JUSTICE 2 COMMITTEE

Tuesday 26 September 2006

Session 2

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JUSTICE 2 COMMITTEE
23rd 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 ALSO ATTENDED:

Bill Aitken (Glasgow) (Con)
Hugh Henry (Deputy Minister for Justice)
Mr John Swinney (North Tayside) (SNP)

CLERKS TO THE COMMITTEE

Tracey Hawe
Alison Walker

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 1

Scottish Parliament

Justice 2 Committee

Tuesday 26 September 2006

[THE CONVENER *opened the meeting at 14:06*]

Legal Profession and Legal Aid (Scotland) Bill: Stage 2

The Convener (Mr David Davidson): Good afternoon, ladies and gentlemen, and welcome to the 23rd meeting in 2006 of the Justice 2 Committee. I remind everyone in the room that all mobile phones, pagers, BlackBerrys and other assorted electronic appendages should be switched off.

We have received apologies from Colin Fox.

Agenda item 1 is day 1 of stage 2 consideration of the Legal Profession and Legal Aid (Scotland) Bill. We will not go beyond section 17 at this meeting. I welcome the Deputy Minister for Justice, Hugh Henry, and his colleagues. I also welcome John Swinney and Bill Aitken, who both have an interest in the bill and have lodged amendments to it. I remind members that they should have the bill as introduced, the marshalled list of amendments and the groupings of amendments.

We start with section 1.

Section 1 agreed to.

Schedule 1

THE SCOTTISH LEGAL COMPLAINTS COMMISSION

The Convener: Amendment 152, in the name of Bill Aitken, is grouped with amendments 154, 1, 2, 155, 157, 159, 7, 160, 8, 9, 161 to 163 and 20. I draw members' attention to the information on pre-emption that is given in the groupings paper.

Bill Aitken (Glasgow) (Con): Parliament has taken a decision that the bill should be implemented. One of the strongest arguments in favour of making a change is that lawyers should not in effect govern, administer, supervise and scrutinise the activities of other lawyers. That is indeed an arguable case. I accept that the public interest probably necessitates the establishment of some form of regulation and governance that is detached from the legal profession, but there is a real danger of introducing a much too close relationship between such regulation and the Government.

An essential part of any democracy is that the government should be detached from the legal system, in so far as that is possible. History is littered with tales of the serious situations that have arisen in other jurisdictions where the executive has been far too closely involved in the running of the courts and the legal profession. The essence of any democracy is that there should be a level of detachment. It is necessary to ensure that that is the case.

The old chicken-and-egg argument, of course, is that we need somebody to initiate the situation, and that can only be the Executive. That said, once the Executive has taken the decision to legislate and to take the initial steps, it should, as far as possible, detach itself completely from the day-to-day workings of the courts and the legal profession generally.

Amendment 152 seeks to detach the Scottish ministers from the process by inserting

"Lord President of the Court of Session".

I would be the last person to try to anticipate one of the minister's arguments, but I have no doubt that he will say that the Lord President—whoever he or she may be—would not be the Lord President had it not been for the steps that the Executive took with regard to judicial appointments. I accept that argument. Nevertheless, the Lord President is, by definition, a judge; he is not a political figure. He is detached from the administrative and regulatory process, as far as Government is concerned, which is as it should be. If, under amendment 152, the powers that the Scottish ministers have are passed to the Lord President, we will have the degree of detachment that is necessary for the operation of a good and impartial judicial system.

The rest of the amendments in the group deal with various Executive powers on the appointment and removal of members of the proposed Scottish legal complaints commission. In each case, the argument could be advanced that it should not be a matter for the Executive, which should be detached from the commission. Therefore, any removals or appointments should be made on the basis of the powers of the Lord President.

I move amendment 152.

The Deputy Minister for Justice (Hugh Henry): I am not sure why Bill Aitken has mixed up the running of the courts and the judiciary with the regulation of the legal profession. To some extent, it is a red herring. I say to him in passing—because he mentioned it—that, in many jurisdictions throughout Europe, Governments appoint the judges, and no one is saying that that does not comply with the European convention on human rights. We are not suggesting that for a moment. Neither are we trying, for whatever reason, to create a system that is not independent and impartial. The independence and impartiality

will occur after appointments have been made, as happens in many jurisdictions in which judges are appointed by Governments.

I emphasise that there is a significant degree of scrutiny and impartiality in our process and that we have built other checks and safeguards into the bill. I do not dispute what Bill Aitken said about the need for us, where possible, not to be too close to the running of the legal profession, but we are talking about something slightly different here. We are not trying to dictate how either the judiciary or the lawyers operate on a daily basis; we are talking about restoring and improving consumer confidence in the legal profession.

Nothing that I say is a criticism of the Lord President. It goes without saying that we have every confidence in the judgment of the Lord President. However, Bill Aitken suggests that the Lord President should take a role in making appointments to a consumer complaints body—the commission—the majority of whose members will not be lawyers. It is a matter of appearance and perception, and I would be concerned about the possible effect on consumer confidence if we handed over control of the membership of that body to someone who was clearly seen to be a—if not the—leading member of the legal profession. If that were the case, it is possible that those who remained dissatisfied with whatever experience they had had of the legal profession could, instead of looking objectively at the case, try to apportion blame to the Lord President's judgment in appointing members.

14:15

Clearly, over time, the office of the Lord President has built up significant relevant experience in assessing the merits of legal practitioners. However, as I pointed out earlier, the majority of commission members will be non-lawyers, and their appointment by ministers will be subject to a degree of scrutiny. I refer to the scrutiny that will be undertaken by the office of the commissioner for public appointments in Scotland. The proposed process for selecting commission members is suitable and transparent. I believe that it is also ECHR compatible. The appointments, which are public appointments, will be made following open competition and will be based on merit.

Amendment 154 seeks to remove the power of ministers to vary the size of the commission. However, that would result in a loss of flexibility, because it would not be possible to increase or reduce the commission's size in response to fluctuations in its workload.

We have heeded the concerns of the Subordinate Legislation Committee about the extent of ministers' powers to vary the size of the commission. Executive amendment 2 sets the parameters for any change to the number of commission members. The limits that we propose for non-lawyer members are

"no fewer than 4 and no greater than 8",

and, for lawyer members,

"no fewer than 3 and no greater than 7."

I hope that that gives Bill Aitken sufficient reassurance on the matter.

Amendments 1 and 2 restrict the ministerial power to vary by order the number of lawyer and non-lawyer members of the commission. As the committee may recall, the Subordinate Legislation Committee expressed the concern at stage 1 that ministerial powers could be used to achieve extreme results. Amendment 2 provides for the number of non-lawyer members to be in the range of four to eight and the number of lawyer members to be in the range of three to seven. Within those parameters, the power to vary numbers by subordinate legislation confers valuable flexibility to enable the commission to respond to varying workloads over time.

Amendments 7, 8 and 9 are part of the package that has been designed to reinforce the independence of the commission. They provide for the power to remove commission members to be transferred from ministers to the chairing member of the commission. The amendments address some of the points that Bill Aitken raised on the potential for undue interference. The chairing member will have to act with the agreement of the Lord President, which will help to avoid any arbitrary behaviour. Amendment 9 makes provision for the Lord President to remove the chairing member.

We have reflected on the concern that ministers could arbitrarily remove commission members. We have sought to introduce a degree of balance, objectivity and accountability. There is, however, a difference between the appointment and removal of members. Whereas the appointment of members will be a frequent occurrence, their removal will happen only exceptionally, for reasons relating to conduct or fitness. The Lord President's judicial role is well suited to considering such matters.

Amendment 160 and Executive amendment 9 address the same issue of who should remove a commission member from office. Both amendments propose the involvement of the Lord President in the process. Amendment 9 makes provision for the chairing member to remove a commission member, but the support of the Lord President will be required to do so. Amendment 9 also provides for the Lord President to remove the chairing member where he

"is satisfied as regards any of the matters mentioned in sub-paragraph (1)(a) or (b)."

I believe that we have taken the right approach. If the Lord President decides to appoint an investigative committee to report to him, he does not require statutory backing. I hope that Bill Aitken will agree that his amendment 160 is superfluous.

Amendments 161, 162 and 163 propose to remove the main control in the bill that will prevent any future empire building by the commission. I am sure that members will understand why it is not possible for us to give the legal profession a veto in this regard. I hope that it is agreed that some other external control is required. The powers in question are the specific and narrow powers of ministerial direction that relate to staff numbers, terms and conditions of employment, and pensions, which amendment 160 addresses. The powers will not allow any sort of interference with the commission's decision making on complaints; they are very much in the interests of the profession. We need to retain the ministerial powers. I hope that Bill Aitken will not move amendments 161, 162 and 163.

Amendment 20 will remove the general ministerial power of direction in relation to the commission's functions. That should give reassurance that there will never be political interference in the way in which the commission handles complaints. More specific ministerial powers of direction—in relation to staff numbers and terms and conditions of employment—will be retained and should be sufficient to prevent empire building or other unnecessary expenditure on the part of the commission.

I will be moving amendment 20.

The Convener: As no other member wishes to speak, I call Mr Aitken to wind up the debate and indicate whether he wishes to press amendment 152.

Bill Aitken: The Deputy Minister for Justice quite properly began his response by pointing out that we have a good legal profession in Scotland. That point is worth underlining. Apart from a few high-profile cases—always, it seems, relating to dishonesty rather than incompetence—Scotland has been well served by its lawyers for generations.

It is also important to stress that the bill will not deal with criminality, because such matters are already dealt with in the law of Scotland. Also, anyone who loses a large amount of money as a result of the incompetence of his legal advisers can seek recovery from the solicitors indemnity fund.

The minister said that in some jurisdictions the Government appoints the judges. He did not suggest that that was a satisfactory state of affairs, but he did suggest that it happened without demur. I take issue with that: there would be real concerns in any country in which the Government appointed the judges. The minister's argument was spurious, if I may say so.

Whatever we decide to do today will have to have the confidence of the public, but it will also have to have the confidence of those who are being regulated. The measures, and the commission itself, will have to have the respect and support of the legal profession, otherwise the bill will not produce the results that we all hope for. The only way to guarantee the respect of the legal profession and the public is to demonstrate clearly that Government will take a largely hands-off approach to the appointment of commissioners and the operation of the commission.

I have not been persuaded by the minister's arguments. We still differ on a large point of principle. The only way around the problem is to agree to my amendments. They are encapsulated by amendment 152, which would take out the reference to the Scottish ministers and substitute it with a reference to the Lord President. That would give the required level of detachment. I will press amendment 152.

The Convener: The question is, that amendment 152 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 152 disagreed to.

The Convener: Amendment 153, in the name of Bill Aitken, is grouped with amendment 158.

Bill Aitken: The issues covered by this group of amendments are more straightforward. Amendment 153 seeks to ensure that the people who make up the legal component of the commission will be practising lawyers. I am not suggesting that, on the date that someone ceases to work, all their abilities dissipate into the ether, but it might be appropriate to ensure that the people who make decisions with regard to the conduct of the legal profession are still actively

involved in that profession. Things change rapidly, and what pertained five years ago in Scots law might not pertain today. We have to ensure that the knowledge of the people involved is—shall we say—contemporary.

I move amendment 153.

The Convener: As no other member wishes to speak, I call the minister.

Hugh Henry: I agree that recent and extensive experience of professional practice as a lawyer will be a highly desirable criterion in appointing a lawyer member of the commission. The bill as it stands will require lawyer members to have practised for at least 10 years. However, it is not necessary to go as far as to prescribe in statute that the lawyer must be practising at the time of the appointment. Conceivably, that could exclude a recently retired lawyer who has the qualities that Bill Aitken described and who might have more time on their hands. They could have a lifetime of valuable experience that could be applied in a different way. Therefore, we should leave that matter to the discretion of the appointing panel.

Amendment 158 suggests that it is desirable for lawyer members of the commission to have experience of the regulation of legal services. Such experience may be relevant to the commission's work, but that is already captured adequately in paragraph 4(c)(iv) of schedule 1, which refers to experience of

"the monitoring of legal services".

I hope that Bill Aitken sees the potential for someone who no longer practises law to make a contribution and that he accepts that the bill already covers adequately what he is trying to achieve with amendment 158. I ask him to withdraw amendment 153.

Bill Aitken: There is not a great deal to separate us on the issue. I accept that the situation with which amendment 153 would deal is not likely to be an everyday occurrence. I have sympathy with the minister's argument that a recently retired lawyer might have the appropriate knowledge and be up to date with what is happening in the profession and therefore could be an asset to the commission. However, a question of degree arises. What happens if a person has been retired for 20 years? Would the same arguments apply? To my mind, they would not. On that basis, I will not withdraw amendment 153.

The Convener: The question is, that amendment 153 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 153 disagreed to.

Amendment 154 moved—[Bill Aitken].

The Convener: The question is, that amendment 154 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 154 disagreed to.

Amendment 1 moved—[Hugh Henry].

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 1 agreed to.

Amendment 2 moved—[Hugh Henry].

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)

Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 2 agreed to.

The Convener: Amendment 3, in the name of the minister, is grouped with amendments 4 to 6 and 156.

Hugh Henry: Amendments 3 to 6 form part of a package that is designed to reinforce the commission's independence and impartiality. Amendments 3 to 5 will provide for commission members to have fixed terms of appointment of five years, except for the first round of appointments, which must be staggered so that not all members leave at the same time. The initial appointments will be for terms of between four and six years. At present, the bill provides simply for terms of up to five years, which theoretically could give ministers the power to appoint for short periods. Amendments 3 to 5 will help to ensure that members of the commission are seen to have proper security of tenure.

Amendment 6 will supplement the provisions on tenure by stating that commission members may be reappointed only once, and then only if at least three years has elapsed since they left the commission. That will help to ensure that commission members are not seen to have a sufficient motive for becoming unduly close to the Government, which could be a concern.

14:30

In recognition of concerns about ministerial influence on appointments, amendment 156 would limit the reappointment of members of the commission to a second term not exceeding five years. Executive amendments 4 and 6 will introduce a fixed-term appointment of five years and allow appointments to be renewed once, but not before a period of three years has elapsed. Amendment 156 does not propose fixed-term appointments and would permit immediate reappointment for a single further period. It does not take sufficient account of concerns that have been expressed about ministerial appointments, therefore I hope that Bill Aitken will not move it.

I move amendment 3.

Bill Aitken: I am relieved that the minister has suggested that it is undesirable for members of the commission to be close to the Government. Indeed, I am encouraged by the fact that it is obvious that he has been persuaded by the force of the arguments that I made earlier, although he has not been sufficiently impressed that he will not press his amendments. However, I still think that there is merit in what I propose, therefore I will move amendment 156.

The Convener: As no other member wishes to speak, I invite the minister to wind up.

Hugh Henry: I have nothing to add, convener.

Amendment 3 agreed to.

Amendments 4 and 5 moved—[Hugh Henry]—and agreed to.

Amendment 155 not moved.

Amendment 6 moved—[Hugh Henry]—and agreed to.

Amendment 156 moved—[Bill Aitken].

The Convener: The question is, that amendment 156 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 156 disagreed to.

Amendment 157 not moved.

Amendment 158 moved—[Bill Aitken].

The Convener: The question is, that amendment 158 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 158 disagreed to.

Amendment 159 moved—[Bill Aitken].

The Convener: The question is, that amendment 159 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 159 disagreed to.

Amendment 7 moved—[Hugh Henry]—and agreed to.

The Convener: As amendment 7 has been agreed to, amendment 160 has been pre-empted.

Amendments 8 and 9 moved—[Hugh Henry]—and agreed to.

Amendments 161 to 163 not moved.

The Convener: Amendment 10 is grouped with amendments 164, 11, 12, 165, 13 to 19, 186, 187, 99, 101, 191 and 102 to 108. I draw members' attention to the comments on pre-emption in the groupings document.

Hugh Henry: Executive amendments 10 to 13, 99, 101 to 103 and 108 are part of a package that is designed to restrict the commission's powers to delegate important decisions. A key element of the scheme is to provide for binding decisions on the merits of a service complaint to be delegated only to a determination committee of commission members. That would be without prejudice to the ability of commission staff to carry out initial investigations and to propose provisional decisions. The decisions would become binding if they were accepted by all parties.

If, on the other hand, a decision were not accepted by all parties, the case would need to be referred to a determination committee for a binding ruling. Such a determination committee would therefore be performing much the same function as the appeals committee that is currently provided for in the bill. However, because no legally binding decision will have been made when such a case reaches the committee, the title "appeals committee" will no longer be appropriate. The amendments provide for the establishment of determination committees, remove references to "appeals committee" and replace them with references to "determination committee" where appropriate.

Amendment 164 is consequential on Mr Aitken's amendments 186 and 187, which would create a right of appeal against the commission's decision. I argue that it is emphatically not in the interests of the users of legal services for parties to a complaint to have the various rights of appeal to the sheriff court that Mr Aitken's amendments propose. The introduction of such rights would mean that complainers would have to face the expense and uncertainty of a court-based process; they would not get a quick outcome for their complaint and they would have to face the daunting experience of going to court.

By contrast, legal practitioners would be entirely comfortable with the court process. Their professional training would give them an advantage over the complainer, so we are firmly of the view that the proposed external right of appeal would undermine the informal and quick dispute resolution service that we seek to set up. Amendment 164 is not in the interests of the users of legal services, and it is not required in order that the procedures that have been proposed for the commission comply with the ECHR. I therefore hope that Bill Aitken will agree not to move the amendment.

Amendments 14 to 19 will refine the commission's power to delegate its functions, which are too broad in the current text of the bill. Schedule 1, paragraph 13 will permit the commission to delegate the majority of its functions to any person. Amendments 15 and 16 will restrict that power so that most commission functions will be delegable only to the chief executive, to committees of commission members, to individual commission members or to members of staff.

Amendments 14 and 17 lay down more restrictive rules for certain more important functions. The function of screening out a complaint for being frivolous or vexatious will have to be carried out by a commission member or by a committee. A decision as to whether a complaint, or part of it, would be more appropriately dealt with by another regulatory scheme, such as that of the financial Ombudsman Service, is to be taken only by a commission member.

The same will be true of decisions on whether any element of a complaint falls within prosecutorial discretion, which is dealt with by amendment 127. Amendment 17 also requires that decisions on the merits of a service complaint, including redress, and on publication of the details of decisions and reports be taken only by a determination committee of commission members. The same will apply to any decision not to investigate, or to discontinue investigation of, a handling complaint about how a professional body has dealt with a conduct matter, and to any decision to direct the professional body to comply with a commission recommendation on a handling complaint.

Amendments 18 and 19 are technical amendments that seek to improve the drafting of paragraph 13 of schedule 1.

Amendment 191, in the name of Bill Aitken, seeks to delete the commission's rule-making powers with regard to internal appeals and is consequential on amendments 186 and 187, which seek to provide for an appeal to the sheriff court on the commission's decisions. The Executive amendments propose to replace the internal appeals process with a system in which informal settlements will be offered. If those settlements are not accepted, the complaint will receive formal determination by a determination committee of the commission. As a result, amendment 191 is superfluous, particularly given that amendments 99, 101 and 102 seek to delete rule-making powers in respect of internal appeals. I hope, therefore, that Bill Aitken will not move his amendments.

Amendments 104 and 105 are minor technical amendments. Amendment 106, which seeks to provide that determination committees will be chaired by lawyer members of the commission, will not affect the requirement for the majority of members to be known lawyers. I believe that that is necessary to ensure public confidence. The chair will ensure that proceedings are conducted in a fair, efficient and legally sound way. It is also important that the proceedings be ECHR compatible—that will be helped by ensuring that the chair of the determination committee is a lawyer.

Amendment 107 reflects our decision to lodge amendments that permit provisional decisions on complaints to be made which, if the decisions are accepted by the parties, would become binding settlements. Although I envisage that provisional settlements will almost always be proposed by commission staff, it is possible that a member of the commission will be involved in some way. Amendment 107 seeks to provide that if a provisional settlement is not accepted, the commission member involved must not then sit on the determination committee that adjudicates on the complaint.

I move amendment 10.

Bill Aitken: The group of amendments highlights an important question of principle: is it fair, reasonable and equitable for a body that makes a determination on an issue to act as judge, jury and executioner; in fact, to act as its own appeal court? That cannot be right. Indeed, Lord Lester of Herne Hill has already stated that, if Parliament proceeds along such lines, it will be acting incompetently under the Scotland Act 1998.

The minister argues that current legislation does not protect the little man or help him if he has to appear in court—which, after all, involves a lot of expense, trouble and trauma. I accept that. However, such a matter will end up in court only if it is taken to judicial review, which is a much more daunting prospect than taking it to the sheriff court. That is why I have lodged amendment 186. We should remember also that judicial review will determine only the reasonableness of the decision, but will not take into account the merits or demerits of individual cases.

Of course the little man deserves justice, but lawyers, too, deserve justice. Anyone who lands on the wrong side of a judgment by a court, tribunal or committee must surely have the right of appeal. In all equity, such an appeal cannot be made to a body that is of the same ilk as the body that made the original determination. The minister will not have heard me uphold ECHR principles very often, but there is a very real danger that the bill will breach article 6 of the convention. As a result, he should gang warily, take the commonsense approach and allow such matters to be taken to the sheriff court as a summary cause. That simple and inexpensive procedure will guarantee justice and ensure that the minister and his Executive colleagues do not fall foul of the ECHR.

14:45

Hugh Henry: We have separated things out in the process and I believe that there is transparency and objectivity in what we have done. I note what Bill Aitken said about the ECHR, but we believe that the bill is ECHR compliant. We note, too, what Lord Lester had to say and which Bill Aitken quoted, but we disagree on that point.

We are talking about a regulatory body, not a legal body. Notwithstanding what Bill Aitken said, court procedures are not weighted evenly. The system would weigh more heavily on the side of people who are familiar with the courts, who know how they work and who have the resources to use court procedures than it would on the side of an aggrieved person.

The right for judicial review in the event of a disagreement about the judicial process is a separate matter. We are talking about a determination of whether a complaint is worthy of being upheld. If we make that a matter for the courts, we will destroy in one fell swoop much of what we are attempting to achieve with the bill. Instead of standing up for an independent and transparent complaints process that will allow lawyers to be held to account for inefficiencies and failures, we would tip the balance and leave them more readily able to go to court in order to avoid having to pay out. It would be a daunting prospect for many people to have to go court, not knowing whether they would be legally represented or how long the process was going to take.

Of all the amendments that Bill Aitken has lodged, amendment 186 is the one that I think would alter significantly the balance of what we are trying to do. He said that we all deserve justice, but I repeat that we are talking about a regulatory body that will deal with complaints, which is not designed to be a court of law. To introduce the courts as Bill Aitken suggests would fundamentally undermine much of what we are trying to do.

The Convener: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 10 agreed to.

The Convener: If amendment 164 is agreed to, amendments 11 and 12 will be pre-empted.

Amendment 164 moved—[Bill Aitken].

The Convener: The question is, that amendment 164 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 164 disagreed to.

Amendments 11 and 12 moved—[Hugh Henry]—and agreed to.

The Convener: If amendment 165 is agreed to, amendment 13 will be pre-empted.

Amendment 165 moved—[Bill Aitken].

The Convener: The question is, that amendment 165 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 165 disagreed to.

Amendment 13 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 166, in the name of Bill Aitken, is grouped with amendment 167.

Bill Aitken: I put my hands up to confess that the Conservative Government did not get things quite right in the Solicitors (Scotland) Act 1980, in that section 42A was deficient in defining clearly who has the right to complain—there has never been clarity about who has the right to complain under the act. If the Scottish Executive is not to go down the same route as the Conservative Government, the bill should be clear, so that everyone knows who has the right to complain—

Hugh Henry: You are speaking to the wrong amendment.

Bill Aitken: Excuse me. I am speaking to—

The Convener: You were invited to speak to amendments 166 and 167.

Bill Aitken: I apologise. In Glasgow parlance, I was knocking at the right door but I was up the wrong close—[*Interruption.*]

The Convener: We need a little order.

Bill Aitken: I apologise for causing confusion.

Amendments 166 and 167 would simply ensure that the commission's powers would be used correctly. The approach in the bill would not work and my proposal is perfectly straightforward.

I move amendment 166.

Hugh Henry: I will avoid passing comment on Bill Aitken and Glasgow closes.

I understand the concerns that amendments 166 and 167 seek to address. However, the amendments betray a lack of trust in the commission's ability to take responsible and careful decisions about loans and property and to have proper regard for the financial consequences of its decisions. A requirement to consult several different parties would fetter the commission unduly and be an unnecessary constraint.

The bill will require the commission to consult professional bodies and their members every January on its proposed budget for the following financial year. The proposed budget must include an estimate of the commission's resource requirements and proposed amounts for levies. That process will be sufficient to address the concerns that are reflected in amendments 166 and 167, so I ask the committee to reject them.

The Convener: The question is, that amendment 166 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstensions 0.

Amendment 166 disagreed to.

Amendment 167 not moved.

Amendments 14 to 20 moved—[Hugh Henry]—and agreed to.

Schedule 1, as amended, agreed to.

Section 2—Receipt of complaints: preliminary steps

The Convener: Amendment 21, in the name of the minister, is grouped with amendments 27, 29, 171 and 149. I draw members' attention to the pre-emption information in the groupings document.

Hugh Henry: The Executive amendments that are grouped with amendment 21 are designed to widen the range of potential complainers to the commission.

Amendments 21, 27 and 29 will provide that anyone may make a conduct complaint about a practitioner. It is important to ensure that anyone who becomes aware of a serious matter, such as dishonest behaviour on the part of a lawyer, can report it to the commission. The requirement in the bill—that the complainer in a service complaint must have been directly affected by the inadequate services—will remain, but amendments 21, 27 and 29 will create an exception for some public bodies and office holders who may come across unsatisfactory practices in the course of their work and may have a legitimate public-interest basis for reporting them. They will not be able to claim compensation if they are not directly affected.

On Bill Aitken's amendment 171, the bill already contains adequate safeguards on complaints by third parties. The only third parties who will be able to make service complaints will be those who are directly affected and the commission will be obliged to screen out frivolous and vexatious complaints and will uphold a complaint only if it considers it to be fair and reasonable to do so. Any compensation that is awarded will be what the commission considers to be fair and reasonable.

Amendment 127—which we have yet to reach—will exclude from conduct complaints the exercise of discretion by a procurator fiscal or advocate depute in the prosecution of crime or the investigation of deaths.

Those safeguards are more than flexible enough to enable the commission to deal with matters such as conflict with the duty to the lawyer's client. There is no reason to think that the commission will set out with the perverse desire to uphold third-party complaints if such complaints cannot be clearly justified. I hope that Bill Aitken will not move amendment 171.

Amendment 149 will remove from public bodies and office holders the right to go directly to the Scottish Solicitors Discipline Tribunal with a complaint about a practitioner concerning devolved services or activities. That is required by the policy of the new commission's being the single complaints gateway and the body that has the right to decide to what extent a complaint relates to service or conduct. However, it is not possible for the bill to remove the right to go directly to the tribunal in relation to reserved services and activities, so amendment 149 will preserve that right in such areas. The intention is that the complete repeal will be achieved shortly through the forthcoming United Kingdom Legal Services Bill or through an order under section 104 of the Scotland Act 1998.

I move amendment 21.

Bill Aitken: Having dealt with the inadequacies of the Solicitors (Scotland) Act 1980, I still adhere to the point that we have not at any stage had a clear definition of a person who has an interest to complain. It is unfortunate that the Executive has not sought to tighten up matters in the bill to remove spurious complaints at the first stage. I heard what the minister said about there being a sifting process, but we require to know who will be directly affected by the actions that are complained against. How remote must the complainer's involvement be before the commission has the power to say that it will not look into the matter? There is an open door and, unless there is a much clearer definition of who has the right to complain, many people will go through that open door and cause great disruption by making unnecessary complaints. The Executive

has the opportunity to tighten matters up: I urge it to do so.

Mr John Swinney (North Tayside) (SNP): The minister is right to cast the approach to defining who may complain in the widest possible fashion. I disagree with Bill Aitken because, by overdefining and narrowing the public's ability to make representations to the commission, we might undermine the minister's central purpose for the bill, which is to ensure that public confidence in the legal profession is boosted.

15:00

Hugh Henry: I think that Bill Aitken might not be aware of some of the shift in emphasis that has already taken place. We are speaking only about those who will be directly affected. He also said that we had taken no steps to deal with spurious complaints. In fact, there is provision in the bill to deal with them—the committee has yet to deal with amendments on that issue.

The balance that we have struck is correct; the one that Bill Aitken advocates is not.

The Convener: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 21 agreed to.

The Convener: Amendment 22, in the name of the minister, is grouped with amendments 24, 25, 126, 127, 144 to 148, 150 and 151.

Hugh Henry: Amendments 22, 24 and 25 introduce an additional type of conduct complaint for conveyancing and executry practitioners. The existing legislation that covers such practitioners treats commission of a criminal offence separately from professional misconduct. It is, therefore, advisable to make a separate reference to that in the bill, to ensure that those matters will definitely be covered by the new complaints handling system.

Amendments 126 and 127 clarify the position of prosecutors under the bill. Amendment 126 relates to service complaints. Because Crown counsel and procurators fiscal act as independent public prosecutors and do not act for a client, they cannot be subject to a service complaint for work that is done in that capacity. That is because, under section 2, the work in question needs to have been instructed by a client before it can be the subject of a service complaint. Amendment 126 removes any doubt that there could be attempts to challenge convictions or decisions about whether to prosecute by using the service complaint route.

Amendment 127 relates to conduct complaints. There, the position is different because prosecutors are and must be subject to the professional conduct regime. At present, however, the Law Society would not investigate the merits of such matters as the decision whether to prosecute under the guise of a conduct complaint, because that would undermine the independence of the prosecution system. Amendment 127 provides, for the avoidance of doubt, that a decision that is made in the exercise of prosecutorial discretion cannot be the subject of a conduct complaint unless something more is involved. However, if something more is involved—such as lying to the court—that can and will be dealt with as a conduct matter.

Amendments 144 to 148, 150 and 151 amend existing statutory provisions that state that the breaches of various types of professional conduct and practice rules may be treated as professional misconduct. It is necessary to amend those provisions to include references to the new category of unsatisfactory conduct that is introduced by the bill. However, it is possible to do that only in relation to services and activities that are devolved. Amendment 144 deals with section 34 of the Solicitors (Scotland) Act 1980, which confers general rule-making powers on the council of the Law Society. It would be possible to use that rule-making power in relation to matters that are reserved. Amendment 144 therefore contains an explicit carve-out for such matters. The intention is that that carve-out will ultimately be removed in the UK Legal Services Bill, assuming that the timings prove compatible with the commencement of this bill, or in an order under section 104 of the Scotland Act 1998.

Amendment 147 repeals section 39 of the Solicitors (Scotland) Act 1980 as regards devolved services and activities. Section 39 confers powers on the council of the Law Society to take action of its own accord to investigate and deal with allegations of undue delay on the part of the solicitor. That conflicts with the policy that the new commission will make all decisions about the categorisation of complaints and will deal with service matters itself. That is why we seek to repeal section 39. It is not possible, in this bill, to repeal it as regards reserved services and activities, but that will follow in due course through UK legislation, as I have explained.

I move amendment 22.

Amendment 22 agreed to.

The Convener: Amendment 23, in the name of the minister, is grouped with amendments 109, 110, 114 to 116, 118 to 125 and 128 to 142.

Hugh Henry: Amendments 23, 125 and 128 to 141 remove references to firms and incorporated practices from provisions that deal with conduct complaints. That is because only individual lawyers should be found guilty of professional misconduct or unsatisfactory professional conduct, as such a finding implies personal culpability. The references to firms and incorporated practices are retained in the provisions that deal with service complaints so that the practice unit can be held accountable for a service failure.

Amendment 109 ensures that complainers are not disadvantaged because of the amendments. Although a firm or incorporated practice can act only through individuals, some complainers may go to the commission with a conduct complaint that names only the firm or the incorporated practice involved. Rather than rejecting the complaint, the commission will be required to help the complainer to reformulate it so that it is about named practitioners.

Amendment 110 follows on from amendment 109. Because amendment 109 requires the commission to be proactive in offering advice to individuals in framing a conduct complaint, amendment 110 recognises that there will be situations in which the complainer needs to be able to express a preference about the medium in which advice is received from the commission, not only when requesting the advice but when being offered it. Amendment 110 enables the complainer at that point to ask for the advice by telephone, e-mail or other means and the commission will be under a duty to comply with that request so far as is reasonably practical.

Amendments 114 to 116, 118 to 124 and 142 remove references to limited liability partnerships from various places in the bill. We have established that limited partnerships are legally only a species of incorporated practice. There is therefore no need to refer to them separately alongside incorporated practices. The amendments remove incorrect references.

I move amendment 23.

Amendment 23 agreed to.

Amendments 24 and 25 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 26, in the name of the minister, is grouped with amendments 28 and 30.

Hugh Henry: Amendment 28 deals with the issue of practitioners acting in a judicial capacity. It was never the Executive's intention that things that were done in that capacity would be subject to the complaints-handling framework established in the bill. Some doubt was expressed at stage 1 about the position of practitioners who might, for example, be sitting as part-time sheriffs or tribunal chairs. They are included in the bill for things that are done outside the judicial capacity, but not for things that are done within it. Amendment 28 makes that clear. The order-making power is needed to ensure that all relevant bodies are covered. The major courts or tribunals that will need to be included in the list are obvious, but a check will be needed on a wide range of public bodies to establish what activities legal members may be involved in and to assess whether they are judicial in nature.

Amendment 30 deals with the potential for overlap between regulatory jurisdictions. The complaints-handling framework that is established by the bill covers service and conduct complaints generally, but certain Scottish lawyers will be subject to more specific regulatory schemes in respect of some areas of their practices, for example solicitors for whom investment business is a core activity and who may be subject to the Financial Ombudsman Service scheme in respect of that work. Amendment 30 provides for the more specific regulatory scheme to take precedence so that the commission will not act on any complaint received that falls within such a scheme and will notify the parties to that effect. The more specific scheme should govern, because it will have been more precisely designed to deal with the subject matter of the complaint.

That will not prevent the commission from continuing to process any element of the complaint that is not subject to the other scheme. Similarly, it will not preclude the findings or orders of another scheme from being used as the basis of a conduct complaint, provided that the complaint that led to the finding or order is not investigated. For example, if the Financial Services Authority severely disciplined a practitioner for financial malpractice, the Law Society of Scotland would be allowed to entertain a complaint that that had happened and to decide whether it constituted misconduct. That would entitle the Law Society to impose its own discipline in the public interest, such as suspending or debarring a solicitor.

Amendment 26 is a minor technical amendment that is consequential on amendments 28 and 30.

I move amendment 26.

The Convener: I want to add something as a committee member. Amendment 30, which was not consulted on, is about ministerial power to regulate. Concerns have been expressed this

afternoon about ministerial intervention and, therefore, the commission's independence in the procedure. Will the minister reply to that point?

Hugh Henry: I have no such concerns. As I explained, the amendments deal with the potential for overlap between regulatory jurisdictions. They provide a sensible and clear way of ensuring that a complaint is properly dealt with, not only in the specific regulatory framework, but, where there is potential overlap, by the Law Society of Scotland.

Amendment 26 agreed to.

Amendments 27 and 28 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 168, in the name of Bill Aitken, is grouped with amendments 169, 170, 172 and 173.

Bill Aitken: I seek to ensure that complaints that are vexatious or totally without merit are removed at an early stage by dealing with them under section 2(2)(a).

Consumer law, which is what we are dealing with, is usually regulated by UK legislation dating from the Sale of Goods Act 1979. To me, there is some merit in ensuring a consistency of approach between Scotland and England.

The bill differs from the draft Legal Services Bill for England and Wales in that section 2 does not include a category of complaints that are "totally without merit", whereas the English bill does. There should be some consistency of approach between English and Scottish law in that respect, and we should be able to deal with frivolous and vexatious complaints at an early stage. If we do not do so, we might raise expectations that the bill cannot satisfy. The amendment is common sense and should be acceptable to the minister.

I move amendment 168.

Hugh Henry: Sometimes Bill Aitken's definition of common sense is anything but common sense, but in this case he is right. The Executive is content to accept the amendments. There is a reasonable argument that complaints that are totally without merit might not be caught by the existing criteria of "frivolous" or "vexatious", and it is desirable that the commission should be able to sift out such complaints. Therefore, I will support the amendments.

There is a case for attaching suitable safeguards. It would be helpful to require decisions on whether a complaint is totally without merit to be taken by a member of the commission rather than by a junior member of staff. Executive amendment 17 proposes that decisions on whether a complaint is frivolous or vexatious should similarly be exercised only by a committee or member of the commission. If the amendments in the name of Bill Aitken are agreed to, we will lodge a consequential amendment at stage 3 to apply a similar safeguard to decisions on whether a complaint is totally without merit.

15:15

The Convener: I invite Bill Aitken to wind up and to state whether he will press or withdraw amendment 168.

Bill Aitken: Once again, to use the Glasgow vernacular, perhaps I should quit while I am winning.

Hugh Henry: Hear, hear.

The Convener: I am not sure whether that was clear enough for the clerks. Is Mr Aitken pressing or withdrawing amendment 168?

Bill Aitken: On the basis of the ministerial assurance, I withdraw my amendment.

Members: No.

Hugh Henry: He must be suffering from shock.

The Convener: The choice is for Mr Aitken.

Bill Aitken: Sorry, I meant to say that I press amendment 168.

Amendment 168 agreed to.

Amendments 169 and 170 moved—[Bill Aitken]—and agreed to.

The Convener: If amendment 29 is agreed to, amendment 171 will be pre-empted.

Amendment 29 moved—[Hugh Henry]—and agreed to.

Section 2, as amended, agreed to.

After section 2

Amendment 30 moved—[Hugh Henry]—and agreed to.

Section 3 agreed to.

Section 4—Determining nature of complaint

Amendments 172 and 173 moved—[Bill Aitken]—and agreed to.

The Convener: At this point, we will have a short break of three or four minutes.

15:17

Meeting suspended.

15:26

On resuming—

The Convener: Amendment 192, in the name of John Swinney, is grouped with amendments 193 to 201, 203 to 205, 207 to 216, 202, 217 to 220 and 222 to 224. I draw members' attention to the pre-emption information in the list of groupings.

Mr Swinney: I reassure the committee that, if the minister gives the amendments in the group, which are all in my name, the enthusiastic welcome that he gave earlier to some of Bill Aitken's amendments, I will be ready to move, in the conventional fashion, to accept the minister's guidance.

In paragraph 70 of the committee's stage 1 report on the bill, the committee accepted and agreed with the Government's view, as proposed in the bill, that conduct and service complaints should be separated. However, the report stated that opinion was divided on the issue and asked the Government to make clear how greater distinction could be drawn between conduct and service complaints. I have looked through the amendments that the minister has lodged on that issue, but I am not clear how the Government is responding to that point. My amendments are designed to create a single destination for conduct and service complaints—they would give the commission the ability to determine conduct and service complaints.

I draw to the committee's attention the evidence that it was given on 23 May 2006 by Mr Neil McKechnie, who was one of the members of the public who gave evidence. He stated:

"Many cases that start off as service complaints can migrate into more serious matters."—[*Official Report*, *Justice 2 Committee*, 23 May 2006; c 2469.]

That was a particularly compelling piece of evidence, which was reinforced by the evidence of the former Scottish legal services ombudsman, Mrs Costelloe Baker, who said:

"The split between service complaints and conduct complaints confuses the profession and it certainly confuses service users and people who come into contact with the profession. The split that is proposed in the bill will increase the confusion on both sides."—[*Official Report*, *Justice 2 Committee*, 16 May 2006; c 2375.]

That is the context for my amendments.

It is important that the way in which individuals complain about how they access and obtain legal services and the consequent issues that arise from that are dealt with as seamlessly as possible in the bill. In the debate on an earlier group of amendments, the minister said that the bill's objective is to ensure an "independent and transparent" process. I agree heartily with that aspiration. The ability to create an independent and transparent process would be assisted formidably if we ensured that the commission determined conduct and service complaints. That would give the public an absolute reassurance that the process was independent and transparent.

15:30

My amendments largely relate to the objective of giving the commission the ability to determine conduct complaints as well as service complaints. I draw the committee's attention to amendment 198 in particular. The amendment makes it clear that, once the commission has upheld a conduct complaint, it must remit the matter to the relevant professional organisation, which must then determine any sanction to be applied. Amendment 198 would ensure that, although the commission would determine conduct complaints, any sanction or penalty would be for the profession to decide. It is the profession that admits members, and my amendments in no way question the ability of the profession to determine who should be in the profession and who should not, depending on the way in which a conduct complaint has been determined.

I want to make two more points in support of my amendments. In late August, the media picked up on the fact that the Law Society of Scotland had had to erase from the records of about 250 solicitors reprimands for what the Law Society had considered to be unsatisfactory conduct. Such findings of unsatisfactory conduct had been put on solicitors' records over a three-year period. After steps had been taken towards having the findings scrutinised in the courts, the Law Society accepted that it had overstretched its powers and responsibilities in reaching the findings and had to withdraw them.

I use that example simply to demonstrate that the Law Society's record of handling issues relating to conduct is far from exemplary. On many occasions, the Law Society has been concerned about the conduct of individual solicitors but it has had to erase its findings from those solicitors' records because they were ill-founded.

The committee would be well advised to take the precaution of supporting my amendments, as they would ensure that the commission was able to take independent decisions in respect of such complaints. Obviously, the Law Society would not have concluded without particularly good reason that those solicitors had to have a finding of unsatisfactory conduct placed against their names. However, the society was subsequently unable to sustain its findings, and I therefore question its ability to handle conduct complaints as set out in the bill as it stands.

Finally, I draw the committee's attention to the current debate within the profession over whether

it should retain its obligation under section 1 of the Solicitors (Scotland) Act 1980 to act in the public interest. The profession is debating whether the bill that we are discussing and various other issues make it appropriate for the profession to retain that obligation, or whether the Law Society and other professional organisations should operate to promote the interests of the profession rather than to respect the public interest obligation.

The debate has been played out in the media—for example, in an article in *The Scotsman* on 4 July and in the *Scottish Law Gazette*. If we are to reform the way in which the profession is regulated and to reflect all the issues, we will have to bear that debate in mind.

It might be time to allocate to the commission, rather than to the professional organisations, responsibility for guaranteeing the public interest in relation to questions about a solicitor's conduct. We should avoid the potential for confusion, by allowing the professional organisations actively to promote the interests of their members and by allowing the commission to determine what is in the public interest in relation to conduct and service complaints. The Parliament has a timely opportunity to do that and to allow the profession to take the stance that it wants to take on the matter.

I move amendment 192.

Bill Aitken: I understand the logic behind Mr Swinney's proposals. However the fact that there has been a disturbingly high number of cases does not necessarily mean that there is a serious problem, given that most of the reported incidents were fairly minor.

Mr Swinney has not considered that a determination about disciplinary action would be made by the Scottish Solicitors Discipline Tribunal, which is sufficiently detached from the Law Society. Mr Swinney is right to express concern, but the level of concern that there has been historically does not justify the action that he proposes.

The Convener: I understand that the Law Society does not have the power to note a finding of unsatisfactory conduct on internal records—the purpose of the proposed court action was to determine that. That is a procedural matter, which has nothing to do with how the society handles complaints, but perhaps Mr Swinney will comment on it when he winds up the debate.

Hugh Henry: So that Mr Swinney can be in no doubt about our conclusion, I should say that we do not accept his proposals. However, I commend him and the clerking team for producing well-crafted and precise amendments, although I do not support them. They have worked hard.

The amendments in Mr Swinney's name would jeopardise the commission's role in operating informal, consumer-friendly procedures, encouraging mediation and dispute resolution at source and focusing on redress for complainers. It is a mistake to suggest that the skills and procedures that are needed for investigating service complaints are transferable to the investigation of conduct complaints. Allegations about a practitioner's conduct carry the risk of a range of disciplinary sanctions up to and including the practitioner's loss of livelihood, which is a serious sanction. A finding against a practitioner that would trigger such sanctions would be likely to lead to more formal adversarial procedures—even if the sanctions were imposed by the professional body—and I am not sure that that is what we are trying to encourage by setting up the commission. The professional organisations and the Scottish Solicitors Discipline Tribunal are skilled at performing their roles and should be left to do the job.

In response to John Swinney's comments on unsatisfactory conduct, the bill will create a new category of unsatisfactory professional conduct and ensure that the Law Society can discipline its members if it is appropriate to do so.

John Swinney talked about complaints that progress from being about service to being about conduct, but that would continue to happen if his amendments were agreed to. He proposes that a complaint that was first considered by the commission would be passed to the Law Society so that disciplinary action could be considered, but the efficacy and necessity of such an approach are not clear to me. Indeed, his proposal is contradictory, in that it would leave the final determination of cases to the Law Society, whose handling of complaints he says has been "far from exemplary".

The regulatory bodies set the standards of conduct for members of the profession, and they are—notwithstanding John Swinney's concerns—best placed to assess shortcomings. The commission could be distracted from its focus on consumer redress if it had to consider the demands of formal trials of practitioners.

The remedy that has been proposed could leave most people dissatisfied. It is clear that the professional bodies would be unhappy about losing their role of investigating their members' conduct. Such a role is a key part of the remit of any body that is responsible for setting and maintaining standards of conduct and discipline. Furthermore, some complainers could think that the proposals, in leaving the sanctions to be imposed by the profession, still do not go far enough. They may think that a principle has been upheld but that the sanction is inadequate and

may still blame the Law Society. We could therefore end up with the worst of both worlds.

There is also a weakness in the amendments, in that conduct complaints are seen as separate from subsequent decisions on sanctions. One could conceive of situations in which the commission would have to carry out a substantial amount of work in order to determine whether there was a conduct complaint and would then pass the complaint to the Law Society. The question of what sanction the Law Society would impose would then have to be asked. Would it simply accept the commission's recommendation on the grade of the conduct complaint, or would it have to satisfy itself and carry out another investigation to determine whether the conduct complaint was serious enough for someone to be struck off, or whether it simply merited a warning? If the Law Society did not have all the facts and had not satisfied itself about the circumstances, I wonder how it could make a relevant judgment on the severity of the sanction. There would be two investigations into the same complaint. It would be odd for the commission to investigate the merits of conduct complaints but not set rules of professional conduct or impose sanctions for breaches of rules. If there is logic in John Swinney's argument, sanctions should lie with those who investigate cases. However, given the potential severity of sanctions, there would be a whole new series of appeals. We are not talking about financial penalties only—the issue goes beyond that, as a person could lose their livelihood.

There is no good argument in favour of what has been proposed, which could continue the confusion and involve more bureaucracy and work. The committee's stage 1 report on the bill was correct to endorse the basic distinction between service and conduct matters. I understand what John Swinney has said, but I hope that, having reflected on the matter, he will conclude that his proposals might add to, rather than resolve, the problem.

Mr Swinney: The convener mentioned the Law Society not having the power to note findings of unsatisfactory conduct, which is my understanding of the position. It does not augur well for the handling of conduct issues if the Law Society is taking action that it has no foundation for taking. I say that to illustrate the point that it would be better for a robust independent process to handle such issues.

I appreciate the minister's comments on the well-crafted and precise nature of the amendments, although the committee clerks are entitled to much more praise than I am for them.

There is a contradiction in the minister's arguments. He raised the spectre of the commission sustaining a conduct complaint against a practitioner and the Law Society, in determining a sanction, having to be satisfied that the commission had properly upheld the complaint.

15:45

Throughout these proceedings, in response to a number of amendments that Mr Aitken has lodged, the minister has said, in effect, that we should have confidence in the commission and believe that it is going to take robust decisions. I am making that assumption that the commission will be able to take robust decisions. However, in the most extreme examples I cannot see how the commission could determine who should be, or should not be, a member of the profession. There must be a limit.

The minister said that complainers might not be happy with the sanctions that the professional organisation agrees. Given my experience, I think that it is unlikely that all complainers will be happy with all decisions taken in the process. However, we have to ensure that we have a reliable, robust and definitive process. I believe that my amendments would help to create an "independent and transparent" process, if I may again use the phrase that the minister used earlier.

During the stage 1 debate in the chamber I raised a point on which the minister kindly wrote to me on 15 September. It relates to some of the provisions in the bill that are not a million miles away from what I am concerned about. I believe that the minister has copied to members of the committee the letter that he wrote to me. I assume that, later in the proceedings, he will move and press amendment 96, which will add further provisions to section 16(6), whereby the commission will have the ability to direct a professional organisation to comply with a commission report about a conduct investigation that that professional organisation has carried out.

The bill already gives the commission the power to look into the way in which a conduct complaint has been handled and to direct the professional organisation about how that complaint should be administered. Now the minister wants to provide for the commission to be able to seek redress.

I am attracted by the proposals that the minister is making—I quite like them and I hope that he will press them. However, amendment 96 in effect acknowledges that the commission could become involved in conduct complaints. I want to ensure that that is provided for comprehensively, rather than in a limited fashion under the existing provisions of section 16, which would be enhanced by amendment 96.

The Convener: The question is, that amendment 192 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 192 disagreed to.

Amendment 193 not moved.

The Convener: Amendment 174, in the name of Bill Aitken, is in a group on its own.

Bill Aitken: With amendment 174 I am seeking to ensure that there is a degree of reciprocation. It takes two to tango. The legislation imposes a duty on the commission to co-operate and liaise with professional organisations. Is it not therefore appropriate that organisations should do likewise?

I move amendment 174.

Hugh Henry: I do not know what has happened to Bill Aitken, because 174 is a constructive amendment. It makes sense for the professional bodies, as well as the commission, to be under a duty to co-operate and liaise in the handling of hybrid complaints. An express duty would reduce the possibility of obstructive behaviour. I support amendment 174.

Bill Aitken: I thank the minister for his magnanimous gesture.

Amendment 174 agreed to.

Section 4, as amended, agreed to.

Section 5—Complaint determined to be conduct complaint

The Convener: Amendment 31, in the name of the minister, is grouped with amendments 32, 65, 75, 77, 78, 90, 91 and 100. I draw members' attention to the information on pre-emption that is given in the groupings list.

Hugh Henry: The amendments in this group will, in the interests of transparency, require the commission and its determination committees to give reasons for a variety of key decisions.

Schedule 3 contains a rule-making power for the commission to regulate such matters. Amendment 100 confines that power expressly to situations in which the bill as amended would not require reasons to be supplied. The other amendments will require that reasons must be given when, for instance, a complaint is categorised as a service complaint or a conduct complaint or a binding determination is made on a service complaint.

I move amendment 31.

Amendment 31 agreed to.

Amendment 194 not moved.

Section 5, as amended, agreed to.

Section 6—Services complaint: notice and local resolution or mediation

The Convener: Before calling amendment 195, I point out that, if amendment 195 is agreed to, amendment 32 will be pre-empted.

Amendment 195 not moved.

Amendment 32 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 33, in the name of the minister, is grouped with amendments 34 to 38, 40, 41, 61, 67, 73, 74, 79, 80, 97, 98, 111, 112 and 143. I draw members' attention to the information on pre-emptions.

Hugh Henry: Amendment 33 will disapply the requirement to refer complaints back for resolution at source and for mediation by the commission if the complainer is a public body or office holder. Such a requirement would not make sense where there was no dispute arising from a previous relationship between the parties but the complainer was, in the public interest, simply drawing a matter to the commission's attention.

Amendments 35, 36, 73, 79, 80, 97 and 111 are consequential on amendment 34, which will split section 6 into two separate sections. That means that various references to section 6 elsewhere in the bill will need to be corrected.

Amendment 37 will require the commission to proceed to formal determination of any service complaint from a public body or office holder. That is because the alternatives to proceeding to determination, such as mediation or proposal of a provisional settlement, are not appropriate where there is no personal dispute between the parties.

Amendments 38 and 40 will require the commission to offer, for service complaints from members of the public, a proposed settlement that will become binding if it is accepted by all parties. Such a requirement supports our policy of making initial complaint handling as informal and as consensual as possible. We envisage that initial investigations and proposed settlements will be carried out by commission staff. If a settlement is not accepted by all parties, the case will be

referred to a determination committee of commission members for a binding determination.

Amendments 41, 61, 67, 74, 112 and 143 are minor technical amendments that result from the insertion, by amendment 40, of new subsections into section 7.

Amendment 98 is an ancillary provision that will permit the commission to use its rule-making powers to regulate how a provisional decision is to be made and accepted.

I move amendment 33.

Amendment 33 agreed to.

Section 6, as amended, agreed to.

Amendment 34 moved—[Hugh Henry]—and agreed to.

Section 7—Services complaint: Commission's duty to investigate and determine

Amendment 196 not moved.

Amendment 35 moved—[Hugh Henry]—and agreed to.

Amendment 197 not moved.

Amendments 36 to 38 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 39, in the name of the minister, is grouped with amendment 60.

Hugh Henry: Amendment 39 requires the commission to determine whether to uphold a service complaint according to what it

"considers is fair and reasonable in the circumstances".

The fairness and reasonableness test is mentioned explicitly in section 8, which deals with decisions about redress once a complaint has been upheld, but, as the committee knows, it is not mentioned explicitly in section 7. I do not want the idea to emerge that decisions on whether to uphold a service complaint do not need to be fair and reasonable. The amendment has been lodged to remove any doubt.

Amendment 60 further defines what is meant by "fair and reasonable" by specifying that it includes taking into account relevant law, such as the law on negligence, and professional rules and codes of practice.

The Executive has listened carefully to the concerns of professional indemnity insurers about the absence of an explicit role for the law of negligence, but I consider that there would be serious problems with requiring the commission to separate negligence aspects from wider aspects of inadequate professional services and adjudicating on complaints. The task would involve potentially complex legal analysis, which would be cumbersome for the majority of small complaints. It would add to the commission's costs and would bog down its administration.

There could also be legal problems with such a move. The commission is currently designed as a specialist consumer complaints-handling body, which is focused on awarding redress. If it moves towards being a body that makes findings of professional negligence against practitioners, that could change the regulatory nature of the commission and might have ECHR implications. For example, we might have to introduce separate decision-making procedures for the negligence aspects.

Amendment 60 moves as far as I think we can move towards providing reassurance about the nature of the criteria that the commission will apply. Of course, as with any new start, that will have to adapt and change. That should be viewed positively and what is involved should be made as clear as possible so that people can make the adjustment.

Amendment 60 does not require the commission to identify negligence complaints separately but, by requiring it to take the law of negligence into account, the amendment should ensure that awards made by the commission are broadly in line with those that would have been made by a court in the same circumstances. I do not see any reason to believe that in practice the commission will hand out large sums of money to complainers who would not have succeeded in negligence actions.

I move amendment 39.

Amendment 39 agreed to.

Amendment 40 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 175, in the name of Bill Aitken, is in a group on its own.

Bill Aitken: The purpose of amendment 175 is to probe whether both the complainer and the practitioner may make oral representations on a complaint. Section 7 requires the Scottish legal complaints commission to give both the complainer and the practitioner the opportunity to make representations on a complaint but is silent on whether those representations may be written or oral. The purpose of moving the amendment is to seek clarification from the minister.

I move amendment 175.

Hugh Henry: I understand what Bill Aitken is saying. An oral representation can be considered and a hearing can be held when that is deemed appropriate. We believe that the matter is best left to the commission's discretion so that it holds hearings as appropriate and when necessary. I do

not believe that it is right that the complainer or the practitioner should have an automatic right to a hearing. That could be a heavy drain on commission resources. I sympathise with the principle of what Bill Aitken is saying but the practicalities could be onerous, so I urge the committee to resist amendment 175.

16:00

Bill Aitken: On the basis of what the minister has said—that an oral representation would be competent—I will not press amendment 175.

Amendment 175, by agreement, withdrawn.

Section 7, as amended, agreed to.

Section 8—Commission upholds services complaint

Amendment 41 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 176, in the name of Bill Aitken, is grouped with amendments 177, 178, 47 to 51, 55 to 57, 182, 59, 183 and 68 to 72. Before I call Bill Aitken to speak to and move amendment 176, and to speak to the other amendments in the group, I draw members' attention to the pre-emption information on the group.

Bill Aitken: Amendment 176 attempts to clarify the legal relationship. In effect, the amendment would ensure that steps to be taken under section 8(1) could apply only where the complainer is the client of the practitioner complained against. The provisions of sections 8(2)(a) to 8(2)(d), which relate to the repayment of fees, rectification at the practitioner's own expense, completion of other work and payment of compensation, are all client-focused actions. The effect of amendment 176 would be to ensure consistency and client focus throughout section 8.

Amendment 177 clarifies the nature of the activity undertaken by the Scottish legal complaints commission under section 8. It simply seeks to harmonise the phraseology used elsewhere. Amendment 182 is consequential.

I move amendment 176.

Hugh Henry: The Executive amendments later in the group fully implement the policy that redress in respect of upheld service complaints should be given to third-party complainers, where they have been directly affected by the service or conduct of practitioners. Amendment 176, in the name of Bill Aitken, is diametrically opposed to that policy, and proceeds on the basis that only the client should be able to receive the redress. I would argue that there could be relatively common situations in which redress for third parties is important—for instance, where the client is a trustee or executor but the party who has suffered the loss is a beneficiary.

On amendments 177, 178, 182 and 183, I believe that the distinction between a determination and a direction is entirely clear. To determine, or make a determination, is to reach a decision on a complaint. To direct, or make a direction, means to order action to be taken—for example, in relation to redress. I believe that there is no ambiguity whatever. The terminology used has been chosen carefully. It is, and must be, consistent with the parent legislation. Therefore, I invite Bill Aitken not to press his amendments.

Amendment 47 provides for remedial action in respect of a service complaint to be taken in the interests of the complainer, rather than the client, to cover a situation where the complainer might not be the client. Amendments 48 to 51 amend section 8 to permit compensation in respect of a service complaint to be awarded to a directly affected complainer, rather than exclusively to a client. Amendments 55 to 57 and 68 to 72 make consequential changes to sections 8(3) and 10, which deal with taking account of previous awards of compensation by the Scottish legal complaints commission and the court.

Amendment 59 corrects a small grammatical error in section 8(7), where Scottish ministers were mistakenly referred to in the singular.

Bill Aitken: The minister appears to be attempting to legislate for a catch-all situation. There would certainly be an injustice if the circumstances that he envisages were to arise, but a legal remedy would be available to any injured third party under the common law of reparation, so there would be no difficulty. He seeks to expand widely the powers of the commission under the bill, and that is a dangerous course of action to take. We must ensure that there is proper and appropriate compensation for an injured party, but there must be a client relationship, and what the minister is seeking to do makes the position much wider. To my mind, that is unwise, so I will press amendment 176.

The Convener: The question is, that amendment 176 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 176 disagreed to.

The Convener: Amendment 42, in the name of the minister, is grouped with amendments 43 to 46, 53, 54 and 58.

Hugh Henry: Amendments 43 to 46 are minor drafting amendments. The other amendments in the group fine tune the provisions in the bill that deal with the situation in which a legal practitioner who is the subject of a service complaint is employed by another lawyer or legal practice. That employer is referred to in the bill as the employing practitioner.

Amendments 42 and 53 provide for a new subsection (2A) to be inserted into section 8 to replace subsection (6), which amendment 58 removes. The new subsection requires any direction by the commission on a service complaint that orders a reduction of fees or outlays or the carrying out of remedial or other work to be made against the employing practitioner, not the employee. That is required because it is the employer who receives the proceeds of the relevant business activities and controls the work.

The new subsection takes a more sophisticated approach to compensation, under which the commission will be able to order that part or all of the compensation be paid by the employee practitioner if it considers that to be appropriate. The provision may be used to reflect the level of personal culpability, for instance, if the employee acted contrary to the employer's express wishes or instructions.

Amendment 54 is a small technical amendment that is designed to ensure that any previous awards of compensation that the commission takes into account arise from the same practitioner-client relationship.

I move amendment 42.

Amendment 42 agreed to.

Amendment 43 moved—[Hugh Henry]—and agreed to.

Amendment 177 moved—[Bill Aitken].

The Convener: The question is, that amendment 177 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 177 disagreed to.

Amendment 44 moved—[Hugh Henry]—and agreed to.

Amendment 178 moved—[Bill Aitken].

The Convener: The question is, that amendment 178 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 178 disagreed to.

Amendments 45 to 48 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 179, in the name of Jackie Baillie, is grouped with amendments 180, 181 and 184. I point out that, if amendment 179 is agreed to, amendment 180 will become an amendment to leave out £15,000 and insert £5,000.

Jackie Baillie (Dumbarton) (Lab): I intend to move amendment 179 and speak to amendment 181; I will leave Bill Aitken to do his own talking.

Amendment 179 seeks to change the maximum level of compensation from £20,000 to £15,000. Like the committee, I accept that the commission should be able to deal with negligence claims—that is appropriate. My difficulty arises with the level of compensation and the lack of justification for setting the maximum level at £20,000. The minister's letter to the committee of 6 September was helpful in setting out some of the detail of the thinking that underpins that maximum, but that illumination made me more convinced that the evidence base is not as strong as it needs to be, hence amendment 179.

I expect that the minister will rightly ask me why the level should be set at £15,000. I contacted the brokers for the master policy, who provided me with figures for the level of claims in any given period. It is interesting that the majority—I confess that I do not have the precise figure, but it was

either 55 per cent or 57 per cent—of claims were settled below £1,000.

Claims are banded from zero to £1,000; up to £5,000; up to £10,000; up to £15,000; and from £15,000 to £20,000. That is very wide of the £6,000 to £20,000 scale suggested in the minister's letter, so I do not quite get how we marry that up. If we include all the claims settled up to the £15,000 level, we cover almost 90 per cent of all claims. A small handful rest in the £15,000 to £20,000 category. It is difficult to know the distribution—whether they are nearer the £15,000 mark or the £20,000 mark—but in many cases expenses will have been included. Again, there is no indication of the level.

In essence, the figure of £20,000 is not supported by robust evidence. The level of £15,000 would be more proportionate. It would capture the overwhelming bulk of complaints and is more justified, based on the evidence. The Executive prides itself on evidence-based policy making, so I invite it to reflect again on the figure.

The alternative suggestion that has been made is that the £20,000 maximum reflects the level of compensation available in England and Wales. If that is the case, I suggest that the terms of my second amendment—amendment 181—should be attractive to the minister. In essence, amendment 181 seeks to mirror, in the main, clause 110 of the draft Legal Services Bill at Westminster. Amendment 181 is about ensuring that the total value of any direction should remain at £20,000; the key difference is that I have included fees and outlays in the limit. To use the minister's words in relation to another issue, it is fair and reasonable. It is more proportionate and is in line with proposals for England and Wales.

I have given the minister a choice: amendment 179, which sets a new upper limit; or amendment 181, which is in the spirit of the Executive's intention, but sets out what must be included within that upper limit. Either amendment would do.

I move amendment 179.

Bill Aitken: I must say how impressed I am with the research carried out by Jackie Baillie, although it is no surprise, as we are not talking about massive negligence claims in respect of someone providing a faulty title. Basically, we are talking about service complaints, the vast majority of which will be settled at a fairly nominal figure. The minister accepted that argument in 2004, when the figure was last considered and was fixed at £5,000, which is exactly the figure that I have incorporated in amendment 180. There is no justification for a £20,000 limit. The £5,000 limit has been in force for a fairly short period. The issues that have been dealt with under the legislation are such that the vast majority of claims will be settled for a fairly nominal amount. I do not know where the £20,000 figure comes from. I await the minister's response with interest.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I have considerable sympathy with Jackie Baillie's amendments. However, when she winds up, will she indicate whether she will move both amendments, because as far as I can tell they are not incompatible? Obviously, her response will come in the light of the minister's comments. We may well be able to have a maximum compensation amount of £15,000, within an overall window of £20,000 including fees and outlays, to make the position consistent with that in England and Wales.

The committee has received many representations on the perceived threat, in particular to small firms, but also to firms that carry out business that attracts a higher than proportionate number of complaints. I am sympathetic to Jackie Baillie's comments about the real rationale behind the overall sum.

Some people have commented, wrongly, that £20,000 is the typical amount that the commission will hand out, but, of course, that is not the case. There has been misinterpretation by some. I am not questioning the motives of those who have misrepresented the level. I am just saying that that has happened.

I will be interested to hear the minister's response. It is right to set a level that allows an individual who has been the victim of bad service to have all the fees and outlays reimbursed plus compensation. I am sympathetic to both amendment 179 and amendment 181, which is why I asked whether Jackie Baillie will be pressing both of them. However, I will listen to the minister's further justifications.

16:15

The Convener: Do you have a comment on amendment 180?

Jeremy Purvis: I do not think that amendment 180 is appropriate.

Mr Stewart Maxwell (West of Scotland) (SNP): As committee members know, the matter was the subject of much discussion during the stage 1 process and in the stage 1 debate. Like Jeremy Purvis, I agree that there has been too much focus on the £20,000 figure and not enough on the fact that it is a maximum. As Jackie Baillie rightly pointed out, the vast majority of claims are for about £1,000.

My comment is more of a question for Jackie Baillie. Why should we choose £15,000 rather than £20,000? She stated that approximately 90

per cent of claims would be dealt with by the £15,000 figure. Given that the motivation is to make it much easier for customers—in this case, the clients or the complainers—not to have to go to court in cases in which the claim is above the maximum level, why should we choose a figure that encapsulates only 90 per cent? Why should we not go for a higher figure that encapsulates more than 90 per cent of those who are caught in the situation? I am not sure about the logic of catching 90 per cent rather than 95 per cent, 99 per cent or even 100 per cent. Perhaps Jackie Baillie could explain that.

Maureen Macmillan (Highlands and Islands) (Lab): I seek clarification of the level of fees and outlays that might have to be refunded. Because of the level of house prices nowadays, conveyancing fees are fairly substantial and, if the fees and outlays had to be refunded, there might not be much left out of £15,000 or £20,000 for the compensation payment. I need to know more about the level of fees before I comment further.

Hugh Henry: A number of different points have been made during the discussion. On the genesis of our proposal, I simply refer members to the evidence that I gave to the committee, which is on the record in the *Official Report*. The proposal arose from discussions with representatives of the Law Society of Scotland, albeit that there are different opinions within the legal profession about the proper level and what the figure should be.

On whether the figure should be £20,000, £15,000 or £5,000, Stewart Maxwell and Jackie Baillie are right to say that there has been too much focus on the maximum figure, which would be paid out in only a very small number of cases. The vast majority of payments will be at the lower end of the scale. If someone has done something so bad that the commission thinks that a figure higher than £5,000 is justified, surely it is right that the person who suffered is adequately compensated. It would be entirely wrong to suggest that we should try to minimise the figure in cases in which someone has suffered loss, distress and so on.

We can argue about whether the figure should be £20,000, £50,000 or £100,000, but what we are talking about is a level that reflects the payments that people might think reasonable depending on the circumstances. As I did in my previous evidence giving, I can only refer the committee to the situation of the Financial Ombudsman Service. The fact is that very few, if any, of the payments that are made in that regard are made at the maximum limit. However, we are talking about not the norm but the exception. My worry is that where someone has suffered exceptionally, they may not be compensated adequately.

The existing compensation limit of £5,000 is perfectly adequate to deal with inconvenience and distress, and to cover any small associated financial cost. However, the proposal would permit only the very smallest of negligence claims to be incorporated into a service complaint that was made to the commission. We should remember that people can suffer substantially from negligence. In the case of a house purchase for example, we know that people can suffer significant loss. It is right that we should reflect on those extreme or exceptional circumstances. In the context of negligence claims, £20,000 is not a large amount.

As Stewart Maxwell said, the figure is not an average but a maximum. I have also said that the average figure will be much lower. The proposal will allow the majority of negligence cases that cannot be settled with insurers to be absorbed within the commission's remit, if the complainer so chooses. Obviously, if someone has suffered exceptionally, they have the right to go to court to get proper redress. We must remember that, in today's prices, £10,000, £15,000 or £20,000 are relatively low sums. We are trying to encourage the settlement of cases at those levels without the need to go to court.

Amendment 181 might look like an attractive compromise, but its proposal is not in the interests of complainers. Maureen Macmillan hit the nail on the head. The amendment follows the approach that was taken in the draft Legal Services Bill for England and Wales by proposing to set an upper limit of £20,000 for the financial redress that can be awarded to complainers, including the rebate of fees.

We take the view that the amount by which a complainer has been overcharged should not serve to reduce the amount that the complainer would otherwise be awarded in compensation. If someone has suffered loss, the calculation of the loss should be carefully thought through. In effect I am saying that, if someone loses their shirt because a lawyer has given them bad advice, the lawyer should compensate for the loss of the shirt. If the lawyer has charged someone for advice, he should also have to repay the overcharged amount.

The point that Maureen Macmillan made is that, in complex or lengthy transactions, the amounts that are charged in fees can be substantial. I understand from the Law Society of Scotland that on occasion, when fee rebates are taken into account, it has awarded more than £20,000 under the existing arrangements. It would be a regressive step if we were to prevent that from continuing. Applying the limit of £20,000 across the board, as amendment 181 proposes, would lead some complainers to lose their proper access to justice. Instead of being able to get complete redress under the more informal complaints-

handling arrangements, they would have to go to court to get back the substantial fees that they had paid out to the lawyer. I understand that even the Law Society of England and Wales considers that the £20,000 limit in the UK bill should not include fee rebates. I also understand that the limit that has been set on that basis may not survive the passage of the bill.

On amendment 184, our policy intention is that, in an action for negligence, when calculating any damages that may be due, the court should take account of any award of compensation that the commission makes. We expect the courts to do that. However, it is going too far to set a mandatory £1 for £1 reduction. For example, when the commission includes in its determination a determination on the amount of compensation, it should do so on the basis of what is fair and reasonable in the circumstances. It may not always be the case that what is fair and reasonable in the circumstances of a complaint before the commission is relevant to the court in making its decision on an award of compensation. We do not wish to tie the hands of the court by requiring it to take account of any element of compensation that is not pertinent to the award that it decides to make.

I hope that I have given an explanation and some assurances. I reiterate that there is an issue about justice for complainers, which needs to be upheld in the bill.

Jackie Baillie: I have no difficulty with the minister's contention that the issue is about justice for complainers in the system; in fact, the entire bill is about ensuring that there is justice for complainers in the system. However, we must ensure that the system is fair and reasonable to all parties.

I will deal with some of the points that have been made and will finish up with the minister's point about what the Law Society of England and Wales has said, which is a point of discussion and debate. On Jeremy Purvis's comments, my reasoning for lodging two amendments on the issue—I realise that they are not mutually exclusive—is that they are different approaches to the same problem. I wanted to provide a choice and therefore stimulate debate about the most appropriate approach. At the end of what I have to say, I will, I hope, enlighten members as to the approach that I intend to take.

Nobody in the room has a difficulty with the minister's principle, but to take his argument to its logical conclusion, we would have no upper limit at all and so perhaps no requirement for anybody, even those who were pursuing a substantial sum of money, to go to court. Therefore, the issue is what is proportionate in the circumstances and what counts as a substantial sum that would trigger the process of the matter being raised in the courts rather than with the commission.

I say to Stewart Maxwell that I chose the figure of £15,000 because that would capture the bulk of cases. The majority of claims are for much smaller sums. Therefore, some of the scenarios that the minister paints, in all but a limited number of circumstances, would not arise. It is important that we send out that signal, because I know that there are fears about the consequences of the limit, although in many cases they may well be unfounded.

Maureen Macmillan and the minister mentioned the level of fees and outlays. If they cared to look at the provisions in the draft Legal Services Bill, they would see that there are two separate elements. One is about fees and outlays; the second is about technical outlays or fees when a person has to fix the first problem. My understanding is that the Law Society of England and Wales believes that, for the totality of those fees and outlays, the sum of £20,000 would be inappropriate and inadequate to cover all circumstances. Often, the fees and the technical outlays that are required to fix the first problem are enormous and go well beyond £20,000. I accept that absolutely. I thought that that argument might be deployed, which is why I left out of amendment 181 those further outlays or fees—it mentions only the fees and outlays that are incurred in the first place.

Given the substantial difference in understanding of what the Law Society of England and Wales has said, I am happy to withdraw amendment 179 and not to move amendment 181, to allow further discussion on what is an important issue. We should take the time to get the bill right. If the committee is so minded, that might be a sensible approach.

Amendment 179, by agreement, withdrawn.

Amendment 180 moved—[Bill Aitken].

The Convener: The question is, that amendment 180 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 180 disagreed to.

Amendments 49 to 51 moved—[Hugh Henry]—and agreed to.

16:30

The Convener: Amendment 52, in the name of the minister, is grouped with amendments 62 to 64. I draw attention to the pre-emption information on the group.

Hugh Henry: Amendment 52 deals with a situation in which, following investigation of a service complaint, the Scottish legal complaints commission considers that the practitioner concerned may lack competence in an area of the law or legal practice. The amendment enables the commission to report its concern to the relevant professional body. The professional bodies will continue to lead on legal education and training as part of their conduct remit.

Amendments 62, 63 and 64 are minor amendments to section 9, which ensures that both practitioner and complainer are sent copies of any such report as well as copies of any determination or direction on the complaint.

I move amendment 52.

Jeremy Purvis: If the commission considers that the practitioner does not have sufficient competence but the professional body considers that they do, will that not cause difficulties? Their professional body may determine that they are fit to practise but the complaints body for complaints about inadequate professional services may consider that they are not.

Hugh Henry: That takes us back to an earlier discussion about which body should determine whether someone's livelihood is removed. John Swinney touched on that issue.

Amendment 52 enables the commission to report its concern to the relevant professional body. However, we believe that the professional body should still lead on legal education and training; indeed, when there is inadequacy, it should be the body to address that. I do not think that a complaints body is well suited to carrying out the training of the profession. It is well suited to dealing with the complaints that arise, but I would expect the Law Society to consider issues of education and training, which in effect influence how lawyers conduct themselves. To argue that the commission should take on that role would be to confuse its responsibilities.

I give Jeremy Purvis an assurance that amendments will be lodged later at stage 2 that will address directions for training by the professional bodies. We still think that the professional body is the proper place for that training and we will address that problem.

Amendment 52 agreed to.

Amendment 53 moved—[Hugh Henry]—and agreed to.

Amendment 181 not moved.

Amendments 54 to 57 moved—[Hugh Henry]—and agreed to.

Amendment 182 not moved.

Amendments 58 and 59 moved—[Hugh Henry]—and agreed to.

Section 8, as amended, agreed to.

After section 8

Amendment 60 moved—[Hugh Henry]—and agreed to.

Amendment 198 not moved.

Section 9—Services complaint: notice where not upheld or upheld

Amendment 61 moved—[Hugh Henry]—and agreed to.

The Convener: If amendment 183 is agreed to, amendment 62 will be pre-empted.

Amendment 183 moved—[Bill Aitken].

The Convener: The question is, that amendment 183 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 183 disagreed to.

Amendments 62 to 65 moved—[Hugh Henry]—and agreed to.

Amendment 199 not moved.

Section 9, as amended, agreed to.

After section 9

The Convener: Amendment 66, in the name of the minister, is grouped with amendments 113 and 221.

Hugh Henry: Amendment 66 will enable the commission to publish reports on service complaints that have reached a conclusion and on

their outcomes. That will be helpful in informing the public and the legal profession about matters that give rise to complaints and about how the commission handles key issues. The amendment will not permit such a report to identify the complainer without his or her consent, but it will be possible to identify the practitioner without consent if the case is exceptional and the commission believes that it would be in the public interest to do so.

There will be many instances of isolated service failure when a decision in the complainer's favour and an award of compensation are perfectly adequate and adverse publicity for the practitioner may be disproportionate. The impact of reports that name practitioners would be reduced if that were done routinely. There may be instances of serious or repeated lapses from appropriate standards when publicity is justified.

Amendment 113 will insert a reference to the reports into section 32. That will add them to the list of commission publications that cannot attract liability and defamation unless malice is established.

As Colin Fox is not present, I will not dwell on amendment 221. The law already recognises that there is a strong public interest in favour of publication in cases of professional misconduct. Amendment 221 would be more generous to lawyers than the current position, which I find strange and which I am not sure is what Colin Fox intended.

I move amendment 66.

The Convener: When we return to that amendment, Colin Fox will be able to say something about it.

Amendment 66 agreed to.

Section 10—Determination under section 7 or taking of steps under section 8(2): effect in relation to proceedings

Amendments 67 to 71 moved—[Hugh Henry]—and agreed to.

Amendment 184 not moved.

Amendment 72 moved—[Hugh Henry]—and agreed to.

Section 10, as amended, agreed to.

Section 11—Complaint appears during mediation or investigation to fall within different category

Amendments 73 to 75 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 76, in the name of the minister, is in a group on its own.

Hugh Henry: Amendment 76 is a small technical amendment. Under section 11, if the commission is reconsidering how a complaint should be categorised, mediation or investigation by the commission is suspended. Amendment 76 makes clear that the suspension is lifted if and to the extent that the commission confirms that the original classification is a service complaint.

I move amendment 76.

Amendment 76 agreed to.

Amendments 77 to 79 moved—[Hugh Henry]—and agreed to.

Amendment 200 not moved.

Section 11, as amended, agreed to.

Section 12 agreed to.

Section 13—Power to examine documents and demand explanations in connection with conduct or services complaints

Amendment 80 moved—[Hugh Henry]—and agreed to.

Amendment 201 not moved.

The Convener: Amendment 81, in the name of the minister, is grouped with amendments 82, 83, 185, 84 to 89 and 117.

Hugh Henry: Amendment 83 provides the commission with a new power to recover documents and information from complainers as well as from practitioners and firms. The provision is inserted into section 13. The commission needs to have proper investigative powers in relation to all parties to a complaint. Amendments 81 and 82 make consequential amendments to the text of section 13.

Schedule 2 contains supplementary provisions relating to the recovery of documents and information. Amendments 86 to 89 adjust those to incorporate references to the new power in relation to complainers.

Amendment 185 is well intentioned but unnecessary. Legal professional privilege is an automatic right that not even the courts can overrule without explicit statutory authority. At the next meeting of the committee, I intend to move an amendment that will require the commission to make provision in its rules to prevent it from investigating a complaint unless the complainer has waived any relevant rights of confidentiality. However, that amendment will not amount to statutory authority to override legal professional privilege, which the Executive considers to be of fundamental importance. I regard amendment 185 as superfluous and hope that Bill Aitken will accept the assurances that I have given.

Amendment 84 permits the commissioner to recover from practitioners costs that have been reasonably incurred in obtaining documents and information from them when those are not supplied on demand and the commission is required to obtain a court order for their disclosure.

Amendment 85 completes the provisions on recovery of documents and information by the commission and enables the commission to obtain documents and information from third parties that are not parties to the complaint in question. If such documents and information are not handed over voluntarily, the commission is enabled to apply for a court order for disclosure. Such an order will be granted only where the court considers that the material is relevant to the investigation or report concerned and that disclosure would be in the public interest. The law of legal professional privilege is left unaltered and will continue to apply, so a third-party lawyer will not be forced to disclose confidential communications with a client unless that client consents.

Amendment 117 defines the court referred to in the amendments as the Court of Session.

I move amendment 81.

Bill Aitken: As the minister correctly identifies, the issue of legal professional privilege has been taken very seriously by the courts of Scotland over centuries. The matter has been complicated slightly by the fact that article 8 of the European convention on human rights makes quite clear that the right to privacy is paramount in all consideration of such matters. I have been somewhat reassured by the minister's comments. With the caveat that I will examine any further amendment that the minister lodges on the matter, I will not move amendment 185.

Amendment 81 agreed to.

Amendments 82 and 83 moved—[Hugh Henry]—and agreed to.

Amendment 185 not moved.

Section 13, as amended, agreed to.

After section 13

Amendments 84 and 85 moved—[Hugh Henry]—and agreed to.

Section 14 agreed to.

After section 14

Amendment 186 moved—[Bill Aitken].

16:45

The Convener: The question is, that amendment 186 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 186 disagreed to.

Amendment 187 not moved.

Section 15—Handling by relevant professional organisations of conduct complaints: investigation by Commission

Amendments 90 and 91 moved—[Hugh Henry]—and agreed to.

Amendment 203 not moved.

Section 15, as amended, agreed to.

Section 16—Investigation under section 15: final report and recommendations

The Convener: Amendment 188, in the name of Bill Aitken, is grouped with amendments 92, 93, 189 and 94 to 96.

Bill Aitken: The effect of amendment 188 is to delete paragraphs (b) to (d) of section 16(2). Section 16 gives the proposed commission the power to make a report on the handling of a complaint by a professional organisation, provided that it contains one of the following recommendations:

"that the conduct complaint be investigated further by the relevant professional organisation … that the conduct complaint be reconsidered by the relevant professional organisation"

and

"that the relevant professional organisation consider exercising its powers in relation to the practitioner concerned".

The issue is whether the role of the complaints commission should be restricted in dealing with conduct cases. Clearly, the Justice 2 Committee agreed with that point of view—I refer members to paragraph 70 of its stage 1 report.

I move amendment 188.

Hugh Henry: The Law Society is keen for the commission's oversight role in conduct matters to be minimised, as it sees the proposal as the thin end of the wedge and the beginning of a process that, it believes, would result in the legal profession losing control of professional discipline.

In my evidence to the committee, I have made it clear that the Scottish Executive sees professional discipline as the natural function of a professional body and one that ties in closely with the wider functions that the professional body exercises in relation to the profession.

Having said that, I would have to say that the profession's responsibility for conduct matters needs to be contingent on a certain level of public accountability for the way in which the role is performed. The commission's oversight role will provide invaluable information about how self-regulation in the area is working. Its powers to enforce its recommendations will respond to the long-standing concerns about the weaknesses of the powers of the Scottish legal services ombudsman in this area. I do not think that it would be appropriate for the commission to have fewer powers than the ombudsman has. The commission should be able to recommend that a conduct complaint be reconsidered or investigated further by a professional body if the commission is concerned about the thoroughness of the original investigation.

If the commission is concerned about an absence of disciplinary action taken by a professional body in response to its findings, the commission should be able to recommend

"that the relevant professional organisation consider exercising its powers in relation to the practitioner concerned".

I therefore hope that Bill Aitken will withdraw amendment 188.

Amendments 92 and 93 are minor technical amendments to improve the drafting of section 16.

Amendment 94 disapplies the commission's power to direct a professional body to comply with a recommendation if that recommendation is

"that the relevant professional organisation consider exercising its powers in relation to the practitioner concerned".

As the professional body would only need to consider exercising its powers to comply with the recommendation, and could not be directed to take a particular course of action, the attachment of an enforcement power to this type of recommendation is not appropriate.

Amendment 95 requires ministers to consult appropriate interests before exercising the power to amend by order the maximum amount of compensation available in respect of a complaint about the way in which a professional body has dealt with a matter of conduct. The omission of such a requirement was remarked on by the Subordinate Legislation Committee at stage 1, and we undertook to lodge an amendment on the matter at stage 2.

Amendment 96 deals with enforcement of a direction by the commission that a professional body is to comply with a recommendation on a handling complaint. I should say that I hope that such a situation will never arise in practice. The process is that the commission makes a recommendation under section 16(2). If that recommendation is not complied with, section 16(6) enables the commission to direct compliance if it thinks it appropriate. Amendment 96 deals with what would happen if the professional body still did not comply. The amendment would permit the commission to apply to the Court of Session to have the matter dealt with as contempt of court, allowing the court to impose a fine or other sanction. That should ensure compliance with recommendations.

It should be noted that amendment 96 does not automatically penalise an organisation for a failure to comply with a direction. The amendment permits the court to inquire into the commission's petition. The court can consider statements and hear from witnesses before it reaches any decision on whether to treat the organisation as if it had committed contempt of court.

Mr Swinney: I welcome amendment 96 in particular; it is an extension of the sequence of actions that the commission can take to try to ensure that issues that are raised by members of the public are dealt with adequately by professional organisations. I hope that the provisions of amendment 96 will be adequate and I acknowledge that the Government has moved on this point.

The Convener: I invite Mr Aitken to wind up the debate on this group of amendments and to indicate whether he will press or withdraw amendment 188.

Bill Aitken: I am inclined to press amendment 188. In any legislation, questions of balance arise, but in this case the balance is not right. Amendment 96 is somewhat draconian. In effect, we will have a commission with the power to ensure that a ruling of contempt of court is made against a legal body. The bodies involved are corporate bodies, so we could have a situation whereby the dean of the Faculty of Advocates or the president of the Law Society of Scotland could be taken away in handcuffs on the say-so of a commission. That would be unprecedented in Scots law. I will therefore press amendment 188.

Mr Swinney: In a somewhat colourful fashion.

The Convener: The question is, that—

Hugh Henry: Convener, it is important to point out that, if the completely unlikely scenario painted by Bill Aitken came about, it would not be at the behest of the commission but on the order of the court. That is a significant difference.

The Convener: I know that we appreciate excitement at this time of night, but the question is, that amendment 188 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 188 disagreed to.

Amendments 92 and 93 moved—[Hugh Henry]—and agreed to.

Amendment 189 moved—[Bill Aitken].

The Convener: The question is, that amendment 189 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 189 disagreed to.

Amendments 94 and 95 moved—[Hugh Henry]—and agreed to.

Amendment 204 not moved.

Section 16, as amended, agreed to.

After section 16

Amendment 96 moved—[Hugh Henry].

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

Members: No.

FOR

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 96 agreed to.

Section 17 agreed to.

The Convener: That concludes day 1 consideration of the bill at stage 2. We thank the minister and his colleagues for coming along. I also thank John Swinney and Bill Aitken for participating in the debate this afternoon.

Subordinate Legislation

Fire Safety (Scotland) Regulations 2006 (SSI 2006/456)

16:57

The Convener: Item 2 is subordinate legislation. We have two negative instruments for consideration. First, the Subordinate Legislation Committee has drawn the Fire Safety (Scotland) Regulations 2006 to the attention of the committee because of defective drafting in regulation 15(2) and because the meaning of regulation 24(2)(b) could be clearer. Do members have any points to raise or comments to make?

Members: No.

The Convener: We take the point that the Subordinate Legislation Committee has made about drafting. Are members content with the regulations?

Members *indicated agreement*.

Fire (Scotland) Act 2005 (Consequential Modifications and Savings) (No 2) Order 2006 (SSI 2006/457)

The Convener: The Subordinate Legislation Committee has also drawn the committee's attention to the Fire (Scotland) Act 2005 (Consequential Modifications and Savings) (No 2) Order 2006 on the ground that article 3 could be clearer. Do members have any points to raise or comments to make?

Members: No.

The Convener: Are members content with the regulations?

Members *indicated agreement*.

The Convener: I remind the committee that there will be a special meeting in private of both justice committees tomorrow morning at 9.30 in committee room 6, with regard to the budget. On 3 October at 2 pm, we will continue stage 2 consideration of the Legal Profession and Legal Aid (Scotland) Bill. The deadline for lodging amendments for day 2 is noon on Thursday. It is not expected that the committee will proceed beyond section 34. I remind members that it is helpful for the clerks to receive early notification of any amendments that are to be lodged.

I thank the clerks for their help and support during the meeting today and I thank all members for attending.

Meeting closed at 16:59.

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