

LOCAL GOVERNMENT COMMITTEE

Tuesday 17 December 2002
(*Afternoon*)

Session 1

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CONTENTS

Tuesday 17 December 2002

Col.

ITEMS IN PRIVATE.....	3685
SUBORDINATE LEGISLATION.....	3686
Scottish Local Government Elections Regulations 2002 (draft)	3686
PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC (SCOTLAND) BILL: STAGE 2	3688
PROSTITUTION TOLERANCE ZONES (SCOTLAND) BILL	3702

LOCAL GOVERNMENT COMMITTEE

33rd Meeting 2002, Session 1

CONVENER

*Trish Godman (West Renfrewshire) (Lab)

DEPUTY CONVENER

*Dr Sylvia Jackson (Stirling) (Lab)

COMMITTEE MEMBERS

Mr Keith Harding (Mid Scotland and Fife) (Con)

*Tricia Marwick (Mid Scotland and Fife) (SNP)

*Dr Richard Simpson (Ochil) (Lab)

*Iain Smith (North-East Fife) (LD)

*Ms Sandra White (Glasgow) (SNP)

COMMITTEE SUBSTITUTES

Robert Brown (Glasgow) (LD)

Angus MacKay (Edinburgh South) (Lab)

*John Young (West of Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Ms Margo MacDonald (Lothians) (SNP)

Peter Peacock (Deputy Minister for Finance and Public Services)

WITNESSES

Assistant Chief Constable John McLean (Strathclyde Police)

Assistant Chief Constable Patrick J Shearer (Grampian Police)

Deputy Chief Constable Tom Wood (Lothian and Borders Police)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Ruth Cooper

ASSISTANT CLERK

Neil Stewart

LOCATION

The Chamber

Scottish Parliament

Local Government Committee

Tuesday 17 December 2002

(Afternoon)

[THE CONVENER *opened the meeting at 14:04*]

Items in Private

The Convener (Trish Godman): Okay, comrades, as everyone is here, we will start. I invite members to agree to take items 5 and 6 in private. We will consider our conclusions to an inquiry and will discuss a draft report. Is that agreed?

Members *indicated agreement.*

Subordinate Legislation

Scottish Local Government Elections Regulations 2002 (draft)

The Convener: The piece of subordinate legislation before us might seem familiar. That is because we have seen it before. The Executive acknowledged that the drafting of the original regulations was defective and indicated that it would introduce amending regulations. Although the committee approved the original regulations, with the proviso that they contained defective drafting, the Executive withdrew those regulations. The regulations before us replace the original regulations.

I will allow the minister a short time to give evidence to the committee. That will be followed by a session during which members can ask questions for clarification purposes only. The debate will come next. After the minister has read from his statement and moved the motion formally, I will ask members whether they wish to speak in favour of, or against, the motion. Finally, the minister will sum up and we will move to a vote, if that is appropriate.

I invite the minister to give evidence on the regulations.

Tricia Marwick (Mid Scotland and Fife) (SNP): I seek clarification. I am sure that members recall the comments that the committee made about defective drafting. Did the Parliament approve the Scottish Local Government Elections Regulations 2002 last Wednesday or Thursday, or did I imagine that?

The Convener: As far as I know, those regulations have been withdrawn.

Tricia Marwick: So we approved the regulations.

The Convener: To be honest, I do not know. Perhaps the minister or his officials know the answer to that.

The Deputy Minister for Finance and Public Services (Peter Peacock): The committee agreed to recommend that the regulations be approved. As it would have been usual for the regulations to be subject to parliamentary approval last week, I imagine that that happened. Today's regulations are fresh regulations. They are necessary to regularise the errors that the previous regulations contained.

The Convener: The previous regulations have been withdrawn; we will consider the fresh regulations. Is that okay?

Ms Sandra White (Glasgow) (SNP): If the Parliament agreed to approve the original

regulations, surely those regulations cannot be withdrawn and replaced by a new set of regulations. I would like the officials to clarify whether that is possible.

The Convener: The regulations that we are considering are a replacement for the regulations that were approved. When those regulations were examined, it was found that they continued to be badly drafted. Although the principle in the present regulations is the same, we will keep our fingers crossed that this time they have been properly drafted.

Ms White: Is it in order for regulations that the Parliament has approved to be withdrawn and for us to consider replacement regulations?

The Convener: You have a point, but as far as I am aware, that is all right procedurally.

Peter Peacock: We are in the Parliament's hands in relation to procedure. We have been advised that the correct procedure is to lodge the replacement regulations.

Ms White: I just wanted to clarify that.

The Convener: We have been advised that the proposed course of action is all right. I suggest that we proceed until we can obtain absolute clarification. The minister is of the opinion that although the issue is in the hands of the Parliament, we can pursue the proposed procedure.

I do not know how often such things happen. In my experience, this is the first time that a piece of subordinate legislation has been returned to the Local Government Committee because of continued bad drafting.

Peter Peacock: As the convener said, I spoke about the regulations and their purpose on 3 December. I do not propose to give a repeat performance. I indicated that we would introduce amendments to correct the minor drafting errors that the Subordinate Legislation Committee brought to our attention. We have now done that.

I regret that that has been necessary, but the rules of the Parliament require us to consider the regulations again. I am happy to answer any questions, although I am conscious that we dealt with the merits of the points at a previous meeting.

Motion moved,

That the Local Government Committee, in consideration of the draft Scottish Local Government Elections Regulations 2002, recommends that the regulations be approved.—[*Peter Peacock.*]

Motion agreed to.

Public Appointments and Public Bodies etc (Scotland) Bill: Stage 2

The Convener: We now move to the final stage 2 consideration of the Public Appointments and Public Bodies etc (Scotland) Bill. Peter Peacock, the Deputy Minister for Finance and Public Services, and his officials join the committee for this item.

Before I call the amendments, I tell the committee that I have received a letter from Karen Gillon, stating that she is unable to attend. She had some amendments, most of which were debated last year, that were consequential to the discussion that we had last week. Did I say last year? It just seems like last year.

I must call the amendments, even though Karen Gillon is not here to move them. It is up to other committee members whether they wish to move them.

Schedule 4

MISCELLANEOUS PROVISION

Amendment 6 not moved.

Amendment 64—[Peter Peacock]—moved and agreed to.

Amendments 7 and 8 not moved.

Amendment 65—[Peter Peacock]—moved and agreed to.

Amendment 9 not moved.

Amendment 66—[Peter Peacock]—moved and agreed to.

The Convener: Amendment 67 is grouped with amendments 68 to 71, 73 and 74.

Peter Peacock: I will speak to amendments 67 to 71 inclusive, followed by amendments 73 and 74. I will then move amendment 67.

The amendments are on general conveyancing and executory services. Amendment 67 is a tidying amendment that simply substitutes an abbreviated reference to the "1990 Act" for the full reference to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, which is found in paragraph 1 of schedule 4 to the bill. The full reference is unnecessary because a definition of the 1990 act is already contained in section 23 of the bill, which is the interpretation section.

Amendment 68 provides a power for the Scottish ministers to make grants to the council of the Law Society of Scotland towards expenses incurred or to be incurred by them in connection with its acquiring the functions of regulating the

provisions of conveyancing and executory services.

The principle that we agreed with the Law Society is that its solicitor members should not in any way have to subsidise the society's new regulatory functions in relation to conveyancing and executry practitioners. Scottish ministers will meet the incurred costs. Amendment 68 will clarify that ministers may make grants to the Law Society for costs incurred in the exercise of its new function. Amendment 68's wording is simply intended to make it clear that not just transitional costs are intended—as the bill's existing wording might suggest—but continuing costs.

Amendments 69 and 73 will simply require the council of the Law Society of Scotland to give written reasons when it grants an application for registration that is subject to conditions. The two amendments will bring into alignment the procedures applying to conveyancing and executry practitioners. The final part of amendment 73 is a technical change whereby the word "him" will be substituted for the word "it".

14:15

The purpose of amendment 70 is to clarify the rule-making powers of the council of the Law Society of Scotland in relation to independent conveyancing practitioners. Amendment 70 will correct an oversight in the bill as introduced by deleting the reference to discipline from the proposed new section 17(11) of the 1990 act because it is covered by section 20 of the 1990 act.

Amendment 71 will simply correct a technical defect identified in the provisions of the original 1990 act, which omitted to extend duties to comply with relevant regulations to conveyancing practitioners as distinct from independent conveyancing practitioners. Amendment 71 will remedy that oversight.

The bill already gives the council of the Law Society of Scotland a power to make rules for employed executry practitioners. Amendment 74 will extend that power so that the council will also be able to make rules applying to executry practitioners who at present offer services, with the approval of the Scottish Conveyancing and Executry Services Board, direct to the public for fee, gain or reward. Such practitioners will be able to continue to offer services direct to the public after the transfer date. However, to provide necessary safeguards for the public, the council should have the power to make rules covering the various matters specified in amendment 74.

I move amendment 67.

Amendment 67 agreed to.

Amendments 68 and 69 moved—[Peter Peacock]—and agreed to.

The Convener: Amendment 91 is grouped with amendments 72 and 75.

Iain Smith (North-East Fife) (LD): The purpose of amendment 91 is to raise the issue of the registration of independent conveyancing practitioners. It is an unfortunate consequence of the proposal to abolish the Scottish Conveyancing and Executry Services Board that the possibility of registering as an independent conveyancing practitioner will also effectively cease. I am not sure that that was the Executive's original policy intent when the proposal to abolish the board was brought forward.

The paper "Public Bodies: Proposals for Change" was published in June 2001 and it indicated the Executive's intention to abolish the Scottish Conveyancing and Executry Services Board. However, the Executive did not say at that time that it intended to abolish the practice of independent conveyancing.

I am slightly unfortunate in being one of the MSPs who has one of the two registered independent conveyancers in their constituency. Obviously, I am perhaps a little more aware of this situation than others. I do not dispute the need to abolish the board and I accept the proposal to do so, but I do not think that it was also the Executive's intention to dispense with independent conveyancing practitioners.

Paragraph 3(j) of schedule 4 deletes section 17(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. Section 17(7) allows for a qualified conveyancer to register as an independent practitioner. Essentially, the section relates to insurance claims against practitioners and states that a conveyancer may be registered if he

"intends to provide conveyancing services to the public for a fee, gain or reward and—

(a) satisfies the Board that he has made adequate arrangements for the satisfaction of any successful claims against him arising out of such provision by him of such services; or

(b) participates in the arrangements made by the Board for that purpose under subsection (13)(b) below".

Obviously, with the abolition of the Scottish Conveyancing and Executry Services Board, paragraph (b) would cease to apply, but I wonder whether it would be possible for independent conveyancers to continue to be registered if they satisfy the conditions in paragraph (a).

I have discussed the matter with the minister and I am aware that there are difficulties with my proposal, which, no doubt, he will go into in more detail. However, repealing section 17(7) of the

1990 act would be unfair to my constituent, who runs an independent conveyancing business. She would be unable to expand her business because it would not be possible to register anyone else to work with her. The two registered independent conveyancers will be able to continue working, but no one else will be able to register in Scotland.

The original intent behind the proposals in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 was to introduce competition into the conveyancing market. That has not worked in Scotland, although similar measures south of the border have worked to a greater extent, where there are around 700 registered practitioners. In Scotland, qualified conveyancing practitioners tend to work in solicitors' offices and not independently. Although competition has not appeared, I am slightly concerned that we are closing the door on it by saying that in future people will not be able to register as independent conveyancing practitioners. In effect, passing the responsibilities of the Scottish Conveyancing and Executry Services Board to the Law Society of Scotland will mean that the Law Society will maintain its monopoly of conveyancing services, even though they are sometimes provided in solicitors' firms by conveyancing practitioners rather than qualified solicitors.

I am concerned that the policy intention will have unfortunate side effects. Therefore, I propose that we should amend the bill by deleting its repeal of section 17(7) of the 1990 act.

I move amendment 91.

Peter Peacock: I will pick up Iain Smith's points at some length and then deal with amendments 72 and 75. First, I recognise that Iain Smith is, properly, probing the Executive's intentions in the matter. Apart from any other reason, as he said he has a constituency interest to which he must have regard in his representations. That is why it is important that we should spell out clearly why we made the proposals.

The effect of amendment 91 would be to keep in force the existing duty on the Scottish Conveyancing and Executry Services Board to register conveyancing practitioners as independent if satisfactory arrangements have been made for insurance to protect the practitioner's clients. The council of the Law Society would inherit that duty on the date on which the transfer of regulatory responsibility took place.

It is helpful to consider amendment 91 in the context of what has happened since the 1990 act was put in place. As Iain Smith said, the aim of the 1990 act was to create competition to solicitors for the provision of conveyancing services. Only independent conveyancing practitioners could

create such competition. However, after more than five years of that competitive environment being possible and there being the opportunity to register as an independent conveyancing practitioner, only two people have registered with the board. The 17 practitioners who are not independent are employed by firms of solicitors or local authorities. It is important that one of the reasons for our proposed change is that those practitioners are covered by their employers' insurance arrangements. I will return to that point in a moment.

Iain Smith mentioned the unintended consequences of the policy. The unintended consequence of the original policy has been that no one has benefited from it because there have been few registrations. The unavoidable conclusion that we have reached is that the goal that was set in 1990 of creating competition has simply not been achieved and the expectations of that time have not been realised. Yet we still have in place the public body and the expenditure to support what was expected to be a much more significant number of independent practitioners.

That is why the bill proposes an alternative way forward, which preserves the role of the employed practitioner under the regulatory supervision of the Law Society of Scotland. Ministers have identified in the Law Society of Scotland a regulatory authority that is well placed to assume responsibility in the light of its long-standing experience.

Having responsibility for employed conveyancing and executry practitioners will provide the Law Society of Scotland with opportunities to encourage skilled paralegal staff to develop by upgrading their qualifications and assuming greater responsibility as employed practitioners.

It is difficult to defend, on public expenditure grounds, a full board serviced by staff to regulate fewer than 20 practitioners, only two of whom are registered as independent. The transfer of responsibility to the Law Society of Scotland will therefore be a more cost-effective way of achieving the regulatory supervision of practitioners. We have also been concerned to protect the taxpayer against the future escalation of costs associated with the regulation of existing practitioners. Our particular concern relates to the cost to the taxpayer of subsidising the insurance needs of independent conveyancing practitioners.

The repeal of section 17(7) of the 1990 act will mean that the council of the Law Society of Scotland will not be able to register independent conveyancing practitioners after the date of transfer. Practitioners who have been registered by the board as independent will be able to continue to practise in that capacity. From the date

on which the Law Society of Scotland takes over the regulatory function, the Law Society will only be able to register conveyancing practitioners who work in an employed capacity.

I will pick up one of the points that Iain Smith made. Existing independent conveyancing practitioners will be able to expand their business to the extent that they will be able to employ conveyancing practitioners, but not further independent practitioners. The amendment that Iain Smith proposes would, if supported, reverse that position in so far as independent conveyancing practitioners are concerned.

The amendment would place a duty on the council of the Law Society of Scotland to register as an independent conveyancing practitioner any conveyancing practitioner who had made satisfactory arrangements for professional indemnity insurance. The act requires independent practitioners to have such insurance to ensure that clients are adequately protected, should they receive inadequate or negligent services. Under section 17(7) of the 1990 act the practitioner would either have to make such arrangements himself or participate in arrangements made by the board, and subsequently the council of the Law Society of Scotland, for such insurance. It is also necessary for the clients of independent conveyancing practitioners to be insured against fraud on the part of the practitioner.

The Law Society of Scotland operates a guarantee fund, which provides cover for solicitors' clients who suffer loss due to fraud on the part of a solicitor. That means that solicitors, through the numbers that exist in Scotland, have a global insurance as a profession against fraud on the part of one of their members. However, and crucially, it is not possible for either an independent conveyancing practitioner or a solicitor, as an individual, to take out insurance against fraud that he or she might commit. Insurers, naturally, would not consider such a proposal. It is for that reason that the board has operated a compensation fund. However, the balance of the fund is extremely modest because of the low numbers who have registered with the board as independent conveyancing practitioners. In fact, the balance stands at just over £1,000. For that reason the board has had to take out additional insurance to provide a realistic level of cover. Such insurance for the existing two independent practitioners will cost £16,000 from public funds in the coming financial year.

Those considerations have led Scottish ministers to conclude that the sensible way forward would be to prevent further registrations in an independent capacity. That restriction will protect the taxpayer against any possibility that insurance costs could increase substantially if

further independent conveyancing practitioners were registered. Given the experience over the past five years of the demand for registration as an independent practitioner, it is most unlikely that the number of registrations would rise to the point where the compensation fund became self-financing in the way that the guarantee fund is among solicitors. However, it is conceivable that public expenditure would need to rise to support the operation of the compensation fund by means of top-up insurance if a limited number of further independent practitioners were registered.

It has been suggested that to meet such concerns section 17(7) of the 1990 act could be retained on the basis that new applicants would be required to make their own insurance arrangements. Such a basis is envisaged by section 17(7)(a), although it has not been applied. Were it to be applied, professional indemnity insurance might be available to individual practitioners, although the cost of the premium could be very high, even prohibitive. The real problem that would arise would be in relation to insurance against fraud, which would simply not be available because no sole practitioner—be they an independent conveyancing practitioner or a solicitor—can insure himself or herself against his or her own fraud. Self-financing arrangements by the individual practitioners could not apply in relation to insurance against fraud, meaning that the council of the Law Society would not be able to approve applications that were made on the basis that insurance costs could be self-financing. The council would be able to enrol solicitors, taking account of the protection provided by the guarantee fund, but unable to enrol those who applied to become independent conveyancing practitioners. The council would thus be placed in the position of appearing to make inconsistent decisions in relation to solicitors and independent practitioners.

14:30

The Executive has concluded that, in all circumstances, it is best to avoid the potential of raising the costs to the taxpayer and putting the Law Society in the difficult position of having a statutory duty that, in practice, it could not exercise if independent practitioners were to be required to meet the costs of their own insurance. We have concluded that, to avoid such difficulties, it is best to discontinue the ability to register further independent practitioners. Iain Smith said that that was an unintended consequence of the policy. However, it was made clear in a parliamentary answer that Jim Wallace gave in May that, after consultation following the proposal to abolish the board, we would include these provisions in the bill. We remain consistent in doing that, and we have consulted on that basis. We think that, on

balance, it is better that everyone is clear about the rules that exist. No other body is as well placed as the Law Society of Scotland to take over the responsibilities of the board, and we are grateful to the society for agreeing to do so.

I have taken particular care to examine the issues that Iain Smith has raised with me over recent weeks, acknowledging the interest that he has shown in the matter. Had I felt able to accommodate his concerns, I would have done so. I hope that it has become clear over the past few weeks, during consideration of the last two bills that we have dealt with, that wherever it has been reasonable for the Executive to accommodate the position of members, we have sought to do so. However, on this occasion and on examination of the facts, I believe that there are real and practical impediments to doing what Iain Smith has suggested in his amendment 91.

Amendment 91 would potentially leave the public purse subject to a call to cover the costs of a small number of professionals although it would not do so in relation to their competitors. Further, it would not be a viable alternative to require independent practitioners to meet such costs themselves. Such an option would give the Law Society a legal duty that, in practice, it could not exercise because of the difficulties with insurance for fraud. In all circumstances, the Executive's approach remains the right one.

Amendment 72 is a straightforward amendment that is consequential on the restriction that is imposed by the bill on the future registration of independent conveyancing practitioners. The amendment simply tidies up the 1990 act by removing a residual reference to section 17(7) from section 17(20) of that act.

Amendment 75 makes the position of executry practitioners who provide services direct to the public for fee, gain or reward consistent with the position that applies to conveyancing practitioners, which is set out elsewhere in the bill.

On the basis of all that I have said, I invite Iain Smith to withdraw amendment 91. If Iain feels unable to do so, I invite the committee to reject the amendment. He said that the Executive should keep an open mind on any potential suggestions to address the issues that he has raised as we move to stage 3. As I have stated, we have considered the matter thoroughly already. However, if suggestions are put to us between now and stage 3, we will reconsider whether there are alternative ways of doing what Iain Smith suggests while making the progress that the Executive wants to make.

Dr Sylvia Jackson (Stirling) (Lab): Iain Smith mentioned that there is more independent conveyancing in England than there is here. How

do the English get over the problem of insurance cover?

Iain Smith: I do not know the answer. I suspect that the arrangement in relation to the board is similar to the one in Scotland that we are about to abolish. Obviously, in England, the numbers will be greater, which perhaps gives the critical mass that is required to provide the type of compensation fund that operates for solicitors. The issue is whether there is sufficient mass here.

I acknowledge fully the points that the minister has made concerning the fraud issue. Between now and stage 3, we must try to see whether there is a way round that particular block. I would not want to leave members of the public exposed to risk, which would be possible if no compensation was available in cases of fraud. For that reason, I seek to withdraw amendment 91.

I am pleased that the minister has indicated that he will keep an open mind. I ask that we continue to examine whether there are alternative ways in which to address the problem. The intention of having independent conveyancing practitioners who can offer a service in competition with solicitors is not bad, and we would want to maintain the principle. If there is a way in which we can do that, we should try to do so. I will consult my constituent and others between now and stage 3 to see whether there is a way that we can do that.

Amendment 91, by agreement, withdrawn.

Amendments 70 to 75 moved—[Peter Peacock]—and agreed to.

The Convener: Amendment 76 is grouped with amendments 77, 78, 92, 79, 93 and 94.

Peter Peacock: Amendments 76, 77, 78, 92, 79, 93 and 94 concern the functions of the Scottish Solicitors Discipline Tribunal in relation to conveyancing and executry practitioners. Amendment 76 addresses a point made by the Scottish Solicitors Discipline Tribunal about certain sanctions that the tribunal and the council of the Law Society of Scotland will be able to impose on a practitioner by means of a direction. The sanctions in question apply primarily to a practitioner who has provided inadequate professional services, and are set out in sections 20(2)(a), 20(2)(b) and 20(2)(f) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

The effect of amendment 76 will be to enable the council of the Law Society of Scotland or the Scottish Solicitors Discipline Tribunal to require the practitioner to give an explanation of the steps he or she has taken to comply with a direction. The resulting explanation is to be given to the council. Amendment 76 also repeals "or it" from section 20(6) of the 1990 act to take account of

the fact that, in future, only natural persons will be able to apply to the council for registration as an executry practitioner.

Amendment 77 is a technical amendment to recognise that the bill will enable the Scottish Solicitors Discipline Tribunal, as well as the council of the Law Society of Scotland, to take the disciplinary step of attaching conditions to the registration of a practitioner. The tribunal is to have the power to impose that sanction by virtue of new section 20(2B)(d), which is to be inserted by paragraph 14(6)(e) of schedule 4. That needs to be recognised in section 20(8) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, and the amendment inserts the necessary wording for that purpose.

Amendment 78 simply adjusts section 20(8)(b) of the 1990 act to recognise that the disciplinary decision that is taken can be either the council's or the tribunal's. At present, section 20(8)(b) refers only to the decision of the council. Amendment 78 seeks to bring the position into line with the intentions of the bill.

Amendment 92 is intended to clarify the tribunal's powers in relation to appeals by practitioners. The appeals in question are those against decisions taken by the council of the Law Society of Scotland in a review of a disciplinary step taken against a practitioner under section 20(2) of the 1990 act. Amendment 92 seeks to remove any uncertainty about the tribunal's powers by providing that it may quash, confirm or vary the council's decision. It ensures that the tribunal will have the same powers in relation to practitioners as it currently has in relation to solicitors.

Amendment 79 will make two minor consequential changes to section 20(17) of the 1990 act, which defines "conveyancing practitioner" and "executry practitioner" for the purposes of section 20. The bill already provides at paragraph 14(4)(c) of schedule 4 that, in future, only natural persons will be able to apply for registration as executry practitioners. In the interest of consistency, it is necessary to repeal references to "it" where they relate to executry practitioners, to make it clear that only natural persons can in future be registered.

Amendment 93 is a minor amendment, which reflects the overall approach taken by amendment 94 to prescribing the powers and procedures of the tribunal in relation to conveyancing and executry practitioners. Those provisions are no longer required because of the provisions added by amendment 94, so amendment 93 deletes the latter subsections.

Amendment 94 will insert a new section into the 1990 act, to apply the relevant provisions from

schedule 4 to the Solicitors (Scotland) Act 1980 on the tribunal's dealings with solicitors to its dealings with conveyancing and executry practitioners. It is important that the tribunal is able to deal with solicitors and conveyancing and executry practitioners on a broadly comparable basis, and the detailed but important provisions ensure clarity in relation to the tribunal's powers and procedures.

I move amendment 76.

Tricia Marwick: On a point of clarification, will the minister explain in words of one syllable what a "natural person" is?

John Young (West of Scotland) (Con): It is not a politician.

The Convener: I do not know about that.

Peter Peacock: We dealt partly with Tricia Marwick's question last week. As I understand it, a natural person is as it appears, whereas a person otherwise described might also mean an incorporated or unincorporated body. We are trying to make a distinction and point out that we are talking about natural persons.

The Convener: That is correct.

Amendment 76 agreed to.

*Amendments 77, 78, 92, 79, 93 and 94 moved—
[Peter Peacock]—and agreed to.*

The Convener: Amendment 80 is grouped with amendment 81.

Peter Peacock: Amendments 80 and 81 relate to the compensation fund for conveyancing and executry services. The bill inserts new section 21B(1) into the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, which provides for the council of the Law Society of Scotland to maintain a compensation fund, which it will inherit from the Scottish Conveyancing and Executry Services Board.

The fund's purpose is to provide grants to compensate persons who suffer pecuniary loss as a result of dishonesty on the part of an independent practitioner. The bill already enables the Scottish ministers to make contributions to the fund, which is currently financed by contributions from independent conveyancing practitioners. However, as I indicated earlier, its balance is very modest, because only two such practitioners are currently registered. As the level of contributions to the fund has been low, the board has had to arrange additional insurance cover, which is met from public funds through grant in aid that is paid to the board.

The effect of amendments 80 and 81 will be to provide the council with an express power to take out such insurance; to provide the Scottish ministers with powers to defray the costs of

insurance arranged by the council; and to clarify that the compensation fund will also compensate persons who have suffered loss by reason of dishonesty in connection with the provision of executry services to the public for a fee, gain or reward by or on behalf of an executry practitioner.

Because of the way in which amendment 80 is framed, it is necessary to restate ministers' existing power in the bill to make contributions to the fund. Members might be concerned that that opens up a potentially unlimited liability in any call upon public funds through Scottish ministers. However, the amendment has to be seen alongside the Executive's intention in the bill to cease the ability to register new independent practices after duties are transferred to the Law Society. That measure will limit the potential public cost.

Amendment 80 is designed to allow ministers to deal with the limited costs that will continue over time and that arise from the independent practitioners registered at the time of the transfer to the Law Society. Depending on the arrangements that the Law Society can secure from its insurers, we might over time be able to limit the public costs involved to less than they are at present. However, without such a guarantee, we must make provision to continue to meet the costs to which we are committed under the current arrangements.

New section 21B(2) provides the council with rule-making powers with regard to the operation of the fund and includes a power to make provision on the contributions to be paid to the fund. However, the subsection relates only to contributions that are paid to the fund by independent conveyancing practitioners. It is necessary that the rule-making powers should also cover contributions to be paid to the fund by executry practitioners providing services direct to the public for a fee, gain or reward. Amendment 81 ensures that that is the case.

I move amendment 80.

Tricia Marwick: Will the minister indicate how much Scottish ministers will have to contribute to the compensation fund? He has said that the amount will be minimal, but how much are we talking about? Does the minister intend to move a further financial resolution at the conclusion of stage 3?

Ms White: I am heartened by the minister's clarification regarding contributions under proposed new subsection (1B)(a). As I understand it, amendment 80 will legislate to provide that the Law Society may set up insurance to pay out on any losses that people incur. I reiterate Tricia Marwick's question about the amount of money. In addition, is there a time scale for how long ministers will continue to contribute?

14:45

Peter Peacock: I will deal with Sandra White's points first. Our fundamental intention is to ensure that the public are protected following the changes to the situation. The previous Administration's legislative intention was clear, but it has not worked out in practice. There are no time scales against which funding will discontinue. In practice, it might continue for as long as the existing firms continue in business. That is a consequence of the current position. Depending on the provisions that the Law Society can negotiate with its insurers—which are a matter for the Law Society and its brokers—it might be possible to reduce the current costs and/or the time during which they might be incurred.

On Tricia Marwick's points, the premium for the current top-up insurance arrangements, which ensure that there are sufficient funds in circumstances in which the fund is required to pay out following dishonest behaviour, is £16,000 per annum. All other things being equal, we expect that to continue. I also understand that the existing financial resolution is sufficiently widely drawn to cover such expenditure into the future, as well as any other expenditure that arises from the bill.

Amendment 80 agreed to.

Amendment 81 moved—[Peter Peacock]—and agreed to.

The Convener: Amendment 82 is grouped with amendments 83 and 84.

Peter Peacock: Amendments 82, 83 and 84 concern the power to provide notarial services and to subscribe documents under section 9 of the Requirements of Writing (Scotland) Act 1995.

The amendments correct the definition of "relevant notarial services", which paragraph 14(11)(j) of schedule 4 inserts into section 23 of the Law Reform (Miscellaneous Provisions) Scotland Act 1990. They also make it clear that those notarial functions are to be exercised by independent conveyancing practitioners, as notarial functions are not required by executry practitioners or employed conveyancing practitioners.

Powers under the Requirements of Writing (Scotland) Act 1995 to subscribe documents on behalf of a blind person or a person who is unable to write are valuable to conveyancing and executry practitioners and so are made available to them all.

At present, the bill defines "relevant notarial services" as

"the functions exercisable by practitioners by virtue of section 14".

That would include the functions specified in section 14(3), which relate to the subscription of

documents under section 9 of the 1995 act. However, such functions cannot be described as notarial services. Accordingly, the definition of “relevant notarial services” is amended to mean only those notarial services specified in section 14—the administering of oaths and the receiving of affirmations in relation to certain matters under certain sections of the specified statutes. Those are powers that independent conveyancing practitioners will find of value in their practice.

As executry practitioners do not require material powers, amendment 83 deletes the amendment that schedule 4 makes to the definition of executry services in section 23 of the 1990 act.

I am sure that that is entirely clear, convener.

I move amendment 82.

Amendment 82 agreed to.

Amendments 83, 84, 85 and 89 moved—[Peter Peacock]—and agreed to.

Schedule 4, as amended, agreed to.

Section 21—Orders and regulations

Amendments 27 and 28 moved—[Peter Peacock]—and agreed to.

Amendment 49 not moved.

Section 21, as amended, agreed to.

Section 22 agreed to.

Section 23—Interpretation

Amendment 90 moved—[Peter Peacock]—and agreed to.

Section 23, as amended, agreed to.

Section 24 agreed to.

Long title agreed to.

The Convener: That ends our stage 2 consideration of the bill. I thank committee members, the minister and his team for their hard work. Some of the technical amendments appeared not to be worth debating, but we only need to read the bill to know that that is not the case.

14:50

Meeting suspended.

15:02

On resuming—

Prostitution Tolerance Zones (Scotland) Bill

The Convener: Okay, comrades. We will proceed with our stage 1 consideration of the Prostitution Tolerance Zones (Scotland) Bill, for which we are the lead committee. I welcome Margo MacDonald MSP to the committee today. I think that this is the first time that you have been at the Local Government Committee, Margo.

Ms Margo MacDonald (Lothians) (SNP): Great.

The Convener: We are happy that you could join us today, as it is your bill.

We will take evidence today from the police forces in Strathclyde, Grampian and Lothian. I welcome Patrick J Shearer, the assistant chief constable of Grampian police; John McLean, the assistant chief constable of Strathclyde police; and Tom Wood, the deputy chief constable of Lothian and Borders police. I understand that you will make opening statements, after which I will open up the meeting for questions. I leave it up to you to decide who is to speak first.

Deputy Chief Constable Tom Wood (Lothian and Borders Police): I have been selected to go first, on the basis of age if nothing else. I suppose that I have the greatest experience in Scotland of dealing with the sex industry on the streets. That experience was gained before the tolerance zone, or non-harassment zone, as it was previously called, was established in Leith, during the time that it operated fairly successfully for 20 years—I will describe that in a minute—and after the zone failed. As members might know, it failed because of the regeneration of the part of Leith in which it operated. It is understandable that, after high-amenity houses were built, local residents took exception to the zone and it failed. In summary, I can speak about the before, during and after of tolerance zones.

The Leith model, as I will refer to it, has been copied by many; various agencies hold it up to be an example of best practice. A number of forces from throughout the country and abroad came to see what they could learn from it. It was not a perfect system nor was it trouble-free. The Leith model was not a brilliant plan that was hatched by the police or anyone else; it was established as the result of a long relationship and a pragmatic approach being taken to a problem that has existed for hundreds of years.

The Leith model was led by the considerations of public health and public safety. I use the phrase

“public safety” in its widest sense and not only from a policing point of view. Co-operation and a multi-agency approach to tackling the issue was key to its success. From a police point of view, the Leith model demanded a step beyond law enforcement to a wider consideration of the general health and safety of the public. I am convinced that, to be effective, the issue has to be tackled on a wide front and not only by the police, health services or local authorities. A comprehensive approach needs to be taken.

The Leith model was based on three propositions. The first was that prostitution has existed, exists and always will exist. I am not a leading authority on the subject but, in my research of the past 20 years, I have found no evidence of a law enforcement system—no matter how draconian—that managed to suppress the sex industry.

I agree that it is possible to come down hard on the industry, but the result of that is to displace it or drive it underground. As I described in my submission, the problem that results from that approach is that the police do not have sight of the criminal activity that surrounds the sex industry. If we are not careful, the threat of serious criminal activity—drugs, blackmail, pimping and serious violence—will always be present around the industry.

It is possible to ignore the sex industry and pretend that it does not exist. That model has been tried and tested over many years in Scotland. The trouble with that approach is that the police lose sight of the industry and therefore lack a method of intervention or control. In the 1980s, we were put in a very difficult position by an explosion in the incidence of heroin addiction in Edinburgh. Faced with a large growth in the number of very young street prostitutes and the threat of HIV and AIDS, we decided to take a pragmatic approach and control the problem, as far as we could, so that we would be best placed to intervene and prevent the worst excesses of criminal activity.

Most important, we wanted to try to give the health authorities a reasonable platform to improve public health. At the same time, we tried to dissuade the people who worked in the sex industry from their way of life—we wanted to give them routes out of prostitution. To offer routes out of prostitution has always been key to our approach.

Although my paper describes the origins and history of the sex industry in Edinburgh, that is less important for today’s debate. I want to concentrate on the enormous importance of multi-agency working and group responsibility. Multi-agency working is a phrase that is often used; it is easy to say but hard to do. It was the key to our

success over 20 years. Group responsibility is different from multi-agency working. A clear understanding among all the groups, including the health board, social work department, police and the council, was needed of what we did and where we stood on the issues.

The importance of the street prostitute health groups and, in particular, the Scottish prostitutes education project—SCOT-PEP—was vital. They provided the means of communication with the sex workers. Without that kind of communication network, the whole scheme would have been worth much less.

During the life of the Leith policy, it was also important that people had a clear idea of where everybody stood, so that the rules were understood by all concerned, by the practitioners—the sex workers—and by the police as well as by the council and the health board. Another important issue was prosecution policy, which had to be agreed with the local procurator fiscal.

Since a long time ago, we have also deployed a prostitute liaison officer, who is a police officer who is dedicated to keeping those lines of communication open. The prostitute liaison officer was tasked not simply with building links of friendship but with the interception of any sort of growing criminal conduct, the prevention of drug abuse and the prevention of violence against street prostitutes.

It is important to recognise that the people who work in the sex industry on the street are much more often the victims than the perpetrators of crime. We should not lose sight of the fact that they are victims, as history relates that many have been murdered and seriously assaulted. Frankly, we believe that Edinburgh has a vast dark figure of such crimes. An awful lot more women on the street get attacked and assaulted than is ever reported. The prostitute liaison officer’s role was vital, and we still have such an officer.

The picture has not been as good recently. The designated area failed, as I said, because of the building of high-amenity housing and because of residents’ protests—which were made for understandable reasons. With our partners, we tried to move the location of the zone, but by that time there was far too much publicity surrounding the whole business, so the new location also attracted protest.

At the moment, we have no zone, but we still have a policy of non-harassment and of trying—I use that word advisedly—to apply the law equally and even-handedly. However, I would be misleading the committee if I said that our policy is as good as it was. It is not. We have lost a lot of intelligence and we have lost touch with what is

happening. We are starting to see the emergence of some of the sex industry's less desirable aspects, such as pimps and drugs, which are coming in with greater frequency.

I do not say, nor have I ever said, that the Leith policy was perfect—it was not—but I am satisfied that the policy provided a pragmatic response that reduced, but did not remove, risk. The sex industry has always been, and will always be, inherently dangerous. However, I think that we reduced risk in those 20 years. I am led to believe by the health authorities—from which the committee itself would need to take evidence—that the general health picture among street prostitutes showed a significant improvement, or at least that it did not show a decline. We did not have the huge difficulty with HIV and AIDS that we feared.

In conclusion, I have no doubt that the policy worked for us in our situation. That is not to say that it would work elsewhere, and it is important to recognise that. As I have always said to police officers who have come to see me from other parts of this country and from other parts of the world, there cannot be a one-size-fits-all policy. The Leith policy cannot simply be taken and transplanted elsewhere and expected to work. Each city has its own problems and therefore its own solutions. I simply report to the committee on how the policy worked, the difficulties that we had, how the policy eventually failed and the picture thereafter.

15:15

Assistant Chief Constable Patrick J Shearer (Grampian Police): I am the assistant chief constable of Grampian police. I will reflect on the situation in Aberdeen in particular.

We operate a zone within the harbour area and have done so since July 2001 in response to a developing situation. Prostitutes have always operated in the harbour area. Throughout the 1980s and into the 1990s, the prostitute population remained fairly stable, but as the 1990s went on, a drug problem developed and the number of prostitutes operating in the area increased significantly. We also identified that the area in which they were operating was expanding and encroaching into areas that contained commercial businesses, including hotels. As a result, we were receiving frequent complaints from businesses and members of the public who were offended and annoyed by the activity of the prostitutes.

We found that we were allocating resources on a daily basis to that problem without solving it, so we took a look at the potential to manage and improve the situation. We examined the Leith experiment and tried to adopt some of the measures that had been implemented there. We

worked closely with drug action teams in the area, as we identified that about 95 per cent of prostitutes had a significant drug problem, and we realised that we could manage the problem and make progress if we restricted the prostitution to a particular area. We identified an area in which they were operating already, but restricted it to a commercial area in the harbour district. That was a practical approach, and our primary objectives were to reduce crime in the area, provide greater opportunities for health promotion work, minimise annoyance to other businesses and residents and encourage overall community safety. Our ultimate objective is to provide an opportunity for people to move on from prostitution and address the problems that encourage them to become involved in it, whether that is debt, housing problems or, as it is largely, drugs problems.

We have operated the zone more formally since summer 2001, and it has not been without its problems. It brings some attention, as the media focus on it, with the result that others have been more inclined to raise concerns. Some commercial businesses have identified concerns, as have residents on the fringes of, or even some way removed from, the zone. However, the zone addresses our objectives. It minimises the general annoyance to residents and commercial businesses, and we have found that we can direct our resources more efficiently and effectively into the area. We are probably providing a safer environment for the prostitutes, their clients and others in which to operate.

That said, as Mr Wood noted, prostitution is not a safe business. It has significant risks, but the zone gives us the opportunity to liaise with the prostitutes. We have prostitute liaison officers who inform them of any developing concerns that we may have. It also allows us to build up a good intelligence picture, which is important to us. We have not seen a significant reduction in reported crime levels, but prostitutes have greater confidence to report matters to us that we probably would not have heard about before. We have a greater picture and awareness of what is happening in the area and can therefore introduce more effective policing strategies to deal with it.

The zone also allows our other partners, including Health Promotions and Drugs Action, to operate more effectively and have good channels of communication. We have been leading in the project in that we did not develop the formal consultation that Mr Wood spoke about. We responded to the practical situation and brought others along with us. That said, we have received significant support and are trying to develop a drop-in centre with Drugs Action to improve the communication approach. I also acknowledge that our system would not work for everyone. The geography and history of the particular area lends

itself to our approach and, from a policing perspective, it allows us to address the objectives I outlined at first and devote our resources more effectively and efficiently.

Assistant Chief Constable John McLean (Strathclyde Police): Unlike the forces represented by my two colleagues, Strathclyde police have no experience of operating prostitution tolerance zones. We see the street prostitution problem in the Glasgow area as unique in a number of ways. That is due in particular to the size of the problem. An estimated 1,400 prostitutes are operating in the Glasgow area, and it is estimated that about 97 per cent of them are intravenous drug users with chaotic lifestyles.

Our approach has been to police the prostitution areas as well as we can, particularly in response to public complaints. A number of factors make our approach different. We are very supportive of partnership working, which takes place in those areas where prostitution is currently taking place in Glasgow. I would mention in particular the Routes Out of Prostitution social inclusion partnership, which, rather than accepting that prostitution exists and will always exist, seeks to provide support for women in getting them out of prostitution and off their drug habits. It aims to get the women housing, jobs and education. As you will note from my written evidence, that organisation is having some success.

Other work is continuing in the Glasgow area, including a methadone programme to help to reduce the drug dependency of the prostitutes. We recognise that prostitution in Glasgow is a symptom, and that the real illness, or cause, is the drug problem. It is on that basis that we have endeavoured to approach the problem.

Like in the areas with tolerance zones that were described earlier, we find that, if we take the convictions for prostitution out of the equation, there is a low incidence of criminality in the main prostitution area in Glasgow. We have police street liaison teams in place. They work with the various agencies and liaise with the prostitutes in the area to gather intelligence and keep themselves aware of what is happening on the street.

We adopt a twin-track approach. One aspect of that seeks to enforce the current law, particularly in response to public complaints; the other aspect is to look after the well-being of the prostitutes. We have gone to the lengths of issuing personal safety leaflets to the prostitutes and giving them personal attack alarms. That shows that we are being balanced in our approach.

We have a different approach to that adopted in Edinburgh and Aberdeen, but it is one that I think suits the situation in Glasgow.

The Convener: Do any of you have evidence to suggest that the existence of tolerance zones is reducing the levels of prostitution in your areas and cities? I accept that you do not have an official tolerance zone, Assistant Chief Constable McLean, but I refer to the areas that you police in Anderston and around Glasgow green.

Assistant Chief Constable McLean: Just to be clear, convener, there is not a tolerance zone in Glasgow.

The Convener: I recognise that, but there is an area where there is heavy policing for prostitution.

Assistant Chief Constable McLean: Prostitutes operate in two areas of Glasgow: as you said, those are the Anderston area and the Glasgow green area. We do charge people with soliciting in those areas. If my memory serves me correctly, about 600 prostitutes have been charged in the east end of Glasgow so far this year, and about 400 in the Anderston area.

Are you asking about crimes against prostitutes or crime in general?

The Convener: I am asking about the level of prostitution—the number of women on the streets soliciting for prostitution. Is there any evidence to suggest that women working tolerance zones do not work anywhere else?

Assistant Chief Constable McLean: I cannot answer that.

Deputy Chief Constable Wood: We struck a deal in our non-harassment zone. We said that we would allow only so many women to be on the streets, because of the nature of the area. That provided some control. The number of people who are on the streets for street prostitution is tied to many other factors, of which the presence of a zone is not one. The factors include drug use, other socioeconomic conditions and supply and demand.

Tricia Marwick: The tolerance zone in Edinburgh worked for several years. I understand that pressure from the building of new houses and other matters meant that the zone ceased to have public and political support. Margo MacDonald's bill says that, if tolerance zones are established, they should be in industrial zones. Is it difficult to find another tolerance zone in Edinburgh that is in an industrial zone?

Deputy Chief Constable Wood: Several attempts have been made to find other zones, but while such zones have no legal basis, it is incredibly difficult for any local authority to stand behind or establish one. We tried to re-establish the zone by moving it to a street that was commercial and had a small number of residences, but residents and business property owners objected. To be frank, no matter what area

we designated or identified as a zone, such objections would always be made, unless the zone had a legal basis.

A zone must be found that the people who operate in the sex industry will use. We could easily identify an area of bogland miles from anywhere, but that would be impractical, because the zone would not operate there. A zone must be acceptable, legally supportable and in an area that workers and clients will use.

Tricia Marwick: Even if the bill were passed to enable local authorities to establish tolerance zones, the reality is that finding such a zone is extremely problematic.

Deputy Chief Constable Wood: Finding a zone would be difficult, but at the moment, it is impossible, because there is no legal basis.

Tricia Marwick: I understand that prostitution in itself is not illegal and that all the convictions in connection with prostitution concern soliciting and such matters. The bill proposes that, in a tolerance zone, no offences would be committed under section 46 of the Civic Government (Scotland) Act 1982. Do you approve of that proposal or do you see difficulties with it?

Deputy Chief Constable Wood: To progress the matter, that exception must be made. I notice that the committee has a question about that. However, the local authority or chief officer of police must have the right to intercede if things get out of hand. For instance, if a tolerance or non-harassment zone were established and a level of criminality encroached on it, the local authority or chief of police would have to have the right to say, "Stop—the deal's off. We'll have to enforce the law." Such safety measures must be taken. If the establishment of a tolerance zone were pursued, a geographical area would have to be defined in which the local byelaw was not enforced.

Tricia Marwick: In effect, we are looking at a public area that would be designated a private area.

Deputy Chief Constable Wood: As I am not a parliamentary draftsman, I do not know whether that is true. An area would have to be set aside where the relevant provisions of the Civic Government (Scotland) Act 1982 would not be enforced if certain important conditions on decorum, behaviour, numbers, drugs and alcohol were met.

Tricia Marwick: Thank you.

15:30

Ms MacDonald: When should I give information?

The Convener: You are on my list. I know what you want to say, and I will come back to you.

Ms White: I have taken from the submissions and the evidence the fact that prostitution has changed since the 1970s and 1980s. The drug problem is disturbing and I am thankful that police throughout Scotland are considering that matter in a wider context through so-called partnerships.

I am worried about some of what the witnesses say in their evidence and submissions. We are talking about zones, but businesses and the public complain if prostitutes happen to be in their area. Even if we take a multi-agency approach, police resources are used to deal with those complaints, which is a sad indictment of our times.

I want to talk about the location of zones. Tricia Marwick mentioned industrial areas, but I am greatly concerned about those areas—I do not even like the term "industrial area". Where will those zones be located? How will the prostitutes get there—on buses? That is a problem. Will industrial areas be acceptable to them? Will they use other areas because industrial areas are unacceptable? Will the crime rate go down? I am worried by the reference to closed-circuit television in the submission from Grampian police. I assume that clients would not go into an area in which CCTV had been set up.

The submission from Lothian and Borders police states:

"most of the women were not engaged in prostitution by choice but were working to sustain themselves or their dependants."

Rather than consider tolerance zones as described in the bill, have the police, or anyone else, looked at the Swedish model where the clients—not the prostitutes—are the criminals?

Assistant Chief Constable Shearer: You spoke about businesses complaining. In the Aberdeen area, only one business complained, and we were able to address its concerns about the hours during which prostitutes were active in the area. Our good relations with the prostitutes mean that they responded to the complaint and that we were able to address the situation. We have had only one complaint from a residents' association, with which we are in correspondence. We are trying to explain to the association about the zone that we are operating.

You also spoke about our resources. Before we introduced the zone, we sent officers to deal with the numerous complaints that arose, which was not an effective use of resources and did not address the problem properly. By dealing with the problem in this way, we can target our resources. We have addressed the primary objective of minimising annoyance and there has been a significant decrease in the number of such complaints.

I have limited knowledge of the Swedish model but I understand that it relies on obtaining

corroborating evidence against the client. Is the prostitute going to give evidence against her client? That difficulty is the reason why that model does not work.

We have taken a practical approach to respond to the situation as it develops. The reality is that prostitutes exist, and we are trying to address the problems that drive people into prostitution.

Deputy Chief Constable Wood: The fact that existing legislation criminalises women but not men has been a bone of contention for some time. In England, the problem has been addressed by the introduction of kerb-crawling legislation. However, that legislation is not without its problems. One of its by-products is that it can make the situation more hazardous for street prostitutes. Male clients are not prepared to stop their cars but merely slow down, which does not give the women the opportunity to assess the danger before they jump into the car. In some cases, it is almost as if the legislation has had exactly the opposite of the intended effect. We have tried to address that by using breach-of-the-peace legislation, but that approach is also not without its problems. Although the common law of breach of the peace is all embracing, the legislation does not quite fit. The bottom line is that the kerb-crawling legislation in England and Wales is not the answer.

Assistant Chief Constable McLean: Like my colleagues, we have difficulties dealing with the men who solicit women for the purposes of prostitution. I acknowledge that the legislation that created that situation is unfair.

With regard to the two areas in which prostitution goes on in the streets in Glasgow, we rigorously enforce the law when residents complain. We find that there are more and more complaints as the inner part of Glasgow becomes developed. Some flats that cost upwards of £1 million have been built in the centre of what might be termed the red-light district, and I do not think that the owners of those properties will be happy to find prostitutes on their doorstep. Moreover, I understand that there are plans to set up a financial district in that area, which will bring further difficulties.

The problems that are specific to Glasgow make it difficult to get a tolerance zone to work there. If you create a tolerance zone for prostitutes, are you creating a no-go zone for other people?

Dr Richard Simpson (Ochil) (Lab): It seems to me that the fundamental change that has occurred relates to drugs. Some of the prostitutes whom I saw when I worked in Cornton Vale prison in the 1980s were alcoholics, but a lot of them were streetwise, to use the term from the paper about the tolerance zone in Edinburgh. The pattern has

changed and now, generally, prostitutes are young, have been in care and are almost all drug addicts; I was not surprised when one of the witnesses said that 97 per cent were drug addicts. That fundamental change has to be addressed.

Our witnesses can debate whether tolerance zones are a good idea, but they are all for multi-agency working. They recognise that there is a significant drug problem and that the pattern of soliciting is changing. I was aware of that when I visited Glasgow green, where I witnessed daytime soliciting, which I had never seen before. I was told by people who were accompanying me from a community group that some men who were picking up their daughters from school were presumed to be kerb-crawling and were approached by prostitutes; that young women coming out of school were being approached by kerb-crawling men; and that men walking in the area were being not just approached but followed home by prostitutes. That is a change in an aggressive direction. Whatever we decide in our stage 1 report, we must reinforce multi-agency working, in order to address the public safety and health issues, and examine the protection of children who might be approached by men.

Our witnesses have a wealth of experience. Do any of them think that we can eradicate street prostitution, given the amount of drug addiction involved? If not, do they believe that the tolerance zones would make a contribution by allowing the police to work with partners to manage the situation in a focused way? Tom Wood might be able to tell us a little about the effects of the closure of the tolerance zone in Edinburgh and the resultant dispersal of the prostitutes. Has that affected the effectiveness of the multi-agency approach that he is involved in? Patrick Shearer might be able to tell us more about the new way of dealing with the situation in Aberdeen and the advantages of focusing prostitutes' working hours.

Deputy Chief Constable Wood: It is my belief that street prostitution will always exist, because it has always existed. As I said in our submission, I have done some research into the history of the subject and I can find no evidence that even the most repressive law enforcement or the most cunning of plans has worked.

Whether a tolerance zone will address the issues we have described depends on geography. There is evidence that although a tolerance zone is the answer in some places, it is not the answer in others. We have to have control and influence, and it is not important whether that is achieved through a tolerance zone or through other multi-agency working, such as the approach that is being taken in Strathclyde.

Since the tolerance zone failed in Edinburgh, we have lost control. There has been a greater movement of street prostitutes out of the old areas

into associated areas and into peripheral areas of Leith. We have had more complaints from members of the public—public petitions and demonstrations—which have been reported in the local media. We have seen the incursion of pimps and other undesirable criminal elements who are always waiting in the wings to attach themselves to the sex industry for the purposes of other criminal activities. I am not as content with the situation as I was. Like everybody here, I would like to wish away the sex industry and abolish it overnight, if we had the power to do so, but that is not the real world. The position we are in now is worse than the one we were in two years ago.

Assistant Chief Constable Shearer: I agree with Tom Wood. I do not believe that we will ever eradicate street prostitution, but we can try to find the most effective ways of managing it.

It is still relatively early days for the Aberdeen zone. However, it provides opportunities and channels for the police and other agencies to communicate effectively with the prostitutes about drugs action, health promotion and social work. Councillors make us aware of and feed in complaints that identify the areas in which prostitutes are causing businesses concern. We ask the prostitutes to restrict their activities and not to come out until certain times, so that we can minimise annoyance.

Operating the zone gives the police and other agencies more opportunities to give the prostitutes advice and to manage and influence them effectively. It also gives us the opportunity to influence those who are involved in kerb-crawling and to advise them appropriately about the significant health risks they run. The zone gives us greater knowledge and awareness so that we can develop appropriate strategies for dealing with it as the picture changes.

The next stage will be the development of the drop-in centre, which will allow us to co-ordinate more effectively. It will also provide an opportunity for prostitutes to come together and for agencies to feed them information.

15:45

Assistant Chief Constable McLean: Much of what Dr Simpson said about the east end of Glasgow is true. Prostitution in the east end is different from prostitution in the city centre, where fewer prostitutes tend to operate. The figures that I quoted earlier show that we enforce more rigorously in that area because of the problems that I described. People with serious drug problems wake up at 10 o'clock in the morning and need a fix to get them through the day. Hence, prostitutes are on the street earlier in the day.

I do not know whether the creation of a tolerance zone in Glasgow would assist us. I have doubts that it would do so in either the short or the long term. We already have drop-in centres, such as Base 75, that are used by the prostitutes and we have a methadone programme. The Routes Out of Prostitution project is the only organisation that gives me hope that we can do something to get the women off the street. My answer to the question whether we will ever get rid of prostitution is, "Probably not, but we should not stop trying."

Dr Simpson: I have a supplementary question about the other end of the system and the fines that are handed out. Prostitutes can be fined up to £500, and it always struck me that sending 65 women a year to Cornton Vale was a complete waste of time from the public's point of view; as a piece of public policy, it is probably one of the biggest wastes of time. I also suspect that some of them act as mules, bringing drugs into the prison. If we fine people who have to earn money to feed a drug habit that makes their life chaotic, we simply add to the problem, as they will need to earn more money. We incentivise them to go back on to the streets for longer. Have you any suggestions about alternative sentencing policies that would allow us to support the partnerships that you have all described, rather than add to prostitutes' problems?

Assistant Chief Constable McLean: There are several possible measures. As Dr Simpson knows, the ministerial working group on women's offending examined the issue and found that it was an expensive waste of time to send prostitutes to Cornton Vale not for prostitution but for non-payment of fines. The challenge is to find alternatives to custody in such situations. It is worth considering the work of the Glasgow drugs court, although prostitutes are prosecuted in the district court rather than the sheriff court, where the drugs court operates. Drug treatment and testing orders might be useful, and diversion into Routes Out of Prostitution or other similar programmes would be more meaningful.

Deputy Chief Constable Wood: I support that. I also support John McLean's comment that although street prostitution will always exist, we should never stop trying to direct people out of it. Any police force in Scotland would share that fundamental view.

My research, to which I alluded in our submission, shows that fining prostitutes is worse than useless. It ensures only that they have to work harder to pay their fine. Likewise, prison puts tremendous pressure on what is usually an already stressed lifestyle. I have been heartened by the work that has been, and continues to be, done on community-based disposals, in which tremendous developments have been made. I

believe that such disposals could work much better than traditional disposals for prostitution.

John Young: Most of the discussion has centred around tolerance and non-harassment zones. During the discussion, my mind worked back to 1978, when I was council leader in Glasgow. An official asked me for a private discussion about a paper on a proposal for a municipal brothel. He had worked out how many clients would use the brothel, as well as a profit margin of £300,000, which seemed an immense sum in 1978. I spoke to my deputy leader, and we agreed that we could not publish the paper because the proposal would be unacceptable to everyone, so it was binned. Do you have any comments about municipal or state brothels, perhaps in the French style? The women might be safer in such establishments, where they could get medical checks.

More recently, a lady from Australia who is an expert in the study of prostitution told Glasgow City Council that interesting lessons on kerb-crawlers had been learned from the Swedish police and the San Franciscan police, who adopted the Swedish method. When the Swedish or San Franciscan police apprehended a kerb-crawler, they would take full details of the man's name and address and his car licence number. For the next three Saturdays, that man would have to go to a centre in Stockholm or San Francisco where he would be lectured on the evils of kerb-crawling. If that did not work and if the man were married, his wife would be notified of the situation. Furthermore, public notices would be put in local newspapers. We were told that that, by and large, that approach worked like a charm, but I do not know whether that is true.

What about municipal or state-run brothels? Are the witnesses interested in the Swedish or San Franciscan method of dealing with kerb-crawling?

The Convener: I think that Pat Shearer has answered a question about the Swedish approach, to which the San Franciscan approach seems similar.

Assistant Chief Constable McLean: Prostitution in Glasgow and elsewhere operates on several levels; there might be call girls and prostitutes might operate from private houses or saunas. The street prostitute is at the bottom of the hierarchy; she is considered to have such a chaotic lifestyle—at least in the Glasgow context, because of drug habits—that she is unreliable. No brothel keeper or sauna operator would employ such a woman. Therefore, applying the concept of municipal brothels would be difficult.

Deputy Chief Constable Wood: I agree. There will always be a street scene in the sex industry. Although the sauna and massage-parlour market

in Edinburgh is fairly well developed and well established, the street scene there will always exist.

The San Franciscan, or Swedish, model could not operate within the present law of Scotland. Off the top of my head, I think that that model sounds as if it contravenes basic human rights.

John Young: It might contravene the European convention on human rights.

Deputy Chief Constable Wood: Indeed.

Iain Smith: I address my questions primarily to the representatives from Grampian police and Lothian and Borders police. I am concerned about the order of events. The bill talks about establishing prostitution tolerance zones, but I understand that the Leith and Aberdeen experiments managed existing situations and did not create new zones. The attempt to create a new zone in the Lothians failed. The bill says that wide consultation must be undertaken on establishing a zone, which is likely to be one of the biggest classic not-in-my-back-yard issues. Is my understanding of the history of the Aberdeen and Leith experiments right? The prostitutes were there first and the zones helped to manage the situation, rather than the other way round.

Assistant Chief Constable Shearer: We responded to an existing situation on the ground. At present, it would be difficult to establish a completely new zone, because no legal backing to do so exists, so councils would be unlikely to take the lead. I imagine that it would be difficult to establish a new zone even if legislation existed, but at least the opportunity would be available.

In Utrecht, that process has been undertaken. A new zone had to be created and the zone was moved out of the city to an industrial area, where it appears to operate successfully; however, I am not fully aware of the circumstances. It would be interesting to see the challenges in introducing such a new zone.

Deputy Chief Constable Wood: I cannot imagine a local authority establishing a zone in an area that did not have prostitute business and a traditional market for it. My reading is that the bill is not meant to provide an entrepreneurial opportunity. The bill does not say that local authorities must set up a zone; rather, it gives local authorities the opportunity to deal with a problem pragmatically and on a sound legal basis. As I said, even dealing with the problem on a sound legal basis is difficult and my experience tells me that the situation is impossible to deal with without that legal basis. If the problem is ever to be tackled, a sound legal basis will be essential.

Iain Smith: I want to ask about the Leith and Aberdeen experiments. Have those zones resulted

in a reduction in prostitution in other parts of Edinburgh and Aberdeen?

Assistant Chief Constable Shearer: The Aberdeen zone has certainly resulted in a reduction in prostitution in the rest of the city. That was one of the main objectives that drove the setting up of the zone. There were complaints that prostitution was having a greater impact on the business community and on residents in other more public areas that were close to the zone. The zone has resulted in a significant reduction in street prostitution elsewhere in the city. Although minor pockets of prostitution might occasionally develop elsewhere, it is much easier to identify and control them. We are able to restrict prostitution to the zone. Although some prostitutes have complained that the zone is too small—they point to the numbers who operate—the zone appears to operate effectively.

Deputy Chief Constable Wood: I would make the same observation on the basis of the history of the Leith policy. Although there were fluctuations in numbers—we would get additional street prostitutes from the north of England or from the west of Scotland, for example—there was an element of control and intervention. The fact that we were able to influence the prostitutes and to communicate with them meant that we could say, “Excuse me, this wasn’t the deal. You’ll have to reduce your numbers.” We were able to exert an influence on the situation over the years.

Iain Smith: I was slightly surprised that Strathclyde police’s written submission says:

“There has been no evidence to date of children being exploited on the streets in Glasgow and there would be concern that a Tolerance Zone would attract young girls/boys to prostitution.”

The latter part of that statement is particularly surprising. I would have thought that a tolerance zone would make the situation more manageable. At present, the younger prostitutes—who are not necessarily underage prostitutes, but teenagers—might operate behind the scenes, which means that it might not be possible to identify them. I invite all the witnesses to comment on that.

Assistant Chief Constable McLean: You might be correct to say that a tolerance zone might help to cure that problem. Reports often say that under-age street prostitution is a significant problem in Glasgow, but our evidence shows that that is not the case; there have been only three instances in the past three years. If youngsters appear on the street, older prostitutes will often chase them away. We are concerned that having a tolerance zone—depending on where it is and how it is policed—might attract young people and might indicate to them that it is okay to solicit in the zone.

Deputy Chief Constable Wood: Our experience in Leith was that the existence of a non-harassment zone and the fact that we had an understanding meant that there was less risk of under-age prostitution. The existing street workers did not want to rock the boat and did not want heavy police attention. We made it clear to them that practices such as under-age prostitution and pimping were totally unacceptable.

A line of communication provides an opportunity to intervene quickly if under-age girls appear on the street. I am not confident that we have the same line of communication as we had previously.

Assistant Chief Constable Shearer: I endorse that view. The zone gives us a much greater opportunity to control, identify and exert influence. Our experience is that it is less likely that youngsters will come into that area.

Dr Jackson: I have two points. You seem to be saying that a twin-track approach is best. You have spoken about managing an area for prostitutes in Lothian and Grampian. You have also discussed how you will work with professionals on safety, drugs issues and helping to move women out of prostitution.

I cannot quite get my head around what is happening in Glasgow. You seem to be saying that the problem is so bad in Glasgow that the drugs problem is totally different, and that the scale of what happens in Glasgow is totally different from Aberdeen and Edinburgh. Although I accept that that might be the case, is there no way that you can accept that in certain areas a tolerance zone might help, for the reasons that Tom Wood gave? Now that there is no tolerance zone, he finds that his lines of communication are cut and that information is less available. I imagine that the fact that there is no tolerance zone makes it more difficult to help the women. I find what you have been saying about what is happening in Glasgow very disturbing.

16:00

Assistant Chief Constable McLean: The lines of communication with the prostitutes are very open, because we have street liaison teams. We have good relationships with the prostitutes and we provide them with personal safety advice and personal attack alarms. We are greatly concerned about the welfare of prostitutes on the street. However, we take the view that we have a duty to people who are disturbed and concerned by the actions of prostitutes, and we are required to enforce the law. Hence, we take the twin-track approach in that we enforce the law while trying to assist prostitutes by supporting Routes Out of Prostitution and by working with Base 75, health workers and social workers. It is not contradictory to take that approach, which is important.

What concerns me about a tolerance zone in the Glasgow context is that we might be perceived to be legitimising prostitution and saying that it is okay. That is not the message that we want to give. We want to say, "Let's get people out of prostitution". We hope that Routes Out of Prostitution is a success, because I think that it is all the prostitutes have at present.

Dr Jackson: Is not it possible that people would argue—I thought that Mr Shearer and Mr Wood were arguing this—that by managing prostitution better, you are helping the women more?

Assistant Chief Constable McLean: I should probably have clarified that. We are managing prostitution, but we are not managing it within the context of a tolerance zone. We are managing it in as much as we are working with our partners, with others who are concerned and with prostitutes. We are trying to address public concerns where they exist, particularly in the east end of Glasgow. I expect that prostitution, particularly in the centre of Glasgow, is becoming less and less acceptable as developments take place and the sorts of incidents that Dr Simpson described occur. We manage prostitution and we look at the intelligence picture, the support picture and the enforcement picture.

The only difference between the approach that we take and the approach that Grampian police and Lothian and Borders police take is that they see tolerance zones as an easier way of managing prostitution. I have some difficulty with that, not in those forces' contexts, but in the context of Glasgow, because there is such a high level of prostitution and a high number of intravenous drug users on the streets.

Dr Jackson: Section 6 of the bill examines how the police could apply to a local authority to have the operation of a prostitution tolerance zone suspended or modified. Under what circumstances would you envisage applying for the suspension of a tolerance zone, how might you envisage applying for the modification of a tolerance zone and what modifications might you seek? I put that question to all the witnesses.

Assistant Chief Constable McLean: I imagine that we would ask for the suspension of a tolerance zone if we became aware that there was serious organised crime in that area or if a particularly serious crime was committed. It is worth noting that the tolerance zones that Ms MacDonald proposes seem to suggest that it would be okay to solicit in those areas. We should note that the prostitutes and their clients go elsewhere to perform sexual acts, which is very often where the prostitutes are in the greatest danger and are most exposed to danger. We have had murders in the Glasgow area. Only one murder in Glasgow in recent years has happened

in what I would call a red-light zone. The others have happened in other places where people have gone with clients.

I imagine that modification of the area would occur if encroachment or development took place—if housing or a hotel were built in an area. That would be a reason for asking for the zone to be modified or for hours to be changed.

Deputy Chief Constable Wood: As I said in my previous evidence, I believe that it is very important that the chief officer of police should be able to act quickly either to stop or to change the operation of a zone. I envisage several sets of circumstances—for example, major criminality or public order problems—in which the chief officer of police would have to act very quickly, so I would be concerned if the intervention process were lengthy. I favour the kind of emergency provision that is included in some of the public order acts, which in extreme situations allow chief officers of police to stop activities in the interests of public safety. That is important.

Assistant Chief Constable Shearer: All the points that I wanted to make have been covered. Chief officers of police should be able to respond if crime levels are high or increasing in an area, or if organised crime is establishing itself there. New developments are another issue, but they take place over a much longer time. Such developments would be anticipated and it would be less important for chief officers of police to be able to respond immediately.

There might be health issues associated with tolerance zones and it is not clear whether chief constables would take the lead on those. However, if communications were in place, a chief constable would be able to advise others of variations in the zone.

Dr Simpson: I have a question for John McLean. I do not see much difference in the management of the issue by Strathclyde police, Grampian police or Lothian and Borders police. Regardless of whether it is called a red-light zone or a tolerance zone, we are talking about a zone in which it is understood that prostitution takes place. Is your problem that, because of the changing character of the area around Glasgow green and the city centre, the zone that has existed in Glasgow for many years will no longer be appropriate? How will you manage that problem without establishing a new tolerance zone to which you can move people, given that you will not be able to stop 1,400 prostitutes working?

Assistant Chief Constable McLean: I hope that the Routes Out of Prostitution programme will have got all the prostitutes out of the business by that time, although that is perhaps unlikely.

We have never had a tolerance zone, but we acknowledge that prostitutes work in particular

areas. We police those areas proactively and gather intelligence in them. Unlike Lothian and Borders police and Grampian police, Strathclyde police are prepared to arrest prostitutes and to report them to the procurator fiscal.

Because of new developments, we will have to continue to enforce the law proactively in response to complaints if prostitutes remain in the areas in which they currently operate. I do not expect them to move, because those are the areas in which prostitutes traditionally work. Tom Wood spoke about how prostitutes operate in areas that they know. The zone in Aberdeen is the area in which they have worked traditionally. It is difficult to find a new area to which prostitutes would be prepared to go.

Assistant Chief Constable Shearer: John McLean suggested that Grampian police would not arrest prostitutes who operate within the zone. If specific complaints are made about prostitutes and they are failing to heed advice or information that we have provided, we will enforce the law. However, over the past 18 months we have not had to operate on that basis. Clearly, prostitutes are listening to what we are saying.

Deputy Chief Constable Wood: I want to clear up on the record any doubt that might exist: Lothian and Borders police enforce the law when they have to; enforcement of the law must be retained as the last defence.

Ms MacDonald: I have a couple of points of information that might help the committee in its deliberations, but before that, I want to state that the proposed bill is an enabling measure only and that its provisions would be in no way compulsory. The witnesses represent the only areas to which the bill would apply; Grampian, Strathclyde, and Lothian and Borders. Dundee already satisfactorily manages street prostitution in its area. Such a small number of women are involved that the local authority can do most things that the bill seeks to empower local authorities, health authorities or the police to do.

It is fairly obvious that two out of three ain't bad. The witnesses seem to doubt the bill's legal basis to allow them to build on experience. The bill is not blue-sky thinking; it is a very practical measure that would allow the police to build on policing and management policies that are already in operation. In no way should the bill be seen as competition to what has been developed in Glasgow. However, after Richard Simpson's questions, we heard that John McLean might well have to dip into the empowerment that the bill, if passed, would give. He must deal with prostitutes who are currently working near new flats and in an area of high investment in the city.

Nobody should be too concerned that the edges of any area that is designated as a tolerance zone

must be pushed. Not that we have personal experience, but the convener and I certainly have long enough memories—as has John Young—to remember that women used to work Blythswood Square before they were moved down the hill. In Aberdeen, the women had begun to encroach into the hotel area and were moved back down to the harbour. As far as Edinburgh is concerned, even Tom Wood is old enough to remember when the women worked Gayfield Square and were encouraged to move down the road, although that had nothing to do with the fact that the police station was in Gayfield Square. It is not blue-sky thinking that section 6 of the bill would allow a police authority to trigger a modification of how any designated zone would work.

Tricia Marwick and Sandra White asked questions about whether the bill would create a private area in a public place. It would not; it would simply create an area inside which one currently illegal activity—soliciting, importuning or loitering for the purposes of soliciting—would be tolerated. Nothing else would be tolerated. For example, underage sex, drug distribution or overt drug use would not be tolerated. In other words, a zone would not be used as a shooting gallery. The bill seeks to minimise all aspects of criminality that currently attach to prostitution by allowing the police to exercise the intelligence that all three forces currently exercise in their areas of prostitution. Therefore, I want people to understand that the bill does not seek to create a private area.

Questions were asked about whether the bill says that an industrial area should be used. The bill does not say that; the bill would enable local authorities—

The Convener: Can I stop you for a minute? I appreciate that you are clarifying many points for us, but you will have an opportunity to do that later.

Ms MacDonald: It is on the record this afternoon that the bill does not say—

The Convener: The committee is very good at picking those questions up. It would be helpful if you could clarify any queries that you have with the witnesses. You can clarify points for the committee when you appear before us again and the committee will question you.

Ms MacDonald: I want to find out whether the witnesses agree with the information from Sweden on the effects of the alternative way of managing prostitution. The Swedish Government opted for a policy of complete criminalisation, but the people who were criminalised were the clients, not the prostitutes. Information from the Swedish Government states that

"criminalisation can never be more than a supplementary element in the efforts to reduce prostitution."

Do the police agree with that?

Secondly, reports from Sweden say that criminalisation has

"driven the problem underground, thereby making the situation more dangerous for the prostitutes."

Do the police agree with that statement?

Swedish authorities have experienced tremendous difficulty in defining what constitutes an act of prostitution; therefore, the legalities of trying to prosecute have been very difficult and have eaten up lots of police and court resources. Would the same problems occur in Scotland?

16:15

The Swedish Government has not yet investigated this, but reports from the media suggest that pimps and gangs have taken control of the sex trade and that prostitution has been driven further underground because of criminalisation. There is still a marginal amount of street prostitution, but the bulk of it is out of sight. It is not out of mind, but the police cannot control it. The media also reported that as clients become more wary of arrest, it becomes more common for prostitutes to accompany them to their homes, which increases the risks to the women. Would the situation in Scotland be different if we were to adopt alternative management of prostitution other than the process that I suggested?

Deputy Chief Constable Wood: I made it clear in my written submission that law enforcement will never be a solution. It will never address what is, and has long been, a social phenomenon. As is so often the case, law enforcement is used as an intervention technique and so is not the answer to the prostitution problem.

My written submission also refers to the dangers of driving prostitution underground. In an intelligence-led policing operation, out of sight is dangerous. I would be greatly concerned if prostitution were driven underground, because that would expose the sex industry to incursions by organised crime. The sex industry around the world becomes linked to organised crime if one allows it to.

Care must be taken when tinkering around the edges, because there may be unforeseen consequences. A classic example of that is the kerb-crawling law: no one foresaw the consequences of that and, indeed, it might have made the situation more dangerous. When legislation is formulated, it is important to think long and hard and consider not only the immediate consequences, but the knock-on effects.

Assistant Chief Constable Shearer: You cite the Swedish statement that

"criminalisation can never be more than a supplementary element in the efforts to reduce prostitution."

That statement must be set in a much broader context. Although I agree with it, I believe that criminalisation has, in some respects, a role to play. For example, if prostitutes or their clients are not adhering to instructions set down in law, enforcement is necessary. I concede that criminalisation has only a small role to play. That is reflected in the police's approach, which is largely about trying to mobilise the other agencies and provide them with opportunities to work with the prostitutes to address the underlying problems that drove the women to prostitution.

You asked whether criminalisation would make prostitution more dangerous. It could drive the prostitutes off the streets and into other areas where they are less visible, which would create greater risks not only for the prostitutes, but for their clients. It would make it much more difficult for other agencies to interact with them.

Assistant Chief Constable McLean: The law is appropriate to deal with prostitution in some circumstances, but prostitution is a social problem. Many other issues, some of which we have talked about this afternoon, need to be addressed. If they are, that will, I hope, have more effect in dealing with prostitution.

Ms White: I have a couple of points of clarification for which a yes or no answer—particularly on the first question—might suffice. First, do you envisage the tolerance zone as proposed in the bill to be mainly a pick-up point? Obviously, no activity takes place in the tolerance zone.

Secondly, if there is any crime or violence against the women, that normally happens outwith the so-called tolerance zone or the place where the women are picked up. How would you deal with that?

My third question concerns multi-agency working. If tolerance zones are established, would it be appropriate to establish advisers for the prostitutes in the pick-up point or will you hand out leaflets at the pick-up point? Just how much does a pick-up point enhance the safety aspects? The prostitutes' safety is paramount.

Assistant Chief Constable McLean: As I understand the bill, the tolerance zone is a pick-up point and sexual activity will take place elsewhere. To that extent, it does not add to the individual prostitutes' safety. However, it is worth noting that, although much of the Glasgow city centre area is covered by CCTV, which you mentioned earlier, that does not seem to deter the clients at all. Prostitution continues to take place.

Deputy Chief Constable Wood: Clearly, a lot of sexual activity will take place outwith the zone, which is why we would have to be extremely careful about where we located any zone. That relates to the consequences that I mentioned in my last response. We would have to think about what and where the impact would be.

Violent acts would normally take place, if they were to take place at all, outwith the zone. However, a zone-type arrangement could be accompanied by a good communication system, an early warning system and a sharing of intelligence among the prostitutes and the police so that clients with particularly violent tendencies are quickly identified and picked up. We have evidence that that worked fairly well in Leith.

You mentioned advisers. A defined area gives us the opportunity to locate a drop-in centre in the right place and to provide health and counselling services, for example, all of which helps to improve public safety a little bit. However, as I said, we will never make things completely safe, only safer.

Assistant Chief Constable Shearer: On the first point, a tolerance zone is a pick-up point, but it increases the prostitutes' safety because it allows them more time to make a proper assessment of the person who is picking them up. In other areas, they may be inclined to emerge out of a doorway and go quickly into a car. A zone also provides us with the opportunity for greater intelligence awareness of those who use the area, so safety is improved in that respect.

If violence is going to occur, it is more likely to happen outwith the zone. However, if we have good communication channels, we are more likely to be aware of any violent actions that take place—it is more likely that they will be fed back to us. That allows us to take action earlier and probably prevent other acts of violence against other prostitutes, which might not be possible if we did not have a good communication network.

On the third point, a tolerance zone would provide an opportunity to improve communication—for example, people could hand out leaflets and an effective drop-in centre could be developed.

Tricia Marwick: Mr Shearer, you say in your submission that the tolerance zone is a pick-up point only. We have discussed that already. If the tolerance zone operates as the bill suggests, that will mean that a prostitute will not commit the offence, under section 46 of the 1982 act, of loitering in a public place, soliciting in a public place or importuning any person in a public place, provided that that occurs in the tolerance zone.

Would other criminal activity—for example, if people had sex in the tolerance zone—constitute a

breach of the peace? It is a fact that sexual activity takes place in tolerance zones. I refer to the submission from Lothian and Borders police, which states that one property owner had more than 200 used condoms discarded on his property in three days. Although the soliciting part of the law would be set aside, would you envisage that prosecution for breach of the peace would continue? Would section 4 of the bill set aside section 46 of the 1982 act? In effect, would that not be the legalisation of prostitution?

Assistant Chief Constable Shearer: The bill would not set aside criminality in relation to sexual activity, breach of the peace, the causing of alarm and annoyance and other ways in which people conduct themselves. Causing a nuisance through the disposal of condoms will also be a key issue. Zones allow prostitutes to be advised of issues of concern and annoyance to others, so that effective action can be taken at an earlier stage, without necessarily going all the way down the prosecution line, which can take several months before having an effect in court. Good communication allows problems to be addressed at an early stage. The bill would not set aside all other criminality. It would probably allow policing resources to be directed more effectively and issues of concern to be addressed.

Tricia Marwick: I will touch on one more point. Who would be responsible for operating such a zone? In their submission, Lothian and Borders police said that they would welcome some other authority taking on responsibility for street prostitution and the zone, because the police are not the people to do that. On the other hand, Glasgow City Council said in its submission that it does not think that local authorities should have any role whatever. Is it possible to come to some sort of conclusion on who would be responsible for the zones? Do you believe that unless an authority takes responsibility for a zone, it simply could not work?

Assistant Chief Constable Shearer: The local authority probably has to take the lead. In response to a practical situation, we grasped the issue and dealt with it. It is a developing issue but, in terms of the bill, the local authority should—supported by other agencies—take the lead in co-ordinating and identifying zones. It is the appropriate agency to ensure that there is proper consultation among all the partners and interested parties.

Deputy Chief Constable Wood: I agree. There are a number of other issues apart from law enforcement; for example, rubbish collection—we have just heard about the condom problem—lighting and environmental design. There are many small peripheral things that are necessary to make the recipe work. No group other than a local authority can have that total responsibility.

Assistant Chief Constable McLean: I agree. I certainly would not like the police to be responsible for designating—or otherwise running—tolerance zones. That must rest with the local authority.

John Young: Earlier this afternoon, somebody mentioned an estimated figure of 1,400 prostitutes in a given area, of whom it was reckoned 97 per cent were on drugs. Someone either said, or it was mentioned in one of the papers, that the figure was 95 per cent. In another paper the other day, someone reckoned that the figure was 47 per cent. How do we assess how many prostitutes are on drugs? Is there a method or a criterion, or is it just a stab in the dark? The figure of 97 per cent seems to be extremely high, but anything is possible.

Assistant Chief Constable McLean: That figure relates to Glasgow, which has a high number of street prostitutes who are intravenous drug users. That information came from the other agencies that work with us at the drop-in centre, which sees most of the prostitutes in the Glasgow area. It is believed that about 400 prostitutes often work in the area around Glasgow green and that about 1,000 work in the city centre. However, they do not all work at the same time. On an average night, it is estimated that about 60 to 80 prostitutes are on the street.

Our information comes from the agencies with which we work in the city centre. We do not have any information regarding HIV or hepatitis among that population.

16:30

Iain Smith: Most of the discussion around the bill has concentrated on what we might think of as the traditional sector, by which I mean female prostitutes. How would the bill apply to male prostitution?

Assistant Chief Constable McLean: There is a significant male prostitution problem in Glasgow. It occurs in a different part of the city from female prostitution and we police it as much as we can. Different laws apply because the legislation on soliciting for the purposes of prostitution applies only to females. However, where complaints are made—as they often are—we deal with them. One of the reasons for dealing with the complaints is that a good deal of crime occurs in relation to male prostitution, particularly robberies and what has been termed “gay bashing”. We have a duty to work with the agencies that are active in that field, including gay agencies, to address those issues and to build up the gay community’s confidence in the police, which will encourage them to report crimes and issues to us.

Deputy Chief Constable Wood: I have restricted my comments today to female prostitutes, but there is an active rent-boy scene in another part of Edinburgh, which we find altogether more difficult to get to grips with. However, we have tried to do so and the Scottish Prostitutes Education Project—the same agency that looks after female prostitutes—has tried to lend support for that. There is a great danger of underage people becoming involved and great danger from violent crime in relation to male prostitution. We are pretty sure that there is an undercurrent of assault and violence, with the boys and their clients as victims. However, a lot of that crime will go unreported because of the fear of stigma.

Assistant Chief Constable Shearer: We do not have any specific intelligence on the rent-boy scene in Aberdeen.

The Convener: Section 3(3)(c) of the bill would create a code of conduct for people involved in the operation of the zone. That code might govern things such as the number of prostitutes working at any one time, the designation of the streets and the times when prostitutes could operate because, if the zone were in an industrial estate, you would not want the prostitutes to be there when people were arriving for or leaving work. Would a code of conduct along such lines be acceptable? Should it specify what would not be tolerated in a zone, which is obviously slightly different from specifying what would be tolerated?

Iain Smith suggested that, in setting up tolerance zones, local authorities would speak to the police, among other agencies, in an attempt to identify suitable areas. Is that what you would like to happen?

Deputy Chief Constable Wood: It is crucial that there be a code of conduct that would offer some indication of what would and would not be allowed. The code should specify the number of prostitutes and the hours in which they should operate and it should deal with issues such as the presence of drugs, alcohol and pimps; allowing everyone involved to know exactly what the rules are would be key to the success of the initiative.

Local authorities should take the lead in setting up zones, but the police should participate actively in identifying and assessing areas.

Assistant Chief Constable Shearer: I endorse Tom Wood’s comments.

Assistant Chief Constable McLean: A code of conduct would be important, but if it did not specify everything that was and was not allowed, there would be rule by exception. People would also have to be clear about what the sanctions would be if the code of conduct were broken.

As Tom Wood said, the local authority should take the lead in setting up zones, but the police should be consulted.

The Convener: I thank our witnesses for their attendance. The committee has a task ahead of us.

I would also like to place on record—for the benefit of the powers that be—that we are all absolutely frozen in here. It would be helpful if someone could do something about that.

16:36

Meeting continued in private until 17:10.

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