

LOCAL GOVERNMENT COMMITTEE

Tuesday 21 January 2003
(*Afternoon*)

Session 1

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LOCAL GOVERNMENT COMMITTEE

3rd Meeting 2003, 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)

WITNESSES

Hugh Henry (Deputy Minister for Justice)

Annie Rhodes (Tolerance Zones Steering Group)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Ruth Cooper

ASSISTANT CLERK

Neil Stewart

LOCATION

The Chamber

Scottish Parliament

Local Government Committee

Tuesday 21 January 2003

(Afternoon)

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

The Convener (Trish Godman): Comrades, we can start. I have received apologies from Sandra White, and I welcome John Young, who is again a substitute for Keith Harding.

Items in Private

The Convener: I ask the committee to take items 3 and 4, on consideration of draft reports, in private. Do members agree?

Members *indicated agreement.*

Prostitution Tolerance Zones (Scotland) Bill: Stage 1

The Convener: We return to stage 1 of the Prostitution Tolerance Zones (Scotland) Bill, which was introduced by Margo MacDonald. I welcome Hugh Henry, the Deputy Minister for Justice, to the committee. It is the first time that he has been to the Local Government Committee and I am sure that he will find it interesting and informative. I also welcome Richard Scott, who is head of the Scottish Executive criminal justice division, and Gillian McCole, who is from the same division. After the minister has spoken for a few minutes, I shall call members to ask questions.

The Deputy Minister for Justice (Hugh Henry): The Prostitution Tolerance Zones (Scotland) Bill raises a number of significant issues. Before a decision is taken on the introduction of tolerance zones, those issues must be considered carefully and in detail. I know that the committee has taken a wealth of evidence on the bill so far.

In its memorandum, the Executive confirmed that it would like to await the outcome of the committee's consideration of the bill before reaching a final view. The committee's discussions so far have been both informative and helpful.

The evidence that the committee has heard shows the difference of opinion that exists between those who favour a harm-reduction strategy and those who advocate a zero-tolerance approach to prostitution. That emphasises the fact that the issue must be given detailed consideration. We do not want a hasty decision to be made.

A number of issues have been raised during the committee's deliberations. We recognise that prostitution is a social problem that cannot be tackled by legislation alone. That point has been made amply in the evidence that the committee has taken. We need to consider the causes of prostitution—why women become involved—and ways of helping women to get out of prostitution. Legislation on soliciting is already in place, but we know that there are differences in the enforcement of that legislation across the country. That can lead to anomalies and, sometimes, confusion.

The bill would enable local authorities to establish tolerance zones but would not make it compulsory for them to do so. The convener has emphasised that point at previous committee meetings. The creation of a zone in one area could lead prostitutes to relocate to it, as they would know that they would not be arrested for soliciting in a zone. It is not clear that overall crime would be reduced, although it is clear that crimes of soliciting would be reduced.

Crimes associated with prostitution, such as illegal sexual activity, drug abuse and pimping would continue to be dealt with and would remain illegal in any new zone. From the evidence that the committee has heard, it is clear that sexual activity does not necessarily take place within zones, which could lead to a larger area being affected by proposals to establish a zone. The committee will need to reflect on that when it decides whether to support the principle of the bill. Local authorities would have to do the same when deciding the location of any zone.

Although the bill provides that a code of conduct should be applied in a zone, it is not clear what would happen if the code were violated. Would that lead to the suspension of a zone or to a prostitute's being banned from using a zone? How would such measures be enforced? Would the bill have to be amended to give local authorities the power to prohibit prostitutes from being in the zone if they breached the code? Should there be a standard code across the country, and should it be included in the bill for the sake of legitimacy, or should there be local variations? It is essential that such details be carefully considered before the committee decides whether to support the legislation.

If the bill is passed and local authorities decide to designate tolerance zones, there may be cost implications. Policing costs could increase, especially if there were an influx of prostitutes to the zones. Perhaps most significant, there could be cost implications for local authorities, although that would be for each local authority to determine—the costs would not be met from Executive sources. Administrative arrangements would need to be put in place to allow for the running of the zones, and a new appeal mechanism would need to be established and staffed. Additional refuse collection and cleansing could also be required, depending on what happened in the areas. I know that the provision of toilet facilities and closed-circuit television has also been raised, and they would be for local authorities and other local agencies to manage and fund.

The existence of the zones would certainly allow greater intelligence to be gathered on the problem of prostitution, and health services could be better targeted, which would be a benefit. In addition, a benefit could come from concentrating resources that help women to get out of prostitution. However, we recognise that even those services would also require greater financial resources. We are aware of the significant and commendable efforts of organisations that provide valuable support to prostitutes. We are worried, and need to recognise, that they may not have the facilities or staff to cope with any increase in demand.

Prostitution is clearly a complex issue. It is right that the committee should take its time to gather detailed evidence. I commend everyone who has contributed so far. The Executive emphasises that we will await the committee's deliberations before we decide our final position on the bill.

The Convener: I am sure that I speak for every member of the committee when I say that all the witnesses whom we have interviewed or cross-examined so far support measures to encourage and help prostitutes to seek routes out of prostitution. The Routes Out of Prostitution social inclusion partnership in Glasgow said clearly that the necessary services are provided in Glasgow, and that it can provide routes out of prostitution. However, the Scottish prostitutes education project—SCOT-PEP—and Aberdeen City Council said that they are having difficulties, as they are not able to target the services because they do not have the legal framework in which to do so. Indeed, that is the committee's dilemma, as you will appreciate. Glasgow is saying, "We have the services and we can provide them without a tolerance zone," whereas Edinburgh and Aberdeen are saying, "No, we are experiencing some difficulty, because we don't have a legal framework."

What is the Executive's view on how tolerance zones might impact on efforts to encourage prostitutes to seek routes out of prostitution? It would be helpful if you would answer that question.

Hugh Henry: If I could answer that question clearly, it would be a miracle. The question reflects some of the complexities and problems and the fact that local differences exist. Local issues vary around the country. For example, there are issues to do with central and local funding for organisations that attempt to provide routes out of prostitution. I argue that such work is not dependent on legalities, because those efforts should continue, irrespective of whether tolerance zones are introduced. If there are local impediments to the success of projects, local groups and agencies should discuss their problems more comprehensively than they may be doing at present. The bill does not provide a legal template that determines how women can be encouraged into routes out of prostitution. Social, health and economic issues need to be addressed and anything that can be done in that respect should continue to be supported.

Iain Smith (North-East Fife) (LD): Margo MacDonald's submission to the committee indicates that, apart from the Aberdeen tolerance zone and the experiment that took place in Edinburgh, no tolerance zones exist in Scotland. However, evidence that has been given to the committee leads us to the belief that a *de facto*

tolerance zone is operating in the red light district in Glasgow city centre. Such zones exist as a pragmatic measure to combat particular problems in particular areas. Does the Executive have any objection to the pragmatic approach to prostitution that is being taken in those areas?

14:15

Hugh Henry: It would not be for me to state whether there is a de facto tolerance zone in Glasgow; it is for others to draw conclusions from the evidence that they have received about activities in Glasgow.

Each local authority and police force needs to make decisions under the law as it stands about which measures are best suited to their area. My reading of the evidence that the committee has received to date is that there are significant differences of opinion between the local groups that support and help prostitutes in one way or another in the same way as there are differences of opinion between police forces in different parts of the country.

As the law stands, local authorities and police forces can serve their communities as they see fit. If the bill is passed as introduced, there will continue to be room for local variation. During one of the committee's previous evidence-taking sessions, the convener drew out the fact that the bill is a piece of enabling legislation that would allow local authorities to implement measures should they wish to do so.

However, variations between different parts of the country would continue. For example, differences in emphasis in the operation of tolerance zones would continue to be found in places that determine that such zones are for them. That is the correct way forward. I do not view the bill as a vehicle for a central diktat that determines what must happen at the local level.

Iain Smith: In its evidence to the Justice 1 Committee, the Crown Office seemed to imply that there are quite different practices in the reporting of prostitutes for street soliciting and in the way that fiscals in different areas take proceedings based on those reports. Is that appropriate or is central guidance required to set out the circumstances in which it is appropriate to report and take proceedings against prostitutes?

Hugh Henry: Prosecution policy is a matter for the Lord Advocate and the Crown Office and Procurator Fiscal Service. It would not be right for me to pass judgment on their operations.

Dr Sylvia Jackson (Stirling) (Lab): We have heard quite a lot of evidence from Glasgow about the concerns that if we pass the bill, we will be condoning or legitimising prostitution. The Minister

for Justice's memorandum to the committee mentions the ministerial working group on women offending and the inter-agency forum on women's offending, which preceded it. In what detail has the ministerial working group looked at prostitution? Are there plans to look at that area again in future? To put it mildly, the concerns that have been expressed seem to be a sticking point. Are you looking more widely into the issue of sentencing, which Iain Smith touched on and to which I am sure we will return later in the meeting?

Hugh Henry: I am not aware of the detailed outcomes of the work of that group. The issues that you raise are separate. In any event, whether or not the legislation is passed, the group will have to continue to consider the broader issues. The bill does not propose the abolition of prostitution or its legalisation throughout the country. Many of the wider social issues and health issues will still exist and the work of the group will have to continue.

The group has considered some of the issues around prostitution, but there is no clear view about how the criminal justice system should deal with prostitution. Differences of opinion exist, and I do not envisage that the work of the group necessarily impinges on the view that the Local Government Committee will have to take on the bill.

Dr Jackson: There seemed to be a fairly unanimous feeling that it would greatly help if we did away with fines. Sentencing policy varies throughout Scotland. Does not that issue require urgent, radical thinking?

Hugh Henry: There are arguments about variation in sentencing policy on a range of matters; some of those arguments came up during consideration of the Criminal Justice (Scotland) Bill. It is not for me to dictate to the judiciary how they should sentence or when they should impose certain sentences.

A specific issue that the committee must consider is whether it is appropriate to allow local authorities to decide that they will tolerate prostitution in specific areas within their areas. The committee will have to consider whether the implications of such decisions will be that they will be seen as a de facto toleration and legitimisation of prostitution. We will reflect on the outcome of the committee's work and consider the evidence but, whatever the committee's decision, the health issues, wider social issues and drug issues will still have to be addressed. We know that one of the dilemmas in dealing with prostitution is achieving the balance between addressing obviously illegal acts and helping to address an individual's fundamental problems. If a woman has a severe drug habit, lifting, fining, prosecuting and jailing her for whatever reason will not necessarily deal with her drug habit.

Although we believe that it is often necessary to penalise people appropriately, sometimes we must seek to address the underlying problem as a way of getting people to leave their criminal behaviour behind. I do not think that what the bill proposes will resolve those problems.

The Convener: One of the points that is coming out loud and clear in the evidence is the number of women who are drug users and also prostitute themselves. You talked about the circle that women get into. If a woman is charged with soliciting and it is clear that she has a serious drug habit, which is perhaps why she is soliciting, would the Executive ever consider that she should be referred to a drugs court rather than go through the normal court procedure? If that were done she would go into a totally different system. The support systems and the amount of help and support that she would get immediately are different. That is one of the ways in which you could have a routes-out policy.

Hugh Henry: You will know that we developed the initiative of the drugs court and that there is no difference between the ways in which that court deals with women and men.

The proposed target group of the drugs court is offenders aged 21 and above. In that group, we can establish a relationship between a pattern of serious drug misuse and offending. More important, we can identify people whose drug misuse is susceptible to treatment. There could well be circumstances where referring a woman to the drugs court system is more appropriate and, potentially, more beneficial.

Dr Richard Simpson (Ochil) (Lab): I very much welcome your remarks relating to the drugs side of the issue. Evidence suggests not only that a substantial proportion of street prostitutes have drug problems but that 69 per cent to 75 per cent have been physically, mentally or sexually abused. We are talking about a disadvantaged, disabled group of people who are more similar to victims than they are to criminals, but we are treating them as criminals.

We have not been able to tempt you into talking about sentencing. Your reluctance to become involved in an area under the remit of the Lord Advocate is understandable. However, you do have responsibility for the police who, if the bill is passed, will be asked to say that something is a criminal activity in one street but not in another. Do you feel that having the police operate differently in two areas within 10yd of each other is an appropriate proposal? It seems fundamental that if we are to ask our police to enforce the law, the law must be enforceable. We have heard some evidence of division on that issue.

Hugh Henry: There are two separate elements to that question. The principal one is about whether one believes that tolerance zones can be effective and make the social contribution that is anticipated. If the bill is passed to implement tolerance zones, we also need to consider their operational implications. The police will have to address that one way or the other. Whether that is fair or right is a separate argument. The police would say that they will attempt to enforce the law to the best of their ability, and as far as their resources allow. It is not for me to dictate to chief constables on operational matters, such as the deployment of resources.

In my opening remarks, I said that in certain circumstances we could anticipate increased demands on the police if there were an increase in the number of women coming to an area, or in the number of customers or clients using the women there. That increase could also attract other criminal activities.

If the bill is passed, the police will have to give due consideration to the consequences for law enforcement, not just in the immediate area but in adjoining areas. They will have to respond appropriately. However, such operational matters are for chief constables to address.

Dr Simpson: There has been a suggestion that there should be a code of conduct operating in a tolerance zone. A code of conduct existed in the Edinburgh non-harassment zone and evidence suggests that the women respected it. Do you think that a tolerance zone should operate with a code of conduct? If so, how do you envisage us enforcing that code of conduct? What sanctions would there be available if the code of conduct was not adhered to?

14:30

Hugh Henry: Those were some of the questions that I posed in my introductory remarks. It is not for me to answer those questions at the moment. The Executive has some of the same questions that you have and, when the committee has reached a conclusion, we will reflect on that and make more detailed comments.

Although there are undoubtedly perceived benefits from a code of conduct, there are also issues to do with status. Does the code of conduct have legal standing? Will there be local variations? The committee has already heard that what goes on in Aberdeen is entirely different from what goes on in Edinburgh, which is entirely different from what goes on in Glasgow. Could a code of conduct be relevant throughout Scotland?

How do we enforce a code of conduct if it does not have legal standing? Would the women be breaking the law if they ignored the code of

conduct? Would they be open to administrative penalties if they broke the code? Would the local authority have the power to ban a woman from the tolerance zone for a specific period of time? Could she challenge the decision of a local authority to ban her from the area? Would such a challenge be legal or would it be an administrative challenge made through the local authority's existing complaints procedures? Would there be an appeals subcommittee in the local authority?

Although we recognise that there could be advantages in a code of conduct, we also have to think about the implications. Several questions still have to be answered, but I do not have answers at present.

Dr Simpson: I come back to the issue of abuse. You said that there are social and legal issues as well as issues of public health and mental health, and the issue of violence against women. Does the Executive intend to take a cross-cutting view of those issues no matter what the outcome of the bill and to come up with a national strategy and guidance to deal with what is now predominantly a drugs problem? It was not a drugs problem 20 years ago so there has been a major change in the situation. Therefore, the mental and physical health problems of the women are enormous, as are the public health consequences of uncontrolled street prostitution.

Hugh Henry: I recognise the cross-cutting issues. There have been many recent national and local initiatives that have contributed to greater understanding and to more effective local action. However, there is a long way to go and I want to encourage a cross-cutting initiative or reaction both from the Executive and particularly at a local level. I know that when Dr Simpson was in my post, he had put some effort into that type of activity and I will continue to discuss the issues with colleagues in other departments to ensure that we make as effective a response as we can. I hope that we will be able to develop some more coherent and relevant initiatives in future as a result of that.

John Young (West of Scotland) (Con): Richard Simpson used the phrase "uncontrolled street prostitution". I am not at all certain about tolerance zones because there are variations from city to city. The Women's Support Project (Glasgow) stated in evidence:

"violence and crime thrives in tolerance zones, including wars between organised crime groups fighting over territory and profit".

We have also heard that before the tolerance zones were set up, prostitutes who were charged and fined often did not have enough money to pay the fines and so had to go back on the streets. It is a catch-22 situation.

I have put this question to all the other witnesses to whom we have spoken. Should we advance a stage further? In many ways, tolerance zones and codes of conduct are grey areas. What is your view on municipally or state-controlled brothels, such as the French have, where women are safer in 101 different ways, including having medical check-ups? I accept that, many years ago, not even a single councillor would have thought of such an idea, but they would not have thought of tolerance zones either. Would that be a better system?

Many problems arise with tolerance zones, such as issues with the local residents or policing. Clients take prostitutes away from the tolerance zone to some other place, which is when assault or death happens. What is your view on my suggestion? My suggestion would not be acceptable to all sections of the community but, a few years ago, sections of the community would not have accepted tolerance zones.

The Convener: Is there a question?

John Young: My question was there.

The Convener: Did you get the question, minister?

Hugh Henry: Yes.

John Young: I can repeat it if you want, convener.

The Convener: No thanks.

Hugh Henry: We have absolutely no plans to pursue initiatives such as those that John Young mentions. It is not pertinent to engage in a discussion about that now because we are here specifically to consider Margo MacDonald's bill. However, I make it clear that the Executive has no proposals of the type that John Young suggests.

John Young: It is obvious that the tolerance zones in the three major cities—if they are tolerance zones—operate differently. Should there be an attempt to tighten up and have more uniform tolerance zones, particularly from the policing point of view?

Hugh Henry: As I said earlier, there would be different stages to the process. First, the principle of the bill would need to be decided. After that, the details of implementation and enforcement would have to be decided. Next, the law would have to be constructed to give a completely consistent approach throughout the country, if that was what was desired, or to allow for local variations and flexibility, if that was what was desired. Whatever legislation was passed, it would need to be clear in its purpose and effective in achieving it.

That leads us to administrative issues about exclusions, codes of conduct and enforcement issues. It would be for the relevant chief constable

to deploy resources to implement the legislation, in the same way in which they would deploy resources to implement any other aspect of legislation. It would not be for us to direct chief constables on that matter.

Tricia Marwick (Mid Scotland and Fife) (SNP): Paragraph 4 of your memorandum states:

"The Bill seeks to partially legalise soliciting by creating areas where it would be legal for prostitutes to solicit."

I have great difficulty with that because I do not understand how it is possible partially to legalise soliciting.

Hugh Henry: I assume that the paragraph refers to the fact that, if the bill were to be passed, tolerance zones would be created in certain areas, which would mean that soliciting would be tolerated and acceptable. De facto, the law would have allowed that situation to be established. We would be saying that it is legal to solicit in those areas. Clearly, however, that would not be the case for other areas: it would not be legal to solicit outwith the tolerance zones. That short paragraph attempted to explain the fact that, even within one city, different circumstances could pertain.

Tricia Marwick: In its submission dated 19 November 2002, the Scottish Police Federation stated:

"We can think of no precedent where a byelaw has been implemented which sets aside the criminal law of the land and we question whether this would be legally competent."

The police go on to say that they would find such a partial legalisation of soliciting

"confusing and detracting from the clarity of the law."

Would you like to comment on that?

Hugh Henry: That is the Police Federation's view. The Executive has made it clear that we will come to a conclusion once the committee has completed its deliberations. We will reflect on issues such as the one that you have just highlighted. We will consider not only some of the wider social ramifications; we will have to consider some of the specific legislative implications for other areas of the law and the effectiveness of introducing and enforcing an eventual act. Paragraph 4 of our submission highlighted one such implication. The Police Federation has expanded on it, and we will reflect on that point.

Tricia Marwick: You said, I think in response to Richard Simpson, that the debate is about whether or not we have tolerance zones. That is certainly what we are discussing within the scope of the bill that was introduced by Margo MacDonald. Is the real debate not about whether or not soliciting should be illegal? Is that not a debate that we as a Parliament and as a society need to be engaging in?

Hugh Henry: My earlier response to John Young stands: I am here to give evidence on a specific proposal. We have not committed ourselves to anything other than commenting on the proposal that will be before us once the committee has reached its conclusions. I am not sure that it would be fair to Margo MacDonald's bill if we started to engage in a much wider debate. There may well be a debate that individuals and parties in the Parliament might want to hold at some point. The proposal before us is a specific one, and we need to comment and reflect on whether that proposal is capable of serving as effective legislation.

Tricia Marwick: The police suggested in their evidence that they are not the people to take responsibility for the management of any tolerance zone; they believe that that is the role of local authorities. The health boards think that everybody should work together on managing them. Which authority do you think should have prime responsibility for the management of any zone that is to be set up? The proposed legislation allows local authorities to set the zones up, but I am talking about the management of the zones after they have been set up.

Hugh Henry: We have not reached a conclusion about how any such proposals should be managed. Once we have decided whether we should support the bill, we will comment on the details. It would be premature for us to start speculating on which agencies we think should be responsible for the zones' management.

Iain Smith: I have three brief questions, although they might require slightly longer answers.

First, the financial memorandum states:

"As the Bill allows for appeals to the Scottish Ministers, some cost may require to be met by the Executive; but this will constitute such a minimal amount that it is likely to be absorbed in normal departmental running costs."

Would you agree with that statement?

Secondly, the policy memorandum states that one objective of the bill is

"to maximize the practice of safer sex and to promote public health policies."

Do you think that the provisions of the bill are appropriate for those objectives?

Thirdly, in your written response you suggest that further consultation on the bill is required. Taking account of the oral and written evidence that the committee has now received, do you still think that further consultation is required and, if so, with whom?

14:45

Hugh Henry: I shall take your final question first. If you and we believed that the groups that you have had before you are completely representative both of the areas that might consider the measure and of wider Scottish society, there would be no need for further consultation. However, we are in a situation that applies to any such bill. A fundamental part of the legislative process is the consultation that committees carry out. I am not sure that either the committee or the Parliament has the facility to engage much further in a public debate before we get to the next stage of the bill. The committee will have to come to a conclusion fairly soon and we will have to respond. Unless there is an easy way of getting wider public views, we will need to make our decision on the basis of the evidence that has been heard.

I have to say that the evidence has been passionate, well argued and lively and that different organisations' evidence has been contradictory at times. To be fair, the committee has in the work that it has undertaken probably heard just about every expression of opinion possible. You might not have heard from everybody who has an opinion, but you have heard most opinions that are there to be expressed. The evidence that has been taken is probably sufficient to work on just now, given that I realise that the committee and the Parliament are working to a tight time scale.

Your first question was about whether the financial implications would be minimal. The view that we have expressed still stands. As I said in my opening remarks, although we recognise that there would be financial implications, it would be hard to quantify them. We have to consider the financial implications for the Parliament, which appear to be relatively small. We also have to consider whether there would be financial implications for those who would be charged with the responsibility of implementation, such as the police and local authorities. I am not quite sure what those implications would be; we have simply posed the question that there may well be some. Will you go over your second point again?

Iain Smith: My other question was in relation to the policy memorandum, which states that one objective of the bill is

"to maximize the practice of safer sex and to promote public health policies."

Do you consider that the provisions of the bill are appropriate for meeting those objectives?

Hugh Henry: That is what the bill anticipates doing. At the moment, we have not taken a view on the bill and whether it would be desirable and effective. It is clear that there could be benefits, as

articulated by some of the people who have given evidence to the committee. We also recognise that others have expressed strong opinions to the contrary. At the moment, our view is that we will await the outcome of the committee's consideration before adopting a stance and before deciding whether we believe that the bill meets the policy aspirations that have been articulated. Some of the evidence that has been given on the bill has been positive, but others have not been persuaded of the bill's merits.

Ms Margo MacDonald (Lothians) (SNP): Minister, I want to pursue the last point that you made. What is the evidence that the existence of de facto tolerance zones in the four cities where there is street prostitution has led to less safe sexual practice or worse sexual health among prostitutes?

Hugh Henry: It is not for me to unpick the evidence that the committee has heard. However, those who have not introduced de facto tolerance zones have indicated strongly that they do not believe that such zones are the right way forward.

Ms MacDonald: I asked for evidence.

Hugh Henry: It is not for me to comment on whether the evidence that has been given by those who have not introduced tolerance zones is correct. Expressions of opinion have been made to the committee. Evidence has been collected from those who have argued that tolerance zones would not have the desired effect. Others have argued to the contrary. To some extent, the committee must choose from among the different evidence that it has heard. That is a matter for the committee. It is not for me to indicate to the committee who is right or wrong in that argument.

Ms MacDonald: My next question is also absolutely factual. You said that you thought that the bill might have resource implications, were it to be passed. The bill proposes that it should be incumbent on local authorities, after consultation with the police, health boards and so on, to designate areas as tolerance zones. You say that that could stimulate greater demand for resources from people who are working to persuade women not to stay in prostitution—those who are taking a zero-tolerance approach while harm reduction is being practised. What is the evidence that more finance would be required for that?

The evidence from Edinburgh is that the number of prostitutes is now lower. Counselling was given to women who wanted to get out of prostitution. The amount of money that is being spent by the counselling and support group in Aberdeen, the drug action team, has not increased because a tolerance zone exists there. The same is true of Dundee. Why do you think that it will cost more to counsel people to leave prostitution if a tolerance zone exists in their area?

Hugh Henry: In my opening statement, I asked whether the introduction of tolerance zones might not lead to an increase in policing costs. We do not argue that there is evidence to that effect—we have simply posed a question. We also suggest that the introduction of tolerance zones could have financial and administrative implications for local authorities. If an authority decided to introduce a code of conduct, how would that be administered and who would enforce it? If the police were responsible for enforcing it, what would be the mechanism for doing that? Would registration be required? Who would determine whether the code of conduct had been breached? Would there be an appeals system?

I am not arguing that the bill would have huge resource implications—I am arguing that the committee needs to ask whether it would have resource implications. The bill could have resource implications, and the committee needs to think through carefully what those implications might be.

I am not saying on behalf of the Executive what the definitive cost of the bill will be. This is not an Executive bill. We are posing a question that we see as legitimate for the committee to consider. The committee may come to the conclusion that the cost to the Executive and to the local agencies is so small as to be insignificant. That will be for the committee to decide. On the other hand, the committee may decide that the cost implications are uncertain and indeterminate. That will be the committee's call.

Ms MacDonald: I have another question on the written submission. In paragraph 9 you suggest that if one city adopts a tolerance zone policy and the other three do not—remember that we are talking about only four cities—

“this might encourage prostitutes from outwith the area to relocate”.

I am interested in why you would even suppose that that might happen, given that a tolerance zone has been operating in Aberdeen for the past year, and the police there report no noticeable movement of prostitutes to Aberdeen from Edinburgh, where there is no tolerance zone.

Hugh Henry: I do not think that we are saying in that paragraph that that is what will happen. We simply speculate that it is something that could happen. It would be good practice for the committee, in looking at every angle in this debate, to look at that angle, to reflect on it, to ask itself whether that is likely to happen, and to come to a conclusion on what the implications might be if it does happen.

In paragraph 9 we do say that there could be “national anomalies”, which is evident. If there were one practice in one city and a different practice in another city, that would be an anomaly

per se. On whether people would then move from one area to another, we say that the bill “might encourage” that. We do not say that it would definitely happen. It would be for those who have heard the evidence to decide, on the balance of probability, what they think is correct.

Ms MacDonald: I wish to ask about anomalies. I think you said that you had no great objections to anomalies per se, because there are differences—or anomalies—between all four cities as to how prostitution is managed or treated or dealt with or approached. Is that the case?

Hugh Henry: Yes, we have a different approach in different areas at present. We were not indicating in paragraph 9 that it would be wrong to have anomalies as such; we were pointing out that anomalies could arise. We have to recognise that if this enabling bill was passed, not only would there be differences of approach between cities, but cities might decide to adopt different approaches in different areas. That would be a potential consequence of the bill. We will reflect on whether that is acceptable once we come to a final decision. However, as you point out, some of those anomalies currently exist.

The Convener: Okay, Margo?

Ms MacDonald: I have loads of questions, but it is all right.

The Convener: I think that we have exhausted the questions, minister. I am sure that you will appreciate, given the time that you have spent with us this afternoon, how difficult it is for the committee to decide on this bill, because the issue is much wider than just tolerance zones, and there are fundamental differences from city to city, as you said. The question of whether a city manages prostitution is answered with a yes or a no. It is going to be difficult, because the arguments have been passionate and well argued, and opinions are varied. However, this is an exciting moment for the committee, because it is clear that the Executive is waiting for us to make up our minds. We have never found ourselves in that position before. I am not so sure that I like it.

Thank you for coming along and giving us your time. We will have a short suspension to allow us to change witnesses. I will have a further break after the next session.

14:48

Meeting suspended.

15:04

On resuming—

The Convener: Okay comrades, we can start again. I welcome to the other side of the table the

member responsible for the bill, Margo MacDonald, and Annie Rhodes, who is a member of the tolerance zones steering group and managing director of Bookspeed. Margo, you know the drill, so it is over to you. I understand that both witnesses are going to speak and then I shall open the meeting up to questions.

Ms MacDonald: First, I will not repeat the written evidence with which I have supplied you. I put on record my surprise, not at the fact that the Executive will not take a position on the bill until the committee has reported—I welcome that, given the breadth of the evidence that has been sought and taken—but at the fact that the Executive considers that more consultation is required. However, it seemed from the minister's remarks that perhaps the Executive is not adamant about the need for further wide consultation. I shall expand on that later.

Only six of the 32 councils in Scotland that were consulted replied. Two of them said that the bill was not relevant to their areas, which is the same reason that some of the other 26 councils that did not reply to the consultation have given me informally. Of the councils that replied, only Glasgow City Council and South Ayrshire Council opposed the bill's proposals. That was not because there is a tremendous problem with prostitution on the streets of Dalmellington on a Saturday night; it was because the councils took the philosophical or ideological point of view expressed by Routes Out of Prostitution that there should be zero tolerance of prostitution.

Following the consultation, we know that the five health boards that have expressed an opinion on the bill have all supported it. Those health boards were the ones that we would expect to support the bill, along with Lanarkshire NHS Board, if I recall correctly, as they have in their areas the health problems associated with prostitution. They have all said that they support the harm-reduction approach and style of management that the bill proposes.

We know that of the four police authorities that are required to manage street prostitution, only Strathclyde police authority opposes the bill. We know that the Association of Chief Police Officers in Scotland does not believe that the provisions are suitable for the patterns of street prostitution in Glasgow, but it studiously avoided saying that it did not agree with the provisions of the bill with regard to the other three cities in which there is street prostitution. It concentrated its remarks on Glasgow. ACPOS also said that it would support an all-Scotland policy on prostitution, which I, as the bill's proposer, would support too. That is quite different, however, from exercising a duty of care to people who are working as prostitutes on the streets, which is what the bill addresses.

We know that the Scottish Police Federation opposes the bill, but its reply to the consultation was produced without reference to the federation's membership or to the prostitute liaison officers in the Lothian and Borders and Grampian forces. Perhaps in that case, I would make an exception and suggest that further consultation might be advisable.

We heard from the minister that there would be variation in the codes of conduct. I most certainly hope that there would be, because codes of conduct should reflect the reality of street prostitution in any of the four cities that might agree to pick up the bill's proposals and run with them. We can only look to see what the codes of conduct are in the areas that have applied the idea of sensitive policing or non-harassment of prostitutes while they are soliciting in a given area or tolerance zone. Far from being about the one sentence that the witnesses from Routes Out of Prostitution seemed to find significant in the advice given to prostitutes who worked in the Salamander Street experiment in Edinburgh, as regards the clothes that might be acceptable, the code of conduct was about the hours during which it was deemed suitable for the police to tolerate soliciting.

In Aberdeen, as I think I instance in one of the pieces that I wrote on the proposal, the police have agreed with the women who work as prostitutes that it would be unsuitable to work in one street within the tolerance zone until an hour later than in the other streets. That is because a business is carried on in that street which means that people go about their business there later. I saw for myself that prostitutes complied with that. Those prostitutes are, as we know from the statistics, heavily dependent on drugs, usually injecting drugs.

On the clothes that prostitutes wear—whether they solicit in a tolerance zone, as in Aberdeen, or an unsuitable area of the town, as they do in Edinburgh because there is no tolerance zone—civil liberties and the European convention on human rights might have something to say about our telling people what they can wear to their work, unless they contravene the normal laws of decency and good order. I expect that anyone who offended against those would be charged as per normal, whether they offended inside or outside a tolerance zone. The one thing that the bill makes clear is that the only derogation from the country's laws as we understand them would regard soliciting. Nothing else would be legal inside a tolerance zone that is illegal outside it.

Another worry that the minister expressed was that local authorities that chose to implement the bill—or the police, who have to police tolerance zones—might incur costs. The evidence that we have from the police and local authorities,

particularly Aberdeen City Council, is that costs are minimal. In fact, the Aberdeen fiscal, if I recall correctly, gave evidence that the cost to the court system was lower because fewer people go through it if soliciting inside a tolerance zone is legal. I do not overlook cost, but we must look to the evidence that we have had from those with experience of operating tolerance zones.

The minister commented on the need to reconcile the zero tolerance policy on prostitution, which is the policy in Glasgow, with the immediate priority given to the harm-reduction policies that Grampian police, Lothian and Borders police and Tayside police have adopted, with the support of the relevant statutory and voluntary agencies, in their areas. That is precisely what the bill seeks to do. It seeks to allow different local authorities with different priorities and circumstances to tailor policies to suit their localities. I see no difficulty. That is one of the bill's merits.

All the witnesses whom the committee has so far heard, including those from Glasgow, have agreed that street prostitution poses different problems for those involved because of its different patterns and history in the four Scottish cities in which it is found. I was pleased to hear the minister agree that, although the word "anomaly" is used, it should not be considered a pejorative description of the reality of street prostitution in the four Scottish cities in which it is found.

The ministerial response also says that the bill's provisions

"could be seen as accepting soliciting".

In the short term, the bill takes the same pragmatic approach as the police, the council, the health board and the Routes Out of Prostitution social inclusion partnership in Glasgow took towards accepting the likelihood that street prostitution will be with us for the foreseeable future.

The committee will recall that all the witnesses from Glasgow said that they did not envisage an immediate end to prostitution, although that is their strategic objective. I would not quarrel with that objective. However, those witnesses admitted that there is a phase before that time is reached. Presumably, the police have to police the business, the local authority must provide adequate cleansing and the health board must try to direct services towards women working as prostitutes.

However, the bill's intention is that a duty of care should be exercised towards prostitutes in the wider community. It presupposes a concerted effort by all the agencies involved in a prostitution management policy to dissuade women from working as prostitutes, while attempting to minimise the harm that is done to them as long as they do.

The minister expressed concern that complaints "might" be made if prostitutes did business outwith the area in which they solicit. That happens at present in all four cities. Glasgow City Council admitted that there is a recognised or agreed area in the city where women may be picked up for the purpose of prostitution. Those women take their clients elsewhere, as they do in Aberdeen, Dundee and Edinburgh.

15:15

As that is common practice at present, and as the bill seeks to prevent the nuisance that can occur regardless of whether a tolerance zone is in place, it is difficult to understand the concern that the Executive has expressed. If there is a tolerance policy and we take the attitude that codes of conduct, setting out acceptable behaviour, should be worked out by all the people concerned—the agencies and the prostitutes—we will ensure that any nuisance is minimised. Such nuisance may include the debris and rubbish that is left by prostitution, to which people object when they find it near their homes. If that were an insurmountable problem, we would have heard much more from areas of the cities other than those that are either in or adjacent to the tolerance zones, but we have not. Perhaps people have misunderstood this aspect of prostitution and its practice.

The same may be said about the effect of prostitution on businesses that are located either in areas that are traditionally used for soliciting or in areas that might be proposed as tolerance zones. I am accompanied by my colleague Annie Rhodes, who is a businesswoman in Edinburgh. She has experience of owning property and running a business in the designated tolerance zone in Salamander Street. I invite Annie to address this matter, about which some members of the committee have expressed concerns.

Annie Rhodes (Tolerance Zones Steering Group): Our business moved to Salamander Yards in March 2000—to much improved conditions. In August that year, we found out that we were located in the middle of the new tolerance zone. My initial response was one of shock and great concern, because as an employer one of my main priorities is the health and safety of my employees. There had been no consultation about moving the zone, so we did not know that it was going to happen. We received a visit from the police at lunch time on the day that the change was due to be announced in the *Edinburgh Evening News*.

Initially, I did not know what to do about the zone. I did what any employer must do in such a situation—I carried out a risk assessment of the impact of the move on employees. Female staff

were nervous about kerb-crawling in the evening. At that point, we were not aware how much debris might be left behind each morning from the night before. We were assured that, because the hours of the zone were from 8 o'clock in the evening to 5 o'clock in the morning, it should not impact on any member of staff, as everyone would be away by that time.

During the three or four months that the zone was in operation, there were no instances of members of staff being approached. In fact, we saw no activity before 8 o'clock at night. It became clear that the women working on the streets were restricting their work to the times that had been set for the zone. We made one minor change, to ensure that no female member of staff was required to leave the business on her own after 6 o'clock. However, there was no trouble.

I became involved in the tolerance zones steering group because I went to a public meeting called by residents who lived on the edge of the zone. I was concerned because the situation affected us, but I became interested in the issues. As I heard about the benefits to the city in areas such as health, crime and drugs, I decided that such a zone really would benefit the city.

I stopped seeing it as a problem and tried to see that letting such a zone exist in an industrial part of the city would be a workable solution for the city. This could not operate where there are residents; that is a different issue altogether. However, the zone could work if it was in a small industrial estate or unit such as ours.

As the steering group tackled issues such as cleaning and hours of operation, it seemed that we were making progress. One issue that came up was that the council was not allowed to go on private land to clean, for example. However, that problem was tackled and it looked as if there was a way through. All the problems that came up were being dealt with and everything seemed positive.

I could see that some work had to be done. I was the only business owner to get involved in the steering group. Others were quite happy because nothing really happened to cause problems, other than some debris being left. However, a way was found to deal with that along with applying restrictions to some parts of the property. Then the tolerance zone finished.

There was an unexpected benefit to being in the zone. Because of the activity at night, there were no incidences of vandalism or break-ins. That was not due to police activity in the area, although I understand that the police visited the area from time to time.

I had conversations with the police about how quickly they would come out if there was an

incident involving a member of our staff, or if our alarm went off in the middle of the night. I asked if the police would stay there until we arrived, whether it was real break-in or a false alarm. I wanted to know that our staff did not have to go into a zone where women might be working, or where there was drugs activity, without the police being there. The police said that they would do their best, but that they could not give any guarantees because they did not have sufficient officers to cover the area.

Of course, the main activity at night came from the women simply being there. That meant that local children who wanted to use those areas to play in, to write on walls, to start fires or to do any of the things that they can do in such quiet areas at night could not go there. We had no incidences of vandalism at all.

Most industrial estates do not get cleaned very often. It is probably down to the owners to do it and I am sure that we are all too busy to organise sweeping. If there were to be any cleaning, it would be to the local businesses' advantage.

I have previously proposed the idea of some kind of financial incentive for business owners in such an area. I do not know how viable that would be. Some form of acknowledgement that the businesses are operating in such a zone might be advantageous. However, I also think that some public relations work with the business owners would probably get quite a good response.

The businesses are operating during the day and this other business is going on at night. With the type of management of the zone that is being talked about, I do not think that the two types of business need to meet. Our experience was that everyone was complying with the times and areas set down for the zone.

The Convener: Thank you.

Margo MacDonald and Annie Rhodes have been listening to the evidence too. I am sure that they agree that the people who have given evidence, including the Executive witness, Hugh Henry, believe that we should encourage as many women as possible to take the routes-out way.

However, some people have given me the impression that they thought the bill could be seen as accepting soliciting. Would some street prostitutes say that tolerance zones are a good idea because they have positive effects, such as the provision of recognised safe areas in which the women are looked after? Such women would not want to take routes out of prostitution—we may have to accept that some women will want to use the tolerance zones and will not be keen to take the routes out.

Ms MacDonald: I can state only my opinion, but it has been informed by many years of association with SCOT-PEP.

It is more than 20 years since I first became aware of prostitution and, in those days, its relationship with the burgeoning drugs trade. A programme was put into effect in Edinburgh to ensure that prostitution was contained at a stage when HIV infection had a much higher penetration in the general community in Edinburgh than elsewhere. I have watched that policy of containment—certainly not promotion—develop organically and have seen Aberdeen apply similar policy guidelines. Dundee takes the same approach, but we tend to forget about Dundee because so few women work as street prostitutes there. However, it, too, has realised that it should not choose between following the routes-out approach, which encourages women not to prostitute themselves, and exercising a duty of care for women who prostitute themselves. The two approaches should go hand in hand and work side by side.

SCOT-PEP provided a needle exchange and free condoms, did outreach work and instituted the ugly mug scheme, which aimed to ensure that women reported clients who were violent or made unusual demands and that records were kept. That intelligence was shared among the women who worked as prostitutes to help them to look after themselves better. It was also shared among the police, so that seriously dangerous individuals could be approached, watched or whatever.

In addition to all that, SCOT-PEP operated a pre-employment training scheme, which it would still be operating if it had received a grant to allow it to do so. Perhaps SCOT-PEP was a few years ahead of Routes Out of Prostitution, because it recognised that two things were true for most women who work as street prostitutes. First, they want to work as street prostitutes because of the control it gives them. They are not dependent on the back-up of a sauna owner giving them their wages and hours of work or on a manager—we use the term “pimp”, which some people object to, but we all know that it refers to the person who lives off the woman’s earnings. Secondly, it is likely that women will want to get out of the business at some stage. They are also likely not to tell anybody if they get out because they want to make a clean break. They may move to another town or city or to another area altogether to make a fresh start. It is naive to assume that women will queue up for Sunday school classes on how to get out of prostitution, returning to the class teacher a few weeks or months down the line to say, “I’m not a prostitute anymore.” It does not work like that.

The Convener: I should like to clarify a point that arose in your presentation. You talked about

tolerance zones and the fact that the prostitute and the client leave the zone after the pick-up, but I am not sure how far away they go. The women will not want to go too far away because they are in business and if they return to the zone, they can get more clients—the more, the better. Therefore, whether we like it or not, sex acts continually take place in a significant area around a tolerance zone, and needles and condoms might or might not be dropped. For me, such concentration of activity has a big question mark over it. If there is no tolerance zone, women will work over a much wider area, and that concentration would not exist. Do you understand what I am trying to get at?

Ms MacDonald: Yes, but with all due respect, you have not rattled round the dark streets of Edinburgh as I have, to work out where—

The Convener: That is an assumption on your part.

15:30

Ms MacDonald: I hope that you have not done so, but we will discuss the matter later.

Dispersing prostitutes throughout the city raises issues about safety and about people having access to them so that health services and so on can be provided. Let us assume that prostitutes all work in one area. You are right to say that prostitutes take their clients, who are almost always in cars in the set-up that we are talking about, to an area that might not be too far away from where they are picked up. As we have heard, although many men who approach prostitutes in Glasgow are not in cars, they still end up in the lanes adjacent to the soliciting area—people who know Glasgow know where those lanes are.

I have seen areas that are used for doing the business in Edinburgh, where it is done quietly, discreetly and in sight of flats. People do not know what is happening because it is in nobody’s interests to let them know. That is the pattern. It is usually not the prostitutes who discard items such as condoms; it is the clients. If the prostitutes know that there is a general approach to managing prostitution and that their co-operation in the management system is required and needed, they will tell their clients, “Do not do that, because you could get charged”—the client could be charged with a litter offence, apart from anything else. Rather than sanitising an insanitary business, there is a drive towards making it less intrusive in other people’s lives. Our experience of tolerance zones is that that is what happens.

Tricia Marwick: My question is one that I have put to various witnesses. Two tolerance zones operated in Edinburgh, and one is operating in Aberdeen, without the benefit of the bill. What is the point of such legislation?

Ms MacDonald: I am not sure whether you heard Councillor Allan's evidence, but she made it plain that whether or not the bill goes through, Aberdeen City Council will continue with the toleration policy because it agrees with it. However, she said that it would be preferable for everyone concerned if they knew the parameters of the law within which they were operating. She also said that the bill would certainly make it easier to commit any necessary resources to the tolerance zone, whether for cleansing or for any other council service. She said that Aberdeen City Council is so taken with the strategy that it will stick with it, but that the policy would be better applied if the council had the legal right to do so. The council could develop the policy more; for example, it could perhaps spend a bit more money on setting up a drop-in centre adjacent to or in the tolerance zone. The council cannot make that sort of arrangement at present because of the legal constraints on what can be done.

The representatives of the City of Edinburgh Council—Les McEwan and the councillor who gave evidence—made it plain that the council cannot go any further at present. Given the publicity that there has been, the council cannot make any progress unless it has a legal basis from which to work. Dundee does not take that attitude because, as I said, so few women work there in a suitable, non-residential area.

As most members of the committee recognise, the system in Glasgow is not 100 miles away from a de facto tolerance zone. Glasgow City Council says that it will not have a tolerance zone policy, but I presume that it will continue with the present system. However, what will the council do when the safer-sex zone is squeezed because of the demands of businesses that soliciting should not take place in their vicinity?

Tricia Marwick: You asked the minister what evidence he has that people come to the tolerance zones from elsewhere in the United Kingdom. It was implicit in your question that you have no such evidence. However, the Scottish Police Federation's evidence stated:

"Officers in Edinburgh and Aberdeen have reported a regular influx of prostitutes from as far away as Leeds and Glasgow to the experimental tolerance zones. It is reported that they frequently brought with them their pimps, some of whom dealt in drugs and engaged in other criminal activity. We have been informed by our members of a specific incident in a tolerance zone where a prostitute assaulted her pimp, who was himself on licence for murder, by stabbing him."

Do you accept that there is evidence that tolerance zones attract people from outwith the zone?

Ms MacDonald: The Scottish Police Federation's evidence is what would probably be

described in a court as hearsay because there are no dates, no names and no pack drill. It was incumbent on the Scottish Police Federation to talk to serving officers who are employed as prostitute liaison officers. That would seem reasonable. The evidence from the police officers who are in charge of policing the tolerance zones is that there has been no noticeable change in the patterns of the women who work there. For example, in Edinburgh, only eight of the women who work in the traditional area in Coburg Street and the experimental zone in Salamander Street sometimes go to Aberdeen. None of those women have been reported as going to Dundee, yet one would imagine that if a tolerance zone acted as a magnet, some of them would go to Dundee because it is not as far as Aberdeen.

We must understand the nature of prostitution. Women from authorities across the central belt in Scotland work sometimes in Glasgow and sometimes in Edinburgh, or solely in Glasgow or Edinburgh. That is because they do not particularly want to meet their neighbours or friends when they are working—they want to put distance between their place of soliciting and their family life. Women have always criss-crossed to a certain extent. For example, women from Fife usually work in Edinburgh.

Some women have come north since the dropping of the tolerance zone policy in Edinburgh, bringing with them pimps and minders, which is one reason why the police in Edinburgh are anxious to re-establish the style of policing that they engaged in when the tolerance zone existed. The hangers-on, managers and pimps were not tolerated in the tolerance zone in Edinburgh and are not tolerated in Aberdeen. Drug dealing is also not tolerated. Apart from soliciting, anything that is illegal outside a tolerance zone is not tolerated inside it.

Iain Smith: I appreciate the considerable amount of work that you have already done as the member in charge of the bill. It would be useful for the committee if you could briefly outline the consultation that you have carried out on it.

Ms MacDonald: We consulted all the health boards, of which four replied, all local authorities, of which six replied, and all police bodies, of which Grampian police, Strathclyde police, Lothian and Borders police, the Scottish Police Federation and ACPOS replied. We also consulted some of the witnesses who have given evidence to the committee and we spoke to prostitutes. I can supply a full list of the consultees if the committee wishes. Most people considered that the consultation was pretty wide-ranging.

Following the huge level of publicity that arose after the non-harassment zone was moved to Salamander Street, Annie Rhodes and I were on a

steering group that the police asked me to convene to avoid losing the policy. I agreed to convene the steering group, which held two or three meetings—some took place in the chamber. A wide range of people came along to the meetings, including the police, church representatives, community representatives, prostitutes and business representatives—that is, everyone concerned with the matter.

I am fairly confident that the bill as introduced is backed by a wide section of the community. Two opinion polls have been carried out on the issue by YouGov and the local newspaper, the *Edinburgh Evening News*, which is an excellent publication. Both polls found overwhelming support for the idea, notion, policy or concept—whatever you want to call it—of prostitution tolerance zones.

Of course, no one would like a tolerance zone up their street. That is another argument for devolving the matter to local authorities. They are the only bodies that can determine whether there is a need for a tolerance zone and whether they and the communities that they serve are able to sustain one.

Iain Smith: The bill proposes a code of conduct for tolerance zones. One of the questions that has come up in evidence is how such a code would be enforced. I presume that, in the unofficial tolerance zones, the police can still fall back on the existing legislation if the prostitutes are breaching the code by charging them with soliciting.

Ms MacDonald: That is right.

Iain Smith: If the bill came into play and a tolerance zone was in operation, that would not be possible.

Ms MacDonald: That is right.

Iain Smith: So what other measures would be available to enforce the code of conduct?

Ms MacDonald: It would indeed not be possible to prosecute them for soliciting inside the tolerance zone. However, as I indicated when we were talking about matters of dress and so on, if the prostitutes' dress was considered to be an affront to public decency, they could be prosecuted for that. Far be it from me, as an old fogey, to say that many of the outer garments worn to go out clubbing these days, which can be seen around the streets of our cities in the early hours of the morning are—[*Interruption.*] I see that the committee gets my drift. It becomes difficult if we try to lay down a strict code of dress.

We are not talking about thousands of people; we are talking about what is a fairly close-knit community—the community of people who are involved in prostitution. Word gets around about how people behave, how they deport themselves and what they wear.

The proposed law regarding the hours of operation is laid down in section 3, which is headed "Making of designation". Section 3(3) reads:

"A designation shall set out—

- (a) the boundaries of the prostitution tolerance zone;
- (b) the times of day during which the zone is to operate (which may differ on different days)—

to take account of local patterns of work and so forth—and

"(c) a code of conduct for persons participating in the operation of the zone",

which applies not only to prostitutes but to other people who operate in the zone including members of support teams and the police. All those people are involved in the agreement on the code of conduct. The experience of Edinburgh and Aberdeen is that, once the decision is taken to try to manage prostitution in an area, it is possible to agree on the code of conduct.

I do not see that there will be any tremendous difficulty with that. If a person breaks the law in a way other than by soliciting, they can be charged, even if the offence takes place inside the tolerance zone. Unless a person's head is zipped up at the back, they will not go around doing things that will get them charged.

Iain Smith: I do not dispute that, but my point is that some of the things that are included in the code of conduct might not be against the law; they might relate to behaviour or whatever.

Ms MacDonald: I am not trying to be funny, Iain, but name two.

Iain Smith: It is not my job to do that—I am trying to clarify the matter. Under the present law, even in an area in which tolerance or non-harassment is taking place, if a prostitute causes difficulty on a regular basis—

Ms MacDonald: Breach of the peace.

Iain Smith: Are you saying that it would be appropriate to rely on breach of the peace?

Ms MacDonald: Of course.

Iain Smith: I am simply trying to clarify the matter.

15:45

Ms MacDonald: Breach of the peace is the appropriate way to deal with just about every circumstance. It is difficult to be prescriptive, but if foul language is being used at a rate of decibels that causes annoyance or embarrassment or is intrusive, what we are talking about is a breach of the peace.

Iain Smith: I asked this question of the Deputy Minister for Justice. The policy memorandum sets out that one objective of the bill is

“to maximise the practice of safer sex and to promote public health policies”.

Evidence from some of the agencies that are involved in helping prostitutes suggested that prostitution per se is likely to damage health. Although prostitution may not be the cause of ill health, it does not make life any better. Given that that is the case and that some of the evidence has suggested that tolerance zones might encourage more people to come into prostitution, does the bill meet that policy objective?

Ms MacDonald: That is one of the most important objectives of the bill. As I explained, the de facto policy grew organically because of the need to promote safer sex in order to provide greater protection and better health.

I have no doubt that prostitution per se damages the vast majority of women who work as prostitutes. I would not be so arrogant as to say that every single woman who works as a prostitute suffers from the same effects of ill health—members have to remember that the prostitute might work for an organisation or an agency that does not describe itself as promoting prostitution. I would also not be so arrogant as to deny that conditions of ill health are associated with prostitution.

The bill aims to manage the practice of prostitution in a way that allows local authorities and health authorities in particular to target services to try to minimise the worst effects of prostitution in respect of ill health. The minister referred to that earlier. One of the reasons for introducing the bill is to allow attempts to be made to manage services for prostitutes. We are not introducing the bill because we want to encourage the practice of prostitution. The bill will enable us to meet the need for those services.

John Young: I echo Iain Smith's words of appreciation for the work that you and your helpers have done. You have taken on a considerable load.

Do you perceive Glasgow and the west of Scotland as taking a higher moral stance on this issue? Do some people in Glasgow feel that they are more religious than people in other parts of Scotland? I am not saying that any of the individuals who have given evidence agree with what I have said. Jan Macleod of the Women's Support Project (Glasgow) described the prospect of developing a code of conduct for those who would use a tolerance zone as “mind-boggling”. You mentioned that of the four police authorities concerned, only Strathclyde police oppose the bill. Glasgow City Council does not appear to be

particularly enthusiastic about the tolerant approach that is taken in two areas. In a written submission on tolerance zones, the Women's Support Project referred to gang warfare and criminal activity being rife in zones. Do you think that Glasgow perceives itself to be on higher moral ground and as more religious than the other cities, or are the comments that I have cited fair?

Ms MacDonald: You said that, buster, not me. John Young comes from the fair city. However, I do not think that Glasgow is trying to make out that it is holier than thou.

Before the folk in Glasgow had seen the bill or discussed it with Annie Rhodes, with me or with any of the other people associated with it, they set their face against it. That is unfortunate, as I do not believe that there is any competition between the cities on this issue. I do not see what I am proposing as contradicting what Glasgow City Council is trying to do. It appeared that some of the witnesses from Glasgow felt that they must take a view diametrically opposed to that set out in the bill. I do not understand why. If Glasgow does not want to introduce tolerance zones, it does not need to. If it wants to go its own sweet way—even if Edinburgh and Aberdeen introduce tolerance zones—it will be able to do so.

John Young: Do you think that the life expectancy of tolerance zones would be quite short? Do you think that tolerance zones would eventually fail and that other measures would have to be introduced?

Ms MacDonald: I do not know. That is a very interesting question. There will always be street prostitution. We have done a considerable amount of research into what has happened in municipalities all over the world. Even in cities that thought they had found a tidy solution by having women work as prostitutes undercover—in brothels and so on—there is still street prostitution, because there is a market for it. Some clients do not want to be seen entering either a brothel or a sauna. Unless we adopt a very punitive attitude and drive prostitution underground, it is likely that there will always be some form of street prostitution.

I do not know whether the problem will remain at its current size. Prostitution in Aberdeen may follow the pattern that has been set by Edinburgh. If we get services to prostitutes and get more women off drugs, more of them may work in saunas and private houses. The bill does not tackle prostitution per se. It tackles the fag end of prostitution—street prostitution. Street prostitutes may be in greater danger than others.

During the years when the tolerance zone was in operation, the number of prostitutes working as street prostitutes fell, but the number of saunas

remained roughly the same. I do not know whether women are earning money in other forms of what we have come to call the sex industry. It is possible that some women are no longer prostituting themselves but working as lap dancers and so on. That comment should not be taken as evidence—I am speculating.

John Young: You know what happened in Melbourne and Amsterdam, especially the former. The Russian mafia seems to have become involved in transporting people.

Ms MacDonald: That is what everybody is worried about.

John Young: I know that it is always difficult to forecast the future, but do you perceive any dangers of that sort coming into play?

Ms MacDonald: If you do not allow the police to operate the sort of policing policy that operated in the tolerance zones and to take advantage of the intelligence on who is working and who might be trying to crash into the scene, which the police have testified is a by-product—in fact it is a central part—of having a tolerance zone, and if you do not have a support group that is enabled to get to the women and to counsel them, and to share intelligence with the police when necessary, you run the risk, as we are seeing in Edinburgh just now, of extortion and protection rackets moving in. Of course, everyone is concerned about the new mafias that have arisen since the break-up of eastern Europe—I think that we are meant to call it the liberalisation of eastern Europe. Everyone is concerned about that. Nobody wants to be too dramatic about it, but everybody would be pretty stupid if they ignored it.

Dr Jackson: Thank you for all the information that you have given us. It is a complex situation. Many questions have been raised that your bill does not address at all, and they will need to be answered in the fullness of time. One of the crucial points about the bill is how it will operate if it is passed.

An issue to which John Young's questions were leading is the identification of areas for toleration zones. You say that you have engaged in quite a lot of consultation in Scotland and that you have examined research from elsewhere. Given the fact that in the cities, on which we are focusing, the areas that have historically been used as tolerance zones are changing as a result of residential development, how will we be able to identify areas for tolerance zones?

Secondly, I would like you to pick up on a point that Annie Rhodes made earlier, which is that the consultation process for Salamander Street was not effective. How can we learn the lessons of that and make the whole process much better?

Ms MacDonald: I will take the second point first. We made the whole process better with the steering group. To be fair to the police, they did not have time to consult. The excellent publication to which I referred earlier splashed the story in a dramatic fashion before the police had a chance to call together residents, businesses and so on. To be honest, the whole thing was kiboshed before it started. There was no real consultation. It was kiboshed after there had been a great deal of alarm in the area and after the council had said, "We're not sure that we can go into a private industrial estate to clean up and so on." All sorts of difficulties were created because there was no consultation. We learned from that that we have to have all sorts of prior consultation.

That leads me to the fact that all the consultation in the world does not make it easy to find a suitable area in traditional areas. In Aberdeen the area is the docks. In Edinburgh, it is Leith docks. In Dundee there is an area but, as I said, we do not need to bother about Dundee, because things are fine there at the moment. In Glasgow, the traditional area is in the city. It is not a dockside area but a commercial area that used to close down at 5 o'clock at night. It was quite a discreet area for soliciting. Remember that we are not talking about every local authority in Scotland. Take Dundee out of the equation and that leaves Aberdeen, Edinburgh and Glasgow.

The witnesses from Glasgow said that they know that they are going to have difficulties and they do not know what they are going to do. They will have to find a solution—I am sure that they will—to the problem that the traditional area is no longer as suitable as it was because of 24-hour working and redevelopment. Companies coming into the area have put a lot of money in and they do not want to be in a red-light zone. Also, they cannot be persuaded by the sort of argument that Annie Rhodes used that might apply to a small area of industrial units that close at a certain time. That is for Glasgow to determine.

There are still certain red-light areas in Edinburgh, and I am loth to say where they are. I will only say that they are in the general area of the traditional area for Edinburgh's street prostitutes. I do not want to identify the areas because folk will be down there with cameras. If the principle of the bill is accepted, City of Edinburgh Council, in consultation with police and local residents, will determine whether it is feasible to put a tolerance zone in that area.

16:00

Before I proposed the bill, I had to test the theory. Believe me, there are some areas that would be suitable. Some would require a certain amount of expenditure that could be borne by the

three partners: police, health board and council. That is up to them. The council simply instigates the idea. For example, a road that has been closed and turned into a cul-de-sac or one-way street might have to be opened up. Speed bumps might have to be introduced for safety and to ensure that cars cannot scoot through.

CCTV might have to be put in. The area might have to be resurfaced so there will be hard standing for a mobile support van such as the one operated by SCOT-PEP at the moment. Toilets might have to be provided.

However, the local community will have to decide whether all that is possible or which of that hotch-potch of possible facilities are needed and suitable in their area. It can be done. It is being done in Aberdeen where they are nibbling at the edges of the tolerance zone. Incidentally, the women in Aberdeen say that they do not think that their zone is big enough. The relevant authorities in Aberdeen have been discussing how they might meet the requirements of the bill.

It will be up to local authorities to decide what facilities they provide. If they cannot find a place, or if setting up a zone is exorbitantly expensive and would require 20 policemen a night, I do not think that they will do it.

Dr Jackson: Did you say that a critical situation might be reached where councils and other agencies are forced to consider operating tolerance zones?

My second question is about the media—I am sorry to see that half the journalists have left the press gallery before I have had a chance to ask this question. It is important to have the media on board if you do not want a repeat of what happened with Salamander Street. Can you suggest any ways in which the media could be a bit more responsible than it was in that case?

Ms MacDonald: No. Sexy stories sell newspapers.

Dr Jackson: Okay. What about my first question?

Ms MacDonald: There is a concern in Glasgow. The committee heard from the witnesses that they are concerned that the policy—whether it is called a policy of tolerance, understanding or sensitive policing—is being squeezed. They have to come up with something else. If the bill were to be passed, it would be a great irony if Glasgow City Council were the first to be glad of its provisions.

Dr Simpson: It seems to me that we have a very interesting situation because a natural experiment has taken place. Edinburgh has had a non-harassment zone, but it has ended; Glasgow has a non-harassment zone, but it is being squeezed; and Aberdeen has introduced a new

non-harassment zone. It is a pity that we have not been able to study Aberdeen more closely to see what is happening.

There are some quite specific facts that can be used to argue both for and against the bill. A fact that would count against the bill comes from the SCOT-PEP paper, which says that women from the west coast made up a significant percentage of those working in Leith—44 per cent—in 2000. That number declined significantly following the ending of the tolerance zone. In other words, that 44 per cent did not stay in the city. I am sorry, but that evidence shows that the tolerance zone attracts women, which is not what you have been saying.

On the other hand, the figures that we have heard relating to attacks on sex workers would argue in favour of the bill. We understand that, in Edinburgh, there were 11 attacks in 2001, when the non-harassment zone was in operation, compared with 31 attacks in 2002, which was after it had been closed. That figure becomes more striking when you reflect that the 11 attacks in 2001 were in a population of 200, whereas the 31 attacks in 2002 were presumably in a population that was 44 per cent less than that, which means that the difference in the ratio of attacks is huge.

In practice, Glasgow is doing exactly the same as everyone else is doing or, in Edinburgh's case, wants to do. Glasgow's position is that we must not condone prostitution, that there must be a city-wide policy to tackle the problem and that the problem will be dealt with even if the tolerance zone goes. Do you think that the principled argument that Glasgow is putting forward—that by acknowledging prostitution and legalising soliciting in an area, society condones prostitution, which will have an adverse effect on women—is valid?

Ms MacDonald: I do not have an ideology in relation to this matter. I think that the bill deals with a practical problem and attempts to exercise a duty of care towards prostitutes. That is simple. The fact that we acknowledge that there is such a thing as prostitution does not mean that we condone it. There is sin and I do not condone sin.

I can see why Glasgow City Council is adamant. It has systems and organisations in place and wants to make them work. That is fine; I have no objection to that at all. However, I cannot understand why it does not want other people to tackle the same problem in a different way.

Dr Simpson: I understand that but, given the consultation that will be needed to establish a new tolerance zone in Edinburgh if the bill were passed, why can the council not go ahead with that anyway without having legalisation? Why can Aberdeen City Council not install CCTV cameras and speed bumps and so on as Glasgow has

done? Councils could say that they were implementing those measures on the ground of community safety and that they have nothing to do with the law on prostitution. Following on from that, the police could operate a system of arrest referral and non-prosecution of prostitutes in that area. That would be fine. We do not need to legalise soliciting in certain areas.

Ms MacDonald: Although I said that there appears to be majority public support for the concept of tolerance zones, there is not absolute support. There are people who definitely do not agree with the concept, as we have heard. Any one of those aggrieved citizens could go to court and accuse the council of misusing public money by aiding and abetting a criminal activity. That is why Edinburgh will not do what you are suggesting it should do.

Aberdeen has not expressed the same reservation in the same way but, when asked, representatives from there said, "Yes, that is possible. That is why it would be tidier all round to have legal parameters within which we could operate." That is one main reason—if not the main reason—why councils and certainly the City of Edinburgh Council said, "No, we cannot act; the Executive has to enable us to act." That was said when Annie Rhodes, Lothian's director of public health and I addressed a meeting of the full council in Edinburgh. The councillors said, "We are not unsympathetic, but you must realise the limit on what we can do legally. We must be empowered to act."

Dr Simpson: If councils were empowered for the community safety of women—in whatever role they take, be that legal or criminal—to protect people without legalising prostitution or soliciting, would that be acceptable?

Ms MacDonald: The member should not forget that I consulted all the legal bodies in Scotland, including the Law Society of Scotland, whose response is in front of me. It picks up details and agrees with the proposed approach. The Faculty of Advocates worked on and helped me to prepare the bill. My legal advice was that what is in the bill was the simplest way to achieve my aim.

Another item that arose was appeals. The advocates said that as the bill was about land use, there would be a parallel with appeals under planning regulations. It depends on the Executive department that is involved, and I was interested in which department would give evidence today. However, that does not negate the parallel with planning appeals.

Tricia Marwick: I have a question for Margo MacDonald that picks up on something that Annie Rhodes said—perhaps she would like to comment, too. Annie Rhodes said that she had

concerns about Salamander Street and that she joined the tolerance zones steering group. She had undertaken a risk assessment for her employees, and female employees were not to leave work alone after 6 o'clock. However, the residents in the immediate area had more concern. Neither they nor their kids could decide not to go home after 6 o'clock at night. Annie Rhodes's business was okay because it did not operate at night, but the residents still lived in the area at night. Would Margo MacDonald or Annie Rhodes like to comment on the impact on residents and communities?

Ms MacDonald: Residents mainly objected to having the same address as the tolerance zone, which was reputed to be sited in Salamander Street. Between two streets, an area of toleration was marked. In fact, the area moved slightly back off the road, so not much was visible from the road. Salamander Street is a long, straight road that runs along the docks. The houses were situated on the same side of the road as the area that was used for soliciting a quarter of a mile away. The zone was in no way a great nuisance—it was not even much of an embarrassment. However, the address was an embarrassment.

Some residents also complained that, near their homes, clients dropped off the women, who had to walk past the residents' homes to reach the tolerance zone. Complaints were also made about some litter. Annie Rhodes and I agree that those difficulties would have been resolved if time to consult and to establish a de facto code of conduct had been available. That happened after the public outcry, which made the situation difficult.

I ask members to compare that situation with the present situation in Leith. That is what concerns Annie Rhodes and me. The women work in an area that is more residential than the experimental zone area that I described. They work there because they do not want to be completely separate from one another, for security and other reasons, and because that area is quite handy for dodging the police.

As the police are policing the area normally, they must act on complaints. When the police receive complaints from residents who are embarrassed or annoyed by the prostitutes and the kerb-crawling in what is a residential area, the women have to run up a street to hide. That is unsatisfactory and does not suit anybody. We must try to resolve the issue and find a place in which the two interests can be reconciled.

Annie Rhodes: The women's compliance with the hours and required conduct in the zone was encouraging. If the zone had not ended so suddenly, the steering group would have had more time to work with SCOT-PEP on the issues. Many of the problems that the residents who were on the

edge of the zone experienced could have been resolved satisfactorily.

16:15

Ms MacDonald: The problems cannot be resolved now, because the women will not admit to being anywhere and they are dispersed.

Iain Smith: Has any consideration been given to using the new power to advance well-being as a means of dealing with the issue? That power allows councils to do anything that promotes the well-being of residents in their area. Obviously, that could be deemed to relate to the health improvement aspects of tolerance zones.

Ms MacDonald: The well-being of prostitutes working around Leith links that comes from the heightened security of working within sight of one another is at variance with the well-being of residents who are fed up with having to push past prostitutes to get to their houses.

Iain Smith: I accept that, but my question was whether the power to advance well-being could be used to justify creating tolerance zones, as has been done in Aberdeen and Edinburgh?

Ms MacDonald: I think that it could be used to do that, but are you implying that we need another piece of legislation?

Iain Smith: No. I am referring to the piece of legislation that we passed two weeks ago. Members fought about it because of the part that related to the Fire Services Act 1947.

Ms MacDonald: I look forward to you introducing a new measure. I will give you all my papers.

The Convener: I think that we have exhausted the questions. Like other members, I appreciate the amount of work that you have done. I hope that you feel that the committee has given the bill a good run. There are difficulties for us. For example, it is difficult to decide who is right when you dismiss written evidence from the Scottish Police Federation. I cannot remember where, but I read in other evidence that up to 10 policemen were required to police the zone.

Ms MacDonald: I saw that too and I must correct it. That point was alleged by the Police Federation, which said that the fact had come to its notice. I spoke to the operational head of Lothian and Borders police and was assured that it was normal for four officers to patrol the zone. Of course, those officers do not patrol only the tolerance zone; they patrol the whole area. I also checked with Grampian police and was informed that if there is trouble, up to 10 officers might be rushed to the spot, although that happens whether or not there is a tolerance zone. That is normal policing.

The Convener: That is the kind of issue on which the committee has conflicting evidence. The question that we must address is whether tolerance zones are a practical approach to prostitution and to keeping people safe or whether they are managing prostitution. We have lots of written evidence and we will start our attempt to put a report together next week. We will keep you informed.

Ms MacDonald: I thank the committee. Apart from finding the process interesting, I have expanded my knowledge. It was good to hear other points of view, except that of the Police Federation, which should consult the officers who work on the ground.

16:18

Meeting continued in private until 17:26.

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