The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 16 March 2010

Session 3

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR Donnelley.

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JUSTICE COMMITTEE
10th Meeting 2010, Session 3

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)
*Angela Constance (Livingston) (SNP)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Nigel Don (North East Scotland) (SNP)
*James Kelly (Glasgow Rutherglen) (Lab)
*Stewart Maxwell (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING GAVE EVIDENCE:

Kenny MacAskill (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Andrew Mylne

LOCATION

Committee Room 6

Scottish Parliament

Justice Committee

Tuesday 16 March 2010

[The Convener *opened the meeting at 10:04*]

Decision on Taking Business in Private

The Convener (Bill Aitken): Good morning, ladies and gentlemen. I remind everyone to switch off mobile phones. We have received no apologies—all members are present.

Agenda item 1 is a decision on taking business in private. Items 2 to 5 on the agenda involve consideration of two draft affirmative instruments. As a preliminary to that, we need to decide whether to consider draft reports on the two instruments in private at future meetings, as is our normal practice. Do members agree to consider those reports in private?

Members *indicated agreement.*

Subordinate Legislation

Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2010 (Draft)

10:04

The Convener: I draw members' attention to the draft regulations and the cover note on them, which is paper J/S3/10/10/1. The Subordinate Legislation Committee had no points to make on the regulations.

I welcome the Cabinet Secretary for Justice, Kenny MacAskill; Colin McKay, from the Scottish Government legal system division; and Fraser Gough, from the Scottish Government legal directorate. I understand that the cabinet secretary will make an opening statement.

The Cabinet Secretary for Justice (Kenny MacAskill): I can do so if you wish, convener, but the matter is fairly straightforward, so I am happy simply to move the motion, unless there are any questions.

The Convener: Do members have any questions?

Members: No.

The Convener: As there are no questions, the matter has been dealt with extremely expeditiously.

That enables us to go on to agenda item 3, which is formal consideration of motion S3M-5735, to recommend approval of the regulations.

Motion moved,

That the Justice Committee recommends that the draft Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2010 be approved.—[*Kenny MacAskill*.]

Motion agreed to.

The Convener: I suspend the meeting briefly, as there is to be a change of officials.

10:06

Meeting suspended.

10:06

On resuming—

International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2010 (Draft)

The Convener: We reconvene with agenda item 4, that change having been achieved with remarkable alacrity. I draw members' attention to the draft amendment order and the cover note on

it, which is paper J/S3/10/10/2. When the Subordinate Legislation Committee considered an earlier version of the order, it raised concerns with the Scottish Government. That order was withdrawn and the current one was laid in replacement. The Subordinate Legislation Committee is satisfied that the new draft order addresses its earlier concerns and is content with it.

I again welcome the cabinet secretary, Kenny MacAskill, and Fraser Gough, from the Scottish Government legal directorate. We also have Brian Peddie, from the civil law division in the Scottish Government. I understand that you do not wish to make an opening statement, Mr MacAskill.

Kenny MacAskill: I am happy to do whatever the committee desires, but I am conscious of time. We have discussed the issue previously and the concerns have been dealt with in the revised order. I am happy to comment further if the committee so wishes.

The Convener: We are probably content with that.

I turn to agenda item 5, which is formal consideration of motion S3M-5848, to recommend approval of the order.

Motion moved,

That the Justice Committee recommends that the draft International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2010 be approved.—[*Kenny MacAskill*.]

Motion agreed to.

The Convener: I suspend the meeting briefly while the witnesses change again.

10:07

Meeting suspended.

10:08

On resuming—

Advice and Assistance and Civil Legal Aid (Priority of Debts) (Scotland) Regulations 2010 (SSI 2010/57)

The Convener: We have two negative instruments to deal with. I draw members' attention to SSI 2010/57 and the cover note on the regulations, which is paper J/S3/10/10/3. The Subordinate Legislation Committee did not draw any matters to the attention of the Parliament in relation to the regulations. Do members have any comments?

Robert Brown (Glasgow) (LD): I have one comment on the second instrument, which is on advocates' fees in criminal procedures. They manifestly—

The Convener: Can I interrupt you there? For the sake of a reasonably ordered disposal of matters, we will dispose of the first instrument first.

Robert Brown: I beg your pardon, convener.

The Convener: I take it that there are no comments on the regulations. Do members agree to note them?

Members *indicated agreement.*

Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2010 (SSI 2010/63)

The Convener: I draw members' attention to SSI 2010/63 and the cover note, which is paper J/S3/10/10/4. The Subordinate Legislation Committee did not bring any matters to the Parliament's attention in relation to the amendment regulations.

Robert Brown: Unlike some other instruments in this category that we have considered, the regulations do not provide for a rise just by the rate of inflation; there is also a retrospective element in regulation 2(2). Do we have any information on the background to that, especially given the current climate? The purpose of the increase may be to catch up—it may cover a few years—or there may be another explanation. On the face of it, the rise needs to be questioned.

The Convener: To my recollection, there has been no significant increase under the heading for some time, so I suspect that it is a catch-up provision. Do you wish us to pursue the matter with the Scottish Government?

Robert Brown: I do not want to make a big fuss about it—there is probably an explanation. We could inquire into the background to the increase and do our duty in that regard, but I will not stand in the way of the regulations this morning.

Kenny MacAskill: There have been on-going discussions about the matter, which is of long-standing concern, between the Faculty of Advocates and the Scottish Legal Aid Board. There has been criticism of the level of payment for appeals. In the discussions, it was agreed that we would backdate the rise; we have honoured and implemented that commitment.

Robert Brown is correct to say that the provisions are different from those in other instruments, but that is the result of a problem, of which he is aware, relating to the level of fees and the reluctance of some counsel to become involved in appeal court business. We are ensuring that we deal with the problem, and we are honouring the indication that we gave while discussions were on-going that we would

backdate the rise to the date of the initial discussions.

The Convener: The issue is fairly straightforward. Are members content to note the regulations?

Members *indicated agreement.*

10:12

Meeting suspended.

10:13

On resuming—

Criminal Justice and Licensing (Scotland) Bill (Stage 2)

The Convener: This is the second day of stage 2 proceedings on the Criminal Justice and Licensing (Scotland) Bill. The committee will consider amendments to part 1 of the bill. However, it will not proceed beyond section 15 and line 29 on page 29 of the bill, because at its meeting next week it will take evidence on amendments that relate to subsequent provisions. I welcome again the Cabinet Secretary for Justice, who is accompanied by officials various. Members should have a copy of the bill, the marshalled list of amendments and the list of groupings for today's consideration.

Section 5—Sentencing guidelines

The Convener: Amendment 55, in the name of the minister, is grouped with amendments 17, 62, 63, 65 and 67.

Kenny MacAskill: Amendments 55 and 17 relate to the costs and benefits assessment of guidelines that section 5(5) requires the Scottish sentencing council to produce. When giving evidence to the committee on 12 May 2009, the Sheriffs Association expressed concern that the assessment of costs and benefits would be part of the guidelines, reflecting that it would be inappropriate for sentencers to take such matters into account. In light of that, Government amendment 55 provides that the assessment is not part of a guideline but should be prepared alongside it and published during the consultation process. That makes it clear that the courts are not expected to have regard to the costs and benefits impact of a guideline when applying it.

We do not support the removal of the requirement for the assessment to contain information on the likely effect of the guidelines on the number of persons detained and the number of persons serving community sentences. We consider that it is essential to know the impact of a guideline on the number of people detained and the number of people undertaking community service during consultation, so that consultees are fully informed, but we agree that those matters should not be part of the consideration of an individual sentence and our amendments address that.

Government amendments 62, 63, 65 and 67 are consequential. They amend the provisions to reflect the altered roles of both the sentencing council and the High Court in preparing and endorsing new and revised guidelines.

I move amendment 55.

10:15

Bill Butler (Glasgow Anniesland) (Lab): I hope that members agree that amendment 17 is straightforward. It would remove the obligation on the sentencing council to consider the likely effect of sentencing guidelines on

"the number of persons detained in prisons or other institutions"

and

"the number of persons serving sentences in the community".

It would be inappropriate for such an obligation to be placed on the council. The amendment rightly retains the obligation to consider

"the likely effect of the guidelines on ... the criminal justice system generally",

so I hope that members will be able to support this reasonable and logical amendment.

Robert Brown: I oppose Bill Butler's amendment 17. It is reasonable and sensible to include in the provisions on the sentencing council the obligation that the amendment would delete, particularly as that provision is elaborated by amendment 55, which the minister moved. If the sentencing council is to have benefit, it must consider the overall position in relation to prisons, community sentences and the like—not, as the minister rightly says, at the individual level but at the corporate level—so that politicians, the public and policy makers have an idea of the implications of sentencing guidelines. After all, prison overcrowding and the evil effects to which it has given rise in the system are one of the big issues that the committee has dealt with over the months. We need information about such issues when considering the likely effects of sentencing policy.

Stewart Maxwell (West of Scotland) (SNP): I support amendments 55, 62, 63, 65 and 67 but oppose amendment 17.

Amendment 55 in particular deals with the committee's concern at stage 1 about the wording of section 5(5). The amendment changes the wording from

"The Council must include in any sentencing guidelines"

to

"The Council must, on preparing any sentencing guidelines, also prepare".

The amendment therefore separates out the guidelines and the assessment of their likely effect, as Robert Brown indicated, but leaves the fact that the matters mentioned in section 5(5) are important to any guidelines and that the likely effect of any guidelines on those matters must be taken into account, although not as part of the guidelines themselves.

Amendment 55 deals with the issue that concerned some members at stage 1. The information would still be available but would not, as originally intended, be included in the sentencing guidelines. That deals with the problem.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I support Bill Butler's amendment 17. My recollection of the evidence that was received during stage 1, including from the Scottish Police Federation, was that the sentencing council should not be required to include in any guidelines an assessment of their likely effects on prison numbers. The courts and the sentencing council should not have that responsibility.

The Convener: The issue is whether it is appropriate for guidelines to indicate that the problems of prison capacity should affect judicial determinations. In my view, it would not be appropriate for them so to do, which is why I am attracted by the merits of Bill Butler's amendment.

Amendment 55 agreed to.

Amendment 17 moved—[Bill Butler].

The Convener: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Brown, Robert (Glasgow) (LD)
Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0. I use my casting vote in favour of the amendment on the basis of what I have already said.

Amendment 17 agreed to.

The Convener: The next group of amendments is on the dates on which sentencing guidelines are to take effect. Amendment 56, in the name of Robert Brown, is the only amendment in the group.

Robert Brown: Amendment 56 is simple. It removes the requirement that the sentencing council must specify the date on which guidelines are to take effect, because the guidelines are ultimately for the court under the arrangements

that have now been decided. It is a consequence of other amendments that we have agreed to.

I move amendment 56.

Kenny MacAskill: I fully support Robert Brown on this amendment.

The Convener: Does Robert Brown feel the need to wind up?

Robert Brown: No.

The Convener: I think that that is a question of quitting while one is winning.

Amendment 56 agreed to.

Amendment 18 not moved.

The Convener: Amendment 18A, in the name of Robert Brown, has already been debated with amendment 51. Mr Brown, would you like to move or not move the amendment?

Robert Brown: Sorry, I have to confess that I have lost track of this one. Not moved, I think.

Bill Butler: If I may comment, convener, I remember that Robert Brown indicated two weeks ago that he would not move 18A or 18B.

Robert Brown: That is what I thought.

Amendments 18A, 18B and 57 not moved.

The Convener: Amendment 58, in the name of the minister, has already been debated with amendment 51. If amendment 58 is agreed to, I will not be able to call amendment 19, on the ground of pre-emption.

Amendments 58 and 59 moved—[Kenny MacAskill]—and agreed to.

The Convener: The next group of amendments is on the relationship with the existing power of the High Court to issue sentencing guidelines. Amendment 60, in the name of Robert Brown, is grouped with amendments 71, 72 and 76.

Robert Brown: Amendment 60 makes it clear that the High Court is still entitled to exercise its jurisdiction to issue guideline judgments. I also support Government amendments 71, 72 and 76, which provide for the court to require the sentencing council to prepare guidelines following a guideline judgment, and for the publication of guideline judgments. That seems sensible. I suppose that it could be argued that amendment 60 is not necessary, but it would be useful to clarify matters in the bill.

I move amendment 60.

Kenny MacAskill: Amendment 60 provides that section 5 is without prejudice to the power of the High Court to pronounce guideline judgments. Such a provision is not necessary as section 5 does not prejudice the existing power of the High Court in any way. The bill is framed in such a way that the system for the High Court to pronounce guideline judgments and the new role for the sentencing council to prepare sentencing guidelines can coexist harmoniously. We therefore resist amendment 60.

Government amendment 72 seeks to strengthen the guideline judgments system by providing a clearer mechanism for their promulgation. It provides for the sentencing council to publish guideline judgments pronounced by the High Court under existing powers, as well as sentencing guidelines.

The intention behind the amendment is to ensure that all sentencing guidelines and guideline judgments are available in one place and are easily accessible to the public. That does not affect the role of the Scottish Court Service in relation to the publication of High Court opinions.

Amendment 71 is consequential on amendment 53 and reflects the revised roles of the sentencing council and the High Court. Amendment 76 is also consequential on amendment 53, and amends section 13, which provides for the sentencing council to produce an annual report. Those amendments reflect the revised function of the council as an advisory body.

The Convener: I see that there are no other contributions; I do not think that there is any great division on the matter. I ask Robert Brown to wind up.

Robert Brown: The minister has put on record the position with regard to the existing powers of the High Court, so I withdraw amendment 60.

Amendment 60, by agreement, withdrawn.

Section 5, as amended, agreed to.

Section 6—Procedure for publication and review of sentencing guidelines

The Convener: Amendment 20, in the name of Bill Butler, has already been debated with amendment 51. I point out that if amendment 20 is agreed to, I will not be able to call amendment 61, on the ground of pre-emption.

Amendment 20 not moved.

Amendments 61 to 63 moved—[Kenny MacAskill]—and agreed to.

The Convener: We turn to consultation on draft sentencing guidelines. Amendment 64, in the name of Robert Brown, is grouped with amendments 21, 395 and 396.

Robert Brown: Amendment 64 would require the Lord Justice General, on behalf of the High Court, to be one of the persons whom the council consults about draft guidelines. Although we have

agreed that the High Court ought to approve the eventual guidelines, it is more efficient and sensible to have its views at an earlier stage. That will get it thinking about the issue and involve its views in the procedure, which I hope will sort out any issues along the line, as we would not want any dispute about those matters.

I support Bill Butler's amendment 21, to add the Justice Committee to the list of consultees. I am interested to hear Angela Constance's argument for consulting young people who are under 18 and the bodies that support them. I am not sure that it is necessary to single out groups in that way, but it might be better to specify more clearly how the draft is published and made known to such groups—there might be another way of tackling the issue. I suspect that amendment 396 might not be necessary, as I assume that the definition of the term "persons" includes bodies, but no doubt the minister will enlighten us on that matter.

I move amendment 64.

Bill Butler: I support Robert Brown's amendment 64, as it seems pertinent and sensible.

Amendment 21, in my name, is both easier and more complex than it might at first appear. It is easier, in so far as the bill already provides a procedure for the sentencing council to publish proposed guidelines in draft, consult certain persons and have regard to their comments prior to finalisation. However, the difficulty is that it is not appropriate—so I am informed—to refer to the committee as such in statute, as it is not a body that is required by statute. The Scotland Act 1998 allows for the Parliament to establish committees, but there is no requirement for it to do so, and certainly no requirement—even under standing orders—to have a justice committee.

In addition, there are times, such as during dissolution and for a few weeks after an election, when, in practice, there are no committees in existence. That makes it necessary for amendment 21 to refer to

"any committee ... with a remit that includes the criminal justice system".

The obligation to consult simply would not apply if there were no such committee at the time. That is my information. I hope that that is reasonably clear. That, in essence, is the purpose of amendment 21. I believe that it is a modest but logical addition and I ask members to support it.

10:30

Angela Constance (Livingston) (SNP): I lodged amendments 395 and 396 after discussions with Action for Children Scotland. Amendment 395 would require consultation of young people who have been victims of crime and organisations that work with young people and which support young people who have been victims of crime. Amendment 396 would require the sentencing council to consult relevant agencies and organisations before publishing guidelines.

My motivation in lodging the amendments is that I really want the perspective and experience of young people, who are far more likely to be victims than perpetrators of crime, to be captured. Of course, we know that only a small minority of young people offend. The group most at risk of becoming victims are young men between the ages of 16 and 24. Sometimes, the same people can be both victims and perpetrators, and there are clear links between victimisation and offending.

On amendment 396, it is important that before guidelines are published

the Scottish sentencing council consults key stakeholders who have experience in working with young people both as victims and as offenders. That will promote consistency and relevance in any guidelines that are published.

Section 6(1)(b)(iii) refers to

"such other persons as the Council considers appropriate."

Does that include bodies? I am not sure what the technical definition of "persons" is.

The Convener: I am sure that the minister will address that issue when he gets the opportunity.

Stewart Maxwell: I will speak first to Angela Constance's amendments. I have some sympathy with the arguments that she makes about the impact of much of this on young people, but I share other members' concerns that picking out one particular group can sometimes have unintended consequences. I am not sure that the amendments are a good way to achieve what she is trying to achieve. It may well be that other methods could be brought into play that would achieve the aims that underlie the amendments without putting those provisions in the bill, because I am not sure that that is the best place for them.

I am concerned about Bill Butler's amendment 21, given that, as he said, there are a number of occasions on which no such committee of the Parliament exists, although I know that the amendment tries to deal with that. However, I have a larger concern. Often in this committee we say that we are concerned about possible or perceived political interference with the judicial system. By making the Justice Committee a formal consultee on the guidelines we might be slightly overstepping the mark. I ask him to consider that point. There is an issue about politicians, whether

on this committee or on any other committee, being formal consultees in relation to sentencing guidelines. I am not sure that I can support amendment 21 on that basis.

I think that Robert Brown's amendment 64 is unnecessary. As I said last week, I think that we are getting to the point of overkill in relation to the legal profession's input into the guidelines. The issue is already covered and I do not think that the amendment is necessary.

James Kelly (Glasgow Rutherglen) (Lab): I oppose Angela Constance's amendment 395. I have no doubt that it is well intentioned, but the bill already gives the option for

"such other persons as the Council considers appropriate"

to be consulted, and that covers it. I agree with Stewart Maxwell's point that if we opened it up and inserted a line on one specific group, we would need to consider the relevance of including others.

The Convener: We have heard some interesting arguments from the three members who lodged the amendments. All the arguments have a degree of validity and they were expressed in fairly cogent and logical terms. I think that we all accept the intent of Robert Brown's amendment 64, but I am not persuaded that the matter is not already picked up in the bill.

Bill Butler's amendment 21 seeks to extend the consultation by widening the input process. I will listen to the minister's comments on that. I am not certain that it would be appropriate for a parliamentary committee to have input, bearing in mind that such committees are made up of politicians, as Stewart Maxwell correctly said. I have doubts about amendment 21, but I will listen to further arguments before making a determination.

Angela Constance makes the obvious point that young people are frequently the victims of crime as well as the perpetrators. Her case is arguable, but I am just a little bit dubious about the advisability of selecting one particular group out of the wider range of persons who might be consulted. She raises an interesting point, but I am not persuaded by it.

Kenny MacAskill: Amendment 64 adds the Lord Justice General to the list of those who must be consulted on sentencing guidelines. There is nothing in the bill to prevent the Lord Justice General from being consulted on sentencing guidelines, and given that draft guidelines will be presented to the High Court for approval I see no need for the proposed provision.

Amendment 21 adds the Justice Committee to the required list of consultees on sentencing guidelines. As drafted, the bill allows the council to consult any committee of the Parliament if it considers it appropriate to do so.

Amendment 395 would require the sentencing council to consult young people who have been the victims of crime and bodies that work with them. Section 6 already requires consultation with the Scottish ministers, the Lord Advocate and

"such other persons as the Council considers appropriate"

on draft guidelines. We can rely on the council's good sense in deciding who it is appropriate to consult. For some types of offence, consultation with young victims will be essential, but for others a statutory requirement to consult them would be of no value. The bill already requires one of the lay members of the council to be a person who appears to the Scottish ministers to have knowledge of the issues that are faced by the victims of crime, so the interests of victims of crime in general will not be forgotten.

Amendment 396 would amend section 6(1)(b)(iii) to require the sentencing council to consult such "persons and bodies" as it considers appropriate on draft guidelines. The amendment is unnecessary. The general rules for the interpretation of acts of the Scottish Parliament already provide that a reference to a person includes a body of persons, whether corporate or unincorporated, so the requirement on the sentencing council to consult "persons" already includes bodies.

Robert Brown: As the convener said, we have had an interesting debate. The issues are perhaps not world shattering, but they are nevertheless interesting and relevant to the operation of the sentencing council.

I am not persuaded by the opposition to amendment 64. It seems to me that I am suggesting a slightly different thing. I appreciate that the High Court gets involved at the stage of the draft guidelines. My point is that there is some advantage in its being more in with the bricks at an earlier stage. Against that background, I will press amendment 64.

On amendment 21, mention has been made of possible political interference from the Justice Committee. One takes the point, but if that is the case I cannot see why the Scottish ministers should be mentioned. Surely the Scottish ministers stand in a similar position to that of the committee. If there is objection to consulting the Justice Committee, the same objection should apply to the Scottish ministers. Bill Butler's suggestion in amendment 21 is reasonable. I am minded to suggest that the committee supports it.

I have a lot of sympathy for Angela Constance's amendment 395. However, as I have said, it is the wrong way in which to do things. After the

meeting, the cabinet secretary might give some thought to the ways in which the viewpoint of young people can be more adequately taken on board. I am interested in what he said about there being someone on the sentencing council to represent the views of victims in general, but that is not quite the same as Angela Constance's proposal. He may want to look again to see whether the perspective of young people can be brought to bear on the workings of the sentencing council either through its procedures or in the way in which things are done.

I press amendment 64.

The Convener: The question is, that amendment 64 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Aitken, Bill (Glasgow) (Con)
Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

I exercise my casting vote against amendment 64. The matter is adequately dealt with in the bill.

Amendment 64 disagreed to.

Amendment 21 moved—[Bill Butler].

The Convener: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Aitken, Bill (Glasgow) (Con)
Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

I exercise my casting vote against amendment 21. As I stated earlier, the amendment would introduce political involvement into the process, which we do not wish to have.

Amendment 21 disagreed to.

The Convener: I call amendment 395, in the name of Angela Constance.

Angela Constance: I highlighted young people in my amendment 395 because of the disproportionate focus on them for right and wrong reasons, but given committee members' comments I will not move it. Similarly, given the cabinet secretary's comments, I will not move amendment 396.

Amendments 395 and 396 not moved.

Amendments 65 and 66 moved—[Kenny MacAskill]—and agreed to.

Amendment 22 not moved.

Amendment 67 moved—[Kenny MacAskill]—and agreed to.

Section 6, as amended, agreed to.

After section 6

Amendment 68 moved—[Kenny MacAskill]—and agreed to.

Section 7—Effect of sentencing guidelines

10:45

The Convener: Amendment 69, in the name of the minister, is in a group on its own.

Kenny MacAskill: Amendment 69 clarifies that when the court departs from a guideline it must state why, even if its reasons are based on another guideline.

I move amendment 69.

Amendment 69 agreed to.

Section 7, as amended, agreed to.

Section 8—Ministers' power to request that guidelines be published or reviewed

The Convener: Amendment 397, in the name of Angela Constance, is the only amendment in the group.

Angela Constance: The purpose of amendment 397 is to require the Scottish ministers to consult relevant persons and bodies before a request goes to the Scottish sentencing council to publish or review guidelines. I am interested to know whether the Scottish Government anticipates that it will, in practice, consult relevant key stakeholders on the need to publish or review specific sentencing guidelines. I imagine that there will be dialogue between the

Government and civil servants and various interest groups about what representations need to be made for particular requests to the Scottish sentencing council. I hope that that dialogue will be a two-way process.

I move amendment 397.

Kenny MacAskill: Amendment 397 would require the Scottish ministers to consult such relevant persons and bodies as they consider appropriate before requesting the sentencing council to consider or review sentencing guidelines. Given that the guidelines themselves will have to be consulted on, adding on a further mandatory consultation at the beginning of the process does not seem justified. There may be cases where stakeholders make a case to the Scottish ministers about the need for a guideline, and that might be part of the reason for ministers inviting the council to do a particular bit of work. Section 12 also requires the council to consult widely in preparing its business plan. That provides another opportunity for stakeholders to suggest areas that the council should examine, not just in relation to sentencing guidelines but in relation to how it uses its other powers in section 11 to conduct research, disseminate information or provide advice and guidance about sentencing. We resist amendment 397.

The Convener: I ask Angela Constance whether she wishes to press or withdraw amendment 397.

Angela Constance: I will withdraw amendment 397.

Amendment 397, by agreement, withdrawn.

The Convener: Amendment 70, in the name of the minister, was debated with amendment 51. I point out that if amendment 70 is agreed to, amendment 23 will be pre-empted.

Amendment 70 moved—[Kenny MacAskill]—and agreed to.

Section 8, as amended, agreed to.

Section 9—High Court's power to request review of guidelines

Amendment 71 moved—[Kenny MacAskill]—and agreed to.

Section 9, as amended, agreed to.

After section 9

Amendment 72 moved—[Kenny MacAskill]—and agreed to.

Section 10 agreed to.

Section 11—The Council's power to provide information, advice etc

The Convener: Amendment 73, in the name of Robert Brown, is in a group on its own.

Robert Brown: Amendment 73 deals with an important issue. It seems to me entirely appropriate for the sentencing council to be asked by Government to look at particular issues as part of its remit, but it is something else altogether for the council to be required or to be requested to give advice to the Scottish Government, far less an MSP, on sentencing matters as opposed to preparing draft sentencing guidelines for the High Court. The Government has an array of lawyers—some are in the room today—and civil servants to advise it. The Government is not responsible for sentencing; that is a matter for the courts. It is certainly true that there are issues to do with the availability, resourcing or effectiveness of community sentences and prison sentences, for example, and no doubt the council might publish material on them, but it is not obvious to me that the council has a role as a Government or parliamentary adviser. That is a confusion of its role and, indeed, its independence.

I move amendment 73.

Nigel Don (North East Scotland) (SNP): I think that sections 11(2) and 11(3) are in the bill to establish that it is lawful for the sentencing council to provide advice. They simply mean that if somebody chooses to ask for advice, the council is not required to say that it does not have the statutory power to provide it. On that basis, those provisions seem perfectly reasonable. I am interested to hear what the minister has to say.

Kenny MacAskill: Section 11 gives the sentencing council the power to provide advice or submit proposals on sentencing matters to the Scottish ministers or any member of the Scottish Parliament. I see no reason to remove that power from the sentencing council and therefore cannot support amendment 73. The council's role is more than to frame sentencing guidelines: it should become a valuable source of knowledge and expertise—the natural place where ministers and parliamentarians turn for advice.

Robert Brown: I do not accept the minister's view of the matter. Section 5, which concerns sentencing guidelines, clearly states:

"The function of the Council is to prepare and publish guidelines relating to the sentencing of offenders."

That is its function, not to provide advice to ministers or MSPs. The minister's reply left a little bit to be desired on the reasoning for sections 11(2) and 11(3). It is an important constitutional point, so I press amendment 73.

The Convener: The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 73 agreed to.

Section 11, as amended, agreed to.

Section 12—Business plan

The Convener: The next group concerns consultation on the Scottish sentencing council's business plan. Amendment 74, in the name of Robert Brown, is the only amendment in the group.

Robert Brown: In light of the earlier decision on the Lord Justice General's involvement in matters, I will not pursue the amendment.

Amendment 74 not moved.

Section 12 agreed to.

Section 13—Annual report

Amendments 75 and 76 moved—[Kenny MacAskill]—and agreed to.

Section 13, as amended, agreed to.

Section 14—Community payback orders

The Convener: The next group is on community payback orders—and requirements under CPOs—to be imposed on offenders. Amendment 199, in the name of the minister, is grouped with amendments 202, 205, 208, 209, 212, 215, 217, 221, 225, 226, 228 to 232, 257, 260, 277, 280, 291, 295, 299 to 302, 304, 305, 307, 308, 312, 313, 336 and 338 to 341.

Kenny MacAskill: Amendments 199, 202, 212, 217, 221, 225, 226, 228, 232, 257, 260, 277, 280, 295, 307, 312, 336, 338 and 339 are minor technical and drafting amendments to ensure consistent use of language. References to the court imposing a community payback order "in respect of" an offender are changed to the court imposing a community payback order "on" the offender. The amendments are designed to remove inconsistencies in the language and terminology in the bill.

Amendment 205 is a minor technical amendment and seeks to make clear that a justice of the peace court may impose only certain of the requirements in a community payback order and not the entire range of options that are available to the sheriff courts.

Amendments 229 to 231 are minor drafting amendments that seek to remove unnecessary words from the bill.

Amendments 208, 209, 215, 291, 299, 300 to 302, 304, 305, 308, 313 and 341 are minor and technical amendments concerning the consistent use of language. References to "made", "making" or "make" in relation to a community payback order are changed to "imposed", "imposing" or "impose." Reference to "in" a community payback order is changed to "by" a community payback order. Amendment 308 deletes "is in force" at section 14, page 24, line 3 and substitutes "has been imposed". Amendment 341 deletes "the order imposing", which is superfluous. The amendments are designed to remove inconsistencies in language and terminology.

Amendment 340 is a minor and technical amendment that relates to the definition of "locality". It will ensure that when a community payback order is imposed in the sheriff or justice of the peace court, the appropriate court is determined by reference to the locality in which the offender resides.

I move amendment 199.

The Convener: The matter seems remarkably simple.

Amendment 199 agreed to.

The Convener: The next group is on the purpose of community payback orders. Amendment 77, in the name of Robert Brown, is the only amendment in the group.

Robert Brown: The intention behind amendment 77 is to state reasonably clearly what a community payback order is for. As members know, I am concerned about whether the order's name really describes its rehabilitative aspects. For transparency and public understanding, it is important that the names of criminal sanctions resonate with people.

I was not convinced about saying that an offender pays back to the community by sorting his drugs problem or whatever—that is not a straightforward use of the English language—but I could not think of a better name for the order. I therefore thought that describing the order's purpose would be useful, and the phraseology that the clerks have used at my request succeeds in that. I hope that the amendment will appeal to the committee as a sensible and helpful definition of community payback order.

I move amendment 77.

Kenny MacAskill: Amendment 77 seeks to define the purpose of community payback orders. It identifies their dual purpose as providing payback to the community and support to the offender in addressing the underlying causes of his or her offending.

We understand and support the intention behind the amendment, but we have two reservations about its drafting. The first reservation is technical: the amendment does not make it clear that the court must have regard to the stated purpose when imposing a community payback order.

The second reservation is more substantial. In our response to the committee's stage 1 report, we underlined to the committee the fact that the name "community payback order" is based on the wider definition of payback that is assumed in the Scottish Prisons Commission's report. That underlines that offenders paying back to those whom they harmed should be at the heart of the justice system and that a range of ways of paying back exists, including paying back by working at change.

Separating payback from rehabilitation, as the amendment would do, might blur the fact that ceasing to offend is an important aspect of payback and that addressing the causes of offending is in itself an important contribution to payback.

We therefore resist amendment 77 and invite the member to withdraw it.

Robert Brown: I thank the minister for his comments and I understand what he says. I am not sure whether the objection that the amendment does not expressly require the court to have regard to the purpose has as much substance as it appears to have at first glance. If the amendment were agreed to, it would be part of the law. I did not intend to affect in a detailed way how the court deals with such issues, but it cannot be said that the provision would have no meaning—that is a different matter.

I take the point about the community payback order's line of descent, as it were, from the Scottish Prisons Commission, but we are still left with a lack of transparency about what the order is. Against that background, I am minded to press amendment 77, although I am not averse to re-examining the situation if technical improvements can be made.

The Convener: The question is, that amendment 77 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Aitken, Bill (Glasgow) (Con)
Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

The casting vote goes against the amendment. I will give the reasons for that. Robert Brown has throughout the process consistently expressed his concerns about the purpose of community payback orders and he was of course entitled to move amendment 77. However, I am not persuaded by it. The technical arguments against the amendment are sound. It might not be Mr Brown's last word on the subject. For the moment, I adhere to the original intent of the bill.

Amendment 77 disagreed to.

The Convener: The next group is on title of "supervision requirement". Amendment 78, in the name of Robert Brown, is grouped with amendments 79 to 97. I draw members' attention to the pre-emption information on the groupings list.

11:00

Robert Brown: Amendment 78 and the other amendments in the group—quite a lot of them are needed to produce the desired effect—are designed to replace the phrase "supervision requirement" with the phrase "offender supervision requirement".

There are two reasons for that. The first, and most obvious, is that the phrase "supervision requirement" is associated more with the children's hearings system and therefore causes a degree of confusion that could be avoided. The second reason, which I believe has some validity, is that a supervision requirement does not really sound as if it is an order of the court, of a penal nature, on a person who has committed a crime. On a point of transparency, it is desirable that the phrase has some meaning to the public.

I therefore suggest that the phrase "offender supervision requirement" is an improvement. I do not pretend that it provides finality, but it makes clearer what the order is all about, and that there lies behind it a penal requirement in an order that has been imposed by a court.

I move amendment 78.

Stewart Maxwell: We have before us a choice between two options. Robert Brown's amendments and the Government's proposals in the Children's Hearings (Scotland) Bill both seek to address the issue, which we queried at stage 1, of the nature of that particular phrase. On the face of it, I am happy with the Government's proposals, although I entirely understand Robert Brown's intention.

The Convener: I do not think that there is any great divide on the matter, although Robert Brown's amendments have—at this stage, at least—a slight edge in terms of clarity on the Government's proposals. Perhaps the minister can persuade me otherwise.

Kenny MacAskill: Amendments 78 to 97 are technical amendments that seek to change the term "supervision requirement" to "offender supervision requirement". As Stewart Maxwell said, the issue was recorded in the Justice Committee's stage 1 report, following the Scottish Children's Reporter Administration's written evidence to the committee.

That evidence sought to highlight what the SCRA saw as the potential for confusion arising as a result of the existing supervision requirement, which can be imposed under section 70 of the Children (Scotland) Act 1995, given the possibility that both types of supervision might apply to a child or young person.

The Scottish Government's response to the committee's stage 1 report explained the proposals that were contained in the draft Children's Hearings (Scotland) Bill, published on 26 June 2009, to change the term "supervision requirement" in that context to "compulsory supervision order". In the Children's Hearings (Scotland) Bill, which was introduced to Parliament on 23 February 2010, the terminology remains as "compulsory supervision order". If that bill is enacted without change in that regard, any potential confusion with regard to the terminology should be eliminated. We will not therefore support amendments 78 to 97.

Robert Brown: I accept that it is not the most major of issues, but the term "supervision requirement" has been so much—and for so long—associated with the children's hearings system that proposals to change the terminology for that system will not do the trick.

As the convener rightly said, the issue is relatively marginal, but my amendment 78 provides clarity. Notwithstanding the minister's comments, I hope that the committee will support it. I press the amendment.

The Convener: The question is, that amendment 78 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 78 agreed to.

The Convener: The next group is on compensation requirements. Amendment 200, in the name of the minister, is grouped with amendments 206, 235, 239, 286, 290 and 327. I draw members' attention to the pre-emption information on the groupings list.

Kenny MacAskill: In imposing a community payback order, the court may impose a supervision requirement. A supervision requirement can include a requirement to pay compensation. Amendments 200, 206, 235 and 239 seek to amend the bill to create a separate compensation requirement, although it should be noted that if a compensation requirement is imposed in a community payback order, the court must also impose a supervision requirement.

The offender must complete payment of the compensation within 18 months of the imposition of the compensation requirement or two months before the end of the relevant supervision requirement, whichever is the earlier.

Amendment 239 provides that some of the provisions in the Criminal Procedure (Scotland) Act 1995 that relate to compensation orders also apply to compensation requirements. That will mean that, for example, the types of loss for which compensation may be ordered and the arrangements for payment of compensation will apply to compensation requirements in the same way as they apply to a compensation order.

Amendments 286 and 327 are consequential on the amendments that provide for a separate compensation requirement. Amendment 290 provides that a variation to a CPO cannot increase the amount of compensation that could have been awarded at the time the requirement was imposed.

I move amendment 200.

Robert Brown: Broadly speaking, I support the minister's amendments, but will he comment on the implications of the decision on amendment 78

and how he wants to take matters forward in light of it? There are some pre-emption issues. I am happy to agree to the amendments on the understanding that we will tidy up the bill at stage 3 in light of the consequences of amendment 78.

The Convener: The amendments will of course be dealt with in due course.

Robert Brown: Yes. I just wanted some guidance on how we might juggle all the technical matters.

Kenny MacAskill: We do not anticipate any difficulties. We are talking about minor technical matters.

The Convener: The issue is straightforward. Is there any need to wind up, Mr MacAskill?

Kenny MacAskill: No.

Amendment 200 agreed to.

The Convener: The next group is on conduct requirements. Amendment 201, in the name of the minister, is grouped with amendments 204, 207, 236 and 275. Again, members should note the pre-emption information in the groupings document.

Kenny MacAskill: Amendments 201, 204, 207, 236 and 275 provide for a court at any level that is imposing a community payback order to include within that order a conduct requirement. In a conduct requirement, the court may require that the offender must do or refrain from doing specified things in a way that is conducive to achieving the outcome of promoting good behaviour or preventing further offending. The provision is similar to the power of the court in relation to probation orders in section 229 of the Criminal Procedure (Scotland) Act 1995.

The changes will give the courts more flexibility than is provided under the community payback order provisions. At present, the law allows the court to impose similar requirements as part of a probation order. More than 1,000 instances of such general conditions were imposed by courts in 2007-08. They included such restrictions as requiring an offender not to go into the centre of town and not to live in a house with anyone under the age of 17.

The amendments provide that the conduct requirement must be accompanied by the imposition of a supervision requirement. Further, they provide that what is required under a conduct requirement must not include or be inconsistent with anything that could be required under one of the other community payback order requirements.

I move amendment 201.

The Convener: There is merit in the amendments. Indeed, had the Government not come up with them, I would have been tempted to do so myself, as they plug a loophole. The courts have historically applied probation orders with conditions, and it is an obvious and useful corollary to do so with community payback orders.

Amendment 201 agreed to.

Amendment 202 moved—[Kenny MacAskill]—and agreed to.

The Convener: The next group is on supervision requirements. Amendment 203, in the name of the minister, is grouped with amendments 234, 237 and 238. Again, I draw members' attention to the pre-emption information.

Kenny MacAskill: Amendment 203 adds a supervision requirement to the list of requirements that the court may impose when it imposes a CPO on an offender who is convicted of a non-imprisonable offence. The amendment provides that the supervision requirement may be imposed on its own or with other requirements.

When a court imposes a CPO under proposed new section 227G(2)(a) on an offender who is under 18 years of age, it must also impose a supervision requirement if the court is satisfied as to the services that the local authority will provide for the offender's support and rehabilitation. Amendment 234 amends that to provide that, when the offender is under 18 at the time the court order is imposed, a supervision requirement must be imposed. As a supervision requirement will be obligatory, local authorities will have to ensure that suitable provision for supervision of young offenders who are sentenced to a CPO exists in their locality.

Amendment 237 limits the length of time for which the supervision requirement must be imposed on offenders aged 16 and 17 whose order includes only a supervision requirement and a level 1 unpaid work or other activity requirement. Amendment 238 clarifies the meaning of the word "specified" in relation to a supervision requirement.

I move amendment 203.

Amendment 203 agreed to.

The Convener: If amendment 204 is agreed to, I will be unable to call amendment 79 due to pre-emption.

Amendments 204 and 205 moved—[Kenny MacAskill]—and agreed to.

Amendment 80 moved—[Robert Brown].

The Convener: The question is, that amendment 80 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the amendment is: For 5, Against 3, Abstentions 0.

Amendment 80 agreed to.

Amendments 206 to 209 moved—[Kenny MacAskill]—and agreed to.

The Convener: The next group is on community payback orders—definitions. Amendment 210, in the name of the minister, is grouped with amendment 211.

Kenny MacAskill: Amendments 210 and 211 are minor technical amendments to proposed new section 227A of the 1995 act. Amendment 210 clarifies that the meanings of "court" and "imprisonment" are the same throughout section 14. Amendment 211 deletes an unnecessary reference to the definition of a level 1 unpaid work or other activity requirement from proposed new section 227A of the 1995 act as the definition will be inserted elsewhere in that act as a consequence of amendment 343.

I move amendment 210.

Amendment 210 agreed to.

Amendments 211 and 212 moved—[Kenny MacAskill]—and agreed to.

The Convener: The next group is on community payback orders—local authority responsible officer and reports on offenders. Amendment 213, in the name of the minister, is grouped with amendments 214, 218 to 220, 222 to 224, 267, 296 and 337.

Kenny MacAskill: Amendment 213 relates to the requirement on the court to take account of a report from an officer of the local authority on the offender's circumstances and makes it clear that the form and content of such a report may be specified by an act of adjournal but that that need not be so.

Amendment 214 disapplies the requirement on the court to obtain and take account of a report by an officer of a local authority where the court is considering imposing a community payback order that imposes only a level 1 unpaid work or other activity requirement or which is imposed in respect of fine default. The amendment aims to reduce the burden on social work departments by limiting the types of cases in which reports must be provided. It does that by providing that, in those circumstances, the court is not required to take account of a report.

Amendment 219 merges the provisions that relate to "offender's duties" in proposed new section 227D of the 1995 act with those on the "responsible officer" in proposed new section 227C of that act so that all the duties must be imposed by the court when it imposes the community payback order.

11:15

Amendment 220 provides that, in addition to taking steps to vary or discharge an order, the responsible officer is responsible for taking steps to revoke an order. Amendment 224 deletes the provisions of proposed new section 227D, which amendment 219 includes in proposed new section 227C.

To support the goal that community payback orders should start as soon as possible, we seek to amend from five to two days the time within which the local authority must nominate one of its officers to be the responsible officer for the order. The two-day period starts when the local authority receives a copy of the order; the responsible officer oversees the order and deals with its compliance. That change is achieved by amendments 218 and 222. Amendment 223 makes it clear that Saturdays, Sundays and other public or local holidays do not count towards the period of two days.

Amendment 296 relates to the requirement on the court to take account of a report from an officer of the local authority about the offender's circumstances and makes it clear that the form and content of such a report may be, but need not be, specified by an act of adjournal.

Amendment 267 allows rules made under proposed new section 227O to cover the issues that it refers to. Amendment 337 requires the court to forward to the responsible officer a copy of any restricted movement requirement varied under proposed new section 227ZF.

I move amendment 213.

Amendment 213 agreed to.

Amendments 214 and 215 moved—[Kenny MacAskill]—and agreed to.

The Convener: The next group is on community payback orders—special provision for level 1 unpaid work or other activity requirements. Amendment 216, in the name of the minister, is grouped with amendments 243, 254, 259 and 297.

Kenny MacAskill: Amendment 216 clarifies that the offender's willingness to comply with an

order is not needed when the court is imposing a community payback order that is imposed in relation to fine default. In line with current legislation, it will be mandatory for the court to impose a community payback order in relation to fine default.

Amendment 243 identifies instances in which a court need not take account of a report from an officer of the local authority before deciding to impose a community payback order. The instances are when the order consists of only a level 1 unpaid work or other activity requirement and when the court has no option but to impose the order because the offender has defaulted on a fine.

Amendment 254 provides that, when the court imposes a community payback order on a person aged 16 or 17 for fine default, it must also impose a supervision requirement. Amendment 259 is a minor technical amendment to take account of amendments to proposed new section 227B(6).

Amendment 297 provides that there is no requirement on the court to obtain and take account of a report by an officer of a local authority when it is considering whether to vary a community payback order when the order imposed only a level 1 unpaid work or other activity requirement or was imposed in respect of fine default.

I move amendment 216.

Amendment 216 agreed to.

The Convener: Does any member object to a single question being put on amendments 217 to 226 inclusive?

Members: No.

The Convener: Why does that not surprise me?

Amendments 217 to 226 moved—[Kenny MacAskill]—and agreed to.

The Convener: The next group is on community payback orders—alternative disposals available to court. Amendment 227, in the name of the minister, is the only amendment in the group.

Kenny MacAskill: Amendment 227 widens proposed new section 227E(3) to provide that the imposition of a community payback order does not prevent the court from imposing any other additional penalties, other than imprisonment, that may be available to it.

I move amendment 227.

Amendment 227 agreed to.

Amendments 228 to 232 moved—[Kenny MacAskill]—and agreed to.

The Convener: The next group is on community payback orders—payment of offenders' expenses. Amendment 233, in the name of the minister, is grouped with amendment 265.

Kenny MacAskill: Amendments 233 and 265 are technical amendments. Proposed new section 227O(2)(c) that section 14 will insert into the 1995 act provides that rules under proposed new section 227O(1) of the 1995 act may make provision for the payment of travelling and other expenses in connection with the undertaking of unpaid work or other activity. Amendment 265 removes that provision and amendment 233 enables provision to be made in an order made by the Scottish ministers for the payment to offenders of travelling or other expenses in connection with the undertaking of any of the requirements of a community payback order.

The current position is that offenders receive travelling expenses that are incurred in complying with probation orders and community service orders. Amendment 233 will ensure that similar arrangements may be made for the requirements of a CPO. Such rules will be subject to negative resolution.

I move amendment 233.

James Kelly: I have some general concerns about the financial back-up on the bill. As I stated during the stage 1 debate, the figures in the financial memorandum on the numbers of people who would go on to community payback orders are not robust enough. The finance that is required to back up the policy has been estimated at between £6 million and £11 million, but I believe that it is closer to the £20 million mark.

There are genuine concerns about the financing of the bill. I note what amendment 233 seeks to achieve but there is a financial commitment associated with it, so I have some concerns and will therefore abstain.

Angela Constance: My understanding is that amendment 233 takes the opportunity of the bill to put into legislation what already happens in practice whereby, if a supervising officer is working with an offender who is on a very limited income, they provide the offender's bus fares or other travel expenses via the criminal justice social work service to get the offender to their community service. Although that might be anathema to some people, it is what happens in practice already. From recollection of my former experience, supervising officers did not provide such expenses routinely; it was done on a case-by-case basis and the merits of the situation were taken into account.

Some vulnerable individuals—albeit that they are offenders—are on very limited incomes and we need to do what we can to enable such people

to comply with their orders. My recollection, albeit that I am talking about some years ago, is that expenses were not provided routinely; it was done on a case-by-case basis. Therefore, with respect, I think that Mr Kelly is overstating his case.

The Convener: I certainly would not think it appropriate for an offender who was ordered to attend a drugs detoxification centre some distance from his home, which might involve considerable expense in getting to and from the centre, to be denied the opportunity of getting the appropriate finance. At the same time, I would be a little bit concerned if expenses of a fairly nominal nature were paid for someone to attend a community project to which he had been ordered to go to carry out community service.

As ever, I value Angela Constance's input on the basis of her previous career, which indicates that, as we stand, decisions in this respect are taken on a case-by-case basis. At this stage, that persuades me that there is some merit in amendment 233. However, I await total reassurance from the cabinet secretary in that respect.

Kenny MacAskill: We seek to regulate and formalise a procedure that already happens and which was introduced as long ago as the 1995 act. As Angela Constance says, it does not happen in every instance but is a matter of supervision. That is where we are coming from. James Kelly and I have disagreed on the matters that he raises throughout the progress of the bill and, doubtless, we will continue to do so. I press amendment 233.

The Convener: The question is, that amendment 233 be agreed to. Are we agreed?

Members: No.

For

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

Abstentions

Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

The Convener: The result of the division is: For 5, Against 0, Abstentions 3.

Amendment 233 agreed to.

The Convener: I suspend the meeting for five minutes.

11:25

Meeting suspended.

11:31

On resuming—

Amendment 81 moved—[Robert Brown].

The Convener: The question is, that amendment 81 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 81 agreed to.

Amendment 82 moved—[Robert Brown].

The Convener: The question is, that amendment 82 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 82 agreed to.

Amendments 234 and 235 moved—[Kenny MacAskill]—and agreed to.

The Convener: If amendment 236 is agreed to, amendment 83 will be pre-empted.

Amendments 236 and 237 moved—[Kenny MacAskill]—and agreed to.

The Convener: If amendment 238 is agreed to, amendment 84 will be pre-empted.

Amendment 238 moved—[Kenny MacAskill]—and agreed to.

The Convener: If amendment 239 is agreed to, amendments 85 to 87 will be pre-empted.

Amendment 239 moved—[Kenny MacAskill]—and agreed to.

The Convener: The next group is on community payback orders and the unpaid work or other activity requirement. Amendment 240, in the name of the minister, is grouped with amendments 241, 398, 242, 244 to 251, 255, 256, 261 to 264, 266, 285, 288 and 289.

Kenny MacAskill: The purpose of amendments 240, 241, 245, 249, 256 and 266 is to make it clear that, under

"an unpaid work or other activity requirement,"

unpaid work—which is the clearest form of payback by the offender to the community—must be undertaken, but that the "other activity" is at the discretion of the responsible officer.

The responsible officer has some flexibility to decide on activities that may be important for the offender to undertake, such as work on literacy or employability. That does not mean that the court itself cannot impose such activities on the offender, through one of the other requirements that are available under the community payback order. However, it provides a flexibility in the order, which can often be valuable in light of information about the offender and his or her circumstances that becomes available to the responsible officer after the court has imposed its sentence.

Amendments 242 and 247 respond to observations by the Subordinate Legislation Committee and limit the Scottish ministers in terms of the powers that are set out in the proposed new sections 227I(6) and 227K(3) to make regulations that vary the maximum and minimum hours for which unpaid work or other activities can be required.

Amendments 244, 246, 248 and 255 are minor technical amendments that remove the word "total" from references to an unpaid work or other activity requirement. That is to avoid implying, incorrectly, that the figure is the result of adding different components.

Amendments 250 and 251 make it clear that three months is the normal period for completion of a level 1 unpaid work or other activity requirement, that six months is the normal period for completion of a level 2 requirement and that any extension of those periods must be the decision of the court.

Amendments 261 and 264 amend the proposed new section 227N of the 1995 act, which applies where an offender is subject to more than one unpaid work or other activity requirement. The purpose of amendment 261 is to clarify that there may be only one unpaid work and other activity requirement included in a community payback order.

Amendment 264 provides that when considering the number of hours that might be specified in an unpaid work or other activity requirement where another such requirement is still in place, the court should take account of only the net hours that are still to be undertaken by the offender in respect of the earlier orders, not the total hours that were originally imposed.

Where the hours that are specified under any existing unpaid work or other activity requirement are concurrent with another such requirement, hours that count towards both requirements are only counted once in determining the net balance of hours that are still to be undertaken.

Amendments 262 and 263 are minor technical amendments to the proposed new sections 227N(3) and (4) that clarify phrasing on the directions of the court in relation to section 227N(2).

Amendments 285 and 288 are minor drafting amendments that resolve inconsistencies in the language and terminology that is used. Amendment 289 provides that where a CPO is varied, the hours that are specified in an unpaid work or other activity requirement cannot be increased beyond the "appropriate maximum".

Proposed new section 227I provides that the nature of the unpaid work or other activity that is to be undertaken by the offender is for the responsible officer to determine. Amendment 398 lays on the responsible officer the duty of ensuring that any unpaid work and any other activity that is undertaken by an offender will bring significant benefits to the area in which it is undertaken. It will be no surprise to the committee that we agree that unpaid work can bring huge benefits to communities. However, we have made it clear in our response to the committee's stage 1 report and elsewhere that our definition of "payback" to communities is wider than unpaid work. It would include, for example, tackling a long-standing alcohol problem that fuelled offending behaviour. We therefore have no difficulty with the principle that unpaid work and other activities should benefit both the offender and the wider community However, there are some technical problems with the way in which the amendment is drafted. The test that it sets refers to

"significant benefits in the area in which the work or activity is undertaken".

A responsible officer might conclude, for example, that an offender should undergo a course of alcohol counselling or engage with a local provider

of literacy services. That would not necessarily bring immediate benefit to the area in which the drug counselling or literacy project is located, even if in the longer term it would benefit the community more widely if the offender beat their addiction or acquired new literacy skills that enabled them to enter the labour market. In many cases it would be difficult to demonstrate immediate local benefit to the geographic area in which the activity was carried out. We have therefore concluded that amendment 398 as drafted would place unnecessary restrictions on the responsible officer, and we are unable to support it.

I move amendment 240.

Angela Constance: Amendment 398 is designed to provide that the responsible officer, in determining the nature of unpaid work or other activity to be undertaken, ensures that it brings considerable benefits to the area or community.

Community payback orders provide the opportunity for offenders not just to address their own issues but to bring significant benefits to the community. The work that an offender undertakes while on a community payback order should be meaningful and not just work for the sake of it, and there should be a direct benefit to the community. I accept that unpaid work is not the only way in which an offender can pay back and that their addressing the underlying causes of their offending in the longer term will also be a meaningful payback to the community.

The debate about the amendment has a lot of parallels with that on Robert Brown's amendment 77. That amendment ultimately failed, and I suspect that amendment 398 may go the same way.

The Convener: The principal issue in this group is amendment 398; the amendments proposed by Mr MacAskill are fairly cogent.

There is considerable merit in amendment 398. It would be greatly beneficial, both to offenders and to our hard-pressed communities, if there were visible and tangible signs of community payback within a community. However, the amendment fails on its practicality. There might not be work available in a number of areas and, as such, it could not be done.

That said, as I am sure that the minister would do, I would encourage supervising officers to see whether it is possible for work to be done in the area where the offence is perpetrated. One of the great successes of the community court system in New York, of which members will have heard me speak in the past, is the fact that there is that visibility, which works as an effective deterrent and encourages the people in the community to recognise that the law is on their side.

On the basis of the practicalities, I would have to vote against Miss Constance's well-thought-out and well-argued amendment 398.

Kenny MacAskill: We accept the spirit and ethos of what Angela Constance seeks to achieve, but I agree with you, convener, that it is the practicality that causes difficulty.

Amendment 240 agreed to.

Amendment 241 moved—[Kenny MacAskill]—and agreed to.

Amendment 398 not moved.

Amendments 242 to 251 moved—[Kenny MacAskill]—and agreed to.

The Convener: The next group is on community payback orders and fine defaulters. Amendment 252, in the name of the minister, is grouped with amendments 253, 258 and 292.

Kenny MacAskill: Amendments 252 and 253 are minor technical amendments to proposed new sections 227M(1) and (2) of the 1995 act to replace the phrase "sentence of imprisonment" with "period of imprisonment" as fine defaulters receive only a period of imprisonment and not a sentence of imprisonment.

Amendment 258 will remove the option of the offender paying part of the outstanding fine in order that the court vary a CPO that was imposed for fine default. The amendment is considered necessary to avoid both potential significant practical administrative problems and the likely difficulty in determining how such an order should be varied. However, an offender can still pay the outstanding fine or the instalment of the fine that resulted in the CPO in full in one payment, the effect of which will be to discharge both the fine and the CPO.

Amendment 292 has the effect that the court, when revoking an order imposed for fine default, may deal with the offender in any way that it could have done in respect of the fine default for which the CPO was imposed.

I move amendment 252.

11:45

The Convener: I will resist the temptation to speak on the issue of unpaid fines.

Amendment 252 agreed to.

Amendments 253 to 267 moved—[Kenny MacAskill]—and agreed to.

Amendment 88 moved—[Robert Brown].

Nigel Don: I think that we have passed the stage at which there is any point in opposing

Robert Brown's amendments on this matter. For consistency, we should just accept them.

The Convener: We will record that as agreement. No doubt you can pursue the matter in another place.

Amendment 88 agreed to.

Amendment 89 moved—[Robert Brown].

The Convener: The question is, that amendment 89 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 89 agreed to.

The Convener: The next group is on community payback orders, mental health treatment requirements and chartered psychologists. Amendment 268, in the name of the minister, is grouped with amendments 269 to 273.

Kenny MacAskill: These are minor technical amendments. Paragraph 3 of part 1 of schedule 5 to the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 (SI 2009/1182) amends section 230 of the Criminal Procedure (Scotland) Act 1995, which makes similar provision in relation to probation orders, to replace references to "chartered psychologists" with "registered psychologists". Amendments 268 to 270, 272 and 273 bring proposed new sections 227R and 227T of the 1995 act into line with the amendments that the 2009 order made to section 230 of the 1995 act.

Amendment 271 updates a cross-reference that relates to the definition of "approved medical practitioner". Proposed new section 227S of the 1995 act uses the term "approved medical practitioner". That term is defined in the Mental Health (Care and Treatment) (Scotland) Act 2003 rather than in the Criminal Procedure (Scotland) Act 1995. Where the term is used in proposed new section 227R(4)(a) of the 1995 act, reference is made to its having the meaning that is given in the 2003 act. Amendment 271 inserts a similar reference into proposed new section 227S of the 1995 act.

I move amendment 268.

The Convener: That was a perfectly straightforward, if somewhat convoluted, explanation.

Amendment 268 agreed to.

Amendments 269 and 270 moved—[Kenny MacAskill]—and agreed to.

Amendment 90 moved—[Robert Brown].

The Convener: The question is, that amendment 90 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 90 agreed to.

Amendments 271 to 273 moved—[Kenny MacAskill]—and agreed to.

Amendment 91 moved—[Robert Brown].

The Convener: The question is, that amendment 91 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 91 agreed to.

The Convener: The next group is on community payback orders and drug treatment

requirements. Amendment 274, in the name of the minister, is the only amendment in the group.

Kenny MacAskill: Proposed new section 227U of the 1995 act provides that a court may impose a community payback order with a drug treatment requirement provided that it is satisfied that arrangements have been made for the proposed treatment. Amendment 274 will clarify that the court may also impose a community payback order where it is satisfied that the proposed treatment can be made available.

I move amendment 274.

Amendment 274 agreed to.

Amendment 92 moved—[Robert Brown].

The Convener: The question is, that amendment 92 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 92 agreed to.

Amendment 275 moved—[Kenny MacAskill]—and agreed to.

The Convener: The next group is on the commencement and standards of community payback orders. Amendment 276, in the name of Robert Brown, is the only amendment in the group.

Robert Brown: We are aware that community payback orders, in their own context and in the wider context of later changes in the bill, are pretty important. My amendment 276 is intended to firm up the speedy and effective start of community payback orders that the committee agrees is vital. I pay tribute to the Scottish Government's investment in improving the existing community orders and getting them to start more quickly, but I think that I am right in saying that those arrangements are not statutory. There is a strong case for making them so. Statutory direction is one of the most effective drivers of public policy. Courts, criminal justice authorities and social workers, among others, know that the order is to commence immediately, especially if it says so in statute. My amendment 276 proposes to insert new section 227VB into the 1995 act. In it, I have retained enough flexibility by providing that the order must start on the day on which it is imposed or the next weekday, but have qualified that with the phrase, "wherever possible". As one can imagine, there may be circumstances in which there are issues, but the norm should be very clear.

My amendment also proposes to insert new section 227VC into the 1995 act. That new section would give ministers specific powers to lay down standards for community payback orders to ensure that they are prompt, effective and proportional, and that they make a difference. It is vital to have national standards in that area. While the Government has in the past indicated its views on those matters to community justice authorities and others, it would be useful if ministers had a specific power to develop standards in that regard.

I move amendment 276.

The Convener: This is an important issue, and I look forward to hearing what Mr MacAskill has to say about it.

Kenny MacAskill: The first part of amendment 276 proposes a new section 227VB, which would require that a court imposing a community payback order with a supervision or an unpaid work requirement must specify commencement dates in respect of those requirements. In addition, the dates to be specified for commencement should be either the day on which the community payback order is imposed or as soon after that date as is practicable. Obviously, there has been no opportunity to consult local authorities on the potentially significant practical and resource impacts of such statutory provision. We agree that a speedy start to a CPO is critical, but we should also recognise our commitment to working in partnership with local authorities. We have taken the approach of joint agreement to new timescales, which are included in guidance that took effect in June 2009 and are already making a difference to delivery. We do not think that such provision in the bill would be helpful. That part of amendment 276 should be resisted.

The second part of amendment 276 would insert new section 227VC into the 1995 act, to provide that the Scottish ministers may specify standards of compliance for community payback orders by means of statutory instrument. There are already powers in the bill to make rules in connection with the undertaking of unpaid work, and we are amending the bill to make it clear that the rules may confer functions on responsible officers and specify how they are to exercise their functions under the bill. The provision that amendment 276 seeks to make would be much broader and we have difficulty in seeing how it would work. For

example, it is not clear how one would set out standard provisions that would support an "effective" community payback order—"effective" is not defined.

Some of the provisions in proposed new section 227VC mirror provision that is already in the bill. The bill makes it clear in section 227A(3) that a community payback order can be imposed only if the offence or offences committed were sufficiently serious. That part of amendment 276 should also be resisted and I invite Robert Brown to withdraw the amendment.

Robert Brown: I listened with interest to what the cabinet secretary said. The issue is important, as he said. I have worries—if I can put it that way—about how everything will fit together, and I depend on Government guidance in that regard. However, I am keen that the bill should provide the stronger statutory drive that I talked about. There was general agreement in the committee that it would be good if community payback activity started pretty much in the way that prison sentences do.

Although I understand and appreciate what the Government has done to try to move things forward, I wonder whether the cabinet secretary will give further consideration to the issue, to ascertain whether the approach can be tightened up. I do not want to impose on the Government a formulation that overlaps with other provisions in the bill, as the cabinet secretary pointed out. I would appreciate further discussion or ministerial consideration of the matter prior to stage 3. If such consideration is forthcoming I will seek leave to withdraw amendment 276.

The Convener: I will allow the cabinet secretary to respond to Robert Brown, because we are talking about an important issue.

Kenny MacAskill: Draft standards and guidelines will be published, but I will be more than happy to discuss the matter with Robert Brown or any other member of the committee, if that would help. We must ensure that we work together. We accept the ethos behind what Mr Brown and the committee seek to achieve; we simply seek to work with partners and statutory agencies who are charged with delivery, so that we move together and ensure that there is no replication.

The Convener: It is important that there should be immediacy. However, on the basis of the cabinet secretary's undertaking, I ask Robert Brown what his attitude is to amendment 276.

Robert Brown: In the circumstances, I will seek leave to withdraw amendment 276.

Amendment 276, by agreement, withdrawn.

Amendment 277 moved—[Kenny MacAskill]—and agreed to.

The Convener: The next group is on progress reviews in relation to community payback orders. Amendment 278, in the name of the cabinet secretary, is grouped with amendment 279.

Kenny MacAskill: Amendment 278 will provide that where the court that imposes a community payback order is not the appropriate court to carry out the progress review, it must specify in the order the appropriate court.

In the course of a progress review, if it is alleged that the offender has failed to comply with a requirement that was imposed by the order, amendment 279 will provide that the court must

"(a) provide the offender with written details of the alleged failure,

(b) inform the offender that the offender is entitled to be legally represented,

and

(c) inform the offender that no answer need be given to the allegation before the offender—

(i) has been given an opportunity to take legal advice, or

(ii) has indicated that the offender does not wish to take legal advice."

Amendment 279 will also provide that the court must appoint another hearing, at which it can consider the matter in accordance with the breach provisions in proposed new section 227ZB of the 1995 act. If the court is not the appropriate court, it must refer the matter to the appropriate court.

The provisions make it clear that a separate breach hearing must be held whenever, in the course of a progress review, it appears to the court that a breach of the order has been committed. They spell out more clearly an offender's rights when it appears that there has been a breach of a community payback order.

I move amendment 278.

Amendment 278 agreed to.

Amendments 279 and 280 moved—[Kenny MacAskill]—and agreed to.

12:00

The Convener: We turn to community payback orders—revocation and so on. Amendment 281, in the name of the minister, is grouped with amendments 282 to 284, 287, 293, 294, 298, 303, 306, 309 to 311 and 314 to 326. I draw members' attention to the pre-emption information that is shown on the groupings list.

Kenny MacAskill: Amendments 281 to 284, 293, 294, 298, 303 and 306 relate to the court's powers when varying, revoking or discharging a CPO. Amendments 281, 282, and 293 are minor drafting amendments to resolve inconsistencies in the language and terminology. Amendment 284

will insert two further options that will be available to the court when varying an order: making provision for progress reviews, or varying such provision when it is already included in the order.

Amendment 287 will remove proposed new section 227Y(5) of the Criminal Procedure (Scotland) Act 1995, as it is unnecessary because the same effect will be provided by proposed new section 227Z(7) of that act. Amendment 294 will remove the requirement for the court to issue a citation that requires the offender to appear in cases in which the offender is already required to appear in respect of breach of a CPO. There is separate provision for the court to issue a citation in breach cases. Amendment 298 will clarify the wording in relation to the duty on the court to explain the requirements for a progress review that is included in a CPO following its variation.

Amendment 303 will insert into proposed new section 227Z of the 1995 act two new provisions that relate to the imposition of new requirements following variation. As the bill is drafted, only the requirements that were available to the court when the order was originally imposed can be imposed following a variation of the order. Amendment 303 will provide that that does not apply when a restricted movement requirement is being imposed as a result of a breach of a CPO. Amendment 303 will also provide that the limitation on the maximum number of unpaid work or other activity hours that could have been imposed when the order was first imposed is disregarded when varying an order. However, there will still be limits on the number of hours that can be specified in an unpaid work or other activity requirement, on variation of a CPO.

Amendment 306 will ensure that, when a court has varied a CPO, a copy of the varied order is provided to the relevant local authority as well as to the offender.

Amendment 283 will insert a new subsection into proposed new section 227Y of the 1995 act in respect of the court's powers to vary an order. The amendment will provide that the requirement that the court may vary, discharge or revoke a CPO only if it is in the interests of justice to do so, does not apply when the court is considering varying the order as a consequence of breach of the CPO. The test for varying a CPO on breach is set out in proposed new section 227ZB(5) of the 1995 act.

Amendments 309 to 311 will remove the requirement for an application for a variation to a community payback order to be made before the court can consider varying the order to specify a new local authority, following a change of address by the offender. That will provide the court with more flexibility when varying a community payback order.

Amendment 314 will ensure that the court provides the offender with a copy of any alleged breach and notifies him or her of their rights to legal representation.

Amendments 315, 316 and 326 will amend the provisions relating to the power of the court to impose custody when revoking a CPO as a consequence of a breach. In cases in which a CPO is imposed for an offence that is not punishable by imprisonment, or for one that is imposed for fine default, the court may impose custody for up to 60 days in the case of the justice of the peace court and three months in any other court.

Amendment 317 will allow the court, when dealing with breach, to revoke any single requirement that has been imposed by the order. Amendment 318 will provide the court with the additional option, as well as that of varying the order, of imposing a fine. Amendment 320 will enable the court to vary the order if it is satisfied that the offender has failed to comply with the CPO, but has reasonable excuse for that failure.

Amendment 319 applies to a breach of a CPO that was originally imposed concurrently with a drug treatment and testing order or restriction of liberty order, and in respect of the same offence. In such cases, if the CPO is revoked as a result of breach, the court will also have to revoke any drug treatment and testing order or restriction of liberty order that was imposed for the same offence.

Amendment 322 relates to the requirement that any CPO that contains a restricted movement requirement must also contain a supervision requirement. The amendment specifies that the court must ensure that the supervision period is at least as long as the period of the restricted movement requirement. When the restricted movement requirement is less than six months in duration, the period of supervision may also be less than six months.

Amendments 323 and 324 will remove the provisions about the period of the restricted movement, as those will be dealt with by amendment 331. Amendment 325 provides that, when the court that deals with an alleged breach of a CPO is a drug court, the additional powers of a drug court also apply.

I move amendment 281.

The Convener: The amendments are reasonably straightforward, but Robert Brown has a comment.

Robert Brown: Proposed new section 227ZB of the 1995 act describes what happens

"If the court is satisfied that the offender has failed without reasonable excuse to comply with a requirement".

The CPO can be varied, and so forth. It strikes me that there will be situations in which there is a reasonable excuse. Nevertheless, problems with the operation of the orders have been experienced and it might be advantageous to both the offender and the public to vary an order. Is there a power to vary the order in such circumstances? If not, would such a power be worth considering?

Kenny MacAskill: That is a fair point. Amendment 320 is meant to do what Robert Brown suggests—it will enable the court to vary a CPO if it is satisfied that the offender has failed to comply with the order but has reasonable excuse for that failure. There is a general discretionary power for the sheriff.

Robert Brown: Thank you. I had not followed the explanation as well as I should have done.

The Convener: It is as well that such matters are highlighted. I will assume that Mr MacAskill's response was his summing up.

Kenny MacAskill: Yes.

Amendment 281 agreed to.

Amendments 282 to 285 moved—[Kenny MacAskill]—and agreed to.

Amendment 93 moved—[Robert Brown].

The Convener: The question is, that amendment 93 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 93 agreed to.

Amendments 286 to 321 moved—[Kenny MacAskill]—and agreed to.

Amendment 94 moved—[Robert Brown].

The Convener: The question is, that amendment 94 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 94 agreed to.

Amendment 95 moved—[Robert Brown].

The Convener: The question is, that amendment 95 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 95 agreed to.

Amendment 322 moved—[Kenny MacAskill]—and agreed to.

The Convener: I call amendment 323. If the amendment is agreed to, I cannot call amendment 96, due to pre-emption.

Amendments 323 to 326 moved—[Kenny MacAskill]—and agreed to.

Amendment 97 moved—[Robert Brown].

The Convener: The question is, that amendment 97 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

Against

Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 97 agreed to.

Amendment 327 moved—[Kenny MacAskill]—and agreed to.

The Convener: We come to amendments on community payback orders—restricted movement requirement. Amendment 328, in the name of the minister, is grouped with amendments 329 to 335.

Kenny MacAskill: Amendments 328 to 335 relate to the provisions about restricted movement requirements, a requirement which may be imposed in a CPO following breach. Amendments 328 and 329 will require the court, when imposing a restricted movement requirement, to take account of any other restricted movement requirements or restriction of liberty orders the offender is subject to, and to ensure that the cumulative effect of those requirements does not require the offender to remain at the specified address for more than 12 hours in any one day.

Amendment 331 will insert new subsections into proposed new section 227ZD of the 1995 act to provide for the minimum and maximum durations of a restricted movement requirement. The minimum duration for such a requirement will be 14 days; the maximum duration will depend on which court imposed the original order, the age of the offender at the time the order was imposed and what requirements were included in the original order. Where the offender was under 18 at the time the order was imposed or where the order only included a level 1 unpaid work requirement, the maximum duration of a restricted movement requirement will be 60 days if the order has been imposed in the JP court, and three months if imposed in any other court. Those maximums are in line with the maximum custody periods that are available in other circumstances for breach of a CPO. In all other cases the maximum duration is 12 months. Amendments 330 and 332 are consequential on amendment 331.

Amendment 333 will allow the court to vary the address that is specified in the restricted movement requirement without the requirement for an application. That might be needed if the court decides to vary the requirement following a breach. Amendments 334 and 335 are consequential on amendment 333.

Amendment 337 will require the court to forward to the responsible officer a copy of any restricted movement requirement that is varied under proposed new section 227ZF of the 1995 act.

I move amendment 328.

Amendment 328 agreed to.

Amendments 329 to 338 moved—[Kenny MacAskill]—and agreed to.

The Convener: We come to the group on unpaid work and other activity requirement—consultation. Amendment 98, in the name of Robert Brown, is the only amendment in the group.

Robert Brown: Amendment 98 is designed to ensure that there is a proper relationship between victims of crime and communities on the one hand, and the arrangements that are made for community work on the other. In fairness, there is growing good practice and experience in this area, but it is vital that both victims and local communities have confidence in the arrangements, know what work is being done to repay them and have an input into that. The importance of that requires specific mention over and above the "prescribed persons" who are specified in the existing section 14. That would be appropriate in the case of community councils and adds a little to their functions in a helpful way. I hope that the committee will be sympathetic to the amendment.

I move amendment 98.

Kenny MacAskill: As Robert Brown says, proposed new section 227ZJ of the 1995 act sets out the duties of local authorities in relation to consulting "prescribed persons" about the nature of unpaid work and other activities to be undertaken by offenders in the local authority area where the community payback order is imposed. Amendment 98 seeks to include in proposed new section 227ZJ two particular classes of persons whom the local authority should consult, namely

"persons or organisations representing victims of crime"

and community councils established in their area.

Rather than amend the section, as proposed, it would be better to allow Parliament to look at the list of prescribed persons in the round when the necessary regulations are laid. According to current plans, that will be in autumn 2010.

Amendment 98 should be resisted. However, both the categories that it mentions would be obvious consultees, so I am happy to give Mr Brown a commitment that we will include individuals or organisations representing victims of crime and representatives of community councils as prescribed persons in the draft regulations, so I invite him to withdraw amendment 98.

12:15

The Convener: No doubt Robert Brown will address that in his winding up.

Robert Brown: Yes. I do not have a totally strong view on the matter. There is some merit in making mention of victims in the bill, but the end result is the important thing. I am in the hands of the committee on this one—I am not sure whether members are anxious to pursue the matter. We have had a satisfactory assurance from the cabinet secretary that I am minded to accept at this stage. We can return to the issue at stage 3 if there are further qualms on the matter. I seek leave to withdraw amendment 98.

Amendment 98, by agreement, withdrawn.

The Convener: That is the sensible solution. There is merit in the amendment, but I think that all of us are encouraged by what the cabinet secretary said.

Amendment 339 moved—[Kenny MacAskill]—and agreed to.

The Convener: We turn to annual reports and community payback orders. Amendment 99, in the name of Robert Brown, is the only amendment in the group.

Robert Brown: Amendment 99 is the natural corollary to the previous amendment. At the time of the Christmas bad weather, some fuss made was rightly made about whether people on community sentences were being employed in gritting the roads. Most of us have no idea of the work that offenders do, how many people are involved and how much it all costs. It is important that elected Government and the public should know that information, both locally and nationally and in a structured way. The importance of the issue goes beyond that; information will be an important contributor to the success of the new orders and their public acceptability. Amendment 99 proposes an important provision, which matches the Government's general desire for consultation on the nature of the work that is being done, public knowledge of the details and transparency.

I move amendment 99.

James Kelly: I support amendment 99, which is both important and helpful in the general context of the bill. From our discussions this morning and previously, it is clear that there is cross-party support for the principle of community payback orders—we want to see them working. The amendment will allow us to demonstrate what is being done. Proper evaluation of the scheme would also be undertaken. I will not repeat my previous concerns about finances. The proposed annual report would give additional information on finances, which would be helpful to the Government and local authorities in predicting their future budgeting requirements.

Kenny MacAskill: Amendment 99 would impose reporting requirements on local authorities individually and the Scottish Government in relation to the impact of community payback orders, particularly in relation to the extent, cost and nature of unpaid work and the extent, cost and nature of the programmes that are undertaken. It would also impose additional statutory reporting burdens on local authorities without due opportunity for advance consultation with the Convention of Scottish Local Authorities.

At this stage, our view is that amendment 99 should be resisted. That said, we fully accept the principle of making available adequate information on the delivery, uptake and impact of the community payback order. I would be very happy to write to the committee to set out in detail the work that we are doing to improve information collection. In particular, we are working in partnership with stakeholders to review the scope and collection of criminal justice social work statistics. Instead of imposing any new burden on local authorities, we are taking forward this work within our existing arrangements. We are working in collaboration with stakeholders who deal with front-line services as well as collating the information that the public and Parliament require.

I invite Robert Brown to seek leave to withdraw amendment 99.

Robert Brown: I am grateful for the minister's response. I am not sure that what is proposed would place a great burden on local authorities, but I am prepared to consider the matter further between now and stage 3. I will discuss it with the minister and wait to see his letter. If committee colleagues continue to have an interest in the matter, we could return to it at stage 3.

It is important that there is a degree of statutory pressure on the operation of community payback orders, as it is central to their success that the public have confidence in them. The information that would be provided under my proposal, both on individual local authority areas and at a national level, would inform debate. It is information that we ought to have, although I am open to discussions about the detail.

Against that background, I seek the committee's leave to withdraw amendment 99.

The Convener: I take it that you seek leave to withdraw amendment 99 on the understanding that the issue might be revisited at stage 3, because there are merits in your arguments.

Robert Brown: Yes.

Amendment 99, by agreement, withdrawn.

Amendments 340 and 341 moved—[Kenny MacAskill]—and agreed to.

The Convener: We turn to the group on community payback orders—consequential modifications. Amendment 342, in the name of the minister, is grouped with amendments 343 and 414.

Kenny MacAskill: Amendment 342 will insert a schedule into the Criminal Procedure (Scotland) Act 1995 that lists amendments that are consequential on the introduction of community payback orders. Amendment 414 seeks to remove the amendments in schedule 5 to the bill that relate to the introduction of community payback orders, as they will be dealt with in the schedule that is proposed in amendment 342.

Amendment 343 contains the schedule that details the amendments that are consequential on the introduction of CPOs, the majority of which relate to the repealing of references to "probation order", "community service order" and "supervised attendance order"—the orders that are being replaced by CPOs—and their replacement with references to "community payback order", where appropriate.

There are a few amendments that are more substantial, such as those that relate to the combination of CPOs, drug treatment and testing orders and restriction of liberty orders, which a court may impose for the same offence, and to the action that a court requires to take when it revokes such an order.

I move amendment 342.

Amendment 342 agreed to.

Section 14, as amended, agreed to.

After Schedule 1

Amendment 343 moved—[Kenny MacAskill]—and agreed to.

The Convener: Before I conclude this item, I point out that the committee has gone through some 36 pages of amendments. That would not have been possible had everyone not come to the meeting so well prepared and organised. I offer my congratulations to all at the table, including the cabinet secretary, on the way in which business has been conducted this morning.

I remind members that the main item on next week's agenda will be oral evidence on stage 2 amendments to the Criminal Justice and Licensing (Scotland) Bill. Formal stage 2 consideration will resume after the Easter recess, on 13 April. A target for the furthest point in the bill that the committee will reach on that day—day 3 of stage 2—will be announced shortly. I remind members that they will be expected to lodge all remaining amendments up to that point by the lodging deadline of 12 noon on 25 March.

I thank members for their attendance.

Meeting closed at 12:24.

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