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Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 26 January 2016

Session 4

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JUSTICE COMMITTEE
4th Meeting 2016, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Elaine Murray (Dumfriesshire) (Lab)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)
*Roderick Campbell (North East Fife) (SNP)
*John Finnie (Highlands and Islands) (Ind)
*Margaret McDougall (West Scotland) (Lab)
*Alison McInnes (North East Scotland) (LD)
*Margaret Mitchell (Central Scotland) (Con)
*Gil Paterson (Clydebank and Milngavie) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Professor Alan Miller (Scottish Human Rights Commission)
Paul Wheelhouse (Minister for Community Safety and Legal Affairs)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Justice Committee

Tuesday 26 January 2016

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning. I welcome everyone to the Justice Committee's fourth meeting of 2016. I ask everyone to switch off mobile phones and other electronic devices. No apologies have been received.

Under item 1, the committee is invited to agree to consider item 5, on our work programme, in private. Do members agree?

Members indicated agreement.

Community Justice (Scotland) Bill: Stage 2

10:01

The Convener: We move on to stage 2 of the Community Justice (Scotland) Bill. We will start where we left off last week, at section 9. Our intention is to conclude stage 2 today.

Members should have a copy of the bill, the marshalled list and the groupings of amendments. I welcome Paul Wheelhouse, the Minister for Community Safety and Legal Affairs, and his officials—

The Minister for Community Safety and Legal Affairs (Paul Wheelhouse): Good morning.

The Convener: That was lovely of you to wish a good morning to everybody. I was not ready for that. Are you all ready to begin? Do you all have your papers out?

Section 9—Corporate plan

The Convener: Amendment 29, in the name of the minister, is grouped with amendments 30, 31, 31A, 32 to 37, 40 to 42, 98, 47, 51, 55, 56, 58, 59 and 63. If amendment 91, in the group on the ability of community justice Scotland to develop and arrange services, is agreed to, I cannot call amendment 56 in this group, as it will have been pre-empted.

Paul Wheelhouse: At stage 1, the committee and stakeholders spoke in favour of a stronger participative role for the third sector in community justice. I fully recognise that the third sector is vital to the successful planning and delivery of effective and efficient services for individuals, and I am grateful for the positive contribution that the sector makes to community justice at local and national levels.

It was always anticipated that relevant third sector bodies should be consulted, which is why the consultation requirements in the bill include the wording

“such other persons as it considers appropriate”

and

“such other persons as they consider appropriate.”

However, I have listened to the concerns of the sector and of committee members, so the amendments in the group will make it absolutely clear—I hope that they will put it beyond doubt—that appropriate third sector bodies are to be consulted, thus ensuring that they have the opportunity to contribute their views on planning, reporting, the approach to commissioning of

community justice services and the key national strategy and performance framework documents.

Amendment 31 will insert a new section that defines the categories of third sector bodies that will be involved in community justice planning for the purposes of the bill. It applies a criterion so that third sector organisations that provide community justice services or perform an advocacy or advisory role will be given the stronger participative role that is described in other amendments in the group.

Amendment 31A, which has been lodged by Margaret McDougall, would amend my amendment 31 so that the definition of third sector bodies would expressly include organisations that represent or promote the interests of

“victims of offences and their families”.

However, as I have just said, my amendment 31 contains a reference to third sector bodies that represent or promote the interests of

“other persons who are or may be affected by community justice.”

That reference is intentionally broad so that it can include bodies that represent the very people that Margaret McDougall is suggesting in her amendment 31A—that is, victims of offences and affected members of their families. My amendment 31 goes wider than that, in that it would also include bodies that represent others who may be affected by community justice—for example, the families of people who have committed offences. As all those people would be covered by the reference to persons who are “affected by community justice”, to single out any one group in the way that is proposed by amendment 31A might call into question the intended width of the new section that will be introduced by amendment 31.

I understand that Margaret McDougall is particularly concerned to ensure that victims and their families are specifically referred to in the bill. I acknowledge that. Although the interests of victims and their families should always be very much at the forefront of our minds, I would wish to adjust some of the wording in amendment 31A to make it more comprehensive and to make it clear that other groups are included, too, including the families of people who have committed offences or who have been arrested under suspicion of committing offences.

For that reason, although I recognise the importance of the issue that is raised by Margaret McDougall, I invite her not to move amendment 31A. I invite her instead to work with me to lodge at stage 3 an amendment in her name that the Scottish Government can support. I hope that this is an area on which we can find consensus.

Amendments 32, 33 and 34 require that Scottish ministers consult appropriate third sector bodies when they prepare the national performance framework in relation to community justice, and when they prepare, review and revise the national strategy on community justice.

Amendment 56 requires that Scottish ministers consult appropriate third sector bodies when they require community justice Scotland to arrange a particular service.

Amendments 29, 30 and 35 require that community justice Scotland consult appropriate third sector bodies when it prepares its corporate plan under section 9, when it prepares its annual report on the exercise of its functions under section 10, and when it reviews the national performance framework under section 16.

Amendments 51, 55, 58 and 59 require that community justice Scotland consult appropriate third sector bodies when preparing its annual report on the achievement of outcomes across Scotland, as required under section 25, when exercising its power under section 26 to identify, design or make arrangements for the provision of a service in relation to community justice, and when preparing, reviewing and revising the strategy for innovation, learning and development, as required under sections 27 and 28.

Amendment 36 will reorder section 18(1) into two subsections, thereby providing greater clarity. Amendment 37 is consequential on amendment 36.

Amendments 40 and 41 clarify that the community justice partners that are referred to in section 18 are the community justice partners for the local authority area, and that they must consult the bodies that are covered in the new subsection that will be inserted by amendment 42 if those bodies are not already participating in planning by virtue of the existing section 18(3).

Amendment 42 restates the list of consultees, reframed to specifically draw out relevant third sector bodies.

Amendment 47 requires community justice partners to consult appropriate third sector bodies when preparing the annual report, which will cover their assessment of whether outcomes are being achieved and their progress toward achieving outcomes.

Finally, amendment 63 is consequential on amendment 32 and will add a definition of the third sector to section 32.

I will now speak to amendment 98, which has been lodged by Margaret McDougall. The amendment proposes to insert a new section that would require community justice partners to provide a report to community justice Scotland

setting out the extent of their engagement with the third sector in preparation of their community justice outcomes improvement plans. I am very grateful to Margaret McDougall for lodging her amendment to address that important issue. It was my intention to say in guidance that the community justice partners should set out, in the plan, who has contributed to it and how they contributed. The purpose of including that in guidance would be to draw out the level of engagement with the third sector and others. Amendment 98 seeks, instead, to express that intention in legislation.

I take no issue with the principle of Margaret McDougall's amendment 98. However, I have a concern with subsections (4) and (5) of the proposed new section, which seek to create a power for Scottish ministers to make further provision about the engagement reports. I consider that to be unnecessary and potentially wasteful of both parliamentary time and Government resources. It would be preferable if—in keeping with other provisions in the bill—that detail were set out in ministerial guidance, following consultation of the third sector and community justice partners. However, as I mentioned, I am sympathetic to the principle behind amendment 98 and would like to work with the member to achieve the result that she wants, but in a more efficient and effective way.

In the light of what I have just set out, I invite Margaret McDougall to accept my offer to work with her to lodge an amendment at stage 3—in her name—and not to move amendment 98.

I conclude by saying that the contribution of the third sector is vital to the successful delivery of community justice. Given that the committee called for an explicitly stronger participative role for the third sector, I trust that it will recognise the significant amendments in my name as a positive response to its recommendations.

I move amendment 29.

The Convener: Thank you very much, minister.

Margaret McDougall (West Scotland) (Lab): Amendment 31A seeks to amend amendment 31 by adding a reference to

“victims of offences and their families”

to ensure that victims and their families are given a higher profile in the bill by explicitly recognising them. As it stands, amendment 31's proposed new paragraph (1)(b)(ii) is too vague. It refers to

“other persons who are or may be affected by community justice”.

That is not an overly clear statement. My small amendment would ensure that there is no doubt about the importance of victims and their families being involved and represented in the

engagement and consultation process. In effect, it would ensure that victims are taken into consideration in the bill—something that was promised by the Scottish Government but has not, in my view, been delivered.

With the expansion of the definition of community justice to include those who are suspected of a crime and given bail, as well as others who were not previously included, it is particularly important that confusion about victims' rights in engagement and consultation be kept to a minimum. To make sure that the process is as simple as possible for victims, I suggest that victims should have the same rights and be treated in a consistent manner, regardless of how the offender is treated.

Therefore, I suggest that the main principles of the Victims and Witnesses (Scotland) Act 2014 be set as standard principles throughout both criminal and community justice. Although there are differences between that piece of legislation and the current bill, they are not easily identifiable by victims.

Amendment 31A is supported by Scottish Women's Aid and Victim Support Scotland, which specifically requested this inclusion. It is very similar to my amendment 95, which was supported by the committee last week. However, I welcome the minister's comments this morning and his offer to work with me to come to a compromise on the wording, so I will not move amendment 31A today, although I might move such an amendment at stage 3.

Amendment 98 is designed to ensure that community justice partners report to community justice Scotland on how they have engaged with and consulted third sector bodies in the preparation and development of the community justice outcomes improvement plan.

The bill states that statutory partners must consider which third sector bodies that are involved in community justice

“are likely to be able to contribute to the preparation of the plan”

for their area, and that they must

“make all reasonable efforts to secure the participation of such bodies in the preparation of the plan”.

Where a third sector body that is involved in community justice

“wishes to participate in the preparation of the plan to any extent,”

the statutory partners will be required to

“take such steps as are reasonable to enable the third sector body to participate to that extent.”

All that is to be welcomed. However, my amendment 98 would go further by putting in place

a reporting mechanism to ensure that community justice partners can be held to account by the national body on how they have carried out those duties.

Experience shows that it can be difficult for statutory partners to engage with third sector bodies at local level due to the nature and diversity of the sector. Similarly, many current planning processes are often out of reach for some third sector organisations—particularly the smaller ones. My amendment 98 would make sure that if there were to be problems or issues with statutory partners engaging with and consulting third sector bodies, the problems would be reported on and addressed through appropriate means.

Amendment 98 complements the Scottish Government's amendment 53 on local improvement recommendations, which states that

"Community justice partners to whom a local improvement recommendation has been made must comply with any direction issued by Community Justice Scotland".

My amendment specifies that community justice partners must report to community justice Scotland on how they have engaged with third sector bodies in preparation of the plan. If partners have not complied with the consulting and engagement duties in the bill, or have found difficulties in doing so, community justice Scotland would make an improvement recommendation with which partners must comply.

Amendment 98 is supported by the criminal justice voluntary sector forum, which includes Apex Scotland, Barnardo's Scotland, Circle Scotland, Cornerstone, Cyrenians, Families Outside, Sacro, Positive Prison? Positive Futures, Women's Aid and Victim Support Scotland.

However, as with my earlier amendment 31A, I welcome the minister's willingness to discuss how we can come to an arrangement and agreement on the wording of an amendment, so I will not push my moment—my motion, rather—at this time.

The Convener: I am waiting for you to push your moment.

Margaret McDougall: I will not push my motion at this time.

The Convener: Does any other member wish to come in?

Alison McInnes (North East Scotland) (LD): I warmly welcome the amendments from the minister in this group. They go a long way towards meeting some of the concerns that we heard during evidence taking, from the third sector in particular, and they will strengthen the bill significantly. I am grateful for that.

I think that the intention behind Margaret Mitchell's—Margaret McDougall's—amendments is well understood—

The Convener: I think that we all need to take deep breaths this morning.

Alison McInnes: I support that intention and think that the issue can be resolved.

The Convener: I, too, welcome the inclusion of the third sector on the face of the bill. Everybody here, including the minister, knows that the third sector is at the core of delivering help to those who have offended or are on the verge of offending. I very much welcome that recognition being in the bill. I also thank the minister for listening to Margaret McDougall. I am glad that they hope to co-operate and come to an arrangement because I, too, think that Margaret McDougall's amendments are important.

10:15

Margaret Mitchell (Central Scotland) (Con): I concur with all that has been said. I hope that the minister can work with Margaret McDougall because I think that it is important that victims and their families be mentioned specifically in the bill.

Roderick Campbell (North East Fife) (SNP): I, too, welcome the continued dialogue between Margaret McDougall and the minister on the issues with—I hope—a view to resolving them at stage 3.

Christian Allard (North East Scotland) (SNP): I was not very keen to have the matter on the face of the bill. The only thing that I ask is for the minister to consider what I said previously about private sector involvement. I am not saying that it should be included in the bill, but I would be thankful if he could recognise the contribution of the private sector.

Paul Wheelhouse: I thank members for their considered points—especially Margaret McDougall for showing such willingness to work with me. I am keen to deliver on the clear sentiment expressed by her and the committee to reflect on the importance of the third sector. Margaret McDougall's amendment 31A on victims and their families makes an important point and I am happy to work with her to get the wording right. I hope that we can all go forward with consensus on the issue.

I will certainly also look at the point that Mr Allard made. I recognise the importance of the private sector, particularly in relation to providing employment opportunities for the people who are within the community justice system. That is important and we will reflect on how we can address it.

Amendment 29 agreed to.

Section 9, as amended, agreed to.

Section 10—Annual reports on exercise of functions

The Convener: Amendment 70, in the name of Elaine Murray, is grouped with amendments 71, 87 and 92.

Elaine Murray (Dumfriesshire) (Lab): As I said last week, the amendments in my name were originally proposed by the Convention of Scottish Local Authorities. I have lodged them in order to at least have some discussion around the issues that COSLA wants to raise and which it still feels are a matter of anxiety for local government.

COSLA is concerned that local government must be involved in the national assurance process. It welcomes the minister's acceptance of the principle of establishing a joint arrangement involving local government and potentially other partners, but believes that it should be on the face of the bill.

Amendments 70 and 71 require that a copy of community justice Scotland's annual report be sent to each local authority. Amendments 87 and 92 ensure that local government will be involved in the national assurance process and put the commitment made by the Scottish Government on the face of the bill.

The support of local government and its governing elected members is fundamental to the success of the future model for community justice. Local government is also the key agency with responsibility for the delivery of community justice services. To that end, local government must be involved in the national assurance process.

As a partner in the delivery of the national community justice strategy and its associated outcomes framework, local government has an important role to play in national oversight alongside Scottish ministers. COSLA believes that the Scottish Government and local government should be jointly engaged in the assurance process that community justice Scotland will facilitate by learning, negotiating, changing and leading on what is needed.

The minister has accepted the principle of establishing a joint arrangements committee involving local government—and potentially other partners—and Scottish ministers to oversee the delivery of the national outcomes and the strategy and that has been welcomed. COSLA also believes that that can be reliably established as a lasting arrangement only if it appears on the face of the bill. The minister may not agree with that sentiment, but he may be able to give some sort of assurance if it is not on the face of the bill to

ensure that COSLA feels fully engaged in the process and in national assurance.

The Justice Committee's stage 1 report indicated that there would be value in involving local councillors in the national body but that

"it would be impossible to find a local elected member who could represent all areas".

COSLA believes that the amendment would address those issues by agreeing an arrangement that would allow local government to present itself as a coherent voice.

The amendments would bring together ministers and representatives of local government to oversee delivery against the national strategy and the performance framework. If they are accepted, COSLA will continue discussions with the minister on how the arrangement should take form. In fact, I hope that COSLA will continue discussions even if the amendments are not accepted.

Amendment 87 requires ministers to meet representatives of local authorities and other persons to consider the community justice Scotland annual report and the assessment that it has made of the performance related to achieving nationally determined outcomes.

Amendment 92 requires community justice Scotland to report to ministers, each local authority and others on its strategy for innovation, learning and development. The frequency of such meetings is not prescribed.

I move amendment 70.

Paul Wheelhouse: This group of amendments lodged by Dr Murray relates to the arrangements for community justice Scotland when reporting on the exercise of its functions or when reporting on the achievement of outcomes throughout Scotland. I regret that I cannot support the amendments, and I will explain why I would urge Dr Murray not to press or move them. I recognise that Dr Murray lodged the amendments largely in order to have a debate on the issues and to seek assurances from ministers about the role of local authorities. I am happy to engage in that debate.

Amendments 70 and 71, as I understand them, would amend section 10 to require community justice Scotland to provide a copy of its annual report on the exercise of its functions to each local authority at the same time as it submits a copy to Scottish ministers.

Let me clarify that, as an executive non-departmental public body, community justice Scotland is directly and only accountable to Scottish ministers in a legal sense. The bill therefore provides that community justice Scotland is required to submit its annual report to Scottish ministers, who must, in turn, lay the report in

Parliament, which reflects the accountability of ministers to the Parliament. The report will then be published.

As community justice Scotland is not accountable to local authorities directly, it is not appropriate for local authorities to receive the annual report at the same time as Scottish ministers and before Parliament receives a copy. It is also not appropriate that local authorities receive a copy of the report before any of the other community justice partners, which could unintentionally create an unhelpful de facto hierarchy among the partners.

Local authorities, as one of the community justice partners, will of course be consulted on the report as it is prepared, and they will have the opportunity to comment on it then. Thereafter, local authorities may access the report once it has been published and laid in the Parliament—at the same time as the other community justice partners—thus ensuring that all community justice partners are treated in the same way and are equally involved.

I recognise, and am happy to put on record, the key delivery role of the Convention of Scottish Local Authorities and individual local authorities throughout Scotland in the delivery of community justice. It is very positive that COSLA wants to be engaged—I take that as an entirely positive intent.

For the reasons that I have given, however, I cannot support amendments 70 and 71. If the committee were minded to agree to amendments 70 and 71, a perceived accountability would be created that would be simply inappropriate. It would create a hierarchy among community justice partners by elevating the importance of local authorities—important though they are—over that of other community justice partners. That would perhaps send the wrong message and would risk difficulty in securing buy-in from the other community justice partners if they felt that there was a perceived hierarchy from the outset. I therefore invite Dr Murray to withdraw and not to move amendments 70 and 71 respectively, although I recognise that she has lodged them in order to have a debate on the issues.

Amendment 87 would amend section 25 to require Scottish ministers to convene a meeting of certain persons to consider the report from community justice Scotland on its assessment of

“performance in Scotland as a whole in relation to the achievement of nationally determined outcomes.”

It has been made clear in our response to consultations on the new model for community justice that the Scottish Government is committed to consulting local government leaders on any decision that has an impact on local financial and commissioning decisions. That would respect the

established procedures for the setting of the public sector budget in Scotland. That commitment still stands.

I am, of course, generally supportive of meeting key partners to consider community justice Scotland’s assessment of how outcomes are being achieved across Scotland—a point that I have discussed with COSLA representatives. I firmly view that as part of an assurance process whereby outcomes are being improved upon and best practice is being shared. I am happy to discuss a suitable mechanism for that with community justice partners, other partners and community justice Scotland in due course. However, I do not believe that a requirement to have a meeting should be placed in the bill.

If the committee were minded to agree to amendment 87, members should bear it in mind that, in my view, the meeting would need to have some purpose other than simply to consider a report. A meeting without a clear purpose and without clearly understood outcomes would not appear to be a good use of time and resources. Furthermore, the amendment as worded would require Scottish ministers only to convene a meeting, but ministers themselves would not be required to attend that meeting. I do not believe that that was Dr Murray’s intended outcome.

For those reasons, I cannot support amendment 87. There does not need to be a statutory provision to require ministers to convene a meeting of local authority representatives to consider community justice Scotland’s report. I am happy to discuss with COSLA and other stakeholders how we propose to have events to share best practice and identify progress. I invite Dr Murray not to move amendment 87.

Finally, amendment 92 would insert a new section into the bill that would require community justice Scotland to report on the delivery of its strategy for innovation, learning and development to the Scottish ministers, local authorities and other appropriate persons. I agree with Dr Murray on the importance of ensuring that that strategy is effectively implemented, but the committee should be aware that amendment 92 would require a report to be produced that is already effectively provided for under section 10.

Let me be clear about that so that members are clear about the drafting and the existing provisions in the bill. Under section 10, community justice Scotland must prepare an annual report on the exercise of all its functions during that financial year. One of its functions, as set out in section 3(1)(c), is to promote and support improvement. In pursuance of section 3(1)(c), section 27 requires community justice Scotland to

“publish a strategy for innovation, learning and development”,

and, in preparing that strategy, to consult

“each of the community justice partners, and ... such other persons as it considers appropriate.”

Therefore, if we take sections 3, 10 and 27 together, community justice Scotland cannot fully report on its functions to promote and support improvement without also reporting on the delivery of the strategy for innovation, learning and development. The requirement to report on the delivery of the strategy is therefore already in the bill. As I have just explained, the additional reporting process that would be created by amendment 92 is therefore unnecessary.

For those reasons, I cannot support amendment 92, and I invite the committee not to agree to it. If the committee is minded to agree to it, it should be aware that that would create an unnecessary duplication of effort for community justice Scotland. It would also place a further burden on the Scottish ministers, each local authority and others who would be required to consider that additional and unnecessary report.

Amendment 70, by agreement, withdrawn.

Amendment 71 not moved.

Amendment 30 moved—[Paul Wheelhouse]—and agreed to.

Section 10, as amended, agreed to.

Sections 11 and 12 agreed to.

After section 12

Amendment 31 moved—[Paul Wheelhouse].

Amendment 31A not moved.

Amendment 31 agreed to.

The Convener: Amendment 72, in the name of Elaine Murray, is grouped with amendments 93 and 99.

Elaine Murray: If these amendments were agreed to, a number of consequential amendments would be required. It did not seem to me to be a good use of the committee’s time or, indeed, the legislation team’s time to go through every single one of those when the amendments might not be agreed to in the first place. Obviously, there will be a job of work to be done if they are agreed to.

Again, the suggestions are from COSLA. The amendments look at what sort of partnership the community justice partners would be involved in.

Amendment 72 would insert into the bill a new section that would place a duty on community partners to establish a local community justice

partnership and would place local partnerships in a community planning context.

Amendment 93 would require all community justice partners to co-operate at both the local and the national level, and would require that to be demonstrated. Local community justice partnerships must have a robust footing so that partners can be properly held to account for community justice services at a local level. In COSLA’s opinion, the bill does not offer that and there is no obligation for a partnership even to be established.

COSLA’s proposed solution is a specific amendment to the bill that requires local community justice partnerships to be formally established and to have a clear relationship with local community planning arrangements. The bill would also be amended to ensure that the duty on partners to co-operate must be demonstrated at a local level. That would allow community justice partners to be locally accountable, with locally elected members playing a key role, and would achieve a balance between protecting local flexibility and ensuring that partnerships are placed on a robust footing. That would make it more likely that individual partners would take the matter seriously and be willing to pool resources, and less likely that community justice could be seen as a discretionary area of activity.

For those who have been involved in the journey of the redesign of community justice, it is assumed that community justice partnerships will be established along local authority lines or, in some cases, across local authority boundaries. Amendment 72 would ensure that partnerships are established on a legal footing.

10:30

Amendment 72 would also place partnerships in a community planning context, which was the original intention of the redesign and was a concern of the Justice Committee at stage 1. The cabinet secretary said in 2014:

“The new model is designed to harness this commitment and passion as much as possible by encouraging a collaborative approach to local service delivery through Community Planning Partnerships (CPPs).”

There must be adequate resourcing of the partnership arrangements to ensure that community justice partners are effective. COSLA has a commitment from the Scottish Government that conversations will take place in that regard.

The intention is not for amendment 72 to preclude partnerships being formed across local authority boundaries.

COSLA welcomed the proposals in the Community Empowerment (Scotland) Act 2015 to

improve community planning by requiring all statutory partners to participate equally and fully in the process, and thought that the bill should replicate that approach. Amendment 93, which would amend section 30, would guard against a national partner being able to discharge its duty to co-operate simply through its activity at national level, by requiring each statutory partner to demonstrate its commitment at local partnership level.

At stage 1 the committee considered the idea of appointing a lead partner, which was rejected, for understandable reasons. The provision in amendment 72 for local partners to appoint a chair would go some way towards resolving the issue. In its report, "Reducing reoffending in Scotland", Audit Scotland asked for

"clear accountability and a mechanism to promote collective responsibility for reducing reoffending".

A duty to form a partnership, with a chair who is ultimately accountable to the community, is one way of providing that.

I move amendment 72.

Alison McInnes: Over the past few years, we have heard a lot about the cluttered landscape in the community justice sector. The bill's intention is to bring greater clarity about the responsibilities of different partners.

However, during evidence taking, scepticism was expressed about whether the bill does enough to declutter complex arrangements. Dame Elish Angiolini told us:

"there is still the capacity for that to persist",

and Mark Roberts, from Audit Scotland, highlighted the complexity of the landscape and said:

"Although we think that some of the proposals will potentially improve those arrangements, complexities in the system might remain."—[*Official Report, Justice Committee*, 1 September 2015; c 2.]

The committee said in its stage 1 report:

"On the basis of the evidence received, the Committee has some doubts as to whether the Bill will de-clutter the complex community justice landscape ... we consider that more can be done to simplify the arrangements by setting out clear roles and responsibilities for those involved, thereby supporting relevant bodies to interact effectively."

I acknowledge that some of the amendments in the name of the minister that we considered this morning are helpful in that regard, in particular in relation to third sector involvement. However, there is scope to clarify the relationship between CJP's and CPP's, given that there has been debate about their interrelationship.

Some people suggested that there should be a lead partner, but others argued that that would

result in other partners leaving the lead partner to it.

Amendment 99 would introduce a requirement for community justice partners from a single area to co-operate with the relevant community planning partnership for the area. The amendment seeks to balance the different positions of COSLA and the Scottish Government, by putting such co-operation on a statutory footing and placing a duty to co-operate on each community justice partner.

Elaine Murray's amendments 72 and 93 and my amendment 99 attempt to address the same issue in a different way. I will listen carefully to the minister's response to all the amendments in the group.

John Finnie (Highlands and Islands) (Ind): I understand that people are reticent about change, but I wonder whether, behind this group of amendments and indeed the previous group, there is a sense of vulnerability on the part of local authorities that does not need to be there. The Christie commission on the future delivery of public services was all about collaborative working and sharing experience, and I would be disappointed if we thought that we needed to set that out in the bill.

Paul Wheelhouse: Amendment 72, in the name of Elaine Murray, relates to the creation and operation of an alternative construct to the one that is set out in the bill—that is, community justice partners acting jointly—which would be called a "local community justice partnership". A local community justice partnership would be required to plan and report, under provisions that are similar to those in the bill. Amendment 72 would also assign a role to the Scottish ministers in making further provision about the constitution and governance arrangements of local community justice partnerships, including the appointment of a person to chair meetings and act as a primary contact in relation to community justice Scotland.

Although I understand that it is well meant, I cannot support amendment 72, for two reasons. First, it would have an unintended consequence that the committee should be aware of. The proposed new section would not amend the duty to prepare a community justice improvement plan in section 17, which means that two community justice outcomes improvement plans would be required. One would have to be prepared by the community justice partners under section 17 and another plan would have to be prepared by the community justice partnership established by those partners under the proposed new section. Indeed, there would be several instances of duplication of duties and requirements. Dr Murray indicated that consequential amendments would be needed, and she is quite correct. Presumably

that duplication is not what Dr Murray intended, but it would be the effect of amendment 72.

Secondly, and more importantly, the bill already has adequate governance arrangements in place and allows for the input of a broad range of relevant organisations by encouraging consultation and collaboration between community justice partners, the third sector and anyone else who is considered to be appropriate. It has always been the intention that the planning, delivery and reporting of community justice would integrate as far as possible with community planning. Further details on that will be given in guidance.

The committee should also be aware of the following difficulties that I believe amendment 72 would create. It is not clear whether the local community justice partnership would be an entity in its own right. It is not clear whether a local community justice partner could choose not to join the partnership. It is not clear what the relationship would be between the community justice partnership and the individual community justice partners—would the community justice partnership have any authority over the community justice partners?

Another area of concern is that the amendment would give ministers a regulation-making power that would allow them to make provision for the constitution and governance arrangements of the proposed community justice partnerships. Let me be clear: I firmly believe that decisions on how local community justice partners assign roles to ensure that they carry out their duties effectively is a matter for them. Indeed, in its stage 1 report, the committee was wary of a lead partner being appointed and it did not believe that there should be a specific requirement in the bill to that effect. The bill is deliberately not prescriptive on the matter. Instead, it allows for local discretion and flexibility in such arrangements so that the responsibility for achieving improved outcomes for community justice is both collective and individual. Amendment 72 would remove that local discretion. Requiring governance arrangements to be set out in regulations that are subject to the affirmative procedure is a measure that is not free of difficulties. It would take up valuable parliamentary time and Government resources, which I do not think could be justified.

In summary, amendment 72 would add another layer to the community justice landscape that the bill establishes. Alison McInnes referred to the “cluttered landscape”, as did the stage 1 report. Amendment 72 would make the landscape more rather than less cluttered. It would compromise local flexibility and the way it is drafted does not work, although I note that Dr Murray has suggested that consequential amendments would

be needed as a result of it. I invite Dr Murray not to move amendment 72.

Dr Murray’s amendment 93 would amend section 30 to require each community justice partner for the area of a local authority to demonstrate co-operation with every other community justice partner for that area. I want to be clear that I understand and do not disagree with the intention behind the amendment, but there are some issues with it. I will ask Dr Murray to work with me, if she is willing to do so, with a view to her lodging an amendment at stage 3.

Co-operation and collective responsibility are, of course, cornerstones of the new model for community justice. I take Mr Finnie’s point that we hoped that we would not have to put that on the face of the bill, but if doing so would give people additional confidence I am willing to look at it. Section 30 in its current form places a duty on each community justice partner and community justice Scotland to work with each other in exercising their functions in relation to community justice. I want to make it very clear that I expect co-operation between community justice partners to be evident through both the community justice outcomes improvement plans and the annual reports on progress against them.

When I reviewed the provisions in the bill I recognised that the existing reporting arrangements under section 20 did not in fact require community justice partners to state how they had arrived at their outcomes. That is why I lodged amendment 45, which was debated in group 2, to require community justice partners to describe the activities that they undertook to achieve the outcomes, in order to provide greater transparency over what they did, how they did it and who was involved.

There is a clear read-across between Dr Murray’s amendment 93 and my amendment 45. I believe that amendment 45 would provide the evidence of co-operation that is being sought by amendment 93. However, I accept that there may be room for an additional provision in the bill on the requirement to demonstrate that evidence. Any such amendment needs to be clearer and more precise on what demonstrating such co-operation involves. It is not clear whether there should be an obligation to publish a report or whether the bill should specify how often such a report should be published; how such co-operation is to be evidenced; or whether the obligation is on community justice partners individually or collectively.

If Dr Murray agrees not to move amendment 93, I will have further discussions with her to propose a suitable amendment at stage 3. I invite Elaine Murray not to move amendment 93.

I will now speak to amendment 99, lodged by Alison McInnes, which inserts a new duty of co-operation on the community justice partners when they are carrying out their functions with the community planning partnership for their area. I recognise the sentiment behind the amendment, as eloquently expressed by Alison McInnes. However, I have a number of concerns about the amendment—both with the principle of what is being proposed and with the detail.

I acknowledge that there is an important relationship between the community justice partners and the community planning partnerships. As Alison McInnes mentioned, the third sector is now very much part of that mix. Six of the eight community justice partners are indeed existing community planning partners and, in practice, there will be important links between them. They share ambitions of joint working to improve outcomes, prevent harm and tackle inequalities, and I envisage a considerable amount of overlap. The transition work that we are pursuing with community planning partners and community justice partners will help them to consider the sort of relationship that they want and to build that relationship. We will further cement that important relationship in guidance.

Amendment 99 does not work. The duty to co-operate is placed only on the community justice partners. There is no reciprocal duty on the community planning partnership to co-operate in return. In addition, there is no such legal entity as a “community planning partnership”, so the duties would have to be placed on the individual community planning partners.

A number of community planning partners have no functions relevant to community justice, for example Scottish Natural Heritage and the Scottish Environment Protection Agency, yet community justice partners would have to be able to demonstrate that, in carrying out their functions in relation to community justice, they had co-operated with all those bodies. Those bodies that do have a direct interest in community justice are already community justice partners, so amendment 99 in effect requires the community justice partners to co-operate with themselves.

If amendment 99 were to be agreed by the committee, it would, in my view, be unworkable in view of the problems that I have just described—although I sympathise with the sentiment behind the amendment. It is not in the interests of the Parliament for the amendment to be passed as it is. I hope that Alison McInnes feels able to recognise that amendment 99 is not necessary in policy terms and that it may give rise to difficulties in practical terms. I therefore ask her not to move that amendment.

Elaine Murray: I will simply wind up the debate formally. I will not press amendment 72—I seek leave to withdraw it.

Amendment 72, by agreement, withdrawn.

The Convener: I have asked for a second time—it will now be a third time, in fact—for the window to be closed, but that has not yet happened. If you, minister, and anybody else are feeling the cold, it is not the fault of the committee. Now that I have put it on the record, let us see whether anybody in facilities management is listening. For the third and last time of asking, please have the window closed and the gale excluded from this committee meeting.

Section 13—National strategy in relation to community justice

The Convener: Amendment 97, in the name of Alison McInnes, is grouped with amendments 73 and 75. If amendment 74 in the group headed “Outcomes and performance in relation to community justice” is agreed to, amendment 75 will be pre-empted.

Alison McInnes: The group of amendments relates to issues that I believe should be addressed in the national strategy and performance framework. My amendment 97 would allow the national strategy to contain information and statistics on action taken in relation to early intervention to prevent offending, diversion from prosecution and youth offending, which would inform the national strategy. That goes hand in hand with the amendments that we agreed to last week on the scope of community justice.

Last week, we agreed to amendments that expanded the definition of community justice to make it explicit that crucial services such as the provision of appropriate housing are an integral part of community justice. To complement my amendments from last week, amendments 73 and 75 recognise the crucial importance of safe and appropriate housing in reducing further offending. The amendments would add the requirement for housing to be included in the national strategy and when the national performance framework is drawn up.

I continue to consider housing to be of such importance that it should be part of any local or national strategy to prevent further offending. I was grateful for the comments that fellow committee members made last week.

I will press my amendment 97.

The Convener: You should move it at this point.

Alison McInnes: I am sorry—I move amendment 97.

The Convener: That is all right—it is just the cold getting to you.

Margaret Mitchell: I support amendment 97 because it complements what we decided last week. The lack of statistics for analysing problems in order to see their extent has dogged the Parliament since it was created in 1999. I am supportive of including this aspect in the national strategy. Like Alison McInnes, I cannot emphasise enough how important housing is to tackling reoffending. We must ensure that that is foremost in everyone's minds.

10:45

Paul Wheelhouse: I thank Alison McInnes for lodging amendments 97 and 73, and I understand the positive intention that is behind them. However, both amendments would require Scottish ministers to act in a presumptive manner with regard to the preparation of the national strategy for community justice, which would undermine the collaborative process in drafting that important document. I therefore ask Alison McInnes not to press amendment 97 and not to move amendment 73.

I will explain my reasons for that. Those amendments seek to amend section 13 to insert information on early intervention, diversion from prosecution, youth offending and access to housing into the existing list of the material that Scottish ministers may consider appropriate for inclusion in the national strategy for community justice. I shall speak to each of those four important issues in turn.

As I stated in my opening speech in the stage 1 debate, the drive in community justice to reduce reoffending is part of our wider approach to promoting social justice and tackling inequality, which includes action to improve early years experiences, raise educational attainment for all and continue to promote the whole-system approach to youth justice. The new national strategy for community justice is being developed in collaboration with a broad range of partners and stakeholders and it would be premature for me to guarantee which topics will be prioritised in the strategy now and for ever more, as to do so would pre-empt the collaborative process. However, I am clear that the community justice national strategy will link with the other strategies to ensure a joined-up approach.

Given that I proposed through my amendments in groups 1 and 2 to broaden the definition in section 1 to reference more strongly intervention at an earlier stage, prevention and diversion from prosecution, I suggest to Alison McInnes that we can—and it would be right to—rely on that broader definition to ensure that such matters are reflected

in the national strategy. Youth justice has its own strategy—“Preventing offending: getting it right for children and young people”—and the community justice strategy will naturally link to that strategy. Amendment 97 is unnecessary and I urge Alison McInnes not to press it. However, I note other committee members' sentiments about it.

Turning to amendment 73, I fully recognise that suitable housing and support to sustain a tenancy are vital to providing stability to people with a history of offending and to helping them desist from committing further offences. As members are aware, there has been a great deal of engagement over recent months with stakeholders, including housing stakeholders, on the development of the national strategy. One of the strategy's four themes is access to services, which is intended to cover a range of services—including housing, welfare and health—that evidence shows are key to reducing reoffending. In the material on that theme, the national strategy steering group will outline its suggestions for improving housing outcomes for those in the criminal justice system. That will build on the thoughts and ideas that have been gathered at the national events and on the recommendations of the ministerial group on offender reintegration, of which the Minister for Housing and Welfare is a member.

I confirm that housing will feature in the national strategy that is being drafted, and I do not foresee any scenario in which a Scottish minister would not include housing in the national strategy. However, housing is not the only support service that has an impact on the likelihood of reoffending. Access to healthcare, welfare and employment assistance is also important, and I would expect that to feature in the national strategy.

If the committee agreed to amendment 73, we would create a risk by singling out only one of those important services for inclusion in the bill. That could lead to housing being prioritised to the detriment of all the other equally important services, which would not be desirable. For those reasons, I ask Alison McInnes to agree not to move her amendment 73, given that I have confirmed that housing will feature in the national strategy.

Amendment 75, lodged by Alison McInnes, seeks to ensure that one of the other indicators that are provided for under section 15(3) would relate to

“access to and use of housing services”.

Indicators are the means by which the community justice partners will measure whether community justice outcomes are being achieved. The suite of indicators that will apply is being developed with stakeholders and, again, I do not want to pre-empt that process.

The words “other indicators” are specifically provided to allow flexibility should additional indicators that are not anticipated be required in the future. If an additional indicator were required for housing, the bill would allow for that without specifying it. Keeping the other indicators unspecified maximises flexibility for any future changes and does not favour any aspect of community justice over another.

I fully recognise the importance of housing in supporting desistance. I agree with Alison McInnes and Margaret Mitchell that housing is very important to preventing reoffending, which is why we have been developing a housing-related outcome with stakeholders. As I have just said, no other form of support service is being specifically provided for in that way, and I do not believe that it would be constructive to do that for one service area. I again ask Alison McInnes not to move her amendments 73 and 75. If they are moved, I urge the committee not to agree to them.

The Convener: John Finnie wanted to come in before the minister, but I missed him, because I was so distracted by the gale-force winds. By the way, an engineer is going to come up to try to fix the window that is open. When they come up, I will suspend the meeting. Believe it or not, that is the only way in which the window can be closed, and it takes five minutes. What a design.

Is John Finnie’s point about the wind or is it about an amendment?

John Finnie: I will spare you any comments about wind, convener.

I speak in support of my colleague Alison McInnes’s amendments—particularly amendment 97. The minister talked about a desire not to behave in a presumptive manner. However, let us be specific about what is being asked for. It is

“information about the action that the ... Ministers are taking, or propose to take, or consider that others should take”.

What is that about? It is action in relation to

“early intervention to prevent offending ... diversion from prosecution”

and

“youth offending,

which supports, or co-ordinates with, the achievement of those aims.”

We are always lobbied to place various elements in bills and people give various weights to the overall legislation on the basis of the references that are made, but there is no difficulty with that at all.

Likewise, there is an argument about not singling out housing—I might appear to be arguing against myself here; I see colleagues nodding—

but the one thing that we all share is that we all have to stay somewhere. We might or might not require some of the other services at any given time, but we all require housing. That is what makes it unique. I therefore support the amendments on that basis.

The Convener: Minister, do you want to come back in, given that I let you wind up before John Finnie spoke? If you do not want to, it is not necessary.

Paul Wheelhouse: I am happy to waive my right to reply.

Alison McInnes: I will press amendment 97 and move the others in the group. I listened carefully to the minister, who said that amendment 97 is unnecessary, but one of the recurring themes that the committee has dealt with over and over is that services are patchy and early intervention would make a difference. Although he said that amendment 97 is unnecessary, he did not say that it is unworkable. On many occasions, we use the statute book to emphasise the need for a particular course of action, so it is sensible to ask for information about what actions people are taking in relation to early intervention to prevent offending, diversion from prosecution and youth offending.

On amendments 73 and 75, as my colleague John Finnie said, housing is pivotal to reducing reoffending, so it is important that we recognise that role. If the minister felt the need to extend the provision at stage 3 to include healthcare and other issues, I would support that. However, it is important that the committee underlines the role of housing, so I will move those amendments.

The Convener: Minister, do you want to say anything else? You look as if you might want to say something.

Paul Wheelhouse: No, I am fine. I recognise the points that the committee is making. Depending on how the vote goes, we will reflect on whether we can make amendments at stage 3.

The Convener: I thought that you were going to say something substantive—although I do not mean that what you just said was not substantive.

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

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Ind)
 McDougall, Margaret (Central Scotland) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 Mitchell, Margaret (Central Scotland) (Con)
 Murray, Elaine (Dumfriesshire) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and
 Lauderdale) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 97 agreed to.

Amendment 73 moved—[Alison McInnes].

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

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Ind)
 McDougall, Margaret (Central Scotland) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 Mitchell, Margaret (Central Scotland) (Con)
 Murray, Elaine (Dumfriesshire) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and
 Lauderdale) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 73 agreed to.

Amendment 32 moved—[Paul Wheelhouse]—and agreed to.

Section 13, as amended, agreed to.

The Convener: I am listening to the sound of something happening that was not supposed to be able to happen.

Section 14—Review of national strategy

Amendment 33 moved—[Paul Wheelhouse]—and agreed to.

Section 14, as amended, agreed to.

Section 15—National performance framework in relation to community justice

Amendment 74 not moved.

The Convener: The question is, that amendment 74 be agreed to. Are we agreed? *[Interruption.]* Oh—I beg your pardon. It is my turn to make a mistake, just to show that I am in a team with you, making mistakes.

Amendment 75 moved—[Alison McInnes].

The Convener: The question is, that amendment 75 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Ind)
 McDougall, Margaret (Central Scotland) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 Mitchell, Margaret (Central Scotland) (Con)
 Murray, Elaine (Dumfriesshire) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and
 Lauderdale) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 75 agreed to.

Amendment 34 moved—[Paul Wheelhouse]—and agreed to.

Section 15, as amended, agreed to.

Section 16—Review of national performance framework

Amendment 35 moved—[Paul Wheelhouse]—and agreed to.

Amendments 76 and 77 not moved.

Section 16, as amended, agreed to.

Section 17—Preparation of community justice outcomes improvement plan

Amendments 78 to 80 not moved.

Section 17 agreed to.

Section 18—Community justice outcomes improvement plan: engagement

Amendments 36 to 42 moved—[Paul Wheelhouse]—and agreed to.

Section 18, as amended, agreed to.

After section 18

Amendment 98 not moved.

Section 19—Review of community justice outcomes improvement plan

Amendment 43 moved—[Paul Wheelhouse]—and agreed to.

Amendment 81 not moved.

Section 19, as amended, agreed to.

Section 20—Reports on performance in relation to community justice outcomes

Amendment 44 moved—[Paul Wheelhouse]—and agreed to.

Amendment 82 not moved.

Amendments 45 to 47 moved—[Paul Wheelhouse]—and agreed to.

Amendment 83 not moved.

Section 20, as amended, agreed to.

Sections 21 and 22 agreed to.

Section 23—Monitoring of performance in relation to community justice outcomes

Amendment 84 not moved.

Amendment 48 moved—[Paul Wheelhouse]—and agreed to.

Amendment 85 not moved.

The Convener: I call amendment 86 in the name of Elaine—

Elaine Murray: Not moved.

The Convener: You are catching up. You are so desperate to get through this that we will soon be ahead of each other.

Amendment 86 not moved.

Section 23, as amended, agreed to.

Section 24—Section 23: recommendations to Scottish Ministers

Amendment 49 moved—[Paul Wheelhouse]—and agreed to.

Section 25—Annual report on performance in relation to community justice outcomes

Amendments 50 and 51 moved—[Paul Wheelhouse]—and agreed to.

Amendment 87 not moved.

Section 25, as amended, agreed to.

After section 25

Amendments 52 to 54 moved—[Paul Wheelhouse]—and agreed to.

11:00

Section 26—Ability of Community Justice Scotland to develop and arrange services

The Convener: Amendment 88, in the name of Elaine Murray, is grouped with amendments 89 to 91 and 57. I point out that, if amendment 91 is agreed to, I cannot call amendment 56 in the

group on role of third sector bodies and community bodies in relation to functions under the act, as it will have been pre-empted.

Elaine Murray: I will remember to move amendment 88 at the right time, convener.

Amendments 88 to 91, which pertain to section 26, relate to the involvement of local government and local partnerships in the commissioning process undertaken by community justice Scotland. COSLA is concerned that CJS's ability to commission services as set out in section 26 must neither duplicate work at a local level nor undermine local prioritisation of what is needed. Indeed, that key message was contained in our stage 1 report.

Scottish local government already takes a sophisticated and informed approach to local and national commissioning. Although CJS needs to be able to commission certain services, that ability should be limited to functions that are currently delivered by the Scottish Government and its agencies and should not encroach on local work. In order to protect local services, the amendments would enable the bill to draw clear parameters around the territory of local and central Government and perhaps the Government agencies that might be involved. COSLA believes that it is important for that to be reflected in the bill and not simply left to guidance.

As a result, assurances are required that local authorities and local community justice partners will be fully involved in the national commissioning process. Although there will always be a case for shifting competencies around different spheres of government, such matters affect democracy and accountability and should therefore be the subject of full and robust debate whenever they happen.

Amendments 88 to 91, which seek to amend section 26, would ensure the involvement of local authorities and local partnerships in the national commissioning process. The Scottish Government has said that it will instruct CJS to develop a commissioning framework with COSLA but, because that has obviously not happened so far, COSLA hopes that the bill will contain safeguards in that respect. If the amendments are agreed to, the provisions in section 26 can be referred to in the national commissioning framework and will ensure that services commissioned by CJS receive local buy-in.

The amendments are also intended as a response to the Justice Committee's stage 1 report, which said:

"We warn against a 'one-size-fits-all' approach: community justice arrangements must be flexible enough to allow decisions to be taken at local level, based on local need"

and:

“we note the position of some witnesses that CJS should, in developing and arranging services, avoid undermining local needs.”

Moreover, I note that the Scottish Government’s “What Works to Reduce Reoffending: A Summary of the Evidence”, which was published in 2015, found:

“One of the most consistent findings of this evidence review is that one-size-fits-all interventions are ill-suited to reducing reoffending, and that there are differences between individuals who offend.”

The amendments would also go some way towards meeting Audit Scotland’s concern that community justice funding should ensure that

“there is more flexibility to meet local needs and priorities”

and that CJS should not be an obstacle to that.

I do not think that I need to go through the detail of the amendments, but I have at least outlined the policy intention behind them.

I move amendment 88.

The Convener: Thank you very much, Elaine. You are doing well against the lurgy—which, by the way, I did not give the deputy convener; she got it all by herself.

If you will forgive me, minister, I will continue this session for a bit longer. We are nearly finished. I know that there is a whirring noise at the back of the room, but we are going to deal with it. Believe it or not, though, it is going to take someone with a screwdriver, wrench, hammer and I do not know what else—we will see what comes in—five minutes to fix it.

I call the minister to speak to amendment 57 and the other amendments in the group.

Paul Wheelhouse: Section 26 makes provision for community justice Scotland to develop and arrange services. In order to fulfil that provision, community justice Scotland will, as one of its first actions, work with community justice partners and the third sector to develop and agree a strategic approach to commissioning to ensure that there is an evidence-led and co-ordinated long-term approach to commissioning for community justice in Scotland.

Amendments 88 to 91, in the name of Elaine Murray, would significantly alter community justice Scotland’s role in the commissioning of community justice services in a way that we feel is contrary to the bill’s purposes. Amendment 90 would insert a requirement for community justice Scotland to have regard to the desirability of working in collaboration not only with other parties as currently provided for but specifically with local authorities. I cannot see a good reason for local authorities to be given such prominence over other community justice partners and stakeholders.

Given the importance of their role in relation to community justice, I would fully expect local authorities to be included in the “others” that community justice Scotland should consider working in collaboration with under section 26(4), so there is no need for local authorities to be specifically named in that provision; indeed, we believe that it would be inappropriate to do so. I therefore cannot support amendment 90.

As for amendment 91, which would remove altogether the provision for Scottish ministers to direct community justice Scotland to develop or arrange services, the committee will not be surprised to hear that I cannot support that proposal either. As priorities change or the community justice landscape shifts, Scottish ministers might be required to direct community justice Scotland to develop specific community justice services at a national level, and it is crucial that ministers have that ability. I have already given assurances that, where Scottish ministers need to establish a new or national initiative, they will consult COSLA leaders as appropriate with a view to seeking their agreement. That would respect the established procedures for the setting of the public sector budget in Scotland. I therefore urge the committee not to agree to amendment 91.

Amendment 88 seeks to prevent community justice Scotland from encouraging or assisting community justice partners in the commissioning of community justice services. As I believe that the provisions in section 26(2) will support in a positive way the ability of local areas to commission and procure by enabling community justice Scotland to encourage and assist those partners in that work, I believe that amendment 88 would deprive the partners of an important source of support.

Amendment 89 seeks to add some wording to section 26(3)(b). Section 26 states that a service that community justice Scotland might identify, design or make arrangements for the provision of may be for either

“all of Scotland, or ... the areas of particular local authorities.”

Amendment 89 would provide that where such provision is for

“the areas of particular local authorities”

it should require the local authorities’ agreement. It would seem that the purpose behind the amendment, when taken with amendments 90 and 91, is to ensure that community justice Scotland cannot undertake its powers under section 26 without the agreement of local authorities, unless such a service were to be national. That would mean that if community justice Scotland wanted to commission a service for community reintegration or via the third sector for a particular area or areas

of the country, the local authority—in other words, one community justice partner on its own—would have the power of veto. That is contrary to the entire spirit and direction of the new model.

I cannot imagine that that was the actual planned effect of amendment 89, and I therefore urge Dr Murray not to move it. I have already given assurances that, where Scottish ministers needed to establish a new or national initiative and in any decision that would have an impact on local financial and commissioning decisions, ministers would consult COSLA leaders as appropriate, with a view to seeking agreement. That would respect the established procedures for the setting of the public sector budget in Scotland. Indeed, that very point is covered in section 26(7).

If the amendments are intended to reflect a concern that community justice Scotland could duplicate work at a local level or undermine local prioritisation, I will seek to provide reassurance on that point. Local ownership of community justice is absolutely vital to the success of the new arrangements. Under the new model, the default is for the majority of commissioning to take place locally, and organisations will be expected to work together to commission services where benefits in doing so have been identified. Where community justice partners have expertise in commissioning, they are invited to share that with their fellow community justice partners and community justice Scotland. After all, the new model seeks to promote the sharing of good practice.

I should point out that Dr Murray's amendments, if the committee were minded to accept them, would have the following consequences for commissioning arrangements. Local authorities would be given pre-eminence over the other community justice partners; Scottish ministers would be prevented from directing community justice Scotland to develop community justice services at a national level, where that was appropriate; community justice Scotland would be prevented from encouraging or assisting community justice partners in developing and arranging services; and local authorities would effectively be handed a power of veto over the commissioning of local services in their areas. All of that completely undermines the collaborative spirit of strategic commissioning and constrains flexibility for local community justice partners by bringing local commissioning under the control of local authorities. For those reasons, I cannot support amendments 88 to 91 and invite the committee not to agree to them.

Amendment 57 in my name corrects an ambiguity in section 26(8) and makes it absolutely clear that community justice Scotland will not provide community justice services, either on its own or in collaboration with others. I point out,

however, that the amendment does not affect community justice Scotland's ability under section 26 to commission a service in relation to community justice for all of Scotland or for particular local authority areas.

Roderick Campbell: I oppose Elaine Murray's amendments. It seems to me that the flavour of the bill is all about encouragement, assistance and working together, and those amendments seem to restrict community justice Scotland's ability to provide any assistance with regard to commissioning. I agree that the majority of commissioning must take place locally, but there must be some provision for community justice Scotland to provide assistance on occasion. The kind of turf war that seems to lie behind the amendments is not, I think, the way forward.

The Convener: I call Elaine Murray to either press or withdraw amendment 88.

Elaine Murray: I seek leave to withdraw amendment 88.

Amendment 88, by agreement, withdrawn.

Amendments 89 and 90 not moved.

Amendment 55 moved—[Paul Wheelhouse]—and agreed to.

Amendment 91 not moved.

Amendments 56 and 57 moved—[Paul Wheelhouse]—and agreed to.

Section 26, as amended, agreed to.

Section 27—Strategy for innovation, learning and development

Amendment 58 moved—[Paul Wheelhouse]—and agreed to.

Section 27, as amended, agreed to.

Section 28—Review of strategy for innovation, learning and development

Amendment 59 moved—[Paul Wheelhouse]—and agreed to.

Section 28, as amended, agreed to.

After section 28

Amendment 92 not moved.

Section 29—Innovation, learning and development activity

The Convener: Amendment 60, in the name of the minister, is grouped with amendments 61 and 62.

Paul Wheelhouse: Amendments 60 to 62 make minor changes to section 29 to put beyond doubt what is referred to by the provisions in that section

that relate to developing and providing education and training.

Section 29(4) currently provides that

“Community Justice Scotland may charge for any education or training materials developed or provided by virtue of”

section 29(1), and amendment 60 seeks to remove the word “materials” from section 29(4) to allow community justice Scotland to charge for education or training in general. Amendment 62 makes it clear that references in section 29 to education and training include educational materials and training materials. The upshot is that community justice Scotland may charge for the development or provision of education or training or any materials in that respect. Finally, amendment 61 seeks to clarify that community justice Scotland can charge only where it has provided the education and training or the related materials itself.

I move amendment 60.

Amendment 60 agreed to.

Amendments 61 and 62 moved—[Paul Wheelhouse]—and agreed to.

Section 29, as amended, agreed to.

Section 30—Duty of co-operation

Amendment 93 not moved.

Section 30 agreed to.

After section 30

Amendment 99 not moved.

Section 31 agreed to.

Section 32—Interpretation

Amendment 63 moved—[Paul Wheelhouse]—and agreed to.

Section 32, as amended, agreed to.

Section 33 agreed to.

Schedule 2—Minor and consequential modifications

The Convener: Amendment 64, in the name of the minister, is grouped with amendment 65.

Paul Wheelhouse: Government amendments 64 and 65 relate to consequential modifications that the bill makes to section 11 of the Management of Offenders etc (Scotland) Act 2005.

Section 11(2) of the 2005 act requires the “responsible authorities” to prepare a report that is to be published in the area of the local authority concerned and submitted to the community justice authority for the area. Paragraph 5(3) of schedule

2 to the bill as introduced amends section 11 of the 2005 act to require the “responsible authorities” to submit their report on the discharge of their functions under section 10 of the 2005 act to community justice Scotland instead of the community justice authorities, which are, of course, being abolished by the bill. Community justice Scotland is then required to send a copy of that report to Scottish ministers.

Paragraph 5(3) of schedule 2 to the bill as introduced also adjusts the publication requirement to require publication

“in such manner as will ensure that the report is likely to come to the attention of the other community justice partners for the area of the local authority.”

However, given that the planning and delivery of community justice services in the local area will be the responsibility of the relevant community justice partners rather than community justice Scotland, it is felt, on reflection, more appropriate for the community justice partners to consider the content of the report as it develops and to reflect any observations on it, within their area, in their community justice outcomes improvement plans and indeed in their annual reports on the achievement of outcomes, without there being any further requirement to send the reports to community justice Scotland. Accordingly, amendment 64 removes the requirement in paragraph 5(3)(a) of schedule 2 for responsible authorities to send the report to community justice Scotland. It also repeals section 11(2)(c) of the 2005 act as a consequence of the disestablishment of the community justice authorities.

Amendment 65 proposes to remove the requirement in the bill for community justice Scotland to send a copy of the report to Scottish ministers. As the ministers are one of the responsible authorities, they already have access to it. As paragraph 5(3)(b) of schedule 2 is not changed by the amendment, the responsible authorities will, in future, be required to publish their reports

“in such manner as will ensure that the report is likely to come to the attention of the other community justice partners for the area of the local authority.”

I move amendment 64.

Amendment 64 agreed to.

Amendment 65 moved—[Paul Wheelhouse]—and agreed to.

Schedule 2, as amended, agreed to.

Sections 34 to 37 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill—just one minute over

time. I congratulate the minister and the committee, and I suspend the meeting for five minutes.

11:16

Meeting suspended.

11:24

On resuming—

Scottish Human Rights Commission

The Convener: The next item is an evidence session on the Scottish Human Rights Commission. I welcome Professor Alan Miller, who is chair of the commission. We will be asking Professor Miller about Scotland's national action plan for human rights two-year report, which was published in December.

As members know, Professor Miller demits office in March, so we also intend to spend some time asking for Professor Miller's observations on his time as chair of the commission—or, at least, what he can put on the record. What he may say to us privately is another matter and we look forward to that. We will start with a question from Christian Allard.

Christian Allard: I have just one question that you may want to expand on, Professor Miller. It is about your relationships with the Scottish Parliament, the Scottish Government, local authorities and other public bodies in Scotland. How well did those relationships work and what about the challenge that a lot of legislation is either reserved or, even in devolved areas, partly reserved? There is the Immigration Bill, for example. How much of that is challenging and are there any positive remarks that you can make on how your successor could move forward?

The Convener: That is a lot of questions—just pick your answers, please, Professor Miller.

Professor Alan Miller (Scottish Human Rights Commission): Two for the price of one. First, I would like to thank you and the other members of the committee and your predecessors for your interest in and support for the work of the SHRC and me as chair over the years. I just wanted to put that on the record.

The Convener: You can stop right there—that is fine.

Professor Miller: I am looking forward to this ultimate session with you.

In direct answer to the question, relationships are critical to the work of the commission—indeed, to the work of any body or organisation. On the specific relationships with the Scottish Government, the Scottish Parliament, public bodies and so on, one of the accomplishments of the commission over the past eight years is that, starting from nowhere, it has developed constructive and honest relationships with all those bodies. That is probably best represented in

the development of Scotland's national action plan for human rights, which set out to be collaborative and built on that shared confidence and trust. From my point of view, those are good relationships, but you and those in Government and public authorities may have a different point of view.

On the reserved or devolved issue, I think that we all sometimes have difficulties with the grey areas and we want to ensure that nothing falls between what is reserved and devolved. Sometimes it is a bit complex. On that particular issue, another key relationship is with the Equality and Human Rights Commission. In Scotland, we co-operate closely with it to ensure that nobody falls between those gaps, and by and large that approach has worked well. That is not to say that there are not frustrations that come up from time to time when matters that are reserved are regressive and clearly have an adverse impact on the rights of people in Scotland—you just need to look at the Trade Union Bill just now—but we all live in this world.

Margaret Mitchell: How does the commission balance its international interests and its focus on domestic work?

Professor Miller: From day 1, when I was first elected by the Parliament, it was crystal clear to me that if, as chair, I was to build a national human rights institution in Scotland, I had to learn from the experience of others who had done something similar in different contexts around the world. From the beginning, I was very open to learning all the lessons that could be learned about establishing the commission.

For example, Scotland's national action plan for human rights—SNAP—is something that comes from the international community. There is international best practice and experience that the commission in Scotland has benefited from and indeed enriched. It is now recognised internationally that SNAP has set the bar for how a plan should be put together and how its potential should be realised.

Over the years, that interest in and interaction with the international community has continued because the Paris principles from the United Nations require national human rights institutions to be a bridge between their own countries and the international human rights system. We will monitor the extent to which international human rights laws and obligations are realised in Scotland, and we will contribute Scotland's good experience in certain areas to benefit the international community. For example, I know that the committee has been closely involved with the area of survivors of historical abuse. The way in which Scotland has finally tackled that problem effectively is of considerable interest to many other

countries around the world. Our international work is a two-way street. It is a necessary dialogue that takes place.

11:30

Margaret Mitchell: I want to ask about some of the specific challenges that you mentioned in the 2015 SNAP report—in particular, the need for a step change in the public sector and the need for SNAP to be embedded in Scotland's institutional fabric.

Professor Miller: A lot of the earlier work of the commission had to be about increasing awareness and understanding of how to apply human rights on a day-to-day basis in schools, hospitals, care settings, workplaces and communities. We spent a lot of time working with the bodies that have responsibility for delivering public services. We assisted them in understanding what they need to do to respect the rights of those to whom they are providing services.

We are getting to a stage where those bodies have to be increasingly held to account—where they actually need to do it. That is the point that we have reached in SNAP. The capacity has been built, and the tools and the know-how have been shared, and now we have to see them being put into practice. That is particularly important in times of austerity, because using a human rights-based approach is much more cost effective and targeted than not using one.

Margaret Mitchell: So there is really no excuse now.

Professor Miller: There is really no excuse.

The Convener: You talked about the elderly. One often has concerns that the human rights of the elderly are not respected. I know that there are other sectors of society whose rights are also not respected, particularly if they do not like to speak out, so they can be quite vulnerable. What is the relationship of the commission to the Care Inspectorate, for example, which looks not just at the quality of physical care but at the way in which older people are treated and respected as individuals?

Professor Miller: There is a very close relationship with the Care Inspectorate. The commission is helping it to shape the new national care standards and ensuring that human rights and the dignity of people who are in care are front and centre in those standards and in how the Care Inspectorate goes about its work. It is a long-standing relationship that came into being several years ago when the commission took the initiative to develop a capacity-building training package for the sector called care about rights, which dealt with how to provide services to older people in a

way that respects their dignity and is person centred. From that day until now, we have continued to enjoy a very close relationship.

The Convener: How does that filter down to the front line—to the carers in our various care homes and residential homes, and to people with learning difficulties and so on? We hear some dreadful stories, and we see dreadful images captured by secret filming, of how people are treated when they are at their most vulnerable. How do we get that approach down to that level so that care services are delivered properly?

Professor Miller: It goes back to Margaret Mitchell's earlier question. It is now time for the bodies that have been provided with a lot of know-how to apply it on a day-to-day basis and to be held accountable for doing so. Training through the care about rights project was given to about 1,000 care providers. It was then independently evaluated and was regarded as having been extremely successful. Through SNAP, that training now has to be scaled up, so that all care homes take advantage of that capacity building. The Care Inspectorate also comes in to ensure that that is front and centre.

Gil Paterson (Clydebank and Milngavie) (SNP): What do you believe have been the commission's main achievements during your term of office?

Professor Miller: I think that the main achievement is that the commission is relevant today. Parliament established it back in 2007 with a fair degree of hesitation. There were questions about whether Scotland needed a human rights commission and what value or relevance would it have. I do not hear those questions anywhere any longer. I hear other questions such as "Why did the commission not do this?" and "Why is it concentrating on that?", but its relevance and credibility are now beyond question.

Scotland's national action plan for human rights has also made human rights relevant more broadly in health, social care and other aspects of real life whereas, when the commission was established, human rights were seen as something that belonged in criminal justice only, and were seen by some as problematic. They were in a bit of a silo, and they were also in a silo in the Government, but now they have broadened out and their relevance is recognised. SNAP is the embodiment of that. Recognition of the relevance of the commission and recognition of the relevance of human rights to everyday life have been two of the accomplishments.

Gil Paterson: Where has the work that you have done added most value?

Professor Miller: One of the things that I personally am proudest of is the challenging work

that we did with survivors of historical child abuse. That was a tough area that had not been effectively addressed by Scotland at all, no matter who was in government or who was trying to tackle it. By using a human rights-based approach of putting survivors at the centre and ensuring that their experience was understood, and by discussing that around the same table where cabinet secretaries were sitting with survivors and representatives of religious institutions and local authorities, all of whom needed to understand one another and place themselves in the shoes of the survivors, the commission provided a human rights framework in which we could discuss what needed to be done to give survivors access to justice. Then an action plan was consensually adopted, and now we are seeing the early stages of its implementation and, through SNAP, the Government and others will be held to account for that implementation. The power of a human rights-based approach in that tough policy area is probably one of our best accomplishments.

Gil Paterson: That is good. I want to follow on from what Margaret Mitchell said about the international perspective. Do you have any concerns about the forthcoming referendum on Europe and how it may impact on human rights?

Professor Miller: Yes, the commission will be publishing a paper prior to the EU referendum on the human rights implications of an exit or of staying in the EU, and on how human rights could be improved. From the point of view of progressing human rights, the commission will produce a briefing paper on the implications of an in vote or an out vote, in the same way that we did for the independence referendum, not taking a position for or against but just setting out the human rights implications that everyone should be aware of, so that people can vote as they think they should.

John Finnie: You have talked about how you got care providers and the Care Inspectorate involved in the care about rights project. You have also had buy-in from patient support groups and friends of care homes and the like, who can see a clear link—for example, the hydration of residents is a fundamental human right. Are there examples in other walks of life? I know that you want to have a rights-based approach to everything. I know that it may not be so easily transferable to other spheres, but are there any other examples like that?

Professor Miller: When the commission was first established, we went around the country and asked people, "What do you think your human rights commission should prioritise?" and the answer was dignity and care, not only for older persons but, as we have seen with survivors of

historical child abuse, with children's welfare when they are in care.

Over my period in office, there has been a shift to seeing the relevance of human rights in health and social care and not only in criminal justice. For example, yesterday afternoon, I was at a housing project in Leith where we are working with residents in very inadequate housing conditions. I know that you have had problems with this building not being wind and watertight today, but that pales in comparison with the structural problems in that apartment building, where we are working with people to make them aware of the right to adequate housing that they have under international human rights law.

Those residents are armed with and empowered by the knowledge that they do not have to ask for things but have a right to decent housing. They are going round all the residents with a survey of the most critical things that need to be improved to allow them to live with dignity in their housing. With that information, they will develop indicators of progress. It is not an overnight panacea. The city council should work with the residents over the next few years to progressively realise their right to adequate housing. The residents will then be able to participate in decisions about how money can best be targeted to make the biggest improvement to living conditions in a very deprived area that are simply unacceptable in the 21st century.

A human rights-based approach has unlimited potential across all kinds of areas, and that is one area that will be shared with you next year in the SNAP 3 report.

John Finnie: You mentioned criminal justice a couple of times. You have commented on a couple of issues involving my former colleagues in the police service: stop and search and arming the police. I like the comment of John Scott QC that the police should be front-line defenders of human rights—have both those issues tested that assertion? Would you like to comment?

Professor Miller: As part of the SNAP process, Police Scotland has committed to being accountable for providing human rights training and for shifting the culture in the police. It has also committed to being accountable for stop and search. Over the past year or 18 months, the commission and I have personally engaged with Police Scotland on the issues of both armed policing and stop and search. We have raised the issue of stop and search internationally. We took it to the UN Human Rights Committee, which called on the United Kingdom and Scotland to fix the problem. I think that progress has been made, not least due to the Parliament's efforts to hold Police Scotland—and the whole governance framework for policing in Scotland—to account. One of the

areas where I think that we have seen the best co-operation between the commission and the Parliament has been in identifying that non-statutory stop and search has no place under the rule of law and should be stopped. Over the next year, we will scrutinise the code of practice and the statutory basis that the Government has committed to introduce.

John Finnie: Police Scotland is an active participant in your leadership.

Professor Miller: Yes. I think that Police Scotland attended twice to provide an account of what it is doing on training and stop and search. A delegation from the justice and safety action group, which was established by SNAP, went out to Tulliallan to gain an understanding of the human rights training that police officers are given and how it can be improved.

John Finnie: Finally, I understand that the commission has A status; why is A status important? I think that it is important, but can you articulate what it means?

Professor Miller: There are now human rights institutions in over 100 countries. Under the UN Paris principles that govern national human rights institutions, those institutions are graded by their peers and by the UN on their independence from their Governments, on their effectiveness, and on other criteria. They are reviewed every five years, and the Scottish Human Rights Commission has been given A status twice.

If you are given the top billing of A status, it means that you have speaking rights at the UN, including the UN Human Rights Council and the treaty bodies. That matters in a whole range of ways. It means that you can hold your state to account, provide shadow reports and enable the UN to dig a bit deeper than the official state report might suggest is necessary. I spoke to the UN Human Rights Council on a whole range of areas, not least the bedroom tax and the right to adequate housing. I spoke to the Human Rights Council straight after the UK ambassador and the special rapporteur. You might remember that the special rapporteur came to Scotland and the UK and had some very robust things to say about the bedroom tax. She got rather short shrift from the UK Government, but we were able to speak before the UN Human Rights Council and support her criticisms. That led to increased public debate in Scotland about the need, from a human rights point of view, to get rid of the bedroom tax.

John Finnie: I have a final final question.

The Convener: A final final. I am waiting for a final final final.

John Finnie: We like to think that we have very high standards in Scotland. Does the position of

the Gypsy Traveller community give concern to the commission?

Professor Miller: It causes great frustration that more progress in real terms has not been made in that regard despite the best intentions of the Equal Opportunities Committee and other bodies. The need for progress to be made in that context is critical.

John Finnie: Many thanks.

11:45

Alison McInnes: Professor Miller, in responding to Margaret Mitchell you said quite rightly that relationships and collaboration are important, but I hope that you will agree that critical analysis is, too. It would be interesting to hear a little bit more about how you have used the commission's powers, particularly to conduct inquiries into public authorities' policies and practices.

Professor Miller: To date, we have not done that, but I cannot speak on behalf of my successor about what will happen after I leave. There are two reasons why we have not used the inquiry power. One is that when doors are open to you and there are open minds who are prepared to listen to what you say and to take seriously your suggestions about what needs to be done, going to the lengths of having an inquiry does not really add anything or take you somewhere that you would not get to through collaboration. We have not yet come across a situation in which an institution has said that it is not interested in having a dialogue with us. In such a case, we would look to use our powers. It might be that, because institutions know what powers we have, they feel that it is better to co-operate with us than to have us use those powers.

The other reason is pragmatic: we have a very limited budget and limited resources. We all know that inquiries can develop arms and legs and can be a big drain on capacity and resources, so we would have to think very seriously before undertaking one. However, we would certainly undertake an inquiry if there was no alternative for making progress in a given area.

Alison McInnes: There have been some fairly major policy shortcomings. John Finnie touched on stop and search in that regard, and there were also the policies on armed police officers, the use of segregation in prisons and the treatment of women offenders. With the benefit of hindsight, do you think that it would have been of benefit to have held a more formal, investigative inquiry into any of those issues?

Professor Miller: I do not think so. On stop and search, we commissioned a legal opinion from the highest-level place where we could get one, which

we had if we needed to use it. If the John Scott-led inquiry had not happened, and if the Cabinet Secretary for Justice had not accepted its report and recommendations, we would certainly have published that legal opinion, and we would have been a lot more assertive if that had been necessary. Fortunately, that was not necessary, because the process came to the right conclusion, but we were poised to do it if it had been necessary.

Roderick Campbell: We are nearing the end of the first month of year 3 of SNAP. Can you give us a bit more information about what the various action groups' priorities are likely to be this year or is that work still being developed?

Professor Miller: The action groups themselves will develop that. I do not know whether you have the report, but I refer you to page 41, where it lays out in broad terms the areas that are likely to be reported on at the end of SNAP 3, which are quite wide ranging.

Roderick Campbell: I am looking at the report.

Professor Miller: The area that is particularly interesting is developing human rights budgeting, which is about people being able to participate in how resources are allocated in local communities or the country as a whole. That is something whose day is coming very soon, and we would like some more progress to be made on it.

We will be reporting on what effect the housing work in Leith has had and how it might be rolled out to other communities around the country.

In the past year we have done an interesting piece of work in Perth and Kinross, where service providers and the elected representatives were brought together with community representatives to explore what a human rights culture would look like in the area and to consider who needs to do what to improve the reality of human rights across a range of public services. This year, we will see what comes out of that work and the extent to which it can be replicated in other parts of the country.

Roderick Campbell: In your report you talk about

"developing pilot initiatives around human rights budgeting."

It might be helpful to explore a wee bit what is involved in that.

Professor Miller: I can talk about that at a macro level and a micro level. The micro level is what we are doing with residents in a housing estate in Leith. If funds are available to improve the housing stock, decisions are not made without the participation of the residents, who know best what would make the biggest difference and be most cost effective. Such approaches need to be

progressed, so that people at that level can participate from the outset in decisions about how resources can be most effectively allocated to enable them to live lives of dignity.

If a country says that it embraces human rights values, but it does not make human rights part of the budget process, which prioritises what will be done with the national resources, and it does not decide its priorities on the basis of a desire to realise rights to the highest attainable standard of health, adequate housing and an adequate standard of living, it is not walking the walk. The best way of getting the most informed priorities for spending money is by asking people to bring their lived experience to the table and be part of the process.

Human rights budgeting is quite a new area that is being explored in different parts of the world and has great potential. Just now, there can be no discussion about what is in the UK budget until it is revealed on budget day. Human rights budgeting tries to turn that on its head so that there is a much more participatory process that ensures that rights are on the table. To some extent, that is beginning to happen in Scotland. There are a number of pilots and projects on participatory budgeting, and we want to contribute to that development.

The Convener: You talked about participatory budgeting in relation to housing. It seems to me that some local authorities are trying to take such an approach by asking the people in their areas what their priorities are, within the limits of the budget. Is that a good place to start?

Professor Miller: Yes, and it is happening in different parts of the country. We want to build up that approach.

Roderick Campbell: One of my colleagues—sorry, I mean Gil Paterson—

The Convener: He was one of your colleagues the last time I looked.

Roderick Campbell: Yes. Gil mentioned the European Union referendum. We are also waiting with bated breath for the UK Government's proposals for a British bill of rights. How does the SHRC plan to participate in dialogue when proposals are released in that regard?

Professor Miller: The commission has published a paper that sets out the test that should be applied to any proposal to replace the Human Rights Act 1998 with a British bill of rights. Basically, the test is whether the proposals are progressive or regressive, and we set out a number of criteria that should be the objective bases of assessment. When the consultation paper emerges, the commission will apply those objective tests to measure whether the approach

is progressive or regressive in nature. Everything indicates that it will be a question of how regressive it is, rather than whether it is regressive, but the objective tests will be applied.

Elaine Murray: I thank you for your work during your time in office and wish you well after you step down.

I want to reflect on a slightly broader issue. Although progress has obviously been made on taking a human rights approach in things such as budgeting and service delivery, it seems to me that we still have not won the war of ideas in relation to the general public, and that that is why human rights are still vulnerable; it is why the UK Government thinks that repealing the Human Rights Act 1998 will be popular and why reductions in human rights are dressed up as ways to fight terrorism and all the rest of it. It is a fairly intractable problem. With hindsight, and having been in office for a period, do you have any reflections on how we can get the person on the number 35 bus to understand what human rights are about and to realise that they are not about offenders getting better treatment—

The Convener: Colour tellies and carpets.

Elaine Murray: How do we get the public to understand that human rights affect us all?

Professor Miller: I completely agree about public awareness and understanding of the relevance of human rights. If we took away human rights from the fabric of our life, we would all feel the difference very quickly; we can take a lot for granted. A toxic debate has been running for several years now at Westminster and it is reflected in a lot of the press and media, including in Scotland. There is a challenge, and it is unrealistic to expect a small body such as the Scottish Human Rights Commission to develop a mass public education programme of the scale that is needed. However, something needs to be done to address the situation.

There are a couple of things to say. Starting where we have to start, which is with the Scottish Parliament and Government, public bodies that deliver services, civil society and non-governmental organisations, we have seen an increased awareness of human rights in the political world, or what we might call the "formal" world. I completely agree that, out there in the "informal" world, that is still to happen with the same degree of success.

On the other hand, the confusion or mistrust about human rights is quite superficial. In my experience, whenever you have a serious conversation with anyone from any walk of life and you strip away some of the illusions and look at the facts and evidence and their life experience, it does not take very long before that person

changes their views. Therefore, I do not feel weighed down by the issue, although it needs to be addressed and I hope that, progressively, that will take place.

A big debate is going to happen on the British bill of rights, the Human Rights Act 1998 and SNAP. That will be about which way we go and whether we are going to be progressive or regressive. The public are going to be caught up in that debate, so it is a big opportunity for us in Scotland and for people around the UK to present a much more progressive alternative, with understanding and vision about the need for human rights to be at the front and centre of any country's way of governing itself.

Elaine Murray: I realise that it does not fall to the Scottish Human Rights Commission to do all that work for the whole of Scotland, but is preliminary work being done, not just by the commission but by others, to prepare the ground for the debate? Obviously, significant forces will be making the opposite arguments when the time comes, and people will not necessarily listen to politicians, because we are not everybody's favourite people.

The Convener: I do not know about that.

Professor Miller: The debate will be an opportunity and I am sure that the commission will do its utmost to try to influence it.

On the broader issue, leaving aside the debate on the British bill of rights and the Human Rights Act 1998, in the coming third year of SNAP, we will explore what kind of education in schools provides the most effective promotion. We really want to focus on that being part of education and preparation for life. Children have very open minds: in my experience of going into schools, they ask the most honest, straightforward and challenging questions, because their minds are free from a lot of stuff that people pick up as they go through life. Children are keen to understand and to look around the world, and they have information technology that none of us had when we were at that stage. Schools are ripe for making progress over the next period.

12:00

The Convener: I would never have thought that, as a human rights commissioner, you would go to a housing project in Leith. One thinks that you might speak to the UN and various big organisations. I am curious about how you got involved in that, because it is important that people see human rights as pragmatic and practical and not just philosophical—although it is that as well. How did the commission become involved with that project? Did someone from Leith write to you to ask for help?

Professor Miller: It is a good story, actually, so I thank you for the question.

When I was elected by Parliament to become the first chair of the commission, I was contacted right away by Mary Robinson, whom I had worked with for a number of years and with whom I have a close relationship. She said, "Congratulations, Alan. What are you going to do?" I said, "I'm going to be coming round asking people like you what I should be doing." She said, "Well, go to Belfast." My immediate reply was, "But, Mary, I've just been elected by the Scottish Parliament and I'm using Scottish taxpayers' money, so the first thing I do can't be to go out of the country." She told me to do it as soon as possible and to go to the Seven Towers housing estate in north Belfast, which she had just visited the week before and where some interesting work was being done to make human rights a reality in everyday life. She suggested that I go there to understand what was happening and that I think about doing the same thing in Scotland.

So, I went and I learned. It maybe took me longer than I would have liked, but last year we held an event in Govan on the first anniversary of SNAP and I invited the people who have been doing that effective work in Belfast. I introduced them to the Edinburgh Tenants Federation, and things have just taken off. The commission and the Edinburgh Tenants Federation are working with that Belfast NGO to learn the lessons about what has worked elsewhere and to adapt it to see whether it can benefit people in Scotland.

The Convener: That is a good place to stop. I was curious, because I would never have pictured you being down in Leith. That is a very good example to show people that human rights are not for others, but are for everyday life.

Thank you very much. We wish you well. If you have anything that you do not want to say in public about your job, we will all be happy to hear it, and mum's the word.

Professor Miller: Thanks very much.

12:02

Meeting suspended.

12:03

On resuming—

Subordinate Legislation

Management of Offenders etc (Scotland) Act 2005 (Specification of Persons) Amendment Order 2015 (SSI 2015/431)

The Convener: Agenda item 4 is consideration of an instrument that is subject to negative procedure. The amendment order will extend the multi-agency public protection arrangements beyond registered sex offenders and restricted patients to other categories of high-risk offenders. It does so in tandem with the Management of Offenders etc (Scotland) Act 2005 (Commencement No 8) Order 2015. The commencement order is not subject to parliamentary procedure and was not drawn to Parliament's attention by the Delegated Powers and Law Reform Committee, so we are not looking at it.

Members who were at our first meeting this year might recall that the DPLR Committee made trenchant comments—I love the word “trenchant”; I do not see it very often—on the instrument that preceded this one, principally on the grounds that it was *ultra vires*. The Scottish Government accepted that view and went on to lay the instrument that we are considering today as a replacement. The DPLR Committee agreed that there was no need to draw the new instrument to the attention of Parliament on any grounds within its remit.

Do members have any comments on the instrument?

John Finnie: I welcome the provision. Some individuals who were previously outwith the categories that were covered by MAPPA pose a far greater risk than those who were covered. For instance, I strongly welcome the extension to people who have a propensity to extreme violence.

The Convener: Yes, indeed. We might also praise the DPLR Committee, because it did its job properly, and it could do with a bit of publicity.

Are members content to make no recommendation on the instrument?

Members indicated agreement.

12:04

Meeting continued in private until 12:43.

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