



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# JUSTICE COMMITTEE

Tuesday 31 March 2015

Session 4

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**Tuesday 31 March 2015**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) BILL: STAGE 1 .....</b>	<b>2</b>

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**JUSTICE COMMITTEE**  
**11<sup>th</sup> 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:**

Kevin Gibson (Scottish Government)

Jenny Marra (North East Scotland) (Lab)

Michael Matheson (Cabinet Secretary for Justice)

Ann Oxley (Scottish Government)

**CLERK TO THE COMMITTEE**

Tracey White

**LOCATION**

The Robert Burns Room (CR1)



## Scottish Parliament

### Justice Committee

*Tuesday 31 March 2015*

*[The Convener opened the meeting at 10:02]*

### Decision on Taking Business in Private

**The Convener (Christine Grahame):** Good morning and welcome to the 11th meeting in 2015 of the Justice Committee. I ask everyone to switch off mobile phones and other electronic devices, as they interfere with the broadcasting system even when they are switched to silent. Apologies have been received from Alison McInnes, and I welcome Jenny Marra to the committee.

Under agenda item 1, I invite the committee to agree to consider in private item 3, which is on our approach to stage 1 consideration of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill, and item 4, which is on our approach to stage 1 consideration of the Apologies (Scotland) Bill. Is that agreed?

**Members** *indicated agreement.*

## Human Trafficking and Exploitation (Scotland) Bill: Stage 1

10:02

**The Convener:** The main item of business is our final evidence session on the Human Trafficking and Exploitation (Scotland) Bill. I welcome to the committee the Cabinet Secretary for Justice, Michael Matheson, and his officials: Ann Oxley is from the criminal law and licensing division; Cat Duggan is child protection team leader; and Kevin Gibson is from the directorate for legal services.

I understand that the cabinet secretary wants to make a brief opening statement.

**The Cabinet Secretary for Justice (Michael Matheson):** I am more than happy to go straight to questions, if that would assist the committee with its business.

**The Convener:** You are wooing us too strongly these days; we are getting suspicious.

Who has questions for the cabinet secretary? I am looking for a volunteer. You see, cabinet secretary—they are not awake.

**John Finnie (Highlands and Islands) (Ind):** Good morning, cabinet secretary. I am trying to establish the pecking order in the relationship between immigration and the issues that we are dealing with in the bill. Have you had discussions with the UK Border Agency or with anyone at the Home Office about your proposed legislation?

**Michael Matheson:** We have engaged with the Home Office on tackling human trafficking and exploitation, and we have been involved in discussions on the Modern Slavery Bill, which was taken forward in the United Kingdom Parliament. A considerable amount of dialogue has taken place between the Scottish and UK Governments on our approaches. We have gone for a UK-based commissioner—that is provided for in the Modern Slavery Bill. The commissioner will have particular functions in Scotland. We continue to have a UK-based approach with the national referral mechanism.

We have engagement with the Home Office, including engagement on the provisions in the Human Trafficking and Exploitation (Scotland) Bill.

**John Finnie:** Do you have any concerns that the immigration authorities have undue input into decision making on whether someone is or is not a trafficked individual?

**Michael Matheson:** I am not aware of any specific concerns, but obviously if there were

concerns about the way in which the UK Border Agency was dealing with particular issues involving individuals in Scotland whom we had identified as possibly having been trafficked, we would explore them with it. I am not aware of any specific concerns, but if an issue was identified, we would certainly wish to pursue it with the UK Border Agency.

**John Finnie:** With regard to the possibility of children being trafficked, are you content that the getting it right for every child approach captures all of that, or should there be something further?

**Michael Matheson:** The view that we have tried to take is very much that children who have been trafficked are children first. Ensuring that children are treated as children first and that they get the right support and the assistance that they require should they prove to be vulnerable is what underpins GIRFEC.

The approach that we have taken in the bill is to have a single offence. The offence is the same, whether a child or an adult is involved. We have taken that approach to avoid getting into the difficulty that can occur with individuals who have been trafficked, who may not have documentation so whether they are 18 or over could be unclear. If there were two different offences—one for trafficking a child and one for trafficking an adult—there could be a difficulty, in that prosecutors would have to prove the individual's age, whereas having a single offence means that we can prosecute irrespective of whether the person who has been trafficked is a child or an adult. That gives us greater opportunity to prosecute and secure convictions.

The provisions that we have in Scotland under various bits of child protection legislation, such as named persons and the child protection procedures in which social workers are appointed, provide a range of protections for children who may be identified as having been trafficked or exploited. The bill helps to support those.

**John Finnie:** It is important that there is co-operation within the United Kingdom, the European Union and beyond. It seems to me that awareness is an important issue. What plans—

**The Convener:** I do not want to stop you, John—

**John Finnie:** Well, you just have, of course, convener.

**The Convener:** I do not want to stop anyone, but for the sake of writing the report I want to follow through on one line. You are asking about lots of topics. You talked about co-operation with the UK on immigration. Does anybody want to follow on from that? You then went on to talk about children and awareness. I will come back to

you, as you have opened up those areas, but does anybody have any questions on immigration or the NRM so that we can get everything in one batch? That is what I am trying to get at.

**Roderick Campbell (North East Fife) (SNP):** Good morning, cabinet secretary. The Home Office received a report of a review of the NRM, which did not deal with the position of children in Scotland. I think that issues were raised when you previously appeared before the committee to talk about the NRM, and the Scottish Government was going to consider the impact of the review. Has thinking moved on in any way on reviewing the Oppenheim recommendations on the NRM?

**Michael Matheson:** The review that took place last year highlighted a number of areas in which improvements were needed in the way in which the national referral mechanism was operating. One proposal was to establish a Scottish panel—or what was viewed as a regional panel—to consider cases that were referred to the NRM. We believe that that will help to give additional focus to particular Scottish cases and will support the way in which the NRM operates.

I am also conscious that some stakeholders would like a Scotland-only NRM. I am not opposed to that, but we would need to consider in detail how it would operate and what impact it could have. At present, the establishment of regional panels, as recommended in the Home Office review, including a Scottish panel to consider Scottish cases, would be a helpful way of focusing better on the operation of the NRM in Scotland.

**Roderick Campbell:** Is it the case that nothing has been agreed with the Home Office at present?

**Michael Matheson:** We are still in discussions with the Home Office, and we will continue to engage on the issue. I understand from the Home Office that further areas of work still have to be taken forward around the operation of the NRM, and I would like to think that the issues will be addressed and resolved. A specific Scottish panel may be a useful way of ensuring that the mechanism operates more effectively in Scotland.

**Margaret Mitchell (Central Scotland) (Con):** Following the review, two pilots are to be set up, in West Yorkshire and in the south-west Association of Chief Police Officers region, to look at the regional differences. Would it be helpful to suggest that Scotland be included as another pilot area to see how the mechanism is working regionally? Some of the concern is about the support services, which are devolved—just as there are different regional support services in different parts of England—and a pilot could ensure a full understanding of how those services work.

**Michael Matheson:** We are conscious of the two pilots that the Home Office has established

and we have asked to be kept informed about how they are progressing, developing and operating, to inform how we move forward in Scotland. That could include the possibility of having a pilot here. In my view, that would be useful. It is for the Home Office to explain why it has chosen those particular areas for the pilots, but we have asked to be kept informed so that information from the pilots can assist us in making progress in Scotland with the operation of the NRM.

I am personally persuaded that a Scottish panel would be a helpful approach, but I am also open to the idea of a specific NRM in Scotland. At the very least, once the pilots have been completed, I would like to try the panel approach to see whether that helps to improve things sufficiently in Scotland.

**Margaret Mitchell:** Will the Scottish Government suggest that Scotland be included as one of the pilots?

**Michael Matheson:** Ann Oxley may be able to say whether there was any specific discussion with the Home Office about establishing another pilot here in Scotland at the time of our dialogue. I know that the Home Office decided on the two locations for the NRM pilots, and I suspect that its decision was partly to do with the number of individuals who had been identified so that the process could be tested.

**Ann Oxley (Scottish Government):** We and our colleagues in Northern Ireland have been in discussion with Home Office officials about the NRM. Both Northern Ireland and Scotland have small numbers of victims. The Home Office identified the pilot areas—it said that those were the two areas that it thought it should test.

**The Convener:** Where are the pilots?

**Ann Oxley:** They are in the Cornwall area—where the ACPO police lead is Shaun Sawyer—and West Yorkshire.

**The Convener:** What is the difference between West Yorkshire's figures and the figures for the whole of Scotland?

**Ann Oxley:** In Scotland, only 55 victims were identified in 2014.

**The Convener:** Do we know how many there were in West Yorkshire?

**Ann Oxley:** Off hand, I do not know. I am sorry.

**The Convener:** I just wondered whether it is a numbers game.

**Ann Oxley:** It is not only a numbers game; the costs for the duration of the pilots come into it as well. There will be two waves of pilots; a second wave will start during the summer, and we are in

discussions with the Home Office just now over that second wave.

**Margaret Mitchell:** Could Scotland perhaps be included in the second wave, or is that not viable, given our numbers?

**Ann Oxley:** At the moment, given our numbers, a pilot is not viable. What the Home Office proposed was a joint pilot with Northern Ireland, but that would not increase the number of potential victims who could be found.

**Margaret Mitchell:** It would be helpful to know the numbers in the regions that are pilot areas, so that we can see the critical mass that we are talking about.

**Michael Matheson:** We can get some more details from the Home Office for you. It is principally an issue that the Home Office is taking forward but we can certainly try to get some further information from it to assist you with that.

10:15

**The Convener:** I get the sense that the committee is quite interested in pursuing that. It might be something that we could consider and press further in our report. Ann Oxley says that it is not a numbers game, but we are being told that the criteria are about the numbers. I am not blaming you, Ann, but that is the point that you made. We would be looking at it in terms of service delivery. Other issues with the NRM came up in questioning: the NRM tends to be a tick-box exercise, rather than being victim centred; and there is a culture issue as well as a service delivery issue. Those points were put to the committee.

**Christian Allard (North East Scotland) (SNP):** The convener is absolutely right—most of the evidence that we got said that what does not work is the NRM. I am quite encouraged to hear about the pilots in England, but I am not quite sure that we got an answer from you on this, cabinet secretary. Would you go for the second round? Are you asking to have a pilot in Scotland—and in Scotland only—in recognition of the evidence that the committee has received and in recognition of the fact that the NRM has big failures here in Scotland as well?

**Michael Matheson:** As you have heard, part of the challenge is the number of cases that we have in Scotland at present for testing the process. Our discussion with the Home Office was around the scope for Scotland to host one of the second-wave pilots. On whether we are able to take forward a pilot, there are issues around the number of cases that we have.

My understanding is that the Home Office has not finalised where the second-wave pilots will

take place, and we will continue to have a discussion with it about that to see whether there is scope to establish a pilot in Scotland. The Home Office has certain criteria for the pilots, which we have to explore with it to see whether Scotland would be a suitable location for a pilot.

**Christian Allard:** But you want a pilot to happen in midsummer.

**Michael Matheson:** I would like to see at the very least a Scotland-based panel, as was recommended. Whether we are in a position to host one of the pilots is a matter for the Home Office because of the criteria that have been set. Given some of the concerns that have been raised about the national referral mechanism and the recommendation on regional panels, I think that it would be useful to have a regional panel in Scotland, and I would be supportive of that.

**Christian Allard:** Thank you.

**The Convener:** It would be helpful to know what the full criteria are for the pilots other than just numbers. Are other criteria involved beyond having a weight of numbers that would make a pilot viable?

I will go back to John Finnie—I would like you to ask about children. Then I will ask others to come in on children so that we can collect things for the report in an orderly fashion.

**John Finnie:** Thank you, convener.

I was going to ask the cabinet secretary about the human trafficking summit in October 2012—it is mentioned in the policy memorandum—and the subsequent meeting of senior people in October last year. We have also been told about the anti-trafficking progress group and the twelve actions. Is it possible to get an update—perhaps in writing—on those actions, particularly in relation to children?

**Michael Matheson:** We would be happy to provide you with information on the progress that is being made against the action points if that would assist you. Cat Duggan is probably able to give you a bit of an insight on that.

**John Finnie:** I am particularly interested in awareness raising. It is all very well to legislate, but if people do not understand the signs and symptoms, that is a problem.

**Michael Matheson:** I am happy for us to provide information on awareness raising in particular.

**The Convener:** Does anyone else have questions on how the bill deals with children? I know that issues have been raised with us in relation to children.

**Christian Allard:** In a lot of the evidence that we received, people said that they wanted something specific for children. I heard the answer that you gave, cabinet secretary. If you are thinking about doing something in relation to children in the bill, will you also think about adults with learning difficulties, who could have the same problems and need the same kind of support? We have seen from our visits and in the evidence that we have taken that some adults are very vulnerable as well.

**Michael Matheson:** Of course, I am more than happy to consider that. There are obligations on local authorities to make certain provision if a vulnerable adult is involved—that includes adults who have a learning disability. Local authorities are required to provide them with support and assistance.

As I mentioned, the approach that we have taken in the bill is to treat the children who have been trafficked as children first of all, and to make sure that the statutory responsibilities that local authorities have for children are carried out with regard to trafficked children. That is the approach that we have sought to take with the bill, as well as having one single offence of trafficking. However, I am more than happy to explore whether there is anything further that may be necessary to address concerns about the bill's provisions.

We believe that we can pursue further aspects in relation to children, but it may be best to place those in the strategy that will be taken forward. Those aspects relate to some of the requirements on and expectations of local authorities in existing legislative provisions on vulnerable children and children who may need to be supported. I am more than happy to consider whether that might be an appropriate route for those with a learning disability.

**Christian Allard:** Thank you.

**Elaine Murray (Dumfriesshire) (Lab):** Some witnesses have felt that there would be merit in including in the bill referencing and cross-referencing of the support and assistance that it is currently legally required be provided for children. Do you think that there would be merit in that and would including that in the bill provide clarity?

**Michael Matheson:** I am conscious that we have already in place a range of legislation that provides for the support of children, although the bill does not specifically make reference to that. If a child is found to be trafficked, local authorities must provide support and assistance. Where a child is vulnerable, child protection procedures kick in, and the process operates from there. I do not think that there is a need to repeat in the bill what is already in legislation, but I am open to considering whether there is a way in which the bill



could provide further reassurance that it is the intention that the child protection and support provisions and legislation that we already have be used for children who have been subjected to trafficking.

We have already had some discussions with stakeholders about their views on the issue, and I know that the committee has heard some evidence on it, as well. I think that the matter will be dealt with largely within the strategy, which sets out more clearly what would be expected of local authorities, given the existing legislative provisions for supporting vulnerable children.

**Elaine Murray:** James Wolffe of the Faculty of Advocates had a concern about the drafting of section 8(1), which seems to imply that it is Scottish ministers who have to

“secure for the adult the provision of such support and assistance as they consider necessary given the adult’s needs.”

I think that he pointed out that other agencies, obviously, would be involved in doing that. Is that a problem with the drafting, or is there a way in which the wider requirement to provide support is encompassed?

**Michael Matheson:** It is the case that the legislative provisions for dealing with such children are already in place. It may be that that issue would be better addressed in the strategy, so that the requirements on local authorities would be very clear. I am not clear what benefit there would be in having something on that in the bill, given the detail of what we intend to put in the strategy for local authorities. At this stage, I take the view that the matter would be better within the strategy than on the face of the bill.

**Elaine Murray:** I think that Mr Wolffe’s concern was more of a parallel one, about support and guidance for adults, which is not necessarily covered in legislation at the moment. The way in which section 8(1) is drafted implies that Scottish ministers, rather than other agencies, will be required to provide that support and guidance. Do you feel that that is a drafting issue?

**Michael Matheson:** I am happy to take away those comments and consider the issue. I think that the general issue behind that is better dealt with within the strategy.

**Jenny Marra (North East Scotland) (Lab):** You have just said that Scotland has existing legislation that covers children. I think that you are referring to the three main children acts, including the Children (Scotland) Act 1995. However, many concerns have been expressed from the start of the process—from all the stakeholders who are involved in dealing with human trafficking, I think—that children are not specified in the bill. Can you tell me precisely how the three acts work together

in a way that gives you confidence that children should not be included the bill, and that the necessary provisions are in place? How does that work?

**Michael Matheson:** Under the most recent legislation, which is the Children and Young People (Scotland) Act 2014, children are entitled to have a named person appointed for them, so a child who had been trafficked to Scotland would be entitled to that. If the child is identified as being vulnerable, child protection procedures will operate and a social worker will be appointed to oversee the individual’s needs and any measures that have to be implemented.

The acts all make different provisions for children in particular sets of circumstances. There may be some issues around operational aspects and how local authorities respond to some matters, but I think that the legislative provisions are clear about the types of protections and supports that they provide to children, whether that is a named person or the appointment of a social worker if the individual is vulnerable. That would give a child who has been trafficked two individuals who would have responsibilities for looking at their needs and the support and assistance that they may require.

**Jenny Marra:** Thank you for that answer, cabinet secretary. I think that you would agree that the named person is not nearly as strong as guardianship. The absence of guardianship is concerning, especially given that England, Wales and Northern Ireland have that provision. Does that not concern you?

**Michael Matheson:** The difference is that England and Wales do not have a named person arrangement of the type that we have in Scotland. The childcare arrangements that we have are not directly comparable, because we have taken slightly different approaches.

I am very conscious that the Scottish guardianship service provides an important supportive role, especially for child asylum seekers who arrive in Scotland on their own. There are clearly some areas where guardianship may also be appropriate for children who have been trafficked. However, I am also conscious that if a child has a named person or, if they are vulnerable, a social worker, to introduce a third person could create conflict and confusion about who has the lead responsibility for dealing with the child’s needs.

I am open to looking at how we can strengthen provisions to ensure that children get the right type of support at the right time when they are vulnerable, and at whether there are means in the bill by which to achieve that. In some cases, it might be that a guardian should be appointed. In

other cases, that will not be necessary because of the provisions that we already have in place.

I am open to exploring the provision and how we can improve on it, but I think that we have in place robust measures that are different from the approach in England and Wales.

**Jenny Marra:** You said that you do not want confusion, but you have already cited two people who would be involved—the named person and the social worker.

I am keen to know whether you believe that the named person arrangement is as strong as guardianship. I think that most stakeholders who are involved with victims of human trafficking feel that it is not nearly as strong. Victims of human trafficking who end up in our country under those horrific circumstances deserve the strongest support that the state can give them—especially the children. Do you not agree?

**Michael Matheson:** If the children are vulnerable, they will also have a social worker appointed to them under the child protection—

**Jenny Marra:** But they will not have a guardian.

**Michael Matheson:** Under the child protection legislation, the social worker has a clear responsibility to deal with any support and assistance that the child may require. There are two individuals who have a clear role in addressing and meeting their needs, and in co-ordinating services to meet their needs. The named person has a particular role in facilitating that.

Is it your suggestion that we should remove the named person and that, instead, a guardian should be appointed for a child who has been trafficked?

**Jenny Marra:** Many stakeholders prefer the guardianship model because it is more robust and gives children a better standard of protection through their ordeal. I think that that has been the general consensus. The evidence in the Convention of Scottish Local Authorities' written submission seems to suggest that there would be a resource issue in that respect. I would be very concerned if the Scottish Government was stepping back from giving trafficked children guardians because of finance matters.

10:30

**Michael Matheson:** COSLA will have to explain its position on the matter. We must be clear about what a guardian would do that would be different from what a named person or a social worker would do. What would be the difference?

**Jenny Marra:** There is much more in statute on the guardian's role. I presume that your civil

servants have investigated the matter and that you have decided that a named person—

**Michael Matheson:** That is what I am saying—we have done that.

**Jenny Marra:** My understanding is that a named person can be a headteacher or someone in a school. People have enough to do. A guardian is a person who is specifically appointed by the state to see a vulnerable person through their ordeal.

**Michael Matheson:** It is worth keeping in mind that the named person for someone who is identified as a trafficked child will be someone who is relevant to the child's needs.

We would, were we to introduce such a third tier of child support, have to be very clear what value guardianship would add in meeting their needs. In some instances, it may be the right thing to do; however, to apply the provision universally might not. There may be children for whom a guardian may be the best choice. It may be for the named person and the social worker who would be appointed if the child is vulnerable to determine whether that should be done in order to meet that child's needs.

We must be careful that we do not get into a situation whereby we say that every child who has been trafficked must have a guardian appointed to them, irrespective of the circumstances. It may be that there is a need to consider in what circumstances that would be appropriate. As I said, the person who may be best to lead on that would be the named person, alongside the social worker who has been appointed to meet the child's needs.

If we were to make additional provision, we would have to be careful to ensure that our doing so would clearly add benefit in meeting the child's needs, rather than doing so on the basis that "guardian" sounds better than "named person".

**Jenny Marra:** It is not that it "sounds better". Were the children's organisations to make a detailed case to you, would you consider inserting guardians in the bill at stage 2?

**The Convener:** We have had a full discussion. I am not suppressing the issues, because I know that they will come up at stage 2, when we will have more debate. You have tested the topic fully and the minister has given his response. I want to get on to other bits of the bill.

What has not been asked about in dealing with children is the presumption of age. James Wolffe QC, who is the dean of the Faculty of Advocates, quoted the European Union human trafficking directive, which he seems to know back to front—as he should. It states:

“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”—

this is key to what has been raised—

“to assistance, support and protection in accordance with Articles 14 and 15.”—[*Official Report, Justice Committee*, 24 March 2015; c 22.]

They are entitled to that whether they have a guardian, a named person or whatever the person appointed to them is called.

The evidence to the committee is that such people often do not know what age they are and they do not have any documents. Should the bill include a presumption of age section to assist agencies to work with trafficking victims?

**Michael Matheson:** Under the present arrangements, if a local authority is unsure about the age of an individual but believes them to be a child, under GIRFEC, it will provide them with childcare services. Local authorities should respond to needs on that basis—that is the general approach that local authorities take for such individuals.

There is a potential unintended consequence around the presumption element. Where someone whose age we are unsure of claims to be a child, that person would be placed in children’s care services. In some cases, that might not be the right thing to do. For example, if a person claims that they are a child but they are not a child, the presumption element could have risks to children.

I am mindful of the evidence that the committee has received from the Faculty of Advocates on this issue. We will consider at stage 2 whether we can clarify the matter further. There are potential unintended consequences, which we will need to work through first to ensure that we have the right safeguards in place.

**The Convener:** Some of the evidence from the Scottish child protection committee chairs forum was that young people quite often pretend to be older than they are, rather than younger. Are you saying that it would be counterproductive to have a presumption that the person is a child, because that might mean that people would play the game, as it were?

**Michael Matheson:** That is part of the reason why, under GIRFEC, the requirement is on local authorities. Although a person might claim to be over 18, if the local authority suspects that they are under 18, they are required to provide childcare services.

Part of the challenge is that very often individuals in such circumstances might not have documentation, or reliable documentation, about

their age. There is also the risk of people who are over 18 claiming that they are under 18. If there was a presumption of age, if local authorities believed that an individual was over 18, but that individual claimed that they were not and had no documentation to prove otherwise, the local authority would be required to meet their needs through childcare services, which would create a risk for children who use those childcare services.

That is why in considering this issue and other issues that have been raised by the Faculty of Advocates we want to take a wee bit of time to work through potential unintended consequences before we consider putting a presumption of age into the bill. I am open to looking at that.

**The Convener:** So your mind is not closed to it.

**Michael Matheson:** I can also see benefits in the approach; we just want to work through the potential unintended consequences, which were the reasons why we did not include that provision in the bill in the first place.

**The Convener:** Will there be some movement on that by the time we get to stage 2, or are we looking at stage 3?

**Michael Matheson:** I would certainly like to try to do that by stage 2.

**The Convener:** Thank you.

John—what was your third strand?

**John Finnie:** It has been covered; I wanted clarification on those issues.

**The Convener:** Margaret Mitchell has questions on an entirely different issue.

**Margaret Mitchell:** Are you in favour of the statutory defence going on the face of bill to augment—not replace—the Lord Advocate’s instructions, on the basis that it would give added protection and that, as James Wolfe said, if we did not have it, it might lead to victims of trafficking, including child victims, being less well protected in Scotland?

**Michael Matheson:** I know that you had fairly extensive evidence from the Lord Advocate on that last week. Having considered it, I thought that he made a strong case for not having the statutory defence on the face of the bill. I think he went so far as to say that he felt that having it in the bill could result in injustices.

It is worth bearing in mind that the statutory defence puts an obligation on the individual to demonstrate that they have been trafficked and that that has resulted in their committing the offence. We have tried to take a much more victim-centred approach whereby there is no requirement for victims to self-identify or to highlight issues themselves. It allows prosecutors

to pursue cases when they believe that that is the right thing to do. They can consider the evidence on what led the individual to commit the offence and whether they had been trafficked. You heard from the Lord Advocate that our approach gives us greater flexibility to respond to individual cases much more effectively and the opportunity to look at abandoning cases and requesting that sentences be set aside.

The approach that we have set out is much more victim centred. It does not place an obligation on the victim to demonstrate to the court that they committed their offence on the basis of their trafficked status. Instead, the approach that we have set out allows the Lord Advocate to issue guidance—or instructions, as the committee discussed with him last week—taking an intelligence-based approach, considering the information that the Crown has received from the police and other parties about a given individual, and making a judgment on that basis about whether someone should be prosecuted. That gives us what I believe to be a much more victim-centred approach and greater flexibility to address any concerns about individuals who have been trafficked committing offences as a result.

**Margaret Mitchell:** I am not suggesting that it is an either/or situation with the two approaches—the approach that the Lord Advocate suggests is excellent. However, a statutory defence would be an additional protection or tool in the box for victims who, in the initial assessment, might not be considered as victims of trafficking and who would be less likely to come forward to the organisation—the Crown Office and Procurator Fiscal Service—that said that it did not think that the person was trafficked, but who might be in possession of some information that would support their case.

When the Home Office considered the matter in England, one of the reasons for providing the statutory defence was that it gave victims the confidence to come forward and give evidence against traffickers. That is on the back of the Equality and Human Rights Commission's follow-up report on trafficking, in which victims agencies said that, despite the guidance, people were still being prosecuted when that should not be happening.

**Michael Matheson:** I understand that. The approach that has been set out by the Lord Advocate will also help to reduce the potential for injustices taking place, as he offered up in his evidence to the committee last week. It provides the Crown with a level of flexibility to not pursue cases in individual circumstances, to abandon such cases, or to consider requesting that convictions be set aside. Such flexibility is much more victim focused.

A statutory defence places an obligation on the victim to demonstrate, not just to the Crown but to the court, that the purpose for which they committed their offence was to do with the circumstances in which they found themselves—being trafficked. That would have to be done and made known prior to the case going to court whereas, under the approach that we intend to take, the Crown, along with others, could consider the intelligence that they have about a particular individual's circumstances and make a judgment based on that. In evidence to you last week, the Lord Advocate was open to the idea of using instructions, rather than guidance, which would bring a stronger emphasis. That is a pragmatic and much more victim-centred approach than having a statutory defence set out in the bill.

**Margaret Mitchell:** If there was some merit in having added protection, might that be considered at stage 2, thus providing a statutory defence? Even though the onus would be on them, some people might prefer to go that way and it would give them confidence to come forward.

**Michael Matheson:** Of course, it is open to anyone to lodge an amendment to deliver a statutory defence. The most appropriate route is the one that we have set out in the bill and the one on which you heard from the Lord Advocate last week.

**Margaret Mitchell:** Would you rule out the statutory defence completely?

**Michael Matheson:** The approach that we have set out is the favoured approach, from my perspective and from the Scottish Government's perspective. However, I am open to looking at moving towards instructions, rather than guidance, as the Lord Advocate said last week.

**Margaret Mitchell:** That is disappointing, cabinet secretary.

10:45

**Roderick Campbell:** Last week, the Lord Advocate drew attention to problems with statutory defences based on the principle of fair notice being given to the Crown of the defence that an alleged victim was lodging. In other words, there is a downside to the statutory defence point and a feeling that it should not be overegged, given that, even in the Modern Slavery Act 2015, it is excepted from 130 offences.

I believe that we are talking about having guidelines on prosecution and non-prosecution in Scotland, but the Lord Advocate said that he was not aware of any prosecution guidelines for trafficking in England and Wales. Is that also your understanding?

**Michael Matheson:** I do not know whether that is still the case. We would have to check that.

**Roderick Campbell:** Thank you.

**Christian Allard:** I seek some clarification on the obligation on individuals to defend their case. If the statutory defence were to be put into the bill, would it become an automatic obligation on victims?

**Michael Matheson:** Yes.

**Christian Allard:** So it would be automatic.

**Michael Matheson:** They would be required to demonstrate that statutory defence.

**Christian Allard:** And putting it into the bill and into guidelines or instructions would not avoid that. There would still be an obligation on victims.

**Michael Matheson:** The Lord Advocate's guidelines would have to be consistent with what was in the bill.

**Christian Allard:** So there is no way that we can dampen the idea that—

**Michael Matheson:** If the bill contains provision for a statutory defence and the Lord Advocate's guidelines say otherwise, it will create confusion. The prosecutors will be left asking, "What are we using? The Lord Advocate's guidelines or the statutory defence?" If the statutory defence is put into the bill, the Lord Advocate's guidance will have to be consistent with that.

**Christian Allard:** I am simply trying to explore whether there is any way that we can have both approaches, but you cannot see any way in which that can be done.

**Michael Matheson:** As I have said, the Crown will use an intelligence-based approach to determine whether to prosecute someone who has committed an offence as a result of being trafficked. It will be able to consider that information and come to a decision based on it. If certain information comes to light during a trial, the Crown can decide just to abandon the case; indeed, I think that there have been instances of the Crown abandoning cases as a result of such information. The difference with the statutory defence is that the obligation would be on the individual themselves to set the statutory defence down prior to the case going to court and for that to be taken forward in the courts. The obligation would then be on the individual to demonstrate that defence instead of the Crown having the flexibility to determine whether that individual should be prosecuted.

**Christian Allard:** I wonder whether that will have any effect on timescales. Will the timeline be a lot longer?

**Michael Matheson:** If a statutory defence is lodged?

**Christian Allard:** Yes.

**Michael Matheson:** My understanding of the legal process is that the victim or the accused would be required to lodge a statutory defence prior to the case proceeding in court, and that would have to be addressed prior to the trial. It is difficult to say whether that would add any time, but the process requires the defence to be lodged before the case comes to court.

**Christian Allard:** Thank you.

**The Convener:** I am trying to think my way through this, cabinet secretary. I have to say that I found the Lord Advocate persuasive, but my mind is still not made up. You are saying that putting the statutory defence in the bill makes it mandatory; in other words, if you are going to use it, you have to use it. If I decide not to use the statutory defence and I am taken to court in a criminal case, what happens if, during the trial, I realise—or, indeed, the prosecution realises—that I am a victim of trafficking? How will that impact on the trial?

**Michael Matheson:** I will get Kevin Gibson to explain that.

**The Convener:** I just need to know how it works.

The first scenario is that I do not use the statutory defence and then we find out, or I realise, that I am a victim. The second scenario is that I decide to use the statutory defence but, during the course of the trial, it turns out that I am not a victim. I need to know how those two scenarios would operate. The question that we are asking is whether we can have both guidelines and statutory defence. If we had both, would they cause huge practical problems in the course of a trial?

**Kevin Gibson (Scottish Government):** I do not think that it is correct to say that the defence is mandatory in the sense that if you are a victim, you must avail yourself of the defence.

**The Convener:** Right, so it is not mandatory.

**Kevin Gibson:** No. If you wish to use the defence, the obligation is on the accused, or the victim—

**The Convener:** I understand that bit.

**Kevin Gibson:** —to raise some sort of evidential basis. It is then for the Crown essentially to disprove the accused's case on that point.

**The Convener:** Yes, but what happens if, during the course of the criminal proceedings, to which I am no longer party, it turns out that in fact

my statutory defence was allowed wrongly or misguided?

**Kevin Gibson:** It would be for the court or the jury to determine, on the basis of the evidence that has been led by the Crown, whether your defence is rebutted.

**The Convener:** I understand that. It has been rebutted, and the court has said, “Yes, you’ve got this defence. You were a victim and you’re not going to be part of this trial.” However, during other parts of the trial it turns out that I am actually a baddie and not a victim. What happens then?

**Kevin Gibson:** Is this if you—

**The Convener:** You were going to be prosecuted along with others, let us say, and you use the statutory defence that you are a victim of trafficking.

**Elaine Murray:** The Crown has to prove that.

**The Convener:** I understand that it has to be rebutted. However, what happens if the jury says, “No, we think that this person is a victim so we will not prosecute. They can’t be part of the trial”, and later, during the course of proceedings against others, it turns out that I am not in fact a victim? Do I take it that I could then be prosecuted?

**Kevin Gibson:** The Crown can appeal a conviction. That route would be open to it.

**The Convener:** I am in a total muddle about how this would work in practice. There are a lot of hands up. I have muddled everyone else up now.

**Christian Allard:** That was very interesting. If the statutory defence is not mandatory, would the consequence of putting it in the bill mean that victims would be less likely to ask for it? If it was in the guidelines, they would be freer to ask for it, or not. Would putting it in the bill have the contrary effect?

**The Convener:** What I was getting at is that if you do not use the statutory defence, does that prejudice you in any way? If it is sitting there in the bill and you have not used it, and during the course of the trial it turns out—or it is apparent to the Crown—that you are in fact a victim and should not be up there on trial, does the fact that you did not use it make it harder or easier?

**Kevin Gibson:** It would be a matter for the Crown to determine whether to abandon the prosecution on the basis of the new evidence.

**The Convener:** So it does not matter that you have not used the statutory defence.

**Kevin Gibson:** I do not think that it matters.

**Jenny Marra:** On this issue, it is my understanding—perhaps you will correct me if I am wrong—that England, Wales and Northern

Ireland have not only guidelines but a statutory defence. It is also my understanding that the Crown Office in Scotland took the Crown Prosecution Service’s guidelines. We need to work on a joint approach on this. If the other jurisdictions across these islands felt that both guidelines and a statutory defence were needed, why have we decided that the guidelines are sufficient?

**Michael Matheson:** We are going to clarify the guidance that has been issued by the Director of Public Prosecutions in England for offences being considered. We have tried to take a very victim-centred approach. We are conscious that, because of the difficult circumstances in which these individuals find themselves, they are unlikely to self-report. We want to take away some of the added burden that is caused by having a statutory defence provision in the legislation. Instead, we want the issue to be dealt with much more flexibly by the Crown and other agencies, which can consider that individual’s circumstances and decide whether to prosecute. We are seeking to take a more victim-centred approach and not place an added burden or pressure on the individual who may find themselves in a very difficult set of circumstances.

**Jenny Marra:** Your argument is that having a more victim-centred approach in Scotland results in not giving them a statutory defence.

**Michael Matheson:** It gives more flexibility for the Crown to consider all the circumstances and to take an intelligence-based approach to making a decision about whether a prosecution should take place.

**Jenny Marra:** Are you confident that the guidelines will not result in miscarriages of justice?

**Michael Matheson:** The Lord Advocate has indicated that he is prepared to take the guidance to the point of being instructions, so that it is very clear what should happen in particular circumstances.

It is about trying to take away some of the pressure on the individual who has been identified as a victim, or who has been accused and who, because of their circumstances—as you will well know—may not be inclined to identify who is the root cause of that offence. To draw some of that pressure away and to create some flexibility for those making that decision, we have decided to take a much more victim-centred approach. As he said last week, the Lord Advocate believes that not taking an approach that is based on guidance or instructions could lead to injustices taking place.

**Jenny Marra:** The Lord Advocate did say that, but immediately after that he said:

"We would take our lead from Parliament as to the extent of any defence that was placed on the face of the bill."—  
[*Official Report, Justice Committee, 23 March 2015; c 32.*]

It is therefore my understanding that the Lord Advocate may still be open to a statutory defence.

**Michael Matheson:** The Lord Advocate will implement what is in legislation. He is saying that if the Parliament decides that there should be a statutory defence, he will have to operate with that, but what he is clearly—

**The Convener:** That is a wee bit of spin, Jenny. We all appreciate that the Lord Advocate has to obtemper the laws that are laid down by Parliament.

**Michael Matheson:** I would not be surprised if the Lord Advocate chose to respond to the committee on that particular point. He is saying that he believes that, if we take a statutory defence approach, there is potential for injustices to take place but that having guidance or instructions would give greater flexibility. Of course—and I am sure that you would be keen to ensure that this is the case, Ms Marra—the Lord Advocate will implement whatever Parliament decides.

**Jenny Marra:** Absolutely.

**Michael Matheson:** I am sure that you agree that that is what he said to the committee last week.

**Jenny Marra:** Cabinet secretary, can I ask you—

**Michael Matheson:** I want to confirm that you agree that that is what he said to the committee last week.

**Jenny Marra:** I agree with what I just read out.

**Michael Matheson:** It is important to clarify that.

**The Convener:** Ms Marra and Mr Matheson—I get to quieten them both.

We must accept, Ms Marra, that what the Lord Advocate said was that he will obey whatever we pass in Parliament as statute.

**Jenny Marra:** Yes.

**Michael Matheson:** Exactly. It would be misleading to say otherwise.

**The Convener:** End of, as they say. It is not the case that he is sitting there open to the idea, whether you agree with his argument or not—and we agree that his argument was very persuasive about the position that he wanted to have, which was discretion and so on.

**Jenny Marra:** Okay.

**The Convener:** Can we move on? Others want to come in on this. Please bear with me. Roddy, do you want to come in on this?

**Roderick Campbell:** Just for the record, I want to—

**The Convener:** No, not at this minute. Jenny Marra will finish and then we will come to you. There is a lot to ask about.

**Jenny Marra:** Finally, cabinet secretary, are you confident that the guidelines are sufficient? I asked you a written parliamentary question on this just a few weeks ago, and you said that you did not hold any records on those elements.

The other jurisdictions on these islands have also taken evidence at length and they have decided that, as well as the guidelines, which are exactly the same as ours—I believe that Scotland and England have exactly the same guidelines—they need the statutory defence. Are you confident that the guidelines alone will be sufficient, given that other jurisdictions have gone for both?

**Michael Matheson:** I return to the point that I made earlier, which is that we will check the guidance that has been issued in England and Wales. As Roderick Campbell suggested, there are issues about whether they have issued guidance on that point.

**The Convener:** Bear with me a second, cabinet secretary, but I have a committee member here who is about to explode. I do not want him to explode in here.

**Roderick Campbell:** I am grateful to the cabinet secretary for checking the position, but the Lord Advocate said last week that he was not aware of any guidelines yet, so I would welcome some clarity.

**The Convener:** I thought that we were talking about instructions.

11:00

**Michael Matheson:** We will check for the committee whether any guidelines have been issued. Different jurisdictions in the UK with different legal systems take different approaches to dealing with a variety of issues on an on-going basis. That is not to say that we are not trying to work together to achieve the same aim, but we can take an approach that is distinctive to our own legal system here in Scotland.

I am confident that the approach that we have set out in Scotland is victim centred and is trying to remove the onus and burden placed on victims who may have committed an offence because of the situation in which they find themselves. As I have indicated, the Lord Advocate is prepared to step it up from guidance to instructions if that gives

further assurance about the approach that the Crown Office will take in the matter, so that there is greater certainty that it is not an area where there is a choice; rather, there will be clear instructions about what should happen in particular sets of circumstances.

**The Convener:** That is a pretty exhaustive explanation. I am exhausted, but I will allow Margaret Mitchell to ask a short final question on the issue, as she raised it.

**Margaret Mitchell:** Let me make it clear that I totally understand that the minister favours a child-centred approach and the issuing of instructions. However, issuing instructions and putting a statutory defence in the bill are not mutually exclusive. We could have both, if the committee and Parliament so decided.

**Michael Matheson:** You are correct to say that they are not mutually exclusive.

**Margaret Mitchell:** And we could have both, if we decided to.

**The Convener:** We have agreed that they are not mutually exclusive. You have got your answer.

I want to move on, as there are lots of bits of the bill to be explored.

**Elaine Murray:** I start with the issue of definitions, because the definition of trafficking in the bill differs from that set out in the EU directive. We have had evidence that the definition should coincide with what the EU directive says, and I wondered why the EU definition had not been included in the bill.

**Michael Matheson:** The definition that we have set out for the new offence is one that, as I mentioned, will apply to both children and adults. It is designed in such a way as to cover all forms of potential exploitation. We have also tried to draft the offence in such a way as to ensure that trafficking activities that have been set out in various international agreements, including the EU directive, are covered by our drafting. We have also tried to do so in a way that will assist us in bringing forward prosecutions.

It is worth keeping in mind the three elements that are often set out in international treaties on human trafficking—the act, the means and the purpose. In our definition, where the means cannot be demonstrated to a sufficiently high level in a court of law, we can still continue with a prosecution if both the act and the purpose can be demonstrated. In that sense, our definition goes slightly wider than some of the international treaties and the EU directive, which is very much about the three elements having to be demonstrated. We have tried to take an approach that encapsulates both adults and children but which still allows us to take forward a prosecution

where we cannot demonstrate the means sufficiently in court. That is slightly wider than some of the provisions that are recommended in the international treaties.

**Elaine Murray:** There was a particular concern about the use of the word “travel”, because there are individuals involved in the trafficking chain who do not facilitate or arrange travel but who are still part of the trafficking process. Do you have a view on that? Could it exclude some offenders by concentrating on the facilitation of travel?

**Michael Matheson:** I am conscious of some of the evidence that the committee has received on that. I am sure that the committee will also recognise that there is a level of flexibility for member states in how they define offences in taking forward the provisions that are set out in the EU obligations. That is why we have the provision on travelling.

It is worth keeping in mind that the travel provision in section 1 is about criminalising not travel itself but arranging and facilitating travel, which does not have to be a cross-border activity, and that subtle difference allows us to consider the prosecution of individuals who have been involved in that. We are trying to widen the scope and provide more flexibility to prosecute those who are involved in, if you like, the whole trafficking pathway.

**Elaine Murray:** Would someone who was involved in the incarceration or other exploitation of trafficked people but who was not involved in their transportation either across a border or within a country be captured by this definition?

**Michael Matheson:** The references to facilitating or arranging would give the scope to do so. The definition provides a slightly wider basis and therefore increases the opportunity for prosecuting individuals.

**The Convener:** The concern is that the word “travel” dominates section 1. We are aware from evidence that we have taken and visits that we have made that people can cross many countries, sometimes over a period of years but, as my colleagues have pointed out, individuals can be in a flat and still be trafficked, without moving anywhere. I accept that section 1 refers to “transferring or exchanging control of the person”,

but the word “travel” occurs so often that it blurs the fact that trafficking can happen without a person being moved at all from, say, a particular house. Can another way be found, perhaps through the EU directive, of making it plain that those sorts of things, too, can happen? I think that that is the issue here.

**Michael Matheson:** In his evidence last week, the Lord Advocate referred the committee to the



dictionary definition of “travel”, which talks about movement from “one place to another”, and I think that the bill’s reference to both the act itself and the purpose of the act will allow for individuals to be prosecuted.

I am more than happy to consider whether the term “travel” can be clarified—

**The Convener:** I think that that would make us happier.

**Michael Matheson:** However, I do not think that the term “travel” will make prosecutions unduly difficult. That said, I am more than happy to explore whether the committee feels that there is a way of expressing or providing for the term in the bill to address some of the concerns that you have received.

**The Convener:** I think that all committee members are concerned about the drafting of the definition in the bill. All the evidence that we have received suggests that it will unintentionally distort what is happening to some people, and we would very much welcome it if the cabinet secretary and his officials were to undertake a pretty strong review and revision of the provision in order to make it clear that it encompasses not only travel but a lot of things that happen to people that involve no travel whatever but which can still be described as trafficking.

**Michael Matheson:** Of course, those people are still being exploited, and cases can be pursued along those lines, too. As I have said, I am more than happy to explore the matter, and I would be interested to hear the committee’s views on whether things could be expressed differently.

**The Convener:** I think that the committee is pretty unanimous on this—indeed, I see heads nodding. We are not happy with it.

**Christian Allard:** Personally, I do not mind the reference to “travel”, but it would be great if there could be a catch-all that referred not only to travel.

I wanted to ask something else about definitions in the bill, convener, but I can wait.

**The Convener:** I just want to deal with this particular section first.

**John Finnie:** I shared the concerns about the use of the term “travel”, but I have to say that they were very largely set aside by the Lord Advocate’s comments. Would it be possible for the matter be covered by instructions? When the Lord Advocate interpreted the provision as a lawyer or prosecutor would interpret it, he managed to take some of my concerns away, but, of course, he will not be in that position for ever.

**The Convener:** Surely you are not already reading the crystal ball about the lifespan of the Lord Advocate, or his professional lifespan.

**Michael Matheson:** Having been challenged on why we have taken a different approach to a statutory defence in the bill, I note that there is a provision on travel in the Modern Slavery Act 2015.

**The Convener:** Okay. Roderick, is your question on the same subject?

**Roderick Campbell:** More or less. It is just a quick question about section 4.

**The Convener:** Okay.

**Roderick Campbell:** I refer to my interest as a member of the Faculty of Advocates. Last week, we took evidence from the Faculty of Advocates, Police Scotland and the Lord Advocate, and they said that the question of consent should be included in section 4. Do you agree with them on that point?

**Michael Matheson:** I do, and we are going to introduce that at stage 2.

**Roderick Campbell:** Thank you.

**The Convener:** That is good. You get a tick from us for that—not a ticking off, but a tick.

**Michael Matheson:** That makes a change. [*Laughter.*]

**The Convener:** Christian, is your question on consent?

**Christian Allard:** No, it is on definition of the offences. Police Scotland argues that a reference to forced criminality should be inserted—

**The Convener:** Oh, yes. Please ask that.

**Christian Allard:** Police Scotland told us that it wants a separate reference to forced criminality to be added. What are your views on that?

**Michael Matheson:** We are more than happy to look at whether we can address that at stage 2. I think that Police Scotland makes a reasonable point on the issue, but we are looking to see whether we can address the concerns.

**Christian Allard:** Will you put such a reference into the bill?

**Michael Matheson:** We are looking at whether we can make provisions that will help to address that. We are still working through and considering the detail, but we are certainly prepared to look at that for stage 2.

**Christian Allard:** No doubt you will come back to us on that. Thank you.

**The Convener:** I think that we are all getting a bit excited. On my list of members with new lines of questioning, I have Gil Paterson, Roderick Campbell and Elaine Murray.

**Gil Paterson (Clydebank and Milngavie) (SNP):** We have heard that criminalisation of the purchase of sex would reduce the number of people who are trafficked, but we have heard from other people that the two issues—trafficking and the purchase of sex—are so complex that they should not be combined. What are your views on that?

**Michael Matheson:** I am conscious that human trafficking and prostitution are both complex areas. I have agreed to meet stakeholders who are on the different sides of the debate on the matter. I am also mindful that to make such a provision in the bill would require careful consideration and a lot of detailed scrutiny. I want to listen to both sets of stakeholders before coming to a final decision on the matter, but I am conscious of the complexities around it and the need to be cautious about how we take any proposal forward.

I am also conscious that there are stakeholders, some of whom have written to me, who are not keen on having such a provision in the bill because, irrespective of whether we agree with the proposal, they just do not believe that the bill is the right place for the matter to be dealt with. I want to listen to the different groups of stakeholders before I come to a final decision on the matter before stage 2.

**Gil Paterson:** Many people have fears about the principle of the purchase of sex, rather than whether it should be in or out of the bill. I hope that you will take that into consideration. I have fears that bringing the matter into the bill would lead to the opposite of what we desire. We are trying to discover and protect people who have been trafficked. If we criminalise the purchase of sex, we will drive it underground, and we will find it difficult to reach people—

**The Convener:** Gil, can I halt you there? That is a statement of your views, which is fine, but you are not giving evidence to the committee. That was not a question. In any event, the cabinet secretary has given a view, as I understand it, that he is considering the matter but that, regardless of the merits of the proposal, it might not be appropriate to include the matter in the bill. Will you clarify that, cabinet secretary?

11:15

**Michael Matheson:** What I have said is that I am prepared to listen and I have agreed to meet both sets of stakeholders in order to hear their views, but I am mindful that, even if we were minded to criminalise the purchase of sex, there is significant opposition to that being provided for in the bill because of the change in focus that there would then be. I am mindful of all those issues, and we as a Government will come to a decision

on that for stage 2. I hope that that will allow stakeholders who will meet me to be assured that we have not yet come to a final position on the matter.

**The Convener:** Do members really need to ask any more questions on that particular issue? The cabinet secretary has made his position clear.

**Christian Allard:** Yes, he has. Whatever happens, he will come back to the committee and ensure that there is proper consultation.

**The Convener:** That will be at stage 2. Right. I trust that Roderick Campbell has a separate question.

**Roderick Campbell:** It is separate.

**The Convener:** Excellent.

**Roderick Campbell:** Cabinet secretary, last week we heard evidence from James Wolffe of the Faculty of Advocates that expanded on the faculty's written submission.

**The Convener:** Stop. In case anybody has an electronic device on, I remind members that I do not allow electronic devices to be used.

On you go, please, Roddy.

**Roderick Campbell:** In its written submission, the faculty raised a technical point particularly in relation to section 10. Its submission says:

"There is ... no ground specified in the Bill, other than the provision of security, on which an innocent owner can regain possession of property".

The faculty seemed to suggest that sheriffs should have a wee bit more discretion to protect the rights of innocent owners. Will the Government consider that further?

**Michael Matheson:** We feel that sufficient safeguards are in place in the approach that we have taken in the bill. For example, we see the provision of security as an important safeguard for issues that may require forfeiture at some point. A level of security will be required for that to be assured. For example, if property was being considered for forfeiture and there was no security, there would be a danger that the court would not be able to pursue forfeiture if that was agreed.

There are also provisions for an individual who would say that they had property rights, for example. Again, those are matters that would have to be considered with the court. The sheriff would have discretion around them. At the point of forfeiture, there is also the requirement for the sheriff to hear anyone who claims a right before they come to a decision on the matter.

The security element is important, and the court will obviously determine what it considers to be

appropriate in the way of security in individual circumstances. There is provision for those who have or claim to have rights in relation to a particular element of property to be able to make representation to the sheriff and for that to be considered. There is also a requirement for the sheriff to hear any further claims that come from individuals who may wish to challenge a forfeiture. The issue of security is important for that provision to be effective, and I think that there is enough discretion for sheriffs to be able to determine what is appropriate in individual circumstances.

**Roderick Campbell:** Thank you for that answer.

**The Convener:** I am sorry, but I am having a little debate with Elaine Murray. We think that the Delegated Powers and Law Reform Committee has made a mistake with one of its references. A whizz kid has spotted that. Elaine might want to ask about it now that she has spotted it.

**Elaine Murray:** The Delegated Powers and Law Reform Committee referred to section 8(2)(b)(ii), but I think that the (ii) should have been (i).

**The Convener:** There you are: she has got it in for that committee.

**Elaine Murray:** It suggested that the regulations that are referred to in that section should be subject to the affirmative procedure rather than the negative procedure. What is your view on that?

**Michael Matheson:** We will not fall out over an “i”, but we are more than happy—

**The Convener:** Cabinet secretary, it is not very often that anybody gets to catch out the Delegated Powers and Law Reform Committee; it is always catching Governments out.

**Michael Matheson:** That is very true.

We are more than content to take forward what the Delegated Powers and Law Reform Committee has recommended, and we will look to make provisions at stage 2 to achieve that.

**Elaine Murray:** The other issue concerned the financial implications of the legislation and the allocation of funds, and the monitoring of costs that are incurred by public sector and third sector organisations that provide support and assistance. There will be a need for joint training, the production of awareness-raising materials and so on. Can you outline further information on how you will allocate funds and so on?

**Michael Matheson:** There are a couple of aspects to the issue. The first concerns the funding provisions. As we have reflected in the financial memorandum, we expect costs to rise as more victims are identified. Part of that will be as a result of the role of the reflection and recovery period to help adult victims. We will monitor that as

it moves forward to see what additional resource might be required in order to meet any increasing demand that occurs as a result. That will enable us to determine whether there is a need for increased resources to support those who are meeting the increased demand.

The second aspect concerns materials, training and so on. Training is already taking place with Police Scotland and the national health service, so materials and provisions are already in place. I know that part of the training toolkit that was developed by Police Scotland is being used by local authorities for their training purposes. I would anticipate more of that taking place.

A part of the strategy will involve consideration of training, provision of information and ways in which we can support more of that work. In the financial memorandum, we estimate that there will be additional costs of between £100,000 and £150,000 in that area of activity as the strategy moves forward. We expect there to be a need for further financial resource to assist as that is rolled out further across the public sector and the third sector. How that will be done will largely be covered within the strategy itself.

**Jayne Baxter (Mid Scotland and Fife) (Lab):** I am mindful of the discussions that took place as the Children and Young People (Scotland) Bill went through Parliament, when there were lots of discussions about resources. In particular, concerns were raised about the number of health visitors and teachers that would be involved in delivering the named-person function. Earlier, you referred to the role of the named person in taking forward the legislation that we are discussing today. I should probably know this, but do you think that the Finance Committee has considered whether other legislation and financial memorandums have been reviewed in the context of this legislation?

**Michael Matheson:** I am not aware of whether the Finance Committee has considered that. We can check.

**Jayne Baxter:** Is it something that you are mindful of?

**Michael Matheson:** Do you mean the need for further resource for health visitors and teachers in relation to the named person function?

**Jayne Baxter:** Yes.

**Michael Matheson:** I am conscious that I am starting to stray outside my portfolio. The cabinet secretaries for education and health might have something to say about that.

When I was a health minister, I recognised the additional responsibilities that go with being a named person and the role that health visitors have to play in that. That is why additional

resources were provided to increase the number of health visitors in Scotland to assist in taking forward some of that work.

It is important that, when provisions are made, we continue to monitor them to consider what practical impact they are having and any financial consequences that they might have, and for Government to try to respond to that in as supportive a way as possible. However, the two specific elements that you mention would be matters for my colleagues in health and education.

**The Convener:** Yes, but it is important to raise them, and Jayne Baxter has done so.

**Gil Paterson:** We have heard concerns about the fact that the role of the anti-slavery commissioner is not in the bill. Do you have the power to legislate in that regard, since it concerns a reserved matter?

**Michael Matheson:** We have taken an approach that involves a UK-wide commissioner, which is provided for in the Modern Slavery Act 2015. Parliament agreed a legislative consent motion for that particular provision.

Elements of the legislation concern Scottish ministers being part of the decision-making process for the appointment of the commissioner, who is appointed by the Home Secretary, and there is specific provision for the commissioner to work in Scotland. I have met the commissioner to discuss some of those issues. I put to him that he should engage with third sector and public sector organisations in Scotland. There is a body of work that he can take forward in that area, and he recognises the need to do so.

I am conscious that there is a danger that a new commissioner can become overly focused on one area, so it is important that the way in which they balance their workload and the approach that they take recognises the role that they play in Scotland. I have had a discussion with the commissioner about working to ensure that there is a balanced approach in the way in which he and his staff operate. He said that he was keen to work with stakeholders in Scotland to see how that can be developed further.

**The Convener:** That is grand. I thank the cabinet secretary and other witnesses for their attendance. We will discuss our draft stage 1 report on the bill at our next meeting, on 21 April.

11:26

*Meeting continued in private until 11:54.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

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