



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 13 November 2018

Session 5



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JUSTICE COMMITTEE
29th Meeting 2018, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)
Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
*Daniel Johnson (Edinburgh Southern) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

George Adam (Paisley) (SNP) (Committee Substitute)
Ash Denham (Minister for Community Safety)
Paul Wilson (Scottish Government)
Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 13 November 2018

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning and welcome to the Justice Committee's 29th meeting of 2018. We have apologies from Jenny Gilruth, and we welcome back George Adam as a substitute. The first item on our agenda is a decision on whether to take in private today and at future meetings consideration of a draft report on post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012 and a draft report on Brexit and the civil and criminal justice systems and policing in Scotland. Do members agree to do so?

Members indicated agreement.

Police and Fire Reform (Scotland) Act 2012 (Post-legislative Scrutiny)

The Convener: Item 2 is an evidence session on post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper. Our final scheduled evidence session is with Humza Yousaf, the Cabinet Secretary for Justice, and Ash Denham, the Minister for Community Safety. They are both accompanied by their officials. I welcome the cabinet secretary back to the committee, and I welcome the minister, who is making her first appearance before us in her new role. The cabinet secretary and the minister have each indicated that they wish to make a short opening statement, for which they will have up to a minute and a half each. Cabinet secretary, do you want to begin?

The Cabinet Secretary for Justice (Humza Yousaf): Thank you, convener, and good morning to the committee. It is a pleasure to be in front of you, and I thank the committee not only for the opportunity to be here but for its thorough and extensive evidence sessions on this important issue.

A number of issues have been highlighted on this journey, but the need for reform and the principles of the 2012 act have been widely accepted. Police and fire reform is one of the most significant public sector reforms since devolution. As members will know, reform is not just about fiscal necessity and improved efficiency, although it was prompted by unprecedented pressures on the budget; we also aimed to improve services and outcomes by creating more equal access to specialist support and strengthening the connection between services and their local communities. I believe that reform has been successful so far, and there is evidence that those three key aims are taking effect in both sectors. That can be contrasted with the position in England and Wales, where the Home Affairs Select Committee recently published a report entitled, "Policing for the future: Tenth Report of Session 2017-19", which found that

"the current structure is a significant barrier to the service's ability to tackle national and transnational threats".

I accept that reform has not always been a smooth ride; it would be foolish to suggest otherwise, and reform on such a scale is rarely smooth. However, lessons from the first five years are very much being learned. Susan Deacon has overseen significant improvements in the Scottish Police Authority, and there is now a strong leadership team in Police Scotland, which is led by the new chief constable, Iain Livingstone. The

policing 2026 strategy has created a framework to allow transformation to bed in following reform, thereby creating a service that is responsive to the challenges of modern policing.

I am aware of the very short time that I have for an opening statement, so I will leave it there. I look forward to questions from the committee. I am very confident that reform has been successful, but we need to ensure that we learn lessons from the past to inform better practice in the future.

The Minister for Community Safety (Ash Denham): Good morning. I, too, am pleased to be here to discuss the legislation. The Police and Fire Reform (Scotland) Act 2012 created two very different organisations, and the “Fire and Rescue Framework for Scotland 2016” sets out Scottish ministers’ expectations of the Scottish Fire and Rescue Service. Audit Scotland’s 2015 review of fire reform, “The Scottish Fire and Rescue Service”, concluded that

“The Scottish Government and the Scottish Fire and Rescue Service”

had

“managed the ... merger of the eight fire and rescue services effectively.”

It also concluded that the SFRS’s “performance is improving” and that

“The move from eight local fire and rescue services to a national organisation has enhanced the scrutiny and challenge of the”

SFRS.

Her Majesty’s fire service inspectorate in Scotland also confirmed that SFRS is operationally “effective”.

I am pleased to note that the majority of submissions to the committee on fire reform have acknowledged, either explicitly or tacitly, that the policy intentions of the 2012 act in relation to fire reform are being met. Looking forward, I say that SFRS transformation proposals are focused on ensuring that the service delivers more for the communities of Scotland. Finally, I take this opportunity to thank the brave firefighters and the staff in the service who, as we know, work tirelessly to keep us all safe.

The Convener: I thank the cabinet secretary and the minister for their opening statements. We move to questions, starting with Rona Mackay.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning, panel. I want to probe a wee bit further on the case for reform. What might the implications have been if reform had not taken place and the legacy forces had remained in operation?

Humza Yousaf: I thank Rona Mackay for that question. I will try not to take this approach too

often, but it is helpful to highlight the financial constraints—the austerity agenda and the pressure on budgets—that, as we all know, we have been under for the past decade. We have only to look at what is happening in other parts of the United Kingdom to see what could have happened in Scotland. Since the beginning of our Administration, we have vastly and significantly increased the number of police officers from the number that we inherited. In the same term, there has been a reduction of almost 14 per cent in the number of officers in England and Wales. The Home Affairs Select Committee report that I quoted in my opening statement is quite pertinent, as it talks about the need to look at structure and reform. Without reform in Scotland, there would undoubtedly have been a huge financial burden, which would have led to very difficult choices that would ultimately have had an impact on policing at a local level in the communities that we, as MSPs, all represent.

The other aspect involves looking not only at what would have happened if we had not carried out reform but at the improvements to the service that have been made since reform. The committee heard some good evidence from a number of third sector organisations. I was especially taken by Rape Crisis Scotland’s comment—I will paraphrase slightly—that, following police reform, there has been a transformative shift in how the police approach and investigate rape cases from the situation under the previous structure.

There is no doubt at all that, without reform, we would have faced huge financial pressures. We still face such pressures—we will no doubt discuss some of them in today’s session—but we would have been faced with the need to make really difficult decisions about police numbers and so on. In addition, we would not have specialist capabilities to the extent that we do now if we had not gone ahead with reform. In those areas, if in nothing else, we have been absolutely successful. That is borne out to some extent by the fact that our approach to certain specialisms is now being viewed by other countries and other parts of the UK. That is a great testament to the reform.

Ash Denham: Without reform, fire services in general in Scotland would have been in quite a different position, although that is a counterfactual, so it is difficult to say for sure. In our delivery of the aims of reform, there have been no station closures or compulsory redundancies—in a challenging financial environment, there is something to be said for that. To echo what the cabinet secretary said about specialist resources, there is now a much more equitable spread of access to resources across Scotland than there was under the regional system.

The objectives of reform have been met: to protect and improve local services, to deliver equal access to resources across Scotland and to strengthen the connection between the service and local communities. We can see that coming through very strongly. Overall, resilience across Scotland has improved very much. The national service is able to respond to incidents throughout the country in a way that legacy forces were simply not able to do. That can be seen, for example, in the response to storm Frank. The service was able to deliver a flex response to address a number of incidents in various areas while continuing to maintain cover across Scotland, which would not have been as easy to do under the legacy system. In addition, the service has been able to respond to major incidents such as the Glasgow School of Art fire, which involved huge numbers of appliances, crews and staff, while maintaining its coverage across Scotland. Without reform, national resilience and outcomes might have been affected.

Rona Mackay: Cabinet secretary, you talked about some aspects of the largely positive evidence that the committee has heard. As you said, reform was a huge undertaking. Was the size and complexity of what was about to happen fully understood at the outset?

Humza Yousaf: Yes. I do not doubt for a second that everybody benefits from hindsight, and the beginning of reform predates my time as Cabinet Secretary for Justice, but I did not hear anything from my predecessor—or even from his predecessor—that suggested that reform was going to be, by any stretch of the imagination, an easy task or a walk in the park. It was one of the biggest pieces of reform that had been undertaken since devolution, and there were always going to be challenges, which is why the committee's scrutiny is so welcome.

Rona Mackay is right—the submissions to the committee from stakeholders have been largely constructive and positive, but it is clear that there are some concerns, anxieties and questions. As a Government, we look forward to reading the report that the committee will produce at the conclusion of its evidence sessions. We can look at where lessons can be learned in the immediate term, but we can also take a long-term view where there are longer-term issues for us to look at. I do not think that reform was underestimated, by any stretch. Those who have been involved in that endeavour understood that it would be a huge task. They did not doubt for a second that reform was necessary, but they knew that it would undoubtedly throw up more than one or two issues.

The Convener: Liam Kerr has a supplementary.

Liam Kerr (North East Scotland) (Con): Good morning, cabinet secretary. You talked about the policy intentions. Police Scotland is projected to be about £35 million in debt this year, and I see that the papers are reporting today that there could be another £15 million to come on top of that. Has that policy intention been achieved?

Humza Yousaf: That is hard to answer—

The Convener: We are currently on policy intentions—at this stage, we are looking at the case for reform. You can come to that later, Mr Kerr—

Liam Kerr: Is that question not about policy intentions, convener?

The Convener: Yes, I suppose that it is. You can answer the question, cabinet secretary.

Humza Yousaf: I make the point to Liam Kerr that it would help if we had the £175 million in VAT that was taken from the SFRS and Police Scotland over the period of reform; that would have helped our finances significantly. With regard to the deficit, the Scottish Police Authority has projected that Police Scotland will overreach and make greater financial savings than expected. The SPA believes that Police Scotland will be able to accumulate £1.9 billion of savings. In addition, it has a plan to tackle the deficit and reduce it by 2021.

There are clearly some uncertainties around that. The biggest one is Brexit and what it will mean for police officer numbers and therefore for deficit reduction and so on. Those things are still up in the air while the uncertainty around Brexit still plagues us. Nonetheless, the savings target of £1.1 billion that is attached to reform is expected to be not only met but exceeded. Of course, we have continually to keep an eye on the deficit, and it is right that we scrutinise it, but I say to Liam Kerr that those savings are a real positive.

The Convener: There will be a bit of overlap between our areas of questioning. We are trying to cover themes very thoroughly, including reform and policy intentions, so members can judge for themselves.

Liam McArthur (Orkney Islands) (LD): Good morning, panel. I will stick with the theme of Rona Mackay's question. We can all learn with hindsight, but I highlight the evidence that we heard from a number of sources. I asked Chief Superintendent Ivor Marshall, who appeared before the committee on behalf of the Association of Scottish Police Superintendents, specifically whether the complexity of reform had been underestimated, and he was in no doubt that it had. He said that, as a consequence,

"We have run a structural deficit for five years because the transformation has not generated the income, so we have

needed to take a patch-up-and-make-do approach to the budget".—[*Official Report, Justice Committee*, 18 September 2018; c 9.]

There have been consequences as a result of underestimating the challenge of reform. I hear what you say about the projections for managing the budget deficit down over future years, but back in 2012-13, we were getting assurances that the financial position would be sound. Given that the UK Government had made clear its position on VAT, which you mentioned earlier, was factoring in that money not a high-risk strategy in setting the foundations for the new police service?

10:15

Humza Yousaf: It is somewhat difficult for me to go back to a period that predates my time as Cabinet Secretary for Justice, describe the innermost thoughts of various people in the Government and the police structures at the time and say whether they overestimated or underestimated any of the challenges and complexities ahead. I never had the impression that any of them, my predecessor in particular, believed that reform, although it was very much necessary, would be anything other than a challenging task.

The SPA has a plan in place to get the structural deficit down, and it will of course be judged on that plan. As the SPA has done, I put forward the caveat that there is some uncertainty about what Brexit will mean for the deficit reduction; we will wait and see. My central point is that the reform savings target is £1.1 billion, and the SPA has projected that it will exceed that target and reach £1.9 billion. We cannot just dismiss that—it is very positive. Did it take us, or the SPA, longer to get there? No—we should get those savings earlier than projected. We are in a good place. That is not to say that in any portfolio, including my own, we do not have to balance underspends and overspends in budgets going into a financial year. I am keeping a close eye on the budget deficit, and the SPA knows very well that this committee and the Justice Sub-Committee on Policing are doing the same, but there is a plan in place to deal with it.

Liam McArthur: I appreciate that you cannot second-guess the thoughts of not only your predecessor but his predecessor in turn. However, I think that it is safe to say that the assurances that were given on the financial position and the savings that would be made were provided partly to reassure the Parliament, which saw those savings as pivotal in allowing the police force in particular and the SFRS to deliver against the legislation. The concern is that the assurances that we are currently being given on budget savings are similarly being offered up in an

attempt to reassure. As a committee, we need to understand how solid the basis for those assurances is, given what happened last time.

You have mentioned on a couple of occasions the threat of Brexit. However, a more specific issue that seems to rear up in determining whether those future savings can be made and the structural deficit brought down concerns the need for investment in information and communications technology. The committee heard from Professor Nick Fyfe, who said as much. HM inspectorate of constabulary in Scotland has also raised the issue, and Police Scotland itself has acknowledged that a sizeable investment in ICT is the only way of unlocking a large proportion of those savings. Can you assure the committee that you have heard what Police Scotland is saying, and that you will respond positively to that case?

Humza Yousaf: I can absolutely give an assurance that I have listened to Police Scotland. It has presented its wishes and desires for its ICT system and, as you know, those have had a public airing. I do not doubt the need to reform and invest in that technology. I think that all of us who have interacted with the police—as every member of the Justice Committee will have done—will have heard those pleas. It is important that lessons are learned from the i6 programme, which the committee looked at in detail previously. We will look at the robustness of the investment in ICT for which SPA and Police Scotland are asking to see whether we can verify the figures, and we will ensure that we test them to the nth degree, as the committee would expect us to do.

I know that Liam McArthur would not expect me to prejudge the outcome of discussions as part of the budget negotiations. I am in discussion, as is every cabinet secretary, with the Cabinet Secretary for Finance, Economy and Fair Work, and there is no doubt that he and I will keep a close eye on, and listen closely to, what the chief constable and the chair of the SPA have to say. It will be important for us to ensure, given previous experiences, that we test the veracity of those figures—the committee would expect no less of me, as a cabinet secretary. Nevertheless, it is extremely difficult to argue against the principle of the case for ICT investment.

Liam McArthur: I certainly welcome your assurance on the challenge function with regard to whatever Police Scotland brings forward on ICT. We can learn lessons, perhaps most obviously from the experience with i6. If you were to find that the figures in Police Scotland's proposals for its ICT ambitions did not match up, you would presumably need to assess the implications of that in relation to bringing down the structural deficit in the service.

Humza Yousaf: As you say, one of the issues around the structural deficit is unlocking investment in ICT. It is worth saying, however, that the deficit reduction plans up to 2021 do not depend fully on ICT investment. I accept that it is one element, but we should bear in mind that the timescale for the ICT investment plan is much longer than the timescale for the SPA's current deficit reduction plan. I accept what Liam McArthur says—he is right to say that ICT investment is part of the deficit reduction. His point is not lost on me, but ICT is not the only place where efficiencies can be found, made and unlocked.

The Convener: We are flexible today—we are seeing where we go with questions.

On that point, cabinet secretary, HMICS states in its written submission that

“the full benefits of police reform will not be evidenced until national ICT systems are in place.”

Investment in ICT is not just a wish from the SPA or the chief constable; it is pretty fundamental. Will you comment on that?

Humza Yousaf: I have a huge amount of respect for HMICS, and I value what Gillian Imery has to say, including those words. I am not here to argue with what she has said. I hope that I demonstrated in my answer to Liam McArthur that any of us who have interacted with the police will understand and believe that there is a need to invest in ICT. I am simply saying that the committee would expect me to ensure—as would the public, I am sure—that those figures are robust. When I spoke to Police Scotland, it welcomed the need for a robust challenge to the figures and the detail of the case. It will then be for me to have a conversation with the finance secretary about potentially unlocking some money in that respect. That conversation is taking place as part of the budget negotiations, but the finance secretary would—as you will understand—want that case to be vigorously challenged to ensure that we do not get ourselves into a situation in which we have to find and commit more money to a project that, although it is valuable, could end up costing the public purse more than it possibly should.

Shona Robison (Dundee City East) (SNP): I will come back to national resilience in a moment but, given that we are talking about the ICT system, I will stick with that theme. The UK Government has now accepted the principle on VAT that the cabinet secretary outlined in his initial comments. If a VAT refund was backdated to the point at which the issue was first raised, would it make a substantial contribution to the ICT project? Is that being pursued?

Humza Yousaf: It is always being pursued, if we are absolutely honest. If we got that £175

million VAT refund for the police and fire services—the vast majority of it would go to the police—it would make a substantial difference to investment in the police, which would include investment in ICT. The UK Government has conceded that there is an argument for Police Scotland to be able to reclaim £25 million of VAT. If it agrees with the principle, surely it should agree that that principle should apply since reform took place. I am not holding my breath to see any movement from the UK Government on that issue. Nevertheless, if it were to act equitably and fairly in that regard, the VAT repayment would go a fair way to help with investment in ICT, given that the ICT ask from Police Scotland is just shy of £300 million.

Shona Robison: I will go back to the theme of national resilience. There is strong evidence to suggest that the biggest success of reform has without a doubt been the ability of both services to respond in a way that demonstrates more equal access, which is one of the three pillars of reform. The success in that area has been proven in some of the big challenges that the services have faced, such as the Glasgow School of Art fire and significant storms. What further scope is there to enhance and build that national resilience in other areas?

The third pillar of reform is:

“To strengthen the connection between services and communities”.

Is it fair to say that, although the services continue to focus on national resilience, the effort in the past few months in particular has shifted to strengthening the local connection?

The evidence that the committee heard suggested that that was not the strongest outcome of reform, but over the past few months we have seen significant progress. A number of local authorities have submitted evidence—which I am sure that you have seen, cabinet secretary—to suggest that those local connections have now markedly improved. Nonetheless, there may be scope to go further on issues around budgets, which may include more devolved budgeting and control over budgets. It would be useful to hear about the key objectives for both national resilience and local connectedness that you would like to be achieved over the next period as part of the continuation of reform.

Humza Yousaf: I will deal with those questions in the order that they came. On national resilience, I agree with the assessment from Shona Robison, and from a number of third sector organisations in particular, that there has been a dramatic improvement in many areas of police investigation and in the police approach to a number of issues. Again, I highlight the evidence from Rape Crisis

Scotland and Scottish Women's Aid, which I found especially compelling on that front.

Police Scotland will seek to continue to improve—"strengthen" is probably a better word—its national resilience around the challenges that we face in relation to security and cyberresilience. It will continue to work on child protection and human trafficking, and on the terror threat, which—looking across the UK over the past 12 months—we know can take many different forms.

There is no doubt about what the police have done in and around the area of sexual offences and domestic abuse, on which the committee heard compelling evidence. We need to ask whether lessons can be learned from the way in which Police Scotland has managed to strengthen that capability, and whether the same approach can be rolled out across other parts of the service. In his evidence, the chief constable quoted an incredibly stark statistic: 320 murders have been committed since Police Scotland was formed, and all but two of them have been detected. I think that he said that the remaining two cases related to serious organised crime—I should say that the investigation and the disruption of serious organised crime is another area in which Police Scotland, from a national perspective, is looking to strengthen its approach and capability.

On the second part of Shona Robison's question, I imagine that a fair part of the evidence that the committee gathered related to local issues. Again, I thought that the evidence from local authorities was challenging in some respects. They were quite frank in saying that, in the first years of reform, the process had not worked to deliver on their expectations, but I definitely detected from the evidence sessions that many authorities are saying that they are in a much better, and much improved, situation.

10:30

I am also heartened by the chief constable's words on local matters. I am paraphrasing rather than quoting him directly, but he has said on many occasions that he is very keen to see how we can further devolve aspects of policing to local authorities and ultimately to communities. We are looking at how we strengthen some of those areas from a national perspective, and I heard evidence from local authorities to suggest that the Scottish Government needs to be a bit more involved in some aspects of that local conversation.

The Convention of Scottish Local Authorities police scrutiny conveners forum, which involves the Scottish Government at official level, meets a couple of times a year and helps to add to that process. In addition, there are statutory obligations on the police—and on Government in respect of

policing—to engage and consult with local authorities. Of all the committee's evidence sessions, I kept a close eye on the session that involved input from local authorities, because I am very keen that if improvements need to be made—as the evidence suggests that they do—we should make those improvements.

Shona Robison: Are other parts of the UK looking at the evidence and outcomes in areas in which both Scotland's police and fire services are quite far down the line? I know that there is talk of reform elsewhere. Are you aware of what is happening in that regard?

Humza Yousaf: The Chancellor of the Exchequer, in his recent budget, mentioned reform of the police service. I do not doubt for a second that many parts of the UK are looking at what we have done here in Scotland. It is also fair to say that there has been a fair bit of international interest in Police Scotland and the reform process that it has undertaken.

We recognise that with humility—there have been challenges, of course. We should not forget that a key area of success by which the Police Scotland reform will be judged is whether it has made our communities safer. If we look at the statistics from 2012-13 to the present day, we see that the Scottish crime and justice survey estimates that there has been a 13 per cent reduction in recorded crime overall, and that is from reform. We have seen some really positive indicators with regard to keeping our communities safe, and it is no surprise to me that other parts of the UK, and other areas internationally, are looking at the achievements of Police Scotland.

The Convener: I note that the minister has not had an opportunity to comment on local scrutiny or any other aspect that Shona Robison covered in her questions.

Ash Denham: I would just like to add a few points from a fire perspective. When we think about fire, we often think about responses to fires, but the Scottish Fire and Rescue Service covers so many other aspects and responds to a variety of incidents. That includes growing issues such as climate change. Over the past few years, the service has responded to quite a lot of flooding incidents across Scotland. Equally, climate change can involve dry weather, which can lead to wildfires; we saw a great response from the fire service to the wildfires that took place this year. The service also responds to incidents that involve terrorism, so national resilience—the fact that the national service is capable of responding to incidents of that type—is a very important part of its role.

During the summer, I visited the Dumfries station, which is one of the SFRS's new specialist

water rescue stations. I went out to see a demonstration of its capabilities, and the officers made it clear that the ability to perform water rescue from the station in Dumfries is very important, given that the service is required so often in the local area. In fact, since it started in 2016, the staff have been called out to perform a water rescue 28 times, so it is clear that people are using the service a lot. The staff are pleased to be part of the national picture, as they have the capability to respond not just locally but across the country.

With regard to the way in which the fire service interacts with local communities, there is good evidence that the 2012 act, especially given the way that the role of local senior officers—LSOs—is enshrined in the legislation, is working very well. It allows connection between local communities, scrutiny from local councillors and so on. Audit Scotland's 2015 report commented on those aspects and said that there had been

"effective local engagement in the move to a national service".

I hope that that gives a flavour from the fire perspective.

The Convener: Thank you for that. Liam Kerr has a supplementary, followed by Liam McArthur.

Liam Kerr: There are reports this morning that the clear-up rate for burglaries is sitting at around 23.9 per cent. If that is right, is the cabinet secretary really comfortable that his community policy intention has been achieved?

Humza Yousaf: When it comes to being comfortable, we would all want to see the statistics going in a positive direction. Shona Robison's question was about local accountability and governance. According to many statistics, including the recorded crime stats and the crime and justice survey, the longer-term trends—I know that people can pick up one-year trends, and I do not dismiss them—reveal a positive trajectory for violent crime and robberies over the past decade. We have seen positive stats. Am I pleased about the statistic that Liam Kerr quoted? No, of course I am not comfortable with it, and we—all of us, collectively—will continue to push Police Scotland to see what further action can be taken to increase the clear-up rate.

However, Shona Robison's point was about local accountability and scrutiny. One of the key elements of the 2012 act is to ensure that Police Scotland produces its local policing plans in consultation with local authorities; the statutory requirement for local commanders helps to inform some of that. If, in the committee's evidence sessions, local authorities in particular have identified gaps in which members think that more could be done to drive up clear-up rates and drive

down crime, I have no doubt that Police Scotland, the SPA and the Government will look closely at those areas.

Liam McArthur: I would like the cabinet secretary to clarify what I thought that I heard him say in linking the positive trend of a reduction in crime rates to police reform. It is true that a reduction in crime rates is a feature across the UK where reform has not taken place, so I am struggling to understand why he would make a causal link between a reduction in crime and the restructuring of Police Scotland.

Humza Yousaf: I am not entirely sure—I will go back to my brief and see whether Liam McArthur is right about there being a reduction in crime across other parts of the UK. I will double-check that and come back to him. I was making the point that in some areas—for example, the committee has heard evidence from Rape Crisis Scotland and Scottish Women's Aid—there has been a transformative approach to the investigation of certain crimes. We know that people are now more confident in reporting sexual crimes and so on. I was hoping to give the member some comfort by quoting the actual numbers on the ground. The Scottish crime and justice survey estimates that crime has fallen by 13 per cent since 2012-13. There will be a variety of factors behind that, but we are doing better than other parts of the UK, and reform is certainly a part of that. Looking at the statistics in England and Wales, we saw an 11 per cent increase in recorded crime in 2017-18. I appreciate that there are differences in methods of recording crime, but that trend is different from what we have seen in Scotland.

Liam McArthur: With respect, cabinet secretary, you have just lectured the committee about long-term trends, but I would be interested to get a comparative figure rather than hearing a figure that has been plucked out of thin air.

Humza Yousaf: Sure.

Liam McArthur: I also caution against attributing a reduction in crime rates to structural reform of policing. As you acknowledged, crime rates are down in Scotland for a variety of reasons. It would be dangerous to attribute any figures, whether on an annual or long-term basis, to police reform or to give too much significance to the restructure of policing.

Humza Yousaf: I have two points in response. First, I never come to meetings to lecture the committee—that is not the approach that I was taking. I was simply suggesting that reform is an important factor. As I said in my previous answer, I would never dismiss one-year figures; I simply make the point that we should look at longer-term trends. I will see if I can provide those figures to Liam McArthur.

There is one point of agreement between Liam McArthur and me; I do not seek any disagreement. I am not suggesting that reform is the only reason that there has been a reduction in crime over the past five years since the reform began. However, it would be churlish to ignore the fact that reform has brought some capability and additionality, and that it has been part of the downward trajectory that we have seen since then. I accept that we saw a downward trajectory before reform, but I think that reform has played a part in the reduction.

Fulton MacGregor (Coatbridge and Chryston) (SNP): My question follows on from the lines of questioning from Shona Robison and Liam McArthur. Is there consistency across the country in the protection and improvement of local services? The cabinet secretary has given some good national examples and has talked about them a few times, but are there any local examples? From a fire perspective, the minister referred to a good local example in Dumfries.

Humza Yousaf: I will answer that from a local perspective. When it comes to national expertise, there has been a concerted effort to get a more effective response on issues such as terrorism, child protection, major investigations and human trafficking. Those are just a few examples. Almost every one of us around the table will, as an MSP, have dealt with cases that involve difficult issues around major investigations or child protection issues. However, although we are strengthening our national capabilities on those issues, we should not lose sight of the effects that will be seen locally. It is in local areas that we will notice the positive effects of that national spatiality and capability. In that regard, there are some good examples.

There is an emphasis on meeting local needs not only in the policing 2026 strategy but in the three-year police implementation plan that runs from 2017 to 2020. It is worth saying that national and regional expertise also—I use that word specifically—includes front-line officers who are deployed in communities across Scotland. As and when the need arises, they provide additional support to local policing. We have seen a strengthening of our national capability in a number of areas, and that has been very much felt at a local level. Again, I go back to what was said by Rape Crisis Scotland among others—the transformative approach that the organisation described will be very much felt at a local level.

Fulton MacGregor: A lot of this area has been well covered by the cabinet secretary and the minister, but I have one follow-up question. How can we improve the local scrutiny bodies? We heard a lot of evidence from various local authorities in different areas, and the police spoke

about there being different issues in different areas. For example, although people going missing is a national issue, it can be an issue more in some areas than in others. How can we improve the local scrutiny bodies to ensure that, as you said, the issues that are most significant or are significant only in a certain area can be highlighted and people can be brought on board to deal with them?

Humza Yousaf: The Convention of Scottish Local Authorities police scrutiny conveners forum, which brings together the elected members who lead on police scrutiny functions across the 32 local authorities, meets a couple of times a year and includes senior representation from Police Scotland, the SPA and the Scottish Government. That is probably the forum in which to have that conversation. I do not doubt what local authorities say about a possible disconnect between the focus on certain national capabilities and what they perceive to be happening on the ground in their areas. There has to be a forum in which they can air those views. There are various forums, but the COSLA police scrutiny conveners forum is a very senior-grade, high-level forum and is probably the place to have such conversations.

I have no doubt at all, especially after hearing from those stakeholders to whom I have spoken, that everybody is looking closely at the committee's evidence sessions and at what the outcome will be. We are happy to see where we can improve, and I am sure, from the evidence that I have seen, that Police Scotland and the SPA are also happy to see where improvements to the governance structures can be made. The police scrutiny conveners forum will be incredibly important in ensuring that local and national priorities are aligned.

Ash Denham: Similarly, the SFRS is a national service but it is delivered locally. We require to balance the need for consistency across the country with the need for local autonomy, which is usually quite beneficial, and the legislation allows for that balance to be struck. There is leeway for local priorities to come through.

10:45

The LSOs, which I mentioned earlier, can develop tailored local plans in conjunction with all local partners and communities in order to meet the needs of those local communities. I think that most people would agree that, as a direct consequence of the way in which the national service is working, local elected members now interact much more with the service than they ever did before. The local aspect is coming through much more—the service needs to be clear and accountable, but there is leeway for the LSOs to

develop plans and respond directly to local priorities.

Daniel Johnson (Edinburgh Southern) (Lab): Cabinet secretary, you said in your opening remarks that a number of lessons have been learned, and you have said on a number of occasions during the meeting that we could all benefit from hindsight. Can you bring to life the key issues on which you think we would have benefited from hindsight? What might the consequences have been, in terms of outcomes that we might have wanted to avoid, if we had had that hindsight at the outset?

Humza Yousaf: I am always happier looking forward than looking back. However, it is important to look back, and the purpose of this evidence session and the evidence that the committee has taken overall is to learn lessons. There is no doubt that one key theme has been issues around local scrutiny, governance and alignment.

Looking back over the years, could some of the structures have been improved to enable more local governance and scrutiny? In areas in which the 2012 act imposes a statutory requirement, how are such requirements given practical effect? In my view, the local issue would have benefited from hindsight, for sure.

On other issues, such as national capability, there are lessons to be learned for politicians, the Government, the SPA and Police Scotland. It has taken a bit of time for everyone to become comfortable with the roles and responsibilities of those organisations, although I do not doubt that we are now in a much better place. I have no doubt that, when we look back, we will see that some of the difficulties and challenges that we faced could potentially have been avoided. However, I am hearing loud and clear that there are lessons to be learned in and around local priorities, governance and scrutiny, and in ensuring that our national police service is aligned with those aspects.

Daniel Johnson: On the point about local issues, following on from colleagues' lines of questioning, we have seen a reduction of more than 300 officers in local divisions. Likewise, we heard clear evidence from Calum Steele and Ivor Marshall about the pressures that officers in local divisions feel. Both of those witnesses expressed a need for a demand-led review that would look at the requirements that are placed on local divisions and at resourcing levels. Their point was that, in a sense, the numbers are very much inherited from the legacy forces, and the rhyme and reason for why those levels are what they are has been well and truly lost—probably well before the reform ever took place. Are you reflecting on those requirements? Is there a need for a demand-led

review, and would you back the call from those two witnesses?

Humza Yousaf: That highlights the difficult position that I am always in as the Cabinet Secretary for Justice. I imagine that you—not you personally, but the Parliament—would be the first to accuse me of interfering if I was to dictate to the chief constable how many officers should be deployed at national, regional and local levels. At the same time, we cannot ignore what local authorities and the other stakeholders that you mentioned may say.

I return to the point that I made to Fulton MacGregor. There may be a rebalancing to bring officers—more of them than has been the case in previous years—into the national capability, but that will have a local impact in keeping local communities safe and tackling specific issues such as child protection, trafficking and major investigations at a local level. Officers are not sitting in some national ivory tower and not doing work in local areas, but I do not dismiss the points that Daniel Johnson and various stakeholders have made.

Labour's manifesto discussed the need for Police Scotland to have—if I remember the phrase correctly—a balanced workforce, and it is incredibly important that the chief constable is given leverage to create that. I do not say this often, but I agree with that point in Labour's manifesto. We must give the chief constable space, from an operational perspective, to do what he thinks is right in order to get the positive outcomes that are possible. I am not in a position to demand, and I will not be demanding, that the chief constable deploys officers in a certain way. That is very much a job for him.

Daniel Johnson: I will follow up on some of the previous points, although I do not want to tread on others' toes. One specific suggestion that came up frequently in our evidence sessions was the possibility of giving local scrutiny panels powers over budget and the ability to appoint divisional commanders. Can such financial powers and powers of appointment be put in place to beef up the role and increase the strength of local scrutiny panels?

Humza Yousaf: I return to what I said in one of my opening answers. Since the appointment of the chief constable, which was warmly welcomed across the board, he has said—I will paraphrase, as I am afraid that I do not have the exact quote—that he is very keen to see how Police Scotland can further devolve policing to local communities. I will leave it at that. That shows that there is a willingness and scope to look at sensible measures that are brought forward to allow communities a greater say in how they are policed.

John Finnie (Highlands and Islands) (Green): Cabinet secretary, you say that you do not want to be accused of interfering, but you do interfere—the good news for you is that you do so with the blessing of all the Opposition parties—through the fixation on the figure of 17,234 police officers. Do you acknowledge that?

Humza Yousaf: We have moved away from that figure, which was not in our 2016 manifesto; I think that that is understood. I believe that the same was true of all the manifestos, although I do not know whether that figure was in the Green manifesto. The idea that the chief constable should now be given the space to create a balanced workforce is absolutely right. That view is very much predicated on my responsibility to keep Scotland safer, given that it involves operational capability. HMICS will oversee any reduction in police officer numbers to ensure that there is enhanced operational capability and no detriment to the service as a result. We are now in a position in which we have to allow the chief constable to create a balanced workforce.

John Finnie: That is very good as we move forward, but—as you rightly said—today’s session is a retrospective examination. People often do not pick up on the fact that 10, rather than eight, organisations had to be rationalised. Police officers could not be made redundant, while chief officers—I welcome the reduction in their number—did not have their contracts renewed. Was it inevitable that there would be an effect on the front line? We have heard varying views about the resilience on the front line that was brought about by an insistence on the figure of 17,234 officers.

Humza Yousaf: Can you expand slightly on what you are saying?

John Finnie: You could not make officers redundant—I would not seek to do that—and the only staff who could be made redundant were police support staff. That led to an inevitable situation in which posts were backfilled. Officers who might otherwise have been deployed in what we would refer to as front-line duties were sitting in offices, doing tasks not as well—I think that that was acknowledged—as the police support staff who had been there before them.

Humza Yousaf: Some of the reduction in the number of police staff was inevitable, given that we were removing duplication when a number of forces were brought together. There was no doubt that that was going to be a consequence of reform. In the same vein, I take nothing away from what John Finnie said—in fact, I always value what he says because of his experience in the police. The latest numbers that have been published show that there is a more balanced police workforce that is deploying officers back to

the front line, where they should be. Some officers are unable to be on the front line because they are pregnant, injured or sick, which is understandable. However, the latest statistics show that more officers are being taken out of those backfilled posts and returned to the front line.

John Finnie: What lessons has the Scottish Government learned about the need to strengthen the connection between the service and communities from the way in which the deployment of armed officers and the stop-and-search policy were dealt with?

Humza Yousaf: It is important that we learn from how both of those issues were dealt with. That goes back to the answers that I have given to previous questions. The greater the alignment between the national service and the desires and wishes, rather than just the needs, of local communities in respect of the two subjects that you mentioned and other issues that—rightly and understandably—provoke emotion, the better. We have structures in place to enable us to do some of that work, but we should look at where our approach can be improved and learn lessons from how previous issues were dealt with. However, we must acknowledge that issues such as stop and search and the deployment of officers with an armed capability involve different emotions and reactions from different people. Those will always be contentious issues—I do not doubt that—but the alignment of the national service with local desires is incredibly important.

John Finnie: Do community impact assessments have an important role to play? Have they been sufficiently used by Police Scotland with regard to those two issues?

Humza Yousaf: I would have to look back at those two specific issues—I would not be able to say, off the top of my head, whether sufficient community impact assessments were undertaken when they were being discussed. I am happy to look into that and provide John Finnie with more retrospective detail, but I am also looking forward, as I intend to do. I am in a new role; there is a new chief constable; and the SPA has a new chair—I say “new” but she is almost a year into her role—and a new chief executive. We are all committed to ensuring that there is as much consultation and engagement as possible at a local level when we define our policing strategies for the future.

John Finnie: I might be able to save you that work—it has perhaps been done. I give you as an example the deployment of armed officers. I do not believe that any reasonable person would assume that the line—I am paraphrasing here—that police deployment and operations for authorised firearms officers will be standardised across Scotland would lead to a situation in which armed police officers in vehicles would be

patrolling Inverness high street, as they have previously done. It would be good if lessons were learned from that approach.

Humza Yousaf: Okay.

John Finnie: Thank you.

Liam Kerr: Cabinet secretary, I will stick with your point that it is not ideal for the Scottish Government to have too great a role in Police Scotland. The committee has looked at the appointments process for the chair and members of the SPA. Could the current appointments process, in which appointments are made by the Scottish ministers, at least lead to the perception that the organisation is not as independent as it could and should be?

Humza Yousaf: We will reflect on any sensible suggestions about how we can strengthen some of the processes. Donna Bell will keep me right here. My understanding is that the convener of the Justice Sub-Committee on Policing—it was Mary Fee at the time, I think—had a role to play in the process that led to the appointment of Susan Deacon as chair of the SPA. That therefore gave the Parliament a role. That seemed to be the right thing to do, and the appointments process seems to have been successful. People have largely welcomed Susan Deacon's appointment, and they recognise the work that she has done in her first 11 months in the role. When there is a sensible space to have a conversation about how we strengthen those processes, it should absolutely take place.

At the same time, the fact that the Scottish Government is the sponsor and the SPA is accountable to us is hugely important, and we cannot dismiss that—it is not insignificant. Nonetheless, where we can look to strengthen processes, I will do my best to keep an open mind. The involvement in the appointments process of the convener of the Justice Sub-Committee on Policing is a positive development.

11:00

The Convener: Can you clarify whether that was a one-off arrangement? If it was, would you seek to change that and build such involvement into the process?

Humza Yousaf: I am open-minded about that suggestion. The process worked well last time. I would be open-minded about whether such an arrangement should remain informal or whether we would want to formalise it.

The Convener: As you will be aware, there was some criticism at the time of the arrangement—perhaps not from all sub-committee members, but I certainly had some concerns—about the fact that the sub-committee convener, who had been

involved in the appointments process, would subsequently be assessing and scrutinising the person in that role, which might cause a bit of a conflict.

Humza Yousaf: If there were any suggestions for ways to improve the process while still giving the Parliament some sort of role, I would look at them. My concern would be that—as others have said—we need to allow Parliament to have a role so that all political parties are involved in the process. Otherwise, any appointment would be in danger of being politicised and we have to be careful to avoid that. If there are other suggestions about how to strengthen the appointments process, I will take an open-minded approach. The last one worked well, but that does not take away from what the convener said. There might be another way of strengthening the process.

Liam Kerr: My question is perhaps for the minister. It has been suggested that some of the early challenges within Police Scotland were down to personalities and clashes over responsibilities among those in charge. It would appear that the SFRS has not had the same issues. Given that the SFRS did not face such challenges, do you draw the conclusion that the early challenges in the police service were simply down to personalities? If so, does that raise the possibility that the same thing could happen again?

Ash Denham: The 2012 act created two very different organisations. The SFRS is considerably smaller than Police Scotland, which had some effect on the complexity of the issues and so on. We also have to take into account the fact that there were very different legacy issues. The other difference between the police and the fire service is that the fire service has a much more straightforward organisational model, which has worked well for it.

Liam Kerr: Cabinet secretary, it has been suggested to the committee that the 2012 act was not sufficiently clear about the respective roles and responsibilities of the SPA and Police Scotland. Does the Scottish Government have a view on whether it would be useful to amend the act to provide greater clarity about those respective roles and responsibilities? Alternatively, do you take the view that—as we heard in evidence from the SPA—the act is the act and there are better ways to achieve such an outcome?

Humza Yousaf: I am more in line with the SPA on that one. I am relatively new to my role. With some fresh faces—a new chief constable, a relatively new chair of the SPA, a new SPA chief executive who comes with a wealth of experience, and me as the new cabinet secretary—we are seeing more stability. The new chief constable and the new SPA chair have had a lot to do with that. Even if they were seeking to be critical, anybody

would recognise that the chair of the SPA has been working very hard—she has really been working her socks off—to improve the structures. When it comes to key learnings, I note that the SPA's improvement plan for 2018-19 sets out key improvements in how things will work and responds to recommendations from 14 different reviews, inspections and audits. We have a plan to move forward.

To go back to Liam Kerr's question to the minister about personalities, the approach is important. People recognise that Susan Deacon as SPA chair and Iain Livingstone as chief constable have taken an open approach and have welcomed transparency and accountability. That is important, and it is equally the approach that the Government has taken and will continue to take.

It is not the time to try to make time-consuming amendments to legislation. The structures, processes and improvement plans are in place to improve things for the future.

The Convener: I want to press you on that specific point. The new appointees certainly seem to be working more collaboratively. That brings us back to the question of whether the previous issues were down to personalities or to governance structures. The new SPA chair has been looking at those structures to try to make improvements within Police Scotland.

Is there a potential conflict of interest in the SPA's dual role? It has to work in a collaborative way and look at improvements to Police Scotland, but it provides independent scrutiny of how the police service is working. It is perhaps the SPA's dual role that has caused problems in the past.

Humza Yousaf: I am not entirely convinced, although I will listen to the evidence and to what you and others have to say about that. Anybody who has encountered Susan Deacon knows that she is not afraid to challenge—she does so robustly when it is required. Equally, I know from speaking to the chief constable that—perhaps counterintuitively—he welcomes such robust challenge. I do not think that the issues lie in the SPA's roles and responsibilities. The way in which it is now working provides it with the ability to challenge robustly while ensuring that priorities are aligned. I do not see that as a conflict. I will look in depth at the evidence that the committee has taken, but it does not seem to me that what you describe was a key issue or theme in the evidence sessions.

The Convener: The SPA chair mentioned that perception was important, as indeed it is. The secondment of Government officials in the interim to try to improve governance relations again raises the issue of independent scrutiny. I would welcome the cabinet secretary's thoughts on that,

and I welcome the fact that he is prepared to look back on the evidence and see whether there could be an issue.

Rona Mackay: I have a question for the minister. The Fire Brigades Union raised some concerns that the SFRS board did have not enough operational expertise, and it asked whether the composition of the board could be looked at. Can I have your reaction to that?

Ash Denham: There is no evidence of any significant challenges to and concerns about the make-up of the board. The 2012 act supports the need to make available the right skills and expertise, and the chair can decide on what expertise and skills she needs on the board and recruit appropriately. Six members were recently appointed to the board; they cover extra skills in areas such as digital and accountancy. I do not think that there is any need for amendments to the legislation to change the current set-up in any way.

A significant amount of operational experience is available to the board. The chief officer, the deputy chief officers and the assistant chief officers, who have a vast amount of operational experience between them, can attend board meetings. If more experience is needed, the fire service inspectorate can be called on, and additional expertise can be seconded to address specific challenges as and when required. Significant operational expertise is already available to the board.

The Convener: I want to return to the governance aspect. You will be aware that the Unison police staff Scotland branch has raised concerns about governance. In its supplementary written submission to the committee, it highlights the need for "greater ... openness" and "clarity" concerning "ministerial decision making". It goes on to state that it has been difficult to see where the boundaries are, and

"where ministerial advice and guidance start and instruction, direction and intervention end".

Can you comment on that aspect, cabinet secretary?

Humza Yousaf: To some extent, some of that will be subjective, and it has recently been a point of political debate. I will keep an open mind on where the 2012 act and associated guidance can be strengthened to demonstrate those boundaries, although I do not think that the act has to be amended to deal with that particular issue. I go back to the convener's point that perception is incredibly important. I have a responsibility to ensure that our communities are kept as safe as possible. The relationship that I have managed to strike up with Susan Deacon and the chief constable is positive and collaborative. We will

challenge when appropriate—for example, I discussed with the committee earlier the need for robust challenge of the case for ICT investment that has been put before me. Equally, we are aligned in terms of the overarching priorities that we wish to see. There is much transparency in those conversations and interactions—the more, the better. I welcome that rather than shying away from it.

The Convener: More specifically, how do you see yourself using your powers of ministerial direction? Will you submit any papers or anything in writing to the SPA? The Unison police staff Scotland submission states:

“in shaping our national police service there needs to be greater clarity and more openness about ministerial decision making, how decisions are arrived at, applied and accounted for by way of records/minutes.”

That is all very important for transparency and openness, especially given that you have spoken about collaborative working. There needs to be a trail of what has been discussed in the minutes and records on the Government’s side.

Humza Yousaf: I do not disagree—I understand the need for transparency and for appropriate notes to be taken. Equally, even our harshest critics will recognise that it is important to have a space in which people—no matter which ministerial portfolio they hold—can talk frankly with colleagues or stakeholders. However, that can never be at the expense of ensuring that we have appropriately recorded notes, minutes and so on—I do not shy away from that at all.

I will look carefully at what Unison and others have said on the transparency question. If the committee makes recommendations in that respect, I will keep an open mind on them. My conversations with the chair of the SPA and the chief constable have been positive and collaborative. There is nothing sinister in those conversations. I am more than happy that we continue to be meticulous in our note-keeping and transparency.

The Convener: Finally, given the controversy about the previous chief constable’s resignation and the involvement of the SPA and ministers, will the process be clear and minuted when you are directing the SPA?

Humza Yousaf: I do not see why that would not be the case. I do not wish to get into what happened with the previous chief constable because it ended up being a very political hot topic. I deny the accusation that my predecessor was interfering; I think that he was absolutely right to ask the questions that he did. In fact, if he had not asked those questions, others would have pulled him up on it. I do not wish to get into the detail of that—it would probably be unhelpful.

I agree with your general point about the need to ensure that there is as much transparency as possible by having notes and minutes. If specific recommendations are made, we will look at them.

The Convener: As you say, it is about moving forward. I think that we would all welcome your commitment to look directly at the need to make a minute of any direction to the SPA.

Daniel Johnson: On that very point, I accept what the cabinet secretary said about not wanting to go over the detail of what happened previously, but the key issue there was whether the chair of the Scottish Police Authority had an option and what status that had. In that light, thinking about moving forward, would it be constructive to have a set of protocols so that whether something constituted merely a suggestion rather than an instruction was clear?

I note with interest that the Deputy Mayor of London has a page on the Mayor of London’s website that displays all the minutes of the meetings that successive office-holders have held with the commissioner of the Metropolitan Police. One can see, on whatever date the parties met, what was discussed, although it is not described at length—there is simply a sentence or two on each topic. Would those two proposals—for protocols and for published minutes when you meet with the chief constable or other senior police officers—constitute a sensible non-legislative improvement to the way in which we govern our police?

11:15

Humza Yousaf: Again, I emphasise that, if the committee makes any recommendations, I will respond with an open mind. I have not seen the Deputy Mayor’s web page on the Mayor of London’s website to which Daniel Johnson refers—I will look at it after today’s meeting. If the committee makes recommendations to improve transparency and accountability, I will have no problem with that.

Everyone around the table will understand that there must be a space for ministers and cabinet secretaries to be frank. Daniel Johnson referred to there being simply a note or a sentence or two on the website, so there is clearly an understanding that Government ministers need a space in which to have frank conversations with stakeholders. Notwithstanding that caveat, I absolutely believe that the more transparency we have, the better. I do not shy away from that.

Again, I do not wish to go back to previous controversies, but there must be a distinction between challenging and asking questions of our stakeholders and giving direction, which others might view as interfering. Sometimes, because of the political atmosphere and the roles that we

each have in Government and Opposition, that will be a subjective consideration. Whatever protocols we have in place, it does not necessarily follow that we will avoid such conversations taking place. I go back to my central point: if the committee and others make recommendations on how to improve transparency, I will look at those with an open mind. I cannot commit to doing X, Y, and Z right here, right now, but I will certainly look at any recommendations with an open mind.

The Convener: That is very welcome, cabinet secretary. I go back once again to the Unison police staff Scotland submission, which refers to the need for “greater transparency” and “a legislative framework”. It suggests that

“analogous bodies in Scotland ... could perform this function such as Audit Scotland”.

That takes us back to the SPA’s dual role, in which it works collaboratively to improve the police force and offers welcome suggestions for how that can be done while also carrying out its independent scrutiny function. Would you consider Unison’s suggestion?

Humza Yousaf: I simply reiterate that, where the committee and others make recommendations, I will keep an open mind. We have robust processes in place. The civil service has guidelines on minuting and note-taking, to which I know the officials in my private office are very much alert whenever we have conversations with stakeholders. There are good processes and guidance in place. On when lessons can be learned from other bodies, I go back to my earlier answer: I would certainly be open-minded, without firmly committing to one particular action or another, in response to any recommendations on that front from the committee and others.

John Finnie: As you will be aware, cabinet secretary, the committee has had a number of representations on a variety of matters. One such representation came from the Scottish Human Rights Commission, which made a number of recommendations. The SHRC believes that

“human rights should be explicitly articulated”

in the 2012 act. You may recall that I secured an amendment to the bill that became the 2012 act that introduced a new oath for officers to require them to give an undertaking to uphold the human rights of citizens. However, it did not apply retrospectively.

I will quickly take you through the five issues that the SHRC raised in its submission. A code of ethics for policing is already in place, but the SHRC believes that it

“should ... be placed on a statutory footing.”

What is your view on that?

As the SHRC notes, section 2(3) of the 2012 act says that the SPA should

“try to carry out its functions in a way which is proportionate, accountable and transparent”.

The SHRC believes that

“The word ‘try’ should be deleted.”

It also states that it

“believes the SPA should have the independence and power to set its own strategic ... priorities.”

That would align with some of the comments that we heard earlier.

Two very specific points relate to legislation. The SHRC welcomes the fact that the optional protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been placed on a statutory footing. It recommends that the role of HMICS with regard to independent custody visiting is also placed on a statutory footing and that its purpose in that respect is made clear. Finally, the SHRC is, understandably,

“concerned that section 94(4) of the Act gives authority for the refusal of a visit to the constable who is directly responsible”.

Will you undertake to look at all those issues, cabinet secretary?

Humza Yousaf: Ooft—there were quite a few in there.

John Finnie: I do not mean that you should do so instantly, but the SHRC has been put in place to make recommendations to the Government.

Humza Yousaf: I have a huge amount of time for the Scottish Human Rights Commission. I have interacted and met with the SHRC in many a year gone by, and it would probably be a good idea to do so in my current role, so I commit to that. John Finnie mentioned five issues in total. On some of those, I would like to have further conversations with the SHRC. Some of the issues may well come out in the committee’s recommendations.

I had a conversation about, and engaged with, OPCAT in a previous ministerial role. We should look at the SHRC’s recommendations on visiting custody suites and so on. I am sure that John Finnie will understand that, given the nature of custody suites, there may well be times—if disorder is involved, for example—when a visit would not be appropriate. Nonetheless, there must be checks and balances on that refusal power. If the SHRC says that the checks and balances are not good enough, I will have to look at that, and I would welcome a conversation about the matter with the SHRC, Police Scotland and others.

I assure John Finnie that, throughout my life, the role of human rights in our justice system—let

alone in other parts of society—has often been at the forefront of my mind. I undertake to meet the Scottish Human Rights Commission to have a conversation about not only the five issues that John Finnie raises, but wider issues in and around the justice system.

John Finnie: Thank you—that is very reassuring.

The Convener: As you said, cabinet secretary, those are important and wide-ranging issues. The committee would be grateful if you could provide us with feedback on those five points after you have met the SHRC.

Humza Yousaf: There will be minutes from that meeting, so I will make sure that there is some feedback.

The Convener: Thank you—that is very encouraging. We move on to police complaints.

Rona Mackay: I want to ask about transparency and equity in the complaints and investigations procedures. Are the complaints processes too complex? What can be done to ensure that there is greater transparency and clarity? There are different processes for senior officers and junior officers. Should senior police officers be prioritised, or should there be one complaints-handling system for all officers?

Humza Yousaf: Those are all good questions. It is important that we give Dame Elish Angiolini the space to carry out her review on complaints handling and procedures. I have met her, and I know that everybody rightly recognises her strong pedigree. It would be wrong for me to prejudge what will come out of that review. It is very helpful that—if I remember correctly—she will produce some interim findings in spring next year; that will allow us to do some of the work that needs to be done sooner rather than later. If Elish Angiolini says to me—although I do not wish to put words in her mouth—that things can be fixed quickly, they should be. We have to give her the space to carry out her important review. Where there is unanimous agreement among stakeholders that a specific measure can be implemented quickly in order to fix something, there is no reason that we should not seek to do that.

The Convener: Do you have a timeframe for Elish Angiolini's review?

Humza Yousaf: I would look to my officials on that, but I think that the interim review findings will be published in spring next year, and the full review will be published between nine and 12 months after that. I see that my officials are nodding.

The Convener: Thank you. Daniel Johnson will go next, followed by Liam Kerr.

Daniel Johnson: I accept the cabinet secretary's point about the Angiolini review. If I was being unfair to him, I would ask him how many different routes there are for complaints from the police and the public. However, I am not sure that I could answer that question with any confidence. Instead, I ask him whether he would agree that there are four routes for the police, including the processes for senior officers and for whistleblowing, and three for the public. In addition, there are three organisations that have a locus in complaints: the police, the SPA and the Police Investigations and Review Commissioner. Given that enumeration, does the cabinet secretary agree that the landscape seems to be cluttered, and that a streamlined process is perhaps needed?

Humza Yousaf: Daniel Johnson always articulates his points with great thought, as he demonstrated in asking that question. I hope that he will understand when I say that I am extremely cautious about prejudging the outcome of Dame Elish Angiolini's review. The review notwithstanding, I see from his question, and from my own knowledge, that one might perceive that there is a cluttered landscape and that the processes could be simplified. Again, those are exactly the type of issues that Elish Angiolini will scrutinise and consider further. I imagine that we will pore over both her interim findings and her full report. I do not doubt—well, I know for a fact—that she will be looking at some of those issues.

Daniel Johnson: Will the review look at whistleblowing? Concerns have been expressed about the independence of the whistleblowing regime that has been put in place by the police in particular. A specific concern is that the independence that the police have sought is limited to the fact that whistleblowers will initially need to approach a charity that is based in England. Once a report of whistleblowing has been taken, it will be sent up the line and dealt with by police officers themselves. The point about whether that process is independent has been well made. Will that be part of the review? If not, what are the cabinet secretary's thoughts on the point about independence in the whistleblowing procedure?

Humza Yousaf: The terms of reference for Dame Elish Angiolini's review are wide ranging, so she has the power to look at whistleblowing. In fact, if you will forgive me, I take that back: the question would be for her to answer. However, nothing prevents her review from looking at the issue of whistleblowing. I cannot tell you definitively whether she will do so—you will forgive me if I do not have the answer off the top of my head.

The issues around whistleblowing in general are incredibly important across our public services, including police, health and any other service. Two years ago, Police Scotland introduced its integrity matters portal, which allows staff and officers to raise particular issues or make allegations. Importantly, the system is not only robust and effective but confidential; whistleblowers will undoubtedly look to have confidence in its confidentiality. All matters that are reported via the system are assessed by a national gateway assessment unit, which ensures that they are dealt with away from local areas to protect confidentiality and assure people's confidence in the process.

I do not see any evidence for a completely different, or a completely independent, whistleblowing system. However, if Dame Elish Angiolini looks at that area and any such recommendations come forth from her review, we will of course consider them. Nonetheless, having looked through the evidence to the committee, I do not see that there is a particular need for such a system. As always, I will keep my mind open on the question.

Daniel Johnson: One of the critical issues in the realm of whistleblowing touches on a wider issue: the way in which complaints are handled by the line. Kate Frame, in her evidence to the committee last week, highlighted a number of areas of concern. In particular, she spoke about the classification of complaints and the fact that very serious issues were subsequently handled at a front-line level rather than being escalated to the PIRC; that was to do with the way in which had been were recorded.

11:30

Does the cabinet secretary agree that recording a complaint about unlawful detention as a quality-of-service issue; categorising a rape as incivility in a complaint about the way in which the rape investigation was being carried out; and classifying allegations of assault as excessive force, is worrying? Each and every one of those complaints surely requires to be escalated and treated with the utmost seriousness. The PIRC looked at those complaints only because the individuals who were involved knew that they could complain to her. That highlights the issues with the process—if those individuals had not contacted the PIRC, we would not know about those issues.

Humza Yousaf: I am meeting the commissioner later today, and I have no doubt that the questions that have arisen from her evidence to the committee will be part of our conversation. I note that Police Scotland has made representations to the committee to challenge some of what has been said, and that the committee also received

further evidence on those matters from the PIRC. I do not intend to step into the specifics of those issues, other than to say that there has been a robust challenge from Police Scotland, which says that rape would be investigated as a criminal matter and would be dealt with as any criminal investigation would.

Daniel Johnson: On that very point, it is important to be clear: the complaint was about not the rape itself but the way in which a rape investigation was carried out. The police rebuttal is based on a misconception of what Kate Frame said, rather than what she actually said. More important, she describes the matter that provoked the complaint as

“an attempt to pervert the course of justice”.

We should take any such statement extremely seriously. Does the cabinet secretary agree that, if the PIRC describes something that happens in the police as

“an attempt to pervert the course of justice”,

that is an extremely serious matter?

Humza Yousaf: I agree. The accusation that has been made is extremely serious; I do not doubt that. As I said, I am due to meet the commissioner later today, and I do not doubt that some of the issues that she raised in her evidence will be part of that conversation. I do not disagree with Daniel Johnson—such an accusation is extremely serious, and I will listen carefully to what the commissioner has to say on those issues.

Daniel Johnson: One of the key points that Kate Frame makes—I recognise that this will be part of the Angiolini review—is that there is a great deal of contingency involved in whether certain matters come to the PIRC's attention at all. Does the cabinet secretary agree that the PIRC's ability to look at any complaint, either retrospectively or by way of triage, needs to be considered and examined as part of the Angiolini review?

Humza Yousaf: I am confident that it will be. Again, I cannot speak for Dame Elish Angiolini but, from the conversations that I have had, I have no doubt that those are exactly the type of issues that she will look at. I give a commitment to listen carefully to what the commissioner has to say. When Dame Elish Angiolini's review is complete, I have no doubt that Daniel Johnson and the committee collectively will make their views known in response to what I expect will be a very thorough review.

Liam Kerr: I will stick with the complaints system, but I will move away from the specifics that Daniel Johnson discussed.

Given the PIRC's suggestions in evidence to the committee, does the cabinet secretary have a view

on whether it is appropriate that Police Scotland can effectively choose which complaints about itself are investigated? Might the law need to be reviewed or amended to stipulate the specific types of complaints that the police should investigate and those that it should pass on to either the PIRC or the Crown?

Humza Yousaf: In any organisation, there are internal complaints procedures, and the police service has such procedures in place. If a member of the public believes that a complaint has not been handled appropriately by Police Scotland or the SPA, they have recourse to the PIRC, who can look at the matter. That is exceptionally important. Notwithstanding all that, there is the Angiolini review—I am sorry to keep going back to the same point, but, given my role, it is important that I do not prejudge the outcome of that review. The public has recourse to the PIRC to question how a specific complaint has been handled; that is important.

Liam Kerr: The committee has also heard in evidence the view that it is unsatisfactory that the process for a non-criminal complaint is halted at the point of an officer's resignation or retirement. It has been suggested that that is unsatisfactory for both parties: the complainer and the party who has been complained about. I put a question on that to the chief constable, who said that it is a matter for Parliament. I will put the same question to you, cabinet secretary. Do you have a view on whether the regulations in that respect need to be amended? If so, should that be done immediately, or should we await the outcome of Dame Elish Angiolini's review?

Humza Yousaf: Again, I would be keen to look at the review, or even the interim findings that we will see in spring next year. If the complainer remains in the organisation and—in the situation that Liam Kerr described—the party who is being complained about resigns or retires, the organisation, which in this case is Police Scotland, still has a duty of care to the complainer. That is incredibly important. I know how much importance the chief constable and the chair of the SPA place on that duty of care and the welfare of their officers and staff.

Again, with regard to the wider issues, a review is currently being undertaken by someone who has an incredible pedigree and a huge amount of credibility and integrity, and for whom people have a lot of respect, not only in relation to issues around complaints but across the board. Although we can put our views to Dame Elish Angiolini, as can the Opposition and the Justice Committee, it would be sensible for us to wait to see the review's findings, or at least the interim report.

Liam Kerr: Out of interest, what is your view on the matter?

Humza Yousaf: Again, I am not willing to prejudge the outcome of the review, but I will be open-minded. All that I can do at this stage is promise you that, if the committee makes recommendations on the basis of its very thorough evidence sessions, I will keep an open mind. The review that is under way will take a thorough and forensic look at the issues, and we should give Dame Elish Angiolini the appropriate space to do her work. I would be wary of doing otherwise.

The Convener: I will press you on that just a little, cabinet secretary. Is it your position that no issue should be prioritised now? In effect, will we have to wait for up to 18 months before we address the very concerning and serious issues that have arisen in the evidence that we received from the PIRC?

Humza Yousaf: No, I do not think so. As I have said in my previous answers, where the Justice Committee recommends that we should examine certain areas further, the Government will do that. As cabinet secretary, I will keep an open mind in that respect. Where there is unanimity on a specific change that could and should be made to improve procedures—although unanimity may be difficult to achieve, given the nature of the conversations that we are having—we should look at that. I simply say again that a thorough review is taking place, and we should be wary of prejudging its outcome. Where we can add value, I do not have any issues whatsoever with our doing so. I am not suggesting that we cannot do anything at all until the full review findings are published—that would be wrong. As I said, interim findings are due to be published in spring next year. If the committee recommends that certain issues should be looked at, even before the interim findings are published, I will keep an open mind in response to what it has to say.

The Convener: You mentioned adding value. Would that involve going further? Given that the regulations could be amended, would you look at that as a possible way of addressing issues that could, it may transpire, fundamentally affect the credibility of Police Scotland and the public's perception of the service?

Humza Yousaf: Legislative fixes are never very quick; they take a considerable amount of time to go through. If the committee thinks that a particular legislative fix or amendment should be applied, it would be sensible for us to wait and see what Elish Angiolini's review has to say in relation to the issue in question. That said, if the convener and the committee collectively think that a particular legislative amendment needs to be explored, I will give immediate attention to such a recommendation.

Liam McArthur: We spoke earlier about some of the problems that were created for Police

Scotland in the early stages of reform by a lack of clarity, or even disagreement between Police Scotland and the SPA, on the respective roles of the two organisations. Layered on top of that were some personality conflicts that, at times, acted to supercharge the problems. Daniel Johnson set out the situation very fairly when he described what appears to be a lack of clarity or disagreement on the respective roles of Police Scotland and the PIRC in handling certain types of complaints and whistleblowing reports. Do you see potential risks if there is no early clarification of those roles and no agreement between the parties on how best to proceed?

I certainly do not dispute that it is entirely appropriate that certain whistleblowing issues should be handled within Police Scotland; that is where the resolution will rest, and it can be a way of bringing the parties together more amicably. However, we can probably both think of circumstances in which that would be less likely to happen and independence is needed. At present, we seem to risk growing disagreement between the PIRC and Police Scotland about what their respective roles should be. As cabinet secretary, is it not for you to help to bring those parties together and find the clarity that is needed?

Humza Yousaf: As I said, I will meet the commissioner, Kate Frame, later today, and I will be keen to hear her view on what Liam McArthur has said. If he—or the committee, I should say—has specific recommendations in that area, I can do no more than reiterate my stance of keeping an open mind when it comes to looking at such recommendations and seeing whether I can take any action. I will examine the issues and explore what I can do to ensure that roles and responsibilities are understood. However, we have in place a complaints procedure in which there is absolute public confidence.

I keep going back to Dame Elish Angiolini's review. It is important to give her the space to look forensically at the issues that Liam McArthur has raised. I see it as part of my role and as my responsibility to see where we can get organisations to work collaboratively and to understand each other's roles and responsibilities, but also to see where tensions between organisations can be smoothed out.

Liam McArthur: Would it be possible to have Dame Elish Angiolini clarify whether she will look at issues to do with the protection and welfare of whistleblowers? We have had evidence from a number of individuals who have experience of going through the whistleblowing complaints process. Each has expressed concerns about the effort that goes into protecting the welfare of individuals who are going through an incredibly stressful process. Can you give the committee an

undertaking in that regard? Do you expect Dame Elish Angiolini to look into that as part of her review?

Humza Yousaf: I will suggest a slightly alternative approach. It may be for the committee—it can make up its own mind—to approach Dame Elish Angiolini and ask her directly whether she will examine those issues in her review. I share Liam McArthur's expectation that such issues will be discussed. However, having just had a conversation about interfering versus not interfering, I am wary of not giving Dame Elish Angiolini the independence that she needs to look at those issues, particularly given the nature of her review. There is no need for me to act as a middleman. The committee, and Liam McArthur as an MSP, could approach her directly. However, I share your expectations that Dame Elish Angiolini will look at such issues.

11:45

Liam McArthur: As part of the review, do you expect her to look at the role that the justice secretary plays in the various relationships between Police Scotland, the SPA, the PIRC and others, or is her remit solely to look at Police Scotland and the other bodies?

Humza Yousaf: I do not expect the Scottish Government to be exempt—nor would I wish it to be—from the scrutiny of Dame Elish Angiolini's review. I fully expect—again, without putting words into her mouth—that the Government, as well as the various stakeholders and bodies that she has mentioned, will be subject to that scrutiny.

The Convener: We will be happy to write to Dame Elish Angiolini seeking confirmation that whistleblowing is part of her review.

In a written submission from Police Scotland, Assistant Chief Constable Speirs suggested that only 5 per cent of persons who make a complaint about the police subsequently request that the PIRC conducts a complaints-handling review. He went on to say that, consequently,

"95% ... are sufficiently satisfied with the manner in which their complaint is handled."

The PIRC took a different view. She said that, of that 5 per cent, 50 per cent were upheld as not being handled properly. Her concern was that, unless someone had the tenacity, wit and perseverance to take their complaint a bit further and ask for a complaints-handling review, there was absolutely no way of knowing whether the complaint had been handled properly or whether independent scrutiny and assessment should have been undertaken. Indeed, many of the issues that the PIRC raised in her final submission came from that 5 per cent of complaints, which she found

raised very concerning issues. Can you comment on that?

Humza Yousaf: First, we absolutely value the role that the PIRC plays and the job that the commissioner does—that is why the Government increased the PIRC’s budget, and it was important that we did so. I go back to Liam McArthur’s point about getting a front-line resolution to any issues, where that is possible. That will not be appropriate in every case, understandably, but where it is appropriate, it is to be encouraged.

On the wider question and the PIRC’s view in that respect, I will meet Kate Frame later today, and that will be part of our conversation. I will be keen to hear from her directly, one to one, about where we can improve the system and where there are deficiencies. Yet again, I go back to Dame Elish Angiolini’s review. Those are exactly the types of issues that she will explore, and I have full confidence that she will do so.

The Convener: The handling of complaints is a huge area. Issues with complaints handling can mean the difference between people thinking, “The police service is working well—we got a result, and our concerns were looked at”, and a situation in which the excellent work of our front-line officers is caught up in criticism. It is a key area, especially given the PIRC’s comments about delays with regard to independent scrutiny of closed-circuit television footage and hospital records to find out what was recorded and what kind of incident took place. I suggest that the issue is fairly urgent. Would you agree?

Humza Yousaf: I will look at that—if you do not mind, convener—after the meeting. As I said, I will have a conversation with the commissioner today on that very issue. I go back to my previous answer: some issues may be viewed as more urgent, and we may not be able to wait for Elish Angiolini to publish either her interim findings or her full report. I will not commit to certain actions one way or another, but I promise you that I will keep an open mind.

The Convener: Will you inform the committee of the outcome of your meeting with the PIRC? That would be very helpful for our scrutiny.

Humza Yousaf: I fully expect that all my meetings with stakeholders will be minuted. If you wish to receive further information about the particulars of that meeting, I will of course be happy to provide that.

The Convener: Thank you—that would be extremely helpful.

I have one final question for the minister. Recruitment to the retained firefighter service has been brought up as a major challenge. Is that a number 1 priority? Where does it sit?

Ash Denham: Operational matters—including the recruitment of retained duty system firefighters—are for the SFRS to deal with, but I take on board the evidence that the committee has received on the RDS. There are problems with the RDS, and I think that the SFRS would absolutely accept that. The way in which we live our lives in modern times means that people are less likely to work in the village in which they live and more likely to travel away from home during the day, which reduces the pool of people who might be interested in being a retained firefighter. We know that the system is in need of reform, and the SFRS is looking for opportunities in that respect.

The issue is a priority. In particular, the Government supports the fact that the SFRS is currently recruiting whole-time managers in remote and rural areas in an attempt to meet the RDS challenge. It is a priority, and the SFRS is looking at innovative solutions in order to resolve the issues.

The Convener: That concludes our questioning. I thank both the cabinet secretary and the minister for appearing before us today. We look forward to the additional information that you have promised to provide to the committee.

11:51

Meeting suspended.

11:58

On resuming—

Counter-Terrorism and Border Security Bill

The Convener: Agenda item 3 is consideration of a legislative consent memorandum on the Counter-Terrorism and Border Security Bill. I refer members to paper 3, which is a note by the clerk, and I invite the cabinet secretary to make a short opening statement on why he is seeking the Parliament's consent. I will then invite questions from members.

Humza Yousaf: The Counter-Terrorism and Border Security Bill was introduced by the Home Office on 6 June. As its title suggests, the majority of the bill relates to reserved areas of national security with provisions that apply across the UK. However, there are three areas that we consider to have implications with regard to devolved competence. Following the incidents in London and Manchester last year, the Home Office undertook a review of counter-terrorism legislation and policy. The outcome of that review, which included the introduction of the bill, has been broadly welcomed as a considered approach to those terrible incidents. Since then, there have been despicable acts in Salisbury and further consequences in Amesbury. In response to those incidents, the bill contains further powers to stop, question, search and detain individuals at the United Kingdom border to determine whether they have been involved in hostile state activity.

We consider that three specific areas of the bill require consent. The first is clause 15, which amends the Road Traffic Regulation Act 1984 to enable traffic authorities, including the Scottish ministers, to impose cost recovery charges for making anti-terrorism traffic regulation orders. Secondly, the Scottish Government requested that the bill make amendments to legal aid legislation to ensure that persons who are detained at the border under terrorism legislation have the right to non-means-tested advice and assistance. Those changes are within the legislative competence of the Scottish Parliament, but they were requested as there is no legislative vehicle available within an appropriate timescale that would ensure that consistency is maintained across the United Kingdom.

12:00

Thirdly, clauses 18 and 21 and their associated schedules will enable certain biometric material to be kept for longer and potentially to be used for devolved purposes. As the Scottish Parliament could enact similar provisions to extend the retention period for biometric data for devolved

purposes, it is considered that those clauses require legislative consent. The safety and security of the people of Scotland is of paramount concern for the Scottish Government, and the bill rightly faces scrutiny in the UK Parliament with regard to whether its impact is appropriate and—importantly—proportionate. We will continue to engage with the UK Government on those matters as the bill progresses. The clauses for which we seek the committee's support today enable national security legislation to be applied consistently across the UK. I am happy to take questions.

The Convener: Thank you. Are there any questions from members?

John Finnie: I am grateful to the cabinet secretary for mentioning the terrible events in Salisbury, because it is important to understand the background to part 2 of the bill in particular. However, I have a number of concerns regarding the bill. I have asked you and your predecessors the following question on a number of occasions. The investigation of crime in Scotland is the responsibility of the Lord Advocate. Will he be in charge of investigations under this proposed legislation?

Humza Yousaf: I have not had any feedback from the Lord Advocate that would suggest that any of the measures in the bill raise specific concerns for him in that they would extend over his jurisdiction and remit. I acknowledge that concerns have been raised about the bill, and I have no doubt that organisations and members of Parliament will continue to robustly address some of the areas that may require consideration. When I spoke with my counterpart minister south of the border, he said that the Government was in listening mode in response to some of the concerns and that it would potentially bring forward changes to the bill.

I have not had any direct representations on the bill. I look to my officials to say whether they have had any representations from the Lord Advocate or the Crown Office on any of its provisions.

Paul Wilson (Scottish Government): We have not had any direct involvement with the Lord Advocate or the Crown Office on any issues that may relate to the investigation of crime. The bill maintains the current position: the Lord Advocate would be in charge of any investigation of crime in Scotland, as he is under current legislation.

In general, the Crown Office has welcomed the provisions that relate to some of its areas of competence. With regard to any intervention in relation to some of the offences that the bill seeks to create, we talked to the Crown Office at earlier stages of the legislation about whether it felt that those provisions were necessary and

proportionate to address the terrorist threat that we are currently experiencing.

John Finnie: Cabinet secretary, can you say whether the extension of the notification requirements to persons who are convicted of terrorism-related offences in the north of Ireland will apply retrospectively?

Humza Yousaf: I look to my officials for advice, but I suspect not.

Paul Wilson: From our conversation with the Home Office, we understand that nothing in the bill will be retrospective, including the provision to which John Finnie refers.

John Finnie: With regard to the retention of biometric material, the text of the legislative consent memorandum before us states that the bill will

“strike a better balance between enabling the police to use fingerprints and DNA to support terrorism investigations and continuing to provide proportionate safeguards for civil liberties.”

Can you outline where the appropriate safeguards for civil liberties can be found?

Humza Yousaf: My understanding is that the Commissioner for the Retention and Use of Biometric Material broadly welcomes the provisions in the bill. The Scottish Government is committed to the introduction of a biometrics bill, which would be debated in this Parliament as any piece of legislation would, but it is important that we ensure that those checks and balances also exist in areas in which we have devolved competency. There are checks and balances in place, of which the biometrics commissioner is one example, and I understand—again, I look to my officials on this—that, in general, he welcomes the bill’s provisions.

Paul Wilson: As far as we understand the situation from our conversation with the Home Office, the biometrics commissioner has been consulted and welcomes the provisions. Indeed, the bill will enact three of the recommendations that the commissioner made in his most recent report in 2017. One of those relates to an extension of the period of time for which national security determination biometrics can be held. The period can currently be extended every two years, which creates some bureaucracy, and the commissioner felt that there was no clear reason not to extend the absolute maximum time limit to five years. That does not mean that people will not necessarily seek shorter extensions, but he felt that it was appropriate that people could go for one extension rather than have to come back three or four times during the same period. Similarly, he felt that it was appropriate to enable chief officers in England and Wales to have a single national security determination for multiple

different pieces of material. Again, the reasons for retention are not changing; the issue at present is that chief officers have to come to the commissioner on a number of occasions to seek further retention periods.

John Finnie: The reasons for retention are changing. The LCM states that

“biometric material is available ... for general policing purposes”.

The cabinet secretary used the specific phrase “devolved purposes”. These are serious extensions and serious intrusions. The argument for the changes that we seem to be hearing is that they are administratively more convenient. I am certainly not persuaded by that, not least because I believe that the information will be shared and put on the national database. Is that correct?

Humza Yousaf: As things stand, a person’s biometric data may be retained when it would otherwise be destroyed if a chief constable determines, under the national security determination, that that is necessary. Any extension of a retention period that is not related to national security determination must be approved by the sheriff court; that is an important part of the checks and balances.

I agree with John Finnie that there are issues with biometric data and so on, and we have to give people as much confidence as we possibly can on such issues. The bill is subject to parliamentary debate, and amendments to it will undoubtedly be lodged to ensure that the measures are proportionate and that checks and balances are operating in the right space. However, I recognise that there are organisations that will want the Scottish and UK Governments to go further in that regard.

John Finnie: I have a specific question on the police national database, where the information will be stored. Is it not the case that there are errors on that database, including human rights violations, which stand uncorrected?

Humza Yousaf: Sorry—what was the latter part of your question?

John Finnie: I said that there are errors on that database, including human rights violations that I understand may relate to photographic evidence, which have not been corrected. Our obligation is to scrutinise and understand the purpose of legislation. Everyone would want an end to violence and the use of maximum proportionate means to address such issues, but the situation has moved on significantly from where it was when you and I sat on the Justice Committee in the previous session of Parliament. We are now looking at much less modest proposals; the

provisions in the bill constitute a significant intrusion.

Humza Yousaf: I do not doubt John Finnie's perspective—there is no need to caveat that. I absolutely accept that he shares with all of us the desire to keep Scotland safe. Questions are rightly being asked about whether the bill strikes a proportionate balance between liberty and security. However, it seems to me—I take a slightly different view from John Finnie—that the bill is much more proportionate than previous UK Government legislation in the anti-terror space.

Again, I emphasise that the specific issues and concerns around checks and balances to which John Finnie refers will be debated in Westminster. I know from talking to the UK Government—he can seek his own reassurances on the matter—that it is open-minded about potential amendments to the bill to give confidence on those issues. From a Scottish perspective, an LCM is needed on three specific issues to provide a level of consistency for legislation that I believe is, by and large, proportionate. Nevertheless, questions are rightly being asked; I do not take that away from John Finnie.

John Finnie: I do not take any issue with the traffic regulation aspect. In addition, I warmly welcome the legal aid aspect and would like those provisions to be rolled out beyond simply those who are accused of such offences.

Finally, cabinet secretary, would you support an independent review of the prevent strategy?

Humza Yousaf: Again, that issue has not been raised with me specifically as Cabinet Secretary for Justice in Scotland. As someone who has interacted with the prevent strategy and the way in which it has been rolled out in Scotland since I was a boy—well, perhaps not quite a boy, but certainly when I was younger—I always thought, from speaking with my friends who lived south of the border, that we did it differently here. I think that it is recognised that we enact our prevent strategy in Scotland in a way that is more community focused. I have not seen a request for an independent review in a Scottish context—

John Finnie: I am making one now, cabinet secretary.

Humza Yousaf: I will give careful consideration to anything that John Finnie says. If he will allow me, I will consider his request, but it is not something that I am persuaded by at present.

John Finnie: Thank you.

Daniel Johnson: John Finnie has asked many of the questions that I had. A glance at what is being proposed in the bill suggests that it raises issues around human rights considerations. Although I understand the reasons behind some of

the measures—for example, the provision that covers expressions of opinions or belief regarding proscribed organisations—the bill raises some human rights issues. I recognise that those aspects are part of the reserved elements. However, as John Finnie rightly pointed out, the provisions on biometrics, which is a devolved area, again raise human rights issues.

Is the cabinet secretary aware of whether the UK Government has carried out a human rights assessment on the bill in its entirety? Has the Scottish Government carried out a human rights assessment on the biometrics element? If it has not, will it commit to undertake to do so?

Humza Yousaf: I cannot answer for the UK Government, and I am not aware of any process that would have gone above and beyond what it would normally do for a proposed piece of legislation. Perhaps my officials can come in on that. I am more than happy to speak to our human rights organisations and engage with them on whether they have particular reservations about the devolved competences in the bill—I can commit to do so. I have not had many approaches or much correspondence on the bill from organisations. Nevertheless, I am happy to ask the question.

I ask my officials whether they have anything to add.

Paul Wilson: As far as we are aware, the Home Office undertook what is pretty much its standard human rights impact assessment for a bill. I understand that the UK Parliament has taken a number of pieces of evidence from human rights agencies, but we have not had anything from any Scotland-based agencies that relates directly to any of the issues that we are discussing today.

Daniel Johnson: Given that you understand that the UK Government has undertaken a human rights assessment for the bill in its entirety, would it not be better for the Scottish Government to look proactively at the elements that will be devolved and undertake a human rights assessment on those elements? Surely it is not sufficient for us simply to wait for approaches from human rights organisations. We have only to look at the issues in relation to the roll-out of cyberkiosks by the police to understand the deficiencies that arise in the criminal justice sphere when a full assessment of the human rights impact is not carried out.

Humza Yousaf: Whenever an issue comes before me and my officials, I question it robustly and we have conversations about where we might have concerns. The three areas in which we are requesting an LCM do not give me a huge amount of concern, because I am aware of each of the issues. From my previous role as Minister for Transport and the Islands, I know about ATTROs,

and I think that the bill offers a proportionate response with regard to recouping some of the charge. On biometrics, work is being done south of the border to ensure that there are checks and balances, and we are introducing legislation on that front. The bill's provisions on legal aid are very sensible, and the LCM will ensure that there is a level of equity in that respect.

The provisions in areas of devolved competency, for which I am responsible, do not raise huge human rights concerns for me. I am happy to have a conversation with organisations to see whether there are concerns, but I do not currently have any concerns myself.

12:15

Daniel Johnson: Forgive me, cabinet secretary, but I need to press that point. The matter goes beyond simply having conversations. The point of human rights assessments is that we do them consistently, every time, to ensure that we have got it right. It is not good enough simply to rely on the fact that previous work has been done, that positions have been created or that other elements are in place. When such questions are raised—the biometric element certainly raises them—we need to undertake a full human rights assessment to ensure that there are no unintended consequences or aspects that have not been fully considered. It is certainly not good enough to rely on external organisations to approach the Scottish Government or to rely on previous work. A specific assessment has to be carried out.

Humza Yousaf: We will take that away and reflect on it. As I said, I believe that the provisions in the LCM are eminently sensible, and I am content with the checks and balances that remain in place. I think that the provisions in the LCM, in particular with regard to legal aid, allow us to bring equity to the system. That does not take anything away from what Daniel Johnson says; it would be interesting to hear his specific concerns from a human rights perspective on the issues that are being debated today in respect of the LCM. However, I am content that the provisions are proportionate.

Liam McArthur: John Finnie and Daniel Johnson have laid out very well the concerns that I had when I read the papers for this meeting. We are always conscious when we are dealing with a statutory instrument or an LCM that the scope for getting into the detail of the provisions is more limited.

At one level, I am reassured. I know that colleagues at Westminster will be kicking the tyres, and will have been doing so since the bill was introduced in June. However, with regard to

the devolved aspects, I take Daniel Johnson's point that we should not simply wait for potential concerns to be raised. The fact that the provisions appear to be more proportionate is reassuring, but it should not preclude the need to proactively undertake impact assessments. A human rights impact assessment is no less fallible than an environmental or business impact assessment, but it helps to minimise the risk of unintended consequences. I therefore think that it would be good practice to carry out such an assessment, given the potential far-reaching nature of the provisions.

I do not dispute that, as the cabinet secretary said, the bill appears to be cast in more proportionate terms than previous legislation. However, we should not necessarily deviate from an approach that gives us as much reassurance as possible in terms of the devolved aspects.

Humza Yousaf: There is not much for me to add, other than to say that I will reflect on the need for best practice. Again, I would be keen to hear any specific issues that relate to the areas of devolved competency for which we are asking legislative consent. I believe that the provisions are proportionate, but that does not take anything away from what Liam McArthur said in relation to best practice.

The Convener: There are no further comments and questions. Do members agree that we give our consent?

Members indicated agreement.

The Convener: I see that John Finnie wishes to record his dissent.

John Finnie: I understand that the committee will produce a short report on the LCM; if my dissent were noted, I would be satisfied with that—thank you.

The Convener: We record John Finnie's dissent. Is the committee happy to delegate to me, working with the clerks, the publication of a short factual report, and to give John Finnie a reassurance that his comments will be noted in the report?

Members indicated agreement.

John Finnie: Thank you, convener.

Liam McArthur: John Finnie clearly wishes to voice dissent. If the report also captures the substantive points that Daniel Johnson made and which I would echo, that would be helpful.

The Convener: One way of handling that would be for the committee's report to provide a link to the *Official Report*, which will contain the full discussion rather than a summary. Would that be satisfactory?

John Finnie: Okay.

Liam McArthur: Okay.

The Convener: We are all agreed. That concludes item 3. I thank the cabinet secretary and his officials for their attendance.

European Union (Withdrawal) Act 2018

European Enforcement Order, Order for Payment and Small Claims Procedure (Amendment, Revocation, Transitional and Savings Provisions) (EU Exit) Regulations 2018

Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018

Service of Documents and the Taking of Evidence in Civil and Commercial Matters (Revocation and Saving Provision) (EU Exit) Regulations 2018

12:19

The Convener: Item 4 is consideration of a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the European Union (Withdrawal) Act 2018 in relation to three UK statutory instruments. I refer members to paper 4, which is a note by the clerk, and invite any comments or questions.

Daniel Johnson: The committee might want to ask the Scottish Government about the impact of the legislation, given that a number of European Union member states—Belgium and Ireland in particular—are not signatories to the Hague convention. Given the volume of trade that the UK as a whole has with Ireland and the low countries, and given that the scope of the legislation covers small claims and evidence for civil actions, I wonder whether there would be a specific impact.

The Convener: So you would like us to ask a question of the Government and seek further information.

Daniel Johnson: Indeed—I am just seeking further information.

The Convener: Are members content that we do so?

Members *indicated agreement.*

The Convener: Is the committee content to recommend that the Scottish Parliament gives its consent to the UK Parliament to pass the three statutory instruments?

Members *indicated agreement.*

The Convener: We will seek the further information that Daniel Johnson requested. Are members content that the clerks will produce a short factual report, and that the authority to publish the report will be delegated to me?

Members indicated agreement.

12:21

The Convener: Thank you. That concludes the public part of today's meeting. Our next meeting will be on 20 November, when we will begin consideration of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill. We are also set to take further evidence on the Management of Offenders (Scotland) Bill. We now move into private session.

Meeting continued in private until 12:44.

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