be doing so, but I will clarify that with SLAB and advise the clerk of the scope of the review.

With regard to women in prison, I share many of the concerns that Clive Fairweather expressed in his report. Women who are sent to Cornton Vale are sent there by sheriffs. It would be improper for ministers to intervene; the independence of the judiciary is a principle that I hold strongly. It would be improper for ministers to put pressure on sheriffs. That said, an inter-agency forum has been established, under the chairmanship of Professor McLean, to examine the issue of women offenders. The forum is trying to devise ways in which the number of women who go into custody can be reduced.

Last month, I visited Turning Point Scotland in Glasgow, where I met a number of women for whom the diversion from prosecution had been used. I pay tribute to the valuable service that was being provided, especially in dealing with drug problems. There was an opportunity for women to receive intensive treatment for their drug dependency, rather than to be sent to Cornton Vale. There are also people in Cornton Vale who provide that kind of service. Those are initiatives that could lead to a reduction in the number of women in prison, and we are happy to support

them. From within the global totals, we will fund a pilot for a community residential facility for women offenders in Glasgow. We want to address this issue imaginatively.

10:30

The Convener: I thank Jim Wallace for attending the meeting and answering a varied series of questions. We look forward to receiving the further information that he has promised to send us.

Leasehold Casualties (Scotland) Bill: Stage 1

The Convener: We now resume our stage 1 consultation on the Leasehold Casualties (Scotland) Bill. I welcome Adam Ingram MSP—the bill's sponsor—to the committee. There will be a short hiatus while the first witness is brought up from the nether regions of the building.

Gordon Jackson: I would like to put Kate MacLean's apologies on the record. She has not simply not turned up—she intimated to me that would not be able to attend.

Christine Grahame: Michael Matheson is not here because he is attending a funeral.

Scott Barrie (Dunfermline West) (Lab): Is he in the same place as Phil Gallie?

The Convener: He is not at the Conservative party conference.

The Convener: I welcome Alistair Rennie, who is Deputy Keeper of the Registers of Scotland, and Ian Davis, who is that agency's head of legal services. Do you wish to say a few words by way of introduction, Mr Rennie?

Alistair Rennie (Registers of Scotland): On behalf of the Keeper of the Registers of Scotland and the agency, we would like to intimate our support for the bill, which would remove confusion that has existed in the law for nearly 100 years. It is crucial that that is sorted out as soon as possible.

The Convener: I dare say that you are aware of some of the correspondence from Mr Hamilton to the Law Commission. He contends:

"The Keeper has a financial interest in the outcome of these deliberations. My company, and the Keeper is on his warning, is taking action to recover a sum in excess of £200,000."

I appreciate that the letter was written some time ago, but the implication is that Registers of Scotland is interested in the bill being passed simply to get itself off the hook—a hook that it has got itself on to.

Alistair Rennie: Section 8 of the draft bill totally undermines that argument. The rights that Mr Hamilton had against the keeper before the draft bill was published have been preserved.

The Convener: I thought that you would say that.

Gordon Jackson: I read with interest the correspondence from Mr Hamilton, in which he made the same point as the convener. He was actually making the slightly wider point that not only the keeper, but the legal profession, wanted

to be let off the hook. To put it mildly, I can understand why.

Although I do not oppose the bill, I have some sympathy for Mr Hamilton's point that, by and large, individuals have never had to pay out because of the confusion that Alistair Rennie mentions. People have entered into voluntary purchases, leases or whatever, but their legal advisers have not picked up that problem. Had it been picked up, landlords' ability to make casualty charges would have been reflected in the price that people paid. People have ended up paying full value, without that consideration being taken into account, because lawyers and keepers have missed it. However, the oversight has been spotted later.

The fault lies with legal advisers who have, Mr Hamilton tells us, picked up the tab, by and large. The proposals would let them and their insurers off the hook. That is an interesting argument, which I had not thought of.

Alistair Rennie: I can understand the argument from Mr Hamilton's or any other landlord's point of view, but the fact remains that, for about 90 years, landlords have not enforced such casualties. The original case that brought the issue to light in the 1990s involved a company called Monocastle, which owned the Wishaw and Coltness estate. Monocastle did not realise that it had a right to casualties and was not enforcing them. The majority of the legal profession thought that leasehold casualties had been abolished in 1914 or had fallen into desuetude because nobody was claiming them.

Gordon Jackson: That makes Mr Hamilton's point. The legal advisers did not know what the law was.

The Convener: I do not think that Mr Rennie is here to answer for the legal profession.

Mr Adam Ingram (South of Scotland) (SNP): I will begin with some technical questions. Why would casualty clauses be omitted from title sheets under the burdens section of properties in the land register?

Alistair Rennie: The keeper has a duty under section 6 of the Land Registration (Scotland) Act 1979 to include only subsisting burdens in a title sheet. Feudal casualties had been abolished so we had to excise them. Some people got confused between the leasehold casualty and the feudal casualty and excised the leasehold casualty.

Mr Ingram: Those omissions have proved pretty costly. About £250,000 has had to be paid out in settlement of casualties claims. What steps have you taken to correct the register?

Alistair Rennie: We have taken steps to stop that confusion. The problem is that, once a title

sheet has been created, one is supposed to be able to rely on it without looking behind or beyond it for information relating to that title. Therefore, if there is an inaccuracy in the register, the register can be rectified only in very restricted circumstances. If we have omitted the casualties, circumstances would usually forbid the keeper from rectifying the register, so the situation must remain. As a consequence, we have had to pay landlords.

The Convener: When you said that some people got confused, did you mean that some people in your organisation got confused?

Alistair Rennie: Yes.

Mr Ingram: In what circumstances is a decision made to rectify an omission from the register?

Alistair Rennie: Section 9 of the Land Registration (Scotland) Act 1979 provides that the keeper can rectify to the prejudice of a proprietor in possession only if one of four circumstances pertains. First, that can be done if the person consents. Secondly, it can be done if a person has, by his own fraud or carelessness, caused the inaccuracy in the register. The other two circumstances are fairly irrelevant to the purposes of this exercise. If one has left the leasehold casualty out of a title sheet, it is obvious that to put it back in would prejudice the proprietor in possession, who would be the tenant. Therefore, under the terms of the statute the keepers cannot rectify most cases.

Mr Ingram: I presume that there is a general indemnity on registration, not only in relation to casualty clauses.

Alistair Rennie: Yes.

Mr Ingram: Do you have a contingency fund or budget for settlement of any claims against you?

Alistair Rennie: We settle claims from income.

Mr Ingram: How much does that cost annually?

Alistair Rennie: It costs about £40,000 per annum.

Mr Ingram: So the settlement of casualty claims caused a dramatic increase in those figures.

Alistair Rennie: Yes. The increase has been relatively high.

The Convener: You said that you picked up that error. Is your position that there will be no new errors after a certain date?

Alistair Rennie: Yes. The cases in which we had problems were first registered between 1984 and 1987. When we realised that things were going wrong, we issued fresh staff instructions, to highlight the situation and to try to avoid more confusion.

Christine Grahame: I will not ask about money—that subject has been covered.

On a technical point, although I am not a conveyancer, I understand that the certificate, once issued, becomes the title. Are you saying that, if compensation has been paid, or if certain people who were enforcing the casualties have been paid off, there is nothing on the title sheet to indicate that that has happened? Can nothing be added to the title sheet to say that the casualty cannot be enforced or that that contractual obligation has been bought off—if that is the right way to describe it?

Alistair Rennie: The casualty will no longer appear on the title sheet, so there is nothing—

Christine Grahame: There would nothing to eradicate because there would have been nothing there in the first place. That was a stupid question.

Do any of the claims come through the Register of Sasines?

Alistair Rennie: No. The keeper does not guarantee the Register of Sasines.

Christine Grahame: I know that, but do you get claims about sasines titles?

Alistair Rennie: No. We have had no such claims.

Christine Grahame: I merely wondered whether wording might be inserted into titles to indicate that the casualty has been terminated.

Pauline McNeill: On that point, would the problem have existed prior to the establishment of the Land Register in 1979?

Alistair Rennie: On the Register of Sasines, the Keeper of the Registers of Scotland does not have to examine burdens in order to see which continue to subsist. People who examine their deeds in the Register of Sasines would examine the original deeds rather than a title sheet.

Pauline McNeill: Would they have seen a casualty on the deeds?

Alistair Rennie: Yes.

Pauline McNeill: I noted your point that a title cannot be rectified even if there is an error in it. Can the title be rectified on the sale of that property?

Alistair Rennie: No. People are entitled to rely on the title sheet.

Pauline McNeill: For all time?

Alistair Rennie: Yes.

The Convener: The purchaser of a property may have been compensated because he had to pay a casualty to whoever was entitled to receive

that money. What happens when that purchaser then sells the property? The casualty will not be on the title deeds, so is the subsequent purchaser also liable to pay the casualty?

Alistair Rennie: No. We would not compensate the purchaser. We would compensate the landlord for his inability to seek the casualty from the purchaser. That subsists for all future purchasers.

The Convener: Therefore, compensation has been paid to landlords rather than to the people from whom the casualties were due.

Alistair Rennie: That is correct.

Pauline McNeill: I do not understand that. I thought that the keeper's job was to make good the title. Why do you not compensate the person who owns the property?

Alistair Rennie: Because he has not suffered any loss. The tenant—the person who is in possession of a 999-year lease—is under no obligation to pay a casualty when the keeper has left that casualty off the title sheet. Therefore, the landlord has suffered a loss through his inability to enforce the casualty.

Maureen Macmillan: Do you have any more liability on future transfers of those 999-year leases?

Alistair Rennie: No. We have bought out the casualties, as it were.

Euan Robson: Have you any idea how many more problems with casualties there might be?

Alistair Rennie: To be honest, I cannot express an opinion on that matter. I believe that there are very few that we have been unable to eliminate. For example, when we discovered the casualties in the Wishaw and Coltness estate, we went immediately through every title that we had issued to check its position.

The Convener: Would it be fair to say that you have made provision in your budget for covering situations in which you might be liable under section 8 of the Leasehold Casualties (Scotland) Bill, if enacted?

Alistair Rennie: That is correct.

Maureen Macmillan: Do you have any redress against a solicitor who makes a mistake and sends the deeds to you with the casualty omitted, or whatever the procedure is, or does the blame fall on your shoulders because you do not pick up that error?

Alistair Rennie: We are able to rectify the register when a solicitor has, through carelessness, given us erroneous information. However, that depends on the information that we have sought from the solicitor. If we have not

asked the right questions, we cannot blame a solicitor for not giving us an answer that we have not sought.

Christine Grahame: My question is not meant to be frivolous, but are there other ancient legal obligations in title deeds? Were you prompted to trawl through and check that there was nothing else in those old titles that might cause problems for the keeper?

10:45

Alistair Rennie: Off the top of my head, I cannot think of an example of such an obligation.

Christine Grahame: Do you have an opinion on that?

Alistair Rennie: We thought about other matters that might confuse people and we tightened up our instructions.

The Convener: As there are no further questions, I thank Mr Rennie and Mr Davis for their attendance. There will be another slight hiatus while we wait for our next witnesses.

Dr Eric Clive and John Dods of the Scottish Law Commission have joined us. Would you like to make a brief statement?

Dr Eric Clive (Scottish Law Commission): Thank you, convener.

I was the commissioner in charge of the project that led to the Scottish Law Commission's report on leasehold casualties. My colleague, John Dods, was among the legal staff who worked on the project. I am no longer with the Scottish Law Commission, but because the commission's policy has not changed since the report was submitted, the commission asked me to speak today on its behalf.

I congratulate Mr Ingram on the introduction of his bill. The commission is naturally very pleased that its recommendations have been brought so promptly before the Scottish Parliament.

Mr Ingram and Professor Robert Rennie have fully explained the background to the bill, but it might, if you wish convener, be useful for me to say a few brief words about the commission's involvement in leasehold casualties and about how the bill differs from the commission's recommendations.

The Convener: Briefly.

Dr Clive: Thank you.

In 1997, the then Secretary of State for Scotland asked the Scottish Law Commission to consider the law on leasehold casualties and to advise on possible reforms. That request followed press publicity and debates in Parliament about attempts

by some landlords to revive and enforce those semi-forgotten rights.

The Scottish Law Commission's method of working is that it conducts its own research, publishes a discussion paper, seeks views on that discussion paper from as many knowledgeable people as possible and prepares and submits a report. In recent years, the commission has found it useful to have an advisory committee or group to assist it with specialist advice on technical problems. Those methods were followed in the case of the work that was done on leasehold casualties.

We distributed the discussion paper to a wide range of people, including landlords and landlords' representatives, such as the Scottish Landowners Federation. The replies that we received from landowners were rather disappointing in number, but we received some helpful comments, including some very helpful comments from Mr Brian Hamilton. In the light of the comments that it received, the commission formulated its recommendations and reported on the matter in 1998.

I mentioned the commission's working methods because a complaint was received from Mr Hamilton to the effect that the deputy keeper and, perhaps, other members of the advisory group were not impartial, as it were, and that they should not have been on the group if Mr Hamilton was not.

I suppose that Mr Hamilton's reasoning was that he had actions pending against the Keeper of the Registers and might have made claims against members of the legal profession. When the Scottish Law Commission embarked on the project, it needed information quickly. It seemed natural that the commission should seek help from the keeper and from Professor Rennie, who works in a leasehold casualties area. There is nothing sinister about the inclusion on the committee of those experts. We did not know at that time that Mr Hamilton was as knowledgeable as he is about leasehold casualties and we had no reason to suppose that he would be willing to share his knowledge with us, so there was nothing sinister about his exclusion.

It is important to stress that the commission's function is not to act as an adjudicative body. We do not exist to adjudicate between individuals; our role is to consider the law and to advise on possible reforms. We are concerned with the general question of reforms for the future. I mention that because I think that that point might be raised.

On compensation levels, there is a big difference between assessing compensation in an individual case and devising a package of

compensation that can apply fairly and efficiently across the board as part of a necessary reform. The Scottish Law Commission was concerned only with the second of those objectives—we make that perfectly clear in our report.

There are three respects in which the bill differs from the commission's report. The bill includes compensation for the loss of rental value casualties, based on the ground rent. The commission recommended—for reasons that are set out in its report—that there should be no compensation for such casualties. That refers to the future, of course. I must emphasise that we were not concerned with accrued arrears. The commission mentioned in its report that assessment of compensation on the basis of the ground rent would be a possible solution, if compensation were thought to be appropriate. It is clear that the commission has no objection to the bill in that respect. It is wise and sensible, given the emphasis on human rights, to err on the side of safety.

Another respect in which the bill differs from the commission's report is that it comes into force on the date of introduction and not on the date of royal assent. The commission did not think it necessary to have even that modest element of backdating, but I can understand the concerns that might have led to that.

Finally, the bill differs from the report by the inclusion of section 8, which relates to pending actions based on the Land Registration (Scotland) Act 1979. We did not consider a special provision for such actions, because we assumed that our recommendations would not affect accrued rights, including accrued rights to an indemnity.

Those are the only points that I wanted to make, but Mr Dods and I will be pleased to answer any questions.

The Convener: Thank you. I will start by making the obvious point—which was made by Mr Hamilton—that the major effect of the bill would be to get solicitors off the hook in future and protect them from the results of their own incompetence.

Dr Clive: I do not agree with that. Even if everything was fully known and proper advice was given in every case, somebody who bought a bunch of old titles could, in effect, set himself or herself up as a private tax collector and levy substantial charges on the transfer of leases. The basic system seems to be wrong, oppressive and in need of reform.

The Convener: Surely the point that is being made is that, if solicitors did their job properly, people who purchased property under such leases would be aware of the burdens that they were letting themselves in for.

Dr Clive: They would, and that would remove one of the major complaints about the human effects of the actions that have been taken by landlords. People would not be taken by surprise, but we would still have what is—in the Scottish Law Commission's view—a fundamentally bad system. An archaic set of provisions that imitates feudal provisions has survived, despite the abolition of the feudal equivalents. That system represents a substantial charge on the transfer of property and needs to be abolished.

Gordon Jackson: Oddly enough, as time has gone on, I have found the matter increasingly difficult. The feudal system has been changed, but not enough in this respect. Somebody can buy an estate because—rightly or wrongly—he sees in its title a value that is based not only on ground rent, but on a casualty value that is based on the rental value of the property. An intelligent prospective buyer would buy the title because it had that value. He would then find that people did not want to pay him that value because their lawyers had missed it. That is largely the reason for the problem.

The Deputy Keeper of the Registers of Scotland has told us that even lawyers are confused about the matter. I think that that was a euphemism for, "We got it completely wrong." Why should somebody no longer get what a casualty is worth, simply because those in the legal profession have missed the casualty, despite knowing what the law is on the matter? Why should not they be paid the casualty—which they bought in good faith—by those who got it wrong, such as lawyers, their indemnifiers and the keeper? Are you satisfied that the ECHR is not contravened by saying to the man who has bought such a title in good faith, "We know that you read the title and bought it. That's what it was worth, but we've decided you're not getting that, because we don't think the law should be as it is?"

Dr Clive: That argument was put forcefully to the Scottish Law Commission. I stress again that we are not concerned with arrears. Where mistakes have been made and an unnoticed casualty has become due, that is not affected. We are concerned only with the future right to claim casualties.

The bill proposes to take away that right from landlords. There was little doubt in our consultation that the casualties should, because of their nature, be abolished. The difficult issue, which underlies Gordon Jackson's point, is compensation. That was the question that the commission found extremely difficult in relation to the rental value casualties—small duplicands are no problem at all.

We considered every scheme of compensation that we could think of that would be consistent with abolishing those archaic rights. In the end we

concluded, given the oppressive nature of the exaction and the legal uncertainties and practical difficulties that surround such claims, that they had no value that was worthy of compensation as part of a reform package. As I said, we were not concerned with valuing specific rights to casualties in specific cases; we were concerned with devising a package that could be used across the board.

That was our conclusion—which I think will be all right from a human rights point of view. Under protocol 1 of the ECHR, a state enjoys considerable discretion in controlling the use of property rights. A specific use of a property right—in this case the landlord's right—may be regarded as being contrary to public policy, as this type of claim has been regarded since 1874 and earlier. In relation to feudal casualties, it was recognised in the early 19th century that such claims should be abolished. They have survived in leasehold casualties, but it has been obvious for a very long time that their survival is contrary to public policy. I believe therefore, that the state has discretion under the ECHR to abolish such means for a landlord to exercise rights, and could do so on whatever terms it thought fair and reasonable. Of course, one can never be entirely clear about such matters.

Maureen Macmillan: I want to check that the person who buys up the old leases does not set their own charges. Is the formula containing the multiplication factor for the value of the property already set? If a feudal superior charged someone who built a porch on their house, that could be regulated at a land court. Was there a way of appealing against the charge that the landowner imposed through the leasehold casualty?

11:00

Dr Clive: There was no statutory method, but some leases included a provision for arbitration.

Christine Grahame: As you said, Dr Clive, it is unusual for an act not to come into force at the time that it gets royal assent. Are there other examples of legislation with a similar provision?

Dr Clive: There are examples, but I cannot think of the name of such a piece of legislation offhand.

Christine Grahame: I appreciate that it is quite difficult. Have you concerns about the provision, which is unusual?

Dr Clive: I would be concerned if this became a common practice. I can see the case for including the provision in this instance—there might be a special reason. Others might be able to respond better, as the proposal was made after I was involved.

Christine Grahame: You said that there might

be a special reason. I take it that that means that you cannot see one.

Dr Clive: I suppose that the reason was the one given by Mr Ingram in the previous discussion—there was a fear that there would be a rush of claims by landowners to take advantage of the gap before the legislation came into force. The commission considered that point in relation to the irritancy provision in section 5, but we concluded that there was no real risk of that because the court has sufficient common-law powers to deal with abuse of the irritancy provisions. We did not think that backdating would be necessary. I cannot say much more, as this relates to matters that we were not involved with.

Christine Grahame: What would your suggestion have been for the time at which this would become enforceable?

Dr Clive: As set out in the report, our position was that the provision should commence on the date of royal assent in the normal way.

Christine Grahame: Does that remain your position?

Dr Clive: Yes.

The Convener: I want to clarify what has been said about compensation. The point has been made that the only type of casualty that has any significant value is one that is based on a rental value when there is a singular successor. Is the compensation much less than what a person who would be entitled to that casualty would receive if the bill were not enacted?

Dr Clive: It is difficult to give a comprehensive answer, because casualties are different.

The Convener: But the sum would not be bigger.

Dr Clive: It is unlikely to be bigger, but it might be. I say that because there are casualties where the landowner might never get a penny. The property might be owned by a church or a company and never change hands. There cannot be a general answer; in such a compensation scheme, there has to be a somewhat rough system.

The Convener: I do not want to put words in your mouth, but I think that you are saying that, in a significant number of the cases, the compensation would be much less than the owner of the casualty would normally expect to receive.

Dr Clive: That is correct. It depends on the assumptions that we make. If the owner retained the casualty and the property changed hands every so often, the owner would undoubtedly get more. If we examined the market value of the rights to casualties, the position would be different. I am not sure what people would pay for the right

to exact a particular rental value casualty from the succeeding tenants of a property, but I suspect that they would not pay much.

The Convener: The report describes leasehold casualties as “archaic, anachronistic and undesirable”. What happens when a lease of 999 years expires?

Dr Clive: The property reverts to the landlord. That is the bigger horror that underlies the situation.

The Convener: I know that 999 years from now is a long way away, but do you feel that that situation is also archaic, anachronistic and undesirable? Should we be doing something about it?

Dr Clive: As I am no longer a member of the commission and am free to speak my mind, I can say that I think that the situation is bad and is in urgent need of reform.

Gordon Jackson: I do not know how urgent the situation is, but I take the point.

I am interested in how the compensation is calculated. As you say, some properties might never change hands and others might change hands every five years. I should have asked this question of the previous witness, but perhaps you will know the answer. The keeper sometimes bought out casualties. Do you know how that was done and what formula was used?

Dr Clive: I do not.

Gordon Jackson: That is a pity, as that information would help to answer the main question.

The Convener: I thank Dr Clive and Mr Dods for attending.

Our next witness is Mr Brian Hamilton. Mr Hamilton, I know that you have circulated a copy of a lengthy statement. If you read out the whole of that statement, the committee's eyes will glaze over and we will not be able to take in all the points. Therefore, I ask you to confine your remarks to the substantive points. You have about five minutes.

Brian Hamilton: I will attempt to pick out the substantive points, although it will be difficult. Members have before them my submission to the Scottish Law Commission. They will have noted the narrow range of views that were represented on the advisory group, which I think led to a report that is not objective, certainly in so far as it purports to draw conclusions on the redemption or compensation value of rental value casualties. The report is flawed and flies in the face of easily available evidence.

The report finds that a fair multiplier for a

casualty due on assignation is 0.75. Landlords and tenants have been freely and routinely negotiating buy-outs of casualties at a multiplier of at least 2.5 for the past 11 years. There has never been a compulsitor on either tenant or landlord to agree a buy-out—they can accept the situation and agree to pay money the next time there is a casualty—but, if they want to end the situation, a multiplier of 2.5 or 3 has usually been what they have agreed between themselves. Scores of examples are readily available. If the committee wants proof of my statement, I can arrange for that proof to be delivered. The Keeper of the Registers of Scotland knows that it is true, because the discharges between landlord and tenant are recorded in his register. He could have brought that information to the Scottish Law Commission when he was sitting on the advisory group.

There has been mention of the Feudal Casualties Act 1914, which abolished casualties in feu charters. Section 5(b) states that 2.5 would be the multiplier for the casualties that we are talking about today. However, there would never have been a feudal casualty so onerous as what we are discussing today, and I have never come across such an example.

In my view, the Scottish Law Commission's report is absolutely worthless on the redemption value and compensation value of the casualties, and bears no relation to what is happening. That is because no alternative views were available to the commission. It could have approached us and asked, but it did not—it knew what it was doing.

The proposal is to substitute the rental value clause in a lease with the stated ground lease. Mr Ingram suggested in the committee meeting of 11 September that the highest compensation that was likely to be paid would be about £60. In some circumstances, a landlord might get £6,000 every seven years or so. That is not compensation—it does violence to the English language to call £60 compensation. It is confiscation; it cannot be anything else.

The bill's sponsors may be in trouble with European law. I am not a lawyer, but I think that we have to distinguish between the situation that we are discussing today and the Duke of Westminster case. The duke got knocked back because he was asking too much, according to the court. However, he was getting something. He lost his case because he wanted a lot more than the law would allow.

At the 11 September meeting, Mr Jackson came close to the truth when he asked Professor Rennie about proportionality, as recorded in the *Official Report* at column 1697. If we accept Professor Rennie's short summary of the Duke of Westminster case, the compensation level should perhaps be the value of the ground without the

building on it. The removal of the casualty clause from a lease takes away the whole value of the assets of the landlord, who will have nothing left. I own 36 houses in Boghead and Kirkmuirhill. The annual rent would not take my wife and me out to dinner for a night. We have no assets in the property apart from the casualty value.

I cannot see how Mr Ingram's proposal can be described as compensation. If we take the stance that all property is theft and say, "We're having it off you," that is fine—I can live with that. If that is the political line, it only has to be said and we need not have the whole discussion about compensation and great long tables that will hardly be used. I cannot imagine any landlord collecting any of the compensation that is proposed. It is too expensive to collect such payments. I could go on, but it might be better if I let members ask questions.

The Convener: Yes, we will come to questions now. Can I first pick you up on some—

Brian Hamilton: May I just say one thing first? While we are talking, members might want to read through the written statement that I supplied. Members may wish to pick me up on several points.

The Convener: I am sure that we will try our best.

You talked about the possibility of our wanting to adopt the maxim that all property is theft. I suspect, however, that people would prefer to adopt the maxim that all leasehold casualties are theft. They have the view that, although it might be legal for people to do what you have done, it is hardly very moral, as leasehold casualties have gone into desuetude and you came across this only through your interest in this area of law.

Brian Hamilton: People think that this law is not moral because there has been a break of 90 years in which no one has picked up the fact that it is possible to collect leasehold casualties. Had there not been that break, people would not have used the morality argument and would have lived with the situation. I believe in the sanctity of a contract. People make a deal and they stick to it. I made a deal and bought an estate. It cost a lot of money; now you are taking it off me.

Pauline McNeill: I have three questions. You mention making a deal and sticking to it. A lot of ordinary people thought that they made a deal—to lease a property—only to find out—

Brian Hamilton: Well—

Pauline McNeill: Can I finish? I am not just getting at you, Mr Hamilton. A lot of landlords have made a killing from ordinary people, who have lost their homes because of leasehold casualties. They thought that they had a deal with the other side.

Do you not think that it is about time that that human suffering stopped and that we got rid of leasehold casualties for the sake of ordinary people?

11:15

Brian Hamilton: I can see that society has developed and, as society develops, we change our rules and regulations. However, we do not normally do that at one individual's expense. Normally, when we decide that we need to make a change in society, we do not put all the burden of that change on one person. On this occasion, it is a matter of just a few people, and it is easy for you to make a change.

You said that the tenants thought that they had a deal. They had a lease, which was set up in, say, 1820. The lease was then assigned—people bought the rights of the lease. What we are dealing with is therefore not the previous tenant, but the deal that was set up in 1820, which has been taken over by various people. Tenants change and landlords change.

Pauline McNeill: We have heard a lot this morning about the fact that lawyers should have got this right and should have advised their clients that a clause was in desuetude. You have mentioned that in the past. Were you relying on the fact that you knew that lawyers were missing casualty clauses?

Brian Hamilton: I will tell you what happened. The estate was offered to me in 1994. At that time, I knew nothing whatever about feudal casualties. I did not know that the Keeper of the Registers had already settled with the Duke of Hamilton in 1990—while I was still sitting in conveyancing classes at the University of Aberdeen—for about £70,000; I did not know that the keeper had also settled with the people who owned the estate at Wishaw.

Pauline McNeill: I, too, have done conveyancing. You are on record as saying that you have simply taken advantage of loopholes in the law and that lawyers should get their act together.

Brian Hamilton: Not loopholes—a loophole is something that could not reasonably have been foreseen. The casualty clauses in the leases are as clear as day. The reason that they were missed was shoddy conveyancing. Lawyers do not have to know everything, but they have to know that when they do not understand something, they ask somebody else.

Pauline McNeill: With respect, that was not the question that I was asking. I am clearly not going to get an answer. I am asking whether you were relying on your knowledge that lawyers often

missed casualty clauses in leases. If you do not want to give me an answer to that, that is fine.

Brian Hamilton: I will give an answer. I will not dodge the question.

Pauline McNeill: Well, I would like an answer.

Brian Hamilton: My answer is that when I bought the estate I knew nothing about casualty clauses. I learned as I went. I read the lease and I asked, "What does this mean?"

Pauline McNeill: My final question is on compensation. Some other parties, notably Cameron Fyfe of Ross Harper and Murphy have told the committee that the bill should not compensate landlords at all, although we know that it will offer some compensation. The argument has been made that landlords have been receiving casualties for nothing in return. What are landlords doing in return for their casualty payments?

Brian Hamilton: Landlords own the land. You can equate a casualty clause with the modern rent review clause. What does the landlord do to justify a high rent in a modern rent review clause? Absolutely nothing. Are you going to destroy the pension industry by abolishing rent review clauses? The principle is the same. You are saying that you believe that the casualty clause should be abolished and I think that you are saying that it should happen without compensation.

Pauline McNeill: No, I am quoting Cameron Fyfe from Ross Harper and Murphy, who asked the committee to consider the argument that there should be no compensation because the landlord does nothing.

Brian Hamilton: Is that Mr Ross Harper who is a professor of law?

Pauline McNeill: It is Cameron Fyfe of Ross Harper and Murphy.

Brian Hamilton: Of course, he has a personal interest in this. He has made his mistakes, along with Professor Robert Rennie of the Law Society of Scotland, and had to compensate people. We have a situation in which one bunch of lawyers is changing the law to protect another bunch of lawyers. This legal campaign is really about protecting professional indemnity insurance premiums.

The Convener: You said that you made a deal, but in fact the deal had long since been made by one of your predecessors with the predecessors of some of the existing tenants.

Brian Hamilton: Do you mean the lease?

The Convener: Yes, in the purchase of the original estate. You said that you did not know about casualty clauses when you purchased the

estate.

Brian Hamilton: Correct.

The Convener: In fact, any income that you are entitled to as a result of those clauses was a windfall. Does not that reduce any moral—if not legal—entitlement that you might have to enforce them?

Brian Hamilton: You could argue that. However, I lost other things that I thought that I was getting. I do not know the word to describe the opposite of a windfall but, when you buy an estate like the one I did, you do not know what you are getting.

Gordon Jackson: Brian Hamilton mentioned me before, but he must never assume my concluded view from my questions.

I am not without sympathy on this matter. You heard the question that I asked Dr Clive about someone who buys an estate in good faith and says, "That is what I am going to get and I will pay a price for it", only to find that the income from the casualty is taken off them. I understand that, but let me ask you this even more bluntly than the convener did: when you bought the estate, did you pay a price for it that reflected in any sense the value as you now calculate it of the leasehold casualties? I am not asking what you paid for the estate; no doubt we can find out. Did you pay the money expecting to get the casualties, or did you pay a price for the estate that did not take them into account at all?

Brian Hamilton: I want to be sure that I understand the question. Are you asking whether I factored in an expectancy of money from the casualties?

Gordon Jackson: No, you may have factored it in because—

Brian Hamilton: If that is your question, the answer is no.

Gordon Jackson: I was going to be even more direct. You did not factor it in, but it is possible to factor it in and still not pay the price because the other side has not factored it in. I am asking whether the price that you paid reflected the value.

Brian Hamilton: Do you mean the value of the casualty? As I said, I knew nothing about casualties when I bought the estate. I found them afterwards.

Gordon Jackson: So the price—

Brian Hamilton: I was looking at leases and I said, "What does this mean?"

Gordon Jackson: So the price you paid for the estate, and therefore the amount that the person you bought it from received, took no account of the

value of the casualties.

Brian Hamilton: Correct.

Christine Grahame: I boldly go here, because I am a registered member of the Law Society of Scotland. I want to take up an issue from your statement. You appear to be saying that the momentum for the bill simply comes from the legal profession covering its back.

Brian Hamilton: That accounts for most of the momentum. Other forces are involved.

Christine Grahame: I put it to you that perhaps one of the other forces is that circumstances have changed, as they do over a long period. As I understand it, these casualties came about because land was entailed, and—bear with me, and correct me if I am wrong—these leases were set up to get round entailment. Now that land is no longer held in that manner, do you not see that there is a policy reason—which is nothing to do with you as an individual; you have done us a service by showing us something in law that needs to be remedied—why the law needs to be changed to take account of changing circumstances of land ownership? That is what the bill is about. It is not about depriving you or others; it deals with something in law that requires to be changed as a matter of policy. This is not a personal conflict between the legal profession and Brian Hamilton.

Brian Hamilton: You made two points. Entailment is a red herring. I can show you examples of leases, feu charters and dispositions on many estates. I do not know what branch of the law you practise but, if you look at the history of entails, you will see that the first entail act was in the late 1600s. Since then there have been all sorts of watering down. There was the Entail Amendment Act 1848, referred to as the Rutherford act, and the Entail Improvement Act 1770, referred to as the Montgomery act. I will not bore you with all the details, but entails were so watered down that they were ineffectual if an owner in possession wanted to lease or feu. The entail story is a red herring.

Christine Grahame: Let us put that to one side. Do you accept that our policy view of land ownership has changed, mercifully, in 2000? We have abolished feudal tenure. In the same manner, this issue, which you have highlighted, has arisen and has to be addressed because of our views on land ownership. The bill does not represent a personal vendetta; it is a matter of changing land policy and land ownership.

Brian Hamilton: I accept that the law has to change as society changes. As I said, if you find that you have to take away someone's property for the public good, you should not make that individual suffer for the public good. I accept that

laws have to be changed.

The Convener: Before I ask Adam Ingram to speak, Christine Grahame properly declared an interest. If anyone else has an interest, they should declare it when they speak.

Mr Ingram: Is that remark pointed at me?

The Convener: No, you just happened to be next.

Mr Ingram: Brian, you indicated that the rental that you received from your properties in Boghead was minimal. How much income have you derived from casualty payments since you purchased the estate?

Brian Hamilton: Did you get a copy of my paper to the Scottish Law Commission?

The Convener: Yes, we did.

Brian Hamilton: I cannot remember the figure, but it is not much different from the figure that appeared in that paper. It is something like £27,000. What does it say in the paper?

The Convener: It says £27,058.

Brian Hamilton: What is the date of that?

The Convener: It is dated 5 May 1997.

Brian Hamilton: Then I think that the figure is still correct; as I think I say in the letter, we have just a few properties left with a casualty provision on them. By and large, those numbers hold good.

Mr Ingram: If the bill is passed, how much income will you forgo?

Brian Hamilton: I was thinking about that this morning. I have three properties with casualty clauses on them. One is the smallest hairdressing shop anyone is ever likely to see—it is about 8 ft by 8 ft. If it were ever to change hands, it might attract a casualty of £500. One house might attract a casualty of about £2,000 and the other might attract a casualty of £5,000 or £6,000. That is the sum total of my interest.

Mr Ingram: Have all the other casualties been bought out?

Brian Hamilton: Yes, they have. You could say that I am here in an almost academic capacity. I have very little financial interest in casualties now. If they are abolished, it will not really affect me.

11:30

Maureen Macmillan: Quite a lot of my concerns have been dealt with. I wanted to get a picture in my head of the estate. Is it a street of houses?

Brian Hamilton: The estate was part of a larger estate, which was the Duke of Hamilton's land. In the 1650s, it was about 14,000 acres, but the land

was gradually sold off. When I bought it, I took what I could find. Before the owner sold the land to me, he took out whatever could be given a clear value—sites and so on. I took a gamble. If anyone really wants to know—it is in the register—I paid £30,000 for the land, hoping that I would find something. I might have found nothing at all, in which case I would have been £30,000 down.

Maureen Macmillan: Have you nothing apart from the income from the leasehold casualties? Is there no other income?

Brian Hamilton: From the estate?

Maureen Macmillan: From the estate.

Brian Hamilton: What did we have? We found two building sites—abandoned land—and various bits and pieces of that sort. There were no superiorities or feu charges. There are bits of land that have been forgotten about. We have had to examine the maps.

Maureen Macmillan: It is a lot of parcels of land.

Brian Hamilton: We had another claim against the Keeper of the Registers, who made a mistake in a similar hearing and paid us £37,500 after a long-running battle. I offered to settle at £25,000 in 1994, but the keeper took it to the courts. Under section 13 of the Land Registration (Scotland) Act 1979, the keeper will have to pay around £200,000 by the time all the legal expenses are picked up.

Maureen Macmillan: So you do have other income from the estate?

Brian Hamilton: A small bit of income, but there are an awful lot of expenses. If you are talking about profit, there has been very little.

Pauline McNeill: You were honest when you gave us the figure of £27,000 that you have made from leasehold casualties—thank you for that. Does that include money that you have received as a result of challenging the keeper?

Brian Hamilton: No. I have received nothing from the keeper. If you examine the table in the Scottish Parliament information centre research paper on the bill, you will see that the case is on-going. I have received nothing from the keeper in relation to casualties yet.

The Convener: I have one final question. You said that you paid money for the estate on the basis that you thought that something might turn up. Given that you did not know about leasehold casualties at the time, what sort of thing did you think would turn up?

Brian Hamilton: Vacant bits of ground. We found a couple of building sites. There is also a small field, which might have some value in the future, depending on local planning policy.

Members may also be aware of the Auchenheath schoolhouse case. The house belonged to the estate. The local authority sold it on a defective title, although it should have returned it to the estate when it was finished with it. We had to litigate to get it back.

The Convener: Thank you for your attendance, Mr Hamilton.

Brian Hamilton: I ask members to take note of the last section of my notes, about the proposed change in the law. I have spoken to Micheline Brannan about it.

The Convener: I am sure that members will read all your documents, as we have your previous ones.

Brian Hamilton: Thank you.

The Convener: Our next witnesses are from the Scottish Executive. Micheline Brannan is from the justice department and Stuart Foubister is from the office of the solicitor.

Micheline will tell us briefly why the Executive supports the measure.

Micheline Brannan (Scottish Executive Justice Department): Thank you, convener. Mr Ingram's bill will abolish a system whereby people who hold properties on long leaseholds are liable to make extra payments at regular intervals or on the occurrence of specific events. Because liability for unclaimed payments passes with the lease, owners in some parts of Scotland were faced with demands for large arrears, which they did not expect when they bought the property. In some cases, severe distress was caused to owners. For that reason, the previous UK Administration referred the matter to the Scottish Law Commission. A report was received, but parliamentary time was not found at Westminster.

The Executive supports the policy behind the bill, which is to abolish liability to pay leasehold casualties or arrears, and was delighted when Mr Ingram indicated his intention to introduce the bill. Mr Ingram has, on advice, made three changes to the bill from what the Scottish Law Commission recommended. They were so well described by Dr Clive that there is no need to repeat them.

I hope that that is enough of an explanation.

The Convener: What is the Executive's attitude to compensation, which is one of the extra measures that were put in? What is the attitude to Mr Hamilton's argument that in particular rental cases in which he has an interest, the compensation is unlikely to match the income that he and other people in his situation might reasonably expect to receive from the casualties, albeit that casualties are variable and an average cannot be predicted?

Micheline Brannan: My understanding is that under the European convention on human rights, compensation must be proportional to the loss—it does not have to be at market value. My understanding is also that while rental value casualties might provide somebody with an income, the income stream would not be a sufficiently reliable way of making one's living to give it a large market value. Strictly speaking, a casualty might have a large market value, but the unreliability and the prospect that the system could be abolished at any time would make it a not very marketable commodity. Mr Foubister might like to bring some legal expertise to that answer.

Stuart Foubister (Scottish Executive Office of the Solicitor): I will do what I can. Aspects of the ECHR, such as article 1 of protocol 1, require a balancing exercise. On one side of the scale is the greater public interest, which the measures are intended to serve. On the other side is the disproportionate impact that the measures might have on an individual who is prejudiced by them. The position is by no means black and white. All sorts of factors need to be weighed up—the price paid for the estate by the landowner, his expectations and his input in return for payments, as well as the interests of the tenants—to set the level of compensation that tenants are required to pay.

The Convener: The point is that while the amount that people receive now is variable, under the proposed formula, it is not variable and it is unreasonably low. It is not proportionate.

Stuart Foubister: It is in no way a market value figure as regards rental values. That is accepted. Our feeling is that that is defensible in ECHR law, given the public interest element in what is being done.

Christine Grahame: I hear what you say about proportionality. It might be more than nominal compensation, but is not it pretty nominal compared with what certain parties could get in compensation?

Micheline Brannan: It is nominal. There is policy behind that. The SLC considered that there should be no compensation for rental value casualties. In the Executive's view, that went too far; the balance has been struck near the nominal level. That is partly to reflect the fact that the landlord is benefiting from investments made by successive tenants over the years, which have increased the rental value of the property. The landlord has not provided anything.

Christine Grahame: I hear what you say. I am pretty sure that Mr Hamilton will raise ECHR challenges when the bill becomes law—he strikes me as that kind of gentleman. What would be your prospects of success in resisting that challenge?

Micheline Brannan: I do not think that we would like to speculate.

Stuart Foubister: We as an Executive would not support a bill if we thought that the prospects of winning were not better than 50 per cent.

Christine Grahame: I was looking for a percentage—a proportion—of your prospects of success in resisting the challenge.

Dr Eric Clive raised an interesting issue about the date when the bill comes into force. Have you any reservations about that provision being in the bill, as legislation usually comes into force when it receives royal assent?

Micheline Brannan: It is not always true that bills come into force when they receive royal assent. Sometimes they are commenced by order, which takes some time.

Christine Grahame: But not earlier than the date when they receive royal assent.

Micheline Brannan: It is unusual, but it is not unheard of. The Mental Health (Public Safety and Appeals) (Scotland) Act 1999 was an example of legislation some aspects of which were retrospective. We can assure you that, because that is unusual, every case is given careful attention to ensure that proceeding in that way is justified. On this occasion, the desire was to avoid a situation in which the bill was introduced, but its progress was not fast, so that there would be several months during which a person with unclaimed casualties could take steps to claim them.

Christine Grahame: I hope that that provision might be included in other bills when progress is not fast.

The Convener: Do members have any further questions?

I thank Micheline Brannan and Stuart Foubister for their attendance.

Forward Programme

The Convener: Item 5 on the agenda is consideration of the committee's forward programme.

The details are in paper JH/00/30/2. Members might want to address the point on consultations towards the bottom of the first page, in relation to the white paper on family law, "Parents and Children".

Would we like to appoint a reporter or take evidence as a committee?

Pauline McNeill: We have not tackled that aspect of the law before. We will be short of time,

as usual, but we should take proper evidence.

The Convener: The alternative view is that, as the Executive is taking evidence in that way, we should wait to see what its conclusions are and take evidence at that stage.

Christine Grahame: I support what Pauline McNeill said. Postponing evidence taking until after the Executive has taken evidence makes sense. When we have decided which groups we want to hear from, I would like to hear their evidence. We can decide in which cases written evidence will be sufficient.

The Convener: Is that the consensus of the committee?

Members indicated agreement.

The Convener: Are there any other comments on the forward programme?

Christine Grahame: On the prison estates review, the paper states:

"The Committee has indicated that it wishes to take evidence from Tony Cameron . . . No date is yet known for that announcement."

Will we wait until the outcome of the review has been announced? That will be in December.

The Convener: I was not privy to the decision to take evidence. I assume that it was a chance to interrogate Tony Cameron on the outcome of the review. If we interrogate him before the outcome of the review, the answer will be that they are working on it and to watch this space.

Christine Grahame: It is just that we now know that the review will not come out until December. It is unfortunate that it is taking such a long time to come out. I do not suppose that we, as a committee, can do anything about that.

The Convener: I do not think so. The minister was asked about that earlier; members heard the answer.

We will move on to item 6 on the agenda—we decided at the previous meeting that it would be taken in private.

11:45

Meeting continued in private until 12:23.

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