

JUSTICE COMMITTEE

Tuesday 26 June 2007

Session 3

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JUSTICE COMMITTEE **2nd Meeting 2007, Session 3**

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

*Nigel Don (North East Scotland) (SNP)

*Paul Martin (Glasgow Springburn) (Lab)

*Stuart McMillan (West of Scotland) (SNP)

*Margaret Smith (Edinburgh West) (LD)

*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Aileen Campbell (South of Scotland) (SNP)

Mike Pringle (Edinburgh South) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Kenny MacAskill (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERKS

Anne Peat

Terry Shevlin

ASSISTANT CLERK

Euan Donald

LOCATION

Committee Room 1

Scottish Parliament

Justice Committee

Tuesday 26 June 2007

[THE CONVENER *opened the meeting at 10:30*]

Decision on Taking Business in Private

The Convener (Bill Aitken): Good morning, ladies and gentlemen, and welcome to the meeting. All those with mobile phones and pagers should ensure that they are switched off, so that they do not cause any disruption.

We have received no apologies and, now that Margaret Smith has arrived, we have a full turnout.

First, I seek the committee's permission to take in private item 4, which is a discussion about our work programme. I should tell members of the public that there is nothing sinister about this; we will simply be dealing with some housekeeping items and our future work programme, and the usual practice is to take such items in private. Are members agreed?

Members *indicated agreement.*

Scottish Executive Priorities

10:31

The Convener: Item 2 is consideration of Scottish Executive priorities for the justice portfolio. It gives me much pleasure to welcome the Cabinet Secretary for Justice, Kenny MacAskill, to the meeting. I think that you are the first of the new Cabinet to appear before a committee, and we are very much looking forward to hearing what you have to say.

We are certainly looking for some indication of the Executive's plans for the year ahead, as that would assist us in working out our approach to inquiries. I know that it is still early days, but we would appreciate it if you could be as firm as possible in your comments. Do you want to introduce the members of your team?

The Cabinet Secretary for Justice (Kenny MacAskill): I am accompanied this morning by Frances Wood, Paul Cackette, Elizabeth Carmichael and George Burgess, who will deal with matters on which I am not able to comment. You are right to say that this is a relatively early juncture, but we are happy to be here. Do you want me to make some opening remarks?

The Convener: I leave it up to you. We are extremely interested in hearing what you have to say. Perhaps you could give us your presentation, after which members will doubtless ask some questions that I know you will do your best to answer.

Kenny MacAskill: It is very kind of you to invite me at such an early juncture to talk about my initial priorities. Of course, the timing imposes a couple of limitations and restrictions. For a start, I am unable to discuss any proposed legislation until it has been discussed and approved by the Cabinet. However, I can discuss the Government's general ethos and certain other matters. I am happy to try to work with the committee and find out what we can do collectively for the benefit of the country.

To some extent, our priorities and guiding principles were rehearsed in the speech that I gave in Parliament on behalf of the Government in the safer and stronger debate, but I will reiterate them for the record. First, we believe that we must have a culture of personal and collective responsibility. Individuals must take responsibility for their actions and accept the consequences thereof. Equally, though, Government and public agencies must take responsibility for all our communities. It is, as some newspapers this morning have alluded to, the "tough on crime, tough on the causes of crime" position.

Secondly, we believe that prevention is better than cure and that we must pour more resources into tackling the causes of crime, not just dealing with its symptoms and manifestations. That means putting more emphasis on tackling the social and economic factors that contribute to crime, such as the three Ds that scar Scotland: drugs, drink and deprivation.

Of course, as well as ensuring that we punish bad behaviour, we must promote good behaviour. MSPs will have heard complaints from constituents that because their children are not offending or misbehaving they do not have the same access to a variety of opportunities. As I say, we must ensure that we promote good behaviour and not simply provide alternatives to deal with those who are badly behaved.

Thirdly, we must have a coherent penal policy that detains the dangerous while treating the troubled. There are clearly difficulties in that area.

In taking forward those priorities, we will build on the important reforms and progress that, as we have acknowledged, have been made over the past eight years of devolution. When in opposition, we welcomed and supported the tougher laws on and prosecution of offences involving weapons; the much-needed reforms of the courts, which have resulted in a greatly simplified system for the 21st century; and the enhanced support and recognition for victims and witnesses. We give credit where credit is due and will build on those measures.

We are also moving forward on issues such as enhanced police capacity, the creation of a serious crime task force, sex offending, alcohol licensing and our drugs policy. We have already had productive discussions with representatives of other parties on some of those issues.

We suggest that the committee could play a valuable role in scrutinising legislation in three areas. Of course, there are many more areas that the committee might be interested in examining, and it is up to the committee to decide its own work programme. However, three particular issues spring to mind.

First, the issue of community sentences has been highlighted in the newspapers today. Although we are committed to ensuring that those who pose a danger to our communities or who commit serious offences are put behind bars, we realise that less serious offences may be better dealt with through rehabilitation and reform. We need to break the cycle of reoffending, which is a significant problem in Scotland. After all, such a situation ill-serves the perpetrators of offences and the communities that are their victims.

Work is under way on ensuring that community sentences are handed down faster and are made

more visible. Indeed, we are seeking to ensure that the sentences that you, convener, have correctly commented on are not only prescribed but served. In that respect, the problem is not so much with the terms of the legislation that has been passed but with its delivery on the ground.

The committee might also be interested in examining the issue of prisons. Alongside our work on community sentences, we need to take a strategic view of our prisons. What are they for? What is meant by the phrase “coherent penal policy”? Who should be incarcerated? On what grounds and in what manner should they be incarcerated? We would welcome it if the committee could work with us on those questions.

Although there have been significant changes to and a substantial improvement in legal aid and advice provision to bring the system into the 21st century, the committee might, further into the lifetime of the Parliament, want to investigate a long-term future strategy for legal aid and advice and assistance provision that would take into account exchanges made during the passage of the Legal Profession and Legal Aid (Scotland) Act 2007 and recommendations made under the strategic review on the delivery of legal aid, advice and information. Of course, that is a matter for the committee. However, given that the system has been—understandably and correctly—amended, the legislature should review the situation.

Other areas that the committee could examine build on recommendations that were made in its predecessor committees’ legacy papers. For example, at its inaugural meeting, the committee discussed carrying out post-enactment scrutiny of the Antisocial Behaviour etc (Scotland) Act 2004. It makes sense for the committee to consider that issue, particularly given that I am required to report on the legislation later this year. We are more than happy to work with the committee on that.

As far as post-enactment scrutiny is concerned, the Justice 1 Committee’s legacy paper mentions the Family Law (Scotland) Act 2006. Given that that legislation has been implemented only recently, it is probably too early to evaluate it in detail. However, this committee might wish to examine a number of non-legislative measures including a wide range of family law publications; research on contact arrangements; and the family contact facilitator pilot projects that are due to start later this year.

The committee could also consider a number of wider prostitution issues such as indoor prostitution, which was highlighted during the passage of the Prostitution (Public Places) (Scotland) Bill.

More recently, the question of dangerous dogs has emerged as one that must be reviewed. As a result of tragedies south of the border, it is recognised that the current legislation may not be adequate to address the situation in society. The Government is more than happy to work with the committee if it is interested in considering the issue—if not, we will consider how best to proceed.

Our general ethos is that we are more than happy to work with the committee to ascertain what we can do to scrutinise existing legislation properly, to ensure that we introduce the legislation that is needed, and to undertake the blue-sky thinking that will be required to make Scotland a better place and to make the country's legal system more appropriate for the 21st century. In that context, we will be happy to work with you during the forthcoming months and years.

The Convener: Thank you. I think that there is a unanimous view in the Parliament that an excessive amount of legislation was introduced during the past eight years. The parliamentary arithmetic in this session means that there will not be such a volume of legislation, but some legislation will be necessary. I am interested in whether the proposals in the Scottish National Party's election manifesto will require legislation. Some of those proposals will attract a large measure of agreement; others will not.

You propose an increase in police numbers. I do not think that that will require legislation.

Kenny MacAskill: That is my understanding. We think that the matter can be dealt with without additional legislation. Some tinkering might be required if we want not only to recruit more police officers—we agree that that is necessary—but to stop the haemorrhaging of talent. We must ensure that we do not lose the reservoir of talent that there is among officers who have given significant years of service—you have commented on that issue. We do not anticipate legislating on the matter, but obviously we will consider doing so if that is required.

The Convener: In your manifesto, you say that you want to restrict access to firearms. Given the Westminster-orientated aspect of much of the issue, will it be necessary to legislate on firearms?

Kenny MacAskill: As things stand, we cannot legislate other than at the margins. We made a manifesto commitment to having a coherent firearms act that would address the gaps and inadequacies in Westminster legislation.

More than eight acts of Parliament and numerous pieces of amending legislation deal with firearms. That makes life difficult for the people—legally qualified or otherwise—who monitor the situation. I will talk to colleagues south of the

border, to ascertain what is proposed in Westminster. Our view is that the current legislation on firearms in Scotland is inadequate, convoluted, not transparent and not easily understandable. That is something that the Government and the Parliament should address.

The Convener: The Antisocial Behaviour etc (Scotland) Act 2004 brought in antisocial behaviour orders. Dissatisfaction has been expressed with how the system is working. You said that you would review the system with a view to improving it. Will you do that through legislation?

Kenny MacAskill: We need to work out where we are before we decide where we want to be. That is why we will return to the committee and the Parliament with a review of what is currently on the blocks. I think that members of all parties accept that there are significant differences in how areas interpret and implement the 2004 act. We need to ascertain whether the approach that is being taken in some areas is adequate and appropriate. It would be premature if I were to say where we are going before we have explored the current situation. I do not envisage additional legislation; we need to see how we can make the current legislation work better. I noted the point that you made about the substantial amount of legislation that was introduced, particularly in the previous session.

We need to let organisations that have been established bed down—whether or not we think that they should have been established in the way that they were—and we need to provide stability, coherence and understanding, so that they can develop. We then need to look at the current situation and learn from it. We must analyse the reports that emerge from the review, rather than rush into further legislation.

10:45

The Convener: You told the Parliament that you would like an increase in community sentences, as opposed to short periods of imprisonment. Will you legislate on that matter, or will you address it in another way?

Kenny MacAskill: If we consider the legislation that was passed in the previous session, we can see that numerous community sentences are already in situ or will become available during the forthcoming months and years. We need to consider what can be delivered and we need to consider the reasons for the current impasse. As you know, there is frustration on the part of sentencers that the sentences that they impose are not implemented, or are not implemented speedily enough.

We do not necessarily seek to increase the types of community sentence that are available. I am advised—and it is not disputed—that we have a greater array of community sentences in our armoury than has almost any country in western Europe. That is great in theory, but the difficulty for many people who impose sentences is that the system is not working well in practice. We need to ensure that our practice matches the theory. There might be a need for legislation, but first we need to consider whether the current arrangements are adequate and how we can make them work better. That brings us back to the need for quick, visible community sentences.

The Convener: You have probably gathered that your proposals on community sentencing might well cause excitement, as would the creation of a Scottish sentencing council. Is that proposal still on the agenda? The establishment of such a council would certainly require legislation.

Kenny MacAskill: We will discuss the matter with bodies, participants and stakeholders—whatever nomenclature we use. We acknowledge the nature of the Parliament, the need to address the desire in Scotland for a consistent sentencing policy and our manifesto commitment that not just legislators and sentencers but the public—victims included—should have a general say on sentencing. We will see what the Cabinet makes of the issue and we will consider the positions of the people with whom we speak. We have been in office for just over a month, so it would be premature if we were to say that we will definitely legislate on a matter, given that there might be other ways of achieving our aims.

Bill Butler (Glasgow Anniesland) (Lab): I welcome the cabinet secretary to the committee. I do not think that any member can disagree with much of what you said in your introductory remarks. You talked about developing a culture of personal and collective responsibility, being tough on crime and the causes of crime, acknowledging that prevention is better than cure, and tackling drugs, drink and deprivation. We agree on all that. However, we want to know how you will make those aspirations a reality by building on and adding value to the previous Executive's work.

I do not say this to cause unnecessary dispute, but I am disappointed that you have not been able to give the committee more specific details, if only about the areas in which the Government is considering legislation. You said that you have been in office for just over a month, which is correct, but previous Executives could at least outline the areas in which they wanted to pursue legislation. I want to explore those areas, because I am sure that no member of the committee wants the current Government to be accused of hitting

the ground strolling in its approach to a legislative programme.

Bill Aitken asked about ASBOs and the Antisocial Behaviour etc (Scotland) Act 2004, which you talked about. The committee may wish to include post-legislative scrutiny of that act in its work programme. For light reading last night, I read the SNP's manifesto; an interesting thing leapt out from its pages. It stated that the SNP

"will consult on giving revamped community councils a greater role in the process of applying for anti-social behaviour orders."

Will legislation be required for that? How will you go about doing what you want to do?

Kenny MacAskill: First, I will deal with the political points that Bill Butler made. I am surprised that he thinks that we have hit the ground strolling—it appears that my predecessors were on a marathon. The election was held on 3 May and today is 26 June. Jim Wallace appeared before the Justice and Home Affairs Committee for the first time on 14 December 1999—if I am strolling, I do not know what he was doing then. In the 2003 to 2007 session, the first time that Cathy Jamieson appeared before a justice committee was with the Lord Advocate at a joint Justice 1 Committee and Justice 2 Committee meeting on 7 October 2003, not to discuss proposed legislation on behalf of the Liberal-Labour Executive but to discuss the justice budget. To be fair to the Labour group, Mr Henry had appeared before the Justice 1 Committee on 17 September 2003, but I understand that that was not to narrate where the Government was going but to speak to statutory instruments. I regret that Bill Butler thinks that this Government is strolling, because we have rushed into committees with far greater speed and willingness than it appears that any other minister was previously prepared to do. It is appropriate to put that on the record.

We will have to work out what will happen with community involvement. Bill Butler will accept that there is a desire in our communities for some kind of reparation. They want that payback to be visible and they want some say. I do not want to create huge bureaucracies and structures, because the danger is that if we tinker with structures, we could spend our time engulfed in legislation. The question is how we can get what people want. They want youngsters who have committed offences to make some payback for the crimes that they have perpetrated. Not only should that payback be visible but communities should have a say about it.

Last night, at a Portobello community council meeting, I met Mr Davidson, who runs schemes in Edinburgh. He advised me how he could get youngsters—if we could get them to him—to work on things such as the Magdalene burn. Whether

we need to legislate so that community councils direct matters, whether we can do things by picking up information from elsewhere, or whether community councils could write to the social work department to say, for example, that they want the Innocent railway line done up—I understand from Mr Davidson that that is how things have been done—I am happy to consider whatever will work. We do not want to create needless bureaucracy; we want something that works. It would be better if kids paid back their communities by doing such work. Equally, it would be better for our communities if work was done to solve the problems that have been caused and to improve them visibly and tangibly. If legislation is needed, I will not hesitate to return to the committee to give details about what we will do—perhaps after a length of time that is akin to the time that other ministers took to appear in front of committees for the first time. I will be happy to do that if it is necessary. There may be other ways to deal with matters that will appear perfectly appropriate to me—for example, community councils could factor the likes of Mr Davidson into the process. We need to try to get a solution.

Bill Butler: I hear what you are saying and note it. Obviously, you have done your homework on previous ministers' diaries, which is good.

Nobody would disagree with much of what you have said, but the committee wants to get an idea of where the Government will propose legislation, as that will help us to set out a work programme. It is sensible and practical for us to seek information about that.

You talked about striking a balance between punishment and preventive measures. The SNP's manifesto mentioned tougher community punishments. It stated:

"The presumption will be that an offender given a custodial sentence of less than 6 months will have that sentence turned into an equivalent punishment in the community."

I do not want to get into the pros and cons of whether such an approach is good or bad, but surely legislation will be needed for it.

Kenny MacAskill: We already have community reparation orders, which are coming into force, and powers to divert have been given to the Crown Office and Procurator Fiscal Service. Before we rush to produce new legislation, we should roll out the legislation that was imposed during the previous session, see how it beds in and make it work. As I said, I am not in a position to narrate what the legislation will be before the Cabinet has discussed it.

Bill Butler may think that I considered what was in my predecessors' diaries out of malevolence, but I presume that the reason why my

predecessors were not called to give evidence was that they were in the same position that my colleagues and I are in now. We cannot dictate what will happen until we have discussed it. That was why Ms Jamieson and Mr Wallace were given time to consider matters. We are here to find out what we can do collectively.

A remarkable number of community orders are available, but the problem is that some are not kicking in at all. We must roll those out and get people involved. Part of the reason for the problem is the time constraints on ministers, the Crown Office, social work departments and others. Equally, resources can be a problem, or there may be problems elsewhere. We must work out where we are before we decide where we need to get to. Additional legislation may be needed, but my inclination at the moment is that we do not necessarily need to create more legislation; rather, we need to ensure that the current legislation works better.

Bill Butler: No one would disagree with that although, for the record, I point out that I did not ascribe malevolent intent to you because you knew what your predecessors did. In fact, I expressed my admiration for a work ethic that we would all agree there should be.

Kenny MacAskill: I am grateful.

Bill Butler: I am grateful that you are grateful.

I have a couple of other short questions. The SNP's manifesto mentions expanding hate crime legislation. Surely legislation will be needed in that respect.

Kenny MacAskill: You are correct. Legislation will be required for that, and I will consider the matter in due course. I am waiting for a meeting with the Lord Advocate and the Solicitor General for Scotland to discuss how prosecutions can be improved. Legislation will be proposed, but it would be inappropriate for me to discuss such legislation publicly without having first discussed it in the Cabinet and having gone through the appropriate protocols. Legislation will be required to deal with hate crime, and we have made a commitment in that respect. I would be happy to return to the committee and discuss that with members in due course.

Bill Butler: I am sure that we will be happy to listen to you.

Finally, for the record, you mentioned being in government for only over a month, which is factually correct, but you will recall that, by this time in the previous two sessions, we already had at least an outline legislative programme that the coalition had agreed—in fact, many proposals had been quite fleshed out. We must balance that against what you have said. However, be that as it

may, when will the SNP minority Government produce its intended legislative programme for the parliamentary committees that will be asked to scrutinise the legislation?

Kenny MacAskill: It is not for me to comment on the broader legislative programme—that is for the First Minister to outline. However, I can say that we intend to return to Parliament with legislation in the latter part of the autumn, although I am not in a position at the moment to say what the aspects of that legislation will be for my portfolio. As I said, we will happily share our proposals with the committee in due course, and they will be subject to scrutiny. We have come to the committee at this early juncture to discuss matters and to try to deal with them as collectively and cohesively as possible. It is impossible for me, and inappropriate for me to be asked, to comment on legislation before it has been to the Cabinet. That point was made clear. I appreciate Bill Butler's desire to hit the ground running as opposed to strolling. It is generally accepted by the media and the public that the Government has done so. Rolling out legislation is to come.

11:00

Bill Butler: I am grateful to the cabinet secretary for those comments, but I should say that we are here to represent the public and not the interests of the media.

I end by saying that I am grateful to the cabinet secretary for going that bit further. I understand the theory of collective Cabinet responsibility. The latter part of the autumn is at least specific, and I am grateful that it is on the record. Like, I am sure, many other members, I look forward to the latter part of the autumn, when we will see the SNP Government's legislative programme.

Paul Martin (Glasgow Springburn) (Lab): First, cabinet secretary, I want to ask about police numbers, which you referred to earlier. You have stated that you do not believe that any legislation is required. In your statement on 6 June, you stated that you will "seek to place" police officers on our streets throughout Scotland. Do you not accept that to place police officers on our streets would be in breach of the Police (Scotland) Act 1967, which makes it the sole responsibility of the chief constable to place police officers on our streets?

Kenny MacAskill: I do not take such a dim view of the role of chief constables. I have not yet met a chief constable who does not agree that we require a greater and more visible police presence. Obviously, I am not suggesting that I or indeed any other SNP justice minister would ever seek to direct a chief constable on where he places his men at any given time. However, I will

seek to work with the chief constables and other stakeholders—I recently met the Scottish Police Federation, for example—to deliver what our communities want, which is a more visible police presence in our communities.

As I say, I have not yet met a chief constable who has said that he wants extra police officers so that he can hide them in a back room or send them off to a waiting room at Edinburgh sheriff court. The chief constables are keen to get extra officers so that they can utilise them in delivering what they want, which is a visible police presence.

Rather than try to create an artificial divide, we should recognise a point that was made earlier. Nobody enters political life or joins the police force to make Scotland a worse, lawless place or to try to create a situation in which we have a less visible police presence. We are all on the same side, and I have had some heartening meetings with chief constables. I still have others to meet, but I have no doubt that the Scottish Government, chief constables, the Scottish Police Federation and all the rest of Scotland are singing from the same hymn sheet: we want more bobbies and we want them out in our communities.

Paul Martin: I was not asking about the merits of the policy; I was raising the issue of the legal opportunities that are available to you to place police officers on the streets. Are you saying that it would be legal for you, to quote your statement on 6 June, "to place" police officers on streets throughout Scotland? Is it that you will no longer seek to do that but will instead seek the agreement of chief constables to do that?

I raise the further question of what happens if a chief constable takes an operational decision not to place a police officer on the streets because of other priorities, for example to monitor registered sex offenders, for other child protection issues, or for rugby or football matches. Chief constables have responsibility for those priorities, as set out in the 1967 act. Do you not accept that you will have to introduce legislation to place police officers on the streets if a chief constable says, "Sorry, minister, I am not going to place the police officers on the streets. I'm in fact going to use them for other responsibilities that I have throughout my police division"?

Kenny MacAskill: I have the utmost faith in Scotland's chief constables delivering not just what the Scottish Government wants but what the people of Scotland want, which is an enhanced and more visible police presence. Frankly, Mr Martin, yours is what I think is called a tautological argument that takes us nowhere. I do not anticipate any divide, and I am not aware of any divide. A desire to create a divide between the Scottish Government and chief constables is fatuous. It ill-serves what was considered at the

outset to be the desire for all of us to work constructively for a much safer and stronger Scotland.

Paul Martin: I think that the minister does us a disservice, convener. I am asking a legitimate question on whether there is a requirement for further legislation. He is saying that there is not. I am just interrogating him on it.

Kenny MacAskill: The short answer to that question is no.

Paul Martin: That is your opinion, and I am entitled to interrogate it.

I will move on from that issue. Minister, you raised concerns about alcohol abuse throughout Scotland. All of us are united on that issue. Does the Government have any proposals to introduce legislation to deal with alcohol abuse?

Kenny MacAskill: My answer is subject to the caveat that, as I have said before, I cannot comment on legislative matters without discussing them in Cabinet.

As a Parliament, we passed the Licensing (Scotland) Act 2005, which changes the situation in Scotland substantially, and we have to ensure that it is implemented. Our desire is that it should be rolled out with regard to the off-sales trade as well as the on-sales trade. Our understanding is that it does apply.

We will seek to address the problem of alcohol abuse in Scotland as part of our general health strategy but, equally, from my position of justice secretary, I recognise that alcohol-fuelled antisocial behaviour is a significant problem in communities the length and breadth of Scotland. We will see what action we can take, and it will build on the licensing legislation that was passed in the previous session. If other legislation is required, we will consider it and return to the committee with due courtesy in due course.

I say again that it is a matter of seeing what is appropriate to ensure that we deliver with existing legislation before deciding to take further steps. Tackling alcohol abuse, its criminal aspects and the antisocial behaviour that follows is a key priority for our Government.

Paul Martin: During the passage of the Licensing (Scotland) Bill, we decided not to allow alcohol consumption in sports grounds in Scotland. However, that has now been introduced on a trial basis for rugby internationals. Do you accept that if we were to extend that to other sports grounds, further legislation would be required?

Kenny MacAskill: The specific situation is that I de-designated Murrayfield and Hampden stadiums with respect to male rugby internationals. The

position on football is separate, and the football authorities will require to speak to the relevant chief constables. If they thereafter want to approach the Government, they are entitled to do so. However, I have no plans for legislative changes.

Paul Martin: Finally, what additional legislation will come forward on the management of registered sex offenders? In particular, the SNP manifesto stated:

"If a child goes missing, then there will be a tough response with sex offenders in the area visited, and if necessary premises searched, without a warrant."

I envisage that that would require further legislation, so are any proposals being considered?

Kenny MacAskill: As we discussed at the meeting when I was happy to meet you and your colleague, Margaret Curran, to discuss such matters, our first priority is to roll out the good work of Professor George Irving that was dealt with by my predecessor Cathy Jamieson. We want to build on not just Professor Irving's work but the work done by the Justice 2 Sub-Committee, on which I served. Some matters may require legislative changes. If that is the case, we will make them and advise the committee. That may involve some of the matters to which you referred. Common law powers are currently available to our police, but we are prepared to consider other statutory powers that may be necessary.

You will also be aware that, at both your request and that of the convener, we are happy to consider measures that are being trialled by other legislatures in other jurisdictions. If at some juncture we decide that they are appropriate for Scotland to make our communities safer and stronger, legislation may be required. If legislation is required, we will seek to introduce it. However, our number 1 priority is to build on the good work of Professor Irving, to build on the work and advice of the Justice 2 Sub-Committee, and to continue the work that Cathy Jamieson was dealing with.

Margaret Smith (Edinburgh West) (LD): Like Bill Butler, I agree with much of what you said in your preamble, cabinet secretary, but I would like to focus on people's rights within the justice system.

In a spirit of helpfulness on the issue of legislation, I suggest three areas that should be considered. You have already mentioned hate crime, but there are two other areas in which we would expect you to introduce legislation. The first area is youth justice. We want you to make progress with "getting it right for every child", a consultation that I think was getting towards the stage of a draft bill. The second area is sexual

offences. We want you to make progress with the work of the Scottish Law Commission.

I also want to ask about the rights of victims. Previous Administrations did good and positive work on victims' rights to information, but the Liberal Democrats' manifesto suggested that we might go further. At the moment, information is available only to people who have been victims of major crime. However, when people are victims of what are called petty crimes, for example mugging, there is great dissatisfaction, because they feel that they do not know what is going on. As soon as their case is dealt with, victims feel that they are regarded as an irrelevance. Could more information be provided for such victims? Could a state fund pay immediate court-based compensation awards to victims?

Kenny MacAskill: We are open to suggestions on how to improve the lot of victims. That will not simply be a matter of building on the good work of the previous Administration, but it is appropriate for me to pay tribute to the Lord Advocate, who—as Lord Advocate and, before that, as Solicitor General under the previous Administration—ensured that victims were treated not as if they were a burden on the court system but as people who had rights and whose dignity should be respected. Clearly, a significant journey remains to be travelled. We will do whatever we can. However, it does not seem to me that legislation will be required. As I said in response to previous points, if we require to legislate, we will seek to do so.

The Lord Advocate correctly saw that work to do with victims would involve dealing with people's attitudes—the attitudes of people on the bench, of people in the Crown Office and Procurator Fiscal Service, and of people in society in general. Victims should be treated with sympathy and respect. Obviously, vulnerable witnesses require different treatment. We are addressing that.

Margaret Smith asked about state funds. The Criminal Injuries Compensation Authority scheme operates across the United Kingdom, on both sides of the north-south border, so, to some extent, it is not within my jurisdiction, like other similar tribunal issues. If Ms Smith is suggesting a variation to that scheme, or an addition to it, I would be happy to consider it, because I know that there is some discomfort with the operation of the present scheme.

The Scottish Law Commission is currently reviewing sexual offences and we await the results of that review, especially those relating to the law of evidence. We hope to build on the commission's work. I acknowledge the pool of talent in the commission, and I accept that, on issues as sensitive as these, we will require to act speedily and efficiently. The commission's review

will not be long coming, and we intend to make progress as soon as possible, once we have discussed the issues with, for example, the Crown Office and Procurator Fiscal Service.

11:15

The Scottish Law Commission has served us well, and it would be foolish of any cabinet secretary to ignore its good work. We read all evidence on sexual offences urgently. As soon as the recommendations of the review are available, I will try to implement them. There is a considerable problem to address. I will consider how best to do so once I have the commission's recommendations.

On youth justice, we will have to address the problems that the children's hearings system currently faces. Those problems also relate to the work of other cabinet secretaries; they do not relate so much to the fundamental legislative process. We will have to consider how services are delivered and how resources are made available.

Margaret Smith: I want to ask about justice being done. You will know that committee members generally support what you have said about community sentences. Of the disposals that are available, one that we regard as good is drug treatment and testing orders. We are keen that such orders should be available to the district courts.

Do you agree that the public have to have more confidence in community disposals? Your answer to that may chime with something that you have already said. Will further structural changes be required in the Scottish Prison Service and in community services in order to give the public more confidence?

Kenny MacAskill: The short answer is that they may be. Criminal justice and community justice authorities have been introduced, and we will have to allow them to bed in. The Association of Directors of Social Work and others are telling me that a period of stability is required. The organisations and the system created are at a very early stage, so let us see how they bed in. If tweaking or refinement is required in future, we will consider it. However, the organisations have to be given the opportunity to develop and evolve. It would ill serve the desire to deliver community sentencing and to address community problems if we reviewed yet again a structure that has only recently been established after a great period of review. Time will tell whether the structure is perfect as it stands. In the meantime, we have to allow some time before deciding whether improvements are needed. At the moment, the

best thing that I can do as cabinet secretary is to allow people to get on with their jobs.

Margaret Smith: We all agree that some people—violent offenders, for example—have to be in prison, but we are concerned about overcrowding in prisons and the impact that it has on rehabilitation and reoffending. Does the new Executive have a prison-building plan for Scotland? Does the plan include private prisons, including prisons for which the contracts may already have been signed? Can you assure the committee that the prison places that are required will be available?

Kenny MacAskill: The number of prison places that are required will depend on our sentencing policy. The Cabinet is considering the prison estate and we will elaborate on our position in due course. Obviously, there are private prisons within the estate. Some contracts have been entered into and we will have to accept the obligations that have been imposed on us.

Margaret Smith: I have one final question. There may be a difference of opinion on the retention of DNA. We are concerned about the possibility of the system being abused. There is some evidence that that is happening. We are concerned about the fact that information on half of all British black men is held on the DNA database for England. Some people suggest that everyone's DNA should be retained. If we go down that road, what safeguards will be put in place to ensure that there is no abuse? Do you recognise that no country in the world except England and Wales keeps DNA profiles and samples from innocent people permanently?

Kenny MacAskill: Absolutely. We are reviewing the situation with regard to DNA, but the review is predicated on the basis that DNA will be retained only in specific circumstances and that the blanket retention of DNA is unacceptable in the relationship between the citizen and the state. However, there are matters that we are happy to review. Currently, the DNA of those who are charged with serious and violent offences is retained for three years. It is perfectly legitimate for us to consider whether that period is appropriate and whether the DNA should be retained for three years and six months or five years. At present, the matter must be dealt with by an application to a sheriff, but we are happy to consider whether there are other ways of proceeding. The previous Executive considered it inappropriate that the DNA of people under 16 who have perpetrated or are alleged to have perpetrated offences of a sexual nature should be retained. We opposed that view at the time, as there is clear evidence that someone who has a predilection for sexual offending at 12 is likely to continue to offend at 22 or 62.

We are happy to consider such matters, but our values and ethos mean that we are not prepared to consider the blanket retention of DNA from any citizen who is charged with any offence but is not subsequently convicted. It is important that the good citizen is protected, as well as that the bad citizen is punished. If we are to tackle crime, all citizens should feel that they have an obligation or responsibility to do that. If good citizens think that tackling crime is the responsibility just of the police or that they may be implicated in some way, we will discourage their participation in creating a safer, stronger Scotland.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I wish to pursue the theme of DNA retention. I agree totally that it is important that good citizens are protected. Have you looked at evidence from England that proves that the retention of DNA enables serious criminals to be tracked down and that it is a way of protecting citizens?

Kenny MacAskill: We have a substantial DNA databank for the Crown prosecution authorities, which serves us well. At issue are the criteria for determining whose DNA should be retained on the databank. As I indicated to Margaret Smith, we are happy to review the matter, within parameters, and are arranging for a review to be carried out. However, we are not prepared to countenance a situation in which anyone who is charged with any offence has their DNA retained in perpetuity, irrespective of whether the case proceeds to a prosecution and ultimate conviction. It is utterly wrong that someone who is charged with a minor road traffic offence should face the possibility of their DNA being retained, especially if they are not convicted. We are seeking a review of the matter. Some information has been given to Jack McConnell, and we will provide a more detailed outline of the review in due course.

We believe that the current system strikes the correct balance between protecting the good citizen and ensuring that we detect the bad citizen, but there are procedural matters to be considered, for example the period of retention and the manner in which DNA is acquired. We may also need to examine the way in which we deal with those who have a propensity for sexual offending, as evidence from criminologists, psychiatrists and so on suggests that they must be viewed differently. Obviously, the way in which cases are dealt with in the children's hearings system is different from the way in which they are dealt with by a criminal court.

Cathie Craigie: I look forward to being involved in the review process. How do you envisage engaging with the committee and the Parliament, so that we can have a say in the matter? What is the timescale for the review?

Kenny MacAskill: Given that we are not seeking an inquiry into the principles, we intend to instruct a review that will report back speedily. I will be more than happy to share its findings with the committee in due course. I am not able to give the member a precise timescale, but we think that speed is of the essence. We believe that the matter can be dealt with relatively quickly and efficiently, without our having to tour around the country, because we know the issues. The person who is instructed to carry out the review will engage with the relevant stakeholders—the Crown, the judiciary and so on—and will report back. When the report is submitted, I will be more than happy to bring it to the committee.

Cathie Craigie: The review relates to an important issue on which many members of the Parliament have strong views. I am sure that I speak for many members when I say that, at the very least, the committee should have an opportunity to see the evidence and material that you will ask experts to consider, and to comment on the content of the review, before you or the Executive take a final decision on the matter.

Kenny MacAskill: What the member proposes seems rather convoluted. If the committee writes to me with that suggestion, I will be happy to consider it, but we are seeking a speedy and effective method of proceeding. A committee investigation is something different; frankly, I do not think that it would be feasible for the committee to set the parameters of the review. The committee is free to discuss and to write to me on the matter, but it has not been broached with me before now by the convener or by any member other than Cathie Craigie. I met Paul Martin and Margaret Curran—

Cathie Craigie: I did not suggest that the committee should set the parameters of the review. However, I expect the committee to be given an opportunity to comment on the review's findings before the minister makes a final decision, so that the views of the committee and the Parliament can be taken into account.

Kenny MacAskill: It would be inappropriate for me to comment on the findings of the review before the person whom I instruct to carry it out comes back with findings. The committee needs to allow me to instruct the review and to consider its findings. I give an undertaking to provide members with the review's contents, for consideration without interference from me. If a cabinet secretary instructs someone to carry out a review, they are obligated to examine the review's findings and, unless there is a good reason for not doing so, to act on those.

My intention is to instruct a review and to see what it produces. It would be wrong of me to curtail the findings of whomever the Government

asks to conduct the review, but I am happy to share with the committee what comes back to us. I assure members that we will not seek to bury it in the bowels or vaults of St Andrew's house. Once we have had the benefit of the review's findings, we will see what the Government and Parliament can do.

The Convener: Inevitably, we will revisit the matter.

Cathie Craigie: Your final answer, cabinet secretary, addressed my concern that the committee should be able to comment on the findings of the review once it has been concluded, before you make a final decision.

To move on, the fact that you have been in office for only four weeks is not an excuse for the lack of a legislative programme. The committee exists to represent the Parliament, and the Parliament in turn exists to represent the people of Scotland. You said in your opening remarks that you have had discussions with other parties on policy areas that fall within your area of responsibility. Perhaps you could share with the committee in more detail than we have read in the media what those discussions involved and whether, during the discussions, you indicated to other parties what legislation may be necessary.

11:30

Kenny MacAskill: I met your colleagues Margaret Curran and Mr Martin, who is sitting on your left. It may be easier simply for him to advise you what the discussion was about. I am sure that nothing that I said to them is secret and that he would be happy to brief you on it all. I also had a meeting with Mr Aitken and Miss Goldie. The contents of that discussion was, to all intents and purposes, fully explored and canvassed in the media. I assure you that I have made no back-room deals with either Ms Curran and Mr Martin or Mr Aitken and Ms Goldie that I have not sought to make clear today. Beyond that, it may be better that, outside the committee meeting, you speak to your party colleagues or representatives of other political parties, otherwise we will simply rehearse information that is already in the public domain.

The Convener: I will allow Paul Martin to comment without rehearsing.

Paul Martin: The meeting that we requested with the cabinet secretary was on the management of registered sex offenders. There were no discussions concerning the legislative programme. Perhaps he will confirm that.

Kenny MacAskill: I remember that you came to discuss registered sex offenders and then broached the retention of DNA. The Government is quite happy to discuss those matters openly.

I return to what I said on the legislative programme at the outset: the Cabinet has not yet met to discuss proposed legislation and it is therefore inappropriate for me to discuss it. It has been suggested that I have hit the ground strolling, but Ms Craigie will recall that, at this juncture in 1999, we were still twiddling our thumbs waiting for the partnership agreement to be signed. The idea that a full legislative programme was available on 26 June 1999 is factually inaccurate.

The Convener: This is getting just a little bit repetitive.

Cathie Craigie: The cabinet secretary is being disrespectful to the committee. We are making a genuine effort to try to find out what the committee is expected to consider over at least the next 12 months. We have a work programme to determine and it is irrelevant whether the cabinet secretary has had meetings with the Tory and Labour spokespeople—I notice that the Liberals were missed out.

Margaret Smith: He never writes, he never phones.

Cathie Craigie: I speak as a member of the Justice Committee and I seek information for the committee. However, as it seems that we are not going to get the information this morning, I am happy to move on.

The cabinet secretary also mentioned in his opening remarks that each of us has personal and collective responsibilities, but the Government has responsibilities for our communities. One of my colleagues asked about police numbers, but I have found that communities see the benefits of community warden schemes because they have been able to build relationships with wardens and have found that, working in partnership with local police, they provide a useful service. What are the Administration's plans for community warden schemes? Will they be expanded and will we see more community wardens on the streets, or does the Executive have no plans for such an expansion yet?

Kenny MacAskill: We have to review the workings of community warden schemes. Community wardens seem to operate differently in different local authority areas. That is appropriate because, to an extent, they have to tie in with what the community wants. They exist not as a replacement for the police but to work with the community, and we need to review how they operate. My experience is that the wardens in my community work remarkably well, but I am aware that in some areas success is not as tangible or evident. We will seek to work out how community warden schemes are progressing, where they work well, why they work well in those areas, whether there are areas where they do not work

well and why they do not work well in those areas, so that we can consider how to advance the schemes.

It would be premature to rush in and say that we are going to roll the schemes out—or roll them back—because the evidence appears to be that the success of community wardens varies around the country. We accept the general ethos that, in trying to restore some sense of community, community wardens provide benefits, but we need to see some tangible evidence, determine what is successful and work out the elixir that makes some schemes work better than others. If we can build on that, we will seek to do so.

Nigel Don (North East Scotland) (SNP): I hear what you are saying about the legislative programme and I appreciate why you are saying it but, as a new member, I have looked at the lists of legislation that the justice committees scrutinised in previous sessions. I recognise that you do not know what legislation the Cabinet will propose, but can you give me an idea of the scale involved? I get the impression from what you have said that far less legislation will be introduced than was introduced previously.

Kenny MacAskill: If the question is whether we intend to have a criminal justice bill, the short answer is of course. That is why I want to have an early meeting with the Lord Advocate and the Solicitor General for Scotland, who want to contribute to the bill.

Other matters are also coming through the pipeline. Ms Smith has already mentioned that we await the outcome of the Scottish Law Commission's deliberations. There is constant, continuing work at the SLC. Some of it, such as work relating to sexual offences, is of great significance and interest to the public, while other matters, such as the law on damages or the law of arbitration, are much more mundane but equally pivotal to our country. Those matters are working their way through the legislative pipeline and we expect to pick up on them. I cannot comment on the detail until the Cabinet has made a decision—or, indeed, until the SLC has finished its considerations. We will then indicate clearly that we will seek to build on those considerations. That is why we have a Scottish Law Commission.

A criminal justice bill will obviously be required. We have already mentioned that we are considering that for later in the autumn, but we will expand on that. It depends on measures from other interested bodies and individuals being factored in, and I will meet the Lord Advocate and the Solicitor General yet again to discuss legislative matters that they wish to raise with me.

Nigel Don: I will come back on that—my colleagues would do the same. What is your

estimate of the amount of legislation that this committee will be asked to scrutinise? Are we looking at the amount that one justice committee considered in the previous session, or will it be half or a quarter of that? Will it be—and I do not think that it will—twice as much?

Kenny MacAskill: I think that you will find that it will be less—I see the convener sighing at that. A lot will depend on the recommendations that come out of the Scottish Law Commission and the rate at which they come out. I am sure that the convener will agree that this is about not simply the number of bills that we will seek to enact but the nature of those bills. I anticipate that the Scottish Law Commission's recommendations on some areas will be relatively non-controversial and will not cause great angst or a great deal of work because, to an extent, we will be signing off the good work that has already been done.

It is perhaps unwise to consider the volume of bills that might come through as opposed to the work rate that such legislation might create. However, our view is that, as the convener said at the outset, a substantial amount of legislation has already been passed, which must be allowed to bed in so that we can find out how it is operating. I can safely assure you that the committee will probably deal with less legislation than its predecessor committees. The precise number of bills and their nature will depend on the matters that I have mentioned.

It would be wrong to consider only the precise number of bills. A whole array of relatively non-controversial matters might fire out of the Scottish Law Commission, and while they might not make huge changes that impact on every citizen in Scotland, they will improve substantially particular areas. I have seen some of the areas that those bills might cover and think that they might have been kept off the political agenda because, understandably, the focus has been on criminal justice, for example. However, huge aspects of our civil justice system need to be brought up to date for the 21st century. Such measures might not be the most exciting, but they will improve considerably the system in Scotland. We hope to work with the committee on those measures.

Nigel Don: As a layperson, I am conscious that our criminal justice system, although thorough, is not famous for its speed. Should we try to speed up the general process? If so, and if you feel that that is one of your priorities, does it require legislation or does it just require what I describe as good management?

Kenny MacAskill: A lot of legislation has already been passed. The High Court reforms, for example, are beginning to kick in and there are signs that progress is being made. Reforms at summary justice level are also beginning to make

progress. We have to see how the reforms that have been enacted work. Sometimes difficulties arise when a measure in a bill that should work in theory does not work when it is implemented. Although significant changes have been made that should allow the criminal justice system to be speeded up, further matters remain to be addressed.

From my discussions with the judiciary, I believe that legislation is not required to deal with some of those matters. If legislation is needed, we should introduce it. However, we do not need legislation to bring some elements of the court system into the 21st century. We can do that by using the modern communication systems that are available to us all, for example. Therefore, although some legislative changes will be needed, some attitudinal and procedural changes will also be required.

We have to consider such issues as a Government, and you have to consider them as a committee. We must allow those who work in the Scottish Court Service and elsewhere to come back with a review. As I said, substantial progress has been made in High Court reform, and I pay tribute to the legislation, which is now kicking in. We need to make sure that similar reforms are made at summary justice level. As the convener knows, some structural changes have already been made to our courts and those must be allowed to work through. That will be a case not of legislating anew, but of seeing how the changes that have been legislated for work out in practice. To an extent, as a Government, we are simply implementing what was enacted in the previous parliamentary session and by the previous Government.

Nigel Don: May I tease that out? Will you and your staff review annually the process of criminal prosecution? Do you propose to change any of the review processes?

Kenny MacAskill: The department keeps such matters under constant review. Areas such as the law of evidence in sexual offences are given to the Scottish Law Commission to consider. I will meet the Lord Advocate and Solicitor General to discuss certain issues—I understand that they have some proposals that require legislative change. I will come back and share those issues with the committee in due course. I cannot share them with you now because I do not know exactly what the Lord Advocate and Solicitor General will suggest, although they will address criminal prosecution. The judiciary and the Sheriffs Association might give us what they believe are beneficial views, as might users of the system and victims.

The law exists not simply to be the law as enacted by Parliament; it exists to be relevant to our communities. As they and our society evolve,

so too must our laws and legal system. Significant progress is yet to be made. The criminal justice system is reviewed not annually but constantly. Crises happen—the reason why the Scottish Law Commission reviewed the law of evidence was because of difficulties that occurred in high-profile cases. None of us—neither committee members nor I as cabinet secretary—is a soothsayer. The law is kept under constant review, and we will seek to expand on that with the committee in due course.

11:45

Stuart McMillan (West of Scotland) (SNP): My first point is about community wardens, which were highlighted earlier. I seek further clarification. I am sure that every MSP in the Parliament has anecdotal evidence from their constituencies and regions that the community wardens are valuable, although others espouse viewpoints that are the exact opposite. I am glad that a review of community wardens was mentioned earlier. Is it correct that there will be such a review?

Kenny MacAskill: Community wardens were introduced for a set period and funding was provided. We have to review where and how they are working. You are right to say that there has been disappointment with the wardens in some areas, although in my area, for example, they appear to have been welcomed and are working well with the community. We have to learn from best practice and take matters forward by reviewing the situation to find out why in some areas the wardens add something. We are anxious to make it clear that community wardens are not a substitute for a visible police presence; they provide an additional bottom-up, rather than top-down, service.

Stuart McMillan: My other point is about custodial sentences of less than six months. Are you able today to highlight examples of crimes that attract sentences of less than six months and which could be reviewed to ensure that people who have been convicted of those crimes carry out community work? For example, someone who is convicted of such a crime and given a four-month sentence could do community service instead of going to prison.

Kenny MacAskill: At the end of the day, we should not get hung up on the time period; we have to concentrate on the nature and circumstances of the offence. The question should be whether the individual and what they did merit a custodial sentence, not the length of the sentence. Imposing shorter sentences is a matter for the judiciary and for sheriffs in particular.

My view, which is shared widely, is that sheriffs often impose lower-tariff sentences out of a sense

of frustration—perhaps the person appears before them regularly because we are failing to address their offending and break their habit—or because they feel that no appropriate scheme is available.

We are trying to ensure that serious offences are punished and that those who are a nuisance—there are always some—are dealt with, perhaps by treating their drug habit, which is why we have DTTOs. We support fully the work on DTTOs that was rolled out by the previous Administration. An array of other measures comes into our armoury, such as supervised attendance orders and so on.

It will always be for the presiding sheriff to decide what the appropriate sentence should be. However, we must ensure that there are sufficient community options so that a custodial sentence is imposed not out of a sense of frustration, but either because the person has committed a serious offence and is dangerous or for another appropriate reason. Schemes must be made available to stop the on-going churn of offending in Scotland that ill-serves us all, no matter what our community or political party.

We have to support and assist the bench. It is a matter of rolling out the reparative orders and other legislative measures that have been introduced, some of which have not yet kicked in or are at a relatively early stage.

As I said, it is not appropriate to get hung up on sentences of less than six months; we must consider what is appropriate for the individual. We want a coherent penal policy. Prison is for serious and violent offenders and should not be for those who have problems that need to be addressed.

The Convener: We must move on. You may have one final question, Mr McMillan.

Stuart McMillan: Does the Government have any plans to increase the number of drug rehabilitation centres and the funding that goes along with them?

Kenny MacAskill: Although my Cabinet colleagues will have to address some of those matters to an extent, we recognise that the drug problem in our communities requires to be dealt with and that some of those who are involved with drugs require to be punished, especially if they are dealing. We are happy to look at enhancing those services.

Drugs are a great social ill in Scotland, which is why we are happy to work with the committee on the issue and with any party that is prepared to address what has been a major problem not just in the 21st century but in the latter part of the 20th century. We were delighted to meet the convener and his party leader to discuss the appropriate points that they had raised. We seek to work with them and with the committee.

Cathie Craigie: You made a point about support and assistance for the judiciary, about which I agree with you. Is there a role for more training and links between the judiciary and communities? People are often amazed by the sentences that are handed down, whether by the sheriff court or by the High Court. How would you approach such training?

Kenny MacAskill: It is not appropriate for the cabinet secretary to become too embroiled when it comes to the judiciary's independence. It would be wrong for a cabinet secretary to direct the Lord President or any sheriff principal as to how he or she should train themselves or their members. We have to support the judiciary, not direct it—otherwise, there would be a problem.

Other issues are being considered. For example, I know that the convener is particularly supportive of the community court in Glasgow, as are others.

It would be inappropriate for me to comment on the training given to the judiciary other than to say that if the Lord President or the Sheriffs Association says that the judiciary feels that there is a particular problem, I will be more than happy to work with them. However, I am deeply conscious that any minister from any political party should be wary of giving directions on judicial training or what the judiciary does. We must be cautious about that.

The Convener: We have had a fair question-and-answer session. However, you might care to deal by correspondence with one outstanding issue. As you are aware, the issue of legal aid has been around the Parliament for months, if not years, and the previous Executive had started on a course of action. It would be helpful if you could write to the committee about the current state of play under that heading—we are receiving wide-ranging representations, including several from members, about it. It would be helpful if you could give the committee an update in writing of the current position.

Kenny MacAskill: I would be delighted to do so.

The Convener: Before you leave, I should say that this particular band of strolling players will be looking to you to be a little bit firmer in respect of the legislative programme in the not-too-distant future. We all have jobs to do and we need to know precisely what the Executive has in mind. I accept that it is still early days, but I hope that by late summer or autumn, we will be in a position to make more definitive plans.

As you might be aware, the committee will discuss its work programme later, relating it to an away day. If the committee decides to invite you or any of your officials to attend any part of the away

day, the clerks will notify you as quickly as possible. I thank you for your attendance.

Kenny MacAskill: No problem. Thank you very much.

The Convener: I suspend the meeting briefly while the ministerial party leaves.

11:55

Meeting suspended.

11:56

On resuming—

Serious Crime Bill

The Convener: We move to agenda item 3, on the Serious Crime Bill, which is United Kingdom legislation. The clerks have issued an extensive paper, but we do not need to spend a great deal of time on the matter today.

For the benefit of new members, I note that such Sewel memoranda are not uncommon in the Parliament; they come before us frequently. The majority of them are not controversial and are agreed on the nod. Margaret Smith will confirm that the more controversial memoranda are usually discussed at the Parliamentary Bureau and are allocated a debate in the chamber.

In respect of the two bills that we were invited to consider today, we are almost talking in a vacuum. Briefing paper J/S3/07/2/1 invites members to consider the two legislative consent memoranda in question. Because this is the first time that new members have been involved, I will explain the process in some detail. These LCMs are going nowhere. The committee was originally expected to consider two LCMs—on the Serious Crime Bill and on the Victims of Overseas Terrorism Bill—to which the clerk's paper refers. However, the Victims of Overseas Terrorism Bill has now fallen, so the committee is not required to do anything about it.

On the Serious Crime Bill, the briefing paper explains that the cabinet secretary does not intend to lodge a legislative consent motion. However, the committee is still required to report on his memorandum. As I said, we are talking in a vacuum; these LCMs will not proceed, and I assume that members will take the view that the committee report should be extremely brief and simply note the position. Is that agreed?

Members indicated agreement.

Nigel Don: Assuming that the cabinet secretary turns out to be wrong and the issues covered in the LCMs proceed, will the committee have an opportunity to revisit them?

The Convener: We are tied in with what the Westminster Government does. If it takes the view that it is not going to support a bill, despite its merits or demerits, it is a dead issue as far as we are concerned. If the cabinet secretary takes a view on a bill that the Westminster Government is in favour of proceeding with, there will be consequences and political debate about what happens eventually. However, these are minor matters. In all the years of the Scottish Parliament, perhaps three or four LCMs have been the subject of controversy—if that.

Nigel Don: To stick with the procedural point, although this might not happen in the next four years, if the issues covered in the LCMs were to rise from their supposed ashes, would we have dealt with them for the final time today or would they come back later?

The Convener: If there was any dispute about what should happen, the matter would require to be determined by Parliament.

Cathie Craigie: If the Commons was to pass the Serious Crime Bill as amended by the Lords, Westminster would have legislated in a devolved area. It happened once in the area of housing legislation, and we had to go through a process of giving retrospective consent. We would have to go through that process.

The Convener: Thank you for that.

That concludes the formal part of the meeting. I thank the public for attending. We now move into private session to deal with the various housekeeping matters to which I referred earlier.

11:59

Meeting continued in private until 12:58.

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