

JUSTICE 2 COMMITTEE

Tuesday 25 October 2005

Session 2

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JUSTICE 2 COMMITTEE

† 25th 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)

*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (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)

*attended

THE FOLLOWING GAVE EVIDENCE:

Mr Tom Buchan (Association of Scottish Police Superintendents)

Mr Joe Grant (Scottish Police Federation)

Mr John McLean (Scottish Criminal Record Office)

Mr Graeme Pearson (Scottish Drugs Enforcement Agency)

Sir William Rae (Association of Chief Police Officers in Scotland)

Mr Peter Wilson (Association of Chief Police Officers in Scotland)

CLERK TO THE COMMITTEE

Gillian Baxendine

Tracey Hawe

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 2

† 24th Meeting 2005, Session 2—joint meeting with Justice 1 Committee held in private.

Scottish Parliament

Justice 2 Committee

Tuesday 25 October 2005

[THE CONVENER *opened the meeting at 14:07*]

Item in Private

The Convener (Miss Annabel Goldie): Welcome to the 25th meeting in 2005 of the Justice 2 Committee. The agenda and relevant papers have been circulated. I intimate that I have received apologies from Colin Fox, who is unable to be with us, and that Cathie Craigie is attending in place of Jackie Baillie, who is at a meeting of one of the tram bill committees. I welcome Cathie to the meeting.

Agenda item 1 is to seek members' approval to take item 5 in private. Do members agree to take that item in private?

Members indicated agreement.

Police, Public Order and Criminal Justice (Scotland) Bill: Stage 1

14:08

The Convener: Agenda item 2 is an administrative matter in relation to the Police, Public Order and Criminal Justice (Scotland) Bill, which we are about to consider in more detail. Do members agree to delegate to me responsibility for arranging for the Scottish Parliamentary Corporate Body to pay for any expenses for witnesses in relation to the bill, as provided for under rule 12.4.3 of the standing orders?

Members indicated agreement.

The Convener: For agenda item 3, I welcome to the meeting some eminent members of the police forces of Scotland. We have before us Sir William Rae, the honorary secretary of the Association of Chief Police Officers in Scotland; Mr Peter Wilson, the president of ACPOS; Mr Joe Grant, the general secretary of the Scottish Police Federation; and Mr Tom Buchan, the president of the Association of Scottish Police Superintendents. We are grateful to the four witnesses for making time to join us this afternoon. This is our first effort at scrutinising the bill and our first opportunity to take evidence on it. I thank the witnesses for the helpful written submissions that they provided. Various issues arise out of the submissions, which we would like to discuss further. Without further ado, I ask Jeremy Purvis to kick off the questions.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I will start with a question on governance. The witnesses will be aware that the Scottish Drug Enforcement Agency in its written submission argues that there should be two authorities. However, it continues:

"In the absence of a two-authority model, the SDEA believes that the most viable alternative is a single authority sitting in two sessions—one for maintained and one for provided services."

That is the system that is outlined in the bill. Do the panel members, perhaps starting with Sir William Rae, have views on governance issues? Is the proposed new structure for the authority and the agency the right model?

Sir William Rae (Association of Chief Police Officers in Scotland): Peter Wilson and I have been members of a programme board that has considered the issue of common police services in the past couple of years. A number of models have been presented and argued through. ACPOS believes firmly that a single overarching authority is the most sensible way in which to proceed. Although we have some issues with the make-up of the proposed authority and the way in which the

Scottish crime and drug enforcement agency will sit within the structure, the principle of a single authority is well supported by Scotland's chief constables. To have two separate bodies to oversee what is, in the main, a relatively small part of policing would be unnecessary duplication. We do not believe that the grounds for separation are supportable.

Mr Peter Wilson (Association of Chief Police Officers in Scotland): I agree absolutely. By way of example, the governance body will deal with issues such as training, equipment and other matters that would be added into the general round of procurement decision making in Scotland. To have two separate committees would not make the best sense or be the best use of time. As one area clearly has an impact on the other, they must be seen to tie together. The examples demonstrate the value of having one governance body, although we must recognise that some operational issues in the SCDEA will be dealt with separately.

Mr Tom Buchan (Association of Scottish Police Superintendents): The view of the ASPS mirrors the one that we have heard from ACPOS.

Mr Joe Grant (Scottish Police Federation): Likewise with the Scottish Police Federation: we support that view and have nothing to add.

Jeremy Purvis: I want to test one aspect with regard to the provision of police support services. Under section 3 of the bill, the new authority will be required to provide national data systems, information technology systems and equipment and records. The use of data could be a sensitive area and could raise public accountability issues, especially in the context of combining criminal history databases. There will also be issues with regard to operational independence. The two areas are slightly distinct. I want to focus on the ability of the Parliament and members, on behalf of our constituents, to hold bodies to account for the use of data systems. Would having just one body give rise to potential problems, such as conflicts of interest in the structure, which will be vertical rather than horizontal, as it would be if the two areas were separate?

Sir William Rae: We certainly do not see a difficulty with that. One reason why we need a robust governance body is to provide the protection that you have just talked about. You are right that the data and information that are handled can be extremely sensitive. However, when we use such systems, we all operate to national standards. If data are to be passed electronically, either between forces or between forces and the common police services, that is done in a protected environment. As our submission emphasises, it is important for the committee to bear in mind that if we simply took the notion of

record keeping in the Scottish Criminal Record Office, it would not necessarily be a policing function. However, the nature of the records makes the task distinctive, which is why chief constables are concerned that the governance arrangements in that regard should be correct. By the same token, we do not want to create silos of records in different parts of the criminal justice system.

Our arguments are strong for sharing where it is sensible to share, such as with facilities for back-office services. That is where the most effective and economic use of our resources will be achieved. One of the good things about the bill is that it makes provision for those corporate back-office services for all the common police services and proposes to bring them under one area of control. That will make for a tidier and tighter way of managing the data issues to which you refer.

14:15

Jeremy Purvis: I am aware that this is only one aspect, but let us consider the debate in the Parliament and among the public about the retention of DNA samples, which would be one of the common functions under the aegis of the authority. Under the bill, those functions will be funded directly by ministers. That will take away the checks and balances that currently exist in the police forces. There is currently a level of public accountability within the board structure. Although the new structure might be neater and tidier and arguably more efficient, does not the way in which the body is formed and funded and the way in which it decides its strategic priorities give rise to a weakness in relation to public accountability?

Sir William Rae: Those are the proposals about which ACPOS has greatest concern. We have no argument about bringing together the common police functions as we described and the creation of a central forensic science facility, because that will be the most efficient way of delivering the functions. However, we are concerned about the checks and balances that are built into the governance arrangements.

We come from a background that has specific, prescribed governance arrangements, which are designed to maintain a balance between central and local government as well as to ensure the operational independence of the chief constables. That tripartite arrangement has protected everyone's interests in policing, including the community interest, for many a year. The key concern for ACPOS is the proposal to change that governance arrangement in relation both to the make-up of those who would provide the overseeing role and to the funding regime. When we speak about money, there is a danger that we might focus on the simplest way of getting money

from point A to point B. However, from our perspective, there is also an issue about ownership. If services are funded 100 per cent by central or local government, they are owned 100 per cent by them.

Mr Wilson: We are concerned that there might be unintended consequences. Under the bill, the common police services will be funded 100 per cent by central Government, but the rest of policing will be funded by the traditional tripartite method.

In recent times, chief constables in Scotland have been willing to bring together those elements of common service that we think are better done collectively—the forensic science element is an example. However, if it were thought that the funding was to be managed differently from how it is under the current tripartite system of governance, the chief constables might hesitate to offer further collaboration in making business better. The skewing of priorities might have the unintended consequence of deterring the effective modernisation of the service that we have delivered over many years by bringing functions together where they work better. We believe that it would be better to keep the same funding arrangements for common police services as for policing in general.

The Convener: Sir William, you said that the traditional tripartite arrangement has been good. However, the whole point of the bill is that we are moving on; we are taking the structure of the police forces of Scotland to another stage.

Sir William Rae: Absolutely. That is what disappoints us, because as part of the consultation exercise we offered a model that we believed was innovative, modern and flexible. However, the proposals in the bill follow slavishly a non-departmental public body model—they include all the layers that meet that requirement. We do not believe that that is necessary. It brings with it bureaucracy and additional cost.

We are the most modern-thinking generation of chief constables that there has been and we are trying to drive through change. I hope that in your respective constituencies you have seen the energy that has been applied to modernising every aspect of the service. We are not hanging on to something from the past that is no longer appropriate. We are challenging the discarding of a fundamental constitutional principle of policing in this country—not just Scotland, but the United Kingdom—through changes to the oversight arrangements and their make-up. Those changes go beyond the issue of common police services and affect the future arrangements for policing in Scotland. There is a read-across. The changes are about moving greater influence and direction

to the centre, rather than maintaining a constitutional balance. That is an important issue.

We have been brought up in the current system, which is all that we have known. That does not mean that it does not need to be challenged from time to time. However, we are dealing with a fundamental constitutional issue for this country. We do not want it to be set aside simply for the sake of administrative convenience.

The Convener: I could follow your line of argument if, for example, we were leaving the SDEA where it is. However, the bill does not do that—it proposes to make the agency a statutory creation. You either accept that or you do not. If you do, does that not begin to kick in the legs of the tripartite arrangement?

Sir William Rae: The SDEA does a wonderful job for Scotland and its contribution is greatly appreciated. However, the arrangements that have existed since its formation have always been problematic, as they have required different funding streams and governance arrangements with which neither the director nor the chief constables have been satisfied. We did not think that they stood up to great scrutiny.

Bringing the agency within a formal structure in which the governance exercised over it was akin to the governance that is exercised over police forces was an aspiration of chief constables as we set out on this process. However, we believe that there is some sort of contrivance to accommodate the agency within the oversight arrangements, while leaving key aspects of its governance outside them. In our submission, we express concern that, if the SCDEA is funded 100 per cent from central Government, its strategic direction will be set by ministers. The organisation would operate entirely differently from the way in which we ordinarily operate policing in this country. As was said earlier, there would not be the checks and balances that exist in the oversight of policing generally.

The Convener: In an operational sense, is the SDEA not a slightly different entity from any of our other police forces? Is it not a kind of Scottish Federal Bureau of Investigation?

Sir William Rae: I do not think that it is. There are discrete areas of business that it must pursue. Chief constables support that, because the SDEA is made up of police officers seconded from forces. It works closely with individual forces to pursue the primary objectives of policing in this country. Although the agency has a specific role, its functions, the way in which it operates, the way in which officers in the agency should be held accountable and the way in which the organisation can be called to account must mirror the arrangements for police forces. I am not convinced

that the provisions of the bill will allow that issue to be addressed fully. In terms of oversight, it would be eminently sensible for the agency to be put into the same arena as the common police services. I do not think that having lines of accountability that extend beyond that governance arrangement meets what is meant by governance—that is, a board of governors overseeing the business that lies in front of it.

The SDEA is the most overtly operational part of the business, but, as we suggested in our submission, although it might be thought that forensic science involves people sitting over test tubes and other bits of equipment, forensic scientists are part of the investigation team at any major murder scene or criminal investigation. Like other detectives, they are engaged in the recovery of evidence. On training, again, there is a close relationship to ensure that the needs of the service and of the community are properly addressed. The service might not be engaged directly with the public, but it certainly delivers services that the public feel and sense. I have to be careful about using the word “operational”, because all the common police services contribute in one way or another to the delivery of policing in Scotland.

The Convener: It seems that the SCDEA, as proposed in the bill, will be self-generating in terms of work.

Sir William Rae: It will be.

The Convener: There will be lines of accountability, although admittedly they will not be through the proposed Scottish police services authority. However, you are dissatisfied that there will be different lines of accountability.

Sir William Rae: To whom are the lines of accountability? The answer is not clear to us. Ministers will be responsible for setting the strategic direction, but there are provisions in the bill to ensure that ministers do not interfere with the operational end. If the SCDEA is not held to account under an oversight arrangement, who will hold it to account? We struggle to see the answer to that question. Ultimately, ministers will be liable for the actions of the individuals who are involved, but that part of the agency's work seems to sit outside the responsibilities of the proposed authority. The SDEA has an excellent director at the moment, but there has to be a safeguard. What will happen if we get a director who decides to pursue his or her own agenda? That might create tensions in the structure.

Mr Wilson: The initial question was whether the SDEA is a different organisation from the other services and Sir William tried to articulate the fact that they are all operational in their own regard. In many cases, the SDEA creates its own work, but that work is around policing in Scotland and

nowhere else. I suspect that, in the majority of cases, the work commences from groundwork that is done by police officers in police forces in Scotland. That integration has been critical in the past and it must remain so.

ACPOS is concerned that 100 per cent funding from the centre might skew the direction of policing in Scotland, given the SDEA's impact on policing in our communities. That is the risk without the governance structure and the clear checks and balances that exist for other services and in the current funding for policing. The SDEA does not work for anything other than the good of the people of Scotland. Its work is all tied in with policing in Scotland, so it has to be kept in a proper relationship with the way in which funding is distributed in the round for policing in Scotland. The 100 per cent funding from the centre that is proposed in the bill might skew that.

14:30

Bill Butler (Glasgow Anniesland) (Lab): I am interested in a few things that were said. Sir William asked to whom the SCDEA would be accountable. Would it not be accountable to the services authority board?

Sir William Rae: Only for those elements of the general back-office services that it provides. It has to provide an annual report directly to ministers for approval. Under the bill, although the SCDEA would be reporting to the authority, the operational parts would be swung outwith the authority and sit outside its ambit.

Bill Butler: Therefore, it would be accountable to whoever is the chief officer.

Sir William Rae: Yes, indeed.

Bill Butler: As with any police force.

Sir William Rae: The chief constable will be responsible to his police authority for what he does with his force.

Bill Butler: Okay. Let us go back a little bit. The SDEA argued in its submission that it should be subject to different governance arrangements. It takes a position directly contrary to that of the organisations giving evidence today. It says that, because of its “special police force” status, it has a need for operational independence. Do you see the merit in that argument?

Mr Wilson: In our discussions with the shadow board in recent months I made it clear that the director of the agency has a need for operational independence in decision making, much as there is a need for operational independence on the part of chief constables. That is what John McLean has tried to articulate.

It does not necessarily follow that there has to be a separate board. Much of the discussion on how the agency performs will be shaped by issues of personnel, training, equipment and logistics. Much of the argument against the SDEA's suggestion is about the logic of having two separate boards when we are dealing with a relatively small policing community in Scotland. What decisions would then conflict when we are dealing with the same sort of people? The logical and simple option is the view that we have articulated that the operational element should sit away from the board.

Bill Butler: Does anyone want to add to what Mr Wilson has to say, or are we all of one mind?

Mr Grant: We are.

Bill Butler: Sir William, you talked of your worry about the model being a slavish imitation of the NDPB model, about the additional cost and bureaucracy involved, and about the change of oversight arrangements. What would modernise things in a way that you would find acceptable and flexible, less bureaucratic and less onerous in incurring costs?

Sir William Rae: We started out with a proposal that there should be three arms to the body, if we set aside the notion of lay members and a lay chairperson: the chief constables, the police authorities and Scottish ministers. We had proposed initially that MSPs might want to sit in on the oversight arrangement, but the Executive knocked that back at an early stage because it did not think that it would be appropriate.

Bill Butler: Perhaps that would be too direct.

Sir William Rae: We suggested that civil servants might wish to sit in, as they have been sitting in on the oversight arrangements for the past 40 years. However, the Executive decided that it was no longer appropriate for civil servants to be involved in the oversight arrangements.

That left the other two key members of the tripartite: the chief constables and the police authorities. We believe that chief constables fulfil the role of advisers to police authorities in that capacity. We have sought a very simple structure with a small board made up of perhaps four conveners of police authorities. If necessary, those conveners should have the authority to appoint professional advisers on issues such as finance. The board would operate similarly to a police board.

I suspect that some committee members have been at meetings of police authorities, police committees or police boards before. When I go, I report on crime, on road policing, on budgets, on personnel matters and on any incidents of note, and people ask me questions about what has

been happening. That is the kind of interaction that takes place within police authorities, and things need not be all that different in SCDEA meetings.

Our simple idea on the structure was that it should comprise representatives of the police authorities, which are seconding their staff to provide these services anyway. A clerk/treasurer would be appointed to act as the accountable officer.

I would stress a point that was made to me by an MSP: modernisation of the service does not necessarily mean moving the deckchairs around. Modernisation will take place whether we change the structure or not. There is an agenda of change in all services—as in the Scottish Parliament—with new legislation. We have to address those issues.

We need to have flexibility on the oversight body and to have people who understand policing and have legitimacy—because it is their people who deliver the common services. The Executive would continue to play a role, but we felt that proximity was important. Chief constables are very used to working with police authorities; we work together in many different ways and then generally report to the Executive at meetings to let it know about the big issues for the police service. The key players of the tripartite arrangement were left in place, but not in a cumbersome way. The notion of proximity came into our thinking when the Executive decided that it did not want to be part of the new structure.

I have to emphasise that this is a small part of policing. We do not want layers of oversight that would be disproportionate to the investment and to the contribution of oversight to policing.

Mr Wilson: It is not stated in the bill—because the bill would not be the place for it—but change is needed because the current system has too many associated legal difficulties. We have grown up with the system of our common police services finding their staff employed by police forces and police boards. As a result, we have had great difficulty in dealing with a number of financial and personnel issues. The common police services have duplicated a number of support functions. The improvement in legislation was to give a proper legal structure for the common police services and to make it more straightforward for us to add other services. That was the remedy that we sought in the bill, to bring about the changes that we have been encouraging for some time. We did not necessarily want to change the whole governance or management; we wanted to remedy a difficulty in the previous arrangements that was causing other practical day-to-day difficulties.

Bill Butler: The convener and others have already raised points about your concerns over

powers of direction for ministers in section 28. Sir William made it clear that, according to section 13(2), Scottish ministers, quite properly,

"must not do anything which would, or might, affect ... particular operations",

and must consult, *inter alia*, the Scottish police services authority and the police associations before setting the SCDEA's strategic priorities. You might wish to comment a little more on that.

All of you have strongly opposed the appointment of laypersons to the Scottish police services authority board. What are the reasons for your opposition?

Mr Buchan: I think that part of your question is directed at remarks that Sir William—

Bill Butler: You may pick up on what I said. I am relaxed about who picks up what.

Mr Buchan: The Association of Scottish Police Superintendents is not opposed to laypersons, but why such a structure is needed has not been made clear to us throughout the process. I understand that there would be between seven and 10 members of the board, but at least three of them must be lay members, which is a dramatic change. Accountability and transparency are mentioned, but I am at a loss to see the basis on which an improvement in managing the service would be guaranteed. It is simply assumed that the introduction of lay members will mean much more accountability and clarity, but why that would be so is not made clear.

Bill Butler: So you are saying that the Association of Scottish Police Superintendents is not against lay members in principle, but that you cannot see how things would work.

Mr Buchan: The question that was posed was whether we are opposed to lay members. The association is not opposed to lay oversight, but a minimum requirement of three lay members is proposed and six lay members would be possible if the authority has 10 members. I am at a loss to understand why such a disproportionate level of lay involvement should be considered.

Bill Butler: I accept that and thank you for your clarification. However, ACPOS has described the suggestion on the appointment of laypersons as

"a significant and worrying departure from the long established constitutional tripartite arrangements".

Perhaps the ACPOS representatives could tell me why that was said.

The Convener: I am slightly conscious of the time, so either Sir William Rae or Mr Wilson should answer.

Sir William Rae: Certainly. We are concerned because there is a potential for five lay members

and an appointed lay convener in the organisation. Who will they be? What is meant by the word "lay"? Many laypeople are involved in the service who are normally either individuals who represent the community in order to ensure that the community's interests are being protected or people who bring a particular expertise to an area of business. Things are not clear.

Bill Butler: Would you be happier if there were a more precise definition, or are you opposed in principle to—

Sir William Rae: We would be happier if the word "lay" were more closely defined, but we do not understand the arguments for having a lay member and transferring authority. The issue is their legitimacy within the tripartite framework. If we end up with six lay members and four people who represent the police authorities and the chief constables, we will, in effect, hand over to those six individuals the decision making for common police services although we do not know who they will be.

Bill Butler: What if the numbers were the other way round? I accept the point that has been made about a clearer definition being needed, but say there were six police members and four lay members. Would that be okay? Whether or not there was a slip of your tongue, you referred to being worried by "a lay member". Do you have an objection in principle to lay members or to the membership that is proposed?

Sir William Rae: It is a principled objection. I will not rehearse the authority's constitutional make-up, but the objection is about those members.

I want to return to the point that was made about strategic direction, if I may. We do not object in any way to the Scottish Parliament identifying priorities and setting its policy agenda, within which we work, but we think that the role of setting the strategic direction of a particular agency, service or whatever is for the oversight body rather than ministers. The governance of any public or private sector body is the responsibility of the board of that body and not necessarily the responsibility of anyone who sits outside that board. Therefore, there may be a question about the language in the bill. As I said, the issue is not chief constables denying the right of ministers and the Parliament to identify priorities but how things are expressed in the bill.

14:45

Mr Stewart Maxwell (West of Scotland) (SNP): You all share the position that you strongly oppose direct recruitment into the SCDEA. Will you explain why you have such strong opposition to the direct recruitment both of new constables and of existing constables into the new agency?

Mr Wilson: Since the SDEA was set up, the chief constables have engaged with its director on the increasingly difficult matter of recruiting officers and staff for the agency. Chief constables are familiar with the issue and they have done what they can to create pools of staff who can be encouraged to go to the SDEA.

It must be understood that the SDEA is not made up solely of police officers. Increasingly, as experience south of the border shows, pressures on the workforce and on staff availability are such that positions that do not require police powers are being civilianised. The SDEA has many members of staff who are not police officers but are what we call support staff. On average, about a third of the workforce of the police forces is made up of support staff.

The issue depends on what the intention is behind introducing direct entry. If direct entry is intended to solve a staffing issue, some work needs to be done in advance to make clear what the staffing deficit is and what skills are required. Many tasks that do not require police powers can already be carried out by individuals who have the proper training and skills. For example, specific authorised people such as vehicle examiners, people who gather evidence and financial experts can be given particular authority within normal policing. It is not unusual for people to be given such authority to do that work.

Our difficulty with direct recruitment is that the bill is unclear not simply on what limitations of rank and so on will apply to SCDEA recruits but on how such recruits will fit into policing in general. What training will come into play? What will happen to those recruits after they have been with the SCDEA for a period of time? Will they be expected to remain with the agency for their entire service or will they return to a police force? To which force will they return? What arrangements will be put in place to ensure that police forces will naturally accept SCDEA staff who did not start off in a host force in the way that all police officers who are currently on secondment do?

A whole variety of issues around direct recruitment are not resolved by the bill and need to be clarified. Our concern is that the provision on direct recruitment is unnecessary. However, we recognise the need to ensure that the SCDEA is properly staffed.

Mr Maxwell: Do you hold the same position on the recruitment of both new and existing constables?

Mr Wilson: I am sorry, but I do not follow your question.

Mr Maxwell: You seem to oppose the recruitment into the agency both of brand new constables and of those who are already

constables. Do you support only the secondment of existing constables to the agency?

Mr Wilson: We currently second people to the agency. We have no difficulty with that.

Mr Maxwell: I appreciate that. You accept secondment to the SCDEA, but you oppose recruitment by the SCDEA.

Mr Wilson: If we were to accept recruitment, we would get into the situation of having people who were employed by the SCDEA from the start. Currently, only police officers—people who have the powers of a constable—are seconded to the agency from a host police force.

Mr Maxwell: Perhaps this is my fault, but I fail to understand why someone with police powers could not be recruited and employed directly by the SCDEA rather than by a police authority.

The Convener: I think that Mr Buchan has something to add.

Mr Buchan: The issue can be best contextualised by considering the reality of the situation. If we had direct recruitment of officers who served their probationary period within the SCDEA, those officers would be of extremely limited value if they wished to transfer to a police force at a later stage. They might bring to a police force expertise in a particular field—in which they would almost certainly continue to be deployed—but the difference between the proposed arrangement and what currently happens is that the SCDEA recruits would not have the same range of operational experience that enhances their value for the police force that deploys them.

The committee should be in no doubt about the matter. I simply cannot envisage how an officer who had been recruited as a probationer by the SCDEA could be accommodated by a police force after four or five years with the SCDEA. Notwithstanding the fact that it is unclear to which police force they would go, the value of such officers on their arrival, given that they would not have overall operational experience, would be exceptionally limited. It beggars belief how much training would be required, as the issue is not just training but experience. There is a significant difference. The current arrangement is that operational police officers are put into the SDEA to gain valuable experience. As often as not, they are deployed at some time in a way that enables them to use the skills that they have acquired. At the same time, we have a resource that we can send to a football match, a road traffic accident or a breach of the peace on the basis of the experience that the police officers have. We could not do that with someone from a specialised unit such as the SCDEA.

Mr Maxwell: In its written evidence, the SDEA says clearly that

“police officers recruited to the Agency”

would be

“trained alongside Scottish Police Service colleagues”,

albeit with a tailored programme. I presume that such training would take place at the Scottish Police College. Officers would be

“assessed, developed etc in line with shared standards”.

If they went to the Scottish Police College and were assessed and developed to the same standards as police officers who are recruited to Strathclyde police, for example, what would be the difficulty?

Mr Buchan: Training at the Scottish Police College forms a minuscule part of the development of an operational police officer. The director of the SCDEA does not envisage his officers dealing with road traffic accidents, domestic violence incidents and a raft of other issues that the normal bobby on the beat—if I may use that expression—would encounter.

The Convener: If I understand the evidence correctly, you are saying that people who were recruited directly by the SCDEA would become pariahs when it came to possible employment by any other police force in Scotland.

Mr Buchan: I do not think that I said that. They would come out with a raft of experience that would be useful in specialised areas.

The Convener: You have said that they would be pretty well unemployable, because they would be so deficient.

Mr Buchan: They would be unemployable if one wanted to deploy them to normal operational policing duties. However, I suspect that they would be highly regarded because they could be utilised in a drugs unit or other specialised area in a department. By no stretch of the imagination could they be open to everyday deployment for tasks, because they would not acquire such skills at the SCDEA. Football matches, domestic violence incidents, breaches of the peace, road traffic accidents—the list goes on. Officers who were recruited directly by the SCDEA would not be a commodity with a general operational capability. They could accrue that only by being recruited to a normal police force.

The Convener: I presume that the matter would be left to the judgment of the applicant. They would have to decide whether they wanted to take a chance by going to the SCDEA.

Sir William Rae: If someone wanted to spend their whole career in the SDEA or SCDEA, there would be no difficulty. However, I am sure that it is

expected that there will be a continual turnover of personnel in that specialist unit. One of the great assets that the SDEA currently enjoys is that any of the personnel who are deployed there are experienced, have been through a rigorous training programme, have been tested and are adding great value. They can be deployed on day 1 to whatever task they will be asked to perform.

Some members of the committee have seen our probationers on day 1. They arrive starry-eyed and ready to be moulded into police officers. It takes two years before we allow them to be given the responsibilities and powers of a police constable, after they have acquired a breadth of experience. If we are talking about a specialist who will work only in the SCDEA for evermore and does not have aspirations to move from the SCDEA into another part of policing, there is no difficulty with the principle of what is proposed.

It is unclear exactly what the provision in the bill means. We think that it means direct recruitment to the SCDEA. There are concerns about whether the conduct regulations would apply in the same way to the category of constable that we are discussing. Police officers have powers, but—to return to the issue of checks and balances—they are subject to controls and measures that are set out in other pieces of legislation. We want to ensure that some people who operate in the police service do not work to a different set of rules and values from those that are upheld by the rest of the service. Nothing in the legislation suggests that someone could not come in off the street and become a chief superintendent. I am sure that that is not what is intended, but someone could come in at any rank. The bill's wording suggests that if someone has “any qualifications”, they can be accepted. It does not say that they need all the qualifications—just “any” of them. That kind of loose wording makes it difficult to know precisely what is meant.

We all recognise that policing is changing and that, as Peter Wilson said earlier, we increasingly employ individuals, such as crime analysts and forensic scientists, who are not police officers but who contribute enormously to the role of policing in our society. We have no objection in principle to individuals with particular skills being brought in and deployed. However, to call them constables and expect that they can move out at some stage and be constables in police forces requires a huge leap in belief. Chief constables are sceptical about that proposal. We want to explore the matter further, because we are not sure that the bill's wording expresses what was intended.

There are elements of the bill that we support, such as the requirement for the SCDEA to have people with the necessary skills, but we think that the notion of starting everyone off as an 18-and-a-

half-year-old recruit and seeing them grow into a fully fledged constable is a bit naive.

The Convener: I know that Mr Grant has been waiting patiently. Do you want to add to what has been said?

Mr Grant: On Mr Maxwell's point about the training at Tulliallan, we have heard anecdotally that the plan is to send SCDEA recruits to the Scottish Police College and give them a truncated version of the usual training. We also heard that their non-college-based training would be radically different from that of other police officers. All that would add up to an individual who would hold the office of constable but be different from the 16,000 other police officers in Scotland. That leaves us with a basic question: why would the specialists, as the SDEA referred to them in its evidence, need to be police officers?

In our view, there is an important, long-standing principle in Scotland, which is simply that every citizen knows precisely who and what a Scottish police officer is and what the police can and cannot do. They also know the level of service that they can expect from a police officer. To put it plainly, we are not keen on creating élites. We believe that to do so would lead to competition in an area in which only full co-operation will do.

The Convener: I am mindful of time and of the fact that there is much ground to cover. However, the issues that we are discussing are important and I wanted members to be able to probe why the respondents hold their views and the respondents to explain as fully as they have done. It would be immensely helpful if members kept their questions concise and the panel was as brief as possible in its responses.

Maureen Macmillan (Highlands and Islands) (Lab): Gentlemen, I want to take you back to section 13, which was discussed when Bill Butler questioned you about the SCDEA's strategic priorities. Section 13(1) says:

"The Scottish Ministers may determine strategic priorities in relation to the carrying out of the functions of the Agency."

Sir William Rae said that he appreciated that the Parliament and the Executive would make those sorts of decisions generally. However, I want to ask you specifically about a matter that Bill Butler asked about, to which you did not respond. It is about the qualifications in subsections (2) and (3). Subsection (2) states:

"Scottish Ministers must not do anything which would, or might, affect decisions of the Agency about which particular operations are to be carried out".

Subsection (3) states:

"Before making a determination ... the Scottish Ministers must consult—

(a) the Authority;

(b) the Director of the Agency;

(c) persons whom the Scottish Ministers consider represent the interests of chief constables ...

(d) persons whom the Scottish Ministers consider represent the interests of police bodies."

Do those qualifications address your concerns?

Sir William Rae: They do not. In fact, we think that those qualifications contradict the point about "strategic priorities". We need clarity about what is meant by that and I hope that that will be achieved in a redrafted bill. As I said, we recognise the public policy issues that are in the bill, but we must be careful that they do not step over the line and direct operational policing. That is the reason for the sensitivity on the provision.

Maureen Macmillan: So you are looking for clarity in section 13 and you would like us to ask the Executive to have another look at it.

15:00

Sir William Rae: Under any general governance arrangements, the strategic direction is normally the responsibility of the oversight board. Another form of words might well be sufficient to allay our concerns in that area.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I turn to paragraph 10 of schedule 1, in which the bill makes provision for the appointment of a senior strategic officer to the Scottish police services authority. All the representatives of the police professional organisations agree that that is not a step that they support. However, the Scottish Executive feels that it is important to have a person appointed at that level to ensure that all the different common services are brought together. You make some suggestions about how you would achieve that. Perhaps you could expand on them for the committee.

Mr Wilson: We approach the issue by asking what remedy is sought by having legislation on the common police services. The SDEA and the Scottish Police College are two examples of bodies that have a high public profile and have demonstrated their reputation worldwide. The directors who are in place and their predecessors have been able to develop the work of those bodies over time and that work goes on. Under the historical governance arrangements, those directors have managed to take decisions that have advanced excellence in Scottish policing.

As I have said, when we considered the governance models for the new common police services in our work on the shadow board, we recognised that there were a number of structural elements that could be shared, such as back-office systems, procurement procedures and staff

mechanisms, which are all essential to helping the different functions to work, even though the services have disparate purposes. The association identified a need for a lead to be given on the management of those elements to ensure that there was a link among the different directors. A directors forum meets to try to progress that work.

We do not think that there is a need for another chief executive. When Scotland is meant to be looking for fewer chief executives across a range of organisations, the creation of another one seems unnecessary, to say the least. What added benefit would it offer? Many disparate functions have been accumulated in the common police services. The forensic science service was recently added and there could be more additions. What added value would the proposal to have a senior strategic officer deliver?

Our view is simply that there is a need to pull together the back-office services and that some management leadership will be necessary to achieve that. However, we do not need to create another chief executive below the governance board because that would take away from the roles, functions and responsibilities of the leaders of the existing common police services without adding any value. Having a senior strategic officer would only help to confuse matters.

Cathie Craigie: I wonder whether Tom Buchan has anything to add to that.

Mr Buchan: Ditto.

Cathie Craigie: You do not?

Mr Buchan: Ditto. A short answer was required.

The Convener: That is what I call a model of brevity.

Cathie Craigie: The Chartered Institute of Public Finance and Accountancy has been in contact with the committee. Its view is that it is necessary to have someone who is in control of the Scottish police services authority, if only to ensure that its financial operations are covered. Do you have any comment on that?

Sir William Rae: We respect CIPFA's advice, but that is based on the need for an NDPB to have a chief executive. That is the model that has been proposed, but the model that we offered involved an officer—the clerk treasurer—who would have had responsibility for funding arrangements.

I suspect that many members will be involved in organisations that have individuals who are responsible for accounting for the total spend on a mixed range of services. The big issue for us in relation to the post is about line management. Members will know of David Garbutt, the director of the Scottish Police College—he is well known throughout the country and is a leader in his

field—and of Graeme Pearson, the director of the SDEA, who is also a leader in his area. We believe that it is unnecessary to introduce another level above that. The important point is that what will save money and improve efficiency is, as Peter Wilson said, co-ordinating the back-office services so that they operate collectively and we squeeze the most that we can from the money that is available. We do not believe that another layer of management is called for.

Jeremy Purvis: We touched on setting the strategic directions. Under the bill, the directions for the SCDEA will come directly from the minister in consultation with the police services authority, ACPOS and others. The funding will come similarly, but with the caveat that the Parliament's Finance Committee will be able to scrutinise it in advance and the Audit Committee will, ultimately, be able to do so in retrospect. Another provision is that the money will not come with terms and conditions with regard to operational matters. I do not mean to be rude, but is the nub of your issue not that although the bill says that the head of the agency will be the rank of deputy chief constable, that person will, de facto, have parity with other chief constables and chief constables will not have a direct link to determining the funding for the new body? You do not like the fact that the operatives will be police officers rather than agents, as is the case south of the border, and you do not like the fact that, in effect, the director of the SCDEA will have parity with chief constables.

Sir William Rae: You are quite mistaken on the budget issue. Of the block of money that is spent on policing in the country, part is cut off at the top to go to common police services and the rest goes to police forces. Because anything that happens to the top slice has an impact on what is left for the rest of the service, there is a relationship between the two. Hitherto, the system has worked fine because ACPOS has been involved, through me, in considering the funding arrangements for common police services. We identify collectively the responsibilities and where the pressures are and then agree what proportion of the budget should be spent on common police services. The proposal is that one particular service, the SCDEA, will have its budget set by ministers and passported through, as we described it in our submission. The authority will have no powers to do anything with that budget; it must simply nod it through to that one particular agency. While we all have great regard for the agency, we wonder whether that is appropriate.

We consider the Scottish Police College to be the most important common police service, because it impacts on every single police officer in Scotland. Why not have a separate arrangement to passport the budget for the college or for the Scottish Criminal Record Office through the

structure? What is so different about the SCDEA that requires that level of protection? That is an anomaly. What kind of governance will the authority be exercising over services if it does not have any influence over how the money is spent? That is a challenge to proper governance. The issue is about the control of direction.

Another aspect that I must mention is the split of funding between local and national government. We all understand that the money comes from the public purse in one way or another and that it is channelled through various routes. About 90 per cent of the cost of policing is met through central government arrangements. When the previous arrangements were examined by a royal commission in the 1960s, it was argued that the balance of power was not simply to be expressed as a statutory arrangement—we also had to ensure that the funding was appropriate.

If one has no control over the money that is spent, one can be invited along to the party, but one will not carry much weight. I suspect that some of you have been in that position: you represent an organisation as a stakeholder and so you are allowed into the arena, but you are not a shareholder. If you say, “I am not going to spend my money that way”, nobody will pay much attention to you—unless you carry some weight.

That may be a very simplistic description, but money is important. It is not solely about the cash. It is about recognising that anything that happens in one part of policing has a consequence elsewhere in the policing world. To carve out this particular channel of funding is not at all appropriate.

Jeremy Purvis: I am assuming that you disagree very strongly with my other views about police constables. I will take that as read.

Mr Wilson: Either I misheard you or there was a misunderstanding: we are saying entirely that it should be police constables; that is the view of the chairman of the federation. We want police constables as part of the agency and they should be seconded through the normal recruitment method through police forces. It is not about being separate. I return to a point that I made earlier: this is about policing for the communities of Scotland; it is not about an agency policing some place else. We want constables in the agency. We have good relations with the SDEA and its director; discussions about tasking and organisation are close and we want them to stay that way through a common understanding of how things are funded and governed, rather than creating something else that was never sought as a remedy.

Jeremy Purvis: Do you not accept that having devolution changes matters well beyond the 1960s tripartite agreements? For example, if a minister

wishes to change policy he has to have the approval of Parliament; he can issue funding, which Parliament has to approve; the Finance Committee can scrutinise the funding before it is issued; the Audit Committee can audit it; this committee can hold the director to account. The transparent scrutiny of funding is considerably greater than the tripartite funding agreements for each police force.

Sir William Rae: I do not agree with that at all. You would have to explain to me why you are treating the agency differently. We want it to be transparent; we want the public to understand how the money is spent. We have spent a great deal of time trying to open up our own force budget so that people understand where the money is being spent. This special arrangement is, we feel, not explained, not justified, and not necessary.

Jeremy Purvis: We will ask the minister about that.

The Convener: Can we move on to the police complaints commissioner that the bill provides for? What is wrong with the present arrangement?

Mr Buchan: I never suggested that there was anything wrong with it.

The Convener: So you are satisfied with the present arrangement.

Mr Buchan: I am satisfied with it. However, if the appointment of an independent overseer would enhance public confidence, that would not be a bad thing. Our association has no reservations about such an appointment; in fact, we support it. I am satisfied that our processes on complaints are sound. However, if an independent overseer improves public confidence on matters in which public confidence may be lacking, that is no bad thing.

The Convener: And is that the view of ACPOS?

Sir William Rae: It is our turn to say ditto. We have included in our submission some technical issues about the drafting of the bill. However, we need not trouble the committee with them.

The Convener: I would like to move on from that.

Some responses to the consultation expressed two areas of concern. One was that the bill's provisions do not mirror practice in the rest of the United Kingdom. In particular, it does not mirror the Independent Police Complaints Commission for England and Wales. Is that an undesirable or inappropriate model for Scotland?

Mr Wilson: The difference in Scotland will be our relationship with the Crown Office and Procurator Fiscal Service. We also have a different legal system. Therefore, we cannot draw

clear parallels—other than the confidence of the community that there is an independent system.

15:15

The Convener: So that allows for the separate prosecution system in Scotland under which criminal complaints against the police are attended to by the Crown Office.

However, south of the border, is it not the case that the Independent Police Complaints Commission for England and Wales can be the first port of call for the instigation of an investigation into non-criminal matters? Would it be healthy also to have that system in Scotland?

Sir William Rae: One of the things that we have tried to do is to encourage third-party reporting of all complaints against the police. We feel that it does not matter where the point of entry is. If the independent commissioner is to be the entry point, we would encourage that in the same way that we would encourage a community representative to raise an issue with an MSP. In such cases, the MSP is the person to bring the complaint to the attention of the police. As I said, we do not care where the complaint comes from. The notion that the convener raised would not cause us any difficulties.

The Convener: So, you would not be unsympathetic to the view that the commissioner is the first port of call for an aggrieved member of the public.

Sir William Rae: I do not know what the commissioner would think about that, but it would not present us with any difficulty. At the end of the day, an investigation will be launched whether or not the complaint came directly from an individual. Obviously, we would want to go and see the complainant in any case to get the information that would allow an investigation to be progressed. I hope that people have confidence in the police, as that will allow them to come to us directly—as 99 per cent of complainants do. Again, if it helps to promote public confidence in the system, I confirm that another route into the system would be entirely acceptable to us.

We have had to put in place arrangements with housing associations, local authorities and partner agencies so that they know how to deal with any complaint that comes to them before they direct it to us. For a complaint to come from the commissioner would not therefore make it an unusual route. I suspect that that will happen, whether it is legislated for or not.

The Convener: If we may, we will move on from that. If I understand you correctly, Sir William, although the commissioner could act as a point of entry, you would continue to expect the complaint

to be investigated under the current arrangement, which is for it to be investigated by an officer from the police force in which the complaint originated.

Sir William Rae: Yes. That is the normal way in which these things are investigated.

The Convener: That is the only way at the moment. Is that not the case?

Sir William Rae: There are no proposals to change that within the bill. We think that the current system provides the best service to the public. If any member has been involved in a complaint against the police, they will know how thorough the investigation is. As Tom Buchan said earlier, our perspective is that the current system operates very effectively. Given that most complaints against the police have a criminal element, the involvement of the procurator fiscal provides the air of independence. We are talking about the provision of an additional safeguard.

I do not sense any worries about the current arrangement. It would therefore not be sensible to set up another army of people to carry out the investigations. That is also not what the bill proposes.

Mr Wilson: If I may, convener, I will add a point of clarification. What Sir William said was not quite correct. The deputy chief constables who oversee complaints investigations will, on occasion, ask police officers from other police forces to carry out inquiries.

The Convener: Yes, if it is a more serious matter.

Mr Wilson: Or if it is appropriate for the needs of the victim.

The Convener: I think that the experience of most MSPs who have acted for constituents is that an officer of the police force from which the complaint originates normally investigates the complaint.

Mr Wilson: Normally, but not only.

The Convener: I think that I will not be at variance with most of my committee colleagues if I say that, for very understandable reasons, that practice can be an issue of some concern to members of the public. That is why I was interested to ascertain your view. I now understand that, although you accept in principle that the commissioner may be an acceptable first port of call, you would not want the commissioner to proceed in the first instance to investigate the complaint.

Mr Wilson: No.

The Convener: Fine.

Mr Maxwell: I have a question about the football banning order section of the bill. The panel seems to be in general agreement that that is a welcome addition to the powers. The bill talks about periods of “10 years”, “5 years” and “3 years”. I understand that you support the proposal for the order to be made for a specific time period. Would a period of longer than 10 years—perhaps up to a life ban from football matches—be appropriate in the most serious cases? Do you have a view on whether the restriction should be made in those time periods?

Mr Buchan: My parent force recently hosted a conference at which we listened to officers who were brought up from down south. As you know, they have been down this path before us, I think because they have more problems than we do in Scotland. Their experience is that the football banning orders work. What is proposed for Scotland is not too far distant from what is in place south of the border. The experience down south is that the orders are a useful tool and the officers spoke only about success. The scheme has not been up and running for 10 years, but I can only imagine that if, after 10 years, the individual had not mended his or her ways, an order for a further 10 years could be applied for. We do not have an issue with the proposed range of football banning orders.

The Convener: I would like to ask about the potential administrative and financial burden on police forces. How will officers police individuals with FBOs and ensure that they do not get into matches?

Mr Buchan: There are implications. In Scotland, we are proactive at preventing disruption, because we do not have banning orders. If the bill is passed and football banning orders are put in place, there will obviously be resource implications. Just how significant they will be remains to be seen. I do not know that they will be particularly significant. It might simply involve a switch of officers from actively combating disruption to proactively identifying people. Where a banning order is not implemented by a sheriff—who, as I understand it, has that power at his or her discretion—the other component requires an application to be made to the sheriff by the chief constable. That will clearly have resource implications, if for no other reason than that we would need to be represented at court.

We welcome the proposed measures. As I have said, the experience that we have gained from colleagues down south is that football banning orders can be very effective. We would hope to use them to at least the same level of effectiveness.

Sir William Rae: On the point about cost, there is provision in the bill for Strathclyde police to act

as a sort of administrative clearing house for the monitoring of football banning orders. That has been discussed with the Executive and there has been general agreement about the cost. It is not all that significant in the grand scheme of things, but the bill does contain that provision.

Bill Butler: I have a couple of questions about the public processions provisions. I know that you are broadly supportive of them, although the ASPS clearly states its disappointment that there is to be no insurance requirement for procession organisers.

Could you explain to the committee what impact you think those provisions will have on the good management and policing of public processions? Do you have any concerns that the practical application of the provisions might lead to too much bureaucracy or to greater pressure on the police?

Mr Buchan: No—on the contrary. We particularly welcome the provision. This is the first time that we have seen a component of proposed legislation through which cognisance should be taken of the demands of the police with respect to a particular event. Such events seldom stand by themselves. Often, people organising marches pick a particular date that just happens to be the same as that for an old firm match, for example. In the past, the police service has never approached a local authority to say that we cannot cope or that a march places too much of an extraneous demand on us. We have always dealt with such situations unless there have been exceptional circumstances. Some members will be only too well aware of situations in their constituencies in recent years when we have had to take such an unusual step. It has been a matter of dismay to me that local authorities, as often as not, will leave things to the police. Unless the officer responsible has told them that there would be a real risk, marches have tended to go ahead.

We welcome the proposed legislation. As you know, we were actively involved in considering the issue with Sir John Orr. In the context of the 32 recommendations that were made, we commented that we would like more cognisance to be taken of the demands placed on the police. My understanding is that your lawyers have considered the matter and that the European convention on human rights comes into play. We accept that. The bulk of Sir John Orr's work was not necessarily about changing the legislation, but about how we manage the training of stewards and so on.

You will possibly be aware that a committee involving the civil servants who are working on the proposals has been formed, and I am a member of that committee. We welcome the proposals, and the provision specifying a 28-day period is particularly welcome.

Mr Grant: For the sake of brevity, I, too, say ditto. You mentioned planning and preparation. There are two elements to that. Local community planning is important, but so is police force management. As a staff association for police officers, we see the ability for people to plan and prepare their lives as important. That is aided by the provisions of the bill.

Sir William Rae: The extension of notification is particularly helpful. As members know, sometimes things go right up to the wire, which leaves us with difficulties in mustering the resources that are required. We are content across the board with the provisions. At the end of the day, this is all about the well-being of the communities that we serve. Hopefully, they will benefit from the bill.

The Convener: We are cantering into the final straight. Jeremy Purvis has a question.

Jeremy Purvis: Most members have visited the violence reduction unit in Strathclyde, and we are impressed by the work that it does. My question relates specifically to knife crime. Does the panel have views on the measures that are proposed? Do you think that they will have a positive impact? I see one of the witnesses smiling already. If they will not, what provisions should be included in the bill?

Mr Buchan: From our submissions, you will be aware that we have some concerns. Much was made in the press of the doubling of the sentence for carrying a knife, which was described as a significant step forward. I am sure that the coverage was not necessarily influenced by the Scottish Executive. However, under the bill the new sentence applies only to crimes on indictment, which will be insignificant in comparison with the vast number of run-of-the-mill offences involving carrying of knives or knife crime, which will be dealt with by summary procedure. There is no doubling of the sentence for such offences, which remains at six months.

For someone to be pursued through the courts on indictment, a judgment by the procurator fiscal is required. I suspect that it would be viewed unfavourably if a divisional commander or sub-divisional officer recommended that a case that was going to the fiscal and involved someone who had been caught in possession of a knife be dealt with by indictment. That would be likely to happen only if it was the person's 15th or 20th offence of knife carrying. I do not think that the new measures will make a significant difference or that in coming years a significant number of people will be dealt with for knife crime by indictment and will therefore be subject to the doubled penalty. The measures will make a difference only to a relatively small number of people.

Sir William Rae: May I add—

The Convener: Are you markedly at variance with Chief Superintendent Buchan?

Sir William Rae: We welcome the legislation. Although we recognise the concerns that have been expressed about whether it goes far enough, the provisions in the bill will be helpful. I refer in particular to the powers of arrest for forces, which do not exist at the moment. That is a frustration when we deal with incidents of this kind. There are provisions in the bill that we would be happy to have.

Mr Maxwell: Chief Superintendent Buchan, in your submission you say that a broader look needs to be taken at the problem of offensive weapons. You mentioned summary cases. Were you thinking of anything else?

Mr Buchan: Although knife crime is totally condemned in the bill, a range of other weapons come into the broader category of carrying of violent weapons. Does the definition of knives include swords and machetes? There is a growing culture in certain areas of Scotland that a machete is a piece of necessary equipment, second only to a baseball bat. The bill could have been expanded to deal with other elements of knife culture. I have spoken about one provision that will not have a significant effect. However, as Sir William Rae said, anything that helps us to address the knife culture that we know exists will be helpful.

Mr Maxwell: If someone is injured by a firearm, the injury is notifiable. That is not the case for a knife wound. Should knife injuries be notifiable?

Mr Buchan: As you probably know, our violence reduction unit is considering that point. There are difficulties with health boards and the disclosure of information. We are hopeful that a protocol will be put in place that will enable us to glean information about the crimes about which we know nothing. The difficulty for us will always be that in the first place we are dealing with a reluctant witness, who will probably say that they do not want anyone to know about the injury. De facto, we are dealing with someone who will not play the game with us. Making knife injuries notifiable would do nothing to aid us in that regard, but it would help us to paint a better picture of the scale of crime.

15:30

Maureen Macmillan: Sections 73 and 74 of the bill give you additional powers in relation to suspects. By and large, you are content with those new powers. I think that Mr Grant might like another one to be added in relation to the information that the suspect has to give. What difference would that make to policing? Also, what difference would be made by the ability to take fingerprints in a place other than a police station?

Mr Grant: Our reasoning behind the requirement for suspects to provide additional information relates to the importance of identifying persons who work with children and vulnerable adults in a way that will allow early and appropriate disclosure where that is necessary. We made the suggestion that, in appropriate circumstances, the question that you have before you could be asked. We believe that that would have been a valuable addition to the law and would have assisted us in the protection of the most vulnerable in our society.

Mr Wilson: The fingerprint issue relates to modern technology, which allows mobile data collection by officers when they are out on operational duty.

Maureen Macmillan: Some of the respondents raised concerns about the new powers, suggesting that they might be misused and that people might be stopped without there being any suspicion, which would be an infringement of civil liberties, especially if people had their fingerprints taken or were asked questions inappropriately. What is your response to that?

Mr Wilson: Our response would be as it would be in other circumstances: it is more advantageous to know who you are dealing with. The experience of policing is that, if you take someone's fingerprints, you are able to identify them if they are on record; if they are not, there will be no return hit, as it were. Nothing is captured at that stage.

There is always a balance to be struck with regard to liberty. However, identifying a lawbreaker at the scene clearly has operational advantages. While I understand the concern, the balance of efficiency supports the provision in the bill.

Maureen Macmillan: I take it that the fingerprints that are taken will not be kept if it is not necessary.

Mr Wilson: In the example that I am talking about, they would not be kept. At the moment, fingerprints must be taken in a police station, which gets in the way. The capture of the fingerprints using the modern mobile data-collection technology is not for evidential purposes; it is to allow us to identify someone. Obviously, once you make a record of something, that record is held somewhere. However, rather than being stored, it would have to be deleted, just as other pieces of information are deleted in line with normal practice.

The Convener: We will finish off by considering the part of the bill that deals with mandatory drug testing and assessment. Under the provisions in the bill, if a suspect has been arrested for certain drug-related activities and you are compelled to

give them a drugs test, what would you do with that person? I am not quite clear about where the police stations would accommodate individuals in that position or where they would send them.

Sir William Rae: This part of the bill needs a great deal of clarity brought to it. There are many provisions relating to the process, but the question that you have just posed is not necessarily answered. Further, there is a difficulty in that the carrying out of such a test would be beyond our current capability. There is no presumptive test that can be carried out in a police station that will instantly tell you whether someone has consumed a class A or other drug. We would have to send a sample to a laboratory. In England, a particular product is being pilot tested, but that project is in its early stages.

The next factor is that, if we were to perform such tests, we would have to locate equipment in various offices. Would those be the same offices that people would be brought to? We support entirely the principles behind the provisions in the bill. The feedback from people who are involved in the many drug referral programmes that are going on in police stations across Scotland is that they are enabling the hard-to-reach groups, who would never voluntarily step into a drug rehabilitation programme, to be hooked in some way and drawn in.

We support the proposal but we hope that the practical issues that have been identified will be resolved before the next iteration of the bill.

Mr Grant: I agree.

The Convener: I thank our witnesses for their patience and for answering our questions fully. The evidence that we have gathered has been extremely helpful.

15:35

Meeting suspended.

15:42

On resuming—

The Convener: I welcome for our second evidence session, Mr Graeme Pearson, director of the Scottish Drug Enforcement Agency and Mr John McLean, director of the Scottish Criminal Record Office. We are very pleased to have them with us. I apologise for keeping the witnesses waiting a little longer than was expected, but I know that they were listening to the first evidence session and I hope that they feel that it was wise to let the witnesses have a full opportunity to explain their position and for committee members to have a good chance to flesh out the responses. Without further ado, we will go to questions.

Bill Butler: Good afternoon, gentlemen. I turn your attention to the governance of provided and maintained services. You will have heard from the first evidence session that the police associations take a contrary view to that of the SDEA, which fully supports the distinction between provided and maintained services on the basis that

"The SDEA is an operational policing agency (defined in the Serious Organised Crime and Police Act 2005 as a 'special police force')."

You heard the police associations argue strongly that the new statutory SCDEA should be governed by and accountable to the new service authority in the same way as other common police services—in other words, there should be no distinction between provided and maintained services. I want to explore Mr Pearson's organisation's view. What do you make of the comments that were made by the first panel? The police associations mentioned concerns about accountability and asked to whom the SCDEA would be accountable. They expressed concerns that it would be bureaucratic, costly and that there would be a passporing through of funding without real scrutiny.

15:45

Mr Graeme Pearson (Scottish Drug Enforcement Agency): First, on being accountable to a body, one must understand the changing context in which the agency works. There has been acknowledgment of local policing and local communities, which are of course very important. I hope that the work that the agency does has a direct impact on the quality of life of people throughout Scotland. The agency now operates of its own accord and could no longer be described as a common police service—a support service—as the Scottish crime squad was. The Scottish crime squad operated in support of police forces and was largely called in by individual police forces to fill gaps in their ability to respond to various challenges. The current agency is largely involved in its own self-initiated work nationally and internationally. Our regular partners are as likely to be outwith Scotland as they are to be in Scotland.

Secondly, the nature of the community that the agency polices has changed substantially. This is probably a crucial part of this afternoon's evidence. A change in mindset is required so that we can contribute to the thinking that is needed in a world of continuous change. The bill should try to deliver an organisation that is to some degree future proofed.

Bill Butler: Can you explain that?

Mr Pearson: As the previous witnesses said, we should not continue with what we have always known to be the case and with what has worked in

the past—including the elements of policing that grew from the Royal Commission on the Police of 1960—because my contact with the world out there tells me that, particularly in the past decade, that world has changed substantially and the speed of change shows no sign of slowing. I will not rehearse all the detail, but the internet, mobility, cheap flights, mobile phones and the aggressive development of organised crime mean that we face different challenges. We therefore need to be organised differently and to be accountable differently. I would like there to be a local community that would be representative and which would be part of the governance arrangement. I recognise that the bill attempts to create that kind of structure.

As director of the current SDEA, I say that we welcome governance because we do not currently have it. There is a mishmash of oversight that does not work in a particularly productive fashion. The arrangement that we would prefer is a governance body with the time and expertise genuinely to challenge the agency so that we could be assured that our strategic priorities and objectives are appropriate to the needs of Scotland, and that the budget that is allocated to us is appropriate to the required spend. Such a body could call me to account in respect not only of what we do but of how we pay for it. The challenges that the agency currently faces and that it will face over the next five years justify an overseeing body to do that work. That said, the bill states that one authority would provide such oversight.

Bill Butler: Can that work?

Mr Pearson: I think that we can make it work.

Bill Butler: Can you explain that?

Mr Pearson: I understand that there are difficulties in bringing together such bodies. If a body is brought together to oversee common police services—the bill makes it clear that there is a grouping of organisations called common police services and a separate organisation called the Scottish crime and drug enforcement agency—what could make the structure work is the ability of the director of the agency to respond directly to the authority on the totality of the issues that affect the agency.

One would expect a director to account for the agency to a board in its global sense rather than merely to respond on operations as a chief constable responds to a police board on the totality of the force's efforts. This morning's programme board meeting was mentioned. We have suggested the means by which a relationship could be created between the director of the agency and the senior strategic officer, which would ensure that all the back-office information

that is necessary for a report could be provided to the director so that a full report could be made to the authority.

Bill Butler: There is a way around things.

Mr Pearson: I think there is. There is a difference between provided and maintained services; the mechanism of sitting in two phases would enable board members to realise that a different set of challenges is to be visited with the agency, compared to the common police service.

Bill Butler: I will end on this question. Do any of the concerns that were expressed by the representatives of the three police associations have substance? It is legitimate to put those concerns, but are they insuperable?

Mr Pearson: I do not think so. We must consider the current environment in which we operate and we must be prepared to create new mechanisms for modern demands. We can deliver if there is good will on all sides.

We need to ensure that the agency can bring about results for the Scottish public that will help to support Scottish police forces in providing a sane and viable community. The targets at which we aim threaten business and are organised in a way that disrupts whole communities. Our desire should be to provide efficiency behind the agency so that it can deliver the outcome that I mentioned. We must do whatever we need to do to change things. Moving deckchairs around was mentioned, but I think that we are building a new ship and that we are in a different ocean now.

Bill Butler: It is not the Titanic that is being built, but a new ship.

Mr Pearson: It will not be the Titanic that I captain.

The Convener: I would like to tease out what we heard earlier and relate it to what you are saying. My impression from listening to the earlier evidence was that there is a genuinely held view that the SDEA's activities are essentially no different from those of other police forces throughout Scotland; your emphasis or focus may be on a slightly different type of criminal activity, but you are just another police force, at the end of the day. Do you slightly disagree with that interpretation?

Mr Pearson: That description is different from what might be offered by the witnesses because they do not see the agency as another police force. One challenge is that there is an external view that the agency is merely a support service and common police service that supports the needs of forces in the same way as forensic science or the SCRO support those needs. However, there has been a change: we have moved away from that and we operate at a level

that is separate from police forces, but we need to build in mechanisms that ensure that we remain within the family of the service because, as the president of the ASPS said earlier, much of the intelligence that we build on comes from our fellow police officers. We need to encourage such links.

We are trying to find mechanisms that deliver for the 21st century while holding on to the connections with the Scottish police service and the virtues that we have learned in the past 30 or 40 years.

Mr Maxwell: There is obviously a difference of opinion on direct recruitment between the SDEA and the other organisations. Why is it "crucial" to recruit directly to the SDEA?

Mr Pearson: There are several reasons for that. Demographics for the next 20 years seem to indicate that there will be a continuing difficulty in recruitment across the board. Therefore, as a senior police officer, I think that we should open all the doors that we can in order to attract candidates of the right quality to join the Scottish police service.

Secondly, there are people who think that there is no point in their applying to join a police force, although they are mistaken in that view. However, they may be attracted in the short term to apply for the agency. If those people are of the right calibre, we should seek to draw them into the service and to become involved in the wider police community.

Thirdly, there are people who would be very attracted to the work that we do, but who might be discouraged from joining because they do not wish to be involved in some of the other challenges that police forces face day in, day out. We might say, "If you want to do that work, you should be happy to do all the other work that is expected of a constable", but there are people who have special skills—understanding a balance sheet or computer crime, or an ability to channel the internet and its implications for Scotland, for example—and who may not particularly wish to walk a beat and be involved in that side. As one who needs those services, do I really want to place a hurdle in the way of such individuals by telling them that although they are attracted to a particular aspect of police work, they should not apply unless they are interested in doing all the other kinds of police work?

In its history, the agency has never been up to establishment—at times, we have been as much as 18 per cent under establishment. That is very difficult for us when we are trying to deal with the demands that are placed upon us. At one stage last year, for instance, we were a third down on the number of financial investigators that we required. We need to find a way of making up those shortfalls, because they are painful to

everybody in the service. Police forces try hard to support us, but they have their own needs and demands to meet. I would like to see police officers being fed into police forces rather than there being a constant demand on police forces.

Mr Maxwell: That is a very interesting answer. You say that you would like to attract different types of characters who might not necessarily be attracted to joining a police force in the first place. Does not that rather reinforce the other witnesses' view that you are attracting, in effect, people who want to work in financial or internet intelligence or other specialist work rather than those who would be suited to police work in the wider sense? Would it be more appropriate to have in your agency specialist staff who did not have police powers? There is concern that such specialist recruits would be constables with full police powers and that they could theoretically transfer to the police service without the training or the two years' probation that go with a normal police career.

Mr Pearson: Joe Grant acknowledged that he had heard through the grapevine that various things may or may not happen. In truth, we would see such people being recruited in exactly the same way as probationers, going through the Scottish Police College and undertaking a course that would be agreed by ACPOS, ASPS and ourselves. Unfortunately, the media cut to the chase and say that those are special folk and agents. They will, however, be constables in the full sense of the word.

Secondly, the police service is not just one thing. When a person enters the service and goes through probation, they suddenly discover the whole universe of policing. Once people go into the agency and see the range of work that is undertaken by the Scottish police service, many of them will become interested in other work within the service. A person declaring at stage 1 that he or she is interested in a particular aspect of policing does not mean that they will spend their entire 30 years in that role.

16:00

Mr Maxwell: I accept that; it would be terrible if people were boxed in. The previous panel said that police constables can do traffic work, football match work, murder scene work or whatever—the full range of practical policing—because they have had two years' experience of wide-ranging and practical on-the-job policing activity. The people who are being recruited to your organisation would, unarguably, go through the Scottish Police College, but their experience on probation with the SCDEA would be different from the practical on-the-job experience that is gained by a normal police constable in a force.

Mr Pearson: The practical experience that we would like probationers to have would prepare them to work both within the agency and within certain sections of police forces. Although they will have benefited from their probationary uniformed phase, the people who investigate murders and deal with serious crime will gain their expertise from training, from experience and from working alongside professional colleagues. If we decide that the SCDEA is to be set up, the Scottish police service will find a way—through secondments, for example—of widening the experience of constables in the agency so that we can alleviate any perceived difficulties. Many of the difficulties are merely perceived, rather than real. Once the agency is set up, people will find many more benefits than drawbacks.

Mr Maxwell: Do you not accept the two-tier argument?

Mr Pearson: No.

Mr Maxwell: You are saying that the secondment argument would work in reverse—that people from the SCDEA could be seconded into the police to gain experience in other areas.

Mr Pearson: Why not? There is a big brave world out there and Scotland must play its part and show that it can be innovative.

There is always an attraction in saying that we can use people who do not necessarily have to be constables. Sir William Rae said that we are already civilianising aspects of our work, but there are key aspects of our work for which one needs to be a police officer. We deal with some particularly nasty individuals; in the future, those individuals will target the agency through corruption and trying to undermine our organisation. The people on the front line who deal with them need to have powers of arrest and to be able to cope with the full range of challenges that they will face.

Cathie Craigie: I will ask about funding arrangements. There is a continuing theme; again, the previous panel held a different view from Graeme Pearson's organisation.

As you know, the intention is that the budget for the Scottish crime and drug enforcement agency will be set by ministers. You strongly support that intention in your written submission. However, the previous panel did not support it, as you heard. Do you want to add to what you said in your submission? Could the proposal put at risk the tripartite work that exists at present?

Mr Pearson: The committee was good enough to rehearse some of the existing checks and balances in the allocation of funds, and some of the ideas on how the agency might access those funds.

One aspect was overlooked during the session with the previous panel. A minister would not, I presume, pick a number out of the air and say that that was the number to be allocated to the agency. Under the governance arrangements that I imagine will be in place, the director of the agency will have to go to the authority with a business plan that outlines what he or she sees as being the agency's future requirements. The authority will analyse the plan and either endorse or reject elements of it. The Executive will then decide whether the plan represents a reasonable application of funds. There is a full circle. A proposal will feed into the governance structure and will either be rejected or accepted. The chair of the authority will tell the Executive that it has considered a bid for funding from the agency and will say whether the authority agrees. On the basis of that process, the minister will decide what funds will be available for the agency. As has been said, the Audit Committee and a range of other bodies will be involved in ensuring that the money is well spent. I, and future directors, will be accountable for that.

I understand ACPOS's point about how the traditional tripartite arrangement has worked over the centuries but, to return to what I said earlier, the SDEA was created in 2000 because something different was required. Jim Orr, who was the director then, faced exactly the same frustrations as I face today. We need new thinking that ensures that the body politic is satisfied with the use of public funds. The bill contains arrangements to ensure that.

Cathie Craigie: Will you address the point that was made earlier that the measures could in some way damage the partnership arrangement with other agencies because the SCDEA will be seen to be treated more favourably?

Mr Pearson: That ignores the fact that the director of the agency will meet with partners in a series of fora. For instance, I sit with the chief constables at ACPOS's council. I imagine that that might be an uncomfortable position to be in if I was in the future to take an irresponsible approach to the agency's funding within the authority environment.

Equally, chief constables will be represented on the authority. Her Majesty's chief inspector of constabulary will oversee what we are and what we do and Audit Scotland can oversee how we spend and account for money. Built into the agency's structure is a yearly cycle of consultation and discussion about what the agency should or should not do. That includes discussion with local police forces, local authorities and joint boards. I speak to conveners of joint boards, local chief constables and other organisations such as HM Revenue and Customs and ports units to ensure

that we position ourselves where our partners see best value—where there are gaps in provision.

In the past two years, I have not sought to create scare stories by saying, "Give me more money—or else", but to demonstrate what the money has been spent on and what it has delivered. If more of a particular measure is wanted, I lay out what the extra resource would cost. In the future, the authority and, I presume, the Executive could decide whether the proposals are attractive.

Cathie Craigie: I now move on to John McLean—he has sort of been forgotten about this afternoon. The committee did not intend that at all.

Mr John McLean (Scottish Criminal Record Office): It is okay—I am enjoying listening to Graeme Pearson.

Cathie Craigie: I want to continue on the issue of the bill's financial implications. Your submission asks the committee to consider whether the bill takes into account all the financial costs that are associated with the Scottish Criminal Record Office. You feel that the financial aspects might not have been fully considered in the bill. Would you like to add anything to that?

Mr McLean: I do not think that I have much to add to what I put in the letter. The financial memorandum put the costs of running the SCRO at £9.6 million. That excludes the costs of Disclosure Scotland, which is part of the SCRO, which are another £3.6 million and need to be taken into consideration. Its financial arrangements involve quite a complicated public-private partnership between the Executive and BT, but they are part of what it costs to run my organisation. The Scottish fingerprint service, which is a fairly new creation, is similar. Some posts are funded by the home forces in Aberdeen, Dundee and Edinburgh but the SCRO picks up the bill for the remainder of the posts. That costs £800,000.

The SCRO is currently growing and developing into much more of an information hub for the Scottish police service and the wider criminal justice community. As such, we find that there will be increments for which no budget provision has been made. The Scottish intelligence database is a good example of that. The back-office facility for that currently costs £400,000 per year. There was no money in the budget for it so the forces have apportioned the costs between them. That is not included in the £9.6 million. The back-office facility for automatic number-plate recognition is to be housed at the SCRO and there is a cost associated with that. The money that is required to run such organisations has to be found from somewhere and it is not reflected in the financial memorandum.

Cathie Craigie: You are flagging that up so that the committee can take it up with the minister.

Mr McLean: Yes.

The Convener: On the power to take fingerprints at places other than police stations, your submission says that the technology to allow that is not fully developed and in place in Scotland. What is the technology?

Mr McLean: Various pilots are being carried out in England under the auspices of the national fingerprint board, on which I sit. One piece of technology is a little electronic gadget that police officers can carry around. They will be able to stop someone on the street, put their fingerprint into the gadget and it will be sent either via wireless telephony or some other electronic means, such as a telephone line, into a new automatic fingerprint recognition system at the SCRO, which will check the database and criminal history systems to see whether there is a warrant out for the person. If there is no trace of the person, the fingerprint will be destroyed straight away; I know that there are concerns about that. The technology is being piloted down south but not in Scotland yet.

The Convener: I think that we all had a primitive idea of police officers out in far-flung spots with ink pads, taking prints and catching the train back to the nearest police station.

Mr McLean: That is what happens just now. If the police stop someone that they are unsure of, they go back to the police station and in some stations they use the old ink pad. However, there is now much more electronic transfer of information. The new technology will make the process much quicker and more effective, so the police will be able to do the check while they are out on the streets. They will be able to confirm someone's identity quickly, so that that person can get on and police officers can get on with their job.

The Convener: It might not be fair to ask you this, but is this quite expensive technology?

Mr McLean: All technology is expensive.

The Convener: Okay. Thank you for that.

Bill Butler: I have a question about the status of the director of the SCDEA. The SDEA's submission makes the argument that the director of the agency should hold the rank of chief constable. Is the SDEA content with the proposals for the appointment of the director and the deputy director of the SCDEA, including with the ranks proposed in schedule 2 to the bill?

Mr Pearson: The process is fit for purpose, but it might be worth revisiting the ranks because, for all the reasons that I gave in my initial presentation, the agency's circumstances have

changed substantially. When the agency was launched in 2000, it did not have responsibility for dealing with money laundering, witness protection and high-tech crime. Its remit has now widened to include dealing with organised crime and providing support for terrorist investigations. The agency does a range of activities that have a national impact and its work affects public confidence.

16:15

Bill Butler: There is also an international impact.

Mr Pearson: Indeed. That is what I was going to come on to. The national impact is reflected in our international relationships. If our voice is to be heard on the transnational stage, we need someone who can stand their ground as a matter of right rather than through force of personality and sheer dogged determination, which is how our voice is heard in the UK and internationally currently.

The role of the SCDEA director will mean that he or she will be a member of the council of chief constables; have power of authorisation for all covert policing; be vicariously responsible for the officers who work under direction; be the accountable officer for the agency; be involved in the recruitment of police constables; be the voice of Scotland internationally; with the authority and the Executive, set strategic priorities for the agency's policing; and be under the Crown Office's direction as the competent authority for international investigations, which, under the arrangements for Europe, will bring with it responsibilities for the activities of officers from other nation states who are operating in the UK and Scotland and vice versa for our officers. The director will also lead on the crime campus for this century.

There is an acknowledgement in the public mind that somebody should be responsible for those matters. The national crime squad for England and Wales, which previously had the same arrangements as we have, and the National Criminal Intelligence Service went through similar changes in the mid-1990s and experienced similar angst before all that occurred. Today, the fact that the director generals of those organisations play their part in influencing policy and strategy is a non-issue—they are expected to do so. The time is right for change. Only once in 20 or 30 years does one have the opportunity to address matters that the committee now has. It would be good to get the vehicle as near perfect as possible.

Bill Butler: Are you saying that, given the varied and detailed remit of the director, he or she should have commensurate rank in order to be a big hitter among big hitters and deal with matters on a par with them?

Mr Pearson: Yes. That is a blunt way of putting it. It is obviously an awkward set of circumstances to discuss.

Bill Butler: However—

Mr Pearson: However, if one is to be heard, one requires to be entitled to be heard. I have operated, as the previous director did, through dogged determination and the use of influence. Chief constables have been accommodating in hearing us. However, the director of the proposed SCDEA might not necessarily be involved at key moments when real discussions must take place. Again, to be blunt, people in Scotland will want to know who will be accountable if matters go wrong when dealing with organised crime. Who will be ready to stand at the pulpit and give evidence about what went wrong and why? In my mind, that must be the director of the agency.

Under the current arrangements, one is not sure whether the chair of the crime committee, the president of ACPOS, the Executive or the chair of the Scottish drug enforcement forum is accountable when things go wrong. Under the arrangements we propose and the bill's provisions, the person who will be asked to put his head through the noose will be not the SSO of the new Scottish police services authority but the director of the proposed agency. That is entirely appropriate.

The Convener: For the committee's benefit—and without risking the disclosure of matters that are subject to operational confidentiality—will you tell us how regularly you engage with forces in other countries?

Mr Pearson: Weekly; in fact, almost daily.

The Convener: Really? Does that engagement take place at a senior level?

Mr Pearson: Yes. For example, without my encouragement and certainly not at my behest, the director general of Europol is currently tramping around Europe saying that the SDEA is the best example of co-operative working in Europe. The amount of work that he carries out for us is far more than the amount he carries out for any other EU member state. Scots do not generally acknowledge the level of operational activity that we have reached and sometimes do not realise that we are at the cutting edge of some of these developments. Indeed, the new serious organised crime agency would acknowledge that many strategies that it is developing as part of its new approach to organised crime are based on examples from the SDEA.

Not only are we involved with other European police forces weekly—almost daily—but we have extensive connections with Russia, South Africa, north Africa and South America. Six weeks ago,

the police chief of Bogota visited me to check out strategies that might help him to deal with Colombian cocaine dealing. Two weeks ago, the director general of the Albanian police met me to discuss the spread through Europe of organised crime with Albanian connections. Only this month, I was on a platform with the head of the FBI, SOCA's director general designate and Europol's director general.

The national-international link can be quite overwhelming and complex with regard to judicial requirements and the warrantry that is necessary in Europe to deliver outcomes. As the committee knows, a couple of months ago, a trawler that was recovered in the Atlantic ocean and eventually delivered to the port of Cadiz was found to contain £25 million-worth of narcotics. The Spanish, who incarcerated a number of Scottish people in the operation, reported that the operation would not have been achieved without the SDEA initiating matters and providing help. Such work is becoming the norm in the agency.

The Convener: That was immensely helpful.

Mr Maxwell: I have a couple of supplementary questions on the issue of fingerprinting, which Mr McLean mentioned earlier. You said that the electronic record would be taken in a street somewhere and would come back to the SCRO. Given that those records will not be required subsequently, what protocols do you have in place for deleting them? You also said that the fingerprint would be checked with the criminal history system. Does the scoping for the new criminal history system database include such a facility?

Mr McLean: On your first question, no such protocols are in place because the technology itself is not in place. That said, under current protocols, if someone is arrested, their fingerprints are taken and held. If they are acquitted, the prints will be destroyed after a certain period; however, if they are convicted, the prints will be held under the terms of the data protection legislation and, after a certain time, will be weeded under our strict weeding policies and then taken away.

Under the new system, after someone's fingerprint has been taken in the street, it will be fired into the system electronically. Once the system has scanned the fingerprint—mine, for example—it will be able to confirm, "Yes, this is John McLean's fingerprint." After the confirmation has been received, there will be no requirement for the fingerprint that was taken in the street. If the suspect is wanted, they will be taken back to a police station where the normal set of fingerprints can be taken. Some protocol or agreement will be required, but the technology is very straightforward.

The only issue that might arise is if the person from whom the fingerprint was taken gave a false name and was then charged with attempting to pervert the course of justice. In that case, the fingerprint that was taken might need to be retained as part of the case because it is best evidence. However, that is a question for the lawyers to discuss.

Mr Maxwell: I was thinking more of situations in which a fingerprint is taken of a person for whom there is no record of a fingerprint having been taken before. At what point would their fingerprint be deleted?

Mr McLean: The record would be deleted straightaway.

Mr Maxwell: Would it be deleted immediately?

Mr McLean: Yes. It would be deleted straightaway, as there would be no requirement to hold that information.

Mr Maxwell: Will you also respond to the second part of my question, which was about the criminal history system?

Mr McLean: In the SCRO, we are trying to get all our computerised systems to speak to one another. At the moment, we have a criminal history system and a fingerprints system, which will soon include palm prints, once that technology has been developed. We also have links into the police national computer, the Scottish intelligence database and the automatic number-plate recognition system. At some time in the future, we will probably hold police forces' custody records and case reports.

We intend to be awfully sensible. In future, as soon as someone is arrested, their details will be entered into the system. We will then be able to check the ANPR system to see whether they have used a car, check the criminal history system to see whether they have any convictions and check their fingerprints to confirm their identity. I am looking into the future a little, but all that I want to say is that our computer systems could and should speak to one another.

Mr Maxwell: I mean no disrespect, but my question was whether the scoping that has taken place for the new criminal history system took account of the electronic fingerprinting facility that you mentioned. The project for the new system is already under way. Will it be possible to check fingerprints against the CHS?

Mr McLean: We have under way a project called IDENT1, which is considering the taking of palm prints and the creation of a national fingerprint database—by “national”, I mean that it involves England, Wales and Scotland—so work is on-going on that issue at the moment. That system will be linked into the PNC. We also plan

to link the criminal history system with the IDENT1 database.

Mr Maxwell: Is that in the scoping documentation for the project for the new CHS?

Mr McLean: We have agreed that what is contained in the existing CHS will be contained in the new CHS so, yes, that is contained in the specification.

Mr Maxwell: Thank you.

Jeremy Purvis: I want to follow up on Mr Maxwell's question to Mr Pearson about the recruitment of staff. I understand that it is proposed that the Scottish police services authority will be able to determine the terms and conditions of employment of SCDEA staff. Basically, Mr Pearson will be able to ask the authority to provide, for example, incentivised conditions so that he can recruit staff. What will prevent the agency from aggressively persuading good officers in police forces that they could have what might arguably be a more exciting career within a directly funded organisation such as the SCDEA? If such officers were to be creamed off, that could have an operational effect on the criminal investigation departments of all police forces.

16:30

Mr Pearson: That is a good point, but acting in such a way would achieve a couple of outcomes. First, we would merely rob Peter to pay Paul. In terms of the totality of our ability to deal with crime in Scotland, we would be no better off, as we would just have relocated resource in different units. In the long term, such a move would be short sighted. Secondly, in the light of such activity, the relationships between the head of the agency and chief constables would become decidedly frosty. In that frosty environment, the agency would not be able to operate with the efficiency that is necessary.

I accept that we would have the opportunity to behave unwisely, but the intended impact of the proposals is not that the deckchairs be reallocated across Scotland but that new people be attracted into law enforcement to the benefit of the entire Scottish police service. In general, we are talking about the opening of a new door to bring in recruits. If the committee were to ask “What did you imagine you might do by opening that door?” I would respond that I would like to see more women and more people from ethnic minority groups coming into the service—people who might otherwise have thought, for whatever reason, “I'm not that sure I want to join the service.” It is about bringing fresh talent into the police community, rather than trying to steal from forces. In the secondment process in which we are involved,

many talented people from forces show an interest in coming to the SDEA but, in balancing needs, forces are able to persuade them that that is not in their long-term interests. One would hope that such negotiations will continue, because all chief constables face pain in that regard and they all react positively to it in different ways. A director who upsets the balance of that relationship would be a complete fool.

The Convener: That concludes our evidence taking, and I thank you for coming before us. As I said to the earlier panel, it has been immensely helpful to the committee to have the opportunity to hear your views directly. We are grateful to you for your attendance.

Subordinate Legislation

Civil Legal Aid (Scotland) Amendment (No 2) Regulations 2005 (SSI 2005/448)

Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2005 (SSI 2005/449)

Criminal Legal Aid (Scotland) Amendment Regulations 2005 (SSI 2005/450)

Legal Aid in Contempt of Court Proceedings (Scotland) Amendment Regulations 2005 (SSI 2005/451)

Fire and Rescue Services (Framework) (Scotland) Order 2005 (SSI 2005/453)

16:33

The Convener: Five negative instruments have been circulated to members. As an enrolled solicitor in Scotland, I declare an interest in the first four instruments, as they concern legal aid.

As members have no questions, are they content with the instruments?

Members indicated agreement.

The Convener: The committee gave its approval to take item 5, on consideration of evidence on the Police, Public Order and Criminal Justice (Scotland) Bill, in private, but I would be grateful for the committee's approval for future discussions of evidence received on the bill to be taken in private. Is that agreed?

Members indicated agreement.

16:34

Meeting continued in private until 17:05

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