JUSTICE AND HOME AFFAIRS COMMITTEE

Monday 22 May 2000
(*Afternoon*)

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JUSTICE AND HOME AFFAIRS COMMITTEE
19th Meeting 2000, Session 1

CONVENER

*Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER

*Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
Phil Gallie (South of Scotland) (Con)
*Christine Grahame (South of Scotland) (SNP)
*Mrs Lyndsay McIntosh (Central Scotland) (Con)
Kate MacLean (Dundee West) (Lab)
Maureen Macmillan (Highlands and Islands) (Lab)
Pauline McNeill (Glasgow Kelvin) (Lab)
*Michael Matheson (Central Scotland) (SNP)
*Euan Robson (Roxburgh and Berwickshire) (LD)

*attended

WITNESSES

Phyllis Hands (District Courts Association)
Angus MacKay (Deputy Minister for Justice)
David McKenna (Victim Support Scotland)
Helen Murray (District Courts Association)
Alison Paterson (Victim Support Scotland)

CLERK TEAM LEADER

Andrew Mylne

ACTING SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Fiona Groves

LOCATION

Committee Room 1

Scottish Parliament

Justice and Home Affairs Committee

Monday 22 May 2000

(*Afternoon*)

[THE CONVENER *opened the meeting at 13:31*]

The Convener (Roseanna Cunningham): Good afternoon. I have received apologies from Phil Gallie, Maureen Macmillan and Pauline McNeil. They are casualties of the switch to a Monday at relatively short notice, which has caused difficulties to several people.

I talked to Pauline McNeill today and she has some concerns about item 4 on the agenda, the Divorce etc (Pensions) Scotland Regulations 2000. Her concerns relate generally to the fact that the relevant date in the regulations is the date of application in respect of a claim on a pension as opposed to the dates that are usually used in matrimonial matters—either the date of marriage or the date of separation. This is a negative instrument, which must be finalised by 3 June. We do not have a great deal of time. As Pauline has raised the matter as something that she would like to consider, I will defer consideration of the instrument until next Tuesday. That will give us an opportunity to meet the deadline of 3 June and allow Pauline a couple of days to decide whether she wants to lodge a motion or to deal with the matter more informally. However, we will proceed on the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 today.

I also want to ask the committee to meet in private next Tuesday to consider a draft stage 1 report on the Regulation of Investigatory Powers (Scotland) Bill. We are somewhat breathless at the speed with which we are going through the matter. There will be a draft stage 1 report next Tuesday, and our normal practice is to consider draft reports in private. Do we agree to consider the draft report in private?

Members *indicated agreement.*

The Convener: I should point out that although we are about to consider a draft stage 1 report, the bill has not been formally introduced. We expect that to happen later this week. If the bill is not formally introduced and referred to this committee by Thursday, we will not be able to proceed to consideration of a draft stage 1 report next Tuesday. I am looking meaningfully at the minister as I say that.

Last week, members indicated that they would like to hear from the Scottish Police Federation on the Regulation of Investigatory Powers (Scotland) Bill. We contacted the organisation. The general secretary simply confirmed in writing that the federation does not have a formal policy on the issue and that its views would be similar to those already expressed to the committee by the Association of Chief Police Officers. There would appear to be nothing further that we can do in that area.

Gordon Jackson (Glasgow Govan) (Lab): If that is the answer, then that is the answer.

The Convener: Christine Grahame, you had a point to raise in respect of the Accounts Commission's offer to give us a community safety partnership briefing. Is that right?

Christine Grahame (South of Scotland) (SNP): No. Did I? Oh yes. I am busy trying to adjust myself. Let me settle my head a bit. Can we come back to this when I have remembered what it was I had to say? I sent so many e-mails this morning that that one has got lost in the post in my head.

Sorry about that, convener.

The Convener: When will you remember, Christine?

Christine Grahame: Shortly.

The Convener: We should move on at this point, since we have the minister here.

I will have to give up the chair briefly and let Gordon Jackson have a turn. I will return as soon as possible.

Draft Census (Scotland) Amendment Order 2000/Census (Scotland) Regulations

The Deputy Convener (Gordon Jackson): I ask the minister to give us his—as they always say—short opening statement. After that, we will hear what people have to say about it.

The Deputy Minister for Justice (Angus MacKay): In February, the Parliament approved the draft census order that set out the Executive's proposals for the date of the next census—29 April 2001—the topics on which questions would be asked and the persons by whom and with respect to whom returns are to be made.

The census order could not include religion as a topic since the primary legislation, the Census Act 1920, did not provide for that. However, during the debate in February, the Deputy First Minister said that, having listened carefully to the strong views expressed, in particular by the Equal Opportunities Committee, the Executive had decided that a voluntary question on religion should be included in the census in Scotland. He also indicated that he would consult on the form of the religion question or questions and on the form of the ethnic group question.

Before we could introduce an amendment to the census order to enable a question on religion to be asked in the census, we first had to amend the primary legislation. The Census (Amendment) (Scotland) Act 2000, which received royal assent on 10 April, adds religion as a matter on which particulars might be required in a census and, to ensure that those who do not answer questions on religion will not be liable to a penalty, amends the section on penalties for failing to comply with census obligations.

That opens the way for the draft census amendment order before us today, the main purpose of which is to enable two voluntary questions on religion and a revised ethnic group question to be asked in Scotland's census next year.

The proposed questions on religion and ethnicity are set out at the back of the Executive note that accompanies the draft amendment order. The proposals have been drawn up following thorough and extensive consultation with users, including the Equal Opportunities Committee, the Commission for Racial Equality, religious bodies, key users in Government and local government, health authorities and others who had previously expressed an interest. Copies of the responses to the consultation have been placed in the Scottish Parliament information centre.

Taking account of the views that were expressed and the need to avoid the census form becoming too long, the Executive proposes two voluntary questions on religion. The first will provide information on religious adherence; the second will provide information on religious upbringing. Both questions will provide information on broad subdivisions of Christianity and of non-Christian groups—most notably those from the Indian sub-continent. The questions will provide important benchmarking information in connection with the Executive's social inclusion policies, which are designed to provide equality of opportunity for every person in Scotland. In England and Wales, the proposal has been a single question: "What is your religion?" The response categories would not feature a split of Christianity.

I shall now address the revised ethnic group question. The Executive proposes to subdivide the white category into Scottish, other British, Irish and any other white background. Another revision is the positioning of the Chinese category as a subsection of the Asian group. The extension of the ethnic group question to include an Irish category with a separate question on country of birth will provide a more accurate and reliable basis for identifying and dealing with possible disadvantage faced by members of the Irish community. The amendment order will also ensure that the provision that is made for particulars to be collected with respect to communal establishments reflects the intended questions that will ultimately be included in the 2001 census.

The census order provided for information to be collected on type of establishment, but it was not clear whether that wording allowed for the collection of information about the type of residents and management or the registration status of the establishment, as was intended. Consequently, those questions were not included in the Census (Scotland) Regulations 2000. The amendment order makes the necessary provision for those intended questions. The detail of the questions on communal establishments—as on religion and ethnic group—will, in due course, be included in the census amendment regulations.

I shall now say a few words about procedural matters, which are complex because of the terms of the primary legislation, the Census Act 1920. As the Executive note makes clear, only those parts that are set out in italics in the draft amendment order are subject to affirmative resolution procedures and can be modified by the Parliament and approved in that modified form. In particular, those provisions are made to ensure that the Executive's intended questions on communal establishments can be asked. All other parts of the draft order are subject to negative procedure and cannot be modified.

This draft amendment order is the penultimate step in fulfilling the Executive's undertaking to include a voluntary question on religion in the next census. The final step will be the introduction to the Parliament of amendment regulations, when the amendment order is made. Consultation on the content of the census began well before this Parliament came into being. For any future census, we would be able to involve the Parliament at a much earlier stage, so avoiding the difficulties that have led to multiple debates on the 2001 census. I stress that the Executive has shown willingness to listen to the arguments that have been put forward by the Parliament. With the full co-operation of the Parliament, the necessary amendment to primary legislation has been passed. Today, I am asking for your co-operation to ensure that the necessary subordinate legislation is in place in good time for Scotland's census to proceed.

I move,

That the Justice and Home Affairs Committee recommends that the draft Census (Scotland) Amendment Order 2000, to the extent that it relates to the particulars printed in italics in article 2(3), be approved.

The Deputy Convener: I ask members to indicate if they want to speak.

Christine Grahame: The proposed new paragraph 10 says:

"As regards ethnic group, whether—

(a) White (and whether Scottish, other British".

Was that always the case? I am curious to know whether that is a change. Can someone now say that they are Scottish, rather than British?

Angus MacKay: I presume so.

Christine Grahame: That is fine. That suits me.

13:45

The Deputy Convener: I inform Michael Matheson, who has just arrived, that the minister has just addressed the draft Census (Scotland) Amendment Order 2000. I am inviting members to speak. That is just to let you know where we have got to.

Michael Matheson (Central Scotland) (SNP): I apologise for being late. I was visiting the Polmont young offenders institution.

The Deputy Convener: You are allowed to ask questions blind. Does anyone have any questions?

Members *indicated disagreement.*

The Deputy Convener: I sense a distinct lack of interest in this.

I have received a letter from Lewis Macdonald, on behalf of a constituent who is the vice chair of Grampian Racial Equality Council. Have you seen that letter?

Angus MacKay: I have had some indication of what is in it.

The Deputy Convener: For the record, the complaint—I use that word in the loosest sense—is that the views of people of African origin in Scotland have not been properly taken into account. They regard white and black as bad categories and think that they are not helpful, particularly in describing someone from a mixed race background. They wanted to speak to this committee but were told that our agenda did not allow that. I promised at least to raise their concerns with you.

These people feel that categories that are based on colour are wrong in principle and seem to have a problem with not having been consulted properly. I do not know whether there is any truth to that, but Lewis Macdonald is very concerned about his constituent and I promised to raise the matter.

Angus MacKay: I am aware of the concerns that have been raised. I understand that various ethnic minority groupings that are referred to in the proposed census form have been consulted equally. No distinction has been made between ethnic groupings in attempting to consult properly. We have consulted through the Commission for Racial Equality and other umbrella organisations. Anybody who made themselves known to us at any stage, or who expressed a request to be consulted, was included thereafter in the consultation and any discussions that took place.

I would be glad to recognise the concerns that are being raised by the individual and the organisation concerned. As I tried to make clear in my opening speech, this has not been a perfect consultation process and we recognise that we could do better in the future when putting together proformas for the gathering of this type of information. We want to take into account all those concerns.

The language that is used in the draft form, in respect of the specific area about which Lewis Macdonald's constituent is concerned, mirrors pretty much exactly what was suggested to us by the Commission for Racial Equality. The truth is that there does not seem to have been a uniformity of opinion on all these matters, and some people feel strongly about them. In the future, by taking a longer run at the problem we will be able to go a lot further towards leaving all parties happy with the final result.

The Deputy Convener: That community feels that it has had no direct access to the consultation process. It is worth highlighting publicly that,

although parliamentary consultation is very open, it is sometimes necessary for people to put their oar in and tell us that they want to be heard. This committee is always happy to listen to people if that is possible.

I shall convey your comments to the people concerned, and they will receive a copy of what you have just said. Lewis Macdonald can take that back to his constituent.

Does anyone else feel that this matter should be fought, debated and argued over further?

Members *indicated disagreement.*

The Deputy Convener: The question is, that the motion in the minister's name be agreed to. Are we agreed?

Motion agreed to.

That the Justice and Home Affairs Committee recommends that the draft Census (Scotland) Amendment Order 2000, to the extent that it relates to the particulars printed in italics in article 2(3), be approved.

The Deputy Convener: Before I demit office, I must seek the agreement of members that the committee should produce a short and simple report giving our recommendations on this matter to the Parliament. It will come to us by e-mail and committee members will have the chance to comment on it before it is sent for publication—although, if this afternoon is anything to go by, there will not be much comment.

Members *indicated agreement.*

The Convener (Roseanna Cunningham): I may have to go out again.

Gordon Jackson: There was no discussion at all.

The Convener: No doubt that was a great relief to the minister.

Insolvency Bill

The Convener: Item 2 is the Insolvency Bill, which is being considered by the UK Parliament. The clerk circulated a note advising that the Insolvency Bill has provisions that affect Scotland and are within the legislative competence of the Scottish Parliament. The UK Government and the Executive have taken the view that it would be more practical and appropriate for the relevant provisions to be dealt with in the UK bill than to have a separate Scottish bill. That is usually referred to as a Sewel motion—or, rather, it is usually done under one. While there will be a Sewel motion in respect of this bill, the committee has an opportunity today to consider the bill before it goes before a meeting of the Parliament.

A detailed memorandum has been circulated, which I hope members have had a chance to consider. The standing orders do not set out a formal procedure for dealing with bills that come before the committee in this fashion, nor is the committee required to publish a report as a result of its discussion today. I am not sure whether members have specific questions to put to the minister. I imagine that a clear political view is likely to be taken on the general issue.

Christine Grahame: I am concerned about the integrity of Scotland's bankruptcy and debt law. I have not had a great deal of time to consider the matter or to take advice on the impact of clause 13. It seems to me that it is an enabling clause—but I do not quite know what it enables, as regulations will be published on which the leave of Scottish ministers is to be sought.

Minister, have you consulted the Law Society of Scotland and the Scottish Law Commission on the bill? We have no other papers. I would like to know who has commented on the bill—I have received nothing.

Angus MacKay: At this stage, we have not consulted anyone, but we will have a consultation process to which organisations—

Christine Grahame: I have had the papers for only a couple of days. I want to be able to consider the comments of external bodies that are interested in Scotland's debt and bankruptcy law on whether the bill removes some of the independence of Scotland's law.

Angus MacKay: Convener, I have a brief statement that I intended to make, if that is acceptable to you.

The Convener: Certainly, minister—you should have indicated.

Angus MacKay: I apologise for that.

I thank the committee for making time available to consider this matter today.

The Insolvency Bill is being considered by the UK Parliament. As it is presently drafted, clause 13 would enable UK ministers to make regulations to implement in domestic law the model law on cross-border insolvency that has been prepared by the United Nations Commission on International Trade Law, which I think is known as UNCITRAL, although I am not entirely sure.

As it is considered that the scope of the UNCITRAL model law extends to matters that are within the legislative competence of the Scottish Parliament as well as to reserved matters, it is proposed to amend clause 13 of the Insolvency Bill so that UK ministers may make the regulations to implement the model law only with the consent of the Scottish ministers.

The Executive believes that that proposal would make the resultant regulations comprehensive and easier to use, particularly for those involved in insolvencies that cross frontiers. The proposal would also give the Scottish ministers a powerful control over the content of the regulations. We believe that that will help to ensure that the regulations will be compatible with Scots law. It is for that reason that I commend to the committee the proposal that is set out in the Executive's memorandum.

I am not sure whether my statement is of assistance—it was intended to be.

Christine Grahame: I am back on to the regulations—would it be of any use to us to see them? I lack information.

The Convener: Minister, is there any indication from the Scottish Executive of the timetable for a Sewel motion in the Parliament?

Angus MacKay: I do not have that information immediately to hand. Perhaps the official with me—[*Interruption.*] I understand that the Sewel motion has been lodged already.

We can consult members on Christine Grahame's point about the content of regulations. We will make an effort to ensure that members are fully briefed on them and that they have the opportunity to raise matters of concern, if they feel that the proposal contains any such matters.

The Convener: Today, the committee can either agree that the UK Parliament should legislate on the devolved matters in the Insolvency Bill—or disagree with that action. The minister would, no doubt, take due note of such a decision. Alternatively, we can simply take note of the minister's letter. Unless there are strong views, I think that we should simply take note of the minister's letter. Perhaps the minister will take on board some of the issues that have been raised about information. Individual members are free to contact the Law Society of Scotland directly in the meantime—perhaps the clerk would also like to do so—to obtain the society's views on the bill.

Draft Bail, Judicial Appointments etc (Scotland) Bill

The Convener: We move on to item 3. Minister, we have your letter, which indicates that the Executive already has in mind amendments to the draft bail, judicial appointments etc (Scotland) bill. I believe that all committee members have received a copy of that letter, which was circulated to them today. Perhaps you could take a few minutes to talk to the draft bill in general and to your letter. Then members will put questions to you.

Angus MacKay: I will make a brief introductory statement on the background to the draft bill and its proposals.

We are grateful to the committee for beginning the process of scrutinising the draft bill prior to its introduction. There is a degree of urgency in securing the passage of the bill, to bring various aspects of our criminal law into line with the European convention on human rights. I am genuinely grateful to the committee for making time to take evidence on the draft bill at such short notice.

I should also explain why the draft bill has had to be published without the usual consultation process having taken place first. Its scope and content could not be finalised until we considered the implications of the Court of Session's recent judgment in the case of Clancy v Caird, which dealt with temporary judges, and the interaction of that case with the High Court judgment on temporary sheriffs in the case of Starrs and Chalmers.

The judgment in Clancy v Caird only appeared on 4 April, which I hope explains why we were not able to publish the draft bill until 4 May. However, we have sent the draft bill to a wide range of interested parties, to provide them with an opportunity to consider and comment on our proposals, and we have provided the committee with drafts of the policy and explanatory memorandums.

The common thread that runs through the draft bill is the need to comply with convention rights. The obligation to do so is not a new one, as the United Kingdom ratified the convention in 1951 and British citizens have had the right to take their cases to Strasbourg since 1966. However, what is new is that, as a result of the Scotland Act 1998 and the Human Rights Act 1998, Scots can raise convention points in proceedings before our own courts, instead of having to take their cases to Strasbourg, and Scottish courts will be able to give direct and immediate effect to convention rights.

Since May last year, when the Lord Advocate became a member of the Executive, the defence has been able to raise convention issues in criminal proceedings where it is alleged that the Crown has acted in a way that is incompatible with convention rights. So far, there have been around 560 challenges, of which only 14 have been successful. That means that the Crown's success rate is more than 97 per cent, which does not suggest that the convention is giving rise to any fundamental problems for the criminal justice system. Most of the 14 ECHR challenges that have been upheld relate to excessive delays in particular cases.

However, in the light of the High Court judgment in the case of Starrs and Chalmers and two recent judgments of the European Court on bail, we are aware that amendments have to be made to various statutory provisions relating to bail, the district courts and temporary sheriffs. Our proposals are set out in detail in the policy and explanatory memorandums that have been circulated to committee members. Therefore, I will simply summarise the key aspects of the bill.

14:00

On bail, we are proposing changes to the arrangements set out in the Criminal Procedure (Scotland) Act 1995, which governs the circumstances in which an accused can or cannot be granted bail. Those changes reflect two recent judgments of the European Court of Human Rights, one of which involved the United Kingdom.

First, we propose that sheriffs should be under a statutory duty to consider whether to grant bail in every case, irrespective of whether an application has been made by the accused. Sheriffs will also have power to defer a decision for up to 24 hours, for example, to obtain further information. Secondly, the bill proposes that the bail exclusions should be repealed. Those provisions preclude a sheriff from considering bail where a person is accused of murder or treason or of certain serious violent or sexual offences and has a previous conviction for a similar offence.

I want to make it clear that it does not mean that such offenders will or should be granted bail. It means that the court must consider the matter in accordance with well-established principles of common law. Those include considerations of public safety and whether the accused has previous convictions. Other factors to which the court will have regard are the likelihood of reoffending, whether the accused has a persistent record of committing the crime, the likelihood of intimidation of witnesses and the likelihood of the accused absconding. There is no question, therefore, of jeopardising public safety.

Part 2 of the bill relates to judicial appointments. It provides for the abolition of the office of temporary sheriff and the creation of a new judicial office of part-time sheriff. That follows the High Court's decision in November 1999 that a temporary sheriff was not an independent and impartial tribunal for the purposes of the European convention on human rights.

If the Parliament accepts that the office of temporary sheriff must go, it is the universal view of the judiciary and the legal profession that the contribution made by temporary sheriffs must be replaced. We have already made a start on that by recruiting an additional 19 permanent sheriffs since the temporary sheriffs were suspended. As a further measure, the bill proposes the creation of a new judicial office of part-time sheriff, with statutory conditions of tenure, which meet in full the convention's requirements on independence and impartiality. The maximum number of part-time sheriffs will be 60 and the number of days that any individual can sit in a year will be restricted to 100.

The use of part-time sheriffs will help to reduce dramatically the unacceptably long waiting periods that have developed in several courts. They will also bring much-needed assistance to the permanent judiciary on whom the burden of coping with the whole court programme has fallen. The part-time sheriffs will cover for the absence of permanent sheriffs on annual leave, sick leave or other business. The senior judiciary has been consulted about our proposals and fully supports them.

Finally, the bill contains provisions relating to justices of the peace and district court prosecutions by local authorities. In future, justices will be appointed as either full or signing justices and only full justices will be able to exercise judicial functions. The bill provides for full justices to have statutory conditions of tenure and creates a procedure for their removal, involving an investigation and report by two sheriffs principal. Councillor and ex officio justices will not be able to act as full justices and local authorities will no longer be able to bring prosecutions in the district court.

Our proposals on district courts do what is needed in the short term to ensure compatibility with the European convention on human rights. However, I would also like to take the opportunity to announce today that we will be reviewing the operation of the district courts more generally.

There are good reasons for such a review. The legislation is dated and district court business has declined significantly. Fundamental questions are often asked about the efficiency of current arrangements. Some suggest rebalancing the work of the sheriff and district courts, while others suggest that lay justice should be replaced with professional arrangements or that the courts should no longer operate under local authority control.

We want to consider all the options afresh. We have no preconceived outcome in mind. Our intention is to set out the issues for debate by way of a consultation paper. Before doing so, we will of course invite those with a direct interest to help us to identify and to consider the relevant issues. This wider review will allow full discussion of all aspects of the district courts and, ultimately, I hope that it will enable us to develop a longer-term strategy to complement the immediate ECHR requirements that are addressed in this bill.

I hope that that provides some of the background to the proposals that are set out in the bill. I will be happy to assist the committee with any questions it has.

The Convener: There probably will be one or two questions. You will be aware that there are two areas of this bill that have given rise to concerns. One is the aspects of the bill that relate to bail. The committee member who is most concerned about that regrettably is not here today to address the matter himself.

The second issue is the question of the effective bar on councillor justices, about which a number of us have received letters, including a letter that suggests an alternative way of dealing with the problem. At this stage it would be worth while asking if the Executive considered whether there was an alternative way to deal with the conflict-of-interest problem with JPs and councillors. That would allow us to canvass what the options were that resulted in you choosing this particular one. I do not know if you are able to advise us on this.

Angus MacKay: Yes. We considered other options that are compatible with the continued delivery of lay justice. The considerations included alternatives such as removing district courts from local authority control or diverting income from fines away from local authorities. The former would require a restructuring of the administration of the district courts, and the latter a re-examination of the existing relationship between central and local government and the Treasury. In our view, neither of those solutions could be implemented easily or quickly.

With this bill we are attempting to ensure that the district courts are ECHR-compatible, and can continue with the business of dispensing summary justice. In our view, the wider longer-term considerations, such as those that I have mentioned, are better considered in the context of the review of district courts, but we have given some thought to this issue in advance.

Christine Grahame: I raised this issue last week. You seem to be saying that this is the quickest, but not the best, solution with regard to JPs. You appear to be saying that this is a short-term solution because you will review the operation of district courts, so would it be fair to say that having signing JPs and sitting JPs is the quick, but not the best, solution?

Angus MacKay: No. It seems to us to present the logical way forward. One of the disadvantages of some of the other suggestions that have been made, such as redirecting fine income, is that it is a long way round to resolving a particular problem, which can be resolved in much shorter order by the path that we are proposing. I do not accept that ours is simply the quickest way of dealing with this matter.

We have said that we looked at some of the issues in advance, and we concluded that the path that we are proposing is the best way forward. There are some broader issues, and they can be looked at in the context of the wider review which, as I said, we have no preconceptions about. Before we even launch the consultation exercise we will take advice and guidance on how it should be structured and on the issues that should be dealt with.

Christine Grahame: I have concerns about the quality of the personnel who will be available to take over. Paragraph 4 of the letter from South Lanarkshire Council, which I am sure you have seen, states:

"There are 80 or so Elected Members throughout Scotland, who are fully bench trained and who have a valuable role to play at local level in ensuring prompt and appropriate disposal of cases."

Given the backlog that has occurred because of the problems with temporary sheriffs—we have a letter from the Sheriffs Association to that effect—will not this cause another large problem in trying to fill the gap, and more backlogs?

Angus MacKay: There are around 4,000 JPs in Scotland, and approximately 1,500 of those are on the supplemental list. The duties of a justice on that list are restricted to those in section 15 of the District Courts (Scotland) Act 1975. Of the remaining 2,500 justices, 900 are available for court service. Over the course of 1998-99, 817 justices of the peace were required for the court rota. That number included 83 councillor JPs—39 ex officio and 44 others. That suggests that the shortfall in experience that has been outlined is a hare that has been set running without a substantial amount of justification attached to it.

As to whether additional JPs might need to be appointed to cover any shortfall, the JP advisory committees assess that matter, so it is a matter for them. It would appear that while district court business is declining and some district courts rely heavily on a small number of justices, each area will have to reassess the availability of justices who meet the criteria against the perceived requirement. It does not appear to the Executive that that necessarily presents any insurmountable problem.

Christine Grahame: In his evidence to the committee, Professor Gane said:

"Removing justices who happen also to be councillors might not be a good thing for the court: you would be removing people who were already making a significant contribution to public life in Scotland. I know many people who are involved with district courts and who think that removing such people could, in some cases, weaken the courts."—[*Official Report, Justice and Home Affairs Committee*, 15 May 2000; c 1256.]

I am concerned that we will have poorer justice and it will be delayed again, in the way that it was with the temporary sheriffs.

Angus MacKay: I can only reiterate a number of the points that I have made.

The business of the district courts is falling in any event. That is one reason why we want to have a wider review. Against the background of business falling, the JPs that Christine Grahame referred to constitute less than 10 per cent of the total and new appointments can be made.

If we were talking about a substantially higher percentage, those remarks would carry considerably more currency, but given the percentage of JPs to which we are referring, it does not seem that there is any reason why we cannot continue to prosecute business reasonably, with the appointment, if necessary in certain areas, of additional JPs.

Christine Grahame: So you do not agree with Professor Gane?

Angus MacKay: I do not think that there is a substantial issue here.

Michael Matheson: I will also refer to the evidence that was given by Professor Gane last week. One of his opening comments, in relation to his concerns about the bill, was that those were about what it did not say as opposed to what it said. He mentioned two matters that he had concerns about. He stated:

"It makes no attempt to address the question of which criteria the court should use in determining whether a person should be deprived of their liberty without bail."—[*Official Report, Justice and Home Affairs Committee*, 15 May 2000; c 1253]

I am concerned that there is nothing in the bill to guide the courts in this matter.

Professor Gane also raised the fact that there is clear concern that, given that the bill fails to provide any form of guidance, there is the

likelihood of inconsistencies in the way in which courts decide whether someone should be granted bail. Although you mentioned in the policy memorandum why you thought that that was not necessary, have you had a chance to consider again whether there is a need to have greater detail, in the way of guidance in the bill, about which criteria should apply when considering whether someone should be granted bail?

Angus MacKay: On the latter point, my understanding is that there is guidance. The Crown Office at present issues guidance to courts on these matters. I am confused about the discrepancy in information, because my understanding is that guidance is issued.

On Michael Matheson's earlier point, which I think was about specifying a statutory right to bail and criteria limiting that right, which I know was suggested by Professor Gane, the purpose of the bill is to rectify aspects of the law that are clearly incompatible with the European convention on human rights, or are at risk of being found incompatible.

If we go down the path of specifying a statutory right to bail and statutory exceptions to that right, we will go far beyond the intended purpose of the bill. It would take a considerable time to develop suitable provisions in the first place and there would be a real risk in doing so of getting it wrong, making errors, or not comprehensively covering all the areas that we wish to cover. That might result in the new provisions being found to be incompatible.

Beyond that, unlike the common law in Scotland, such statutory provisions could not easily be adjusted in the light of developments in Scottish case law or Strasbourg case law. Even if they properly reflected existing case law, they could easily be overtaken by future decisions. In our view, that is a path which, while it is initially attractive, is not one that we feel would best serve the interests that we intend to meet through this bill.

The other thing is that, because the statutory criteria, if we were to go down that path, would have to be interpreted in the light of convention jurisprudence, it is not clear what would be gained by seeking to codify the position in statute. As I have already explained, there would be a risk either of getting it wrong or of being overtaken by subsequent developments.

14:15

Michael Matheson: One of the concerns that Professor Gane raised was that there could be an inconsistency in the short term as regards the interpretation by the courts of common law, although he said that those inconsistencies might be ironed out in the medium to long term.

Angus MacKay: We might have to agree to differ. I am not clear as to why Professor Gane was making those points. It was confirmed to me that guidance is issued by the Crown Office and that sheriffs and judges act on long-standing points of common law when considering the issues. I cannot see why the situation should change substantively when we move from the current regime.

Michael Matheson: Is that guidance quite clear about the type of criteria that would apply when a court is making a decision in relation to the application for bail?

Angus MacKay: It cannot specifically address every case. However, it would have regard to the criteria that would need to be taken into account before taking a decision about bail.

Christine Grahame: You say that there is guidance at the moment from the Crown Office. Is that guidance available to defence solicitors to allow them to see what parameters are being operated?

Angus MacKay: My understanding is that that guidance is not available.

Christine Grahame: That puts the defence lawyer at a disadvantage. How are they to know whether a sheriff is operating within the guidance if they do not know what it is? If the guidance was in statute, the solicitor would know whether there were grounds for appeal, for example. On 15 May, Professor Gane told us that practitioners, especially those with experience of different parts of Scotland, tell him that practice is patchy over Scotland and that certain criteria are more relevant for some sheriffs than for others. That situation could be resolved by putting the guidelines into statute or in some form where they are open to both sides of the case.

Angus MacKay: My understanding is that that is what the common law in Scotland is about: it allows the law to evolve and develop. A number of important cases are open and available to defence parties to consider when examining the prospect of bail for their clients. One example is Lord Wheatley's decisions in Smith v M 1982. Guidelines for the court in allowing or refusing bail were set out clearly. Two broad categories were identified: protection of the public and the administration of justice. A series of other considerations that should be taken into account were outlined. All of that is publicly available and is known to defence agents. There is no mystery.

Christine Grahame: Of course not, but the cases would still have to be dealt with by examining how those guidelines had been interpreted by subsequent case law. If the

guidelines are issued to the judiciary, why are they not within the statute so that both sides would be aware of what was being issued by the Crown Office?

Angus MacKay: The Lord Advocate's guidance is issued to procurator fiscals. That is the present position.

Christine Grahame: I was thinking about whether the guidelines should go to the defence. That could be put into statute. The interpretation of guidelines will still be a matter for case law.

Angus MacKay: First, that will not differ from the present position. Secondly, it is a matter for the court to determine, not the fiscal. The fiscal receives advice but the court reaches a conclusion.

Christine Grahame: I know that—that is not my point. Any guidelines on whether bail should be awarded that have been put out to the Crown Office should be available to the defence lawyer as well. They are only guidelines and they will depend on the facts and circumstances of the case.

Angus MacKay: My understanding is that any prominent case that affects the current circumstances would be reported widely and openly, for example in *The Scots Law Times*. That will be available to defence representatives when they are considering applications.

Christine Grahame: I know that, but it would be helpful if they were mentioned in the statute.

Mrs Lyndsay McIntosh (Central Scotland) (Con): As a bench-serving justice of the peace, I should declare an interest.

Minister, you mentioned in your opening gambit that district courts would no longer be under local authority control. Under whose authority would they operate?

Angus MacKay: As I said, we have no preconceptions about where we want to go with this. We want to have open consultation and to give everybody the opportunity to make a contribution. We do not have a preconceived agenda about where district courts should go or under whose control they should sit.

Mrs McIntosh: Would the District Courts Association be consulted about this?

Angus MacKay: Everyone will be consulted who has a material or an indirect interest.

Mrs McIntosh: I have one or two questions pertaining to the training and to the length of time for training. You mentioned that the number of bench-serving magistrates who are not councillors and so on is a small percentage. You also said that, if there is pressure on getting court work done, it is for the district areas to consider increasing their number of JPs.

I am concerned about the length of time that it takes to train fully a bench-serving magistrate or justice of the peace—it cannot be done overnight. A considerable amount of preparation and groundwork has to be done before JPs can be let loose on an unsuspecting public or a wary client list. Is it your intention to take away the duty that lies with the training committees or to stipulate exactly what has to form part of the training for a justice of the peace?

Angus MacKay: Probably the shortest, best answer that I can give is that they have effectively been doing without the ex officio councillor JP since November last year, so courts have already had experience of delivering business in the absence of that expertise.

Mrs McIntosh: I have seen evidence that the number of justices in each of the areas that were in my former commission area is being reduced annually. That makes the job of getting through the court business considerably more difficult, particularly given the numbers who are going on to the supplemental role.

Angus MacKay: That is one of the reasons why we need to have a fundamental look at the purpose of the district courts and how they are structured in relation to the various other courts. The business has been declining and we have to consider what makes most sense as a business case.

Mrs McIntosh: I look forward to seeing your suggestions, minister.

Euan Robson (Roxburgh and Berwickshire) (LD): I wish to ask a layman's question about the new section 22A and the period of 24 hours in which the sheriff can either admit or refuse to admit a person bail. Is that a new time limit? If it is, are there practical difficulties in that relatively short period?

Angus MacKay: Twenty-four hours is the practice in most circumstances already, so there is not a major adjustment. There is some flexibility. In 99 per cent of cases at present—and, we anticipate, in future—24 hours is considered long enough. In practice, in the rare cases where information cannot be obtained in the time scale, the sheriff always attempts to exercise caution and denies bail, particularly as it is open to the accused to reapply for bail as soon as the relevant information that was not available becomes available.

The Convener: It looks as if there are no further questions. Most of us will have been interested to hear the advance warning of a more root-and-branch consideration of the district courts. I thank

the minister for that early warning. I assume that it is not intended that that should be done in the next couple of months. We look forward to receiving the appropriate consultation documents. I thank the minister and his team for their attendance.

Our next witnesses are Alison Paterson and David McKenna who are, respectively, director and assistant director of operations for Victim Support Scotland. Thank you for coming—I know that Alison has just got back from a holiday. David has already starred in our budget consultation. We have asked you to come today because we thought that Victim Support Scotland would have an interest in and be concerned about the changes that are proposed in respect of the bail aspects of the draft bill. If there are other issues relating to the bill that you wish to mention, that will be fine. Do you wish to say anything before committee members put their questions to you?

Alison Paterson (Victim Support Scotland): I would like to make a statement.

The Convener: Away you go, then.

Alison Paterson: As tempting as it is to pick up on the minister's points, there is merit in going back to our initial points. We are primarily concerned with part 1 of the bill and the sections that deal with bail at first appearance, removal of restrictions on bail and appeals against refusal of bail. Under Scots law, victims and witnesses in cases involving serious crimes are given some protection from accused persons while such cases are awaited through the provisions in sections 24 and 26 of the Criminal Procedure (Scotland) Act 1995. Those provisions are the result of much public disquiet about the number of very serious cases of accused people offending while they are on bail. We are, however, keenly aware that many victims and witnesses continue—despite those provisions—to experience intimidation, threats, harassment and violence at the hands of accused persons who are liberated on condition of bail.

That hard-won legislation was introduced only five years ago—it is important that we remember that. Our view, therefore, is that the draft bill provides no comfort and little protection to the victims of crime. Every year, Victim Support provides—through our local services—practical and emotional support to thousands of families whose lives have been ruined by crime and who live often in isolation and fear. The ordeal of having to live in the knowledge that an accused person in a case of violent crime is free on bail until the case comes to court causes further anguish and trauma. That adds considerably to the overall impact of the crime on the victim.

We understand that it is neither acceptable nor desirable that everybody that is charged with a crime should automatically have their liberty removed—that is not the case that we are making. On the other hand, it is wholly unacceptable that victims should suffer further crimes of violence at the hands of an accused person who is out on bail. Unfortunately, that is the case all too often; victims become disillusioned with and—more important—vulnerable in our justice process.

We believe that it is essential that the rights of an accused person to be released pending trial under ECHR article 5.3 are balanced against the rights of victims, the community and our people to have their lives protected by law and to have liberty and security. Those are fundamental rights, which are set out in articles 2 and 5 of the ECHR. I remind the committee that—in the case of Osman v the UK—the European Court of Human Rights determined that a public authority can be shown, or will be shown, to have failed in its positive obligations in relation to bail decisions if it can be established that that authority knew, or should have known, of the existence of an immediate risk to the life of an individual and that the authority failed to take measures that were within its powers that might reasonably have helped in avoiding that risk.

We believe that the draft bail bill provides Scotland and its Parliament with a unique opportunity to consider improving the rights to protection of victims by delivering legislation that is inclusive and puts new rights for victims of crime on the statute book.

14:30

We petitioned the Justice and Home Affairs Committee to support an amendment to the draft bill to include the requirement that, at any stage of considering bail, the judge or sheriff should have before them up-to-date information, taken directly from the victim, on the impact of the crime on the victim and—significant for the granting of bail—of any potential threat to the safety of the victim that the accused person may represent, as well as any other relevant concerns or information that only the victim may have or be able to impart that is relevant to the decision on bail. That information would include, for example, whether there was a known relationship between the victim and the accused. We stress that that information does not appear automatically on police reports that are presented in relation to bail.

We ask that the draft bill provide a legislative framework to ensure that the victim's interests are protected in that way. We have heard the minister say that the legislation cannot address every point in every individual case and that no bail requirements or criteria can do so. We therefore propose an innovative but straightforward provision that would ensure that the victim—the vulnerable person—and any other related person

would have an opportunity to have their specific risk assessment put to the court. We also ask that the draft bill provide a legislative framework to ensure that the victim is informed about the bail process and bail outcomes. If those proposals are incorporated in the bill, they will provide improved protection of the human rights of victims and lead to greater public confidence in our justice system.

The European convention on human rights was ratified by the UK Government in 1951, at a time when the rights of victims were nowhere on the social or political agenda. We have talked about protecting the rights of accused people in primitive criminal justice systems. It may be outwith the remit of this committee to amend the Human Rights Act 1998, but we must bear in mind the fact that victims have rights too. We are confident that the act will ensure those rights, particularly rights to life and to protection from degrading treatment. We are happy to answer any questions on our proposals.

Gordon Jackson: You are quite properly keen that victims should be informed of the outcome of the bail process. If they were the complainer, they should obviously be told whether someone has been bailed. What happens at the moment? Are victims never told?

Alison Paterson: That is variable. A huge effort is made to inform victims, but there is a time-delay problem in many cases.

David McKenna (Victim Support Scotland): In a recent case that we were involved in, a young woman was sexually assaulted on her way home from work. She was lucky that the offender was caught by the police within 20 minutes of the assault. Two days later, however, she was walking home from work and he walked up to her in the street. She was shattered, as she had assumed that, because he had been arrested, he would be in prison, not on the streets. No one told her, and no one was going to tell her.

Gordon Jackson: When you say that the situation is variable, do you mean that it varies between different fiscals' offices, or does it vary from time to time in the same office? Is there variation because the information is not provided well enough throughout the country, or is the situation more hit and miss than that?

Alison Paterson: The Scottish Executive victims steering group is considering that issue, which, as has been recognised, represents one of the weakest aspects of the flow of information to victims. It has been acknowledged that practice varies because efforts vary. Furthermore, current aspects of the way in which the system works make it very difficult to get the information to the victim before the person is on the streets again. Interim liberation is a case in point—it is almost impossible to get the information to a victim after an appeal.

Gordon Jackson: You have examined the proposal and you understand the present situation. I realise that there are things that you want that are neither in the current arrangements nor in the proposal. Do you think that the bill would make the situation worse and, if so, could you be precise about the way in which it would be worse? In future, who might be getting bail who would not get it now? What difference will the bill make in relation to matters that concern you?

Alison Paterson: We read Professor Gane's comments this afternoon; we understand that the current criteria of previous offence for a similar crime will not on its own stand up under ECHR as a reason against bail. Clearly, we would be depending on sheriffs and judges to exercise their wisdom and discretion in relation to the commonsense criteria that have been mentioned to meet ECHR standards. The weakness in that is that sheriffs and judges do not always have the full information in front of them to enable them to make those decisions in a way that guarantees the protection of the victim.

Gordon Jackson: I understand that; it is true of the current situation, just as it would be of the future. I am asking whether you think that the bill means that in future people might get bail who would not get it now.

Alison Paterson: We would be reluctant to cast doubt on the wisdom and concern of sheriffs in ensuring that public protection issues are addressed. We are frequently told that sheriffs and judges will continue to make sensible and proper decisions. However, taking away the protection of the automatic denial of bail in very serious crimes is a concern to us because there will be a disparity among sheriffs and they will not have the full information. I must emphasise that point. If there is no choice but to implement the bill to meet ECHR concerns, I would say that you must consider putting in place a procedure that ensures that all the information from the victim's perspective is available.

Gordon Jackson: You said that, at the bail hearing, the views of victims specifically should be taken into account. I would like to press you on the mechanics of that. Because of my experience, I have tried to live in the world of imagining it happening. How is it to be done? Currently, it could be done through the police report but, as you said, that is very patchy. If the police report does not give the information to the procurator fiscal, what can he do? He cannot know the unknown. What procedure do you envisage?

Alison Paterson: First, I would like to inform the committee that the victims steering group has

almost concluded some work on the prospect of a pilot on the use of a victim's statement. Some members may be aware of an exercise in England and Wales in which a victim's statement was introduced from the point of reporting a crime. The purpose of the statement was to inform the authorities throughout the progress of the management of the case of any information concerns of the victim, relevant to their safety or any compensation. That could be put on the case file and taken into account by the prosecution, the courts or the prison authorities when considering parole. I am optimistic that we will be piloting such a scheme in Scotland, which, when it is fully developed, would ensure that such information could be made available.

The problem with bail is time. Information has to be brought very quickly before the court. Our view is that the police should be responsible for ensuring that police reports are improved and contain a section that clearly shows that there has been consultation with the victim.

Gordon Jackson: If that becomes a police responsibility, it makes more work for the police; although there is nothing wrong with that, everyone has problems with resources. However, do you think that this procedure should kick in for someone who has had their house broken into, who has suffered physical assault or who has merely been sworn at in the street and is a victim of a breach of the peace?

Alison Paterson: As we are discussing victims of violent crimes, including sexual crimes, we want to focus everyone's attention on a victim's statement or input in relation to crimes where bail is involved.

Gordon Jackson: I am aware that victims are genuinely concerned even if nothing happens to them during the crime; the presence of the person committing the crime is the frightening thing. However, I think that you said that it is only too common for people who are released to commit other crimes against their first accuser. Do you have statistics or figures showing that crimes of violence committed by people released on bail against their accusers are—in your phrase—"all too common"?

David McKenna: We know that such crimes are all too common, because two or three victims every week contact Victim Support somewhere in Scotland to say that they have been victims of crime and that the person accused of committing that crime has committed further crimes against them.

Gordon Jackson: Crimes of violence?

David McKenna: Yes. The experience is not uncommon. Of course, this depends on one's definition of violence, which could range from bricks through the window or being spat at to physical assault.

The other problem is that it is very hard to prove such intimidation and harassment of witnesses, because the accused person conducts the activity in such a way that corroboration or witnesses are difficult to obtain. There is often very little that the police can do if they are actually called.

Gordon Jackson: Because it is very difficult to prove that such activity happens, as you say, you work on the assumption in your figures that it is true. However, your assumption might not be true.

David McKenna: That is correct. Thankfully, we do not have to apply that formal legal test to our clients. We obviously assess whether, in our view, the clients are telling the truth, as they are in most cases.

Alison Paterson: I should point out that we are called Victim Support; we do not make legal assessments. However, as for the veracity of a victim's statement, it is up to the sheriff to make a judgment on any contribution that victims make to the bail assessment programme. The point is that we are asking for a safeguard.

Gordon Jackson: For the avoidance of doubt, I was not suggesting that there was anything wrong with Victim Support applying the test. However, the legislation will have to apply certain tests that perhaps you cannot.

The Convener: Three people are waiting to be called. Gordon, can I hand the chair over to you?

The Deputy Convener (Gordon Jackson): Right. Where am I? Lyndsay McIntosh is next.

Mrs McIntosh: In your statement, you said that there has to be a balance between the victim's rights and the rights of the accused. I am particularly interested in the value of the victim input statement. If the protection that you seek is not forthcoming, will the number of people who report crime or are prepared to be witnesses when it comes to a court case dry up?

Alison Paterson: That will be a major public confidence issue for the committee. The amendments to the 1995 act were hard won after long-term lobbying by organisations such as Rape Crisis Scotland and Victim Support Scotland, but those measures may be removed because of the external impact of ECHR.

If you do not look for a 21st century amendment that reflects the needs and rights of victims, you will find that the public will be confused and that individual victims—particularly intimidated victims—will be concerned about what will happen to them if they report a crime. That great concern has been addressed in "Speaking up for Justice" in England and Wales, where, as members may

know, a raft of legislative and practice procedures is being developed to protect vulnerable and intimidated witnesses. We do not yet have that in Scotland; indeed, we are adding to concerns by taking measures away without putting in place a safeguard on bail. That will be a retrograde step.

14:45

Mrs McIntosh: So instead of taking one step forward, we are taking two steps back.

Alison Paterson: Yes.

Christine Grahame: First, we must refer to victims as "alleged victims", as we are dealing with people who are innocent until proven guilty—that is the problem. I am attracted to the idea that witnesses, alleged victims in a case and so on should be informed about the bail process and about everything else that happens during the court process. It is very wrong that that has never taken place and I do not think that that point is contentious.

I find your second point slightly difficult. I am attracted to your idea of a risk assessment taking place during the bail hearing, but I have some problems with an alleged victim making a statement. Such a statement would not be made on oath and it would not be challengeable—it is simply something that would be written down. I am trying to be fair and objective here, as I can think of many instances where I would be sympathetic to what you suggest.

I am concerned that the procedures for the risk assessment should be truly independent. At present, witnesses have some protection, in that, wherever the accused lives, he or she must not contact them and so on—we know that conditions of bail are imposed. I appreciate that you are talking about violent crimes, but I ask you to develop your thoughts further, so that, rather than the victims simply making a bald statement, there would be something that is more independent and that would be available to the defence, who might wish to resist it. If such a procedure could be developed that satisfied me, would you wish to see guidelines, which would be available to all sides, issued to the court? I have some difficulties, as we are dealing with an accused person at the bail stage, not with someone who has been convicted.

David McKenna: I accept everything that you say. This afternoon, we have not set out in detail how such a scheme might operate.

The experience in England and Wales, and our own understanding of the situation, is that it would be a matter for the police—as part of their routine work of taking witness statements—to use prompts to identify from the victim both the extent of the impact on them of the crime and any related issues of their personal security or that of their family. It would not be a matter of the victim simply saying, "I am terrified. I think he shouldn't get out and therefore he should not get out." The police should take a professional approach—police officers have been trained to elicit that information when they carry out interviews with victims, using professional prompts to deliver information to the court or to the fiscal service.

Christine Grahame: I was also thinking of a psychological appraisal—that would truly involve a third party taking a professional view on the alleged victim in specific circumstances. The weight given to such an appraisal would depend on the sheriff, but that is another suggestion to consider. There is merit in your proposal, but I am trying to balance the rights of the accused with the rights of the alleged victim and the rights of justice, given that people are innocent until proven guilty.

Alison Paterson: There is a great danger of over-egging this problem, perhaps because of the strength of the case that we are making to include such proposals in the bill. We are asking for only an improvement to existing good practice—where it happens. Of course, the victim should be asked about their concerns and about their relationship with the offender. They should be asked whether there is any intimidation going on that will not emerge, or whether there are reasons why they are frightened of giving information.

We draw back from agreeing today that it would be advisable, necessary or moral to put victims under the pressure of some form of psychological testing, when all we are suggesting is a risk assessment exercise, about which the authorities can make their own judgment. Let us not forget that the victim has no legal representative. The accused is advised of their rights by a whole battery of experts, but the victim is on their tod.

Christine Grahame: I was trying to assist and to get to a position where something purely independent could be put before the judiciary.

Alison Paterson: I appreciate that. I was anxious that you should not think that we were arguing for some kind of—

Christine Grahame: No. I can see trouble ahead for the principle of innocent until proven guilty.

Alison Paterson: It may not be long before another victim is successful in bringing a case on the basis that nobody asked them about their worries about the accused. That principle has been recognised by the court.

Christine Grahame: I wanted simply to develop it into something more solid, which could serve as the basis for guidelines for sheriffs and judges.

The Deputy Convener: Would it be fair to say that you are suggesting a system, rather than something that needs to be enshrined in statute? I know that on occasion police ask victims for their views and sheriffs are told about them. Would you like the system to be clearly defined to ensure that that always happens, or do you think that legislation is necessary?

Alison Paterson: At the present stage in the development of victims' rights—with a small r—the procedure needs to be spelled out in legislation, to ensure that it is followed. There is still a huge issue of victim awareness in the criminal justice system—of lack of understanding of the effects of crime, of victims' difficulties in participating in the system, and of the level and nature of intimidation. In the long term, I hope that such a measure will not need to be enshrined in statute, but at the moment we feel that that is necessary.

Christine Grahame: Does that mean that you would want the statutory guidelines on conditions for granting bail to include a sub-paragraph dealing with the risk assessment to the alleged victim and to other witnesses, as there might also be a risk to family members?

David McKenna *indicated agreement.*

Michael Matheson: The issue that I wanted to raise has been covered to some extent, but I would like to clarify a few points. It seems that statutory guidelines are the flavour of the month. I may be wrong, but you appear to be saying that victims and witnesses have greater protection in England and Wales than in Scotland, and that in England and Wales there is greater co-ordination of victim support services. Would it be fair to say that you are concerned that the bill as it stands could erode still further the protection of victims and witnesses?

Alison Paterson: Yes.

Michael Matheson: I want to pick up on the issue that Christine Grahame raised. You heard the minister refer to guidelines that could be issued to sheriffs on the criteria that they should use when considering whether to grant bail. Do you think that consideration of the needs or views of victims should appear in the bill, given that the legislation deals with the other criteria for deciding whether bail should be granted?

Alison Paterson: On balance, yes. We appreciate that framing in legislation the concept of protection or involvement of the victim is a new and complex idea, but in principle we would favour doing that.

Michael Matheson: Would it be fair to say that failure to place consideration of the needs of victims in statute would, in effect, erode the protection that victims receive? Would they be in a worse position than at present?

Alison Paterson: We would say so. I cannot talk about an action plan that has not yet been published, arising from "Towards a Just Conclusion", but when you invite us back to speak about that—as I hope you will—and reflect back on this discussion, the strength of our concerns may come into focus.

Euan Robson: I return to the question of violence against victims. I understood you to say that you get two or three instances a week from around Scotland.

David McKenna: The figure is higher, I think—I was being conservative.

Euan Robson: Have you any idea how many of those instances occur when the person is out on bail, compared with the number that occur after the serving of a sentence or the receipt of a fine?

David McKenna: This is a guesstimate, but I suspect that nine out of 10 instances occur when the accused person is on bail. In our experience, an offender who has served a prison sentence does not usually come out and immediately start retribution against the victim or the families involved. The instances generally involve accused people who are free.

Euan Robson: The balance between intimidation and retribution in the mind of the offender is the important point. Are you saying that the intimidation, the matter that comes before the court, is a much more serious problem?

Alison Paterson: This is linked to bail; we know from work such as "Towards a Just Conclusion", and other surveys that have been carried out in the UK, that intimidation in our communities is a far greater problem and is more prevalent than ever comes to light. One of the problems is that people are afraid—whether the intimidation is of low or mid level—to come forward and report it.

In relation to crimes of violence, threatened violence, harassment or sexual crimes—members can again appreciate the link with the need to give clear information to victims—victims, if they come forward, must be protected. That protection should include sound bail provisions and an opportunity for the victim's situation to be closely examined before bail is afforded.

Euan Robson: How much of the intimidation is carried out by the alleged perpetrator of the crime, rather than by associates of the alleged perpetrator? Is it clear who is carrying out the intimidation? Is it members of the gang or relatives of the person concerned? If there is a strong element—as I suspect there is—of associates conducting the intimidation, do you have proposals in that regard?

Alison Paterson: We can get some to you. Today, we have focused on alleged victims of violent and sexual crimes, because those are the crimes that cause most damage to people's lives and are most likely to affect public confidence in the treatment of victims in the criminal justice process.

Huge issues surround intimidation in our communities; those issues will be addressed—or not—under the action plan that will come from "Towards a Just Conclusion".

The Deputy Convener: Scott Barrie?

Scott Barrie (Dunfermline West) (Lab): My questions were covered in the contributions by Michael Matheson and Euan Robson.

Christine Grahame: I wanted to pick up on the idea of risk assessment and the question of victims or alleged victims. In my view, we should be considering not just the victims of sexual or violent crimes, but those of other crimes, who may be terrorised during incidents of burglary, for example. We should examine the reaction of the individual, not of a class of people.

Alison Paterson: There are no criminal justice social workers giving evidence today, but we know that social work in Scotland has been arguing for some years that there should be a victim perspective in the social inquiry reports that are provided to the courts. Reliance on the offender's version of events gives a very skewed picture, not just in relation to the ability to challenge the offender's attitude to the offence, but in relation to risk assessment.

Victims, by dint of their experience, have an important contribution to make to risk assessment, particularly in relation to violent and sexual crimes. We ask that that fact be recognised and that the Executive take it on board, either in a bill or in a lesser procedure.

15:00

The Deputy Convener: This is just a stream of consciousness: at present, bail is granted unless there is good reason for not doing so. Bail applications are processed quickly, using ex parte statements, which we take or do not take. If there were an input such as you describe, I can envisage bail hearings taking place. If someone produced a statement, through the procurator fiscal, that said that someone should not be allowed out for certain reasons, and it was then alleged that those reasons were a pack of lies, the sheriff would be forced to make a decision regarding the liberty of someone who, at that point, would be presumed innocent. The equivalent of a six-month jail sentence could be handed down. The victim might end up being cross-examined at a bail hearing. How would you feel if the proposals led to that?

Alison Paterson: Any greater involvement of the victim in the criminal justice process will necessitate putting that issue under the microscope. That issue was taken on board in England and Wales, with the victim's statement.

There is a danger that, in communicating our concerns about victims' vulnerability, we patronise victims and assume that they would not be able to go through the legal process.

You make a good point and it will be made elsewhere. Victims deserve our respect, and the support to help them deal with the situations that they might find themselves in. Any victim who chose deliberately to misrepresent facts about their relationship with the offender or the nature of their concerns would—basically—have it coming to them. However, I predict that that will happen in only a small number of cases.

David McKenna: Much will depend on who is taking the statements. A properly trained police officer who is able to make an assessment based on key criteria will not simply repeat what the victim says in court. A balanced report of the security issues for the victim must be given by the police officer to the fiscal department. That report must be available in court when bail is considered.

Ireland introduced victim impact statements. The judiciary and everyone involved in the legal system said that the statements would be open to challenge in court and that there would be hearings into their accuracy. However, in the five years in which the system has been operating, no victim impact statement has been challenged by a defence lawyer or a defendant.

Euan Robson: Are demonstrable breaches of bail conditions treated with sufficient seriousness by the courts? Is the victim's perspective on such breaches taken into account later in the process?

David McKenna: The problem is that the victim might not know what constitutes a breach of bail conditions, as the conditions are not normally spelled out in court. I am not sure that the person who is released on bail is fully aware of the bail conditions.

A further problem is that, once the accused is back in the community, it is hard to get corroboration for accusations of breaches of bail. "Speaking up for Justice", a Home Office document, recommended that more use be made of closed-circuit television and police surveillance to gather evidence of breaches of bail; it also recommended that alarm systems should be provided for victims. The real issue is that the policing of breaches of bail conditions is not high up the agenda in Scotland.

Alison Paterson: It is difficult to monitor the type of crimes that we are discussing. The Government's review of stalking and harassment will bring into sharp focus how we monitor the actions of obsessional stalkers with regard to their victims, and breaches of anti-harassment orders. Those are important issues, but they are difficult to track.

Michael Matheson: I would like clarification on a point. You mentioned the possibility of an action plan being developed. If the bill is not amended as you would like it to be as it goes through Parliament, could the concerns that you have expressed today be addressed adequately via an action plan for victims? You should bear in mind that an action plan would not have a statutory basis, whereas an amendment to the bill would.

Alison Paterson: As we speak, at least three victim action plans are being engineered: the Lord Advocate's feasibility study; the action plan for "Towards a Just Conclusion", which is about to be published; and the victims steering group strategy for victims, which the group will present to ministers this autumn. We have not seen the latter two documents yet.

My first concern is about the lack of joined-upness in relation to strategies to protect victims. Although much can be achieved by greater emphasis on victim awareness training and inter-agency collaboration, we need to emphasise certain important areas, such as victim protection, through a statutory requirement. The answer to your question is therefore no.

Michael Matheson: What about the point that any changes to the bill will be in statute?

Alison Paterson: If there is leverage to work with the key professionals on the awareness issues that we referred to, that would enhance the process of risk assessment.

The Deputy Convener: For the record, you referred to the victims steering group. What is that?

Alison Paterson: The victims steering group is the Scottish Executive inter-agency group that was set up under Michael Forsyth to co-ordinate policy on victim services across the then Scottish Office, now the Scottish Executive. It is chaired by Colin Baxter, and includes representatives from all the criminal justice agencies; I am slightly alarmed that the committee does not have a high level of awareness of it. In our manifesto for the Scottish Parliament, we called for the victims steering group to be given higher status in the Executive. According to officials, the victim strategy will be the overall plan that will be presented to ministers this autumn.

The Deputy Convener: Do you have anything to add, Christine?

Christine Grahame: Yes. I wish to comment on your stream of consciousness, deputy convener. Bail hearings are not appealing, in that they would almost be pre-trials. I can see problems with disentangling conditions for bail and rights to bail from the case itself.

You appear to be saying that the legislation is being rushed through because of ECHR. If we took our time and waited until late autumn, and looked at the other information that became available—including information on models elsewhere in Europe, which has not been mentioned—we might be able to put something in the bill, or in guidelines, that would balance the rights of alleged victims and those who are accused, while protecting alleged victims. Is that the case? Is the bill going through too fast?

Alison Paterson: I cannot argue with your rationale on process. This is a poor way of dealing with a much bigger problem. However, protection under bail is an important part of the problem. My concern about waiting is that, although the committee will consider the action plan, "Towards a Just Conclusion", and I presume that you will also examine what arises from the Lord Advocate's feasibility study, I will be very surprised if the victims strategy is presented to you, unless you seek it out, as the victims steering group does not appear to have enough clout.

Christine Grahame: You could send it to us.

Alison Paterson: I hope that there will be a ministerial commitment to take action, but there will be no legislation on it.

Christine Grahame: I do not want to go on too long about this. I feel that we have opened up an issue that it would have been interesting to include with the bail bill. However, we are constricted by time from exploring it. That has become clear from your interesting contribution.

Alison Paterson: You must now deliberate on our proposals. However, if the reason for not acting on our recommendations is that that there might be a better opportunity later on, we are concerned about when that will happen.

Christine Grahame: It is now or never.

The Deputy Convener: Thank you. You suggested that you might come back, and I have a feeling that that will happen some time.

The Convener (Roseanna Cunningham): I am returning to the chair because I do not want Gordon Jackson to get too comfortable.

I thank the witnesses from the District Courts Association for coming to the meeting. Helen Murray JP is the convener and Phyllis Hands the secretary of the association. I understand that you

will make a brief statement before we move to questions.

Helen Murray (District Courts Association): Our interest is in chapter 2 of the draft bill, on justices of the peace. I will begin with section 7, on the appointment of justices. We have no objection to the introduction of the two categories of full and signing justices. We query the fact that signing justices will not be able to sit on committees, because of the past contribution on local justices committees and on the justices of the peace advisory committee of people who have been signing justices.

We welcome the more open method of appointing justices. That is in line with the report of the central advisory group, on which Mrs Hands and I served last year, on the recruitment and training of justices.

We have no difficulty with section 8 on the removal and restriction of the function of justices, as we feel that it ensures security of tenure for justices. However, we would like "neglect of duty" in proposed new section 9A(2)(b) to include failure to meet training requirements. In practice, the reason why many justices have been removed from the court rota is that they have not turned up regularly for training. That is absolutely vital. On-going training, as well as basic training, is important for justices. We welcome the involvement of the sheriff principal of the sheriffdom, which includes the justices commission area. That ties in with the central advisory committee's proposal that training regions that are based on sheriffdoms should be set up—everything would mesh together.

15:15

Section 9 deals with the restriction on the function of justices who are councillors. There has been no real consultation with the District Courts Association on that, despite meetings that we have had with the Crown Office. In November, we held our first meeting, at which we were told of the decision of the Lord Advocate to advise fiscals not to put cases before councillor justices because of doubts about their impartiality, which were raised by ECHR issues and which were being explored by the legal advisers. At that point, we agreed to co-operate in that barring of the councillor justices, as we had already discussed possible problems that could be raised through ECHR issues. Consequently, we advised our members to remove councillors from the rota for three months.

There has never been a challenge to justices, although there has been a challenge to clerks—that is not mentioned in the bill. We do not have a problem with the clerks because of the counsel's advice that we have received. We sought the advice of a human rights expert, Aidan O'Neill, and copies of our memoranda are available, as is a supplementary paper that we put in this afternoon.

I want to concentrate on one aspect of the advice that we were initially given. There was a difficulty with ex officio justices, as there are no legal or conventional restraints on the possible termination of their appointment by the local authority. We made the advice that we received from Aidan O'Neill available at a Crown Office meeting in January, but still no decisions were made by its legal advisers. A further extension of the councillors' suspension was agreed at that point.

We then sought supplementary advice from Aidan O'Neill, and we asked about the destination of fines—this business of fine income. He said:

> "I do not see how the present situation of the local authority retaining fine income raised from the District Court in order to offset in part the costs of their providing the court in question raises doubts as to the (appearance of) impartiality of the District Court.
>
> There is no direct link between the amount of fine income and the workings of the local authority. It is not the local authority which sets the general or specific level of any fine, but rather the Justice hearing the case acting in accordance with the requisite guidelines and statutory constraints about him or her."

In answer to our questions about the independent councillors—we call them councillors who are justices in their own right—he says that

> "it does not seem to me that there is any problem in independently . . . appointed Justice continuing to preside in District Courts, at least in cases which do not involve the authority of which he is a member."

That advice put our minds at rest on that issue.

We had a third meeting at the Crown Office in March, at which continuing doubts were expressed about all councillor justices, although no reasons were given for those doubts. Our view was that we should continue to suspend the ex officios, but reinstate the independent justice councillors, and we cited areas in which there were problems in covering courts—for example, in South Lanarkshire, Aberdeen City, Argyll and Bute, Dundee and East Ayrshire. In all other parts of the country, no problems had been brought to our attention. However, our suggestion was rejected and the total ban continued.

We were told of the contents of the forthcoming bill at a meeting in April. As far as our views on councillor justices are concerned, we have considered this from the two points of view: fine income and security of tenure. Our counsel's advice is that doubts about their impartiality through the destination of some fine income is no reason for restricting their function. That is the only point that is mentioned in the memorandum

attached to the bill.

If the Executive is not going to budge on that matter, the way round the problem is one that has already been mentioned this afternoon—that is, that the fines should be remitted to the Exchequer. Funding through grant-aided expenditure to local authorities for the running of the court should be increased to 100 per cent. That would have to be done at a later date; it could not be done at this stage.

On the lack of security of tenure for the ex officio justices, we recognise that that lies with the electorate and the local authority appointments system. The period of office given by the electorate is limited, but it is beyond three years. That is a period described by Lord Reed as relatively short, but it implies that it is sufficient. Lord Prosser says, in the Starrs and Chalmers judgment that

"length of tenure may be of little importance when the office is not a step in a career, but is something done out of a sense of duty".

That is what applies to justices of the peace across the country, including councillor justices. The possible difficulty presented by the local authority system could be overcome by establishing statutory conditions for their appointments and by statutory removal and suspension arrangements being put in place, as in sections 9A and 9B.

On part 3 of the draft bill, in relation to the abolition of prosecutions on behalf of or by local authorities, we are content with that. Angus MacKay spoke this afternoon about a review of operation of district courts. We welcome that and would be delighted if it were done; it needs to be done. There has also been mention of things being rushed through at this stage. We would have preferred to see a full investigation of everything, including the position of councillor justices and clerks at this stage. A lot needs to be done.

Angus MacKay also mentioned the declining business in courts. That is not apparent in many courts. The District Courts Association is monitoring the situation. We are getting members across the country to bring us examples of their figures. In some areas the numbers are down considerably, but that is not national.

The District Courts Association is confident that lay justice has a significant part to play in the criminal justice system in this new century. I suggest that the fact that almost 1,000 members of the Scottish community have an understanding of criminal law and, through that, an understanding of the rights of the individual means that this is a jewel in the crown of Scottish democracy and should not be lightly discarded.

I will be happy to answer members' questions.

The Convener: Before we have questions, you might take a minute to explain, for the record, what the District Courts Association is, how its membership is made up and how it operates.

Phyllis Hands (District Courts Association): The District Courts Association was formed in 1980 to be a consultative and discussion forum for district courts in Scotland because, at that time, 53 local authorities were responsible for running the district courts and there was no central body for advice and assistance to clerks or justices in the training of either party. A body of opinion was formed throughout Scotland that this forum was required. The membership is of commission areas in Scotland; one member is appointed to represent a commission area at the association meetings. The clerks to the district courts are associate members. We have our own meetings at which we discuss any legislation that is coming out and national training for justices. We are a forum for discussion and consultation for district courts in Scotland.

The Convener: So you are not, strictly speaking, a policy-making body. You do not operate on a conference set up once a year or pass resolutions.

Phyllis Hands: Not to any great extent. We have an annual general meeting, three policy committee meetings and a full association meeting each year. We do not instruct our members. We only advise them and give them guidelines. Over the years, we have become more proactive in interference in the way that district courts are run by providing guidelines, which generally are followed by our members.

Gordon Jackson: I probably have not been paying attention and the answer to this question may be here. How many councillor justices would we be taking?

Helen Murray: Ten per cent of the total number.

Gordon Jackson: So 10 per cent will go.

Helen Murray: Yes.

Gordon Jackson: The other day, I got a letter from the local authority—coincidentally, I had written because one of my constituents was going to become a justice and wanted to know what had happened to his application. The strong response was that the number of justices needed was going down in a big way. I do not have the letter with me, because I had not thought of it for today. It said that with duties being affected, fixed penalties and general changes in the legal system, there was not the same sort of demand and that justices would not need to be appointed for some time. Does that make sense to you?

Helen Murray: Yes, it does make sense, but it would depend on the commission area.

Gordon Jackson: Glasgow.

Phyllis Hands: During the recent local authority reorganisation—I say recent, because four years is not that long when you are at the coalface—a lot of the Glasgow areas were taken out. There was then a surplus of JPs within the Glasgow district boundaries. Also, Glasgow ran four lay courts until approximately a year ago and now has only three.

Generally, new justices are being appointed. Recently, 12 were appointed in North Lanarkshire because of the problems that we were having getting justices to sit on the rota. When we say that business is declining, we mean not that the general impression that we get from our members is that the number of cases being called in court is declining by any significant amount, but that the number of trials that are taking place is taking away court business. Fiscal fines linked to the intermediate diet and the recent alteration of the criminal legal aid provisions are causing the diminution of business for trials.

Christine Grahame: I think—although I may be missing your point—that you are echoing the point made by South Lanarkshire Council in its letter, which says that

"to simply reduce the role of Councillor Justices is wholly unacceptable and fails to recognise the substantial implications for lay justice by removal of experienced Justices with considerable local knowledge and dedication from the Bench."

Do you agree with that?

Helen Murray: I think that that applies to many councillor justices. I can think of one ex officio justice who has been ex officio for 20 years. During that time he has contributed a great deal at local level, on the bench, to local training, at District Courts Association meetings and to District Courts Association training. We would be very sad to lose such a person.

Christine Grahame: I am emphasising the local knowledge and your point that there are difficulties manning the courts at the moment in, I think you said South Lanarkshire, Aberdeenshire, Argyll and Bute and East Ayrshire councils.

Phyllis Hands: It was Aberdeen City Council.

Christine Grahame: I think that I am correct in saying—I will see the *Official Report* later—that the Deputy Minister for Justice said that he did not think that there would be extensive delays or backlog if, as may become the case, councillor justices can no longer sit. Do you agree with that?

Phyllis Hands: There may not be extensive delays in the courts, because we have had three months of not having them, but the problem is that the onus on justices to man the courts is on fewer people, whose employers—if they are employed—may become dissatisfied with their attendance. At the moment, it is easy enough to say that it is a temporary measure and that the situation will soon even itself out, but if it becomes a permanent measure, those people might not be available.

The other problem with taking councillor JPs out of the courts is the resources made available to the court locally. At the moment, the court is funded and operated by the local authority. It is not so much that the council has a financial interest, but that there are problems of resources, staffing, providing facilities for staff training and making time for staff to do that training. Fiscal fines and fixed penalties from the police following speedwatch campaigns mean that the staffing level in the district court office is sometimes critical.

Christine Grahame: You raised a point about the clerks and the possibility of them being open to challenge from ECHR. Could you clarify that?

15:30

Phyllis Hands: The clerks have already been challenged under ECHR. A case was raised at Kirkcaldy district court—Michael Kelly v Procurator Fiscal (Kirkcaldy)—which is scheduled to be heard in the High Court of Appeal on 31 July, 1 and 2 August. There has been no recognition of that within the proposed legislation. However, we have yet to receive a challenge to a councillor justice sitting in the court.

Christine Grahame: You seem to be saying that the whole thing was rushed. It does not appear to have had much in-depth consultation.

Helen Murray: I would not call it in-depth consultation.

Christine Grahame: Did you know anything about the general review of the role of district courts until it was announced today?

Phyllis Hands: We were told about the review two minutes before we came into this afternoon's meeting.

Christine Grahame: This legislation appears to be rather messy. I referred to it as a hammer to crack a walnut. Do you agree?

Phyllis Hands: Yes. At the meetings that we had at Saughton House—Mrs Murray referred to the fourth meeting, which I attended—we were told that the bill was intended to address the problem of councillor justices and ex officio councillors. At that time, I told the Executive about the problem of council employees; for example, members of citizens advice bureaux, which are funded by councils, are another obvious case of a

person who is paid for by the local authority. There are many other justices of the peace who sit on the bench and who are linked to the council in other ways, either by employment or through voluntary organisations that are funded by the council. The Executive did not perceive that as a problem.

Christine Grahame: And now it is.

Phyllis Hands: In accordance with the District Courts Association, the clerk of the court must be provided by the local authority. Whether that was to be a private solicitor employed on a part-time basis or a full-time clerk employed by the council, that has been challenged. We await the High Court's decision on that matter.

Christine Grahame: That is very interesting.

Scott Barrie: Am I right in thinking that some authority areas might be harder hit than others because some areas did not have councillors sitting as justices in the first place, as a matter of policy?

Phyllis Hands: Yes. I do not think that that was a matter of policy, but of local practice. There used to be burgh councillors and justice of the peace courts. In the towns and cities where the bailies manned the court, there tend to be more councillor justices of the peace on the court rotas than is the case in the more landward areas. Mrs Murray is from Perth; I am from North Lanarkshire. They are two different kinds of district court. We have councillor justices; Perth and Kinross does not.

Scott Barrie: Nor does Fife.

Helen Murray: We do not have any councillor justices. It is tied in with training, which is something that we did not mention earlier. One of the main functions of the District Courts Association is to be involved in the training of justices. We have been working very hard in producing a basic training package for justices. Mrs Hands has been working with another group of justices and clerks learning how to produce distance learning packages that we can send out all over the country.

In the past, training has been patchy: in some areas it has been first class while in others it has been abysmal. Our aim is a national training programme. We are getting there, but we will need money for it—it will not be the big zero, as is implied in the explanatory notes that accompany the bill, which say that all these changes in the district courts will cost nothing. I am always horrified when something is to cost nothing, because that tells me something.

We have no councillor JPs in Perth because we were the first to introduce a system of open recruitment for justices, who were trained before they sat on the bench. It just so happened that no councillors put themselves forward at that point. We have had two other selection processes since then, and, similarly, no councillors have put themselves forward. The situation varies from commission area to commission area, for a variety of reasons.

Scott Barrie: My other question is on work load. This afternoon, the minister suggested that the work load is falling, but from what you say you dispute that.

Has the District Courts Association given any thought to the types of case that can be discussed and considered by district courts? Has there been any interaction with the sheriff court system about cases that are referred to sheriff courts instead being referred to the district court?

Phyllis Hands: We have continually offered to increase our services. The Scottish Executive's district courts working group has discussed issues such as the road traffic offences of driving without insurance or drunk driving, which could be dealt with in the district court provided that the justices received proper training. At present, we can take away someone's licence, but only if they have sufficient points on their licence under the totting up procedure. In view of that experience of disqualifying people from driving, it was felt that the offences of driving without insurance or drunk driving could be moved down to the district court.

Helen Murray: We have had contact with sheriffs, sheriff principals and one senior judge on the subject of putting more business in the district courts. They are quite happy to move down more business from the sheriff court to us because our powers are quite extensive. We can impose sentences of up to £2,000 and 60 days in jail, so we can take much more serious cases than we tend to take.

The important issue is that everyone should be confident that we can handle such cases—it comes back to training. We must be sure that a good training programme, which will build up confidence, is available throughout Scotland. That is what the association is working towards.

Phyllis Hands: As part of the consultation on the introduction of the fiscal fine, or conditional offer from the procurator fiscal, we were advised that that was a forerunner to more important, more serious business being brought to the district courts to alleviate the problems at the sheriff courts. However, that has not materialised to any great extent.

There are instances—anecdotal, as I do not have the case numbers and names with me—of people being offered fiscal fines in rural areas, but the complaint or action being raised in the sheriff court. While the fiscal fine was not paid in those cases, otherwise the accused would not have

been taken to court, we have the problem of trying to collect the fiscal fine. The fiscals are not consistent, and there is no standard procedure in Scotland.

Mrs McIntosh: I reiterate my declaration of interests. Both ladies are known to me—one particularly well.

Helen Murray mentioned the problem of training—

Christine Grahame: Is it Helen you know?

Mrs McIntosh: No—Mrs Hands sometimes clerked for me when I sat in the district court.

I was interested in Mrs Murray's comments on training. Many of those on whom one relies for an input on the training organised for JPs are not those who wished to sit on the bench because of their long experience of doing district court work. Mrs Murray also mentioned those who do not keep up with their training and the difficulties that arise when attempts are made to remove them from the bench.

Mrs Hands mentioned the number of cases that were supposed to be coming before the courts as a result of the introduction of fiscal fines and said the quality of the work was about to increase. That does not appear to have been the case, although citations to means-inquiry courts continue apace; they never seem to decrease. Apart from drink-driving cases, which can be fraught with difficulty, what other cases can be referred to the district court to make up for the work that has been removed? Do you have any comment on the decline in the number of people who are roused from their sleep to sign warrants, which used to be a frequent occurrence?

Phyllis Hands: The legislation was amended so that the fiscal fine could be introduced and so that all matters that could be tried summarily could be dealt with in the district courts. That covers all matters that can be decided by a sheriff sitting on his own. Into that category would fall cases brought under the Misuse of Drugs Act 1971—relating not just to possession, as happens at the moment, but to supply—more serious assaults and more serious theft, including theft of items worth up to £2,500. At the moment, the only theft cases that district courts get to deal with are those relating to shoplifting and to the theft of bikes and so on from open sheds. The new legislation was designed to add to the types of business that could be handled by district courts.

Mrs McIntosh: You mention drugs. I know that the minister has already visited the States to examine drugs courts. Given the experience that justices have, could they have an input into such courts?

Phyllis Hands: They probably could, because they live in the areas where drug problems manifest themselves on a daily basis.

Gordon Jackson: I thought that Mrs Hands was expressing the concern that if councillors no longer serve as justices, local councils might provide less in the way of facilities. That may be regarded as a cynical view, but being a cynical person I identified with it immediately. I thought that there might be something in the suggestion that if councillors do not get the chance to sit as justices, they may not to be too bothered about how the district courts operate. Assuming that that cynicism is not misplaced, what is the line of communication at the moment? How do the district courts liaise with councils? How can you ensure that there is proper lobbying of the council if the councillors are not there to do it for you?

Phyllis Hands: At the moment the justices committee—which is not a council committee—discusses problems that exist in the system. The head of legal services or the clerk of court takes those concerns to the local authority committee whose budget includes district courts. At North Lanarkshire Council, the general purposes committee has to approve all decisions on our budget.

Gordon Jackson: So the system would continue to operate in the same way. The justices committee, through the clerk or head of legal services, would go to the appropriate council committee.

Phyllis Hands: Yes.

Gordon Jackson: However, there would be less opportunity for lobbying because councillors would no longer be justices.

Phyllis Hands: Yes. At the moment there are no councillor justices on the rota in Motherwell, but there are two councillor justices on the justices committee. It is more a liaison system than anything else.

Helen Murray: Your cynicism is well founded.

Gordon Jackson: Unfortunately, it normally is.

Helen Murray: Once again, the situation varies from commission area to commission area. However, I can say without fear of contradiction that attitudes towards the district court vary widely depending on the area served. It is undoubtedly true that certain district courts are starved of cash by the council and struggle on. In other areas, generous provision is made, but there are no national statutory guidelines. Nothing is laid down about how much should go to district courts. It is at the discretion of each council. There is a grant from central Government to councils in respect of district courts. It amounts to about 72 per cent of the running costs; 28 per cent comes from councils. There is no ring-fencing of the global

sum. Once the council has the funding, it can do what it likes with it. In some areas, the courts are starved.

Gordon Jackson: In real terms, what is the difference between a looked-after district court and a starved one? Are we talking about paint and paper? Are we talking about staffing? Are we talking about canteen facilities? I am being realistic here.

Phyllis Hands: There is a court in Dumfries that sits in a Portakabin because there are no other facilities. Our own court in North Lanarkshire is built in the basement of the civic centre.

15:45

Gordon Jackson: So it is the facilities that suffer.

Helen Murray: It is not just the facilities.

Phyllis Hands: The number of staff also suffers. If you have a dedicated clerk working in a district court full time, you tend to find that that court runs more efficiently and with more confidence than one in which the clerk is being rotated from the general legal services department where they are dealing with conveyancing or the sale of council houses on a daily basis, then once a month they are sent down to the district court to deal with criminal matters. That person does not have the confidence in themselves and in what is happening to be able to give the necessary advice to justices, and will tend to sit with their head on the table hoping that everything will go away if a problem arises. That is the kind of starvation that we see.

Gordon Jackson: That is what I wanted to know. Does your association exercise any clout in this matter? I may be wandering off the subject, but does your association get on to the authorities that are not playing the game and say, "Hey, do better"? Do you get in to this arena?

Phyllis Hands: We have no power to do that, but we do issue guidelines, which I will get out of my bag.

Gordon Jackson: Are they ones that you prepared earlier?

Phyllis Hands: Yes. We issue these guidelines, which give best practice on what should be happening in court, to all authorities.

Helen Murray: We have also produced a district court charter, laying out the facilities that there should be in a court. As Phyllis Hands said, the range of facilities that are supplied goes from one extreme to the other. Facilities are important. You need decent facilities. When I showed the district court charter to one of our legal advisers he said, "You are asking for a crèche for children. What are you asking for now?" He said that as if people do not have children who need looked after when they come to court. We are looking for the ideal, although we realise that that is not always possible.

I wish to return to the issue of training and how starvation relates to it. If a court is starved of money, it does not have the money available to do proper training. Training costs money, even at a local level. Training is not just about sending people away on courses. It covers quite an area.

Gordon Jackson: So you are afraid that if there are no councillor justices the situation will get worse.

Phyllis Hands: Yes, because there will be no liaison or interest.

The Convener: I want to bring this matter to a close, because we are straying from the purpose of this evidence session. I am aware that committee members are interested in the generality of what you have to say, but if it is okay with you we will ask you to come back at some point to talk about general issues. There are important issues to be discussed, but they are not within the confines of the bill.

Christine Grahame: May I ask a supplementary that is within the context of the bill?

The Convener: Yes.

Christine Grahame: On the issue of training and costs, who have you been told will pay for the training of additional JPs?

Phyllis Hands: It is up to each local authority.

Perhaps I might say something about fine income. At the moment, not all fine income is retained by the local authority. Fines from common law offences go to the local authority. We retain only 10 per cent of fines from road traffic offences and only 1 per cent from wireless telegraphy cases. In vehicle excise cases, we retain nothing. At the moment, we send approximately 70 per cent of our income to the Exchequer. If all the money were sent to the Exchequer it would be much easier for each court to decide its finances.

The Convener: If there are no further questions, we will bring this item to a close. Thank you for coming in—I suspect that we will see you again.

Subordinate Legislation

The Convener: We have agreed to defer consideration of the Divorce etc (Pensions) (Scotland) Regulations 2000 to next week. That leaves the European Communities (Lawyer's Practice) (Scotland) Regulations 2000, SSI 2000/121. The assistant clerk has circulated the usual helpful note, which keeps us right on what this is likely to be about. Members will note that there is information from the Law Society in respect of this statutory instrument.

The regulations are a negative instrument—an instrument that remains in force unless the Parliament passes a resolution calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument. The relevant date in respect of this statutory instrument is 6 June.

Christine Grahame: You have moved too fast for me. I wanted to raise a point on the divorce regulations which, quite rightly, Pauline McNeill was concerned about. In paragraph 5 of the Executive note is a list of people the Executive consulted. It says that:

"Some, but not all, were able to respond in the time available".

I would like to know who responded and what the time available was. That might assist us if we try to find out the problems that lurk in this. It goes on to say:

"We have explained to those who were unable to do so that any further points which are raised can be dealt with in the further Regulations".

I do not know what this is about and would like to know more. Should I find that out or can the clerk do it?

It seems that the clerk can do it.

The Convener: If no one wishes to comment, we shall simply take note of the instrument and move to item 5, which is consideration of the draft committee report on the budget process 2001-02. We have agreed that this item will be taken in private, so I ask that the committee room be cleared of non-committee personnel.

15:53

Meeting continued in private until 16:25.

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