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Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 20 April 2010

Session 3

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JUSTICE COMMITTEE
13th 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 ALSO ATTENDED:

Richard Baker (North East Scotland) (Lab)
Margaret Curran (Glasgow Baillieston) (Lab)
Fergus Ewing (Minister for Community Safety)
Trish Godman (West Renfrewshire) (Lab)
Rhoda Grant (Highlands and Islands) (Lab)
Johann Lamont (Glasgow Pollok) (Lab)
Margo MacDonald (Lothians) (Ind)

CLERK TO THE COMMITTEE

Andrew Mylne

LOCATION

Committee Room 1

Scottish Parliament

Justice Committee

Tuesday 20 April 2010

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

Decision on Taking Business in Private

The Convener (Bill Aitken): Good morning, ladies and gentlemen. Let us get the meeting started. No apologies have been received so the committee has a full turnout, as usual. I remind everyone to switch off their mobile phones.

Agenda item 1 is a decision on whether to take items 4 and 5 in private. Item 4 is consideration of a draft report, and item 5 is consideration of a letter from the Presiding Officer and a Parliamentary Bureau paper on the scrutiny of Scottish Law Commission reports. Do members agree to take those items in private?

Members *indicated agreement.*

Criminal Justice and Licensing (Scotland) Bill: Stage 2

10:05

The Convener: Item 2 is the fourth day of stage 2 proceedings on the Criminal Justice and Licensing (Scotland) Bill. The committee will not proceed beyond the end of part 3 today—indeed, that estimate might be slightly optimistic.

I welcome the Minister for Community Safety, Fergus Ewing, who will be accompanied during the course of the morning by various officials, who will in all probability change places from time to time, as different matters come before the committee.

I also welcome non-committee members. Joining us today are Johann Lamont, Rhoda Grant and Trish Godman. I anticipate that other members might join us as we deal with items of specific interest to them.

Members should have before them their copies of the bill, the fourth marshalled list and the fourth grouping of amendments.

Section 27—Directing serious organised crime

The Convener: Amendment 353, in the name of Robert Brown, is grouped with amendments 354 to 356.

Robert Brown (Glasgow) (LD): The committee will recall that, when we began discussing the series of amendments on serious organised crime, I observed that there was broad agreement about the need to have weapons to tackle the Mr Bigs of serious organised crime but that there was also some anxiety about the scope of some of the offences. I think that I also commented on how difficult and complex the area is.

Section 27(1) says:

"A person commits an offence by directing another person ... to commit a serious offence".

I might be wrong, but I thought that that was, in effect, the principle behind the offence that relates to someone being art and part of or an accessory to a crime. I am not sure that section 27(1) adds anything to the common law in that regard. The essence seems to be the direction of another person to commit serious organised crime. Amendment 353 is a probing amendment that is designed to allow us to examine whether the phraseology of the section is correct in that respect. Amendment 355 echoes it.

The minister has lodged several slightly different amendments on details of the section. It is an important section, and the question of direction is

central to what the Government and the prosecution authorities are seeking to do in this area. It is important that we get the approach right, and I would like to ask the minister whether the section is sufficiently broad to deal with the people at whom we are trying to get, and whether it adds anything to the common law.

I move amendment 353.

The Minister for Community Safety (Fergus Ewing): Before I begin, I should say that I am suffering from a slight cold this morning. I hope that members will bear with me. The American humorist O Henry said:

"Life is made up of sobs, sniffles, and smiles, with sniffles predominating."

He was right.

The matter that Robert Brown comments on was raised extensively by the committee and was considered by us extremely carefully. The Cabinet Secretary for Justice wrote to the committee on 29 January and again on 19 February on the matter. I have reread those letters in order to fully understand the matters that are before us this morning.

In response to the concerns that were raised, we have lodged a number of amendments to clarify the definition of "serious offence" and "material benefit", which the committee agreed to last week during consideration of section 25. Those definitions also apply to section 27. The clearer definitions ensure that the police and prosecution retain the flexibility to use the new offences to tackle all levels of serious organised crime, including those individuals who direct others to commit offences on their behalf. We have lodged two amendments to section 27.

Amendments 354 and 356 make changes to the detail of the provisions on serious organised crime in part 2 of the bill. Amendment 354 will delete section 27(4), which makes provision on the means by which a court can infer the intention of a person who has issued an apparent direction to commit serious organised crime. On reflection, we consider that that provision is unnecessary and that the common-law rules, to which Robert Brown alluded, can be relied on.

Amendment 356 will delete subsection (6), which sets out a rule as to when a direction under section 27 is to be treated as having been done in Scotland for the purpose of determining when a direction is an offence triable in a Scottish court. The policy is now that common-law rules will govern jurisdiction in the area. Therefore, a direction under section 27 that is made either in or outside Scotland will be an offence, provided that it is intended to have effect in Scotland. Given the intention to rely on the common law, subsection (6) is no longer required.

I appreciate that amendments 353 and 355, in the name of Robert Brown, seek to address the committee's concerns about the breadth of the provision and that the committee specifically raised those concerns in a recommendation in its report to Parliament. We considered those concerns extremely carefully—indeed, I personally reviewed all the relevant paperwork. However, the amendments seem to be intended to restrict the directing serious organised crime offence by making it an offence to direct a person to agree to become involved in serious organised crime under section 25(1) rather than to direct a person to commit a specific indictable offence. Viewed in that way, the amendments seem to take the focus of inquiry back a stage, because they would focus the provision on a direction to a person to agree to do something that they reasonably know or suspect will enable or further the commission of a serious organised crime rather than on a direction simply to commit a serious offence within the meaning that is given by section 25. The latter could more easily be established in court. Moreover, the prosecution would be required to provide a direct link between the direction and criminal activity. Amendments 353 and 355 would allow the focus to fall on very early stages of preparation that might be difficult to prove. The proposal would therefore limit the impact of the directing of serious organised crime offence, which is targeted at those who direct others to commit a serious offence. We appreciate that the intention is to ensure that directions to commit offences that are not truly connected to organised crime should not be treated as such, but that concern is more appropriately addressed in this context by the proper exercise of police and prosecutorial discretion.

We introduced the new offence at the request of the serious organised crime task force, which includes police and Crown representation, because of the difficulty under the current law of prosecuting those who direct organised crime but do not become involved in it on a day-to-day basis. Officials have discussed Mr Brown's amendments with the Crown Office, which considers that their effect would be to make the offence more difficult to understand and, in effect, unenforceable, thereby allowing those who direct others to commit offences on their behalf to avoid prosecution. Agreeing to the amendments would, in effect, render the offence unenforceable and unworkable.

For those reasons, I respectfully invite Robert Brown to withdraw amendment 353 and not to move amendment 355.

The Convener: In his preamble, Robert Brown properly and correctly underlined the issues that I think all committee members had with some of the original wording. His lodging of amendments 353 and 355 so that we could obtain clarification has been extremely useful. I think that the Government has gone a considerable way down the road of providing reassurance.

Robert Brown: I said that amendment 353 is a probing amendment. I remain not entirely clear about what section 27(1)(a) adds to the common law, but the minister rightly said that it is clearer than my amendment. I accept that and will not press amendment 353, but I have on-going reservations about whether anything is added to the common law. The provision seems to me to be a statutory codification of the common law rather than something new, but perhaps we can continue to discuss that at a later point. Against that background, with the minister's assurances and my desire not to foul up the bill, I am happy not to press amendment 353.

10:15

Amendment 353, by agreement, withdrawn.

Amendment 354 moved—[Fergus Ewing]—and agreed to.

Amendment 355 not moved.

Amendment 356 moved—[Fergus Ewing]—and agreed to.

Section 27, as amended, agreed to.

Section 28—Failure to report serious organised crime

The Convener: Amendment 357, in the name of Robert Brown, is grouped with amendments 106, 359 and 360.

Robert Brown: Section 28 is, I think, the section that has given the committee the most concern. It is the most difficult one because it goes a degree further, so it is important that we make it as clear as possible. Although we understand and support the motivation of dealing with serious organised crime, the net needs to be cast in a targeted way and not too widely.

Amendment 357 would provide that the "knowledge or suspicion" of serious organised crime must be based on "good reason". The law must have something a bit more solid than surmise before it can hold someone criminally liable, particularly for such a serious matter. The amendment is an attempt to bring a small element of definition into the provision.

I support amendment 106, in the name of the convener, which would target the senior people who profit by a connection with serious criminals, rather than the junior clerk or post boy. The convener will no doubt elaborate on that well-made point.

Amendment 359, in my name, deals with the anomaly that a police officer might not be the obvious person to make a report to. It might be a customs officer, a social security official or somebody of that sort. Surely it could not be right if someone who had properly reported an issue was still criminally liable because he had reported it to the wrong person.

I move amendment 357.

The Convener: The thinking behind the four amendments in the group is to avoid a comparatively junior person, for example, in a solicitor's or estate agent's office, being caught up in matters when their knowledge of what was going on was peripheral. Amendment 106 in my name seeks to avoid the situation in which a comparatively junior member of staff is liable for prosecution. A cashier in an office might be asked to bank cheques. He or she will do that fairly mechanically—they will simply fill in a bank pay-in slip, take the cheques to the bank and deposit them. Another example is an employee who has to pay electricity bills. Although they might consider that the electricity bill for a particular residence seems fairly high, they might not know that the house has been let out and is being used as a cannabis farm, if that is the case.

I am a little concerned that the wording of section 28 would enable the Crown Office to prefer charges against such individuals, which surely cannot be the legislative intent. Clearly, we are after the people who are euphemistically described as the Mr Bigs of the serious and organised crime world and we are not seeking to swallow up those who are somewhat further down the food chain.

Amendment 357, in the name of Robert Brown, attempts to go down the self-same route. He uses the phrase "with good reason", but there might be difficulties with the interpretation of that term. I am interested in what the minister has to say on that. Robert Brown's other amendments in the group seek to make it clear that the offences are indictable, which might have some merit.

Fergus Ewing: I fully understand the intention behind Robert Brown's three amendments and the convener's amendment 106. However, for the following reasons, we do not think that they are appropriate, necessary or helpful.

Amendment 357 would require the prosecution to prove not only that a person had a suspicion about serious organised crime, but that they had good reason for holding that suspicion. We do not think that the amendment is necessary, as sufficient safeguards are already in place. The

prosecution must prove that a person who failed to report serious organised crime actually had the relevant knowledge or suspicion. It is not clear what purpose would be served, the existence of a suspicion having been proved, by having to prove in addition that the person had good reason to hold that suspicion.

We are aware of the reasons behind amendment 106, which seems to be intended to protect junior members of staff. It provides that a person is not to be under a duty to report in cases where, by reason of their inexperience or lack of seniority, it would not be reasonable to assume that they should have been aware of an offence having been committed.

I respectfully request that the committee resist amendment 106, first for a technical reason. The amendment seems to proceed on the basis of a misunderstanding of when the duty to report under section 28 applies. It does not apply where a person is assumed to have knowledge or suspicion of serious organised crime. Rather, the Crown must show that a person has actual knowledge or an actual suspicion—the Crown must prove that as a matter of fact. That is a significant safeguard, and it prevents the duty from applying to, for example, a very inexperienced member of an organisation who receives information that might have led a senior employee to suspect serious organised crime but did not lead that inexperienced junior employee to suspect serious organised crime. Viewed in that way, amendment 106 seems unnecessary, as the issue that it is intended to address does not exist.

Perhaps more important, there might also be an internal inconsistency in the bill if amendment 106 is accepted. At the moment, a person will be under a duty to report under section 28 when they are shown to have knowledge or a suspicion as to the commission of an offence as mentioned in section 28(1). As we have mentioned, that must be proved as a matter of fact. Where that is proved, what are we to make of a provision that says that, in spite of clear evidence of an accused's knowledge that an offence was committed, the duty does not apply at all, because he or she was insufficiently senior or experienced to be aware of the commission of an offence? That seems an illogical conclusion.

A more substantial—perhaps the most important—argument is that the nature of amendment 106 is problematic. We know that serious organised crime is very flexible, and it is not unknown for serious criminal networks to attempt to place members of those networks in businesses or organisations that undertake activity that will assist their aims. That may well include people in lower-level grades sometimes. Therefore, we do not believe that there should be a blanket ban protecting members of staff. That would create a significant loophole, which would inevitably be exploited by serious crime groups.

However, we recognise the committee's concerns and we wish to make it clear that we are not intending to capture people who have innocently had their suspicions raised and have not made any personal benefit from choosing not to report such activity.

Members will recall that section 28(2) specifies that, in other cases, namely where there is family involvement, there must be a "material benefit". Perhaps the issues do not arise in connection with those cases in the same way. The offence is intended to capture those people who either happily facilitate serious organised crime or are wilfully blind to the consequences of their actions such that they continue to facilitate such criminality.

In addition to the safeguard that we have already mentioned, section 28(4) sets out a defence of reasonable excuse for failing to report, which should provide further comfort to all members of staff at whatever level in the organisation who come across information without realising that it is linked to serious organised crime.

Furthermore, the Solicitor General for Scotland has made it clear that prosecutorial guidance will be issued to ensure that the offence is targeted at and used proportionately against those in a position of authority or who have used their expertise in relation to the supply of goods and services and who have benefited from their connection with serious organised crime. An additional safeguard is that any such prosecution under this offence will proceed only with Crown counsel's consent. I hope that those safeguards, which have been carefully conceived and set out, provide the committee with some assurance.

Amendments 359 and 360 seek to allow a person to discharge his or her duty to report under section 28 by reporting to a person holding a public office specified by the Scottish ministers. I was going to say that it is not clear which holders of public office Robert Brown envisages being covered by these amendments, but he has helpfully set them out in his remarks. I am advised that matters reported to customs officials, whom Mr Brown mentioned, would then be reported to the police either by the official or by the person who originally brought the matter to the official's attention. However, ultimately, only a constable is able to ensure that a proper investigation takes place following the receipt of a report and that appropriate reports are sent to the procurator fiscal. Although there is no provision for what a public official would be required to do on receiving a report, they would presumably be expected in turn to report the suspicions of another to a

constable. I fully understand Mr Brown's point and believe that his remarks have been helpful but, with respect, the proposal seems to add an unnecessary layer of further reporting and bureaucracy.

I hope that that clarification assures committee members. For all those reasons, we suggest that the amendments in this group be resisted.

Robert Brown: I have listened carefully to the minister's response, some of which I found persuasive and some of which—I must confess—I did not. I was particularly unimpressed by the suggestion that the offence is targeted at people who facilitate or are wilfully blind to the existence of serious organised crime, because I do not think that that is what section 28 is saying. Indeed, that is what I find difficult about it. The crime is defined extremely widely and applies to all sorts of circumstances that go way beyond the minister's statement of what the Government is purportedly trying to get at.

The point about having to prove whether people had good reason to hold suspicions is valid. Should a junior member of an organisation, say, who has a fanciful notion about something but who nonetheless can be said to have a suspicion be charged with a serious criminal offence in that respect? I have doubts about that. I accept that there might be an issue as to whether the phrase "with good reason" has been properly defined, but I ask the Government to examine the issue between now and stage 3. Indeed, if I get such an undertaking, I will be happy to seek leave to withdraw amendment 357.

I am not persuaded by the distinction that was drawn between assumed and actual knowledge. After all, we are dealing with what can be proved against people, which is based on the inferences that can be drawn from particular factual situations. Indeed, that makes any apparent difference between assumed and actual knowledge more of a tautological dispute.

I am not sure about the convener's view, but I see the minister's point about the application of the provision to junior officials. However, we are still left with the difficulty that relatively junior officials who are not the prime movers or shakers in these crimes or the plants of the Mr Bigs can still be caught by section 28. That concerns me somewhat.

10:30

The defence, if you like, that the Government will arrange for prosecutorial guidance from the Crown Office and that prosecution will be undertaken only with the permission and agreement of Crown counsel admits that a problem exists, because such matters should not be the subject of prosecutorial guidance—we should get the legislation right.

On the question of reporting to someone other than a constable, it is a fact, which we should overcome, that the bill says that it is an offence not to make a disclosure to a constable but to make a disclosure to someone else. It might be fanciful of me to say that somebody might prosecute in that situation—perhaps that would not happen—but the phraseology should be right. The provisions are widely worded.

Given the difficulties, I do not propose to press amendment 357. I would appreciate the minister's assurance of further discussion before stage 3, because we are not quite there yet.

Fergus Ewing: I thank Robert Brown for his detailed work. It is plain that he has made many points, as is his wont. We will carefully consider the *Official Report* of his remarks and any further representations that he would like to make. I undertake that we will write to the committee as soon as we reasonably can and in any event no later than stage 3 with our response to his arguments, particularly about the use of the word "constable".

We will look at the *Official Report* and consider the remarks by Robert Brown and any other members who wish to contribute. I hope that that is helpful.

The Convener: That is a constructive way forward. Like Robert Brown, I have received some reassurance on my amendment. I am not yet totally convinced but, on the understanding that the matter will be considered again before stage 3, I will not take matters further today and I will not move amendment 106.

Amendment 357, by agreement, withdrawn.

Amendment 106 not moved.

Amendment 358 moved—[Fergus Ewing]—and agreed to.

Amendments 359 and 360 not moved.

Section 28, as amended, agreed to.

After section 28

The Convener: Amendment 107, in the name of the cabinet secretary, is grouped with amendment 108.

Fergus Ewing: Amendments 107 and 108 provide for amendments to the International Criminal Court (Scotland) Act 2001 in respect of the offences of genocide, crimes against humanity and war crimes. The amendments match changes that the Coroners and Justice Act 2009 made to the International Criminal Court Act 2001 for England and Wales and Northern Ireland.

Such serious crimes are best dealt with in the country where they took place, which is where the evidence is most easily accessible and where witnesses are easier to contact. That is the best solution, because witnesses and survivors can see justice being done.

Failing that, such crimes should be dealt with by international courts or tribunals, where they exist. However, those options might not be available in some circumstances. We have therefore decided to strengthen the relevant domestic law in the same way as the United Kingdom Parliament and Government have done.

In 2001, the Scottish Parliament decided against making the law retrospective and that there are several pragmatic reasons for not doing so. However, it is unacceptable that we can have alleged genocide and war crimes suspects resident in the UK who cannot be extradited to stand trial and who we ourselves cannot deal with. That is particularly the case because this area of offending is recognised internationally as one in which countries can take wide jurisdiction and any justice gap is intolerable.

The catalyst for the amendments made at Westminster was undoubtedly the release of the four Rwandan genocide suspects last year. Such a situation has not arisen in Scotland, but it is perhaps clearer than it was in 2001 that Scotland could be a place for those suspected of such serious offences to hide. We need to address that.

Amendment 108 will provide that, as far as is permissible under the legal principles applicable to retrospection, we should cover the categories of crime of genocide, war crimes and crimes against humanity from 1 January 1991. That is the date from which the International Criminal Tribunal for the former Yugoslavia had jurisdiction to try offences under the tribunal's statute, which was adopted by the United Nations Security Council.

We propose no change to the categories of people covered by the legislation, which should remain UK nationals and residents, including those who commit crimes and subsequently become resident. However, amendment 107 seeks to provide more certainty as to who may or may not be considered to be a UK resident.

Proposed new section 8A of the International Criminal Court (Scotland) Act 2001 will make additional provision in respect of UK residents in two ways. First, proposed new section 8A(2) lists a number of categories of person who are to be treated as being resident in the UK for the specific purposes of the 2001 act to the extent that that would not otherwise be the case. The specific categories are listed in proposed new sections 8A(2)(a) to 8A(2)(j). Secondly, proposed new section 8A(3) provides a non-exhaustive list of considerations that a court must take into account in determining whether a person is resident in the UK.

I move amendment 107.

Bill Butler (Glasgow Anniesland) (Lab): I do not know the answer to this question; I seek the minister's guidance. Obviously, I support the general thrust of both amendment 107 and amendment 108. I probably have this wrong, but I might as well ask about proposed new section 9B of the 2001 act, which is entitled "Provision supplemental to section 9A: modification of penalties". Will proposed new section 9B(2) of the 2001 act mean that there is a reduction in penalty from 30 years to 14 years? If so, what is the rationale for that? I hope that I have simply got that wrong. I would be grateful if the minister could clarify that for the record.

The Convener: As no one else wishes to contribute, I merely comment that there is merit in the amendments. I invite the minister to wind up and to answer Bill Butler's question.

Fergus Ewing: I think that the answer to Mr Butler's main question is no. I will double-check afterwards that I have fully understood that that is the case, but that is the advice that I have been given.

I commend amendments 107 and 108 to the committee.

Amendment 107 agreed to.

Amendment 108 moved—[Fergus Ewing]—and agreed to.

Sections 29 to 31 agreed to.

After section 31

The Convener: Amendment 109, in the name of the cabinet secretary, is grouped with amendments 11 and 515.

Fergus Ewing: Amendment 109 will correct a problem that exists in the provisions of the Criminal Law (Consolidation) (Scotland) Act 1995 that deal with the possession of knives and offensive weapons in public places. We have become aware of cases in which people have escaped prosecution for carrying weapons in the common parts of shared dwellings, such as the stair of a tenement block, because the courts have not found the location to be a "public place". The previous Administration recognised the lacuna in relation to prisons and took steps to resolve it in the Custodial Sentences and Weapons (Scotland) Act 2007 by inserting new section 49C into the 1995 act to deal with weapons in prisons.

Amendment 109 deals with these problems by defining a public place as any place other than

domestic premises, school premises or prisons. The common areas of communal buildings are expressly included in the definition of a public place. Effectively, this turns the existing definition on its head—instead of saying what is a public place, it provides that everywhere is a public place, subject to a number of limited exceptions.

Amendment 109 also creates uniform defences to the various offences under the 1995 act that deal with knives and offensive weapons. It makes sense to have consistent defences to charges for possession of a knife or offensive weapon. Amendment 109 provides that persons charged with possession of a knife or offensive weapon under sections 47, 49, 49A or 49C of the 1995 act will have a defence if they are able to show that they have a "reasonable excuse" or "lawful authority" for being in possession of the knife or offensive weapon. Further, to achieve consistency, amendment 109 harmonises the penalties for the obstruction and concealment offences detailed in sections 48 and 50 of the 1995 act. It will increase the maximum penalty under section 50(4) of the 1995 act to a level 4 fine in order to align that provision with the similar offence under section 48(2). Amendment 515 is consequential on amendment 109.

We support the principle behind amendment 11 of ensuring that the prohibitions on carrying knives and offensive weapons that already apply to public places apply to workplaces, too. We are aware of the specific case involving a weapon being brought into a call centre that has possibly prompted Johann Lamont's amendment. However, our amendment 109 will achieve the same effect as amendment 11 and go further, by redefining public places as anywhere other than domestic premises and those school premises and certain prisons for which bespoke offences already exist. We therefore believe that amendment 11 is superseded by amendment 109, and we respectfully invite Johann Lamont not to move amendment 11.

I move amendment 109.

Johann Lamont (Glasgow Pollok) (Lab): I am very grateful for the assistance that the clerks gave me in drafting an amendment both to identify an issue and to try to find a solution to it. I will come on to the minister's comments in a moment, but I think that it will be helpful if first I explain the purpose of amendment 11.

The legislative process has an important role in reflecting people's experiences and trying to close loopholes or address the apparent perpetration of injustice. That is the intention behind amendment 11. A particular experience has been brought to my attention. It was reported that an offensive weapon was brought to a workplace via the mail—it was not carried into the workplace but delivered to it, which might have been caught under other legislation. Indeed, as the minister indicated, the person who had the offensive weapon could not be charged, because the workplace was not defined as a public place. When I reflected on that, I noted the fact that, for the purposes of the smoking ban, we regarded workplaces as public places, so we perhaps had already gone some way along that route.

The aim of amendment 11 is to close that loophole by inserting a section into the Criminal Law (Consolidation) (Scotland) Act 1995 that reflects the models in section 49 of that act, which makes it an offence to carry a knife in a public place, and section 49A, which makes it an offence to carry a knife on school premises. The model for the provision in respect of workplace premises was found in the Fire (Scotland) Act 2005—but not by me, I hasten to add.

I ask that the minister confirm the position in his summing up. I welcome what he said, but perhaps he understands that my anxiety about the matter arises from not being able to understand the technicalities when I read amendment 109. I seek an assurance that amendment 109 will address the circumstances that I described. If there is a need to look again at what the Scottish Government has proposed, we could have dialogue on that before stage 3. However, the purpose of amendment 11 is to close a loophole. If I have confidence that that loophole has been closed, I am more than happy not to move amendment 11.

10:45

James Kelly (Glasgow Rutherglen) (Lab): I support amendment 109 and consequential amendment 515, which are sensible because they widen the definition of a public place and ensure that the carrying of knives in such places will be legislated against appropriately. The amendments try to achieve a sensible objective.

I also support amendment 11. Again, no one expects to go into their workplace and be threatened by an offensive weapon such as a knife. Amendment 11 seeks to close the loophole through which potential offenders in such circumstances can escape the appropriate consequences under the law.

Like Johann Lamont, I seek clarification from the minister on the purpose-and-effect notes that the Government has provided on amendment 11. They state:

"This new offence would be in addition to the existing offences of possessing a knife in a public place".

I assume that that was drafted under the law as it stands, not as it will be if amendment 109 is agreed to. I am not casting doubt on what the

minister is saying, but I would like a more comprehensive explanation of how "public place" encompasses the workplace. It would be helpful if the minister could provide that clarification.

Robert Brown: I also support amendment 109, which, as the minister says, is intended to close definite loopholes in the existing legislation.

I have a couple of queries. I might have missed this, but I do not think that the minister dealt with proposed new section 47(1A) of the Criminal Law (Consolidation) (Scotland) Act 1995, which would be inserted by subsection (2) of amendment 109, on the

"defence for a person ... to show that the person had a reasonable excuse or lawful authority".

Indeed, I do not think that he addressed the definition of offensive weapon in proposed new section 47(4) of the 1995 act, which refers to:

"any article ... made or adapted for use".

It might be that I do not understand the links between the statutes, but my view is that that is pretty much what the existing law says. Will the minister clarify whether any changes are intended in that regard or, if not, what the purpose is of those provisions?

I am also intrigued by Johann Lamont's amendment 11 and proposed new section 49AA(4) of the Criminal Law (Consolidation) (Scotland) Act 1995, which talks about there being a reasonable defence for carrying a knife

"(a) for use at work ...

(b) for religious reasons, or

(c) as part of any national costume."

In the days when I was a scout, we wore knives for various non-criminal purposes, for the most part. I know that there are issues around Sikh costume, for example, which sometimes has a weapon attached to it, and, of course, around the sgian dubh. The phrase "reasonable excuse", as it is used in the minister's amendment 109, might cover all those instances, but I would like the minister to clarify that the Government is satisfied that it does so adequately, and that it covers the use of a knife at work, which in some ways is a much more important issue than the others.

The Convener: As the minister said, amendment 109 is predicated on an appeal court decision that held that the possession of a knife in the common close and landing of a building did not constitute an offence under the existing law. It might be worthy of note that, in that particular case, the controlled entry system of the building was defective, which is why the accused was able to get access. Nevertheless, that judgment has caused concern. Amendment 109 seeks to remedy the situation and is therefore worthy of support.

Johann Lamont's amendment 11 is perfectly understandable. She stated that she requires some reassurance that the bill, as amended, will cover eventualities such as the one that she brought to us today.

Robert Brown raised his career as a scout, which many of us might regard as an historical curiosity. Nevertheless, he raised an appropriate point. I do not wish to anticipate what the minister is going to say, but surely Robert Brown's point is covered by the wording in both the bill and existing legislation. Any such charge states that the accused had an offensive weapon in his possession without "lawful authority" or a "reasonable excuse". I would have thought that a scout or someone in national dress, within the normal and sensible confines of the definition, would have a "reasonable excuse".

The intention of the law, as it is finalised, should be that everyone, in the privacy of their own home, should be able to have knives and other implements that could be used as weapons but which are not likely to be used as weapons in domestic circumstances. Basically, we have to ensure that knives are not used or carried outwith the home or in a public place. Amendment 109 should remedy the matter, but I would be grateful if Mr Ewing could provide the reassurance asked for by Mr Kelly, Mr Brown and Ms Lamont.

Fergus Ewing: And by yourself, convener. I am in a position to be 100 per cent helpful. Ms Lamont has asked for an absolute undertaking that amendment 109 will provide a comprehensive provision, and I am happy to provide that undertaking to her. The fact that amendment 109 provides that everywhere is a public place, subject to a number of limited exceptions, means that it states a general principle that will apply to and address the problems that have been alluded to.

I thank Ms Lamont for raising with the cabinet secretary the case that she alluded to briefly today—in which the police felt powerless to act, as they held that the workplace was not a public place—because that helped us with the drafting of amendment 109, which will tackle and remove that problem. It will also remove the problem relating to incidents in common stairwells. I am thinking of one incident in which police found two men in a stairwell, one carrying a baseball bat and the other carrying a knife, but the procurator fiscal determined that no substantive crime had been committed and marked the case as no proceedings. I think that the convener alluded to the case of Templeton, in which a sword was found lying at the bottom of a stairwell in a common close and, on appeal, the appeal court found that that was not a public place, which

meant that the conviction of the person responsible for the presence of the sword in the stairwell was overturned.

I am happy to provide an absolute assurance to all members who have, quite rightly, raised questions about the issue because of the importance of ensuring that there are no loopholes and that those who are found to be carrying knives and offensive weapons without reasonable excuse or authority are convicted of that serious offence.

Robert Brown raised the issue of knives being carried in connection with the national dress of this country or the dress that is associated with various religions. That issue is already dealt with by separate statutory provisions. The provisions that we are talking about today will not affect the position, and the defence will continue to apply.

The purpose of amendment 109 is to provide uniform wording of the defence provision. Members will have noted the that the wording in section 47 of the 1995 act is slightly different from that in section 49 of the same act. Section 47 talks about

"lawful authority or reasonable excuse"

and section 49 talks about

"good reason or lawful authority".

It was felt that there should be uniform wording, as the same defence applies. That will ensure that there will be no inconsistencies with regard to what is, basically, the same offence. If the offence is the same, the defence should be the same.

I think that that answers all the points. I am happy to address any points that members feel I have inadvertently neglected to deal with. However, if members are happy with what they have heard, I will press amendment 109 and respectfully ask Ms Lamont to not move amendment 11, while thanking her for lodging it.

The Convener: Members look uncharacteristically relaxed, so I think that they feel that you have covered everything.

Amendment 109 agreed to.

Amendment 11 not moved.

Amendment 402 moved—[Rhoda Grant].

Amendment 402A moved—[Robert Brown].

The Convener: The question is, that amendment 402A 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 1.

The casting vote goes against the amendment.

Amendment 402A disagreed to.

Amendment 402 agreed to.

Sections 32 and 33 agreed to.

Section 34—Extreme pornography

The Convener: Amendment 361, in the name of the cabinet secretary, is grouped with amendments 362 to 364 and 366.

Fergus Ewing: I will be brief. Amendments 361 to 364 and 366 are technical amendments that are intended to clarify the factors that may be taken into consideration in determining whether an image is a pornographic image, whether an image depicts an extreme act and whether an image extracted from a film that is classified by the British Board of Film Classification has been extracted solely or principally for the purpose of sexual arousal. The amendments will make it clear that any sounds that accompany an image are one factor that may be taken into consideration in making such a determination.

I move amendment 361.

Amendment 361 agreed to.

Amendments 362 to 364 moved—[Fergus Ewing]—and agreed to.

The Convener: Amendment 365, in the name of Robert Brown, is grouped with amendments 367 to 369.

Robert Brown: I have previously expressed concern that there is a lacuna in the arrangements for excluding classified works. There is a period of time before a classification certificate is obtained when a video or film is liable to be criminalised. If it eventually gets a certificate, it is obviously not reasonable that its makers should be prosecuted. Obviously, if it does not get a certificate, that is a different story. My amendment 365 would extend the protection back to the point when the application for classification was made, provided that the certificate was subsequently granted. I appreciate that there would still be an in-between situation, but that would exist anyway. At least the amendment would help a little to avoid criminalising people who ought not to be criminalised.

I have no comment on amendments 367 to 369, which seem perfectly reasonable.

I move amendment 365.

Stewart Maxwell (West of Scotland) (SNP): I understand what Robert Brown is trying to do, but I have a small question for him. If we move back the exclusion to the point that he suggests, rather than the point of classification, would that provide a defence for those who make the images that we want to deal with? In effect, while the images were being made and before they achieved classification, there would be a defence in law that said, "You can't touch me, because I am going to apply for classification." I am concerned that an unfortunate by-product of the amendment would be that those who make the kind of extreme pornography with which we wish to deal could use the defence of saying that they were going to apply for classification. I know that that is not the intention; I just wonder whether Robert Brown has considered that point.

11:00

The Convener: It might be more useful for Mr Brown to deal with that in his summing up.

Fergus Ewing: We understand that amendment 365 seeks to provide that a work will be excluded from the extreme pornography provisions if it forms all or part of a work in respect of which an application has been received by the British Board of Film Classification for a film certificate. As drafted, the bill provides that a film is excluded from the offence provisions if it forms all or part of a classified work—in other words, if it is a film to which the BBFC has granted a classification certificate.

It is important to understand the purpose of the provision excluding BBFC-certificated works. The BBFC is clear that it would not give a classification certificate to a pornographic film containing depictions of rape, serious sexual violence, bestiality or sexual activity with a corpse. The provision is intended, for the avoidance of doubt, to reassure members of the public, who may not be familiar with the detailed provisions of the offence, that they cannot face prosecution for possessing a BBFC-certified film. As it is up to film makers to ensure that their films do not constitute extreme pornography, there is no need to extend the exemption to films that have not yet received a BBFC certificate.

We are also not sure that amendment 365 as drafted achieves its intended effect. The amendment applies only to a classified work, which is defined in proposed new section 51B(5) of the Civic Government (Scotland) Act 1982, as inserted by section 34 of the bill, as

"a video work in respect of which a ... certificate has been issued".

As the amendment seeks to cover the work until the certificate is issued it cannot logically be a "classified work", which would mean that someone could be committing an offence by possessing material that did not yet have a certificate until such time as the certificate was issued, at which point it would be decriminalised retrospectively.

Amendments 367 to 369 are technical amendments that seek to clarify how the terms "image" and "extreme pornographic image" are to be construed in these provisions.

I invite Robert Brown to withdraw amendment 365.

Robert Brown: The problem is that there is a difficulty either way. Even if a work ends up as classified, there is a period before it is classified in which it does not enjoy the protection of section 34. I accept that there is a risk of creating the somewhat paradoxical situation in which a work could be illegal at one point but then would suddenly become legal once it was classified. Indeed, that is one of the problems that I had when I discussed with the clerks how I might phrase an amendment.

I do not disagree with the Government's intention to ban the kind of extreme pornography that has been indicated, but we need to be careful that the way in which we are going does not have any unintended consequences. I do not think that amendment 365 will have the effect that Stewart Maxwell has suggested, although there is, as I have said, a paradox here.

Although I am anxious for the Government to examine the provision further and satisfy itself that it does what it ought to do and does not catch things that it ought not to catch, I am not prepared to press amendment 365 against the Government's wishes.

Amendment 365, by agreement, withdrawn.

Amendments 366 to 369 moved—[Fergus Ewing]—and agreed to.

The Convener: Amendment 517, in the name of the cabinet secretary, is in a group on its own.

Fergus Ewing: I will be brief.

Amendment 517 provides that a person who has been convicted of the offence of possession of extreme pornography, has been sentenced to imprisonment of more than 12 months, and was aged 18 or older at the time of the offence may be made subject to the sex offender notification requirements where the court considers that that is appropriate. Without any specific provision, it would be left for the courts to determine in each individual case whether there was a significant

sexual aspect to the offender's behaviour in committing the offence. Amendment 517 will ensure that the most serious offenders who have been convicted of possessing extreme pornography and may pose a risk to the public can be monitored.

I move amendment 517.

Amendment 517 agreed to.

Section 34, as amended, agreed to.

After section 34

The Convener: Amendment 110, in the name of the cabinet secretary, is in a group on its own.

Fergus Ewing: Amendment 110 amends the voyeurism offences that are contained in the Sexual Offences (Scotland) Act 2009. Committee members may be aware that, shortly before stage 3 of the Sexual Offences (Scotland) Bill, a Scottish Parliament information centre briefing drew attention to a then unpublished paper by James Chalmers that raised concerns that the voyeurism offences in that bill did not criminalise so-called up-skirt voyeurism—where, for example, a person uses a camera that is hidden in a bag to film up women's skirts in a public place. James Chalmers noted that a number of instances of such behaviour had been discovered.

Amendment 110 extends the offence of voyeurism so that it is committed where a person records an image of the victim's genitals or buttocks from beneath their clothing or operates equipment beneath the victim's clothing with the intention of enabling any person to observe his or her buttocks or genitals, whether in a public place or not, in circumstances in which they would not otherwise be visible, and does so without that person's consent. As such, it ensures that so-called up-skirt voyeurism falls within the scope of the new offence. The amendment also makes equivalent changes to the offences concerning voyeurism and children. We are grateful to Mr Chalmers for his work on those matters.

I move amendment 110.

Amendment 110 agreed to.

The Convener: Amendment 111, in the name of Kenny MacAskill, is in a group on its own.

Fergus Ewing: Again, I will be brief.

Amendment 111 is a technical amendment that corrects an omission in the Sexual Offences (Scotland) Act 2009 concerning defences in relation to offences against older children.

I move amendment 111.

Amendment 111 agreed to.

The Convener: Amendment 370, in the name of the cabinet secretary, is in a group on its own.

Fergus Ewing: Amendment 370 raises the maximum penalties for a number of prostitution-related offences to ensure that they represent a more effective deterrent to criminality and give the police better tools to address issues.

Amendment 370 amends the Criminal Law (Consolidation) (Scotland) Act 1995 to increase the maximum penalties for brothel keeping, living on the earnings of prostitution and living on the earnings of male prostitution in sections 11 and 13 of that act. Currently, the maximum penalty for living on the earnings of prostitution of any kind is two years' imprisonment or a fine of £10,000, and the maximum penalty for brothel keeping is six months' imprisonment and a fine of £2,500. The Government's view is that those penalties are out of date and unrealistic, as it is clear that they do not present an effective disincentive to criminality. Therefore, we propose to increase the penalties from their current levels to a maximum penalty of seven years' imprisonment and an unlimited fine. That will bring the terms of imprisonment into line with the penalties for the equivalent offences in England and Wales, and will provide for a more realistic level of fine to be imposed, especially where it is clear that significant money is being made from those forms of exploitation.

The Government welcomes the recently launched Equality and Human Rights Commission inquiry into trafficking in Scotland and the Equal Opportunities Committee's inquiry into migration and trafficking. Trafficking for sexual exploitation in Scotland appears to be exclusively for prostitution. We therefore expect that the findings of those inquiries will address not only trafficking but connected issues relating to prostitution. We do not wish to be perceived as prejudging the outcomes of those inquiries by making substantial changes to the law on prostitution, but we consider it appropriate to lodge a simple amendment to complement the bill's existing provisions on prostitution and human trafficking, and to provide additional practical assistance to the police in tackling those issues.

I move amendment 370.

The Convener: The issues are fairly straightforward, and there are no further contributions.

Amendment 370 agreed to.

The Convener: I welcome to the committee Richard Baker and Margo MacDonald, who are joining us for some of this morning's business.

Amendment 8, in the name of Trish Godman, is grouped with amendments 8A to 8D, 461, 9 and 9A.

Trish Godman (West Renfrewshire) (Lab): I express my thanks to the clerks.

Proposed new sections 11A to 11D of the Sexual Offences (Scotland) Act 2009, which amendment 8 contains, are linked. They cover all areas, and would make it an offence to buy sex. New section 11A, "Engaging in a paid-for sexual activity", would include all forms of payment, including payment in kind and presents. I accept that those provisions might have to be sorted at a later date. New section 11B, which proposes a ban on advertising, is clear. Ann Hamilton, a witness who appeared before the committee, pointed out an example from a newspaper. I have one such example with me today, should committee members wish to see it. Proposed new section 11C is on "Facilitating engagement in a paid-for sexual activity", which refers to sexual activity as described in the Sexual Offences Act 2003. New section 11D provides a tariff following a person's arrest for said offences. I will return to those provisions in a moment.

Margo MacDonald's proposed new section 11AA of the 2009 act, which would be inserted by amendment 8A, is on "Causing alarm etc". I am disappointed that it calls only for an offence of breach of the peace to apply. I believe that the matter is much more serious. That amendment disregards the exploitation, violence and abuse that are a reality for the majority of individuals who sell sex. The proposed measures do not acknowledge the harm of prostitution, and they put no focus on the buyer of sex.

Nigel Don's proposed new section 11E, "Paying for sexual services of a prostitute subjected to force etc", would be introduced by his amendment 461, and Margo MacDonald's proposed new section 11AB, "Profiting from coerced paid-for sexual activities", would be introduced by her amendment 8B. Both those amendments distinguish between victims of trafficking or people who are under the control of a pimp, and those who are forced to sell sex as a result of circumstances, for instance poverty or drug abuse. They would create a two-tier approach to tackling prostitution, whereby only certain victims would be worthy of the protection of the law.

My amendments challenge the acceptance of prostitution. At the moment, buying sex is viewed as something that men do, to which there is an entitlement and which does not cause harm. We need to discourage the demand that feeds that exploitation. There have been interventions on behalf of prostitutes for a long time, all focused on the women. Demand has remained invisible and without scrutiny. There is now substantial evidence that prostitution causes harm and will continue to do so unless intervention moves to the buyer—in other words, those who demand sex.

I wish to comment about my impressions of the committee meeting of 23 March. It seems that reservations arose because criminalising the buyer is thought to push prostitution underground or indoors, and one witness believed that that would impact adversely on the women's economic situation. If prostitution goes underground, the services need to respond to that. If the punter can find women indoors, so can the services and so can the police. Ann Hamilton gave you examples of that happening. It might go underground or indoors, but it would not be invisible.

The committee came to a full stop when it came to statistical information. We know that people are trafficked and that people prostitute themselves for all kinds of reasons. The evidence exists. I know it does—I have read it, and it is all sourced.

The view was expressed that women have the right to be prostitutes. Those women are not the focus of the amendments. The Scottish prostitutes education project—SCOT-PEP—supports women who have made that choice. However, we must remember those women of Ipswich and Glasgow who were murdered. Prostitution is a dangerous activity, and services need to be available to any woman who wishes to leave, including those women who believe that they have the right.

The two proposals on raising awareness and banning adverts directly support the principle that the buyer commits an offence. Up until now, the response from the Government has been weak—it has been mostly about education and making people aware of the problem. That has a role to play, but it does not address the fundamental issue of demand for services.

My understanding is that the previous Government's position was that prostitution is on the spectrum of violence against women. Demand has to be the central focus of intervention, and my amendments address that.

11:15

The revelation to the committee that Scotland's information base is so limited that it leads to uncertainty about the way forward was appalling. Given the international profile of the issue of trafficked women and prostitution and the activity's known links to serious crime, such a state of affairs is untenable.

In the discussion last week about amendments 10 and 10A, which were on minimum sentencing for people who are found carrying a knife, members suggested that the fear of being caught is much more effective than the fear of going to prison. As I speak, men are raping trafficked women and men are buying sex from prostitutes. They have no fear—they will never be caught—because that is not an offence. We need to send a

strong message that buying sex is not harmless or acceptable. It should be regarded in Scotland as an abuse and an exploitation that will not be tolerated. I argue that we owe it to all women who are victimised by prostitution to do what we can now.

If my amendments are not agreed to, I would be interested to know how the Government intends to move policy forward on violence against women.

I move amendment 8.

Margo MacDonald (Lothians) (Ind): I must say from the outset that the amendments that Trish Godman and I have lodged really have no place in the bill, which was not intended to cover the issue. It is certain that no commensurate consultation has taken place on the proposals, which would represent a major change in our legal system.

If the committee takes the amendments one after the other as they are set out in the marshalled list, and if Trish Godman's amendments are not supported, I will be happy to withdraw amendment 8A and not to move my other amendments. I lodged my amendments simply because I thought that balance was required in the committee's scrutiny and not because I thought that my proposals should be inserted into the bill.

I have read the evidence that was given to the committee. The police were represented by Assistant Chief Constable Livingstone, who said that, in his view, no more powers were needed at this stage to deal with prostitution. He felt that the police had a sufficient range of powers in the law as it stands to deal with prostitution. He also said that no national consensus exists and that how prostitution is carried out and how the community views it are local matters. Of course, that has something to do with the geography and history of communities and with how the police have managed the situation.

Deciding on legislation before the basic intelligence has been gathered from the police, apart from anybody else, would be putting the cart before the horse. The police gave evidence that much more intelligence is needed. As Trish Godman said, it is worrying that so little evidence is available about something that people appear to think is very important and worthy of priority law making.

The minister said earlier—I just caught his remarks—that we should not get matters out of sequence and that we should tackle them logically. The current approach to the proposals is not logical.

There is a basic flaw in the argument. I will not debate whether trying to curtail demand for the services of prostitutes would be effective, but it takes two to tango. If we decide—as Trish Godman requests—that all sexual services that are traded must be illegal, the law should treat the seller and the purchaser of sexual services equally.

We have heard reference in this committee to the Swedish approach to things—it was in Ann Hamilton's evidence. I have here a communication that I received from the Stockholm city police yesterday, which states that they do not register prostitutes, so official statistics are impossible to give. I therefore caution the committee that dangling the Swedish model in front of it as providing some sort of template for this Parliament would be wrong. In Stockholm, an estimate of the number of prostitutes is made by the police officers who work in the area, which is exactly what happens here, so Sweden has no more to teach us than we have to teach it in that regard.

As the committee will know, an attempt was made in Sweden to do what the amendments that we are discussing seek, which is to criminalise the purchase of sex. It is true that prostitutes left the streets in Stockholm, Malmö and so on, but according to the police estimate from Stockholm yesterday there are about 300 prostitutes working on the streets. On a daily basis, around 10 to 30 of them can be found on Stockholm's streets, which is a bit higher than the number we have working in Edinburgh, for example. It is a lot lower than the number in Glasgow, but figures from Glasgow are very difficult to come by, as we know.

I bring the Swedish example to the committee's attention simply to point out that there is no panacea if the objective is to eliminate prostitution. We have been told umpteen times by the people who support the Swedish experiment that it worked in Sweden. One of the things that happened in the first year after the legislation was passed was similar to what we discovered in relation to our legislation on kerb crawling—there was a change in behaviour, but things started to drift back to where they had been. I sincerely hope that that does not happen with regard to kerb crawling in Glasgow, because I thought that a fair case was made there.

In Sweden, people worked underground, and the support services were concerned, because they knew that criminality would come in to a much greater extent than previously. However, women are now drifting back to the streets without too much being said about it, because at least the support services can get to them and the police know where they are and can manage the situation to a much greater extent—that was what I suggested to the committee the last time. As well as talking about recategorising the buying and selling of sex as a nuisance crime where it affects a third person, I tried to explain that the balance

was that no one was likely to try to sell sex—and therefore no one was likely to look to buy it—in an area where they knew that a third party would complain about them. A red-light district would therefore be created, which is what enabled the police in Aberdeen and Edinburgh to have much better intelligence on what was happening and at least to hold to a minimum the add-on criminality that attaches to prostitution. I do not think that that has changed, other than that many fewer women work on the streets now—they work indoors.

As I explained to the committee the last time, I hope that the Government decides to reconstitute a committee to investigate indoor prostitution. Most of the women with whom I have contact work not for pimps or managers but for their own sake. They determine how to operate and do so discreetly, so they are not lifted by the police, neighbours do not complain and so on. However, that is still not satisfactory if we believe that there is trafficking. Few women have been shown to have been trafficked into Scotland, but that is not satisfactory. We need much more knowledge about the issue and the police need to be better informed so that they can better inform us before we try to change the law so drastically.

I move amendment 8A.

The Convener: I invite Nigel Don to speak to amendment 461 and the other amendments in the group.

Nigel Don (North East Scotland) (SNP): I agree with Margo MacDonald: I do not think that this is the appropriate legislative place for these amendments, although I understand why Trish Godman has raised these pressing issues. I accept that prostitution is generally an abuse of women and that we should address that, but there is a great deal more to be said about that—mostly to us rather than by us. We need to hold a serious inquiry into this area of the law. I do not know how we would fit that in or what the Government feels it can do about it, but I do not think that we have got to the bottom of the matter yet and we should not just scrape the surface, as I fear that we would do by passing these amendments.

I remind members that my amendment 461 mimics section 14 of the Policing and Crime Act 2009 in England and Wales, which I think is about to be brought into force. It seemed to me that there was value in having similar law, particularly criminal law, north and south of the border and that we should explore that. However, most of the responses that we got to that were simply dismissive, because people preferred Trish Godman's version. The responses were not in favour of what was suggested; there were significant comments against it. I fall back on the point that we are talking about a strict liability offence, which we should not introduce lightly. We should think about introducing the suggested provisions only if people's response is, "Of course we should be doing this. It's long overdue. Everybody agrees." It is plain that that is not the case. On that basis alone, I will not move amendment 461.

Robert Brown: This has been a useful debate in which valid views have been expressed on all sides of the argument. It is useful that Trish Godman started the debate in this context. However, I believe that it is right to oppose all the amendments in the group.

I have expressed concerns about trafficking in the context of the Commonwealth games and the lack of prosecution in that area. I disagree with Margo MacDonald in one respect: I think that there is good evidence that a significant number of people are trafficked into and across Scotland. Such evidence comes from, among others, the trafficking awareness raising alliance in Glasgow, which supports people who have been trafficked. There is a big difference between the number of people who are supported in that context and the non-existence of prosecutions in this area.

Otherwise, Margo MacDonald's words of caution were wise. We have to be chary about inserting well-intentioned amendments on such wide issues into bills at stage 2. I am not saying that it cannot be done—the stalking amendments that we passed earlier were narrow enough and there was sufficient consensus on them to make that possible—but prostitution is an activity on which there are conflicting views and practices in different parts of Scotland. As Margo MacDonald said, there is no national consensus on the way forward. Prostitution is also an activity that has been with us for thousands of years. It is right to be sceptical about whether an amendment to the Criminal Justice and Licensing (Scotland) Bill in 2010 will suddenly change all that.

There are issues about the phraseology of Trish Godman's amendment. It would introduce what has been categorised as a strict liability offence, which I think is possibly right, but what is the definition of "sexual activity"? Does it include non-physical activity such as texting? Does it include escort work? Is there an objective or subjective test as to what is involved? What does "paid-for" comprise? Trish Godman indicated that it included payments in kind or in gifts, but in some respect that makes things worse, because how do you distinguish between people's multiple interactions in on-going short or long-term relationships? Would that have the effect of making prostitution more marginal and more dangerous? There are issues about that, notwithstanding the views that are held at the Glasgow end of things, if you like. Would it handicap police investigations of the murder or rape of people who are involved in this

area of activity? On the other hand, it could be a price worth paying if far fewer women resorted to prostitution because demand was stifled by criminalisation, although Margo MacDonald has made the valid point that whatever the early effects of the Swedish model, it does not necessarily produce a long-term change in activity.

We have evidence from the City of Edinburgh Council that there is no consensus on the way forward. We could benefit from a rather more detailed study, either by recalling the task force or by seeking a royal commission-type study. Before I could be satisfied of the need to go in the proposed direction, I would need there to be much greater agreement and underlying justification than we have had in the limited context of today's stage 2 debate.

11:30

Richard Baker (North East Scotland) (Lab): I will speak briefly in favour of Trish Godman's amendments. It is right that she has lodged them at this stage. The bill is wide ranging, and a number of issues that were not part of the stage 1 consultation have been brought forward for consideration at stage 2. We will make different decisions on whether those issues should be advanced further, but it is right that Trish Godman has brought forward this important matter for consideration at this point.

The amendments reflect a campaign that has been waged strongly, on the basis of good evidence, by Glasgow City Council. Neither the council nor Trish Godman has described a change in the law as a panacea or a silver bullet. The council has looked at a range of interventions; Trish Godman referred to the SCOT-PEP project and help to provide routes out of prostitution. Nevertheless, a change in the laws on prostitution has been described in the campaign and by Trish Godman as a key measure to deal with the misery and exploitation that, we must remember, exists around prostitution for so many women. Unfortunately, many women are trafficked into Scotland for that purpose.

People have talked about when we should consider the issue. The problem is likely to be even more pressing at the time of the 2014 Commonwealth games. It is clear that 2010 is exactly the kind of time for us to talk about how we can have the best laws to deal with the issue.

The argument for a change in the law has been well made. People have talked about equality in the law. To me, it has always seemed perverse that prostitutes have routinely been prosecuted whereas those who have purchased sex have not; indeed, they have not even been criminalised in the eyes of the law. There are international examples—not just from Sweden but, I believe, from across Scandinavia—that indicate that criminalising the actions of the purchaser has a positive effect in tackling the problem. On that basis, I strongly support Trish Godman's amendment 8.

Margo MacDonald has lodged her amendments to enable her to take part in the debate. I appreciate the intention but, as has been said, the amendments appear to be covered by existing offences of breach of the peace and public indecency.

Amendment 461, in the name of Nigel Don, does not the reflect the change that Trish Godman seeks. As Nigel Don said, it would create a new offence of paying or promising to pay for the sexual services of a coerced prostitute, which would leave Scotland in a position similar to that which obtains on the issue in England and Wales. We do not want the laws on prostitution here to be weaker than those in England and Wales; in fact, we would support amendment 461 in the event of Trish Godman's amendments falling. In any event, we seek an opportunity to return to the matter and to move to the reform of the law that Trish Godman proposes, which we see as optimal.

Stewart Maxwell: I have a great deal of sympathy for Trish Godman's intent. The principle behind her amendments is well considered and, probably, overdue. However, I have some issues with the detail and practical application of the amendments.

Robert Brown has covered much of the ground that I had intended to cover, so I will try to keep my remarks reasonably short. We took oral evidence on this set of amendments. Richard Baker talked about the experience and evidence of the Glasgow witness, but the evidence from the Edinburgh witness and the police officer from whom we heard was very different. There is a range of opinions and, as others have said, a lack of consensus on the way forward in the area. Despite my sympathies for the intentions behind the amendments, the bottom line is that the issue is far too large and complex to be dealt with in this fashion.

I want to make two further points. First, at the meeting to which I referred, I asked witnesses about the definitions in the amendments. Trish Godman indicated that she understands that there are issues relating to the definitions and she believes that they can be dealt with at a later stage. I am not sure about that; there are problems with those definitions. I will not go over them, as we dealt with them at a previous meeting and Robert Brown has already covered the matter.

My second point concerns whether we should agree to the amendments at all. I think that the

issue here is effectiveness. If I truly and genuinely believed or even thought, on balance, that the amendments would have the intended effect of helping women who find themselves in a very difficult position, preventing other women from falling into prostitution or tackling the serious organised crime behind a lot of prostitution, I might have been willing to support them. However, I question their practical effectiveness. I think that it would be much better to take the issue away, look at it on its own seriously and in great depth, tackle it properly and come up with a very effective solution that would deal with all our concerns.

As a result, I am not minded to support Trish Godman's amendments or, partly for the reasons that have been stated, Nigel Don's amendment 461. I also do not support Margo MacDonald's amendments. However, she has said that she will withdraw amendment 8A and not move her other amendments if the other amendments in the group do not progress, because she wants a much wider debate about the issues.

James Kelly: I support Trish Godman's amendments. I realise that the area is complex and controversial; indeed, that much is clear from the breadth of contributions, evidence that we have received and comments that have been made outwith the committee. I welcome the fact that Trish Godman and others have lodged the amendments and their contribution to a very much needed debate on this issue.

My support for amendments 8 and 9 is based, first, on the strong indication in the evidence that we received of the need to reduce demand if we are to tackle the adverse effects of women being dragged into the sex industry. Indeed, Trish Godman made that point strongly in her own comments and I certainly think that her amendments would tackle the issue.

Secondly, the amendments have a punishment element. Wisely, Trish Godman referred to last week's debate on the amendments concerning knife crime, in which some members supported the view that stronger penalties for such crime would act as a deterrent. If a punishment element is associated with the purchasing of sex, people are likely to be less inclined to participate in the activity, demand will reduce and fewer women will be caught in very difficult situations.

The Convener: Although Margo MacDonald is correct to say that there was no consultation on the amendments, I point out that the committee took additional evidence on the issue. That move has proved to be useful, because it has allowed me to conclude that views are very mixed. For example, the views of Ann Hamilton from Glasgow were to some extent contradicted by the other two witnesses who gave evidence with her, and I have to say that I was largely persuaded by the evidence given by the police that, if agreed to, Trish Godman's amendments would lead to difficulties.

The amendments in the group have been well thought out and were lodged in a sincere effort to combat the unfortunate and sometimes tragic situations that can arise, particularly when women have been forced into prostitution by threats, violence or other forms of coercion. In fact, we are about to debate an amendment that I believe goes some way towards dealing with trafficking, which we all want to deal with in a exceptionally severe way.

That said, I am concerned that if we agree to amendments 8 and 9 difficulties in workability will arise. For a start, the evidence that would be required to secure a conviction would be very difficult to obtain. Apart from using closed-circuit television or something of that nature, I question whether the evidence would be available to ensure a successful prosecution.

I do not intend to deal with Margo MacDonald's amendments at any great length, as she has candidly admitted that she lodged the amendments to counterbalance in some way the amendments in the name of Trish Godman. However, we will have to deal with her amendments first as they seek to amend Trish Godman's amendments and, procedurally, there is no other way forward.

Margo MacDonald: May I ask a procedural question on that point?

The Convener: I will deal with that presently.

The other arguments that have impressed me were those that were made by Robert Brown. I largely agreed with what he said under a number of headings. I am also of the view that the matter should be subject to wider and further inquiry, but I do not think that stage 2 of what is largely a legal bill is the appropriate time to agree to any of the amendments, bearing in mind the lack of consultation and the lack of an opportunity to take fuller evidence. However, I anticipate that the matter will be revisited, under some heading, in the time ahead.

Angela Constance (Livingston) (SNP): I echo the comments that have been made by most members around the table. There needs to be a more dedicated and focused examination of the issue in its entirety. Although I welcome the desire to focus more on the buyers of sex—mainly men—I have issues with that approach because, by and large, criminals do not think that they will get caught. Like others, I accept that the issues around prostitution appear to be different in different parts of the country.

All those who have lodged amendments on this issue are to be commended for bringing the issues once again to the fore, as they had slipped off the radar. All the remarks that have been made have resonated with me. The question to the Government is, rightly, focused on how we can take the issue forward, but I am not convinced that this bill is the right way in which to do so. We need to think about how we can address the issue in a more dedicated and thoughtful manner.

Fergus Ewing: In response to Trish Godman, I say that the Government treats with the utmost gravity all issues relating to violence against women, as any Government would. That is expressed by action across the directorates of Government and by the actions of the police, the justice system in general, social work and the voluntary sector. In my area of responsibility, the new strategy that is contained in "The Road to Recovery: A New Approach to Tackling Scotland's Drug Problem"—as we all recognise, drug addiction fuels much of the prostitution that takes place in Scotland—is a valuable tool that we can use to help women to find recovery and thereby exit prostitution.

I pay tribute to the work that has been done in connection to, for example, Strathclyde Police's persistent offenders project. When I visited that project, I met a young woman who, six months previously, had been 6 stone in weight, perhaps close to death, on the streets and on the game. However, she had been helped to regain her life by the intervention of the social work department and the police. I want to mention that project because the causes behind prostitution need to be considered, as they are part of the complex background that many members have alluded to.

Amendments 8, 8A to 8D, 9, 9A and 461 all deal with the issue of prostitution and propose to criminalise the purchase of sexual services and associated behaviour, although not the selling of sexual services. Those changes would represent a significant change to the law in this area. Like many others, I have previously offered strong views on the issue of prostitution, and I want to draw members' attention to the wider context in which the Government has been considering the issue.

11:45

Many members will recall the substantial and prolonged debate on prostitution that took place in the run-up to the Prostitution (Public Places) (Scotland) Act 2007, particularly during the passage of the bill through Parliament. As some of you will know, I participated fully in that debate and voiced my views on the issue along with many others who had strong views to offer. That debate made it very clear that the substantial and complex issues surrounding prostitution are not amenable to simple solutions or quick fixes—to be fair, I do not think that anyone believes that that is the case. Nevertheless, the consideration of, and debate around, the Prostitution (Public Places) (Scotland) Bill resulted in a very welcome development in the law that targeted kerb crawlers. Whereas the law had always criminalised the antisocial behaviour associated with soliciting and loitering for the purposes of selling sex—I well remember hearing committee evidence about such behaviour in the east end of Glasgow that caused huge concerns to the residents there—the 2007 act levelled the playing field by ensuring that those soliciting and loitering for the purpose of buying sex are also criminalised.

However, we remind the committee that the initial impetus for a fresh consideration of street prostitution came from the Prostitution Tolerance Zones (Scotland) Bill, which was introduced by Margo MacDonald in 2002. Although that bill proposed that prostitution should in effect be legalised, the five years of consideration and debate that led to the 2007 act came to a very different conclusion, which was that more of the antisocial behaviour associated with prostitution should be criminalised. Bearing that in mind, the committee may not be surprised to hear that the Government is concerned about making substantial changes to the law in this difficult, complex and sensitive area by means of stage 2 amendments to the bill. We are concerned that such significant changes to such a sensitive area of law have not been properly debated or consulted on. We know that the committee, too, was concerned that these amendments raised significant new issues on which there had not been proper consideration and agreed to take written and, indeed, oral evidence on those. We think that the volume of responses on the matter and the wide range of issues that they raise reinforce the concerns.

I note that, in written evidence that the committee received, a group of academics appealed for

"more extensive consultation with all key stakeholders which would presumably help to broaden out the current narrow focus of reform into a more inclusive, research-informed reform strategy. We would urge the committee to make a careful balanced assessment of this complex area".

We would remind the committee that the stage 1 call for written evidence resulted in around 90 submissions, covering all the provisions contained in the bill, yet, in only two weeks, 93 responses have been received on these prostitution amendments alone.

The changes leading to the 2007 act had the benefit of proper consideration by the expert group

on prostitution, and the Government's view is that the significant changes to the law that are proposed by these amendments require similar scrutiny. I believe that that was the thrust of Margo MacDonald's submission this morning. A more considered review of the issues is needed to ensure that any measures that are put in place are necessary, practicable and sustainable. The volume of written evidence offers overwhelming confirmation that prostitution is a complex area that requires careful consideration and debate prior to additional measures being taken to address the issue.

I carefully read the *Official Report* of the oral evidence session that took place on 23 March, particularly the contributions by Ann Hamilton, Iain Livingstone and George Lewis. Several members, including Stewart Maxwell and the convener, alluded to that evidence. I found that it raised very significant issues of concern. For example, the Association of Chief Police Officers in Scotland stated:

"The links between prostitution and vulnerable individuals, organised crime, community concern and antisocial behaviour are probably more complex than they are in relation to any other issue ... there are gaps in our understanding—the profile of prostitution is different throughout Scotland."

Margo MacDonald has often made that point in detail. The police argued that prostitution

"is not a single entity and does not manifest itself in any single way. It can be very complex and multilayered with regard to whether it occurs on-street or off-street".

They also expressed their anxiety about

"legislating on a social problem and a social phenomenon when we do not have a clear understanding of prostitution and the scale and extent of the problem".

Margo MacDonald also explained to the committee this morning that similar difficulties may take place in Stockholm. It would seem sensible to suggest that we may need more evidence from that source as we proceed. The police also suggested that

"There is value in our committing to having a longer look at the problem, its various layers and complexities and interdependencies".

The convener and other members have already proposed that solution.

Assistant Chief Constable Livingstone expressed considerable concerns about the evidential difficulties of securing successful convictions. He described those as a "fundamental reservation" and he asked:

"would we end up with a piece of legislation on the statute book that was not enforced or utilised, which would undermine our whole approach?"—[*Official Report, Justice Committee*, 23 March 2010; c 2776, 2779, 2789, 2795 and 2784.]

Other members have characterised the evidence that was heard by the committee on 23 March as tantamount to saying that agreeing to the amendments in Trish Godman's name would lead to the problem being driven underground thereby, as members have rightly said, potentially exacerbating the already very serious threats to women. If the experts say that passing amendments might make a problem worse, it seems to me that the case for taking a further look at the evidence becomes overwhelming. Even Glasgow Community and Safety Services acknowledges that indoor prostitution has not received the type of attention and research that it requires and did not oppose further consideration of these complex issues before we legislate.

The Equality and Human Rights Commission recently announced an inquiry into human trafficking in Scotland. The inquiry, which will be chaired by Baroness Helena Kennedy, will focus on sexual exploitation. All the available intelligence indicates that any trafficking into Scotland for sexual exploitation is for the purposes of prostitution, so the inquiry will inevitably focus on prostitution. The Government welcomes the commission's inquiry and we have made clear to Baroness Kennedy that the Government will seek to support the inquiry and assist it in its consideration. Given the focus on prostitution, we are hopeful that the inquiry will reach some positive conclusions on the way forward on this issue and we look forward to reading its report on the matter. It would seem to make a lot of sense that we give Helena Kennedy the opportunity to complete her inquiries and that we contribute to them—as all members are entitled to do—and consider their outcome carefully before we proceed further. I note that ACPOS has also welcomed the helpful work that Baroness Kennedy has kicked off.

As I said during the debate on amendment 370, the Government is concerned about making substantial changes to the law in this difficult, complex and sensitive area without proper consideration of and consultation on all the issues involved.

In conclusion, rushing through a major change to the law on prostitution through stage 2 amendments, without any proper consultation and with very limited time for consideration, is a bad idea. The issues involved are complex and require proper consideration. I therefore ask the committee to reject all the amendments.

Trish Godman: I will try to address as many issues as I can.

Margo MacDonald said that there is no place in the bill for my amendments because of a lack of consultation, and others, too, have made that comment. I wonder, though, where I should have

raised the issue, because other amendments have been raised late and it is a wide-ranging bill, but perhaps you know better than me.

The police say that no more powers are needed, but no one has been arrested for trafficking here. It is worrying that the police say that there is little evidence but that they have the power to do something about it.

Assistant Chief Constable Livingstone told the committee:

"We recently visited all licensed premises—and there are a number of gay saunas in Edinburgh—with a view to engaging with people working in those establishments. They were not enforcement visits, but welfare visits."—[*Official Report, Justice Committee*, 23 March 2010; c 2786.]

I do not know how many police make welfare visits, but I do not think that many of them do. However, if I was a trafficked woman living in a foreign country where I did not speak the language and the police came into the sauna, I am not sure that I would consider that they were present for the purposes of a welfare visit. I accept that that is what the police were trying to do, but Assistant Chief Constable Livingstone's point was that he was not receiving evidence about trafficked women in saunas.

The law needs to be equal. It is certainly not equal at the moment, but amendment 8 would change that. Currently, the woman gets charged, but the man does not.

Margo MacDonald mentioned Sweden. We can copy good practice from Sweden, where there has definitely been a reduction in trafficking. Indeed, when I visited the Metropolitan Police, I was given information about two international gangs whose leaders are each serving 25 years in a Swedish prison because they were found to be trafficking women into that country.

Nigel Don said that the bill is wide ranging but that it is the wrong place for the proposed measure. I should pick him up on his point that women in prostitution are generally abused; they are, I suggest, always abused. He also mentioned that the Metropolitan Police is implementing the new legislation that has been introduced this month. However, I was told by the Metropolitan Police that the new legislation in England was introduced on the basis of roughly the same amount of information as we currently have in Scotland.

Robert Brown talked about trafficking in the context of the bill and of the Commonwealth games. I know that the Metropolitan Police has a dedicated Olympics team working in the borough of Newham, where the accommodation for the athletes is currently being built by men from the eastern European bloc. The Metropolitan Police team has already managed to help some trafficked women there. I am not sure that similar numbers of people will be trafficked for the Commonwealth games, but I certainly think that we need to address the issue.

Robert Brown also said that there is no national consensus across Scotland on my proposals. I suggest that there is no national consensus on any law that we introduce. We have introduced serious laws such as the smoking ban that were not agreed on throughout Scotland. In our job, that happens quite a lot. In response to his other point, as I have already said, the Sexual Offences Act 2003 provides a definition of "sexual activity".

I have sourced an article that suggests that there is a possibility—I repeat, this is a possibility—that Edinburgh has a thousand licensed premises, in each of which an average of 20 women might work. Even if the number of premises is half that amount and is only 500, some 20 women might work in each sauna because of shifts and so on. Therefore, I suggest that there are women out there in danger every day.

Stewart Maxwell said that he had sympathy for my proposal but had not heard enough evidence. That point has been made before. He also picked up on the definitions, and I accept that point. If my amendments are agreed to, we may need to look at that point later.

James Kelly talked about the need to reduce demand and to tackle the effects of prostitution on women. Again, the fear of getting caught is an important point. There is currently no fear because people know that they will not get caught because engaging in paid-for sexual activity is not an offence.

Bill Aitken also asked for additional evidence and said that he was persuaded by the police's evidence that the proposed measures might have difficulty in working. I am not sure about that. If the amendments are agreed to and become law, the police will need to deal with the issue in the same way as those people who currently provide services to help women who are trafficked into prostitution. Ann Hamilton explained that services need to respond to what is happening out there.

Angela Constance said that she echoed the comments of others in believing that a more dedicated focus was required for the issue. She also mentioned that the criminals do not get caught. As I have said, they do not get caught because prostitution is currently not an offence.

The minister mentioned the new strategy on drug abuse, but that is, as he will surely agree, only one part of the picture. Not all prostitutes are drug users and people enter prostitution for all kinds of different reasons. He was concerned

about changes in the law on such a sensitive issue. Clearly, the issue needs to be addressed, given that we have received 93 submissions for and against the proposals, which have aroused a lot of response from the general public. Of course prostitution is a complex issue, not only because it involves organised crime but because there are gaps in our understanding on why women prostitute themselves. Prostitution is not a single entity but a multilevel problem.

However, that misses the point. I am aware of all that—I know all that—but I also know that men can currently go out and demand or buy sex from a woman in the knowledge that nothing will happen to them. I can separate that out from everything else that is going on—I can do that quite easily. An offence has been committed. If the amendments were accepted and became part of the bill, the police would have other powers to use and services would have a different way of dealing with the problem and looking at all the multifaceted issues that are involved—I do not think that my amendments will change any of that, as it is very complex subject.

I hope that committee members will support my amendments, but I suspect that you will not.

12:00

The Convener: Thank you. Before I ask Margo MacDonald to wind up, I advise her that, under rule 9.10.10 of the standing orders, it is necessary for the committee to dispose of amendments to amendments prior to the principal amendments being dealt with. That is perfectly logical. As Margo MacDonald is seeking to amend Trish Godman's amendment, we must deal with hers first.

Margo MacDonald: I apologise, convener. I should have been up a bit earlier to read rule 9.10.10.

The Convener: Clearly, you are not a full-time member of the Justice Committee or you would be up early every morning.

Margo MacDonald: Oh, please. I would work so much harder if I was, though.

The business of trafficking has been referred to, but we have no figures on it in front of us in any of the evidence that has been submitted to the committee. Despite that, it was talked about in relation to Glasgow and the assertion was made that we know that there are trafficked women. First, how do we define "trafficked women"? Are they people who come here illegally, as economic migrants, or are they people who are brought here against their will and coerced into prostitution? Even the terminology is not common to everyone who uses it. I suggest that it is no basis for a new law.

As we know, the economic situation does not exactly look promising. In every society in the world, over the past 2,000 years, there has been a record of women being forced to the extreme of selling themselves in order to put food on the table or look after their children. I do not mean to be sentimental or emotional, but it is just true that it may be the last thing that a woman has left to protect her and her family. In 2010, the situation is not so drastic; on the other hand, it could be that arrangements are made privately because women do not have money coming in to cover the necessities of everyday living. We are characterising someone in that situation in exactly the same way as we are characterising a refugee—either an illegal immigrant or someone who has been kidnapped, brought to this country and forced to prostitute themselves. However, the two things are very different.

Several members have admitted that this is a complex area. It is complex and fast changing, as women no longer sell themselves only on the street; the new technology means that the telephone and the internet are used to further the business of prostitution. If she wants to, a woman can work much more easily without a criminal gang or a pimp behind her. I know that from speaking to women who are doing that. We can expect that to be much more the pattern in the future. If the intention of the committee and the Parliament is to outlaw paid-for sex between consenting adults, they will have to tackle that, and it will need much more information than we have got this morning. Is the business of escorting to be treated in the same way as phone sex? I do not see how that can be policed or how an equitable punishment can be arrived at if that is what the committee thinks is needed.

At the end of her remarks, Trish Godman said that there are many different reasons why women prostitute themselves. That suggests that there might be an element of choice in some cases. If choice is involved, we are proceeding from an erroneous basis in saying that all prostitution is the exploitation of women and violence against women.

I hate to throw a spanner in the works at the last minute, but I could not pass up the chance. I have been trying to explain to various parliamentary committees for a long time that the answer is much more complex than simply saying that we will abolish prostitution. We must determine what prostitution is, first.

The Convener: Thank you. You have not intimated whether you are pressing or withdrawing your amendment.

Margo MacDonald: Because of rule what-you-may-call-it—

The Convener: Rule 9.10.10 of the standing orders. You are pressing your amendment.

Margo MacDonald: Does that help you, convener?

The Convener: I am entirely in your hands on the matter.

Margo MacDonald: Och, I never thought that that would happen. Yes, I will press my amendment.

The Convener: The question is, that amendment 8A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

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

The Convener: The result of the amendment is: For 0, Against 8, Abstentions 0.

Amendment 8A disagreed to.

Amendments 8B to 8D not moved.

The Convener: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

Aitken, Bill (Glasgow) (Con)
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 3, Against 5, Abstentions 0.

Amendment 8 disagreed to.

Amendment 461 not moved.

12:07

Meeting suspended.

12:17

On resuming—

Section 35—People trafficking

The Convener: Amendment 371, in the name of the cabinet secretary, is grouped with amendments 372 to 377, 386 and 387.

Fergus Ewing: Human trafficking is an abhorrent crime. Our role as legislators is to ensure that we provide our police, prosecutors and courts with the right tools to tackle it.

Section 35 already seeks to make amendments to the legislation on human trafficking to broaden the application of the offences and to ensure that our courts have jurisdiction to try them. However, since the bill was introduced, there have been a number of developments in England and Wales and in Europe of which we need to take account. Over the past year, the European justice and home affairs council has worked on a new framework decision on human trafficking. Although that proposal fell with the coming into force of the Treaty of Lisbon, the draft has reappeared as a proposal for a directive. We are, therefore, taking the chance to get ahead of the game.

Section 22(1) of the Criminal Justice (Scotland) Act 2003 and section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 make it an offence to arrange or facilitate the trafficking of human beings into, within or out of the UK for the purposes of various forms of exploitation. Amendments 371 to 373 and 377 create new offences that deal with the arrangement or facilitation of trafficking for those forms of exploitation but also cover the trafficking of persons into, within or out of a country other than the UK. Amendments 376 and 377 provide that those new offences apply to UK nationals, people habitually resident in Scotland and UK corporate bodies. That will help to ensure compliance with any new directive.

Amendment 377 also expands in several ways the definition of “exploitation” in section 4(4) of the 2004 act. Those changes ensure that we have complete coverage of trafficking where the exploitation would involve removal of body parts including blood, rather than simply the removal of organs for transplantation.

Through the Borders, Citizenship and Immigration Act 2009, changes have been made for England, Wales and Northern Ireland to cover the use or attempted use of a person for the provision of services or the provision or acquisition of benefits of any kind, where the person is chosen on the grounds of ill health, disability, youth or family relationship. Part of amendment 377 replicates that change. The change ensures that the offence of trafficking captures those cases

where the role of the person who is being exploited is entirely passive and that person is being used as a tool by which others can gain a benefit of any kind.

The existing offence in section 4(2) of the 2004 act of trafficking persons within the United Kingdom requires that the person who arranges or facilitates the travel within the UK believes that an offence under subsection (1) may have been committed—that is to say, that the person has already been trafficked into the UK. Amendment 377 adjusts section 4(2) to remove the requirement for that belief, so that the act of a person who arranges or facilitates the travel intending to exploit the victim, or believing that another person is likely to do so, is sufficient for an offence to be committed.

Amendment 377 also ensures that the sheriff court has jurisdiction over the 2004 act offences. Amendments 374 and 377 clarify that those offences can be taken by solemn or summary procedure, although, given the gravity of the offences, we would expect most cases to be dealt with on indictment.

Amendments 386 and 387 are technical amendments that clarify the jurisdiction of the sheriff court in relation to those offences for which section 11(3) of the Criminal Procedure (Scotland) Act 1995 and section 55(7) of the Sexual Offences (Scotland) Act 2009 make provision. By those provisions, proceedings can be taken in Scotland in relation to certain specified criminal activity by certain persons that has taken place outwith Scotland. The amendments clarify that both solemn and summary prosecutions may be taken in the sheriff court for those offences.

Amendment 386 also amends section 11(4) of the 1995 act to provide that persons may be prosecuted in Scotland by solemn or summary procedure for those offences to which that provision applies.

I move amendment 371.

Amendment 371 agreed to.

Amendments 372 to 377 moved—[Fergus Ewing]—and agreed to.

Section 35, as amended, agreed to.

After section 35

The Convener: Amendment 112, in the name of the cabinet secretary, is grouped with amendment 143.

Fergus Ewing: There is little doubt that slavery, servitude and forced labour are wrong and should be addressed in our criminal law. Although we think that the law in Scotland covers most of the circumstances that might constitute slavery, servitude or forced or compulsory labour, we think that there is a risk of a gap in the law in so far as it may not deal with the employer of an individual who is subject to such behaviour, particularly where that person—the employer—has not been engaged in the trafficking of the individual. That could be of particular relevance to people who are brought to this country, possibly in good faith, and taken advantage of because of their uncertain immigration status. A case against France in the European Court of Human Rights a few years ago highlighted the need to ensure that the law is clear in that area to avoid a finding that article 4 of the European convention on human rights has been breached.

Amendment 112 is designed to ensure that there is no gap in the law by creating new statutory offences of holding an individual in slavery or servitude, or requiring that individual to perform forced or compulsory labour where the offender either knew or ought to have known that the person was being held or required to perform labour in such circumstances. Slavery, servitude and forced or compulsory labour will be defined by reference to article 4 of the European convention on human rights, to ensure compliance with the convention. Given its seriousness, the offence will attract a maximum penalty of 14 years' imprisonment.

The offence mirrors the new offence that is contained in section 71 of the UK Coroners and Justice Act 2009. We consider that a provision in virtually the same terms for Scotland is appropriate, not least because a difference in approach between Scotland and the rest of the UK would be unhelpful. Any difference would also run the risk of the UK being found to be in breach of its obligations under article 4.

Amendment 143 seeks to include the new offence as an exploitation offence, as defined in section 40A of the Antisocial Behaviour etc (Scotland) Act 2004, which section 72(7) of the bill introduces. The section provides for the closure of premises that are associated with human exploitation.

I move amendment 112.

Amendment 112 agreed to.

Section 36 agreed to.

After section 36

The Convener: Amendment 113, in the name of the cabinet secretary, is in a group on its own.

Fergus Ewing: Amendment 113 inserts a new section into the bill to create two new statutory offences relating to fraud.

Following publication of "Her Majesty's Inspectorate of Constabulary for Scotland:

Thematic Inspection Serious Fraud" in May 2008, an ACPOS-led short-life working group looked at whether changes to fraud law were needed in Scotland. It noted that the common law of fraud worked well, but it recommended the creation of two new statutory offences to complement common law. The new offences are based on similar offences in sections 6 and 7 of the Fraud Act 2006, which does not extend to Scotland.

The two new offences will criminalise the possession or control of articles for use in, or in connection with, the commission of fraud; and the making, adaptation and supply or offering to supply an article that has been either designed or adapted for use in, or in connection with, the commission of fraud, or when the person intends that the article is to be used in, or in connection with, the commission of fraud.

Currently, when an individual is found with, say, a credit card skimming machine in their possession but there is no proof that they have attempted to undertake a fraud, no offence has been committed though it is clear that the article is to be used for fraudulent purposes. In future, if it can be proved that the accused possessed the article and that the article was to be used in or in connection with the commission of fraud, the new offence of possession or control of the article will apply and the person can be prosecuted.

Some may query why the new offences do not simply outlaw the possession or supply of fraudulent articles, but it would be very difficult to define exactly what is a fraudulent article. For example, a credit card skimming machine can be very similar to credit card readers that are used by shops all over the country, while a list of credit card numbers held on a computer could simply be part of a shop's retail records. We therefore believe that, in addition to a person possessing the article, it must also be established that the article was to be used in, or in connection with, the commission of fraud. We consider that the wording of the provision is sufficient to allow the courts to interpret the provision as including possession of an article intended for use in fraud.

We are glad to be able to include the two new statutory offences in the bill as they will help to ensure that our laws are comprehensive in dealing with fraud.

I move amendment 113.

Amendment 113 agreed to.

Section 37 agreed to.

After section 37

The Convener: Amendment 114, in the name of the cabinet secretary, is grouped with amendments 189, 192, 194 and 196.

Fergus Ewing: Amendments 114, 189, 192, 194 and 196 allow me to pay tribute to the Liberal Democrats—not in this Parliament, but at Westminster.

It was Dr Evan Harris MP who first raised the continuing existence in England of the offences of sedition and seditious libel during the passage through Parliament last year of the Coroners and Justice Bill. As he said, although it would be unthinkable for the state to use the offences today in the way that they were used against the likes of John Wilkes in previous centuries, they remain part of our law. Theoretically, every time that a journalist harangues the Government or a comedian insults the Crown, they are liable to be arrested.

The provisions are more than a mere theoretical curiosity to amuse law students. More importantly, the fact that the UK has such laws is used as a convenient excuse for repressive regimes worldwide to have, and to use, their own. In such countries not only is there a chilling effect—people being too afraid to air criticism of the authorities and elites—but citizens are regularly prosecuted for speaking out.

The UK Government was seized of the force of the arguments and tabled amendments to the Coroners and Justice Bill to sweep away the offences of sedition, seditious libel, obscene libel and defamatory libel in the rest of the UK. We believe that it is appropriate for us to follow suit and lay finally to rest the Scots law offences of sedition and leasing-making, which is what amendment 114 does. That will help give the UK greater moral authority when dealing with repressive regimes.

Amendments 189, 192, 194 and 196 tidy up the statute book in consequence of amendment 114 and the changes made in the rest of the UK, including the complete repeal of two antiquated acts as they apply to Scotland.

I move amendment 114.

12:30

Angela Constance: It would be interesting if the minister could explain leasing-making when he winds up.

The Convener: I am sure that he will do so. While he is being advised, I should say that there is a delicious irony in a Scottish National Party Government minister—a representative of a party that I have always thought to be a seditious bunch—moving that that part of the law be removed and those of us of greater ilk being denied the protection that the law presently allows against being traduced in such an unseemly manner.

Stewart Maxwell: I am not sure that that meets the criterion for being respectful to other members of the Parliament. [*Laughter*.]

The Convener: Mr Ewing, would you like to sum up?

Fergus Ewing: Indeed. I was not aware that every time a journalist harangues the Government, he is liable to be arrested. Had I known that, convener, history might have been somewhat different. However, as a habitually loyal colleague, I am happy to move the amendments. When I read out the words "leasing-making", I wondered whether a typographical error had crept into my script; that is why I paused momentarily. However, there is no error—one does not expect errors from one's officials—and it means lese-majesty, or the act of making critical remarks of Her Majesty, so I am happy to have lodged the amendment. I am pleased say that, according to the current edition of Gordon, there have been no reported prosecutions for leasing-making since 1715. Members can draw whatever conclusions they wish from that fact.

The Convener: Yes—we are entitled to some light relief after a heavy morning.

Amendment 114 agreed to.

The Convener: Amendment 378, in the name of the cabinet secretary, has been debated with amendment 399. Minister, I believe that you do not intend to move amendment 378.

Fergus Ewing: No, and I will explain briefly. Following extensive discussion at last week's meeting, there was agreement to consider further the various amendments relating to the proposed new stalking offence that Rhoda Grant lodged, and our offence of threatening, alarming or distressing behaviour. The committee earlier agreed to Rhoda Grant's amendment 402, and we will now work with Rhoda Grant and the committee with a view to preparing further amendments that will ensure that the final version of the stalking offence is robust and workable.

I will not move Government amendment 378 at this time. Instead, we will refine the text as necessary and engage with interested members to ensure that we can lodge an amendment at stage 3 that will address the uncertainty created by Her Majesty's Advocate v Harris and which will, I believe, have broad parliamentary support.

Amendment 378 not moved.

The Convener: Thank you; that is useful.

Amendment 115, in my name, is grouped with amendments 116 to 120, 120A, 121 to 125 and 185. The amendments have been overtaken by events. Since they were lodged, the Government has intimated its intention to legislate separately after a consultation process. On the basis of a brief assurance from the minister that that is still the Government's intention, I will seek to withdraw or not move my amendments, with the committee's approval.

I move amendment 115.

Fergus Ewing: We are certainly pleased with the broad consensus in favour of reforming the law of double jeopardy. It might be helpful if I read into the record our reasons for doing so, because that is the basis on which the convener will feel able to withdraw amendment 115.

As we indicated during the debate in Parliament last month, we welcome the intention behind the amendments in the group, but they do not go far enough. The convener's amendments adopt the provisions that were set out in the Scottish Law Commission's recent report on double jeopardy. We are grateful to the commission for its work in the area and on the related issue of creating a Crown right of appeal—that reform is, of course, already in the bill. During last month's debate, we outlined our reasons for conducting a consultation exercise instead of pressing ahead with the commission's recommendations on the bill. Our view remains focused on the creation of an exception to double jeopardy where new evidence has arisen, and on the need to get this important reform right.

Although the commission provided draft legislation to create a new evidence exception to double jeopardy, it was offered on a provisional basis. The commission was unable to recommend either way on the principle of whether to have such an exception. We are in favour of a new evidence exception and share the convener's enthusiasm for change, but the issue is complex and important and we think that we should wait for the results of the consultation exercise. In particular, we want to hear the views of the public on issues such as the offences to be covered by a new evidence exception and whether it should be made retrospective. I am pleased that the convener shares those views, if I have interpreted his remarks correctly. I hope that Mr Brown shares those views, too. We hope that the Government's consultation exercise, which is due to close on 14 June, will form a solid foundation for taking forward reform of the law in the area.

Robert Brown: I share those views.

The Convener: As no one else wishes to contribute and I assume that the minister feels no need to sum up, I seek permission to withdraw amendment 115.

Amendment 115, by agreement, withdrawn.

Amendments 116 to 120, 120A, 121 to 125 and 544 not moved.

The Convener: In view of the lateness of the hour and the fact that one further item is likely to cause some debate, and because the committee has a couple of administrative items to deal with in private, I suspend proceedings. I am sorry that we did not reach Margaret Curran's amendment, but unfortunately time does not allow. I thank the minister and his team for their attendance.

12:39

Meeting suspended.

12:41

On resuming—

Powers of Entry etc Bill (UK Parliament Legislation)

The Convener: Item 3 concerns the Powers of Entry etc Bill, which is UK Parliament legislation. The committee is invited to consider the paper by the clerk, which is paper 1. As noted in the paper, the bill is no longer in progress in the UK Parliament. Nevertheless, under standing orders, the committee is obliged to report on the legislative consent memorandum. A draft report will be considered under item 4.

Also, as noted in the clerk's paper, standing orders do not allow for circumstances in which, by the time a memorandum reaches the committee, the bill is no longer in progress. The committee may wish to consider writing to the Standards, Procedures and Public Appointments Committee suggesting a minor change to the rules to make it clear that the obligation to refer a memorandum to a committee and the obligation on the committee to consider and report apply only for so long as the bill continues to be in progress in the UK Parliament.

That is eminently sensible. Is it agreed?

Members *indicated agreement.*

The Convener: The committee will now move into private.

12:42

Meeting continued in private until 13:04.

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