



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# JUSTICE COMMITTEE

Tuesday 6 November 2012

Session 4

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**JUSTICE COMMITTEE**

**31<sup>st</sup> 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) (Ind)

\*Colin Keir (Edinburgh Western) (SNP)

\*Alison McInnes (North East Scotland) (LD)

David McLetchie (Lothian) (Con)

\*Graeme Pearson (South Scotland) (Lab)

\*Sandra White (Glasgow Kelvin) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Joe Griffin (Scottish Government)

Kenny MacAskill (Cabinet Secretary for Justice)

Colin McConnell (Scottish Prison Service)

Colin McKay (Scottish Government)

Deborah Smith (Scottish Government)

**CLERK TO THE COMMITTEE**

Irene Fleming

**LOCATION**

Committee Room 4



## Scottish Parliament

### Justice Committee

*Tuesday 6 November 2012*

[The Convener *opened the meeting at 10:03*]

### Decision on Taking Business in Private

**The Convener (Christine Grahame):** I welcome everyone to the Justice Committee's 31st meeting in 2012 and ask everyone to switch off mobile phones and other electronic devices completely, as they interfere with the broadcasting system even when they are switched to silent. David McLetchie has sent his apologies.

Item 1 is a decision on taking business in private. Does the committee agree to consider items 6, 7 and 8 in private?

**Jenny Marra (North East Scotland) (Lab):** No.

**The Convener:** Which items do you not want to take in private? Is it all of them or one in particular?

**Jenny Marra:** I see no good reason why items 7 and 8—consideration of our work programme and the Statute Law (Repeals) Bill—should be taken in private.

**The Convener:** Let us move to item 2. We will take evidence from the minister first and deal with items 7 and 8 later.

**Jenny Marra:** Is that when we will decide whether to take the items in public or in private?

**The Convener:** Yes. If it is all right, we will park item 1 and come back to it later.

## Subordinate Legislation

### Fire (Scotland) Act 2005 (Relevant Premises) Regulations 2012 [Draft]

10:04

**The Convener:** Item 2 provides the opportunity to take evidence from the Cabinet Secretary for Justice on one affirmative instrument—the draft Fire (Scotland) Act 2005 (Relevant Premises) Regulations 2012—before formally debating under item 3 the motion to recommend approval of it. The Subordinate Legislation Committee has not drawn the Parliament's attention to the regulations on any grounds in its remit.

I welcome Kenny MacAskill, the Cabinet Secretary for Justice, and Richard Dennis, head of the fire and rescue services division at the Scottish Government. Before you start, cabinet secretary, I remind you that in 1999 you advised me to set up a cross-party group on Borders rail. You may not remember that, but I do. Today, the document was signed to transfer the project from Transport Scotland to Network Rail, so there you go—credit to you for that.

**The Cabinet Secretary for Justice (Kenny MacAskill):** Thank you very much.

**The Convener:** I may disagree with you on lots of other things along the route, but that was a great piece of advice. I had to tell you about that because I am thrilled and I wanted to thank you.

Anyway—back to business. We will move straight to questions, as the cabinet secretary has no opening comments.

**Alison McInnes (North East Scotland) (LD):** I have a brief question. Are the regulations proportionate for very small situations, such as those involving individual childminders? Has that issue been covered?

**Kenny MacAskill:** Such individual operations are clearly small but, given that we are dealing with vulnerable people, we have to do everything that we can and we must draw to the attention of those who are in a privileged and responsible position their obligations. That is where the regulations are coming from. You are right; we are dealing with the issue through subordinate legislation, which will focus on an area where we know that there is a growing market and that it is appropriate for people to take the necessary steps.

**Alison McInnes:** So you believe that the provisions are proportionate.

**Kenny MacAskill:** Absolutely.

**The Convener:** As there are no other questions, we will move to item 3, the formal debate on the motion.

*Motion moved,*

That the Justice Committee recommends that the Fire (Scotland) Act 2005 (Relevant Premises) Regulations 2012 [draft] be approved.—[*Kenny MacAskill.*]

*Motion agreed to.*

**The Convener:** As usual, the committee is required to report to Parliament on the affirmative instrument. Are members content to delegate to me authority for the final wording of that report?

**Members indicated agreement.**

**The Convener:** I suspend the meeting for a minute so that the next set of officials can come in for the next item of business. We committee members will stay put.

10:07

*Meeting suspended.*

10:07

*On resuming—*

## **Draft Budget Scrutiny 2013-14**

**The Convener:** This is the final evidence session on the draft budget. I ask members—although they do not have to do this—to focus questions on police reform and on the courts budget, which we decided would be our target to start with. You may also ask about any other issues that you wish to raise. We will cover the budget for implementing the findings of the commission on women offenders during the following agenda item, so you do not need to get into that just now—I can see that Alison McInnes is raring to go.

I thank the cabinet secretary and Richard Dennis, head of the fire and rescue services division at the Scottish Government, for staying with us for this item and I welcome other Scottish Government officials: Colin McKay, deputy director, legal system division; Deborah Smith, head of police division; and Joe Griffin, deputy director of community justice.

The cabinet secretary will make a short opening statement, after which members will ask questions.

**Kenny MacAskill:** I am grateful for the opportunity to appear before the committee today. When I was here to discuss last year's draft budget I made the point that our record of investment across the justice portfolio was delivering benefits for our communities. That remains the case and it is worth while reminding the committee of what has been achieved.

We have put 1,000 more police on Scotland's streets and we are driving reform of our police and fire services to maintain them in the face of the United Kingdom Government's budget reductions. Recorded crime is now at its lowest level in 37 years and more than 100,000 fewer crimes were recorded by police in 2011-12 than in the period before we came to office.

Critically, reconviction rates in Scotland are at their lowest level in the past 13 years. The clear-up rate for all recorded crimes is at its highest level for more than 30 years. The number of violent crimes is down by just under a third and the number of offences involving a firearm is down by almost half since the Scottish National Party came into government. The number of crimes of handling an offensive weapon is down by 44 per cent since we took office and custodial sentence lengths are up for the sixth consecutive year.

Almost three quarters of summary court cases were dealt with within 26 weeks in 2011-12, compared with only two thirds when we came to

office. We have ploughed the proceeds of crime back into communities by investing more than £46 million that has been seized from criminals in community projects that will benefit more than 600,000 young people.

Only this morning, statistics were released that show a fall in the number of homicides. In 2011-12, the police recorded 88 homicide cases, which is a decrease of 11 per cent from the 99 cases that were recorded in 2010-11. I could say more about our record on tackling serious and organised crime, our investment in the prison and court estates, our commitment to reducing reoffending and our determination to support recovery from drug addiction, but those issues might arise during our discussion today.

Our draft budget for 2013-14 is focused on maintaining services in the face of Westminster cuts while supporting activity to modernise our justice system. Our track record is one of ever-greater efficiency and improvement, and that work will continue. As for the technical budget, adjustments to funding for the police and fire services were referred to in my letter of 30 October, which I hope was helpful to the committee.

I realise that the committee wishes to focus on the police reform, women offenders and court budgets, so I will not go into those issues in depth at this point. I will simply say that our draft budget priorities are to further reduce crime, particularly violent and serious organised crime; to reduce the harmful impact of drug abuse; to prevent criminal behaviour by young people; to build on our strong record of reducing reoffending; to reduce the fear of crime in communities; to reduce the harm from fires and other emergencies; to continue to tackle hate crime and sectarianism; to transform civil and administrative justice while widening access and implementing law reform; and, of course, to continue to support victims and witnesses in the criminal justice system.

I hope that I have made clear the significant achievements of recent years. In these difficult economic times, the Government is planning its spending wisely to keep Scotland's people safe. I and my officials are happy to take any questions.

**The Convener:** Thank you, cabinet secretary. For the sake of our report, I would like to focus on the budget in relation to police reform, then move on to courts and other issues. We will talk about Cornton Vale during the next item of business. I hope that that will give the drafting of our report some coherence.

**Jenny Marra:** The First Minister denies that police officers are doing civilian staff duties, but recent reports in the *Sunday Herald* reveal that a group that reports to you, cabinet secretary, and

which is made up of chief constables and Scottish Government officials proposed that cuts to police staff would have to be delivered by

"police officers performing basic administrative duties themselves".

Is the First Minister wrong to have denied the existence of backfilling?

**Kenny MacAskill:** The best evidence was the evidence that the committee received from the newly appointed chief constable for the police service of Scotland, who made it clear that he was not aware of any evidence of such a strategy. He is in the best position to confirm that, and I accepted his evidence.

**Jenny Marra:** A paper that was prepared by your officials suggested that such backfilling should happen and that it was an obvious route to take.

**Kenny MacAskill:** I have always been taught to accept the best evidence rule in law. That might not be known to you, Ms Marra, but it is known to me and doubtless it is known to other members. The best evidence is the evidence of the newly appointed chief constable. He sat before the committee and answered a question from you or one of your colleagues by making it clear that he was not aware of that strategy. It is not being pursued and he would not support it. Of course, that is not to underestimate the challenges that he and his colleagues face. That is the best evidence, and I accept the evidence of Chief Constable House.

**Jenny Marra:** So you can guarantee today that no backfilling is going on across Scotland.

**Kenny MacAskill:** I accept the evidence of Chief Constable House, who said that he was not aware of that, that there is no strategy to pursue such a course and that it would be the wrong course to take.

**Jenny Marra:** Can you guarantee that backfilling will not happen in the future?

**Kenny MacAskill:** I came to the committee many times during the passage of the Police and Fire Reform (Scotland) Bill. I took many questions from you and other members about how I must not direct or otherwise interfere with the police. On that basis, we have enshrined in an act of Parliament the fact that the chief constable is accountable to the Scottish Police Authority. My office is entirely separate from that, which is constitutionally correct, so I have to leave such matters to the chief constable and the authority.

I accept the word of Stephen House and I congratulate him on his appointment. He has made his position clear, and I have no evidence

from anyone else that would make me believe that what he said is not the situation.

10:15

**Jenny Marra:** Despite the recommendations in the paper put to you by your own officials.

**Kenny MacAskill:** I go on the evidence of the chief constable, which is the evidence that the committee took in response to its questions. I accept the statement that he made.

**Jenny Marra:** Can I move on to something else, convener?

**The Convener:** Is it still on policing?

**Jenny Marra:** Yes.

**The Convener:** Okay.

**Jenny Marra:** The same group that reports to you, cabinet secretary, suggests in its paper that there will be a 20 per cent reduction in the overall estate footprint of the Scottish police. Can you assure us today that that will not result in the closure of any local police stations?

**Kenny MacAskill:** Again, Chief Constable House touched on that when he gave evidence. I reiterate that, at the committee's request and with the Government's support, such decisions are for the chief constable and the Scottish Police Authority. That is the constitutional position that we have enshrined and that is how it will be. I will adhere to that.

Chief Constable House made it clear that any reference to the police estate relates to the fact that we will not need eight human resources departments, eight payroll departments and so on. It was not a reference to police stations.

**Jenny Marra:** With respect, cabinet secretary, not all such decisions are at the discretion of Chief Constable House. The Scottish Government has given him a figure of 17,234 police officers that he must stick with, so these are not all operational decisions for him. With respect, I am asking you whether you can guarantee that there will be no local police station closures.

**Kenny MacAskill:** No justice secretary can ever give a guarantee of that, because it is not their decision to make. As things are constituted, a decision on the closure of a police station is made by the chief constable of one of the eight forces, subject to their board, be it unitary or otherwise. Under the new service post-1 April 2013, such a decision will be for the new chief constable and will be subject to the scrutiny and approval of the Scottish Police Authority.

The paper to which you refer was not from my officials but from the Association of Chief Police Officers in Scotland. That organisation will to some

extent be superseded and trumped post-1 April by the chief constable of Scotland's police service, Mr House. I stand behind the evidence that he gave. It would be entirely wrong for me to give the commitment that you ask for, because it would indicate that I was interfering in operational matters that must remain in the remit and running of the chief constable, subject to the scrutiny of and accountability to the Police Authority.

**Jenny Marra:** So that would be interfering in operational matters, but to give the arbitrary figure of 17,234 police officers does not represent interfering.

**Kenny MacAskill:** I do not think that it does. As a Government, we take the view that the visible police presence is delivering a 37-year low in crime and, as shown in figures that are out today, an 11 per cent reduction in homicides. I know that that view is disputed by other political parties, but that is a matter of political choice. That is why we have elections in Scotland, just as there is an election in the United States today.

We believe that a visible police presence reassures people. That is not the position that has been adopted south of the border, where people face a loss of 16,000 to 18,000 officers under the coalition Government, and where the Labour Party, in opposition, believes that 10,000 officers should be lost. In Scotland, we believe that to maintain the police presence is a good thing to do.

If the chief constable and the authority were to come to me at any stage and raise other matters, I would be happy to discuss those with them. At present, however, Chief Constable House agrees that a visible police presence helps to make our communities safe. The proof is in the pudding, as they say. I read out the fine track record that our police service—including support staff, uniformed staff and detective officers—has delivered, and I pay tribute to it.

**Jenny Marra:** Convener, can I move on to a final question on the budgetary implications of terms and conditions for serving police officers?

**The Convener:** Okay. This should be your last question for now, as I have a big list of members who want to come in. Just to let people know where they are, my list is Alison McInnes, then Graeme Pearson, Roderick Campbell and Sandra White.

**Jenny Marra:** When Chief Constable House gave evidence to the committee a couple of weeks ago, I asked him about terms and conditions for police officers and police staff. The weekend before that, you told the SNP conference in Perth:

"For those who serve, there will be no attack upon the terms and conditions under which they serve".



I understand that you have been nominated for a debating award for that speech. However, Stephen House told the committee two weeks ago that terms and conditions would be

“a fairly obvious place to go in many respects”.

Which of you is right?

**The Convener:** I have another nominee beside me. Jenny Marra is nominated in the one to watch category and I am watching this little duel go on. The rest of us have not been nominated, although we are all brilliant.

**Kenny MacAskill:** In any employment, terms and conditions are agreed between employers and employees. The employer of the Scottish police force is the chief constable, who is accountable to the Scottish Police Authority. The representatives of the employers and employees—whether they are the Scottish Police Federation, the Association of Scottish Police Superintendents, ACPOS or its successor, or the Scottish Chief Police Officers Staff Association—would enter into discussions about the matter.

As an Administration, we have made it clear that we reject and will not implement the proposals introduced south of the border by Tom Winsor. The coalition Government is delivering those proposals, but we reject them. I do not know the position of the Labour Party south of the border or north of the border on the Winsor review, but we will not implement those proposals.

Beyond that, the relationship between employer and employee is a matter for the chief constable and the Scottish Police Federation. I meet both individually. If need be, I am happy to meet them collectively in some instances. However, it is constitutionally and correctly a matter for them to deal with.

I ask Jenny Marra to confirm that the Labour Party's position is that the Winsor review is wrong.

**The Convener:** Actually, cabinet secretary, you—not the Labour Party—are being asked the questions.

**Jenny Marra:** Thank you, convener.

Cabinet secretary, you told us that you accept the very good evidence from Chief Constable House on the previous two issues that I asked you about, so will you accept the evidence that he gave to the committee that, when looking to save money, terms and conditions are

“a fairly obvious place to go in many respects”?—[*Official Report, Justice Committee, 23 October 2012; c 1855.*]

Do you accept that that was his evidence to the committee?

**Kenny MacAskill:** I meet Chief Constable House and I also meet the SPF. I was on the

phone to its general secretary yesterday regarding the tragedy at Baird Street police station, and I put on record my sympathies and condolences to the family of the police officer involved and, indeed, to his colleagues there.

I meet Chief Constable House and the SPF regularly, but I have to leave terms and conditions to them. As Mr Pearson will know from his experience, there are various pay and pensions issues, and some of them are clearly critical. I regularly meet the Scottish Police Federation because of the UK Government's attack and cash grab on police pensions, on which I am only able to sympathise and write letters of objection.

I disagree with the unilateral way in which the Home Secretary has disbanded the Police Negotiating Board, but we are setting up a separate authority in Scotland to shadow that body. I will not sit on that authority, but there will be officials representing the employers and officials representing the employees.

Matters are dealt with not by the diktat of the Cabinet Secretary for Justice, but through the relationship between the employers and employees. Scotland is precluded from handling some aspects of terms and conditions because they are dealt with on a pan-UK basis. We have made it clear where we stand on Tom Winsor's review. Some matters will be constantly under discussion between the Scottish Police Federation, the Association of Scottish Police Superintendents and SCPOSA or whatever organisation supersedes it, together with the Scottish Police Authority and the chief constable.

**Jenny Marra:** So terms and conditions are an operational matter and you cannot guarantee that they will not be undermined to save money in your budget.

**Kenny MacAskill:** I give you an absolute assurance that we are not implementing the Winsor review now or ever. I made that clear to the Scottish Police Federation conference, and it appreciated that.

On terms and conditions, there are matters that ebb and flow. We have had situations relating to police officers' houses and boot allowances—there are a whole variety of matters. Some of the complexities that we face in implementing the Police and Fire Reform (Scotland) Act 2012 concern police benevolent trusts.

The devil is always in the detail, but I leave that to the good offices of those who represent the employees—those who serve—whether that is the SPF or, for support staff, Unison and Unite, and those who represent the employers, who will be the chief constable, his support staff and the Scottish Police Authority.

**Alison McInnes:** The current police authorities are making significant savings this year to ease some of the budget pressures in the forthcoming year. The additional reserves that are beginning to be built because of those savings probably amount to about £14 million. That is in addition to the £36 million in reserves that you have already discussed with the Convention of Scottish Local Authorities; you have negotiated how that money will be shared out. We heard from Chief Constable Smith that he would urge you to consider giving the money back to the new authority. Have you been able to think about that?

**Kenny MacAskill:** We agreed with COSLA that all uncommitted reserves will be split by the Scottish Government and local authorities on a 51 per cent to 49 per cent ratio. There was a different ratio for fire. It is for the Scottish Government to determine how to allocate its share in line with priorities across all portfolios, including justice. That is a matter that we require to tackle. Sometimes the police require additional funds. For example, additional funds were provided in my first year in office when we faced the challenge that was presented by the airport terrorist. The same applies when funds are required elsewhere. It is for the Government to determine by looking across all portfolios, including the justice portfolio, where the requirements are.

**Alison McInnes:** So you do not anticipate that the additional £14 million will be allocated in a different way. Are you saying that you will continue to allocate money based on a 51 per cent to 49 per cent split?

**Kenny MacAskill:** What we are saying is that it does not require to be put away in a savings fund by any one authority. No doubt I will take questions from the committee on other aspects of the justice portfolio in which there are challenges. You would probably not wish me to say that we do not have the money for those things because it is squirreled away somewhere, gathering 0.5 per cent in interest or whatever.

The tight budgets that we face are challenges for Kevin Smith in his portfolio, for Chief Constable House, for the Lord President and for everyone in the Government and in local government. This is about ensuring that, across the justice portfolio and across Government, we use the limited amount of money that we have as wisely as possible, which is why we will put it where the priorities are. I am happy to discuss that with the committee.

**Graeme Pearson (South Scotland) (Lab):** Good morning, cabinet secretary. I would like to cover three areas. At our meeting two weeks ago, Kevin Smith said that a paper had been prepared that would identify the areas of savings for years 1, 2 and 3 in the new arrangement for a single

police force. We were promised that paper but, as I understand it, we have not received it. Have you received details of how the savings will be achieved? They are significant savings. Can you say where they will come from?

**Kenny MacAskill:** Those are fundamentally matters for the Scottish Police Authority. Deborah Smith might want to comment on that.

**Deborah Smith (Scottish Government):** I was just going to say the same thing. We have not seen detailed proposals. Chief Constable Smith will have prepared some proposals, which will require to be discussed not only with the new chief constable but with the Scottish Police Authority. They will need to be comfortable with the proposals before they are formally submitted to us. I suspect that that is why they have not yet been forthcoming.

**Graeme Pearson:** As I understood it, the details were in hand. They just had not been shared with us. I would have thought that, in preparing the business case, the Government would have been interested to know where the savings will come from. Off the top of my head, I think that the savings are about £22 million in the first year and £44 million in the second and third years. The total is £100-odd million by the end of the three-year process. I would have thought that you would have taken some interest in where the savings will come from in order that we could have some comfort about that.

As the cabinet secretary knows, I am a great supporter of the creation of a single police force. This is not an argument against that; what I seek is the comfort of knowing that it will work.

**Kenny MacAskill:** The committee heard in evidence from Vic Emery and Steve House that they thought that there was no funding gap. It has been said that the savings will have to be managed. As I said to Jenny Marra, it is not for me to direct on that. However, I note that Steve House thought that, although it will be challenging, they will be able to do it.

I do not wish to interfere—or to risk being challenged by the committee for interfering—in police matters. For a while, one of the great fears about the creation of a single police service—it is a fear that I know you did not share, Mr Pearson—was that there would be interference from me.

I am due to meet the chair of the authority later this week and I undertake to raise with him that the committee has concerns and to ask him to make information available to you as matters become clearer. I certainly accept the comments by Chief Constable House and Vic Emery that these things are under way. They are being managed capably, but I will ask the authority to share that information wherever possible.

10:30

**Graeme Pearson:** In response to Jenny Marra, you mentioned operational independence, and you talked about the fears about interference that were generated by earlier discussions. The other week, the convener of the SPA announced that it will provide strategic leadership to the police and he added that matters that involve the direction and control of officers are rightly for the chief constable. He also made it clear that he will employ all police staff and maintain corporate services such as human resources, finance, marketing and other important functions that the authority will manage.

What is your understanding of operational independence? Will the holding of staff management and corporate services at board level and the belief that the authority's purpose in life is to provide strategic leadership to the police not make for a difficult relationship with the chief constable? Finally, are you aware of the growing discomfort over those matters and have you had any discussions with the various postholders, including Sir Peter Housden?

**Kenny MacAskill:** I have not discussed the matter with Sir Peter Housden, but I have had regular discussions with the chair of the authority and the new chief constable since their appointment. Indeed, the chief constable and I recently met the Cabinet Secretary for Health and Wellbeing and the director of public health, so these things are on-going.

We must recognise that the Scottish Police Authority's function, as enshrined in statute, is to scrutinise and maintain Scotland's police service. It takes a historical view, if you like, and examines what has been done, but it will also look at certain contemporary issues.

**The Convener:** I wonder how your line of questioning fits into our scrutiny of the budget, Mr Pearson. I know that you are concerned about the roles of the SPA and the chief constable, but I want us to focus on the budgetary implications.

**Graeme Pearson:** When it comes to how we deliver the spend in the first two years, if elements of the budget are maintained at board level and managed by the authority separately from the chief constable, it is of interest to know how such matters will be addressed corporately.

**The Convener:** That is a helpful clarification.

**Kenny MacAskill:** The chief constable is new to his office and the authority and its chair, too, are newly appointed. Discussions are continuing and I have no reason to believe that a happy accord over interpretation will not be reached.

It seems to me that both sides have accepted that the chief constable has operational

responsibility—although that is not just a matter of moving police officers around Scotland—and that the authority's responsibility is not simply to look at what has already been done but to examine what is being done. We have to give the newly appointed individuals an opportunity to discuss the issues and work things out. As I said, I will meet the chair of the SPA later this week, and I have no doubt that I will meet the chief constable as well. I understand the member's concerns and assure him that these matters are being chivvied along.

**The Convener:** Chivvied, cabinet secretary?

**Kenny MacAskill:** Indeed. They are being chivvied along, convener.

**The Convener:** That is a quaint term.

**Graeme Pearson:** It seems quite a friendly way of doing things.

**The Convener:** Doesn't it?

**Graeme Pearson:** The cabinet secretary must bear it in mind that, in order to do these things well, people need the levers to do the job properly. The chair of the SPA has said that, as a businessman, he sees policing through that lens and equates the chief constable with a chief operating officer. When I asked him the other week about democratic oversight, he said that his "way of doing business" was to have "transparent and open communication" and that

"from a democratic point of view ... such an approach satisfies what needs to be done."—[*Official Report, Justice Committee, 23 October 2012; c 1860.*]

I look forward to seeing the subtleties in this new relationship, and I understand from previous conversations that you are sensitive to them. However, I ask that you be aware that sensitivity over these issues is growing in the service.

**The Convener:** You have put your point on the record, Mr Pearson, but I want to keep to the budget.

**Graeme Pearson:** I have a final, brief question. The Scottish Police Federation has said that there is particular sensitivity about the way in which pensions will be managed. The federation seems to suggest that the Scottish Government can take its own approach to pensions in terms of retirement age and financing the pension pot for the future. Have you thought about those matters and can you give us any advice on them?

**Kenny MacAskill:** We have been corresponding with the United Kingdom Government not only on police pensions but on prison officers' pensions. The UK Government's position of seeking to have prison officers work to the age of 68 is unacceptable because some jobs are restricted by age and capacity. Their pensions are dealt with by the local government scheme,

over which we have no control. Police and fire service pensions are slightly different, but the general secretary of the federation has made it clear in a letter to every officer that whatever levers we have tried to use to deal with the matter have been closed down, if I can put it in that way, by the UK Government.

I sympathise greatly with the Scottish Police Federation's position. We have sought to raise the issues that it is concerned about not just with the Home Secretary but with the Treasury. Sadly, however, we have been rebuffed. I am grateful that the federation has made the position clear in that regard.

**Roderick Campbell (North East Fife) (SNP):** Good morning, cabinet secretary.

**Kenny MacAskill:** Good morning.

**Roderick Campbell:** I start with a couple of questions just for the record. We talked about police station closures. Chief Constable House said in his evidence to us:

"I can give you a guarantee that we will try to avoid any police station closures. It would be the last thing that we would want to do, but there have been occasions in the past five years when we have closed police stations with public acceptance and support."—[*Official Report, Justice Committee, 23 October 2012; c 1855.*]

Have you any comment on that?

**Kenny MacAskill:** That is a sensible and pragmatic attitude, because we live in a changing world. When I first moved into my home in Newington, there was a police station around the corner, but it and other stations closed because a new one opened in St Leonard's. Such things ebb and flow with changes in society. Clearly, police stations play an important role in communities, which is why the police consider the issue carefully.

As I said earlier in relation to the police figures that are being bandied about, back-office administration is being done eight times over. That cannot be sustained, given the financial pressures that we face, as we move to a single police service. As I said, police stations are in a different category. Sometimes, though, communities move, which means that the police must move with them.

**Roderick Campbell:** Thank you. Chief Constable House also talked about discussing terms and conditions for police officers, which Ms Marra commented on, in

"open and honest negotiation with the relevant staff association or union."

However, he also said:

"I imagine that the association will agree to terms and conditions that it sees as beneficial to its members. It will not agree to anything that it sees as detrimental to its

members."—[*Official Report, Justice Committee, 23 October 2012; c 1855-6.*]

Do you have any comment on that?

**Kenny MacAskill:** The Scottish Police Federation is, quite correctly, not shy in looking after its members' interests. I have great faith in it and I have no doubt that, if there are any difficulties, as there sometimes are between employers and employees, the employees will be treated fairly by the employers. However, I am sure that those who represent the employees will, quite correctly, not be shy in looking after their members' interests.

**Roderick Campbell:** On the funding of the approximately 300 police officers who are currently funded by local authorities, it has been suggested that the Government expects local authorities to continue to provide extra funding for that. Have there been any recent discussions about that?

**Kenny MacAskill:** We have regular discussions with the Convention of Scottish Local Authorities. The issue was raised previously by me and by David McLetchie. The powers will continue for local authorities to provide that funding. All our information to date is that local authorities welcome the benefits from the work that those officers do, because they are brought in for specific tasks in their communities. We have no reason to believe that those circumstances will change.

**Sandra White (Glasgow Kelvin) (SNP):** Good morning, cabinet secretary. Thank you for your opening statement and your comments on the excellent fall in the number of homicides, particularly in my area in Strathclyde.

I want to touch on an issue that has been raised on a number of occasions, which is operational independence. It is obviously to do with the budget as well.

**The Convener:** There was no hint of that being raised in your question, but I am now listening carefully.

**Sandra White:** Cabinet secretary, we heard from numerous witnesses about the operational independence of the police force. Unison's submission states:

"the Scottish Police Authority and the Chief Constable should be able to decide the correct balance of police officers and police staff".

Chief Constable House gave evidence on that point as well.

I will not ask you whether you agree with that because you have already mentioned it, but one issue that Chief Constable House raised was the gap between the current costs of policing and the

proposed budget for next year. He said that the gap is about £70 million, but he also said:

“Let me be clear. I believe that the budget is doable ... as does my chairman.”—[*Official Report, Justice Committee*, 23 October 2012; c 1847.]

I want to link that with the question of operational independence. Can you confirm the £70 million figure that Chief Constable House mentioned? Will you comment on how the savings will be achieved, bearing in mind the independence of Chief Constable House and the single police force?

**Kenny MacAskill:** It is not a funding gap. You are quite correct, in that both the chair of the SPA and Chief Constable House confirmed in evidence that the budget for 2013-14 is sufficient. They recognise, though, that savings are needed, and part of those savings will come through police reform, which will protect and improve local services despite the financial cuts. Most of the £70 million relates to savings that are expected through police reform—I think that the figure is £41.8 million in 2013-14—and resources are available within the police central government budget to support the SPA in delivering those reform savings.

Other matters such as inflationary challenges are being looked at by the SPSA, but I am confident from the evidence of Vic Emery and Steve House that the budget that has been provided for them has no gap and that the challenges that they face will be met. The challenges will be dealt with by them and not through interference from me. Doubtless they will keep me and the committee apprised of what they are doing, but it has been made quite clear that they do not see a difficulty. It will not be easy, but they expect to be able to meet those challenges.

**Sandra White:** You mentioned police reform. We heard evidence from various groups and branches of the police force, trade unions and so on, and one issue that they raised was the difference between police support staff and police. I commented in our meeting on 23 October that everyone has a different version depending on which group they represent.

Chief Constable House and others said that there was no way that staff would be made redundant and that there would be ways of ensuring that staff had other jobs. It is a thorny issue and one that has to be raised. Can you assure us, despite the independence of the single police force and the chief constable, that staff will not be made redundant and there will be no compulsory redundancies?

**Kenny MacAskill:** We have made it clear that there will be no compulsory redundancies. There have been on-going voluntary redundancy

schemes, particularly for forensic science posts. You might be aware of that as some of them have been in your constituency. The voluntary redundancy schemes exist in the current service and they may or may not apply thereafter.

Mr Emery, as chair of the authority, has accepted that, as part of the Government's broader position on the public sector, there will be no compulsory redundancies. Although there are challenges given the cuts that are coming in from Westminster, Chief Constable House recognises the important role that is played by support staff, which in many instances cannot be played by police officers because of the specific nature of the skills. That is a matter for the authority and the chief constable.

**The Convener:** We will move on to courts. John Finnie and Jenny Marra are already bidding to ask questions. Are there any other bids to ask questions on courts? I will take Graeme Pearson and Rod Campbell after John and Jenny.

**John Finnie (Highlands and Islands) (Ind):** Good morning, cabinet secretary. I want to ask about the Scottish Court Service consultation that is due to be completed at the end of next month. The consultation looks at court structures and, in particular, shrieval specialisations and the High Court circuit.

A written submission from the Public and Commercial Services Union states:

“We believe the proposed reduction in the budget of the Scottish Court Service is dependent upon acceptance of the recommended court closures. This would prejudice the consultation currently underway and also make more difficult the proper scrutiny by Parliament of the proposals which will emanate from the consultation.”

Is there a linkage? What flexibility exists? Other reforms are coming through the victims and witnesses bill and there are developments in information technology and so on.

10:45

**Kenny MacAskill:** There is a consultation document and, ultimately, as well as that consultation and consideration by the Scottish Court Service, the matter has to come to the Parliament: I have to come before the committee on any changes that the Lord President and the SCS wish to consider making.

The document makes it clear that the consultation is about creating

“a court structure that (a) provides Scotland's citizens with services and facilities consistent with the standards of a modern system; (b) is ready to support the anticipated reforms effectively, and (c) is affordable”.

That caveat exists, but not to the extent suggested.

Parliament will ultimately have the opportunity to judge whether any court closure proposals brought forward after the consultation meet all three of those challenges. Ministers will not prejudge the consultation process, but tough choices will no doubt have to be made.

The SCS has tried to deal with matters within the existing financial envelope. We will see what the consultation brings. There is obviously still the further failsafe that we have to bring the proposals before Parliament.

**John Finnie:** I will ask about the capital implications that arise from the proposals. The consultation proposes the retention of courts that are not of the best standard at the expense of courts at which there has been recent upgrading. Is a plan in place to deal with future capital implications that arise from the outcome of the consultation?

**Kenny MacAskill:** We accept that the budget is tight but it is unacceptable not to do anything about a court estate that is not fully fit for purpose, given the changes that have taken place in communities. The SCS will have to work through some of those issues.

During my five years in post, there have been on-going difficulties related to the High Court, some of which are to do with the challenges posed by the nature and complexity of the building. Nobody disputes that there are challenges for the SCS. That is one reason why it has launched the consultation, although it is not the sole reason, as the court structure has to be affordable.

We must recognise the changes that are coming in technology as well as those that have occurred in society. I cannot prejudge what the SCS will do or where it will do it, but one reason for the reform of the court structure is to ensure that we do what we can to maintain the existing fabric.

**John Finnie:** Can you comment on the suggestion that savings made in the court budget will simply be transferred to meet witness costs under the Crown Office and Procurator Fiscal Service budget?

**Colin McKay (Scottish Government):** That matter is covered in the Scottish Court Service consultation document and in some of the evidence that Eric McQueen gave last week. The SCS consulted extensively with the other justice organisations. My recollection of the evidence is that they all said that the costs would be neutral or that there would be small savings.

There are clearly some swings and roundabouts in relation to the Procurator Fiscal Service as it may have to pay expenses for more people with more expensive travel, but there will be savings in other respects. As Eric McQueen said, some

closures will mean that some people spend less time and money travelling to court than would otherwise have been the case. The Crown Office has done that analysis and I think that it indicated in its evidence that it anticipated that, overall, there would not be a significant cost impact.

**The Convener:** I do not know whether we would all accept that.

I would like to ask a question before we move on. The cabinet secretary said that when the hit list is created it would have to come before Parliament. Can you confirm the process? Will there be subordinate legislation? If so, will it be subject to the negative procedure or the affirmative procedure?

**Colin McKay:** There will be subordinate legislation. I apologise, because at the moment I cannot honestly tell you whether it will be subject to the negative procedure or the affirmative procedure. We will certainly confirm that for the committee.

**The Convener:** Thank you. Sorry to interrupt, John.

**John Finnie:** My point has been covered, convener.

**Jenny Marra:** The court budget will be cut in real terms by £5.5 million in 2013-14 and by a total of £10.9 million between 2012-13 and 2014-15. Are not those budget reductions driving your proposal for court closures in Scotland?

**Kenny MacAskill:** We are facing huge budget cuts from Westminster. This is the world in which we live, Ms Marra. I wish that, rather than Westminster spending £250 million on a further upgrade of Trident, we got a Barnett share of that money so that we could do sensible things with it, such as spend it on the courts or use it to deal with the problems that people have heating their homes during a cold winter.

We face significant budget cuts. Every area of my portfolio presents challenges—the Scottish Court Service is but one. I am grateful to the Lord President and the staff of the Scottish Court Service for the job that they are doing to maintain the service in the face of such pressure.

If you think that our budget is too little, perhaps you should tell us from where cuts should come.

**Jenny Marra:** Are you saying that the budget is driving the court closure proposals?

**Kenny MacAskill:** No. A variety of matters drive the proposals. As I said, we must ensure that our courts are up to date. Some of our courts are very old and are not the easiest places to deal with when improving technology—I know that the committee wants to bring in modern technology. It can be difficult to put modern technology into old

buildings, given their configuration. Also, towns change and communities move. John Finnie touched on that, as did Colin McKay.

The exercise is about looking, at the start of the 21st century, at a court estate that in many instances has been with us since the 19th century, when Sir Walter Scott was presiding in court—I know that he is someone whom the convener takes very much to heart. In 21st century Scotland, communities have changed, and the Scottish Court Service has to look at that.

We must operate within the budget, which is challenging, because Westminster is imposing huge cuts on the Scottish Government and prefers upgrading weapons of mass destruction to looking after the fabric of our communities. We must also ensure that the court estate is best placed to deal with the challenges of the 21st century and the changes that have taken place in our communities and towns.

I grew up in Linlithgow—this was long before I became justice secretary or even qualified as a lawyer. The sheriff court was in Linlithgow—I do not know whether Mr Pearson gave evidence there—because historically the area was Linlithgowshire. The biggest community in West Lothian, formerly Linlithgowshire, is Livingston, so it made sense to move the court to Livingston, because more people had to travel from Livingston to Linlithgow than from Linlithgow to Livingston.

Such issues have to be factored in. There is a tight, difficult budget and I am grateful for the outstanding service that the Lord President and the Scottish Court Service provide. In the second decade of the 21st century, we need to consider what courts we require and where, and whether our courts can deal with the challenges of the modern technology that we all want to bring in.

**Jenny Marra:** We are in quite a heady period of legal reform, given the changes that have been recommended in the Carloway review and the proposed reduction in the drink-driving limit, which we debated in Parliament last week. Do you agree that there will be an increase in court business as a result of the reforms?

**Kenny MacAskill:** I am not aware that a huge upturn in business is anticipated as a result of the drink-driving legislative change. I am driving the matter forward and I am grateful for the cross-party support that it has received. If there is an increase in business, so be it; people who flout the law and endanger the lives of themselves and others must be dealt with. I do not think that the matter is causing the Scottish Court Service great distress or worry.

In driving matters forward, Lord Gill, the Lord President, has taken account of the fundamental changes of which he is the author and the

proposals of his deputy, the Lord Justice Clerk, Lord Carloway. Such matters have been factored in.

**Jenny Marra:** Would it be better to wait for the reforms to bed in, to see whether there is an increase in business, before steam-rolling ahead with court closures?

**Kenny MacAskill:** No, I do not think so. I do not think that there will necessarily be an increase in business, but any increase will be factored in. It is about looking at the budget, the changes in our communities and the opportunities to make use of new technology.

I went to Kittybrewster in Aberdeen, where a new custody suite is about to be built to replace the facility that currently exists at the police headquarters. Video technology will be built into the new facility. That is a sensible approach. Currently, someone is taken to the police station and then from the police station to the court and from the court to the prison. We will be able to cut down on needless journeys, which will benefit the prisoner and will certainly benefit the system and the service.

**Jenny Marra:** Do you have any evidence that there will not be an increase in business as a result of the reforms? They have not yet been implemented, so we do not yet know. The last thing that we want is further delays in our court system. Delays already disrupt the system.

**Kenny MacAskill:** Those matters have been taken into account. We are talking about two fundamental issues. One is that of the Gill reforms. Lord Gill is the Lord President and is currently dealing with matters, and I am grateful for the work that he is doing. The other is that of the Carloway reforms. Lord Carloway is the Lord Justice Clerk. Both of those pieces of work are integral to what we are doing. They are factored in. I am perfectly confident that the matters are all considered and taken on board, given that, in one situation, we are dealing with the same individual. Matters are looked at in the round in relation to the Scottish Court Service, in terms of not simply any increase in court business that might result from the Carloway reforms but, quite rightly, what might happen in terms of reductions in the workload as a result of changes such as videoconferencing and the work that is going on in Aberdeen and elsewhere, which I have referred to.

**Jenny Marra:** If you discovered that there had been an increase in court business or that the courts had become much busier as a result of the reforms, would you reconsider your programme of court closures?

**Kenny MacAskill:** The Lord President has considered these matters. I am due to meet him again, as I meet him regularly. I am happy to give

you an assurance that I will flag up to him the concerns that you have and that either he or I will get back to you on them. However, I am satisfied that the Lord President has taken into account issues around the proposals that he and his colleague, the Lord Justice Clerk, have made.

In Scotland, the Lord Justice General and the Lord Justice Clerk are in charge of driving forward these fundamental changes. The issues are factored in. As I say, nothing about them concerns me but I will raise them with the Lord President on your behalf.

**Graeme Pearson:** Will you share with us the mechanisms that you have in place for examining and assessing the impacts of the reforms of Lord Gill, Lord Carlaway and others? How are they factored into the budgetary processes? There is a fairly substantial decline in the budget for the Court Service; alongside that, there is an equal decline in the legal aid budget. How have those issues been factored in? How has that work been done on the ground?

**Kenny MacAskill:** A variety of pieces of work are going on. Colin McKay can tell you more about them, but, clearly, there is the making justice work programme, which is separate and non-statutory. Some of Lord Gill's proposals, which were made several years ago, did not require legislative change and some did. That is why, next week, we will proceed to stage 2 of the bill that will allow those changes to be made. Other matters, such as videoconferencing, are dealt with through the making justice work programme. They are not dealt with in one particular silo; they are on-going work. They are factored in.

**Colin McKay:** I can give a little more detail. Clearly, the overall envelope was set by the original spending review. At the time of the spending review, there were discussions with the justice agencies in relation to the bids that were put forward and ultimately included in the budget, including discussion with the Scottish Court Service as a separate, non-ministerial department about what it needed to live on, as it were. Following that setting of the budget and the provision that was made, work has gone on within the individual agencies in terms of their business and corporate planning on how they are going to live through the next period.

There are two mechanisms that bring that together. In terms of the reforms, as Mr MacAskill has said, the making justice work programme, about which he has written to the committee in the past, brings together all the different structural and procedural reforms. One of its projects deals with the Gill reforms. The project board is chaired by the chief executive of the Scottish Court Service. It will consider the business case for those reforms and the implications for legal aid, the Crown Office

and the police, all of which are represented on the project board for the Gill reforms as well as the project boards for the other reforms.

There is an overarching programme board that has on it the chief executives of the Court Service and the Scottish Legal Aid Board, the Crown Agent and a representative from the police. They oversee that overall process.

11:00

Right at the apex of official co-ordination there is a thing called the justice board that looks, over the piece, at the work of all agencies that are involved in the justice directorate; it also looks at planned reforms and generally monitors how the finance is going over the year, any contingencies that have arisen and any plans that need to be put in place.

There is a fairly coherent structure in place that allows the Government to work with the different justice agencies, including the independent Court Service, to ensure that the reforms are properly budgeted for and the implications for the other agencies are fully taken into account.

**Graeme Pearson:** How are the interests of victims and witnesses weighted in those arrangements? How do you balance a judgment about saving money with the needs of the end customers, so to speak, whether those are victims, witnesses, accused persons or others?

**Colin McKay:** To some extent, that is why the process is overseen by the Government, which has an interest in victims and witnesses. There is engagement with a wide range of organisations in the broader network within which it operates, including Victim Support Scotland and organisations that have an interest in particular groups such as Scottish Women's Aid. They are all spoken to regularly about all such issues. There are also political commitments to victims and witnesses, which the officials in the various agencies have to—

**Graeme Pearson:** But the key point is how you weight their views. We have heard from the cabinet secretary about the imperative of saving money: the pressure is on. Given the views that those groups will express, how do you set the benchmark that says that the impact is too great?

**Kenny MacAskill:** There is no formula as such. As Colin McKay has said, I engage with Scottish Women's Aid, Victim Support Scotland, People Experiencing Trauma and Loss and others. To some extent, we just leave matters to be resolved by people of good will taking matters on board. Nobody goes out of their way to make matters worse. The previous Lord Advocate, Elish Angiolini, raised the issue that we should deal more appropriately with victims, and progress has



been built on that. The current Lord Advocate, Frank McConnell, correctly recognises the problems that are faced by witnesses, not just victims, which is why we are proceeding with the victims and witnesses bill.

There is no formula; we are required to look at the budget and take on board the views of others. As well as the views of those around this table, the Government takes on board the interests of stakeholders—those who represent the rights of the accused and those who represent the rights of victims and witnesses. You may say that the process is bureaucratic, but all those views require to be taken on board, and that is what we seek to do. That is why we take representations from individual members on particular issues relating to the care and welfare of either victims or prisoners.

**The Convener:** I am advised by the deputy convener that Frank McConnell is a dancer. The Lord Advocate is Frank Mulholland.

**Kenny MacAskill:** I meant Frank Mulholland. My apologies to my friend.

**The Convener:** Maybe Frank Mulholland dances as well—who knows? We will find out one day.

Mr McKay wants to add something.

**Colin McKay:** I will add just a small supplementary point on the courts programme that is produced by the Scottish Court Service. The concerns of victims and witnesses were of concern to the judiciary, which was one of the reasons why, before the Court Service developed its plans, the Lord President laid down some principles of access to justice. Those were included in the consultation document to guide the Court Service in developing its plans. They include the desirability of criminal justice being delivered locally; the requirement that the court should be accessible within a day's travel, wherever possible; and the requirement to provide proper facilities for victims and witnesses in courtrooms. The concerns of victims and witnesses were addressed in setting the parameters within which the Court Service had to work out how it was going to deliver the savings.

**Graeme Pearson:** Thank you. My last question is on the impact of the use of corroboration on Government budgets going forward.

In the event that the legislation is passed and the approach to corroboration changes, does the cabinet secretary see a need to continue to require corroborative evidence in the area of forensic science analysis and post-mortem? We know from experience that mistakes can, on occasion, be made in those circumstances, and that there is a special need for corroboration in

that regard. That is an obvious budget cut, but it might be a budget cut too far.

**The Convener:** I was waiting for the magic word “budget” to slither in, and you said it.

**Graeme Pearson:** I never slither, convener.

**Kenny MacAskill:** We are consulting on those matters. In my experience—and doubtless in that of Mr Pearson—there is usually an autopsy by the defence as well as one by the Crown. We need to see the outcome of the consultation.

Mr Pearson makes a valid point. There have been some high-profile cases, but equally there have been many that have gone remarkably unchallenged. I am happy to assure Mr Pearson that we will consult properly on the issue.

**Roderick Campbell:** In relation to the maintenance budget for the courts, the written submission from the Scottish Court Service states that the proposed capital funding will leave “little for on-going maintenance” in the next two years.

The acting chief executive has confirmed in written evidence that the SCS has a maintenance backlog of £57 million. Even if the proposals in the court reform consultation document are implemented, the savings will potentially be a drop in the ocean against that backlog.

It is clear that, beyond the two years, unless a substantial improvement in the Government's financial position comes from somewhere, the SCS will be under considerable pressure.

**Kenny MacAskill:** The SCS is under pressure, which is why the status quo is not tenable and why, as I said, it is consulting on making changes. Roderick Campbell is correct that challenges still exist. We have discussed before how to balance those matters. That is the art of politics: how do we decide what we put into health as opposed to what we put into justice or education?

We believe that our budget is appropriate and covers the needs of the Scottish Court Service at present. However, this is not simple or easy. Once we come to a further spending review, the priorities might have to be changed; that is how the process operates.

As a Government, we have preserved health spending as we think that it is important to the wellbeing of the people of Scotland. Opposition parties have disagreed with us on that, but we have had to take the decision.

We believe—and Eric McQueen has confirmed—that the budget is manageable. It is not easy, but that is the same across the portfolio. We wish that we were not in the current situation, but the cuts are coming from Westminster and we have no alternative way of dealing with them. We will work with the stakeholders and institutions,

and together we will create a fair and appropriate balance. Roderick Campbell's point is valid, and the matter will have to be considered and reviewed in due course.

**The Convener:** I will ask a question, which is a bit of a surprise. The committee has focused on criminal procedures in relation to court closures, but most people are involved in civil matters. I am thinking of things such as small claims, adoption, child welfare, matrimonial contact and interim interdicts. All those matters—for example, interim interdicts for residential contact—need to be heard pretty quickly, and all the people who might be involved will be very local.

I have concerns that civil work, which we tend to put to one side without thinking about it, will be prejudiced by the closure of rural courts. I appreciate that custody has to exist for criminal procedures and requires certain assets such as jails and custody suites. However, last week, I asked whether it would be possible for civil procedures to be held in buildings other than court buildings. The social work department, the general practitioner or whoever would all be on site and able to give evidence at hearings or interim hearings. What is your view on that?

**Kenny MacAskill:** That is a matter for the Scottish Court Service, and I have no real view on it. In my past experience as an agent, I appeared at referrals from children's panels in Dundee, which at the time were dealt with in a separate building and not in the sheriff court—the sheriff moved to a separate building.

However, a lot depends on what is available, and it must be counterbalanced with the greater specialisation that we face in legislation. I have not practised law for 13 years, but when I was doing so in Edinburgh, which is one of our largest sheriffdoms, very few sheriffs did adoptions. There was usually one sheriff in particular who did adoptions—at one time it was Sheriff McNeill, who was replaced by Sheriff Scott, I think—but other sheriffs did not do adoptions. We now have mental health measures, guardianships and so on, and I know from discussions with people in the Scottish Court Service that there are many cases in which there is only one sheriff in any particular locality who can or does deal with such cases. Your point is valid.

To some extent, the point is about police stations. I often go to places where the police officer is not in a police station but in the same building as council services, such as social work. Frankly, that makes a lot more sense because people tend to take care of multiple issues. If opportunities arise, it would be good to deal with them. However, a particular sheriff who specialises in adoption, mental health measures or guardianships might be in a different place.

Whether we are talking about buildings or new technology, we have to break out of saying that particular courts and particular sheriffs have to deal with particular issues. That cannot continue in the world in which we live today. The court might not be in the right place and, in some cases, the sheriff who is there might not have the right skills. That is not to criticise that sheriff, but they still might not have the skills to deal with a particular matter.

**The Convener:** I accept your argument about sheriffs and specialisms, which has been going on for a long time. Nevertheless, there are not only issues about access to justice, because costs are involved, too. I am therefore sceptical about court closures being cost neutral when I can see civil cases in which a social worker or a GP, for example, might have to travel into a city rather than giving their evidence within the community. Not only would their travel incur costs, but it would cost them time and so on. I challenge the idea on those grounds. I accept that the situation might be different when custody suites have to be provided, but I draw your attention to the fact that civil work forms the majority of people's contact with the courts in Scotland. We must not overlook that when we look at the costs of access to justice and the financial costs of moving a court 40 or 50 miles away.

**Kenny MacAskill:** I accept that, but the Scottish Court Service has pronounced from on high, and the case of B v G was about how matters are dealt with, not just where they are dealt with. The Lord President has my full support on that. We have to recognise that some cases have to be dealt with expeditiously. I take your point on board, but the overwhelming majority of cases do not ever go to proof.

**The Convener:** The cabinet secretary is aware that Graeme Pearson wants to ask a certain question. I am a bit dubious because I do not really see what it has to do with the budget but because consensus seems to have been reached behind my back, you may proceed, Mr Pearson.

**Graeme Pearson:** I am sorry, convener, but you agreed to have word passed to the cabinet secretary.

**The Convener:** Woops. Then I did forget; forgive me—I had a senior moment.

**Graeme Pearson:** The issue of fatal accidents abroad and the ability of our authorities to deal with them has been mentioned at the committee before, and a number of members are concerned about it. We have had a number of responses that indicate that the Government will introduce legislation at some point in the future. I hoped that you would be able to give the committee some indication today about when that would happen. In

the event that you find that you are too busy, would you object to someone from the committee taking the matter forward independently?

**Kenny MacAskill:** The parliamentary timetable is not within my domain but we are committed to implementing Lord Cullen's recommendations about deaths abroad and wider issues. The fatal accident legislation is now from a past century and we have to progress it. I reaffirm the commitment that we will bring in the legislation before the end of this parliamentary session, but I cannot give you a precise timetable.

We are doing what we can and, as I have said previously, we have already managed to implement the measure for military deaths abroad. I am grateful for the support on that from south of the border and for the excellent work that has been carried out by the Lord Advocate, Frank Mulholland. I wanted to get that on the record.

Some clear issues that individual concerned citizens have brought to me require not so much a legislative change as an improvement in the Foreign and Commonwealth Office's interaction with individuals. To be fair, I think that the FCO is seeking to address that. All that I can say is that you may care to discuss the issue with the Minister for Parliamentary Business, although I give you the assurance that we are committed to the issue in the interim.

**The Convener:** Mr Pearson is happy. He smiled: I think that that means that he is happy.

I thank the cabinet secretary and the officials very much for their attendance. I suspend the meeting for 10 minutes before we move on to the next item, which is on Cornton Vale.

11:15

*Meeting suspended.*

11:27

*On resuming—*

## Commission on Women Offenders

**The Convener:** Item 5 is an evidence-taking session on the cabinet secretary's report to Parliament last week—for which I thank him; it was very useful—on progress in relation to the commission on women offenders. The session will also cover any budgetary issues relating to women offenders.

I thank the cabinet secretary and Joe Griffin, deputy director of community justice at the Scottish Government, for remaining with us and I welcome to the meeting Colin McConnell, chief executive of the Scottish Prison Service. I believe that this is Mr McConnell's second visit to the committee. He has hardly got his foot in the door and here he is, back again.

I ask the cabinet secretary to make a short opening statement, after which we will move to questions from members.

**Kenny MacAskill:** I have nothing to say, convener. I am happy to go straight to questions.

**The Convener:** That is wonderful. Alison McInnes will start the questioning.

**Alison McInnes:** This time last year, cabinet secretary, you were quite scornful of my pursuit of a replacement to Cornton Vale, saying:

"If you wish me to commit to or take up a Lib Dem announcement—if that is what it is—that we should build a replacement for Cornton Vale, then tell me where the money should come from, because it would probably cost about £140 million ... I cannot ask the SPS to build a replacement for Cornton Vale."—[*Official Report, Justice Committee*, 1 November 2011; c 422.]

I genuinely welcome what was a desperately needed change of heart.

**The Convener:** That was just wonderful, Alison.

**Alison McInnes:** I am making a serious point. Cabinet secretary, do you now consider yourself to have been poorly advised by the previous SPS management on this matter?

**Kenny MacAskill:** No. We are simply responding to the report of Dame Elish Angiolini's commission—which, after all, is why we are here. She highlighted Cornton Vale's unsuitability, which is a point that resonated in comments made by Her Majesty's chief inspector of prisons, and we are seeking to address that particular aspect of the commission's report. As the report makes clear, we never doubted that problems existed at Cornton Vale, but we are happy to accept the position that has been set out and I am grateful to

Colin McConnell for pressing on with the replacement. It will take time, but we have committed to finding the money and I am grateful to my colleague the Cabinet Secretary for Finance, Employment and Sustainable Growth for assisting us in that effort.

11:30

**Alison McInnes:** We did not really need the Angiolini report to tell us about the problems at Cornton Vale; after all, Brigadier Hugh Monro and this committee have been pressing you for a long time on the matter. The issue was the SPS's unfortunate attitude.

Indeed, that lies at the heart of my next question. What changes have been put in place to meet the challenge of changing the culture throughout the SPS on this matter and to put women offenders properly on the agenda?

**Kenny MacAskill:** I will ask Colin McConnell to comment in a moment, but I think that the Angiolini commission has taken a holistic look at these matters. The issue is not simply about women who are in prison but about those who might be put into prison and how we divert them from going there if such a move is not appropriate. As Dame Elish accepts, prison will always be the place for some offenders, whether or not they are women, but the fact is that far too many who go there would be better diverted to alternatives. Of course, the question is how we deal with women not just when they go into prison but when they are liberated, as they will be at some point, and my colleague Joe Griffin and his team are rising to that challenge.

We accept that there are far too many prisoners at Cornton Vale and that it would be better to deal with some of them elsewhere. Of course, there is also the issue of the prison estate, which the SPS is addressing. We must ensure not only that fewer people come in to the system but that we treat the difficulties of those who do and address their offending behaviour. It is not that these people are not offending but that prison is not necessarily the best solution for alleviating the situation. In cases where, because of the nature of the offence, certain people are required to go to prison, we must try to break the cycle of offending.

Colin, do you wish to comment on the issue of culture?

**Colin McConnell (Scottish Prison Service):** Certainly.

In direct response to the question, I note that the SPS had a long-standing approach to strategic planning. However, with the benefit of Dame Elish's report—which, of course, the previous administration did not have—I as incoming chief executive have been able to take a fresh look at

that planning. Now that the issues have been crystallised in the commission's recommendations, we have been able to take a fresh approach not just to longer-term planning but to short-term opportunities for the SPS to respond speedily and meaningfully to Dame Elish's powerful recommendations. That was the reason behind my proposals to the cabinet secretary, and I am really pleased that he has picked up on them and that we have been able to move forward as proposed.

**Alison McInnes:** Are you personally going to lead the holistic work that is needed?

**Colin McConnell:** Yes. One of the six recommendations that Dame Elish aimed at the SPS was that, in effect, someone be brought on to the SPS board at a non-executive level to drive the initiative forward. I think that we all understand why she made that recommendation; it seems to me that the spirit behind it is that someone at a senior level needs to get a grip of the matter and drive it on. However, I do not think that that needs an independent or new person; I think that the chief executive simply needs to do it and that is what I am doing.

**Alison McInnes:** That is very welcome. I am hopeful that if the head of the organisation recognises that the issue needs to be tackled, the culture within SPS, too, will change. I am sure that we will keep an eye on the matter.

I am well aware that the Angiolini report covers much more than Cornton Vale, and I am sure that other colleagues will touch on the other issues that it raises. However, I want to focus a bit longer on the issues at that prison. Last week, Mr McConnell advised us that he expected the new prison to cater for 300 women; however, the cabinet secretary has just said that there are far too many women in prison and part of the reason behind the Angiolini report was to find other ways of dealing with the issue. The report recommends a small national prison for those on long-term sentences and those who need to be imprisoned for the safety of the public. Does what is proposed represent a change or a general shift away from that part of the Angiolini report?

**Colin McConnell:** You are quite right to focus, as you did last week, on what seems to be a deviation or a disconnect from where Dame Elish wants us to go, but in reality I do not think that it is a disconnect. It is part of a journey to get us to where the commission wants us to be, which is essentially to have smaller units that target in a more focused way the many and varied special issues that confront women offenders and, more particularly, women in custody. We have to start somewhere.

Today, there are 451 women in custody across the Scottish Prison Service, with more than 250

placed at Cornton Vale. I think that we all recognise and accept that Cornton Vale is a place out of time and we need something much better. Our approach is to replace it. As you know, the replacement will be in Inverclyde. If we look back at the history of the population growth of women in custody, we see that that population has grown by more than 200 per cent over 20 years. We must be mindful that whatever we design, certainly in the short to medium term, has to be capable of managing the population that we have at present while beginning to put in place the strategies, approaches and services that will ultimately lead to the population reducing.

My counsel, if you like, or my professional advice to the cabinet secretary and the committee is that we should plan to provide a proper resource for women in custody. It must be specially targeted, as you have pressed me to ensure. Ultimately, it has to be able to cope with a population of between 450 and, say, 480, because historically that is where we have been, but it will have an absolute imperative to put in place proper support services that, in time, will reduce that population. That is what we are about.

**Alison McInnes:** That is useful. I am glad that you touched on that, because the problems at Cornton Vale run deep. They go far beyond the state of the buildings. There are problems with how mental health issues are dealt with, or indeed not dealt with, the prolonged segregation of some women prisoners, problems with family access and insufficient access to education and training. All those issues have been highlighted time and again.

What provisions will you put in place in the new prison, particularly in terms of capacity and physical space, to deal with the mental health issues and access to education and training? I would be interested to hear about that.

**Colin McConnell:** Dame Elish set out an extensive list of services that she recommended we provide. Our approach, not just to provision at Inverclyde, but in the hub-and-spokes approach that we talked about last week, is that we intend—it is certainly part of the emerging design brief—for Inverclyde and subsequently the new regional unit at Edinburgh to ensure that there is specialist, targeted provision across the landscape of needs of women in custody.

For example, there will be a unit at Inverclyde that is designed to deal with women with particular mental health problems. Extensive education facilities will be provided at Cornton Vale and in the spokes out in the community-facing environment, which will be designed to integrate with community services to ensure that we get continuity between custody and the community. The recommendations in Dame Elish's report are

being brought to life, not just in the physical structures that you mentioned but in the relationships and the service provision that we will put in place.

**Alison McInnes:** I want to ask one final question, if the convener will allow me. What will happen in the transition? Is there enough budgetary provision to help to tackle the existing problems before Inverclyde opens?

**Colin McConnell:** Yes, there is. The committee will appreciate that I am not here to do a bleeding-stumps presentation. The cabinet secretary and the Scottish Government have made sure that the Scottish Prison Service is appropriately resourced to do the business that it has to do, and that includes the necessary improvements that we need to make pro tem at Cornton Vale. Those are already funded and I have set that money aside, so we will see some significant improvements to the living accommodation at Cornton Vale and the development of a family centre there, which we fully intend will be operational by the spring. As you know, we are also looking to improve the training of staff who work with women, and that is already being brought forward. Where necessary, we will pump-prime additional targeted service delivery for women at Cornton Vale while we bring on the more medium-term improvements at Inverclyde and Edinburgh.

**The Convener:** I have a long list of members who wish to speak: Colin Keir, Rod Campbell, Sandra White, Graeme Pearson and John Finnie.

**Colin Keir (Edinburgh Western) (SNP):** Good morning. The Angiolini commission highlighted the problem of prisoners experiencing delays in accessing entitlements on release from prison and the effect of those delays on the prospect of them reoffending. You mention in your letter that you had a meeting with the UK Minister for Welfare Reform. Is there anything that the Scottish Government can do to mitigate the problem? More generally, do you have a sense of what impact the UK Government's welfare reforms will have on this group?

**Kenny MacAskill:** There is an issue there, as you correctly raise. I had a meeting with Lord Freud some months back, and we are working on a pilot project with the Department for Work and Pensions to try to ensure that women leaving HMP Cornton Vale are able to receive benefits immediately on release. That project is planned to be established in April 2013.

As a Government, we are also investing in services through the change fund and community justice centres to ensure that, for example, mentors will meet women at the gates as they come out. That will help to support them, but I would not underestimate the challenges that the

Scottish Prison Service—and, indeed, the criminal justice system—will face from welfare reform. I am grateful to Lord Freud for considering that pilot project, but we are also taking steps ourselves.

**Colin Keir:** Is there perhaps more than a fair chance that the number of women coming into the justice system will rise because of the benefit reforms?

**Kenny MacAskill:** I do not know. I think that the reforms make for great difficulty. To be fair, received wisdom was that the crime rate would rise during the recession, but that has not been the case. However, I do not think that we should underestimate the huge problem that people will face because of, for example, the change to monthly payments. That will be felt in particular by women, but it will also be felt by men and by youngsters. There are huge problems there.

We are doing what we can in terms of the prison estate and in terms of how we deal with those who are discharged or liberated from prison by trying to meet and engage with them both before their release and when they are released. The broader social matter would probably be better commented on by others, but I would be denying reality if I thought that welfare reform will not cause problems. It will cause hardship, and when there is hardship sometimes people do things that, under other circumstances, they would not consider.

**Roderick Campbell:** The Angiolini commission was very positive about mentoring—which we talked about a few minutes ago—and said that it provides necessary support and ultimately helps to reduce reoffending. What is the Government doing to try to encourage as many women as possible into mentoring?

**Kenny MacAskill:** We are working on a variety of matters through the change fund. For example, I have met Sacro, which promotes mentoring in a number of areas, including by bringing in ex-offenders, and that is also supported by others. In a variety of ways, we are seeking to work and engage with people to give prisoners support before they leave and then when they leave. Joe Griffin will elaborate on that.

11:45

**Joe Griffin (Scottish Government):** Mentoring is important because many of these issues are about not just how the services are provided but how vulnerable people access them. The terms in which people leave prison are often undesirable. Predictably, it is just before the weekend, when services are not open. Drug dealers often know exactly when their clients are coming out and are waiting for them. By getting more service user feedback, we have come to understand the real-life experience of people leaving prison. Our

thinking behind expanding the range of mentoring services available was that side of the equation—to try to get people to link in with the services that already exist and to which they are entitled as citizens, as well as to look at the specialist requirement for particular types of service to respond to those circumstances.

Specifically, in setting up the reducing reoffending change fund, we and partners took the view that that should be devoted to the expansion of mentoring services across the board. There is £7.5 million available for that over the three years of the spending review period. We have now allocated funds for the first year. Groups working with women are among those that are receiving the funding. We hope that that will be a much more effective way of supporting women and others leaving prison to access the services to which they are already entitled.

**Roderick Campbell:** How do we ensure that projects receiving money from the change fund are sustainable beyond that funding cycle, for the long term?

**Joe Griffin:** That is the other part of the change. When we set up the fund in the spending review, we were keen to look not only at changing the way in which people exit prison back into the community but at changing the way in which we fund things. The problem is that pilots that are run by the third sector often prove themselves to be successful but struggle to get sustainable funding thereafter.

The model that we are looking at for years 2 and 3 of the change fund is something called a public-social partnership. It is a funding model that originated in Italy whereby the third sector and statutory funders come together to co-design a service and then reach an agreement that, provided certain outcomes are met during the delivery of that service, it will be sustained over a period. We have deliberately used the change fund to test that approach in Scotland because we feel that it could be an innovative way of ensuring that the projects that really work and deliver outcomes get sustainable funding. Of course, it is early days and there are still challenges with that. I am not making great claims for success right now. However, we think that the analysis is right and that too many projects struggle to get sustainable funding. We are using the change fund to address that head on.

**The Convener:** I want to know more about that, because the issue of short-term funding, and successful projects having to redesign themselves to apply for fresh moneys, has been a running sore for all the time that I have been in Parliament. I am encouraged by what you say about a public-social partnership. Perhaps it is not the day to tell us more about that but perhaps you could let the

committee know more about how that will operate. Will it become the norm? Will it be the way in which funds are used in the voluntary sector and the public sector? When will that happen?

**Joe Griffin:** Money has gone out for year 1, which is to support services that are already delivering mentoring. The money has also been to help some of the recipients to prepare for years 2 and 3, which will be explicitly run along public-social partnership lines. People bidding for the change fund will need to demonstrate that they have come together—statutory and third sector—to work according to those arrangements.

We do not yet know what obstacles will prevent that from working. To some extent, they remain some of the bigger obstacles in the system about the way in which the money is used. Nevertheless, we think that it is an interesting model, which is worth looking at. That is what we are doing through the change fund.

It is too soon to say whether we will expand that model so that everything will be based on it, but there is a logic about it, and an attraction in the collaborative approach that is taken. The guarantees of sustainability are also interesting. However, I would not want to say more about it at this point.

We share the analysis of the problem. I suppose that that is one of the reasons why Dame Angiolini went on to look at the structures lying behind community justice, which the cabinet secretary has said he believes are no longer tenable. There are bigger structural questions at play as well.

**The Convener:** I will leave it there for now, but I think that some of us might want to return to that in due course.

**Sandra White:** I want to put on record my thanks to everyone who has been involved in what is happening in Cornton Vale at the moment—Alison McInnes, the committee and others as well. A number of years ago, I visited Cornton Vale with the Equal Opportunities Committee and I have worked with others since then to bring about change. However, this is the best committee to undertake that work. I am pleased about what is happening.

I want to ask about collaborative working. There will be a new prison, which will be an improvement on Cornton Vale, but my interest is in what happens when the women are released from prison. We do not want there to be a revolving door, so the work that is done outside is important. One of the issues is housing and accommodation for women when they are released. That is a difficult issue in communities—I am sure that we have all come across difficulties with the issue in our local areas.

What is happening in terms of collaborative working on that issue? Are we working with housing associations and local authorities with regard to women being rehoused and being given mentoring back-up? The changes in the welfare system have already been discussed, but it is important that we have joined-up thinking and collaborative working to ensure that there is not a revolving door.

**Kenny MacAskill:** We are aware that stable accommodation is a critical factor in avoiding the problem that you raise. The Government is committed to tackling and preventing homelessness. That is underpinned by the target of ensuring that all unintentionally homeless households will be entitled to settled accommodation by the end of 2012. In 2009, a Government and COSLA steering group was established to take forward priorities around investing in the right areas, improving access to accommodation, developing corporate responsibility for homelessness across local authorities and—perhaps more important, given the comments that you have made—preventing homelessness before it occurs.

We have established five local authority-led housing option hubs across Scotland. They share good practice in preventing homelessness and they have discussed their findings with Dame Elish Angiolini and the commission on women offenders.

The cross-sector supported accommodation implementation group will report at the end of this month. That group has considered the recommendations of Dame Elish Angiolini's report. As I said in my letter, officials are also exploring different models of housing support for women leaving prison, including support in tenancy.

There is no single, simple solution. Further, as you say, working with partners is important, which is why officials are working with Glasgow City Council, the Glasgow Housing Association and Turning Point Scotland to explore options for improving access to suitable accommodation. We must ensure there is suitable accommodation, but what is suitable for one person might not be for another. There must be support, and we have to work with those individuals through agencies and partners. That is what we seek to do.

**Sandra White:** Obviously, we are talking about the budget today, but we must remember that we need to give women offenders the best possible opportunity to get rehoused.

With regard to joined-up thinking, you have mentioned the hubs and so on. Will the integration of health and social care have an impact on the delivery of joined-up care and support to women offenders? Will there be regular meetings between

you and the health and social care set-up, when that comes about?

**Kenny MacAskill:** Some of those matters are more for COSLA than us. However, we interact with COSLA and other Government departments. I think that your assumption is correct. That case is being worked on, and discussions are taking place on another aspect of the Angiolini report, which concerned whether there should be a national agency. We are going to consult on that. The status quo in community justice is not tenable and there have to be changes. I have been in discussions with COSLA and we will continue to engage in those discussions. Dame Elish Angiolini's proposal will be one option for change in the consultation document, but we need to engage with partners on the matter. We have taken no firm view on it.

We are looking to work not only with COSLA but with the Association of Directors of Social Work to try to ensure that the health and social care changes do not have any consequences that would be detrimental to community or criminal justice and that the appropriate balance is maintained. We are aware of the ADSW's thoughts about a holistic social work service and COSLA's view—which we accept—that such things are best dealt with locally. It is about working towards change, as change there has to be, while taking on board the views of COSLA and the ADSW, and getting the best possible input from them.

**The Convener:** I remind members that this is not just about budgets; it is also about the reports. I know that I was hard on members in the previous session, as the discussion then was about the budget, but this time we are discussing the response to Elish Angiolini's report and budget issues, so do not feel constrained—not that many of you do.

**Graeme Pearson:** First, it would be right to record how helpful I found the thoughtful explanations that Colin McConnell gave us last week and today. The inventiveness that he has displayed in resolving some of the issues is to be applauded. The sting in the tail is that I look forward to the same inventiveness in relation to men in prison and what they face in the future.

My question is about the role of Her Majesty's chief inspector of prisons. The chief inspector reported his concerns about Cornton Vale and then, when he returned 18 months later, felt sufficiently moved to report that he had observed no change in the interim. However, let us leave aside Cornton Vale, as we are moving on and we will resolve that problem. My question is about the role of the chief inspector, and their ability to record their observations and say that things have been done or get an open response from the

Government or the Scottish Prison Service that says, "We're not going to do anything about these things." From looking at the history of the period, it seems that the matter was parked. Nobody said, "We're not doing anything," but equally nobody did anything. Moving forward, where do you see the chief inspector's role? How do we ensure that recommendations and observations that the chief inspector makes are acted on?

**Kenny MacAskill:** Brigadier Hugh Monro is doing an excellent job, as did his predecessors, Andrew McLellan and the late Clive Fairweather, to whom I pay tribute. To be fair, some of the comments that he made about Cornton Vale were addressed. He thought that particular issues had not been addressed in 18 months, but he acknowledged that progress had been made in other ways.

Retaining an independent inspectorate is necessary and appropriate. I regularly meet the chief inspector, and he has access to me. Ultimately, it is about working out a solution. There are challenging matters for the Prison Service in the chief inspector's most recent reports, such as on the open estate, but he has reported good practice and commented quite often on outstanding practice. Things have to be taken in the round. Progress on Cornton Vale has been made and significant change has now been triggered by Angiolini, but I always attach the utmost significance to any report from the chief inspector of prisons.

**Graeme Pearson:** Do you agree that the key point is how we ensure that recommendations and observations that the chief inspector makes are acted on? In his subsequent report, he stated blankly that he had witnessed no change as a result of his previous visit, 18 months earlier. I am not seeking someone to blame or to criticise; rather, I am trying to ensure that we do not repeat that exercise in the future with either the women's or the men's estate.

**Kenny MacAskill:** It is a matter of working with the Prison Service. My recollection is that progress was made on some issues, but there were fundamental issues on which progress was not made, which the chief inspector challenged. Colin McConnell's predecessor thought that there were limitations on where the Prison Service could go with those matters, given the nature of the estates. Obviously, these are Government responsibilities, and I am held to account on them by both the committee and the Parliament. We need to continue to encourage the dynamic that exists between HMIP and the Prison Service.

**Graeme Pearson:** I will leave it at that.



12:00

**John Finnie:** I will comment on and ask questions about recommendations 34 and 35 on “Structures”. We have heard a lot of positive things today about the holistic approach, multi-agency working and all the rest. It certainly seems from what the report found—many of us knew this already—that people who have been incarcerated and so were, in a sense, out of sight and out of mind, were not being met at the gate.

I commend you for including the question of a national service in the consultation. I do not want centralisation of services, but it seems to me that the fragmentation and silo mentality that have applied so far have failed. I do not know whether that is the responsibility of the community justice authorities. There are competing demands and I think that we still have relatively junior people making housing decisions based simply on housing criteria rather than their also having had regard to wider issues. Through another body, I have had experience of that just within the past week.

We must make it clear that people must be supported in housing and accommodation when they leave prison, rather than just given a house. That could be the worst thing to do for someone, because people often need support when they leave prison.

You state on page 5 of your letter:

“We are keen to engage in an open dialogue with partners on what should replace the current arrangements”.

You also say:

“The consultation period is likely to last until spring 2013, with an announcement on the way forward being made later that year, and introduction of new arrangements in 2015/16.”

Given that a report can often build up an impetus, is that date for introduction soon enough? What will happen in the interim period? Is there a danger of slippage?

**Kenny MacAskill:** That is a fair point, which I accept. However, there is complexity because of the number of agencies involved and our having to balance how we achieve some national cohesion as well as local delivery, which you correctly pointed out. As I said to your colleague Sandra White, we believe that the status quo is not tenable, and Elish Angiolini has made that clear. We have had initial discussions on the issue with COSLA and have touched on it with the ADSW.

Its going out to consultation at the end of the year is probably the earliest that it can be done. Because of the complexities, we must allow the consultation to continue until spring 2013. I am open to suggestions about how to truncate or accelerate the process, but given what is already

going on in health and social care, we must recognise that there are already significant pressures and that we must take the time to get the process right.

I am happy to give you an undertaking that we will do that, if we feel that the consultation process could be accelerated without jeopardising democratic input or recognition of the complexities or difficulties involved. However, I do not want to drive forward without ensuring that we bring people with us so that we get the best possible outcome. We must remember, when undertaking structural change, that we are dealing with people who have complex needs, and that staff have to continue to do their day job as well as cope with changes in their roles or changes for those with whom they work. I can give John Finnie that commitment on the consultation timescale. We feel that it is manageable, but we will monitor the situation as it goes along.

**John Finnie:** Okay.

With regard to the three stages—where we are at the moment, the interim period after the consultation, and the period thereafter—who is responsible for an individual prisoner’s overall wellbeing when they are released?

**Kenny MacAskill:** That is a multi-agency responsibility; for example, some aspects of a released prisoner’s wellbeing will be to do with health problems, whether addiction or mental health. Such prisoners will also have statutory entitlement to housing, which is a matter for the local authority housing department. We must try to bring all such functions together without creating unnecessary bureaucracy. This is about problem solving; it is part of the ethos of progressing criminal justice in respect of how the courts solve problems, and in respect of the Prison Service’s responsibility for solving problems. I do not foresee a scenario in which one agency would be given total responsibility for dealing with prisoners’ issues, because some matters will remain the responsibility of other agencies.

We must create the structures that bring together all the people who have an input in housing and health—those who are dealing with mentoring, monitoring and support. The question is about how we create those structures. We are going out to consultation on that because we are open about where it is going—other than to say that the status quo is not tenable. One of the options will be what has been suggested by the Angiolini commission, although I understand and accept why that option is not currently favoured by even COSLA or the ADSW. There will have to be alternatives.

**John Finnie:** Do you accept that the situation could remain fragmented because of competing

demands among the various bodies? For example, should local authorities rewrite their housing allocation policies, or are they robust enough as they are? Sandra White mentioned the integration of health and social care that is taking place at the moment, which is not without its challenges.

**Kenny MacAskill:** What works best for the criminal justice system is to get all partners round the table. In the community safety partnerships in Glasgow, which have been replicated in West Lothian, Stirling and other areas, we have around the table police officers, people who deal with young offenders, youth workers and people who deal with housing matters. They look at what has happened, who caused it, how it came about and consider what the solution might be.

I think that the future, in terms of dealing with such individuals, will be our recognising that a multitude of people are required to deal with them. Each individual is different, whether through drug addiction, alcohol problems, personality disorder, health problems or mental health problems. We must move away from the silo mentality that John Finnie mentioned and instead have people working in partnership. Will the problem be best solved by creating a single silo or is it better to work at partnership level? All the things that seem to be working remarkably well in addressing offending, as opposed to dealing with reoffending and the consequences of offending, show that the partnership approach works best.

**The Convener:** I would like to conclude there. It has been a very thorough question-and-answer session. I thank the cabinet secretary and his officials for their attendance.

## Decisions on Taking Business in Private

12:07

**The Convener:** We return to item 1 on the agenda without even pausing for breath, as we have a lot to do. Item 1 was to ask the committee to agree to take items 6, 7 and 8 in private. Jenny Marra disagreed to that. Do you want to take all those items in public, or can we agree to take some of them in private?

**Jenny Marra:** As I have said before, I object to a lot of the agenda being taken in private. In particular, I see no good reason to take items 7 and 8 in private. I have previously rehearsed the reasons why our work programme should be discussed in public.

**The Convener:** Is the committee happy for item 6 to be taken in private?

*Members indicated agreement.*

**The Convener:** Are there any comments on item 7, which is our work programme? You will know from the private paper that, quite often, we will be talking about possible witnesses. My concern is that we must be discreet in doing that, and three or four of the proposals will require that we consider possible witnesses. I do not think that it is appropriate for us to do that in public, but I leave it to the committee to reflect on that.

**Alison McInnes:** I agree with you, convener. Beyond that, it is also useful to be able to discuss informally issues that we might want to put on the committee's agenda. It would be unfortunate if, because of a lack of time or other demands, we were unable to put something on the agenda and people took away the idea that it was not an important issue for us. That is why it is useful to be able to discuss such things in private.

**John Finnie:** As Jenny Marra is, I am instinctively uneasy about taking business in private, but I acknowledge what has been said. I wonder whether at some point, probably early on, a decision was made either by this committee or collectively by all the committees that has set the precedent. Is there any information that our officials could give us on that?

**The Convener:** I have said this already, so members might find it a bit tedious to hear me say it again, but in my 13 years here—in 11 of which I have convened committees—all work programmes have been considered in private, for the reasons that we have rehearsed. There is nothing mysterious about it; it is simply so that we can have a free discussion. We do not want people outside to feel somehow that their issue has been

not selected other than for very good reasons of time and so on. We also need to discuss witnesses and other issues. There should be a frank discussion among members, and I would not want to inhibit that. I know that everyone has things that they want to put into the work programme, and that is absolutely fair, but sometimes the committee needs to choose not to do something. I feel that we need to be able to have a really frank and robust discussion.

As I understand it, having such discussions in private has been the position on most committees—I do not know of any that discuss such matters in public—for the past 12 years. It happens for the reasons that I have given, and not for any bad reasons. I think that they are very sensible reasons, but there we go.

**Jenny Marra:** I will make a suggestion, convener. I understand that the discussion of witness names might be sensitive, but I feel quite strongly that we should be able to stand up in public and defend our priorities and what we think the committee should be spending its parliamentary time discussing. Could we split the debate in two, such that we would discuss our priorities for the work programme on the record and then discuss witnesses in private?

**The Convener:** That sounds like a neat solution, but it would not work, to be frank. After a decision on our work programme, it is quite good to say at the next meeting what we will do and for what reasons, which will tell people why we have made decisions. I do not see how we could disentangle the two. Again, I come back to the need for a frank and free discussion among members, which is what one wants when the work programme is being discussed.

**Sandra White:** I think that it would be nonsensical to split such discussions in two. We have had this conversation before; we have spent more time talking about whether we should have discussions in private than we have spent in private at some meetings. I object, and have had my objection minuted previously, to the way in which the issue is being presented by Jenny Marra—as if the Justice Committee wants to do things in secret. We certainly do not. People know exactly what we are coming out for when the decisions are made public. There is nothing secret or underhand about it. Where there are sensitive issues to be discussed, it is far better that they be discussed in private. I really object to the fact that, at every single meeting, Jenny Marra suggests that we are not being transparent and are somehow doing something underhand. I would second the convener in any motion—

**The Convener:** It is not a motion. It is a view based on my experience over the years.

**Sandra White:** My view is that the discussion should be held in private.

**The Convener:** Let us hear from Colin Keir then Graeme Pearson, and then from Alison McInnes, if she wants to come back in.

**Alison McInnes:** I will see how things develop.

**The Convener:** My goodness. Let us see how things develop.

**Colin Keir:** I am with Sandra White on this one. I do not normally go along with the idea of secrecy or anything like that, but I think that considering the three items in private would allow for frank discussion. We can at least set up the priority for the substantive debate that will eventually be had.

**Graeme Pearson:** It is a pity that Sandra White objects, because it is right that we should check ourselves and ensure that the practice that we are involved in is appropriate. We need to question ourselves about why we are doing things in private. It is right to have this conversation, because it reminds us why we are here and reminds us of the way in which we do our work. Jenny Marra has suggested an approach to try to breathe fresh air through the system and to allow the public to understand things. I do not think that there is anything sinister in the desire to share what we have been doing in private, because folk externally will wonder what we talk about and will think that the private meeting is where the business is being done.

**The Convener:** Now they know; we decide what we are going to do.

**Graeme Pearson:** Although we might be uncomfortable with the exercise of debate, it is right that we should at least talk these things through without feeling that there is something sinister about it.

**Sandra White:** Convener—

**The Convener:** No. I think that we have put fairly firmly why we consider some items in private. There are very good and sound reasons for it. Unless Alison McInnes wants to respond, let us move on. I take it that there is still a split among views here, so we will take a little vote.

The question is whether members agree to take item 7 in private. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

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

McInnes, Alison (North East Scotland) (LD)  
White, Sandra (Glasgow Kelvin) (SNP)

**Against**

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

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

Do we also want to debate taking agenda item 8 in private?

**Jenny Marra:** I stand by what I said; I see no good reason why we should consider a report on a legislative consent memorandum in private. That debate should be on the record.

**The Convener:** I want to get a move on, as we have a lot of business to do. For draft reports, I do not want to make exceptions to the rule. For very good reasons—the same reasons as I mentioned before—we need a full and frank discussion. We should not fight in public over a preposition or a comma—which sometimes happens and would be highly embarrassing if we did it in public—so I suggest that draft reports, as before, should be discussed in private and we should just get on with it. Do you want a vote on that as well?

**Sandra White:** It might make a good press release.

**The Convener:** If people do not want a vote on it, do members agree that the item be considered in private?

**Members** *indicated agreement.*

**The Convener:** Thank you very much. We now move into private session.

12:15

*Meeting continued in private until 13:01.*

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