



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 12 June 2012

Session 4

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JUSTICE COMMITTEE
20th 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 ATTENDED:

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

Kenny MacAskill (Cabinet Secretary for Justice)

Gordon MacDonald (Edinburgh Pentlands) (SNP) (Committee Substitute)

Lewis Macdonald (North East Scotland) (Lab)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 4

Scottish Parliament

Justice Committee

Tuesday 12 June 2012

[The Convener *opened the meeting at 09:32*]

Police and Fire Reform (Scotland) Bill: Stage 2

The Convener (Christine Grahame): I welcome everyone to the 20th meeting of the Justice Committee in 2012 and ask all present to completely switch off mobile phones and other electronic devices, as they interfere with the sound system even when switched to silent.

I have received apologies from Humza Yousaf and welcome in his place Gordon MacDonald. As Gordon has previously attended the committee, he does not need to declare any interests. John Lamont is also attending to move David McLetchie's amendments; however, as he is not a substitute member, he cannot vote. So you are powerless, John—that is excellent.

Item 1 is day 2 of our two-day consideration of the Police and Fire Reform (Scotland) Bill at stage 2. In the unlikely event—and I stress the word “unlikely”—that we require an additional meeting to complete stage 2, we will meet again at lunchtime tomorrow. I do not intend to curtail debate but, given that, if we go on, we will need to sit tomorrow at lunchtime, much as I love the sound of members' voices, I encourage everyone not to make unnecessarily lengthy contributions.

I welcome the Cabinet Secretary for Justice and his officials. Members will have copies of the bill, the marshalled list and the groupings of amendments for today's consideration.

Section 45—Local policing

The Convener: I hope that Graeme Pearson is ready, because I am calling his amendment 203, which is grouped with amendments 173, 53, 205, 54 to 56, 206, 57, 207, 58 to 61 and 208.

Graeme Pearson (South Scotland) (Lab): I will try to be brief, convener.

This group considers the local authority's role in policing. In our amendments, members are reflecting concerns that we have picked up from witnesses and elsewhere. Amendment 203, which seeks to stipulate that

“The chief constable must provide to each local authority as soon as reasonably practicable details of the resources allocated to policing in its area as at—

(a) 1 April 2012, and

(b) 1 April in each subsequent year”,

is an attempt to give comfort to those in local authorities who are genuinely concerned that the resources currently available in their policing areas might, with the creation of a single police force, simply melt away if local boards have no impact on or are unable to understand decisions that are taken centrally. Indeed, that very concern was raised at a meeting that I attended last night in Ayrshire. By accepting amendment 203, the cabinet secretary might well put that pressing concern to rest.

Amendment 173, in the name of Alison McInnes, seeks to place a positive duty on the local commander and the local authority to agree police plans, and I believe that it follows the logic of the consensus that we are trying to achieve in taking forward policing.

Do you want me to comment on the other amendments, convener?

The Convener: That is a matter for you, Mr Pearson.

Graeme Pearson: In her amendment 204, Jenny Marra again reflects on the gender balance that others have highlighted—

The Convener: Unfortunately, nice though it was, you cannot make a comment about amendment 204, because it is not in this group.

Graeme Pearson: Amendment 205, in the name of Lewis Macdonald, seeks to create a balance between local accountability and national oversight and addresses the need to ensure that local authorities are able to express concern about and have impact on policing decisions.

Amendment 206, which is also in the name of Lewis Macdonald, reflects the concerns that I mentioned with regard to amendment 203 by seeking to tease out the elements that should be in the police plan. For example, it says that the plan should include

“costings and an explanation of budget provision”

and set out

“the number of constables and police staff expected to be deployed in the local authority's area”.

Finally, amendment 208, in the name of David McLetchie, says:

“Where, in the opinion of the local commander, there has been or is likely to be a material failure to achieve the main priorities and objectives for the policing of the local authority's area, the local commander must report that to the local authority as soon as practicable.”

Again, that is all about transparency and giving people confidence that they know what is going on and understand the basis on which executive decisions are made.

I move amendment 203.

Alison McInnes (North East Scotland) (LD): Amendment 173 simply seeks to reword section 46(1) to place greater emphasis on a local authority's role in determining the priorities and objectives for policing in an area. Although I do not doubt the intention behind the subsection as drafted, its use of the word "involve" remains open to interpretation, and amendment 173 would make it clear that priorities and objectives must be developed by the local commander and the local authority acting in concert. I am content with the majority of the amendments in this group in their intention of promoting the role and input of local authorities in planning policing in their areas; indeed, Graeme Pearson's amendment 203, which seeks to require exact details of resource allocation, will prove vital in allowing local authorities to monitor whether their needs are being met.

I am not convinced that amendment 207, in the name of David McLetchie, is the correct way to proceed. At stage 1, we heard a great deal about the lack of a dispute resolution mechanism in the bill; although I can see where the member is coming from, I am very wary of putting in place a mechanism that would in effect formally allow the new force to ignore a local authority's view on its local policing plan.

The Cabinet Secretary for Justice (Kenny MacAskill): The amendments in this group deal with the role of local authorities in local policing. Amendments 203 and 206 seek to create duties with regard to the provision of information to local authorities on resource allocation, costings and workforce deployment. The bill already enables local authorities to obtain reports and information from the local commander on the policing of their area, including information on the allocation of resources for that area, and I consider such an approach to be more helpful than the imposition of duties of the kind that are proposed in the amendments and which might not be readily fulfilled in practice.

First, amendment 203 seeks to place a statutory duty on the future chief constable to provide information on matters that are not within his or her gift, as they are the responsibility of the existing authorities, boards and chief constables. Secondly, in relation to both amendment 203 and amendment 206, we expect that there will be a core allocation of resources in each local authority area. However, one of the benefits of a single service is the opportunity to provide specialist support that is organised nationally but which is more equally accessible to all communities in Scotland. Such resource may not be easily attributable to individual local authority areas. For those reasons, I cannot support the amendments.

On Alison McInnes's amendment 173, section 48(2)(a) already gives the local authority clear decision-making powers to approve local plans, which must include

"the main priorities and objectives for the policing of the local authority's area".

It is far better to support through the bill on-going efforts by local commanders and local authorities to work collaboratively to improve shared outcomes than to create a statutory requirement for the meeting of minds. Therefore, I cannot support amendment 173.

Mr McLetchie's amendment 208 is also unnecessary, given the broad powers that local authorities already have to request information and reports. We should focus on facilitating and supporting positive collaborative local relationships and not anticipate failure.

I will deal with amendments 205 and 207 together. The risk in creating statutory escalation procedures is that they become the option of first, rather than last, resort. That approach would detract from the important relationship between the local authority and the local commander.

Amendment 205 is unnecessary because the bill already makes the chief constable responsible for the policing of each local authority area. Local authorities will be able to contact the chief constable or the Scottish police authority about any aspect of policing, and I see no need to compel them to do so if they do not approve the local plan. If the local authority chooses not to approve the plan, the chief constable or local commander could proceed to make arrangements for the policing of the area as proposed in the plan, while working with the local authority to resolve any outstanding issues. That will be possible without the provision that is proposed in amendment 207. I cannot support either amendment.

Amendments 53 to 61 in my name take account of views that were heard in stage 1 evidence and discussed with stakeholders. Amendment 53 clarifies that local authority feedback can be provided with specific reference to the local plan. Amendment 54 allows the local commander to refer to the chief constable a requirement from the local authority to provide information or reports if the local commander considers that complying with it could prejudice a policing operation or a prosecution. The chief constable can confirm or reject the requirement.

Amendment 55 gives the chief constable the function of participating in community planning, while requiring the local commander to discharge that function locally. That reflects the approach of the Scottish Government and the Convention of Scottish Local Authorities in the review of

community planning, as it will enhance national governance and accountability in relation to police participation in community planning.

Amendment 56 adjusts section 48(1) to clarify that preparation of the first local police plan must follow the approval of the first strategic plan by the Scottish ministers. Amendments 57 and 59 to 61 are minor drafting amendments. Amendment 58 will make express provision about the circumstances in which a local plan “may” or “must” be reviewed and replaced.

I invite the committee to support amendments 53 to 61, which are in my name.

The Convener: I invite Lewis Macdonald to speak to amendment 205 and the other amendments in the group.

Lewis Macdonald (North East Scotland) (Lab): Graeme Pearson described the straightforward purpose of the amendments in my name, which is to allow full transparency, at a local level, in relation to resources and staffing so that the local commander works with the local authority and makes that information available to it, which is of critical importance. They also put dispute resolution into the bill, in order to deal with issues that could arise when the local authority and the local commander disagree.

I listened carefully to Kenny MacAskill’s arguments against having statutory provision for all sorts of things that are proposed in amendments lodged by other members. We do not live in Teletubby land. He said that it is better to get people to work together and that we should facilitate positive collaboration and not anticipate failure. That is very nice and we all agree with it, and of course the Government’s job is to facilitate collaboration. However, Parliament’s job is to legislate for all sorts of outcomes, whether they are successful or unsuccessful, and the law’s job is to provide for what happens when relationships go wrong—for example, when the facilitation of local collaboration does not work. That is why it would be much better to put in place the provisions that are suggested in my amendments and in those lodged by Graeme Pearson and Alison McInnes, so that the bill provides for what should happen when local partnerships do not work as well as we would all like them to. That purpose is shared by those amendments; it is also shared by David McLetchie’s amendments, although I regard those as a weaker alternative.

The Convener: I invite the weaker alternative, John Lamont, to speak to amendment 207 and the other amendments in the group.

09:45

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I will speak to amendments 207 and 208, in the name of my colleague David McLetchie.

The bill states that a local police plan is to be prepared by the local commander and submitted to the authority for approval. In preparing the plan, the commander must consult such persons as he or she considers appropriate, which may include the local authority, and the plan can be amended on the agreement of the commander and the local authority at any time.

However, the bill provides no more detail on what happens when the local commander and the local authority disagree. Section 48 is unclear about what happens if the local authority does not approve a plan. Surely the presumption is that the plan will still be published without the local authority’s approval, but there is nothing in the bill that explains that.

There is also relatively little detail in the bill on how local authorities are to scrutinise local police plans; it is presumed that guidance is being developed by the pathfinder projects. Section 46 permits local authorities to monitor and provide feedback to local commanders, and it requires the local commander to provide information if requested.

In the stage 1 report, the committee agreed with the Government

“that the manner in which local authorities are to scrutinise the local plans should”

not

“be included on the face of the Bill”

as that

“would be too prescriptive and would not allow”

sufficient

“flexibility”.

The committee also suggested in the report that more detail on that should be included in guidance in time for local authorities

“to put in place any scrutiny mechanisms before the single service becomes operational.”

Amendment 207 seeks to clarify what happens if the local authority does not approve the local police plan. We have not suggested a detailed dispute resolution process on the basis that that may not provide sufficient flexibility, although there is a strong argument that the bill should do more in that regard and that a formal dispute resolution mechanism may prove necessary. The amendment instead provides that,

“If the local authority does not approve a local police plan”,

it must

“notify the Authority”

so that its disapproval is recorded. The amendment also clarifies that the plan can be implemented notwithstanding the lack of local authority approval.

Amendment 208 seeks to address the lack of clarity about local authority scrutiny of local police plans. It compels the local commander to notify the local authority when it comes to light that a priority or objective of the plan might not be achieved. The term “material failure” is used to ensure that the provision applies only to major departures from the plan. The notification requirement is triggered both when a breach occurs and when the commander learns that a breach is likely. The rationale behind the amendment is that it will provide local authorities with information on the progress of implementation of the national plan without their specifically requesting that information.

We are generally supportive of the other amendments in the group with the exception of amendment 204, in the name of Jenny Marra—but that is not being dealt with at the moment. I apologise, convener.

The Convener: You were led astray by Graeme Pearson. I understand that—who is not? Cabinet secretary, do you want to respond to anything that has been raised subsequent to your comments?

Kenny MacAskill: The committee and stakeholders have agreed that a statutory dispute resolution mechanism is not necessary and would not be helpful. The bill currently provides a framework, and it is right that local authorities should have the flexibility to develop their own mechanisms for reaching agreement as matters progress.

Graeme Pearson: I am grateful to the cabinet secretary for responding to the various views that have been expressed by the committee. In relation to amendment 203, he commented on the powers of the chief constable as at 1 April 2012, but I would have thought that officers could still have co-operated with one another to provide a snapshot given the level of concern that has been expressed locally about a significant change in policing that is causing nervousness and upset.

On the cabinet secretary’s responses to the other amendments, I have to say that the matter is one of opinion and approach rather than of fact and designation. The amendments that have been lodged by Alison McInnes, Lewis Macdonald and David McLetchie are reasonable amendments that would improve and help to develop the way forward for the service. That is what we are trying to do—we are not trying to scupper the way

forward; we are trying to make things better in the future. I am, therefore, disappointed at the approach that has been taken, which is to see little or no merit in any of the amendments.

The Convener: Are you pressing your amendment?

Graeme Pearson: Yes.

The Convener: The question is, that amendment 203 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 203 disagreed to.

The Convener: The question is, that section 45 be agreed to. Are we agreed?

Members: Sorry?

The Convener: The question is, that section 45 be agreed to. Are we agreed?

Members: Yes.

Section 45 agreed to.

The Convener: I will speak slowly for everyone’s benefit. If only we had had bacon rolls this morning.

Section 46—Local authority role in policing

Amendment 173 moved—[Alison McInnes].

The Convener: The question is, that amendment 173 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)

MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 173 disagreed to.

Amendment 204 moved—[Jenny Marra].

The Convener: The question is, that amendment 204 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 204 disagreed to.

Amendment 53 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 53 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
McInnes, Alison (North East Scotland) (LD)

Abstentions

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

The Convener: The result of the division is: For 6, Against 0, Abstentions 2.

Amendment 53 agreed to.

Amendment 205 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 205 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 205 disagreed to.

Amendment 54 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 54 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
McInnes, Alison (North East Scotland) (LD)

Abstentions

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

The Convener: The result of the division is: For 6, Against 0, Abstentions 2.

Amendment 54 agreed to.

Section 46, as amended, agreed to.

Section 47—Duty to participate in community planning

Amendment 55 moved—[Kenny MacAskill]—and agreed to.

Section 47, as amended, agreed to.

Section 48—Local police plans

Amendment 56 moved—[Kenny MacAskill]—and agreed to.

Amendment 206 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 206 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)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 206 disagreed to.

Amendment 57 moved—[Kenny MacAskill]—and agreed to.

Amendment 207 moved—[John Lamont].

The Convener: The question is, that amendment 207 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

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)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Marra, Jenny (North East Scotland) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 0, Against 8, Abstentions 0.

Amendment 207 disagreed to.

The Convener: I think that that is annihilation, really.

Graeme Pearson: He has already admitted that he is powerless.

The Convener: Yes, and we demonstrated that most cruelly.

Amendments 58 to 61 moved—[Kenny MacAskill]—and agreed to.

Amendment 208 moved—[John Lamont].

The Convener: The question is, that amendment 208 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)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 208 disagreed to.

Section 48, as amended, agreed to.

Sections 49 to 52 agreed to.

Section 53—Disciplinary procedures: conduct and performance

The Convener: Amendment 62, in the name of the cabinet secretary, is grouped with amendments 63 and 64.

Kenny MacAskill: Section 53 requires that

“Regulations made under section 49 must establish, or provide for the establishment of, procedures for dealing with a constable whose standard of behaviour or performance is unsatisfactory.”

Following discussions with stakeholders, we have concluded that performance is an employee issue and rightly a matter for the police service and the authority, and not for the police investigations and review commissioner. Amendment 62 therefore removes unsatisfactory performance from the commissioner’s remit.

Amendment 63 clarifies that, although it is for the authority to determine how to deal with individual senior officer disciplinary cases, it is for regulations to set out the overall standards, processes and sanctions in relation to such matters. That will ensure that a fair, transparent and open process is followed, and that the necessary safeguards for senior officers are provided.

Amendment 64 is a technical amendment that relates to the consultation requirements for police pension regulations.

I ask the committee to support amendments 62 to 64, which are all in my name.

I move amendment 62.

Amendment 62 agreed to.

Amendment 63 moved—[Kenny MacAskill]—and agreed to.

Section 53, as amended, agreed to.

Section 54 agreed to.

Section 55—Consultation on regulations

Amendment 64 moved—[Kenny MacAskill]—and agreed to.

Amendment 174 moved—[John Finnie]—and agreed to.

Section 55, as amended, agreed to.

Sections 56 and 57 agreed to.

Schedule 3 agreed to.

Sections 58 and 59 agreed to.

Section 60—Powers to obtain information

The Convener: Amendment 65, in the name of the cabinet secretary, is in a group on its own.

Kenny MacAskill: Amendment 65 deals with the powers of a police appeals tribunal to obtain information. The amendment prevents the chairing member from requiring a person to disclose information or answer a question that that person could refuse to answer or disclose on any grounds—whether to do with confidentiality or otherwise—in civil proceedings in the Court of Session. The amendment provides an additional safeguard for individuals who are appearing before a police appeals tribunal.

I move amendment 65.

Amendment 65 agreed to.

Section 60, as amended, agreed to.

Sections 61 and 62 agreed to.

Section 63—General functions of the Police Investigations and Review Commissioner

The Convener: Amendment 66, in the name of the cabinet secretary, is grouped with amendments 67 to 77, 79 to 81, 209, 82 to 86, 210, 145, 146, 148 and 149.

Kenny MacAskill: The police investigations and review commissioner will play a crucial role in ensuring public confidence in the police in meeting human rights obligations. Amendment 66 and the other amendments in my name improve the provisions relating to the operation of the commissioner. We have considered carefully the issues that were raised by the committee and we have consulted the Crown Office, the Police Complaints Commissioner for Scotland, police stakeholders and the Scottish Public Services Ombudsman. I am confident that the Government amendments in the group address the committee's concerns and that they will ensure a robust legislative framework for the delivery of the commissioner's functions.

When there is an indication of criminality by the police or police staff, the prosecutor may direct the commissioner to carry out an investigation. Amendments 66 and 69 give the prosecutor flexibility, so that offences other than those that lead to death or serious injury may be referred to the commissioner for investigation.

10:00

Amendment 67 addresses the concerns of the committee and stakeholders by clarifying that serious incidents will be referred to the commissioner by the police authority or the chief constable.

Amendment 68 is a technical amendment to remove a provision that is already contained in section 53.

I turn to amendments that provide clarity on what may and what may not be investigated by the commissioner as serious incidents or matters in the public interest. Amendments 70 and 74 will ensure that a matter that has been the subject of a relevant complaint can be investigated by the commissioner as a serious incident or a matter in the public interest.

Amendments 71, 72, 75 and 76 address the committee's concerns about the relationship between criminal investigations and other investigations. They make it clear that a matter that is being investigated by the commissioner under the direction of the prosecutor, or one that has been so investigated and as a result of which criminal proceedings have been brought against any person, cannot be investigated as a serious incident or a matter in the public interest. Likewise, matters that have been investigated in a fatal accident inquiry by the commissioner cannot be investigated by the commissioner again.

I turn to amendments 73 and 77, which relate to the commissioner's investigation of matters in the public interest. To address concerns about the scope of the public interest provisions, amendment 73 makes it clear that relevant police matters will be limited to incidents that have occurred or are alleged to have occurred and which involve the authority, the police service or a person serving with the police. Amendment 77 seeks to make minor changes to clarify that incidents that are capable of being investigated as serious incidents, but which have not been referred by the authority or the chief constable, may be investigated by the commissioner in the public interest.

At the request of police stakeholders, amendment 79 will require ministers to consult staff associations representing all ranks when they make regulations on investigative procedures.

Amendments 80 and 81 seek to remove the statutory duty on the commissioner to publish reports of serious incident and public interest investigations and to replace it with a discretionary power.

Amendment 145 seeks to insert a new provision to give the commissioner a power to publish complaint-handling review reports when he or she considers it appropriate to do so.

Amendments 82 to 84 are technical amendments to ensure that the obstruction and contempt provisions are consistent across all the commissioner's functions.

Amendment 85 will ensure that the procedure to deal with complaints about the commissioner and his staff will be for complaints that are made by any person, including a police officer.

Amendment 86 seeks to insert a new section into the Police, Public Order and Criminal Justice (Scotland) Act 2006 to protect the commissioner from actions for defamation, as requested by the Police Complaints Commissioner for Scotland and supported by the Justice Committee.

Amendment 146 seeks to insert a new provision that will allow the police investigations and review commissioner to refuse to undertake a complaint-handling review if a period of three or more months has elapsed from when the appropriate authority concluded its review of the complaint and communicated its outcome to the complainant. The commissioner will have discretion to waive the time limit when there are exceptional circumstances.

Amendment 148 seeks to amend the length of tenure of the commissioner to five years for an initial appointment and to three years for reappointments.

Amendment 149 provides that Scottish ministers may, by order, apply to the commissioner's staff officers provisions of any enactment relating to constables, with appropriate modifications, rather than just provisions of the bill and subordinate legislation made under it.

Roderick Campbell's amendment 209 relates to reports that the commissioner prepares on investigations into serious incidents and investigations in the public interest. It provides that, if the commissioner decides to name an individual in an investigation report, that individual should be given seven days' notice of that intention. The bill already requires the commissioner to provide a report to the person who requested an investigation, the Scottish police authority and any other person whom the commissioner considers appropriate, which could include persons to whom the report relates. The bill inserts into the 2006 act new section 41E, which says that the commissioner must not identify an individual or include any information in the report that is likely to result in the identification of an individual unless the commissioner determines that it is in the public interest to do so.

I believe that what Roderick Campbell is looking for would be better achieved through operational agreements between the commissioner, the chief constable and the Scottish police service than it would be by defining a set number of days in the primary legislation, which would not allow for any flexibility. Accordingly, I cannot support amendment 209. However, I acknowledge the concerns that Mr Campbell has raised on behalf of

the Scottish Police Federation, and I am happy to meet him and the federation to discuss how those concerns might be addressed outwith the legislation.

Finally, amendment 210, in the name of David McLetchie, proposes that constables and police staff should be excluded from appointment to the commissioner's staff. I cannot support that amendment, as it is essential that the commissioner has staff who have all the necessary training, skills and experience to carry out investigations effectively. The experience of other police oversight bodies, such as the Police Ombudsman for Northern Ireland and the Garda Síochána Ombudsman Commission teaches us that the experience and skills of constables are essential in the beginning and can reduce over time as the commissioner's staff gain experience.

For those reasons, we are inserting a new paragraph 7A in schedule 4 to the 2006 act, which will allow the commissioner to appoint constables of the police service and other policing bodies to serve as members of the commissioner's staff under his direction and control. It will be for the commissioner to ensure that the inward secondment of constables does not undermine the independence of investigations.

I ask the committee to support amendments 66 to 86 and 145, 146, 148 and 149 in my name.

I move amendment 66.

The Convener: I call Roderick Campbell to speak to amendment 209 and other amendments in the group.

Roderick Campbell (North East Fife) (SNP): Thank you, Presiding Officer.

The Convener: I am Presiding Officer now—that is excellent.

Roderick Campbell: I am sorry, convener. I have elevated you unnecessarily.

Amendment 209 is a probing amendment that arises from concern among rank-and-file police officers, and is particularly based on experience south of the border in cases such as the Menezes case, in which there might be considerable pressure to investigate complaints quickly and an individual officer might need to have adequate time to consider an application to protect anonymity. Amendment 209 is designed to give effect to that. I am, however, grateful for the cabinet secretary's offer to meet to discuss the matter further.

John Lamont: Amendment 210, in the name of David McLetchie, is also intended to be a probing amendment. It seeks to prohibit the appointment of Scottish police service staff to the police investigations and review commissioner. The

argument is that the commission's role in investigating complaints and serious wrongdoings of the police should be as a stand-alone body. The involvement of the very staff that the commission might have to investigate is arguably inappropriate.

I do not intend to move amendment 210, but we are concerned about the practical and financial arrangements for the commission. The extension of its remit to include investigations of serious criminal offences that are committed by a person who is serving with the police will clearly require more resources.

There are questions about the remit of the PIRC. There have been calls for a definition of "public interest", and I would be grateful for the cabinet secretary's views on those points.

Alison McInnes: I support the Government's amendment 86 on the protection from actions for defamation for the PIRC. That was one of the recommendations on which the committee agreed, and it is vital to ensuring that the commissioner is free to perform his or her role fully without constraint. I welcome the cabinet secretary lodging such a robust amendment.

Kenny MacAskill: We recognise the points that were raised by Mr Lamont; it is a matter of balance. We have looked at what happens in Northern Ireland and the Irish republic. There is a benefit in having the right skills available when a new organisation is being set up. If the number of officers on secondment were to be excessive in years to come, questions would be raised, but we must allow some flexibility in starting up the office to allow the appointment of those who have the appropriate skills. That seems to have worked reasonably well for the Police Service of Northern Ireland and Garda Síochána.

I take on board the point that was made by Mr Lamont on behalf of Mr McLetchie, but these matters will doubtless be kept under review by the authority, by the committee and by me to ensure that they are being dealt with appropriately. It is a matter of balance.

Amendment 66 agreed to.

Amendments 67 to 69 moved—[Kenny MacAskill]—and agreed to.

Section 63, as amended, agreed to.

Section 64 agreed to.

Section 65—Serious incidents involving the police

Amendments 70 to 72 moved—[Kenny MacAskill]—and agreed to.

Section 65, as amended, agreed to.

Section 66—Investigations of other matters in the public interest

Amendments 73 to 77 moved—[Kenny MacAskill]—and agreed to.

Section 66, as amended, agreed to.

Section 67—Investigations: procedure etc

The Convener: Amendment 78, in the name of the cabinet secretary, is grouped with amendments 96 and 137.

Kenny MacAskill: Amendment 78 and the other amendments in the group are about information-sharing provisions. My colleague Roseanna Cunningham and I lodged the amendments following discussion with Her Majesty's inspectorate of constabulary, the Police Complaints Commissioner for Scotland, the Auditor General for Scotland and the inspectors of the fire and rescue service. Those stakeholders all agree that the exemptions and the disclosure provisions in the bill are unnecessary because they already have sufficient powers to share information appropriately.

I ask committee members to support amendments 78 and 96 in my name and amendment 137 in the name of Roseanna Cunningham.

I move amendment 78.

Amendment 78 agreed to.

Amendment 79 moved—[Kenny MacAskill]—and agreed to.

Section 67, as amended, agreed to.

Section 68—Reports on investigations

Amendments 80 and 81 moved—[Kenny MacAskill]—and agreed to.

Amendment 209 not moved.

Section 68, as amended, agreed to.

Section 69—Investigations: obstruction and contempt

Amendments 82 to 84 moved—[Kenny MacAskill]—and agreed to.

Section 69, as amended, agreed to.

Section 70—Complaints against the Commissioner

Amendment 85 moved—[Kenny MacAskill]—and agreed to.

Section 70, as amended, agreed to.

After section 70

Amendment 86 moved—[Kenny MacAskill]— and agreed to.

Amendment 210 not moved.

Sections 71 to 73 agreed to.

Section 74—Functions of inspectors

The Convener: Amendment 87, in the name of the cabinet secretary, is grouped with amendments 247 and 88 to 95.

Kenny MacAskill: Amendments 87 to 95 deal with Her Majesty's inspectors of constabulary in Scotland. The amendments, taken together, adjust and refine HMICS's role and responsibilities. I am happy to answer any questions that members may have on the detail of the amendments.

Amendment 247, in the name of Graeme Pearson, relates to Scottish ministers' power to direct HMICS to carry out inquiries about matters relating to the police service or the authority. Amendment 247 proposes to add a provision specifying that inquiries may be about

"the adequacy of the numbers of constables and police staff to ensure that objectives set out in the strategic police priorities and local police plans are met."

The provisions in the bill already allow ministers to direct HMICS to make such inquiries as ministers consider appropriate. That is sufficiently broad to allow Scottish ministers to determine what the subject of an inquiry may be. Further, giving in an isolated example the kind of things into which HMICS may inquire may be construed as intending some sort of limit on the kind of inquiries that HMICS is to make. That would be an unfortunate, unintended consequence and I therefore cannot support amendment 247.

I invite the committee to support amendments 87 to 95.

I move amendment 87.

10:15

Graeme Pearson: I note the cabinet secretary's comments about the breadth of options available to HMICS. I do not acknowledge that my amendment 247 would have the effect that he suggests. My amendment states that

"Inquiries under subsection (1)(a) may, in particular, be made about the adequacy of the numbers of constables and police staff to ensure that objectives set out in the strategic police priorities and local police plans are met."

That would allow HMICS, at the request of the cabinet secretary, to examine those matters and report objectively and in a neutral fashion on, in particular, staffing and the provision of constables.

Amendment 247 reflects the concerns that I have picked up and which have been evidenced during previous meetings of the Justice Committee about staffing issues and police numbers. The cabinet secretary is well aware that we have discussed those issues ad nauseam over the past year. To resolve some of the issues, it would be preferable to agree to an amendment such as amendment 247 to ensure that the general public realise that we identify with those concerns and are willing to place them on the record in the bill.

The Convener: I invite the cabinet secretary to wind up.

Kenny MacAskill: I think that those matters are clearly addressed in the bill.

The Convener: The question is, that amendment 87 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

Against

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

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 87 agreed to.

Amendment 247 moved—[Graeme Pearson].

The Convener: The question is, that amendment 247 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 247 disagreed to.

Section 74, as amended, agreed to.

After section 74

Amendment 88 moved—[Kenny MacAskill]—and agreed to.

Sections 75 and 76 agreed to.

Section 77—HMICS reports

Amendments 89 to 92 moved—[Kenny MacAskill]—and agreed to.

Section 77, as amended, agreed to.

After section 77

Amendments 93 and 94 moved—[Kenny MacAskill]—and agreed to.

Section 78—Power to give directions after adverse HMICS report

Amendment 95 moved—[Kenny MacAskill]—and agreed to.

Section 78, as amended, agreed to.

Sections 79 to 81 agreed to.

Section 82—Scrutiny and investigations: co-operation and information sharing

Amendment 96 moved—[Kenny MacAskill]—and agreed to.

Section 82, as amended, agreed to.

Section 83 agreed to.

Section 84—Provision of other goods and services

The Convener: Amendment 97 is grouped with amendment 98.

Kenny MacAskill: Amendments 97 and 98 deal with the provision of goods and services by the Scottish police authority and the police service of Scotland to organisations and individuals specified by order.

Amendments 97 and 98 clarify that an order may specify the types of persons to whom goods and services may be provided rather than listing those persons by name. That ensures that the opportunity for parliamentary scrutiny is maintained without excessive bureaucracy. I ask that the committee supports amendments 97 and 98.

I move amendment 97.

Lewis Macdonald: I seek clarification from the cabinet secretary. Can he offer examples of the type of person to whom he would wish the section to apply?

Kenny MacAskill: I presume that it could be Governments or police services elsewhere.

Lewis Macdonald: In other words, other institutions external to the police service.

Kenny MacAskill: Yes.

The Convener: I take it that that was a winding up.

Kenny MacAskill: Yes.

The Convener: I clarify that I did not mean winding up in the sense of winding you up.

Amendment 97 agreed to.

Amendments 98 and 99 moved—[Kenny MacAskill]—and agreed to.

Section 84, as amended, agreed to.

Sections 85 and 86 agreed to.

Section 87—Assaulting or impeding police

The Convener: Amendment 100, in the name of the cabinet secretary, is grouped with amendments 101 to 103.

Kenny MacAskill: In its evidence, the Scottish Police Federation suggested that the offences of assaulting, resisting, obstructing or hindering a constable be separated, partly to allow a true record of assaults on police officers to be kept. My officials have since confirmed to the federation that separate records on assaults can be kept under the current system; however, I believe that it is helpful to separate assault from the other types of behaviour listed as it highlights that an act of violence has been committed against a constable as opposed to their being subject to some other form of obstruction in the carrying out of their duties.

These amendments achieve that aim. Amendment 103 seeks to ensure that both offences can, where appropriate, be charged together, allowing the court to consider all the evidence contained in these incidents and to convict on either charge or both.

I move amendment 100 and ask the committee to support it and amendments 101 to 103.

Amendment 100 agreed to.

Amendments 101 to 103 moved—[Kenny MacAskill]—and agreed to.

Section 87, as amended, agreed to.

Sections 88 and 89 agreed to.

Section 90—Purpose of custody visiting

The Convener: Amendment 248, in the name of Lewis Macdonald, is grouped with amendments 249 to 252.

Lewis Macdonald: At the outset, I make it clear that we welcome the move to put independent

custody visiting on a statutory footing. Amendment 249 seeks to strengthen—

The Convener: Mr Macdonald, I remind you that you are required to move amendment 248, which is the first in the group.

Lewis Macdonald: I shall do so, convener, but I shall start by speaking to my amendment 249, which seeks to strengthen the rights of custody visitors more than the Government proposes to do. In fact, we want to extend the same rights to prison visitors. Everyone agrees that independent custody visiting should be put on a statutory footing; however, there is no general agreement on the cabinet secretary's plan to abolish independent prison visiting committees at a time when he is using this bill to strengthen the statutory position of visitors to those held in police cells.

The bill is about reforming the police and fire services and our debates this morning have focused on the best way of doing that. However, I think that it is fair to say that these particular sections have a tenuous connection with the rest of the bill and could just as easily be introduced in a different form. Indeed, that is what we want ministers to do and why we have lodged amendments 248, 250 and 251.

Over the past few days, it has become clear that, even though it had agreed to think again on the matter, the Government is still intending to scrap all Scotland's visiting committees and replace their 240 volunteer members with, as I understand it, three paid public servants, who will, when they apply, be asked to show experience of working in senior roles in the prison service. The voluntary commitment of prison visiting committees, which include elected local councillors of all parties who are rooted in their local communities, will be cast aside in order to—

The Convener: I am delighted to hear about prison visiting committees, but I must point out that this group of amendments is about independent custody visiting. I just want to keep you on track.

Lewis Macdonald: I assure you, convener, that I am very conscious of the need to stay close to the detail of the bill.

The Convener: Indeed.

Lewis Macdonald: However, committee members will want to understand why I have lodged these amendments. The same cabinet secretary and Government that are proposing in this bill a statutory basis for custody visiting are also proposing to remove independent prison visiting committees. Instead of having provisions on custody visiting inserted into a bill on police and fire reform, we want the cabinet secretary to introduce a bill that will put both independent

custody and prison visitors on a statutory footing. That is the intention behind these amendments, and we certainly believe that such an approach will best protect the voluntary principle, the principle of community involvement and the critical principle of the independence of those who visit and monitor prisons and police cells.

If the cabinet secretary were to accept the amendments and bring forward such a bill to extend the principles to prison visiting, that would make the whole system more effective, more efficient and—critically—independent of the Government and the police and prison service.

On that basis, I move amendment 248.

Kenny MacAskill: Lewis Macdonald's amendments 248 and 250 to 252 would remove the sections of the bill that place a requirement on the Scottish police authority to establish a system of independent custody visiting. Those provisions are in pursuance of the objectives of the optional protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—OPCAT—which was ratified by the United Kingdom in 2003. The provisions enhance the current schemes in the eight police areas, bringing them together into a national system under arrangements made by the Scottish police authority. I believe that this new statutory regime will provide a more transparent criminal justice system in which the rights and treatment of individuals and the custody of the state are effectively monitored. Deleting the provisions would call into question our compliance with OPCAT in that regard. I therefore ask Lewis Macdonald to withdraw his amendments.

I also cannot support Mr Macdonald's alternative amendment 249, which amends the wording of section 91. That would alter the circumstances in which a visit to a place of detention can be refused in order to mirror the current wording in section 92. However, that section relates only to visits by the UN sub-committee and recognises our commitments in that regard. The current approach to section 91 offers greater flexibility and requires ministers to predetermine the circumstances in which a police officer of the rank of inspector or above can refuse—or, more probably, delay—access to a particular detainee or group of detainees for operational reasons. That may be, for example, when a person is being interviewed and immediate access would compromise the legitimate investigation of a criminal offence. I emphasise that such circumstances should be limited and exceptional. I am happy to assure the committee that we will consult existing visitors, administrators and other stakeholders such as the Scottish Human Rights Commission in developing such criteria. I believe that the current provisions are

appropriate and provide flexibility and scope for development in consultation with current scheme administrators and stakeholders. I therefore ask Lewis Macdonald to withdraw amendment 149. Comparison cannot be made with the Government's plans for prison visiting committees, which are vastly different, and police and prison custody are separate issues; therefore, I do not think that Lewis Macdonald is doing us any service in seeking to conjoin the two.

The Convener: I think that you meant amendment 249, cabinet secretary, which has not been moved yet. It is confusing.

Lewis Macdonald: I am sorry that the cabinet secretary addressed the point that I made only in his last sentence. I am also sorry that his response was that the two things are different and are not conjoined. He will know as well as the rest of us that OPCAT applies to those who are held in prison as well as to those who are held in police cells. What the cabinet secretary appears to be proposing for visitors to prisons is not likely to be OPCAT compliant, as the OPCAT requirement is for those persons to be independent of Government and his intention to appoint full-time public servants to replace voluntary prison visitors does not meet that requirement. I am most disappointed that the cabinet secretary has not addressed more clearly why he wants to move towards a stronger statutory basis for custody visiting, and in completely the opposite direction with prison visiting.

The Convener: Can we keep off the subject of prison visiting and on the bill?

Lewis Macdonald: I understand your enthusiasm, convener.

The Convener: I have been very lax with you so far.

Lewis Macdonald: I am happy to focus on the bill.

I seek to withdraw amendment 248, although I am sure that we will return to the issue at stage 3, because we have not yet heard a satisfactory explanation of the cabinet secretary's approach on the matter.

Amendment 248, by agreement, withdrawn.

Section 90 agreed to.

Section 91—Independent custody visiting

Amendments 249 and 250 not moved.

Section 91 agreed to.

Section 92—SPT visits

Amendment 251 not moved.

Section 92 agreed to.

Section 93—Interpretation of Chapter 16

Amendment 252 not moved.

Section 93 agreed to.

After section 93

The Convener: Amendment 242, in the name of Graeme Pearson, is grouped with amendment 243.

10:30

Graeme Pearson: I am conscious that, in the committee's discussion of amendments to the bill, we have not been particularly successful in persuading the cabinet secretary of some of the views that we have offered to him. I hope that he will see some virtue in what I have to offer in amendment 242. I am grateful to the Parliament staff who helped to place some sense around the ideas that are presented in the amendment.

Let us face a number of realities before I comment on the various elements of the amendment. Governments find accountability a hindrance. Civil servants would prefer to act under one direction and report only to that office. Parliaments across Europe are struggling to bring Executives to account, and at Westminster, Margaret Hodge and many others are, through committees, struggling with the concepts of accountability and governance. That indicates that modern governmental arrangements work well for supported Executives but act as a hurdle to effective parliamentary scrutiny. The elements attached to all Governments, be they SNP, Labour, Lib Dem or others, avoid the hindrance that accountability brings.

As a committee, we have a duty to ensure that the watershed moment of moving policing from local response and accountability to a national agency includes effective arrangements that provide democratic oversight of those changes in an on-going and proactive manner.

What is policing? In a mature society, citizens forego elements of their liberty to allow us to live together in relative harmony. That is enabled by the provision of the police service. The citizen thereby consents to the state providing, financing and empowering a police force and fire service in our interests, and the citizen also agrees to the Government controlling those arrangements to deliver a peaceful community.

The police service is not, by mutual agreement, an arm of Government. Unlike other public servants, police officers are expected to act in the interests of the ordinary citizen. The police are, in fact, uniformed and warranted citizens who act on

behalf of a community to provide the peace and good order that are necessary for the conduct of daily life. They are answerable to the courts and also to their chief constable through the discipline process. Only at times of national crisis does the relationship change and the balance of influence shift.

It has been so since Robert Peel set out the following principle of policing in 1829:

“To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police, the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.”

Our task today is to take extreme care not to disturb that sensitive balance and to ensure that the national police service is answerable to not the Government, but the body politic of Scotland. That is a difficult balance to strike.

In earlier centuries, local police authorities, local boards or burghers that represented close-knit communities provided the means by which policing by consent could be achieved by not only calling the police to answer, but providing the budget. With an area, a regional and now a national police service, that element of localism is more challenging to deliver, hence the time and effort that the committee dedicated to earlier amendments that were designed to repair inadequacies in the bill.

It remains to be seen how local policing boards at divisional level will work in practice but, in any case, the means to deliver meaningful accountability to the democratic process is missing. The Auditor General for Scotland called it a democratic deficit. The Association of Chief Police Officers in Scotland, the Association of Scottish Police Superintendents, the Scottish Police Federation and even the fire chiefs, from their perspective, commented on the vacuum that has been identified in that regard.

Bill writers may argue that the SPA is designed to act in that endeavour. However, the board does not provide the transparency that is necessary in a modern democracy. It will be populated by people chosen on approval of the minister, paid by the minister, answerable to the minister and therefore to Government—not to mention the minister’s power to sack or retire the chief officer. The range of powers to influence and control are too heavily weighted to the advantage of the Executive, ministers and civil servants.

I served for four years on the service boards for the national criminal intelligence service and the national crime squad. The business of those boards was to deliver on targets, objectives, budgets and projects. The wider issue of

democratic accountability is not the prime concern of such groupings. Given the constitution of the board, I am sure that the SPA will be similar in its approach. National democratic governance by means of a parliamentary arrangement or a commission is therefore critical.

Police detain, question, arrest—often by force—and support prosecutions to imprison our citizens. The result of bad policing is a cancer for any society. It allows injustice, corruption, unfairness and incompetence. Policing must face democratic oversight, delivered by the Scottish Parliament and independent of Government. Only last week, our convener rehearsed the reality of the Justice Committee having insufficient time proactively to examine issues due to the volume of Government business generated each year.

A Parliament searching for a role for its members should realise that there is a genuine role here worthy of a commission that would meet throughout the year. I maintain that parliamentary oversight of the relationships and the outcomes that arise from the creation of the national force is essential to the good health of those arrangements. In the absence of a proactive body checking, taking evidence and reporting to the Parliament, the belated post-mortem responses to scandals, shortcomings and mistakes will prove insufficient to deliver the vision of a safer Scotland for our communities.

The costs attached to a commission should be minimal in terms of a secretariat and support. In essence, regular evidence-gathering sessions should ensure effective governance, particularly as the cabinet secretary has commented that he is comfortable with the current preparations and plans. The committee and the cabinet secretary should remember that only last week, the incoming president of France sacked all three of the senior police chiefs publicly identified as personal staff to the previous Sarkozy Government. I do not want Scotland’s police to be similarly tarnished. The Leveson hearings have proved how insidious power is in its operation.

This committee can lead the way in ensuring the proactive oversight of government, executive, board and chief officers and their administration of policing, in the interests of our people and communities and not for the benefit and comfort of unseen figures.

I earnestly move amendment 242.

The Convener: Thank you for a full, thoughtful and eloquent submission. Do other members wish to speak on the amendment?

John Lamont: The Scottish Conservatives broadly support Graeme Pearson’s amendment for the reasons that he described so well. It goes to the crux of all the amendments that a number of

the Opposition parties have lodged to say that we have serious concerns about how local accountability will be protected. Graeme Pearson's amendment goes some way towards dealing with those concerns. Unfortunately, as a committee substitute I do not have a vote this morning, as has already been demonstrated. I am powerless, but if I did have a vote I would vote in favour of the amendment.

The Convener: You could always ask to come back to this committee—you would be welcome.

Lewis Macdonald: I will reflect briefly on Graeme Pearson's considered presentation and on John Lamont's comments. A number of amendments to the bill have been lodged seeking to strengthen local accountability and local engagement. Unfortunately the Government has not seen fit to support any of those amendments and therefore we are in the current position. What is offered is a different model, but it is one that will strengthen accountability and oversight. I hope that, having rejected the amendments that related to what might be done at the local level, the Government will seriously consider supporting this amendment that relates to what can be done at a national level.

Alison McInnes: I will speak in support of Graeme Pearson's amendments, and I thank him for his work on developing an innovative and very welcome suggestion. The bill is a major reform of a major service. It takes away a great deal of local accountability and does away with the need for locally elected representatives. Graeme Pearson's amendment takes a different approach, which acknowledges the role of democratically elected people at a different level, here in the Parliament. The amendment has a great deal of merit and I urge the cabinet secretary to accept it.

Kenny MacAskill: I will speak to amendments 242 and 243. It is important to clarify that ministers will not have the power to sack or remove the chief constable from office. I fully support and recognise the importance of the scrutiny of policing by the Parliament and this committee. As Cabinet Secretary for Justice I have been grilled by members of the committee on a number of occasions over the past few years, so I can testify to that.

The bill already will provide a range of new opportunities for parliamentary scrutiny of policing: the strategic police plan, the annual police plan and the police authority's annual report and accounts will all be laid before the Parliament, as will reports from Her Majesty's inspectorate of constabulary and the police investigations and review commissioner. The Parliament already has the tools to scrutinise all aspects of policing if it wishes, whether by this committee or the full

Parliament. Indeed, this committee's remit is to consider and report on:

"the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice".

Likewise, the Parliament has the power to require any person, including a person exercising functions under this bill, to attend parliamentary proceedings to give evidence, or produce documents.

The amendments, therefore, do no more than mirror powers and responsibilities that already lie with the Parliament and have been delegated to this committee. It is not clear how the overlapping scrutiny roles would operate in practice, or why a stand-alone commission—with all the additional bureaucracy that that entails—should be required to exercise scrutiny functions that the Parliament can already exercise effectively. The Scottish Commission for Public Audit, which Mr Pearson often refers to, is not a good analogy. That was created to address the special or, it could be argued, unique challenge of overseeing and auditing the Auditor General for Scotland. All other parliamentary commissioners are individual office holders, not MSPs. However, I recognise that much of the parliamentary scrutiny that is set out in the bill will be reactive, as it will respond to the laying of plans and reports. The Parliament has significant scope to take a more pro-active scrutiny role, and I agree that that would be a positive step. I am therefore happy to work with Mr Pearson and the Parliament to identify options for more pro-active parliamentary scrutiny, which would be based around the current committee structure, in either the Justice Committee or a subcommittee of it. On that basis, I ask members not to support the amendments but to see whether we can work constructively, to ensure that we get the appropriate balance without unnecessary bureaucracy.

The Convener: Mr Pearson, the cabinet secretary has made an offer. Please wind up and tell me whether you wish to press or withdraw.

Graeme Pearson: I am not used to getting offers from cabinet secretaries.

The Convener: Well, you have one now.

Graeme Pearson: As you will know, I am relatively new to the committee. Before I decide whether to accept your offer and withdraw the amendment, I would like to understand whether or not we can engage in a discussion but lodge similar amendments at stage 3. If I am able to do that, I am more than happy to engage with the cabinet secretary.

I would like to put on the record my response to the cabinet secretary's allusion to the Auditor General's arrangement. It did not really reflect the

position that I presented to him. The cabinet secretary and his officials must understand that, because the significant changes that we are talking about will make such a big impact on the way that this service will be monitored, it is important that we arrange innovative oversight to ensure the good health of the service.

In that context, I am happy to take the matter forward by discussing it further, and we can revisit it at stage 3.

The Convener: I point out that it is up to the Presiding Officer to choose amendments for stage 3 and I do not want to pre-empt any decision that she might make in that regard—

Graeme Pearson: I understand that, convener.

10:45

The Convener: Nevertheless, I believe that you have made a number of important points and, subject to the cabinet secretary's response, I am sympathetic to taking this debate forward. Although I accept what the cabinet secretary has said, I think that there is room for compromise and would like the matter to be debated further if necessary. Of course, it might well not be necessary. I do not know what other members think—no one need say anything at this point—but putting something on the record might assist Mr Pearson if he requires to lodge an amendment at stage 3.

Graeme Pearson: Speaking as a relatively new committee member, I would hate to think that with the establishment of some form of subcommittee or ad hoc arrangement we would lose the necessary democratic oversight.

The Convener: You have made a very full submission on the record, the cabinet secretary has undertaken to discuss the issue further with you and you have heard what I have had to say on the matter. The choice of stage 3 amendments is up to the Presiding Officer, but it might be open to you to lodge an amendment at stage 3 if you are still dissatisfied.

Amendment 242, by agreement, withdrawn.

Amendment 243 not moved.

Section 94 agreed to.

Section 95—Transfer of constables, staff, property etc

The Convener: Amendment 212, in the name of the cabinet secretary, is grouped with amendments 213 to 215, 104, 216, 105 to 111, 254, 112 and 113.

Kenny MacAskill: The amendments in the group relate to the appointments of the SPA chair

and senior officers, and to arrangements for the transfer of constables and staff to the new police service. We all agree that the chief constable and other senior officers should be appointed at the earliest possible date. Amendments 212, 213 and 216 are key to facilitating that, in that they seek to allow the authority to be established and senior officers to be appointed in the transitional period before the police service is established.

Amendments 104 to 111 seek to amend schedule 4 to the bill to adjust the provisions relating to the transfer of senior officers who are not appointed to the offices of chief constable and deputy chief constable. They also respond to views that have been expressed by stakeholders, and seek to simplify the post-reform structure and to improve operational effectiveness by ensuring that the only officers who hold the ranks of chief constable and deputy chief constable are those who are appointed to those offices in the new police service. The amendments maintain the principle of no detriment by preserving senior officers' right to otherwise retain the terms and conditions of service that they held in their forces prior to their transfer to the new service.

Amendments 112 and 113 seek to make minor additions to schedule 4 to ensure that Scottish ministers can obtain the necessary information and assistance to meet property transfer schemes under the bill. Amendments 214 and 215 seek to make it clear that the provisions of schedule 4 relating to the transfer of constables to the police service on the appointed day apply equally to constables on relevant service.

Amendment 254, in the name of Lewis Macdonald, seeks to insert a new provision into schedule 4 to state that the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply to transfer of police staff to the police service. The TUPE regulations make provision for safeguards for employees who are affected by transfers of businesses or undertakings in the private sector. They do not legally apply to transfers in the public sector, so it would be neither appropriate nor necessary to apply them directly in this case. The Cabinet Office statement of practice on staff transfers in the public sector, known as COSOP, provides that "in circumstances where TUPE does not apply ... the principles of TUPE should be followed ... and the staff involved should be treated no less favourably than had"

TUPE

"applied".

I have made a clear commitment that staff transfers under the bill should result in no detriment to any individual and that COSOP will apply. Indeed, the bill goes a step further than COSOP by making statutory provision in

schedules 4 and 5 to ensure that relevant TUPE principles are legally binding in respect of transfers under the bill. Accordingly, I cannot support amendment 254 and invite the committee to support amendments 104 to 113 and 212 to 216.

I move amendment 212.

Lewis Macdonald: As the cabinet secretary has made clear, the intention behind amendment 254 and a later amendment is to ensure that TUPE principles apply, and clearly relates to police staff who are, at the moment, unsure of their prospects after reorganisation. At stage 1, I mentioned constituents of mine who are employees of Grampian Police but work on secondment with Aberdeenshire Council or BAA at Aberdeen airport. Like many other police staff around the country, they are uncertain of their prospects. Clearly, the intention in applying the principles should be to ensure that such people are protected. I welcome what the cabinet secretary said about that, as far as it went, and I will be content not to move amendment 254.

Alison McInnes: I acknowledge the need for transitional arrangements for the new police service to be enshrined in the bill, so I am content to support the bulk of the amendments in the minister's name. However, issues are raised by the relatively late introduction of the arrangements, particularly in relation to the make-up of the new police authority during the transitional phase. Will the cabinet secretary talk about the authority's scope for making significant decisions while it has only one member—the chair? I seek reassurance in that regard.

Kenny MacAskill: The approach simply allows us to take the necessary steps to recruit the chief constable, by having the chair in place. The likelihood is that the other members of the authority will be in place before there is a move towards dealing with significant matters, so I think that I can safely say that the only matter that the chair will deal with on their own is likely to be the appointment of the chief constable.

Amendment 212 agreed to.

Section 95, as amended, agreed to.

After schedule 3

Amendment 213 moved—[Kenny MacAskill]—and agreed to.

Schedule 4—Transfer of constables, staff and property etc

Amendments 214, 215, 104, 216 and 105 to 111 moved—[Kenny MacAskill]—and agreed to.

The Convener: Amendment 253, in the name of Lewis Macdonald, is grouped with amendments

217 to 220. If amendment 253 is agreed to, I cannot call amendments 217 to 219, because they will be pre-empted.

Lewis Macdonald: The cabinet secretary said that the amalgamation of police forces should be without detriment to the terms and conditions of those who work in the service. One aspect of police officers' conditions of service is that they can choose to remain in the police force area in which they joined up. Amendment 253 is intended to protect that.

As drafted, schedule 4 means that officers can be required to move anywhere in Scotland on promotion. The provision applies not just to the chief constable or deputy but to any promoted rank. I understand from conversations with the Scottish Police Federation that such a catch-all provision has not featured in previous amalgamations of police forces in Scotland and I see no reason why it should feature now, other than in relation to the most senior posts.

The issue is particularly important for police officers and communities outwith the central belt. People who—as Graeme Pearson said—are suspicious about the creation of a single service, because they fear that personnel and resources will be drained away from some parts of the country, will wonder why the bill makes it so easy to require officers to move from one part of the country to another. Amendment 253 would help to allay such suspicions.

Amendments 217 to 220, which are in John Lamont's name, offer a different way of solving the problem. I will be interested to hear what the cabinet secretary says about all the amendments in the group.

I move amendment 253.

John Lamont: Schedule 4 concerns the transfer of constables, staff and property following the establishment of a single police force. Constables will no longer be employed by their regional forces, but by the Scotland-wide single police force. Paragraph 9(2) will limit the transfer of constables to another area of Scotland, and provides that constables may not be transferred if the move

“would necessitate that constable moving home to a place outwith what was the area of the police force which has ceased to exist.”

However, paragraph 9(4) sets out three cases in which that limitation will cease to apply. It states:

“Sub-paragraph (2) ceases to apply to a constable if ... the constable—

- (a) is or becomes a senior officer of the Police Service,
- (b) is promoted to a higher rank,

(c) gives the chief constable written consent to”
the transfer.

The Scottish Police Federation has expressed concern about the provision because it would allow the transfer of an officer to anywhere in Scotland on promotion to a higher rank. The SPF argues that the provision could damage local policing and would act as a disincentive to new recruits due to the disruption that would be caused by relocation. The condition was not included when previous amalgamations took place in 1975.

The Scottish Conservatives believe that it is appropriate to allow the transfer to other parts of Scotland of a constable seeking promotion. Like people in other professions, constables should be given the choice to relocate in search of a promotion. However, the current wording of paragraph 9(4) of schedule 4 appears to allow the relocation of promoted constables at any future point following promotion. In particular, the use of the phrase “ceases to apply” appears to permit transfers to any other part of Scotland at any time if a constable is promoted after the establishment of the single police force. I hope that that is not the intention of the provision but, if it is, it would be disruptive to employees of the single police force, who would be liable to transfer to any part of Scotland at any time following promotion.

My amendment 253 seeks to clarify the position by replacing “ceases to apply” with “does not apply”. It would also reword paragraph 9(4)(b) of schedule 4 to clarify that a constable can be transferred only at the point of promotion and not at any future date.

John Finnie (Highlands and Islands) (SNP): I understand the Scottish Police Federation’s concerns regarding the provision. In many respects, it relates to the historical dimension of transfer being regarded as punitive. However, there is ample good practice on transfers. In addition, it should be remembered that transfers do not often come without cost, so concerns regarding transfers that would involve moving significant distances, particularly to remote Highlands and Islands areas, would be considerable. There is good practice in this regard and guidance from employment law. I do not support the amendments, but I wonder whether the point that underlies them could be reinforced in supplementary guidance to senior police officers.

The Convener: Are you tempted to provide supplementary guidance in that regard, cabinet secretary?

Kenny MacAskill: I have several comments to make on Lewis Macdonald’s and John Lamont’s amendments. Paragraph 9 of schedule 4 provides safeguards for officers who transfer to the new service. It provides that an officer must not be

assigned duties that would necessitate the officer’s moving home to a place that would have been in another force area in the current force structure. Paragraph 9(4) of schedule 4 provides for exceptions so that the safeguard applies until the constable

“is or becomes a senior officer ... is promoted to a higher rank”

or consents to waiving their right.

Amendment 253 would remove those exceptions and the effect would be that the police service could not require any constable who has transferred to the police service to move outwith their previous home area for the entire duration of their career in the police service, irrespective of the seniority of that constable or any change in circumstances that was brought about by a promotion.

Amendments 217 to 220 would narrow the exception in paragraph 9(4) relating to promotion so that the provision would apply only where the requirement to move outwith their home force area was a direct consequence of the promotion. The effect would be that promoted constables would retain the right to stay in their home force area unless the promotion itself entailed a move outwith the area. The bill provides the right balance between the rights of individual officers and the needs of the wider service, and it provides a proportionate approach to ensure flexibility for the police service to organise itself and deploy resources in the way that will best deliver policing across Scotland, without its being unduly restrained by the force boundaries of the obsolete eight-service structure.

I therefore cannot support Lewis Macdonald’s and John Lamont’s amendments, which would place unnecessary restrictions on the police service’s flexibility to deploy officers as they are required across Scotland. Even where the exceptions apply, I would expect that the police service would take a proportionate and sensible approach to deciding whether or when to require constables to move outwith their home areas—not least because of the cost to the service of relocating officers. Mr Finnie made that point and it has been made to me by the employers, if I can put it that way, through ACPOS and by the Scottish Police Federation.

I can understand that there are concerns within the ranks of the SPF, but I assure them that I am not aware of any drive or desire by senior management in the police to do anything other than have the right to transfer in the most exceptional circumstances, and we have sought to preserve that.

I am happy to undertake to discuss matters again with Mr Finnie and the SPF to see whether

we can deal with issues in regulations or in other ways. It seems to me that neither the SPF nor ACPOS wants what the amendments seek. We currently have sufficient protection in the bill in that regard, but there will be some instances in which there must be some redeployment and the bill will ensure that the right to do that will be available to senior officers.

The Convener: Given that, are your concerns assuaged, Lewis?

11:00

Lewis Macdonald: No, I am afraid they are not. Not for the first time this morning, the cabinet secretary has said that everything will be all right, that we should just leave it to the chief constable and that he will not do the wrong thing. I think that his response to Mr Finnie was that he is not aware of any desire, anywhere in the police service, to do the wrong thing. Of course he is not; we would not expect there to be a desire to do the wrong thing.

The point is that there is an existing set of terms and conditions. Given that Mr MacAskill described my amendment 253 and then went on to describe Mr Lamont's amendments, I expected, because of the way in which he approached them, that he would respond to them in different ways, whereas he simply said no to my amendment and no to Mr Lamont's amendments. I do not think that he has even offered to produce the supplementary guidance that Mr Finnie sought. I am very disappointed by that.

In the light of the different impacts of the different approaches, I am content to seek to withdraw amendment 253, but I will support Mr Lamont's amendments.

Amendment 253, by agreement, withdrawn.

Amendment 217 moved—[John Lamont].

The Convener: The question is, that amendment 217 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 217 disagreed to.

Amendment 218 moved—[John Lamont].

The Convener: The question is, that amendment 218 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 218 disagreed to.

Amendment 219 moved—[John Lamont].

The Convener: The question is, that amendment 219 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 219 disagreed to.

Amendment 220 moved—[John Lamont].

The Convener: The question is, that amendment 220 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 220 disagreed to.

Amendment 254 not moved.

Amendment 112 moved—[Kenny MacAskill]—and agreed to.

The Convener: Lest members think that I have nailed them to their chairs, I indicate that I intend to stop very shortly, when we reach the fire reform part of the bill. I say that because there is a certain anxiety around the table. We will have a 10-minute break, so just hang in there.

Amendment 113 moved—[Kenny MacAskill]—and agreed to.

Schedule 4, as amended, agreed to.

Section 96—Key police definitions

Amendment 114 moved—[Kenny MacAskill]—and agreed to.

Section 97—Meaning of other words and expressions used in Part 1

Amendments 115 to 118 moved—[Kenny MacAskill]—and agreed to.

The Convener: I invite John Finnie to say whether he intends to move amendment 175.

John Finnie: Which one is that?

The Convener: It is the one on the meaning of

“joint central committee of the Police Federation for Scotland”.

John Finnie: Forgive me; I thought that that amendment had already been voted on.

The Convener: No. We are talking about amendment 175, which was debated with amendment 169 on day 1. Do you want to pause and think? Do you know what you are doing?

John Finnie: Rarely. I will move the amendment.

Amendment 175 moved—[John Finnie].

The Convener: The question is, that amendment 175 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 175 disagreed to.

Amendment 119 moved—[Kenny MacAskill]—and agreed to.

Section 97, as amended, agreed to.

Section 98 agreed to.

Section 99—The Scottish Fire and Rescue Service

Amendment 176 moved—[John Finnie]—and agreed to.

The Convener: Thank you very much. We break until 11.15.

11:05

Meeting suspended.

11:15

On resuming—

The Convener: We are back again, refreshed.

Amendment 255, in the name of Lewis Macdonald, is in a group on its own.

Lewis Macdonald: We are now two weeks closer to the enactment of the bill than we were when we previously discussed the status of the new services, but I fear that there has been no sign of any further progress on the issue of VAT in the intervening fortnight.

When we debated a similar amendment on the police side two weeks ago, the cabinet secretary offered nothing new, other than a vague hope that things would sort themselves out. The hard reality is that it was not Treasury ministers who got it wrong or introduced some new catch that would trip up the Scottish ministers in their well-laid plan for new single services; it was, of course, Mr MacAskill who introduced the bill without having first made an arrangement or come to an agreement that would avoid the new services being liable for VAT. Hoping that other parties here or ministers in another Government would come up with a solution after the event has clearly not done the trick. Indeed, as the cabinet secretary confirmed when he previously spoke about the matter, the prospect of solving the problem that he had walked into was so poor that he introduced

the bill with VAT liability built into the financial projections.

That is just not good enough. VAT liability of £4 million every year is equivalent to an extra 27 firefighting appliances, for example, or whatever other extra provision the Scottish fire and rescue service could secure with the extra resources. This is not a minor problem; there has been a failure to resolve an issue that is at the very heart of the bill. It is not enough to say, as Mr MacAskill did when we previously debated a similar amendment, that the service cannot be treated as a local authority without having to build houses or run schools; in fact, it is possible for it to be treated as a local authority without taking on any such responsibilities. Strathclyde partnership for transport, for example, is covered in precisely those terms in legislation elsewhere, and it has no obligation to carry out general local authority functions.

We have made a proposition for the Government to respond to, so that it can tell us what it intends to do in order to secure 27 extra firefighting appliances or whatever else can be secured by resolving the issue, which is, as yet, unresolved.

I move amendment 255.

Kenny MacAskill: Amendment 255 states that the Scottish fire and rescue service

“is to be regarded as if it is a local authority”

in an attempt to exempt it from VAT. However, the amendment would not achieve that purpose. Simply stating that a body is a local authority does not automatically exempt it from VAT. Furthermore, the amendment as drafted would place all the duties and functions of a local authority—such as those to do with schools and housing—on the SFRS, which is clearly inappropriate.

The new streamlined governance and accountability arrangements that we are putting in place for the new services are key to delivering all the benefits of reform. I cannot support changes that would completely undermine the effectiveness of our new arrangements, even if they allowed us to reclaim VAT.

I can confirm that, after extensive discussion, HM Treasury has rejected our request that the SFRS and the Scottish police authority will be able to recover VAT. That will mean that the SPA and the SFRS will be the only police and fire and rescue authorities in the United Kingdom that are unable to recover VAT. Indeed, we understand that, following reforms in England and Wales, the new police commissioners will be entitled to recover VAT. That is manifestly unfair, and the

combined annual cost to the Scottish fire and police authorities amounts to around £25 million.

We think that the Treasury has based its decision on the fact that the new police and fire authorities will be funded by central Government. The Treasury's view in this case is in stark contrast with the view that it took in relation to academy schools in England, which are funded by central Government; in that case, the Treasury inserted a new section into the Value Added Tax Act 1994 to ensure that they could recover VAT. It also ignores the fact that the new police authority will continue to be able to receive funding from Scottish local authorities to pay the costs of agreed local priorities, which is at odds with the Treasury's policy as set out in its letter of 29 February to the Finance Committee. The Government's clear view is that the ability to obtain local funding provides a direct link with local taxation, which would satisfy the Treasury's policy as stated in that letter.

We have made every effort to co-operate with the Treasury to satisfy that policy and achieve a policy outcome for Scotland's police and fire services. We are ready and willing to lodge amendments to the bill to provide reassurance to the Treasury by expressly including the funding link in the bill and we have shared illustrative draft amendments with it. We are therefore disappointed that the Treasury has rejected our proposals, and that it has failed to provide any suggested amendments that would meet its requirements, or, indeed, any reasons for its decision.

The Treasury's decision is in effect a tax on Scottish public sector reform that has not been levied on similar reforms in the rest of the United Kingdom, as we contrast the police service of Scotland with the Police Service of Northern Ireland. The people of Scotland are being penalised twice: first, by the Westminster-imposed cuts and, secondly, by this additional VAT grab by the Exchequer.

However, we costed our outline business cases responsibly, on the basis that VAT would be payable, not because we consider that that approach is right but because it is the prudent approach that demonstrates competent management of our finances. The figures show that, even with the VAT payment, the single services will deliver estimated savings of £1.7 billion over 15 years.

It is a matter of great regret that our police service remains the only police service in the United Kingdom on which VAT is levied—the PSNI, and even police commissioners are not. Our fire and rescue service is equally encumbered, but organisations such as academy schools are given

VAT exemption. There seems to be some prejudice against what we are seeking to do.

Lewis Macdonald: The job of the cabinet secretary is not to tell us why another Government has got things wrong: the job of the cabinet secretary is surely to tell us why his Government has got it wrong. Why is the cabinet secretary telling the committee today that he has tried but failed to persuade the Treasury?

The bill was months in the preparation and years in the thinking. The Scottish Police Services Authority has been paying VAT since 2007. It is simply not good enough to say that the Government made a case and nobody listened. Surely these matters should have been resolved before we got to this stage, and that is the responsibility of the Scottish Government and not the responsibility of the Treasury. Indeed, it is not news to any of us because the rejection that the cabinet secretary has reported is in exactly the same terms as the letters that Unison received from the Treasury minister weeks and months ago, which were made available to the committee in evidence on the bill. It is simply not good enough to say that it is all the fault of the Treasury.

Apparently, the cabinet secretary has shared illustrative draft amendments to the bill with Treasury ministers. Would it not be a good idea to share those draft amendments with the committee? It is a shame that that was not done at stage 2, but I hope that the cabinet secretary will agree that it will be done in advance of stage 3.

The cabinet secretary said that being treated as a local authority will not make authorities exempt from VAT. That is an interesting statement in the context of the illustrative draft amendments—which I look forward to seeing—but it is not one that I accept. Of course, the point about the obligations being placed on a local authority is not correct, as I indicated in relation to Strathclyde partnership for transport. However, there is an opportunity for the cabinet secretary to come back with the illustrative draft amendments, prior to stage 3.

The Convener: I will let the cabinet secretary respond to those points on the record, because this is an important debate. I will let Lewis Macdonald back in afterwards, should he wish; otherwise, we will move on.

Kenny MacAskill: We are happy to share the illustrative draft amendments. However, amendment 255 would require the UK Government to agree to cover the services with the provisions of the Value Added Tax Act 1994. That comes back to the actions of the UK Treasury. When academy schools came along, it decided to exempt them. When police commissioners were formed, it decided to exempt

them, and the PSNI was always given an exemption. However, when the Scottish Government asks for exemption for the Scottish authorities, we are told no. We provide ways in which we could be flexible in order to meet the criteria that the Treasury has specified for schools and so on south of the border, but it says no. At the end of the day, Lewis Macdonald's position is the same as mine, but it still requires the Treasury's approval. It has said no to us whichever way we have tried to go.

I am happy to share the illustrative amendments with Mr Macdonald, but he would have to show me how we would manage to get the changes to the VAT act signed off by the Treasury.

Lewis Macdonald: The Treasury's actions are a response to the Scottish Government's proposals. I am baffled by the fact that the Scottish Government has got to this stage without making any proper provision to protect Scottish interests. That is disappointing.

However, I am pleased that the cabinet secretary has agreed to let us see the proposals that he has made to the Treasury as a way to move the issue on. Clearly, if we could support the proposals, we would welcome that, but we need to see what the draft amendments are and what impact they would have. That is sufficient to allow us to come back to the issue at stage 3, so I seek the committee's leave to withdraw amendment 255.

Amendment 255, by agreement, withdrawn.

The Convener: It would also be nice if the rest of us could see the illustrative amendments, not just Mr Macdonald, although I am sure that he would share them with us.

Amendment 120, in the name of the minister, is grouped with amendments 256 to 259, 121, 122, 260, 123 to 125 and 223.

Kenny MacAskill: Amendment 120 and the other amendments in the group deal with the composition of the SFRS. Amendment 120 draws a distinction between the appointment of the chair of the SFRS and the appointment of the other members. That reflects the distinct role of the chair and will enable the chair to be appointed earlier than the other members.

Amendment 121 will ensure that Scottish ministers can still modify the minimum or maximum number of members of the SFRS by order. Amendment 122 will enable rather than oblige the members of the SFRS to elect a member to act as deputy to the chairing member. As a result of amendments 120 to 122, the existing provisions in paragraph 5 of schedule 1A that relate to the chairing member and deputy are

no longer required. Amendment 124 will therefore remove paragraph 5 of schedule 1A.

Amendment 125 is a technical amendment to remove duplication in the bill around procedures for the removal from office of a member of the SFRS.

Amendment 223 deals with membership of the SFRS in the important months before the service goes live. The SFRS will ultimately have a chair and six to 10 members who are likely to take up their appointments at different times during the coming months. Amendment 223 will enable the chair and other members of the SFRS to act with full authority when undertaking important planning and preparation work, even when there are fewer than six other members. It is a transitional provision and so will apply only until such time as the SFRS becomes fully operational.

Amendment 256, in the name of Lewis Macdonald, seeks to ensure that at least half of the members of the SFRS are local authority members who have been nominated by COSLA. Amendment 257 would require ministers to have

“due regard to representation among members of SFRS of persons with knowledge of communities and fire and rescue services in all regions of Scotland.”

Similar wording was proposed during the previous committee meeting for the Scottish police authority, and the committee rejected it. I have been clear throughout that members of both bodies should be appointed solely on the basis of their skills and expertise through an open and fair public appointments process. We expect a wide range of people to put themselves forward for appointment to the SFRS, including local authority members, but it is essential that they all have equal status on the board and that they work collectively in the best interests of the whole of Scotland, not as representatives of particular areas of interest.

The service must also be flexible enough to change over time and committee members have suggested that there are likely to be changes to the appropriate proportion of local authority members at any particular time. Accordingly, I cannot support amendments 256 and 257.

In amendment 259, Jenny Marra has proposed that the SFRS should have a quota of at least 40 per cent of each gender, which she previously suggested for policing bodies. There was a good discussion on that at the previous meeting. I support the intention of promoting gender equality in all public bodies, but I do not agree that statutory quotas are the right way to go about it. The most important thing is that appointments provide the range of skills and expertise that the service needs. We want the service to reflect Scottish society, and that means taking account of

a range of issues, not just gender. The appointments process will be subject to the requirements of the Equality Act 2010. That is the most appropriate and comprehensive way of ensuring that all applicants are considered fairly.

Amendments 258 and 260, in the name of Jenny Marra, would require that at least one member of SFRS staff is appointed to the board from its inception. I fully expect the SFRS board and senior management to engage constructively with staff in the trade unions, but our position on members of the board being appointed for their skills and expertise, not because they represent a particular interest or area, has been made clear. I am also concerned that there could be conflicts of interest between the individual's role in representing staff and their role in acting collectively as a board member. That is why the bill disqualifies staff from becoming members of the board.

However, this is a new board and a new body and, as the board settles into its work, we will be prepared to consider a view from it about the potential benefits of allowing an employee to be a full board member. As the bill stands, changes to allow staff membership of the board would not be possible without primary legislation. I therefore lodged amendment 123, which will allow ministers to modify by order the disqualification criteria for membership of the SFRS board. That will mean that, if there is a strong case in future for those who are currently disqualified from being members of the board to become members of it, the disqualification criteria can be adjusted accordingly.

I invite the committee to support amendments 120 to 125.

I move amendment 120.

11:30

Lewis Macdonald: As the cabinet secretary said, amendment 256 is intended to ensure the engagement of local authorities and local communities through members of local authorities. The arguments that apply in this case are much the same as the arguments that we put in relation to the police authority. Those arguments remain valid, given that we are not yet decided on national oversight of the police service, but also given the absence of any specific local oversight of either the police or the fire service. The amendment therefore remains important.

Amendment 257 was not answered by the point that the cabinet secretary made when he talked about the importance of representing the whole of Scotland and not just particular interests. The purpose of amendment 257 is not to ensure the representation of particular interests but to ensure

that the fire authority board represents the whole of Scotland. Although I do not expect the cabinet secretary to support amendment 256, it is disappointing that he continues to resist amendments that are designed to ensure that there is geographical knowledge of the whole of Scotland on the part of board members, whichever sector of society they come from. That is important in itself, and that is the purpose of amendment 257.

Jenny Marra (North East Scotland) (Lab): Together, amendments 268 and 260 provide for at least one member of staff of the Scottish fire and rescue service to be included on the board of the service. Amendment 268 provides for a nominated member of staff to be included on the board, and amendment 260 removes from the bill the provision that explicitly disqualifies staff from becoming members.

I listened to the cabinet secretary explain his amendment, and I seek clarification from him of whether it covers the same point as amendment 260 and removes the disqualification of staff from becoming members. I ask him to say whether the amendments would have the same effect.

The Convener: Can I just correct you, Jenny? I think that you are talking about amendment 258 instead of 260. Amendment 260 is on the proportion of men and women. The other one is about members of staff.

Jenny Marra: Sorry, convener. I mixed up the numbers.

It is common practice among many of Scotland's other public service bodies to include staff representation in their governing structures. That includes various colleges, universities and national health service boards, NHS 24 being just one example.

To have an appropriately qualified member of staff on the board will ensure that there is an on-going and constructive dialogue between staff and the governing structures of the Scottish fire and rescue service as its operational priorities change and develop, and it will allow the concerns of the staff—those at the coalface of decisions by the chief fire officer—to be filtered and considered as the strategic direction of the service changes and develops. From the outset, it will foster confidence among staff in the new governance structures of the service and enhance the transparency and accountability of the chief fire officer to the members he or she will direct. That, in turn, will translate into a greater feeling of public confidence in the service as a whole.

Convener, I am sorry if I mixed up the amendment numbers, but I will continue. Amendment 259 seeks to ensure that neither the proportion of men nor the proportion of women

who are appointed to the board is less than 40 per cent. I reiterate the points that I made during the first part of the stage 2 consideration of the bill, when I spoke to a similar amendment—as the cabinet secretary has pointed out—relating to the boards of the new single police service. As with representation in the police service, there is a clear need to redress the gender imbalance in the governing structures of Scotland's fire and rescue service. Up until the most recent election, Scotland's fire boards consisted of 146 members of whom 114 were male and just 32 were female. That left the gender balance at 78 per cent male and just 22 per cent female. I still feel strongly that, when opportunities such as the bill arise to redesign our public services as we want them to look in 20 years' time, we must harness progressive opinion that seeks to overcome the inequality that we all want to remove from Scottish society.

Kenny MacAskill: Our amendment 123 enables the modification by order of categories of people who are disqualified if a strong case is made. Amendment 260, in the name of Jenny Marra, would remove one of those categories relating to staff, but I think that we should see how matters develop. The situation could be dealt with by way of subordinate legislation in due course rather than in primary legislation, and I think that it would be better to see how things work out.

Amendment 120 agreed to.

Amendment 256 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 256 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 256 disagreed to.

Amendment 257 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 257 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)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 257 disagreed to.

Amendment 258 moved—[Jenny Marra].

The Convener: The question is, that amendment 258 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)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 258 disagreed to.

Amendment 259 moved—[Jenny Marra].

The Convener: The question is, that amendment 259 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)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 259 disagreed to.

Amendments 121 and 122 moved—[Kenny MacAskill]—and agreed to.

Amendment 260 moved—[Jenny Marra].

The Convener: The question is, that amendment 260 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)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 260 disagreed to.

Amendments 123 to 125 moved—[Kenny MacAskill]—and agreed to.

The Convener: Amendment 261, in the name of Lewis Macdonald, is in a group on its own.

Lewis Macdonald: The amendment follows the revelation that the new chief officer of the fire and rescue service is to be paid a record sum of £165,000 a year—more than any previous chief fire officer in Scotland has been paid and several times the salary of many of the members of staff who will shortly lose their jobs as the process rolls forward. The chief fire officer of Strathclyde Fire and Rescue is already exceedingly well paid, receiving £155,000 a year, which is more than either the First Minister of Scotland or the Prime Minister of the United Kingdom receives.

There is also huge controversy over the practice of chief officers retiring, gaining access to a lump sum and promptly returning to the service at full pay to do much the same job as they did before. That sends the wrong message at a time when so many other people are struggling with austerity measures of one kind or another. Ministers might well argue that a larger service requires a higher salary, but that is hardly in tune with the current hit on pay and pensions that so many others in Scotland's public service are taking. Amendment 261 does not seek to overturn the decision that ministers have made—clearly, we do not want to delay the appointment at all—but it will require ministers to come to Parliament and give us the reasons for their decision.

I move amendment 261.

Kenny MacAskill: Although I can see and support the intention behind amendment 261—after all, as the SFRS will be a significant public

body in Scotland, it is quite right that its chief officer's terms and conditions of service be open and transparent—I do not consider it necessary for ministers to make a statement about those terms and conditions to Parliament. Accordingly, I cannot support the amendment. As the committee might be aware, the first chief officer post was advertised on 1 June, partly in response to requests from the committee for an early appointment. The job advertisement, which is available on the Scottish Government website, sets out the main terms and conditions of service, including salary, and I am happy to send a copy to the committee if that would be helpful. Since 2010, all Scottish public bodies have been required to list on their websites the names and salary details of members of their senior leadership team and to update that list twice a year. I expect the same to apply to the SFRS senior team so that there is on-going transparency about the salaries of senior officers and staff.

As a result, I cannot support amendment 261.

Lewis Macdonald: I was giving the cabinet secretary the chance to make an informal statement about his reasons; I am sad to say that he has not taken it and has not told us why the salary of the chief fire officer has to be so much higher than that of any other public servant in a comparable post. As I do not accept his response as sufficient explanation, I will press amendment 261.

The Convener: The question is, that amendment 261 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 261 disagreed to.

The Convener: Amendment 262, in the name of Graeme Pearson, is grouped with amendments 126, 128, 129, 221, 222, 136 and 271.

Graeme Pearson: Amendment 262 seeks to ensure that, as we have previously discussed, we get transparency in how public bodies conduct their business. I will not rehearse all the arguments that have been made at previous

meetings and I have no comment to make on the other amendments in the group.

I move amendment 262.

Kenny MacAskill: I would expect the SFRS to be open and transparent and to engage with the public, but amendment 262 would mean that all information—even on sensitive issues such as fire fatalities or criminality—would have to be made public. Furthermore, although the SFRS will be covered by freedom of information legislation, the amendment would compel the publication of all correspondence between the service, local authorities, the Convention of Scottish Local Authorities and Scottish ministers, which would inhibit the frank discussions that those bodies need to have to deliver the best service for communities.

Amendment 262 would also place an unnecessary burden on the service to produce an annual engagement strategy. As I said, I expect the SFRS to be open and transparent. Since our discussion on the police part of the bill on 29 May, I have written to David McLetchie indicating my intention to lodge an amendment at stage 3 to ensure that the Scottish police authority meets in public, but with appropriate protections for sensitive information, and that it publishes its agendas and papers, but with the necessary safeguards in place for sensitive information. I will lodge a similar amendment for the SFRS.

Amendment 126 also relates to those issues and seeks to complement and supplement the range of statutory obligations that the bill already places on the SFRS with regard to transparency, accountability and governance by placing the body under an additional broader duty to go above and beyond those obligations and, for example, to make its decision making more open and inclusive than is required by statute.

Amendments 128 and 129 are minor technical amendments that seek to avoid any duplication in the bill with regard to auditing procedures, and amendments 221 and 222 deal with consultation arrangements for the SFRS's first and subsequent strategic plans. COSLA suggested that the approach to the body's strategic plan should be more in line with the approach to involving local authorities and others in the development of the strategic police plan.

Amendment 221 meets that aim by obliging the SFRS to obtain views from local authorities and others on what the first strategic plan should contain. It will also ensure that local authorities and others will be sent copies of the draft plan to comment on, and it will place a duty on SFRS to have regard to those comments in preparing the plan.

Amendment 222 will have the same effect in relation to subsequent strategic plans.

Amendment 136 will place an obligation on the SFRS to give a copy of its annual report to the Scottish ministers.

Amendment 271, in the name of Lewis Macdonald, would oblige the SFRS to include information on average staff numbers in the annual report. That seems to be unnecessarily prescriptive. The provisions that relate to the annual report are purposely broad in order to give the SFRS the flexibility to include the most relevant and useful information. Of course, the SFRS might choose to include information about staff numbers, but I cannot support the prescriptive approach of amendment 271.

I ask the committee to support amendments 126, 128, 129, 136, 221 and 222—all of which are in the name of Roseanna Cunningham.

11:45

Lewis Macdonald: The cabinet secretary described the approach in amendment 271 as “prescriptive”, but the amendment is simply intended to strengthen confidence by ensuring that there is transparency around the important issue of staffing levels in the fire service, now and in the future. I would have been happy if the cabinet secretary had not resisted the amendment, but there we are. We rehearsed the issue in some detail in the context of police staff, and it arises in the context of the fire service, so I intend to move amendment 271.

The cabinet secretary described amendments 128 and 129 as “minor technical amendments”, but it appears that they will remove accountability to ministers and the Parliament in relation to the service’s accounts. If that is the case, it is regrettable. Can the cabinet secretary reassure me that the amendments are of a minor and technical nature and will not substantially reduce the accountability of the service to the Parliament or to the Scottish ministers?

Kenny MacAskill: The amendments will not do that. SFRS will be covered by the Public Finance and Accountability (Scotland) Act 2000, so there will be that protection. As I said, amendments 128 and 129 are minor and technical.

Graeme Pearson: I welcomed what the cabinet secretary said about responding to David McLetchie, and his indication that he will approach the fire service environment in a similar vein. The cabinet secretary has expressed a commitment to openness and transparency, but he will be aware that attempting to deliver such openness and transparency in the current arrangements can be frustrating—hence amendment 262, which would

have tried to force the delivery of openness in government in a modern society.

On amendment 271, in the name of Lewis Macdonald, I had hoped that the cabinet secretary would acknowledge how important the staffing issue is—not only to the general public but to the staff themselves. The cabinet secretary’s acceptance of amendment 271 would have been regarded as a healthy and welcome move.

I press amendment 262.

The Convener: The question is, that amendment 262 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 262 disagreed to.

Amendment 126 moved—[Kenny MacAskill]—and agreed to.

The Convener: Amendment 263, in the name of Jenny Marra, is grouped with amendments 264, 127, 265, 130, 266, 267, 274 and 163.

Jenny Marra: Amendment 263 would enable supported businesses to be awarded contracts for supply, maintenance and replacement of fire uniforms, through a statutory obligation under article 19 of “Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts”. I am grateful to the cabinet secretary for his correspondence on the matter and for his sympathy for the principle behind amendment 263.

I want to address concerns that were expressed when a similar amendment was lodged in relation to the police service. The cabinet secretary said in correspondence that the approach would be too restrictive in its application, because it would deny the right of any business other than a supported business to enter into contracts for supply, maintenance and replacement of uniforms. However, that would not be the effect of amendment 263. It would place an obligation on

the fire service to use article 19 businesses as the first choice in supply, maintenance and replacement of uniforms, but if the supported businesses could not supply the contract, other businesses would be invited to tender as usual. The legal reading of the amendment provides for that arrangement, so it would not be restrictive and exclude commercial businesses.

The cabinet secretary has corresponded with me during the past couple of days and said that amendment 263 says that

“it must reserve the right to participate to ... supported businesses”.

Indeed, that is the express intention of amendment 263. If I was to propose that the wording be “may reserve the right”, it would just reiterate the Government’s policy that is already within the Public Contracts (Scotland) Regulations 2012 and there would be no greater effect of including the measure in the bill. If we use the wording “must reserve the right”, the fire service will be obliged to consider awarding the contracts for uniforms to supported business and then to open the contracts to tender from all other commercial businesses.

I also appreciate that the cabinet secretary’s correspondence has cited the procurement framework and the procurement bill that will be introduced later this year, but I suggest that agreeing to amendment 263 would be an express way of supporting the Government’s intention to give more business to supported businesses and to support the workers in Scotland.

Amendment 265 seeks to put in place a non-exhaustive list of general functions of the SFRS by amending the Fire (Scotland) Act 2005. The rationale behind the amendment is the need to acknowledge the variety of services that the fire service will provide. As the service has evolved, it is important for the bill to reflect exactly how it will contribute to delivering the Government’s national outcomes through its functions.

I move amendment 263.

Lewis Macdonald: There are, in the group, four amendments in my name. Amendment 264 would introduce a requirement for ministers to approve any decision to let a contract in the future operation of the fire service. It is open to ministers to suggest ways in which that could be limited. In our previous debate on the matter, in respect of the police, the cabinet secretary said that that could result in ministerial permission being required for the ordering of paperclips. That is clearly not the case, unless ministers choose not to lodge any further amendments on the matter.

Amendment 264, along with amendments 266 and 267, is intended to ensure that the fire service is not in the future faced with the prospect of

contracting out or privatisation. That is a simple provision that the cabinet secretary has said he supports in principle, so I invite him to support the amendments.

Amendment 274 seeks to introduce a provision that is unlike those that we have discussed before. It would extend the responsibility of the SFRS beyond the shoreline to include the marine area. The reason for that is simply to respond to circumstances. Until very recently, the Maritime and Coastguard Agency of the United Kingdom was responsible for fire-fighting offshore and on vessels that are within UK waters. That responsibility has been typically arranged through agreement with Scottish fire services. Amendment 274 seeks to probe the Government’s intentions for the future responsibility for fire-fighting at sea and to ensure that no gap is left inadvertently in statutory or practical responsibility for fire-fighting either on offshore installations which, as we know, are extremely sensitive and hazardous places for people to work, or on vessels in Scottish waters.

Kenny MacAskill: As Ms Marra mentioned, she and I exchanged correspondence on amendment 263 just yesterday and officials from the Scottish Government’s procurement directorate provided further advice to her on the relevant procurement regulations, not least the fact that they state that a contracting authority “may”—rather than “must”—“reserve the right to participate”

to a supported business. That approach strikes the right balance between giving supported businesses a strong opportunity to win contracts and giving contracting authorities such as the SFRS flexibility to meet their needs and to secure value for money for the public purse. The new service might, where appropriate, choose to reserve contracts—and not just those for uniforms—for supported businesses, but it should also, where necessary, be able to open contracts to a broader range of suppliers in order to secure uniforms at the right cost and of the right quality.

A new framework contract under article 19 is currently out to tender by the Scottish Government and will be up and running in time for day 1 of the new service. That framework will provide a more flexible, open and transparent procurement route that will also allow the new service to select a range of goods and services—not just procurement of uniforms—from a pre-selected list of supported businesses. It will also provide a more efficient means for supported businesses to market other services. Accordingly, I do not feel that I am in a position to support amendment 263.

Jenny Marra’s amendment 265 seeks to introduce a new overarching general function for SFRS. The Government’s position is clear: the function that is set out in the Fire (Scotland) Act

2005 and the Fire (Additional Function) (Scotland) Order 2005 were debated and agreed by Parliament in the very recent past and remain fit for purpose. I am aware that some stakeholders have called for the introduction of a new function along the lines that have been proposed by Ms Marra in the belief that the existing functions require to be broadened to reflect the full range of services that the service provide. However, I am not persuaded that such a move is necessary or prudent.

Amendment 265 would result in an extremely wide-ranging function and would impose duties on SFRS to save lives, protect property and render humanitarian services across Scotland in all circumstances and without limit or constraint. That aim is neither sensible nor achievable. There is nothing to suggest that the existing statutory functions fail in any way to support the fire and rescue service in undertaking the wide prevention and response role that it has developed.

Furthermore, through the additional functions order, the legislative framework already provides sufficient flexibility to adjust or expand existing functions in the future if necessary without the need for primary legislation. The functions are underpinned by the “Transitional Fire and Rescue Framework for Scotland 2012” and will be put in context and further strengthened by the inclusion of a new purpose for SFRS that will have a clear focus on prevention and community safety, to which all stakeholders, including the Fire Brigades Union and SFRS, will have the opportunity to offer input. I welcome comments in the Justice Committee’s stage 1 report and evidence from the chief inspector of fire and rescue authorities that support our view that the framework provides a suitable vehicle for any clarification or further guidance on SFRS functions without the need for legislation. I therefore cannot support amendment 265.

With regard to Lewis Macdonald’s amendments, I suggest that adopting the definition of “Scottish marine area” in amendment 274 would significantly expand the scope of SFRS’s statutory functions and would result in significant and disproportionate resource implications. I remain of the view that the position that is taken in the bill is the better and more proportionate approach; for a start, it will maintain the existing approach under the 2005 act by defining the low-water mark as the seaward boundary up to which SFRS is required to respond to incidents. Although SFRS will have the power to exercise functions beyond that point, that approach will ensure that its actions are discretionary and based on risk assessment rather than being mandatory in all cases. I cannot support amendment 274.

If agreed to, amendments 266 and 267 would remove sections 109 and 110, the purpose of which is to update sections 35 and 36 of the 2005 act, which already provide powers to accept assistance and delegate functions to third parties. Sections 109 and 110 are also intended to add new safeguards to ensure that those powers cannot be exercised in the future unless the chief officer is satisfied that the third party has the necessary knowledge, skills and expertise to carry out the function. I cannot support any move to remove powers for SFRS to accept assistance from or to delegate functions to third parties, or to remove the new safeguards that will provide protection when the SFRS does that.

Arrangements with third parties play a vital role in the collaborative delivery of fire and rescue services—with the support, for example, of mountain rescue or cave rescue teams—and allow aspects of performance of functions to be delegated to specialist agencies. In the context of a single service, it is all the more important to ensure that powers to accept assistance or to delegate functions be exercised only where the chief officer is satisfied that the third party in question has sufficient knowledge, skills and expertise to perform the function. This additional requirement strengthens the assistance provisions, building on protections that should ensure that high levels of service are maintained and public safety is not jeopardised. I therefore cannot support amendments 266 and 267.

12:00

I appreciate that with amendment 264 Lewis Macdonald is seeking to prevent any privatisation or contracting out of SFRS services. However, the fact that there is no limitation on the requirement that he proposes for SFRS to obtain ministers’ agreement before entering into any contract will severely constrain the service’s ability to go about its daily business. I certainly do not want every contract for stationery or diesel to come across my desk.

With regard to the Government amendments in the group, amendment 127 seeks to make it clear that the SFRS can exercise its power to form or promote companies only with Scottish ministers’ consent. That will ensure that the SFRS can establish a company only if there is sound reason to do so and if the company’s activities are consistent with SFRS’s core functions.

Amendments 163 and 130 seek to repeal sections 16(5) and 16(6) of the Fire (Scotland) Act 2005 to allow SFRS to make a profit from providing services such as hiring out vehicles or premises, providing training to individuals outwith the SFRS or rescuing animals. In line with the 2005 act, the SFRS will not be able to charge for

carrying out its core duties such as extinguishing fires, protecting life or protecting property in the event of fire. I ask the committee to support amendments 127, 130 and 163.

Jenny Marra: I appreciate that the cabinet secretary and the Scottish Government have a wider procurement strategy, but I reiterate that amendment 263 deals with a specific need of supported workplaces that produce uniforms and which are currently under threat of closure from the United Kingdom Government. The cabinet secretary might well want to do all that he can to support those workers and to use the powers in his grasp to bring those contracts back to Scotland, but this one simple measure could easily save the jobs of 43 workers in Dundee. The proposal is within the law—by which I mean article 19—and it is within the power of the cabinet secretary and committee members to save those jobs by supporting the amendment. I urge the committee to do so.

The Convener: The question is, that amendment 263 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 263 disagreed to.

Amendment 264 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 264 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 264 disagreed to.

Amendment 127 moved—[Kenny MacAskill]—and agreed to.

Amendment 128 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 128 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

Against

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

Abstentions

McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 5, Against 2, Abstentions 1.

Amendment 128 agreed to.

Amendment 129 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 129 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

Against

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

Abstentions

McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 5, Against 2, Abstentions 1.

Amendment 129 agreed to.

Section 99, as amended, agreed to.

Before section 100

Amendment 265 moved—[Jenny Marra].

The Convener: The question is, that amendment 265 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 265 disagreed to.

Sections 100 to 107 agreed to.

Section 108—Charging

*Amendment 130 moved—[Kenny MacAskill]—
and agreed to.*

Section 108, as amended, agreed to.

Section 109—Assistance

Amendment 266 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 266 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 266 disagreed to.

Section 109 agreed to.

Section 110—Delegation

Amendment 267 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 267 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 267 disagreed to.

Section 110 agreed to.

Section 111 agreed to.

Section 112—Strategic plan

*Amendments 221 and 222 moved—[Kenny MacAskill]—
and agreed to.*

Section 112, as amended, agreed to.

Section 113—Local fire and rescue plans

The Convener: Amendment 244, in the name of Alison McInnes, is grouped with amendments 268, 269, 131 to 135 and 270.

Alison McInnes: Amendment 244 reflects amendment 173 to part 1 of the bill, which we considered earlier. The intention is to place greater emphasis on the role that a local authority will have in determining the priorities and objectives of the SFRS in its area. As I said in relation to amendment 173, I do not doubt the intent behind the current wording of the provisions, but I am concerned that the use of the word “involve” remains open to interpretation. Amendment 244 would make it clear that the priorities and objectives must be developed by the SFRS acting in concert with each local authority.

I am largely happy to agree to the other amendments in the group, although I would welcome some clarification from the cabinet secretary on amendment 135, which changes the language. Instead of a local authority having the right to make representations or observations, or to offer advice or recommendations, it will simply be able to provide feedback. I would be interested to hear whether the minister thinks that that risks limiting local authorities’ ability to monitor and shape the work of the SFRS in their areas.

I move amendment 244.

Lewis Macdonald: As Alison McInnes indicated, the debate on these amendments is, to a degree, a mirror image of this morning’s first debate, except that, in this case, the amendments relate to the fire service. My amendments make

provision for improvements in the transparency and accountability of the fire service through the local fire and rescue plans. They also seek to resolve the question of what should happen when there is a conflict or a difference of opinion between a local authority and the local senior officer in the fire service, which amendment 270 covers.

Like Alison McInnes, I was struck by amendment 135. The rest of the Government's amendments in the group are fairly uncontentious, but amendment 135 appears to dilute the existing provision in the bill, which would be a step in the wrong direction. I am inclined to think that it would be a retrograde step.

Kenny MacAskill: Although I understand the motivation for amendment 244, I believe that the bill already delivers a framework for local collaboration and partnership. It gives the local authority clear decision-making powers to approve local plans, which—under new section 41E(2)(a) of the 2005 act, for which section 113 provides—must include the

“priorities and objectives for SFRS in connection with the carrying out in the local authority's area of SFRS's functions.”

In that way, the bill supports continuing efforts by local senior officers and local authorities to work collaboratively to improve shared outcomes. That is more pragmatic than creating a statutory requirement for the meeting of minds, which is why I cannot support amendment 244.

Amendments 268 and 269 create duties for the provision of additional information to local authorities on resource allocation and workforce deployment. The bill already enables local authorities to obtain reports and information from the local senior officer on the carrying out of SFRS functions in their area. That can include information on the allocation of resources and the deployment of staff in that area. I consider that approach to be more helpful than prescribing the duties that are proposed in the amendments.

I want to make three points. First, amendment 268 would place a statutory duty on the future chief officer to provide information on matters that are not within his or her gift, as they are the responsibility of the existing authorities' boards and chief fire officers.

Secondly—this applies to both amendments 268 and 269—we expect there to be a core allocation of resources and staff in each local authority area. However, one of the benefits of a single service is the opportunity to provide more equal access to specialist support that is organised on a national basis but is accessible to all communities in Scotland. Such a resource may not be easily attributable to individual local authority areas.

Thirdly, the bill already requires local fire and rescue plans to set out how the SFRS proposes to deliver priorities and objectives. That is a far more meaningful requirement, which focuses on the means by which outcomes will be delivered, than a requirement for a head count of personnel who are expected to be employed in a local area, as proposed in amendment 269.

For those reasons, I cannot support amendments 268 and 269, and I am not convinced about the need for amendment 270, as the bill already makes the SFRS responsible for ensuring that adequate arrangements are in place for the carrying out of SFRS functions in each local authority area. Local senior officers are SFRS employees, and local authorities can contact the SFRS concerning their conduct, performance or any other aspect of SFRS functions without the need for statutory provisions.

Government amendments 131 to 135 make relatively minor adjustments to the provisions to improve the operation of local authority scrutiny of the SFRS. We have already discussed corresponding police provisions.

Amendment 131 will amend new section 41E(3) of the 2005 act, to insert express reference to representatives of SFRS employees. That will ensure that local senior officers must consult such representatives when they are preparing local fire and rescue plans.

Amendment 132 will amend new section 41H of the 2005 act to make it clear that the duty on the SFRS to provide a local authority with information or reports that relate to the carrying out of SFRS functions in that authority's area may include reports that are related to the local fire and rescue plan.

Amendment 133 will ensure that feedback is provided by the local authority to the local senior officer, and amendment 134 will make a minor technical change.

Amendment 135 will adjust provisions that relate to the monitoring role of local authorities. The focus remains on enabling local authorities to

“monitor and provide feedback to SFRS on the manner in which SFRS carries out its functions in the authority's area”.

I do not consider that the amendment will limit the opportunities for local authorities to scrutinise local services—Alison McInnes was worried about that. It is intended only to ensure consistency of drafting with the equivalent police provisions in section 46(2). It responds to stakeholders' concerns that have arisen from a different drafting about the policy intent being different across the police and fire services. I give Alison McInnes the assurance that the amendment is meant simply to get a

shared drafting mechanism, and not to undermine what would be provided.

I ask the committee to support amendments 131 to 135, in the name of Roseanna Cunningham.

The Convener: We will find out whether the cabinet secretary has reassured Alison McInnes on amendment 135.

Alison McInnes: I am not greatly reassured about it, and will disagree to it. I will press amendment 244.

The Convener: The question is, that amendment 244 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 244 disagreed to.

Amendment 268 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 268 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 268 disagreed to.

Amendment 269 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 269 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 269 disagreed to.

Amendments 131 to 135 moved—[Kenny MacAskill].

12:15

The Convener: Does any member object to a single question being put on the amendments?

Members: Yes.

The Convener: Can I put a single question on amendments 131 to 134?

Members: Yes.

Jenny Marra: No. Yes.

The Convener: I understand—it has been a long morning.

Amendments 131 to 134 agreed to.

The Convener: The question is, that amendment 135 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

Against

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

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 135 agreed to.

The Convener: There was no jiggery-pokery there, Alison. I am just trying to move us along.

Amendment 270 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 270 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 270 disagreed to.

Section 113, as amended, agreed to.

Section 114—Annual report

*Amendment 136 moved—[Kenny MacAskill]—
and agreed to.*

Amendment 271 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 271 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 271 disagreed to.

Section 114, as amended, agreed to.

Sections 115 and 116 agreed to.

Section 117—Inspectors of SFRS

The Convener: Amendment 272, in the name of Graeme Pearson, is in a group on its own.

Graeme Pearson: Amendment 272 addresses the current provision in the bill that reports should be laid before Parliament if they relate to matters mentioned in section 43B(3)(a) and (b). I see no reason why the provision should be limited in that regard. I would be grateful to hear the cabinet secretary's views on the matter.

I move amendment 272.

Kenny MacAskill: I am happy to support amendment 272.

The Convener: My goodness. Things are turning out nice.

Amendment 272 agreed to.

*Amendment 137 moved—[Kenny MacAskill]—
and agreed to.*

Section 117, as amended, agreed to.

After section 117

The Convener: Amendment 245, in the name of John Lamont, is in a group on its own. John has one of his own—this is getting exciting.

John Lamont: Thank you, convener. I hope that I meet your excitement.

Amendment 245 seeks to tackle an issue that was the subject of petition PE1254, which was closed in September 2011. The petition called for an amendment to section 51 of the Fire (Scotland) Act 2005 to allow special constables to be employed by a fire and rescue authority. In England and Wales, a similar provision exists in the Fire and Rescue Services Act 2004, but special constables are not deemed to be members of the police force there. In Scotland, special constables hold the same powers. The result is that in England and Wales, special constables are allowed to act as fire officers but in Scotland they are not.

PE1254, by Mark Laidlaw, was closed on the grounds that the Scottish Government would consider the issue as part of the wider consultation on police and fire reform. Although the issue was included in the consultation on the bill, the Government has taken the view that to allow special constables to act as fire officers in the new single police force could risk creating a conflict of interest.

Amendment 245 would permit the employment of special constables as fire officers. There are four reasons why such an arrangement would be desirable. First, it would allow public-spirited people to have more than one role, which would be particularly useful in rural communities. Secondly, it would bring special constables in line with their counterparts in England and Wales, who are currently allowed to be fire officers. Thirdly, the skills of a special constable could be useful for fire officers and vice versa. For example, a fire officer attending what may turn out to be a crime scene could benefit from police training on evidence protection. Lastly, the petition gained the support of a number of organisations. It attracted the support of the Chief Fire Officers Association in Scotland, the Fire Officers Association and the Scottish Police Federation.

I move amendment 245.

The Convener: It is my turn to speak because this relates to a constituent of mine from Galashiels, Mark Laidlaw. I had dealings with him on this important issue when he lodged his petition. I hope that the cabinet secretary will look favourably on it, because there is a lacuna in the law that prevented special constables from being in the fire service. The fact that this issue has been raised shows the value of the Public Petitions Committee and the value of an individual being able to lodge a petition.

Roderick Campbell: It is a sensible proposal.

Kenny MacAskill: I fully understand the point made by the convener and by Mr Lamont, as preventing special constables from being in the fire service can have an effect on rural communities. As Mr Lamont correctly pointed out, the Parliament passed the original prohibition in order to deal with conflicts of interest—long before I became Cabinet Secretary for Justice. However, it appears to the Government that this could be managed by the chief constable or the chief fire officer considering the individual circumstances. If the committee is happy with the amendment, so are we.

The Convener: The committee is happy and Mr Laidlaw will be happy. John, do you wish to press the amendment?

John Lamont: No—yes, I wish to press the amendment, sorry.

The Convener: There was a hesitancy there. No wonder you are blushing. We are all getting tired.

Amendment 245 agreed to.

Section 118 agreed to.

Schedule 5—Transfer of staff, property etc

The Convener: Amendment 273, in the name of Lewis Macdonald, is grouped with amendments 138 to 140.

Lewis Macdonald: We rehearsed the arguments for this amendment in relation to the application of the conditions of TUPE to police staff. The intention behind amendment 273 is to extend their application to those who work in the fire service. The cabinet secretary gave a clear assurance as to how he will ensure that the effective conditions of TUPE will apply in relation to police staff. I would welcome a similar assurance from him in relation to the fire service. In the meantime, I move amendment 273.

Kenny MacAskill: Amendment 273 seeks to insert a new provision into schedule 5 to state that

the TUPE regulations will apply to the transfer of fire and rescue service to the SFRS.

As we discussed earlier in relation to police staff, it is neither appropriate nor necessary to make provision in the bill to apply TUPE regulations directly. I have made a clear commitment, which I make again now for fire and rescue staff, that staff transfers under the bill should result in no detriment to any individual and that the Cabinet Office statement of practice on staff transfers in the public sector will apply. Indeed, the bill goes a step further than COSOP by making statutory provision in schedules 4 and 5 so that relevant TUPE principles are legally binding in respect of transfers under the bill. For those reasons, I cannot support amendment 273.

Government amendment 138 is a minor technical amendment to ensure consistent use of the term “transfer day” in the schedule. Amendments 139 and 140 are technical amendments that ensure that all relevant information is provided—in the correct format—for the transfer schemes.

I ask the committee to support amendments 138 to 140 in the name of Roseanna Cunningham.

Lewis Macdonald: I have no difficulty with the Government amendments.

In relation to amendment 273, the cabinet secretary has put significant assurances on the record. I wish to consider those assurances in consultation with staff representatives between now and the next stage of the bill. On that basis, I withdraw amendment 273.

Amendment 273, by agreement, withdrawn.

Amendments 138 to 140 moved—[Kenny MacAskill]—and agreed to.

Schedule 5, as amended, agreed to.

After section 118

Amendment 223 moved—[Kenny MacAskill]—and agreed to.

Section 119 agreed to.

Section 120—Subordinate legislation

The Convener: Amendment 141, in the name of the cabinet secretary, is grouped with amendment 246.

Kenny MacAskill: Amendment 141 responds to a point that the Subordinate Legislation Committee raised. The amendment makes orders under section 122 subject to the affirmative procedure when they make textual amendments to primary legislation, and subject to the negative procedure otherwise.

Amendment 246 amends section 120 so that an order that is made under paragraph 1 of schedule 5 to appoint a day for the transfer of joint fire and rescue board staff to the Scottish fire and rescue service is subject to no parliamentary procedure. That is in line with usual practice. The amendment will bring the approach for the transfer of the fire and rescue service into line with the procedure for the equivalent transfer of staff and constables to the police service of Scotland.

I ask the committee to support amendments 141 and 246. I move amendment 141.

Amendment 141 agreed to.

Amendment 246 moved—[Kenny MacAskill]—and agreed to.

Section 120, as amended, agreed to.

Sections 121 to 123 agreed to.

Schedule 6—Minor and consequential amendments

The Convener: Amendment 224, in the name of the cabinet secretary, is grouped with amendments 142, 225 to 232, 143, 144, 147, 150 to 158, 233 to 240, 159 to 162, 164 and 241.

Kenny MacAskill: This is a group of minor and consequential amendments to other legislation. I will not go through all the amendments, but I am happy to provide more detail on any on which members have questions. I ask the committee to support all the amendments in the group.

I move amendment 224.

Alison McInnes: I think that I am looking at the right group. I am interested in the subject matter of amendments 227 to 232, which are included in the group of minor and consequential amendments, given that they relate to intrusive surveillance. I seek confirmation from the cabinet secretary that the amendments merely reflect existing practice.

Kenny MacAskill: Yes. The amendments make changes to the Regulation of Investigatory Powers (Scotland) Act 2000, which provides arrangements for the authorisation of surveillance activities, in particular intrusive surveillance for the purposes of preventing or detecting serious crime. At present, for police forces in Scotland, those forms of surveillance can be authorised only by a chief constable. Under a single police service, we do not consider that the single chief constable with a single deputy would have sufficient capacity or provide sufficient resilience to deal with the number of authorisations that is likely to be required. We also want to provide flexibility for the chief constable to arrange the police service as he or she sees fit, which might include establishing a serious crime division that would take on the activity.

The amendments provide that the chief constable may designate any deputy chief constable or assistant chief constable to grant authorisations under the 2000 act. They also remove the provisions for urgency or absence, as we expect the chief constable to designate enough senior officers to provide cover for any circumstances.

Alison McInnes: Thank you.

Lewis Macdonald: Amendment 142 removes the reference to the Police Pensions Act 1976 and amendment 229 removes the section on the grant of authorisation in cases of urgency. I would be grateful for a brief explanation of those two matters.

Kenny MacAskill: Amendment 142 removes an amendment to the Police Pensions Act 1976. Further amendments are required to that and several other acts that relate to police pensions. Some of the issues are reserved and will therefore need to be included in an order under the Scotland Act 2012 following the passage of the bill. In the interest of clarity, we intend to provide a package of measures that relate to pensions in the section 104 order rather than splitting it across two pieces of legislation.

I presume that that also deals with the other aspect.

Lewis Macdonald: The other aspect was the grant of authorisation in cases of emergency, which is covered by amendment 229, but I am grateful for your clarification on pensions.

Amendment 224 agreed to.

Amendments 142, 225 to 232 and 143 to 157 moved—[Kenny MacAskill]—and agreed to.

12:30

Amendment 274 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 274 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 274 disagreed to.

Amendments 158 and 233 moved—[Kenny MacAskill]—and agreed to.

Schedule 6, as amended, agreed to.

Schedule 7—Repeals

Amendments 234 to 240, 159 to 164 and 241 moved—[Kenny MacAskill]—and agreed to.

Schedule 7, as amended, agreed to.

Section 124—Commencement

The Convener: Amendment 211, in the name of David McLetchie, is in a group on its own.

John Lamont: I will speak to and move amendment 211 in the name of my colleague David McLetchie.

The Scottish Government estimates that a single police force will result in £130 million of savings a year and £1.7 billion of savings over 15 years. Those figures and those in the financial memorandum are based on an outline business case that was produced in 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 971-2.]

The Scottish Government’s position is that the full business cases are a matter for the services, as they will influence and determine the detailed design of the new police and fire and rescue services. The Government expects those business cases to be completed at the earliest opportunity available to the new services.

Our amendment 211 seeks to force the Scottish Government to publish a full business case before the implementation of the bill.

I move amendment 211.

Lewis Macdonald: Amendment 211 seems perfectly reasonable. If the Government’s decisions are based on a full understanding of the business case, one would imagine that the Government has gone beyond the outline business case that we have seen and that it is satisfied with the consequential calculations that it has made. It would therefore be entirely welcome if the spirit of enthusiastic endorsement of third-party amendments in the past 30 minutes were to be reflected again in relation to amendment 211.

The Convener: You have such charm, Lewis—you are irresistible.

Kenny MacAskill: Amendment 211 would mean that the Scottish ministers would have to publish a full business case before commencing parts of the bill under section 124. The outline business case, which was produced in accordance with Treasury guidance and published in September 2011, provided a strong evidence-based case for the move to single services. Work is under way on how the services will be delivered, but it will be up to the Scottish police authority, the SFRS board and the new chief officers to develop strategic plans for the first three years of the new services and to decide the detail of how they work. The Scottish Government expects the production of detailed business cases by the services to be a necessary contribution to that work. They should simply get on with that matter. Therefore, I cannot support Mr McLetchie’s amendment 211.

John Lamont: I cannot accept the cabinet secretary’s point. A large part of the Scottish Government’s argument in favour of single police and fire services has been about the significant savings that will be delivered to the Scottish taxpayer. It is not acceptable for the Scottish Government to push ahead with the changes without a full business case. I encourage the committee to support amendment 211.

The Convener: The question is, that amendment 211 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)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 211 disagreed to.

Section 124 agreed to.

Section 125 agreed to.

Long title agreed to.

The Convener: The committee will be delighted to know that that ends stage 2 consideration of the bill. I thank you all very much. It has been a long morning for you, cabinet secretary, as it has been for the committee, but members must stay in their

seats as we move on to agenda item 2, after which they will get to go.

Subordinate Legislation

Fire and Rescue Services (Framework) (Scotland) Order 2012 (SSI 2012/146)

12:35

The Convener: There are three negative instruments for consideration. The Subordinate Legislation Committee has drawn the Parliament's attention to Scottish statutory instrument 2012/146 on the ground that it appears to be defectively drafted. The Subordinate Legislation Committee has also drawn the Justice Committee's attention to the Scottish Government proposal that the framework be republished in June without the Parliament having seen the final version of the document. Do members have any comments?

Graeme Pearson: It seems inappropriate.

Jenny Marra: Yes.

The Convener: Your comments are? I know that you are numb now.

Jenny Marra: I would like to see a properly drafted version of the order before we wave it through.

The Convener: It has been a long day, so if members have concerns about the order I will preempt them by saying that we could write to the Minister for Community Safety and Legal Affairs, Roseanna Cunningham, to ask her to respond to the concerns of the Subordinate Legislation Committee at our next meeting. The minister is due to appear at that meeting on the Crime and Courts Bill legislative consent memorandum, and to move some affirmative instruments.

As usual, it is for individual members to consider whether they wish to lodge a motion to annul the order, which could be moved at next week's meeting. On the other hand, members may want to hear the minister's explanation first. Will we write to the minister regarding the Subordinate Legislation Committee's concerns?

Members *indicated agreement.*

The Convener: I point out that members cannot move a motion to annul without notice. Members may wish to hear what the minister has to say.

Jenny Marra: Will the minister not just say that it is an error in drafting that will be corrected?

The Convener: I think that it is more than an error in drafting. It goes beyond that.

Graeme Pearson: It is based on a document that does not exist.

The Convener: Yes. We will put the issues that the Subordinate Legislation Committee raised to

the minister and give her the opportunity to respond. If members are not content with that, they will still have time to intimate a motion to annul. [*Interruption.*] No; they will not. They would have to lodge the motion, then not move it.

To clarify, we will write to the minister and ask her to address the Subordinate Legislation Committee's concerns. However, if any member wanted a back-stop to the process, they would have to lodge a motion to annul and then intimate that but not move it. That would be a belt-and-braces approach.

Jenny Marra: When does the motion need to be lodged?

The Convener: Any time before the meeting takes place. Is that okay? That is a belt-and-braces approach.

Licensed Legal Services (Complaints and Compensation Arrangements) (Scotland) Regulations 2012 (SSI 2012/153)

The Convener: The second instrument for consideration is SSI 2012/153. The Subordinate Legislation Committee has not drawn the Parliament's attention to the instrument on any grounds within its remit. Are members content to note the instrument?

Members *indicated agreement.*

Licensed Legal Services (Maximum Penalty and Interest in respect of Approved Regulators) (Scotland) Regulations 2012 (SSI 2012/155)

The Convener: The third and final instrument is SSI 2012/155. Again, the Subordinate Legislation Committee has not drawn the Parliament's attention to the instrument on any grounds within its remit. Are members content to note the instrument?

Members *indicated agreement.*

The Convener: Our next meeting will take place on Tuesday 19 June, when we will take evidence from the Minister for Community Safety and Legal Affairs on the Crime and Courts Bill legislative consent memorandum. We will also address with the minister the issues that have been raised by the Subordinate Legislation Committee, as discussed.

We will also take evidence from Rhoda Grant on her proposed criminalisation of the purchase of sex (Scotland) bill. That will allow the committee to decide whether it is satisfied with the reasons given by Rhoda Grant for not consulting on the draft proposal. I think that Rhoda took over the bill from Trish Godman.

Finally, we will consider our work programme. I know that members are looking forward to all that. Here endeth the lesson and the meeting.

Meeting closed at 12:39.

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

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