



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 29 May 2012

Session 4

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.scottish.parliament.uk or by contacting Public Information on 0131 348 5000

Tuesday 29 May 2012

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1345
POLICE AND FIRE REFORM (SCOTLAND) BILL: STAGE 2	1346
SUBORDINATE LEGISLATION.....	1412
Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) Order 2012 [Draft]	1412
Act of Sederunt (Actions for removing from heritable property) 2012 (SSI 2012/136).....	1414
ANNUAL REPORT.....	1415

JUSTICE COMMITTEE

19th Meeting 2012, Session 4

CONVENER

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

DEPUTY CONVENER

*Jenny Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Roderick Campbell (North East Fife) (SNP)

*John Finnie (Highlands and Islands) (SNP)

*Colin Keir (Edinburgh Western) (SNP)

*Alison McInnes (North East Scotland) (LD)

David McLetchie (Lothian) (Con)

*Graeme Pearson (South Scotland) (Lab)

*Humza Yousaf (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con)

Kenny MacAskill (Cabinet Secretary for Justice)

Lewis Macdonald (North East Scotland) (Lab)

Margaret Mitchell (Central Scotland) (Con) (Committee Substitute)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 29 May 2012

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning. I welcome everyone to the 19th meeting of the Justice Committee in 2012. I ask everyone to switch off their mobile phones and other electronic devices completely, as they interfere with the broadcasting system even when they are switched to silent.

I have received apologies from David McLetchie. I will make clear what will happen in these unusual circumstances. John Lamont will speak to and move amendments in the name of David McLetchie. Margaret Mitchell is en route from some taster in Orkney and Shetland—I hasten to add that that is to do with committee business—and she will declare her interests when she arrives. If we are in the middle of a vote when she arrives, I will let that vote go through. She will be the voting person. Therefore, one Conservative will speak to and move amendments and another Conservative will vote on them, which is a novelty for us. Let us see what happens. John Lamont cannot vote, of course, as he is not a substitute on the committee.

Agenda item 2 is a decision on taking business in private. Do members agree to take item 8 in private?

Members *indicated agreement.*

Police and Fire Reform (Scotland) Bill: Stage 2

10:01

The Convener: Item 3 is the Police and Fire Reform (Scotland) Bill. This is day 1 of two days of stage 2 proceedings on the bill. The target for today is to reach section 70—I am laughing at that already. Whether we will reach that section is yet to be seen, but we will definitely not go beyond it.

I welcome the Cabinet Secretary for Justice and the officials. The officials will not answer members' questions; they are here only to assist the cabinet secretary, although I am sure that he rarely needs assistance.

Members have copies of the bill, the marshalled list and the groupings of amendments. Before we start our consideration of the amendments, I will say a wee bit for the newer members of the committee about how we operate at stage 2.

The running order is set by rules of precedence that govern the marshalled list. I will call all the amendments in strict order from the marshalled list. We cannot move backwards, so members should stay awake.

The amendments have been grouped to enable related amendments to be debated together, and there will be one debate on each group. I will call the member who lodged the first amendment in the group to speak to that amendment and all the other amendments in the group and to move the first amendment in the group. Every other member who has lodged an amendment in the group will be called to speak thereafter. Members who have not lodged amendments in the group but wish to speak should indicate that by catching my attention in the usual way.

The debate on the group will be concluded by my inviting the member who moved the first amendment in the group to wind up. I will usually give the cabinet secretary an opportunity to come in before that, in case he wants to respond to any points that have been raised in the general debate.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or withdraw it. If that member wishes to press it, I will put the question on the amendment. If the cabinet secretary moved the first amendment in the group, I will generally assume that he wishes to press it—although that might not always be the case—and I will not necessarily ask him to confirm that. If any member wishes to withdraw their amendment after they have moved it, they must seek the committee's agreement to do so, and I

will ask the committee about that. If any committee member objects, I must put the question on the amendment to the committee, as the amendment will already have been moved.

If, after the debate, a member does not want to move their amendment when it is called from the marshalled list, they should simply say, "Not moved." Any other MSP present will be entitled to move that amendment instead. If no member moves it, I will immediately call the next amendment on the marshalled list.

As I said before the meeting, only committee members or substitutes in attendance are allowed to vote. Voting is by show of hands, and it is important that members keep their hands clearly raised until the clerk has recorded the vote, whose result I will then read out.

I will start quite slowly, but we will rattle along once we have got the hang of it.

Section 1—The Scottish Police Authority

The Convener: Amendment 165, in the name of John Finnie, is grouped with amendments 167 and 176.

John Finnie (Highlands and Islands) (SNP): The amendments deal with Gaelic translation. They include in the bill the Gaelic names of the Scottish police authority, the police service of Scotland and the Scottish fire and rescue service—*ùghdarras poilis na h-Alba*, *seirbheis phoilis na h-Alba* and *seirbheis smàlaidh agus teasairginn na h-Alba* respectively.

Gaelic is an integral part of Scotland's heritage, national identity and current cultural life. It is, therefore, appropriate that the services' Gaelic names are included in the bill. I ask the committee to support the amendments.

I move amendment 165.

Lewis Macdonald (North East Scotland) (Lab): I welcome the amendments and congratulate John Finnie on lodging them. For those not blessed with knowledge of the Gaelic language, the amendments include the revelation of the source of the Scots word "polis". Many less well-known Scots words have the same origin.

The Convener: I remember the Gaelic that you used in the Montrose debate. I thought that it was a curse on the Grahames, but I am not going to ask you for a translation.

The Cabinet Secretary for Justice (Kenny MacAskill): I agree whole-heartedly with John Finnie and Lewis Macdonald about the importance of Gaelic, and I therefore support the amendments.

Amendment 165 agreed to.

Section 1, as amended, agreed to.

Schedule 1

The Scottish Police Authority

The Convener: Amendment 177, in the name of Lewis Macdonald, is in a group on its own.

Lewis Macdonald: With your indulgence, convener, I will speak to the amendment for a little longer than I will speak to some later amendments.

Amendment 177 is significant. It offers a possible solution to the problem of VAT, which is one more solution than the Scottish Government has so far proposed. I will be interested to hear what the cabinet secretary has to say on the amendment.

The amendment directs that the police authority is to be regarded in law as if it were a local authority. That might not be the only way to prevent £22 million a year from being transferred from the police authority to the United Kingdom Exchequer, but it is one valid way of doing that.

There has been discussion about whether there might be a Northern Ireland-style exemption for the police and fire services in Scotland. It is fair to say that there is a number of differences between the situation in Northern Ireland and the situation in Scotland. The population and territory of Northern Ireland are more like those of a region than those of Scotland are. In general, local authorities in Northern Ireland are smaller and have fewer powers than Scottish local authorities. Northern Ireland's special status in Government derives more than anything else from circumstances in Northern Ireland in the 1970s, 1980s and 1990s, which, happily, did not happen here. Scotland does not have that history and, therefore, does not have that special status.

Ministers have said repeatedly that a solution will be found. Unfortunately, to date, there is no evidence of that. Treasury ministers have reasserted not only that the police and fire services will be liable to VAT but that ministers have known that from the outset.

The amendment is an attempt to offer a perhaps more radical solution that reflects the views that were put forward by the Convention of Scottish Local Authorities on behalf of local government, by Unison on behalf of staff in local government and the police service, and by others, such as Jim Gallagher, the former head of the Justice Department. Their view is that the way to avoid liability for VAT is for the services to operate and remain as part of the local government family. Regarding the police service as if it were a local authority is the first legislative requirement to meet the terms of the Local Government (Scotland) Act

1973, which would allow the police authority to make a claim for the rebate of VAT.

Clearly, if the amendment were accepted by ministers, further amendments would have to follow. I am keen to hear what the cabinet secretary has to say about the proposal. I would like to know whether he will support the amendment and, if not, what he intends to do in advance of the bill completing its progress in order to remove the liability to VAT.

I move amendment 177.

Kenny MacAskill: I welcome Lewis Macdonald's desire to avoid money needlessly going to the Treasury, and I reiterate this Government's commitment to do all that is within our powers to ensure that the police authority and the fire and rescue service will be treated in the same way as their counterparts in England, Wales and Northern Ireland are and will be able to recover VAT.

Of course, as the committee will appreciate, the devolution settlement means that it is ultimately for the UK Government to decide which public bodies, including Scottish public bodies, may recover VAT. Therefore, my officials are proactively pursuing the matter with HM Treasury, and I remain optimistic that those constructive discussions will achieve a positive outcome. I assure Lewis Macdonald that we are working to that end.

I appreciate what Mr Macdonald is trying to achieve, but I do not believe that amendment 177 would resolve matters. As drafted, it would give rise to an absurd result. As it does not restrict the purposes for which the SPA would be regarded as a local authority, the SPA would be regarded as a local authority for all purposes, which would import to the SPA all the obligations that are placed on a local authority, including those that relate to schools, housing and so on. That cannot be Mr Macdonald's intention.

In addition, amendment 177 does not take account of chapter 7 of part 1 of the bill, which deals specifically with the local authority role in local policing. Those arrangements would be nonsensical if the SPA was a local government body. For those reasons, I cannot support amendment 177.

Lewis Macdonald: I am disappointed by the cabinet secretary's response. I did not expect Government support for my amendment, but I had hoped to get a clearer indication of what else might be done to resolve the matter. Simply to say that discussions will continue does not strike me as particularly encouraging. The issue has not sprung, newly formed, on to the cabinet secretary's desk—he has faced it since the proposals were first put forward.

With the committee's permission, I will seek to withdraw amendment 177, but it is clear that we will wish to return to the matter at stage 3 if the Government does not offer a more satisfactory response.

Amendment 177, by agreement, withdrawn.

The Convener: Amendment 1, in the name of the cabinet secretary, is grouped with amendments 1A to 1D, 178, 179, 181, 2 to 5, 183, 184 and 187. I point out that, if amendment 1B is agreed to, amendments 1C and 1D will be pre-empted.

Kenny MacAskill: I will speak initially to amendment 1, which deals with the membership of the Scottish police authority and the appointment of its chair.

Schedule 1 covers the status, structure and governance of the Scottish police authority. Paragraph 2 sets out provisions that relate to membership of the authority and enables the Scottish ministers to appoint seven to 11 members to it.

Amendment 1 draws a distinction between the appointment of the authority's chair and the appointment of the other six to 10 members. The chair has specific and particular responsibilities over and above those of other authority members—for example, the chair has responsibility for strategic leadership and the conduct of authority business. Amendment 1 will enable the Scottish ministers to appoint the chair separately from other members, which will also support earlier appointment of the chair and, in turn, the chief constable.

Alison McInnes's amendment 1A would make the Scottish Parliament, not the Scottish ministers, responsible for the appointment of the authority's chair. It would result in the chair being appointed by Parliament and the other members of the authority by ministers.

Amendment 1A confuses lines of governance, accountability and scrutiny. It would let ministers off the hook for the chair's performance and its impact on the governance of the police service, as ministers could not be held to account for an individual whom they had no role in appointing. Furthermore, Parliament's ability to independently scrutinise the chair and the performance of the police authority and service would be diluted by its role in his or her appointment.

The Scottish police authority is not a parliamentary body such as the Scottish Public Services Ombudsman or the Auditor General for Scotland, so Parliament should not be involved in the appointment of the authority's chair.

10:15

Amendments 1B, 1C and 1D seek to alter paragraph 2 of schedule 1, which states:

“The Authority is to consist of not fewer than 7 and no more than 11 members.”

During the bill’s progress, there has been much discussion about the right number of members for the authority and the basis on which they should be appointed. Lewis Macdonald’s amendment 1B would oblige the authority to have a chair and exactly 14 members. Defining an absolute number of members rather than a range would limit the authority’s flexibility to deal with changes in its membership and in the skills and expertise that it needs over time. It would also mean that as soon as one member left another one would have to be appointed, rather than perhaps two or three members being appointed at the same time.

David McLetchie’s amendments 1C and 1D would oblige the authority to have a chair and 15 to 19 members. The Auditor General’s 2010 report “The role of boards” was clear that, although it is difficult to specify the ideal number of board members, there has to be a balance between having sufficient skills and expertise and not having so many members that decision making and collective responsibility become difficult. The committee concluded that the quality and the experience of members are more important than numbers. It is the Government’s view that 15 to 19 members plus the chair would be too many—that number would not facilitate the strategic and collective decision making that the authority requires.

Therefore, the Government cannot accept amendments 1B, 1C or 1D, but it is willing to reflect further before stage 3.

Lewis Macdonald’s amendment 178 seeks to ensure that at least half the authority’s members are local authority members and that those members are nominated by COSLA to be appointed by ministers. The committee was not convinced that the bill should specify a set number of lay or local authority members. The Government agrees and has been clear throughout that members should be appointed solely on the basis of their skills and expertise, through an open and fair public appointments process.

We recognise that local authority members have a valuable contribution to make to the authority and we expect a number of people with local government skills and expertise to be appointed to it. However, it is not clear how members could act together in the service’s interests while at the same time representing a particular area. The Auditor General noted that such conflicts have

created difficulties for the Scottish Police Services Authority and other bodies.

It is important that all board members have equal status. That will not be the case if some are nominated and some are there because they have been through a rigorous and open appointment process that is focused on their skills and expertise.

Lewis Macdonald’s amendment 179 and David McLetchie’s amendment 181 seek to ensure that, in appointing members of the authority, ministers have due regard to the need to cover various areas and interests, such as being

“members of a local authority”;

representing or having

“knowledge of communities and policing in all regions of Scotland”;

and having

“no ... direct connection to policing.”

We expect a wide range of individuals to put themselves forward to become members of the authority. However, the authority is not a representative body, not least because the primary purpose of its members is to act collectively in the best interests of policing for the whole of Scotland and not for particular areas or interests. The authority must have the maximum flexibility possible to ensure that it has the skills and expertise that it needs to govern the service and hold the chief constable to account. Amendments 179 and 181 would limit that flexibility, so I cannot support them.

It is my pleasure now to speak to amendments 2 to 5, which are in my name. Paragraph 2(4) of schedule 1 enables the Scottish ministers to modify

“the minimum or maximum number of members”

of the authority by order. Amendment 2 does not change that, but it updates the bill to reflect the distinction between the chair and members made by amendment 1.

Paragraph 5(4) of schedule 1 obliges members of the authority to

“elect ... a member to act as deputy to the chairing member.”

In line with the approach to how members of the authority organise themselves, amendment 3 enables rather than obliges them to elect a member to act as deputy to the chairing member.

As a result of amendments 1 to 3, paragraph 5 of schedule 1, which relates to the chairing member and deputy, will no longer be required. Amendment 4 therefore removes paragraph 5.

Amendment 5 is a technical amendment. Paragraph 6 of schedule 1 sets out the circumstances in which the Scottish ministers may remove a member of the SPA from office. Paragraph 6(1)(b), which enables the Scottish ministers to remove a member from office if that member

“is incapacitated by physical or mental illness”,

is not required, as paragraph 6(1)(g) already enables the Scottish ministers to remove a member of the authority from office if they

“consider that the member is otherwise unfit to be a member or is unable for any reason to carry out the member’s functions.”

Amendment 5 therefore removes paragraph 6(1)(b) from the bill.

The committee concluded that the SPA must hold its meetings in public and publish its papers, and Graeme Pearson’s amendment 183 and David McLetchie’s amendment 184 seek to make various provisions in that respect. Section 2(3) already states that the authority

“must try to carry out its functions”

in a transparent way, which will include meeting in public and publishing its agendas and reports. Although the Government recognises that both amendments seek to make that explicit, we cannot accept amendment 183, as it has no safeguards for sensitive information. Similarly, the Government cannot support the provisions in amendment 183 that would compel the authority to publish its correspondence with local authorities, COSLA and the Scottish ministers and

“any reports it receives from the chief constable.”

All those parties must be able to engage in correspondence and dialogue in a free and frank manner and will, of course, be subject to freedom of information legislation.

The proposed new paragraphs 11(1B) and 11(1C) of schedule 1 in my colleague Graeme Pearson’s amendment 183 would oblige the authority to

“publish a strategy setting out what steps it will take to ensure public engagement in its proceedings”

and would require that strategy to be

“published within 6 months of the establishment of the Authority and ... reviewed at the end of every subsequent year.”

Section 2(3) already states that the authority

“must try to carry out its functions”

in an

“accountable and transparent”

way and in line with

“good governance”

practice. Although that would include engaging stakeholders and the public, we do not consider it appropriate to prescribe how the authority should do that or to burden it with producing and reviewing strategies and the associated costs. Unfortunately, for that reason, I cannot support amendment 183.

John Lamont will speak to David McLetchie’s amendment 184, which sensibly recognises that in certain circumstances, such as the discussion of sensitive police issues, it will not be appropriate for meetings to be held in public or for papers to be published. Although I am sympathetic to the amendment, I want to ensure that the drafting does not unduly restrict the authority’s freedom to determine for itself the best way of going about its business. I cannot support amendment 184 in its current form, but I am prepared to work with Mr McLetchie with a view to lodging a revised amendment at stage 3.

Amendment 187, in the name of David McLetchie, would oblige the authority to try to carry out its functions in a way that involved “local authorities wherever possible”. As the bill already provides a range of formal mechanisms for involving local authorities in policing in Scotland through, for example, the strategic police plan and the agreement of local police plans, and as the policing principles encourage the police service to work in collaboration with others, including local authorities, when appropriate, the amendment is not necessary and, as such, I cannot support it.

I ask the committee to support amendments 1 to 5 in my name and I move amendment 1.

The Convener: Before I call Alison McInnes to speak to and move amendment 1A, I welcome to the committee Margaret Mitchell, who has had a long journey and will be the voting member for the Conservatives. Do you have any relevant interests to declare?

Margaret Mitchell (Central Scotland) (Con): No, I do not, convener.

The Convener: Thank you very much. I call Alison McInnes to speak to and move amendment 1A and to speak to other amendments in the group.

Alison McInnes (North East Scotland) (LD): Amendment 1A seeks to require that the chairing member of the new authority be appointed separately from other members through the Crown appointments process. I realise that that process is more usually reserved for positions such as Auditor General for Scotland, but I think that the nature of the beast that the Government is creating is far from usual. As the Scottish police authority will be responsible for a budget of

£1 billion or so—not to mention for protection of our communities—I think it only right for the public to demand reassurances about its running. In my view, one of the best ways in which we, as a Parliament, can provide such reassurances is to ensure that the process of appointing the SPA is as open and transparent as possible.

Of course, the public appointments process is a well-regulated mechanism, but the appearance of partiality and political influence remains a possibility. By contrast, the Crown appointments procedure is more robust and demands an extra level of scrutiny, a cross-party appointments panel and ultimately the whole Parliament's agreement.

I do not believe that there is any inherent inconsistency in appointing the chair through one process and the rest of the board through another; rather, that would represent the best compromise. As the cabinet secretary pointed out, the chairing member will be largely responsible for the direction that the authority takes, and the spotlight for decision making will, ultimately, fall on the chair. By ensuring that the appointment is completely independent, we will from day 1 instil among the public greater confidence in the authority of the Scottish police authority.

Amendment 1A focuses on establishing the principle of using the Crown appointment process. If the Government was open to it—the Government has said that it is not—a few more technical amendments would be needed at stage 3, and I would be happy to work with the Government to produce those amendments. Alternatively, of course, I reserve the right to come back with a fully developed set of amendments.

I will touch on other amendments in the group. I certainly share the view that the authority should be larger than is currently specified and I tend towards Lewis Macdonald's amendment 1B, because it is less prescriptive. However, I am not convinced by amendment 178. There is a strong case for including local authority representation, but it would not be wise to prescribe the precise number of such representatives or the manner in which they will be appointed. As the committee has pointed out, it might well be beneficial to have more local authority representation in the short term to help with the transition, but that need might lessen as the authority matures.

I agree fully with the amendments on transparency and I favour Graeme Pearson's amendment 183 over David McLetchie's amendment 184, because it is slightly more robust.

I move amendment 1A.

Lewis Macdonald: We welcome the broad approach in the Government's amendments to separate the appointment of the chair and we

recognise that that could help to bring forward the chief constable's appointment, which would be a desirable outcome. However, it is again disappointing that the Government has not taken the opportunity to relax the tight limits that it has imposed on the board's size.

I will respond to what the cabinet secretary said. Amendment 1B in my name specifies not a fixed number of board members but a minimum number. He implied that we are suggesting a fixed number of 14 plus the chair, but we seek a minimum of 14 plus the chair, and to have the flexibility that Alison McInnes was correct to describe as being part of our approach. What we propose would be the best way forward. The setting of a minimum number of board members would be adequate to allow appropriate appointments to be made.

As for the board's make-up, we want the bill to specify local government representation on the authority not merely as a transitional arrangement—as Alison McInnes suggested—but as an on-going feature of the service in order to retain a division of political power and authority in policing and to retain a statutory basis for local authority representation. The cabinet secretary said that he expects a significant number of councillors to be members of the authority, but no statutory provision requires that. We seek to address that.

Concern has been expressed in parts of Scotland that the creation of a single force will result in the centralisation of resources and of decision making. Amendment 179 in my name would require ministers to

"have due regard to representation ... of persons with knowledge of communities and policing"

in local areas. That is intended to guarantee to communities that centralisation will not occur and to ensure not only that the new authority's members have expertise and knowledge, which are important, but that the expertise and knowledge are of the whole country and not only of the central belt, for example. As a signal to communities that the single force is not a threat to local policing and that it can strengthen local policing, it would be wise for the Government to support amendment 179.

I know that Graeme Pearson will speak to his amendment 183. As for the offer that Mr MacAskill made on the point of principle, all that I will say is that if he thinks that either amendment on transparency needs to be reinforced, there is no reason why the Government cannot accept amendments 183 and 184 then lodge further amendments at stage 3 to make the appropriate exceptions.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I thank the convener and the committee for allowing me to speak to David McLetchie's amendments.

I want to describe the context in which we will move our amendments.

The Convener: You are speaking to amendments, rather than moving them, at this stage.

10:30

John Lamont: Yes.

The Scottish Conservatives support the principle of having a single police force—indeed, we included a policy on that in our 2011 election manifesto—but we have concerns that the bill will not protect sufficiently the local accountability of policing. Communities must be able to hold local police to account when things go wrong, and our view is that elected police commissioners are the best way to protect local accountability. However, our objective at stage 2 is to improve the Scottish Government's bill rather than simply to try to rewrite it to include elected police commissioners. Therefore, we have lodged amendments that work within the Government's proposed structure of local police commanders and local policing plans, but it remains our party policy that elected police commissioners are the best way to enhance local accountability.

On amendments 1C and 1D, as we have already heard the bill currently sets the number of members of the Scottish police authority at between seven and 11. There is concern that those numbers may not be sufficient to provide for regional cover and the necessary expertise on the national board. As a comparison, under the recently passed National Library of Scotland Bill, the National Library of Scotland board is set at between eight and 13. As we have also already heard, the Scottish Government has lodged an amendment in the name of Kenny MacAskill that states that the Scottish ministers must appoint a chair of the authority and

"not fewer than 6 nor more than 10 other members".

Our amendments would set a minimum of 15 and a maximum of 19 board members. Our view is that 15 is the minimum that will be required to cover adequately Scotland's eight current police boards. That also follows a suggestion from COSLA, which has argued that restricting the board to 11 may inhibit the ability of the SPA to hold the police service to account.

On amendment 181, in the name of David McLetchie, the committee's stage 1 report noted that the bill does not expressly outline the type of

expertise that should be included on the authority. Paragraph 2(3) of schedule 1 states:

"The Scottish Ministers must appoint as members only persons who they consider to have the skills and expertise relevant to the functions of the Authority",

but the bill does not point towards the type of skills that will be required, and there is no mention of regional representation on the board. Our amendment does not seek to list explicitly the types of expertise that should be represented on the board or the regions that should be covered, but instead seeks to expand on paragraph 2(3) of schedule 1.

The Justice Committee's stage 1 report raised concerns surrounding the transparency of the SPA. In its response, the Scottish Government asserted that the board would hold meetings in public and publish all papers, but that requirement is not included in the bill. Section 2(3) requires the authority to

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

Our amendment 184 seeks to compel the board to hold meetings in public and to publish the agendas and papers for those meetings. It includes exceptions that are specified in the standing orders—it is expected that there could be an exception when security or other reasons do not permit a meeting or part of a meeting to be held in public. I am pleased that the cabinet secretary has acknowledged that point, and we would be happy to work with him to improve the drafting. It is important to cover that point.

The bill is sparse on the relationship between the national police authority and local authorities. That is being developed by the Scottish Government's pathfinder projects, but the committee's stage 1 report noted that the bill will not establish formal mechanisms between the SPA and councils. Our amendment 187, in the name of David McLetchie, would alter the main function of the authority by adding a requirement to involve "local authorities wherever possible". That was suggested to us as a high-level statement of intent that would apply broadly to any of the authority's actions. No other amendment seeks to insert a similar provision. Labour amendments attempt to tidy up the relationship between the authority and local councils, but we believe that amendment 187 would clarify things slightly more.

Graeme Pearson (South Scotland) (Lab): I will speak to amendment 183, but first I associate myself with Lewis Macdonald's views on other amendments in the group. Given the importance of the SPA, I ask the cabinet secretary to reconsider his approach to setting out the qualities

of the individuals who would be selected for membership.

I think that everyone in Scotland would acknowledge that the move to a single police force will bring about significant change in the service's relationship with communities throughout the country. There will be a shift from the long-standing tripartite arrangement, which involves local authorities and enables local police authorities, which are populated by people who are selected from the local community, to call to account a chief constable and report back directly to the communities on the nature and health of local policing.

There is no doubt that that arrangement, which was suitable for the 19th century and for a substantial part of the 20th century, needs to be amended. In the lead-up to the most recent election, Labour demonstrated its commitment to a single police service. That principle is well accepted. However, in creating a national board we must take account of aspects of the local arrangements that have been effective. I ask the cabinet secretary to reconsider what might be regarded as unnecessary secrecy or the impression of secrecy. If we are to have policing by consent, it is important that the public know what is happening in the board and know about the communications between key players in the board's arrangements.

Amendment 183 would require that certain matters be made public knowledge, so that the public—having gained access to the information—could be confident that policing was happening with their informed consent. Sensitive information, or information that has regard to national security, could be exempted, perhaps through freedom of information provisions or through the security environment around the information. I hope that the cabinet secretary will consider that.

Amendment 183 would require the authority to hold its meetings in public, which seems to be an entirely healthy thing for such a public organisation to do. The authority would also be required to publish its agendas and papers—in the 21st century, people increasingly expect to be able to read such documents—and its correspondence with local authorities and COSLA, which I expect the public will want to be able to read, given that such correspondence should be conducted in the public interest and to support public need. The same goes for directions from the Scottish ministers, and it almost goes without saying that people should be able to read reports that the authority receives from the chief constable.

Amendment 183 would also require the authority to

“publish a strategy setting out what steps it will take to ensure public engagement in its proceedings.”

That would inform the public about how they might influence what happens with the new single police service. If there is no plan, how can the public feed into public authorities? I doubt that any member has not experienced frustration when attempting to make contact with public bodies without knowing what processes are available to enable them to do so.

If the Government agrees to amendment 183, it can provide appropriate safeguards to protect sensitive information. I ask the Government to consider the amendment seriously, because the arrangement to which we agree is likely to be in place for many years. It is important that everyone who is concerned with the policing of Scotland thinks that policing is happening in their name and that they can influence how policing moves forward.

Roderick Campbell (North East Fife) (SNP): I have a brief point regarding the composition of the authority, to which Lewis Macdonald's amendment 178 refers. I fully support what Alison McInnes said in that regard. The committee anticipated that the first authority would include substantial representation from local authorities because they have appropriate expertise. However, we feel that in general it is not right to be prescriptive about that, and that the position may in any event change over time.

The Convener: Before I ask the cabinet secretary to wind up, I note that Alison McInnes will be the final member to speak because she is seeking to amend an amendment.

Kenny MacAskill: In response to Alison McInnes's point, I understand the importance of the chair of the board. However, there will be plenty of opportunities for Parliament to scrutinise policing—for example, when the strategic plan is laid before Parliament and when matters are raised with the committee.

With regard to the amendments that relate to the size of the board, I am happy to reflect on that further and to enter into discussions on the precise number. I believe that there is an optimum size, as has been mentioned.

On amendments in the names of Graeme Pearson, David McLetchie and Lewis Macdonald, it is important that we recognise—as Roderick Campbell mentioned—that the board will evolve over time to reflect the skills and expertise that will be required at particular points. That might require the specification of a certain number of local authority members or other members, but we must allow the board to evolve. The skills that are needed immediately—to which Alison McInnes and Roderick Campbell referred—are probably

held already by people who are currently serving on boards. If those people apply, they will doubtless be considered favourably.

On the point about the number of members, paragraph 2(4) of schedule 1 enables ministers to change by order the number of members of the authority if it becomes apparent that more or fewer are required for the authority to perform its function. That requires flexibility. Audit Scotland has found that the average size of public boards in Scotland is 14, and that FTSE 100 companies have an average board size of 11. For that reason, we have been veering towards somewhere between 11 and 15, but we are happy to discuss that. Local authorities can involve others through committees and sub-committees when they deal with particular matters.

On amendment 187, the SPA is already required to consult local authorities in setting strategic priorities nationally. Amendment 187 would at best duplicate that requirement, but could also blur the clear mechanisms that the bill contains.

On the question of secrecy, I have indicated that we are happy to work with David McLetchie to see whether we can get the precise wording right. There is a general desire to address that issue in the bill.

I acknowledge the view of Graeme Pearson and other members that there should be as much openness as possible, given the nature of the organisation. That is a matter of balance, because there are some aspects in which secrecy will be necessary for the security of those involved. I am happy to review the matter and to enter discussions. We feel that we currently have the appropriate balance, given FOI provisions, but we can reflect on that. At present, we think that the amendments in question would be detrimental, but we are happy to consider the issue and to work with David McLetchie on whether we can resolve that specific issue.

Alison McInnes: The establishment of the SPA will remove decision making from local areas and will concentrate power in the hands of ministers. The intention of amendment 1A is that, from the outset, the appointment of the chair will be, and will be seen to be, completely impartial.

I will press amendment 1A.

The Convener: The question is, that amendment 1A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)

Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Convener: I ask members to shout clearly, or I may miss them and we will move on. We do not retrace our steps here.

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

Amendment 1A disagreed to.

10:45

Amendment 1B moved—[Lewis Macdonald].

The Convener: The question is, that amendment 1B be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 1B disagreed to.

Amendment 1C moved—[John Lamont].

The Convener: The question is, that amendment 1C be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

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

Amendment 1C disagreed to.

Amendment 1D moved—[John Lamont].

The Convener: The question is, that amendment 1D be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

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

Amendment 1D disagreed to.

Amendment 1 agreed to.

Amendment 178 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 178 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
McInnes, Alison (North East Scotland) (LD)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 178 disagreed to.

Amendment 179 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 179 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)

Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

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

Amendment 179 disagreed to.

The Convener: Amendment 180, in the name of Jenny Marra, is grouped with amendment 204.

Jenny Marra (North East Scotland) (Lab): The amendments would introduce a quota system for the local and national police and fire boards and ensure that representation on the boards was, as a minimum, 40 per cent women and 40 per cent men, with the remaining 20 per cent being flexible. That system is based on one that has been proven to work in Finland, Norway, Denmark and Iceland and which has been considered for use in Ireland and Canada and, indeed, at UK Government level. The quotas have proven effective in increasing female representation on government and public limited company boards, where they are used.

There is a clear necessity to redress the current gender imbalance in the decision-making structures of our police and fire boards. Until the most recent local elections, nearly 18.5 per cent of police board members in Scotland were female, which is lower than the percentage figure for female councillors. For example, Central Scotland joint police board had 11 members, but not one was female.

I believe that it is unacceptable for a force that serves an area in which women make up over 50 per cent of the population to have no female representation in its decision-making structure. When the police deal every day with gender issues such as domestic violence and prostitution, I feel that it is even more incumbent on a police board to have equal gender representation.

The recent Angiolini report makes clear that the justice system not only affects women uniquely, but has failed women substantially. The report calls for improvements in many areas, including policing. I believe that voting for amendment 180 will help to give the guidance to our police force to make the changes that Angiolini envisages and which have cross-party support in the Parliament.

I emphasise that we are creating police and fire services for the future and decision-making bodies that will last for generations. As politicians, we have a responsibility to get it right, not just for 1 April next year, but for 1 April 2023 and 2033. Harnessing the progressive opinion that exists on

gender equality now will ensure that, in 20 years, we can look back safe in the knowledge that we took every opportunity to make our policing system fair and accountable to the people whom it serves.

Such provisions are in force and working throughout Europe. They are necessary to redress a systemic imbalance of representation at board level in our current police and fire services. Amendment 180 would help to ensure that the changes that we need for women entering the justice system are carried out effectively on 1 April 2013 and into the future. More equal societies tend to be fairer societies. Amendment 180 is a big step towards achieving that.

I move amendment 180.

Alison McInnes: I congratulate Jenny Marra on lodging amendment 180 and on the way in which she spoke to it. I support the intention behind the amendment. Until now, I have been reluctant to argue for quotas, but I must say that voluntary action does not seem to be working and I am getting older and impatient. From the outset of the new service, let us make it clear that we respect equally women in our society. If policing is about keeping communities safe, the setting of strategies and priorities by the board should take account of women in our communities. It would be a good signal to include women in boards in the suggested way from the outset.

Lewis Macdonald: I support amendments 180 and 204. The first group of amendments that the committee considered was on the official status of the Gaelic language. Such amendments would not have been considered in relation to such a public body a generation ago. Likewise, amendments 180 and 204 would not have been proposed a generation ago, but they are a sign of our changing society and of our changing expectations of the public bodies that serve us. The amendments will move the police service and public service in Scotland in the right direction.

Roderick Campbell: Although I have sympathy with the intention to ensure that the police authority represents both sexes in society, obviously, the gender issue is not the only line in society. The Equality Act 2010 proceeds on the basis of a far wider view of equality than just that of the gender balance. The amendments raise a much wider issue that is best tackled through separate legislation, rather than by simply adding specific provisions to the bill. I was rather concerned when I heard Miss Marra on the radio this morning referring to the conveners of police boards who gave evidence to us as “quite old”, which must have come as a bit of a shock to Stephen Curran, aged 39. If we want a provision for women, why do we not have an authority that reflects the age balance in society?

The amendments raise a big issue that the Parliament perhaps needs to tackle, but inserting the provision in amendment 180 into the bill is not the way to do it.

Margaret Mitchell: I have tremendous sympathy with the intention behind amendment 180, but it is too prescriptive and we would need to consider various equalities issues that the board should reflect; singling out the gender issue would give the wrong signal. Therefore, although I have tremendous sympathy with the amendment, it is not the way to tackle the issue.

The Convener: I will chip in, because I have just found out that 39 is old, and I have a son of 39. You will have to wait a wee while to sit in my chair, Jenny.

I, too, have huge sympathy with amendment 180. It is frustrating that women are displaced and do not reach the heights, not just in public bodies, but in businesses. However, I have always been opposed to quotas. I am sure that the women who are sitting round this table and who are in the Parliament today got here on merit. We said that we want quality on the police authority board, and I agree. To say that 40 per cent of the board should be either men or women might tip the balance and mean that men or women who are better able to do the job are excluded. That would be wrong.

I do not know whether this will help me at all—it might undermine my case—but Edwina Currie was on television today saying that she is not in favour of quotas. Some women might outnumber, in a vocal sense, all the men who just sit there like sheep. We should consider not just the numbers, but the quality. For all those reasons, and even though I have sympathy for the reasons behind amendment 180, I cannot support it.

Because I have spoken, I almost forgot that the cabinet secretary still needs to wind up. I must not forget the cabinet secretary.

Kenny MacAskill: Jenny Marra has raised an important issue, but it is not an issue that is simply for police and fire service boards; it transcends that and is important throughout society. The matter should be addressed, but I do not think that this is the right way of doing that. I concur with Jenny Marra's support for the small independent nations that do so well in the area of gender balance and in a variety of other ways. I am a big admirer of Finland, Norway, Denmark and Iceland and I wish that Scotland had the powers to emulate what they do.

The Convener: How did you manage to slip that in?

Kenny MacAskill: There is an issue to address, but whether the bill is the right place to address it

is another matter. If Ms Mitchell was not here as a substitute for Mr McLetchie, the Justice Committee would not meet the quota, notwithstanding the convener's gender. The committee should reflect on that.

The issue should be addressed not just through the make-up of police and fire service boards but in public life and, indeed, on private company boards. Indeed, the matter has been resolved in other countries. However, I have made it clear that appointments to the Scottish police authority should be made on the basis of skills and expertise and they should reflect Scottish society, including ensuring a gender balance. However, it is not necessary to be prescriptive about that in the bill.

I agree that, where possible, local authority committees should have a good gender balance but it might not be possible to achieve that because of the make-up of individual councils. Trying to make the change through the bill without making wider changes in local authorities might cause difficulties for individual local authorities, never mind the fact that I do not think that COSLA would welcome us trying to use the bill to micromanage local government by dictating how it should discharge its functions.

In those circumstances, and although I recognise the issue and sympathise with the reasons for the amendment, the solution does not lie in the bill. I accept that a solution must be found and I look longingly at the nations to which Ms Marra referred that are doing so much better.

Jenny Marra: I thank committee colleagues for their contributions on amendments 180 and 204. Some of the points that have been raised are very interesting.

I put it to the cabinet secretary that we can look to those other nations that have made strides in equal representation, but our Parliament has the required powers already. We do not need subsequent powers to take a step in the right direction.

Colleagues have said that the bill is not the right place to take that step. I listened with interest to Roderick Campbell, who said that there are wider issues of equality and representation to be considered; I wonder whether that will lead us to a future Scottish National Party bill on the representation of gender and ethnic minorities on all public bodies. I will watch with interest to see if that happens.

My reason for lodging the amendments is that I believe they would signal a real step in the right direction, and we have the power to take that step. In addition, we have particular gender issues with policing. When Scottish police forces deal with gender issues such as domestic violence and

prostitution, and are then scrutinised by a board that is composed solely of men, as was Central Scotland's, our whole community is not being sufficiently represented, especially considering the fact that women make up 52 per cent of our population.

As a result, I will press amendment 180 and move amendment 204 at the appropriate time. I simply do not think that a do-nothing approach is good enough.

11:00

The Convener: The question is, that amendment 180 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 180 disagreed to.

Amendment 181 moved—[John Lamont].

The Convener: The question is, that amendment 181 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

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

Amendment 181 disagreed to.

Amendments 2 to 5 moved—[Kenny MacAskill]—and agreed to.

The Convener: Amendment 182, in the name of Lewis Macdonald, is grouped with amendment 196. If amendment 196 is agreed to, amendment 197 in the later group on police staff will be pre-empted.

Lewis Macdonald: Amendment 182, which relates to Scottish police authority staff, and amendment 196, which relates to staff of the Scottish police service, seek to remove the statutory provision by which police and authority staff could be brought in under third-party arrangements. The background to and purpose of the amendments will be clear to colleagues from the stage 1 debate in the chamber and the subsequent parliamentary debate on concerns that have been expressed by police staff about their future prospects in the service. At the end of one of those debates, the cabinet secretary stated emphatically that the kind of privatisation that is being inflicted on forensic services in England would not happen here.

The amendments seek to secure Kenny MacAskill's commitment that privatisation will not happen on his watch by building it into law and by removing the provision—and the risk attached—that gives this or any other Government the freedom to contract out services that are currently provided in-house by staff who are employed by the police service.

The term “contracting out” can be a disguise for privatisation and can certainly cover the removal of posts. Some of the debate around the bill has reflected those concerns and the fact that, given their scale, the cuts and savings required from the authority cannot readily be met without significant reductions in police staffing. As was discussed at the recent Association of Scottish Police Superintendents conference, others who are responsible for the management of the service will be tempted to consider contracting out as a possible way of squaring the circle and making these economies. Amendments 182 and 196 are intended to remove such an option.

I move amendment 182.

Kenny MacAskill: The Government is committed to the police service; indeed, Lewis Macdonald quoted my statement that there will be no privatisation of policing under its watch. Not only are we not following the direction of travel that the coalition Government south of the border is taking on forensic services, but in the previous session this Government rolled back what would have been the privatisation of Low Moss prison to ensure that it remained in the public sector. As a result, that particular commitment was stated not just in 2012 but in 2007 when we rolled back what I believe to be flawed plans to privatise that aspect of the prison service.

Nevertheless, the effect of amendments 182 and 196 would be that the SPA could not appoint staff to carry out its functions or to carry out police functions under the chief constable's direction and control under contract from a third party. Although we have no intention for the provisions to be used for wholesale replacement of police staff, there might well be occasions when the authority needs additional specialist skills or additional capacity on a short-term basis, for example to cover maternity leave or to help implement a new policy or procedure. The provision is needed to allow the authority to retain the flexibility to obtain extra staff when it is not necessary to employ someone permanently. I reiterate our opposition to privatisation, but must oppose amendments 182 and 196 in Mr Macdonald's name.

Lewis Macdonald: The cabinet secretary reminds us of Low Moss; however, I remind him of another privatisation—that of the Forestry Commission—that had been proposed by Mike Russell but which was withdrawn by the present Government. As Mr MacAskill will recall, ministers denied that that was privatisation, even though it clearly was. Ministers might use different words to describe it, but the consequence is either that the service is provided in-house by public employees working for a public employer or that it is provided in a different way that primarily involves a private company.

As a result, I intend to press amendment 182. Both it and amendment 196 make the choice clear. As with a previous amendment, the cabinet secretary has said that certain exceptions need to be taken into account; if amendment 182 were to be agreed to, it would be open to the Government to lodge at stage 3 an amendment setting out exceptions. If the cabinet secretary genuinely believes that the amendments jeopardise, say, maternity cover, I am sure that it is not beyond the wit of the civil service to devise a way of reinstating that particular aspect.

The Convener: The question is, that amendment 182 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 182 disagreed to.

Amendment 183 moved—[Graeme Pearson].

The Convener: The question is, that amendment 183 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and
Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 183 disagreed to.

Amendment 184 not moved.

The Convener: Amendment 185, in the name of Lewis Macdonald, is grouped with amendments 9 to 20. Mr Macdonald, I ask you to move amendment 185 and speak to all the other amendments in the group, if you so wish.

Lewis Macdonald: Thank you, convener. That is most helpful.

The amendments take us to the heart of concerns about the concentration of powers in the hands of ministers. Although I have mentioned my disappointment at one or two developments this morning, I am particularly disappointed that in this case ministers have responded to concerns not by looking for new ways of sharing powers with others but by proposing to increase their hiring-and-firing powers with regard to the operational leadership of a national police force. It does not seem that Government has heeded the concerns raised in evidence that the accrual of more power over the police might be unhealthy in a democratic society.

Amendment 185 seeks not to remove the powers that ministers wish to give the authority that they appoint to require the chief constable to retire in the interests of efficiency and effectiveness—although there must be concern at the way in which ministers are seeking to centralise such power in the hands of their appointees for the first time—but to ensure that such power is not used lightly by prohibiting the authority from delegating that power to a sub-

committee or staff member. Although the proposal is perhaps more modest than we would have wished, I hope that it is modest enough to attract broad support. In their amendments, ministers propose to add to the power to require retirement a new power for the authority to require resignation, again in the interests of the force's effectiveness and efficiency. That is a step in the wrong direction; in effect, it is a power of dismissal and should, accordingly, be resisted.

I move amendment 185.

Kenny MacAskill: I have listened to Lewis Macdonald and I would like to speak to his amendment 185 and the amendments in the group in my name, all of which deal with the retirement of senior officers in the interests of efficiency and effectiveness.

Section 14 gives the Scottish police authority the power to call on a senior officer to retire from office in the interests of the efficiency or effectiveness of the service. That is intended to carry forward provision in the Police (Scotland) Act 1967, which provides the current six joint police boards and two unitary police authorities with a power to call on a senior officer to retire in the interests of efficiency or effectiveness.

Amendments 9 and 11 clarify that the power enables the authority to call on a senior officer to resign from the police service if they are not yet eligible to receive a pension. Also, in the interests of providing clarity, amendment 10 puts it beyond doubt that the test for efficiency or effectiveness relates to the efficiency and effectiveness of the police service, rather than the individual.

I believe that there is scope for strengthening and adding further transparency to the process that the Scottish police authority must follow if it wishes to call on a senior officer to retire in that way. My amendments 12 and 14 achieve that aim by requiring the authority to give the senior officer a written explanation of its reasons for proposing to call on them to retire, and to give them an opportunity to make written representations to the authority. Furthermore, amendment 15 places a statutory duty on the authority to take any such representations into consideration before reaching a final decision. Finally, if written representations are made, amendment 17 requires the authority to provide the officer with written reasons for its final decision. I ask the committee to support amendments 9 to 20.

Unfortunately, I cannot support amendment 185. If Mr Macdonald's intention is to ensure that section 14 is not used without a robust process, I reassure him that section 14, together with our proposed amendments to it, provides for a robust, fair, open and transparent process that must be followed by the authority in the exercise of the

power. Further, I consider it appropriate to give the authority general powers to delegate its functions to its committees or staff, and it is rightly for the authority to decide which of its functions to delegate and to what extent.

The bill takes an enabling rather than a prescriptive approach to the authority's business. In that context, we do not consider it appropriate to single out specific powers that must be treated differently.

Graeme Pearson: I concur with the views that were expressed by Lewis Macdonald. Obviously, within the context of what we are trying to do in centralising the services into a single police service, the powers that the cabinet secretary outlines in this part of the bill are extensive and punitive, when applied to an individual, even though it might be suggested that they would be used only in limited circumstances, with all of the safeguards that the cabinet secretary has outlined.

Given the nature of the board that the cabinet secretary has proposed and the fact that he has acknowledged that he is not minded to accept the openness that we suggested earlier when we were discussing amendment 183, the conduct of the board in relation to how the matter is dealt with would have deep implications for how any external party might view the justice or otherwise of the discussions. I therefore ask the cabinet secretary to reconsider his approach to Lewis Macdonald's amendment 185.

John Finnie: I do not recall Graeme Pearson or his former colleagues ever displaying the same interest in similar regulations that applied to junior ranks, without any of the protection that this regulation will afford. The regulation is a measured response to the concerns that have been raised with the committee, and I support it.

The Convener: Do you want to respond, Graeme?

Graeme Pearson: Merely to say that it is unfortunate to personalise the matter in the way that John Finnie has done. I am trying to ensure that whoever holds the post receives due justice. I ask the committee and the cabinet secretary to consider the details and make a measured judgment. There was no need for the comment that was just made.

The Convener: I do not think—[*Interruption.*] Gentlemen! I am having to hold ex-police to account. This is great.

I will let John Finnie respond and say his bit, then we will get on with the business at hand.

John Finnie: If Graeme Pearson took any personal offence, I apologise unreservedly. The Association of Chief Police Officers in Scotland—

The Convener: That is fine. You have kissed and made up. Stop while the going is good.

Graeme Pearson: I am grateful for the comment.

The Convener: Oh heavens, we are needing our tea break. I invite Lewis Macdonald to wind up.

11:15

Lewis Macdonald: I did not hear in Mr MacAskill's comments a clear explanation of why the Government has seen fit to lodge amendments requiring resignation in those circumstances, in addition to the requirement on retirement that is already in the bill. The lack of a clear explanation only adds to my concern.

The cabinet secretary asked whether we were seeking a robust process. That is what we are seeking. We will support Government amendments in the group that add to that; there are some amendments that we will oppose because they detract from it. When we come to those amendments, members may wish to consider that.

The Convener: The question is, that amendment 185 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 185 disagreed to.

Schedule 1, as amended, agreed to.

The Convener: I am going to go on for a little bit, but I think members are needing a cup of tea. Just to let you begin to feel happy about things, when I get to amendment 187, I will call a little break—you are going to get out of your chairs.

Section 2—Functions of the Authority

The Convener: Amendment 186, in the name of Lewis Macdonald, is grouped with amendments 188 to 190, 6 and 191.

Lewis Macdonald: Amendment 186, which relates to the functions and responsibilities of the authority, speaks for itself. “Try to do the best you can” is all very well and good for a school report at the end of term but it surely will not do for the law of the land.

If the statutory requirement on a public body is to “try to” do something, all that it has to do to defend itself is to show that it tried. If, on the other hand, the law says that the authority must carry out its functions in a given way, trying and failing will not meet the statutory requirement.

Amendment 186 makes proportionate, accountable and transparent governance a must-do rather than a nice-to-have. I hope that, on that basis, it commands broad support.

Amendment 188 touches on the wider issue of what kind of public body the bill will create. The ability to hold reserves is one of the features of local government and other public bodies, for example, and protects them from simply being under the control of ministers of whatever party is in government. Giving the new authorities the power to hold reserves would not be the end of the world for public sector accounting in Scotland; instead, it would allow ministers to demonstrate that the measure is a sensible and well-balanced reform rather than a power grab by central Government. Accordingly, I hope that ministers can support it.

However, it is appropriate for ministers to exercise some supervision in any area where the authority might be drawn into commercial contracts. As I said, we are particularly concerned about any step to contract out, either on a one-off basis or as entire services, jobs that are currently carried out by police staff. We therefore support Mr MacAskill’s amendment 6, which will require ministerial consent for the forming of companies by the authority. We want, through amendment 190, to extend that to cover the letting of contracts to third parties. That is in line with amendment 196, which we debated earlier and which seeks to drop provision for police staff to be provided by a third party. Amendment 190 can still go forward if amendment 196 is not agreed to.

If amendment 190 is agreed to, it will not directly prevent contracting out in the police service but it will ensure that that can happen only with Government support. Privatising jobs must never be treated as an operational matter or as a matter that is for the commercial judgment of the authority. It is a political choice, and responsibility for making that choice must lie with the Government of the day.

Likewise, amendment 191 does not seek to prevent the authority from entering into a contract; rather, it requires the authority to do so subject to

the duty to secure best value and therefore to follow guidance issued by ministers. I hope that that is seen as a sensible safeguard of the public interest that the Government and other members can support.

I move amendment 186.

Jenny Marra: Amendment 189 makes use of article 19 of the European Union’s public procurement directive to put in place a preference for supported workplaces to make police and firefighters’ uniforms for the new services. Article 19 allows Governments to bypass competition regulations so that they can contract services directly from supported workplaces—Remploy and Blindcraft, for example.

Article 19 exists because the dignity of work that supported workplaces offer is irreplaceable for the many staff who work in them. In Scotland, we have supported workplaces with an excellent history of creating specialist and high-spec workwear uniforms, including police and fire service uniforms. The future of those factories is at risk. For example, in Dundee, Remploy recently held contracts to make firefighters’ uniforms for the London Fire Brigade. It would be nice if, under amendment 189, we could make uniforms for Scottish firefighters in Scotland. If the amendment were to be agreed to, contracts of more than £1 million could be made available to supported workplaces. The UK Government is withdrawing support for Remploy, but the Scottish Government, through article 19, has the power in its hands to sustain it.

Our firefighters’ uniforms are made south of the border. I am sure that the cabinet secretary will be unable to resist the opportunity to easily bring that work and those jobs to Scotland. The amendment has the support of the Fire Brigades Union, which would like the Government to use the moral power to have firefighters’ uniforms made in their communities by disabled workers. The amendment offers a neat solution, and I urge members to support it.

Roderick Campbell: I have some sympathy with amendment 186, in the name of Lewis Macdonald. Will the cabinet secretary clarify the use of the words “try to”, and whether slightly better wording might be used in the bill?

Kenny MacAskill: There has been an interesting and wide-ranging discussion about the functions and powers of the SPA. Amendment 6, which is in my name, makes it clear that the SPA can exercise its power to form or promote companies only with the consent of the Scottish ministers. That will ensure that the SPA establishes a company only if there is good reason to do so, and that the purposes and activities of any such company are consistent with those of the

SPA and do not detract from core service provision.

I agree with Lewis Macdonald that the SPA should operate in a transparent and accountable manner. Plenty of other statutory requirements are placed on the authority, such as those under the Freedom of Information (Scotland) Act 2002 and the Ethical Standards in Public Life etc (Scotland) Act 2000, and it is subject to statutory audit and inspection by Her Majesty's inspectorate of constabulary for Scotland and the Auditor General. The provision aims to complement those measures so that the authority goes beyond just taking those as statutory boxes to be ticked. Section 2 seeks to achieve that, but the effect of amendment 186 would be to place the SPA under a statutory duty that would be onerous and potentially unenforceable. I therefore cannot support the amendment.

I appreciate that the eight current police authorities and joint boards, as local authority bodies, can hold reserves, which are used to help manage particular peaks in demand. As a nationally governed organisation, the SPA will be required to operate within a financial regime that is set by HM Treasury and which does not allow the holding of reserves locally. Large parts of the public sector in Scotland operate effectively and efficiently in that way, including the national health service, which also has to deal with unexpected peaks and flows in demand. We are confident that the SPA, with a large, single annual budget of around £1.4 billion, will be able to do the same. I am therefore unable to support amendment 188.

Section 52 of the Local Government in Scotland Act 2003 applies to current services by virtue of their being part of the local government family. Local government is subject to a specific statutory requirement because the Scottish public finance manual has no application to it. Applying guidance intended for local government to the SPA does not make sense. The SPA will be subject to the guidance in the Scottish public finance manual, which is issued by the Scottish ministers; it will also be subject to inspection and audit by the Auditor General.

I assure members that the police service of Scotland will not be privatised. The bill protects the status of the police as a public service and we have no plans to change that. I therefore cannot support amendment 191.

Amendment 190 would require the SPA to seek Scottish ministers' consent before entering into any contract, however small. I do not believe that Mr Macdonald really thinks that it is necessary for the Scottish ministers to consent to contracts for the purchase of every paper clip or police car. Surely such things should be for the chief constable and the SPA to determine.

I turn to Ms Marra's amendment 189. The Scottish Government recognises that supported businesses play a valuable role in assisting people with disabilities to integrate into the labour market and in helping to improve their overall independence and wellbeing, which is crucial in building a healthier and fairer Scotland. The procurement of new uniforms will be a matter for the Scottish police authority to take forward. We do not expect that it will replace all uniforms on day one. Instead, it will replace them as and when required. I am sure that, in its drive to deliver quality and best value for money, the SPA will carefully consider all the available options, including supported businesses such as Remploy. In any event, the amendment would not allow the SPA to enter into contracts with other suppliers, should no supported business be available to deliver a contract for the supply of uniforms. Accordingly, I cannot support amendment 189.

Jenny Marra: I will respond to that point. We would be delighted to lodge an amendment at stage 3 that would allow other companies to bid if no supported workplaces were available to provide the contract.

The cabinet secretary is right to say that the SPA will not replace all uniforms on day one. However, fire officers' uniforms have a limited lifespan. They have barcodes on them and are used only 30 times before they are discarded. There are 6,000 firefighters in Scotland and they have two uniforms each. That means that there are 12,000 uniforms in circulation that need to be constantly replenished and renewed.

Another issue is the insignia that will need to be changed on day one. That contract alone would allow the people who work in Remploy factories in Dundee and across Scotland to maintain their jobs and their dignity. I urge the cabinet secretary to think seriously about my amendment.

The Convener: Do you want to respond to that, cabinet secretary?

Kenny MacAskill: I am happy to reflect on that point. We have to look at the opportunity for the police authority and indeed the fire authority to consider what they are bound to do in terms of procurement. We can seek to ensure that organisations such as Remploy are given the opportunity to tender, but we must also ensure that the uniforms and other items that are required are available.

At the end of the day, the primary duty is to ensure that those who serve are adequately provided for in terms of uniforms. As I said, we have to balance that with trying to ensure that we cater for other organisations that do equally important work in our society. The primary duty is to protect the interests of those who serve, but we

are happy to look at the issue that Ms Marra has raised.

Lewis Macdonald: I listened carefully to what the cabinet secretary had to say on the issues—

The Convener: I beg your pardon. Roderick Campbell asked the cabinet secretary to clarify the use of the words “try to”, which would be removed by Lewis Macdonald’s amendment 186. Did the cabinet secretary respond to that?

Kenny MacAskill: I think that it was covered.

Lewis Macdonald: I can confirm that the cabinet secretary did indeed respond to it.

The Convener: Thank you. Rescue me, Lewis.

Lewis Macdonald: However, I am afraid that it was not the response that I hoped to hear, and I suspect that Roderick Campbell shares my sentiments. The defence was that requiring the authority to carry out its functions in a way that is consistent with good governance would be onerous and unsustainable. That begs the question of why on earth the provision is in the bill in the first place. If it is onerous and unsustainable, why impose it? If the Government is going to impose it, which I assume is its intention, it should do so in such a way that it will work, and it should remove the conditional term “try to”. In my view, a requirement to try to do your best is not good enough for the law of the land. I will therefore press my amendment 186.

The cabinet secretary implied in his comments on some of the other amendments in the group that no legislative provision is required. For example, he said that we should not require ministerial approval of contracts for paper clips and police cars. That is a fair point but, as in the case of article 19, it is perfectly open to the Government to accept amendment 190 today and lodge a further amendment—or discuss with colleagues their doing that—at stage 3. I do not think that what the cabinet secretary said is an argument against the amendment.

I finish by commenting on Jenny Marra’s amendment 189. I recall a previous minister giving a clear assurance in the previous session of Parliament that every public body in Scotland would be expected to secure at least one order under article 19. Sadly, that has not happened. With the creation of a new public body, we have an opportunity to take that from an expectation to a requirement. The committee would do well to support amendment 189.

11:30

The Convener: The question is, that amendment 186 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

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

Amendment 186 disagreed to.

Amendment 187 moved—[John Lamont].

The Convener: The question is, that amendment 187 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

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

Amendment 187 disagreed to.

Sections 2 and 3 agreed to.

The Convener: We will take a short break and come back at 11.40. Do not stretch it—11.40, okay? Thank you.

11:31

Meeting suspended.

11:40

On resuming—

The Convener: I make it plain to everyone that the cabinet secretary will stay with us for stage 2 until 12.45, when we will move on to a short matter—I do not know how I have picked up the word “matter”; it must be contagious—for subordinate legislation, for which he will also be present.

Section 4—General powers of the Authority

Amendment 188 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 188 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and
Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

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

Amendment 188 disagreed to.

Amendment 189 moved—[Jenny Marra].

The Convener: The question is, that amendment 189 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and
Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 189 disagreed to.

Amendment 190 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 190 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)

Grahame, Christine (Midlothian South, Tweeddale and
Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 190 disagreed to.

*Amendment 6 moved—[Kenny MacAskill]—and
agreed to.*

Amendment 191 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 191 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and
Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 191 disagreed to.

Section 4, as amended, agreed to.

Section 5—Directions

The Convener: Amendment 192, in the name of David McLetchie, is grouped with amendment 166.

John Lamont: The Scottish Government has repeatedly asserted that the ministerial power that section 5 provides for will rarely be used and will apply to non-operational matters only. The power will enable ministers to direct the authority on any non-operational matter. The rationale behind the power is that it is required

“to enable the Scottish Ministers to act in the public interest and to execute the will of the Scottish Parliament if necessary.”

However, a number of organisations and individuals, including Professor Jim Gallagher, COSLA and the Scottish Police Federation, have expressed concern that the power creates the risk of political interference with the police force.

Amendment 192 accepts that a ministerial power may be necessary but seeks to force the minister to justify its use by issuing a statement that sets out the circumstances in which such a

direction could or would be given; it seeks to put pressure on the minister to explain the circumstances in which the Government might want to use the power.

I move amendment 192.

Alison McInnes: Throughout our consideration of the bill, I have listened carefully to the Government's explanation of the power of direction. I emphasise to the cabinet secretary that I fully recognise that the intention behind the provision is not to enable the Government to abuse the power, but the fact remains that there is a great deal of uneasiness surrounding its all-encompassing nature, which is why I support David McLetchie's amendment 192.

My amendment 166 provides a specific limitation relating to any directions that are given regarding the use of firearms, including Tasers. I am advised that it would be fairly unusual to require a ministerial direction to be carried out by way of order, but I hope that the cabinet secretary will agree that it is well worth having extra safeguards in this area. Although I recognise that the present Government almost certainly has no intention of doing this, section 5 as it stands could, for instance, permit ministers to direct that all police officers carry firearms. That is an unlikely scenario, but it would clearly be an unwelcome development.

11:45

I am firmly of the opinion that, when it comes to the use of firearms, it is wise to have an extra level of assurances. Requiring directions regarding firearms to be made by order would give Parliament the chance to ensure that the new power was not being misused on such a critical issue. I therefore hope that the cabinet secretary will be open to amendment 166. I stress that I am not suggesting that the current Government has any sinister intentions whatsoever. However, when we are scrutinising proposed legislation, we must consider what a less benign Government might do with it in years to come. We must guard against being blinded by good intentions and be clear about what the power of direction might allow future Governments to do.

The Convener: It is good to hear that the cabinet secretary is not sinister.

Graeme Pearson: I will comment on the nature of direction from the Scottish ministers to chief officers. Obviously, a Government minister would seek to instruct a chief officer only in very unusual circumstances. Kenny MacAskill's earlier response about the operation of the board and relative relationships gives an indication that the public generally will not be aware of the various interactions between ministers and chief

constables. Therefore, although it will be onerous, and, I am sure, inconvenient from the point of view of how the statement might set out circumstances, it is important that, at the beginning of the establishment of a single police force, an attempt should be made to outline the nature of the circumstances in which a Government minister—a politician—would issue a direction to a chief officer, particularly in relation to policing duties. I ask the cabinet secretary to consider the implications of not publishing such a document.

Roderick Campbell: I understand the basis for amendments 192 and 166, but I have concerns about their being too prescriptive. Section 5(3) requires ministers to lay a copy of any direction before the Parliament, which would no doubt give rise to a debate if there was controversy. I am instinctively agin things that are too prescriptive.

Margaret Mitchell: I feel strongly that we should agree to amendment 192. The public should be notified when ministers give any direction to the chief constable of the single police force. That would put in place the necessary checks and balances. David McLetchie's amendment 192 and Alison McInnes's amendment 166 are prerequisites and should be agreed to.

Kenny MacAskill: I make it clear that the Government cannot instruct or direct a chief officer, as the bill does not allow that—only the SPA can do that. We have been clear that ministers cannot make directions relating to specific operations or the carrying out of those operations. We also recognise the need for parliamentary scrutiny, which is why the bill provides for openness and transparency by requiring that any direction must be published and laid before the Scottish Parliament.

Ms McInnes's amendment 166 would mean that any direction in relation to firearms would be subject to parliamentary order and so could not take effect for at least 28 days after it was laid. I cannot support that amendment. The power of direction would be exercised rarely and only when necessary. For example, it might be used to ensure that the authority takes action on recommendations arising from parliamentary committees or public inquiries. There might also be circumstances in which a direction is necessary to exercise the will of Parliament. In any case, any direction—whatever the subject matter—will be made openly and transparently, with opportunity for subsequent parliamentary scrutiny and debate. Directions should be capable of taking effect as soon as they are required, without the unnecessary 28-day delay that amendment 166 would impose.

Mr McLetchie's amendment 192 would require the Scottish ministers to publish a statement, prior

to the exercise of the power, about what the Scottish ministers consider to be a specific operation and so may not make directions about.

The bill clearly defines the respective roles and responsibilities of the chief constable, the authority and the Scottish ministers. It is absolutely clear that the only person who can direct and control constables is the chief constable. We are not persuaded that a statement by the Scottish ministers as proposed by Mr McLetchie in amendment 192 would add to that clarity.

As Mr McLetchie would surely recognise, policing, society and crime are continually evolving and the future of policing cannot be predicted. It is not reasonable for the member to propose that Scottish ministers address all possible eventualities.

John Lamont: I acknowledge the point that the cabinet secretary has made, but there is widespread concern in a number of organisations, such as COSLA and the Scottish Police Federation, about how the power could be used. Although I hear what the cabinet secretary is saying, it would be appropriate for the bill to include something that sets out more clearly when the power could be used, so there could be no doubt in the mind of the public or the police about when the Government might decide to take action along the lines described.

The Convener: The question is, that amendment 192 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

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

Amendment 192 disagreed to.

Amendment 166 moved—[Alison McInnes].

The Convener: The question is, that amendment 166 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

McInnes, Alison (North East Scotland) (LD)

Mitchell, Margaret (Central Scotland) (Con)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 166 disagreed to.

Section 5 agreed to.

Section 6—The Police Service of Scotland

Amendment 167 moved—[John Finnie]—and agreed to.

Section 6, as amended, agreed to.

Section 7—Senior officers

The Convener: Amendment 193, in the name of Lewis Macdonald, is in a group on its own.

Lewis Macdonald: One of the key recommendations that was made by the Justice Committee at stage 1 was that ministers should bring forward the appointment of the chief constable, to give him or her the time and opportunity to manage the transition from eight forces to a single force in an effective and efficient manner.

The police service is a command-led service, which means that, when officers are required by Government to have the new structure in place in time, they will do their level best to achieve that. However, members of the committee all know that some people who are involved in the transition believe that delivering the new service in time could come at a heavy price in terms of half-formed structures, false economies and missed opportunities, unless the effective leadership of the force is in place in good time before the transition.

Ministers have accepted that there is a case for a better-managed transition. They have said that they will enable the early appointment of chief officers of the police and the fire and rescue services, and that is welcome. This amendment invites them to put flesh on the bones of that commitment. In the stage 1 debate, it was rightly observed that Governments of all parties can commit to making things happen according to a vague timetable and then let that timetable slip gradually until it has all but disappeared. That should not happen in this case.

We suggest that six months is a reasonable period for the new chief constable to be in place

before the new service comes fully into being. That can be done, if ministers wish. They might argue that four or five months would be adequate, and colleagues would wish to listen to that argument. They might say that an adequate period of office for the new chief constable can be achieved only by some kind of transitional arrangement beyond 1 April, and I do not think that we would resist that approach. However, I do not think that they can credibly argue that they accept the committee's recommendation but dare not have it included in the bill in case they should fail.

As I said in an earlier debate, it is not good enough for ministers to try and not to succeed. A commitment to appoint the new chief constable in good time must deliver what it promises. This amendment is designed to ensure that that happens.

I move amendment 193.

Kenny MacAskill: We understand that the amendment is intended to ensure an appropriate lead-in time for the chief constable to plan and prepare for the establishment of the police service. We do not disagree with the underlying principle, but we consider the amendment to be unnecessary and potentially unhelpful. Therefore, we cannot support it.

We have listened to the views of stakeholders and agree that the new chief constable should be appointed at the earliest possible date. We are, therefore, lodging amendments that will deliver that early appointment. First, an amendment that has already been debated this morning will enable the early appointment of the SPA chair separately from other members. Secondly, we will lodge amendments for agreement on 12 June that will enable the early appointment of the chief constable and other senior officers. I am confident that we are on course for the appointment of the new chief constable to be made in the autumn.

I have also made clear the Government's intention that the new police service will become operational on 1 April 2013. That will allow the chief constable a period of around six months to plan and prepare for the establishment of the police service, building on the excellent work that is already being undertaken in the services.

Amendment 193 is, therefore, unnecessary to achieve an appointment at the earliest possible date. On the other hand, what is proposed could give rise to a legislative absurdity by giving the authority the power to do something only if something else happens six months down the line. Mr Macdonald will appreciate that such a legal duty cannot sensibly operate in practice.

I hope that my comments provide some reassurance to Mr Macdonald and to the

committee that the Government is committed to enabling the chief constable to be appointed at the earliest possible date. Although we are sympathetic to what Mr Macdonald is seeking to achieve, we are unable to support his amendment.

The Convener: I will let Graeme Pearson in because I am a nice person.

Graeme Pearson: Given all that you have said, cabinet secretary, you will realise how important the lead-in to the go-live date for a single police service is. Can you give us any more detail of your plans behind the scenes to deliver the appointment of such a person?

Kenny MacAskill: As I say, we must act according to the various rules of the Office of the Commissioner for Public Appointments in Scotland. We are seeking to appoint the SPA chair and steps are being taken to ensure that others, who must be cleared with the public appointments commissioner, come in to carry out the selection process. I give an absolute assurance that the appointment will be dealt with in an open and transparent manner and not by me or by any other Government minister.

The Convener: Lewis Macdonald has not summed up yet. We want to know whether you have been reassured.

Lewis Macdonald: Sadly, I have not heard much additional reassurance from the cabinet secretary. Graeme Pearson's question invited an indication of a more precise date in the autumn, as we discussed in the stage 1 debate, but the cabinet secretary has not given much reassurance about the timetable. I am inclined to press the amendment and test the Government's resolve on the matter.

The Convener: The question is, that amendment 193 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

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

Amendment 193 disagreed to.

Section 7 agreed to.

Sections 8 and 9 agreed to.

Section 10—Constable's declaration

The Convener: Amendment 168, in the name of John Finnie, is in a group on its own.

John Finnie: Amendment 168 deals with the oath that is taken by constables. Constables are public authorities for the purposes of the Human Rights Act 1998 and, as such, are already required to act in accordance with convention rights. Following representations from stakeholders—notably Amnesty International, of which I declare my membership—I propose that the oath should be amended to contain a specific reference to upholding fundamental human rights and according equal respect to all people.

I move amendment 168.

Roderick Campbell: I declare an interest as a member of Amnesty International and I record my agreement with John Finnie's amendment, which is a positive step forward.

Jenny Marra: I associate myself with John Finnie's and Roderick Campbell's comments and declare an interest as a member of Amnesty International. We heard some powerful evidence from Hugh Orde on the importance of human rights, and it is an important amendment within the police service.

12:00

Kenny MacAskill: I welcome John Finnie's amendment 168, which will put human rights and equal respect for all people at the heart of the oath that constables take. In considering the issue, we must remember that, although the police are at the forefront of protecting the human rights of others, they are sometimes required to use force and/or to limit individuals' right to liberty and security.

I am aware that the committee listened with interest to the evidence from the Police Service of Northern Ireland on how it has embedded human rights in its policy and practice. Scotland starts from a different place, but putting human rights at the heart of the oath will send out an important message about how we expect each and every constable to go about their difficult work.

Some stakeholders have argued for a more prescriptive approach to human rights in the bill. That would not be the right way forward, but amendment 168 will send an important signal to the authority and the police service. I trust that that will be reflected in how they go about their business, in how the authority holds the chief constable to account and in the training and support for officers and staff. I am happy to support the amendment.

Amendment 168 agreed to.

Section 10, as amended, agreed to.

Section 11—Ranks

The Convener: I am entertained by the next group, which is on the creation of new ranks, because we heard that rank does not matter. We will find out whether that is the case. Amendment 7, in the name of the cabinet secretary, is grouped with amendment 8.

Kenny MacAskill: Amendments 7 and 8 deal with senior officers' ranks. Section 11 makes provision about the rank structure of the police service of Scotland. The bill currently enables ministers to add or delete ranks below the rank of assistant chief constable only. Following representations from stakeholders, I have decided that that power should be extended to all ranks below that of chief constable. Amendment 7 allows that to happen. I expect the power to be used to add or delete senior ranks only when the SPA and the police service make a good case.

The bill sets out the senior officer structure, which may require to be changed to reflect any future addition or removal of senior ranks. Amendment 8 widens the regulation-making power in section 11(5) to enable the Scottish ministers to change the senior officer structure by modifying relevant provisions of the bill. Regulations that are made under that section will be subject to the affirmative procedure, which will enable the Parliament to scrutinise any proposed use of the power.

I invite the committee to support the amendments and I move amendment 7.

Margaret Mitchell: I welcome the cabinet secretary's comments, but my reservation is that the power to remove ranks will extend to a very senior rank. Will he assure the committee that an equally senior rank will be in place, given that we will have only one chief constable and that having appropriate checks and balances in the bill is essential?

Kenny MacAskill: I assure Margaret Mitchell that we currently have no plans for changes. It has simply been put to us—especially by various officers—that there should be the opportunity to make changes. I expect that any proposal would be more likely to involve inserting an additional rank than removing a current rank.

At present, we are not minded to make changes. However, as the service evolves, those who are dealing with it should have the opportunity to address issues. The amendments will just ensure that we have the flexibility to deal with situations that might evolve as the police service beds in.

Graeme Pearson: I do not disagree in principle with what the cabinet secretary said. Will he share with us which stakeholder proposed the amendments?

Kenny MacAskill: It was ACPOS.

Amendment 7 agreed to.

Amendment 8 moved—[Kenny MacAskill]—and agreed to.

The Convener: Amendment 169, in the name of John Finnie, is grouped with amendments 34, 174, 114 to 118, 175 and 119.

John Finnie: Amendments 169, 174 and 175 deal with the requirement to consult the Scottish Police Federation. Section 11(5) gives the Scottish ministers the power to amend by regulations the ranks that a constable may hold. Section 49 requires the Scottish ministers to make regulations on the governance, administration and conditions of service of constables and police cadets.

The bill requires the Scottish ministers to consult the three central committees of the Scottish Police Federation before making those regulations, except when they relate to matters that require full Police Negotiating Board consultation.

However, the federation has raised concerns that consultation with its constituent parts could result in separate responses from each, with no one clear view being provided. The amendments will require the Scottish ministers, prior to making regulations under sections 11 or 49 of the bill, to consult with the three central committees of the Scottish Police Federation sitting together as one joint central committee. Consultation with the SPF through a joint central committee will ensure that we get a single shared view from its members before any regulations are made. I therefore invite the committee to support amendments 169, 174 and 175 in my name.

I move amendment 169.

Kenny MacAskill: Amendments 169, 174 and 175 in the name of John Finnie make a sensible change to the requirements for consultation with the Scottish Police Federation prior to regulations being made. That responds directly to concerns that were raised by the SPF that consultation with its constituent parts could result in separate responses from each, with no one clear view being provided. I agree that it is more appropriate to consult a body that represents all federated ranks through the joint central committee, because that would enable the SPF to take a collective, coherent view prior to regulations being made, thus providing a strong voice for police officers in Scotland. I thank John Finnie for lodging the amendments and I hope that the committee will support them.

My amendments in this group are technical amendments to various definitions in the bill.

Amendments 34 and 115 clarify that all references to a constable within the bill will apply only to constables of the police service of Scotland, and will include constables who are on temporary service outwith the police service of Scotland.

At present, “Key police definitions” are set out in section 96 of the bill, and the

“Meaning of other words and expressions used in Part 1”

is in section 97. Amendment 114 will delete section 96 and amendments 115, 116, 118 and 119 will insert the necessary definitions into section 97. That simply reflects a change in our proposed approach to amending other legislation that might need to refer to those definitions.

The definitions of “Police Service of Scotland” and “Scottish Police Authority” will not be transferred to section 97, because they are defined in sections 1 and 6 of the bill respectively. Likewise we consider that the general translation for the term “chief officer of a police force” in other enactments, which is provided in section 96(2), is no longer required, as those references will now be dealt with individually.

Amendment 117 will alter the definition of “international joint investigation team”. It will replace the reference to a specific European Council framework decision under which those teams are currently formed with a reference to the powers under which that decision was made and the article of the Treaty on the Functioning of the European Union under which any future measures will be agreed. That will ensure that the protections afforded by the bill to members of international joint investigation teams will continue to have effect if the current framework decision is replaced. The future adoption of any measures will be subject to parliamentary scrutiny as a result of the UK’s opt-out on matters relating to justice and home affairs.

Amendment 169 agreed to.

Section 11, as amended, agreed to.

Sections 12 and 13 agreed to.

Section 14—Senior officers: retirement for efficiency or effectiveness

Amendment 9 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Roderick (North East Fife) (SNP)
 Finnie, John (Highlands and Islands) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and
 Lauderdale) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 McInnes, Alison (North East Scotland) (LD)
 Mitchell, Margaret (Central Scotland) (Con)
 Yousaf, Humza (Glasgow) (SNP)

Against

Marra, Jenny (North East Scotland) (Lab)
 Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 9 agreed to.

Amendment 10 moved—[Kenny MacAskill]—and agreed to.

Amendment 11 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Roderick (North East Fife) (SNP)
 Finnie, John (Highlands and Islands) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and
 Lauderdale) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 McInnes, Alison (North East Scotland) (LD)
 Mitchell, Margaret (Central Scotland) (Con)
 Yousaf, Humza (Glasgow) (SNP)

Against

Marra, Jenny (North East Scotland) (Lab)
 Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 11 agreed to.

Amendment 12 moved—[Kenny MacAskill]—and agreed to.

Amendment 13 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Roderick (North East Fife) (SNP)
 Finnie, John (Highlands and Islands) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and
 Lauderdale) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 McInnes, Alison (North East Scotland) (LD)
 Mitchell, Margaret (Central Scotland) (Con)
 Yousaf, Humza (Glasgow) (SNP)

Against

Marra, Jenny (North East Scotland) (Lab)
 Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 13 agreed to.

Amendments 14 and 15 moved—[Kenny MacAskill]—and agreed to.

Amendment 16 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Roderick (North East Fife) (SNP)
 Finnie, John (Highlands and Islands) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and
 Lauderdale) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 McInnes, Alison (North East Scotland) (LD)
 Mitchell, Margaret (Central Scotland) (Con)
 Yousaf, Humza (Glasgow) (SNP)

Against

Marra, Jenny (North East Scotland) (Lab)
 Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 16 agreed to.

Amendment 17 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Roderick (North East Fife) (SNP)
 Finnie, John (Highlands and Islands) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and
 Lauderdale) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 McInnes, Alison (North East Scotland) (LD)
 Mitchell, Margaret (Central Scotland) (Con)
 Yousaf, Humza (Glasgow) (SNP)

Against

Marra, Jenny (North East Scotland) (Lab)
 Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 17 agreed to.

Amendment 18 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Roderick (North East Fife) (SNP)

Finnie, John (Highlands and Islands) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and
 Lauderdale) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 McInnes, Alison (North East Scotland) (LD)
 Mitchell, Margaret (Central Scotland) (Con)
 Yousaf, Humza (Glasgow) (SNP)

Against

Marra, Jenny (North East Scotland) (Lab)
 Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 18 agreed to.

Amendment 19 moved—[Kenny MacAskill]—and agreed to.

Amendment 20 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Roderick (North East Fife) (SNP)
 Finnie, John (Highlands and Islands) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and
 Lauderdale) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 McInnes, Alison (North East Scotland) (LD)
 Mitchell, Margaret (Central Scotland) (Con)
 Yousaf, Humza (Glasgow) (SNP)

Against

Marra, Jenny (North East Scotland) (Lab)
 Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 20 agreed to.

Section 14, as amended, agreed to.

Section 15—Constables: service outwith the Police Service of Scotland

The Convener: Amendment 21, in the name of the cabinet secretary, is grouped with amendments 22 to 27.

Kenny MacAskill: Amendments 21 to 27 deal with constables' service outwith the police service of Scotland.

Section 15 of the bill makes provision to allow the chief constable to make arrangements for constables to serve with other forces or organisations outwith the police service of Scotland. The amendments clarify how temporary service outwith the police service will operate. In particular, they ensure that the status of constables who are on temporary service is clear, and enable the Scottish ministers to make regulations that set out the types of temporary

service on which constables will not retain the default status that is set out in amendment 22, or on which constables may not be engaged.

I invite the committee to support amendments 21 to 27 and I move amendment 21.

Amendment 21 agreed to.

Amendments 22 to 27 moved—[Kenny MacAskill]—and agreed to.

Section 15, as amended, agreed to.

Section 16 agreed to.

Section 17—Chief constable's responsibility for the policing of Scotland

The Convener: Amendment 28, in the name of the cabinet secretary, is grouped with amendments 29 to 31, 37, 171, 200, 172 and 38 to 48. Amendments 171 and 200 are direct alternatives, so if members agree to amendment 171 and then to amendment 200, the latter decision will stand.

This is getting more complicated. I think that I understand what I am doing, but perhaps not.

Kenny MacAskill: Amendment 28 and the other amendments that you mentioned, convener, deal with police priorities and plans. The bill provides a coherent and integrated planning framework at a local and national level. Chapter 4 of part 1 of the bill sets out a range of provisions relating to principles, priorities, objectives and plans in respect of the roles of the Scottish police authority and chief constables in their preparation. Sections 34 and 35 of the bill will place responsibility for the preparation of the strategic plan and annual plan with the Scottish police authority, and stipulate that each plan should cover the functions of the authority and the policing of Scotland.

12:15

Section 36 obliges the authority to involve the chief constable in the preparation of those plans and obliges the chief constable to assist the authority in preparing them.

The amendments in my name in this group make no change to the Scottish Government's responsibility for setting the very high-level strategic policing priorities. They also make no change to the authority's role in providing strategic direction for the policing of Scotland through its preparation, with the involvement of the chief constable, of the strategic police plan. However, the chief constable is responsible for directing and controlling the police service and for the allocation and deployment of resources received from the authority. It is therefore right that the chief constable should have responsibility for the

preparation of the annual police plan, with its much greater focus on delivery. Amendment 40 makes that change, and the other amendments in my name adjust other provisions to fit.

Section 33 of the bill enables the Scottish ministers to determine strategic police priorities for the authority relating to the policing of Scotland or the authority's functions. Those are high-level, strategic priorities that are intended to set the strategic direction for Scotland, not individual local areas, over the medium to long term. Section 33 also lists the persons that the Scottish ministers must consult before determining the strategic priorities. That, of course, includes such persons as appear to them to be representative of local authorities.

Amendment 37 adds the chief constable to the list of persons who must be consulted by the Scottish ministers before they determine the strategic policing priorities. Alison McInnes's amendment 171 would mean that the Scottish ministers had to consult each and every local authority separately instead of a representative body such as COSLA. We believe that it is more appropriate to consult a body representative of local authorities, as that enables local government to take a collective and coherent view on the police priorities for Scotland as a whole. Individual local authorities cannot provide a strong, collective view on national priorities in the way that a body like COSLA can. Therefore, I cannot support amendment 171. In any case, the bill gives local authorities other ways to influence policing in their area. Each local authority will be consulted on the Scottish police authority's strategic police plan and will approve the local police plan for their area.

Lewis Macdonald's amendment 200 would change the bill so that it specifically refers to COSLA, rather than persons representative of local authorities. The Scottish Government is committed to working in partnership with local government and COSLA and very much values COSLA's role and input. However, it is not good practice to refer to non-statutory bodies such as COSLA in legislation. If COSLA decided to change its name or role for some reason—a decision that would be entirely for it—any reference to COSLA on the face of the bill might become irrelevant or inappropriate. Any subsequent change to its name would need primary legislation to require the Scottish ministers to consult the newly named body. In the meantime, the Scottish ministers would be under no obligation to consult a body that represented local authorities.

The same principle applies to the bill's references to

“such persons as appear to them to be representative of superintendents”,

which obliges ministers to consult bodies such as the Association of Scottish Police Superintendents, and to

“such persons as appear to them to be representative of senior officers”,

which obliges ministers to consult bodies such as the Scottish Chief Police Officers Staff Association. I therefore cannot support amendment 200, not because we do not value COSLA, but simply because the legislation needs to be future proofed.

Amendment 38 places an obligation on the Scottish ministers to lay a copy of the strategic police priorities before the Scottish Parliament, which will provide the Parliament with an opportunity to scrutinise the priorities. Alison McInnes's amendment 172 would mean that the Scottish ministers would have to make a statement to the Parliament setting out the reasons for any strategic police priorities that they proposed to determine. The bill already provides for a range of opportunities for the Parliament to scrutinise policing, and amendment 38 enhances that. Therefore, I cannot support amendment 172.

I move amendment 28.

Alison McInnes: First, with regard to the Government's amendments in the group, I agree with the principle that it should be the responsibility of the chief constable rather than the Scottish police authority to prepare the annual police plans.

My amendment 171 is a reflection of my concern about the vagueness of the current list of consultees for the authority's strategic priorities. Lewis Macdonald's amendment 200 would formalise who would be recognised as being representative of local authorities, but I do not believe that that would be a better approach.

It is right that each individual local authority should be afforded the right to have its own input into the preparation of the strategic priorities. It is clear that policing needs will be very different in each of Scotland's local authority areas, and it is vital that those needs are not confined to the local plans, but are appropriately reflected in the overarching priorities. A similar requirement already exists for consultation on the fire service's strategic plan in part 2 of the bill.

My amendment 172 would require ministers to make a statement to the Parliament on the setting of the strategic priorities following the consultation period. I am concerned that, with the removal of locally elected members from their police oversight role, responsibility must fall more on the shoulders of MSPs to play an active role in monitoring the function of Scotland's police. The requirement would allow a simple mechanism for ensuring

transparency in the setting of priorities. I note that a similar requirement on the Government is in place in the Climate Change (Scotland) Act 2009 and that it has already proved to be an effective tool for parliamentary scrutiny.

Lewis Macdonald: I agree with the broad thrust of the involvement of ministers in consultation to determine strategic priorities, and agree broadly with the role of the chief constable as laid out in the Government's amendments. However, we see no reason to be less specific on how the Government should consult with others than our amendment proposes.

Amendment 200 suggests that we should specify the Convention of Scottish Local Authorities as the appropriate body for representing local government. In response to Alison McInnes's proposal, the cabinet secretary said that COSLA is able to represent a more strategic view of local government than 32 or any other number of individual local authorities could. We agree with that and see no great difficulty in naming COSLA in the bill. The cabinet secretary said that it is inappropriate to name some bodies and not others. Amendments that relate to the Scottish Police Federation have just been agreed to, and there are provisions in the bill as introduced that refer to specific bodies. Therefore, there is no difficulty in that respect that would not be readily dealt with. We think that that approach would be helpful.

As the convener said, amendment 200 is an alternative to amendment 171. We think that amendment 200 should be supported.

We support Alison McInnes's amendment 172, as it would strengthen the requirement for parliamentary scrutiny of and accountability on strategic plans and priorities by requiring a statement to be made. Again, I see no particular reason why ministers would find that difficult. The notion that a change in the police service's strategic priorities might be a matter of interest to the Parliament as a whole seems to me to be perfectly reasonable, and I hope that committee members will support it.

Kenny MacAskill: The reason why the Scottish Police Federation is treated differently is that it already exists and is mentioned in statute. That does not apply to COSLA. There is a clear and significant difference between the Scottish Police Federation and COSLA and the ASPs.

On the other issues, there are sufficient ways in which the Parliament will be kept informed.

On that basis, I will press amendment 28.

Amendment 28 agreed to.

Amendments 29 to 31 moved—[Kenny MacAskill]—and agreed to.

Section 17, as amended, agreed to.

Section 18—Delegation of chief constable's functions

The Convener: Amendment 32, in the name of the cabinet secretary, is grouped with amendment 33.

Kenny MacAskill: Amendments 32 and 33 deal with the delegation of functions within senior ranks in the police service of Scotland.

Section 18(4) requires the authority to designate an assistant chief constable to carry out the chief constable's functions in certain circumstances. Following discussion with the services, we consider that to be unnecessary. In the new service, it is likely that there will be more than one deputy chief constable, so there should never be a situation in which there is no available deputy chief constable to step in for the chief constable. If that unlikely scenario arose, it could be dealt with operationally—for example, by the temporary promotion of an assistant chief constable to deputy chief constable.

Amendment 32 will remove section 18(4). Therefore, there will be no requirement for the authority to designate an assistant chief constable to carry out the chief constable's functions when there is no available deputy chief constable to do so. Amendment 33 makes a minor consequential change to section 18(5) to reflect that. I invite the committee to support the amendments.

I move amendment 32.

Amendment 32 agreed to.

Amendment 33 moved—[Kenny MacAskill]—and agreed to.

Section 18, as amended, agreed to.

Section 19—Constables: functions and jurisdiction

Amendment 34 moved—[Kenny MacAskill]—and agreed to.

Section 19, as amended, agreed to.

Sections 20 and 21 agreed to.

Section 22—Failure to perform duty

The Convener: Amendment 170, in the name of John Finnie, is in a group on its own.

John Finnie: Amendment 170 deals with the maximum penalty for the offence of neglect or violation of duty. The bill will increase the maximum penalty for the offence from 60 days' to five years' imprisonment. Some stakeholders, including the Scottish Police Federation, expressed concern about that, suggesting that the

proposed new penalty is disproportionate and that serious offences can more appropriately be dealt with by using common-law charges.

It is important that firm action is taken against the very small minority of officers who fail to uphold the constable's duty, to protect the police service's reputation. It is therefore right that there should be a statutory offence and appropriate penalties. However, in light of the concerns that were expressed in evidence, I propose that the maximum sentence should be two years, rather than the proposed five years. It will still be possible to deal with more serious offences, for example under a charge of perverting the course of justice, which carries a penalty of up to life imprisonment.

I move amendment 170.

Kenny MacAskill: I am aware of the concerns. I am grateful to Mr Finnie for lodging amendment 170, which I am happy to support.

Amendment 170 agreed to.

Section 22, as amended, agreed to.

Sections 23 to 25 agreed to.

Section 26—Police staff

The Convener: We are rattling along. Amendment 194, in the name of Lewis Macdonald, is grouped with amendments 195 and 197 to 199. If amendment 196, which was debated with amendment 182, is agreed to, I cannot call amendment 197, which will have been pre-empted. I know that you all remembered that—you are still alive out there.

Lewis Macdonald: The amendments in the group are all to do with recognising the valuable roles that police staff and police custody and security officers play in our modern police service. Staff are no longer there simply to assist constables directly, although of course some of them do that in important ways. Many roles that are performed in the police service by non-warranted civilian staff are specialised roles, which support the service in general rather than individual constables. Amendments 195 and 198 would simply update the wording of the bill to reflect that modern reality.

Amendments 194 and 197 would clarify that the people who are appointed to carry out such functions should be members of police staff rather than, for example, individuals who have been appointed by contractors on a more or less casual basis to come into the service, carry out a contract and then go away.

Amendment 196, which we have debated, would remove altogether the reference to who might do those jobs, thereby requiring that they should be police staff appointments. Amendment

197 offers a softer version of the same thing, so members who cannot support amendment 196 might want to support amendment 197.

Amendment 199 would provide additional protection for people with certification as a police custody and security officer. If the chief constable sees fit to remove certification from an individual, he or she should report the decision to the authority and, by implication, be prepared to defend it if challenged. The approach is designed to protect individuals in the context of their relationship with their employer and to ensure that there can be no removal of certificates on a wider scale for reasons other than the conduct of an individual member of staff.

I move amendment 194.

Graeme Pearson: The cabinet secretary will be aware that there is enormous worry among support staff about how their valuable work will continue in the new single service. Lewis Macdonald's amendments would go a long way towards calming their fears about the future and ensuring that on 1 April we have a unified service that will provide Scotland with excellent policing. I hope that the cabinet secretary can find a way of engaging with the amendments as Lewis Macdonald has suggested.

The Convener: Cabinet secretary, are you going to engage with the wooing of Lewis?

12:30

Kenny MacAskill: Absolutely, convener. I am happy to acknowledge the key role that is played by police staff, who carry out many vital functions in the service. They not only take on backroom tasks to free up officers for front-line policing but have their own specialist skills and specific functions, without which constables cannot effectively carry out their duties.

Amendments 194, 195, 197 and 198 seek to make it clear that police staff and police custody and security officers have their own role in policing and do not just assist constables. I agree that such a change will underscore the value of those staff and, accordingly, I support those amendments.

Unfortunately, I cannot support amendment 199, as I do not agree that it will achieve anything useful. The certification of police custody and security officers and the deployment of police staff generally are operational matters for the chief constable and I see no reason for involving the authority, by statute, in one very specific aspect of that.

Lewis Macdonald: I am grateful to the cabinet secretary for supporting amendments 194, 195, 197 and 198. However, I will press amendment 199 at the appropriate time because it is important

to give custody and security officers extra reassurance in the event that certification is removed and their livelihood is impacted on.

Amendment 194 agreed to.

Amendment 195 moved—[Lewis Macdonald]—and agreed to.

Amendment 196 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 196 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 196 disagreed to.

Amendment 197 moved—[Lewis Macdonald]—and agreed to.

Section 26, as amended, agreed to.

Section 27 agreed to.

Section 28—Police custody and security officers

Amendment 198 moved—[Lewis Macdonald]—and agreed to.

Section 28, as amended, agreed to.

Schedule 2 agreed to.

Section 29—Certification of police custody and security officers

Amendment 199 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 199 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
McInnes, Alison (North East Scotland) (LD)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 199 disagreed to.

Section 29 agreed to.

Section 30 agreed to.

Section 31—Forensic services

The Convener: Amendment 35, in the name of Kenny MacAskill, is grouped with amendments 36 and 99.

Kenny MacAskill: Amendments 35, 36 and 99 deal with forensic services.

Section 31 requires the Scottish police authority to provide forensic services to the police service, the Lord Advocate and procurators fiscal. Amendment 35 seeks to make it explicit that the authority is also required to provide forensic services to the new police investigations and review commissioner, as we expect that the commissioner will require those services in their investigatory role.

Section 31 also allows the authority to provide forensic services

“to such other persons as it thinks fit”.

However, that is out of step with the provision of other goods and services that the authority can provide to public bodies, office-holders or anyone else specified by Scottish ministers by order. As we see no difference between the provision of forensics and any other goods or services that the authority might wish to provide, amendment 36 seeks to place the authority’s provision of forensic services to persons other than those mentioned in section 31—and its ability to charge for such services—on a similar footing to all other goods and services that the authority may provide.

Section 84 permits the authority to provide goods and services to other organisations and individuals and to make arrangements for the police service of Scotland to do the same. Amendment 99 will have two effects on section 84, the first of which is to clarify that the organisations to which forensic services must be provided, namely the police service, the PIRC, the Lord Advocate and procurators fiscal, will not be charged for them.

Secondly, amendment 99 seeks to remove the constraint that any charging for the provision of goods and services must be limited to recovering

the cost of providing them. In other words, it will in some instances be possible for the authority to generate a profit from the provision of goods and services. Stakeholders support amendment 99 as it will have positive effects, notably in increasing flexibility in the provision of goods and services and creating appropriate and reasonable opportunities for the authority and the service to generate income.

I invite the committee to support amendments 35, 36 and 99.

I move amendment 35.

Amendment 35 agreed to.

Amendment 36 moved—[Kenny MacAskill]—and agreed to.

Section 31, as amended, agreed to.

Section 32 agreed to.

Section 33—Strategic police priorities

Amendment 37 moved—[Kenny MacAskill]—and agreed to.

The Convener: Amendment 171, in the name of Alison McInnes, has already been debated with amendment 28. I know that you will have remembered but, nevertheless, I remind the committee that amendments 171 and 200 are direct alternatives.

Amendment 171 moved—[Alison McInnes].

The Convener: The question is, that amendment 171 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 171 disagreed to.

Amendment 200 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 200 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 200 disagreed to.

Amendment 172 moved—[Alison McInnes].

The Convener: The question is, that amendment 172 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

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

Amendment 172 disagreed to.

Amendment 38 moved—[Kenny MacAskill]—and agreed to.

Section 33, as amended, agreed to.

Section 34—Strategic police plan

Amendment 39 moved—[Kenny MacAskill]—and agreed to.

Section 34, as amended, agreed to.

Section 35—Annual police plans

Amendments 40 to 47 moved—[Kenny MacAskill]—and agreed to.

Section 35, as amended, agreed to.

Section 36—Planning: role of chief constable etc

Amendment 48 moved—[Kenny MacAskill]—and agreed to.

Sections 37 to 39 agreed to.

Section 40—The Scottish Police Authority's annual report

The Convener: Amendment 201, in the name of Lewis Macdonald, is grouped with amendments 49 to 52 and 202. I warn the committee that I intend to stop today's consideration of the bill at the question on section 44, which will come after the question on amendment 202, in the name of David McLetchie. That should take us up to time.

Lewis Macdonald: The issue of reporting and audit impacts on two areas that have been discussed this morning and at stage 1. One is the need to ensure that there is as much transparency as the proper functioning of the service will allow. The second concerns staffing: the need to ensure that those who work for the police service are reassured that their employment is affected by their utility for the service rather than by any other considerations, and that communities are reassured that police staffing will not be cut simply as a way to economise at the expense of the service itself.

Amendment 201 is straightforward and simply requires annual reports to include the number of police officers and the number of police staff who are employed in any one year. We also support amendment 202, in the name of David McLetchie, in terms of its impact on improving transparency and the audit trail for the police service.

I move amendment 201.

Kenny MacAskill: These amendments deal with reporting and audit. We have already debated a number of amendments that place responsibility for preparing an annual police plan on the chief constable. Amendments 49 to 52 are, in effect, consequential on those changes and give responsibility to the chief constable to prepare an annual report to the SPA on the performance against that plan.

The information that amendment 201, in the name of Lewis Macdonald, would oblige the authority to include in the annual report is available now and will continue to be so. There is no need to include that as a requirement for the annual report, although the authority may choose to include such information in its assessment of the performance of the police authority and the police service. I therefore cannot support amendment 201.

On amendment 202, in the name of David McLetchie, the bill already enables the Auditor General for Scotland to initiate examinations into the economy, efficiency and effectiveness of the police authority and the police service, and the arrangements that they make in respect of best value. Those provisions give the Auditor General full scope to undertake the type of activity that the amendment suggests.

It is my view, following discussions with stakeholders in the Scottish Commission for Public Audit, that the Auditor General is best placed to determine how and when to examine the economy, efficiency and effectiveness of the service. On that basis, I cannot support amendment 202.

John Lamont: The Scottish Government has made much of the savings that will be made by bringing the forces together. It is estimated that a single police force will result in £130 million-worth of savings a year and £1.7 billion-worth of savings over 15 years. However, those figures and the financial memorandum are based on an outline business case that was produced in July 2011.

The financial memorandum states that it

“does not provide a plan or blueprint for the future delivery of the services and it is not intended to be used to set future budgets”.

Chief Constable Smith of ACPOS said that the outline business case was

“never intended by the police officers who were party to it, or by the consultants, to be a document that contained sufficient detail on which to base significant decisions about investment and savings.”—[*Official Report, Justice Committee*, 28 February 2012; c 971.]

Our amendment seeks to compel the Auditor General to review the savings made by the creation of a single police force. That must be done “as soon as practicable” after the creation of the single force and the report must be laid before the Scottish Parliament. We decided against the inclusion of a time period, on the basis that that might restrict the Auditor General or the information available to him or her.

We also support amendment 201.

Graeme Pearson: The cabinet secretary will remember that, earlier in the bill process, there was an indication from ACPOS that it was working on the full business case and that that would be ready within the month. That period has passed. Can the cabinet secretary confirm that he has a full business case and that it puts him in a more confident position in dealing with the amendments that we are discussing?

Kenny MacAskill: We are currently in a confident place with regard to robustness on that specific matter. I will need to check it and return to you, but there is nothing that we are unduly concerned about. We will press on, and we have decided that 1 April 2013 is perfectly realisable.

Graeme Pearson: So you will let us know about the full business case—

Kenny MacAskill: I will come back with the information.

Graeme Pearson: Whether you have it or otherwise.

Kenny MacAskill: I will make inquiries; I cannot confirm that at the moment.

Graeme Pearson: I am grateful.

The Convener: Just for clarity, are we talking about providing that information for or before stage 3?

Kenny MacAskill: I will come back as soon as I can with a written response—I assume that it will be before stage 3.

12:45

The Convener: Members are just clarifying what the position will be with regard to amendments. That is the push here with regard to that timeline, so it would be helpful to know when we will get the response.

Lewis Macdonald: I am intrigued by the last exchange, because my understanding was that the cabinet secretary said in the stage 1 debate that there was not a full business case and that there was no intention to have a full business case in advance of the establishment of the services. Can the cabinet secretary offer further clarification on that point? If his reply to Graeme Pearson on the full business case is that it requires a detailed response, that suggests a different position from the one that I understood from the stage 1 debate. If the cabinet secretary wishes to respond to that, I am happy to give way to him.

The Convener: Please direct your remarks through the chair.

Lewis Macdonald: Of course.

The Convener: I have a small part to play here—it is very small.

Kenny MacAskill: My response to Mr Pearson was that I would get back to him on his specific query as soon as I could. That is what I intend to do. Some of the written response might be preempted by what I am saying, which is that work on the full business case is being led by the services. It will be ready at the earliest possible opportunity. That presumably answers Mr Pearson's question about whether the full business case has reached me, so I do not need to come back to him on that point.

The services are working on arrangements for delivery of the new service. A whole range of projects are being worked on and delivered by partners and stakeholders.

Lewis Macdonald: I am grateful to the cabinet secretary for that clarification—"the earliest possible opportunity" presumably is "some time in the autumn."

In relation to the other amendments, I was not much taken with the cabinet secretary's response to amendment 201. The average number of constables and police staff is a matter of public record. The cabinet secretary said that there is no need to include that in the annual report. I think that it would be quite extraordinary if the police authority chose not to include that number in the annual report. To make it a statutory requirement seems to impose no unnecessary burden on anyone but simply to achieve in statute the level of transparency that I think that everyone here would expect in any case. I am disappointed that the Government will not support amendment 201.

Likewise there seems to be no good reason for the Government not to support amendment 202. The Auditor General has existing powers—amendment 202 proposes that the Auditor General should report on the difference between the cost and funding of the existing police service and the cost and funding of the reformed police service. Again, I see no difficulty with that and no reason for the Government to resist that amendment.

The Convener: The question is, that amendment 201 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

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

Amendment 201 disagreed to.

Amendments 49 to 51 moved—[Kenny MacAskill]—and agreed to.

Section 40, as amended, agreed to.

Section 41—Accounts

Amendment 52 moved—[Kenny MacAskill]—and agreed to.

Section 41, as amended, agreed to.

Sections 42 and 43 agreed to.

After section 43

Amendment 202 moved—[John Lamont].

The Convener: The question is, that amendment 202 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

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

Amendment 202 disagreed to.

Section 44 agreed to.

The Convener: Members will be delighted to know that I am going to suspend the meeting for two or three minutes. We will continue considering the amendments to the bill at our next meeting on 12 June. We will see how our next meeting goes, but we will probably need an extra meeting—possibly over a Wednesday lunch time—to conclude. We may have to meet on 13 June as well.

12:49

Meeting suspended.

12:52

On resuming—

Subordinate Legislation

Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) Order 2012 [Draft]

The Convener: Under item 4 on the agenda, there is one affirmative instrument for the committee's consideration. This agenda item gives us an opportunity to take evidence from the cabinet secretary and his officials on the draft order before formally debating the motion to approve it, under the next agenda item.

The Subordinate Legislation Committee has not drawn the Parliament's attention to the draft order on any grounds within its remit.

I welcome again—he must love being with us—the Cabinet Secretary for Justice, who is accompanied by three Scottish Government officials: Lucy Smith and George Dickson, from the police reform delivery unit; and Kevin Gibson, a solicitor in the Scottish Government.

Officials are allowed to speak during this item, should the minister invite them to do so, but they are not allowed to do so during the debate on the motion.

I invite the cabinet secretary to make a short opening statement.

Kenny MacAskill: The Police and Fire Reform (Scotland) Bill makes provision for Scottish ministers to appoint the chairs and members of the Scottish police authority and the Scottish fire and rescue service. Those appointments are to be regulated according to the code of practice for ministerial appointments to public bodies in Scotland, which is produced by the Commission for Ethical Standards in Public Life in Scotland. Before the Public Appointments Commissioner's staff can formally engage in the appointments process, those bodies need to be listed within the commissioner's statutory remit.

The Police and Fire Reform (Scotland) Bill, which has passed stage 1, as introduced, provides for the Scottish police authority and the Scottish fire and rescue service to be listed in schedule 2 to the Public Appointments and Public Bodies etc (Scotland) Act 2003, which sets out the list of bodies that fall within the commissioner's remit.

I have listened to stakeholder concerns and noted the recommendation in the committee's stage 1 report that the chief constable and chief fire officer should be in place at the earliest opportunity. The Scottish ministers agree and

want to make the key first appointments to the Scottish police authority and the Scottish fire and rescue service, and to have the chief constable appointed, as soon as possible. That means that the public appointments process will begin before the bill passes through Parliament, which will allow both the organisations time to plan and fully prepare for when the single services go live, which is currently scheduled for April 2013. I strongly agree with the Justice Committee's recommendation that the appointments of the chief constable and chief fire officer be made as soon as possible.

I am keen to ensure that the new chief constable is appointed by the Scottish police authority, as set out in the Police and Fire Reform (Scotland) Bill. To allow that to happen, the chair must be appointed as soon as possible. To wait until the bill is passed and the amendments to public appointments legislation have come into force would have a significant and detrimental impact on the dates by which we could appoint the chairs and members of the Scottish police authority and Scottish fire and rescue service and would, in turn, delay the appointment of the chief constable by the chair of the Scottish police authority.

That is why I seek the committee's approval to use the mechanism in section 3(3) of the Public Appointments and Public Bodies etc (Scotland) Act 2003, which provides that, where a public body is to be established and will, when established, be specified as one that falls within the commissioner's remit, the Scottish ministers may provide that it is to be treated until its establishment as if it already falls within that remit. That will allow the process for the key public appointments to the bodies to formally commence in time to allow for those people to be in place by autumn 2012, which will be well in advance of day one of the new services. We expect the chairs and members of the boards and the chief officers to be in place in autumn 2012, but that relies on the appointment process beginning as soon as possible, which is why I seek Parliament's approval of the draft order.

The Convener: As there are no questions, we move on to agenda item 5, which is the formal debate on the draft order.

Motion moved,

That the Justice Committee recommends that the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) Order 2012 [draft] be approved.—[*Kenny MacAskill.*]

Motion agreed to.

The Convener: We are required to report to Parliament on the draft order. Are members

content to delegate to me authority for the final wording of the report, which will be brief?

Members indicated agreement.

The Convener: I thank the cabinet secretary and his officials.

Act of Sederunt (Actions for removing from heritable property) 2012 (SSI 2012/136)

The Convener: Moving swiftly on, we come to agenda item 6, which is an instrument that is not subject to parliamentary procedure. The Subordinate Legislation Committee has not drawn the Parliament's attention to the instrument on any grounds within its remit. As members have no comments, are we content to note the instrument?

Members indicated agreement.

Annual Report

12:57

The Convener: Agenda item 7 is our annual report. Members have a copy of our draft annual report for the parliamentary year from 11 May 2011 to May 2012, which is paper J/S4/12/19/3. Do members have any comments? I remind you that we are still in public.

Roderick Campbell: I have a comment on the absence of any specific comment—

The Convener: You have the wrong paper. The one that we are looking at is white.

Roderick Campbell: Yes, I know—sorry.

The Convener: It is all right. We are all with you there, Rod. It has been a long haul.

Roderick Campbell: As far as I can recall, there is an absence of any specific paragraph that deals with human rights. In the light of some public controversy about that, it might be appropriate if we mentioned the committee's human rights work.

The Convener: Absolutely. The committee would probably agree with that. I do not prickle easily, but I rather prickled at the comments that have been made about this committee not taking into account human rights. We will put something in and get back to you. We will extend the report and generalise it.

Do you want to say something on that, John?

John Finnie: I have a comment on another matter.

The Convener: We are finished on that point, so we will move on to the next one, which is from Graeme Pearson.

Graeme Pearson: We spent some time discussing deaths abroad and the impact of fatal accident inquiries. I made contact with you, convener, about a response from the Government on the timetable that it has mentioned in previous years. Would it be appropriate to put a paragraph in the report that says that we have discussed the issue and that we are keen to get that response? Is it there? Have I missed it?

The Convener: We could put something about that in paragraph 21.

Jenny Marra: Reference is made to the issue in the third line of paragraph 20.

The Convener: We could say that we want more clarity about the timetable, because there is an existing rule in Parliament—it might be a protocol; I do not know—that if the Government is to introduce legislation on an issue, neither a

committee nor members can do anything on it. Therefore, we would like more of a timetable.

Graeme Pearson: That would draw a comment from the Government; it would indicate that we are not leaving the issue alone but are coming back to it. I would be grateful for the inclusion of something along those lines.

13:00

The Convener: We might also want to say—I will take guidance on this—that we are finding it hard to do any inquiries because of the amount of legislation that we are having to deal with, and that we would like some space to hold some short inquiries. We appreciate that the Government has an obligation in regard to legislation, but we can put down a marker in our report—as previous committees have done—that we might find it extremely hard to fit in an inquiry before the session comes to an end, given that it is not possible to get much done in the final year of a session. Would members like to include such a remark?

Alison McInnes: Is that not an issue that you should raise in the Conveners Group?

The Convener: Raising it in the Conveners Group makes no odds because, at the end of the day, it is the Parliamentary Bureau that puts the stuff in front of us. Having too much legislation to deal with has been a huge issue for the Justice Committee over the years. I think that we should keep making the point.

Humza Yousaf (Glasgow) (SNP): I agree with Alison McInnes that the issue should perhaps be raised in another forum. As I understand it, the purpose of an annual report is to go over what a committee has done during the year. Although we have been pressed for time to do our own inquiries, we have done some good stuff on female offending, in particular, and we might do something on the work of speech and language therapists with young offenders.

The Convener: Where is that?

Humza Yousaf: There is a bit in the report on our inquiry into female offending, but my point is that—

The Convener: I am sorry to interrupt, but the report covers the period up to 10 May 2012, whereas our session with speech and language therapists took place in the current year. I understand what you are saying, but our report covers the period from 11 May 2011 until 10 May 2012.

Humza Yousaf: I agree, but what I am saying is that, as a newbie on the committee—along with quite a few other members—

The Convener: You are not a newbie any more—you are experienced.

Humza Yousaf: I might not have got the balance right, but I assume that the scrutiny of Government legislation forms a large part—if not the primary aspect—of our role.

The Convener: The committees have a dual purpose—they act as standing committees and as select committees. It has always been difficult for particular committees to find space to do inquiries. In its legacy report, the previous Justice Committee moaned about the issue.

It seems to me that in the past year—which is the year that we are talking about—we tried to find space to do an inquiry or even a committee bill, and we are still in that position. I think that there is no harm in putting a comment to that effect in our report.

Humza Yousaf: My point is that the implication of doing that is that we would be saying that we would like to have more time for our own work at the expense of having time to scrutinise Government legislation; perhaps you are saying to the Government, “Don’t legislate so much.”

The Convener: I think that the Government could take its foot off the pedal a wee bit occasionally; it is desperate—

Humza Yousaf: That is not the type of message that I would like to give out. The Parliament is here to make legislation.

The Convener: I can see that I am dissenting from the Government position, as usual. If you do not want such a comment to be included in the report, we will not put it in. I have put my view on the record, even if we do not put it in the report.

Humza Yousaf: I do not think that the issue is about dissenting or not dissenting; it is about whether we should be making legislation, regardless of who is in government.

Graeme Pearson: Can we look forward to an SNP split?

The Convener: The committees were seen as a counterbalance to the Government because, apart from the Opposition, there is no other check and balance to hold the Government to account. We perform that role during the legislative process, but there was also supposed to be space for committees to do their own thing—I am not talking only about the Justice Committee—and we must not let that role erode over time, whoever is in government. I say that to Graeme Pearson.

Graeme Pearson: I am on your side.

The Convener: Oh dear. I am worried.

Humza Yousaf: I do not disagree with you, convener.

The Convener: Could we put in a line to say that the pressure of legislation makes things difficult? Can I coax you to agree with that? I am missing Lewis Macdonald, who is good at wooing.

John Finnie: I do not know whether you need to coax me, convener. However, I remind you that we recently solicited a piece of work regarding unfulfilled work of the Scottish Law Commission, which would suggest that we want more legislation. It is a question of striking the right balance, and it is perhaps also about making more time available and the competing demands of other—

The Convener: It is about finding space for us. If we decide to introduce a committee bill, it will be us doing it and not the Government. It is a question of what we have time to do.

John Finnie: Sorry, convener, can I go back to the annual report, please? That is what we are discussing.

The Convener: Yes.

John Finnie: Can you clarify whether there is anything in paragraphs 15 or 16 that says that we held the informal meeting with the UK bill of rights team? That should be mentioned, whether or not the term “evidence session” is used.

The Convener: Yes. I am happy to put that in, and we will extend it to cover the way in which we deal with all legislation that comes before us. The claim was that, when we consider in the round all the material that comes before us, human rights are somehow not just parked but dismissed. I was pretty cross about that claim, because members of the committee pay due attention to human rights. We should include the informal evidence session that some of us attended, but we should also mention the generality of how we deal with the issue in relation to all the legislation that comes before us.

John Finnie: Sorry, convener. Perhaps I have not been clear. I think that the report should say that we met the bill of rights team.

The Convener: Yes. We are going to say that.

John Finnie: Okay. Good.

The Convener: Am I right that members do not want to include anything about the committee being pushed for time to do our own thing?

Humza Yousaf: I am not dead against that. I was just making the point.

The Convener: Margaret Mitchell has been waiting to get in.

Margaret Mitchell: I am grateful to you for allowing me to do so. I am only substituting today, but I was previously a member of the Justice Committee, and throughout the current and previous sessions of Parliament, regardless of which party has been in power, there has always been tremendous pressure on previous Justice Committees to be legislative machines and to consider large amounts of legislation. Two crucial things have therefore not been given the priority that they should have had. The first is post-legislative scrutiny. I do not know whether the committee has carried out any of that yet. It is crucial, but it is one function of the committee that is not given the attention and time that it should get. The Parliamentary Bureau should recognise that when it decides which committees will consider bills.

The second thing is inquiries. Until we give them the status that they should have, in many ways, we are wasting our time in doing them. A case in point is the Equal Opportunities Committee's inquiry on women in prison. The Cabinet looked at the report, but had that inquiry been followed through and given the attention that it should have had, we might not have needed the Angiolini report. Important decisions were deferred. Inquiries have a specific place. The convener's comment is reasonable.

The Convener: I agree. Margaret Mitchell and I have both been conveners, and we have both been here for a while. What concerns me is that, over the past 13 years, the balance has shifted and the committees have less time to do their own thing.

We will not slip anything into the report about that—"slip it in" is a bad expression. We will let members see it first.

Humza Yousaf: I bow to your greater experience.

The Convener: We will certainly put in something about human rights, and also something about trying to get a balance to enable the committee to do some of its own work. Whether we decide to do a committee bill or an inquiry, we need to have time to do it. That is work that we are supposed to do. We will e-mail the wording to members sometime today.

Does the committee delegate to me authority to sign off the annual report, once members have seen those couple of paragraphs?

Members *indicated agreement.*

13:09

Meeting continued in private until 13:14.

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

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by APS Group Scotland.

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

For details of documents available to
order in hard copy format, please contact:
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk

e-format first available
ISBN 978-1-4061-9001-4

Revised e-format available
ISBN 978-1-4061-9012-0