

# **JUSTICE COMMITTEE**

Tuesday 7 October 2008

Session 3

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## JUSTICE COMMITTEE

**23<sup>rd</sup> Meeting 2008, Session 3**

### CONVENER

\*Bill Aitken (Glasgow) (Con)

### DEPUTY CONVENER

\*Bill Butler (Glasgow Anniesland) (Lab)

### COMMITTEE MEMBERS

\*Robert Brown (Glasgow) (LD)

\*Angela Constance (Livingston) (SNP)

\*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

\*Nigel Don (North East Scotland) (SNP)

\*Paul Martin (Glasgow Springburn) (Lab)

\*Stuart McMillan (West of Scotland) (SNP)

### COMMITTEE SUBSTITUTES

Aileen Campbell (South of Scotland) (SNP)

John Lamont (Roxburgh and Berwickshire) (Con)

Mike Pringle (Edinburgh South) (LD)

Dr Richard Simpson (Mid Scotland and Fife) (Lab)

\*attended

### THE FOLLOWING GAVE EVIDENCE:

Mike Ewart (Scottish Prison Service)

Fergus Ewing (Minister for Community Safety)

Robert Gordon (Scottish Government Director General Justice and Communities)

Ruth Ritchie (Scottish Government Finance Directorate)

### CLERK TO THE COMMITTEE

Douglas Wands

### SENIOR ASSISTANT CLERK

Anne Peat

### ASSISTANT CLERK

Euan Donald

### LOCATION

Committee Room 6



## Scottish Parliament

### Justice Committee

*Tuesday 7 October 2008*

[THE CONVENER *opened the meeting at 10:16*]

### Decision on Taking Business in Private

**The Convener (Bill Aitken):** Good morning ladies and gentlemen. I remind everyone that all mobile phones should be switched off.

Item 1 is to ask the committee to agree that item 4, on whether to accept supplementary written evidence relating to the Damages (Asbestos-related Conditions) (Scotland) Bill, and future consideration of the draft report on the Scottish Government's budget proposals be taken in private. Is that agreed?

**Members** *indicated agreement.*

## Subordinate Legislation

### Restriction of Liberty Order (Scotland) Amendment Regulations 2008 (SSI 2008/307)

10:17

**The Convener:** Item 2 is a negative instrument. No points were raised by the Subordinate Legislation Committee. If members have no questions, are we content to note the regulations?

**Members** *indicated agreement.*

## Budget Process 2009-10

**The Convener:** Item 3 is further consideration of the budget process. This is the second and final scheduled oral evidence session on the draft budget. I welcome today's witnesses: Fergus Ewing MSP, the Minister for Community Safety; Robert Gordon, the director general justice and communities in the Scottish Government; for the second successive week, Mike Ewart, the chief executive of the Scottish Prison Service; and Ruth Ritchie, a team leader in finance justice in the Scottish Government.

Mr Ewing, you are always a welcome attendee at the committee, but we notice that it is you today and not Mr MacAskill. Is he otherwise occupied?

**The Minister for Community Safety (Fergus Ewing):** It is always a pleasure to come before the committee; I hope that I will be able to say that at the end of today's meeting. It was agreed that I should appear to present the Scottish Government's case and answer any questions that members might have.

**The Convener:** So Mr MacAskill is otherwise occupied.

**Fergus Ewing:** Yes, indeed.

**The Convener:** We will move straight to questions.

**Paul Martin (Glasgow Springburn) (Lab):** Is the minister concerned about the higher than projected increase in prisoner numbers?

**Fergus Ewing:** This is an extremely serious question, which the Scottish Government has approached in that light since we took power last year. We have tackled the problem with the utmost gravity in a number of ways. We are concerned about the rising prison population, which is why we have taken various measures to tackle it. I believe that they are the right measures and that, had we not taken them, we would be facing an even worse situation.

The measures include commissioning three new prisons. Over the next three years, we will spend, on average, £120 million on building prisons. The first prison to be completed will be Addiewell, which is due to open at the turn of the year. From the evidence that Willie Pretswell gave to the committee last week, I understand that there will be approximately 30 prisoners in Addiewell during the first week and that that number is expected to rise to 700 by March 2009. The two other new prisons will be Grampian and Bishopbriggs, which I imagine that members will want to ask about later—certainly Stuart McMillan asked about Bishopbriggs last week. In addition, Ratho house will come into use in Edinburgh from January next year; it will house 116 prisoners or thereby.

Therefore, in a relatively short period of time, there will be an additional 812 or thereby new places.

Commissioning new prisons is the most immediate measure that the Government has taken. It is fair to point out that the previous Executive took some of the initial steps towards the commissioning of the new prisons, but the decision to commission them was taken by this Government very shortly after we came into power—and thank goodness that was done.

Building new prisons is the most important measure that we are taking to tackle the rising prison population. I read with care the evidence that Mike Ewart gave last week and the questions that members put to him. There is a short-term problem, which we hope to address by commissioning new places. In addition, we have looked carefully at the prison estate, including the open prisons, to see what can be done about that. Mr Ewart and his team have shown great vigour in addressing the problem, working closely with the trade unions.

To conclude, I pay tribute to all those professional prison officers who are doing the job of looking after people who need to be locked away for the public's safety while we are simply talking about it this morning.

**Paul Martin:** You described the short-term challenges that face the prison estate. I assume that the solutions will require a significant increase in resources. Are you satisfied that the draft budget will meet the requirements that Mr Ewart set out last week?

**Fergus Ewing:** The prison budget has been increased by more than 3 per cent. There has been a real increase during this parliamentary session.

There are challenges, specific aspects of which Mr Ewart discussed last week. There are savings to be made, and the SPS has done a good job on that. However, following the legislative changes in 1997 to which Mike Ewart alluded last week, this is an area in which negotiations with the trade unions are of the utmost importance. The SPS can, of course, keep any savings that are made beyond those that have been deducted at source.

I wish that I was in the position today to report that we have made more progress with HM Treasury with regard to the Somerville case. Members will know that there are more than 1,000 cases, some of which are subject to an offer, and others of which are yet to be considered but might lead to further payouts. Part of the problem is that we have not made progress with the United Kingdom Government in relation to the reform of the law that means that the Scottish Government is the only public institution for which the one-year time bar is not applied. That means that the

money that we are spending on meeting compensation payments for the Somerville slopping-out cases cannot be used towards meeting the pressures on the Scottish Prison Service.

Equally, I am disappointed that the massive injection of resources from reserves into prisons in England and Wales did not result in any payment to the Scottish Government in Barnett consequentials. That payment—we can go into its details if members so wish—was made from reserves. By a kind of financial jiggery-pokery, we have been deprived of resources that we would most certainly be using to good effect now to address the serious problems that we face. Those large resources were made available to the prison estate south of the border but not to the Scottish Government. That is a grave matter.

**Paul Martin:** The question was straightforward. Mr Ewart made it clear in his evidence last week that the system is under significant pressure because of an increase in prisoner numbers that was not projected. The question is clear. Yes or no—have you given him additional resources?

**Fergus Ewing:** The clear answer is this—

**Paul Martin:** Yes or no?

**Fergus Ewing:** When Mr Ewart answered the question on the topic, he said that he was confident that he could manage his budget. The exact phrase that he used was “nip and tuck”. So be it—but I have confidence in him and in his judgment last week that he will be able to manage within the existing budget.

Of course, the SPS and the Scottish Government will examine the situation carefully. I believe that Mr Ewart talked about a marginal cost per additional prisoner of between £3,500 and £5,000 and said that the cost per extra 100 prisoners would be £350,000 to £500,000. Once we see the outturn figures, it will be possible to sit down and consider what provision can be made. The Government takes seriously and is extremely sympathetic to reasonable requests for appropriate additional funding to meet extraordinary, unpredicted and unplanned additional pressures. However, I adduce in evidence the fact that Mr Ewart said last week that he was confident that he could manage with his budget, although it will be “nip and tuck”.

**Paul Martin:** I return to Mr Ewart’s evidence to us last week about the challenges that he faces because of the increase in prisoner numbers. Have you or Mr MacAskill discussed the possible emergency release of prisoners?

**Fergus Ewing:** We have decided that the main way to tackle the problem is by providing new prisons and extensions to existing prisons, as I

have described. In the short term, that new capacity will become available between December and March.

As for emergency release, when we presented measures to Parliament to extend further the use of home detention curfew, which we support and which the Administration under Mr Martin’s party introduced, the Labour Party and the Conservative party did not receive them sympathetically. It is clear that enthusiasm for those measures is lacking. We live in the real world. If those parties wholly oppose reconsidering such measures, the parliamentary arithmetic is not with us.

It is not unfair of me to mention that the automatic release of prisoners occurs *ex lege*. It was introduced by the previous Conservative Administration in its dying days, although the Conservatives are now committed to changing the position. Automatic release occurs day and daily after prisoners have served only part of their sentences. The difference between emergency release, which appears to be a no-no for at least two parties in the Parliament, and automatic release is unclear to me. Automatic release occurs without any risk assessment. I would have thought that a mature debate about the way forward for Scotland’s penal policy should assess the risk to the public of releasing any prisoner and not simply allow release after a number of days has been served.

Be that as it may, we are confident that the other measures that we have put in place will allow the SPS to manage the situation. We communicate daily with the SPS. I assure members that the Scottish Government treats the topic with the utmost gravity.

10:30

**Paul Martin:** I am sure that, in the interests of open government and transparency, you will want to clarify whether Mr MacAskill or you have discussed the possible emergency release of prisoners because of the increase in prisoner numbers. Yes or no?

**Fergus Ewing:** In the same way as Cathy Jamieson and Jim Wallace did not discuss internal advice, nor do we. That is the position of any Government.

**Paul Martin:** I am asking not about internal advice but about discussions.

**Fergus Ewing:** Just a few days ago, the Ministry of Justice south of the border announced that 36,661 convicted criminals had been released early from jail under a scheme to cut overcrowding in prisons. I do not know whether that represents a Labour Party policy south of the border but not north of the border. We would be keen to discuss

that. We want to tackle the answers to such extremely challenging problems in so far as we can across all parties and, without scoring party-political points, to reach a sensible conclusion.

It is relevant to note what has happened down south, where a serious decision has been taken to tackle a serious problem. South of the border, 36,661 convicted criminals have been released from prison, which is a large number. I hope that the committee will look into that carefully in its further deliberations.

**Paul Martin:** I have a final quick question about the prison estate. I understand that Kilmarnock prison has spare capacity that is not being used. Will Mr Ewart confirm whether that prison has spare capacity and whether that is being used fully?

**Fergus Ewing:** I will ask Mr Ewart to answer shortly. Once I became aware of the press release that the Labour Party apparently issued this morning, which accuses me of potentially risking public safety, I took steps to look into the issue further, although I had already looked into it in general preparation. I can tell the convener that it is absolutely not the case that Kilmarnock prison has 48 extra prisoner places. That is completely untrue and falls into the category of contributions to the political debate that verge on the irresponsible.

It is clear that, like other prisons in Scotland, Kilmarnock prison is operating at in excess of its assessed operational limit, as Mr Ewart described last week. It is absolutely not the case that Kilmarnock has 48 prisoner places available, in contrast to what the Labour Party's press release says. Had they been available, we would of course have used them long ago.

Mr Ewart can explain the situation in further detail.

**The Convener:** There are contradictions, so we will hear from Mr Ewart.

**Mike Ewart (Scottish Prison Service):** The assessment of the operational limit of prison capacity that we applied to public sector prisons was applied equally to Kilmarnock prison. The position is exactly as Mr Ewing describes it. Kilmarnock has no available additional capacity that could be brought into use.

There is the unfortunate appearance that additional places are available because, when the original contract for Kilmarnock was struck, an additional tranche of places was built in. The thinking at that time was that those places would never be called on. In the interim, significant developments—particularly in jurisprudence on the application of the European convention on human rights—have ruled out the use of those places.

Kilmarnock prison has no available capacity that is unused.

**The Convener:** This is an important point.

**Paul Martin:** How many places can currently be provided in Kilmarnock prison and how many prisoners are in there at the moment? There is no point in providing an overview without providing specific figures relating to prison capacity at Kilmarnock prison.

**Mike Ewart:** Kilmarnock is operating at over its assessed operational limit.

**Paul Martin:** So what are the numbers?

**Mike Ewart:** I will give you the numbers outside the committee, if I may. I do not have today's figures at my fingertips, but I can certainly give you them. I can give you a run of figures and further explanation, which will indicate that what I am telling you is the case.

**Angela Constance (Livingston) (SNP):** I want to pick up a point that the minister made in reply to Paul Martin's first question. On the Barnett consequentials, what difference would it make if Scotland were to get a proportion of the reserves that were released for England and Wales?

**Fergus Ewing:** It would make a substantial difference. In England and Wales, following the Carter review, £1.2 billion was transferred from the reserve to the Ministry of Justice to be allocated for the prison estate. As that is a reserve claim, the Scottish Government does not automatically receive equivalent funding through Barnett consequentials. If that funding had been included in the comprehensive spending review 2007, as one would have expected, given that the money is being spent on the prison service, which is a devolved topic in Scotland, the Scottish Government would have been entitled to approximately £120 million in consequentials. Coincidentally, that is the cost of building a new prison. Through that financial jiggery-pokery, we have lost out to that extent.

A letter was sent to the Chief Secretary to the Treasury on 31 January expressing our concerns on how the situation appeared to have been handled to Scotland's disadvantage. Scotland's annual projections of its prison population have been showing similar population and overcrowding trends to those affecting HM Prison Service. The response from the chief secretary on 31 March indicated that HM Treasury had not changed its position and would not grant the Scottish Government access to any additional funding. As a result, the Scottish Government has decided to raise that and other matters with the joint ministerial committee, using the dispute resolution procedure that is set out in section 12 of "Funding the Scottish Parliament, National Assembly for



Wales and Northern Ireland Assembly: A Statement of Funding Policy". The joint ministerial committee is expected to meet in the next couple of months. I hope that that sets the record straight on that issue. We have been short-changed by £120 million, which would have enabled us to deal with the problems with much less difficulty.

**Angela Constance:** I know that the committee received a briefing about the potential consequences of the Somerville case. Has any work been done on the potential costs that are associated with that?

**The Convener:** Is there a reserve within the budget for those payments?

**Fergus Ewing:** Yes. The position on Somerville is that, in total, the SPS has paid £6.3 million in compensation and £2.8 million in associated legal fees. A further 430 cases are under offer and another 590 have yet to be considered. Sopping out ended when the new house block at Polmont opened in 2007. As you heard last week in evidence about chemical toilets and so on, Peterhead is the only prison where prisoners do not have access to night sanitation. That is being addressed through the replacement prisons at Peterhead and Bishopbriggs, as the committee well knows.

However, that still leaves the question of how to deal with the fundamental legal issue raised by the Somerville case, which is that the Scottish ministers are the only public authority exposed to claims for damages arising from breaches of human rights without a one-year time bar. We asked the UK Government to assist us in tackling that.

I know that members have taken an interest in the matter. On 25 June, Nigel Don asked the Cabinet Secretary for Justice what was happening. The cabinet secretary stated:

"It is ... frustrating that despite our strenuous efforts we still await a commitment by the UK Government to take action to remedy the situation, although our discussions with them continue ... In the meantime, we have no option but to deal with existing cases as the law now stands."

At the outset, I mentioned the figure of 1,020 cases—430 under offer and 590 yet to be considered. To settle all those cases will cost several million pounds. That is money that the Government believes would and should have been available to invest in our prison officers and prison estate and to tackle these problems. Because we have not obtained a satisfactory response from Westminster, we are left facing these sopping out claims without the time bar that applies to every other authority. That seems to me to be a shocking neglect.

**The Convener:** I hear what you are saying, minister, but I remind you that this is an evidence session, not a debate.

**Robert Brown (Glasgow) (LD):** I return to the matters for which the Scottish Government has responsibility for which it claims that there is an adequate budget. Mike Ewart referred to the assessed operating limit for prison numbers; I think that he referred to it last week as the "safe operating limit". He gave the figure for that as 8,126 across the prison estate and we know that the number of prisoners was 8,137 on 15 September, according to the information that we had last week. Do we have any more up-to-date figures on the total numbers in prison since 15 September? What importance does the Scottish Government attach to the safe operating limit? What is its implication in policy terms? What, if anything, does it trigger? Will you give us a bit more information on its meaning and significance?

**Fergus Ewing:** I read with care the evidence that Mike Ewart gave last week, when he described—I think in answer to questions from Cathie Craigie—the assessed operational limit. As I understand it, a figure has been agreed as the assessed operational limit in respect of each prison establishment in Scotland. I have a table that quotes the limit throughout Scotland. I am not sure whether the committee has that table, but I am certain that we could share it with you. Generally, the figures, which are valid as of 4 September, show the assessed operational limit. I will ask Mr Ewart to answer the first part of Mr Brown's question shortly. My recollection of Mr Ewart's evidence is that he said that the figure was not a target and that it was

"not a line in the sand ... but an indicator".—[*Official Report, Justice Committee*, 30 September 2008; c 1144.]

Mr Ewart went on to argue that the limit is rather like a rev counter in a car. One can exceed the limit and go into the red zone for a while to overtake a lorry on the road, but one does not want to be in the red zone indefinitely, because that leads to an unsafe situation. As I understand it, he was not saying that the limits are legally defined. They are not legally enshrined targets but an effort to grapple with an extremely serious situation, which he said last week involves having to deal with two statutory responsibilities: to accept prisoners and to operate within health and safety rules. The limit represents a serious way in which he sought to provide an indicator of the levels that prisons can accommodate.

As at 4 September, the assessed operational limit of Kilmarnock prison was 649 and the prison population was 654. Far from there being 48 empty cells, the process of the assessed operational limit had already been undertaken for Kilmarnock. The facts show that, as at 4

September, the prison was five prisoners in excess of its operational limit. Perhaps Mike Ewart can bring us up to date on where we are with the overall custody figure and the numbers on HDC.

**Mike Ewart:** There is nothing like watching your own metaphors pass before your eyes. I am happy to say that the numbers today are slightly less grim than I was reporting at the previous meeting of the committee. As of unlock this morning, we have 8,048 prisoners in custody and 340 on home detention curfew.

10:45

**Robert Brown:** I will come back on that question, Mr Ewing, because I did not ask what the safe operating limit was not; I asked what it was, and about its significance as a policy. I have not derived from your lengthy answer any real information about what that limit means in terms of policy implications or action that the Scottish Government might take when the limit is reached. I am relieved to hear that numbers have gone below the limit today, but that was not the case when the committee last heard evidence on the matter.

**Fergus Ewing:** I agree fully with Mike Ewart's evidence from last week when he gave a lengthy explanation of the significance of the assessed operational limit. I explained clearly that that limit does not have any particular legal significance; it is simply an effort by the SPS, working with the prisons, to assess what the operational limit of each establishment should be. With respect to Robert Brown, I cannot be clearer than that. I am very pleased that the numbers are going down. The committee heard evidence that there is a seasonal element to the prison population, which tends to go down before the turn of the year and might be expected to rise thereafter.

On a wider issue, I have described what we do in the short term. We are taking the right measures. I have described how we feel short-changed in relation to the budgetary figures. I have not yet described the future. We took emergency action to deal with the commissioning of new prisons and extensions to existing ones, and we asked Henry McLeish to head up a commission to look into the future of penal policy. He plainly set out two visions for the future: building ever more prisons and locking ever more people up; or moving towards community sentencing. We need to start to consider that latter vision as a matter of budgetary practice. It is difficult to do so unless there is consensus in the Parliament, but nonetheless, as an optimist, I hope that we can build that consensus on alternatives to custody in the longer term.

As Robert Brown knows, in a demand-led service such as the prison service where, for good reasons, Governments cannot and should not control what the judiciary does, the number of prisoners will always be demand led. That is not within our control. Mike Ewart dealt with that matter fully last week when he spoke about predictions and projections.

**Robert Brown:** I have another brief question to which I hope I will get a rather briefer answer. You were concerned more about the safe operating limit of individual prisons than the overall total. Can you tell us—or forward the information if you do not have it with you today—how many prisons in the Scottish prisons estate have gone above the safe operating level over the past three months?

**Fergus Ewing:** Robert Brown persists in using the word “safe” to describe the target. That word has not been used by Mr Ewart, who was the architect of the term “assessed operational limit”, but perhaps he will describe it further in a moment. I have in front of me figures that show the prison population as at 4 September. They show the assessed operational limit of each prison and the prison population at that time. Some prisons, such as Barlinnie, were in excess of the assessed operational limit whereas some, such as Aberdeen and Cornton Vale, were slightly below it. I can make that information available to the committee later if it would be of use.

**The Convener:** That would be helpful. Do you have anything to add at this stage, Mr Ewart?

**Mike Ewart:** I think that I gave such a long and boring explanation of the assessed operational limit at the previous meeting that I will spare you any more of it.

**The Convener:** I could not possibly comment.

**Bill Butler (Glasgow Anniesland) (Lab):** I will comment and say that it was a clear explanation of the assessed operational limit, which I want to ask about in a moment or two. Good morning, minister. It is good to see you in non-party-political mode as we seek the objective truth in and around the budget.

Before pursuing further the point that my colleague Robert Brown raised about assessed operational limits and health and safety, I refer to a question that my committee colleague Angela Constance posed, who asked about Barnett consequentials. In your answer, minister, you used for the second time a rather quaint phrase—“financial jiggery-pokery”. Are you saying that the usual procedure for Barnett consequentials was disregarded, and if so, in what way?

**Fergus Ewing:** I will repeat what I said earlier—

**Bill Butler:** I would rather that you did not and answered my question.

**Fergus Ewing:** I will answer the question in my way, as is my right.

**Bill Butler:** Of course.

**Fergus Ewing:** It is axiomatic that if prisons in England and Wales receive more money from the Government, there should be a consequential increase in the budget for this Parliament, given that prisons are a devolved responsibility. I am surprised that that is not accepted by all members of this Parliament. Of course, the failure to subscribe to that principle has been explained away in various ways. I have made it clear in simple terms that we do not find such explanations acceptable or valid.

**Bill Butler:** The minister has made his debating points clear in simplistic terms: they are apparent. However, like the minister, I am an optimist, so I ask the question again: are you saying that the usual procedure for Barnett consequentials has been set aside or disregarded, yes or no? If you are saying yes, as you seem to be, will you explain in which ways the usual procedure has been disregarded? What is new? What is your beef, minister?

**Fergus Ewing:** At the risk of repeating myself—

**Bill Butler:** You would not do that. We are coming to risk in a moment, minister.

**The Convener:** Let him finish.

**Fergus Ewing:** In a second encore, to use a musical expression, I say that the pressures that prisons face in Scotland are exactly the same as those that are faced by prisons in England and Wales—a rising prison population and overcrowding. In England and Wales, the problem was addressed by the injection of £1.2 billion to solve it. For technical reasons, the Treasury argued that the usual procedures, of which Mr Martin is extremely fond, did not apply. Whether that is a valid explanation is a legitimate matter of interpretation and opinion. We are strongly of the view that it is extremely clear that Scotland has been deprived by financial jiggery-pokery of our share of that £1.2 billion. Because it is such a huge amount, it is absolutely right that I make the Government's position clear at this meeting.

**Bill Butler:** I am an optimist, but I am also a realist. We have had two shies at the minister and got the same reply—I am sure that we will see that in press releases to come.

Like Robert Brown, I turn to the important health and safety issues that Mr Ewart raised in committee last week. The minister will be aware that the SPS submission states:

"When the prison population is in excess of the AOL, SPS can no longer guarantee that the continued operation of Scotland's prisons is operationally safe or compliant with our legal obligations."

That is clear. Do you agree with the SPS that it is caught between a rock and a hard place? It puts it a little more elegantly:

"The conflicting responsibilities imposed by health and safety legislation and the statutory requirement to accommodate every prisoner sentenced to prison provide SPS with no relief mechanism. In the absence of such relief, SPS will be obliged to continue to receive and accommodate increasing numbers of prisoners and the risks will escalate."

Do you agree that there is a danger that the risks will escalate, minister? What will the Government do about it?

**Fergus Ewing:** To answer your first question, I share Mike Ewart's analysis. Yes, the Government takes extremely seriously all health and safety matters. Yes, Mike Ewart properly explained to the committee last week his responsibility and statutory obligation to receive all prisoners sent by the courts. In addition, he has statutory responsibilities to continue to meet health and safety obligations. Yes, I do not demur from saying that, in a sense, the SPS is caught between a rock and a hard place.

We all need to deal with the situation as it is, not as we might like it to be. The situation is serious, so I find it unfortunate that half-baked proposals and ideas—such as commissioning any disused hospitals that might be lying around—have been put forward. We are in the serious business of addressing a serious problem.

Mr Ewart has given the reasonably good news, which is of some minor relief, that prisoner numbers have decreased slightly. However, we cannot rely on that continuing, although we expect a certain seasonal trend. As I said, we have made it clear that an extra 812 prisoner places should be in place by spring next year.

In addition to the three new prisons—I did not touch on this fully earlier, although I expect that the committee has received written evidence to this effect—five prisons have gained increased capacity of one sort or another.

**The Convener:** That was dealt with by Mr Ewart last week.

**Fergus Ewing:** Was it? I do not think that I mentioned Glenochil and Perth, nor did I mention the Ratho wing at Saughton, which will provide 116 places. In addition, by, I think, the end of 2009, Polmont will gain a new house wing, which will provide just over 100 extra places.

Plainly, there is a risk—all members are right to home in on that—so the Government would welcome a cross-party approach on any serious measures that might be taken. Hope for such an approach has been expressed outwith the Parliament by many closely involved organisations, such as Includem, whose chief

executive Angela Morgan put the matter very well. I accept that risks are involved. That is why the tone and demeanour of today's meeting are extremely serious.

**The Convener:** I will allow Bill Butler a final brief question under this heading.

**Bill Butler:** I agree with the minister that the matter is serious. He agrees that the SPS is caught between a rock and a hard place or, to put it more elegantly, between two statutory responsibilities. In light of that, what guidance has the Government offered the SPS chief executive on ministers' priorities in the period until that welcome short-term relief is available in spring next year?

**Fergus Ewing:** We do not regard it as our duty to provide new guidelines to the SPS. The SPS is responsible for managing the situation. The way that we work is to keep in, quite frankly, daily contact—

**Bill Butler:** In that daily contact, minister—

**Fergus Ewing:** Convener, may I finish my answer to the question? I was asked about guidelines and I am answering the question on guidelines. We do not think that guidelines would help. If the Labour Party thinks that guidelines would help, it should let us see what those guidelines would do and how they would help—

**Bill Butler:** With respect, minister, the SNP is in government. Given the two potentially conflicting and serious statutory requirements on the SPS, what have Mr Ewing and Mr MacAskill done to chat with the SPS—Mr Ewing said that he talks to the SPS on a daily basis—about the Government's priorities on that potentially serious and dangerous conflict of statutory responsibilities? What has the Government done?

11:00

**Fergus Ewing:** I have already extremely clearly described a number of steps that we have taken, not just since the problem became as acute as it is now, but from the very day that we took responsibility. More recently, we have discussed any practicable ideas for solving the problem. For example, we looked closely at how the open estate could be used to best effect. We looked extremely closely at home detention curfew. Obviously, we are bound to consider other solutions in the event that the types of scenario that were mentioned last week—namely, some horrendous disaster such as a fire in a prison—should arise. Plainly, we have discussions, as one would expect, about what could be done in those eventualities. Our discussions with Mike Ewart and his colleagues explore every avenue and every option.

However, we are confined to seeing the world as it is, not as we would like it to be. We need to deal with the situation as we find it and work through the problems with the SPS. Our relationship with the SPS is excellent. Plainly, that is an advantage in handling this extremely difficult situation. I guess that Mr Ewart might be in a slightly difficult position to disagree with that comment, but the cabinet secretary and I are in contact with him on a daily basis to solve these problems. No stone has been left unturned.

**The Convener:** The prison numbers issue will rumble on and no doubt will be explored further in the Parliament, but we must move on to the issue of new accommodation.

Last week, Mr Ewart told us when Low Moss would come on stream. It has been pointed out that the former facility at Low Moss seems to have been taken out of use somewhat prematurely. In any event, does the Government now regret causing a year's delay by changing the procurement process from a public-private partnership to a conventional public build and operation?

**Fergus Ewing:** I hesitate to disagree strongly with you on your characterisation of the problem, but I do so for only a nanosecond. To say that Low Moss was closed prematurely flies in the face of the evidence that we heard last week. I understand that Mr Ewart quoted one senior prisoner officer who said that Low Moss should have been closed when he joined the service. We heard that Low Moss was operating in breach of health and safety limits and was unfit for purpose. We heard that, if the facility had not been closed down voluntarily, it might have been closed down compulsorily. I am sorry to disagree, but I cannot agree with the assertion that Low Moss was closed prematurely.

When the decision was taken, the plan was that the 300 or so prisoners—if my memory serves me—would be accommodated in the new facilities that would be available in Glenochil and Perth. That was the forecast and the decision that was made at the time. It would be churlish and unreasonable to criticise that plan. That should be put on record, out of fairness. I do not know whether Mr Ewart feels that I have missed anything out in that regard.

Do you want me to turn to the future now that I have addressed the past?

**The Convener:** No, I want you to answer the question. Might it not have been a better idea—I accept that we can all have 20/20 vision with hindsight—to proceed with the PPP rather than with a conventional build and use scheme?

**Fergus Ewing:** We have no regrets about taking action to support our position that prisons

should be run by the public sector rather than the private sector. From memory—I stand to be contradicted about this—I think that Wendy Alexander welcomed the decision.

The SPS was asked to minimise any delays involved in changing the procurement process, which has now reached the short-listed bidder stage. The SPS expects to award a contract next year for the design and build of the prison. Construction is expected to take place around 2009-10 and occupation thereafter.

It is reasonable to say—I think that this was touched on in evidence before—that the challenges at Bishopbriggs are somewhat greater than the challenges that might exist at Grampian, particularly given the onerous planning conditions and the requirement to construct new roads. We have to take into account those serious, practical matters in considering when Bishopbriggs is to open.

We have no regrets about the basic decision on the procurement method. Prisons should continue to be run in the public sector.

**The Convener:** Sorry, I might have missed something. Is HMP Grampian the new prison at Peterhead?

**Fergus Ewing:** What I was saying is that there are problems with the new prison at Bishopbriggs—in relation to onerous planning conditions and the construction of a road—that are not being felt in Grampian because, as I understand it, the site there is already owned and the community is sympathetic to the replacement of Peterhead.

**The Convener:** The simple issue is that I was not aware that HMP Grampian is how we now describe Peterhead. At least I have learned something this morning.

I turn to the budget in general. Have you discussed with the SPS the proposed removal of £10 million from the planned capital allocation for 2009-10, which is to be repaid in 2010-11?

**Fergus Ewing:** That matter was raised last week, and Mr Ewart's answer was absolutely the Government's position. It is a borrow-and-pay-back measure. The decision will not damage or impair the profile of estate investment. It is a simple transfer of funds to, I believe, the health and wellbeing portfolio to deal with affordable housing, about which, as we know, there is an element of urgency at the moment. The money is being borrowed and it will be paid back next year.

I understand from both Mike Ewart's evidence last week and our internal communications that the matter has been agreed with the SPS and is not seen to be a problem.

**The Convener:** As the minister, are you giving a concrete guarantee that the repayment will be made timeously?

**Fergus Ewing:** I am a Government minister; I am not a guarantor. Those in the financial world who have undertaken that role have come to grief, so I will stick to my job as minister.

**The Convener:** Many of us might be tempted to think that it would have been better for you to be a guarantor, Mr Ewing, but we will move on.

**Angela Constance:** As we are talking about Bishopbriggs and budgets, how does the cost of the planned publicly owned and operated Bishopbriggs compare with what the cost would have been if the prison had been built under PPP?

**Fergus Ewing:** I did not specifically look into that in preparation for today's meeting, but if the committee wishes, we can look into the matter and provide more information. I know that a public sector comparator calculation has to be done for all PPP projects, and that such calculations are done as a matter of course. Mr Gordon will correct me if I am wrong, but I think that I am right to say that such comparisons have not always been published in the public arena, or at least not straight away. I recall some other examples.

I do not know whether Robert Gordon, Ruth Ritchie or Mike Ewart can add to that, but we will certainly come back to the committee and be as helpful as we can in answering Angela Constance's question.

**Robert Gordon (Scottish Government Director General Justice and Communities):** We do not have a private sector comparator for Bishopbriggs because we did not get that far in the process, so we do not know the sum for which the private sector would have volunteered to build the prison. I think that the material on Kilmarnock and Addiewell is pretty much in the public domain, but perhaps Mike Ewart can confirm that.

**Mike Ewart:** The full contracts for both Addiewell and Kilmarnock are in the public domain. They give the most secure information about the costs of particular operations.

As Robert Gordon said, as we do not have a bid for design and build and we never got to the stage of opening bids on PPP, any information that we could give you about the relative costs would be speculative. It would probably be based on the assessment that was made at the time of the estates review in 2000, so it would be slightly antique. That is the best information that we could provide.

**Bill Butler:** In light of the apparent upward trend in prisoner numbers, do ministers intend to maintain a policy of no further increases in capacity after Bishopbriggs?

**Fergus Ewing:** I have described the measures that we have taken to increase capacity—put briefly, the three new prisons and extensions to five existing ones. The Parliament as a whole has a clear and stark choice to make about the long-term future. We do not think that the correct way to address penal policy in the long term is to build ever more prisons.

In the past few days, we have seen published statistics that show that reported crime is at a record low. We might go on to discuss police numbers, which are, as of June this year, at a record high. At a time when those two happy events have occurred, however, the prison population has reached a record high. Plainly, there is a mismatch, and we hope that there will be a mature debate about that. There is some support in the Parliament, at least from the Liberal Democrats and the Greens, for our considering more effective community disposals. A great deal of good work is done in that regard—I do not want to paint a bleak picture of the work that is done—but we need to do more. That is the challenge that we face in the long term. I hope that that is a fairly direct answer to Bill Butler's question.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I do not want the minister to go away from the meeting having unintentionally misled the committee. A couple of times this morning, you mentioned three new prisons. Are you making an announcement about that today? As far as I am aware, we have the new prison at Addiewell; the new prison at Bishopbriggs, which replaces something that was closed in the past; and a new prison in the Grampian area, but that is only a replacement of an existing facility. Are you announcing that there is going to be a third new prison, or is it two new prisons and a replacement?

**Fergus Ewing:** There are three new prisons. I am certainly—

**Cathie Craigie:** But if you could explain—

**Fergus Ewing:** I am absolutely not planning to conjure up a new prison out of the fiscal hat. The three new prisons are as you described them. It is fair to characterise the new Grampian prison as a replacement of two existing establishments. That is perfectly reasonable. There is no disagreement about that whatsoever.

**Cathie Craigie:** Thank you.

**The Convener:** Mrs Craigie simply wanted to underline the fact.

**Paul Martin:** I return to the issue of procurement, about which I have two questions. First, does the minister agree that there is a significant risk to the public purse from pursuing the public procurement option? Secondly, does he

recognise that there is an analogy with the building that we are in at the moment, which was procured through the public procurement process? The eventual cost of the Parliament building was six or seven times the original estimate.

**Fergus Ewing:** You are speaking to someone who could fairly categorise himself as a student of the sad story of the Holyrood project. There is not a shred of similarity between that and the prison estate decisions. For a start, there is no political interference in how prisons should be designed. We are not giving advice about think pods in the cells, for example, or asking for extra provisions to be added after stage D has been reached. We are not fiddling around with the design. The comparison is not apt.

As I understand it, the method will be to use a fixed-price contract rather than the procurement model for the Holyrood project, which was construction management. I have had a briefing on the technical aspects, as you would expect, and I can safely assure the committee that we are not looking at Holyrood mark 2. Indeed, to make that comparison is unfair to all those who are working on the projects for the good of Scotland as a whole, because it diminishes their standing.

I do not know whether Mike Ewart has anything to add about procurement.

**Paul Martin:** Before Mr Ewart comes in, I want to clarify that I clearly asked whether there would be a risk to the public purse. The minister clarified that there will be a fixed-price contract that will ensure that the public purse will not be at risk in any way. I am happy that the minister managed to clarify that point. I am satisfied with that.

11:15

**Fergus Ewing:** Well, I am pleased. The management of risk is an essential part of all construction contracts. As I understand it, there are provisions in all construction budgets, as a requirement of Treasury guidelines, to provide for the management of risks that occur, such as construction inflation and costs rising when materials require to be purchased. Those aspects are routinely built into budgets. Mike Ewart will tell me whether I miss out anything, but examples of projects in the prison estate that were completed within budget and on time are those at Glenochil, Saughton, Perth and Polmont. The record is pretty good, and there is no reason to think that the future will be any worse in that respect.

**Bill Butler:** I was going to say to the minister, after he replied to my previous question, that his answer was clear, for which I am grateful.

Obviously, Mr McLeish's commission has come up with interesting recommendations. I am not

against having a mature debate about them; I do not think that any member of the Parliament is against that. In fact, the Labour Party is not against serious consideration of alternatives to custody; it would be ludicrous if we were, because some of the alternatives to custody were introduced by the previous Labour-led Executive—or, more properly, the Labour-Liberal coalition.

According to the minister's answer, the Government's predisposition and clear inclination are to consider alternatives to custody to deal with the upward trend in prisoner numbers, and such a development in alternatives to custody will require investment in community programmes and increased spending on community justice services. Therefore, why are there no plans in the budget to fund those extra community justice services in 2009-10 or 2010-11?

**Fergus Ewing:** First, in the interests of taking a bipartisan approach, I acknowledge that the previous Administration, with broad support, introduced some of the non-custodial measures. That was good, but I hope that we can build on that support and take it forward.

There are two budgetary elements for alternatives to prison: £86.45 million, which forms part of the local government settlement; and £23.2 million in the justice lines for central spending on offender services and victim-witness support, for which the budget amounted to £5.7 million in 2009-10. Therefore, the total budget available for delivery of the community justice agenda amounts to £104 million, which is an increase of £2.1 million over 2008-09. That includes community service at £13 million, social inquiry reports at £12.4 million, probation at £10.4 million, throughcare at £9 million, drug treatment and testing orders and drugs courts at £9 million, restriction of liberty orders at £6.7 million, supervised attendance orders at £4.1 million and supported accommodation at £3.8 million. The remaining areas of public spend include court social work units, diversion from prosecution measures, arrest referrals, pilots of mandatory drug testing of arrestees and programmes that underpin probation.

We have less new money than recent Administrations had. That is a factor in the overall poor financial settlement that we face. However, I am confident that we can work in partnership with all the service providers at local and national levels and with the excellent charitable organisations that do so much good work in this field.

**Bill Butler:** I hear what you are saying, and I do not dispute your figures, but they all refer to the situation before the publication of the McLeish commission's report and the consequent awareness of the possible financial ramifications

of implementing the commission's recommendations on alternatives to custody. If it is the Government's will to move towards greater use of alternatives to custody, why does the budget not anticipate the possible financial consequences of doing that?

**Fergus Ewing:** To be fair, I was grateful for the opportunity to outline the various components of spend because each is greatly significant in addressing the problem. We should acknowledge the significant contribution made by bodies such as Includem, Sacro, the Aberlour Child Care Trust, the Robertson Trust and NCH Scotland, although not all their funding, by any means, comes from the taxpayer.

To respond to Bill Butler's question, while it is generally recognised that community penalties offer a more effective solution than short-term custodial sentences do, we cannot simply transfer resources from the prisons budget without risking public safety. As we have said during the meeting, we must maintain expenditure on prisons. We cannot just grab part of it and transfer it at a time of greater need.

**Bill Butler:** If that is what you are saying—I see the logic behind it—how will you fund an expansion in alternatives to custody? Where will the money come from? Why have you not looked at the need for extra resources for an expansion in alternatives to custody?

**Fergus Ewing:** To be accurate, we have increased resources, although the increase has not been as great as we would wish. The transfer to the different approach is a long-term project that must first be agreed by Parliament; it is not something that we can achieve within three years. We are doing more than ever before in relation to non-custodial options. I think I mentioned in Parliament last week that more than a million hours have been served in various types of community service, so a huge amount is being done. There are many excellent ideas that we would like to see put into practice, but the short-term challenges that we face in prisons are such that we cannot divert money from prisons to non-custodial options.

I am happy to work with all members to find extra resources. I have taken the opportunity today to explain that we would have had those extra resources had it not been for the financial jiggery-pokery of the United Kingdom Treasury. Armed with that additional amount, we could have taken decisions substantially to enhance available funding for non-custodial options.

**Bill Butler:** But you have already said that we must deal with matters as they actually are and not as we would wish them to be.

**Fergus Ewing:** Exactly.

**Bill Butler:** You cannot have, or attempt to have, your cake and eat it. You cannot say that we will go for alternatives to custody and then say that we cannot supply additional resources for that because a big boy took the ball and ran away—it is your responsibility. If you promote alternatives to custody in a serious debate, you must consider seriously resourcing a possible expansion of those alternatives. You cannot simply wash your hands of the problem.

**Fergus Ewing:** As you rightly say, we must deal with the situation as it is: we must operate within a fixed budget and take decisions that we would perhaps not like to take. We cannot fund spending that we would like to make—we operate within the budget. If the Labour Party has amendments to our budget that identify from which other budget sources it would take money away to put into even more community, non-custodial disposals, we would look carefully at such amendments. Indeed, as I understand it, convener, the committee is entitled, if it so wishes, to lodge amendments to the budget, but it can do so only on the basis that it has identified where the money would come from.

I was happy to work with colleagues from the Conservative party in particular, for example, to look at the extension of drug treatment and testing orders. That is just one example, but I could pick many more. In that example, we are looking at extending the orders to lower-tariff offenders. We have therefore agreed to conduct a pilot study in Lothian to develop the use of that option, which has proven to be fairly successful across Scotland. However, we would like to do a lot more. If Mr Butler can tell me where he would find the money to do so, we would be happy to work with him as well.

**Cathie Craigie:** I am sure that members agree that you have been raking about for excuses rather than answering our serious questions. The fact is that the budget within which the Scottish Government must operate is greater than any devolved Government's budget has been since devolution. It is for the Government to decide how to spend that money. Governments must be responsible for their policies and for the utterances that come out of ministers' mouths.

You are Minister for Community Safety and are part of the Scottish National Party Government, which has followed the lead of previous Scottish Executives in seeking alternatives to custody. The difference between the current Government and previous Executives appears to be that previous, responsible Administrations included in their budgets money for alternatives to custody and diversionary measures. How much money for alternatives to custody is in the budget? Given your proposals for alternatives to custody and

current prisoner numbers, will the amount that is in the budget be sufficient?

**Fergus Ewing:** I think that there was a question in there at the end—

**Cathie Craigie:** I hope that there will be an answer.

**Fergus Ewing:** You asked whether I can identify the money in the budget that is available for non-custodial sentences. I answered that question earlier at some length, when I read out the total figure and provided a breakdown of its components. With respect, I have answered the question, although perhaps I did not do so in a way that you found congenial.

**The Convener:** We must move on—

**Cathie Craigie:** Convener, the minister has been good at repeating himself. I am asking how much money for alternatives to custody is in the budget and whether the minister thinks that there is enough money to implement the measures and achieve the outcomes that are described in policy statements.

**The Convener:** Give us a total, minister.

**Fergus Ewing:** The total budget that covers the range of areas in respect of non-custodial sentences and alternatives to prison is £103.95 million, as I said.

**Robert Brown:** As Mr Ewing knows, Liberal Democrats are sympathetic to the direction that he has set out on alternatives to custody. However, the resource issue is important. In the course of this discussion we have identified that there are resources for doing certain things—although they are pretty much on the same pattern. The committee is anxious to know whether the Government is doing work to identify the potential to release resources elsewhere and provide significantly greater input to the whole question of alternatives to custody, which is necessary if there are to be swift and immediate reactions to cases that might otherwise lead to short-term sentences. I do not think that the minister has satisfied the committee on that crucial point.

**Fergus Ewing:** Of course we are doing work on that, but first we need to build a consensus that the approach can happen. A great deal of work on precisely that has been done with the Convention of Scottish Local Authorities and others since the McLeish commission reported. We have cordial relations with COSLA and we have great pleasure in working with Councillor Harry McGuigan on the matter and on related issues. We need to build a consensus, so that measures can win support in the Parliament, which is where the debate must take place.



If I wanted to be critical I would say that a party that is committed to cutting income tax by 4p in the UK and 2p in Scotland—a total of 6p—would find it extremely difficult to find savings of 6 per cent from the current budget while providing the increased resources that Robert Brown would like to be provided. However, I will not mention that at this point.

**The Convener:** You have just done so, at some length.

11:30

**Stuart McMillan (West of Scotland) (SNP):** In recent weeks I have talked to people in different parts of the west of Scotland. There appears to be a great deal of consensus in support of more non-custodial sentences. The public perception appears to be that such an approach offers a positive way forward.

However, it appears that only a minimal increase in the budget for non-custodial sentences has been allowed for. First, is it legitimate to suggest that if the Scottish Government did not have to allocate £120 million per year to the three new prisons, some of that money would go into the budget for non-custodial sentences? Secondly, if more resources become available to the Scottish Government, what priority will be given to resourcing non-custodial sentences?

**Fergus Ewing:** The technical answer is that the £120 million, which is what we will spend on average each year for the next three years to provide the three new prisons—or new/replacement prisons—is capital spend. I am no expert, but I understand there to be a financial rule that one cannot deploy the capital budget for revenue purposes. It is reasonable to point out that if the money were not being spent on capital programmes to build new prisons, and if the McLeish vision of a prison population of 5,000 had been achieved—it has not been achieved, of course—the £120 million could have been invested in new schools, new hospitals or other public investment projects. Perhaps I should defer to my colleagues in finance on that, in case my answer was too simplistic. We certainly could not use the £120 million for revenue spend.

I am sorry. I did not catch your second question.

**Stuart McMillan:** If extra resources became available to the Scottish Government, what priority would be given to putting more resources into non-custodial sentences?

**Fergus Ewing:** The Cabinet Secretary for Justice and I would argue for high priority to be given to doing that.

I think that all members accept that more investment in prevention and early intervention is

also important, so that we can try to prevent young people in particular from developing criminal habits. We want that whole area to be developed. For example, effective disposals for young persons involve intensive support through the intensive support and monitoring scheme, which the previous Administration introduced—I think with cross-party support. Intensive support is highly effective in diverting young people from crime. That is a priority for the future and the cabinet secretary and I accord the matter high priority in our arguments for future budgetary enhancements. However, we are where we are with the budget within which we must operate.

**The Convener:** We move on to consider running costs and efficiencies.

**Nigel Don (North East Scotland) (SNP):** I was going to address the issues that Mike Ewart raised during last week's meeting on the marginal cost per additional prisoner, but much of the area has been covered. Instead, I will pursue the minister's comment about discussions with the Scottish Prison Service if it turns out that extra resources are needed. When the minister said that the UK Government can take money out of reserves, I thought, "Surely the Scottish Government doesn't have any reserves." How would we balance the budget if Mr Ewart said that he needed more money and the Government agreed with him? Do we have reserves? If we do not, perhaps that reinforces the point that UK reserves should be ours. I am confused about how we would balance all that.

**Fergus Ewing:** The Scottish Government's budget is entirely different from the UK budget. One difference is that our budget is really an annual estimate of projected expenditure. As matters develop and the year finishes, it always turns out that the estimates were wrong—the actual figures will always be different from the estimates.

I am happy to say that that accounting process is not on my desk to deal with—Ruth Ritchie can deal with such technical matters. As I understand it, we do not have a budget heading for reserves. There is no piggy bank that we can rob as the need arises; the system is not really like that. That may be how things work in the Treasury, but it is not how they work in Scotland.

I have a point to make before I ask Ruth Ritchie to respond to the technical aspects of Nigel Don's question. In total, the prisons budget is in excess of £440 million. Although the pressures that Mike Ewart talked about last week are extremely serious, they are of the order of £1 million to £2 million so, as a proportion of the total budget, I would not say that they are massive by any means. The possibility always exists for managing cost overruns, albeit that it might be nip and tuck.

**Ruth Ritchie (Scottish Government Finance Directorate):** It is true that no reserve is held at the centre. At the moment, budgets are monitored on a monthly basis and expenditure is examined as the year progresses. Underspends usually start to accumulate, which is why there are two periods in the year during which money can be moved from one budget to another and across portfolios. Those are the two budget revisions, when the Scottish Government takes an overview and moves money to where it is needed from areas in which expectation has been higher than actual expenditure. It is possible for us to move money around during the year.

**Nigel Don:** Thank you.

I take the point that we cannot possibly balance the books—no organisation can. By the time we get to the end of a financial year, how many millions of pounds out are we, in the normal order of things?

**Ruth Ritchie:** At the end of 2007-08, we had underspent by £42 million, which is a very small amount, given the overall Scottish Government budget.

**Nigel Don:** Did that money just roll over into the current year, on the ground that it amounts to only a few hours' expenditure?

**Ruth Ritchie:** There used to be something called end-year flexibility, whereby the Treasury permitted departments to roll money forward within a spending review period. The situation is difficult, at present, because the Treasury is not allowing the Scottish Government to draw down any end-year flexibility, so the £42 million that was saved last year is sitting in our account at the Treasury. We will get that money back at the start of the next spending review, whenever that is called. We expect it to be next year, but we are not sure yet.

**Nigel Don:** If we had inadvertently overspent by £42 million, where would that have come from?

**Ruth Ritchie:** We would have overspent the budget and the Treasury would have demanded answers on why we had overspent. We would have had our accounts qualified by the Auditor General for Scotland and the accountable officers would have been sent for and questioned.

**The Convener:** Who is the accountable officer for justice expenditure?

**Robert Gordon:** I am the accountable officer for justice and communities, and the permanent secretary is the accountable officer for the £30 billion.

**Nigel Don:** Forgive me, but this is an issue that matters—those millions count. I do not want to get personal, but that means that you want to underspend in order not to have to account for an

overspend. If I have understood you correctly, that money simply goes back to the Treasury and sits there until its next three-year spending review. Have I got that right?

**Robert Gordon:** The rules change over time. An underspend that had accumulated over a number of years was drawn down in the current spending review and has been allocated across the three years of the spending review period. However, part of that agreement was that any additional underspend that built up during the present spending review would be held until the next spending review. That is why it is in the Scottish Government's interest to bring the budget in as close to a zero underspend as is possible. As Ruth Ritchie said, the Government's achievement in the most recent financial year was quite considerable.

**Nigel Don:** That suggests that a few days before the end of the financial year, you run around like I used to in a factory, spending large sums of money or pushing expenditure back a few days to balance the books. Is that what happens?

**Robert Gordon:** No.

**Nigel Don:** That does not happen.

**Robert Gordon:** No.

**Fergus Ewing:** Even though I admit that it is a serious topic, which it is right to raise, an underspend is expected to be the least of our worries this year. The rules in that regard are the terrain of the Cabinet Secretary for Finance and Sustainable Growth, if the committee wants to get copperplate chapter and verse on how the system operates.

**The Convener:** That was quite an interesting interlude. As you correctly say, it might be advantageous to follow up that issue with another minister.

What proportion of the Scottish budget does the £42 million that was mentioned represent? Can you give a rough percentage?

**Ruth Ritchie:** Not without working it out, I am afraid.

**The Convener:** It is a very small percentage.

**Ruth Ritchie:** It is a tiny amount—we are talking about thousandths of a per cent.

**The Convener:** We will move on.

**Cathie Craigie:** Like other services, the SPS is required to find efficiency savings. We have been advised by the SPS that it will be required to find £8.6 million in 2008-09, £17.1 million in 2009-10 and £25.6 million in 2010-11. Are you confident that the SPS is meeting the challenges on efficiencies that the Government has set it?

**Fergus Ewing:** Yes, we have confidence in the SPS's management of that and other matters. I understand that Mike Ewart answered a number of detailed questions on the issue in his evidence to the committee last week and, in previous answers, I have alluded to the general approach that is being taken.

First, all Government departments are required to make efficiency savings. Secondly, as I understand it, the SPS has an excellent record in achieving efficiency savings. Thirdly, in parallel with carrying out its basic job of managing the prisoner population, the SPS is working closely with its trade union partners to identify and progress potential efficiency savings. For very good reasons, it is absolutely right for the SPS to work with the trade unions, whose members do an excellent job for us all, as it manages the process. In previous years, the outcome of such work has been highly favourable, and I am confident that despite the challenges that Mike Ewart set out last week, which have been touched on today, the targets can once more be achieved.

**Cathie Craigie:** As has been mentioned, the facts are that the SPS and its staff have had to work extremely hard to cope with additional prisoners in the prison estate this financial year and that that situation is expected to continue into the next financial year. Could the Government consider that the SPS has made its efficiency savings by taking on the extra workload of dealing with more prisoners than were budgeted for? I understand that it has done that without receiving any additional support from Government for this financial year.

**Fergus Ewing:** I am sorry—I am not sure that I caught all that.

**Cathie Craigie:** The SPS is dealing with substantially more prisoners than were allowed for in the budget that was set for last year. Could the fact that it is doing so without any additional Government money be taken to mean that it has made the necessary efficiency savings and allow it to tick that box, so to speak?

11:45

**Fergus Ewing:** I think that Mike Ewart answered that line of questioning pretty clearly last week in saying that the projected number of prisoners was 7,600 and that any prisoners on top of that would bring a marginal extra cost. Nigel Don may have asked what that marginal cost would be, and I have alluded to it already—£3,500 to £5,000 per prisoner. I have also mentioned what the totals might be if, at the end of the year, the population average is in excess of 8,000. It is a mathematical computation. We are sympathetic to reaching a solution, and we are confident that the

SPS and the prison officers can manage, as they have done, the handling of prisoners in difficult circumstances with the overcrowding.

I do not think that I can usefully add much more to what I have said, but Mike Ewart may want to add to that.

**Mike Ewart:** At the committee's previous meeting, I explained—in my terribly technical and dull way, I am afraid—that simply looking after an additional number of prisoners would not qualify under the current definition of an efficiency saving. I am happy to say that we have had further discussions with colleagues in the Scottish Government. A meeting with ministers took place last week, and we are considering ways in which we can work with them to make the fact that we are looking after significantly more prisoners than we expected to within the budget head, with appropriate adjustments, fit within the Government's definition of efficiency savings. So, there has been progress since our previous discussion.

**Cathie Craigie:** Is the Government content that the services that are provided by the SPS have not suffered because of efficiency savings that the department has had to make?

**Fergus Ewing:** I am tempted to say that four walls do not a prison make. Prisons are places in which a huge range of activities go on: health services are provided, training for prisoners is rightly provided and recreation must be provided. A range of services must be provided in a prison. Members who have visited our prisons know that, as the prison populations increase, the difficulties in managing the overall functions within the prisons increase. The Auditor General's report and our recent response to it will be considered by the committee in due course, along with some of the specific issues that it raised. Nevertheless, I am confident that the broad range of services that is provided in prisons is appropriately maintained. I do not know whether Cathie Craigie has a specific concern that she wants to raise with us.

**Cathie Craigie:** In evidence that we heard from Mr Ewart last week, and in the written submission that the committee received prior to that evidence session, the SPS advised us that, if the prison population continued to be more than 7,600 it would put pressure on the service and the SPS would have to go back to the Government in year to seek additional budgetary support. Last week, Mr Ewart said that we are very close to that position and the discussions that you have had in the past week bear that out.

We recognise that there is an issue with the budget in the current financial year, and the budget that we are considering for the next financial year appears to show that there will be

similar pressure points. I am concerned that there must be enough money in the budget and that you must argue with your colleagues to get enough money in the budget to provide a safe service that meets the needs of the community and the needs of the people who find themselves locked up.

**Fergus Ewing:** I am confident that, overall, the Scottish Government will be able to manage those problems, which are acute. The situation has arisen because of a rise in the prison population that was not predicted—that was discussed last week. That may well result in additional budgetary pressures, and Mike Ewart is right to say that such matters will be discussed with the Scottish Government at the appropriate time. Nonetheless, the message that I want to leave the committee with is that, although there are serious problems, they are not problems that we think we cannot cope with. We can and will cope with them in the end-of-year arrangements—that is our hope and expectation.

**Cathie Craigie:** In the written submission that we received from the SPS last week, and in questioning, we found agreement on the figure of 7,600 prisoners. I asked whether there would be financial problems if the figure were to rise above that. The answer that I received was yes, there would be financial problems if that happened. What makes you so confident, minister, if the head of the service—the person who is responsible for delivering the service on our behalf—has concerns?

**Fergus Ewing:** I do not think that there is any conflict between the two positions, as the range of additional costs that we envisage, to which I alluded earlier, would constitute a relatively small amount of the total planned budget for prisons. The total departmental expenditure limit is more than £440 million, and the extra costs that we would be looking at would be, although significant, of a relatively small order. We hope and expect to be able to manage the situation.

Ruth Ritchie or Mr Gordon may want to add something about how the financial process is managed.

**Robert Gordon:** I will start and Ruth Ritchie may want to add to my comments.

We look monthly at all the budgets across the justice portfolio, which amount to more than £1 billion. We see the ups and downs month by month, with different areas predicting marginal underspends or marginal overspends. A huge part of the job that Ruth Ritchie does—and does very well—is finding ways of balancing the figures and, subject to ministerial agreement, submitting for parliamentary approval revisions to the budget in the autumn and in the spring, as necessary. We are in regular dialogue with ministers about where

the pressures are and where there is room for manoeuvre.

Specifically on Cathie Craigie's point, the minister has quoted the kind of figure that might be the marginal cost of keeping the extra prisoners above the population of 7,600. In the whole scheme of things, if the SPS were not able to accommodate that cost within the £400-plus million budget, there would be the possibility of that marginal extra cost being found from elsewhere in the budget. My job is not to encourage the SPS to come and ask for more money, as I have lots of other areas that want more money. That is why Mike Ewart's nip and tuck is what I need to see happening.

**The Convener:** I will allow Cathie Craigie back in, after which Ruth Ritchie can sweep up.

**Cathie Craigie:** The minister pointed out, rightly, that the budgets are annual estimates based on the best guess that people can make. It looks as though the estimate of 7,600 prisoners will be wrong; that will not be the average figure across the year. Is it not unrealistic to give that number as an estimate, knowing that it will not be correct, just to make the books at the centre balance? Should the SPS not be arguing more strongly that it requires more money and that the figures on which the department as a whole is basing its estimates are wrong?

Last week one of my colleagues said to me that the person who orders in turkeys for Tesco at Christmas time must have a good idea of how many customers will come through the door. The issue is the same for number crunchers; if you start with the wrong number, you will get things wrong. Any problems that arise as a result cannot land at the door of the SPS.

**Fergus Ewing:** I wish that managing the prison population were as predictable as stocking Tesco's turkey shelves—sadly, it is not. That point was discussed fully last week, when Mr Ewart explained that the number is demand led. If the courts sentence people to prison in large numbers, we have to manage the situation. As a non-financial person, I do not see it as logical for bodies in the public service to come to Governments repeatedly mid year to ask for more money until the position has become clear—there must be a settled process.

Cathie Craigie is right to say that we are dealing with the balance of probability; the committee has established that in the evidence that it has taken over the past two weeks. It is more likely than not that the figure of 7,600 will be exceeded, perhaps by some margin. The SPS will manage that situation, and we will work with it. I am confident that it should be possible to manage the problem in the context of the SPS's overall budget. The

figures are by no means de minimis, but they are not of such proportions as to cause me not to be confident in our ability to manage the problem.

**The Convener:** That is fine, but there must be ministerial input.

**Angela Constance:** My question is about prison operations, as distinct from services in prisons, about which Cathie Craigie asked. Are you confident that rising prisoner numbers, combined with efficiency savings, will not have an adverse impact on prison operations?

**Fergus Ewing:** What do you mean by prison operations?

**Angela Constance:** I stand to be corrected by Mr Ewart, but I understand prison operations to include locking and unlocking cell doors, feeding times, and taking prisoners to court and to visits. Such operations are distinct from health, rehabilitation and social work services.

**Fergus Ewing:** As we have discussed, all our prisons and prison officers face particular pressures in managing the difficulties that arise from prison population levels. I am extremely confident in the abilities of all those involved to deal with such pressures. I say that having visited a goodly number of prisons in the past 12 months and having spoken to a great many prison officers in the front line who are doing the job for Scotland. The question of whether operational problems will arise is the terrain of Mike Ewart, who will seek to answer Angela Constance's question.

**Mike Ewart:** My concern, which I expressed at last week's meeting, relates more to the impact of excess numbers on the services that Angela Constance describes than to purely budgetary considerations. The pressure of numbers in any establishment places logistical limits on the way in which access to recreation and programmes can be provided. The challenge that I described and which we continue to seek to meet is to fulfil at least our minimum legal duties to deliver services to prisoners and, ideally, to go well beyond that to carry out our rehabilitative mission.

12:00

**Angela Constance:** To ask a rather blunt question, could SPS efficiency savings be seen as a form of budget cuts?

**Fergus Ewing:** Not at all. Some of the efficiency savings were outlined last week. I hope that the committee was persuaded by Mr Ewart's answers that that is not and should not be the case.

**Angela Constance:** The chief inspector of prisons has criticised the waiting list for the sex offender programmes at Peterhead prison. What

do you intend to do to reduce those waiting lists in the interim before the new HMP Grampian is built?

**Fergus Ewing:** There certainly was criticism from the chief inspector of prisons, and we take that seriously. In response, it is worth noting that, of the 55 liberations from Peterhead prison during 2007-08, 52 had completed the sex offender programmes, which compares favourably with previous years when between 42 and 38 completions were recorded. That is an increase of 23 per cent year on year. Almost all the sex offenders who have been liberated have completed the necessary programmes.

That does not answer entirely the chief inspector's criticisms, which go beyond those figures, but we would probably all accept that we would like sex offenders to have completed their programmes just before they are released.

**Nigel Don:** I have one more question to ask before we leave the subject of prisons. Can the minister confirm that he and his colleagues have looked round the country for all the possible alternative places to prisons? That is a matter of some public speculation and I would be grateful to hear some confirmation that you have looked everywhere, including in the cellars of Edinburgh castle, military prisons and the like. Has the country been looked over from A to Z and is it clear that there are no alternatives?

**Fergus Ewing:** That is a very serious question, and it is our view that there are no establishments that could easily or effectively be converted into prisons. Obviously, prisons require to be secure and there must be cellular security. In other words, if a prisoner can kick down a wall, the building is not secure. Sadly, as many will know, such things happen fairly often.

Scouring the country for unused hospitals or military establishments seemed to be a fag packet idea, and I was surprised to see Annabel Goldie, normally a fount of wisdom and common sense, associate herself with it. Be that as it may, if the idea was a realistic solution, we would have adopted it long ago. Getting planning permission for such a building would take around a year, so it is not a short-term solution. I do not know that anyone who has advocated the idea has suggested where we might find the prison officers to run converted hospitals or military establishments. No military establishments are available to us that could be so used.

At the end of the day, it would probably be cheaper to build a new prison, if that is the way that members wish to go. We do not believe in going down that route, but nonetheless it would be cheaper. The price tag for a new prison might be £120 million and £30 million would be required to run it. Any party that advocates the idea would

have to propose amendments to the budget to identify the cost of converting the hospital or military establishment and the revenue expenditure, which might be of the order that I have suggested, although it could be more or less.

We do not think that the idea is serious; I welcome the opportunity to place that firmly on the record. It might be useful if Mike Ewart explained the work that has been done in connection with the idea and gave his view of the proposal.

**The Convener:** Briefly, please, Mr Ewart.

**Mike Ewart:** I will be brief. "Follow that" is really all I can say—Mr Ewing has set out the position with great clarity.

On the face of it, using an empty building as a temporary prison facility might look like an easy solution, but in practice all the constraints that the minister described would apply. We would require planning permission for such a building and we would need to make it secure. A building that has been designed for other purposes cannot be made secure simply by putting barbed wire round it. The fact is that any such building would remain soft and vulnerable. Under previous prison regimes in recent history, we have seen prisoners on the roofs of buildings that were built as prisons. I am afraid that buildings that were built as hospitals will not contain prisoners.

I am possibly the only person who can speak with some authority on the issue. In a previous life, I converted an existing building for use as a court and prison during my time at Camp Zeist with the Scottish Court Service. To produce a prison even out of a building that had been designed to withstand nuclear attack was an enormously expensive business.

**The Convener:** With respect, I am not entirely convinced that that is analogous. However, this story will run and run. I will share with the minister the results of my own findings in due course.

Moving on from the Scottish Prison Service, I am sure that the minister will be aware that the committee spent a lot of time last year considering police numbers, which is why this year—logically, I hope—we have directed much of our attention towards prisons. However, we have a few outstanding questions about police numbers. Nigel Don will open the questions.

As this has been a long evidence-taking session, I ask that questions and answers be kept brief.

**Nigel Don:** Committee members have access to a recent submission from the Association of Chief Police Officers in Scotland. I hope that the minister also has that document, as we do not want to run through all the numbers. Is the minister content with progress on increasing our police numbers?

**Fergus Ewing:** Yes. We are investing £94 million to deliver a more visible policing presence on Scotland's streets. We are recruiting 1,000 extra new officers and we are working with forces and police authorities to deliver significant additional capacity through redeployment and better opportunities for retention. The 1,000 will be delivered thus: 150 were delivered in year 1; 450 will be delivered this year; 200 will be delivered in the third year; and 200 will be delivered in the fourth year. Specific sums have been allocated for that.

I was delighted to see that, in evidence to the committee last week, the ACPOS representatives welcomed the fact that the money is ring fenced because that helps them to account for, or invoice for, the extra numbers. We are confident that we will deliver our pledge, which is a key aspect of providing a safer Scotland.

**Nigel Don:** I had a concern about the number of applicants, but I think that the ACPOS submission suggests that significant numbers are applying.

Another constraint that has been suggested is the capacity of the Scottish Police College at Tulliallan to cope with recruits. Can the minister confirm that that is not a constraint?

**Fergus Ewing:** I can confirm absolutely that that is not a constraint. One of the ministerial duties that has given me most pleasure was attending, and speaking to, the passing-out parade in Tulliallan at the beginning of the summer recess. In the course of that visit, I learned that Tulliallan is upping its game in a way that perhaps deserves to be more widely understood. In 2007-08, the number of new recruits who passed out of the police college was 575. This year, the number is expected to rise to 1,636. In other words, more than 1,000 extra recruits will pass out from Tulliallan this year alone. Although the number of recruits passing out was previously higher than in 2007-08, the figures show that Tulliallan is performing extremely well. The institution has a great reputation and it will help to deliver the 1,000 extra police that we pledged.

**Paul Martin:** How many police officers will retire in the three financial years from 2008-09?

**Fergus Ewing:** Predicting the exact number of officers who will retire is impossible, because their doing so depends on individual choice. Almost 2,300 officers will be eligible to retire in this parliamentary session. It is plain that that represents a huge pool of knowledge, experience and expertise that cannot be replicated immediately, even in the best training college.

**Paul Martin:** ACPOS says that 1,631 officers will be eligible to retire in the next three financial years. In response to Nigel Don, you accepted

ACPOS's figures. How many officers will be recruited in those years?

**Fergus Ewing:** Each force recruits officers and receives funding for the officers whom it requires to replace. As the convener well knows, following negotiations between my party and his party, which I credit, we made available an additional £94 million to ensure sufficient funding for training and payment of the extra officers. I am confident that the target will be met, as I am confident in our eight forces' abilities to replace officers who retire.

**Paul Martin:** If 1,631 officers are to retire and you are taking credit for recruiting 1,000, there is negative equity, if we can put it like that, in the number of officers on Scotland's streets. You can contradict me if you wish.

**Fergus Ewing:** Sadly, I do so wish. We are providing ring-fenced funding for additional officers, over and above the replacement of officers who retire.

**Paul Martin:** You say that the officers are over and above existing provision. I recollect that you inherited 16,231 police officers. Do you expect to have 17,231 officers in place at the end of the financial year 2010-11?

**Fergus Ewing:** As senior police officers have opined, it is not for the Scottish Government to dictate to chief constables the size of their police forces. We do not just want to provide 1,000 additional police officers—which we are providing and will provide—but to have police officers redeployed to front-line services and away from backroom functions wherever possible, which the public really want to happen. An element of redeployment is involved. It is not for the Government to dictate to chief constables the size of their forces.

**Paul Martin:** You say that you cannot dictate to chief constables the size of their police forces, but you dictate that officers should be placed on Scotland's streets—you and the Cabinet Secretary for Justice have said that several times. On the one hand, you say that you will not dictate the size of police forces but, on the other hand, the Government's policy is to encourage chief constables to place officers on our streets throughout Scotland.

**Fergus Ewing:** Neither the cabinet secretary nor I deigns to dictate to chief constables. In general, chief constables are not dictated to: they are rightly in charge of their patches and are independent of the Government. ACPOS has agreed to additional front-line provision, so the Government and the police are as one.

**Paul Martin:** So the chief constables and not the Government can take the credit for the additional police officers.

**Fergus Ewing:** The taxpayer should take the credit for providing the funding. Taxpayers fund public services, so hard-working taxpayers should enjoy a break.

12:15

**Paul Martin:** I have a final question. Can you advise us how many officers have deferred retirement after their 30 years' service?

**Fergus Ewing:** The precise number of those who retire depends on the decisions of individual officers. We have argued—I do not think that it can be disputed—that police officers who have completed 30 years' service have huge experience and expertise. They have a huge pool of ability which, if they can be persuaded to continue post-retirement, we want to harness.

I have not yet had the opportunity to study the information that ACPOS has provided to the committee, following last week's discussion in which certain questions were not answered, so I am afraid that I cannot comment in detail on the figures. I believe that they were furnished to my officials just this morning; therefore, it would be rash of me to start making off-the-cuff comments about them. Nevertheless, I believe that everybody can agree that we want to utilise the experience that officers have amassed over three decades of service, and that more needs to be done to revive and review the 30-plus scheme, for example, in that regard. We also need to consider the civilianisation of posts and greater use of technology, and we must press for a change in the UK legislation that requires the police to support the Vehicle and Operator Services Agency in carrying out roadside checks.

**Paul Martin:** I wonder whether the minister would be helpful enough to provide in writing the figure for officers who have deferred retirement.

**The Convener:** That would be useful.

**Fergus Ewing:** If we have information about the number of deferred pensions, we will come back to the committee about it. I am advised that the police may not have that information. If it does not exist, we cannot provide it, but we will use our best endeavours.

**The Convener:** I can see that problem.

We turn to the slightly vexed question of police pensions.

**Stuart McMillan:** Last month, the Scottish Government confirmed that £68.5 million of additional money was going to police pensions. That is welcome, but there remains a potential pressure on operational funding. Is there agreement between ministers, COSLA and the

police about a long-term solution to funding of police pensions?

**Fergus Ewing:** I am delighted that the Scottish Government and COSLA have today reached agreement on the extra funding that is needed to offset the pressures on the police service and the fire and rescue service that have been caused by the retirement bulge—the record number of retirements. I am pleased to say that a joint statement was issued this morning by Kenny MacAskill and Pat Watters, welcoming the deal. The detail of the funding is made available in a news release that I have in front of me, which members will see in due course. Plainly the deal, which has been funded jointly by the Scottish Government and COSLA, will be welcome news to police officers and firefighters throughout Scotland.

As far as a long-term deal is concerned, part of the agreement looks towards how the current system can be changed by pooling risk. That is a fairly technical matter, but it is an approach that both COSLA and the Scottish Government wish to take. Robert Gordon and Ruth Ritchie may be able to explain the technicalities of the scheme.

**Stuart McMillan:** In your earlier answers, you talked about the Barnett consequential or the lack of them. We have a new Secretary of State for Scotland. Have you contacted him to pursue the line of argument to which you alluded earlier?

**Fergus Ewing:** I have not yet had the opportunity to make contact with the new secretary of state, who was appointed only recently. However, the deal that has been reached on pensions has two components. The one that was announced today deals with the retirement bulge—that is, the high number of people retiring in the police and the fire service because of high levels of recruitment in the 1970s. The previous deal that we reached with our partners in COSLA was to fund the increased cost of the increase in pensions commutations. Commutation is, of course, the conversion of an element of an annual pension into a lump-sum payment. The commutation scheme was implemented in England and Wales. The UK Government paid for that, but did not match the payment with Barnett consequential in Scotland. Once again, the Scottish Government was the victim of financial jiggery-pokery by Westminster. It would be terrific if, for example, the Labour Party was to join us in discussions with Jim Murphy to get that money back for Scotland, because it would allow us to recruit our 1,000 additional police officers even more swiftly, to extend the range of non-custodial sentences or to address many other worthy purposes within the justice portfolio.

**Cathie Craigie:** My colleague Bill Butler asked the minister to explain his so-called financial

jiggery-pokery but he was unable to do so. Perhaps he might try to explain it this time.

**The Convener:** I take it, Mr Ewing, that you feel that there is no need to define jiggery-pokery as you see it.

**Fergus Ewing:** There is little need—I think I have explained it clearly on more than one occasion.

**Stuart McMillan:** I do not know about my colleagues on the committee, but I have not seen this morning's press release, so I am not sure about the future aspect of the announcement. Does it mention the Scottish Government's aspiration to fund police pensions centrally? If not, what is the situation with that?

**Fergus Ewing:** Yes, it does. The announcement that was made today is that the payments will be made—let us be clear about that. Serving police officers and firefighters who are coming up to retirement needed that clarity. It was one of the key issues for the Scottish Government to deal with over the summer and involved a huge amount of negotiation and discussion with our partners in COSLA. Ultimately, however, the work was successful. That is the main priority of the moment on pensions.

Over the long term, the Scottish Government and local government are firmly committed to finding a way at central level in which to deal with pensions and the risks of bulges in the contingent liabilities by using a form of pooling. Perhaps I could bring in Robert Gordon or Ruth Ritchie to explain in a bit more detail how that might operate.

**Robert Gordon:** I have little to add to what the minister has said. By pooling, we would eliminate the bulges that from time to time cause budget pressures. Some chief constables were concerned about the affordability of replacing officers who retire—that goes back to the question that Paul Martin asked. However, one of the significant points about the announcement that was made this morning is that, because the pressure on pensions will be dealt with, the numerical targets—the 1,000 additional officers for whom the Government is providing additional funding and the replacement of the significant numbers of officers who are expected to retire over the next three years—will likely be easier to achieve. Therefore, record numbers of police are likely to be provided, although the precise number will be for chief constables to determine in taking account of their areas' needs, as the minister made clear.

**The Convener:** In like manner to our discussion on prisons, we will turn to efficiency savings.

**Robert Brown:** In written evidence, ACPOS stated that achieving the 2 per cent cash efficiency savings



"will be extremely challenging given the high proportion of Police budget accounted for by Police pay and Police pensions."

I know that the minister is aware of that issue. Does he accept that it will be challenging? What challenges does he have to overcome? Will he give us an insight into the issue?

**Fergus Ewing:** Obviously, today's decision will make the situation less challenging than it was yesterday. In that respect, it is very welcome.

The police reported total efficiency savings of £65 million for 2007-08, of which £14 million were cash-releasing savings. The remainder were time-releasing savings. The police target had been £58 million, so they came in £7 million above target, which is a creditable performance.

I noted that one of the senior police officers who gave evidence last week said that about 80 per cent of the budget is made up of staff costs, so the room for manoeuvre is plainly limited. The budget's being so largely made up of fixed items of employment costs means that the efficiencies that the police have managed to find are so much greater. I can give Robert Brown examples of efficiencies, if he wishes.

**Robert Brown:** I was asking more about the general picture. ACPOS seems to have concerns about whether operational effectiveness would be affected in any way by the desire to meet the 2 per cent target, considering the high percentage of the budget that is taken up by pay and pensions. Do you expect any operational challenges in meeting the efficiencies in the forthcoming year?

**Fergus Ewing:** There will always be operational challenges, but the police will always rise to meet them and some of their efforts in finding efficiency savings will be welcomed by the public. For example, they are sharing radio masts with the Scottish Ambulance Service and the fire and rescue services, thereby saving rental and replacement costs. They have also used personal digital assistants to reduce the time that is spent on paperwork, which is a big bugbear of the beat cop. Using electronic formats saves police time and also takes some of the boredom out of the job of endlessly repeating similar information on forms. The police have simplified procurement processes, for example through e-procurement, and have looked at workloads and shift patterns to reduce overtime and sickness absence costs. They have also used videoconferencing to reduce unnecessary travel, and I believe that they even use energy-efficient light bulbs.

**The Convener:** We shall sleep easier of a night knowing that energy-efficient light bulbs are used.

**Robert Brown:** The central point is whether the minister sees any conflict between the efficiency savings target and the target for additional officers

in communities. We all remember the financial and statistical jiggery-pokery that the Scottish National Party Government engaged in over the difference between 1,000 officers and the equivalent of 1,000 officers. We have some concerns in that respect, and we would be grateful if the minister could put our minds at rest about them.

**Fergus Ewing:** That is not a version of events that I recall. I believe that the police are well able to find efficiency targets this year, as they did last year. Indeed, in these parlous economic times, the public expect Government to find efficiencies. If we did not do so, we would rightly be criticised. We are not apologetic about the process—quite the reverse.

**Robert Brown:** This is a serious point. Do you expect that the efficiency savings will eat into police numbers in practical terms and thus prejudice the additional police officer targets that the Parliament has set, in effect in tablets of stone?

**Fergus Ewing:** I would not expect that to occur. I recall that the police evidence was that 150 officers were delivered and 450 officers will be delivered, so we are on target to delivering the extra 1,000 police officers, not least because the Government provided ring-fenced funds to do so—something that ACPOS witnesses expressly welcomed in their evidence. I am not at all worried about the situation. If I were presiding over an Administration that said that it would deliver 6 per cent tax cuts, I would be very worried—

**The Convener:** I think we have heard that point, Mr Ewing.

12:30

**Robert Brown:** I have two slightly more technical points. ACPOS referred to the Scottish Police Services Authority and said that it was important to have an independent review of the arrangements once they had had time to settle in. First, do you agree with ACPOS that it is too early to gauge what benefits have come from the SPSA? Secondly, do you agree with the suggestion that there should be an independent review before the end of 2009-10?

**Fergus Ewing:** The SPSA has made significant progress in a number of respects in considering more effective centralised activity. That has had the support and welcome of senior ACPOS representatives, as would be expected given that two chief constables sit on the authority's board. However, it is too early for appropriate consideration to be given to a review. There have been criticisms of the SPSA—I am sure that we have all read them—but it has the broad support of the police community. Although there are some

problems, the authority has already made some significant achievements.

**Robert Brown:** Finally, do you think that the problem of VAT payments on information and communication technology services that are delivered by the SPSA has been resolved by the agency arrangements that it outlined to the committee last year? Are there any outstanding issues?

**Fergus Ewing:** After discussions with HM Revenue and Customs, the Government, ACPOS and the SPSA, there is every reason to believe that workable arrangements can be put in place to allow the SPSA to provide ICT services to the eight Scottish police forces in a way that does not attract VAT liability. Discussions, as they say, are on-going.

**Robert Brown:** Will the minister return to the committee with a report on that in due course? It is of some importance.

**Fergus Ewing:** Yes.

**The Convener:** The issue seems to have taken a long time; we need to know the position.

That concludes the evidence session. I thank Mr Ewing, Ms Ritchie, Mr Gordon and Mr Ewart for coming. I am sorry that it has taken so long, but they will appreciate that the budget is a very important parliamentary process. As such, we require to be as thorough as possible.

12:32

*Meeting continued in private until 14:20.*

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