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Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 27 January 2015

Session 4

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JUSTICE COMMITTEE
4th Meeting 2015, 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)

*Jayne Baxter (Mid Scotland and Fife) (Lab)

*Roderick Campbell (North East Fife) (SNP)

*John Finnie (Highlands and Islands) (Ind)

*Alison McInnes (North East Scotland) (LD)

*Margaret Mitchell (Central Scotland) (Con)

*Gil Paterson (Clydebank and Milngavie) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Philip Lamont (Scottish Government)

Michael Matheson (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Joanne Clinton

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 27 January 2015

[The Convener opened the meeting at 10:02]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning and welcome to the fourth meeting in 2015 of the Justice Committee. I ask everyone to switch off mobile phones and other electronic devices, as they interfere with broadcasting even when switched to silent. No apologies have been received.

Moving to agenda item 1, I invite the committee to consider taking in private item 3, which is consideration of our draft report on a supplementary legislative consent memorandum, and item 4, which is consideration of our work programme. Are we agreed?

Members *indicated agreement.*

Prisoners (Control of Release) (Scotland) Bill: Stage 1

10:02

The Convener: Agenda item 2 is our final evidence-taking session at stage 1 of the Prisoners (Control of Release) (Scotland) Bill. I welcome to the meeting Michael Matheson, the Cabinet Secretary for Justice, who is accompanied by the following Scottish Government officials: Philip Lamont, head of the criminal justice and sentencing unit; Jane Moffat, head of the rehabilitation and reintegration unit; and Ann Davies, from the directorate for legal services.

I understand, cabinet secretary, that you do not want to make an opening statement—so far, you have won friends. We will go straight to questions. I will take Christian Allard, Elaine Murray, Gil Paterson, Alison McInnes, Margaret Mitchell, Roddy Campbell and then John Finnie. Why not join in, Jayne?

Jayne Baxter (Mid Scotland and Fife) (Lab): Okay.

The Convener: There we are. You are all down for questions. Now I have forgotten who I am starting with. Is it Elaine? *[Interruption.]* No. It was Christian, was it not? The clerk has not written the names down fast enough. You were too fast for him, Christian. Off we go.

Christian Allard (North East Scotland) (SNP): Good morning, cabinet secretary. During the evidence-taking sessions, we have heard a lot of concern about cold release; indeed, I think that every witness and submission has raised very great concerns about the issue.

In response to the question of how we ensure that on their release prisoners are safely integrated back into communities, Sacro said that the answer was not to remove automatic early release entirely but to reduce it to the last three months of an individual's sentence to allow for a brief period of compulsory supervision for the individual's reintroduction into the community. That is important. Indeed, on the issue of mandatory pre-release supervision, some of the people who gave evidence thought that it might be an idea to amend the bill in that way. Have you had any thoughts on the matter?

The Cabinet Secretary for Justice (Michael Matheson): I am aware that in some of the evidence that you have received concerns have been raised about what you have described as cold release and its implications. However, it is worth taking a step back to consider certain issues. Although the intention of the bill is to end automatic early release, there is still provision for

parole-conditioned release, and those who are released on conditions set down by the Parole Board for Scotland will have a level of supervision. That is the case at the moment, and that will remain the case when automatic early release ends. At present, you can apply for parole halfway into your sentence, but does it actually matter if you are refused it if you get automatic early release two thirds of the way in? When that element of the sentence ends, there will be no supervision in place.

Aside from individuals released under conditions set by the Parole Board, there are also a significant number of prisoners who receive extended sentences from the courts. Once individuals who are on that kind of determinate sentence have served that period, they are then subject to a period of supervision.

There is a final category of individuals who might not qualify for parole or any form of early release and who might simply be released at the end of their sentence. Given the evidence that the committee has heard, I am open to exploring with it whether any measures can be put in place to address the concerns that have been raised. For example, Sacro has suggested that, in the three months prior to those individuals' release, they should have supervision to help them back into the community and to address any issues that they might have. I am open to considering such suggestions, and I would welcome the committee's input and views on that particular approach.

However, it is worth keeping in mind that not all prisoners will be in that situation. Some will get parole release and some will have been on extended sentences that were imposed by the court, and both of those groups will receive supervision. For the smaller category of individuals that we are talking about, I am more than willing to explore any further measures that we can take to improve the bill.

Christian Allard: Peter Johnston made it very clear that with regard to prisoners who were on extended sentences there was no problem at all with post-release supervision. As you have said, cabinet secretary, we are talking about only a very small number of prisoners, but if you were able to reassure most of the people who gave evidence about the prisoners who could end up on cold release without any mandatory pre-release supervision being in place, that would help greatly.

Michael Matheson: I am prepared to look at the issue. I take it that Sacro is suggesting that the prisoners in question would receive parole release three or six months before the end of their sentence to ensure that their move back into the community was supervised. If that is a more appropriate means of managing some of these

risks, I am open to exploring it and any other way in which we can improve the bill in this area. If other committee members have suggestions, I am content to consider them as we move forward with the bill.

Christian Allard: Thank you.

The Convener: I do not know whether you have had an opportunity to see Professor McNeill's written submission to the committee, which we received on 20 January.

Michael Matheson: No, convener.

The Convener: He said:

"I spent last week in a meeting with European experts from several jurisdictions and many of them were expressing concern about the increasing numbers of prisoners opting to 'max out' on their sentences, in order to avoid ... the painful uncertainties attendant on discretionary release schemes and ... the more and more intrusive and sometimes disproportionate forms of post release supervision emerging in many jurisdictions."

In other words, there are prisoners who are not looking for early release or parole, because they know that when they get out they will be free and easy. I do not know whether you addressed that in your response to Christian Allard.

Michael Matheson: We have that at present with automatic early release. Prisoners just have to serve two thirds of their sentence and they can be released, even though in previous years the Parole Board for Scotland may have considered them as being a risk and as being unsuitable for release into the community. I am more than prepared to consider whether, for those who get to the end of their sentence, there are measures that we can take to try to address some of the concerns that have been highlighted to the committee.

I should also emphasise that provisions are open to the courts at present to apply an extended sentence for individuals who have been sentenced and who they think will continue to pose a risk. If I give you a couple of statistics, that might demonstrate the scale of use of extended sentences. In 2013-14, 42 per cent of sex offenders getting a sentence of four years or more received an extended sentence, 50 per cent of sex offenders getting a sentence of 10 years or more received an extended sentence, and 32 per cent of non-sexual offenders receiving a sentence of 10 years or more received an extended sentence. At present, in considering a case, courts have the flexibility to use the option of extending an individual's sentence at the time of their period in custody, if they believe that they will continue to pose a risk. The issue may be more around some members' feelings about whether that option is being used sufficiently by the courts, and whether

there are measures that could be taken to extend that further.

The Convener: I shall let other members in and perhaps return to other issues later.

Elaine Murray (Dumfriesshire) (Lab): We heard a number of pieces of evidence. Professor McNeill said in written evidence that the

“question of how best to manage early release should be referred to the Scottish Sentencing Council”.

Professor Tata agreed with that, saying that he could not support the bill as it is and that the sentencing council should be looking at such issues. Peter Johnston of the Risk Management Authority also recommended

“that further thought be given to the bill, rather than proceeding with it as it stands.”—[*Official Report, Justice Committee*, 20 January 2015; c 9.]

Lisa Mackenzie of the Howard League Scotland said:

“The Scottish sentencing council is recruiting staff and it seems a shame to be ... pre-empting its existence”.—[*Official Report, Justice Committee*, 13 January 2015; c 14.]

I wonder what is happening with the Scottish sentencing council. Would it not be better placed to examine these issues?

Michael Matheson: First of all, I am open to improving the bill, but I am also committed to ending automatic early release, as we have set out clearly in the bill. It is for the Scottish sentencing council to determine its work programme. Of course, we could ask it to look at further issues around automatic early release at some point in the future. The Scottish sentencing council is due to be up and running by the end of this year, which is a piece of work that is being taken forward by the Lord Justice Clerk, who will head up the Scottish sentencing council.

I note the quotations that you have referred to. I am open to looking at how we can improve the bill, but I am also clear about our commitment to end automatic early release. If the committee and others have a view on how we can improve the existing bill, I am more than content to consider the issues. Equally, if, in ending automatic early release in the way that we have set out in the bill, further areas arise that should be considered at a later stage, the Scottish sentencing council could consider them, but I do not think that we have to wait to make a decision on ending automatic early release until the Scottish sentencing council comes to a decision on the matter.

Elaine Murray: It is true, though, that the proposals will end automatic early release for only about 1 per cent of the prison population. Could you explain the thinking behind that? An alternative approach was postulated through the Custodial Sentences and Weapons (Scotland) Act

2007. The McLeish commission found a number of problems with that, particularly because the Scottish Prison Service could not cope with the increased number of people who would be kept inside. Your Government amended that act through the Criminal Justice and Licensing (Scotland) Act 2010, which enabled ministers to bring in a phased implementation of a sentencing regime in which there would be a defined period in prison and a period under supervision in the community. I wonder why, instead of progressing with that approach, which your own Government agreed with, this other, rather contradictory, approach has come in, which will affect only 1 per cent of the population.

10:15

Michael Matheson: It is 1 per cent of the population based on the timescales that we have set out in the bill—10 years for non-sexual crimes and four years for sexual offences. If the committee has a view on whether that threshold should be lower, I am prepared to consider that. I know that there are some stakeholders who believe that the threshold should be lower for both categories of prisoner, which would mean that a bigger percentage of the prison population would be impacted.

On the wider issue of other possible routes that could be taken, there is still the matter of addressing automatic early release. The issue was to provide transparency in sentencing policy, so that there is the period in custody and the period in the community. What we are doing by ending automatic early release is ensuring that an individual will be required to have their case considered by the Parole Board, and the Parole Board will determine whether they should be released early. At present, we do not have that at all once a prisoner gets to two thirds of their sentence.

The other thing that is worth keeping in mind around the other approach to changing sentencing arrangements is that, as Henry McLeish pointed out, a number of other issues would have to be addressed before such an approach could be introduced. A large part of that would be about addressing short-term sentences in order to create capacity in the prison estate to keep prisoners in prison for longer periods of time. A number of things would need to be done before that would be possible, some of which we are already doing, but it is also important that we send out a clear signal about ending automatic early release.

Elaine Murray: Surely the issue for victims and for the community is that a sentence should mean what it says. The approach in the 2007 and 2010 acts was about people serving the sentences that they were given rather than coming out early,

which is the public's objection to automatic early release—they think that somebody is going away for six years and they go away for only three. The other approach would tackle that perception issue without potentially releasing people at the end of their sentence with no support at all, which is one of the concerns about the bill. As Christian Allard said, people could end up with no support at the end of their sentence. They may have served what they were supposed to serve, but there would be nothing to support their transition back into the community.

Michael Matheson: That would be the case for a small proportion of prisoners and there may be other ways in which that can be addressed. In ending automatic early release, the certainty that a victim will have is the knowledge that the individual responsible will not be released automatically when they have served two thirds of their sentence, irrespective of the risk that they may continue to pose. The bill gives us a way of addressing that more effectively, so that the arrangements are clearer for victims.

I reinforce the point that only a small proportion of prisoners who get to the end of their sentence and can be released will have no supervision. That is why I am more than happy to explore ways in which we can address the concerns.

Elaine Murray: Will you bring in the provisions of the 2010 act in relation to the orders that you could make? There was going to be a more staged approach.

Michael Matheson: As Henry McLeish pointed out, a range of other things would have to be done to deal with short-term sentencing to address that shift. We are committed to doing that. We have already moved for a presumption against sentences of less than three months. If the committee has a view on moving that further, I would be more than happy to explore with members ways of tackling the effectiveness of short sentences. That is one of the key things that Henry McLeish highlighted in his report.

Elaine Murray: Is this the first stage? Do you intend to end automatic early release? The bill does not end automatic release—not in the vast majority of cases. Do you intend to move further?

Michael Matheson: I am prepared to consider whether, as some stakeholders believe, the thresholds should come down further. I am not in a position to say that I will bring it down to X level at present, but the four and 10-year thresholds that we have set are the Government's starting position and I am prepared to look at extending that further once I have considered the issues. If the committee has a view, I am happy to explore it with you.

Gil Paterson (Clydebank and Milngavie) (SNP): Good morning, cabinet secretary. I want to consider post-release rehabilitation programmes. I was involved with the save Peterhead campaign, so I travelled up to Peterhead and met lots of people who were involved in the programmes at the prison whose success rate drew world attention. I believe that that success continues to this day. Prisoners with sentences of more than four years who volunteered to participate in the programmes did so because they were serious sex offenders who felt that their behaviour needed to be addressed or because they were lining up to benefit from the Parole Board's appreciation that they were doing something positive. However, no matter whether they were doing the programmes for the right reasons or to get out early, it was concluded that prisoners in both categories got a lot of benefit from the programmes. Apparently, the outcomes were no different for the two categories.

We heard in our first stage 1 evidence-taking session on the bill that, if we do away with early release, it follows that, as night follows day, there will be more people who could benefit from rehabilitation programmes in the prison setting. However, two issues came up in the evidence. First, because resources are a bit squeezed at present, some prisoners who have volunteered for programmes are not benefiting from them. Secondly, because there will be higher numbers of prisoners in the programmes, resources might be further squeezed.

If what the bill proposes goes ahead, more people will have longer terms in prison, and there is an opportunity for them to engage in very positive programmes. Can you assure the committee that there will be sufficient resources for that engagement?

Michael Matheson: You spoke about the save Peterhead campaign, and I imagine that you were referring to the STOP programme to rehabilitate sex offenders, for which Peterhead prison was one of the pioneers. I know that in his evidence to the committee, the chief executive of the Scottish Prison Service, Colin McConnell, said that he was expecting an increase in the number of prisoners who take up rehabilitation programmes. If a prisoner knows that they will be automatically released after serving two thirds of their sentence, there is less of an incentive for them to participate in a programme. However, if they wish to secure paroled early release, they will have to demonstrate that they are making progress in addressing their offending behaviour. There is obviously an incentive for those prisoners to take up the programmes.

How resources will be deployed to meet the increase in demand for programmes will be a

matter for the Scottish Prison Service, which will have to manage demand from within its resources. There will always be pressure on resources, just as there are financial pressures on every department in Government. That makes things challenging and is why it is important that the programmes that the Scottish Prison Service runs have better outcomes and make a difference.

The SPS must therefore focus on providing the programmes, and I assure the committee that the Scottish Prison Service will do its best within the resources that it has. If more prisoners undertake rehabilitation, that will reduce their potential to commit further offences in the future, which has the medium to long-term benefit of reducing demand on the system. My preferred approach is to invest in rehabilitation programmes in order to reduce demand at a later stage.

Gil Paterson: Lots of women's groups that look after women and children who have experienced serious sexual attacks were in the vanguard of the save Peterhead campaign—of course, Peterhead prison was eventually saved—because of the programmes at Peterhead. Are you comfortable with assuring the committee and women's groups that the Prison Service can handle the greater numbers who will take part in rehabilitation programmes, and that that will increase the number of prisoners who will change their behaviour?

I listened carefully to what the Scottish Prison Service had to say, and it was reassuring. As you said, the SPS will do the job as best it can, but I am very concerned that we use the opportunity of ending automatic early release to tackle those who do not participate in programmes but who would benefit from them. There might be a resource issue, and I would be grateful if you could look at the matter to reassure yourself, me and the committee that there will be enough resources.

Michael Matheson: I am more than happy to look at that. I will certainly discuss the point with the chief executive of the Scottish Prison Service. A range of measures, such as supervision, are put in place for sex offenders who are released from prison, regardless of whether they have undergone rehabilitation while in prison, in order to address areas of risk. Part of the challenge is to ensure that we increase the number of prisoners who participate in rehabilitation programmes. I believe that ending automatic early release and requiring the Parole Board to consider whether a prisoner should be released early will act as a driver for more prisoners to participate in the programmes. I think that one of the benefits that will come from ending automatic early release will be an increase in the number of prisoners who participate in the programmes.

I am more than happy to discuss with the chief executive of the SPS how the service will address any additional demand, if Mr Paterson wishes me to do that. However, I am confident that the SPS will be able to cope with the additional demand.

Gil Paterson: I am grateful for that. Thank you.

Alison McInnes (North East Scotland) (LD): I want to pursue that issue a bit further with you, cabinet secretary, if you do not mind. You said that you hope that the ending of automatic early release will “act as a driver”, but we have heard mixed views on that. We heard from Professor Miller that equity in the provision of and access to programmes across Scotland will become more important and that there will perhaps be a human rights issue if prisoners are not able to access release through parole because they have not had access to the proper programmes due to demand pressures or programmes not being available in a particular area.

Professor Miller referred to the

“consequences for prisoners’ rights if they are not given the rehabilitation programmes that they will be looking for more than in the past.”—[*Official Report, Justice Committee*, 13 January 2015; c 15.]

He said that the committee needs to consider that as a foreseeable consequence as we go forward. Will you reflect on that?

Michael Matheson: I am more than happy to do that. It is also worth keeping in mind that ending automatic early release will not increase demand tomorrow. Given the turnover of prisoners, it will kick in over a 10 to 11-year timeframe, so there will be time to allow for the planning for and development of programmes to meet the increasing demand. However, I have a very clear view of how to address the issue of Scotland's prison population: a big part of the focus has to be on tackling the underlying causes of offending behaviour.

I also recognise that prisons are not the best places in which to rehabilitate people, but while individuals are in prison we must take the opportunity as best we can to achieve their rehabilitation. Rehabilitation is an important element, and having adequate provision for rehabilitation is one of the three pillars of our prison system.

I am more than happy to ensure that we continue to explore how we provide equity in the provision of rehabilitation services in our prison estate so that we can be confident that we are maximising the potential of rehabilitation while individuals are in prison, notwithstanding the current financial constraints.

I mentioned an 11-year timeframe. That gives us some time to do the planning and other

additional work that will be necessary. However, I am confident that, given their professionalism, our prison officers and the Scottish Prison Service will be able to provide the additional support and assistance that will be required in rehabilitation.

Alison McInnes: Thank you.

10:30

Margaret Mitchell (Central Scotland) (Con): I want to pursue that issue a little further, cabinet secretary. The problem is not new. For many years—in excess of 10—we have looked at the inadequate provision of rehabilitation programmes for prisoners. It boils down to resources.

Dr Monica Barry highlighted that

“There is not a demand problem with programmes”

in prison; rather,

“there is a supply problem.”—[*Official Report, Justice Committee*, 13 January 2015; c 3.]

Therefore, it does not matter how professional the SPS is or how many discussions there are: unless the resources are in place, we will have the same kind of situation that is referred to in the report on HMP Shotts, which found that there

“is still a lack of meaningful and productive work available for prisoners”.

That is not a good state of affairs for anyone.

Michael Matheson: Yes. You will be aware of the updated report on HMP Shotts, which said that significant improvement has been made in providing purposeful activity. HMP Shotts has therefore addressed a number of the concerns that were highlighted in the previous inspection report. It is important to recognise the work that the professional staff there are undertaking in addressing some of the deficiencies that were highlighted.

The Convener: What is the date of the updated report, cabinet secretary?

Michael Matheson: The updated report on the progress that has been made on the challenges that were identified in HMP Shotts was published a few months ago. If I recall correctly, I think that I referred to it just before Christmas in answer to a question from Alex Fergusson, who raised the matter in the chamber.

Part of the challenge in the prison estate is ensuring that we use the resources in a way that can best effect change. For example, although there are people who oppose the idea that we should have a presumption against short-term sentences, it has been demonstrated that short-term sentences are very ineffective in dealing with offending behaviour. Even sentences of up to six months are very ineffective in addressing

offending behaviour, but they take up a tremendous amount of the Scottish Prison Service’s resources.

There is a desire to ensure that we are much more effective in rehabilitating prisoners in the financial environment in which we operate, but we also have to be realistic about how we achieve that. We need to ensure that we provide the greater provision of rehabilitation that some people may believe is necessary in an equitable fashion and in a way that results in better outcomes for the prisoners who are targeted so that they deal with their offending behaviour. That also means being honest and realistic when we look at short sentences, which we know are extremely ineffective in addressing offending behaviour and which cost the taxpayer a very large amount of money and take up a large amount of the SPS’s budget. That money could be better used to rehabilitate more serious offenders who pose a greater risk to our communities.

I am more than happy to debate and explore those issues, but my view is very much that we need to take a balanced approach to how we make better use of rehabilitation in our prison establishments.

Margaret Mitchell: For various reasons, people end up with short-term sentences if they have gone through all the other disposals and there has been a breach. Very often, a short-term sentence is the only disposal that is left. I would have thought it more important that rehabilitation programmes were available for people in that circumstance—for example, to identify literacy and numeracy problems, which we know a large percentage of the prison population has.

Are there plans to consider early testing for such problems and to provide even just a signpost to indicate where more support can be found, for example for people with dyslexia? Such things help to rehabilitate people who have offended for various reasons. We know that difficulties with literacy and numeracy can lead to criminal behaviour. Is there resource in prison that could be used to stop recidivism? With the revolving door, people are going back to prison, which is, I would argue, a greater cost to the community.

Michael Matheson: I am all in favour of stopping the revolving door—I think that everybody on the committee would sign up to that—but it is about using an effective approach to stop the door from revolving, and we need to be very clear about how we achieve that. You are correct that a big part of that involves addressing the causes of offending behaviour.

The evidence shows that the situation for many prisoners, particularly if they are serving a sentence of three or four months and have

automatic early release after two thirds of their sentence, means that the Scottish Prison Service has a tiny window in which to try to address those issues. It is unrealistic to expect the SPS to be able to deal with a prisoner's literacy issues and so on in what can be an extremely small timescale while that individual is in prison. Part of the challenge is whether that is an effective use of resource.

The Convener: Sorry to interrupt—

Margaret Mitchell: I sense that the convener wants us to move on.

The Convener: It is a very interesting debate but we are opening it up now to the revolving door, short sentences and so on. Those are important issues, but we are examining the bill in front of us, which is not about short-term issues. It is a big and interesting debate but we are digressing.

Margaret Mitchell: I ask your opinion, cabinet secretary, on Professor Tata's comment that, rather than making sentencing clearer, the bill muddies the water. A 10-year sentence is 10 years, but somebody with a nine-year sentence, for example, will be released after two thirds, or six years, of the sentence. Is the bill just complicating the sentencing process rather than making it easier to understand and more effective?

Michael Matheson: I do not agree. I am aware of that view and the evidence that was given to the committee. I believe that if we end automatic early release, victims will have certainty that the offender will not automatically be released two thirds into their sentence, irrespective of the circumstances.

Margaret Mitchell: Would that be the case if automatic early release was abolished for everyone, rather than for a small group?

Michael Matheson: If your view, or that of Professor Tata, is that the threshold should be lower and that we should put a larger number of prisoners into the category of not qualifying for automatic early release, you are talking about a different scenario. As I have said, I am prepared to look at the thresholds. I am more than prepared to explore what the threshold should come down to. However, by ending automatic early release we are giving a clear indication that someone will not be released just for the sake of it because they happen to have got to two thirds of their sentence.

Margaret Mitchell: I sense that you want to move on, convener.

The Convener: I am looking at the purpose of the bill, which is key. It applies to "certain long-term prisoners". As I understand it, the sentence has to be four years and over, whatever happens. If we want to get into that debate, we may have to do so through other legislation. I do not know

whether the bill could be amended, even if one sets one's path in that direction.

Michael Matheson: Do you mean if you were to look at going below four years?

The Convener: Yes. I do not think that the bill could be amended.

Michael Matheson: The provisions of the bill are restricted by its long title.

The Convener: That is right, so we would be talking about different legislation.

Roderick Campbell: Notwithstanding the acceptance in the policy memorandum that reoffending rates for sex offenders serving sentences of more than four years were not necessarily higher, we heard concerns—in particular from Peter Johnston—about the selection of sex offenders and the logic for that because of generally low rates of recidivism. Will you comment on that?

Michael Matheson: The approach of this and previous Governments has been to deal with sex offenders in a different way, largely because of the impact that sexual offences have on victims, their families and the wider community. That is why we have in place a range of provisions to safeguard the community against sex offenders. Given that, we believe that it is appropriate to have a lower threshold for sex offenders than the 10-years threshold that we have set for serious offenders in non-sexual crimes.

Roderick Campbell: Peter Johnston said that sex offenders generally co-operate in prison, in terms of accessing programmes. In his view, they are not the people on whom the bill should be focused. Do you have anything to add to that?

Michael Matheson: Numbers of sex offenders will participate in different programmes, but it is important that we have a threshold for sex offenders and, if they do apply for early release, that we have in place appropriate supervision, which a parole release would help to provide.

Some of the evidence that the committee has received suggests that an increasing number of sex offenders will participate in rehabilitation programmes. Colin McConnell said in evidence that sex offenders' uptake of offered programmes is currently about 50 per cent but would move up to about 67 per cent after automatic early release is ended. That would help us to increase the number of sex offenders who participate in programmes to address their offending behaviour, which will assist us in reducing their risk once they return to the community.

Roderick Campbell: I return to cold release, which we started with. Colin McConnell said in evidence:

“my experience is that the first six to 12 weeks after release can be extremely risky ... My emphasis is on making custody itself less distinct and less disconnected from the community ... That includes moving our resources—our prison officers—much more into the community to work alongside citizens who are moving from a period of custody back into the community.”—[*Official Report, Justice Committee, 20 January 2015; c 19.*]

Will you comment on that?

Michael Matheson: That goes back to Christian Allard’s question about whether we should put in place provisions that would mean that when someone comes to the end of their sentence there is a period of supervision if they have not qualified for parole release.

It is worth keeping in mind that the Scottish Prison Service is undertaking a significant amount of work to better manage throughcare of prisoners—particularly those who are going back into the community—with a named officer within their establishment and links with social work and housing. You will be aware of the cross-portfolio programme that my predecessor set up, which is looking at housing, health and other areas that can support individuals in moving back into the community. That work has to start early in prison, to ensure that prisoners’ release is properly planned for and support can be implemented when the individual is released from prison.

Much more is happening in terms of managing prisoners’ throughcare and planning for their liberation. Alongside that, measures to address the issue of folk ending their sentences without any supervision, which Christian Allard asked about, could assist us in trying to address some of the concerns that have been raised.

Roderick Campbell: So in essence, the emphasis on throughcare continues anyway, irrespective of the detail of the provisions.

Michael Matheson: Of course.

10:45

John Finnie (Highlands and Islands) (Ind): Good morning, cabinet secretary. Professor McNeill’s submission, which you will have seen, exhorts the committee to lift the quality of public debate. In that respect, I commend your comments about the ineffectiveness of short sentences and about prevention and rehabilitation.

Professor McNeill refers near the start of his submission to the use of the word “unconditional” in relation to early release. He states that that is not helpful, because individuals

“remain liable to return to custody to serve the remainder of their sentence if they commit a further imprisonable offence”.

There is a suggestion that there is a populist background to such legislation, particularly with reference to sex offenders. I will not repeat Roderick Campbell’s questions, but he referred to the level of co-operation.

I will ask about the multi-agency public protection arrangements—MAPPA. First, what is the purpose of the bill. Is it to enhance public safety?

Michael Matheson: Yes.

John Finnie: If the purpose is to enhance public safety, would you not be better to set aside the bill just now and concentrate on section 10 of the Management of Offenders etc (Scotland) Act 2005—legislation that is 10 years old—because MAPPA’s provisions do not cover violent offenders. I have personal knowledge of that from another walk of life, so it seems to me to be far more pressing than the matters that the bill addresses.

Michael Matheson: MAPPA is a framework for dealing with sex offenders and people with mental health conditions. It brings agencies together to plan for when it is required that supervision must be in place for a person. MAPPA cannot apply in circumstances in which that is not the case.

The Government is undertaking internal work on using for violent offenders the MAPPA principles that are used for sex offenders. That work is due to be completed this year and is examining how we can extend the MAPPA principles, framework and approach to violent offenders. Many values and principles in the MAPPA approach could be used for non-sexual violent offenders. I expect to be in a position by the end of the year to look at how we could extend the provision to violent offenders and non-sexual crimes.

John Finnie: That is helpful. I am sure that the committee would be grateful if you could keep us updated on progress, because that work aligns with some of our other work.

If the priority is protection of the public, to what extent would putting in place MAPPA for violent offenders offset provisions in the bill? Many people would imagine that legislation that has been in place since 2005 should have been implemented by now.

Michael Matheson: When an individual has served two thirds of their sentence, if no extended sentence provision is put in place and they do not qualify for parole, they are currently being released without supervision being in place. I take it that your question is whether MAPPA should be used as an alternative in order to provide such supervision. Is that correct?

John Finnie: In the scheme of things, legislation that is in place in relation to a purpose

that the bill asserts to be addressing has not been implemented. Are things out of kilter? For instance, an offender can serve a full 10-year sentence for a violent offence and not co-operate with the prison authorities throughout it, but be let out the prison gate at the end, full stop.

Michael Matheson: That is one reason why we are looking at using the MAPPA principles for violent offenders.

John Finnie: I question the priority and the urgency.

Michael Matheson: We are looking at taking something forward once the work that I mentioned has been completed. The bill will have an impact over 10 to 11 years, so I do not think that there is a conflict between the timelines. I expect that we could have in place provision in relation to the work that we are undertaking around the MAPPA principles for violent offenders well before the provisions in the bill have a significant impact on our prison population.

John Finnie: If that had already been in place—it should have been—many of the issues that have been raised about cold release and so on would have been addressed, because you would have been able to offer MAPPA as an answer.

Michael Matheson: Bear in mind that a supervision provision needs to be in place for the individual. If the person gets to the end of their sentence and there is no extended sentence in place, MAPPA does not apply.

John Finnie: It could be a very violent person who has been released into the community.

Michael Matheson: This goes back to Christian Allard's point. I am more than happy to explore with the committee how we can use the bill to make supervision provisions for individuals who get to the end of their sentence and who would not currently have any such provisions in place for going back into the community.

The number of individuals concerned is very small. At present, when courts are sentencing someone who they think is violent and who could pose a risk at the end of their sentence, they have the option to provide an extended sentence after the person has served their period in custody.

John Finnie: The public might reasonably expect us to encourage you to put in place the full provisions of legislation that has been on the statute book for 10 years, rather than adopting new legislation that might, in turn, contain provisions that would not be imposed for 10 years. That is what I am keen to encourage you to follow up.

Michael Matheson: I hope that you are reassured by the work that we are doing just now.

John Finnie: We understand that the work is on-going.

Michael Matheson: We will have by the end of this year done the work on MAPPA. I hope that that provides you with reassurance.

John Finnie: It does indeed. Thank you.

The Convener: When will the work on how MAPPA operates crystallise? Will it be at the end of the year?

Michael Matheson: That work started at the end of 2013. It has been done over the course of 2014 and is due to be with ministers by the end of this year.

Philip Lamont (Scottish Government): Yes. The expectation is that recommendations will be made to ministers during the course of this year. Following any decision, it will then come before Parliament.

The Convener: It would be useful to keep our eye on the matter and to have a meeting on it at some point. There are issues about the way in which MAPPA is currently operating. I do not want to digress, having rebuked somebody else for digressing, but it is my understanding that prisoners are currently in the first instance released back to where they were resident. That might be where the crime was committed, which means that there could be vigilantes and all kinds of things. There are issues around how provisions operate now, so I hope that the committee will take an opportunity to examine that. That is a matter for us. It is an important question, and the arrangements have flaws, as they operate at the moment.

Michael Matheson: I am more than happy to keep the committee informed of progress on the matter and of details as they come to us.

The Convener: That would be very good, thank you. We have all had examples in our constituencies of the arrangements not operating in the way that one would wish.

Jayne Baxter has been very patient, but I know that this will be worth waiting for.

Jayne Baxter: Thank you, convener, and good morning, cabinet secretary.

John Finnie stole my question—I was going to ask about MAPPA. I have experience from a past life of how it works, and I am interested in the scope for MAPPA to deliver a bit more on its objectives. However, that issue has been dealt with.

I will therefore ask about another aspect of the bill: early release for community rehabilitation. Some witnesses have said that it is a somewhat tokenistic approach, but other witnesses have said

that it is a very practical response to prisoners' need for help and support on their release. How much value will a couple of days make at the end of a sentence? How many prisoners will the measures affect?

Michael Matheson: Those measures came about as a result of work that is being carried out in the ministerial group on tackling reoffending.

I will give a practical example. I sat on that group as Minister for Public Health, and I now chair the group under my current portfolio. One of the challenges that was highlighted concerned an individual who had been in Barlinnie prison. The person was liberated on a Friday and resided in Oban. By the time they got to Oban, the offices for housing and other services had closed, and they were not able to get access to a general practitioner or other practical provisions.

That goes back to the point about improving throughcare and managing prisoners back into the community. As we know, if we do not manage that effectively, we are in danger of continuing with the revolving door, to which Margaret Mitchell referred, such that some individuals end up homeless and think that there is only one way to get back in somewhere: they end up committing offences and going back into prison again. Managing that period is extremely important. It requires a multi-agency response from health, housing and others.

A practical response is to give the Scottish Prison Service the flexibility to release prisoners up to two days early. To return to my example of the individual in Barlinnie prison who resided in Oban, it may be that for practical reasons, in order to manage their move back to the community, such releases should happen on a Wednesday. We can then get the housing, benefits and health provision sorted out before the weekend, so that we are not setting up the person to fail.

That small practical change could make a significant difference. It would be used at the SPS's discretion. It would not be used routinely, but would allow the SPS a level of flexibility to accommodate such cases as and when they arise.

Jayne Baxter: I am interested in how local authorities and other public sector agencies work together to support prisoners on release, which is part of the rehabilitation programme. Is there any scope to develop through community safety approaches a stronger network and stronger partnership working between housing and health and all the other agencies that you spoke about, so that they are better prepared as a team to cope with prisoners who are being released into their communities?

Michael Matheson: There is definitely a role for community planning partnerships in that regard.

As the committee will be aware, there is a commitment in the programme for Government to make changes to community justice partnerships. Part of that work will be to look at how we can effect better planning in those areas.

I will give another example. We have work taking place in Perth prison, which is working with housing agencies. Housing is the key issue that is flagged up to me by the people who work with offenders; if it is not managed everything else quickly breaks down. The prison is running a pilot on how it works with housing partners for its offenders, and the approaches that it uses to ensure that that is managed and planned much more effectively. We are also doing research on approaches that are used in other parts of the country to manage housing on prisoners' release.

It is not just for community planning partnerships but for local authority housing departments and housing associations to recognise that they have a part to play in working with the SPS to deliver. The SPS can do only so much, so the other organisations need to see themselves as partners in the work. The tomorrow's women Glasgow project is work that we have commissioned off the back of the Elish Angiolini report. There is a housing official in the team whose job is to create the link with housing when offenders are moving back into the community. When I was chatting to that official, it was clear that her mindset had changed since she had come into the role. She was a housing official who now views the situation entirely differently; she finds that she is going to her old colleagues and saying, "No, you're going to have to think about this" and challenging their normal way of working.

I want to see similar approaches being taken, and more of them, elsewhere. It is important that we do not just expect the SPS to sort out the matter, because the other stakeholders have a part to play in helping to address the issues.

Jayne Baxter: Sometimes, the revolving door starts to birl at the custody stage. There is a need to provide the support right through the prison system. Indeed, that should be provided once people are in the system, so they must be supported pre-court and pre-trial. However, that is for a different bill and a different meeting.

The Convener: I just like the word "birl". It is a great Scottish word—it is visual.

On that note, we end our question session. I thank the cabinet secretary and his officials. As previously agreed, we are moving into private session, so I ask that the room be cleared, please.
10:59

Meeting continued in private until 11:30.

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