JUSTICE 2 COMMITTEE

Tuesday 18 March 2003
(*Morning*)

Session 1

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

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JUSTICE 2 COMMITTEE
7th Meeting 2003, Session 1

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Bill Aitken (Glasgow) (Con)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Mr Duncan Hamilton (Highlands and Islands) (SNP)
George Lyon (Argyll and Bute) (LD)
Mr Alasdair Morrison (Western Isles) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE SUBSTITUTES

Roseanna Cunningham (Perth) (SNP)
Lord James Douglas-Hamilton (Lothians) (Con)
Donald Gorrie (Central Scotland) (LD)
Dr Sylvia Jackson (Stirling) (Lab)

*attended

WITNESSES

Alison Coull (Office of the Solicitor to the Scottish Executive)
Sharon Grant (Scottish Executive Justice Department)
Hugh Henry (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Richard Hough

LOCATION

The Chamber

Scottish Parliament

Justice 2 Committee

Tuesday 18 March 2003

(*Morning*)

[THE CONVENER *opened the meeting at 11:04*]

The Convener (Pauline McNeill): Good morning everyone and welcome to the final meeting of the Justice 2 Committee. As usual, it would be helpful if members could switch off their mobile phones and pagers before we begin.

I have only one item to report. The Scottish outdoor access code resulting from the Land Reform (Scotland) Act 2003 is now up for consultation. I believe that there are already some differences about the access code. Although members will be busy with other matters, they may wish to keep an eye on the consultation period. Any new committee should come back to the issue to ensure that the access code reflects the detailed analysis that the committee gave as well as the assurances from the minister about how the act would operate. I put that on record.

Sexual Offences Bill

The Convener: The committee will examine the Sexual Offences Bill, which the United Kingdom Parliament is considering. I welcome Hugh Henry, the Deputy Minister for Justice, and his officials.

As usual, committee members have a note that the clerks have prepared to accompany the Executive memorandum, which sets out the Executive position on the bill. The deputy minister will make an opening statement, which will allow the committee to hear about the measures. He will then answer any questions that the committee may have.

The committee will be aware that standing orders do not set out a formal procedure for the consideration of Sewel motions. Once the committee has taken its evidence, it may report its conclusions to Parliament in advance of the Parliament considering the motion this Thursday.

The Deputy Minister for Justice (Hugh Henry): I am sure that we are all aware of the significance of the issue that we are debating today. The registration of sex offenders is clearly an issue that concerns the public, who want to be assured that appropriate measures are in place. We are attempting to improve the way in which the police keep track of convicted sex offenders, which will assure the public. The proposed measures will improve our ability to monitor the whereabouts of convicted sex offenders and will strengthen our ability to protect children and other potential victims from the risk that sex offenders can pose.

We know that the public are understandably concerned about the menace of sex offenders and the wider risks that such offenders pose. The Executive and our Westminster counterparts have acted quickly to introduce safeguards where the need to strengthen the sex offenders register has been highlighted. As far as is practically possible, we have sought to do that across the UK as a whole.

We know that sex offenders can be adept at avoiding detection and circumnavigating the public protection and community safety restrictions that we have placed on them. Sex offenders are no respecters of their victims, and they are certainly no respecters of the differing criminal justice systems that apply in the UK and, indeed, in different parts of the world.

Several important measures to strengthen the sex offenders register have already been introduced in the UK. Those measures respond to public concern about the dangers that sex offenders pose following the tragic death of Sarah Payne. The measures were contained in the UK

Criminal Justice and Court Services Act 2000 and more recently in the Police Reform Act 2002.

Both of those were the subject of Sewel motion debates on 5 October 2000 and 26 June 2002 respectively. The Scottish Parliament supported measures that included increasing the maximum penalty for failure to register from six months' to five years' imprisonment. Following a particularly difficult case in which a dangerous sex offender was convicted in England but moved to Scotland, we took steps to ensure that the mutual recognition of sex offender orders was respected across the UK.

The further measures that we now propose to introduce will strengthen arrangements in a number of areas that were highlighted in the Home Office-led review of the Sex Offenders Act 1997. The Scottish Executive was actively involved in that review between June 2000 and July 2001. Improvements will address concerns that notification by post does not enable the police to know that the offender is in their area; that the period of 14 days to register a change of address is too long; that the onus is on the police to ensure that the offender is still at the registered address rather than on the offender to ensure that they keep the registered information up to date; and that itinerant offenders can evade registration. Such concerns are undoubtedly valid and our proposals to address them are sensible.

We also mean to tackle the sexual exploitation of children wherever it occurs. Currently, the courts do not have the power to stop an individual who has been convicted of sex offences against children travelling overseas for the purpose of activities that involve sexual harm to children. We believe that that is wrong and so we propose measures that will prevent sex offenders from travelling overseas in certain circumstances. Clearly, the court would have to be satisfied that certain conditions had been met before such a measure was taken—for example, that the offender's behaviour posed a high risk to children abroad—but it is important that the power is there for the courts to act if necessary.

Through regulations, we intend to tighten the arrangements for the notification of foreign travel by registered sex offenders. The Scottish Parliament will have a further opportunity to debate those measures when the regulations are made. We also intend to introduce a new order to make those who have been convicted of sex offences overseas register when they come to the UK.

There are a number of measures through which we propose to take a different approach from that of the Home Secretary. In 2001, the expert panel on sex offending submitted to ministers its report entitled "Reducing the Risk: Improving the response to sex offending". The report made 73 wide-ranging recommendations, which form a cohesive framework for the management and supervision of sex offenders. The recommendations covered community and personal safety, risk assessment, access to personal change programmes, housing and information management. It also dealt in detail with strengthening existing monitoring, which is the subject of this Sewel motion.

The expert panel's recommendations strengthen the notification provisions of the Sex Offenders Act 1997 in relation to offences that are committed in Scotland. They extend the notification requirements to sex offenders who are convicted of specific offences—abduction with intent to rape, assault with intent to rape or ravish and indecent assault—not just when the victim is under 18 or the offender was sentenced to at least 30 months, as is presently the case. Also, where an offender is convicted of any offence that does not carry an automatic notification requirement, but where the evidence discloses that there was a sufficiently significant sexual element to the offender's behaviour to warrant additional measures to protect the public from serious harm, they require that the court should have discretionary power to order notification.

Those provisions recognise that persons who commit serious offences against victims of any age or where there is a significant sexual element should not escape the notification requirement. It is preferable to legislate in accordance with the expert panel's recommendations. Doing so will mean that the courts can examine the sexual element of the crime at the time of trial. In England and Wales, the approach is to list specified offences that allow the courts to examine sexual behaviour. Both approaches are directed at the same ends, but we believe that the Scottish approach better fits with our common law traditions and the approach that the courts take in Scotland.

Scotland has benefited not only from the findings of the joint review of the legislation, but from the recommendations of the expert panel on sex offending, which considered closely the operational issues facing the criminal justice system in Scotland in managing and supervising sex offenders.

Indeed, the Parliament has already recognised the importance of strengthening the system in recently passing the Criminal Justice (Scotland) Bill, which will introduce—also as a result of expert panel recommendations—provisions to improve the information that is available to the courts in sexual offence cases. Before passing sentence in indictment cases or cases where offences involve a significant sexual element, the court will be

required to obtain reports, including a psychological assessment.

The provisions that are contained in the Sewel motion build on that approach. I hope that the committee will be minded to support it.

The Convener: If the judge decides that there is a significant sexual element, will the judge determine whether the person will be registered on the sex offenders register?

Hugh Henry: Yes.

Stewart Stevenson (Banff and Buchan) (SNP): I listened carefully to what the minister had to say and I want to raise a range of issues with him. The first issue is a matter of principle. I understand that the second reading of the Sexual Offences Bill took place in the House of Lords on 13 February. That begs the question: why are we discussing the subject for the first time on 18 March? If it was valid for the House of Lords to have a second reading more than a month ago, has it suddenly become invalid today? The minister might want to deal with that issue before I move on.

11:15

Hugh Henry: I did not follow your question. What did you mean when you said that it had "become invalid today"?

Stewart Stevenson: I am in a quandary about why we are being asked to grant to the Houses of Parliament at Westminster the right to deal with a Scottish issue, when it is manifest that they are already in the course of doing so.

Hugh Henry: That might be their procedure for dealing with the bill, but we have the opportunity to make our comment. We believe that we are taking the right way forward. Although there will always be timetabling issues, which mean that consideration cannot coincide perfectly, it is best to progress on a United Kingdom basis. We acknowledge that some of the issues to do with the crimes that are involved often arise on a UK basis.

Stewart Stevenson: I am not debating that issue—we could debate it, but I do not intend to spend much time on it. My point is simply that, if the House of Lords has had the second reading and so is already engaged in the process of considering the bill, in practice, have not we missed significant opportunities, because of the relationship between the timetabling of our deliberations and the timetabling of consideration at Westminster?

Hugh Henry: We still have the opportunity to influence the process, because the measures will be subject to committee consideration at Westminster. We will be able to influence what comes out of committee at that stage.

Stewart Stevenson: I am grateful for that.

Let me move to the substance of my questions. In your opening remarks, you made the point that we wish to deal with the matter in Scots law through the common law and the definition of offences. I suspect that my colleagues would agree with that. On page 71 of the bill, schedule 2 provides specifically for a list of offences in Scotland. That list is rather different from the list of offences that we have incorporated in the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 and the Criminal Justice (Scotland) Bill. Will we have the opportunity to delete that list, given that you wish to rely on the common law, or to align it with the lists that have been used in legislation that the Scottish Parliament has passed in very recent times?

The Convener: The minister is considering his answer. Members of the committee do not have the list in the bill.

Stewart Stevenson: I have it here.

Hugh Henry: The way in which we are approaching the issue is to extend the coverage of offences with a significant sexual aspect in line with the recommendations of Lady Cosgrove's expert panel on sex offending. We do not propose to delete anything from the bill.

The Convener: I think that the member's concern is that the list looks like a statutory list, such as would be compiled in England and Wales, which might negate our principle. We would prefer to rely on the common law and do not see a need to list the sexual offences.

Hugh Henry: That is a moot point. The committee has made some helpful recommendations, which we are trying to reflect, along with the concerns that the committee has expressed. We believe that this is the most appropriate way in which to do that.

Stewart Stevenson: Nonetheless, there is a dichotomy between the argument that you are deploying in support of the use of a list in schedule 2 to the Sexual Offences Bill that is before the House of Lords and your opening remarks, which referred to common law.

Essentially, it is part 2 of the bill that will apply to Scotland. I do not pretend to have read all 100 pages of the bill in detail—I have read only the parts that I have been told apply to Scotland—so I am prepared to have any shortcomings in my study of the bill drawn to my attention, but at the beginning of part 2, the bill states that a person is subject to a notification order if

"he is convicted of an offence listed in Schedule 2".

The list is on page 71, in schedule 2.

Not only might that list be incomplete or extend beyond what is in common law; in certain respects—specifically in respect of offence 51, which relates to homosexual offences—it deals with those offences in a different way from other recent legislation. I recognise from the minister's opening remarks the fact that we have the opportunity to change the bill through input from ministers and the Scottish Parliament. Nevertheless, I am concerned that the bill as it is presently drafted deals with offences in a very different way from other recent legislation.

The Convener: Let us be clear that other committee members—including me—understand what you are talking about. You are saying that you would prefer not to have a list of offences because, as it is constructed, it appears to be trying to list every possible sexual offence; whereas we could simply refer to the common law of Scotland when there is a serious sexual element to an offence. You are saying that, given the fact that the judge—who knows the law in Scotland—will decide anyway, there is no requirement for the bill to be constructed in that way. Is that correct?

Stewart Stevenson: I am minded to accept what you have just said. I have not done sufficient work to come to a firm conclusion on the matter, but I would prefer the reference to be to the common law. My simple point is that there appears to be a conflict between what the minister said and what the bill says. I seek to clarify which direction the minister will choose to take in his advice to parliamentary colleagues.

The Convener: I did not say that there is a contradiction. I think that we might be talking about different things. That is your question.

Stewart Stevenson: As I said, the minister can perhaps put me right.

Hugh Henry: The bill attempts to incorporate what is already in the Sex Offenders Act 1997, which lists offences in Scotland. Paragraph 2(1) of schedule 1 to the 1997 act states:

"This Part of this Act applies to the following sexual offences under the law of Scotland, namely-

(a) the following offences-

(i) rape;

(ii) clandestine injury to women;

(iii) abduction of a woman or girl with intent to rape;

(iv) assault with intent to rape or ravish;

(v) indecent assault;

(vi) lewd, indecent or libidinous behaviour or practices;

(vii) shameless indecency; and

(viii) sodomy".

The list is a restatement of what is already in legislation and reflects the 1997 act. The 1997 act contains two separate lists of offences, recognising the differences in law in different parts of the United Kingdom. We are attempting to get the best of both.

The Convener: You have given us an explanation of the list. It is for the committee to comment on whether that is the way in which the bill should proceed.

Stewart Stevenson: I have one final point. I accept the minister's comments. Will he add to the list of offences the traffic in prostitution offence that was introduced under section 20A of the Criminal Justice (Scotland) Bill, which we have just passed?

Hugh Henry: I do not think that that would be listed, but I will take advice.

The Convener: We will have to come back to that point because I have a question on whether a judge would consider that to be a serious offence. I worry about whether a judge should have that level of discretion. Prostitution could become a sexual offence if we say that it should. I would like to explore that point later, which will answer the question about whether prostitution should be on the list.

Bill Aitken (Glasgow) (Con): The problem is that no list can ever be totally exhaustive. I will propose a scenario that could occur and that is not covered by the list or by the bill as drafted. Let us suppose that there was a serious breach of the peace in which there was a clear sexual element—for example, a man exposes himself to a woman in a confined area, utters threats but does not touch her or assault her in any way. That could be indicted as a breach of the peace. As the bill stands, that is not included on the list, when arguably it should be.

Hugh Henry: That is one of the things that Lady Cosgrove considered. We are proposing to address that issue.

Bill Aitken: As I see it, what you are proposing does not cover that scenario because the list does not cover it. If such an incident were dealt with under the common law of Scotland, there would be no difficulty.

Hugh Henry: We are proposing that, where evidence given in court suggests that there is a serious sexual element to the offence, the judge can decide to take account of that factor. The list is not exclusive, because it still gives discretion to the judges. We clearly intend to implement Lady Cosgrove's proposals.

Bill Aitken: That is inconsistent. Surely the safest way of getting round the issue is not to have a list. Such matters should be considered in

relation to the common law, which is all-inclusive. That would prevent anything from falling into the spaces.

Hugh Henry: The situation that you have described is not covered by the bill, but it will be included after the committee stage. The issue will be addressed. There is a clear intent to cover the point that you have made and the powers will be given to the judges.

Mr Duncan Hamilton (Highlands and Islands) (SNP): That does not make any sense to me. You say that there is an intention to deal with the issue at the committee stage. How can you know what is going to happen at that stage or that the issue will be addressed?

Hugh Henry: The technical procedure for dealing with it will be through an amendment.

Mr Hamilton: I understand that. However, the nature of amendments is that one has no idea how they will end up.

Hugh Henry: That is always an issue when we are dealing with bills.

Mr Hamilton: So how do you know that the issue will be addressed?

Hugh Henry: We have agreed proposals that will be brought forward in that way.

The Convener: For the purposes of this discussion, the committee is perfectly entitled to relay its view to the minister and report to Parliament. We might have to take some advice.

I can see that the Executive has been consistent in terms of the Sex Offenders Act 1997. However, it might be that the 1997 act is wrong and there is no need to construct a list of offences given that we are ensuring that judges can exercise their discretion and that such offences can be dealt with under the common law of Scotland anyway. The situation gets dangerous when we try to list all the offences, as something might be missed off the list. The committee can determine those issues in its report.

Hugh Henry: There are two separate issues. One is Bill Aitken's concern about whether the judge will have the power to determine whether, for example, there was a serious sexual element in a breach of the peace case. We believe that that will be addressed. The separate, more fundamental issue is whether a list of offences should be prescribed in a way that is not entirely consistent with common law. I would be worried if, in passing the new legislation, we were to try to change the Sex Offenders Act 1997 by reducing some of its provisions. I am worried that that could result in a weakening of powers, when we are attempting to strengthen the law.

11:30

The Convener: I do not think that we are at odds with you on what you want to do. The question is how it should be done. I suggest that the committee, even at this late stage, might want to take advice. We know what we would like to do and perhaps we need to take advice on how we can achieve it. Presumably judges either know what the common law is or they have a list themselves. The question is whether such a list ought to be in the legislation. If something is missed off, we would have to keep adding to the legislation, but if the legislation just refers to the common law, everything is covered. If the judge has discretion to determine whether he should refer to the sex offenders register an offender who has committed any common-law offence with a serious sexual element, we would be achieving the Executive's aims anyway.

Hugh Henry: If we did that, we would not just be talking about the bill; we would be moving on to consider whether we should strike down, by whatever means are available to us, the list contained in an existing piece of legislation because we do not believe that that list is appropriate. I remain to be persuaded that that would be an appropriate way of proceeding.

The Convener: I do not think that we would be striking down the 1997 act. We might just be saying that, in future, we would prefer such matters to be dealt with without there being a list, although the 1997 act would obviously remain as it is. I feel that I need to think about the issue.

Mr Hamilton: In answer to a question on how our deliberations fit in with what is happening in Westminster and why we are discussing the bill after it has been agreed to in principle, the minister quite properly said that there is an opportunity for us to influence the legislation, to tease it out and to see how it looks in a Scottish context. Is not there an argument that that is precisely why, post devolution, the legislation should have come to this committee?

Let us look at the package of measures as a whole, and let us assume that we want to achieve the same thing and ensure that it is sensitive to the Scottish position. Would not there have been an argument for including those provisions in the recent Criminal Justice (Scotland) Bill, on the basis that it was a miscellaneous bill anyway, or as near as damn it? The question is why the package as a whole was not brought forward then.

Hugh Henry: Technically, it could have been considered then, but one of the reasons why there was a delay was that we wanted to await the outcome of the Home Office review. The timetable for the Criminal Justice (Scotland) Bill did not fully allow us to do that. Duncan Hamilton is right that,

in theory, we could introduce our own legislation, by appending it to some other bill or by creating our own specific legislation, but there are a number of constraints, including timetabling.

In principle, we could decide to introduce our own legislation in the next session of Parliament, but that could lead to a situation in which a stronger set of measures was available in England and Wales than was available in Scotland. That could happen if we were to have a delay, but there is nothing in principle to prevent the Scottish Parliament from saying, even at this stage, that it wants its own legislation. However, we believed that it was not practically possible to introduce such provisions on the back of the Criminal Justice (Scotland) Bill.

Mr Hamilton: Lady Cosgrove's recommendations were published in 2001. It may have been decided that it was best to wait for the Home Office consultation, but I am not sure what more that was supposed to achieve. If the Executive thought that that was the right thing to do, that is what it should have done.

Hugh Henry: To do what?

Mr Hamilton: What we are just about to do.

Hugh Henry: As I said, we wanted to wait for the outcome of the Home Office review. Convener, would it be possible to bring in some of the officials who have been more closely involved with this issue?

The Convener: We are just trying to do what we have been asked to do, which is to scrutinise something that is before us, so that would be helpful.

Sharon Grant (Scottish Executive Justice Department): In answer to Duncan Hamilton's question about our falling behind in waiting for the Home Office review, I would point out that the review was a joint review between the Scottish Executive and the Home Office. The recommendations in Lady Cosgrove's report came out shortly before the consultation took place on the joint review. As a result of the joint review, some of the recommendations in Lady Cosgrove's report were not taken forward, because the recommendations that came out of the joint review were better, to put it bluntly. That is why we have delayed the remainder of Lady Cosgrove's recommendations.

Additionally, the timetable for review of the Sex Offenders Act 1997 slipped, because the Home Office decided that it needed to have a complete review of sex offences. It then amalgamated its proposals for what became the Sexual Offences Bill with the review of the Sex Offenders Act 1997. By that time, the timetabling was too late for the Criminal Justice (Scotland) Bill. Again, we wanted to avoid causing any gaps in registration requirements north and south of the border, which is why we are asking for a Sewel motion to be able to take the measures through Westminster.

Mr Hamilton: It strikes me that, even though the second part of the delay that you describe was nothing to do with the Scottish Executive or the Scottish Parliament, it will nonetheless impact on whether the legislation gets the scrutiny here that it deserves. On scrutiny, you said that the bill would be referred to a committee. To which committee will it be referred?

Sharon Grant: As far as I am aware, it will go through the Westminster process. Officials have agreed with Home Office officials to amend our Scottish schedule to the Sex Offenders Act 1997.

Mr Hamilton: In terms of the scrutiny, do we know to which committee the bill will go?

Sharon Grant: It will have to go through parliamentary scrutiny, but I will have to take solicitor's advice on that.

Hugh Henry: I do not know off hand to which Westminster committee the bill will go, but we can find that out.

Mr Hamilton: I would be interested to know the level of Scottish representation on the committee and how seriously the scrutiny will be taken by that committee, because I am willing to bet my last buck that some of the perfectly valid issues that have been raised by this Scottish parliamentary committee will not be raised by another committee.

Hugh Henry: The committee stage will be taken on 24 March by a House of Lords committee on the floor of the chamber, as far as I know.

Mr Hamilton: I have another point, which picks up on something in the Executive memorandum on Sewel motions generally. The enshrined principle is that the UK Parliament will not normally legislate on devolved matters, yet the Executive memorandum states:

> "the policy of both the Scottish Executive and the UK Government has consistently been, so far as possible, to legislate for sex offenders on a UK basis."

In other words, the principle in this policy area is to go exactly against the general principle of Sewel. For the record, I take it that, as a matter of policy, the Sewel convention is suspended when it comes to sex offences.

Hugh Henry: No. We still have the right to legislate appropriately—

Mr Hamilton: I am interested not in the right, but in the practice.

Hugh Henry: We will operate pragmatically. We will do whatever gives the best safeguards to

members of the public and whatever affords the strongest possible measures to deal with sex offenders. If, pragmatically, that comes as a result of legislation being considered at Westminster, we will take that opportunity. If, however, we believe either that that is insufficient or that the timing is not right for us, we will legislate in our own terms as appropriate.

The issue is about getting the best of both worlds. It is not about having a policy decision that the convention will be suspended for sex offenders or that sex offence issues will be treated any differently. We would look to ensure that there is consistency UK-wide, simply because we have already seen high-profile cases of people moving from one jurisdiction to another. If we believe that something needs to be done here to give us either additional or stronger powers, action will be taken.

The Convener: I do not have a policy difference with the Executive on that, but I do not know about other members. The committee needs to understand the route by which it might relay to ministers and, in turn, to the relevant Westminster committee our concerns about the presentation of our common-law position. We are rehearsing what we have said before, but that is what we need to work out.

I want to discuss the discretion that would be given to judges. Stewart Stevenson asked whether the new human-trafficking offence would be included on the list. How would you expect a judge to interpret that kind of provision or do you take no view at all?

Hugh Henry: To some extent, we could be talking about different things. We have already introduced additional powers to deal with people who are involved in the trafficking of women for the purposes of sexual exploitation. What we are talking about here are offences against women that are specific to individuals—the judge would have the discretion to determine whether a specific act was of a sexual nature and required the individual to be registered.

I do not think that the trafficking of women would necessarily have been considered in relation to listing. However, I presume that, if something in the charge were sufficient to give the judge a concern that the individual should be registered, there would be nothing to prevent the judge from registering the individual as a result of what they heard. We have said clearly that such discretion would be available to the judiciary.

The Convener: Should this not be a policy matter for politicians rather than judges? There is a case for saying that there might be a serious sexual element to organising human trafficking and exploiting women for the purposes of prostitution.

Hugh Henry: We should cast our minds back to some of the discussions that we had on the Criminal Justice (Scotland) Bill. The offence could cover a wide range of people. It could technically cover the van driver who was driving women between different locations; it would be for the judge to decide whether the van driver was a threat or a menace to women for the purposes of registration for sexual offences. The driver would have committed an offence in relation to the trafficking of women for the purposes of sexual exploitation, but may not, in the opinion of the judge, be a sufficient risk to women to be on the register.

I would not want to diminish the value of the register by requiring in statute that everyone loosely associated with that activity should be placed on the register. That would make the job of the police horrendously difficult. In the eyes of many people, it would start to diminish the value of the register. It might send a strong warning to those involved peripherally in the trade of women, but we are talking about two different things.

The Convener: What you are saying makes sense. I just wonder whether the issue should be a matter of policy or a matter for judges. I will have to give that further thought. I will allow a few more minutes for questions.

Bill Aitken: How many people are currently on the register?

Hugh Henry: The figure that I have at the moment is 1,794.

Bill Aitken: Since when has the system been operating?

Hugh Henry: Since September 1997.

Bill Aitken: I notice that the police are given powers to check fingerprints and to take a photograph each time that there is a notification. Those registering require to confirm their details annually. Would it not be a safeguard to ensure that a photograph is taken at every annual re-registration, given the way in which people's appearances can change, either by accident or by design?

Hugh Henry: I am advised that that could be done.

Scott Barrie (Dunfermline West) (Lab): In your introduction, you talked about the registration of people who have committed sexual offences abroad and come here. What would be the procedure, given that not every country has a similar system to ours? What may be deemed to be a sexual offence in this country may not be an offence in another country and vice versa. How would the system work?

11:45

Hugh Henry: Clearly, there are some difficulties, not least the fact that we probably have a more advanced and stronger system for dealing with this issue than most other countries do.

UK citizens who commit sexual offences abroad will be delivered back to the UK authorities and we will be notified when they arrive. If a UK citizen were deported from Canada, Australia or the United States, it would be easy for us to identify them at the point of entry and to make the appropriate arrangements.

It is more difficult to deal with people who have been convicted and who take advantage of the freedom of movement that now exists within the European Union to come to this country. It is right that we should put in place the requirements while working with our UK and European colleagues to strengthen measures. There are arguments for introducing in the fullness of time some kind of European registration—a scheme that would ensure that people are required to provide notification to jurisdictions in the European Union when they move.

We do not underestimate the difficulties. Unfortunately, although we may be prepared to legislate, that is not always the case elsewhere. However, it is right to identify the problem, to do what we can to solve it, to anticipate what may need to be effected and to work with our colleagues to ensure closer co-operation within the European Union in the first instance and beyond if possible.

Stewart Stevenson: Over the next two days, the Parliament will debate the Mental Health (Care and Treatment) (Scotland) Bill. Section 83 of the Sexual Offences Bill, which is headed "Persons formerly subject to Part 1 of the Sex Offenders Act 1997", deals in subsection (4) with detention in hospital and section 121 deals with mentally disordered offenders. Is the minister satisfied that the inter-operation of the Mental Health (Care and Treatment) (Scotland) Bill and the Sexual Offences Bill is adequate and complete?

Hugh Henry: I believe so. I will ask Alison Coull to address the specific issue.

Alison Coull (Office of the Solicitor to the Scottish Executive): The Sexual Offences Bill is drafted in terms of the Mental Health (Scotland) Act 1984. However, there is power in the Mental Health (Care and Treatment) (Scotland) Bill to amend legislation to ensure that the new regime is taken account of. We will be able to amend the Sexual Offences Bill and to use the order-making power to ensure that it takes account of the new regime.

The Convener: That ends questioning. We must now report to Parliament.

Hugh Henry: I will try to obtain information urgently on the timetable for the Sexual Offences Bill, if that would be helpful, and will communicate that to members through the convener.

The Convener: That would be helpful. I suggest that we take advice on the matter. I would have been a great deal happier if the provisions in schedule 2 headed "Offences in Scotland" were headed "Common-law crimes with a significant sexual element". I do not know whether that would address Stewart Stevenson's point. At this stage, we need to say what we would like to see in our report.

Stewart Stevenson: Being a fairly practical person, I think that the only thing that the committee can say to Parliament is that it makes no recommendation on the bill. My reason for saying that is that we have spent only a brief amount of time—less than an hour—on what is a substantial bill. We spent months on the Criminal Justice (Scotland) Bill, which was two thirds of the size. I simply do not feel that we can have done justice to the bill. We have dipped into the issue, but we have found that there are difficulties, which the minister has not been able to resolve by plucking an answer from the air. That is not the minister's fault and it is not our fault, but we are simply not doing justice to the bill. We should not make a recommendation on the bill or agree to the motion because the consideration that we have given the matter in the past 45 to 50 minutes is not sufficient to enable us so to do.

Mr Hamilton: It strikes me that the nature of the discussion that we have just had is one reason why the bill should have been considered in much more detail. Notwithstanding the considerations about timing, bills such as this one should come before the committees of this Parliament as a matter of policy. We have asked many questions. We have received answers to some of those questions but not to others. It would be stretching things to recommend that we are happy to proceed on that basis. I have concerns about the level of scrutiny that the bill will receive in Westminster. The assurances that we have received on that were not strong enough for my liking.

Leaving to one side what we think should happen, I think that it is important that we at least get clarity on where exactly the line for Sewel motions is drawn. If we wish to adhere to the principle that the UK Parliament does not normally legislate on devolved matters, it is clearly contradictory to state that sexual offences provisions should normally be dealt with on a UK-wide basis. We may all have different views on that, but the Executive needs to clarify the issue about Sewel motions.

The Convener: I have no difficulty with the principle that our sexual offences legislation should be consistent with a UK framework, so we would have to say that there is a mixed view on that issue. I concur with the view that we should say that we ought to have had more time, as that would have enabled us to ensure that we were clear about the elements that we have discussed this morning. If we had had more time, we could have appointed an adviser and taken proper advice on some of the issues, which would have allowed us to come to a more definite conclusion.

However, there are still things that can go in our report. We can draw to Parliament's attention some of the concerns that we have raised this morning. Perhaps all that we can do is reflect the mixed opinions about the Sewel motion and list the concerns that members have raised on the record.

Bill Aitken: We can also highlight our unanimous view that it would have been preferable if we had had more time to look into the issue and to deal with it more appropriately.

Stewart Stevenson: My concern is not so much about the principle of Sewel motions—although I am sure that that will be debated when the motion goes before the Parliament. Where I am coming from is that there is a practical issue about the bill. Other people in other places will raise other issues about Sewel motions per se. My point is simply that if, as a devolved Parliament, we are in a position in which we have to inter-operate with other Parliaments, the system must work better than it appears to have worked in this instance. That is the core of the issue that I have raised today.

The Convener: We will reflect those comments in our report. I am mindful of the fact that this is the committee's final meeting and that Parliament will be dissolved on 31 March. However, we could still take advice for others to pick up on. It could then be determined whether the listing of offences in the bill is relevant. We do not have a specific adviser, but I imagine that we could ask Professor Gane, who was our adviser on the Criminal Justice (Scotland) Bill, whether he would offer us his opinion. Is that agreed?

Members *indicated agreement*.

Mr Hamilton: Could I just get some clarification about what precisely we are asking of Professor Gane? What is his remit?

The Convener: It is essentially to do with the debate that we had about Stewart Stevenson's question whether it would be better if the list of Scottish offences in the UK Sexual Offences Bill were deleted and if the bill referred to common-law crimes with a significant sexual element, rather than simply—

Mr Hamilton: And, on scrutiny, the minister will write to the convener to outline the process from—

The Convener: We will get a note from the minister about the timetabling, yes.

Mr Hamilton: So once you have received that letter, the committee may want to reflect and report on it.

The Convener: We would try to draw on the correspondence as much as we can before the Parliament considers the matter, so that the Parliament has a report before it. We really have to clear the report by the end of tomorrow. We can only do our best to pull this together and we will just have to see whether we can achieve our aims by the end of tomorrow.

Stewart Stevenson: Is the Sewel motion to be considered on Thursday afternoon of this week?

The Convener: Yes.

That brings us to the end of our consideration of this item. I thank the minister and all his officials for participating in this morning's discussion.

Subordinate Legislation

Births, Deaths, Marriages and Divorces (Fees) (Scotland) Amendment Regulations 2003 (SSI 2003/89)

The Convener: Item 2 is subordinate legislation. We have two negative instruments to consider. The first is the Births, Deaths, Marriages and Divorces (Fees) (Scotland) Amendment Regulations 2003 (SSI 2003/89). I refer the committee to the note that has been prepared by the clerks. The Subordinate Legislation Committee considered the regulations at its meeting on 25 February 2003 and had no comment to make. Does the committee have any comments?

Members: No.

The Convener: We will note the regulations.

Sheriff Court Fees Amendment Order 2003 (SSI 2003/97)

The Convener: The second instrument that we have been asked to deal with this morning is the Sheriff Court Fees Amendment Order 2003 (SSI 2003/97). A note on the order has been prepared by the clerk. The Subordinate Legislation Committee considered it at its meetings on 4 and 11 March. It sought clarification from the Executive—the Subordinate Legislation Committee was very much on its toes—and members will see the Executive's reply, with an explanation of the definition of the "transitional period". I have no concerns now that I have read the reply. Do any committee members wish to make any comments?

Members: No.

The Convener: Are members happy to note the order?

Members *indicated agreement*.

Legacy Paper

The Convener: Item 3 is our legacy paper. We have to finalise our legacy report in the light of the further information received from the police organisations and the Faculty of Advocates. We have also received a reply from the Minister for Justice on the committee's scrutiny of European issues. Do members wish to add anything to the paper in light of the additional information?

Bill Aitken: I am surprised that we have not received a response from the Law Society of Scotland, which I thought would have been quite keen to make an input.

The Convener: Is there anything contained in the information that members wish to add to the legacy paper? Is there anything that the clerks think is worth drawing from the paper?

Gillian Baxendine (Clerk): Members might find the comments from the Faculty of Advocates on the timing of legislation of particular interest. They very much chime with the committee's concerns, so members might wish to highlight the fact that it is not just committee members who share those views.

The Convener: Is it possible to submit the letters with our legacy report?

Gillian Baxendine: Absolutely.

The Convener: Why do we not just include everything and call that the legacy report? The correspondence is fairly short. Furthermore, a future committee might find it helpful to read what the various organisations think about stock taking.

Bill Aitken: It is important that we underline how difficult life has occasionally been made for us by having to get legislation through in a manner that is not satisfactory for proper scrutiny. The time factors that apply throughout the Parliament have to be reviewed.

Mr Hamilton: The paper from the Faculty of Advocates says that the faculty's law reform committee is keen to have feedback from us about the degree to which a technical rather than policy-focused approach would help us. The committee should probably reply to the faculty about that.

The Convener: We have had at least one meeting with the faculty in which we have talked about the relationship that it might have with the committee. We have made it clear that we would value closer liaison, which would allow us to talk through the issues of the day. There is often a question of finding the time to fit that in. We suggested that we could have an evening session over dinner twice a year, because people are usually around on a particular evening. That would allow people to eat and talk at the same time.

12:00

Mr Hamilton: That brings up the prospect of having standing advisers. Although some flexibility is needed for each issue and the committee might want to have an individual expert on a matter, is there an argument for having four or five retained advisers?

The Convener: Yes. I am glad that you have raised that.

Mr Hamilton: Such advisers would not be here all the time, but we could tap into them as appropriate.

The Convener: That is an excellent point, which I meant to suggest earlier. I have realised that we should have had an adviser on the Land Reform (Scotland) Bill. We did very well, but we would have benefited from a wee bit of assistance. That would probably apply to any weighty bill. Where could we add that in the report? Should it go with operational issues?

Mr Hamilton: Yes. The committee advisers section of the paper from the Faculty of Advocates says that the faculty would be willing to act in that way, as I presume people from other walks of life, such as academia, would be.

The Convener: We could construct a paragraph under the heading "Operational Issues" to say that we greatly benefited from the advisers whom we had and now take the view that advisers should be available for every piece of legislation, including statutory instruments. We could suggest a standing panel of advisers and the appointment of more appropriate advisers for specific matters. Organisations such as the Faculty of Advocates and the Law Society might not have the status of advisers, but we would find it useful to keep up liaison with them outside formal committee meetings, to ensure that the committee has a rounded view.

Mr Hamilton: That would also combat the problem of short time scales for dealing with legislation or decisions, because we would not have to approve an adviser. The advisers would be available if we needed to pick up the telephone to them and such help would be available to all committee members.

The Convener: Given its remit, a committee on justice and home affairs will probably need such a resource.

Mr Hamilton: Can I stress that I will be available next year at a cheap rate?

The Convener: No.

Is everybody reasonably happy with the proposal?

Stewart Stevenson: I have an observation. My party colleagues on the Justice 1 Committee said that they had reached a different conclusion about whether two committees should be established. Nonetheless, they have not succeeded in persuading me that there should be one committee. I remain of the view that unless a radical change takes place in the approach to legislation, we need two committees. In practice, any liaison between the two committees appears to have been conducted in a way that has served the interests of good legislation and good research.

The Convener: It helps to have that on the record.

Scott Barrie: The establishment of two committees has worked surprisingly well. I appreciate that other people have a different view on that, but I was a member of the old Justice and Home Affairs Committee from its inception and it was patent that that committee's work load was intolerable and could not have continued. A solution was needed. Whether having two committees was the solution is for people to have a view on, but it was obvious that the Justice and Home Affairs Committee could not function with the volume of legislation that it had, never mind what it would have had to deal with later—the work load that the two committees have had in the past 12 months. People who are thinking about not having two justice committees should also think about how such a work load would be split.

The Convener: I also hope that in future people will not assume that the justice committees should deal only with criminal-law legislation. One of the system's successes is that, because of the way in which bills have been referred, we have been able to deal with civil and criminal legislation.

I think that that deals with our legacy paper—our words of wisdom for future committee members.

Stewart Stevenson: We now come to the important issue of when we are going out.

The Convener: I am sorry, but we have one more quite important item to deal with.

Petitions

Asbestos (PE336)

The Convener: I will go through each of the petitions to establish their status. However, first we need to discuss the important matter of petition PE336, which concerns asbestos poisoning. To find out what progress has been made on that petition, committee members should refer to a note on last week's meeting with the Lord President and to the final practice note that has been issued.

Bill Aitken, the clerks and I met Lord Cullen and others over the past month to convey the committee's support for the principles behind the petition. I think that we have made some progress, although it is up to the committee to determine whether that is the case. I will set out the main points, after which Bill will no doubt want to add some comments. I would appreciate it if we could then discuss the matter so that I can hear the committee's views about the petition's progress.

I should point out that, although the matter was first raised in the petition, it has now been the subject of a committee report and is therefore part of the committee's general work load. In its report, the committee recommended that the timetable for diets of proof should be shortened to six months and that a judge should preside over proceedings six weeks before proof.

Members will have a copy of Lord Cullen's letter, which explains his attitude towards those recommendations. He says:

"I have carefully considered the Committee's recommendations in regard to the procedure in mesothelioma cases and other cases with similar characteristics. I entirely agree that, in view of the short life expectancy of the pursuers, such cases should be brought to a conclusion, whether by settlement or judgment, as speedily as possible."

He also recognises the amount of time and effort that the committee has devoted to the matter. Although he has some doubts about our recommendation on shortening the timetable to six months, he has taken our points on board and has produced the practice note accordingly.

Members will be aware that, under new rules, a diet of proof has to take place 12 months from the date on which the case is raised and that rule 43.8 allows for either party to apply for the variation of the timetable. However, it has been made clear that any extension beyond those 12 months is unlikely.

It is important to point out that the proposal in question centres on rule 43.8. As a result, we sought clarification from the Lord President about what the rule would mean in practice. He made it clear that references to cases of terminal illness have been introduced as a matter of policy and the factor should weigh significantly in the court's decision. He also explained that as each case will vary it would not be appropriate to take anything away from the judge's responsibility by specifying a particular timetable. For those reasons, he did not agree to our recommendation for a six-month timetable. I should make it clear that we strongly emphasised that the committee wanted to achieve such a timetable. We still feel that a judge should be involved in the proceedings to ensure that the parties are ready.

I refer members to the practice note itself, which if accepted sets out the rules that judges will adopt. One departure from our suggestions is that the procedure is to be adopted for all parties who have a terminal illness who apply for a variation to the timetable, even where the illness is not necessarily related to the action. The Lord President felt that we could not distinguish between those who have a terminal illness that is related to the action and those who simply have a short life expectancy. I agree that that is a fair way in which to proceed.

Members can read through the rules. Rule 43.1 is about application and interpretation, rule 43.2 is about summons and pleadings and so on, but the heart of the matter is the variation of the timetable. We pressed hard on what will happen when parties apply for a shortening of the timetable. We wanted to know whether it will be possible to achieve a six-month timetable and were told that it will be. However, if the judge determines that the process might take a bit longer, it will be their prerogative to say that a seven or eight-month timetable is required. It is important that members read the Lord President's notes, but I wanted to let members know that we pressed strongly on that issue. I believe that we are near to achieving our objectives. The practice note will allow for the possibility of a six-month timetable, although where it is shown that that cannot be achieved, the timetable might be slightly longer—that will depend on the complications of the case.

I have a doubt at the back of my mind about whether, given the short timetable, there should be a point at which parties go to the judge to ensure that they are prepared for the proof. We pressed that point with the judges, but they are not keen on it for several reasons. One reason relates to the resources of the court; another is that judges feel that, as the timetable will accelerate all the processes, the judges will be hard on parties who are not prepared. If a six, seven or eight-month timetable is agreed, the parties will be expected to adhere to it.

The petitioners and the committee are concerned about parties who will not be affected

by the new rules and who will have to undergo the procedure under the old rules because we cannot change the rules halfway through proceedings. It is the judges' view that, by dint of the dynamics of the new rules—both the Coulsfield rules and the new shortening of the timetable where a terminal illness is involved—the existing cases will be accelerated. Lord Mackay will continue to conduct the by order hearings for a certain period to ensure that the systems are fast tracked.

The matter is to do with policy. We questioned the wording of the practice note, because at first read it seems to be in casual or loose language—for example, it states that the court must

"look with considerable sympathy on"

such requests. However, we have been assured that no judge would contravene such phrasing in a practice note because it is deemed to be policy and is instructed by the Lord President. We mentioned that, to a lawyer, the wording does not mean anything, but we were assured in lay person's terms that the wording is the language of the judiciary for saying, "This must be done."

We had a hard discussion and I believe that we achieved a lot—although that is for the committee to determine.

12:15

Bill Aitken: The process has been interesting and a lot has been achieved. When the matter first came to the committee, there was tremendous sympathy for the people who were in such an unhappy position. The committee was determined to ensure that something was done and I am convinced that we have achieved that.

The crux of the matter is defined in rule 43.8 of the practice note that the Lord President proposes to issue. The convener was correct to point out that she and I were a little dubious about some of the language that was used. We felt that it could have been more specific and harder, to ensure that applications for an acceleration of the timetable would be dealt with in the manner that we would have wished.

However, I draw the committee's attention to the wording, which states that the court would

"look with considerable sympathy on"

any such applications. The word inconceivable is perhaps too strong to describe the situation but, frankly, having heard the Lord President's explanation, I think that it would be extremely unusual if the process did not go on along those lines. It should also be highlighted that any individual or party opposing an application for acceleration must

"demonstrate that their opposition is well founded"—

to use the words that are contained in practice note number 2. There is also an appeals provision in the event of either party feeling that they have not received satisfaction in that respect.

This issue is also likely to remain live in the Court of Session. One of the procedures that was outlined in the Coulsfield rules was that a users committee could be set up. Such a committee will obviously keep the situation under constant review, particularly in the early months when people will necessarily be finding their feet.

That leaves simply the outstanding cases that are already in the pipeline. As members are aware, on separate occasions the convener and I attended Lord Mackay's court to see what happened there. From our observations it is clear that he is making every effort to expedite matters. Delays were not exclusive to the defenders; the pursuers also had to take responsibility for delays from time to time.

All in all, our work on this petition has been worth while. Clearly, and ideally, we would have wished to see all those cases disposed of within six months, and some of them may well be. We have achieved a result that will in turn inevitably mean that those cases will be dealt with on a fairer and more expedient basis than has previously been the case. That is as a result of subtle pressure that was recognised as being worth while and that received a receptive hearing from the Lord President and the others whom we met.

Mr Hamilton: The convener, Bill Aitken and the Lord President are to be commended for what they have done on this petition. We have reached the point that is precisely where we would have wanted to end up, and we have the commitment that matters will be expedited as quickly as possible.

Practice note number 3 states:

"Practitioners are reminded that in any personal injury actions which have been raised under the existing procedures … it is possible for a party to seek an early or accelerated diet of proof or jury trial, where there is good reason for doing so."

Does that relate to cases prior to April?

The Convener: Yes.

Mr Hamilton: What is the difference between that position and the new procedure?

The Convener: The difference is that the new procedure will apply under rule 43.8. The judge must consider that as a matter of policy and must look with sympathy on applications and on the applicant's circumstances. It is a stronger provision.

Mr Hamilton: Once that policy has been decided different procedures do not necessarily

mean that those cases prior to April will be leapfrogged in the process. Is that correct?

The Convener: No.

Gillian Baxendine: Just for clarity, the other difference for the cases before 1 April is that the Coulsfield provisions will not apply. Those cases will not automatically be timetabled and the procedure will not be truncated in that way. There will not be things like the meeting between the parties prior to the hearing. All the procedures that have been put in place to accelerate things in the Coulsfield provisions will not exist for those cases.

Mr Hamilton: But for those who are in the pre-April category, the fact that the other cases will take place on a truncated time scale will mean that the queue is shorter and the wait is shorter so everybody will benefit. However, there is no possibility of changing the pre-April regulations.

The Convener: That is right.

Bill Aitken: Inevitably, the fact that the more recent cases are being dealt with in this manner will have a knock-on effect.

The Convener: The by order hearings conducted by Lord Mackay can still proceed for the cases that are pre-April, so that has been successful so far in shortening the timetable.

Mr Hamilton: Okay. That is fine.

The Convener: Ultimately, what we detect—we can get only a sense of what we think is going on—is that the will is there to speed up the pre-1 April cases. However, the provisions do not back that up if parties are dissatisfied.

Mr Hamilton: I appreciate that. My other question is about the dispute that might surround an application for an accelerated diet and Bill Aitken's comments about rule 43.8, which states:

"Any party opposing such an application will be required to demonstrate that their opposition is well founded."

Do we have any greater understanding of what that means? What is the most likely scenario?

The Convener: We spent a lot of time asking what that meant. A flavour of what was said to us is that judges would expect a damn good reason from the defence if it did not believe that a short timetable could be achieved, given that the policy is about applying a short timetable for a reason—that the person's life expectancy is so short.

Mr Hamilton: That is fine. I was just curious.

The Convener: You have asked the same questions that we asked.

Mr Hamilton: I do not doubt it.

I have one final question on whether the process works. Is there any facility for keeping a note of the statistics? Is there on-going research so that we know whether the process works and whether we need to review it further? I do not know whether such research would be done in conjunction with the Executive and the courts.

The Convener: The Executive has offered to do that. I think that, in concluding the matter, we should make it clear that the committee expects to work with the Scottish Executive and the judiciary to review the practices. I do not know whether we want to suggest a timetable, but that must be our strongest point. We currently have to trust that the legal process will work. At an appropriate point, someone must examine the process and consider the relevant statistics.

Mr Hamilton: Who is responsible for the collation of the statistics?

Gillian Baxendine: The Scottish Executive has offered the services of its research department to help with that, but it is a matter for the court.

Bill Aitken: The users group is also involved. It will be representative of all parties and will have the figures before it. We should be able to tap into that.

Mr Hamilton: Is this part of our legacy paper? Does the paper already state that there will be an on-going review?

Gillian Baxendine: The legacy paper will have to be updated in the light of this discussion.

Mr Hamilton: In that case, I am happy to support that approach.

The Convener: We will state in the paper in the strongest possible terms that there will be an on-going review.

We are trying to arrange a meeting this week to make the petitioner aware of both what the Lord President had to say to us in his letter and what the committee has now agreed. The meeting is likely to be on Thursday. We are clear that we must now talk to the petitioner. It is helpful if committee members feel that the objectives in the report have been achieved.

Members *indicated agreement*.

Paedophiles (Sentencing) (PE490)

The Convener: Petition PE490 is on sentencing of convicted paedophiles. The committee did not invite any further action on that petition. I guess that the committee does not want to refer it back to the Public Petitions Committee.

Fishing Industry (Fixed Quota Allocations) (PE365)

The Convener: Petition PE365 is on a review of fixed quota allocations and property rights in respect of Scotland's fish stocks. Do members want to refer that petition back to the Public Petitions Committee?

Members *indicated agreement*.

Judiciary (Freemasons) (PE306)

The Convener: Petition PE306 is on freemasonry and the judiciary. The committee decided that it did not want to take further action, but invited the petitioner to provide more information, which has now been provided. What is the committee's view on whether the petition should be referred back to the Public Petitions Committee?

Mr Hamilton: I am content that the issue has been exhausted.

Bill Aitken: I concur.

The Convener: Unless any other member is otherwise minded, I do not propose to refer the petition back to the Public Petitions Committee.

There is one question that I need to put to the committee on this issue, which is whether the committee is minded to publish Mr Minogue's evidence, given that we invited him to submit it. I have been advised that our legal department has some concerns about the contents of that evidence. The petitioner is pressing for his evidence to be made available on the web, but, having read through the evidence, the committee might want to take a view on that.

Stewart Stevenson: On whose shoulders would the liability lie in law if we were to publish the evidence in its entirety?

Gillian Baxendine: My understanding is that a number of issues arise, one of which is possible defamation. The Parliament is protected in relation to that. Nevertheless, it would be for the committee to decide that it was happy to publish. There is a separate issue to do with the Data Protection Act 1998. My understanding is that the Parliament will be liable if it publishes something that breaches that act, and that there would need to be some editing of the submission to comply with that act.

Stewart Stevenson: I therefore propose that, based on the legal opinion, the evidence be edited or those parts that relate to potential breach of the Data Protection Act 1998 be excised, but that otherwise it be published. If the petitioner, having been apprised of the legal opinion that there may be defamation, persists in wishing to publish the evidence, it is for him to consider the consequences. I propose that we publish.

Gillian Baxendine: To be clear, my understanding is that if the evidence is published as a parliamentary proceeding, the protection extends to the petitioner as well.

Stewart Stevenson: In that case, I recommend non-publication.

Mr Hamilton: We have to be careful about this. My take on it is that to publish half the paper would be to stoke the fire still further. I suspect that we should simply say that if the petitioner wishes to publish the evidence, distribute it or put it on his own web page, so be it, but it is not something with which the Parliament should be associated.

The Convener: I am sympathetic to the principle of the petition, but the committee decided that it was not, and that is the status of the petition at the moment. We invited the petitioner to produce information. I have an open mind on that, but the evidence that has been produced is not the kind of information that I was looking for. I was quite surprised to read some of it.

Mr Hamilton: The point is that if we make an active choice to extend parliamentary privilege to something that we are sceptical about, we do a disservice.

The Convener: So the committee is agreed that we will not publish the evidence.

In closing our last meeting, I wish to put on record my thanks to all members of the committee. I have enjoyed my time here. I know that you have all worked really hard and have really thought about all the pieces of legislation that have been before us. It has been a small committee. It has been a bit hairy at times, in terms of getting everybody here. I know that tremendous pressures have been placed on members, because we have met twice a week at times—we have done so more than any other committee—but it has worked well.

It goes without saying that I speak for all the committee in thanking the staff and the clerks.

Stewart Stevenson: Hear, hear.

The Convener: They have managed to do the impossible sometimes in deciphering all the decisions that we have made. I thank them very much. Perhaps when the meeting closes we will discuss when we can show our appreciation to them over a drink. I wish them all the best of luck for the future. They have all done a great job.

Bill Aitken: Before we close the meeting, it would be appropriate to associate myself with your comments. This has been a tremendously good committee. We have frequently disagreed—that is political life—but no one could doubt the

commitment of individual committee members to apprising themselves thoroughly about what they are doing. Every member of the committee has made significant input into every matter that has come before the committee. It has been a personal pleasure for me to work with you all.

In conclusion, some word of praise inevitably is due to you, convener, for the way in which you have conducted proceedings. You have done so in a professional and fair manner. When the Faculty of Advocates records within its letter that it sent us on our legacy paper that the committee has been impressive, much of that reflects on you. This has been a very good committee, which has contributed a great deal to the Parliament. It has been a success story.

The Convener: Thank you.

Stewart Stevenson: I would like to reflect on what has been said by my two colleagues and political rivals, and agree with them that the committee has worked well. I have thoroughly enjoyed my time here. I still have not quite worked out why my party managers put me on this committee, based on my previous experience and knowledge, but the committee and its work has greatly expanded them. I thoroughly enjoyed it. As I do not wish to see myself quoted in anyone's election address, I will stop short of personal praise, but you know how much I admire my colleagues and their efforts.

The Convener: It is amazing the things that we have learned about one another, and the things that I have learned about you, Stewart, and all the jobs that you have had. Sometimes I listen to you and think, "How could you possibly have done all those jobs?" but I was grateful that you were an advanced driver when you took us down to Stornoway.

Bill Aitken: I was always just worried that he had a problem holding down a steady job.

The Convener: I also thank the official report. I cannot imagine what it must be like keeping up with what members say. Thank you.

Meeting closed at 12:31.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178