



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 3 March 2015

Session 4

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JUSTICE COMMITTEE
7th 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:

Bronagh Andrew (Community Safety Glasgow)
Dr Pamela Cairns (Soroptomist International)
Lisa Gamble (Barnardo's Scotland)
Christopher Gaul (Migrant Help)
Gordon Macdonald (Abolition Scotland)
Catriona MacSween (Scottish Guardianship Service)
Jenny Marra (North East Scotland) (Lab)
Michael Matheson (Cabinet Secretary for Justice)
Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP)
Nicola Merrin (Victim Support Scotland)
Graham O'Neill (Scottish Refugee Council)
Chloe Swift (Office of Scotland's Commissioner for Children and Young People)

CLERK TO THE COMMITTEE

Joanne Clinton

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Justice Committee

Tuesday 3 March 2015

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning and welcome to the seventh meeting in 2015 of the Justice Committee. I ask everyone to switch off mobile phones and other electronic devices completely as they interfere with broadcasting, even when switched to silent. Gil Paterson will be delayed; he is at the Public Petitions Committee but will be with us shortly. We might be joined by other MSPs—we will see. I know that Jenny Marra and Christina McKelvie are interested in the topic of trafficking; they might make it to the meeting, but I know that they have other commitments.

Agenda item 1 is a decision on taking business in private. Does the committee agree to take in private item 5, which is consideration of our next steps on agricultural crime?

Members *indicated agreement.*

The Convener: With that, I welcome Jenny Marra to the meeting. Do take a seat, Jenny.

Human Trafficking and Exploitation (Scotland) Bill: Stage 1

10:01

The Convener: Agenda item 2 is our first evidence-taking session on the Human Trafficking and Exploitation (Scotland) Bill, which, as people will see, will be in round-table format. I should tell the witnesses that the committee split into three groups for some initial informal evidence taking.

I welcome all of our witnesses to the meeting. The purpose of the session is really to allow you to interact in giving evidence, but I ask that you do so through the chair. You should indicate that you wish to contribute with a strong glint in your eye, a wave of your finger or something; we will take a note of your interest and I will let you know where you are in the list. That is how it works. When I call you, your microphone will come on automatically—you will see a wee red light on the cuff at the top; you do not need to push anything. We have a very good recording man, and he will make sure that you are heard.

I ask everyone to introduce themselves and say where they come from. I will go anti-clockwise—and this week I will remember what anti-clockwise means.

I am convener of the Justice Committee and member for Midlothian South, Tweeddale and Lauderdale.

Elaine Murray (Dumfriesshire) (Lab): I am deputy convener of the committee and member for Dumfriesshire.

Gordon Macdonald (Abolition Scotland): I represent Abolition Scotland.

Margaret Mitchell (Central Scotland) (Con): I am a Central Scotland MSP.

Lisa Gamble (Barnardo's Scotland): I am from Barnardo's Scotland.

Roderick Campbell (North East Fife) (SNP): I am the MSP for North East Fife.

Christopher Gaul (Migrant Help): I am from Migrant Help.

Chloe Swift (Office of Scotland's Commissioner for Children and Young People): I represent Scotland's Commissioner for Children and Young People.

Jenny Marra (North East Scotland) (Lab): I am a North East Scotland MSP.

Catriona MacSween (Scottish Guardianship Service): I am from the Scottish guardianship service.

Christian Allard (North East Scotland) (SNP): I am a North East Scotland MSP.

Graham O'Neill (Scottish Refugee Council): I am from the Scottish Refugee Council.

John Finnie (Highlands and Islands) (Ind): I am a Highlands and Islands MSP.

Dr Pamela Cairns (Soroptomist International): I am from Soroptomist International.

Alison McInnes (North East Scotland) (LD): I am a North East Scotland MSP.

Bronagh Andrew (Community Safety Glasgow): I am from Community Safety Glasgow's trafficking awareness-raising alliance—or TARA—service.

Jayne Baxter (Mid Scotland and Fife) (Lab): I am a Mid Scotland and Fife MSP.

Nicola Merrin (Victim Support Scotland): I am from Victim Support Scotland.

The Convener: Did you see all the little red lights coming on? That was a good little rehearsal.

We have before us the bill, and today's evidence will assist us in working out what is good, bad and indifferent about it. Does someone want to kick off with a comment? By the way, I thank everyone for their written submissions.

Lisa Gamble: Barnardo's Scotland welcomes the bill, and we were glad of the visit from Justice Committee members. However, we believe that some areas of the bill need to be strengthened. For example, we would like a child to be defined in the bill as "any person who is under the age of 18 years"; we want a section on presumption of age; and we would like clarity on the provision for trafficked children, particularly what the provision should be for 16 and 17-year-olds.

We also want the provision of independent guardians for children who have been or who are suspected of having been trafficked to be put on a statutory footing, and we would like provision of a statutory defence for children in addition to the Lord Advocate's guidelines on the presumption of non-prosecution. Finally, we would like an additional statutory aggravation to recognise the vulnerability of child victims of trafficking and the seriousness of the offence of trafficking when it is against a child, and for that to be considered at the sentencing stage.

I am happy to discuss any of those issues with the committee.

The Convener: Does anyone else want to come in on any of those issues?

Gordon Macdonald: We would raise three issues. The first is the need to look at criminalising demand for the purchase of sex, which has been done in Sweden and Norway, and the Northern Irish Assembly has just passed a law to do that as well. In those jurisdictions that have done that, it has been shown to reduce demand for paid-for sex and human trafficking. Secondly, like Barnardo's, we would like child-trafficking guardians to have a statutory basis, rather than just a policy or voluntary basis. Thirdly, we need to improve survivor services. In particular, we perhaps need to extend the period of time that is available, from 45 days to 90 days, and ensure that there is adequate provision for survivors.

Chloe Swift: Like Barnardo's Scotland, we broadly welcome the introduction of the bill. We are keen to ensure that the bill embeds a rights-based approach in policy and practice and that the bill fully recognises the particular vulnerability of children who have been trafficked. I highlight articles 35 and 39 of the United Nations Convention on the Rights of the Child, which talk about preventing

"the abduction of, the sale of or traffic in children"

and promoting

"physical and psychological recovery and social reintegration"

of child victims. We see that happening through having a clear definition in the bill of a child as someone who is under 18 years of age, consolidation of existing legislation relating to children, a clause on the best interests of the child, provision for independent guardians and clarity on the provision for 16 and 17-year-olds, including a presumption of aid. Finally, we would like consideration of a provision on a statutory defence for children who are victims of trafficking.

Nicola Merrin: Thank you for inviting us to speak today. We warmly welcome the bill, as we believe that it is a great opportunity for victims who have been trafficked or exploited to receive the support that they need, how and when they need it. However, we would like to raise a few points.

First, we are concerned about the vulnerability factors in the bill, which are too prescriptive and simplistic and do not take into account all the ways in which a victim can be exploited or vulnerable.

Our second concern is about the non-prosecution of victims. Although we are pleased that the Lord Advocate has guidance on the presumption not to prosecute someone who has committed a crime as a result of their becoming a victim of trafficking, we believe that the Northern Irish and English legislation has stronger

provisions in that area. We would like to see a statutory defence in the bill as well as the Lord Advocate's guidance.

However, the fundamental issue for us is to ensure that adequate and timely support is provided to victims. Although we understand that most of the work will be done through the strategy, which we warmly welcome as well, there is a chance in the bill to ensure that support is provided as soon as possible and as soon as it is needed. We believe strongly that support should not be dependent on the national referral mechanism process, immigration status or anything other than the need of the victim. Specifically, that relates to the timeframe, which Gordon Macdonald talked about, and providing support to victims before they get the chance to decide whether they want to go on with the NRM process or report to authorities.

Bronagh Andrew: We welcome the introduction of the bill. We support some of the suggestions that our colleagues have raised, including those on the presumption of aid and the non-prosecution principle.

We would like to see the means element of human trafficking reflected in the bill and we are seeking clarification on that. All the international definitions have three key elements. The act of trafficking is covered by the offence—recruitment, transportation, harbouring and receipt of a person. Then there is the means—how the traffickers do the trafficking, which is through coercion, deception and, in particular, the abuse of a position of vulnerability. We would be really keen to see that reflected in the bill.

We seek clarification in the bill on whether support for victims will depend on entry to the national referral mechanism and on whether support will be available in the period before an adult consents to enter the NRM.

Finally, we support the calls to criminalise the purchase of sex. Our experience over 10 years has clearly evidenced the strong links between the sex industry and trafficking of the women to meet the demand.

Dr Cairns: For those of you who do not know, Soroptimist International is a worldwide women's organisation that seeks to improve the lives of women and girls.

By far the majority of victims of trafficking are in fact women and children, and we very much welcome the bill. We would like to see the purchase of sex criminalised, because most trafficking—a large percentage—is about sexual exploitation. We would like that to be stopped because it is about supply and demand, and if we cut the demand, we will cut the supply.

Northern Ireland has criminalised the purchase of sex and one of our fears is that those who want to be involved in that will move across to Scotland unless we have strong robust laws to protect our people.

Christopher Gaul: At Migrant Help, we warmly welcome the bill. We would like to see a long-term strategy and framework around safe repatriation, if victims voluntarily choose to return home. There is currently no strategy and the process is quite ad hoc, so we would like the bill to address that. We would also like it to address data sharing with Police Scotland, and we would like more information on what that could look like. We welcome the concept, but we need a bit more information.

Graham O'Neill: The Scottish Refugee Council warmly welcomes the bill, which marks the culmination of leadership from Scotland's human rights community, a number of politicians and now the Parliament and Government. It is an important marker on our journey towards tackling slavery.

There is a lot that is good in the legislation. The strategy is very important, because it is about Scotland working together to take responsibility for acting against the crime of trafficking. Trafficking is manifesting in different parts of the country as well as across sectors. In many ways, it is a symptom of how we live in developed Western economies.

The strategy is about getting all the different sectors together to take leadership and to build up knowledge and intelligence on the issue. It is commendable that the Scottish Government has set down a legal duty to report to Parliament on the strategy. We welcome that duty in particular, because the strategy will be the vehicle for the long-term approach that we need if we are going to tackle such a severe crime and human rights violation.

The Scottish Refugee Council works in the international protection world, particularly—but not only—in relation to asylum seekers. We know that part of the experience of people in the asylum process, who are often deeply resilient but are in very vulnerable circumstances, is that they are taken advantage of and subject to exploitation.

For more than 10 years, we have worked with a number of key partners—notably TARA, which is the pioneering service on the issue in Scotland and works with survivors—to help people who have suffered from trafficking and exploitation.

A big frustration for us and many others has been the conflation of trafficking and immigration—

The Convener: You mentioned that in your written submission.

Graham O'Neill: Action on that is to be welcomed and thankfully is now happening at UK level. We need to decouple those two processes, because trafficking is essentially a crime and a human rights violation; the issues around immigration that sometimes arise are only secondary. We welcome the introduction of dedicated legislation to tackle what is a crime and a human rights violation.

We think that there is a logic to the bill, particularly as regards the very welcome step that the Scottish ministers are taking in placing themselves under a duty to provide support and assistance to survivors. That is a very concrete step in taking control of what happens to survivors. I think that there is also a real logic to the development of a Scotland-based identification process. That gets away from the current process, which is too legalistic and is confined to decision making by organisations that were set up for different purposes—in other words, border control or combating serious and organised crime. We very much welcome the bill's provisions on survivors, and we would like them to be developed as the bill goes through the parliamentary process with a view to having more of a Scotland-based identification process.

10:15

At the other end, we would like more control to be taken in Scotland of enabling survivors to make the fullest possible recovery with due regard to their personal circumstances and/or whether they are assisting with the relevant legal proceedings—criminal proceedings or proceedings related to, for example, compensation. We think that the bill is an extremely important step towards Scotland developing a holistic approach to survivors through identification, assistance and recovery. We very much welcome that, and we hope that it can be worked through as the parliamentary process proceeds.

The non-prosecution and non-penalisation of survivors is a key principle in relation to international law on trafficking. Indeed, it is a key principle in relation to preserving criminal responsibility. We see the issue from first principles. Fundamentally, the provision is about survivor rights—it is nothing to do with immunity from prosecution, and I do not think that anyone is considering it in that way. Secondly, it is integral to criminal procedure in law, because it is integral to the principle of criminal responsibility. We see that as an important way to conceptualise the principle. Thirdly, it is a prerequisite to getting at the people we want to get at—I am talking about organised criminals in particular—because survivors are potential witnesses. They are the ones who will provide lines of inquiry et cetera.

We think that the statutory guidelines are a welcome first step in relation to this crime, but we think that the provisions in the bill need to be strengthened. Our aim is not to get at the independence of the Lord Advocate, which is a key tenet of the Scots system, but to—

The Convener: So you are not in favour of a statutory defence.

Graham O'Neill: We are in favour of a statutory defence. We do not see it as an either/or situation. We do not see statutory guidelines, which are about prevention, and a statutory defence, which provides an additional safeguard for individuals when the system—for whatever reason—breaks down, as being mutually exclusive; we see them as being part of a holistic approach.

The Convener: The Law Society of Scotland and the Faculty of Advocates agree with the idea of a statutory defence.

I want to pick up on what you said about the conflation of trafficking and immigration. When Alison McInnes, John Finnie and I were at Barnardo's, the issue of domestic trafficking, which somehow slips off the agenda, was drawn to our attention. Are you saying that we focus too much on trafficking as being an immigration issue?

Graham O'Neill: That has been one of the symptoms of the inappropriate conflation of what is a human rights abuse with immigration. Immigration is a secondary consideration. The question that people need to direct their minds to is whether the person has suffered a human rights violation as a result of what we are calling trafficked exploitation and what should be done to assist that individual to recover.

At the moment, we have organisations that are conflicted. That is particularly the case for the UK Border Agency.

Catriona MacSween: I want to reiterate some of the points that have been made. I am here representing Aberlour and the Scottish guardianship service. I am responsible for delivering the day-to-day work with child victims of trafficking, and I am a guardian to some child victims of trafficking.

It is important to raise some of the operational issues—

The Convener: You are talking about children who are trafficked from outwith the European Union.

Catriona MacSween: Yes. All the children we work with have an immigration element to their case.

It is extremely important that the definition of what a child is is more explicit, because that is an issue that comes up time and again, particularly

for 16 and 17-year-olds. There needs to be a duty to refer children to the Scottish guardianship service to give guardians a more statutory footing. At the moment, in practice, we are still very much just an invited party at meetings and in respect of information sharing, which impedes our ability to do our job of supporting victims of trafficking. It is really important to have a duty to refer trafficked children to a guardian.

I agree with the points that have been made about the creation of a statutory defence as an additional safeguard, because I have seen many children being put through the criminal justice process and criminalised for activities that they had been forced to undertake.

The bill needs to be more explicit about what support should be provided to trafficked children under the Children (Scotland) Act 1995. We cover the whole of Scotland and have found that there is a lot of disparity in the support for trafficked children, who get treated differently in different local authority areas.

The Convener: Can you give an example of that, please?

Catriona MacSween: Until recently, it has taken a lot of advocacy from us and other agencies to address the situation of 16 and 17-year-old children who arrive here. They will often be accommodated under the provisions of section 22 of the Children (Scotland) Act 1995 as opposed to those in section 25, which would treat them as looked-after and accommodated children. Under section 22, they do not receive the same level of care in terms of access to the section 29 provisions of the 1995 act on leaving care services and support. We have often seen children discharged from care without support when they are 18.

The current situation for children who are treated under section 22 of the 1995 act causes a lot of problems in terms of the lack of pathways planning. The bill needs to be more explicit about support for trafficked children. At the moment, the level of support that they get depends on what local authority they present in, because different local authorities interpret the law differently. That has been a point of advocacy for the guardians for a number of years.

The Convener: I have Alison McInnes and Christian Allard on my list to ask questions—I have noticed you—but I will take Lisa Gamble first.

Lisa Gamble: I take the opportunity to echo what the Scottish guardianship service said about the bill. We want to see provision for 16 and 17-year-olds clarified in the bill by including in it the relevant provisions from the 1995 act. We want to see a provision in the bill that reads something like

the example in our written submission, which states that

“where a child is suspected to be a victim of trafficking and who is 16, but under 18 and:

- appears to require accommodation;

- has no one with parental responsibility for him, is lost or abandoned, or there is no one who can provide suitable care for the child; and,

- the child wishes to be accommodated; then,

- the local authority must provide such accommodation under Section 25 of 1995 Act.”

Chloe Swift: I reiterate that the children’s commissioner is fully supportive of having clarity in the bill on provision for 16 and 17-year-olds. We are aware of the issue and it has been brought to the commissioner’s attention. We are certainly very supportive of ensuring that section 25 of the 1995 act is used. We know that that point has been highlighted by Police Scotland, the Legal Services Agency and others in their evidence to the committee.

The Convener: Thank you. Gil Paterson has just arrived—thanks very much, Gil, for coming back from the Public Petitions Committee meeting. If no more witnesses wish to speak for the time being, I will take Alison McInnes.

Alison McInnes: Obviously and quite rightly, from the outset of the meeting there has been a strong focus on children and lack of provision for them in the bill as introduced. Of course, determining a child’s age can be very difficult without proper documentation. Both Lisa Gamble and Chloe Swift talked about presumption of age. Can you elaborate on what you are looking for in that regard?

Lisa Gamble: The bill’s definition of a child is someone under 18, but a child victim of trafficking is often not clear when they come into the country what their age is. We think that the bill therefore needs a provision on presumption of age that would state, as we outlined in our written submission, that

“where a person who is suspected of being a victim of trafficking and there is reason to believe they may be under 18, they should be treated as a child ... the Bill should specify that until an age assessment of that person’s age has been carried out by a local authority, a public authority must assume that a person is younger than 18, and a child.”

A similar provision is in the Modern Slavery Bill and the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

The Convener: I was going to ask whether the presumption of age operates somewhere else, even in common law—apart from in statute.

Lisa Gamble: I am not sure about common law, but it certainly operates in the England and Wales and Northern Ireland legislation on trafficking.

Chloe Swift: We are certainly very supportive of a reference to a presumption of age. We have been very clear in our evidence about needing a definition of a child as under 18. We note that, in the child impact assessment produced by the Scottish Government, there is a specific line about individuals of an unknown age receiving services. We think that it is particularly important that systems are in place to ensure that child victims can be provided with services when they are defined as under 18 years of age until an age assessment has concluded. We consider that to be particularly important in cases where there might be a lengthy wait for an age assessment. As Lisa Gamble said, it is in line with the requirement in the EU directive on trafficking and part 5 of the Modern Slavery Bill.

Bronagh Andrew: We are saying that we understand that there is an obligation under the Council of Europe convention and the EU directive. As somebody who manages a service for adult victims, I know that, over the years, we have had women referred to us who have been assessed as older than they state, which creates additional complexities for us to ensure that we are meeting our duty of care to young people who we agree are under 18 but who, until there is a formal age assessment and further agreement is reached, have to access adult services.

The Convener: In many places we do not have registered birth certificates and so on, so there is no documentation.

Bronagh Andrew: Exactly.

Nicola Merrin: I reiterate that we support adding the presumption of age to the bill and we support the definition of a child. We are concerned that there would be some discrepancies or ambiguities around support provision for 16 and 17-year-olds. We would not want there to be any gaps in service provision for any reason. We echo what has been said.

Christian Allard: I want to challenge the witnesses on three points. We heard a lot this morning about being more explicit and trying to give more detail in the bill. I read in the submissions about the bill being gender blind. There is an issue about nationality of course and about people being trafficked from abroad. It would be helpful to hear your views on how specific the bill should be. We visited TARA last week. Traffickers are very clever at finding loopholes. Would it be helpful not to be so specific, especially in the sentencing part? On gender and prostitution, we have to make sure that males are protected as well. On age, we have to make sure

that there is a statutory defence for adults as well. On nationality, we have a big problem because how much can you protect EU citizens—even UK nationals—who have been trafficked at one point or another?

The Convener: Under that umbrella, you are saying that, if we are too specific, we could get it wrong, by excluding people.

Bronagh Andrew: To pick up the point around gender services, we know that globally and across Europe it is predominantly women and children who are exploited for all forms of human trafficking. We have obligations under the Council of Europe convention and the EU directive, which recognise the gendered nature of this crime and recognise that gender-specific services should be provided. Using the language “gender-specific” does not preclude men and boys from accessing support that is pertinent to their particular needs. However, particularly for women who have survived quite extreme sexual violence, gendered services are an absolute requirement.

10:30

Graham O'Neill: I echo Bronagh Andrew's response. One of the virtues of the bill is its inclusivity. It brings into being an inclusive definition of trafficking that homes in on exploitation and works back from that to identify who the person who is being exploited is, and what their characteristics are.

As Bronagh Andrew rightly said, international law has recognised that women and children, in particular girls, are especially vulnerable to being taken advantage of and exploited. The next level up from that inclusive definition is to recognise that vulnerability in terms of key points around the identification of indicators of trafficking. That goes right through to the criminal justice system having a low opinion of individuals who exploit children, taking into account aggravating factors in the sentences that are applied. The European Union human trafficking directive and the Council of Europe convention recognise that explicitly.

I completely understand the rationale behind the question and the desire to ensure that we do not have unintended consequences from limiting protections, but what matters is that we have an inclusive definition of the crime and that we recognise the particular vulnerabilities of particular groups of people through trafficking indicators that home in on that. It would be interesting to look into that issue of trafficking indicators: does the bill deal adequately with trafficking indicators in terms of vulnerability, particularly for gender and age? That also involves how the criminal justice system deals with the matter.

The Convener: I am trying to get this trafficking indicators thing into my head. Is that not dealt with under section 1, on the definition?

Graham O'Neill: Trafficking indicators involve characteristics such as age—where a child is concerned—gender and the control methods that are applied to an individual, such as debt bondage or threats to one's family and loved ones. It is more accurate to say that "trafficking indicators" is more of a policy term, which is used—

The Convener: Would that not be more useful for the police and the Lord Advocate, rather than for the text of a bill?

Graham O'Neill: That is a legitimate debate to have: do we want to present trafficking indicators in the bill, or do we want to have them in guidance? We certainly want to have them in guidance. The question is legitimate.

The reason why I raised that point was as an example in response to Christian Allard's point on the unintended consequences of being too specific in the legislation. I do not think that it is a problem, so long as we have a very inclusive definition of the crime.

The Convener: I have Nicola Merrin, Lisa Gamble, Chloe Swift and Gordon Macdonald wishing to contribute on the question of being too specific in the bill. So that we can get through everything—this is your one shot—I ask you just to say, "I support that view," if you agree. That would be helpful. I know that that curtails the discussion a little bit, but we want to pick up on other issues in the bill and we want to get them absolutely right from the point of view of people whom you meet who have been abused and who have to use services.

Nicola Merrin: Just to clarify, is this to make the vulnerabilities more vague?

The Convener: Yes.

Nicola Merrin: Yes, we would support that. We support TARA and the provisions on the abuse of a position of vulnerability.

Lisa Gamble: On the issue of being specific about children, the bill currently does not recognise the vulnerability or needs of children at all. I just want to make that clear.

The Convener: We have already noted that.

Chloe Swift: I would make the same point. I wish to clarify that the vulnerabilities of children are not addressed in the bill. Children have particular vulnerabilities, as Graham O'Neill has identified.

Bronagh Andrew: That is where the position of abuse of vulnerability comes into its own right. The EU directive makes the following definition:

"A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved."

That recognises that vulnerability is multifaceted, and that a whole lot of different issues impact to make an individual vulnerable to the crime.

Gordon Macdonald: I draw attention to something in our written evidence. The European Parliament passed a resolution last year noting that 96 per cent of identified and presumed victims are either women or underage girls. Furthermore, 62 per cent are trafficked for sexual exploitation. That shows the gendered nature of the crime.

Margaret Mitchell: Could you elaborate a little on the provision in section 1, particularly the use of the word "travel", so that we can see whether there are some concerns about that or any other aspects of that section?

The Convener: We share the concern about the use of the word "travel", because it ties in with the idea of immigration, as we heard in the evidence from Barnardo's.

Bronagh Andrew: Community Safety Glasgow was concerned about the use of the word "travel", which implies international movement. Focusing overtly on that word leaves it unclear whether, in British cases of sexual exploitation involving children or adults, people being moved from one part of a city to another would constitute travel. Part of our concern about the offence as defined is that it does not reflect the means element, and that the word "travel" focuses very much on movement, which skews our understanding.

In her submission for a member's bill, Jenny Marra recognised the call for a definition of human trafficking in Scots law. My understanding is that the offence as it stands would act as the definition. As such, it does not capture that important means element of the act of human trafficking.

The Convener: I am rattling around looking for that EU directive. Can anybody help us out with that? There was a better definition in that directive, I felt. It is in one of the submissions. I will let someone else look for it. In the meantime, let us hear from Nicola Merrin.

Nicola Merrin: Although the means element is in the part of the bill that deals with exploitation—I think that it is section 3(8)—it is not within the full definition. There is no element of giving or receiving payments or benefits to achieve the consent of a person; my understanding is that that is not there at all. We would reiterate TARA's point about the definition.

The Convener: It is the bit about travel that I am looking for. Jayne Baxter has handed me the directives, but I am looking for the one that deals with the point about taking the emphasis away

from travel. It is still important, but it is not the be-all and end-all, and that is our concern.

Bronagh Andrew: It is about that definition of travel. Suppose that a woman who has been exploited and who meets all the tests was moved from Pollokshaws to Possilpark in Glasgow. Would the offence as it stands capture that? Would that woman meet the test for travel?

We know that trafficking is a process that involves several stages. My concern is that some perpetrators might not be caught by the offence, because somebody is responsible for recruitment, and somebody else is responsible for transportation, and somebody else in the country of origin is responsible for the means element, the coercion and the abuse. The individual could then be sold on to somebody who is exploiting, and it is not clear whether the offence would capture all the perpetrators involved in the person's journey of being trafficked and exploited.

The Convener: There is a lot about travel in that section. Section 1(1)(b) refers to a person who

“arranges or facilitates that travel with a view to the other person being exploited.”

Section 1(2) states:

“It is irrelevant whether the other person consents to any part of the arrangement or facilitation of the travel.”

There is huge emphasis on that. We understand that it is important, but there may be another way of helping us to do it.

Nicola Merrin: You mentioned the irrelevance of consent. As others have pointed out, it relates only to the travel element, but it should relate to all elements of the definition—the means and the exploitation as well.

The Convener: We will get the quotation from the directive at some point. We are still rummaging around for it.

Lisa Gamble: I want to pick up on Bronagh Andrew's point about the importance of ensuring that the bill adequately covers internal trafficking. One of the key areas for Barnardo's is child sexual exploitation. We run services for child sexual exploitation in Scotland, and you came to visit safer choices. In the past year, we have dealt with two cases that had involved international trafficking from outwith the UK, where the children had come via the north-east of England, but in 10 cases there had been internal trafficking, with children being trafficked across Scotland, whether that was from Glasgow to Aberdeen or to Fife. It is important to be mindful of that as the bill proceeds.

The Convener: Yes. I think that the word “travel” is limiting us.

Elaine Murray: Several of the written submissions refer to the need to decriminalise the sale of sex and criminalise the purchase of sex, and there is a suggestion that that could be part of the bill. Would that be better dealt with outwith the bill, as a separate piece of legislation of the type that Rhoda Grant suggested, or could it be covered by the long title under the phrase

“provision to reduce activity related to offences”?

Gordon Macdonald: It is included in the Northern Ireland human trafficking act, so I am sure that it could be covered in the bill if there is the political will for that. The issue is whether there is the political will to consider it as part of the bill. We encourage the committee to consider supporting an amendment at stage 2 in that area. If there is a feeling that more information is needed on the issue, a separate piece of legislation could be looked at, but we have been round the houses on it. We have had a proposal for a bill before. There is no reason why it could not be included in the Human Trafficking and Exploitation (Scotland) Bill.

The Convener: If we proceeded with an amendment at stage 2, there would have to be substantial further evidence, because it would expand the scope of the bill to catch all purchase of sex, taking it beyond human trafficking. Do you agree that we would require to take further evidence?

Gordon Macdonald: It would cover all purchase of sex, but the reason for it would primarily be to deal with the problem of human trafficking.

The Convener: Yes, but I suspect that, because it would be all-encompassing, substantial evidence would have to be taken. I am not ruling it out. I am just making the point that that might be the case. Do you concur?

Gordon Macdonald: Yes. The committee could, of course, consider appointing a rapporteur to go away and look at the issue and come back with some information.

The Convener: We will leave the committee to think about that, but we might not want to do that on such a substantial matter.

Who has the definition that I have been looking for? Lisa Gamble does—that is excellent

Lisa Gamble: The focus is more on control. It is taken from article 2 of the EU trafficking directive, which states:

“The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud”—

The Convener: I kind of like that definition better. I saw it last night, but I could not find it this morning. I think that the control element would take in domestic trafficking across parts of the UK.

Bronagh Andrew: I want to comment on the point that Gordon Macdonald raised. The Council of Europe convention and the EU directive provide for member states to take actions to prevent human trafficking. If we are applying a supply-and-demand model, I think that the links between the sex industry and women being trafficked to meet demands are clear, but within articles under both the directive and the convention, member states can consider the criminalisation of the use of a victim of trafficking. We need to consider that.

The Convener: I am not disputing the point about supply and demand. I am just looking at the matter from the point of view of the evidence that is required.

Elaine Murray: Gordon Macdonald mentioned the Northern Ireland human trafficking bill. Was the provision in that bill there from the beginning—from the first draft?

Gordon Macdonald: Yes. There was some debate about the provision in Northern Ireland, but when it came down to it, the vast bulk of the parties supported it, including Sinn Féin.

The Convener: Thank you for that. Jenny Marra is next, to be followed by John Finnie and Roderick Campbell. I should also say that Gil Paterson has joined us; it was a long time ago, but I forgot to mention it.

Jenny Marra: I want to ask three specific questions, if the convener will allow me that. The first goes back to the definition of a child. I want to ask a legal question on that. We have been told this morning that we do not have the presumption of age. Can the witnesses say whether we would, if the bill was to proceed without that, breach the Council of Europe recommendations or the EU directive?

The Convener: Just put your three questions, and then we can let the witnesses discuss them.

Jenny Marra: Okay.

My second question is the same as the first but relates to the non-prosecution element of the bill. If we are to proceed, as the bill states, just with the Lord Advocate's guidelines, will we fall short of the EU directive on or the Council of Europe recommendations on protection of victims?

Thirdly, would we be better with a rewritten definition of the crime of trafficking that is more robust and all-encompassing and that would therefore include the means, too?

10:45

The Convener: I think that some of those questions have been glancingly touched on. Witnesses can address all three, if they like—or not, as the case may be.

Jenny Marra: I know that the questions have been touched on, but I am looking for full legal clarification on them.

The Convener: We are going back to them, Jenny.

Chloe Swift: I am not sure that I can give you legal counsel, but article 13 of the EU directive states clearly that

"Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection".

Similarly, article 8 talks about

"Non-prosecution or non-application of penalties to the victim".

The EU directive is legally binding, so it would be down to the lawyers to interpret exactly what the articles mean. Our perspective is that the presumption of age should be included in the bill.

The Convener: Does anyone else want to comment?

Graham O'Neill: I echo what Chloe Swift said about the presumption of age, particularly in relation to the direct effect of the EU human trafficking directive. I do not know whether omission in the bill of the presumption of age is tenable, given that it is a clear requirement in the EU human trafficking directive, as well as the Council of Europe convention. It is something that I—and, I am sure, many others—would hope and expect would be resolved in the bill.

Jenny Marra: Can I clarify that, Graham? Are you saying that, given the omission of the presumption of age, the bill falls short of the EU directive?

Graham O'Neill: If there is no other statutory provision in Scotland for that, that is a legitimate question. I am stopping short of absolutely clarifying that, but what I am saying is that if there is no other statutory provision for survivors of trafficking—that is, children under 18—for presumption of age, then the answer is yes.

The Convener: The same question was asked about prosecution and statutory defence. If that is not in the bill, is that a breach of the EU directive? Who wants to have a bash?

Bronagh Andrew: I do not know whether that would be a breach of the directive because the language is quite careful; it is along the lines that

member states “can consider” or “are entitled to consider”. I do not know that it is a breach of our European obligations not to legislate for that, but it is something that we need to legislate for.

The Convener: I do not want to pre-empt the committee but I suspect that, in terms of the statutory defence, the committee would be quite sympathetic to it. We should bear it in mind that the Faculty of Advocates and the Law Society of Scotland have also come out in favour of that, so we are already pushing at an open door.

Nicola Merrin: As Bronagh Andrew said, international law says something about putting in place provisions for when this happens. The Lord Advocate’s guidance would do that, but our position is that that is already in place. There are stronger provisions in other legislation. We would like to see both.

The Convener: We go back to the definition of the crime of trafficking, which we have glanced at a little.

Gordon Macdonald: I have one other point about the definition. The definition in the bill does not include forced begging or criminal activities, which are included in the EU directive.

The Convener: There is a catch-all, is there not?

Gordon Macdonald: There may well be a catch-all. However, the bill talks about the provision of services and the acquisition of benefits but not about forced begging and criminal activities, which are specifically mentioned in the EU directive.

The Convener: I am wondering whether there is a catch-all. There is usually some way round it, such as “and other, connected activities”. Is there anything like that?

Nicola Merrin: As Gordon Macdonald indicated, section 3(7) says:

“The person is subjected to force, threats or deception designed to induce the person—

(a) to provide services”

or to provide someone else with benefits. That would cover—

The Convener: It might be useful to have a catch-all.

Nicola Merrin: We would like forced begging, forced marriage and forced criminal activity to be specified.

Chloe Swift: With regard to definitions, article 2 of the EU directive ensures that the “means” that are set out in the second limb of the directive’s definition reflect children’s particular vulnerabilities, and makes it clear that, where a

child is a victim of trafficking, no possible consent to exploitation should ever be considered legally valid. That is just a point of clarification if we are moving away from the emphasis on travel.

John Finnie: We have heard about the hierarchy of interests with regard to immigration authorities and criminal justice authorities, and I certainly favour the rights-based approach for individuals that Chloe Swift has articulated.

I have a specific question for Graham O’Neill and Christopher Gaul. The Scottish Refugee Council submission talks about some of the powers that might come out of the work of the Smith commission, including significantly

“the right to grant trafficking survivors temporary leave to remain for specified purposes”.

Will the bill remove some of the tensions between the different layers of interest? To what extent will the additional powers for Scottish ministers help? Everyone acknowledges that this is an international issue that requires co-operation. Will you comment on the proposal?

Graham O’Neill: That is a very good question. We have been frustrated by the conflation of immigration and trafficking and—as I said at the outset—we welcome the fact that Scotland is taking responsibility in legislation for survivor assistance and care. We think that a precondition for that is survivor identification, and that a logical conclusion of Scotland’s more holistic approach to what happens to survivors is that, because Scottish ministers are taking responsibility for identification, assistance and support, they should also have the particular powers to enable survivors to have the fullest possible recovery. After all, they, Scottish institutions and Scottish third sector organisations are closest to the survivor, know what the survivor needs and have the survivor’s trust and confidence, so it would be a real shame—indeed, it would be quite perverse—if after implementation of the bill the Home Office were still able to come in and remove that person from the country. We want to avoid that, because it does not constitute a survivor-centred approach. Instead, it means that immigration in practice intrudes in a concrete way on an individual’s ability to survive, and we do not think that such an approach is in the interests of anyone, including the UK authorities.

The logical conclusion of taking a fully survivor-centred approach to this crime and human rights violation is what is contained in the suggestion in the Smith commission report; to their credit, the parties agreed that the UK and Scottish Governments should give additional consideration to the question whether through executive devolution Scottish ministers should, instead of some policy arrangement, have the actual power

to grant trafficking survivors temporary leave to remain for specified purposes. That would comply with international obligations to enable such individuals to recover fully and would, where applicable, allow them to be witnesses in criminal proceedings.

As you would hope and expect, we are taking a close interest in the matter and want to work with the Scottish and UK Governments to encourage that process. Given that the bill is going through Parliament, we invite, as we say in our submission, the committee to take an interest in the matter. We would be very happy to work with you on developing it further.

Christopher Gaul: Convener—

The Convener: Wait a minute, Mr Gaul. I have Nicola Merrin, Bronagh Andrew and then you. I have a list.

John Finnie: I imagine that Mr Gaul was trying to respond to my question.

The Convener: I am sorry, John. Did you name Mr Gaul?

John Finnie: Yes.

The Convener: I missed that.

Christopher Gaul: I agree with Graham O'Neill and the Scottish Refugee Council.

On-going police investigations are severely hampered when Home Office involvement removes someone from the country. That ties in with our comments on what is needed. If the survivor chooses to go home—there are instances in which they are desperate to go home as quickly as possible—that needs to happen of their own volition. It needs to be because they wish to do so, and there needs to be support and a framework for on-going support, regardless of whether they are in this country or not. That will also act as a bridge for the police investigations, should the police wish to remain in contact with a person who has returned home.

The lack of a framework in general is quite startling. We have counted at least 10 different mechanisms in different projects or programmes through which people return home. That is not helpful to them, us or Police Scotland.

The Convener: Is the problem the national referral mechanism? I think that it is under review, but it is UK wide. Could we do with something that draws together everything in Scotland, but not in a silo? Obviously, there should be sharing, because people move about. Is the national referral mechanism part of the problem?

Christopher Gaul: Jeremy Oppenheim recently produced his report on the national referral mechanism. He has proposed that there be a

panel rather than responsibility lying either with the United Kingdom Human Trafficking Centre or with UK Visas and Immigration. The focus of that panel would be—as Graham O'Neill mentioned—very different because it would take a victim-centred approach. It would not be about immigration violation. I think that the Human Trafficking Foundation, Barnardo's in England and ECPAT UK recently produced worrying correspondence from UKVI that had rejected a person's application as a victim of human trafficking. The culture in which people operate and the lens through which they see dictate whether they think that somebody has had their human rights violated and is a victim.

The Convener: Yes, but as I read it, the bill's aim is to ensure that people receive the appropriate protection and support. A lot of that support will be very local in Scotland, from councils and so on. We heard from Catriona MacSween the different interpretations of what is to be provided. Would it be more helpful, if we are looking for support very early before people get into the criminal justice system, speak to the police or whatever, to have provision here in Scotland that is better, that is co-ordinated and that is, as far as possible, universal?

Christopher Gaul: Yes, I agree.

The Convener: How would you do that? The national referral mechanism, which has been mentioned, seems lumpy—that is a word of mine, but you know what I mean by it. Nicola Merrin, you tell me about that.

Nicola Merrin: Oh, dear.

The Convener: Well then, don't. [*Laughter.*]

Nicola Merrin: I will; do not worry.

It has been raised time and again in various reports that there are problems with the national referral mechanism. Obviously, it is a reserved UK issue; it is being reviewed at the moment. In the bill and the strategy, we can ensure that support is provided before, and is separate from, the NRM process.

The Convener: That would to some extent duplicate the process.

Nicola Merrin: No—it would be tied in. The issue just now for us is the funding. A person is a suspected victim of trafficking until we decide that they are a victim of trafficking. I think that there is flexibility at the moment—TARA will explain that—but we are looking for more than flexibility. We are looking for the provision of support before the person decides that they may wish—

The Convener: I understand that, but what I am getting at is where we have as far as possible a comprehensive note of people who have been identified or are suspected of being victims of

trafficking, and there is support in place, we should ensure that, in practical terms, people get the same support throughout Scotland and that we know who and where they are. There is all the talk about strategies and so on. I do not know whether that is happening now. That is what I am asking. I am looking at you, Bronagh Andrew. [*Laughter.*]

Bronagh Andrew: Consideration of the national referral mechanism as it stands, as it has been reviewed and the recommendations made to take it forward would be an evidence session in its own right, to be honest.

For a long time, TARA has been very supportive of a Scottish national referral mechanism. We gave evidence on that to the Equal Opportunities Committee back in 2010. The system as it stands—bear in mind that there have been recommendations for significant change—is too focused on immigration and credibility, it does not take a victim-centred approach as such, and it is an interpretation of what the Organization for Security and Co-operation in Europe has suggested a national referral mechanism should be.

The NRM should be about identification and protection, but the system has become one that is about testing credibility, about data collection and about a lot of other things. It is not about the individual who has potentially been trafficked and building a wall of support and protection around them so that they feel safe and able to support investigations and prosecutions.

I can provide you with further information about the national referral mechanism.

11:00

The Convener: You referred to the Equal Opportunities Committee. We will get the Scottish Parliament information centre to provide us with material on that.

Lisa Gamble: Support provisions for people who are under 18 should be provided in the child protection system and the child should get access to a full assessment for future support, in line with the getting it right for every child principles. Our concern about the NRM is that decisions are probably best made by a person who knows the child. If not enough information goes into an NRM form, people are making decisions that are not based on the full information about the child, which will have quite a big impact on the outcomes for the child. Perhaps Catriona MacSween could pick up on the NRM and children.

Catriona MacSween: I agree. The NRM does not offer children much, to be honest. Children do not consent to enter the process. There are often multi-agency meetings of professionals who know

the child, are experienced in doing assessments and who are saying that they think that there are enough indicators to suggest that a child has been trafficked, but for our group of children, cases are sent to UK Visas and Immigration to make that decision. Sometimes the decision that comes back says that it does not think that the child has been trafficked—someone in the Home Office will say that the child has not been trafficked when we have many professionals who are saying that they think that the child has been trafficked. That has a detrimental effect because local authorities sometimes then remove the safeguarding measures that are in place for that child.

The NRM for a child is more about data collection; it does not offer much. I do not think that any one of the young people whom I have worked with has received leave to remain from having been identified as a trafficking victim. Decisions would be better made in child protection teams.

Graham O'Neill: The NRM was set up, reactively, by the UK Government in response to its obligations under the Council of Europe Convention on Action against Trafficking in Human Beings; it was not set up with the needs of trafficked individuals as the primary interest. I realise that that is quite a strange thing to say, but numerous reports have found that not only does the NRM not deliver for adults but, in particular, it does not deliver for children—indeed, there is nothing for children in it.

Jeremy Oppenheim's review for the Home Secretary, which was published last November, made some very good points, although other bits need to be worked through. The good points include the principle that the people who are closest to the individual—in Scotland, those would be your professionals, statutory bodies and bodies such as TARA—should be the ones who make decisions. There should be a multi-agency approach, based on the application of child protection assessment principles. Those should also be applied to adults, so that there is a shared decision about what is best for the individual, with the individual involved in the decision, rather than a form being filled in and returned to the UK human trafficking centre and the Home Office, after which people do not really hear about it.

The NRM has no discernable impact on an individual's life other than the most serious one, which is the decision whether to accept that someone has been trafficked.

In practice, the system has not been set up with the individual's needs in mind, and the bill gives us a real opportunity to think about how to design a better system. Of course, one wants the system to be consistent with that in the rest of the UK, because of the international crime dimension, but

nonetheless one should never compromise on it. We should ensure that we have multi-agency, assessment-based decision making, through which those who know the survivor best are able to put in place the assistance package that will enable them to recover as much as possible. Understandably, the Government did not put that in the bill, because its introduction coincided with the publication of Jeremy Oppenheim's review. However, that review has been published and the Home Secretary has accepted its recommendations in principle. Discussions are going on between UK Government and Scottish Government officials and ministers about how the identification question could be answered through the bill and other legislation. The committee will want to take an interest in that, particularly when it speaks to the minister.

The Convener: We will.

I call Chloe Swift next, then Bronagh Andrew and then Christopher Gaul.

Chloe Swift: Some of the complexities—

The Convener: Rod Campbell wants in. I will let him in immediately after Christopher Gaul, no matter who puts their finger in the air—I am talking about Gil Paterson.

Chloe Swift: Shall I continue?

The Convener: Yes, please. I have to keep them happy.

Chloe Swift: The complexities that have just been described around the table are one of the best arguments for putting the guardianship service on a statutory footing. The service can help children navigate the challenges and complexities of the NRM processes, some of the complex child protection procedures and, in some cases, asylum and immigration issues.

We have called for the bill to make provision for an independent guardian, to protect children's rights, advocate for their best interests and get them the help that they need to realise their rights. Catriona MacSween might want to pick up on some of those points.

The Convener: She is not on my list. Roddy Campbell has to get in before he bursts.

Chloe Swift: Well, Catriona MacSween agrees with me.

We have been calling for a provision that highlights the need for public bodies to take into account the best interests of the trafficked, separated child, to ensure that some of the particular vulnerabilities of children are taken into account. The existing child protection system and legislation should be brought into line with the best interests duty.

Bronagh Andrew: Children experience similar issues with the NRM as adults do. As a very experienced first responder, we are still told that individuals whom we have assessed as having been trafficked are not considered to be trafficked for the purposes of the NRM. That is challenging: it impacts on the ability of the women concerned to recover and to continue to engage. Sometimes, there is too much of a focus on decisions that come from the national referral mechanism. In effect, the NRM is a policy or a process; it does not have legal status at the moment.

I echo colleagues in saying that it is a very complex process. Margaret Mitchell and Christian Allard met a couple of the women we support and when they asked them about the NRM, those women did not really understand what they were being asked about. It is particularly complex for people who also have an on-going asylum claim. It is just another thing from the Home Office that they have to sign.

We sometimes query informed consent and adults' capacity to consent to enter into the NRM. That can have an impact on what they understand about their rights. For example, any information that they give can have an effect on further immigration claims.

Christopher Gaul: I totally agree with TARA. We say in our submission that a Scottish NRM would have an impact on other things. For example, the current NRM does not record the individual's pre-trafficking experience or socioeconomic context. That information is vital if we are looking to stop trafficking. You want the bill to be progressive and to lead the way, and Scotland could really take the lead on the issue.

The bill could also have an impact on data sharing and Police Scotland. We would welcome a mechanism for sharing data between organisations such as ours and the TARA service, which work with the victims for a substantial period of time and probably retain a pool of information that could be vital. Again, such a mechanism would need to be worked out to ensure that the victim, rather than the information that comes from them, is the focus.

Roderick Campbell: We have been considering alternatives to the NRM with regard to the bill's provisions at section 8(4) and section 8(5), on the

"Duty to secure support and assistance".

As the Faculty of Advocates—of which I am a member; I declare an interest in that respect—mentions in its submission, the bill does not make provision for a survivors service. Abolition Scotland's submission also suggests that section 8 might be strengthened by further legislative provision.

The Faculty of Advocates suggests that

“minimum standards for support and assistance, whether by way of primary legislation ... or ... by statutory Code of Practice”

might improve matters. What are your views on the provisions in the bill as drafted, and to what extent would you favour those being strengthened by such mechanisms?

Graham O'Neill: It was rightly recognised that the meaning of “support and assistance” in the Modern Slavery Bill for England and Wales needed clarification, and that has been provided through guidance.

Section 8 of the Human Trafficking and Exploitation (Scotland) Bill absolutely needs to be clarified, either through a statutory code of practice or through guidance, with regard to key questions on what support and assistance actually mean and what criteria will be applied to access to support and assistance. That leads on to questions about needs assessment and how that will be worked through.

As Bronagh Andrew mentioned, there are also questions around informed consent. We know that, almost by definition, the impact of trafficking and exploitation is that they traumatise individuals. There is a question around the timeline for getting support, which leads to the question of criteria. If a person is deciding whether to give informed consent, they need support—in almost all cases, I would imagine—before they can do that. We need to address that if we are designing the new system around the needs of and reality for the survivor.

There needs to be clarification through a statutory code of practice or through guidance on how the duty in section 8 will work. It is very good that the Scottish Government has put in primary legislation the principle of giving support and assistance to individuals and is making that a duty, but we need to clarify how that will work in practice.

Bronagh Andrew: To pick up on some of Graham O'Neill's points, we were really pleased to see the basic fundamentals of support included in the Human Trafficking and Exploitation (Scotland) Bill, which goes further than Westminster's Modern Slavery Bill. We think that the duty should be underpinned by statutory guidance on minimum standards for that support.

We also think that all those who support individuals or investigate cases of human trafficking should have to undergo accredited training. I do not know whether that would be better placed in the bill or in the strategy, but I think that some governance is needed around the support that is provided to children and adults who have been trafficked.

I also want to flag up an issue with the support provision in the bill. The

“Duty to secure support and assistance”

in section 8 is very much about victims of human trafficking; it does not cover those who have been held in slavery or servitude or who have been forced into compulsory labour. I do not know whether that is an oversight: people who have been identified as trafficked can access that support, but it is not clear whether those who have been identified as being held in slavery or servitude would also be entitled to access it.

The Convener: I think that that comes under section 3, on

“Exploitation for purposes of offence of human trafficking”, although I may be wrong about that.

Bronagh Andrew: I am not a lawyer, so I am not sure how the sections all work together.

The Convener: Section 4 also deals with that area. The bill spreads the net pretty wide in terms of what constitutes—

Bronagh Andrew: But section 8 refers to human trafficking; it does not mention other forms of exploitation.

The Convener: We will have to think about that. I think that section 4 probably secures that support, but I will have a look.

Nicola Merrin: Following on from that point, we agree with what has been said about section 8(1), which refers to support when

“an adult is a victim of an offence of human trafficking”.

We believe that, instead of focusing on time periods—which I know are linked to the NRM—support should be provided from the moment that someone is identified as a possible victim of human trafficking. There is too much emphasis on credibility. I imagine that if someone said to Victim Support Scotland that they were a victim of rape, theft or whatever, we would never say to them, “You have to prove it before we provide you with the service.”

Another issue is that victims of human trafficking are so vulnerable that they need time to recognise and accept what has happened to them. Often that can happen only through work with, say, support workers, and they need time to recover—

The Convener: They might not even think that they have been trafficked. They have no idea what has happened to them—they think that they had friends.

11:15

Nicola Merrin: Exactly. Moreover, we provide information about the criminal justice system to

other mainstream victims to allow them to make an informed decision about whether they want to report matters to the police, and I think that it is unfair for victims of human trafficking to be dealt with on a different level and almost forced to go through that process. We must also ensure that any individual needs assessment comes back to what the victim needs, rather than what we consider they should be provided with.

Finally, with regard to the support and assistance provision in section 8(4), I am not sure but I think that the submission by NHS Greater Glasgow and Clyde psychological trauma services highlights the reference in 8(4)(e) to “counselling”. This will make me sound quite pedantic, but I note that counselling is a specific psychological treatment, and I think that the reference should be widened to “psychological treatment”, “emotional support” or something like that.

The Convener: I note that section 8(4) says that the support and assistance referred to “is not limited to” the various things that are listed. [*Interruption.*] That was a very aggressive wave, Ms Andrew. I can see you. [*Laughter.*]

Bronagh Andrew: A consultant clinical psychologist who is co-located with our team three days a week has made her own submission to the committee, but we certainly recommend that the bill specifically include a reference to access to psychological assessment and treatment, if that is required. Many survivors of human trafficking have post-traumatic stress disorder and other mental health issues and I know that, in her submission, our psychologist, Dr Sharon Doherty, has said that counselling is not always effective and in fact could be harmful.

The Convener: Section 8(4)(c), which refers to “medical advice and treatment”, could be extended to include the access to psychological assessment that you mentioned.

Bronagh Andrew: I think that a specific reference would be helpful.

Gordon Macdonald: We echo the points that have been made about counselling and consistent standards across the country. Another area that could do with a wee bit more clarity is accommodation and, in particular, the need for accommodation to be appropriate and secure. I recently had a conversation with someone in the police, who said that there is a shortage of such accommodation in Scotland, particularly for young people and children.

Roderick Campbell: What are the panel’s views on the overlap between the sections that we are discussing and the trafficking strategy? Indeed, what are your general views on what should be in the strategy?

Lisa Gamble: I do not mean to be contrary, but Barnardo’s Scotland would really like provision with regard to children to be outlined in the bill, not in the strategy.

The Convener: That point has certainly been made—and taken.

Chloe Swift: We have made it very clear that we want provision with regard to children to be set out in the bill. As for the strategy, we would like it to take a rights-based approach to children and adults, and we want it to ensure that there is cohesion between the existing processes and that children’s particular vulnerabilities are taken into account in the existing child protection procedures. We need a rights-based approach that considers the relevant articles of the UNCRC.

The Convener: I call Nicola Merrin. [*Interruption.*] Do not worry—we are not counting the number of times you have spoken. Yes, we are. No, we’re not.

Nicola Merrin: We feel that the strategy should contain two particular elements. First, it should raise the awareness of the public and professionals. A lot of good work has already happened on that through, for example, Police Scotland, and we believe that such an approach would help with the identification of victims.

What is most important is how people deal with the situation when they come across someone who has been victimised and trafficked. In our training for professionals, we want to focus on lawyers, who might be in a position to identify people who have been trafficked and who are going through the prosecution system—that is really important. The most fundamental aspect is support for the victim and ensuring that all agencies work together. There has been talk of compensation for victims of crime, which is an issue that is often forgotten about because it is not seen to be as important as the provision of support. The Legal Services Agency provides support on compensation, but so does Victim Support Scotland.

It is really important that everyone works together, not just the specialist agencies. The strategy would be the best place to lay that out.

Dr Cairns: For the past eight years or so, Soroptimist International has been raising awareness of human trafficking throughout our communities. We encourage the public to attend the open meetings that are held by our clubs throughout Scotland so that they can hear about modern-day slavery.

Wearing my old hat as a retired general practitioner, I remember that when foreign nationals came into our GP surgery with a translator, as they often did, I was always a bit

suspicious because I could not have a one-to-one conversation with the patient. I recently talked to one of my younger colleagues who still practises and has learned a lot about modern-day slavery from me and other soroptimists. She is now really switched on to the situation of young women being brought into the surgery with translators and is suspicious when she cannot communicate with the patient. Not only the police and social workers but healthcare workers need to know about trafficking and how to handle it.

Christopher Gaul: I totally agree with Nicola Merrin about the training of all front-line professionals, including those in the health service—Dr Cairns rightly raised that point—professionals across local authorities, such as those in environmental health, and professionals in the fire service—I am thinking of people who go into various buildings and businesses. They are the ones who are going to see people and who need to learn to think about things laterally and not just look at the jobs that they are doing. We totally agree that the strategy should focus heavily on training.

Bronagh Andrew: We want to see some of the prevention work reflected in the strategy. I am talking about not just prevention work at the local and national levels but work through our international obligations to prevent trafficking, prevent people from being vulnerable to it in the first place and, picking up on what Chris Gaul said about safe returns, prevent revictimisation on return. We are keen to see a robust prevention aspect in the strategy.

Gordon Macdonald: There is an opportunity in the strategy to go into more detail about support for victims, particularly in relation to economic empowerment and basic literacy. I draw the committee's attention to the International Justice Mission guidance that we attached to our written submission, as another issue that could be looked at is how statutory agencies might work with civil society in helping victims, not just in Scotland but in the home countries that victims go back to. For example, the Scottish Government could look at how it could support such people, particularly through overseas aid. Support for improving justice systems could also be looked at. As Andrew Bevan, who is in the public gallery, has said, there are 4 billion people in the world who do not have access to proper justice systems, which is a part of the problem that is often neglected.

Graham O'Neill: I want to echo and maybe develop the really important point that Chloe Swift made about the rights-based approach. Part of the thinking behind Jenny Marra's proposed member's bill was the principle of involving survivors in the development of a strategic approach. The strategy will be a vehicle for long-term change, and there

will be a report to the Parliament on it every three years, so the rights-based approach must be at the heart of what the bill seeks. It might not be on the face of the bill, but it should certainly be one of the starting points for the development of the strategy. Involving the people who are affected should be a principle, but there are also strong practical reasons for involving such people, given the insights that individuals who survive trafficked exploitation unfortunately have.

The Convener: Do you have a comment, Roderick?

Roderick Campbell: I am finished.

The Convener: I was hesitant to move on in case it prevented you from saying more.

Gil Paterson (Clydebank and Milngavie) (SNP): I apologise to everyone for being late. What we are discussing is very important, but the Public Petitions Committee was discussing a petition on a hospice in my constituency and the petitioners needed my help. I do not know whether I gave them any help, right enough, but that is where I was.

The Convener: We will find out when we read the *Official Report*.

Gil Paterson: Yes. I particularly apologise to TARA, which looked after us so well when we visited it in Glasgow.

My question—I hope that it was not asked before I arrived—is about the UK commissioner. The matter seems to be reserved. What are people's opinions on that in the context of the bill?

The Convener: Nobody else has dealt with that.

Graham O'Neill: It is welcome that we will have a UK commissioner to address this human rights violation. The Scottish Refugee Council provided submissions to the Justice Committee at the end of last year in the context of the legislative consent memorandum process in relation to the UK commissioner. There is a serious question about whether the provisions in the English and Welsh legislation are adequate to safeguard Scottish interests, given that the vast majority of the competencies and powers that relate to the wellbeing of survivors and tackling the crime are devolved.

Reasonable consultative mechanisms are in place for the UK commissioner and the Home Secretary to consult Scottish ministers but, from what I can see in the legislation, they do not get at the formulation of policy or priorities. That is when we would want to have autonomy or a degree of discretion in a Scotland commission as part of the UK commission, as opposed to nearer the end of the process, when priorities have nearly been finalised.

We made submissions on that point at the end of last year and we definitely think that the committee needs at least to consider it, particularly when the Scottish ministers give evidence on whether the provisions in the English and Welsh legislation are adequate to safeguard Scottish interests.

The Convener: I do not want people to repeat things, because we are running short of time.

Bronagh Andrew: We would like the anti-slavery commissioner's obligations towards Scotland to be explicitly mentioned in the legislation, to ensure that he understands that we have a unique legal system and that different policies and processes apply, and to reflect that so that Scotland does not simply become an addition to his more general work. We are keen for that to be made explicit in the legislation.

The Convener: Christina McKelvie is nodding.

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): I certainly support that, convener. Thank you for allowing me to attend your committee today. I have a personal interest and a political interest in the matter.

When we had the EU's anti-trafficking co-ordinator in front of the European and External Relations Committee, she was clear about the responsibility of member states, and of regions in those member states, especially when they have different legal set-ups and devolved issues around care, rehabilitation and support and health services. My nod was certainly affirmative.

The Convener: I thought that it was an affirmative nod. Jayne Baxter is next—she has been patient.

Jayne Baxter: It has been fascinating to hear the expert testimony about how we can make the bill better.

I visited the Scottish guardianship service and I was extremely impressed by what I saw and heard that day. What would happen for trafficked children if we did not develop and get into statute the services that are provided there? I ask Catriona MacSween to speculate about the consequences of not doing the things that the service does.

Catriona MacSween: The particular vulnerabilities of children who have been trafficked have been raised several times today. Having a guardianship service and a guardian working with the child helps them to understand and participate in the processes that they find themselves in.

Guardians can hold people to account. The fact that a child is being looked after by a local authority does not mean that they are accessing all their rights and entitlements or that the

appropriate safeguards are being put in place. A guardian looks out for the child's best interests in ensuring that all their needs are met.

The Convener: The job is in the name—guardian.

Catriona MacSween: It is. Children who have been trafficked are still being put into their own tenancy when they are 16. That is clearly not suitable and is not an appropriate safeguard, but there is a lack of resources, and because they are over 16, they will not be put in a children's unit. A lot of work has still to be done on providing support and assistance that is appropriate for children.

Guardians are advocates, but we also play a huge part in educating young people and helping them to understand the processes. All the children we have worked with so far—bar one, I think—who have been trafficked have also been claiming asylum. About 45 per cent of the young people we work with undergo an age assessment, and some have been through the criminal justice process. We are talking about a child going through multiple processes and having to instruct lawyers, and a guardian is there to be by their side.

The process is complex and time intensive. The number of hours and the amount of support that a guardian puts into working with a child are way above what any social worker would be able to provide. A lot of children would slip through the net if guardians were not involved.

The Convener: I am conscious that we have had quite a good whack at this, so I thank our witnesses for their written and oral evidence, which has all been helpful. We will have more evidence sessions, and we will then consider our draft stage 1 report after the Easter recess, when the witnesses will be able to see the views that we have come to. I also thank the witnesses for hosting members' visits, which were useful.

11:31

Meeting suspended.

11:44

On resuming—

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

The Convener: Item 3 is our final evidence-taking session at stage 1 of the Prisoners (Control of Release) (Scotland) Bill. We have the Cabinet Secretary for Justice back to respond to issues raised in the letter of 3 February and in the evidence that we heard in last week's round-table session. I welcome Michael Matheson, Cabinet Secretary for Justice, and Neil Rennick, acting director, justice, at the Scottish Government. We can go straight to questions from members.

Roderick Campbell: Good morning, cabinet secretary. In our evidence session on 24 February, misgivings were expressed about the evidence that the bill will improve public safety and public protection. Can you give the committee any additional evidence or supporting facts in relation to those concerns?

The Cabinet Secretary for Justice (Michael Matheson): Are you asking about the approach of ending automatic early release?

Roderick Campbell: Yes.

Michael Matheson: There is evidence that the committee and Mr Campbell might find useful. In 2012-13, 476 prisoners were subject to supervision in the community after parole release and 403 were subject to supervision in the community after non-parole release—they would have had automatic early release. The rate at which non-parole-released prisoners breached their licence conditions was 37 per cent, compared with 5.5 per cent for parole-released prisoners. Someone who has been released automatically is seven times more likely to breach their licence conditions than someone who has been released after the Parole Board for Scotland has made a decision. That is a significant gap, which I think adds significant weight to the reasons why we should end automatic early release.

Roderick Campbell: Thank you for those figures. In your view, the bill will improve public protection. Can you say anything further about the use of extended sentences, which we did not touch on in our most recent session?

Michael Matheson: I have no doubt that ending automatic early release for long-term prisoners will help to improve public protection. A significant number of prisoners who receive a long-term sentence of four years or more already receive an extended sentence, which the court imposes when the sentence is handed down, based on the judgment that those prisoners require a period of

extended community supervision after they have been released from prison. It is entirely down to the courts to determine that, but the number of prisoners who have received extended sentences has increased. I suspect that it would be for judges and sheriffs to determine the extent to which they continued to use those sentences and to what level.

Roderick Campbell: In your view, the bill, together with the continued use of extended sentences, will improve public protection compared with where it is at present.

Michael Matheson: Yes—I believe so. Part of the reason for introducing extended sentences was to allow the courts to impose an extended period of community supervision post someone's release from prison, which would allow them to be supervised and would allow any further measures to be taken once the person moved back into the community, for the purposes of protecting the public.

Roderick Campbell: The second purpose of the bill is rehabilitation of offenders. Can you add anything further on programmes to assist rehabilitation in prison and in the community at large?

Michael Matheson: I know that the committee has had evidence from Colin McConnell, the chief executive of the Scottish Prison Service, who is reviewing the way in which the Prison Service delivers its rehabilitation programmes and courses in the prison estate. There has been a tendency in the past to deliver programmes en bloc and slot prisoners into them. I know that the Prison Service is keen to look at developing programmes that are much more aligned to the assessment of the prisoner's needs to make sure that programmes are more tailored and reflect more what prisoners require. That is a significant undertaking for the Prison Service, but it wants to move in that direction, which it feels would be a more appropriate way to deliver rehabilitation programmes.

We are keen to support the SPS to move in that direction. I have no doubt that the SPS will start to take a much more bespoke approach to how rehabilitation programmes are developed for prisoners in order to improve the delivery of those programmes and the outcomes that can be gained from them.

Roderick Campbell: We heard a lot at last week's evidence session about what were described as option A and option B. It was suggested that your letter to the committee lacks clarity about what your proposals for stage 2 mean.

The Convener: What are options A and B?

Roderick Campbell: I think that option A is some form of supervision at the end of an offender's sentence. Option B is supervision that forms part of the sentence. There seemed to be confusion among witnesses about what your letter meant. Will you clarify that?

Michael Matheson: When I previously appeared before the committee, it was clear that it had concerns about prisoners who do not qualify for early release through parole, who could be released at the end of their custodial sentence without any supervision being in place. I made it clear to the committee that I am open to exploring how that concern could be addressed.

Having considered that, I think that a guaranteed period of supervision would be the most appropriate way to ensure that the prisoner, when they are released, has a period of supervision in the community. That period could be three or six months towards the end of the prisoner's sentence. However, I am open to the committee's views, based on the evidence that it has heard, about the best timeframe to set.

Elaine Murray: As Roddy Campbell suggested, last week's witnesses found it a bit difficult to comment because they had not been able to see precisely what you were suggesting. When might the amendments be available, so that people can see what the proposals are?

Michael Matheson: That will be at stage 2.

Elaine Murray: Clearly. Our problem with the bill is that originally its provisions would have been stage 2 amendments to the Criminal Justice (Scotland) Bill, then they were introduced as a stand-alone bill, and now this bill will be significantly amended at stage 2. That makes it difficult to consult properly on the bill. Would you be amenable to an extension of stage 1 or an extended stage 2, so that the committee can take evidence on the proposals?

Michael Matheson: There are two aspects. First, the general principle of the bill, which is ending automatic early release for long-term prisoners, has not changed, but the timeframe is to change. The timeframes for the different groups were four years for sex offenders and 10 years for those serving long-term sentences for non-sexual crimes. For a consistent approach, that will be changed to four years and four years. If automatic early release for long-term prisoners is to be taken away, it is better to do that consistently. That is quite a straightforward and direct change.

The second aspect is the provision of a guaranteed period of supervision. That reflects the evidence that the committee received at stage 1 and the views that it expressed to me on the issue. I said that I was open to considering the provision of a guaranteed period of supervision. I would

debate whether that is a significant change to the bill, but it is a change that it is appropriate for us to consider.

If the committee recommends in its stage 1 report a particular approach to implementing the guaranteed period of supervision, I will reflect on that and respond to it. If the committee wishes to have further time at stage 2 to take more evidence on that, it can suggest that to me.

Elaine Murray: The problem for some of the witnesses last week was that, if the compulsory post-early-release supervision is to be tagged on at the end of the sentence, rather than being part of the sentence, there could be human rights issues. There is the issue of option A and option B, and there has been no clarity yet on a minimum period of compulsory post-release supervision. Evidence needs to be taken on those changes, as I would argue—certainly after hearing what the witnesses said last week—that they are not insignificant.

Michael Matheson: That is the witnesses' view, but I take a slightly different view, and I am conscious that some of the witnesses do not support the idea of ending automatic early release per se. If the committee wants to consider taking further evidence at stage 2, I am happy for it to pursue that course.

My view is that a period of six or three months at the end of a sentence could be created within the sentence period. I am more than happy to explore that with the committee. It is not for me to say to the committee that it should not take more time at stage 2—that is clearly in the committee's gift. It would be inappropriate for me to say that I do not think that the committee should have sufficient time to do that.

Elaine Murray: Do you appreciate that it is important for us to see what the Government is proposing so that we can take evidence on it? We need to have the substance of the proposed changes.

Michael Matheson: I say with all due respect that you have been around this place for as long as I have and that you know that committees have had to deal with amendments that have been lodged at stage 2 at that point. I have seen even more significant changes made to bills at stage 2 without any extra evidence taking.

If the committee feels that it needs more time to consider the issue, given what we are proposing to do, it can decide on that. It is not for me to direct the committee.

Elaine Murray: I appreciate that such things have happened before—indeed, I have argued against my own Government when it tried to make

changes at stage 2—but it is not ideal for consulting and getting views from stakeholders.

Michael Matheson: That is one point of view. I think that it is very reasonable that I have come along to the committee at stage 1 to respond to concerns. The committee has flagged up concerns about the idea of cold release and indicated that there should be some supervision towards the end of a prisoner's sentence if we end automatic early release.

My response to the committee is that I am prepared to address that, and we are looking at whether the period should be within the existing sentence and how it would be managed. I have said to the committee that, if it feels that the guaranteed period should be a minimum of six or three months, I am content to listen to its views. I am responding to concerns that the committee has flagged up, which it is perfectly reasonable for me to do.

Elaine Murray: I presume that there will be a revised financial memorandum.

Michael Matheson: The effect of any changes will have to be considered. Whether any changes to the financial memorandum will be needed will depend on the approach that we take.

The Convener: One of the issues concerns the use of the word "guaranteed" as opposed to "compulsory". A technical difficulty is that, if someone is to fulfil the entire sentence, to say that you guarantee supervision at the end does not mean that you have to do it, because it is not compulsory. That is the issue that we are finding difficult. It would be more likely that that would have to be included in the timeframe of the sentence itself—for example, a 10-year sentence of nine-and-a-half years plus six months of compulsory supervision. That is the issue for us. Those two words cannot just be interchanged.

Michael Matheson: If the committee was to come back with a view that there should be a compulsory period of community supervision of three or six months towards the end of a sentence, I would be happy to consider that.

The Convener: The problem would arise if you said that someone had completed their sentence, and then there was something compulsory, which would become the sentence as well. That is the difficulty that we are struggling with.

Michael Matheson: That would have to be—

The Convener: I respect that you have taken a different tack from the previous cabinet secretary, as you are entitled to do.

12:00

Michael Matheson: Of course, but it is worth keeping in mind that the bill deals with a select group of prisoners. There are those who will be released on parole prior to the end of their sentence, and they are entitled to apply for such release after they have completed half of their sentence. There are also those who are serving an extended sentence, which will have been imposed when their original sentence was handed down. Finally, we are left with those prisoners who have not qualified for parole but who are coming to the end of their sentence, and the question is whether they are reintegrated into the community on either a compulsory or a guaranteed period of community supervision.

The Convener: That is the issue. As we heard in evidence, people might serve their sentence, come out cold and say, "Well, you're guaranteeing me supervision, but I dinnae want it and I don't have to take it."

I call Christian Allard.

Christian Allard: I have a couple of questions—

The Convener: Have you moved, Christian? You were over there before.

Christian Allard: Indeed, convener.

Cabinet secretary, you have said that you were concerned about people objecting to the ending of automatic early release, but in last week's evidence session, Victim Support Scotland made very clear its support for the ending of automatic early release. Indeed, when I asked all the panel members about this, they highlighted in their answers why they supported it. Can I perhaps push you on this? Who do you think does not support the ending of automatic early release?

Michael Matheson: I am sorry if I have misinterpreted this. The fact is that although everyone might support the ending of automatic early release, they might have different views on how that might be achieved and might not agree with our approach. Of course, they are entitled to their views on the matter.

Christian Allard: With regard to the approach, can you reassure us that we will not end up with a situation such as we had with the Custodial Sentences and Weapons (Scotland) Bill? In that case, the principle was good—and, in this case, everyone agrees that the principle of ending automatic early release is good—but the fact is that the language that is used must be on a sound footing and the Custodial Sentences and Weapons (Scotland) Bill was flawed in its detail. Can you reassure us that there will be no more changes to the scope of the bill and that, at stage

2, we will focus on the detail of what has been debated so far?

Michael Matheson: When the committee publishes its stage 1 report, we will respond to the issues that have been flagged up and then consider how to amend the bill at stage 2. As I said to Elaine Murray, if there are specific aspects of our response that the committee feels it needs more time to consider, it will be up to the committee to decide whether to examine and take more evidence on that.

That said, anything that we take forward has to fit within the terms of the bill. The principle of ending automatic early release is not changing, but we have said that we will bring down the threshold for crimes of a non-sexual nature, and that we are minded to take an approach that reflects the concerns that have been expressed about cold releases and which the committee raised with me when I previously gave evidence on the matter.

The Convener: I should point out that it is up to the committee to ask the Parliamentary Bureau to extend the time for considering the bill. For example, we can decide to produce a stage 1 report to flag up our concerns and then have a longer stage 2 with evidence-taking sessions, but we still have to approach the bureau ourselves. The committee's members include bureau members; they will understand the situation and will be listening to these comments.

Gil Paterson: Cabinet secretary, one of the main criticisms of the bill concerns whether the Scottish Prison Service has the resources to cope with a situation in which more individuals require supervision and whether, if more resources are needed, they will be put in place.

Michael Matheson: The evidence that you received last week from the SPS was that there is a timeline for when the ending of automatic early release will start to impact on prisoner numbers. It will take several years before the change works through into the system.

I do not look at the issue of dealing with prisoner numbers in isolation. It is not the case that all we will do is something on ending automatic early release. We need to do more on short-term sentences, to ensure that they are delivered much more effectively. If we look at the churn of prisoners, we see that when they go through our prison estate on short-term sentences it takes up a massive amount of the service's resource. The evidence also shows that short-term sentences are not very effective in addressing offending behaviour.

We need to look at how we can improve that approach. Measures have been taken over recent years on different types of disposals—for example,

the presumption against sentences of less than three months—that are trying to address some of the issues. Within the Government, I am looking at how we can take some of those measures further, to ensure that we are not spending so much time with a churn of prisoners on short-term sentences, the outcomes of which are very poor. Of course, those who have to go to prison should do so, but we are continuing to send to prison individuals whose needs could be better addressed through community disposals.

We have several years in which to take forward some of those measures before the impact of any change to automatic early release feeds into overall prisoner numbers, and I want to look at prisoner numbers in the whole, rather than look in isolation at the effect of the removal of automatic early release.

Gil Paterson: I am a great supporter of various programmes. I was vice-convenor of the cross-party group in the Scottish Parliament on men's violence against women and children, which looked at world-renowned work that was being done in Peterhead. I anticipate that there are people who are serving sentences for serious sexual offences who may well want to participate in programmes such as the one at Peterhead.

The SPS says that it will be able to cope with whatever is decided, but perhaps that is civil-service speak. Nevertheless, more people might volunteer—the Peterhead programme was voluntary. The right reason for people to volunteer is to address their behaviour, but even if they volunteer for the wrong reasons such programmes are so successful that people benefit from them. Can you assure me that resources will be available in those circumstances? Are you assured of that yourself? Like night follows day, there will be an increase in numbers. It might be minimal, but the Peterhead programme was a good programme and I would not like to see more people volunteer for such programmes but not be able to benefit from them.

Michael Matheson: You raise a good point about access to programmes, which we touched on earlier, and the review work that is being done in the Scottish Prison Service on how it can improve the delivery of its rehabilitation programmes. You referred to the STOP programme at Peterhead, which had a significant reputation for how it worked with sex offenders.

The evidence that you received from the chief executive of the SPS said that it believed that the current uptake of sex offender programmes, which is approximately 50 per cent, would increase to around 67 per cent with the ending of automatic early release. That is why it is important that the review programme of work that is being taken forward includes how the service can ensure that

the way in which it delivers the programme, with increasing demand, is much more tailored to the individual prisoner's needs, in order to address them much more effectively.

There is no doubt that that will be challenging. One part of that is that, within the prison system, a sizeable part of the resource is taken up by dealing with the churn of short-term prisoners, which draws resource away from tackling some of these issues. The challenge is to get that balance right.

Some of the things that we are considering concern ways in which we can much more effectively deal with short-term prisoners and have much more effective programmes for them, while ensuring that the programmes for long-term prisoners have the necessary resources that will enable them to be delivered in a much more individualised way.

A number of things have to be done in the system in order to achieve that. One of the important aspects, which was highlighted by Henry McLeish in his report, is that prisons should be used much more effectively for those for whom prison is the appropriate place to be. The bill, along with other policies that we are taking forward, will help us to achieve that balance much more effectively.

Margaret Mitchell: You mentioned that one of the reasons for changing the proposal in the bill was consistency. However, surely it would be consistent to include short-term sentences and abolish automatic early release for them as well.

Michael Matheson: In this bill, we have set out that we will do that for long-term prisoners—achieving that is within the confines of the bill. You will be aware that the independent prisons commission recommended that, before the ending of automatic early release for short-term prisoners, a range of other measures would need to be taken, such as dealing with the churn of short-term prisoners and providing more in the way of community disposals.

Some of that work has started and some of it needs to be accelerated. That is what I am looking at doing. Once we are in a position to take that forward, I am content for us to consider the issue of ending automatic early release for short-term prisoners, too. However, as was highlighted by the independent prisons commission, we are not yet at that point. When we are, we can revisit the issue of automatic early release for short-term prisoners.

Margaret Mitchell: In the interests of public safety, given that we know that the highest percentage of people who reoffend and end up back in the system are short-term sentence prisoners, would it not be better to end automatic

early release while you are considering proposals, doing the evaluation of whether a community sentence is more appropriate and examining how short-term sentence prisoners are handled just now? Throughcare is not there at the moment. We hear about it all the time, but it is just not evident. Every day, people are released without having the throughcare that is necessary to help them not reoffend.

The Convener: I do not think that that would be competent within the bill, because it will become

“An Act of the Scottish Parliament to end the right of certain long-term prisoners to automatic early release”.

Margaret Mitchell: I understand that. I am suggesting—and it was being suggested by the majority of the round-table panel members last week—that automatic early release of all prisoners should be scrapped, perhaps through the Criminal Justice (Scotland) Bill, and that we should start to get down to providing the rehabilitation programmes for which demand far outweighs supply in prison. We must start getting at the experience of prisoners in order to ensure that prison rehabilitates people. My proposal would deliver the stated aim of protecting the public and provide clarity and transparency in sentencing.

Michael Matheson: There is a range of issues to consider. First, it is wrong to say that there is no throughcare in prisons. There may be areas in which throughcare needs to improve, and I know that work is being progressed to achieve that, but it is simply wrong to make that statement. I have witnessed at first hand the delivery of throughcare in a range of areas. The Scottish Prison Service has committed to employing 42 throughcare officers who have that responsibility. The officers are working with the different agencies to support prisoners in moving from prison into the community.

12:15

These things take time, but it is important to put on record that a significant amount of work is undertaken by our prison officers—sometimes in very difficult circumstances, such as working with prisoners who come from very difficult backgrounds—to deliver throughcare as effectively as possible. That is not always achieved as well as it could be, because the Scottish Prison Service cannot deliver on its own: it needs to work in partnership with other agencies. I am progressing work through the ministerial group on offender reintegration on housing, health and all the other areas that come into play in ensuring that throughcare for prisoners is delivered much more effectively.

The second issue concerns the ending of automatic early release for short-term prisoners.

Notwithstanding the fact that it would not be competent to do that through the bill that is before us today, the independent commission on prisons—as I have mentioned—looked at the issue in detail and recommended a range of measures that would have to be put in place before that aim could be achieved. Some of that work has started and, as I have indicated, I want to look at how we can accelerate it further.

Margaret Mitchell raised the issue of rehabilitating people and protecting the public. There is no doubt that prisons have an important part to play in protecting the public, but we have to look at the evidence base on short-term prison sentences. It shows that, very often, short-term sentences are not effective in tackling offending behaviour. We need to ensure that we take an approach that takes account of that evidence base, which I am keen to do.

I made it very clear when I decided not to go ahead with the plans for Inverclyde prison that we need to ensure that the approach that we take and the model that we use is much more effective in tackling offending behaviour, rather than simply facilitating a revolving door with people going in and out of prison. Expecting a prison, in a short period of time, to be able to turn around an individual's situation completely is entirely unrealistic.

If we want to address those issues, we have to look at the best ways in which we can deliver short-term sentences. Some sentences may be served in prison, while others may be dealt with through a community disposal. We need to ensure that we deliver in a consistent way that produces better outcomes and assists us in reducing reoffending.

Those are big issues in penal policy. It would be far too simplistic to think that, if we end automatic early release for all short-term prisoners and provide just a wee bit more rehabilitation—or even a significantly greater amount—in prisons, we will be able to deal with those things much more effectively. The evidence shows us that that is not the best way to go in dealing with the issue. We need to focus on disposals that are much more effective in tackling offending behaviour. That means using community disposals that deliver on our aims more effectively in a number of ways.

Margaret Mitchell: I ask the cabinet secretary for clarification on one point, because it was not clear in his evidence this morning. Does he intend to lodge an amendment at stage 2 to provide for a minimum period of guaranteed supervision, so that we can see what the Government is proposing?

Michael Matheson: I have listened to the views that committee members have expressed on the matter, and we will reflect on the

recommendations in the committee's stage 1 report. I recognise the concerns that the committee has raised with regard to the idea of cold release, and I am prepared to consider a period of supervision, whether it is guaranteed or compulsory, that must be provided at the end of a sentence.

I am prepared to lodge an amendment in order to achieve that, given the concerns that the committee has raised. The final detail of the proposal will reflect the concerns and issues that the committee raises in its stage 1 report.

The Convener: We are having a debate about guaranteed and compulsory supervision. I presume that if the supervision happens within the sentence period, it is guaranteed and, if it happens post the sentence, it is not only guaranteed but compulsory because the person will have finished their sentence.

Michael Matheson: If the supervision was going to be provided over and above the sentence that was handed down by the courts, it would have to be an extended sentence.

The Convener: That is right. However, it is compulsory if someone is still serving their sentence and it comes in the middle of it. I just wanted to get those two words clear in my head. You are looking at me as though I have not done that, John, but I have.

Alison McInnes: Cabinet secretary, I acknowledge that you have acted in good faith in responding to what the committee said earlier. However, if the period of compulsory supervision is itself part of the sentence rather than subsequent to it, how would you respond to the suggestion that it is only automatic early release by another name? Is it just a rebranding?

Michael Matheson: It is unfair to say that it is a rebranding in that sense. For a long-term prisoner, automatic early release occurs at the two-thirds point of their sentence no matter what the circumstances are. There is currently no control whatsoever over that period, and that will not be the case in the future. We are prepared to give the Parole Board the power to determine what the period of compulsory or guaranteed supervision should be on the basis of the individual's circumstances. Right now, the Parole Board is absolutely powerless to prevent anybody who qualifies for automatic early release from getting it. We propose to give the Parole Board the power to determine that, which will give it more control over what is happening and over the supervision measures that are put in place for an individual. The data that I offered to Roddy Campbell earlier demonstrate the marked difference that that can make to whether a prisoner breaches their supervision. We are extending the Parole Board's

powers so that it will be able to determine what the supervision period should be towards the end of an individual's sentence. We are removing the automatic element of it.

Alison McInnes: That is helpful. During the hypothetical compulsory supervision period, would there be a power of recall?

Michael Matheson: Yes, there would be.

Alison McInnes: Ms Murray pressed you on the financial memorandum, and you said that you might update it. Surely, in considering the issues, you must have considered what the financial resource implications would be. Have you had discussions with, say, Social Work Scotland about your revised proposals?

Michael Matheson: It is worth keeping in mind that we are talking about a very small number of prisoners and that it will be several years into the future before any of this will start to have an impact. There would be a danger in starting to put some limits on it now, thinking about what we may require in five or six years' time. If there is a need for some additional resource going forward, we will be alive to that and will seek to address that. However, we must get the balance right. If there is a need for additional resource—as I say, that will be a number of years ahead—we will look at that, but, as I have mentioned, it is also about the balance in the system. Some of the resource that we have got tied up in dealing with the churn of short-term offenders may be better directed to dealing with issues around the end of a sentence. It may be a matter of reallocating existing resource in order to make the balance more effective.

Jayne Baxter: It is clear from what we have heard this morning, that some of these topics are quite complex and interconnected. Would there be any benefit in waiting to hear from the Scottish sentencing council about the impact of the reforms on sentencing policy?

Michael Matheson: The Scottish sentencing council will be up and running from October or November, and it will develop its own programme of work. I am not entirely sure what the benefit would be of what you suggest, as it would only delay our taking the matter forward. The Government has made it clear that we are ending automatic early release for long-term prisoners. The Scottish sentencing council may want to look at things such as the use of extended sentences and so on, but I am not entirely persuaded that there would be any benefit in delaying the bill to allow the sentencing council to look at the issue. I suspect that many victims would find it difficult to understand why, when there is a bill before Parliament that could end automatic early release, we would decide to delay it for an indeterminate period of time.

Jayne Baxter: I think everyone is agreed that transparency of sentencing is very important. I was trying to clarify whether there is an on-going interaction between the bill and the work of the sentencing council. I would like to hear your views on that.

Michael Matheson: There is not at the moment, on the basis that the Scottish sentencing council is not up and running as yet. The council can play an important part in sentencing policy in the years to come, and it will provide an invaluable insight. Once the council is operating, we will be engaging with it on an on-going basis.

John Finnie: I welcome your acknowledgement of the cold release aspect and your encouragement of greater use of non-custodial disposals, noting the resource that is tied up and the shift that can take place.

You have mentioned the independent commission on prisons on a number of occasions. As a number of colleagues have said, various issues overlap here. I note what you have said about awaiting receipt of the stage 1 report before formulating amendments. Would it be possible to get a copy of where things stand for the Scottish Government with regard to each of the proposals of the independent commission on prisons, just to see where that sits in relation to everything else?

Michael Matheson: Of course we can provide the committee with such a response.

John Finnie: Thank you very much.

Christian Allard: I want to return to a particular point made by Margaret Mitchell. Some people asked in evidence last week for the bill to be scrapped. They all came back afterwards, at the end of the evidence session, when they heard from Victim Support. That is clear.

I would like you to tell us what your thinking is on stage 2 with a view to getting the balance right between the rights of the families of victims and the process that we must go through under the bill. I do not think that that point has been addressed very much this morning.

Michael Matheson: On the point about trying to get the balance right, I have already indicated to the committee that I want all automatic early release for long-term prisoners to come to an end, so that there is a consistent approach and transparency—so that there is no staged approach for crimes of a non-sexual nature with a long-term sentence. That consistency of approach is important from a victim's perspective.

The other aspect is the evidence showing us that the supervised release of prisoners helps to reduce significantly the risk of those individuals breaching their supervision and thereby

committing another offence that has a further impact on victims.

The point about having a guaranteed period of supervision at the end is to reduce the risk of the individual going back into the community and potentially committing further offences. It is about managing that in a way that allows the person to be recalled as and when necessary, and it is about helping to protect the public.

Ending automatic early release, the transparency that that creates, having an equalisation at four years across offences and the guaranteed period of supervision towards the end of the sentence help to provide victims with greater transparency as well as offering greater public protection.

Roderick Campbell: You spoke about throughcare officers. The bill deals with long-term offenders serving sentences of four years or more. I believe that I am correct in saying that statutory throughcare applies to prisoners serving sentences of four years or more.

Michael Matheson: Yes.

The Convener: We all know that.

Roderick Campbell: Yes, but I wanted to get it on the record.

Michael Matheson: That has helpfully reminded me of another part of the bill that has not been explored in great detail—the Prison Service's ability to vary release by two days.

The Convener: We are all happy with that.

Michael Matheson: It is a good example of an area in which the Prison Service has flagged up difficulties with throughcare because of the system being so rigid. It reflects how we have tried to address some of the issues in legislation to help to improve throughcare.

The Convener: The committee has known that for a long time, so we are happy with that, because it was a practical issue that we had come across. I thank the cabinet secretary for his evidence.

Subordinate Legislation

Firefighters' Pension Scheme (Scotland) Regulations 2015 (SSI 2015/19)

12:30

The Convener: Agenda item 4 is subordinate legislation. We have three negative instruments to consider. The first is the Firefighters' Pension Scheme (Scotland) Regulations 2015 (SSI 2015/19), which provides for a reformed pension scheme for firefighters in Scotland. The Delegated Powers and Law Reform Committee agreed not to draw the attention of the Parliament to the instrument. Do members have any comments?

John Finnie: I want to say what a disappointing state of affairs it is that we have moved to the new scheme. I know that there are interim arrangements, and I know that it is outwith the control of this Parliament, but that is worth saying.

The Convener: I share your concerns. The retirement age, as I understand it, is 60—apart from the interim measures. In certain professions, it could be physically difficult for people to fulfil the requirements of their job up to that age, notwithstanding the fact that some of us who are approaching 60 are still able to do it. I knew that that would make members smile.

Apart from that, are there any other comments on the instrument?

Christian Allard: Could we record the fact that we all agree with that sentiment?

The Convener: Yes. Is it agreed, therefore, that we make no recommendation on the instrument, apart from that observation?

Members *indicated agreement.*

Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Regulations 2015 (SSI 2015/53)

The Convener: The second negative instrument is the Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Regulations 2015 (SSI 2015/53), which sets out the procedure for the selection and nomination for appointment of members of the Scottish Courts and Tribunals Service. Again, the DPLR Committee agreed not to draw the attention of the Parliament to the instrument. Are members content with it?

Members *indicated agreement.*

**Scottish Administration (Offices) Order
2015 (SI 2015/200)**

12:32

Meeting continued in private until 12:34.

The Convener: The final negative instrument is the Scottish Administration (Offices) Order 2015 (SI 2015/200), which specifies that the clerk and deputy clerk to the sheriff appeal court are offices in the Scottish Administration that are not ministerial offices for the purposes of the Scotland Act 1998. These are new offices and those in them are to be office-holders in the Scottish Administration in the same way as the existing posts of sheriff clerk and sheriff clerk deputy are such offices. The DPLR Committee agreed not to draw the attention of Parliament to the instrument. Are members content to make no recommendation in relation to the instrument?

Members *indicated agreement.*

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