JUSTICE 2 COMMITTEE

Tuesday 18 January 2005

Session 2

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JUSTICE 2 COMMITTEE
2nd Meeting 2005, Session 2

CONVENER

*Miss Annabel Goldie (West of Scotland) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)
*Colin Fox (Lothians) (SSP)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Mr Stewart Maxwell (West of Scotland) (SNP)
*Mike Pringle (Edinburgh South) (LD)

COMMITTEE SUBSTITUTES

Ms Rosemary Byrne (South of Scotland) (SSP)
Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
Mr Kenny MacAskill (Lothians) (SNP)
Margaret Mitchell (Central Scotland) (Con)
Mrs Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Hugh Henry (Deputy Minister for Justice)

THE FOLLOWING GAVE EVIDENCE:

John Elliot (Scottish Committee of the Council on Tribunals)

CLERK TO THE COMMITTEE

Gillian Baxendine
Tracey Hawe

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Richard Hough

LOCATION

Committee Room 4

Scottish Parliament

Justice 2 Committee

Tuesday 18 January 2005

[THE CONVENER *opened the meeting at 14:02*]

Item in Private

The Convener (Miss Annabel Goldie): I welcome everyone to the second meeting in 2005 of the Justice 2 Committee. Item 1 is to decide whether members agree to take item 5 in private.

Members *indicated agreement*.

Inquiries Bill

14:04

The Convener: Item 2 concerns the Inquiries Bill that is before the United Kingdom Parliament. The committee is taking evidence to assist our consideration of the bill, which is the subject of a Sewel motion. I welcome Mr John Elliot, the chairman of the Scottish Committee of the Council on Tribunals.

First, I ask Mr Elliot to comment on the proposals, after which we will move to questions from members. I do not intend to be prescriptive about the subject matter of those questions. Our session today is a general introduction to what the bill will mean for the tribunal sector in Scotland. We are glad that you could join us today, Mr Elliot. Without further ado, will you give us your initial views on the proposals that have emanated from Westminster?

John Elliot (Scottish Committee of the Council on Tribunals): Members have a copy of the paper that I prepared at the end of last week. It sets out who I am, where I am coming from in relation to the bill and what the Scottish Committee of the Council on Tribunals does. As the Inquiries Bill falls within our general remit, we were consulted on its provisions and saw some paperwork last year. Although the council has not debated the bill as yet, we have formed views on a number of matters.

We welcome the bill, the thrust of which is correct. We appreciate that it is intended to help to rationalise and modernise the procedure in relation to inquiries, specifically inquiries that are related to events that might cause public concern. There have been a number of such inquiries over the past years and I am sure that members of the committee are familiar with them. Perhaps the most important one is the bloody Sunday inquiry in relation to Northern Ireland, but other inquiries such as the Bristol royal infirmary inquiry have given rise to the belief—which I think is correct—that there should be rationalisation of how large-scale public inquiries are dealt with. The bill therefore sets out a framework to determine how inquiries are ordered. The Council on Tribunals and its Scottish committee generally welcome the thrust of the bill. Much of the substance in the bill is commendable and is on the right lines.

Members will be aware of the clauses in the bill that relate to how the bill might operate in Scotland—specifically, clauses 29 and 30. In my paper I draw attention to possible difficulties with how the provisions might operate. Any such provisions are bound to be fairly complex, given that the matter involves ministers in different

jurisdictions and up to four separate Administrations—England, Scotland, Wales and Northern Ireland. I have attempted to highlight one or two areas that might cause difficulty, although difficulty would be natural in any event.

In my paper I set the bill against the general background of tribunals and draw the committee's attention to significant changes in relation to tribunals that are being—or that are likely to be—proposed by the Westminster Government. I will be happy to answer questions on the bill and the more general scene. It is obvious that to some extent discussions about the bill will involve matters of interpretation. I confess that one or two clauses in the bill puzzle me; no doubt they puzzle members, too.

The Convener: Will you expand on your final comment?

John Elliot: Some of the clauses that relate to the production of evidence demonstrate the complexity of the arrangements that might be necessary. For example, if a Scottish inquiry required evidence on a matter that emanated from England, Wales or Northern Ireland, it would be complex to assess whether the material related to a largely Scottish devolved matter. Equally, an English inquiry might take evidence or consider material that related to a largely devolved matter. That is an obvious area of difficulty, which I suspect would to some extent have to be dealt with case by case because nobody can make general rules that anticipate the evidence that is likely to be produced. The explanatory notes that accompany the bill give an example of an inquiry that relates to coal mines and highlight the difficulties in producing evidence relating to a matter that is not devolved. That is one area of difficulty.

Another area of difficulty relates to the way in which inquiries would be set up. The arrangements that would have to be entered into by ministers, for example ministers of the UK Government and Scottish ministers, would require decisions about who would take the lead role in the inquiry and therefore, to a degree, about who would take responsibility for the inquiry. Sometimes, ultimate responsibility is decided when the media are keen to find out who is actually running an inquiry. We must also consider how such inquiries will be funded and who will oversee their operation. Inquiries that are run jointly across borders may prove to be difficult.

Another difficulty with clauses 29 and 30 will be in deciding whether a joint inquiry is also one that relates to two different Administrations. The wording of clauses 29 and 30 makes it difficult to decide what the real difference is between joint inquiries, which seem to involve ministers, and inquiries that involve more than one Administration, which are covered in clause 30, which obviously relates to Administrations.

Greater minds than mine will probably write pamphlets and articles about such issues, but I draw the committee's attention to some of the obvious complexities, which are to be expected, given that we have four Administrations.

The Convener: The briefing on the bill that the committee received pointed out that, although a number of UK Government departments have decided to repeal legislative provisions that confer on ministers the power to hold inquiries, and instead decided to rely on the bill, our understanding is that the Scottish ministers have decided to retain for the time being their subject-specific powers to set up inquiries. Is that a comfort to you?

John Elliot: Yes. Of course, under the bill, the Scottish ministers will be entitled to set up inquiries—there is no question of their not being able to do so. However, the point that you raise is of comfort to me.

Mike Pringle (Edinburgh South) (LD): Bullet point 4 in section 3 of your submission states:

"We welcome the power of Chairman (Clause 19) to require production of evidence",

but the final sentence in that paragraph says that

"As yet, we have not established why that does not apply in Scotland."

Will you expand on that?

John Elliot: I think that that provision is odd. As a Scot, one always looks for provisions in proposed legislation that seem to mark Scotland out as different or which treat England differently, although sometimes one is too sensitive to such matters. There must be a reason for the difference, but although I compiled my note on Friday and have asked questions of one or two people since then, I still do not understand why the difference exists. I have no doubt that there is a reason for it, although one finds occasionally that there is no reason for such differences, so it is always worth while asking about them. On this occasion, I am afraid that I do not know the answer.

Mike Pringle: We will maybe ask the minister about that next week.

In section 11 of your submission, which is headed "Devolution Issues", the third bullet point from the end states:

"There has been no comprehensive look at Scottish-only tribunals operating in Scotland to consider their effectiveness, their support and their independence from Government, as has been the case in England and Wales. Conceivably, Scotland-only tribunals could be less well supported and less independent than GB tribunals."

You referred to that issue in your opening remarks, but will you expand on it further?

John Elliot: The Westminster Government has proposed legislation—a bill has not been introduced, so we do not know exactly what will be in it, but a white paper has been produced, which presumably shows us the direction in which the Government will go—to set up a system that will deal with the perceived lack of independence from Government departments and ensure that tribunals are supported properly. That proposal supposes, rightly, that some tribunals are not as well supported as others are. Throughout the UK, many tribunals are well supported and others are not. Some are more independent than others are.

The Government's draft Courts and Tribunals Bill—which we understand will be introduced at some point, although I do not know when—aims to ensure that tribunals operate independently of the Government department in respect of whose decisions they generally adjudicate, and that they are properly supported. Our concern is that, in setting up a tribunals service, that may mean that Scotland-only tribunals will be less well supported than their Great Britain counterparts. I say "Great Britain" because, generally speaking, the tribunals with which we are concerned do not operate in Northern Ireland. The GB tribunals will be part of a tribunals service that will have an extensive judicial and administrative system that Scotland-only tribunals will not enjoy. Although some Scottish tribunals are well supported, if one believes, as we do, that the tribunals service is a good thing, it seems unfortunate that the benefits of the service cannot be extended to tribunals that operate in Scotland.

14:15

Mike Pringle: I have just two small final points. At the end of paragraph 11, you say:

"Alternatively, a Scottish Tribunals Service could be created to embrace all Scotland-only tribunals."

I am interested in that. Will you expand on it? The last sentence of the first bullet point in paragraph 11 says:

"There is no overall vision for tribunals in Scotland."

Who should be responsible for that vision?

John Elliot: As the latter question sounds like a fairly political question, I would like to duck out of it. Clearly, however, the people who have responsibility for the administration of justice in Scotland are the people who one would suppose would be most interested in this particular arm of the justice system.

I see the justice system as having three arms: criminal justice, civil justice and what we call administrative justice, which in general is the review of decisions that are taken by Government departments.

Traditionally, administrative justice has been the poor arm of the justice system. Nevertheless, in England and Wales, reviews of all three branches have been undertaken: the Woolf reforms in relation to civil justice; the Auld reforms in relation to criminal justice; and the Leggatt review in relation to administrative tribunals. As a result of the Leggatt review, the present proposals are likely to be taken forward.

Mr Pringle also asked about the last bullet point in paragraph 11. If one believes that the tribunals service is really worth while, as we do, one would believe that the provision should be extended to all tribunals that operate in Great Britain. That would give all tribunals the benefits of its advantages. Alternatively, however, it would be perfectly logical to create a tribunals service that was a Scotland-only service. The likelihood is that such a service could stand on its own feet.

There could not be a system that embraced only the Scotland-only tribunals—I am thinking about anything from the children's panel system to the Crofters Commission—as there are neither the cases nor the body of work to support it. If one thought that a Scotland-only system to oversee all the tribunals that operate in Scotland was the right way to go, it could conceivably be a valuable thing.

Jackie Baillie (Dumbarton) (Lab): Your paper was very helpful; it has also been helpful to hear your evidence to the committee. My understanding—although it may be a misunderstanding—is that the Council on Tribunals is concerned specifically about the detail of the Inquiries Bill. What I seem to be picking up from your evidence is that those concerns are more about forthcoming legislation on tribunal reform than on the bill. I have a simple question, the answer to which will help me to understand the matter. Do you have any major problems with the Inquiries Bill as it stands? Are there any showstoppers in the bill?

John Elliot: The main concerns that I have relate to the way in which the bill might operate across borders.

Jackie Baillie: That is helpful.

Maureen Macmillan (Highlands and Islands) (Lab): Are those difficulties insurmountable?

John Elliot: To some extent, it will probably be a case of suck it and see. The types of inquiry that are contemplated in the bill are not the regular type of inquiry such as planning inquiries, for example. They are the kind of major public inquiries that deal with subjects that, as the bill says, are likely to cause public concern. The Dunblane inquiry is an obvious example. They are

inquiries that are set up on a one-off ad hoc basis. The bill seeks to give a framework to those inquiries in terms of appointments, support, funding, who serves on them and so forth. Because they are set up on a case-by-case basis, awkward questions will be asked about devolved and reserved matters; such problems will have to be solved between the various Administrations, although it is difficult to foresee what the problems will be. As I said, if the inquiries are set up, who will take the lead on any specific issue? For example, the Dunblane inquiry related to a matter that was of enormous concern to Scots but which was also of considerable concern to people throughout the UK because of its subject matter.

One has to consider whether the bill will work in practical terms. For example, does responsibility need to be firmly agreed before an inquiry starts? How will that be done? How will that operate? However, one can go only so far on that when setting up a framework such as this.

Maureen Macmillan: The devil is in the detail.

John Elliot: Yes.

Mr Stewart Maxwell (West of Scotland) (SNP): I was interested to hear your answers to the questions that Mr Pringle put. In the last paragraph of the fourth bullet point of section 11 of your written submission, which is on devolution issues, you state:

"Most Scottish tribunal office holders would prefer there to be a clearly identifiable Scottish element in the judicial appointment making process"

and that

"that is in harmony with the political will in Scotland".

The final bullet point of section 11 suggests that

"a Scottish Tribunals Service could be created to embrace all Scotland-only tribunals."

Do you think that there should, rather than could, be a Scottish tribunals service? Would it be logical and would it make administrative sense to have a Scottish tribunals service rather than to try to address the cross-border problems that you have been talking about?

John Elliot: Yes, but we must also get the cross-border issues concerning the inquiries and the tribunals sorted out. One member has already made sure that we are sticking to that.

I personally think that a Scottish tribunals service would be a very good thing for tribunals operating in Scotland for the specific reason that we have our own system of law. Although it is not impossible to resolve issues of law between England and Scotland, there is a certain logic to the idea that we should control our own administrative justice system, just as we control our own civil and criminal justice systems. However, we need to have the resources to do that and must have a vision of what we want tribunals to do. So far, that vision has not come out of Scotland, as nobody has considered it as an issue. The focus in Scotland has been generally on criminal justice.

Mr Maxwell: Given that lack of vision, as you describe it, if we proposed a separate Scottish tribunals service, would that generate interest and urge whoever is responsible to produce the kind of vision that you are talking about?

John Elliot: I think that it might. To an extent, it takes an act of political and executive will to do that. If one accepts that, as I say in my written submission, people are more likely to come before a tribunal than they are to come before a civil or criminal court, you will appreciate the importance of the administrative decision-making process to ordinary citizens. A process that operates as independently and efficiently as possible must be in their interests.

The Convener: I would like clarification on a point that arises from Jackie Baillie's question. The matter that is immediately before the committee is the Inquiries Bill and the need for the committee to have regard to the Sewel motion that will soon come before the Scottish Parliament. Although the bill has only a general responsibility for the framework, are you concerned that if we do not pick up on aspects of the bill, it might create difficulties with whatever the ensuing legislation will be for the more detailed activity of tribunals?

John Elliot: I think that you have to consider the bill as pretty much standing on its own in that respect.

The Convener: That is helpful. As members have no further questions, I thank you for coming before us. I also thank you for your written submission, which was of great assistance to members. Your evidence will assist us as we reflect further.

We are awaiting the arrival of the minister for item 3 on our agenda. In fairness to him, we have got through the previous two items more swiftly than was anticipated. I am happy to suspend the meeting until the minister appears. Members may wish to have cups of tea and coffee.

14:25

Meeting suspended.

14:27

On resuming—

Subordinate Legislation

Scotland Act 1998 (Modifications of Schedule 5) Order 2005 (Draft)

The Convener: I welcome the Deputy Minister for Justice, Hugh Henry, and his advisers—Robert Marshall, Jill Clark, Johann MacDougall and Ian Snedden. We are grateful to you for joining us for the item on subordinate legislation. Members have received a copy of the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2005—oh, no; I am talking rubbish. That instrument has been withdrawn. Members have received no such thing. The minister is no doubt enormously relieved to hear that. There is only one order for approval: the draft Scotland Act 1998 (Modifications of Schedule 5) Order 2005. In accordance with the affirmative procedure, I ask Hugh Henry to speak to and move the motion to approve the order.

The Deputy Minister for Justice (Hugh Henry): We welcome the opportunity to outline to the committee the background to the proposed order under section 30 of the Scotland Act 1998, which will modify schedule 5 to the act. The purpose of the order is to amend the reservation in section H2 of schedule 5 in respect of health and safety to reflect the split in policy responsibility for fire safety matters in Scotland between the Health and Safety Executive and the Scottish Executive.

As members are aware, one of the objectives of the Fire (Scotland) Bill is the revision of fire safety legislation. We are keen to maintain a consistent approach throughout the United Kingdom to fire safety requirements for premises that are not private dwellings. The fire safety regulations will be the key piece of subordinate legislation in that respect, and I understand that my officials have given an early draft of the regulations to the committee to assist with its consideration at stage 2 of the bill.

At present, several health and safety matters in respect of fire safety are reserved. However, I can report that we have been successful in securing agreement in principle—and subject to the committee's support for the order—to devolve responsibility to the Scottish Parliament for a number of fire safety matters that are presently reserved.

The reservation at section H2 of schedule 5 to the 1998 act no longer reflects the distinction between general aspects of fire safety and its more specialised and technical aspects. Although specialised and technical aspects of fire safety are the responsibility of the Health and Safety Executive—and rightly so—the policy responsibility for general aspects of fire safety has been devolved to the Scottish ministers.

Consequently, we have reached an agreement with the Health and Safety Executive, the Office of the Deputy Prime Minister and Whitehall colleagues that policy on currently reserved areas of fire safety on construction sites and special premises, as listed at 1 July 1999 under the Fire Certificates (Special Premises) Regulations 1976, would be more appropriately devolved to the Scottish ministers. The draft section 30 order that is before the committee will extend the legislative competence of the Scottish Parliament to those areas to complement the transfer of policy responsibility.

14:30

We intend that the Fire (Scotland) Bill and the associated subordinate legislation will provide a one-stop shop for all general fire safety requirements in respect of premises in Scotland that are not regarded as private dwellings. The section 30 order brings us one step closer to achieving that. Once the order and the eventual act are brought into force, the powers will be used to bring special premises and construction sites under the new fire safety regime. At that point, fire and rescue authorities and joint fire and rescue boards in Scotland will become responsible for enforcing the new legislation in respect of special premises. The authorities will already be familiar with those premises for firefighting purposes. When preparing their integrated risk management plans, they will take into account their enforcing duties and include those relating to special premises. Our intention is to continue the existing regime for construction sites whereby the Health and Safety Executive is responsible for fire safety there.

As I have indicated, the section 30 order, together with the bill, will help to ensure consistency of approach throughout the United Kingdom, subject to differences between Scottish and English and Welsh legislation, and will introduce a level playing field with regard to the impact of fire safety requirements on industry and commerce.

I hope that the committee will support the order and the welcome extension of responsibilities to the Scottish Parliament.

I move,

That the Justice 2 Committee recommends that the draft Scotland Act 1998 (Modifications of Schedule 5) Order 2005 be approved.

Mr Maxwell: You have clearly explained the change that is going ahead and the functions of

the Health and Safety Executive and the Scottish ministers. Will you expand on the rationale behind the new split in responsibilities? Why has the line been redrawn now, and why is it not somewhere else? Why have we not transferred more functions to Scottish ministers than the draft order proposes?

Hugh Henry: We think that the proposed balance is probably the right one. We recognise that there are matters that are better left as the responsibility of the Health and Safety Executive. We have discussed the need for consistency throughout the United Kingdom. We have tried to demarcate areas that are more related to fire policy, which the Scottish Parliament, rather than the United Kingdom Parliament, determines. Having considered our areas of general responsibility and those areas in which responsibility lies with Westminster, we think that the present proposal offers better scrutiny and accountability, while allowing us to leave in place matters that we think are best dealt with at a United Kingdom level. There are some areas that we think are best left to the Health and Safety Executive to pursue.

Who knows? Perhaps in the fullness of time, and with experience, we might start to consider taking over responsibility for other matters, but as things stand now, we think that we have arrived at a sensible balance and that our proposals represent the right thing to do.

Mr Maxwell: I hear what you are saying and I understand the approach that the Executive has decided to take, but will you give us one or two examples of areas that have been left with the Health and Safety Executive and explain in detail why that is the case and what the rationale is behind the Executive's thinking? You have spoken in general terms, but will you give an example to illustrate why you think it is better for a given area to be left with the Health and Safety Executive rather than being transferred to the Scottish ministers?

Hugh Henry: Do you want me to list all of the functions that rest with the Health and Safety Executive?

Mr Maxwell: No. I would like you to give us some examples of the functions that you believe would best be left with the UK body.

Hugh Henry: We have considered the issue from a positive perspective rather than a negative one and have borne in mind issues such as our legislative competence, our policy responsibilities and the areas that we can directly influence. We have sought to bring across issues relating to those areas rather than identifying, in a negative way, issues that we would not be able to take over.

For the purposes of the Fire (Scotland) Bill, we believe that we are not able to legislate on policy in relation to, for example, vessels and hovercraft, mines and buildings on the surface of mines—that is perhaps not the issue that it once was in Scotland, but there could be some on-going issues in that regard—or premises that are specified in part 1 of schedule 1 to the Fire Certificates (Special Premises) Regulations 1976, which is probably more of a specialist area than anything else.

The Convener: The question is, that motion S2M-2196, be agreed to. Are we agreed?

Motion agreed to.

That the Justice 2 Committee recommends that the draft Scotland Act 1998 (Modifications of Schedule 5) Order 2005 be approved.

The Convener: I thank the minister and his many supporters for attending the meeting.

Fire (Scotland) Bill: Stage 2

14:37

The Convener: Item 4 on the agenda is stage 2 of the Fire (Scotland) Bill. We have decided to divide the committee's consideration of stage 2 into two days, of which today is the first, on which we will deal with sections up to section 48.

Members should have a copy of the bill and of the marshalled list of amendments. I should mention that the clerks have produced a sort of feedback form. It would be helpful to them if members could give them their views on that form.

In an almost Gilbertian manner, the minister has transformed from the expert on the transfer of reserved issues into the expert on matters relating to the Fire (Scotland) Bill. Our welcome to the minister and his advisers continues, even in their altered capacity.

The amendments have been grouped to facilitate debate. I will call them in turn and we will deal with them in that order. There will be one debate on each group of amendments. Members may speak to their amendment if it is in that group, but there will be only one debate on each group.

Section 1—Fire and rescue authorities

The Convener: Amendment 1, in the name of the minister, is grouped with amendments 2 to 4, 19 and 20.

Hugh Henry: Amendments 1 and 2 will amend section 1 to clarify fire and rescue authorities' duties in respect of the sea. Under section 1, a fire authority's area is defined by reference to the area of the local authority, under section 2 of the Local Government etc (Scotland) Act 1994. However, a territorial limit is not set out, so there is no statutory definition of how far out into the sea a local authority area extends. Given the importance of clearly defining the extent of a fire and rescue authority's area, amendments 1 and 2 will clarify the matter by limiting the fire and rescue authority's area to the low water mark. Such an approach is consistent with the approach taken in England and Wales and will not place any significant burden on fire and rescue authorities. Thus, where a fire and rescue authority's area adjoins the sea, the authority will be under a duty to make provision for the exercise of its core functions in that area up to the low water mark. It will also have powers to act outwith that area where specified.

I stress that amendments 1 and 2 will not place an obligation on fire and rescue authorities to tackle incidents on stricken vessels at sea. The intention behind the amendments is to restrict duties to the low water mark, but authorities will still be allowed to exercise some powers outwith their area, including at sea. Fire and rescue authorities that want to respond to eventualities under section 12 will be able to do so, but authorities will not be under a duty to put out fires at sea.

Amendment 3 will ensure that joint fire and rescue boards may, like existing joint boards and unitary authorities, compulsorily purchase land.

The second part of amendment 3 will ensure that existing administration schemes—and future administration schemes under section 2—may determine the appropriate pension fund for employees of the fire and rescue joint boards who are not members of the firemen's pension scheme. Essentially, the current regime will continue to operate as it does at present under the Local Government Superannuation (Scotland) Regulations 1987. As firefighters' pensions as such are a reserved matter, future pension provision for Scottish firefighters was made under the Fire and Rescue Services Act 2004, which came into force on 1 October. However, the Fire Services Act 1947 provided that administrative arrangements for non-firefighters could be determined in administration schemes. Therefore, we need to retain an equivalent to section 36(13) of the 1947 act to cover those types of employees.

Amendment 4 will give ministers the necessary powers to transfer the property, rights, liabilities and staff from joint boards under existing administration schemes to joint fire and rescue boards under any future schemes that may be made under section 2(1).

Amendment 19 will ensure that relevant authorities can continue to acquire and dispose of land as they are currently empowered to do under the 1947 act. Essentially, the amendment will address an oversight in the bill as introduced.

Amendment 20 will provide that any amalgamation scheme order that is made under section 2 and any order for the transfer of assets that is made under section 5 will be subject to the affirmative rather than the negative parliamentary procedure.

Section 2 re-enacts the provisions that are contained in the Fire Services Act 1947, so that Scottish ministers can continue to be able to initiate amalgamation schemes to combine two or more fire authorities where that appears to them to be in the interests of greater economy, efficiency and effectiveness. Proposed new section 5(3), which amendment 4 will insert, will allow ministers to transfer the property, rights, liabilities and staff from existing joint boards to new joint boards that are constituted by an amalgamation scheme that is made under section 2. Therefore, fire and

rescue authorities will continue to be able to propose amalgamation schemes for the agreement of Scottish ministers. Amendment 20 will afford a greater amount of parliamentary scrutiny for any amalgamation scheme orders.

I move amendment 1.

Colin Fox (Lothians) (SSP): The minister has stated both to the committee and to the Parliament in the stage 1 debate that the bill must achieve a balance between providing centralised powers to ministers and devolving decisions to local expertise and control. However, amendment 4 appears to provide ministers with yet another centralising power, this time to amalgamate fire authorities regardless of whether that has been agreed. Is that the intention behind amendment 4?

14:45

Hugh Henry: With the convener's permission, I will clarify that question with Colin Fox so that I can give a full answer. He asked me whether the power gives something to ministers. Is he suggesting that we are taking this power for the first time?

Colin Fox: No. I wondered whether the minister is suggesting to us that the amendment will give him the opportunity to step in and amalgamate fire authorities at a later stage.

Hugh Henry: Amendment 4 is a tidying-up amendment, which continues the arrangements that have been in place since 1947. I see no reason in essence for anything to change in future from what has happened in the past.

Colin Fox: Can you elaborate on what you mean by tidying up? Where does the tidying up come from? Has the provision been omitted from legislation between 1947 and today?

Hugh Henry: Amendment 4 provides for the traditional power of ministers by order to transfer the property, rights, liabilities or staff of existing joint fire boards. The amendment tidies up the drafting of the legislation to ensure that we have continuity with the arrangements that pertained in the past.

Jackie Baillie: I have a simple question to ensure that I am clear on the issue. My understanding of what you are saying is that local fire brigades will still be able to submit proposals to ministers if they choose to do so. I am keen that there is such local decision making. You are saying that those provisions are in the 1947 act and that the provisions in the bill are more transparent in the sense that Parliament will need to vote on any subsequent proposals, which has not previously been the case. As a back-bench MSP, that gives me a degree of satisfaction.

Hugh Henry: Jackie Baillie is right. In the past ministers could, by order, have made such changes and implemented them. The amendment means that the bill will require us to come back to Parliament to seek approval before any such change can be made. In one sense Jackie Baillie is right to point out that I was incorrect in saying that the provision is merely a continuation of the current arrangements; in fact, I suppose that it is more significant, in that it gives an opportunity for parliamentary scrutiny in a way that did not previously exist.

Bill Butler (Glasgow Anniesland) (Lab): To be absolutely clear, are you saying that the amendment proposes more of a decentralised process than the existing one?

Hugh Henry: No. It is more an issue of openness, better transparency and better accountability. The amendment recognises the legitimate role of the Parliament in a way that was not previously the case. Whether any impetus in the future is central or local is a separate issue.

Bill Butler: So there will be a greater ability to exercise democratic scrutiny.

Hugh Henry: I agree.

Mr Maxwell: I have another point of clarification. For absolute clarity, are you saying that there is in effect no change between the provisions in the 1947 act and the provisions in the amendment other than the fact that there will be greater parliamentary scrutiny? Do Scottish ministers have the same ability to exercise power on this matter as did Scottish Office ministers?

Hugh Henry: Essentially, that is the case, other than that we have introduced an element of greater parliamentary scrutiny and more openness.

Mr Maxwell: Is that the only difference? Are there no other differences?

Hugh Henry: Having listened to suggestions, we have been moved to make such an order under the affirmative procedure rather than the negative procedure, but I cannot think of any other change. If Stewart Maxwell has, in his close scrutiny of the bill, identified something that I have missed, I am more than willing to look at it.

Mr Maxwell: No. I was just asking for exact clarification of the position from your point of view, because there has been a lot of debate around that point. Clearly, there is a great deal of concern among members of the fire service that the power will be used to reduce, in the first instance, the number of fire control rooms and, subsequently, the number of fire brigades in Scotland. The logical argument that would be used is that if we have fewer control rooms, we will have to return to a position of having coterminous boundaries, so

the power would be used to reduce the number of brigades to match the number of control rooms, against the desire of the fire brigades. Is that your intention? Do you see that as a possibility at all?

Hugh Henry: I made the position clear in the stage 1 debate, and I am sure that I also referred to it when I gave evidence to the committee. The two issues are entirely separate. I emphasise again that we are not proposing any new hidden powers and we are not proposing to do anything that—

The Convener: As convener, I would be content, minister, if you would address your remarks to amendment 4, in the name of Cathy Jamieson, in responding to Mr Maxwell's concerns.

Mr Maxwell, we are not here to rehearse the stage 1 debate. The minister is here to move and debate amendment 4.

Hugh Henry: I shall be guided by you, convener.

The Convener: In responding to Mr Maxwell, please deal with the point in relation to amendment 4.

Hugh Henry: The point that I was going to make about amendment 4 is that we are not introducing any further powers that were not there before, nor are we proposing to do something that would then give us the opportunity to step beyond that into something else. The number of boards and the number of control rooms are entirely separate matters. I believe that what we are doing gives greater transparency and greater accountability. I think that it is a democratic step forward, and I am puzzled at those who are concerned that the introduction of greater openness and transparency is something to be regretted.

The Convener: I propose to close the debate on this group of amendments. Are there any concluding remarks that the minister wants to make?

Hugh Henry: No thank you, convener.

Amendment 1 agreed to.

Amendment 2 moved—[Hugh Henry]—and agreed to.

Section 1, as amended, agreed to.

Sections 2 to 4 agreed to.

Schedule 1

JOINT FIRE AND RESCUE BOARDS: SUPPLEMENTARY PROVISION

Amendment 3 moved—[Hugh Henry]—and agreed to.

Schedule 1, as amended, agreed to.

Section 5—Existing joint fire boards

Amendment 4 moved—[Hugh Henry].

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)

AGAINST

Maxwell, Mr Stewart (West of Scotland) (SNP)
Fox, Colin (Lothians) (SSP)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 4 agreed to.

Section 5, as amended, agreed to.

Section 6 agreed to.

Before section 7

The Convener: Amendment 5, in the name of Maureen Macmillan, is grouped with amendment 13.

Maureen Macmillan: Amendments 5 and 13 seek to address a source of concern in the bill, which is that it does not spell out the role of the chief fire officer and his or her relationship with the fire board. As the convener noted, that means that accountability and lines of authority will be blurred. The committee's former deputy convener, Karen Whitefield, first raised the issue with the Executive. The Fire Brigades Union and the Fire Officers Association wished it to be made clear in the bill that the firemaster must be accountable to, and held responsible by, the fire authority on the delivery of operational services. Bill Butler raised that issue in the stage 1 debate. The Convention of Scottish Local Authorities, too, felt that local accountability could be threatened because of ambiguity or lack of detail regarding the role of the chief officer.

The Executive argued that it was not necessary to make explicit in the bill the relationship between the chief officer and the authority, as that would be a matter for individual employment contracts. However, in the stage 1 debate and in correspondence with the committee, the Deputy Minister for Justice has indicated that he is willing to reconsider that. I hope that he will accept that the bill as it stands has raised genuine concerns and that he will not oppose my amendments.

Amendment 5 seeks to clarify that a chief officer will always be appointed by an authority and that

the chief officer will be responsible to the authority. That will mean that we are in no doubt about democratic accountability.

Amendment 13 seeks to amend section 33, which will enable a relevant authority to seek assistance from another organisation—a "relevant person"—that employs its own firefighters. Amendment 13 would enlarge the scope of that provision, by giving the chief fire officer responsibility for identifying or approving a "relevant person".

I move amendment 5.

Colin Fox: I have a concern about amendment 13, which would allow fire authorities to enter into agreements with outside bodies to deliver certain functions on their behalf. I am worried that that would allow non-firefighters who were not fully trained or prepared to tackle fires to perform key functions that at the moment are carried out by our fire crews. What does the member have to say about that concern about amendment 13?

The Convener: Maureen Macmillan can comment on that when she winds up.

Mr Maxwell: I do not have an issue with amendment 5, but amendment 13 is problematic, especially when we consider it alongside amendment 12, which we will deal with later. Colin Fox has alluded to the fact that, if amendment 13 were agreed to, we would have a situation in which a chief officer could contract out services that are currently provided by the fire service or by members and employees of that service.

Section 33 refers to functions conferred

"by virtue of any of sections 8 to 10."

If amendment 12 were agreed to, that provision would be widened to include most of the activities of a fire authority that are mentioned in the bill. If he wished, a chief fire officer would be allowed to contract out—in other words, to privatise—fire safety functions, the drawing up of certificates and the production of computer-aided design drawings, for example. A range of services could be privatised because a chief officer would have the power to enter into relationships with outside bodies. Frankly, the member has not addressed that point. I hope that she will clarify in her summing up whether she believes that that is the case and, if she does, whether that is her intention. Does she intend to allow the privatisation of certain of the services that the fire service provides?

15:00

Hugh Henry: I will deal with the amendments in turn. The Executive has taken note of the evidence that the committee received at stage 1 and it supports amendment 5, which reflects what a number of organisations sought. The amendment seeks to ensure that the bill sets out that there will be a direct line of reporting responsibility from the chief officer to the fire and rescue authority.

I am completely baffled by the line that the debate on amendment 13 is taking. Stewart Maxwell seems to have become fixated with privatisation—he is trying to say that everything that we are doing is privatisation. I presume that we will come to that debate later, but the allegation in respect of amendment 13 is complete and utter nonsense.

The exclusion of persons who are not firefighters and organisations that do not employ firefighters from assisting fire and rescue authorities with their firefighting function was unintentional. Maureen Macmillan sensibly seeks to introduce a provision that will make a considerable difference for many fire authorities, particularly the authority in her area, the Highlands and Islands.

Section 33 of the bill was drafted in such a way as to ensure that only those with specialist skills and training could provide assistance to fight fires. In one respect that is right, but we recognise the point that Maureen Macmillan picked up on: as drafted, the provision is too restrictive. If we did not accept her amendment 13, we would prevent organisations that do not employ firefighters but that nevertheless have the relevant skills and training from helping fire and rescue authorities with their firefighting function. The amendment will ensure that any person, even if they are not employed as a firefighter, can provide assistance if their involvement has been approved by the chief officer.

I can think of a particular example that arises in areas such as the Highlands and Islands. In major incidents such as forest fires, the amendment will allow the chief officer to bring in helicopters and people to fly them if that specialist help is needed and wanted. It will also allow forestry workers to be deployed at the behest of, and under the control of, the chief officer. I find it utterly bizarre for members to suggest that amendment 13 would contribute in any way to the privatisation of the fire service. It would not. Maureen Macmillan has lodged a sensible amendment and those who oppose it could cause unforeseen and unintentional damage in areas in which such skills could be usefully deployed.

The Convener: In effect, we have heard a winding-up speech from the minister, but would Maureen Macmillan like to add anything?

Maureen Macmillan: The minister has stolen my thunder. It is important that the chief officer should be able to call on help from members of the

public when fires break out in remote areas, particularly heath fires, forest fires or grass fires. Unfortunately, we have such fires from time to time; sometimes they affect two or three places at once and the fire brigade in the Highlands is severely stretched. It is therefore important that people who are not full-time members of the fire brigade can be called on to help, including military personnel, civilian helicopter pilots or just local people in a village who act as fire beaters. I am grateful for the minister's support for amendment 13.

Amendment 5 agreed to.

Sections 7 to 9 agreed to.

After section 9

The Convener: Amendment 23, in the name of Colin Fox, is grouped with amendments 24 and 18.

Colin Fox: Amendments 23 and 24 seek to put the other emergencies that our fire crews attend on the same statutory footing as road traffic accidents, which the bill already covers. All the categories that are covered in amendment 23—biological or nuclear incidents, search and rescue, flooding, rail crashes and airport incidents—have the potential to become major incidents.

Unfortunately, such occurrences are no longer uncommon. We have many chemical facilities and chemicals are always being transported. We have biological and nuclear installations. As the weather has shown recently, we also have to respond to flooding fairly regularly. Amendment 23 seeks to demonstrate that the Parliament takes those emergencies equally seriously. They are as potentially life threatening as are road traffic accidents and incidents. The amendment seeks to show a willingness to allocate the necessary resources, personnel and training to cope with such emergencies and eventualities.

I move amendment 23.

The Convener: Technically, the minister should speak to amendment 18.

Hugh Henry: Do you want me to address Colin Fox's amendments?

The Convener: Yes, you can do that as well. It is just a technicality. We have a note here about amendment 18 and the fact that you should speak to it at this stage.

Hugh Henry: I am perfectly happy to do so.

I do not have any difficulty with either the principles or sentiments expressed by Colin Fox. My disagreement is more about the tactics of how best to achieve what he is seeking to do with his amendments. We could have made a decision to include those or similar functions in the bill, but we have taken a fundamentally different approach.

Over the years since the 1947 act, fire and rescue services have acquired a range of additional responsibilities, none of which is provided for in statute. We have opted for an arrangement that we believe provides maximum flexibility, setting out the current functions of the fire authorities, and places the service in the best position to respond to possible future additional responsibilities that have not yet been identified.

If we had tried to make a definitive list of all emergencies to which relevant authorities had a duty to respond, we would have run the risk of not covering all possible threats. By taking a power to create new duties by order, we retain the ability to respond to changing events and to amend the detail of the order by a subsequent order.

That approach was perfectly acceptable to the fire authorities and, I might add, to the trade unions in England and Wales. I cannot understand why such an approach would not be acceptable in Scotland. The purpose of the power in section 10 is to allow the flexibility to respond to a changing environment. The matter is best suited to subordinate legislation because that would allow an appropriate degree of flexibility to respond to changed circumstances and to deal with the types of emergency that we could not anticipate.

I stress that we are working on the matter through consultation and partnership. We are already out to consultation, which will allow interested parties to contribute and express a view on the scope and content of the proposed order. My concern is that Colin Fox's amendments would cut across the consultation on the section 10 additional function order. In the consultation paper, we propose what the initial order would cover specifically. We then want to consider the other functions, which are virtually identical to those in amendment 23. It would be wrong to pre-empt that consultation process. It would also be wrong to restrict the flexible approach provided for in the order-making power. We are working with stakeholders to ensure that they have the opportunity to inform the process. That work is due to complete on 8 March, which will leave ample time to make an additional function order before the commencement date of the bill, if that is required.

Amendment 18 clarifies that the action of extinguishing a fire includes the control or containment of a fire. Operationally, often the best way of tackling a fire involves allowing it to burn itself out or letting it spread in a way that makes it safer or easier to control. That is what happens at present. However, to ensure that those tackling fires continue to be able to take the most appropriate action in the circumstances, we think

that it would be helpful to make it quite clear that the term "extinguishing" in respect of fires includes controlling or containing.

I move amendment 18 and ask Colin Fox, in the light of the assurances that I have given, to withdraw amendment 23 and not to move amendment 24.

The Convener: I am sorry to be boringly pedantic but, having spoken to amendment 18, you do not need to move it at this stage. You can do so later.

Hugh Henry: I am sorry.

The Convener: Do not worry. We are not alone in finding stage 2 procedure slightly arcane at times.

Bill Butler: I do not have a problem with Colin Fox's amendments 23 and 24, as the intent behind them is good. However, having heard the minister, I am convinced that we should be appreciative of the flexibility in the route that he is suggesting. No one would want to cut across the consultation that is on-going. I hope that, having heard the minister's arguments, Colin Fox will decide to do as the minister has requested. Amendment 18 does not take away anything that he intended in amendments 23 and 24.

The Convener: Mr Fox, do you wish to press amendment 23?

Colin Fox: I would like to press the amendment. I will respond to a couple of the points that the minister and Bill Butler have made. I welcome the sympathy that has been shown to my amendments and recognise the genuineness of the suggestions that the minister has made. Amendment 23 is not an attempt to provide a definitive list, as the minister suggests. It simply highlights the fact that there are three or four other categories that are important in respect of the duties of firefighters. I welcome and have some sympathy with the minister's view that the matter may be dealt with by subordinate legislation, in another place or in the consultation exercise. However, I would like nonetheless to press the amendment. In that way, I get the best of both worlds. Even if I lose, I win in the end.

The Convener: The question is, that amendment 23 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fox, Colin (Lothians) (SSP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)

ABSTENTIONS

Maxwell, Mr Stewart (West of Scotland) (SNP)

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

Amendment 23 disagreed to.

Section 10—Conferral of functions in relation to other emergencies

Amendment 24 not moved.

Section 10 agreed to.

Sections 11 to 14 agreed to.

Section 15—Charging

The Convener: Amendment 6, in the name of the minister, is grouped with amendment 7.

Hugh Henry: Amendments 1 and 2, which we have already debated, define the "area" of a fire and rescue authority and clarify the duties of fire and rescue authorities in respect of activities at sea. Amendments 6 and 7, despite some of the comments that have been made, amend section 15 to provide that a charging order under that section may authorise charging for firefighting or protecting life or property in the event of a fire only where it occurs at sea or at sea outwith the authority's area. The amendments will put Scotland on an equal footing with England and Wales and will ensure that we are not left in the position of being unable to charge in relation to an incident at sea while fire and rescue authorities south of the border are able to charge. A charging order may not authorise charging to extinguish fires, protect life or protect property in the event of fire in the area of the fire and rescue authority.

I move amendment 6.

15:15

Mr Maxwell: I refer the minister to a letter, dated January 2005, that he sent to the convener. In paragraph 9, on charging, he says:

"There will be no change to the ability of fire and rescue authorities to charge for other aspects of their activities".

That refers to fire safety measures. He goes on to say:

"However, they will not be allowed to charge for activity in extinguishing fires, protecting property in the event of fires or protecting life."

It seems as though the minister has just changed his position. Perhaps it would have been appropriate for him to have begun his remarks on the amendments by paraphrasing a short speech made by a previous Prime Minister 26 years ago. I fully expected him to say, "Where there is

harmony, we shall bring discord, and where there is clarity, let us bring confusion."

Despite what the minister has said and despite Executive spin on the issue, it is clear that the door is being opened to allow charging for the core functions of the fire service. The bill, as introduced, has all-round support in relation to authorities not being allowed to charge for such activities. At no stage has there been any demand for the amendments that the Executive has lodged. In other words, there was harmony, but now the Executive has created discord; there was clarity, but now the Executive has created confusion.

It was crystal clear what

"they will not be allowed to charge"

meant, but now there are numerous questions and inconsistencies. Is the minister now saying that someone who lives on a houseboat that is moored in an inland loch cannot be charged if their home is on fire, but someone who lives on a houseboat moored in a sea loch or a tidal river, such as the Clyde, could be charged for receiving the core services of the fire brigade? If amendments 6 and 7 are agreed to, people living on a houseboat next to houses on land could be charged when the fire brigade extinguishes a fire in their home, whereas people living right next to them, on the land, could not be charged. What about people living in canal boats? Would they be charged?

The Convener: Can you keep this fairly brief, Mr Maxwell?

Mr Maxwell: I want to cover questions that the amendments raise.

The Convener: I am conscious of time. I am trying to be generous and encourage debate.

Mr Maxwell: I am trying to get through my points. Are canals included or does that depend on whether they are connected to the sea or are inland canals? Will there be exemptions for people who live on houseboats? What about merchant navy sailors who live on their ships for prolonged periods? What about a fishing boat from Peterhead that goes on fire? Will the crew be charged for being rescued and for having their property saved? What about people living on yachts for short or long periods? It seems as though those people will be charged, given the amendments. Is everything at sea or are only some things at sea?

Even from that brief list of questions, it is clear that amendments 6 and 7 are a recipe for confusion. The minister says that the Executive has no intention of charging for core services, but of course that is not true. The amendments will create a situation in which fire brigades can, in certain circumstances, charge for the core services of extinguishing fires, protecting life and protecting property. If the amendments are agreed to, we will lose the absolute clarity that exists in the bill at present. Despite the Executive's previous claims, there will be charging for core services in certain circumstances and at certain times, as the minister has just confirmed. Where is the comfort for communities who live on our coasts?

The Convener: Mr Maxwell, your point is clear. Please draw your remarks to a close.

Mr Maxwell: Why is a free-at-the-point-of-use core fire service being withdrawn from certain groups? The principle of providing a free core service for protecting life and property is sacrosanct. There is no excuse for charging people for those services under any circumstances.

Colin Fox: I am surprised that the minister did not say that, given its size, amendment 6, which will take out the word "not", is just a tidying-up measure. However, he seems to be proposing the introduction of the power to charge for what are core firefighting functions. As he knows, the service is paid for out of our taxes; it should surely remain free at the point of delivery.

As I am sure the minister would like to highlight, there is a difference between the core functions and the special services that we currently charge for—services such as pumping water, attending road traffic accidents, answering automatic fire alarm call-outs, entering lockfast premises and dealing with lift malfunctions. Those charges exist at the moment, but charges do not exist for what he would, I am sure, describe as the core functions of protecting life, fighting fires and rescuing people. I agree with Stewart Maxwell that amendment 6 seems to be a profound rather than simply a tidying-up measure.

I turn briefly to amendment 7. As the minister knows, there is a difference of opinion to be resolved regarding firefighting at sea. The difference has to do with the low water mark and incidents on offshore vessels. An important, unresolved and thorny issue remains in relation to no-fault insurance liability covering firefighters who would attend such incidents at sea. When vessels are registered and owned overseas, there are real problems for firefighters seeking damages for injury. As the minister knows, a warning has been issued by Professor Black—

The Convener: Mr Fox, may I ask how this point is relevant to amendments 6 and 7?

Colin Fox: I am trying to draw attention to the distinction in amendment 7 between action taken at the low water mark and action taken at sea. Until the issue of the extension of insurance cover is clarified, the amendment is premature.

Jackie Baillie: I, too, would like us to avoid confusion, of which more has been created than clarified so far. My interpretation of the amendments is that we still reject the notion of introducing charges for core services. I would not want anyone in our communities to be fearful. Will the minister confirm that all he is introducing is the notion that charging can take place only in respect of action taken at sea by a fire authority? If I understood him correctly, I think that that will bring us into line with what happens in England and Wales.

Bill Butler: I would like clarification because I would hate to be confused. To give us absolute clarity, will the minister say whether charges are being introduced for core services? Is there any intention in the future—near or far—of introducing charges for core services? Could we have answers to those questions, for clarity's sake? I would also like clarification on the reasonable point that Colin Fox raised about no-fault insurance liability cover for firefighters.

The Convener: Minister, may I suggest a limit of three minutes for winding up?

Hugh Henry: Convener, you are trying to spoil my pleasure.

The Convener: Not intentionally.

Hugh Henry: In this discussion, a number of things have confused me. Stewart Maxwell gave examples in which things might or might not happen. He spoke about canals—for clarity, perhaps he could give me an example of canals that are not inland. I am trying to think where the canals at sea might be.

Mr Maxwell: I was talking about canals that connect to the sea.

Hugh Henry: Stewart Maxwell spoke about a number of things that were at sea; I suggest that, from his contribution, the only thing that is at sea in this debate is him. The scaremongering and hysteria are bizarre. The accusations are based on no facts whatsoever.

Bill Butler asked whether charges are being introduced for core services. Absolutely not. On Jackie Baillie's point, I put on record again what I said in my opening speech. A charging order may not authorise charging to extinguish fires, protect life or protect property in the event of fire in the area of the fire and rescue authority. The difference is that there is no duty to fight fires at sea outwith a fire authority's area.

I will give further clarification on the question of insurance liability. Following the logic of Colin Fox's argument, a fire authority would be persuaded not to provide any services at all to those at sea. An authority would let them burn because they were not in its core area and it did not have the liability. That would be outrageous, if there was an incident that a fire authority could adequately respond to. To be fair to Colin Fox, I do not think that that is what he intended to suggest.

The amendments are not about the privatisation of fire services. Stewart Maxwell is making a feeble attempt to cover up his embarrassment at some of the comments that he made yesterday. It is not for me to comment on what the *Daily Star* says about the SNP dimwit. However, things were said yesterday and today that can be based only on ignorance, stupidity, incompetence or, worse, political opportunism. The accusations that have been made are outrageous. There is no attempt to privatise. We are still providing the core duties in an authority's area without any charge. However, outwith that area, from the low water mark to the territorial limit, there is the potential to charge when that would be appropriate.

The Convener: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)

AGAINST

Fox, Colin (Lothians) (SSP)
Maxwell, Mr Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 6 agreed to.

Amendment 7 moved—[Hugh Henry].

The Convener: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)

AGAINST

Fox, Colin (Lothians) (SSP)
Maxwell, Mr Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 7 agreed to.

The Convener: The question is, that section 15, as amended, be agreed to. Are we agreed?

Mr Maxwell: No.

The Convener: I am advised that members can vote against a section only if an amendment has been lodged to delete that section. To a boring lawyer, it would be interesting to know why, therefore, the question has to be put that a section be agreed to. However, that is the procedure. I am advised that I can accept a motion without notice that a section be disagreed to. If Mr Maxwell wishes to lodge such a motion, I am prepared to hear it.

Mr Maxwell: No, I will not at this point. I will leave things as they are. The argument has been made.

The Convener: I am grateful to you.

Section 15, as amended, agreed to.

Sections 16 to 19 agreed to.

Section 20—Fire hydrants: provision etc

The Convener: Amendment 25, in the name of Mike Pringle, is grouped with amendment 26.

Mike Pringle: I have had on-going discussions with the minister, which have not reached a conclusion. I will, therefore, not move the amendments.

Amendments 25 and 26 not moved.

Section 20 agreed to.

Sections 21 and 22 agreed to.

15:30

Section 23—Powers of authorised employees in relation to emergencies

The Convener: Amendment 8, in the name of Cathy Jamieson, is grouped with amendments 11, 14, 15 and 21.

Hugh Henry: Amendments 8 and 11 will remove what amount to duplicate provisions and offences in the bill to reflect the provisions of the Emergency Workers (Scotland) Act. Amendment 14 seeks to amend that act to reflect the effect of the bill and the placing on a statutory footing of emergency functions beyond firefighting.

Amendment 15 will make it an offence to assault, obstruct or hinder an employee of a fire and rescue service who is undertaking the non-emergency functions of fire safety and fire safety enforcement. The Emergency Workers (Scotland) Act was amended at stage 2 to make it an offence to assault, obstruct or hinder police, firefighters or ambulance workers whenever they are on duty rather than when they are responding to emergency circumstances. Those changes were made in recognition of the fact that, for those workers, the real possibility of their being required to respond to an emergency is ever present. The Emergency Workers (Scotland) Act refers to a member of a fire brigade under the Fire Services Act 1947—the current legislation. That reference requires to be updated to reflect the approach that we have taken in the bill. The effect of the amendment will be to extend protection to employees of a fire and rescue authority when they are undertaking firefighting, attending road traffic accidents or other emergencies, or carrying out other eventualities functions. Additionally, they will be covered during attendance at an incident, in obtaining information and in investigating a fire.

It has always been our intention to improve protection of fire and rescue service employees whenever they are undertaking fire and rescue service functions. For that reason, amendment 15 seeks to protect those employees when they are carrying out non-emergency functions, such as fire safety and fire safety enforcement. Although it would not be appropriate for those functions to be in the Emergency Workers (Scotland) Act, they are, nevertheless, important functions that involve interaction with local communities and businesses.

Amendment 21 is consequential on agreement to amendment 14.

I move amendment 8.

Amendment 8 agreed to.

Section 23, as amended, agreed to.

Sections 24 to 26 agreed to.

Section 27—Powers of authorised employees in relation to investigating fires

The Convener: Amendment 9 is in the name of Cathy Jamieson.

Hugh Henry: Amendment 9 will extend to outdoor places and to vehicles the power in section 27 to investigate the circumstances of a fire where a fire has taken place. The fire service has undertaken investigation of fires for many years and the information that is gathered feeds into programmes on community fire safety, improvement of fire precautions, tackling of wilful fire raising and identification of dangerous products. Those matters are all in the interests of public protection. Amendment 9 will ensure that employees of a fire and rescue authority can carry out such investigations wherever a fire occurs, whether in a vehicle, a house, a shop or any outdoor place.

I move amendment 9.

Amendment 9 agreed to.

Section 27, as amended, agreed to.

Section 28—Exercise of powers under sections 25 and 27: securing of premises

The Convener: Amendment 10 is in the name of Cathy Jamieson.

Hugh Henry: Amendment 10 will bring the terminology used in section 28 into line with that in sections 25 and 27 by clarifying that the term "employee" is an "authorised employee". Sections 25 and 27 will provide fire and rescue authorities with powers to enter premises, to remove articles and so on in pursuit of either obtaining information or investigating fires. An "employee" in those sections is referred to as an "authorised employee"; that is, someone who is an employee of the relevant authority and who is authorised in writing for those purposes.

Section 28 provides that an employee who enters a place under the powers in sections 25 and 27 must leave the premises as secure against unauthorised entry as he or she found them. Amendment 10 will clarify that the employee doing that should be the "authorised employee" who is authorised to be there in the context of sections 25 and 27, and not another person taken into the premises in terms of section 27(2)(a)(i), for example.

I move amendment 10.

Amendment 10 agreed to.

Section 28, as amended, agreed to.

Section 29—Sections 25 and 27: offences

Amendment 11 moved—[Hugh Henry]—and agreed to.

Section 29, as amended, agreed to.

Sections 30 to 32 agreed to.

Section 33—Assistance other than from relevant authorities

The Convener: Amendment 12, in the name of Cathy Jamieson, is in a group on its own.

Hugh Henry: Amendment 12 addresses an anomaly that exists between section 33 and section 34. Section 34 makes provision that a fire and rescue authority can enter into arrangements with others to provide services in the execution of its functions. Those functions are fire safety, firefighting, road traffic accidents, other emergencies and eventualities and fire safety enforcement. Delegation is limited to the extent that, in recognition of the particular expertise that is involved in firefighting, a fire and rescue authority may, under section 34, delegate the discharge of its firefighting function only to persons who employ firefighters. Section 33 makes provision for a fire and rescue authority to enter into an arrangement to obtain assistance with some of its functions. The functions for which such an arrangement can be made are presently restricted to firefighting, road traffic accidents and other emergencies.

Amendment 12 will address the anomaly by adding fire safety, other eventualities and enforcement of fire safety to the functions for which assistance arrangements may be made. That will bring section 33 into line with the functions that can be discharged by others.

I move amendment 12.

Mr Maxwell: Briefly, the arguments on this issue have been rehearsed. I mentioned amendment 12 when we were discussing amendment 13. Given that amendment 13 has been agreed to, amendment 12 would widen the scope and allow a chief officer to contract out services within the service. Therefore, I think that amendment 12 should not be agreed to.

The Convener: Do you wish to make a concluding comment, minister?

Hugh Henry: No, except to say that I am completely perplexed. I just do not see how Mr Maxwell can place that construction on amendment 12. He can come back to me on that before stage 3, but I am genuinely bewildered.

The Convener: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)

AGAINST

Fox, Colin (Lothians) (SSP)
Maxwell, Mr Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 12 agreed to.

Amendment 13 moved—[Maureen Macmillan].

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

Members: No.

The Convener: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)

AGAINST

Fox, Colin (Lothians) (SSP)
Maxwell, Mr Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 13 agreed to.

Section 33, as amended, agreed to.

Sections 34 and 35 agreed to.

After section 35

Amendments 14 and 15 moved—[Hugh Henry]—and agreed to.

Sections 36 to 43 agreed to.

Section 44—Central institution and other centres for education and training

The Convener: Amendment 16, in the name of Cathy Jamieson, is grouped with amendment 17.

Hugh Henry: Amendment 16 will remove the power for Scottish ministers to establish and maintain local training centres. That provision was carried over from the Fire Services Act 1947, but it is now regarded as unnecessary. Training arrangements operate very satisfactorily, with the Scottish Executive funding and maintaining the Scottish Fire Services College, which undertakes recruit training and other specialist courses. Moreover, individual fire and rescue authorities carry out their own local and refresher training at their own local training centres.

In removing this ministerial power, however, we do not want to lose the flexibility whereby, for reasons of convenience or logistics, authorities and Scottish ministers can agree that a centrally provided training course would be better delivered at a local training centre. The new subsection that amendment 17 will insert will enable that sort of arrangement to be made.

I move amendment 16.

Amendment 16 agreed to.

Amendment 17 moved—[Hugh Henry]—and agreed to.

Section 44, as amended, agreed to.

Section 45—Statutory negotiation arrangements

The Convener: Amendment 27, in the name of Colin Fox, is grouped with amendments 28 to 33. I ask Mr Fox to move amendment 27 and to speak to the other amendments in the group. I allow you four minutes.

Colin Fox: I hope not to take that long.

The amendments in the group are intended to place a clear and unambiguous commitment in the bill to have recognised trade union representation on the statutory negotiating body. In the course of our previous evidence and the stage 1 debate, it was suggested that there was a policy omission around the need to recognise more than one trade union to represent employees.

Amendment 27 seeks to ensure that the right of recognised trade unions to represent their members is clear and unambiguous in the bill and that all recognised trade unions have their full right to participate in negotiations recognised. The suggestion in the earlier evidence sessions that trade unions can simply lobby the negotiating body is completely unacceptable; indeed, that suggestion is an insult to the trade unions and diminishes the important role that they have in safeguarding the service. The trade unions need, and are entitled to have, a seat at the top table, rather than be reduced to giving out leaflets outside.

I hope that the minister recognises that he and I have debated this issue twice now. I also hope that he recognises that amendments 27 to 33 are an attempt to make it absolutely clear that there is an unambiguous commitment to ensuring that trade unions are key players in the fire service.

I move amendment 27.

The Convener: Thank you, Mr Fox. I appreciate your brevity.

15:45

Maureen Macmillan: This issue has been raised time and again. When I raised it during the stage 1 debate and noted that the problem seemed to be with the definition of "recognised trade unions", the minister said that

"section 45 clearly states that any negotiating body should include representatives of employees."—[*Official Report*, 18 November 2004; c 12001.]

What exactly is the problem with the phrase "recognised trade unions"? I note that, in your summing up in that debate, you said that you needed to examine the matter further to determine whether you could do anything to make the position absolutely clear. Could you say something about that today?

The Convener: Before the minister replies, I ask whether any other members want to ask a question.

Bill Butler: I would be grateful if the minister could say a little about what Maureen Macmillan was asking about. It is important that there be no ambiguity. There is a clear intention in section 45 that recognised trade unions would be involved in such a statutory negotiating body and I wonder

whether there is a problem with including the phrase, "recognised trade unions". I am not quite sure—my memory does not go that far back—but I think that the Educational Institute of Scotland is a recognised trade union that is involved in the statutory negotiating body with which it is concerned. Could the minister give us some comfort and clarification?

Hugh Henry: I am not entirely familiar with the legislation or negotiating circumstances pertaining to teachers so I cannot give Bill Butler any clarity or assurance on that point.

I understand what members are saying and I have sought to address some of their concerns. I am happy to put the Executive's commitment on record. However, there are certain difficulties in trying to prescribe things in the way that members suggest. I believe that the amendments are unnecessary. Section 45 already places a clear requirement on ministers to include persons representing the interests of some or all employees of relevant authorities as members of any such statutory negotiating body. The provision is drafted to ensure that no legitimate interests are excluded from the arrangement; there is no doubt that a recognised trade union would be included in the arrangements as a matter of course. That is our intention.

It is worth highlighting that, although recognised unions have certain rights, such as a right to appoint safety representatives and the right to receive information for collective bargaining purposes, union recognition—in a strictly factual sense—is a matter for employers at local or industrial level. There are a number of routes, which I will not rehearse now, by which unions can be recognised or be subject to de-recognition.

To be overly prescriptive in the bill could result in an overly rigid provision. For the reasons that I have outlined, the approach that we have adopted is more inclusive and more flexible. Just as we want to include trade unions, we also want to avoid excluding trade unions that might not have, for certain purposes, negotiating rights on a particular negotiating body but who need recognition for other purposes.

What we are doing will give trade unions the right to be represented on a negotiating body. I put that on the record. However, I believe that being overly prescriptive in the bill is not the way to address the concerns that have been expressed.

Colin Fox: I thank the minister for the assurance that there might be consideration of a more robust way of doing things than we currently have. I take his point that he feels that the amendments might be overly prescriptive, and I sense that he has some sympathy with the feeling that is shared by me and my colleagues that there is a little too much ambiguity as things currently stand. I hope that that may be a signal that—dare I say it—a middle way could be found at stage 3 between prescriptiveness and ambiguity.

I would, however, like to press amendment 27.

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fox, Colin (Lothians) (SSP)
Maxwell, Mr Stewart (West of Scotland) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 27 disagreed to.

Amendments 28 to 32 not moved.

Section 45 agreed to.

Section 46—Guidance

Amendment 33 not moved.

Section 46 agreed to.

Section 47—Prohibition on employment of police

The Convener: Amendment 22, in the name of Cathy Jamieson, is in a group on its own.

Hugh Henry: The prohibition in section 47 is aimed only at police constables and special constables, and it re-enacts section 32 of the Fire Services Act 1947. It exists to ensure that there is no conflict of interests in, for example, the fire and rescue service attending an incident at which a suspected arsonist was detained or where a disturbance was caused by bystanders. Since 1947, the use of the phrase

"member of a police force"

has perhaps suggested a wider group. We want to ensure that it is clear that it is only police constables and special constables, under the Police (Scotland) Act 1967 and not, for example, employees of a police authority, who are prohibited under that section from becoming retained firefighters. Amendment 22 seeks to clarify that.

I move amendment 22.

The Convener: For clarification, does "constable" have a statutory definition?

Hugh Henry: It does not in this bill, but I believe that it has a definition in the Police (Scotland) Act 1967.

The Convener: I asked the question for the avoidance of confusion. If there is a reference to rank, the amendment would suggest that other ranks can run off and help at fires.

Hugh Henry: I am advised that, when read with the rest of the 1967 act, any rank of officer will be included within the definition.

The Convener: I am grateful for that clarification.

Amendment 22 agreed to.

Section 47, as amended, agreed to.

Section 48—Interpretation of Part 2

Amendment 18 moved—[Hugh Henry]—and agreed to.

Section 48, as amended, agreed to.

The Convener: I thank committee members for their assistance in getting us to our declared objective this afternoon. I also thank the Deputy Minister for Justice, Hugh Henry, and his colleagues from the Justice Department for their assistance. We look forward to continuing this interesting process next week.

15:55

Meeting continued in private until 16:33.

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