JUSTICE COMMITTEE

Tuesday 11 November 2008

Session 3

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JUSTICE COMMITTEE
27th Meeting 2008, Session 3

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)
*Angela Constance (Livingston) (SNP)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Nigel Don (North East Scotland) (SNP)
*Paul Martin (Glasgow Springburn) (Lab)
*Stuart McMillan (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Aileen Campbell (South of Scotland) (SNP)
John Lamont (Roxburgh and Berwickshire) (Con)
Mike Pringle (Edinburgh South) (LD)
Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING GAVE EVIDENCE:

The Rev Graham Blount (Scottish Churches Parliamentary Office)
Gerard Bonnar (Scottish Government Criminal Justice Directorate)
Norman Dunning (Enable Scotland)
David Greatorex (Christian Institute)
Tim Hopkins (Equality Network)
Mhairi Logan (LGBT Domestic Abuse Project)
Kenny MacAskill (Cabinet Secretary for Justice)
Dr Gordon Macdonald (CARE for Scotland)
Eric McQueen (Scottish Court Service)
Euan Page (Equality and Human Rights Commission)
Alistair Stevenson (Evangelical Alliance)

CLERK TO THE COMMITTEE

Douglas Wands

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Euan Donald

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 11 November 2008

[THE CONVENER *opened the meeting at 10:01*]

Decision on Taking Business in Private

The Convener (Bill Aitken): Good morning, ladies and gentlemen. I begin with the usual request that all mobile phones be switched off.

Agenda item 1 is a decision on taking business in private. Does the committee agree to take item 6, on whether to accept into evidence late written submissions for the Sexual Offences (Scotland) Bill, in private?

Members *indicated agreement*.

Subordinate Legislation

Justice of the Peace Court (Sheriffdom of Glasgow and Strathkelvin) Order 2008 (SSI 2008/328)

Stipendiary Magistrates (Specified Day) (Sheriffdom of Glasgow and Strathkelvin) Order 2008 (SSI 2008/330)

10:02

The Convener: Agenda item 2 is consideration of two Scottish statutory instruments, under the negative resolution procedure, pertaining to the sheriffdom of Glasgow and Strathkelvin.

Prior to the formal procedure on the instruments, members may put questions to the Cabinet Secretary for Justice and his officials. I welcome Kenny MacAskill, Cabinet Secretary for Justice; Gerard Bonnar, head of the summary justice reform branch of the criminal procedure division of the Scottish Government; Stephen Crilly, solicitor in the criminal justice, police and fire division of the Scottish Government; and Eric McQueen, director of field services in the Scottish Court Service. I invite the cabinet secretary to speak to the instruments.

The Cabinet Secretary for Justice (Kenny MacAskill): Thank you for inviting me to address the committee on the two orders. The Stipendiary Magistrates (Specified Day) (Sheriffdom of Glasgow and Strathkelvin) Order 2008 (SSI 2008/330) is a brief instrument with a limited purpose. The order merely specifies a date for the purposes of section 74(12) of the Criminal Proceedings etc Reform (Scotland) Act 2007. The specified date is 8 December 2008. The statutory basis for the appointment of stipendiary magistrates will change from that date. Until then, they hold their appointment under the District Courts (Scotland) Act 1975. From 8 December, they will hold their appointment under the 2007 act. The existing stipendiary magistrates will automatically be reappointed, unless they decline.

The Justice of the Peace Court (Sheriffdom of Glasgow and Strathkelvin) Order 2008 (SSI 2008/328) is also made under the 2007 act. The order establishes a justice of the peace court in the sheriffdom of Glasgow and Strathkelvin, and makes consequential and transitional provision. The order establishes one JP court for that sheriffdom. At the same time as the order comes into force, a commencement order will bring into force for the sheriffdom the repeal of the provisions of the District Courts (Scotland) Act 1975, under which local authorities operate district courts. That function will be repealed for the three

local authorities concerned, so they will no longer require, nor be entitled to operate, district courts within the sheriffdom of Glasgow and Strathkelvin.

The JP court order makes provision for a staff transfer scheme for any staff transferring to the employment of the Scottish Court Service. It also makes provision for the transfer of certain records in relation to penalties that are not specifically covered by the 2007 act. The order makes transitional provisions to assist in the smooth transition of on-going cases from Glasgow, Rutherglen and Kirkintilloch district courts to the new JP court. For example, those provisions will allow the courts to fix dates in the new court before it is fully established. The provisions for transfers of records and for transitional arrangements complement and supplement the provisions of section 66 of the 2007 act.

That is a brief outline of what the orders do. I understand that members may have questions about some of the underlying circumstances. I am only too happy to try to answer them, in conjunction with the officials accompanying me.

Robert Brown (Glasgow) (LD): I wonder whether I may quiz the cabinet secretary a little further on the policy aspect of the proposals, not so much with regard to the integration of the sheriff court and district court arrangements per se as with regard to the extent to which the distribution of local justice courts, if you like, is an appropriate issue. Across Scotland, circumstances vary from urban to semi-urban to rural. What consideration has been given to the need for local justice and to the advantages of, for example, reporting in the local press and access by local witnesses to local courts?

Kenny MacAskill: That is an excellent point. We fully accept that this is not simply about Rutherglen, Kirkintilloch and Glasgow because similar arrangements have applied in other areas. This is a rolling programme, and we have already seen local concern about closures in Kingussie, Inverurie, Nairn and other places. Clearly, we are trying to get a correct balance in order to maintain local matters. That is why, for example, we have retained JP courts, which was a policy of the last Administration that we supported. It seems to us that our provisions have the benefit of retaining JPs who can comment on their locality and know what is important to the community. Even if they have to move from a siting in the community, they can comment and act on incidents of criminal offending in their community.

Clearly, other matters arise regarding how people can get to court and how those who are punished are dealt with. We have tried to ensure that such matters are provided for. We think that we have an appropriate balance that will ensure that we get the best out of JP courts and the expertise and specific community involvement that they provide. We now have facilities that are fit for purpose in the 21st century, with the requirements for security and, indeed, legal advice from those who must provide it to the courts. At the same time, we are maintaining what they provide, which is the ability of the bench to reflect particular communities. We appreciate that individual areas, whether Rutherglen or Inverurie, have particular sensitivities. However, we believe that those can be maintained because existing JPs will transfer and the distinctive aspects of their communities will still be reflected, albeit in a different base.

Robert Brown: But what principle underlies your decision on whether local courts should continue in some areas but not in others? That is what I am getting at. When you come to look at the provision in Lanarkshire, I imagine that there will be courts in East Kilbride, Hamilton and such places. Is it to do with the amount of court business or the nearness of other courts? What principle do you operate on? There is no hint of that in the consultation paper.

Kenny MacAskill: A variety of factors is involved, one of which is the volume of court business. For example, with regard to the two orders that are before the committee, Kirkintilloch can have a court on only one day a month and Rutherglen can have a court on only one or two days, at most, a month. Another factor is the proximity of a court to other courts. Clearly, consideration was given to whether the Rutherglen court could be transferred to Hamilton or East Kilbride, or into the city of Glasgow.

Those are two factors among many, including individual mitigating factors. However, as I said, the volume of business, the ability of the premises to provide the balance between local identity and security and appropriate service, and proximity to other courts are important factors.

Robert Brown: I think that the consultation paper refers to the custody facilities at Rutherglen court, which I presume have operated up to now. There will continue to be a need for custody facilities in the police station next door, with all the advantages that that may have. Was consideration given to the overall need for custody facilities that comprise the police station and the court?

The Convener: I remind the minister that our procedures allow for the officials to speak to us directly—that is a matter for you, Mr MacAskill, but it might save time.

Eric McQueen (Scottish Court Service): At Rutherglen district court there are low levels of custody. There are police facilities next door, but that is not a sensible arrangement; the preference is to ensure that there are secure custody facilities in the court building—

Robert Brown: Why is it not a sensible arrangement?

Eric McQueen: It is about the separation of the police cells and court accommodation. The idea is to free up police cells for police use during the day as prisoners are transferred into the court building. We had initial thoughts about how the design of Rutherglen district court could be changed, but the cost of upgrading the existing facilities to try to create a secure environment would have been in excess of £200,000. Given the proportion of business that comes through the court, we took the view that such costs were not justifiable.

Robert Brown: What is the problem with the current arrangements?

Eric McQueen: It is not so much that there is a problem; district courts have run well for years. However, unification throughout Scotland is creating pressures to do with security costs and we need to ensure that there is a consistent standard throughout the country. It could be that our proposals set a new standard for the delivery of criminal business.

Robert Brown: Rutherglen and Cambuslang are in the curious position of being within the sheriffdom of Glasgow and Strathkelvin for the purposes of criminal business, while being provided with social work services by South Lanarkshire Council and with health services increasingly through the local community health partnership. How does all that fit together? One of your priorities is to "improve service integration", which seems difficult to do if the authority that provides social work follow-up is different from the authority that covers the main part of the sheriffdom.

Kenny MacAskill: The issue has been addressed. There is already a procedure in relation to community service or supervision orders that would apply to a person who misbehaved on an outing from Rutherglen to Glasgow and was dealt with at Glasgow sheriff court. The procedure will simply become part of the new arrangements.

You make a valid point about the need for harmonisation—we think that there is harmonisation. We made inquiries and were satisfied by South Lanarkshire Council that procedures are in place and no difficulty is anticipated. We hope that there will be a seamless transition. People who are transferred to the new JP court from Rutherglen district court will be dealt with by South Lanarkshire Council—just as has been the case for some people who were dealt with by Glasgow sheriff court. Equally, anyone who is transferred in from Kirkintilloch will ultimately be dealt with by East Dunbartonshire Council. You are correct to make the point, but the procedures exist and, in the main, work effectively.

Robert Brown: I have been told that the social work service in Rutherglen in South Lanarkshire is not linked electronically to the sheriff court, which creates issues to do with meeting targets. Has consideration been given to such problems? Social work and police facilities are close to Rutherglen district court.

Kenny MacAskill: I am not aware of technical issues. For more significant offending, there is certainly a procedure in the sheriff court whereby a person is more likely to get a community service order than would be the case in the district court, where lower-tariff offences will be dealt with—Eric McQueen might want to comment on whether things are done electronically. Procedures exist and we are not aware of significant difficulties. As I said, it seems that matters can be dealt with. However, there might be technical issues of which I am unaware.

Eric McQueen: I am not aware of technical issues. The aim of unification is to improve the technical transfer of information between organisations. Unification will give us a single information technology system for all courts in Scotland. We are working closely with social services on the exchange of information and to ensure that we create space in the court environment in which social workers can be based. The process is very much about partnership working and improving communication between organisations.

Robert Brown: Is South Lanarkshire Council in favour of or against the proposals? Also, is there a prospect of a further review of boundaries, which might affect the issue?

Kenny MacAskill: On the latter point, we await the result of Lord Gill's review. The programme is being rolled out in other sheriffdoms, to try to provide an improved service to everyone who is involved in the court system, as Eric McQueen said. It is our intention to continue the roll-out in other sheriffdoms and we do not anticipate changes until Lord Gill and his wise men and women have given us their final views and the Parliament has decided what it wants to do as a result.

I understand that the council intimated formal opposition, but beyond that I do not think that it has sought to engage in the process or raise matters.

10:15

Robert Brown: Given that you are relying on Lord Gill's review, would it be sensible to await the review's outcome before making changes that will

take away existing provision, which I think that you said is working reasonably well?

Kenny MacAskill: We cannot wait for Lord Gill's review, basically. Whether the review will lead to legislation during the current parliamentary session is debatable—it might or might not do. It is unlikely that such legislation will be introduced to the Parliament before a considerable time has passed. There are matters that we must progress, to ensure that there is a better service at sheriff and district court levels.

Gerard Bonnar (Scottish Government Criminal Justice Directorate): The programme dates back to 2001, when Sheriff Principal McInnes started his review—the process has been in train for quite a long time.

The Convener: How many cases are called annually at Rutherglen district court?

Eric McQueen: Rutherglen hears about 600 cases per year on average. There are probably about two trials per sitting. The court sits twice monthly.

The Convener: If members have no further questions on SSI 2008/328 or SSI 2008/330, we will move on.

No points were raised by the Subordinate Legislation Committee on SSI 2008/328. Are members content to note the instrument?

Robert Brown: I intimate formally that, in light of the cabinet secretary's replies, I will seek to annul the order.

The Convener: Right. You will seek to do that in the Parliament—

Robert Brown: The order will come back to the committee.

The Convener: Yes, the order will have to come back to the committee next week.

No points were raised by the Subordinate Legislation Committee on SSI 2008/330, which appears not to be controversial. Are members content to note the order?

Members *indicated agreement*.

Bankruptcy (Scotland) Amendment Regulations 2008 (SSI 2008/334)

The Convener: No points were raised by the Subordinate Legislation Committee on SSI 2008/334, which is also subject to the negative resolution procedure. Are members content to note the regulations?

Members *indicated agreement*.

The Convener: We will have a brief pause to allow the next panel of witnesses to take their places.

Sexual Offences (Scotland) Bill: Stage 1

10:18

The Convener: I intimate to our witnesses and to others present that, today being 11 November, business in the Parliament—and indeed in all public buildings and courts in Scotland—will be suspended briefly at 11 o'clock for the appropriate commemoration. I will attempt to bring proceedings to a halt at a suitable moment just prior to 11 o'clock. I apologise for the necessary interruption but I am sure that everyone appreciates it.

I welcome Euan Page, senior parliamentary affairs officer at the Equality and Human Rights Commission; Mhairi Logan, manager of Scotland's lesbian, gay, bisexual and transgender domestic abuse project; and Tim Hopkins, policy and legislation officer at the Equality Network. I thank you for attending to give evidence; it is greatly appreciated. The committee is slightly behind the 8-ball, time-wise, so I ask members to ask questions as succinctly as possible.

Bill Butler (Glasgow Anniesland) (Lab): Good morning, colleagues. As you know, the Sexual Offences (Scotland) Bill seeks to move the law in the direction of making rape gender neutral. Could each witness comment on that policy from the perspective of equalities and human rights?

Tim Hopkins (Equality Network): We have been pursuing that end for many years. In England, the law of rape was extended in 1994 to include male rape. If a man is raped, it is important that the right language—the language of rape—is used in prosecuting that. We are therefore very pleased that anal and oral rape have been added to the definition of rape.

A specific issue arises for transsexual people. At the moment, it is unclear whether the law of rape in Scotland would cover the rape of a transsexual woman who has a surgically constructed vagina. That is unclear for two reasons: the first is that her vagina is surgically constructed, and the second is that she might legally still be a man if she has not had gender recognition under the Gender Recognition Act 2004.

The bill deals with all that. It makes clear the fact that surgically constructed genitalia count for the crime of rape, whether we are talking about the victim or the perpetrator, and that the legal gender of the victim and the perpetrator does not matter. The crime can be committed by anyone who has a penis regardless of their legal gender.

As the committee knows, our written evidence raises a specific issue regarding the definitions of penis and vagina in section 1 of the bill. Transsexual people have told us that they are unhappy with the terms "artificial penis" and "artificial vagina". Such language is not used in the corresponding English legislation, which simply refers to surgically constructed parts. That is what we are talking about. An artificial body part is a prosthetic part; an artificial limb is a prosthetic limb, not a surgically reconstructed limb. A limb that is part of the body, whether it is surgically constructed or original, would not be called artificial, and the same should apply in the language of the bill. We recommend the language that is used in the English legislation and removal of the word "artificial".

Mhairi Logan (LGBT Domestic Abuse Project): We support what Tim Hopkins has said. The domestic abuse project believes that it is great that men will be able to name the experience of rape as such. We are really pleased with the changes to the first offence of rape.

Euan Page (Equality and Human Rights Commission): I agree with my colleagues. This is a long-overdue rewriting of the law to ensure that offensive, outmoded terminology is removed and that the offence of rape can apply equally to male and female victims. We welcome that.

Our submission picked up on one or two outlying issues. Although the bill strives, rightly, to make rape and sexual offences gender neutral in statute, the policy environment in which we work is that—without for a second downplaying the equal trauma and pain that are caused by rape regardless of the gender, gender identity or sexuality of the victim—rape is still predominantly a crime committed by men against women.

Bill Butler: How do the witnesses respond to the comment that rape is still overwhelmingly a crime committed by men against women, and that the policy of gender neutrality might obscure that fact?

Euan Page: I disagree that there is any—

Bill Butler: I am playing devil's advocate.

Euan Page: Of course. It is a very good point. The Equality and Human Rights Commission disagrees that there is any contradiction between striving for gender neutrality in statute while recognising that the policy environment in which the new law will be introduced is one in which we are dealing with rape as a gendered crime. There is no contradiction as far as the commission can see.

Bill Butler: Does Ms Logan have a comment on that view, which is sometimes expressed by some people?

Mhairi Logan: The project definitely accepts that we are talking about disproportionate gender-

based violence, but as it stands, the bill does not diminish that. It is about the policy context within which we work. Lesbian, gay, bisexual and transgender people who experience domestic abuse and rape should also be considered in terms of gender-based violence; that sits quite comfortably alongside what is proposed in the bill.

Bill Butler: I understand that.

Tim Hopkins: The number of cases in which the new crime of rape as set out in the bill would be committed by someone who is legally a woman would be very small. The Scottish Law Commission was right to identify penetration with the penis as a specifically bad crime. The penis is a sexual organ, it is in the nature of rape, and it is what people understand rape to be. We are therefore in favour of rape being a separate crime, which means that it can be committed only by someone who has a penis; the majority of those who commit rape are men. The crime is gender based and the law should recognise that.

Bill Butler: All three organisations refer to rape of a woman by a woman. Is that a significantly prevalent issue?

Mhairi Logan: Our written submission refers to Stonewall Scotland's recent research, in which approximately one in 15 lesbian or bisexual women disclosed that they have been raped by a partner. Other research that was done in 2006 into same-sex domestic abuse showed that approximately one third of respondents disclosed that they had experienced sexual violence by a partner. We are therefore talking about significant numbers and a massive issue.

That is why we said that it is important that the bill includes an offence that sits alongside rape and which is clearly distinct and not subsumed within general sexual assault. It is important that the rape with an object offence is included to cover lesbian and bisexual women's experience in the context of domestic abuse. Without that, we cannot say that the legislation is sexual-orientation neutral because it will not cover the experience of a sizeable proportion of women.

I support what Scottish Women's Aid and Rape Crisis Scotland said on the issue. It is important that the term "rape with an object" is used. As Tim Hopkins pointed out with regard to gay and bisexual men being able to use the word "rape", an important part of experiencing sexual violence and being able to recover from it is for the victim to reach a point at which they can say not that they were forced to have sex, but that they were raped. Giving lesbian and bisexual women that language is important to the recovery process, and rape by an object or another body part can still be a separate offence. We should think about that.

Tim Hopkins: Our position is the same as that of my colleagues. There should be a separate offence. The English offence is called "sexual assault by penetration", but the term "rape with an object" would be better because it captures the victim's rape-like experience while distinguishing the crime from the central rape offence of penile penetration. The offence should cover vaginal and anal penetration, but not oral penetration; that is what the English law does. The Scottish Law Commission originally suggested that in its 2006 discussion paper.

Euan Page: I agree with what has been said. The EHRC pointed to stakeholder concerns that there is a gap in prevention, protection and understanding in the area of same-sex female rape, both in the criminal justice arena and in the wider interventions for support after such an event. We need to be alive to that.

The Convener: I turn to Cathie Craigie, although I think that the witnesses have anticipated her questions to some extent.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): The witnesses are very good and are covering everything while taking account of the convener's introductory remarks.

I hear everything that you have said this morning, what is in your submissions, and the clear arguments that have been made. The Lesbian and Gay Christian Movement's written evidence raised concerns about the same matters. It suggests that, if the Government is not willing to take the route that we have just discussed, we should consider creating a separate offence of assault by penetration. What are your views on that?

10:30

Tim Hopkins: The principal difference between what the LGCM suggests and what we suggest is just the name of the offence. It suggests the creation of an offence that is similar to the English offence of assault by penetration with an object or another part of the body. We believe it is important that the offence is called something like rape with an object; as Mhairi Logan said, such an assault is experienced by the victims as a form of rape, so it is important that the word "rape" is included.

Cathie Craigie: Would you confine the definition of rape to vaginal and anal penetration?

Tim Hopkins: Yes. Other witnesses have discussed the matter with you already and the Scottish Law Commission discussed it in its final report. There is an issue about, for example, a forced kiss during which there is penetration with the tongue. If the crime of rape with an object was defined to include oral penetration, such a forced

kiss would become an example of rape with an object. It is not clear that it makes sense for the word "rape" to be applied to such things, whereas it is much clearer in the case of coerced and forced vaginal or anal penetration. That is why we believe that it is not appropriate to include oral penetration in the offence. Oral penetration would be covered by the sexual assault offence.

Mhairi Logan: The word "rape" depicts the seriousness of the offence. I agree with Tim Hopkins that the definition of rape with an object should be confined to vaginal and anal penetration.

Cathie Craigie: Would you include penetration by other parts of the body?

Mhairi Logan: Yes, definitely. People experience violent rape with the hand, fingers or other parts of the body. It is important to include that.

The Convener: We turn to questions on consent and reasonable belief, on which Robert Brown will lead.

Robert Brown: I want to ask about two aspects. The first relates to the question of the victim being asleep or unconscious. The same point has been made in different ways by many organisations, but the Equality and Human Rights Commission, in particular, states:

"It is very difficult to see under what circumstances an individual would wish to consent to sexual activity at some point in the future when s/he is asleep or unconscious."

To an extent, the issue is theoretical. Will you elaborate on your thinking on it? There is a genuine question about when consent takes place. How do we deal with the problem of situations in which alcohol has been taken or issues of greater uncertainty arise?

Euan Page: The committee is right to try to bottom out that area, because it is not clear cut. We must ensure that we do not sweep up in the law people who behave inappropriately but not in a way that should leave them open to a serious criminal charge. As we state in our submission, we need to get a handle on the situation that is envisaged. The dangers in going down the route of prior consent are manifold. By its nature, consent, or free agreement as it is defined in the bill, implies the ability freely to withhold consent at any time, but that ability is removed if one of the sexual partners is unconscious.

I know from reviewing the previous evidence that has been given to the committee that there have been discussions about situations in which people have had too much to drink and somebody gets caught up in the moment. To take the model to its logical conclusion, however, is it really conceivable that an individual would be caught up in the moment and have sex with somebody who was unconscious? Part of a sexual relationship between two adults is the important principle of reciprocity, and that would be missing from such an arrangement.

The dangers of proceeding with the provision on prior consent outweigh the dangers of removing it. We need to ensure that the criminal law does not inadvertently reinforce the public misconception, which is unfortunately still widely held, that somebody can be responsible for being raped because they had too much to drink or acted stupidly with drink, drugs or whatever. The responsibility for being raped does not exist; the rapist is the only person who is responsible for a rape.

Robert Brown: Your submission states that section 10(2)(b) of the bill, which deals with the matter, should be removed. Is that what it boils down to?

Euan Page: Yes. Unless a compelling reason is given for recrafting the provision in such a way that it clearly protects a group of people who would otherwise be caught up in criminal law inappropriately, the provision should be removed from the bill. The Equality and Human Rights Commission is not aware that any compelling reason has been provided thus far.

Robert Brown: Do you have a clear view about how consent should be indicated in the perhaps more ambiguous circumstances that we are discussing? We should bear it in mind that the matter has given the courts difficulty for 150 years, when cases of clandestine sexual assault were first decided by the High Court.

Euan Page: I do not pretend that this is an easy area. Doubtless, we will move on to talk about the bill's provisions on due regard being given to the defendant's indications of what steps were taken to establish consent, which perhaps ties in with the issue that we are discussing. We need to get to the bottom of what consent looks like, be it verbal or otherwise.

To take the matter out of the realm of statute and into the realm of policy, we should consider Rape Crisis Scotland's excellent this is not an invitation to rape me campaign, for which there are posters and have been adverts in magazines and papers in the past few weeks. Consent is not affected by whether somebody has had too much to drink, is flirting with somebody, has kissed them or is wearing a particular outfit. Consent can be given or withdrawn at any point. It is important to get to the bottom of the fluid nature of consent. One does not enter into a contract to have sex with somebody. We need to get away from the onus being on the victim, who is grilled about why he or she gave out mixed messages or whatever.

The onus should be on the accused to explain what indications they believe they were given that the person consented to have sex with them.

Robert Brown: I think that we all accept those points, but the difficulty is that we are talking about criminal statute. In court, ultimately, there will have to be proof beyond reasonable doubt of all the issues, including that there was no consent. That is what gives us problems, is it not? Does anyone else have any different comments on that?

Tim Hopkins: The results for LGBT people on the issue are no different, so it is not an LGBT equality issue, but I will comment briefly. What is required is not the removal of section 10(2)(b) altogether but the removal of the second half of it, which states that prior consent is possible. We would still want a rule that stated that there is no consent if the person is unconscious.

I have the impression that the prior consent provision was included in the bill to deal with specific circumstances that, it was suggested, might arise between people in long-term relationships, but I agree with Euan Page that the dangers of including the provision outweigh the possible benefits. Regardless of what it strictly means in law, it sends out the message that prior consent is an excuse for rape. Situations that arise in long-term relationships could perhaps be dealt with in prosecution policy.

Mhairi Logan: Prior consent does not sit sensibly alongside free agreement. They contradict each other, and a question arises about how long ago the person gave their consent. I worry that the argument would be used in the context of domestic abuse and rape cases. We support the point that Rape Crisis Scotland and Scottish Women's Aid made on the matter.

Robert Brown: The other issue is reasonable belief, which section 12 covers. It is arguable that there is an element of academicness about that provision, too.

Mr Page, the Equality and Human Rights Commission has criticised the reasonable belief provision in section 12 and suggested that it runs the risk of being meaningless because of the difficulty of saying what steps the accused took if they will not give evidence. Will you elaborate a little on that? Do you have any other thoughts on how that challenge might be dealt with? Perhaps the bill has not got things altogether right, but the issue is important.

Euan Page: Before I answer those questions, it is worth putting on the record that I endorse Tim Hopkins's comments. We are not looking for the excision of the whole of section 10(2)(b); rather, we are talking about excising the offending second part of it.

The reasonable belief provision is enormously encouraging, but there is a question about its practical application. How can we introduce the provision into court procedures in a way that does not jeopardise a defendant's right to silence? Would it be possible, whether through judicial guidance or otherwise, to make it clear that an inference can be drawn from a person's refusal to provide evidence on the steps that were taken to ascertain consent? That is a practical suggestion.

Robert Brown: Are there any other thoughts or suggestions?

Tim Hopkins: I do not have anything to add to what has been said.

Robert Brown: There is concern about the provision and practical laws of evidence. Would there be any advantage in widening the provision and using the phraseology in the English Sexual Offences Act 2003? That act states that the reasonableness issue is to be determined

"having regard to all the circumstances".

It should be borne in mind that an objective element to reasonable belief is introduced in part 1 of the bill.

Euan Page: The answer to your question is, "Possibly." When the Equality and Human Rights Commission met members of the bill team, we acknowledged in our discussion that section 12 strays into wider questions to do with the law of evidence in Scotland. Perhaps that question needs to be considered in the round with wider questions to do with the law of evidence. That is one possibility. Perhaps we could get back to you in writing on the matter once we have further discussed it internally.

Robert Brown: That would be helpful.

The Convener: It would be useful if you could reply to us in writing, Mr Page.

We turn to the definition of rape. Stuart McMillan's question appears to have been anticipated.

Stuart McMillan (West of Scotland) (SNP): I am content with the responses that have been given.

The Convener: Right. Angela Constance will therefore lead on questions about children and young people.

Angela Constance (Livingston) (SNP): As the witnesses know, the bill will continue to criminalise many forms of consensual sexual behaviour between older children. Is that consistent with the human rights of older children? Is it, for example, consistent with their privacy rights under article 8(1) of the European convention on human rights? I direct that question at Mr Page first.

Euan Page: The committee wrestled with that issue in its first two evidence sessions, and I do not know whether the Equality and Human Rights Commission has a great deal to add to the useful responses that you received then. We endorse the pragmatic approach that a number of witnesses have advocated. Provisions exist to deal with the very rare circumstances in which a criminal justice response would be the first and most appropriate response, but it is hard to envisage a situation in which such a response would come before a sexual health and child welfare response. In addition, the Lord Advocate has discretion to intervene when that is necessary. We would expect criminal justice interventions as opposed to other responses to be rare, as they are already.

You are right. Several potential rights are involved, particularly if we are to consider any moves towards an automatic appearance before a children's panel. There are all sorts of issues to do with rights to privacy and the most appropriate way of dealing with individual children. We whole-heartedly agree with what has been said, and endorse the pragmatic, case-by-case approach that many witnesses have taken.

10:45

Angela Constance: Are you saying that, provided that there is discretion and people are not automatically referred to the children's hearings system, for example, no conflict exists with the right of older children to privacy? Have I understood you correctly?

Euan Page: I think that that is right. If we are pragmatic, the law will stay in place. We think that the Lord Advocate would use her powers of discretion sparingly, and we want the best interests of both children to be paramount. It is hard to square such an approach with an approach involving an appearance before the children's panel or any other criminal justice intervention.

Mhairi Logan: I do not have anything to add to that.

Tim Hopkins: I do not have much to add. The Equality Network does not work with children and young people, so we do not have a view on where the boundaries that separate what is and is not criminal should be. However, it is important to us that there is no sexual orientation discrimination in the law. It is clear that, at the moment, the law discriminates on grounds of gender—members have discussed that with other witnesses. If a 15-year-old boy and a 15-year-old girl engage in sexual activity, the boy—but not the girl—will have committed an offence. The law also discriminates on grounds of sexual orientation at the moment, because if a 15-year-old girl engages in sexual activity with her 15-year-old girlfriend, they will both have committed an offence, whereas if a 15-year-old girl engages in sexual activity with her 15-year-old boyfriend, she will not have committed an offence. We are pleased that that sexual orientation discrimination will be removed from the law.

It is also important that the law is implemented in a way that is free from discrimination. For example, if the question whether to prosecute an offence under section 27 is left to the discretion of prosecutors, it is important that that discretion is exercised in a non-discriminatory way. Equally, referrals to the children's panel need to be made in a non-discriminatory, sensitive way, because a privacy issue for young lesbian, gay and bisexual people is that they may not have come out to, for example, their parents.

The Convener: Nigel Don has a question for Mr Page.

Nigel Don (North East Scotland) (SNP): I want to return to the point that Mr Page made about taking a pragmatic approach and the Lord Advocate's discretion. In previous evidence sessions, I have been concerned that we could, for understandable reasons, finish up with a law that is routinely not enforced. It also seems to me that we are talking about a law that the average older child could not describe. The perpetrator of the offence would not be able to tell me or you what the offence was, because they would not know the circumstances under which it would be prosecuted or the circumstances under which it would not be prosecuted, which would apparently happen in the majority of cases. As someone who can discuss human rights, does the fact that people would not know the law offend you?

Euan Page: There is a general issue to do with the extent to which sexually active 15-year-olds refer to criminal statute before they decide what to do. That problem will doubtless remain.

I was struck by the comments that were made by, I think, Children in Scotland. It is a case of weighing up the pros and cons of changing the law and decriminalising such offences, or proceeding on the basis that has been advocated by several witnesses, who believe that, on balance, it is better to ensure that we continue to have a criminal law response in our armoury while recognising that that response is unlikely to be used frequently. I realise that such an approach is unsatisfactory to some members, who will think that laws that will not be enforced should not be passed. However, organisations in the children's sector have stated that we must be mindful of the complexities of the law in this area and of the unintended consequences of sending out messages that the law has been relaxed or the penalties lowered.

The issue is not clear cut or easy, but a number of witnesses have advocated the best balance, which involves moving forward on the basis that the law exists with the understanding that when and how to proceed will be up to the wisdom and judgment of the Lord Advocate.

The Convener: We appear to have dealt with the bulk of the issues. Does Ms Constance have any further questions?

Angela Constance: Mr Hopkins has anticipated my final question, but I wonder whether Ms Logan or Mr Page wants to give a view on the equalisation of the law on consensual sexual activity between young men and young women over 13 but under 16. Both groups are potentially criminalised.

Mhairi Logan: I agree with what Tim Hopkins said. There used to be a problem, in that there was a difference in law between two young women in a relationship and a young woman and a young man in a relationship, but the bill will rectify that.

Euan Page: I am happy to go along with Tim Hopkins's and Mhairi Logan's comments.

The Convener: We will have a final question from Bill Butler.

Bill Butler: Are there other issues in the bill on which panel members wish to comment? Are there equalities and human rights issues that we have not yet touched on?

Tim Hopkins: I have one further point to make, and I hope that I will not take too long to explain it.

The Convener: So do I.

Tim Hopkins: The issue is discussed in our written evidence. Section 13 of the Criminal Law (Consolidation) (Scotland) Act 1995, which is entitled "Homosexual offences", deals with most of the sexual offences committable between men. Most of the section will be repealed by the bill, with the offences being replaced by gender-neutral and sexual orientation-neutral offences, which is great. However, part of section 13 of the 1995 act deals with offences that connect to prostitution. The Scottish Law Commission proposed two years ago to repeal all those offences and to consolidate the necessary provisions with general prostitution offences that are also in the 1995 act. However, when the Law Commission published its draft proposals, it pulled back from its original position, because, it said, the Scottish Executive had excluded prostitution from the remit of the review—

The Convener: I will interrupt you there, Mr Hopkins. You appreciate that we have to deal with the bill that is before us.

Tim Hopkins: Yes.

The Convener: I would prefer not to have extraneous matters introduced at this stage.

Tim Hopkins: I am sorry. In that case, I will not talk about material related to prostitution, which is arguably outwith the scope of the bill.

The Convener: Those discussions are for another place and time, of course.

Tim Hopkins: Fair enough. However, the parts of section 13 of the 1995 act that the bill, as it stands, will leave in legislation include material that will require consequential updates, because of other measures in the bill. In particular, section 13(4) of the 1995 act defines "a homosexual act" as an act of

"sodomy or an act of gross indecency or shameless indecency".

There are two problems with that. The first is that "shameless indecency" no longer exists as an offence, and the terms "sodomy" and "gross indecency" are, in effect, repealed by the bill. The second is that the language is very offensive. It is discriminatory to define any homosexual act between men as sodomy, gross indecency or shameless indecency. Section 13(4) of the 1995 act must be amended, by a simple consequential amendment to the bill, to define "a homosexual act" in straightforward terms as a sexual act between men.

Another problem is that section 13(9) of the 1995 act goes beyond prostitution. It criminalises any soliciting or importuning by

"any male person for the purpose of procuring the commission of a homosexual act".

We think that that criminalises a man asking another man to have sex with him, because doing so is regarded as soliciting the procuring of a homosexual act by the other man. The words "for the purposes of prostitution" are missing from section 13(9) of the 1995 act. That is the key point. In all other legislation on prostitution, the words "for the purposes of prostitution" are there to qualify the words "soliciting" or "importuning". We therefore recommend that the phrase be inserted into what remains of section 13 of the 1995 act, to ensure that the scope of what remains catches only prostitution—as the Scottish Law Commission suggested—and does not accidentally catch things that should be legal for gay men, just as they are legal for everybody else.

The Convener: That is a useful clarification to add to what is in your submission.

Bill Butler: I am obliged to Mr Hopkins as well, convener. We now have something to think about for sections 13(4) and 13(9) of the 1995 act.

Does Ms Logan or Mr Page have anything to add?

Mhairi Logan: I would like to make one final point on the question of rape with an object. As the bill stands, it is proposed that rape would only ever be dealt with as a solemn matter in the High Court. We would like that also to be the case for rape with an object.

Euan Page: The committee has already highlighted this issue during previous evidence sessions. In questions of coercion or threats of violence, we need to be sure that we do not have in our minds the scenario of the knife against the throat. The dynamics of coercion and violence in an abusive relationship can be much more subtle and insidious than that. An individual's ability to consent freely to sexual activity can be hampered in ways that might not be immediately obvious, and we must be aware of that.

Enable Scotland will be next to give evidence this morning. The Equality and Human Rights Commission got sight of Enable's submission only after we had produced our own. Enable raises a very important point about how we can address the difficult area of ensuring that we extend all the protection that we should to people with learning disabilities while not using the criminal law as a means of regulating how consenting adults have sexual relationships.

I completely understand that two opposing principles are at play. The overriding and unacknowledged principle at the moment is that people with learning disabilities should not have the same autonomy and opportunities to make decisions about how they live their lives as other people. We need to address that head on, and Enable makes some practical suggestions on how to ensure that the greatest possible protection and the greatest possible autonomy and dignity are extended to adults with learning disabilities when they are deciding when and with whom they will have a sexual relationship. The Equality and Human Rights Commission will be contacting Enable to try to think through some of those issues.

Robert Brown: Violence is sometimes described as violence such as would overcome the fortitude of a reasonable person. Is some sort of qualification to that required, to distinguish significant threats of violence from more minor incidents?

Euan Page: The issue is perhaps more complex than has been suggested. Sometimes things are easy to say but difficult to get right in law. Circumstances have to be taken into account. Enable's written evidence makes the point that threats that might appear minor or inconsequential to one person might, to another person, be extremely distressing and have a major impact on their future decisions. Legislation must therefore capture not so much the nature of the threat but the circumstances in which it is made.

The Convener: I congratulate the panel of witnesses on evidence that was the acme of brevity and clarity. I am very much obliged to you all for that. Thank you for your evidence. The committee will consider carefully what has been said.

I now suspend the meeting in order that we can commemorate the war dead when the two minutes' silence is announced at 11 o'clock.

10:59

Meeting suspended.

11:03

On resuming—

The Convener: I welcome to the meeting Norman Dunning, chief executive of Enable Scotland. We will proceed directly to questions, which will be led by Nigel Don.

Nigel Don: Good morning, Mr Dunning. Fortuitously, I want to ask about section 10, which is where we left off. Will you expand on the suggestion in your written submission that the notion that someone might submit to sexual contact as a result of threats be reconsidered?

Norman Dunning (Enable Scotland): I agree with the previous panel that the issue must be seen in context. After all, what one person sees as a credible threat might not seem so to another. In that respect, people with learning disabilities might be much more suggestible to threats than others. As we say in our written evidence, a person's pet might be threatened or they might be told that they will never be allowed to go home again, and they will find such threats credible in a way that others might not. As a result, we suggest that if section 10 is to be amended, it should cover not only threats of violence but credible coercion or something like that.

Nigel Don: I get the impression that, given those examples, we will not be able to list in the bill all the relevant threats.

Norman Dunning: Not at all.

Nigel Don: Are you therefore suggesting that we should use phrases such as "credible threat", "threats that are relevant in all circumstances" or something like that?

Norman Dunning: Yes—threats that are relevant to the particular person in the particular situation. The issue obviously extends beyond people with learning disabilities, but we considered it in the context of how those people would react in the situation.

Nigel Don: So you would be happy with a general proposition, along the lines that we have just discussed.

Norman Dunning: Yes.

Paul Martin (Glasgow Springburn) (Lab): You will be aware that the bill will repeal some sections of the Mental Health (Care and Treatment) (Scotland) Act 2003, relating to offences involving abuse of trust. Is the bill's approach to such offences an improvement on the 2003 act?

Norman Dunning: No. I must make it clear that Enable Scotland has changed its view. We gave evidence to the Millan committee in which we supported what became section 313 of the 2003 act. There were similar provisions in the Mental Health Act 1983, although they applied only to women with learning disabilities.

We in no way wish to give the impression that we condone any breach of trust by people who are there to care for and support people with learning disabilities, but the criminal law is not helpful in trying to resolve that situation. We note in our submission that there have been only four referrals under the 2003 act, none of which has resulted in prosecution. There were only a handful of referrals under the previous provisions in the 1983 act. Criminalising such a breach of trust does not seem to work, which is why we have revisited the issue.

We have had a considerable debate within our organisation, and with people with learning disabilities and their parents. One way that we led that discussion was by presenting different scenarios that might occur and asking how they might best be resolved. One issue that arose was that scenarios involving breaches of trust between a care worker or a support worker and a vulnerable person, such as someone with a learning disability, usually take place in private. One finds out about them usually because somebody who is closely involved—either the vulnerable person or somebody from their wider family who hears about it—comes forward and tells someone.

We feel that people are not coming forward with that information, probably because of the criminal law. The issue is quite subtle. It is important to remember that we are talking about people with learning disabilities who have the capacity to consent, rather than people who do not have the capacity and who are already covered by legislation. If a person enters into a consensual relationship with their care worker, we have to be subtle in dealing with the situation.

To cut to the chase, we find out about such relationships when someone tells us, and therefore we have to make it easier for people to tell us. If a support worker finds themselves getting into an improper relationship, we want them to come forward, but they are less likely to do so if they think that it is a criminal offence. We want the person with the learning disability who is engaged in a consensual relationship to feel that they can come forward without getting the person they got involved with caught up in the law. Other people connected with the scenario are also more likely to come forward and point out a wrongdoing if they do not think that it will result in a criminal conviction.

We should not underestimate people's reluctance to come forward—first, to be a witness in a criminal case, and secondly, to be a witness in a case that involves a delicate sexual matter. We are taking a pragmatic approach: we think that the best way to protect people is not to use the criminal law.

There are, of course, other sanctions that can be applied. If the support worker was employed, their behaviour would be inappropriate in their employment situation, and if they were a registered worker, their registration might need to be terminated. However, we do not think that the criminal law is the best way to deal with the situation.

Paul Martin: Do you envisage any scenario in which using the judicial system would be of benefit? I appreciate that your point is that regulation can help, but there must be scenarios—for example, involving predatory behaviour or someone abusing the trust of a number of individuals they are caring for—in which it would be more effective to pursue a criminal offence. You have set out specific scenarios, but the situation is complex. Surely the opportunity for criminal interventions should remain while understanding that regulation plays a role.

Norman Dunning: You make a valid point about predatory behaviour, although I refer again to the fact that the current law does not help—there are no prosecutions. There are also other ways of dealing with predatory behaviour, particularly by registered care or social workers, whose registration can be terminated.

There is currently a gap. As members may know, the Scottish Social Services Council is in the process of registering care workers. It started with social workers and then service managers, but the logistics mean that it is taking a long time to register everybody. So regulation exists, but its implementation is taking time, and it will probably

be another three or four years before all care workers are registered. We know that there is a gap, but we still feel that the criminal law is not the best way to deal with the situation.

Ultimately, regulation will cover all support workers, but, as we acknowledge in our evidence, it will not cover people who are not recognised as care workers—people who help somebody to get a job, for example. However, there will always be such issues.

I return to the fact that we are talking about consensual behaviour. If someone's learning disability is such that they cannot consent to a sexual act, there is no problem of interpretation—that is clearly a criminal offence.

Paul Martin: Do you accept that there will be circumstances in which people might be preyed upon? I appreciate the consensual element that you referred to, and I recognise that there are adults with capacity, but do you acknowledge that those adults face complex issues? Do you accept that some individuals could take advantage of those circumstances, despite the capacity issue that you referred to? Surely there should be the opportunity to pursue criminal law. I acknowledge the issue that you raised about enforcement, but it does not take away from the fact that there are complex issues concerning the detection of such activities.

Norman Dunning: Again, it is a question of how best to help people with learning disabilities. Rather than "protecting" them—as I said, there is no evidence that the current law does that, and the new measures are very similar—we need to educate them and give them the confidence to be ordinary citizens. A lot of the information that we receive from people with learning disabilities with capacity is that they want to be treated like other citizens—like everybody else.

The issue goes right back to education. At the moment, a lot of people with learning disabilities are vulnerable in sexual matters because they do not receive the same sex education as other people when they are children. They do not have the same opportunities to form the ordinary peer relationships that other people have, because people are too protective of them.

We hear from people with learning disabilities that they want to be less protected, better educated and better supported. Giving those people the right support to deal with complex matters in their lives is much more important than having a criminal sanction. Criminal sanctions tend to work the other way round—they mark them out as being different and encourage overprotective attitudes.

The Convener: There are no other questions for you, Mr Dunning, so I thank you for your attendance. The issues that Enable Scotland is particularly involved in are difficult and sensitive, and we appreciate the fact that you have come to answer our questions.

Norman Dunning: Thank you.

11:15

Meeting suspended.

11:16

On resuming—

The Convener: I reconvene the meeting and welcome the third panel of witnesses. The Rev Graham Blount requires only a limited introduction, as he is well known to members of the Parliament in connection with his work as the parliamentary officer for the Scottish Churches Parliamentary Office. He is joined by Alistair Stevenson, the public policy officer of the Evangelical Alliance. Good morning to you both and thank you for your attendance. The purpose of this type of evidence-gathering session—I direct this information to Mr Stevenson in particular—is for members to question witnesses about the content of the bill. We are not interested in any extraneous matters this morning; we are dealing with the bill as it is before us.

I will ask the first question. What is the proper role of criminal law in regulating sexual conduct?

The Rev Graham Blount (Scottish Churches Parliamentary Office): When we talk about sexual conduct among those who are in some sense children—whether younger or older children, they are our focus in relation to the bill—we see the regulation of sexual conduct fundamentally as a welfare issue. The welfare issues involved were well rehearsed in the committee's meeting last week with the children's charities and the children's commissioner. Broadly, we share their concerns and have discussed the matter with them.

The question is, what is the most effective way to discourage young people from engaging in sexual activity before they are ready and to support those who have already done so? The Church of Scotland is still persuaded that, in that context, the criminal law is not the most effective way to protect older young people from themselves. Increasingly, the present legal situation is not working if the criterion is to deter people. We do not want to exaggerate the figures—about which the committee has heard—but it appears that the law is not successfully discouraging young people from engaging in sexual activities.

The Convener: May I interrupt you for a second? This is an important issue that we intend to examine in greater depth later on, if you will bear with us. I am interested in hearing what you feel is the role of the law in dealing with sexual conduct generally.

The Rev Graham Blount: The law exists to protect vulnerable people. Obviously, in a given situation certain judgments will be relevant in determining which people are vulnerable and require to be protected in the context of consensual sex between young people. In most situations, we believe that it is appropriate to treat all those involved as equally vulnerable.

Alistair Stevenson (Evangelical Alliance): We agree that the law should provide protection. A lack of legal involvement in a case would send a clear message that the law does not give direct expression to the principle that vulnerable persons should be protected and seen to be protected. The law exists to provide protection for vulnerable people. We agree with Graham Blount on that point.

The Convener: We will come to the issue of children presently.

In the written evidence that we have received, there is general appreciation and acceptance of the terms of the bill. Do you find any of its provisions difficult to accept or agree with? I invite Mr Stevenson to lead on that question.

Alistair Stevenson: I am happy to do so. We did not submit written evidence to the Justice Committee because we thought that our views were successfully taken on board by the Scottish Government when the bill was produced. We have no further problems with the bill.

The Convener: That will no doubt come as great encouragement to the Government.

The Rev Graham Blount: The Church of Scotland welcomes the broad intent of the bill. In certain areas of detail—other than those on which we have commented—we do not have adequate knowledge to comment further. We want the principle of protecting vulnerable people to be reflected in legislation, and we are persuaded that the bill as a whole seeks to do that.

The Convener: That is perfectly straightforward. We turn to the definition of rape.

Stuart McMillan: The committee has received a considerable amount of evidence suggesting that the crime of rape should be extended to include penetration with an object, instead of such conduct being covered by a more general sexual assault offence. Do you have a view on that?

The Rev Graham Blount: The church has not taken a view on the issue. We recognise that difficulties arise wherever one draws the line in these matters. One would not want to broaden the definition of rape in a way that progressively made the offence seem less serious. That is not to say that there are not very serious forms of sexual assault that do not come within the definition of rape.

Alistair Stevenson: We have no evidence to submit on the matter.

The Convener: Again, you have been quite clear. We move to the issue of children and young people.

Paul Martin: The bill draws a distinction between younger children and older children, and suggests that whereas sexual relations between younger children should be criminal, sexual relations between older children should not necessarily be criminal. What are your views on that issue?

The Rev Graham Blount: Drawing a line at a particular age is problematic, but it seems sensible to recognise that there is a difference between very young children and teenagers.

Paul Martin: You referred to the role of the criminal law. Can you elaborate on that? Has the General Assembly of the Church of Scotland taken a formal position on issues relating to the bill?

The Rev Graham Blount: The General Assembly appoints the church and society council to speak for it between General Assemblies. The council submitted a response to the consultation on the Scottish Law Commission's proposals, and the contents of that response are reflected in what we have said at this stage. The General Assembly was aware of our response when it met earlier this year. It did not debate the matter formally, but it did not seek to change what had been said in the church's name.

Paul Martin: Does the church have a specific position on how the criminal law should relate to younger and older children?

The Rev Graham Blount: We made our submission before the General Assembly. I am not sure that I understand your question.

Paul Martin: I am seeking to ascertain whether the church's position could change. When the General Assembly meets again, could there be developments in its position?

The Rev Graham Blount: That is always possible, as is the case in any organisation. When Enable Scotland gave evidence to the committee, it indicated that its view had changed. Our position was known to the General Assembly earlier this year, but it did not seek to change it.

Alistair Stevenson: I think that the clearest message I can come to you with this morning is to

say that, while the Church of Scotland has a view on this, certainly Christians across denominations are particularly divided on the issue. I suppose that I am here this morning to provide the other side of the argument and to say that although, initially, it is extremely difficult, as has been said, to draw lines in the sand in terms of age, it is important to do so, as the Rev Graham Blount has indicated. We think that, although some children might have the capacity to understand the implications of their consent, many children between the ages of 13 and 16 do not. Children are more likely to be vulnerable to exploitation and are less likely to understand the capacity either to withhold or to give consent. We therefore agree with the Government's position that children between the ages of 13 and 16—older children—should be criminalised in some cases.

As the Rev Graham Blount has said, at the heart of any church and Christian response is our wish to cement our firm foundation in the ideal of ensuring the welfare of the most vulnerable in society, including children. That must be to the fore of any discussion. We think that the law can and should play a role in drawing a line in the sand at the age of 16 and saying that we disagree that children between the ages of 13 and 16 should be having sex with each other. The law can be used to send a clear message. Although it might be a blunt instrument in this case, on the basis of all the evidence that we have heard, we regard it as the only means of addressing the issue.

Paul Martin: So you believe that the law plays a role in regulating sexual behaviour among young people.

Alistair Stevenson: We do, yes.

Paul Martin: The Rev Graham Blount's view is slightly different. In your written evidence, you suggest that the criminalisation of young people is unacceptable.

The Rev Graham Blount: That is not entirely the same thing as saying that the law does not have a role to play. We do not believe that criminalising young people who engage in consensual sex within the specified age parameters is the most effective way of discouraging them from engaging in that activity or of ensuring that those who engage in that activity are supported.

Paul Martin: I appreciate the point that you are making, but do you believe that the law has a role in regulating that behaviour? You say that the law is not the most effective means of preventing that behaviour, which is one argument, but do you believe that the law plays a role in preventing that behaviour? In other words, is there a role for the law or are there some intervention opportunities to deal with that behaviour in some instances?

The Rev Graham Blount: There are intervention opportunities in law for situations in which the sexual activity is not consensual. We have no reservations at all about the role of the law in such situations. We favour a legal position that makes the situation a matter of a welfare referral to a children's panel. That would be a use of the law but not of the criminal law.

The Convener: Would you be relaxed in the knowledge that all prosecutions in Scotland are at the discretion of the Lord Advocate, whom we hope would ensure that the cases that you have in mind would proceed on a sensitive basis?

The Rev Graham Blount: Yes. Our concern is about the passing of new legislation that would, rightly, extend the crime by making it even-handed for both boys and girls, if—as the implication appears to be—the Lord Advocate issues guidance that the law should not normally be enforced.

The law might be understood to send an important signal to young people, but it is a very confusing signal if we find it necessary to remind people in statute that the Lord Advocate always has discretion, on the basis that much of the discussion seems to assume that the vast majority of cases will not be prosecuted. We would also be worried if people were prosecuted under one heading because the heading under which it was suspected their action actually fell could not be discussed in court. A prosecution might be pursued because it is believed that an activity was not consensual, but because that is irrelevant to the indictment it would not come out fully in court.

11:30

The Convener: I can see the force of that argument.

Cathie Craigie: I refer to sections 27 and 29. The bill seems to want to continue to criminalise penetrative sex, but will apparently legalise oral sex, between young people aged 13 to 16. What are your organisations' views on that? The Church of Scotland expressed concerns in its written evidence and said that it is "not persuaded" by section 27 and section 29. Perhaps the Evangelical Alliance could comment on whether the Government was able to allay any of its concerns before the bill was introduced.

Alistair Stevenson: That is a really important issue that we have continued to think about since we first saw the Government's proposals. Unfortunately, it has not been picked up until now. If we were pushed on the point, we would say that in relation to penetrative and non-penetrative sex it is difficult to start drawing lines in the sand. Unfortunately, we do not have any answers on the issue, and I am not entirely sure whether it is

appropriate to start drawing lines in the sand. The current situation seems to be working—there is no evidence to say that it is not. Some ambiguity in this matter might be helpful in providing space for cases to be judged case by case and to be left to the discretion of the prosecutor or the Lord Advocate.

The Rev Graham Blount: I do not disagree with anything that Alistair Stevenson just said. The church did not express unhappiness about sections 27 and 29; it is fair to say that we did not consider the detail.

Cathie Craigie: Are there any risks associated with criminalisation of sexual conduct between older children? I would welcome some detail on that.

The Rev Graham Blount: There is a risk in respect of support. If there was not a threat of an appearance in court, children who had engaged in sexual activity but regretted it might be more likely to look for support both within and beyond their family. That is one reservation that we have about the use of the criminal law. It might be helpful to bring older children who are in such a situation to the children's panel, not on criminal grounds, but on welfare grounds.

Alistair Stevenson: I might be reiterating the point that I made earlier, but the welfare of the child is of utmost importance for any Christian and, I am sure, for every person at the table. We understand that criminalising sex between older children has implications, but we feel that they do not outweigh the message that the law sends, and would continue to send, to children in that situation, which is that the people who make the decisions for them feel that it is not appropriate for them to have sex. The children might not understand that at that moment in time. Putting on my teenage hat, if I was a 15-year-old, I suppose that I would like to rest assured that the people who have made the decisions—who are more intelligent than me and who have been around a lot longer—have seen the evidence and understand the implications more than I do and therefore have the authority to speak on the matter. If that was in my mind as a 15-year-old teenager, it would be fundamental to the next step that I would take in such a situation.

Nigel Don: I cannot help but point out that the Rev Graham Blount has been the first person who has actually supported the position behind my line of questioning, which is that a law that is not routinely enforced may not deserve the title of law and might be counterproductive. However, although it has been suggested that we should simply decriminalise such sexual activity, doing so would send the wrong message. Generally speaking, that does not have much support. Have any of the people to whom Graham Blount has spoken made suggestions about how we might find some middle ground? Is there a legal turn of phrase or another way of doing things that would achieve the objective that we both have of making an understandable and enforceable law that nonetheless sends the right messages?

The Rev Graham Blount: I wish that I had a bright answer to that, but none has been found. The committee has previously heard a witness—it may have been the witness from Barnardo's—speak about the need for robust public health campaigning and the provision of support services for young people. That must be part of the argument. The churches' welfare concern would be reflected by introducing in the bill a statutory welfare-based referral to the children's panel in such circumstances. However, none of those measures is the magic bullet that will sort out the issue. We need to consider working with families to support parents and teenage children in dealing with the pressures that they face. I am pleased that, in some places, churches are involved in that. Personal support that is provided in an on-going way, and not as a result of a case being reported, is crucial to changing things.

Nigel Don: Do you accept that, if we put that in the bill as a first line of attack, with the offence as a subsequent line, as it were, the Lord Advocate would not have discretion because she would not have the locus in the first place to investigate the case? As far as I understand it, we must retain the offence throughout, even if we then say that it will in practice be dealt with through the children's panel.

The Rev Graham Blount: I am open to correction, but I understand that if there appeared to be a lack of consensual activity, the Lord Advocate would want to investigate using other provisions in the bill.

Nigel Don: I think sections 1 and 2 apply to anybody of any age when there is a clear lack of consensual activity. The problem arises when it is not entirely clear. My understanding of the justification for the bill as drafted is that the Lord Advocate can exercise discretion from the very beginning and that therefore, in effect, the police can from the beginning exercise their discretion to investigate a matter so that it is dealt with through the criminal system, to the point at which a decision is made not to prosecute rather than the matter having to be revisited once the health issues have been dealt with. I think that is the basis on which the bill is drafted and that we are stuck with it. Do you accept that?

The Rev Graham Blount: I tried earlier to express my concern that the bill might lead to young people finding themselves in court under sections 1 and 2 when the basis of the Lord Advocate's discretion to proceed with the matter is

something that is not, on the face of it, what they have been charged with.

Bill Butler: The bill will extend criminal responsibility for consensual sexual acts to girls aged 13 to 16, whereas at present such criminal responsibility extends only to the boy. Do the witnesses agree with that extension of the criminal law or, as has been suggested strongly by responses to previous questions, do they believe that the criminal law should not be involved when there are consensual sexual acts between older children and that, as the Rev Graham Blount said, there should be a statutory welfare-based referral to the children's panel?

The Rev Graham Blount: Our belief is that whatever legal provision is made should be even-handed between boys and girls. As you say, we have already made the point about what we believe it is appropriate to deal with in legislation.

Bill Butler: Is it the Church of Scotland's position that such acts should not be dealt with under criminal law?

The Rev Graham Blount: Yes. That is the position to which the church has come.

Alistair Stevenson: We agree that there should be a general principle of gender neutrality.

Bill Butler: Should the criminal law be involved?

Alistair Stevenson: Yes. I think it should.

The Convener: There are no further questions for the panel. I thank the Rev Graham Blount and Mr Stevenson for giving their evidence so clearly.

The Rev Graham Blount: I would like to say one thing that I have not said in response to any of the questions.

The church regrets that it did not raise the point, which some of your witnesses raised last week, about consulting children. We believe that it would be useful to do that before the bill is passed. As Paul Martin hinted, there may be the possibility of the church's view being changed. If what Children 1st found in their conversation with a relatively small number of children proved to be widespread, that would, at the very least, give us pause for thought.

The Convener: Thank you for putting that on the record. That is helpful. I again thank you both very much.

11:44

Meeting suspended.

11:45

On resuming—

The Convener: I introduce the final panel of witnesses. We are joined by David Greatorex, who is head of research at the Christian Institute, and Dr Gordon Macdonald, who is parliamentary officer at CARE for Scotland. The committee is greatly obliged to you for giving evidence. I am sorry that you have been kept so long, but you will appreciate that we have had a heavy morning's work. That said, we move to questions, which will in some respects repeat the questions that were asked of the previous panel. I open by asking what the panel considers is the proper role of criminal law in regulating sexual conduct.

Dr Gordon Macdonald (CARE for Scotland): We agree with the earlier comment that the role of the criminal law is to protect vulnerable people. However, it is also to prevent harm, which is obviously part of protecting vulnerable people.

David Greatorex (Christian Institute): We echo that. The role of the criminal law is to prevent harm—it is a protective measure. As Alistair Stevenson said, the message that is to be sent and which comes out clearly in the policy memorandum is that the law has a role in regulating sexual conduct and in indicating society's disapproval of children engaging in such activities.

The Convener: In their representations to the committee, the religious organisations have generally backed the provisions of the bill. Are there any aspects of the bill that you find unacceptable? If so, what are they, and what are your reasons for finding them unacceptable?

David Greatorex: Our main concern about the bill is that it underestimates the seriousness of oral sex. As has been mentioned, certain sexual activities will be criminal under the bill, but activities such as oral sex will not be criminal. When we talk about child protection and welfare, we must consider how serious oral sex can be; for example, sexually transmitted infections can be transferred through oral sex. Alistair Stevenson talked about drawing lines in the sand. We consider that this particular line has been drawn in the wrong place. We would like the law to apply to oral sex in order to indicate society's disapproval of that conduct.

Dr Macdonald: I generally support that position. With sexual activities such as non-penile penetration, where one should draw the line can be quite difficult to judge. However, our concern is that there should not be opportunities for people to behave in a predatory way in relation to oral sex or other fairly explicit sexual activity.

The Convener: We turn to the definition of rape.

Stuart McMillan: The committee has received considerable evidence suggesting that the crime of rape should be extended to include penetration

with an object. Does the panel have a view on that matter?

David Greatorex: We have not considered that issue particularly. We approve of the fact that oral sex is to be included within the definition of rape. I do not want to bang on about the same point, but we consider the fact that that is defined as rape under part 1 means that there is a disparity and that it is not treated as seriously with regard to older children in part 4.

Dr Macdonald: It is not an issue that CARE has considered.

The Convener: Fine. We turn to the sensitive issue of sexual activity between children and young people. Paul Martin will lead the questioning.

Paul Martin: Gentlemen, what are your views on the role that the criminal law plays in regulation of sexual behaviour between young people?

Dr Macdonald: I return to our answer to the first question. The law has primarily a protective role to prevent harm and to act as a deterrent. Specifically, where there is harm or predatory behaviour, the law acts as a mechanism for intervention so that that behaviour can be addressed by the appropriate authorities—the police, social services or whoever.

David Greatorex: Paragraph 113 of the policy memorandum acknowledges the importance of the criminal law in guiding young people's behaviour. That is true of full sexual activity and, we believe, of oral sex. The message-sending role of the law is important: if any hint of a watering-down of the law is given, it will be taken as a weakening of the law. We do not want to encourage any form of underage sexual activity by weakening the law or giving the impression that the law has been weakened. The criminal law is an important indicator of society's views.

We believe that the law should provide the capacity to intervene in the most serious cases, although we acknowledge that discretion will be exercised in many cases. To have the law in this area totally disapplied, leaving the authorities unable to intervene, is not a step that we would condone. The law should include scope for intervention in the most serious cases.

Paul Martin: Are you suggesting that young people think about the current law and decide that they should not engage in sexual behaviour because of the possibility of their being brought before the courts?

David Greatorex: The law will have a deterrent effect on some young people, although not on all. The fact that 30 per cent engage in sexual activity indicates that the law is not a deterrent to all, but some of the remaining 70 per cent will be deterred by the law. The Children 1st study found that children are using the age of consent as a buffer—an excuse or prop—to enable them not to consent to sexual activity. That is an important sign that young people do think about the law in this area.

Paul Martin: The bill draws a distinction between younger and older children. What are your views on that?

Dr Macdonald: We would not draw such a distinction. Essentially, we argue that 16 is the appropriate age of consent for sexual intercourse.

David Greatorex: I agree that 16 is the correct age of consent. We would not like the law to be watered down, because we believe that under-16s are still children. Nevertheless, we acknowledge the reasoning behind the drawing of that line. We say that children under 13 have no capacity for consent, and that children over 13 but under 16 have limited capacity. We still consider that children under 16 are vulnerable and require protection, and that they do not have the necessary capacity to consent to the types of sexual activity that we are talking about.

Dr Macdonald: I am aware that this is not the Health and Sport Committee, but from a purely health-focused point of view, the earlier people engage in sexual activity, the greater the health risk. That is certainly the case for cervical cancer. The age range 13 to 16 is crucial. We should seek to use not only the criminal law but other mechanisms to encourage young people in that age group not to engage in sexual activity. At the end of the day, the criminal law will not, on its own, solve the problem.

Cathie Craigie: In its submission, the Christian Institute says that

"the law should prohibit any sexual activity below 16."

Are there any risks in criminalisation of sexual conduct between older children?

David Greatorex: Obviously one concern is that if a broad definition is used, children will be criminalised for kissing. That concern is often raised, but the area is exactly one where discretion is important and there is room for common sense. That is why we said "any sexual activity". Discretion is required. By having the provision drafted in that way, someone can intervene, even in circumstances in which full sexual activity is not involved.

Cathie Craigie: In its submission and its oral evidence this morning, the Church of Scotland made it clear that it views the matter as a welfare issue. I may be putting words into the church's mouth, but I understand that it thinks that the bill should be written appropriately so that it does not end up as law that is never enforced.

Do you think that the law will be

"brought into disrepute if legislation is passed which is not intended to be enforced"?

David Greatorex: I do not, no. There are many roles for the law. If not every case is prosecuted, the message-sending role of the law is not undermined—society's standard is still clearly set out. Some people will benefit by being deterred and others will be enabled to say no. We learned that in evidence from Children 1st and similar evidence was heard in England and Wales when sexual offences legislation was considered in 2003. It was heard that children used the age of consent as a prop not to engage in sexual activity in which they were unwilling to engage.

Peer pressure is also important. Any assistance that we can give children to resist pressure that media coverage and peer pressure puts them under is important assistance. The criminal law can do that by expressing the seriousness of the activity.

Cathie Craigie: The Christian Institute's submission raises a great number of concerns about part 4 of the bill—indeed, part 4 is the focus of your submission. How would you change part 4 to meet the concerns that you have set out?

David Greatorex: That is quite a question, and one that is probably beyond my pay grade.

As I said, we would like to see the line on sexual activity drawn much further down than it is at the moment. Oral sex should not be exempted but be brought within the provisions of the bill. One concern is the proximity of age defence—the 16 to 14 issue. From conversations with criminal law practitioners, I understand that under the current law prosecutions may result when the age gap between parties is 23 months. We believe that the introduction of the proximity of age defence in the bill will therefore weaken the law.

12:00

Cathie Craigie: Last week we heard from many organisations that work with and represent young people. The Commissioner for Children and Young People in Scotland made the point that, under the bill as drafted, if my next-door neighbour's 15-year-old daughter becomes pregnant, she will be a criminal. In terms of the opportunity that the bill provides to look at legislation in this area, is that the right way forward?

David Greatorex: There is important room for discretion. We are looking at the wider picture—the message that is sent when we legislate in this area. We are concerned that focusing on difficult cases such as the one that you have described could dilute the message that is sent. We would like to maintain a firm position in the law, while allowing for discretion. Legislating for more difficult cases could allow cases in which the criminal law needs to intervene to slip through the net.

Dr Macdonald: Presumably the 15-year-old would be recorded as a criminal only if she were prosecuted and convicted in a court. As we have heard, that is unlikely to happen unless there is evidence of abusive behaviour.

The Convener: If the case were referred to the children's hearings system, the offence would be recorded, although that is not a criminal conviction.

Cathie Craigie: You say that there should be flexibility and discretion to enable us to deal with particularly difficult cases. As we see in other areas with which we have to deal, young women below the age of 16 get pregnant all too often. Should discretion be exercised so that such cases are never prosecuted or, as other witnesses have suggested, should the individuals concerned receive welfare, education and training? Are we making legislation that we intend never to enforce? What is the point of having such legislation? One piece of written evidence—it may have been from the Christian Institute—stated that that would send out the wrong message; it would be saying that it is okay to break the law, because there is a way to get off.

Dr Macdonald: People need to remember that we are starting not with a blank sheet of paper but with the current law. The argument has been made that we should not pass laws that will not be routinely enforced or prosecuted. However, I do not imagine that the law is likely to be enforced routinely in cases where two 12-year-olds have had sex, even though that will remain an offence under the bill. No one is proposing that it should not be an offence just because there may not be a prosecution. There has been a tendency to see the issue in purely theoretical terms.

Margaret Smith asked about referrals to children's panels. There have been about eight such referrals—I cannot remember over what period they were made. I would be concerned if it were suggested that every teenager who is having sex should be referred to the children's hearings system. It would be really interesting to hear what those involved in the system would have to say about that suggestion. I do not imagine for one minute that children's panels would welcome that, because it would snow them under with all sorts of cases. They have enough difficulty in dealing with the number of cases that are already referred to them.

Whether in relation to older or younger children, the law is aimed at targeting the most serious abuse and predatory behaviour. We all accept that

most children will not end up in court or even go to the children's panel but, in some cases, it is important to have that mechanism. Otherwise, no intervention will be made to prevent behaviour that might lead to more serious offending behaviour later. That is why the law is important. The issue is not that the law will not be enforced; it will be enforced, but the key point is that enforcement will be appropriate.

David Greatorex: Cathie Craigie said that children are becoming pregnant routinely. I am sure that we all want to reduce the number of such pregnancies and we should use every tool that is at our disposal to do so. The criminal law is one tool that we have. The law's deterrent role is real and significant and it can be applied through the bill.

The policy memorandum says that we should not take risks with young people's health. By weakening the law, we would take the risk that the deterrent effect—which currently functions—was reduced or removed, which would mean that more children engaged in sexual activity, which could be dangerous for them. I would maintain a strong role for the relevant criminal law.

Robert Brown: You talk about the criminal law's deterrent effect, on which one can have varying views. Do you have evidence, such as research, that the criminal law has a deterrent effect on sexual conduct?

David Greatorex: I have nothing to hand. We have the evidence from Children 1st that the law is in some children's minds, because they use it as an excuse not to consent. However, I have no research to offer the committee.

The Convener: That is fair enough.

Bill Butler: As you know, the bill will extend criminal responsibility for consensual sexual acts to girls who are aged 13 to 16, whereas at present only the boy has criminal responsibility. Do you agree with that extension of the criminal law?

Dr Macdonald: Yes.

David Greatorex: Yes.

Cathie Craigie: At the end of the previous panel's evidence, the Rev Graham Blount said that the Church of Scotland supports the call that we heard in evidence last week for further consultation with children and young people. Do you support that?

David Greatorex: The findings of Children 1st were interesting. The role of the law as a prop to allow children not to consent should be further considered. However, we return to Alistair Stevenson's comment that older and wiser heads should legislate, rather than children themselves. We would consult children and be interested in their views, but we would hesitate to give those views too much weight. The criminal law has an advisory role in regulating children's conduct, so we would hesitate to allow them total freedom to dictate that regulation.

Dr Macdonald: I am not sure whether the committee should undertake such consultation. The danger is that the sample will be skewed, particularly if specific organisations arrange the consultation. I am not sure what age of children the committee would consult. I do not particularly want you all to turn up to interview my four-year-old, thank you very much—not that I would not welcome you for a cup of coffee any time you liked. The question is what is appropriate. Obviously, the committee will exercise discretion in deciding what it wants to do; however, if you go down that road you must ensure that you get a balanced sample of opinion rather than the views of a selected number of people. That is where I would consider there to be some difficulty with that course of action.

Cathie Craigie: Convener, the suggestion was made last week that there should be age-appropriate consultation.

The Convener: That is not to say that Dr Macdonald's four-year-old might not have some sensible contributions to this or any other discussion.

There are no further questions for the panel. Thank you for your attendance. I also thank the witnesses who gave evidence earlier. We have dealt with some difficult and sensitive matters this morning, and the way in which the evidence has been given has been particularly helpful.

Nigel Don: I would like to put on record, for the avoidance of doubt, the fact that I am a member of the Church of Scotland and the sponsor of Alistair Stevenson's regular visitor pass.

The Convener: That is noted, Mr Don. Do any other members have interests to declare in that respect?

Cathie Craigie: I, too, declare that I am a member of the Church of Scotland. I did not realise that I had to say that.

The Convener: The interest is peripheral; nevertheless, your declaration will be recorded.

Justice and Home Affairs in Europe

12:11

The Convener: We turn to item 5. The purpose of the item is to update the committee, following its previous formal consideration of European Union matters in January and the familiarisation visit that it made to Brussels in May. I refer members to paper J/S3/08/27/5, provided by the clerks, especially the section on matters for decision.

As I have said, the fact that European legislation is impinging on Scots law to a greater extent than before requires us to be vigilant that we do not miss anything that might be of particular relevance to Scotland. That said, considerable progress is being made under a number of headings and I do not think that anything that is proposed will cause any great problems. However, at some stage, if the time is available, we may want to explore some of the issues. Does any member have any views on what issues might be worthy of exploration?

Bill Butler: Paragraph 6 states:

"The Committee may wish to seek further information from the Scottish Government about Eurojust".

I support that. I also support the suggestion in paragraph 14 that we

"request that Scottish Government officials continue to provide regular updates on the Regulations relating to the applicable law in matrimonial matters."

In addition, the suggestion that we invite the Cabinet Secretary for Justice to give evidence on JHA issues six months hence is a reasonable one.

The Convener: I concur with those views. Is anyone otherwise minded?

Members: No.

The Convener: Turning to the question of specific dossiers, are there any issues in which members have a particular interest?

Bill Butler: I am interested in the Prüm convention—I have probably not pronounced that correctly—which deals with DNA data and fingerprint exchanges, joint police operations and so on. That would be an interesting area on which to focus some discussion with the cabinet secretary.

The Convener: Your pronunciation of "Prüm" was perfect, and I think that there is general agreement with what you suggest.

Robert Brown: There will be some interest in the green paper on matrimonial property regimes, which is referred to in the paper. I am intrigued to find that the law of Scotland is regarded as a common-law jurisdiction. When I practised law, it was always regarded as a mixed system. I remember having some issues with all of that.

The Convener: The suggestion is worthy of support. I, too, think that we should look at the green paper.

12:15

Nigel Don: I suggest—as I have suggested before—that we consider the general area of matrimonial law. The paper mentions other such matters, including the enforcement of maintenance obligations. I would like us to focus on the people bits, and I would like to ensure that we keep a comprehensive eye on anything to do with matrimonial matters.

The Convener: I think that we all agree with that.

I point out that the European elected members information and liaison exchange—EMILE—will hold a meeting in the Parliament on Thursday 4 December. The topic for discussion is justice and home affairs in Europe, and the event will run from 6.30 to 8.30. I expect to receive an invitation from the Minister for Europe, External Affairs and Culture shortly. It is hoped that those members of the Justice Committee who are available will attend the event. I appreciate the fact that Thursday evening is perhaps not the best evening on which to hold such a function. Nevertheless, I shall probably attend and I encourage anyone else who is available to attend.

That brings us to the end of the public part of the meeting. As no members of the public are present, I do not have to ask them to withdraw. I formally place on record my appreciation of the committee's efforts throughout a pretty lengthy evidence session.

12:16

Meeting continued in private until 13:21.

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