JUSTICE 2 COMMITTEE

Tuesday 7 March 2006

Session 2

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JUSTICE 2 COMMITTEE
6th Meeting 2006, Session 2

CONVENER

*Mr David Davidson (North East 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

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
Carolyn Leckie (Central Scotland) (SSP)
Mr Kenny MacAskill (Lothians) (SNP)
Margaret Mitchell (Central Scotland) (Con)
Mike Pringle (Edinburgh South) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Bill Barron (Scottish Executive Justice Department)
Ian Fleming (Scottish Executive Justice Department)
Hugh Henry (Deputy Minister for Justice)

CLERKS TO THE COMMITTEE

Gillian Baxendine
Tracey Hawe

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 4

Scottish Parliament

Justice 2 Committee

Tuesday 7 March 2006

[THE CONVENER *opened the meeting at 14:04*]

Item in Private

The Convener (Mr David Davidson): Good afternoon, ladies and gentlemen, and welcome to the sixth meeting in 2006 of the Justice 2 Committee. The only apology I have received is from Colin Fox, who will arrive a little late. I believe that Jackie Baillie, too, intends to arrive later.

We turn to item 1 on our agenda. Do members agree to take item 5 in private?

Members *indicated agreement*.

Police, Public Order and Criminal Justice (Scotland) Bill

14:06

The Convener: We now turn to item 2. I welcome Hugh Henry, the Deputy Minister for Justice, and Ian Fleming from the Scottish Executive Justice Department. The minister will brief the committee on the Executive's proposed amendments to the Police, Public Order and Criminal Justice (Scotland) Bill, in relation to the control of sex offenders. The amendments have yet to be formally lodged.

Members should have copies of the draft amendments and the minister's letter of 3 March in response to the questions that were raised at our meeting of 21 February. I believe that the letter was circulated on Friday. Members should also have from the Scottish Parliament information centre a revised briefing paper on the sex offenders notification scheme.

I invite the minister to speak to the draft amendments. After he has done so, members will be able to ask questions. I thank him for coming along this afternoon. It is very helpful to committee members to receive such information in advance so that we can understand ministers' thinking.

The Deputy Minister for Justice (Hugh Henry): As members know, following the murder of eight-year-old Mark Cummings by registered sex offender Stuart Leggate, Cathy Jamieson announced on 6 December 2004 that Professor George Irving would carry out an independent review of the operation of Scotland's sex offender registration system.

Professor Irving made 36 recommendations, which addressed various parts of the criminal justice system. Cathy Jamieson wrote to the convener on 24 October last year to set out how we would implement some of the recommendations through the Police, Public Order and Criminal Justice (Scotland) Bill. We plan to extend the range of information that convicted sex offenders are required to provide beyond the current requirements of name, date of birth, address and national insurance number.

First, we are minded to amend the Sexual Offences Act 2003 to require offenders to furnish the police with details of their passports.

Secondly, we are minded to amend the 2003 act to introduce a regulation-making power that will require a registered sex offender to notify further information to the police. That power will in the first instance be used to prescribe details of the financial affairs of the offender. I will say a bit more about that later.

Thirdly, we are minded to amend the Criminal Procedure (Scotland) Act 1995 to allow the police to take samples of DNA from registered sex offenders, if DNA has not already been taken at the time of charge or conviction.

Fourthly, we are minded to amend the 2003 act to enable the police to take a DNA sample from a registered sex offender when the offender attends a police station to notify. That will be done in order to identify the person.

Fifthly, we are minded to amend the 2003 act to give police the power to enter and search the accommodation of a registered sex offender in order to assess the risk of reoffending that the offender poses.

Sixthly, we are minded to amend the 2003 act to introduce in section 96 a new subsection that will expressly allow for regulations to specify the type of personal information that prisons and hospitals can pass on to the police when an individual is about to be released. The information will include details of the address at which the offender intends to stay. Respondents to a recent consultation highlighted the usefulness of such information to the police and to people who become responsible for offenders when they are transferred.

Professor Irving believes that the effectiveness of the sex offenders register would be improved if the police were able to see details of registered sex offenders' financial affairs. Given the complex and detailed way in which financial affairs are often managed today, we consider that it would be appropriate to set out such provision in regulations, as opposed to primary legislation. Accordingly, the provision will be dealt with by the regulation-making power that I mentioned earlier, which will enable Scottish ministers to extend the range of information that a sex offender is required to provide to the police as part of the notification regime. That will give us the flexibility to prescribe more detailed types of information about sex offenders and their personal affairs, which will be useful in enhancing the effectiveness of the register. We plan to draft a set of regulations to prescribe the additional financial information that we want sex offenders to provide to the police—for example, bank account and credit card details.

There are no plans at present to make additions to the notification requirements beyond the provisions of the 2003 act and Professor Irving's recommendation that passport details, DNA samples and, in the fullness of time, bank details be included.

I point out that, if it were fully implemented, recommendation 1 would require relevant offenders to notify information, whose disclosure would be difficult to justify. Almost all the other suggestions that Professor Irving made relate to information that will change or be difficult to define, such as leisure activities and main associates. In addition, it is not the case that offenders would simply have to notify the information—they would also have to notify a change within three days of that change taking place. The recommendation would also require the notification of personal information relating to other individuals, which would be a significant departure from what is currently required under the 2003 act and would be likely to raise European convention on human rights issues. However, it may in the future be helpful for the police to have other personal information that sex offenders hold, in the context of the general crime prevention purposes of the scheme. In that case, we could return to the issue by means of a regulation-making power.

I have provided the committee with further clarification of a number of points on the sex offender measures that emerged from last week's evidence taking. I refer in particular to the taking of DNA from people who are on the sex offenders register but do not have convictions. I hope that that clarification was helpful, but I am happy to respond to questions from the committee.

The Convener: Thank you. My first question relates to the reduction in the time within which people must register. Did you consider at any time whether advance notice should, where possible, be given to relevant authorities?

Secondly, am I right that you would have no objection to putting regulations before the committee before they were debated in the chamber?

Hugh Henry: The regulations will be subject to the affirmative procedure, so the committee will have an opportunity to consider them. Ian Fleming will answer the first question.

Ian Fleming (Scottish Executive Justice Department): Did your question relate to the transfer of sex offenders from prison and hospital?

The Convener: The question was about any advance notice system. There may be advance notice if someone is transferred from hospital, but it may not be given if someone simply changes address.

Ian Fleming: The regulations that we will put in place will require that information be made available to the police as soon as it is certain that a person is moving or transferring. Provisions in the regulations will allow that to happen at least 14 days before a change takes place.

The Convener: Thank you for that clarification.

Bill Butler (Glasgow Anniesland) (Lab): You talked about retention of DNA samples from registered sex offenders. Will the Executive's

proposed amendments mean that the DNA of people who are subject to risk of sexual harm orders—a civil measure that does not involve conviction—will be retained? If not, should not consideration be given to that?

Hugh Henry: The people to whom Bill Butler refers are not covered by the amendments as they are currently drafted. He has raised an interesting issue.

I presume that the people in question will have been considered to pose a sexual risk, although they are not on the sex offenders register. The proposals will cover people who are on the sex offenders register—we focused purely on the sex offenders register and on people who had convictions. There will be a group of people about whom there is concern and action might be taken because of a perceived potential risk of their sexually offending. I will need to go away and think about that. Bill Butler is absolutely right that such people would not be covered, so we might need to reflect on that.

14:15

It is certainly the case that someone who breaches a risk of sexual harm order would go on to the sex offenders register; therefore, a DNA sample could be taken from that person. It is not about waiting for people to breach an order and then taking action; if someone has a risk of sexual harm order imposed on them, there is clearly concern about them in the first place. I will have to reflect on that issue now that Bill Butler has raised it.

Bill Butler: I am grateful that the minister will reflect on the matter. I know that there will be ECHR issues to consider. As the minister indicated, the main consideration—or certainly a central consideration—is how to prevent a breach of the order.

I turn to the power to enter and search, which is an extension of Professor Irving's recommendation that there should be a power merely to enter premises. What is the rationale behind the Executive lodging an amendment that seeks to provide a power to enter and search? Are you convinced that there are enough checks and balances to ensure that civil liberties are considered?

Hugh Henry: Bill Butler is right to say that there could be ECHR issues. We will have to check that, because everything we do needs to be ECHR compliant.

We believe that it is necessary to grant the power to enter and search because we believe that it is necessary to assess the risk of a person's posing a threat to children, to women or to anyone else who is vulnerable to being sexually exploited, attacked or abused. If we were to identify a person as being a potential risk and thereafter grant the power to enter their premises, it would cause unnecessary complications if we did not have the power to search those premises at the same time. It might be that, having entered premises, it is decided that something should be checked as a result of a reference that is made or because there are children's toys or something else that could be an inducement or attraction to children that is inappropriate for the adult to have. It would cause unnecessary complications if we were worried that a person was grooming, but nothing could be done. It might be suspected that there is equipment or toys in another room that could be used to attract or induce children or there could be magazines or other things in the house.

If there is a need to assess the risk, what would be the purpose of the police entering the house, not fully believing what was said to them there and then having to go away and apply for a separate warrant to conduct a search? I agree that the measures could have civil liberty implications, but much of our work to tackle sex offending has civil liberty implications. We have always had to balance the rights of individuals with the need to protect the public, especially children, from the activities of some individuals. We believe that if the right to enter a house has been conferred because of worry about somebody and we want to assess the risk from that person, it makes sense to have the further power to search at that point.

We should remember that the power will not be used on a whim or by the police acting on a phone call from the social work department; instead, the police will have to persuade the court to grant the power. The court will test the issue and will have to be satisfied that there is a need to search. The police will have to show that, before going to court, they had attempted to carry out a risk assessment. In other words, the police will have to satisfy the court that the power is not just more convenient for them because they cannot be bothered doing the work any other way; they will have to show that they attempted to carry out a proper risk assessment, but that that was not possible and so the extra step is needed.

A further safeguard is that it will be possible to exercise the warrant only at a reasonable hour. The aim is not to encourage potential harassment—the police will not turn up in the middle of the night and drag a person out of bed simply because they feel that the person should be kept on their toes or for whatever other reason might spring to mind. A series of checks and balances will be built into the process and the court must be satisfied that the power is appropriate.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): We are close to getting to specifics. No doubt when we consider the proposed amendments at stage 2, we will have the opportunity to consider the detail. Under proposed new section 96A(2)(d) of the 2003 act, if a warrant is to be granted, a police officer will have to have sought access to the premises to search and examine them on more than one occasion. Currently, unless there are specific grounds for a search warrant to be applied, it is illegal for the police to do that. It seems rather bizarre to say that a warrant can be issued only if the police have already tried to do something that they do not have a right to do without a warrant.

Hugh Henry: We will consider the details and have another discussion when we finalise the amendments. However, I am satisfied that the authority that will be granted is proportionate and that it involves checks and balances. Jeremy Purvis has raised an issue that warrants further consideration. We will think about the issue before we come back with the amendments.

Jeremy Purvis: I am grateful for that. I will make one more point. Proposed new section 96A(2)(a)(ii) of the 2003 act states that the police will have to show that they have

"reasonable grounds for believing that a relevant offender resides there, or"—

obviously in circumstances in which the address is not the offender's home address—

"may regularly be found there".

That will give considerable scope for search warrants to be granted for someone else's property, on the ground that the police seek to assess

"the risks posed by the offender."

However, the existing ground on which a warrant is granted to search someone else's home is that an offence is likely to be committed.

Hugh Henry: Two separate issues are involved. We are trying to address the potential risks that can be identified in relation to sex offenders—people who have a track record of sex offending. The point that Jeremy Purvis raises about the police having the right of entry to a person's home to check up on someone who is residing there—as a lodger, sharing the accommodation or whatever—is valid. Clearly, the police would need to ensure that they did not identify to the person whose home they were entering that the other person is a sex offender.

Discretion and a strong element of consideration will certainly need to be shown by the police. The person who is being investigated or spoken to also has the right to know that, in conducting their inquiries, the police will not leave that individual open to the risk of, for example, being made homeless or attacked. The other person may be unaware of their previous record or might feel strongly about sex offenders. There are checks and balances in the system that the police also need to consider in terms of how they behave and operate. The police need to employ the highest standards of professionalism in their operations.

There is also a clear obligation on the sex offender to comply and co-operate, which might obviate some of the difficulties that may be involved in the point that Jeremy Purvis raised. Again, I return to the point that I made earlier about the need for the situation to be put in context; we are not talking about action that will be taken on a whim. If the information is available to the police—either it has been obtained or given—there will be no need for the police to go through that process. The procedure would happen only when the police were worried about a potential risk that needs to be addressed.

Given some of the cases that have happened to date—indeed, given the case that prompted Professor Irving's investigation—there is a need for us to consider what more we can do to provide the safeguards that people want. I am thinking in particular of the safeguards that parents want for their children and the safeguards that we all want for anyone who is vulnerable to sexual attack.

Jeremy Purvis: I will have to re-read Professor Irving's report. I may have misread it, but my understanding was that the police power of entry forms part of the monitoring process and that it will allow the police to check against the sex offenders register whether the offender is abiding by the criteria that have been set down.

What the minister has said puts a different slant on the power with regard to the risk assessment process. If a person on the register who is classified as being a low risk—which takes in a fair number of people—and is abiding, either regularly or occasionally, in someone else's property or someone else's home, surely that person will not necessarily know that the person on the register is a sex offender—

Hugh Henry: That is correct.

Jeremy Purvis:—nor should they necessarily know that, as long as the monitoring is carried out appropriately.

However if, through a process of reassessing everyone on the register, the police use proposed new section 96A(3) of the 2003 act, they will be able to search someone's property, although that person may not know that the person who is living there is a sex offender. The power is a dubious one. If the police have reasons to believe that the person whom they are investigating is avoiding them or not fulfilling the criteria, why cannot they

use a normal search warrant? Surely that would be sufficient and appropriate? The new power will mean that the police will have to go to a sheriff and say that they have cause to believe that a crime has been committed.

14:30

Hugh Henry: Jeremy Purvis is confusing two separate issues, although he was right to explain the context. If a person has been assessed as posing a low level of risk, there will be no need for the power to be used—we are not talking about using the power to reassess everybody. However, the power would kick in if there was a need to reassess someone through the enabling of monitoring that had not previously been done sufficiently.

Jeremy Purvis made a point that I made. There could be concerns about a person's not knowing that a person who resides with them is a sex offender. Of course, at the moment, the police have powers to enter and search premises where they believe an offence is being, or is likely to be, committed. We will not use the power as part of the process of investigating a crime or a potential crime; that is something completely different. We will use the power as part of the process of monitoring sex offenders and assessing the risk that some sex offenders might pose.

There will be no need for the power to be used against every sex offender, but there may be some sex offenders who will not co-operate or provide the information that is required. If there was a suspicion that further information might be available and helpful, use of the power would have to be considered. However, the case for that would need to be made to the courts; the power will not be the first resort. The police will need to show the court what else they have done in order to justify the court's taking this extra or exceptional step.

I believe that the new power would be tightly drawn. It would be restricted to enabling the police to enter and search premises for the purpose of carrying out adequate risk assessments of individual offenders. I repeat what I said earlier: the power would be made available only when other means were shown to be insufficient. If everything else has been tried and we still need to do something extra to prevent a person from reoffending or returning to old ways, the power will give some extra reassurance.

The Convener: I wonder whether, for clarity, you could consider the *Official Report* of this meeting and pick up on some of the points that have been made about processes, guidance and so on in the application of the power, should it become law. It might be helpful for us to have your comments in hand when we come to debate your final amendments—I appreciate that these are draft amendments.

Mr Stewart Maxwell (West of Scotland) (SNP): I have two points to make, the first of which is on the area that we have just been discussing. I ask for clarification on section 96A(2)(d). When reading draft amendment 4, I assumed that the expectation would be that the police would get voluntary access—that people would co-operate. I think that you are saying that the power would be used only when a risk had been identified and there was a lack of co-operation—which, in a sense, would reinforce the possibility of risk.

Hugh Henry: Yes.

Mr Maxwell: Can you clarify the meaning of the last line of paragraph (d), which refers to the circumstance that a constable

"has been unable to obtain entry for that purpose"?

Do you mean that there has just been no answer, or do you mean that the person was in and answered the door but refused entry? If a risk has been identified and the police are unable to obtain access—particularly if access has been refused by the offender—why must that happen on more than one occasion before the power can be used? Surely, giving the offender that warning gives them the opportunity to remove from the premises whatever evidence the police think may be there.

Hugh Henry: Yes. Potentially, that would be a worry. However, we should remember that searching for inappropriate materials would be part of the process of monitoring that individual and assessing the risk that they posed, but the police might well want to sit down and talk to the individual about a range of things.

A court would not grant a warrant if the police were unable to satisfy it that a number of attempts had been made to gain access, perhaps by trying to contact the person in question, by turning up at their door, by phoning them or by writing letters. We are trying to be proportionate. We are not trying to catch people out as such; instead, this is part of a process of encouraging people to co-operate with the relevant authorities to allow us to build up a profile of a sex offender and enough information on them to assure the courts, social work and the wider public that we are adequately assessing how that person might behave. We do not want to use this as a pretext for carrying out dawn raids on every sex offender, or to make them feel that they do not know when a police officer might knock on their door.

Most people will co-operate and provide the required information, and the proper risk assessment will be carried out. However, if there is a concern that the risk assessment of any

individual is incomplete and that they are not being adequately monitored because we do not know the risk that they pose to the wider public, we need to take those extra steps and make it known to the individual in question that we expect them to co-operate. If they then refuse to co-operate, we should be able to go back to court and make it clear that, although we tried to get the person to co-operate and give us adequate access, they still refused. At that point, we should be able to secure a warrant to get that access. The police should be responsible for demonstrating that to the courts to ensure that the provision is not used trivially as part of everyday operations.

Mr Maxwell: That clarifies the point. The sheriff would in effect be the ultimate judge of whether a reasonable approach had been taken.

Hugh Henry: That is correct.

Mr Maxwell: I want to follow up some issues that Bill Butler raised. I see that, according to one of the draft amendments, sex offenders will have to provide details about their passports. You have also said that regulations will set out provisions on the notification of financial details. Again, we will have to wait and see what the regulations say, but I am sure that most, if not all, members support such a move. However, when Executive officials gave evidence to the committee a few weeks ago, there seemed to be some confusion about DNA samples. I did not attend last week's meeting, so I apologise if the matter was cleared up then. Is it the Executive's position that DNA samples will be retained only if people have been found guilty of an offence? In that respect, I accept Bill Butler's point about those who pose a risk, which might be a separate issue for discussion, but is the intention to go further than that?

Hugh Henry: I hope that the letter to the convener dated 3 March has clarified some of the DNA issues. However, as far as the proposed new section is concerned, we are talking not only about people who are convicted of a crime but about those who are on the sex offenders register. People in the latter group might not have been convicted, for a number of reasons, including technical reasons such as insanity.

Mr Maxwell: I accept that. I have no argument with retaining DNA samples from those who have been convicted and those who are on the sex offenders register. However, is the intention to apply these provisions to people beyond those who are on the register?

Hugh Henry: The draft amendment before the committee goes no further in that respect. However, Bill Butler has identified a group of people who are not covered by its provisions and I will need to reflect on that matter.

Mr Maxwell: That is fine.

The Convener: As there are no further questions, I thank the minister and Mr Fleming for their evidence on this item.

Police, Public Order and Criminal Justice (Scotland) Bill: Stage 2

14:39

The Convener: Item 3 is day 2 of our stage 2 consideration of the Police, Public Order and Criminal Justice (Scotland) Bill. Members should have a copy of the bill, the marshalled list and the second list of groupings of amendments. I thank the minister for attending the meeting for this item. The target for today's meeting is to get to the end of section 46 and schedules 3 and 4. If the committee does not reach the end of section 46, any amendments that are not taken will be carried forward to next week's meeting. The committee will not proceed beyond section 46 today.

Sections 24 to 27 agreed to.

Section 28—Directions

Amendment 64 moved—[Hugh Henry]—and agreed to.

Section 28, as amended, agreed to.

Section 29 agreed to.

Schedule 3

TRANSFERS OF STAFF AND PROPERTY

The Convener: Amendment 69, in the name of the minister, is grouped with amendments 70 to 73.

Hugh Henry: This group of amendments is technical and relates to the arrangements for the transfer of staff that are set out in part 1 of schedule 3. Amendment 69 is a technical amendment to reflect the fact that constables who transfer to "relevant service" with the Scottish police services authority or the Scottish crime and drug enforcement agency are more accurately described as transferring from police forces than transferring from police authorities or joint police boards, as the bill currently provides.

Amendments 70 to 73 are consequential on that change and make it clear that a staff transfer order that is made by the Scottish ministers in respect of such constables may include provision that requires a police authority or joint board to make a transfer scheme for the constables to whom the order relates. It is envisaged that a staff transfer order that is made by the Scottish ministers will set out the matters that the transfer scheme should cover, while the transfer scheme will set out the detailed arrangements that will govern the transfer and identify those who are to be transferred.

I move amendment 69.

Amendment 69 agreed to.

Amendments 70 to 73 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 74, in the name of the minister, is grouped with amendments 75, 76, 133, 77 and 78.

Hugh Henry: This group of amendments relates to the arrangements for the transfer of property rights and liabilities to the new Scottish police services authority that are set out in part 2 of schedule 3. The intention is that the Scottish ministers will use the order-making power that is set out in part 2 of schedule 3 to transfer property rights and liabilities of the existing common police services and the Scottish Drug Enforcement Agency to the new authority.

The amendments amplify the arrangments that are set out in the bill and provide a number of important safeguards. Amendments 74 and 75 extend the scope of a transfer scheme to include property, rights and liabilities of local authorities and other persons. Amendment 75 also makes it clear that the property that is to be transferred must relate to the functions of the Scottish crime and drug enforcement agency or the police support services. Any person who is affected by the transfer must be consulted before the transfer scheme is made, and amendment 77 provides that

"A transfer scheme may make provision for the payment by the Authority of compensation in respect of property and rights"

that are transferred to the authority.

I move amendment 74.

Amendment 74 agreed to.

Amendments 75, 76, 133, 77 and 78 moved—[Hugh Henry]—and agreed to.

Schedule 3, as amended, agreed to.

Section 30 agreed to.

Before section 31

14:45

The Convener: Amendment 134, in the name of Jackie Baillie, is grouped with amendments 135 to 147 and 131. If amendment 138 is agreed to, it will pre-empt amendment 107, which is for debate in a later group.

Jackie Baillie (Dumbarton) (Lab): I hope that members realise that I will not spend too long speaking to amendments 135 to 147 because they are consequential on amendment 134.

I agree absolutely with the need for an independent body to consider police complaints. I acknowledge that there is a genuine desire in the Executive to adopt an almost rights-based, transparent approach to complaints, irrespective of

the institution. However, there is a danger that we are about to create more institutional clutter, which, from the point of view of common sense, we want to avoid.

I shall deal with the concerns that have prompted amendment 134. There is a general concern throughout the Parliament about the way in which the number of commissioners seems to have mushroomed and the fact that, to all intents and purposes, commissioners lack accountability. There are proposals elsewhere to examine and review the number of commissioners. However, there is a specific concern about the overlap between the proposed independent police complaints commissioner and the Scottish public services ombudsman. The committee took evidence on that at stage 1 and I returned to the subject during the stage 1 debate in the chamber.

I shall highlight three specific areas for the minister. First, the police are already within the ombudsman's jurisdiction. The ombudsman can investigate a complaint of maladministration or service failure; there is therefore clear duplication. I know that it is suggested that there will be protocols between a variety of agencies and the proposed commissioner. I simply note that such protocols probably already exist between those agencies and the ombudsman. We are in danger of recreating something that we already have.

The second area is the procedures that cover civilian staff who are employed by the police. They are not officers and are subject to a separate disciplinary procedure—their circumstances are more like those of staff who are already covered by the ombudsman.

Thirdly, in these days of efficient government, organisations that have similar back-office and service functions have opportunities to share.

We created the Scottish public services ombudsman in 2002 because—quite rightly—we wanted an open, accountable and easily understood complaints system, which, most importantly, had the trust of the Scottish public. We merged four ombudsmen to create a one-stop shop, which means that it is clear to people where they can complain—they are not faced with institutional clutter and there is no confusion. The tragedy is that we seem to have forgotten that sensible approach and are creating more commissioners to deal with complaints.

Our partnership agreement commits us to having an independent police complaints commissioner. Amendment 134 does exactly that. We should not reinvent something that we already have. The clarity of having a one-stop shop for complaints—the Scottish public services ombudsman—was right in 2002 and it is right now. That approach is efficient and would deliver an independent police complaints commission in Scotland.

I move amendment 134.

Hugh Henry: I am pleased that Jackie Baillie has recognised the need to deliver an independent police complaints commissioner. A commissioner would be able to satisfy the public that complaints against the police were being investigated not just thoroughly, but independently. It is important that that is done, but we may have a difference of opinion about how best to do it.

I acknowledge some of Jackie Baillie's arguments, and I cannot disagree with her about some of the historical work that has been done, such as the creation of the one-stop shop—the Scottish public services ombudsman—and the attempts to avoid confusion that have been made. We have seen the benefits of having a focused ombudsman's function and office.

Jackie Baillie raised the issue of opportunities to share common functions and resources, where appropriate, and I give her my assurance that we will look to see whether those opportunities can be taken up.

I suppose that the difference of emphasis between our approach and Jackie Baillie's is to do not so much with the sharing of some of the general work, which could easily be done, but with who is publicly seen to be the person who is best placed to take complaints forward.

Jackie Baillie makes a valid point about the need to avoid having too many organisations and too much clutter. Whatever we do, there is a need in relation to police complaints on which we must focus, as the issue is a bit different from that of some of the run-of-the-mill complaints.

Jackie Baillie is right to draw a distinction between police officers and civilians. Police officers, individually and collectively, have to exercise a wide range of significant powers. We have discussed some of the situations that police officers can become involved in, and members can imagine some of the grounds for complaint that could be used by aggrieved individuals. We also need to reflect on the fact that, in any walk of life, there are a huge number of complaints and grievances that are sometimes overlooked and dismissed too casually when there is a need to address and redress a fundamental wrong that has occurred. Equally, we need to reflect on the fact that, from time to time, there are those who use complaints as a malicious way of getting their own back and do not care about the consequences of making such complaints.

There is a question of balance in everything that we do. Police go into sensitive situations—sometimes confrontational ones involving drugs,

alcohol, people with specific illnesses and so on—in which objectivity and rational discourse are not necessarily the order of the day, and we know the problems that can flow from those situations. Therefore, in the course of their work, the police are probably more often in situations in which complaints can be generated than most people are. While it is right that we address some of the legitimate complaints that are often made about police officers, we do not want to create victims in the police service simply because we have not given due thought to how the complaints procedure would work.

The other difference between the police and other agencies is that most of the investigations that are undertaken by police officers are criminal in nature, and they need to be investigated meticulously and sensitively. A wide range of complaints are made against the police. Some involve criminality, some involve malpractice and some relate to manner, demeanour and things that are said. I am sure that we could all recite complaints that have been made, from the relatively trivial to the extremely serious. They can range from someone not answering their telephone quickly enough to allegations of corruption or physical abuse. Between the trivial and the extremely serious lie lots of issues relating to incivility, rudeness, insensitive handling of victims and so on.

The Scottish public services ombudsman's role relates to maladministration, which is significantly different from the types of complaint that I have suggested could be made about the police. If we were to follow through with what Jackie Baillie proposes, we would have to address technical issues. Agreeing to amendment 134 would have significant implications for the bill, which would have to be fundamentally changed.

We would all need to get our heads round the change in the ombudsman's role from investigating maladministration to considering specific complaints. We would have to consider the organisation and culture of the ombudsman's office and ensure protection within that body that would enable maladministration to be examined without crossing into the area of specific complaints. That is why we have gone for a separate complaints procedure. We are not talking about maladministration, because complaints about maladministration can still be made about the organisation's performance; we are talking about complaints about police officers.

Our view is that establishing an independent police complaints commissioner is the right thing to do. As Jackie Baillie indicated, there is now an expectation that there will be a body that can independently investigate police complaints.

I suppose the other difference is that the proposed independent police complaints commissioner will report to ministers, whereas the ombudsman reports to Parliament—that is a fundamental difference in accounting procedures. That does not mean that one approach is right and the other is wrong; it simply means that there is a difference in approach.

These issues were not specifically raised when we consulted on the bill last year, although I appreciate that Jackie Baillie is introducing a new dimension. It would have been interesting to see the response, had her proposal been consulted on more widely. Her amendments, as constructed, would require significant work to be done to bring police complaints fully within the ombudsman's remit because, unintentionally or otherwise, not adopting the bill's definition of a "relevant complaint" would have the effect of limiting the ombudsman's role to complaints related to service failure or maladministration. I do not think that that is what Jackie Baillie is proposing. Further issues would arise because the amendments would not give the ombudsman the jurisdiction to consider all non-criminal police complaints.

We could have a situation in which no one would consider complaints that were not related to service failure or maladministration. I acknowledge that some of those matters might need to be dealt with by way of consequential tidying up. Jackie Baillie's amendments would significantly change the bill and it would be naive to believe that we could fundamentally change a bill with a couple of amendments without thinking everything through, which is what we would need to do.

We also worry that amendment 134 does not appear to give the ombudsman a role in ensuring that police organisations have appropriate procedures in place for handling complaints, which is an important part of the proposed commissioner's intended functions.

Finally, Jackie Baillie's amendments do not provide for the ombudsman to report to ministers and for ministers to require the ombudsman to investigate in certain circumstances, which we regard as a strength of the current provisions.

15:00

I hope that the Executive's amendment 131 ensures that the roles and responsibilities are clear and effective. We are attempting to do two things. First, we want to add the proposed police complaints commissioner to the list of bodies over which the ombudsman will have jurisdiction, which would enable the ombudsman to consider complaints against the new body of maladministration or service failure. That will enhance consistency with broader public policy and, I hope, go some way towards establishing a one-stop approach in which people will know

where to go to have maladministration investigated. Secondly, the amendment amends the Scottish Public Services Ombudsman Act 2002 to ensure that it is clear that the proposed commissioner is the only body with responsibility for non-criminal complaints that are made against the police. We are introducing a degree of clarity. This relatively small but important amendment to the 2002 act removes the relevant references to joint police boards.

We think that we are taking the right approach. Further changes to the 2002 act would probably be needed if we adopted Jackie Baillie's approach. I know exactly what she is saying and why she is saying it, but I am not sure that changes to the 2002 act are all that is required—other changes would also be required.

Whatever we do, the Parliament should deliver what we have promised to the public. If someone wishes to make a complaint against a serving member of a Scottish police force, they should know where to go and be assured that their complaint will be dealt with professionally and independently. What we have suggested would achieve that by having one body that does that work, separating out complaints from maladministration. That is the best way forward. There is huge agreement between Jackie Baillie and me on what we want to achieve, although we disagree on how best to achieve it. In terms of simplicity and process, what we propose can achieve that. Nevertheless, I recognise the will of the committee and the Parliament and, if further changes are made, we will need to do further consequential work.

Mr Maxwell: I am sympathetic to the idea of not setting up unnecessary bureaucracy. I can see where Jackie Baillie is coming from on that point. The one-stop shop has an appeal, and I have one or two questions about it.

Jackie Baillie proposes substantial amendments to the bill that we examined at stage 1, which gives me some concern. We took a lot of evidence on the bill as introduced, and her amendments propose something very different. Her proposal matches what is in the bill—there is an equivalency of powers and ability to investigate that match what is in the bill, although there seems to be some doubt in the minister's mind about that. Does Jackie Baillie accept the fact that what the police do is particular in many ways and different from some of the council maladministration issues that the ombudsman investigates, and that the public perception would be that police complaints were being downgraded? We want to ensure that the public are aware that there is an independent police complaints commissioner, and that public perception issue slightly concerns me. Does she envisage any change in the existing balance in the bill between that role, as she sees it, and the role of the procurator fiscal's office?

Jeremy Purvis: There is a superficiality to saying that one body can handle everything. Although that is attractive, what Jackie Baillie proposes would make the system weaker in the eyes of the public, with a specific independent body handling both individual complaints about policing and complaints about policing practice. The system would also be weakened on a statutory basis. I would like to hear Jackie Baillie's comments on that.

I would also like Jackie Baillie to reflect on two particular points. First, the bill gives the proposed police complaints commissioner the power to issue guidance—as I understand it, the Scottish public services ombudsman has a fairly similar power. The proposed commissioner, under the provisions of the bill, will be able to issue guidance to individual officers and to police forces as a whole with regard to their practices and how they conduct investigations of complaints. It is important to note that.

The second point is the proposed commissioner's role in reporting to ministers on matters that are much wider than complaints handling. If I recall correctly, a report was conducted south of the border on accidents involving police cars. That is an issue of public interest that relates specifically to the police, and the Independent Police Complaints Commission was able to report to Parliament and to the Government on it. In Scotland, that role, which covers important matters, would be taken away by Jackie Baillie's proposal. Unless I receive strong reassurances, I am afraid that I will not support her amendments.

The Convener: I have some comments of my own on the amendments. We have great sympathy with Jackie Baillie's proposal to cut down on bureaucracy, the number of institutions and so on. However, we feel that the police constitute a special case because of their role in society and law enforcement. From our mailboxes and constituency surgeries, we know that a large number of complaints against the police are made in a variety of ways, although those complaints are not always fair, as the minister has pointed out. I accept his reassurances about the specific role of the Scottish public services ombudsman with regard to maladministration and the proposed police complaints commissioner. On that basis, and having listened to the arguments, I am inclined not to support Ms Baillie on this particular issue.

Colin Fox (Lothians) (SSP): Because I arrived during the debate on this group of amendments, I will not go into the issue at great length. The motive behind Jackie Baillie's amendments

appears to be the public's sense that complaints against the police must be seen to be treated totally independently, otherwise, the outcomes will have no veracity. That is the difficulty that we face.

I have some sympathy with amendment 134 on the basis of the distinction between the police investigating themselves and the role that the ombudsman could play. My understanding is that the provisions proposed in the amendment would come into play at a specific, later stage, after certain internal complaints procedures had been followed. We are trying to strike a balance between gaining the public's confidence while not introducing a system that deals with every detail or every minor complaint.

I apologise to the minister for arriving too late to hear his remarks.

Hugh Henry: If I may, I will comment just before Jackie Baillie winds up. On Colin Fox's point, one thing about which Jackie Baillie and I agree is that we do not want a police complaints system that deals with every trivial complaint as a matter of first instance. Where possible, we want complaints to be dealt with appropriately at a local level. In cases where people are aggrieved and do not feel satisfied, there is a clear need to have a system that can, independently of the police, examine the more serious complaints, so that people may be assured that it is not a matter of the police investigating themselves and somehow protecting one another.

I have no difficulty with what Jackie Baillie said about independence, but I believe that the ombudsman is truly independent. Any of us who has dealt with the ombudsman when she has been dealing with a range of agencies will know that she guards her office's independence jealously. I am sure that, whatever the ombudsman was given to do, she would protect that independence. Maladministration is a wider issue than that of simple complaints; there is a difference in emphasis between the two areas.

I neglected to refer in my opening remarks to another of our proposals regarding additional powers for the proposed commissioner. The ombudsman's current role is limited to dealing with complaints of maladministration or service failure by a police authority or joint board. In practice, that role can be limited. A chief constable is responsible for all operational aspects of policing in their force area and for the deployment of resources. Those matters tend to be the focus of complaints. Currently, Her Majesty's inspectorate of constabulary has a role in that, but we intend to remove that role and give it to the proposed commissioner.

Colin Fox, Stewart Maxwell and the convener indicated that they are sympathetic to Jackie Baillie's approach. There seems to be a view that, wherever possible and irrespective of our views on the arm's-length question, we should avoid clutter and overlapping and reduce bureaucracy. Whatever the outcome of this discussion, there are aspects of it that the Executive and the Parliament will perhaps need to look at for the future.

Jackie Baillie referred to work that is being done in the Parliament in relation to the various commissioners' offices. Clearly, there is a growing anxiety about them and I think that we need to protect the interests of the public by using money wisely and ensuring that the public is not confused about where to go for different levels of complaint. Perhaps we will need to have another debate at some point.

The Convener: I invite Jackie Baillie to wind up and decide whether she wishes to press or withdraw amendment 134.

Jackie Baillie: I will try to pick up on all the points that members have raised—in a way, they are grouped together. First, I say to Stewart Maxwell that, although it came late in the day, during stage 1, we received evidence that suggested that there could be considerable duplication between the ombudsman's role and that of the proposed independent police complaints commissioner. We reflected that in one of the recommendations in our stage 1 report, and I have now taken that to a logical conclusion by attempting to address exactly what the Executive wants to achieve, albeit by using a different body that already exists.

I am clear that, although I may not have the technical expertise of the minister and his department, I sought to match exactly the bill's intentions. If I have failed to achieve that for a technical reason, I would expect the minister to tidy that up.

In relation to the role of the Crown Office and Procurator Fiscal Service, I hope that I can reassure Stewart Maxwell that no difference is intended between the role that I propose for the ombudsman and that of the proposed police complaints commissioner.

Jeremy Purvis, too, can feel reassured by what I said about technical issues. As far as I am concerned, there is no intention to make the process weaker—quite the contrary: I want to make it more transparent and stronger. At the heart of the bill lies the intention to give the general public, rather than us, the ability to access independent and robust complaint mechanisms. Therefore, by making the process more transparent, we will strengthen it. I would expect the ombudsman to capture the proposed commissioner's powers, such as the power to issue guidance.

I will focus on the ombudsman for a couple of reasons. First, I would hate the suggestion to come out of this meeting that we somehow got it wrong in 2002 and that the ombudsman is incapable of operating in a specialist role in complex areas—the ombudsman already does that. When we brought together the responsibilities of four ombudsmen in 2002, we included the responsibilities of the Scottish parliamentary and health service ombudsman. Health is an extremely complex area that involves a huge range of governance issues, but the Scottish public services ombudsman employs specialist staff to enable her to deal effectively and comprehensively with such matters.

15:15

Secondly, although the minister is right to say that police officers have a specialist role—they deal with a huge range of difficult situations, the nature of which we cannot begin to second guess—I would expect the ombudsman to be as sensitive as we are about the recruitment of a police complaints commissioner. I see no logical reason to suggest why that would not be the case.

My fundamental concern is to ensure that the public are not confused. I suspect that we might all struggle to understand the differences between maladministration, service failure and action that leads to a complaint about an individual police officer—never mind how we might explain those differences to some of our constituents. If we want a robust and independent process, we must seriously consider the proposals in amendment 134.

However, I have listened to what has been said and I am all for consensus. I note that there is some consensus that there might be too much institutional clutter. Given that I am attempting not to weaken but to strengthen the ombudsman's role in police complaints, I am prepared to withdraw amendment 134. I reserve the right to lodge another amendment at stage 3, because there is substance to my proposal, as the consensus in the committee demonstrates. However, I do not want to split the committee unnecessarily and I am sure that the minister's suggestion that the Executive or the Parliament might give the matter wider consideration indicates that he is minded to do so before stage 3.

Amendment 134, by agreement, withdrawn.

Section 31—The Police Complaints Commissioner for Scotland

Amendment 135 not moved.

Schedule 4

THE POLICE COMPLAINTS COMMISSIONER FOR SCOTLAND

The Convener: Amendment 79, in the name of the minister, is grouped with amendments 80 to 84.

Hugh Henry: Amendment 79 provides a detailed list of the people who will be disqualified from being appointed to the office of police complaints commissioner for Scotland. The amendment replaces paragraphs 2(1)(b) and 2(1)(c) of schedule 4, to make it expressly clear that anyone who has served as a constable in the United Kingdom—including the Channel Islands and the Isle of Man—cannot be appointed to the office of commissioner. Amendment 79 also contains a technical amendment, which makes it clear that a person who

"is or has been a member of staff of the Authority"—

as opposed to an employee of the authority—is also disqualified. It is vital that the commissioner be totally independent from the police. Amendment 79 will help to secure that independence.

The bill provides that a person who has been

"sentenced to a term of imprisonment of 3 months or more is disqualified for appointment to the office of Commissioner during the period of 5 years following the day on which the person was sentenced."

Amendment 81 removes that provision and gives the minister the flexibility to decide whether a criminal conviction has any bearing on a person's suitability for the role.

The bill provides that ministers may dismiss a commissioner who has,

"since appointment, been sentenced to imprisonment for a term of 3 months or more".

Amendment 83 gives ministers the flexibility to dismiss a commissioner on the ground of any criminal conviction, whether or not a custodial sentence is imposed.

Amendments 80 and 82 are minor, technical amendments, which improve the drafting of provisions.

Amendment 84 corrects the terminology in paragraph 5(2) of schedule 4 to reflect the fact that the commissioner will be an office holder rather than an employee.

I move amendment 79.

The Convener: The amendments give ministers the power to make the decisions that you described. Obviously we do not know who the ministers will be in the future and the amendments leave matters fairly open. Why will you not make the bill more specific?

Hugh Henry: We want a degree of flexibility, as I explained. The bill could set out a specific length of sentence or period of imprisonment, but we might all think that a person who was guilty of an offence that might attract a lesser sentence should be barred from consideration for the office of commissioner.

Similarly, if someone who was in post were to be convicted of an offence that caused widespread public concern, but a judge—for whatever reason—decided that imprisonment for three months or more was unsuitable, that person could continue in post and nobody would be able to do anything about that, despite sufficient concern being felt. The aim is to ensure that we can act and react to circumstances that none of us can foresee.

I will give an example of a recent situation in my area: local authority employees downloaded completely inappropriate material from the internet and the local authority decided that some of those people should no longer be its employees. I have no access to information about that and I have taken at face value what has been said. We can imagine that the commissioner could download something reprehensible but not attract a prison sentence. Would they be a fit and proper person to do their job? Would they be able to do their job if they decided to stay? Would they have the confidence of the Parliament and the public? Their act might not attract a prison sentence, but sufficient concern could be felt. We should have flexibility to respond appropriately to such situations.

Mr Maxwell: Most of the organisations that are listed operate within the United Kingdom. The first line of amendment 79 says:

"is or has been a constable of a police force".

Does that cover somebody from abroad, such as a member of a police force in the European Union who is entitled to work here?

The line at the end of the amendment says:

"is or has been a member of staff of the Authority".

Does that cover all the staff of police forces, including all civilian and support staff?

What is the definition of a member of a police force or a constable? Does that apply from the first day of employment or the first day of the training course at Gullane? Does it apply when someone returns to the authority or police force? Does it operate from the day when someone applies to become a member of a police force, although they would not be an employee or a member at that point? Is that situation taken into account? The amendment does not seem to deal with it.

Hugh Henry: The answer to the first question is that the amendment covers only the United Kingdom and the jurisdictions that are listed. It does not cover other parts of Europe, because someone who came from outwith these islands would have no connection, so the question of impartiality would not arise. If people feel that having been a member of a police force anywhere in the world should debar someone from appointment, we can reflect on that. An element of ministerial discretion will remain. The issue is not a huge sticking point. We will have discretion; we refer only to the UK.

The short answer to the second question is no. The answer to the third question is that the definition applies from the day when someone takes their oath.

Mr Maxwell: I agree that the matter is not a big issue. However, if the principle is that we will disallow members of police forces, it seems reasonable to disallow people who have been members of police forces outwith the UK. If that is the principle, the provision is slightly odd, so I wondered whether you should reflect on it. For the same reason, do you think that people who have attempted to join the police force but for whatever reason have never become employees of it should be disallowed?

Hugh Henry: Before stage 3 we will reflect on the point about people being members of police forces elsewhere. It may be that in a changing world—we are members of the European Union—people feel part of a wider police network. I do not know whether that is the case, but we will examine the issue. It has not been a big issue for us, but we will reflect on it.

Amendment 79 agreed to.

Amendments 80 to 84 moved—[Hugh Henry]—and agreed to.

Schedule 4, as amended, agreed to.

Section 32—Examination of manner of handling of complaint

The Convener: Amendment 85, in the name of the minister, is grouped with amendments 86, 89, 94, 113, 114, 116 and 119.

Hugh Henry: Amendment 85 is a technical amendment to section 32(1) to add the words "the complainer". The definition that is provided avoids the need to define what is meant every time that the phrase is used in the provisions on police complaints.

Amendments 86 and 89 adjust section 32. They put the PCCS under a duty to keep the person whom the complaint is about, as well as the complainer, informed about what conclusions the commissioner has reached and what actions he or she decides to take in relation to a complaint. The amendments will ensure that all the key people are kept informed appropriately.

Amendment 94 changes section 33(4) to ensure that the complainer, any individual against whom a complaint is made and the appropriate authority in relation to the complaints are all notified if the commissioner decides to discontinue or not proceed with a complaint handling review.

Amendments 113, 114 and 116 make changes to section 36 to put the PCCS under a duty to keep informed both the appropriate authority in relation to the complaint and any person who is the subject of a complaint, in addition to keeping the complainer informed.

Amendment 119, which changes section 37, is largely consequential to amendment 116. Amendment 119 ensures that if the commissioner has to discontinue the reconsideration of a complaint or cannot proceed with the process, for example because it transpires that the complaint is of a criminal nature, the person who is complained about and the appropriate authority in relation to the complaint should be told about that as well as the complainer.

I move amendment 85.

Jeremy Purvis: My point is a minor one, but I would be grateful if the minister could tell us whether it has been considered. There may well be cases in which someone makes a complaint on behalf of someone else. The person may be a vulnerable adult who might not be competent under other legislation. Would the complainer be the individual who is aggrieved or their representative?

Hugh Henry: It would be the person who is acting on behalf of the vulnerable adult.

Amendment 85 agreed to.

Amendment 86 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 87, in the name of the minister, is grouped with amendment 115.

Hugh Henry: Amendment 87 is a minor amendment to make the provision consistent with the drafting of section 36(2)(b). It reflects the fact that the commissioner, after reviewing a complaint, may decide that further action either is or is not necessary. Amendment 115 removes the requirement for the commissioner to provide relevant persons with any provisional findings of the investigations when the commissioner is supervising the reconsideration of a complaint. There could be circumstances in which a statutory requirement to do that would prove unhelpful, particularly if a case is controversial or the subject of public debate.

I move amendment 87.

Amendment 87 agreed to.

15:30

The Convener: Amendment 88, in the name of the minister, is grouped with amendments 93, 95, 102, 104, 124, 128, 129 and 130.

Hugh Henry: Amendment 88 is a drafting amendment, in consequence of the fact that a definition of a reconsidering authority has been inserted in the bill. The amendment clarifies that the commissioner must send a copy of the complaint handling report to the appropriate authority that dealt with the initial complaint.

Amendments 93 and 95 make it clear that section 33(1) and section 33(4)(b) apply to the appropriate authority that received the initial complaint, rather than to a reconsidering authority, which could be a body that did not deal with the initial complaint.

Amendment 124 creates a new section that defines more clearly which authority is to be the appropriate authority in relation to a relevant complaint, based on its specific circumstances. The newly expanded provisions build on and substitute for the definition of an appropriate authority that was previously given in section 43. The amendment ensures that a definition of an appropriate authority is provided for complaints that are made against individuals who serve with the police, as well as for complaints that are made against a particular policing body and in which individuals are not identified.

Amendment 128 is a minor drafting amendment that defines the authority and the agency with reference to section 30.

Amendments 102 and 104 remove extraneous words from the provisions in section 34, which are not needed as a result of amendment 128.

Amendments 129 and 130 are consequential on amendment 128 and abbreviate the names of the agency and the authority in section 43.

I move amendment 88.

Amendment 88 agreed to.

Amendment 89 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 90, in the name of the minister, is grouped with amendments 91, 92, 108 to 112, 117, 118 and 120 to 123.

Hugh Henry: Amendment 91 enables the PCCS to ask a relevant authority other than the authority with which the complaint originated to reconsider that complaint, if he or she considers that to be appropriate. The amendment ensures that, if a relevant authority that is different from the one that received the initial complaint is directed to reconsider the complaint, it is sent a copy of the report that the commissioner draws up after

reviewing the complaint. There may be cases in which a complaint was originally handled by Lothian and Borders police, for example, but in which the commissioner decides that Central Scotland police would be better placed to undertake a review. The provision builds on current arrangements that allow one force to ask another to investigate its actions, if it believes that that is appropriate. The amendment defines the authority that is tasked with reconsidering the complaint as the reconsidering authority.

Amendments 90, 92, 109, 112, 117, 118, 120, 121 and 122 change the term "appropriate authority" to "reconsidering authority", in consequence of the insertion in the bill of a definition of a reconsidering authority.

Amendment 108 substitutes for section 35(1), to ensure that the duty to appoint a person to reconsider a complaint is imposed on a reconsidering authority.

Amendment 110 makes it clear that, if the reconsidering authority is the body that received the initial complaint, it must not appoint the person who previously looked at the complaint to reconsider it.

Amendment 111 is a small drafting amendment to make the provision more precise. It is consequential on the definition of relevant complaint that is inserted in section 34 by amendment 96.

Amendment 123 provides that the person who reconsiders the handling of a complaint must send a copy of their final report to both the appropriate authority in relation to the complaint and the reconsidering authority, in cases where those are not the same authority.

I move amendment 90.

Maureen Macmillan (Highlands and Islands) (Lab): I seek clarification of the definition of the word "person". In amendment 91, a person seems to be a legal entity, rather than necessarily an individual. However, in amendment 108, a person seems to be an individual. Is that correct? The position is a bit confusing.

Hugh Henry: Amendment 108 relates to an individual.

Maureen Macmillan: Amendment 91 contains the phrase

"to any other person who is a relevant authority".

Hugh Henry: Amendment 91 refers to a body.

Maureen Macmillan: The same word is used, which could be a bit confusing. Is there any way that a person can be distinguished from a legal entity?

Hugh Henry: Maureen Macmillan makes a valid point about using the same word to describe an organisation and an individual.

The Convener: Perhaps the minister could lodge an amendment at stage 3.

Hugh Henry: From a legal point of view, I do not know whether that can be done. We will consider whether it is possible.

Amendment 90 agreed to.

Amendments 91 and 92 moved—[Hugh Henry]—and agreed to.

Amendment 136 not moved.

The Convener: The question is, that amendment 136 be agreed to—

Members: It was not moved.

The Convener: Thank you. Remember that I still have my L-plates on.

Section 33—Duty of Commissioner not to proceed with certain complaint handling reviews

Amendments 93 to 95 moved—[Hugh Henry]—and agreed to.

Amendment 137 not moved.

Jackie Baillie: While I am impressed with your progress, convener, we have missed out agreeing to section 32. Perhaps we should do that.

The Convener: We do not need to agree to section 32 because the amendment to leave it out was not moved; I am told that that means that the section is agreed to. However, I thank Jackie Baillie for her testing question.

Section 34—Meaning of "relevant complaint"

The Convener: Amendment 96, in the name of the minister, is grouped with amendments 97 to 101, 103, 105 to 107, and 125.

Hugh Henry: It will be helpful if I clarify in detail what constitutes a relevant complaint that can be considered by the PCCS. Amendment 96 will do that by creating new subsections 34(1A) to 34(1D). Amendment 96 will make it clear that a relevant complaint is to include any written statement of dissatisfaction about acts or omissions by a police organisation or by individuals. We want people to be able to see that their complaints are resolved effectively, whether they identify the individuals who are involved or whether the complaints relate more generally to the service that is provided by an organisation. For example, a person who experiences poor service at the hands of a call centre would probably not be in a position to identify particular individuals. Instead, the complaint would be of a more general

nature: "I rang but I couldn't get through," "Nobody came to my assistance," "Service is not acceptable," or "I didn't like how they spoke to me." If a complaint such as that is not handled well, we want the PCCS to be able to look into it, even though no named individuals are being complained about.

The amendment will also clarify that the PCCS's remit to review complaints extends to complaints about off-duty as well as on-duty acts or omissions. That may arise if, for example, a member of the public complains about the actions of police staff at a residential training centre.

We think that it is preferable to use the phrase "acts and omissions" rather than the word "conduct". That terminology is already used in other provisions on police complaints in the bill. Amendments 97 to 99 will ensure consistency throughout the provisions.

Amendment 100 will ensure that the definition of a person who is serving with the police, which is given at section 34(3), will apply in all police complaints provisions in the section.

Amendment 101 is a minor technical amendment that will ensure that the PCCS's coverage will extend to complaints that are made against people who are appointed by contract under section 9 of the Police (Scotland) Act 1967 as well as those who are employed directly by the police authorities or joint police boards.

Amendment 103 will remove the words "Deputy Director" from section 34(3)(d). We believe that they are superfluous because the definition that is contained in the remainder of the section already includes deputy directors. The amendment will also make it clear that a member of the agency, not just the deputy director, will be regarded as being a person who serves with the police for the purposes of the police complaints provisions.

Amendments 105 and 125 are minor amendments to sections 34 and 39 that will improve the drafting of the provisions. Amendment 106 is a minor amendment that is consequential on amendment 96. There is no longer a need for section 34(4) because the provision is included in new subsection (1)(e).

Amendment 107 will move section 34 to a new position—before section 32—which will make the provisions easier to follow because the definition of a relevant complaint will be provided in advance of them.

I move amendment 96.

Jeremy Purvis: There are two matters on which I seek the minister's thoughts, the first of which is the requirement that a written statement expressing dissatisfaction be made. I understand that, at the moment, a member of the public making an oral complaint to a police officer or senior officer can start internal complaints proceedings. Why, if that is the case, will a written statement have to be made?

Secondly, new section 34(1C) states:

"An act or omission need not be one occurring in the course of a person's duty".

Does that mean that a complaint can be made against an off-duty police officer?

Hugh Henry: The answer to the second question is yes. On the first question, an oral complaint needs at some stage to become a written complaint. If someone phones up and says that they want to make a complaint, that in and of itself will not be sufficient; they will need to sit down with a relevant individual, give the details orally and then be asked to sign the complaint, which will then constitute the written statement of complaint. Some people might have difficulty submitting written complaints. We do not want them to be excluded.

Equally, for a complaint to be processed, there needs to be something in writing. Even if someone has orally given the information to a relevant member of staff, I would want them where possible to sign the complaint in order to confirm what they have said and what they are complaining about. If a person needs help to take that process a step further, voluntary organisations such as citizens advice bureaux can help.

We are not trying to exclude people from making oral complaints; rather, we are trying to ensure that when a complaint goes into the system it is in an appropriate form and it is accurate. As Jeremy Purvis will know—I am sure that he has experienced this as an MSP, as I have—when we act on what people have said, they can come back and say that they meant something different and that we have not fully addressed their point. There could be a dispute about what the complaint or issue was, so to get the complaint in writing is the right thing to do.

The Convener: I presume that you would expect the person who was making the complaint to receive a copy of what they had signed.

Hugh Henry: Yes.

15:45

Jeremy Purvis: I understand that. Certainly, any complaint that I have taken up with a senior officer on a constituent's behalf has always been in writing and has sometimes already been the subject of discussion. However, a member of the public is not required to make a written submission before a police officer can log the fact that the person has witnessed an incident or a crime, but that will be a criterion for making a complaint

about conduct that they have witnessed. Why should there be an increased threshold for making a relevant complaint? I appreciate that the police will need a record of the complaint before they can carry out an internal investigation, but I suggest that requiring a written statement is a threshold that some people may be unable to meet and that it is unnecessary if the person has made an appropriate oral complaint of which a record has been kept. When such a complaint is reconsidered, it will be easy for the police to say that no written statement of dissatisfaction was made at the outset.

Hugh Henry: It is in the interests of the complainer and the person against whom the complaint is made to have a record that confirms the substance of the complaint. If it were possible simply on the basis of what somebody had said to launch an investigation that could jeopardise an individual's career, I would be worried that things could be misinterpreted or misunderstood. Not for the first time, situations might arise in which people are surprised by the unintended consequences of action that followed something that they had said. It is in everyone's interests that there be a clear record.

People will be able to complain orally, but their complaint will need to be typed up and then signed by them. However, the written statement must be the first step in the due process. As the convener said, the written statement will not only form part of the record of the complaint's proceedings; it will also provide the complainer with a record of what exactly is being investigated.

The Convener: The question is, that amendment 96 be agreed to. Are we agreed?

Members *indicated agreement*.

Jeremy Purvis: On a question of procedure, how do I register an abstention?

The Convener: Your remarks will be recorded in the *Official Report*. Did you want us to move to a vote?

Jeremy Purvis: I wish, on the basis that I have given, to abstain from agreeing to amendment 96.

The Convener: You should have said "No" when I asked whether the amendment is agreed to.

The question is, that amendment 96 be agreed to. Is that agreed?

Members: No.

The Convener: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)

ABSTENTIONS

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

The Convener: The result of the division is: For 6, Against 0, Abstentions 1.

Amendment 96 agreed to.

Amendments 97 to 106 moved—[Hugh Henry]—and agreed to.

Amendment 138 not moved.

Amendment 107 moved—[Hugh Henry]—and agreed to.

Section 35—Appointment of person to reconsider complaint

Amendment 108 moved—[Hugh Henry].

Bill Butler: Should section 34 not have been agreed to just then, convener?

The Convener: No—it is like the previous section.

Amendment 108 agreed to.

Amendments 109 and 110 moved—[Hugh Henry]—and agreed to.

Amendment 139 not moved.

Section 36—Duty to keep complainer and Commissioner informed

Amendments 111 to 117 moved—[Hugh Henry]—and agreed to.

Amendment 140 not moved.

Section 37—Power of Commissioner to discontinue reconsideration

Amendments 118 to 122 moved—[Hugh Henry]—and agreed to.

Amendment 141 not moved.

Section 38—Final reports on reconsideration

Amendment 123 moved—[Hugh Henry]—and agreed to.

Amendment 142 not moved.

After section 38

Amendment 124 moved—[Hugh Henry]—and agreed to.

Section 39—General functions of the Commissioner

Amendment 125 moved—[Hugh Henry]—and agreed to.

Amendment 143 not moved.

Section 40—Reports to the Scottish Ministers

Amendment 144 not moved.

Section 41—Provision of information to the Commissioner

The Convener: Amendment 126, in the name of the minister, is the only amendment in the group.

Hugh Henry: Amendment 126 is a minor drafting amendment that will remove from section 41(4) a superfluous reference to "an appropriate authority". The amendment will ensure that that subsection correctly refers back to "a relevant authority", which is mentioned in its first line.

I move amendment 126.

Amendment 126 agreed to.

Amendment 145 not moved.

Section 42—Power of Commissioner to issue guidance

The Convener: Amendment 127, in the name of the minister, is the only amendment in the group.

Hugh Henry: Amendment 127 reflects the fact that there will be no need for the police complaints commissioner to issue guidance other than "to relevant authorities" and

"to persons appointed to reconsider complaints".

Sections 42(1)(a) and 42(1)(b) capture all the relevant parties, so paragraph (c) is not needed.

I move amendment 127.

Amendment 127 agreed to.

Amendment 146 not moved.

Section 43—Interpretation of Chapter 2

Amendments 128 to 130 moved—[Hugh Henry]—and agreed to.

Amendment 147 not moved.

Sections 44 to 46 agreed to.

The Convener: That concludes for today our stage 2 consideration of the Police, Public Order and Criminal Justice (Scotland) Bill. I thank the minister's team for attending. We could do with a short interval before we go to the next item.

As a matter of information for the committee and the minister, the target for next week's stage 2 consideration is to reach the end of section 68 and to complete chapter 2 of part 2, on public processions.

15:55

Meeting suspended.

16:07

On resuming—

Police and Justice Bill: Legislative Consent Memorandum

The Convener: I welcome members back to the meeting. We move to item 4, which is the legislative consent memorandum to the Police and Justice Bill. Members should have a briefing note from the clerk and a memorandum from the Scottish Executive that explains the background to the bill. We received written evidence from Her Majesty's inspectorate of constabulary for Scotland, which was e-mailed to members on Friday. The return from the Association of Chief Police Officers in Scotland was circulated to members on Monday. The Law Society of Scotland has confirmed to the clerks that it does not wish to make any comment. Members should also have a copy of the written submission from the Scottish Police Information Strategy.

The Subordinate Legislation Committee discussed the bill and the legislative consent memorandum this morning and its convener, Sylvia Jackson, has sent a letter, which was circulated to members of the Justice 2 Committee prior to the start of the meeting. Do all members have a copy of that?

Maureen Macmillan: No.

The Convener: I will give members a couple of minutes to look through what has appeared. I do not know whether Colin Fox has a copy of Sylvia Jackson's letter.

Colin Fox: I do.

The Convener: In case members are worried about what the outcome of our discussion will be, I remind them that it will be part and parcel of the report that we produce.

I welcome the Deputy Minister for Justice, again, and Bill Barron of the Justice Department. They are here to give evidence on the legislative consent motion. I invite the minister to make an opening statement, after which we will move to questions and discussion.

Hugh Henry: I intend simply to outline the relevant provisions, which are the abolition of the Police Information Technology Organisation and the establishment of the national policing improvement agency for England and Wales and the office of Her Majesty's chief inspector for justice, community safety and custody; amendments to the Computer Misuse Act 1990; and amendments to the Extradition Act 2003.

The majority of the provisions that are the subject of the legislative consent motion are consequential to changes to reserved legislation or to legislative changes for England and Wales. The other provisions—for example, on computer misuse—concern a devolved matter, but they amend UK legislation to implement a UK obligation under a European Union framework directive.

I will have our lawyers look at the point that Sylvia Jackson, on behalf of the Subordinate Legislation Committee, raised with the Justice 2 Committee to ascertain whether any issues arise in relation to clauses 40, 42, 43 and 44. If there is a problem, we will address it, but we are not aware of a particular difficulty at the moment.

The Convener: Thank you. Because of the timescale in which we must produce our report, I would be grateful if your department could give us a response during the coming week if there is anything you wish to add.

Hugh Henry: Okay.

The Convener: Thank you. Do members have questions for the minister?

Bill Butler: The Subordinate Legislation Committee has raised an issue to do with paragraph 46 of schedule 1 to the Police and Justice Bill and the functions of the NPIA. Paragraph 46(1) will give the secretary of state power to modify by order the objects, functions and structure of the NPIA. What opportunities does the Scottish Parliament have to approve such moves? Obviously, some of the matters are minor and inconsequential, but they are devolved to this legislature.

Hugh Henry: The new body will be for England and Wales only. It will develop and manage police information technology and police training and act as an agency to promote improvement within forces in England and Wales. We already have agencies within our devolved responsibilities to promote and manage those areas, but because the NPIA will take over responsibility for the Police Information Technology Organisation's business, we will have a continued interest in some of the systems that PITO currently runs on a UK basis—for example, the police national computer, the IDENT1 service and the Airwave project, which is a more topical issue. There will also be a continued interest in courses that are currently run by Centrex, including the strategic command course for senior officers, which Scottish forces buy into and which is regarded as an important part of helping to prepare people for promotion within police forces in Scotland.

On safeguards for Scottish interests, where there is or is likely to be a Scottish interest in any strategic direction that the secretary of state gives, the secretary of state must first consult Scottish ministers. Where decisions that are made by the NPIA board will have or are likely to have an impact on Scottish policing, the NPIA board must first consult ACPOS and the Scottish police services authority. Where the secretary of state decides to exercise powers under paragraph 46(1) of schedule 1 to modify objects, powers and duties of the NPIA, the secretary of state must first obtain the consent of Scottish ministers where any such order may or will have an effect on policing in Scotland. If amendments to acts of the Scottish Parliament are required, they will be made by Scottish ministers, subject to the usual procedures in the Scottish Parliament.

Bill Butler: What would the usual procedure be? Would it be the affirmative procedure?

Hugh Henry: Yes.

Bill Butler: I am obliged for that.

Mr Maxwell: The letter that the Justice 2 Committee received today from the Subordinate Legislation Committee states:

"The Executive recognises that there needs to be provisions ensuring appropriate involvement of Scottish Ministers or the Scottish Parliament"—

you have outlined some of those, minister—

"and it is proposed that appropriate amendments to this effect will be tabled in due course."

What amendments do you envisage lodging? Do you have them in mind already? Are they in draft form? What areas will they cover?

Hugh Henry: I will bring Bill Barron in on that one.

Bill Barron (Scottish Executive Justice Department): We have signalled to the Home Office what requires to be done and it has prepared the amendments through its solicitors. Our solicitors have checked them and I am sure that they are all in order. As the minister said, if amendments to acts of the Scottish Parliament are required, they will be proposed by the Scottish ministers and will be subject to the affirmative procedure in the Scottish Parliament.

Mr Maxwell: So you can confirm that the amendments are in the process of—

Bill Barron: They are in hand.

Mr Maxwell: My second question is about Scottish representation on the board of the NPIA. At present, Scottish representation on the board of PITO is guaranteed, but with the abolition of PITO and the creation of the NPIA, there will be no Scottish police representation. It seems that there will be a reduction in the consultation and involvement of Scottish police forces in the cross-border authority. Both ACPOS and HM chief

inspector of constabulary for Scotland, Andrew Brown, raised concerns about that in letters to the committee. ACPOS states:

"membership of the NPIA Board should be secured."

The chief inspector of constabulary states:

"there appears to be merit in … Scottish representation within the NPIA structure".

Do you want to comment on those views?

16:15

Hugh Henry: We do not believe that such representation would be appropriate. The NPIA will be an England and Wales only body and I do not think that it would be appropriate for a Scottish body to have a veto over the agency's activities in England and Wales. As I explained, we have asked for safeguards in relation both to what it is appropriate for ministers to do and to anything that the NPIA does that might impact on ACPOS and the SPSA. There must be consultation before any action or decision is taken that might affect policing in Scotland. That is the appropriate way in which to safeguard Scottish interests.

We have also obtained the Home Office's agreement that the new agency's management statement should state that, when committees or sub-committees are formed to discuss anything that will have an impact on Scotland, Scotland will be represented on them. When the NPIA functions as an England and Wales only body, there will be no representation. We think that that is appropriate.

Mr Maxwell: I did not understand your comment that Scottish representation on the board would amount to a veto over what the NPIA does in England and Wales. It seems to me that that is not the case. You said that the NPIA will be an England and Wales only body, but the evidence shows that it will deal with a number of UK-wide systems. I will not go through them all because you know what they are.

I welcome the fact that there will be Scottish representation on any committees or sub-committees that will have a direct impact on Scotland, but it is clear that ACPOS and HM chief inspector of constabulary for Scotland do not think that the relationship between the NPIA board and the Scottish police forces will be robust enough. They told us that Scottish representation on the board should be secured. I am trying to understand why, if they are happy with the relationship that you outlined, they would submit such concerns to the committee.

Hugh Henry: Clearly, that is a matter for them to discuss with the committee. The UK-wide systems that you mentioned include the IT systems that are shared by PITO, ACPOS, individual forces and the Scottish Police Information Strategy, but it is proposed that those IT systems will become part of the Scottish police services authority. Arrangements are being made to develop Scotland-wide IT systems so that there will be no need to retain PITO as a Scotland-only body when it is abolished in England and Wales. We are doing a number of things in a distinctively different way.

I cannot for the life of me identify anything that will require Scottish representation. We have an assurance that if the NPIA set up a committee or a sub-committee to consider anything that might have an impact on Scotland, there would be Scottish representation. Until the agency identifies and discusses matters that relate to Scotland, I see no reason for Scotland to be represented on it.

The Convener: The committee has a difficulty. Because of the pressure on it to deal with the bill to suit the parliamentary business programme, it does not have time to take evidence from ACPOS and HMIC. Can you share with us the outcomes of any discussions that you have had with them on the topic?

Bill Barron: We cannot do so today, because we are not entirely familiar with those discussions. However, we can come back to the committee on the point by letter later in the week. I know that my colleagues who specialise in the topic have been in constant debate with ACPOS and, I imagine, HMIC while negotiating the safeguards that have been secured.

The Convener: I would be grateful if you could provide the information to the clerks by Thursday, so that we can consider it over the weekend.

Bill Barron: I will do so.

The Convener: That will be helpful.

Jackie Baillie: It is certainly helpful, because I have a sense that the debate about membership of the NPIA arises from a feeling of uncertainty about whether the safeguards are sufficiently robust. I would be happy if we could resolve that issue. I am conscious that there will be a duty to consult on measures that will or might have an impact on Scotland, but I wonder who triggers such consultation. Minister, you spoke about the management statement, which is very helpful. However, given that the category is so broad, I assume that you cannot list in advance all the areas where there is likely to be an impact. What process is in place to ensure that the appropriate dialogue takes place and that we do not miss out, either as a result of deliberate intent—which I do not imagine would be the case—or by accident? We do not want to create anomalies.

My second question is technical, so I am slightly nervous about putting it. ACPOS told us that

paragraph (a) of subsection (1) of proposed new section 3 of the Computer Misuse Act 1990 refers to

"any unauthorised act in relation to a computer".

ACPOS went on to tell us at length why the provision should refer not to a computer but to a computer or any component part of a computer network. If that would deal with the much wider point that ACPOS is making, I hope that the Executive will consider it.

Hugh Henry: I ask Bill Barron to deal with Jackie Baillie's questions.

Bill Barron: I did not fully understand the technical question, but I will tackle the first one.

The Convener: Perhaps Jackie Baillie was referring to removable storage disks and so on.

Jackie Baillie: I am impressed, convener. I am sure that I was referring to such things.

Bill Barron: Many police IT systems work on a UK basis, although some are particular to Scotland or to England and Wales. We do not need to take any action in legislation to ensure that those who are in charge of police IT systems talk to one another across the UK. By the use of the words "would" or "might", we were keen to ensure that if the NPIA or the police down south invented a totally new system and did not know whether we wanted to buy into it or to do our own thing, they would have to go into consultation mode, because the system would or might have an impact on Scotland. We do not think that a heavy piece of legislation is needed to ensure that the person who is in charge of police IT in Scotland talks to the person who is in charge of police IT in England.

The Convener: A little confusion seems to have arisen from the letter from ACPOS, which we had not seen before today. It refers to the Computer Misuse Act 1990, rather than the proposed legislation.

Bill Barron: We have not seen the letter.

The Convener: To save time, we will ensure that you are supplied with copies of it—I am not sure whether it is the committee's role to help the Executive in that way, but we need to be as co-operative as possible. As a new boy on the committee, I have seen the time pressures to which the committee is subject. Any speedy help that the minister can provide will be gratefully received.

Hugh Henry: Certainly. If the issues that the committee has raised could and should have been clarified in discussions between the Executive and ACPOS, I will take them up. Concerns about policy that cannot be resolved can be brought to the committee, but matters that could have been sorted out before we came to the committee should have been dealt with.

The Convener: That is why I asked for details of your discussions with ACPOS and HMIC. We need to be in the loop as much as you are.

Bill Barron: I was not aware that ACPOS and HMIC had raised that issue. They might be doing so for the first time or they might have taken the matter up with the Home Office, which is drafting the provisions. We will ensure that the loop is closed.

The Convener: I am sorry to be demanding, but it would be helpful if we could have the information by Thursday.

I thank the minister and Mr Barron for their attendance and their help. The committee appreciates the opportunity to consider the matter and share information before we get down to the nitty-gritty of political debate. We look forward to receiving your communication on Thursday.

Our intention is to bring a draft report to the committee for consideration at our meeting next week, after which amendments to the report will have to be agreed by correspondence, to allow publication on 16 March. The clerks are under a great deal of pressure. I invite members' comments.

Mr Maxwell: ACPOS and HMIC have expressed legitimate concerns. I accept the minister's comments about the safeguards that will be put in place to attempt to avoid problems. However, we do not have sight of the proposed amendments to which the Subordinate Legislation Committee referred—I attended that committee's meeting this morning—and we do not know what discussions have taken place between ACPOS, HMIC and the Executive, so I am concerned that a gap might be created. We would be right to express concern about that in our report. There must be provision for proper safeguards and consultation, however that is formulated, to ensure that the Scottish police forces are properly represented.

Bill Butler: I agree. We must take on board what we were told about amendments being in hand. They will be subject to the affirmative procedure, so the Parliament will quite rightly have a scrutiny role in that context. Jackie Baillie asked whether the safeguards in relation to the NPIA are sufficiently robust, which is a matter that we can legitimately include in our report. I hope that we receive information by Thursday that will inform the draft. We will have an interesting discussion at our next meeting.

Jeremy Purvis: I agree with members' comments. However, notwithstanding the fact that we need to be comforted by the amendments that are proposed for the UK bill, it seems that an

innovative approach is being proposed. As I understand it, the Sewel convention allows Westminster to legislate on a matter and make changes without going back to the Scottish Parliament for approval. In the context of the bill, however, there is a suggestion that subsequent proposals be decided on by the Scottish Parliament, through an instrument subject to the affirmative procedure. Such an approach is interesting, novel and welcome. It is worth putting on the record that the Executive should be commended for moving in that direction.

The Convener: Obviously we have not yet agreed on the conclusions to our report, but I think that all members who spoke made it clear that we must consider how the application of the proposed new system will affect policing in Scotland. I am grateful to members for their comments and I hope that everyone will act speedily when they have an opportunity to engage in dialogue with the clerks, who are under tremendous pressure.

We will consider item 5 in private, as we agreed.

16:29

Meeting continued in private until 17:01.

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