



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 8 February 2012

Session 4

© Parliamentary copyright. Scottish Parliamentary Corporate Body

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

Wednesday 8 February 2012

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	589
SUBORDINATE LEGISLATION	590
Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Amendment Regulations 2012 [Draft]	590
Scottish Local Government Elections Amendment Order 2012 [Draft]	590
BUILDING REPAIRS (SCOTLAND) BILL	593
PETITION	603
Scottish Public Services Ombudsman (Review) (PE1405)	603
POLICE AND FIRE REFORM (SCOTLAND) BILL: STAGE 1	609

LOCAL GOVERNMENT AND REGENERATION COMMITTEE
4th Meeting 2012, Session 4

CONVENER

*Joe FitzPatrick (Dundee City West) (SNP)

DEPUTY CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

COMMITTEE MEMBERS

*Anne McTaggart (Glasgow) (Lab)

*Margaret Mitchell (Central Scotland) (Con)

*John Pentland (Motherwell and Wishaw) (Lab)

*David Torrance (Kirkcaldy) (SNP)

*Bill Walker (Dunfermline) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Derek Mackay (Minister for Local Government and Planning)

Andrew Muir

Liz Sadler (Scottish Government)

Christie Smith (Scottish Government)

David Stewart (Highlands and Islands) (Lab)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 2

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 8 February 2012

[The Convener *opened the meeting at 09:45*]

Decision on Taking Business in Private

The Convener (Joe FitzPatrick): Good morning, everyone. Welcome to the Local Government and Regeneration Committee's fourth meeting in 2012. As usual, I ask folk to check that they have switched off any electronic devices.

Are there any declarations of interest?

Kevin Stewart (Aberdeen Central) (SNP): As per usual, I declare an interest as a member of Aberdeen City Council. Given what we will discuss later, I also declare an interest as a member of Grampian joint police board.

Bill Walker (Dunfermline) (SNP): I declare an interest as an elected member of Fife Council.

David Torrance (Kirkcaldy) (SNP): I declare an interest as an elected member of Fife Council.

Anne McTaggart (Glasgow) (Lab): I declare an interest as an elected member of Glasgow City Council.

John Pentland (Motherwell and Wishaw) (Lab): I declare that I am a member of North Lanarkshire Council.

The Convener: Agenda item 1 is to decide whether to take in private items 8 and 9. I propose that we take them in private. Is that agreed?

Members *indicated agreement.*

Subordinate Legislation

Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Amendment Regulations 2012 [Draft]

Scottish Local Government Elections Amendment Order 2012 [Draft]

09:46

The Convener: Item 2 is oral evidence from the Minister for Local Government and Planning and from Government officials on two affirmative instruments. Members have a paper that sets out the instruments' purpose, as well as copies of the instruments.

I welcome the minister, Derek Mackay, and his team of Andrew Sinclair, Jaime Neal and Deborah Blair. I ask the minister to make opening remarks.

The Minister for Local Government and Planning (Derek Mackay): As the committee is aware, the Scottish Local Government Elections Order 2011 (SSI 2011/399), which provides rules for the conduct of local government elections in Scotland, was made on, and came into force on, 10 November 2011. Since then, we have identified some required amendments, which are addressed in the instruments that the committee is considering.

The draft Scottish Local Government Elections Amendment Order 2012 resolves potential difficulties concerning the publication of voting information when a count has been conducted by means of an electronic counting system. The draft order amends rule 61 of schedule 1 to the 2011 order, on the publication of voting information, so that information about postal votes is to be treated in the same way as polling station information is treated.

That means that, when fewer than 200 postal votes are received in a ward, the information about those votes shall be aggregated with the information from at least one polling station in that ward. The aggregated information will include no fewer than 200 votes, which will protect the secrecy of individual votes should a low number of postal votes be cast in a ward.

The draft order will simplify the publication requirements by removing the requirement to publish at polling station level some of the material that is already published at ward level under rule 56 of schedule 1 to the 2011 order. The publication of such data at polling station level would provide no information about the transfers of preferences on ballot papers for some

candidates and only partial information about the transfers of preferences for most other candidates, so it would present an incomplete picture of the election.

The draft order also remedies two minor drafting points in the 2011 order. First, it corrects a typographical error that the Subordinate Legislation Committee identified during the passage of the 2011 order. Secondly, it inserts a consequential amendment to the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007 (SSI 2007/263) so that those regulations refer to the requirement of secrecy provisions in the 2011 order rather than those in section 66 of the Representation of the People Act 1983.

The committee is also considering the draft Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Amendment Regulations 2012. We have recognised that obtaining copies of the marked register post-election is more expensive for Scottish local government elections than for any other election in Scotland, so the draft regulations reduce the costs of obtaining copies of the marked register to bring them into line with those for other elections. The new costs will be £10 plus £2 for every 1,000 entries for printed versions or £10 plus £1 for every 1,000 entries for data versions.

I am sure that the committee will agree that the changes are necessary and I hope that it will support the draft instruments.

By way of information, I also bring it to the committee's attention that, last night, the electoral management board for Scotland released its directions on the count for the local government elections. It is directing local officials not to begin the count before 8 am on Friday 4 May, so it is clear that there will not be an overnight count. The result will be determined the next day, in line with the consultation that the electoral management board for Scotland conducted.

The Convener: Thank you for those remarks and for the additional information, which will be helpful to the committee.

Members have no questions. The process seems pretty straightforward—thank you for making it all seem less technical than might otherwise have been the case.

We move to the debate on the motion on the draft Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Amendment Regulations 2012. As no members wish to speak in the debate, I ask the minister to move the motion.

Motion moved,

That the Local Government and Regeneration Committee recommends that the Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Amendment Regulations 2012 [draft] be approved.—[*Derek Mackay.*]

Motion agreed to.

The Convener: We now move to the debate on the motion to approve the draft Scottish Local Government Elections Amendment Order 2012. As no members wish to speak in the debate, I ask the minister to move the motion.

Motion moved,

That the Local Government and Regeneration Committee recommends that the Scottish Local Government Elections Amendment Order 2012 [draft] be approved.—[*Derek Mackay.*]

Motion agreed to.

The Convener: I thank the minister and his team. We will see you another time, no doubt.

09:51

Meeting suspended.

09:52

On resuming—

Building Repairs (Scotland) Bill

The Convener: Our next item of business is an evidence session with David Stewart MSP on a statement of reasons relating to a draft proposal for a member's bill. We have before us a proposal for a building repairs bill, along with the member's statement of reasons about why he feels that no further consultation on the proposal is necessary. I welcome David Stewart back to the committee and invite him to make an opening statement.

David Stewart (Highlands and Islands) (Lab): Thank you, convener and members of the committee, for allowing me to come along to give evidence, and for allowing me to participate a few weeks ago in the committee's evidence session on dangerous buildings. I appreciated that.

First, I will explain my draft proposal, and then I will set out the detail of my statement of reasons as to why further consultation is unnecessary. That is clearly the crunch point for today, but I am happy to provide members with as much additional detail about the bill as I can. I welcome questions, but I understand that the crunch question is about whether the bill requires further consultation. That is obviously why I am here today.

As the committee is well aware from its recent evidence session on building MOTs, the subject of dangerous and defective buildings is a significant one that affects all of Scotland. At that meeting, Professor Cliff Hague, from the Built Environment Forum Scotland, set out the scale of disrepair in Scotland's housing with reference to the 2010 Scottish house condition survey. As all members will be aware, one in four Scottish dwellings is in a state of extensive disrepair and half the owner-occupied dwellings in Scotland are in some form of critical disrepair, as are housing association and housing co-operative properties. The proportion increases steeply to 67 per cent for privately rented properties, rising further to 73 per cent for council and other public sector housing. As Professor Hague said, the statistics paint a disturbing picture of disrepair. I believe that a crisis is looming in Scotland that requires the level of disrepair to be tackled proactively.

My proposal seeks to provide a mechanism to enable local authorities to be more proactive by making provision for them to recover their costs by charging order when they have carried out work on defective or dangerous buildings. It is important to note that the problem that I seek to address applies more widely than just to residential property and extends to buildings more generally, including commercial properties, for example.

Members will be aware that only six out of the 32 local authorities in Scotland have ever served formal defective building notices. In the cases in which notices have been served, there has been only a 48 per cent success rate in relation to cost recovery. Alastair Mackenzie from the Scottish Association of Building Standards Managers said in evidence to the committee a few weeks ago that, in spring 2010, there was £1.3 million of outstanding debt to local authorities. That debt has still not been recovered. My proposal is relatively simple, but it has the potential to make a real difference to local authorities' ability to recover such sums and thereby to enable them to become more proactive in their approach.

I realise that my proposal is just a small part of a bigger picture and that the Scottish Government is actively considering the issue. I do not suggest for a second that my proposal is some magic bullet that will solve all the problems, but it is an opportunity to add to local authorities' toolkit for the recovery of debt. Members—particularly those who have taken through a member's bill—will understand that more reasonable and focused members' bills tend to stand a better chance of success. That is what I am attempting to do with my proposal, but nonetheless I am passionate about my policy, as I believe that it will assist in moving Scotland closer to the ultimate goal of protecting our built environment and, equally important, the health and safety of the public.

A positive by-product of the proposal is that it would provide a stimulus to the hard-pressed construction industry the length and breadth of Scotland. If there is more repair work for local authorities, much of it will be passed to local construction firms in every constituency in Scotland.

I turn to my statement of reasons, which is the principal purpose of my being at the committee today. To assist the committee in arriving at its decision, it might be helpful if I set out briefly the history of my proposal; describe the consultation that I undertook; and say why I believe that a case has been made for my proposed bill, by reference to specified published material.

I lodged my initial draft proposal during the previous parliamentary session, on 16 December 2010. At the same time, I launched my consultation, which was open for responses until 11 March 2011. The consultation was circulated to a wide range of organisations and individuals, including local authorities, community councils and, of course, equality groups. In addition, the consultation was available on the Parliament's website for anyone who was interested to respond. The consultation concentrated clearly on my main policy objective—the reintroduction of charging orders—although it also sought

responses on building MOTs and other subsidiary issues.

As time is short, I will quickly talk about charging orders, which, as members will probably be aware, came into existence in 1959. They were property-related charges; they had a legal standing over other debts; they cost less than £100 to record; and, of course, they could help low-income home owners and tenants who had a full repairing lease to pay for repairs under a burden on the property. Charging orders existed until 2003 but, because of what I believe was a drafting error in the Building (Scotland) Act 2003, they were removed. Members who keep up to date with such matters will know that, in the Housing (Scotland) Act 2006, a repayment charge was introduced, which the minister at the time, Malcolm Chisholm, said was a form of charging order. Again, members who are up to date on the situation will know that the repayment charge mechanism has rarely been used. However, charging orders have had a strong track record in Scotland since 1959.

My consultation paper was developed with the assistance of the non-Executive bills unit, drawing on its experience and best practice. Claire Menzies Smith from the unit is with me today—I thank her for all the help that she has given me.

The consultation was issued to 272 consultees and, because it was genuinely open, it stimulated a wide spectrum of detailed responses that highlighted the merits and potential drawbacks of the proposals. More than 80 per cent of respondents supported the reintroduction of charging orders. I am grateful to those who responded, as their responses helped me to refine my proposal and will be of continuing assistance in developing my policy further.

Unfortunately, having gathered my responses I ran out of parliamentary time to finalise my summary of responses before the session came to an end, when all members' bill proposals fell. The Parliament cannot publish my summary of responses alongside my new proposal. I have, therefore, taken the practical step of providing a link from my published statement of reasons to my website, where the summary document and all the individual responses can be viewed. The decision facing the committee today, as I pointed out earlier, is whether a case for my proposed bill has already been established by reference to specified published material. I hope that I have convinced the committee that further consultation is unnecessary.

10:00

In conclusion, it is my view that I have met the test that is set out in the standing orders by publishing a recent consultation paper specifically

on the issue that I wish to legislate for and by publishing on my website not only the summary of responses, but the individual responses that I received. The committee's inquiry into building MOTs and dangerous buildings has also provided further published material and a valuable focus on the subject area. I therefore believe that further consultation on my proposal would duplicate effort and incur unnecessary cost and could create the impression of overconsultation.

I hope that I have set out my position clearly. I am, of course, happy to answer any questions that members may have. I thank the committee again for the courtesy of inviting me to attend.

The Convener: Thanks for that. We move to questions from members. I will kick off by asking you to comment on the number of responses that were received. Forty-three seems a small number of responses. Was the consultation wide enough?

David Stewart: I took advice from NEBU, which does this day in, day out, and I was told that that is quite standard. I point out that two thirds of local authorities responded—by and large, favourably. That is a strong response rate, and there was a high quality of response. I took advice on whom I should send the consultation document to, and I am convinced that my consultation followed the customary practice for proposed members' bills in the history of the Parliament from 1999. It was also comprehensive in terms of the groups that I covered, which included all housing associations and community councils. I think that the return rate was reasonable and comprehensive. The key point is that the consultation ensured that my initial statement, which was about charging orders, was verified. If it had not been verified, I would not be here today because I would not have taken the bill proposal any further.

The Convener: Okay. Have there been any significant changes to the bill proposal since your consultation?

David Stewart: Yes. As you know, the consultation covered a wider area than charging. It also addressed building MOTs, which the committee has also looked at, and timescales—whether there is enough time for work on dangerous and defective buildings to be carried out. I also considered how the identity of an owner can be verified, especially in relation to houses in multiple occupation. The City of Edinburgh Council, in particular, has looked at that. All such measures have merit, and I am sure that the Scottish Government will bring them forward. When I have spoken to ministers, it has appeared clear that some work will be done on them.

My view, therefore, was that I should stick to one central, clear proposition. Undoubtedly, that is the proposition on charging orders. The position

from 1959 to 2003 was, "If it ain't broke, why fix it?" In simple terms, it could be argued that my proposed bill would rectify a drafting mistake from 2003. From speaking to local authorities, I believe that there is overwhelming support for that—I think that the committee got that impression when it spoke to SABSMS a few weeks ago.

Margaret Mitchell (Central Scotland) (Con): Thank you for your explanation. You mentioned that repayment orders were introduced in 2006. Can you explain the difference between the repayment order and the charging order? Was that specifically consulted on?

David Stewart: That is a good point. I have done quite a lot of work on that issue. Sometimes, one has to be a bit of a detective to work out what has happened in the past. Malcolm Chisholm was the minister when the 2006 act was passed and I have spoken to him about the issue. It appears that there was a drafting mistake, as a cost-recovery opportunity was missed out of the 2006 act. At a late moment, the committee identified the mistake and Malcolm Chisholm introduced repayment orders at stage 3. They are from the same family as charging orders and would apply generally in housing.

I stress that if councils took action under the 2003 act and carried out work on dangerous or defective buildings, the cost recovery that I am suggesting would be applicable. Currently, local authorities have no choice in relation to dangerous buildings—there is a statutory obligation to act. However, the problem that I have identified is that there is no statutory obligation in relation to defective buildings, and only a few local authorities are carrying out work on such buildings. Under my proposed bill, if work was carried out on dangerous or defective buildings, charging orders would come into play. They would also apply to commercial buildings, where the 2006 legislation does not apply.

In summary, charging orders will be part of the suite of tools—the toolkit—that is available to a local authority officer in the building control department who is involved in a case of dangerous or defective building work and who wants to secure cost recovery from the owners. Most owners pay, so there is no problem. Charging orders would apply only in marginal cases where local authorities needed to carry out cost recovery in addition to the procedures that are currently open to them. My proposed bill is a very strong and necessary piece of legislation about which local authorities are very enthusiastic.

Margaret Mitchell: Have those who would be affected by the charge as it applies to commercial buildings been consulted, and did they respond to the consultation?

David Stewart: All interested groups were considered. I stress that I am not trying to change the current obligations, which are very simple. Whether an owner runs a commercial building or their own home, they are responsible for repairs, and that will not change in any way. I am merely suggesting that if a local authority had to carry out the work and wanted to secure cost recovery, it could use a charging order, it could undertake a voluntary arrangement, or it could go to the sheriff court and get cost recovery in the way that currently exists.

The advantage of charging orders is that they are higher up in the hierarchy of recovery of funds. For example, if a firm goes into liquidation, a charging order against the title is higher up the hierarchy than other debts. It is also very cheap. Someone who goes to court can be charged up to £5,000; a charging order costs £100. It is a well-trodden path and a simple mechanism. I have also consulted those who own property. My proposal will not change matters for owners; it will change the ability of local authorities to get their money back when they have carried out work on commercial buildings or housing that is essential for the safety of the public.

Bill Walker: Good morning, Mr Stewart. My question goes back to the consultation that you have done so far, particularly with the Scottish Government, which has history in this regard, so I reckon that there is quite a lot of information. I am not asking you to praise the Scottish Government, but are you satisfied that you have got out of it all the information that you can in order to proceed to the next stage without any need for further consultation? What discussions have you had, in broad terms?

David Stewart: I had a positive and useful meeting with the previous minister, Aileen Campbell, in September. I feel that the bill is uncontroversial—I would say this, wouldn't I?—because it is in everyone's interests to ensure that the health and safety of the public is considered, that we stimulate the building industry, and that we help local government to be assured that it will get its money back when it has done essential work. That is the key. In advance of my meeting with Aileen Campbell, her officials got in touch with me to give me some general advice. While it is obviously up to the Government's business managers to decide what legislation is progressed, I am in no doubt that there will be such legislation in future. As members will be aware, if the Government decides to legislate on this matter, my bill falls, because that is part of the member's bill procedure. Of course, on one level I will be very happy if that happens. I want the bill to go forward because it addresses a big gap in dangerous and defective buildings legislation, but it makes no difference to me personally whether

that is achieved by me or by the Government. Between now and stage 1, I will be happy to meet Mr Mackay and Government business managers, as well as local government and other interested parties, to discuss the issue further.

Bill Walker: Constituents who knew that you were working on the matter have asked whether, if the bill progresses through the member's bill route, you have any idea of the timescale involved. Do you get the feeling that it will get nods along the way?

David Stewart: As members will know, I am required to get 18 members to support the bill, one of whom must be a non-Labour representative on the Parliamentary Bureau. I can reveal to members that I have the required number and meet the tests. Then, with NEBU, we will work with the parliamentary draftsmen to ensure that the bill is properly drafted, and at some point it will come before your committee at stage 1. I doubt that that will happen before the summer recess, but I hope that it will be in 2012, perhaps in the autumn.

John Pentland: Many of the 43 responses that you have received are from those one would expect to respond, such as local authorities and housing associations, which have the responsibility of ensuring that everything is right and proper. Are you surprised that some people have not participated in the consultation? What key areas have those who have responded raised with you?

David Stewart: As far as local authorities are concerned, my proposed bill is central to their work, so I was extremely encouraged to get responses from two thirds of them and, by and large, those responses were positive. However, local authorities do not own the issue; it goes much wider than that. We could have had more responses from housing associations but, in effect, I have not stopped consulting because, until I have finalised my proposals, I am open to being spoken to by housing associations, landowners and so on. Following press coverage of the proposal, quite a few individuals have written to me.

On the numbers, NEBU has advised me that, on the basis of past custom and practice, the response rate is fairly good, so I am quite happy with it, although I do not believe that the response process so far is necessarily the finished article. If I get further useful responses, I will take them on board. The key thing, as I have already pointed out, is that the charging order is a well-recognised creature, so I am not inventing a random technique. I am reintroducing a technique that worked from 1959 until 2003. That is why local authorities have been so positive—they know that it worked well. The City of Edinburgh Council said that its deletion in 2003 was a big mistake. I am

just trying to undo that mistake and rectify the problem.

Kevin Stewart: I thank David Stewart for coming to our meeting. I have an obvious interest in this area—it was me who asked that the committee hold a session on building MOTs.

You said that the reintroduction of charging orders would mean preferential treatment in the paying back of debts. Would the charging order debt always rest with the owner, or would it sometimes carry forward with the building? My great concern with a defective or dangerous building would be that the council moved in, but because the person who owned the building had gone bust, the charging order would rest with the building, which would deter new ownership of the building and lead to its being a blight on the community for a very long time. Could you talk us through the effects of charging orders? Would the charging order debt ever rest with the building?

David Stewart: Kevin Stewart makes a good point. I am sure that members are aware of examples in their constituencies of the scarring of a landscape by buildings whose owner has disappeared and with which no one wants to get involved. In my area, in Fort William, there are classic examples of buildings that have not reached dangerous building status. That is where the problem lies, and it is a huge one.

If charging orders were reintroduced, they would form part of local authorities' armoury. When a building is dangerous, they have to take action. Let us say that a disco burns down in Aberdeen and the council has to intervene. It must make the building safe—it has no choice. A council must intervene when a building is dangerous. The problem is how it recovers its costs. At present, it can decide to adopt a voluntary arrangement—that often happens. Councils will take legal advice about the next step. They can use conventional sheriff court debt recovery—as I pointed out, that will still be available to them—but it is expensive. Under my proposal, they will be able to go ahead with a charging order, if they think that the building meets the test for such an order.

Normally, the debt from a charging order would apply to the title. In other words, if someone sold the property, they would normally clear the debt or the new owner would have to take on responsibility for it. I recognise that the fact that there is a burden on a property could put off people who want to buy it—that is just part of the nature of charging orders.

However, local authorities have been hit really badly by the problem. The main way in which my proposal will make a difference relates not to dangerous buildings, on which councils already have to act, but to defective buildings. As

members know, all dangerous buildings were once defective. If local authorities can get in early, that will be a lot cheaper for them and for owners, and it will be a lot better for the public. Currently, there is a grey area between defective and dangerous. What can happen, to take the example of Aberdeen, is that roof slates can fall off buildings and cause a real danger to the public because the local authority has not intervened.

In answer to your question, charging order debt would normally remain as a burden on the property, but I stress that the key point is that it will not be compulsory for local authorities to use a charging order. It will be part of their armoury. If a building is a suitable case for the use of a charging order, councils will be able to use one. If not, it will be open to them to use the normal route, which is civil debt action in the sheriff court.

10:15

The Convener: We are straying into the detail of the bill. Our focus today is on Mr Stewart's statement of reasons about why he feels that no further consultation is necessary. Are there any other questions on that issue?

Kevin Stewart: Among the 19 per cent who responded negatively to the consultation, was the burden issue one of the reasons for their negative response?

David Stewart: Obviously, it is difficult for me to determine the numbers and value of properties, but one or two property owners were not keen on any new bureaucracy. I am sure that all members will be aware of that general view, and it is understandable that we hear that from the business community. We do not want to create extra bureaucracy and costs for business. However, the vast bulk of respondents—more than 80 per cent—were in favour of charging orders. That is the key point that I would like to leave with the committee.

Kevin Stewart: Were any local authorities concerned about the burden issue and having blights that could not be dealt with because of a burden?

David Stewart: If I remember correctly, all but one local authority were in favour of the reintroduction of charging orders. They are not something new—local authorities have all had experience of working with them. I will confirm the detail to Mr Stewart, but I think that the vast majority of local authorities saw more benefits than negatives.

The Convener: As there are no further questions, I thank David Stewart for his evidence, which we will discuss in private later.

10:16

Meeting suspended.

10:18

On resuming—

Petition

Scottish Public Services Ombudsman (Review) (PE1405)

The Convener: The next item of business is consideration of PE1405, by Mr Andrew Muir. The petition was lodged on 12 October 2011 and referred to the committee by the Public Petitions Committee on 15 November 2011. The petition calls on the Scottish Parliament to request the Scottish Government to conduct a fit-for-purpose review of the Scottish Public Services Ombudsman.

It is important to point out that the SPSO is directly accountable to the Parliament through the laying of annual reports and other reports. In the exercise of its functions the SPSO is independent of the Scottish Government, members of the Scottish Parliament and the Scottish Parliamentary Corporate Body. However, the committee has agreed to provide the petitioner with an opportunity to set out the reasons for his request for a review of the SPSO. To that end, I welcome the petitioner, Mr Andrew Muir, to the committee. Mr Muir, do you want to start with an opening statement?

Andrew Muir: I have a speech of about three to five minutes, if that is okay.

The Convener: That is fine.

Andrew Muir: I thank the committee for inviting me to speak. I came up yesterday from Birmingham, which is where I work.

I do not think that the Scottish Public Services Ombudsman is fit for purpose. Three separate organisations—Scottish ombudsman watch, Integrity4Scotland and accountability Scotland—have been campaigning for a review of the SPSO. Those organisations have up to 100 members, each of whom has a grievance against the ombudsman. I asked the members of those organisations to give me some examples, and I have three for the committee. Member 1 said:

“I have had a terrible time with my dealings with the SPSO with regards to the misdiagnosis of breast cancer.”

Member 2 said:

“In 2009 I submitted an extensive complaint to SPSO about CPNA’s very flawed consultation performance over a five year time period but Jim Martin continued to dismiss me as time barred, completely missing the point of my complaint.”

Member 3 said:

“I complained about a school inspection. After 16 months within the SPSO and 8 months case adjudication it was simply deleted.”

There are many more. In addition, nine public petitions against the SPSO were submitted last year but were simply closed.

I do not believe that the quality of staff in the SPSO is high enough. They do not have a passion for investigation and they look desperately for ways to close cases or time bar them, after which they count such cases as successes. I do not think that it is necessarily suitable to use a retired doctor for a national health service case as he might be biased in favour of former colleagues. The SPSO needs to employ people who enjoy investigating and are independent.

The desire to close cases prematurely can be summed up by Jim Martin’s comments in a recent report:

“I don’t advertise my services. If I did, I’d be swamped.”

There are many public sector organisations in Scotland, and the public sector is important not just in terms of the number of employees, but in terms of its power and financial muscle. I do not think that the SPSO is imbuing a culture of change in those organisations and making the complaint handling process in those organisations open and transparent. My experience of several organisations is that they are arrogant, slow to handle cases, uncommunicative, unapproachable, money orientated and unjust.

For the record, I will briefly summarise my own complaint. In 2006, my wife, Claire Muir, was put in a psychiatric hospital even though she has no mental illness. The detention process was illegal and she suffered inhuman and degrading treatment. The same people who detained her appeared at every mental health tribunal to ensure that she remained on compulsory treatment orders. She was released from care after 15 months when I eventually managed to obtain a change of psychiatrist.

When I took my wife’s case to the SPSO it used every excuse: “Oh, Mr Muir, it’s time barred” and, “Somebody else has looked at it.” It said that the Scottish Social Services Council had looked at the case and that it must be right, and that the case had been through the courts and the mental health tribunals. The SPSO did not want to get to the bottom of the case and just threw it out. Now I am angry and frustrated and my wife has been stigmatised and traumatised.

I would like three things. First, I would like a full, independent review to monitor the adequacy, effectiveness and justice of the SPSO’s rulings—not just its financial dealings but its decisions.

Secondly, I would like cases such as mine to be reopened. There are up to 100 people in the organisations that I mentioned. Perhaps some young graduates or unemployed people with investigative minds could be employed to get to the bottom of our cases and give us justice. Thirdly, some members of those organisations have been going a lot longer than I have—up to nine years since the start—and it would be nice for them to have a chance to talk about it, as they have much more knowledge. I have been going for only five years.

The Convener: Thank you. We now move to questions. It is probably best if members try to stay away from individual cases—it would make things difficult if we were to ask about specifics.

Kevin Stewart: Good morning, Mr Muir. I will play devil's advocate. When Mr Martin took office in May 2009, a huge number of cases remained open. I have heard Mr Martin elsewhere, and he said that the SPSO often could not say no and would not close a case. It is pointless if, rather than close a case and tell folk what the situation is, the ombudsman sits on it. That is as unjust as closing a case. Will you comment on that?

Andrew Muir: Why does the SPSO close cases? The reasons that it gives—for example the time barring rule, which I do not really like anyway—do not seem fair to the public.

Kevin Stewart: I will play devil's advocate again. Folk go to the ombudsman because they have gone through a number of other processes by which they have not gained satisfaction. There is a difference between an injustice and a dissatisfaction. A lot of folk will get answers from the ombudsman that they do not particularly like. Would you like to comment on that?

Andrew Muir: These are injustices—they are not just dissatisfactions. That is true in my case, and other people to whom I have spoken are angry. The SPSO says in its letters, "I'm sure you're going to be disappointed, Mr Muir," but it is just a total injustice.

The bodies that we go through before we get to the ombudsman waste a lot of time; they are quite happy to time bar us by dragging out the procedures. They take ages, and are very uncommunicative. It is not backwards and forwards: you get a letter, and then another one a few months later, and by the time you know it you have missed all your deadlines, which you did not know about at the start. You are too busy being distressed by your own experience to know about time bar rules, and they do not tell you at the start. I think that you need to be given as much time as you like.

Kevin Stewart: When you say, "as much time as you like," do you think that a case should go on ad infinitum?

Andrew Muir: Not ad infinitum, but five years in my case and nine years in other cases is fairly typical. There is just so much intransigence between the public sector and the private sector: they are like two different species. You just cannot speak to them—I cannot speak to anybody.

There are a load of people in the NHS, for instance, who say, "Don't speak to Mr Muir." The director of NHS Greater Glasgow and Clyde said, "No member of staff must speak to him." That shows how bad it is. It takes months to get an answer. That is why the process does not need to be time barred unless it takes more than 10 years. It just takes so long.

Bill Walker: Good morning, Mr Muir. I am very interested in this subject. You want the Government to carry out

"an independent 'fit for purpose' review"

because the SPSO is set up by the Parliament. How do you see an investigative body being selected, bearing it in mind that you are asking the Scottish Government to initiate that? As the convener pointed out, the body that you are complaining about—the SPSO—is independent of the Government. How do you see that all fitting together and that consultation proceeding?

Andrew Muir: If the Scottish Government wants Scotland to be independent, it has to be seen to be a fair country. I would like independent individuals with investigative minds to look at old SPSO cases to see whether it has done a good job. It just has to be independent. I am sure that you can find independent people in Scotland who are talented and can do that.

Bill Walker: I understand the concept of independence once those people are in place, but do you see the Scottish Government or the Parliament appointing them? How will it work, to get at the independence concept?

Andrew Muir: It is up to the Government to create a nice society.

The Convener: I think that there is a challenge around the specific wording of the petition. It appears to me that the Scottish Government does not have the powers to do what you ask. I guess the initial question is whether it should be done, and whether the Parliament should find a way.

Margaret Mitchell: Good morning, Mr Muir, and thank you for your opening statement. You referred to the other petitions that the previous session's Local Government and Communities Committee closed. That was done on the basis that those petitions were essentially asking for

exactly what your petition is seeking. Is that the case?

Andrew Muir: I think that that was the case. The petitioners would know better than I do why that was so, but there were some along the same lines that were seeking a review. I do not know why they were closed. We are obviously delighted that I am here and have a chance to speak today.

Margaret Mitchell: There is only one other aspect that might be of interest, which is the issue of the Scottish Parliament. Now that we have a majority Government, is there any concern that there may not be the same checks and balances that existed previously when we had minority or coalition Governments?

Andrew Muir: I am afraid that I am a bit concerned about the Scottish National Party. It is very uncommunicative, and possibly even slightly a dictatorship. I have managed to have contact with the other three parties, but the SNP is pretty bad. I think that it is just moving on to the independence debate and is less willing to speak to Mr Public.

Margaret Mitchell: My question was more about majority government of whichever political persuasion. By definition, there are perhaps not the checks and balances in place that were envisaged when devolution was considered, as no one thought that such a situation could arise.

Andrew Muir: Yes, I agree with you on that. Now that there is a majority, there is less scope for debate.

The Convener: Just for information, I point out that the committee that decided not to close your petition without taking any evidence from you and that unanimously agreed to allow you to come along today and give evidence has a majority of SNP members, but I will try not to take offence at your comments.

10:30

Andrew Muir: Thank you—I have no idea which political parties committee members are from.

The Convener: The Parliament has a majority SNP make-up, and this committee is the same. We agreed unanimously to take your evidence.

Kevin Stewart: We should go beyond that to say that there is no influence by political parties on the ombudsman either. That is one of the reasons why he is independent.

The Convener: I see that there are no further questions from members. That being so, I thank Mr Muir for his time. We will discuss the evidence in private, and take evidence from the SPSO on a number of issues in the near future, at which point

I am sure that we will cover some of the issues that have been raised today.

10:31

Meeting suspended.

10:35

On resuming—

Police and Fire Reform (Scotland) Bill: Stage 1

The Convener: Our next item of business is an oral evidence session with members of the Scottish Government's bill team for the Police and Fire Reform (Scotland) Bill. The committee has been appointed as a secondary committee for consideration of the bill at stage 1. The focus of our consideration is to examine the policy aspects of the bill that are most relevant to our remit and to report on those issues to the Justice Committee, which is the lead committee for consideration of the bill.

I am pleased to have Christie Smith and the bill team with us. Christie is the head of the police and fire reform division at the Scottish Government. I invite him to introduce the other members of the team and make an opening statement.

Christie Smith (Scottish Government): Thank you very much, convener, for inviting us to the committee to give evidence on the bill. My responsibilities are for the overall reform of both the police and the fire and rescue services, including the proposals in the bill and those outwith it.

I have with me Liz Sadler, who is the head of the team that produced the bill, and Stephanie Virlogeux, who works with Liz on the bill. Liz will make some opening remarks to give an overview of what the bill does. We are then in your hands for questioning.

Liz Sadler (Scottish Government): I thought that it would be helpful to provide the committee with a brief overview of the bill and, specifically, the provisions in it that relate to local accountability and the wider links with local authorities. My comments supplement the submission that we provided the committee with last week.

The purpose of the bill is to create a single police service and a single fire and rescue service to meet the three aims of reform: to protect and improve local services despite financial cuts; to create more equal access to specialist support and national capacity; and to strengthen the connection between services and communities.

Police and fire reform is part of the Scottish Government's wider public service reform programme, which is focused on improving service outcomes for the people of Scotland. Building on the findings of the Christie commission, the programme will be built on the four pillars of prevention, greater integration of public services at

a local level, greater investment in the people delivering the services and a focus on improving performance.

The provisions in the bill align well with those aims by providing a clear, modern purpose for policing focused on prevention and early intervention to improve outcomes—a new outcomes-focused purpose for the fire and rescue service will be set out in a new fire and rescue framework; clearer integration of services with community planning structures and local governance arrangements, to enable partnership at a local level; local governance arrangements that create stronger partnerships and links with front-line staff and clear arrangements for the transfer of staff to the new services; and a clear statutory framework for national governance, statutory planning and reporting requirements, and clear scrutiny arrangements.

The Scottish Government has consulted widely both on the principle of single services and on how those services will operate. That has been done through two formal consultations—the first was conducted from February to May last year and the second in September and October—and through detailed engagement with stakeholders and practitioners.

The bill is in three parts. Part 1 deals with the police, part 2 deals with the fire and rescue service and part 3 deals with general provisions.

The Police (Scotland) Act 1967 is more than 40 years old. We have therefore taken the opportunity in part 1 to repeal that legislation and put in place a new modernised framework for policing.

The regulatory framework for fire was updated in the Fire (Scotland) Act 2005. Part 2 therefore amends the 2005 act and transfers its firefighting, fire safety and other functions under the act from the current eight services to the Scottish fire and rescue service. For the most part, the bill puts in place consistent arrangements for both police and fire.

It is important to emphasise that the bill sets out the governance arrangements and framework for the new single services; the detailed managerial and operational delivery of those services will be for the services to decide, not for legislation.

The arrangements in the bill have a strong local focus. In particular, the bill provides new statutory principles for policing and placing communities at the heart of service provision; national governance structures to ensure an enhanced focus on the local delivery of policing and fire and rescue services; and a new role for local authorities at the national level, with ministers having a statutory duty to consult local authority representative bodies before they determine strategic police priorities. The Scottish police authority and the

Scottish fire and rescue service will have a statutory duty to consult all local authorities on their strategic plans, and there will be new, clear powers for local authorities in relation to the provision of policing and fire and rescue services in their area, including in relation to the establishment of local commanders and local senior officers. Those officers will be designated to contribute to community planning, which will provide for greater integration with the community planning process, and there will be clear arrangements for the transfer of staff and property.

The Scottish Government has established a project to support local authorities in trialling the new local arrangements ahead of their formal introduction. Twenty-five local authorities have already told us that they will participate in the pathfinder projects. That demonstrates a strong appetite among the local authorities to develop the new arrangements in partnership with the police and fire and rescue services. We look forward to gathering and sharing the learning and good practice that emerge.

To conclude, the bill will establish single services for Scotland to ensure that the police and fire and rescue services are in the best possible shape to meet the demands of the 21st century and the expectations of Scotland's communities. Through reform, the Government is seeking to ensure that the services remain strongly rooted in and are responsive to those communities, and that resources are focused on supporting the front line.

We would be happy to answer any questions.

The Convener: Thank you very much.

You talked about integration with community planning and mentioned local commanders. How do you see that working in practice?

Liz Sadler: The bill provides for the local commander to be designated under the Local Government in Scotland Act 2003 to participate in community planning in the local authority area. The Scottish fire and rescue service will also have a duty to do that. The local senior officer will be the designated officer. The local commander and the local senior officer will therefore have a key role in agreeing a local plan with the local authority for the provision of their services. They will have a statutory duty to prepare a local plan in partnership with the local authority, which will have responsibilities for monitoring and advising on the local plan.

The Convener: Do we expect the local commanders to go to local authority meetings to answer councillors' questions directly?

Liz Sadler: Absolutely. The bill leaves the arrangements for that open. Policing is different in different parts of Scotland, so we think that the

mechanisms for how the relationship works should be left to local discretion, but we certainly envisage that the local senior officer and the local commander will appear before the local authority. The local authority could decide to use its current community planning arrangements or it could set up a police and fire committee. Indeed, it could have that as a committee of the full council. It is entirely up to the local authority how to work in partnership to establish what best meets local needs.

John Pentland: Would there be a local commander for each local authority?

Liz Sadler: The bill provides that the chief constable and the chief officer must designate a local commander and local senior officer for each local authority area in Scotland. If it were considered appropriate, a local commander could work with more than one local authority, but there must be a designated person for each local authority.

John Pentland: So as things stand, there could be 32 local commanders.

Liz Sadler: Yes.

Margaret Mitchell: Currently, the position of local commander is quite powerful. Would the local commanders as envisaged in the 32 local authorities have the same powers?

10:45

Christie Smith: They will have the same powers and responsibilities locally, but their position in the police or fire and rescue service might be different, depending on the extent of those powers, so we have not specified the rank or grading of those posts. There are already divisional commanders but they vary in their rank and grading. We would expect that to be worked out between the services and the councils.

Bill Walker: I will follow that up on a practical level. I am still a local councillor in Fife and we have a pretty good relationship with the police. For example, at ward level we work with constables and sergeants; at area committee level, we work with chief inspectors; and at Fife Council, we work with the chief constable of Fife. The relationship works pretty well within a matrix structure. There is also community engagement with community councils and other interested people, which works pretty well. I am satisfied with the reorganisation of the police into a national service, but I want to maintain those local links because that is the issue that people ask me about. They are all in favour of saving money and streamlining the service at the top level, but they are concerned about what happens at the lower levels.

I will follow up something that one of my colleagues said. I do not think that this is in the documentation that I have seen so far. As our local authorities vary hugely, I assume that the local commander for a very large local authority could be the equivalent of an assistant chief constable, whereas for a very small local authority a superintendent may be the appropriate level. Is that the idea? I am keen to maintain the links, but we have 32 local authorities and it could be quite tricky. I take it that the person who is designated as the local commander will be at an appropriate level to relate to the local issues.

Christie Smith: Yes. We think that the local links are pretty good in most places. Probably the thing that has been said most consistently to us when we have consulted on the proposals is that we should not break those links but try to make them stronger. In Fife and in Dumfries and Galloway, where there is already coterminosity between the council, the police and the fire and rescue service, those links work most like how we think they will work in the future. However, that is not generally the position in Scotland. In most of Scotland, the services are overseen by the joint boards of a number of councils. The effect of the proposals will be to take the joint board out of the equation and put the council in direct contact with the police and fire and rescue services.

You are right that there are places where a chief inspector is responsible for a council area. There is quite a range from Glasgow, which has two chief superintendents, to Clackmannanshire and from Edinburgh to Orkney. That is why we do not think that there is a one-size-fits-all solution. To a large extent, the services have already got the span and the burden of local responsibility about right. We hope that the services working with the councils, particularly over the next year in the pathfinder projects, will be able to sort that out to everyone's satisfaction.

Kevin Stewart: Ms Sadler said that it will be up to each local authority to decide whether the commander and chief officer will report to the community planning partnership, to a committee of the council or even to the full council. If local authorities chose still to have joint arrangements, would that be possible under the legislation?

Liz Sadler: Yes, it would be possible for local authorities to come together and organise in that way. We would expect the local authorities, the police and the fire and rescue service to work in partnership to determine the best way of delivering that.

Christie Smith: Twenty-five local authorities want to participate in the pathfinder projects. Most of them want their own arrangements, but at least two neighbouring local authorities of a similar size want to try a combined arrangement. The three

island authorities are also thinking about a combined arrangement. There is a diversity of ambition and we are quite happy to see how those different arrangements work out. The bottom line is that each council will be entitled to make its own arrangements if it wants to do that. It will be a matter of consensus and voluntary co-operation if councils decide to come together.

Kevin Stewart: So we will have complete and utter independence for councils—apart from Fife Council and Dumfries and Galloway Council—to decide on the matter, rather than the current arrangement whereby a small number of councillors go to a board.

Christie Smith: Yes.

The Convener: You mentioned some of the councils that are part of the pathfinder projects and said that different options were being considered. When will those options be made public, so that we can look at what councils are proposing?

Christie Smith: We have expressions of interest from those councils now and we are collating them. There may be one or two late expressions of interest, but we hope to get everyone up and running in April. There is no sensitivity or confidentiality about our information and we will be able to make it available pretty soon. In fact, if the committee wants more information about that before it makes its report to the Justice Committee, I am sure that we can arrange to provide it. We can write to you after the meeting, if that would be useful.

The Convener: That would be useful; the sooner, the better would be helpful for our inquiry.

Margaret Mitchell: Can I take you back to the consultation? There were 219 respondents, the vast majority of whom were not in favour of having a single police force. How many of those respondents were local authorities? How many local authorities were and how many were not in favour of having a single police force?

Christie Smith: I am not sure whether we have the analysis by local authority with us, but we can easily produce it. The majority of those in the February to May consultation who expressed an opinion about structure did not favour having a single police service. However, a good number of respondents did not express an opinion about structure, so it would not be true to say that a majority of respondents opposed having a single police service.

Margaret Mitchell: Perhaps you can give us an analysis later of the comments.

Local authorities will have the power to monitor and advise on local plans. How will that differ from

the current arrangements and powers that they have?

Christie Smith: They do not have any powers in relation to local plans just now. Local policing plans are often worked out between divisional commanders and councils where such arrangements are well developed. As we noted earlier, I am pretty sure that in Fife and Dumfries and Galloway there is a plan that is agreed with the council that is the unitary authority for that. However, the position is variable and voluntary in the rest of the country. This will be the first time that the police will be obliged to prepare a local policing plan for agreement with the council; there will a similar position for fire and rescue. The statutory obligation is an obligation.

Margaret Mitchell: That is helpful, but perhaps I can phrase my question in another way. The councils will have the power to monitor and advise on local plans. How does that differ from the overall powers that local authorities have just now over the direction of the police or over decision making within the police and fire and rescue services?

Christie Smith: Other than in Fife, and Dumfries and Galloway, which we keep coming back to, local authorities can exercise that power only through the joint board. Twelve local authorities come together to agree Strathclyde's plan, and five councils come together to agree the Lothian and Borders plan. However, that will be done through the joint board and not through the council as such; it will be done through the council's representatives on the joint board.

Margaret Mitchell: Do funding decisions not rest in part just now with local authorities? It is my understanding that, under the bill, the Scottish Government will solely be responsible for the funding of the services. Is that the case?

Christie Smith: At present, about two thirds of police funding is provided by the Scottish Government and the other third is provided by the 32 local authorities so, in effect, the funding is assembled from 33 places. The proposal is that all the funding for the police will come directly from the Scottish Government. In fire and rescue, most of the funding comes through councils and joint boards from the local government settlement, although there is some national funding for national assets and so on. Again, we propose that all the funding for the Scottish fire and rescue service will come from the Scottish Government.

Margaret Mitchell: So the decision-making power to which I referred is not in the bill and will be taken away from local authorities. That raises a concern—although it is not for the bill team, as you only advise on the bill—because with funding come power and influence.

Will appointments to the new Scottish police authority be entirely under the Government's remit?

Christie Smith: The bill proposes that the Scottish ministers will make the appointments. They will be regulated by the Commissioner for Public Appointments in Scotland, so they will be public appointments in that sense.

Margaret Mitchell: Under the bill, the Government will fund both services and will appoint the new Scottish police authority's chair and all its members. Is that the case?

Christie Smith: That is correct.

Kevin Stewart: At the moment, local authority funding involves a requisition by police and fire boards in all areas other than Fife, and Dumfries and Galloway. Has a local authority ever refused to pay the requisition?

Christie Smith: I have never heard of a local authority refusing to pay the requisition, although negotiations can take place about the amount of the requisition.

The Scottish Government used to provide 51 per cent of the police grant and require local authorities to provide the other 49 per cent. An interesting fact is that, since we discontinued that requirement several years ago, police funding has still been more or less split 51:49. It is difficult for a single local authority that is part of a joint board to take an independent decision about police funding, so the local authorities have by and large followed the previous pattern and have met the requisition.

Kevin Stewart: No local authority in the country has used its power through resources to try to stop the requisitioned amount being given to a police or fire and rescue board.

Christie Smith: I am not privy to discussions about requisitions, but I have not heard of a local authority that has refused to meet the requisition.

Kevin Stewart: I return to the democracy aspect. Small numbers of members of each local authority serve on boards, other than in Fife and in Dumfries and Galloway. In making their submissions, were councils aware of the proposal to democratise the police service further to local authority level, or was that not originally proposed?

Christie Smith: The consultation that was mentioned, to which councils responded, was not explicit about that issue—it made a general case for reform in principle and talked about the direction of reform. The more detailed proposals were set out in the second consultation document. Individual councils have reacted pretty positively to the idea that they will have more access to police

and fire services and that more members will be involved in oversight of police and fire services.

I think that about an eighth of councillors scrutinise police and fire and rescue services. If councils had their own committees for those services, analogous to council committees such as education or social work committees, we would expect about half of councillors to have direct contact with the police and fire and rescue services. That would involve about four times as many councillors as are involved now. Such an arrangement would probably be particularly beneficial for small councils, which might typically send two members to quite a large joint board. We think that the proposals will create quite an increase in engagement between councils and the services.

Kevin Stewart: So it is fair to say that, since the proposals were announced, councils have become much more positive about the nationwide services.

Has there been a level of positivity in the applications for pathfinders?

11:00

Christie Smith: So far, 25 of the 32 councils have expressed an interest, with maybe more to come. Many seem to be enthusiastic about this; in fact, some have started this work before the pathfinders have even begun.

John Pentland: The proposed changes will have implications; indeed, in response to Margaret Mitchell, you outlined the financial implications. However, I want to ask about staffing. After the single police force and single fire board are created, there will still be local variations in employment agreements. If liabilities arise from this move, who will pick up the cost—the local authorities, the Scottish Government or the fire and police boards?

Liz Sadler: On the day the new services are established, all employed staff and officers will be entitled to transfer on their terms and conditions of service. In the run-up to reform, the existing police and fire services will still have to live within their resources and, after reform, there is likely to be some rationalisation of staffing. The Government expects that to be achieved through voluntary redundancies, the cost of which will be borne by the current joint boards in advance of reform and by the new services after reform. The financial memorandum and the outline business case for the reform programme take account of the cost of such redundancies.

John Pentland: Do those costs include any potential equal pay claims on transfer of employment?

Liz Sadler: Once the staff have transferred to the new services, it will be up to those services to look at people's terms and conditions and the extent to which they need to harmonise any differences. Again, the outline business case sets out some estimated costs—I think that the figure is £2.9 million—to allow the police to bring terms and conditions of service into line.

The Convener: Can you confirm that the Scottish Government's no compulsory redundancy policy will apply to the people who are shifted into the new service?

Liz Sadler: The business case has been prepared on the basis that there will be no need for compulsory redundancies.

John Pentland: I have two other questions. First, when you were asked earlier whether each of the 32 authorities would have a local commander, you said yes. Will the pathfinder projects involving two or three local authorities working together have a single commander?

Secondly, will accountability come back to the local level?

Christie Smith: On the question about the pathfinders, we have said that every council can have its own local commander if it wants. Indeed, from the expressions of interest that we have received about the pathfinders, it seems that that is what most councils want. However, a couple want to try to share a local commander and, in one case, three want to share. That approach will be trialled and, if that is the way they want to go, they can go that way. However, if at the trial's conclusion they decide that they want their own local commander, they will be entitled to take that route. In fact, the bill makes that clear.

Although as part of the single national service, the commanders will be ultimately accountable to the chief constable or the chief officer of the fire and rescue service, they will have specific duties to account locally for local performance, to take account of local priorities, to report to the council, to participate in community planning and all the rest of it. That approach is intended as a counterbalance to keep local services rooted locally and to ensure that the creation of a single service does not result in overcentralisation or an overpreoccupation with national priorities.

John Pentland: What about local accountability?

Christie Smith: I am sorry—I thought that I had answered that. I am happy to elaborate, but I do not quite understand the question.

John Pentland: Will there be local accountability for the business of the local commander or the police or fire board?

Christie Smith: The bill sets out the duties of the local commander and local senior officer, which include reporting to the council, agreeing a plan with the council, participating in community planning and a range of other such duties. That is how the services will account locally.

Anne McTaggart: What are the estimated savings? Has that figure been put together yet?

Christie Smith: Yes—it has been put together over a period of several years, actually. As the financial memorandum sets out, we estimate that, when the reform programme is complete, we will save £101 million a year in cash from policing and £25 million a year in cash from fire and rescue. It is a five-year programme, so the figure will build up over time. The crucial step in enabling the change is to create the single structures.

Anne McTaggart: Have the set-up costs, such as the costs of rebranding and rebadging, been taken into account in those figures?

Christie Smith: Those figures are the annual recurring net savings after costs, or once the reform is complete. There will be one-off costs in the creation of the new structures in the next couple of years. Those have been accounted for and provision was made for them in the spending review that has just been carried out.

Margaret Mitchell: Is it the case that somebody who is currently a community police officer could in theory apply for and become a local commander?

Christie Smith: If he or she is qualified and has the right rank for the position, I am sure that that is the case.

Margaret Mitchell: Is there a stipulation on what rank someone must be to apply for the position?

Christie Smith: We have not stipulated a rank for that. We expect the services to sort that out with the councils. Whatever the rank is, the officers who are eligible to apply for the position will be able to do so. However, that is a matter for the police and fire and rescue services to sort out.

Margaret Mitchell: So there is no stipulation in the bill about what rank people must be to apply to be a local commander.

Kevin Stewart: Convener, I think that we are going up the wrong path, because the appointment of local commanders, whatever rank is involved—from inspector up to chief superintendent—will be an operational matter for the chief constable, as is the case under the current set-up. We are getting into realms that the bill does not touch on, because operational matters will still lie entirely within the remit of the

chief constable. I think that that is correct, but perhaps Mr Smith can confirm it.

Christie Smith: That is correct. As we discussed, there is potential variability in the responsibilities of local commanders, depending on the area that is involved. That is why we have not attempted to specify a rank in the bill. We expect the services to work that out with the councils.

Margaret Mitchell: That answers that question, but will you elaborate on the positions of assistant and deputy chief constables? How do they fit in and what role is envisaged for them?

Liz Sadler: The bill provides that the Scottish police authority must appoint a chief constable and one or more deputy chief constables and one or more assistant chief constables. The appointment of the chief constable is subject to ministerial agreement. The appointment of deputies and assistants will be a matter for the board to decide, in consultation with the chief constable. The composition and roles of the senior command team will be a matter for the chief constable to work out in association with the Scottish police authority. What the deputies and assistants do will depend on the way in which the service decides to organise that team. Ministers do not want to specify their exact roles in legislation.

Margaret Mitchell: Is there any provision in the bill for resolution in the event of a conflict between national and local priorities?

Christie Smith: We do not expect conflict between national and local priorities, but the bill sets out ways of resolving that in the planning requirements at the various tiers. For example, Scottish ministers can set strategic priorities for policing or fire and rescue services, but they must consult local authorities before doing so. The Scottish police authority and the Scottish fire and rescue service must prepare strategic plans for policing and fire and rescue, and they must consult local authorities before doing so. Those bodies will have explicit duties to maintain and improve local policing and local fire and rescue. The local plans that are prepared in each locality need to be consistent with and take account of the strategic plans and so on. Finally, the local commanders and local senior officers will both be part of a national structure, but they will also be accountable for performance locally and will provide a mechanism for resolving any issues of priority.

Margaret Mitchell: There have been some concerns about the business cases. Some people have said that they are subjective and partial. Has any attempt been made to have an independent review of the findings, or were the findings merely put straight into the policy memorandum?

Christie Smith: Both outline business cases were based on work that was carried out by the services themselves. In policing, particularly, it was a police-led team that came up with the various proposals for a structure. We shared drafts of the OBCs in the early summer of last year and then published final versions in September. We think that we fairly appraised the different options that were before ministers at the time, the three structural options being a single service, a regional structure and the status quo with increased collaboration. There is no doubt that the OBCs reflect ministers' judgment that the structures most likely to achieve the aims of reform are single services. Ministers have been clear in defending that decision, not only through the OBCs, but through the bill and by other means. Ultimately, it was for the Government to decide on which structure to bring before Parliament in a bill, and that is the view that the Government took.

Margaret Mitchell: So, to answer the question, the findings were put straight into the policy memorandum.

Christie Smith: The policy memorandum describes what is in the bill. The outline business cases set out the financial analysis and other kinds of analysis that supported the reform process. The material from the outline business cases did not find its way into the policy memorandum. The bill was drafted to create a single service, which was the conclusion that came out of the outline business cases.

Margaret Mitchell: Did the conclusions go straight into the financial memorandum, then?

Christie Smith: I am sorry if I misunderstood your question. Yes, much of the material in the financial memorandum is based on the analysis in the two outline business cases.

Kevin Stewart: Going back to the issue of priorities and the resolution of conflict between local and national priorities, am I right in saying that there is no remedy for such conflict under the current set-up? A regional priority in Grampian might not be a local priority in, say, Aberdeen. Am I right in saying that, at the moment, there is nothing to deal with that?

Christie Smith: At the moment, there is nothing to deal with conflicts involving national and local priorities. You are right to say that we have a mechanism that could generate regional priorities. However, in discussion with councils and others in the run-up to the bill, we could not find good examples of regional priorities—Strathclyde priorities, Lothian and Borders priorities or Grampian priorities—although we found plenty of examples of local priorities. We know that there are certain national priorities, whether those are big national issues such as counterterrorism or

things that are nationally important because they are local priorities everywhere. That is why the bill provides for the expression of national and local priorities, and we think that it provides mechanisms for getting those in the same place so that they are not dealt with separately.

Kevin Stewart: So, in the bill there are mechanisms to deal with local priorities, whereas those mechanisms did not exist previously.

Christie Smith: Exactly.

John Pentland: I have a question for Ms Sadler. If the joint boards leave any usable reserves, will they come to local authorities or will they be distributed to the new police and fire authorities?

Liz Sadler: As national bodies, the Scottish police authority and the Scottish fire and rescue service will not be able to utilise reserves. Officials are currently working with the Convention of Scottish Local Authorities on how best to utilise the existing resources or how to distribute them fairly.

Margaret Mitchell: If a local authority decided that it had a particular priority that it wanted to see in the local plan and it wanted to contribute funds towards addressing that priority, could it do so?

Christie Smith: Yes, it could. Councils do that now. Some councils pay for additional police officers or other local initiatives, and they will certainly be able to do that after the changes are made.

The Convener: There are no further questions. I thank Christie Smith and his team for their evidence. We will take oral evidence on the bill from key stakeholders on the afternoon of Tuesday 21 February, and we look forward to hearing more about the bill then. Thank you for your evidence today.

11:15

Meeting continued in private until 11:44.

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

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

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

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

For information on the Scottish Parliament contact
Public Information on:

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

e-format first available
ISBN 978-1-4061-8298-9

Revised e-format available
ISBN 978-1-4061-8312-2

Printed in Scotland by APS Group Scotland
