JUSTICE COMMITTEE

Tuesday 5 May 2009

Session 3

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JUSTICE COMMITTEE
13th Meeting 2009, 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)
*Stewart Maxwell (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 ALSO ATTENDED:

Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab)
Elaine Murray (Dumfries) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Gerard Bonnar (Scottish Government Criminal Justice Directorate)
Elspeth MacArthur (Judicial Appointments Board for Scotland)
Kenny MacAskill (Cabinet Secretary for Justice)
Roy Martin QC (Judicial Appointments Board for Scotland)
Eric McQueen (Scottish Court Service)
Chris Orman (Judicial Appointments Board for Scotland)
Sir Muir Russell (Judicial Appointments Board for Scotland)
Nadya Stewart (Crown Office and Procurator Fiscal Service)

CLERK TO THE COMMITTEE

Douglas Wands

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Andrew Proudfoot

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 5 May 2009

[THE CONVENER *opened the meeting at 10:19*]

Decision on Taking Business in Private

The Convener (Bill Aitken): Good morning, ladies and gentlemen. I open the meeting by reminding everyone to switch off mobile phones. I have received no apologies for the simple reason that, as ever, we have a full turnout.

The first item is to seek the committee's agreement on whether to take in private item 7, when we will consider whether to accept into evidence the submissions that have been received in response to the call for evidence on the Criminal Justice and Licensing (Scotland) Bill, and whether to take in private any future consideration of written and oral evidence that we receive. Are members agreed?

Members *indicated agreement*.

Judicial Appointments Board for Scotland

10:19

The Convener: Item 2 is evidence from the Judicial Appointments Board for Scotland. Members should have the Scottish Parliament information centre briefing paper, a private paper and the research questionnaire that was commissioned by the board.

It gives me particular pleasure to welcome our witnesses: Sir Muir Russell, the chairman of the Judicial Appointments Board for Scotland; Elspeth MacArthur, lay member; Roy Martin QC, legal member; and Chris Orman, secretary to the board. I invite Sir Muir Russell to make some short opening remarks, after which we shall move to questions.

Sir Muir Russell (Judicial Appointments Board for Scotland): We are very grateful for this opportunity to give evidence to the committee. I guess that this is something of an update on the evidence that my predecessor, Sir Neil McIntosh, gave in March last year.

You have already introduced my colleagues Elspeth MacArthur and Roy Martin, who are among the longest-serving board members, and Chris Orman, the board's secretary. I replaced Neil McIntosh in October 2008, and in the past year we have been joined by other new members: Lady Smith, Sheriff Kenneth Ross, Martin McAllister, Professor Andrew Coyle and the Rev John Miller, who I believe will attend his first board meeting this very month.

Quite a bit has been happening with judicial appointments over the past year. In December 2007, there was an all-Scotland floating sheriffs slate, from which nine appointments were made. Those appointments will run until December 2009, and we expect to run a new competition in the autumn. In June 2008, a part-time sheriffs slate was announced, from which seven appointments were made. Those appointments will run until June 2010. Four senator appointments were made in March and November last year and two sheriff appointments were made in June 2008 and February this year. Moreover, in February, we sent out a questionnaire on diversity and related issues, and we expect the findings to be analysed and available this summer.

At the moment, we are focusing mainly on the commencement of provisions in the Judiciary and Courts (Scotland) Act 2008 that relate to the board. We hope that that will happen later this year—indeed, as soon as possible.

We have also been examining our processes and I guess that we will discuss how we are taking forward the board's work with regard to the various matters that are in place and in progress. In particular, we are considering the implications of the statutory framework that is set out in sections 12 and 13 of the 2008 act. We have also been looking at what might be called housekeeping matters, by which I mean support for the board's work and various factors including staff, premises, information technology and budget, and ensuring that our set-up safeguards the integrity, independence and transparency of the board's operation, which I know that committee members were very concerned about from board members' previous appearance at the committee.

Those are our top-of-the-head concerns. We are very happy to contribute to the discussion and to respond to members' questions as best we can.

The Convener: You have identified the main issues that we want to pursue, the first of which relates to the Judiciary and Courts (Scotland) Act 2008. What differences has the passing of that legislation made to the board's operation and what differences do you expect the legislation to make in due course?

Sir Muir Russell: Colleagues who have lived with all of this for longer than I have will no doubt want to supplement my response, but I think that the board's statutory status—the enshrining in statute of various provisions related to process and independence—will very much focus our minds on the tasks that face us, including, for example, the duty to appoint on the basis of merit and character; the duty imposed on legal members of the board to examine candidates' knowledge, skills and competence; and the duty to take account of and promote diversity. In other words, the legislation has crisped up the things that we have been doing. As members will hear, we have been responding to our statutory duties by thinking quite carefully about our various processes and the criteria that we use.

As I said in my opening remarks, we have also been looking at the resources that we need to do the job properly. Despite the excellence of the support that we have received in the last little while, we have really had very few people at our disposal; indeed, we are down to Chris Orman and one colleague. We need a bit more support in that respect.

In the past few months, we have had discussions with Scottish Government officials to do with issues of premises, IT and budget so that we can do the job properly. The 2008 act has made a difference by ensuring that we focus on what we are about.

The Convener: Are things bedding in?

Sir Muir Russell: Yes. I think that the new board is beginning to work well together following all those changes. We are beginning to have a clear vision of how things will work and how they might be a little different from how they were in the past. As I said, that will be driven by the statutory obligations that we are under.

Nigel Don (North East Scotland) (SNP): Good morning. I want to go a small step further by asking whether there are any concerns about getting hold of the resources that the board needs. You put the point very diplomatically about being in discussions with the Government, but clearly the board will not be able to do the job well—no matter how well it might have been set up—if it is not properly resourced. I think that we recognise that we need that job to be done well. Is resourcing an issue?

Sir Muir Russell: I do not think that that is an issue at the moment. The statute provides that the Government should provide, or secure the provision of, the resources that we need. We have discussed our need for premises, which have now been organised. We have also discussed our need for access to IT in a way that keeps us clearly distinguished from the Government. Underpinning all of that is our need for budget resource to support a slightly larger staff complement.

We have identified the criteria that we believe are important for the appointment of a chief executive and we have worked with the Government on the grading of that job. We have been very fortunate to be able to interview a senior civil servant with a lot of policy, appointments and legal experience who will transfer to us. I do not want to give too much away as we have not made the announcement yet, but he is sitting in the room at the moment. We are very pleased that that has been done—Elspeth MacArthur and I interviewed him and we were comfortable with the appointment—so we have a feeling that we are getting somewhere.

The budget allocation that we have been given by the relevant division in the department—forgive me, I know that we are not allowed to call it a department these days, so I am showing my age—is good as it is quite substantially up on where we were last year. That reflects both the work that we need to do on the competitions and the increased staff complement that we expect. Therefore, the answer to the question is a conditional yes. We believe that we are being given adequate resource to get on with the job.

Nigel Don: I get the impression that you are comfortable with your current allocation.

Sir Muir Russell: Yes, I think that I can say that.

Chris Orman (Judicial Appointments Board for Scotland): Yes.

Sir Muir Russell: Chris Orman is really the person who understands those details.

Nigel Don: I am happy to hear that answer.

The Convener: Does Ms MacArthur have anything to add at this stage?

Elspeth MacArthur (Judicial Appointments Board for Scotland): No, I have nothing to add to what the chair has said so far.

The Convener: Would Mr Martin also adopt the previous arguments?

Roy Martin QC (Judicial Appointments Board for Scotland): Yes, I certainly would.

If I may for one second, let me just emphasise that the critical difference in the board's becoming a statutory body is the process that will take place, in accordance with section 13 of the 2008 act, to assess the legal competence of candidates for judicial appointment. That is a distinct process that, in accordance with the act, must be carried out only by the judicial and legal members of the board. Those of us who fall within those categories are—through what we have called the section 13 working group—devising those procedures, which will then be presented to the board as a whole for approval and will be applied in individual cases. I hope that those procedures will add to the robustness of the process.

The Convener: That is a very apposite response, given that we now turn to the appointments that the board has agreed, which are required under the legislation to be totally reliant on merit. Bill Butler will open the questioning.

Bill Butler (Glasgow Anniesland) (Lab): Good morning, colleagues. How satisfied are you that the most able candidates are being appointed to judicial office in Scotland? Can you state your reasons for your view about the appointments procedure?

Sir Muir Russell: You will realise that I am new to the board, and that what I said about the process did not refer to my involvement in the interview process for particular appointments. When I look at the process, I see something that has encouraged the best people to apply and in which evidence about and references for those people have been taken. I see a fairly serious process, which generally involves two stages: sifting and interviewing. I do not really have any substantive comment to make beyond the fact that it seems to me that the board has made a good start on its process over the past six years. I think that that is the general view of most commentators, most of the time. It would be unwise for me to go beyond that, except to say that it seems to me that the board has been operating well over that period; therefore, one has to have confidence in what it has been doing.

10:30

Bill Butler: Heaven forfend that I should encourage you to be unwise, Sir Muir. Perhaps board members with a longer tenure have something to add.

Elspeth MacArthur: I have been on the board, in its non-statutory capacity, for almost two years. My background is in human resources. When I joined the board, and since joining it, I have been consistently impressed by the principled approach that it has always taken, in respect of not only its independence but the transparency of the processes that it has used, the care with which that has been done, the close involvement of all board members and so on.

That is not to say that those things should not evolve and improve over time, as we learn more about the population that we are dealing with and as we develop our processes further. In response to your original question, although every recruitment process can always be improved, in comparison with many recruitment processes, this one has stacked up pretty well.

Bill Butler: What improvements would be worth considering?

Elspeth MacArthur: We have two working groups. One of them is considering the section 13 matters specifically, and the lay members are considering the section 12 issues. Careful contemplation of what those working groups come up with will add to what we are doing, and we will refine the processes. However, the principled approach will not change, and the principles of transparency and fairness will continue to apply.

Bill Butler: Does Mr Martin have anything to add?

Roy Martin: From its origins, one of the principal functions of the board, in getting away from the system that previously applied to judicial appointments, has been the establishment of confidence in its processes, and the consolidation and continuation of that confidence.

In that regard, it is important to bear it in mind that there are perhaps four constituencies whose confidence we ought to have. First, there are the legislators—the Parliament—not least because they created the 2008 act and because they generally deal with matters concerning the judiciary. The second constituency is the public at large, whose opinion must come from a reflection of what we do in newspapers, parliamentary proceedings and so on.

Thirdly, there are the members of the legal profession who see themselves as being qualified for appointment, who apply to us and who are then dealt with in a particular way by the board. Finally, there are the members of the judiciary, who of course wish there to be appointments to their body who will inspire confidence and so on in their activities.

I have been a member of the board for as long as Elspeth MacArthur, and I see the primary purpose of the refinement and improvement of our processes as achieving the maximum level of confidence from those constituencies. As the chairman of the board has said, it would be foolish to claim any absolute success. However, I can say that we have learned from reasoned criticisms that were made in the past—for example, the criticism that the board relies too much on what a candidate says about himself and what his selected referees say. In the processes that we are developing, we are looking to require candidates to produce, for instance, examples of their work in the past so that a judgment can be made about how well they present, and to identify referees who can speak to candidates' actual conduct in a particular case or transaction.

I apologise for taking up a little time, but those are examples of what we are doing. That is all being done to demonstrate that there can be confidence in the way in which we identify the persons who are recommended.

Robert Brown (Glasgow) (LD): I wish to pursue the issue of the thoroughness, objectivity and verifiability of the process and to get a bit of flavour from you about how all that works.

In previous evidence to the Justice Committee, a number of views were expressed about the lack of external verification. For example, Lord Osborne said:

"the board is blinkered to sources of information that one would have thought were highly valuable."—[*Official Report*, *Justice Committee*, 11 March 2008; c 587.]

Richard Keen QC said that the board should consult "a little more widely" and made the point that, as the dean of the Faculty of Advocates, he was asked for information about appointments in England but not in Scotland. It is all very well to have the information that the candidate produces, but in this unique and important type of appointment it is important to have verifiable and useful information from other sources without falling into the trap of the old-boys' network and the whispering round. Can you give me a feel for how all that is dealt with? I think that there is a need for external information in addition to the information that the candidates provide.

Sir Muir Russell: If one took such a system to its full rigour, there would be very systematised annual reporting. One can just about imagine how that might work for some of the smaller communities, but, on a bigger scale, how would the Law Society of Scotland report on its 10,000 members? We have not looked to the legal world to develop something that we can just plug into to call down what one might call, in hierarchical terms, an annual report on someone.

We want to pick up the points that Roy Martin mentioned. We want to get examples of evidence of a candidate's work and comments from people who have worked with the candidate, so that we are able to understand what they do, what they have done and how they tackle issues. It is not so much about asking exam questions to which there is a right answer but about finding out how a candidate's mind works, what sources of information they use and what thinking processes they bring to bear. That is the sort of information that legal colleagues on the board will look at in a much more systematic way. We want to look at written work and gather information from people who have sat in front of the candidate when they have been pleading or giving an opinion, and we may conceivably have a process in which they are asked to comment on a case study in a discussion-type interview with legal colleagues on the board.

All of that is designed to get as close as we can to objectivity in gathering evidence without presuming that such a system cannot exist. We do not want a system that could be criticised on the basis that it all depends on whom one knows and that, if the candidate happens to have been heard of by the people around the table, they might be alleged to have a better chance. We want to avoid that. We are trying to find objective evidence.

Being new to this, I am pretty optimistic about the way in which my legal colleagues on the board have been pursuing the matter and the sort of things that I believe it will be possible to introduce into the process. I am hopeful that we can do that in the appointment process that we will run this autumn and that we can make clear to the profession and those who have been critical the steps that we have taken to respond to a lot of the points that were made in the committee a year ago.

Robert Brown: I would like to develop the point that Richard Keen made. One imagines that England has 10 times as many individuals in the profession, both at the bar and in the solicitor branch, yet Richard Keen is asked for information about applicants. I guess that that reflects the process in England. However, arrangements for Scottish judicial appointments do not appear to require such external verification, and he is not asked to comment; neither are sheriffs whom a candidate has appeared before nor members of

the local bar or area practices. There must be various ways in which to gather not just the internal information that the candidate provides, but external information regarding the candidate's repute in the areas in which they practise. Is that not an important aspect of this unique and important job?

Sir Muir Russell: Our thinking at the moment is that we should move from candidates' simply nominating referees who have a general view of them and their background to having as referees people with whom they have worked. That moves us some distance towards where we are getting to; it does not take us to a formal and standard process whereby we always ask the dean of faculty and the Lord President or whomever. We will see how that goes and whether it works practically.

Our thinking might develop; people might become more or less comfortable with that amount of evidence assembling. We need to move swiftly and positively in the direction that you all want us to take, and that is why the first things that we do will get us quite a long way towards the objectivity that we all want. I keep using the word "evidence"—we do not want just a statement that somebody is bright and used to be good at law school; we want evidence about what they are doing now. We can get quite close to that. I defer to Roy Martin for further detail on that.

Robert Brown: Before we hear from Mr Martin, I have another question. Sticking with what happens in England, is there liaison between the Scottish and English bodies about best practice, so that one can get guidance on possible ways forward from other people who have had the same problems?

Sir Muir Russell: There is regular liaison with Usha Prashar and her Judicial Appointments Commission and with the Northern Ireland Judicial Appointments Commission. We each try to learn from others in the work that we do. We had an early start, but the English commission has been able to rev up pretty quickly, in terms of its size and the establishment of its statutory basis. There might be some things to learn from it and, I am vain enough to say, I hope that there might be some things that it will learn from us. That is the plan. I spent some time with Baroness Prashar at the beginning of my appointment catching up on some of the issues. Some of that has gone into a little of the thinking that we have been doing, as has other colleagues' experience of visiting the English commission, attending some of its conferences and talking with Northern Ireland colleagues.

Roy Martin: Speaking as a member of the board for two years, its having existed since 2002, I have considerable sympathy for what has been said, not least by Lord Osborne and the dean of the Faculty of Advocates. It is useful to bear it in mind that the creation of the board came out of a desire to move away from the old system—I apologise for mentioning that for the second time. Because of that and the view, right or wrong, that it was based on nods and winks, private soundings—that phrase was used—and personal knowledge and had become unacceptable for a range of reasons, in its origins the board might have gone a little too far to demonstrate that it was different. Thus, it set its face against anything that might be characterised as private soundings, confidential information or whatever. I would like to think that, with the benefit of experience and the existence of the board as a statutory body—indeed, with the benefit of the newer board members with their different experiences—we can recognise that there might have been a swing too far in one direction and that it is reasonable to move back a little in another direction. We must not do that to the prejudice of the aspirations that we all have for the body, so it must be seen to be done properly.

I venture to suggest something that is perhaps not acknowledged as widely as it might be—to an extent, Elspeth MacArthur acknowledged the point in her comments. The board comprises 10 individuals who were appointed from different backgrounds and who exercise as seriously and as best they can their responsibilities to achieve the best results in terms of the best appointments to the bench. We might not always get it right, but I would like to think that there is a safeguard for all the constituencies that I mentioned in the fact that the board is made up of 10 people, that you know who we are and that we can help you by coming to speak to a committee such yours. Therefore, if there were distortions through private soundings in the past, I would like to think that they would be very much less likely to come through into what might be seen as an unjustified appointment.

10:45

Robert Brown: What are Ms MacArthur's views as a relative outsider to the legal fraternity prior to her appointment?

Elspeth MacArthur: The principles that the chair mentioned are important: it is important to get good-quality evidence from a well-informed source. That is what we are trying to develop further. It is about what the person giving the evidence has seen that he or she can tell us. It is not about whether the person giving the evidence holds a particular office—there is a sense that that could be more restrictive. If we can go to people who have direct evidence about the candidate, we will get the best evidence that we can. Those are

the underlying principles, and we are in the process of working out how we get there.

Robert Brown: Are you able to go to people other than those whose names have been provided by the candidate?

Elspeth MacArthur: Yes—well, possibly. The critical thing is whether the person has observed the candidate working, rather than operating on the basis of a secondary reputation—it is about professional competence as observed.

Angela Constance (Livingston) (SNP): My question has been somewhat anticipated by Robert Brown's earlier question and by Mr Martin's remarks. At the risk of duplication, I will ask it anyway, in case there is other information the panel would like to put forth.

How does the Judicial Appointments Board incorporate the views of third parties such as the Law Society, the Faculty of Advocates or personal referees into its recruitment procedures?

Roy Martin: The procedure to date has been as already discussed: the candidate will identify three referees at a point in the process. After the initial sift, the referees of those candidates who have come through that sift are invited to provide a written reference to the board on a form that we provide. The information provided in that reference is then taken into account by the board when it continues its assessment of the candidate through a second sift and an interview and—ultimately—makes a recommendation.

The references that are provided are taken into account, in so far as they exist, but the shortcomings are that they are all from persons who were identified by the candidate and that—thus far at least—there has been an invitation simply for general references. The form concentrates on various competences, about which the referee is asked. However, as the chairman emphasised, it is not based on the new procedure that we are developing, whereby the referee will be asked to comment on a particular experience with the candidate in court.

Angela Constance: Will you move towards specifying to a candidate the balance of referees that they have to supply—for example, that they have to supply a referee who has working knowledge of their performance as a professional and other referees who may verify other aspects of their qualities and life?

Roy Martin: Yes. We are already doing that, in the sense that there will be a category of what we call "professional referees", who will comment on work—there should be at least one of those. There will be two other referees who will comment more generally.

To respond to the other aspect of your original question on consultation with the Law Society, the Faculty of Advocates and other bodies, increasingly the view held by the board is that such consultation is valid, although it has not happened up to now because of a perhaps reasonable but overdone anxiety that it would be a return to the old days of private soundings and so on. We have not devised exactly the process that we might use for such consultation but, for example, we consult the Lord President on the short leet for senatorial appointments to the Court of Session and we are discussing consultation with sheriffs principal and so on. If I may say so, that work is entirely in hand.

Although it is entirely reasonable to suggest that we consult a particular person who may have valuable information and who, we can assume, will provide us with assistance objectively and in good faith, there is always the danger that such consultation may be perceived in some quarters as not having those characteristics. We must be careful.

Angela Constance: Do you think that the Judicial Appointments Board for Scotland has struck the correct balance between ensuring that there is fairness for individuals—a level playing field for applicants—and ensuring that there is fair and qualitative information from the real world?

Roy Martin: Forgive me if I do not answer your question directly. The board has always aspired to strike such a balance, and we are refining our approach. I do not know whether we have struck the right balance in the past—that is a judgment for others to make—but we certainly seek to do so. I return to my earlier point about confidence. We want to inspire confidence in everyone, including candidates, that the process is robust, so that even those who are not successful cannot say that they think that they were treated unfairly. They should be able to say that the process was robust on the day and that they did not succeed because they were judged fairly against others. We aspire to that.

Angela Constance: It is a journey.

Roy Martin: Exactly.

The Convener: I am finding your evidence quite encouraging, because it has resolved some of the difficulties that arose from evidence that we took previously. From her experience, Ms MacArthur will be aware that there are people who make a fairly lucrative living from producing CVs. It would be naive to assume that that practice has not penetrated the legal world, as it has every other area. We were concerned that the interview was the principal criterion for appointment, given that some CVs and documentation might not have been prepared without assistance. What are the mechanics of the sift that is carried out?

Roy Martin: It is being refined because of the additional duty under section 13 of the 2008 act. At the moment, all applications for shrieval appointments are considered by all members of the board, who consider the full application form and identify the referees. I do not think that we receive professional CVs—we may, but I have no experience of that. However, it is perfectly reasonable to theorise that that could happen.

When applications have been received, there is a meeting of the board, at which candidates are scored under a number of headings. The board decides which applications are to be taken forward to the next stage of the shrieval appointments process, at which referees are contacted and written references are obtained. There is then what we call a second sift, in which the candidates are assessed against what their referees have said. If successful, they are invited to interview. The process is slightly truncated for Court of Session judges. It will be different when the new procedures are introduced.

The Convener: I have a factual question. How many applications did you receive for each appointment?

Sir Muir Russell: We have some numbers from the previous year; Chris Orman will keep me right. There were 103 applications for the all-Scotland floating sheriff slate that runs until December this year. We long-listed 45 candidates, interviewed 35 and recommended 20 for inclusion on the slate. That gives you a flavour of the sort of cut that is made. The figures are broken down by gender; the proportions were essentially the same at each stage of the process, which in that sense is working in a reasonably unbiased way. There were 16 applicants for the post of senator in 2007, eight of whom were interviewed and one of whom was recommended, and 22 applicants for the post of sheriff in Kirkcudbright, eight of whom were interviewed and one of whom was recommended. In such cases, we interview quite a few people for each vacancy.

The Convener: As members have no further questions on the vital issue of merit, we turn to diversity, the questioning on which will be led by Cathie Craigie.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Sir Muir Russell has the honour of chairing the board, which, as Roy Martin pointed out, is made up of 10 individuals—eight men and two women. Is the board doing enough to encourage women to take part in the process from the outset?

Sir Muir Russell: The flip answer to that would probably be that we do not appoint ourselves—you might expect me to say that. I shall not give the patronising answer, about the extent to which the women members punch above their weight.

You are right: one should always be vigilant about getting a better balance. Cabinet secretaries and ministers should keep that point in mind when they make their appointments.

Cathie Craigie: I take your flip point, but are women sufficiently well represented on the board?

Sir Muir Russell: They are excellently represented, but in an ideal world there would be more of them on the board. I hope that that is not too flip an answer. Elspeth MacArthur might want to comment further.

Elspeth MacArthur: It is worth adding that when appointing board members the process set out by the Office of the Commissioner for Public Appointments in Scotland is followed, and it is widely geared. There are only 10 people on the board, so the figures are disproportionately small, but it would be nice if there were more women members. That might be the case in the future.

Cathie Craigie: Thank you.

The Judiciary and Courts (Scotland) Act 2008 created a duty to encourage diversity in the range of people who are recommended for judicial appointment. What barriers, actual or perceived, inhibit women and people from minority groups from applying for judicial office?

Sir Muir Russell: We do not know. The duty is clear. As I said in my introduction, before I took up my appointment, the board set up a group to examine the evidence and information that were available, which led to the issuing, in February, of a questionnaire. We are working with the Law Society of Scotland and the Faculty of Advocates to consider diversity and a number of aspects of the judicial appointments process that might or might not influence the willingness of people to come forward. I will ask Elspeth MacArthur to say a word or two about that work shortly, as she has played a lead role in it.

The questionnaire asks questions about the composition of the population that we pick from, to establish their experience, age and career stage, which will help us to understand whether we are being successful in attracting a representative group of applicants, and if we are not what is preventing people from applying. Out of that, I hope that we will be able to develop advice that we can provide to ourselves and, perhaps, to the professions, the Government and the universities. A range of stakeholders have an interest in that population and how all the diversity criteria apply to it. The questionnaire will enable us to find out what a range of people might do differently and will help us to ensure that our processes do not have any disincentives built into them.

We are at the beginning of another journey. It is extremely helpful that the section 14 duty has

been set out, because, just as with the other things that the 2008 act has brought to us, it brings a sharp focus to what we are doing. Within our budget there is provision for continuing work on diversity. I ask Elspeth MacArthur to follow through on some of the specifics, because she has lived with the issue for quite a while and is actively involved in it.

11:00

Elspeth MacArthur: I think that you have seen the questionnaire that went out, so you will know broadly what is covered. There are two things that the board wants to understand better. The first is the demography—the size and shape of the population from which we are recruiting. The survey will help us in that, as will other data. The second is people's perceptions, which relates to Cathie Craigie's point. We believe that the survey will be representative, although one might want to revisit it in the future. It will provide us with quantitative data: it will tell us how many people think X or Y and what the contrasting views are. If there is a particularly strong view on something, the survey will tell us whether that view is held randomly across the population—such as that 40 per cent of people hold it—or whether it is held by a particular group, such as the advocates, people who live outside the central belt, younger people or more experienced people. We will understand much better what people think. However, such surveys do not tell you why people think what they think. Subject to resource constraints and so on, qualitative work is often done to follow up such surveys. You look at a particular sample and try to get underneath it to understand why a particular view is held.

As Sir Muir Russell said, the survey will generate information for us about people's perceptions, some of which will be directly useful to us in our work, particularly with regard to how we communicate with the population from which we are recruiting and how we ensure that our processes do not deter anybody. The information will also be useful to a lot of other people; there is lots of information on areas over which we have no control but which might be of interest to our partner organisations who have worked with us on the survey, such as the Faculty of Advocates and the Law Society of Scotland, as well as the judiciary and the Government. The survey contains a wide range of questions.

Cathie Craigie: When do you expect the survey to be complete?

Elspeth MacArthur: It is being worked on by the independent survey company at the moment. We expect it to be published at some point in the summer.

Cathie Craigie: This question is probably directed to Elspeth MacArthur, too. Has the Judicial Appointments Board for Scotland been successful recently in increasing the number of women and people representing minority groups who are appointed?

Elspeth MacArthur: I am confident that the processes that have been used and the principled approach that the board has adopted have produced a reasonable recruitment process and, given the candidates whom we have seen, the evidence is that it has done a reasonable job. However, we do not know enough about what the wider population from which we are drawing is really like. It is a generational issue, which changes over time.

If we were an employer, we would have a raft of data on our employees, but we are not an employer. We have lots of data about the people who have been through our processes, but we do not have data about the people who have not been through our processes. The data are held by different groups. The survey is an attempt to get a snapshot from various perspectives, which will increase our knowledge. We need more data on which to measure our progress, and the data will need to build up over time. We cannot reach a single answer tomorrow; it is about how we can map the situation as it develops over five or 10 years.

Cathie Craigie: The board's main role is to appoint our judiciary. Will it provide enough time and resources to collate the information that emerges, so that the data can make a difference? I note from our briefing for this meeting that although the ratio of male to female members of the Law Society of Scotland is almost 50:50, the ratio of men to women in the Faculty of Advocates is around 75:25. How will you use the information that you gather to try to secure the much more representative judiciary that we all want?

Elspeth MacArthur: We must bear in mind the fact that appointments are always made on merit, which does not conflict with the idea of broadening diversity, because that is also about merit, over the longer term.

We have data on the appointments that we have carried out so far and we will continue to collect data, but we are committed to collecting more and better data, so that we can learn about our processes. Information that comes out of the survey will help us to understand what different groups think. You quoted figures on gender, because more information about gender is available, but other areas are important, too. The survey will help us to understand whether there are variations because groups vary—there might not be such variations. It is important to us that we gain a better understanding, and the survey will be

the first significant step in building the knowledge that we need.

Cathie Craigie: I accept that you need to collect all the data so that you can understand what is happening, but there is a perception that the judiciary does not fully represent the population that it serves. We all agree that appointments must be made on merit, but there is a strong feeling that the judiciary is not properly balanced. Will the board use the data to correct how applications are sought and how decisions are reached, so that there will be a better balance in the pool of people?

Elspeth MacArthur: We can do two things: we can check our processes to ensure that they do not deter people who should not be deterred, and we can direct our communications better, for example to reach out to particular groups.

Appointment to a judicial post is often the apex of a person's legal career. An important point about the survey is that we are working on it with other organisations that have a big part to play in legal careers—the Faculty of Advocates and the Law Society of Scotland. We are not alone, in that developing the broader pool from which we can draw involves people other than the board. We must continue to work with them to ensure that future appointments draw on the best possible talent, regardless of where it comes from.

Sir Muir Russell: I have been encouraged by the extent to which the Law Society of Scotland and the Faculty of Advocates have been involved in work on the questionnaire. As you know, they were fully associated with it and with the launch publicity. Our statutory duty is

"to encourage diversity in the range of individuals available for selection",

and it is good that we can work with the faculty and the society to do that.

Such an approach is perfectly legitimate and does not get in the way of saying to us, "When you've got that increased range, you select on merit and the legal capacity criteria," and the other criteria that we discussed. That is what we will do. Our approach will involve awareness raising of various kinds and consideration of the terms used in advertising and describing jobs, to ascertain whether things have been putting off people who should not be put off.

A raft of approaches will increase the range of individuals who are available for selection. Some of the work will be long running, for example it might involve what is in university courses—my day job is running a university—and the way in which people's careers begin to track from early on. We will consider many things, and we are not alone in that, because they are being examined in Northern Ireland and in England and Wales. I believe that there is also quite a bit of international experience. In that case, to pick up on Robert Brown's question, we can cross-fertilise and exchange ideas, and learn from one another.

Angela Constance: Following on from Sir Muir Russell's point, although I do not dispute the need for or the merits of the research questionnaire, part of me groans at yet another piece of research in the area. I am sure that it includes some issues that are particularly pertinent to the legal profession, or to women and ethnic minorities seeking judicial office, but a ream of work has been done on the barriers to women and ethnic minorities seeking senior office in other professions. What existing information could be used while that work is on-going?

Sir Muir Russell: The flip answer is not enough. If the group that prepared the questionnaire—which included Professor Alan Paterson, who has done a lot of study in the area—had been able to track the issues in relation to those populations, as has been done in other professions, we would be further on. However, we are quite near first base in terms of understanding what is happening beyond the raw statistics in the SPICe paper, which show the proportions of different sections of the population.

It is not easy to track why there are different proportions of various sections of the population, beyond making a few basic suppositions about age and geography. We need to look behind that at what has caused the situation and ask whether it is age; whether it involves the profession only at the Law Society end; whether the profile now is different from how it looked 30 years ago; whether it is something to do with the jobs; or whether it is to do with how we handle matters. That is what the questionnaire is about.

Elspeth MacArthur: The research will help us to target our efforts more effectively. It is easy to take a broad view—to say that the situation must be due to this and that, so we will do a bit of everything—but if we understand better how different sections of the community view things, we can be much more effective in making a difference where it matters.

We like our communications, our publicity and all the work that we do to be informed by evidence, and the questionnaire is another form of evidence. That is important for the confidence-building scenario: people will know that we are proceeding on the basis of having asked the questions and them having kindly given us answers, which we take seriously.

Angela Constance: I am curious about whether you think that there is something in particular within the legal profession that acts as a barrier to

women and ethnic minorities who are seeking senior office, and which is different from the barriers in other professions.

Elspeth MacArthur: That might be one thing that we find out. Characteristics of the judicial role are quite distinct from other roles, which might or might not have consequences. We have to ask the question in order to find out.

Roy Martin: I support entirely what my colleagues have said about the board's aspirations and the use that it will make of the information, but it must be appreciated that the situation is not solely under the board's control.

The nature of judicial office and the way in which the job is carried out on a day-to-day basis might influence, for example, mothers who are qualified and want to apply but who find the working hours to be unsuitable. That is one obvious example, but there might be all sorts of obvious or more subtle reasons why somebody—and this applies across the board—might be encouraged or discouraged from applying for a judicial post.

The research asks many questions on those sorts of issues, which are not simply diversity issues, and it might inform not only the board but the Parliament and ministers about how they might redesign judicial office—the functions of judges—to make it more attractive to those who are discouraged from it. We will do all that we can on the basis of the research, but some things might have to be done elsewhere.

11:15

The Convener: There is always a difficult balance in such circumstances. However, with your inside knowledge, perhaps you can confirm my impression that, as women have advanced in their legal careers, a much greater proportion of them are judicial appointees than was the case some time ago. The obvious corollary is that, as members of ethnic minorities continue along their career routes in the legal profession, we can assume that more judges and sheriffs will be appointed from ethnic minorities in due course. Is that a proper assumption?

Roy Martin: I believe so. It is a practical consequence of the fact that the demography of the legal profession has changed substantially in my lifetime. When I was at university, approximately 10 per cent of the law course was women, but the figure is now 50 per cent or more. The character of judicial appointment means that people are appointed at the later stages of their careers. Although the processes do not take account of age per se in determining merit, those who apply tend to be people who have been in the profession longer. The logical consequence is that, as more women and people from ethnic minorities come through the legal profession into the senior end, more of them will be appointed to judicial office. I know that reference has been made to the so-called trickle-up effect not quite working in the medical profession. However, the convener is right about what we deal with at present and how that is likely to change.

Paul Martin (Glasgow Springburn) (Lab): Sir Muir, what is the role of the Judicial Appointments Board for Scotland in the appointment of sheriffs to Glasgow and Edinburgh?

Sir Muir Russell: I noticed the reference to that in the SPICe paper. We make recommendations to the Scottish Government and the First Minister. However, the process for filling specific posts—apart from those recruited directly over the past year for named areas such as Kirkcudbright and Dumfries—is handled in the Government department. We do not actually say in our slates, "This is a person for that post." The short answer to your question is therefore that we do not have a role in the process of back-filling and moving pieces on the chess board, if I can call our judicial colleagues that. Civil servants have an advisory role and the Cabinet Secretary for Justice and the First Minister have responsibility for the decisions.

Paul Martin: Should the board be allowed to develop that role?

Sir Muir Russell: At this stage of my knowledge, I do not know. I know that some posts have been recruited for particular areas and that there is a general slate of people who are judged to be competent at the highest level to undertake the role of sheriff. My feeling is that shifting the appointment process to the board—as distinct from its judging fitness, suitability and merit—would be a huge step and would not be for the board to form a view on. I want us to go after the issues that we have been discussing, which are process, transparency, merit and having a diverse field—that is plenty for us to be getting on with.

Paul Martin: You accept that the sheriffs in Glasgow and Edinburgh are significant, high-profile posts and that there might be concern that those appointments should be open to scrutiny in order to ensure fairness.

Sir Muir Russell: It is certainly important that the appointments are properly publicised and that people know what is going on. I do not know that there is any secrecy about that. I simply know that the issue does not come within our frame of reference unless a particular post is being recruited. As you know, that occasionally happens, but I have to say that it represents only a small proportion of posts.

Paul Martin: You said that it is important that the appointments are properly publicised. You will have to excuse my ignorance, but is there a

publication procedure for the Glasgow and Edinburgh posts? Is there any objectivity in the scrutiny of the matter or the way in which the posts are advertised?

Sir Muir Russell: The area-specific appointments that we handle are advertised and there is a special recruitment process for them.

Roy Martin: If I understand the member's question about appointments to Glasgow and Edinburgh correctly, the chairman is quite right. We simply respond to ministers' requests, which by and large relate to all-Scotland floating sheriffs.

My understanding of the procedure for appointments to, for example, Glasgow or Edinburgh is that the posts are often filled by people who are already either floating sheriffs or sheriffs in another location. I cannot speak for the processes that ministers follow in that regard, but I understand that the posts are advertised within the shrieval profession. I am not aware whether they are advertised outside the profession—and if that is not what you meant by your question, please forgive me—but, if that were the case, the board would of course have to follow the usual processes and make recommendations in that respect. As I say, appointments to Glasgow, Edinburgh and, indeed, elsewhere are often made from the existing body of sheriffs. That is a matter for ministers, and the board has no involvement in it.

The Convener: We will pursue the matter with the appropriate minister.

We are very much obliged to Sir Muir Russell and his colleagues for attending this morning's meeting. Your evidence has been extremely useful and interesting and indicates to me, at any rate, that there has been considerable progress in the board's operation since the subject was first raised in the committee's consideration of the Judiciary and Courts (Scotland) Bill.

I suspend the meeting briefly.

11:22

Meeting suspended.

11:25

On resuming—

Subordinate Legislation

Scotland Act 1998 (Modification of Schedule 4) Order 2009 (Draft)

The Convener: Agenda item 3 is evidence on the Scotland Act 1998 (Modification of Schedule 4) Order 2009, which is an affirmative instrument. Prior to the debate on the motion at agenda item 4, members may ask questions of the cabinet secretary and his officials on a matter that has been the subject of some controversy in the past. I draw members' attention to the cover note on the instrument. The Subordinate Legislation Committee did not draw any matters to the attention of this committee. SPICe has prepared a short background briefing paper.

I welcome Kenny MacAskill, the Cabinet Secretary for Justice; Brian Peddie, the head of the European Union and international law branch; and Fraser Gough, a solicitor in the Scottish Government legal directorate.

The Cabinet Secretary for Justice (Kenny MacAskill): The draft order stems from the judgment by the House of Lords in the Somerville case in October 2007. That judgment identified a significant legal anomaly in relation to time bar for human rights claims, which has resulted in substantial cost to the taxpayer by way of compensation payments and legal costs. I was pleased that there was strong support across the Parliament for our efforts to remove that anomaly and for the solution that was eventually agreed with the United Kingdom Government, which was announced in Parliament by the First Minister on 19 March. The draft order is the first stage in delivering that solution.

As the Somerville judgment related to the wording of the Scotland Act 1998, before the problem that is highlighted by the case can be addressed, an order under section 30 of the act is required. That would give the Scottish Parliament competence to legislate to establish a one-year time bar for bringing human rights claims under the Scotland Act 1998, similar to the time bar that exists for claims under the Human Rights Act 1998. The draft order would achieve that. It has also been laid before the Westminster Parliament for approval, as required by the Scotland Act 1998.

Assuming that the order is approved by both Parliaments, it will then be made by the Privy Council. A bill to amend the Scotland Act 1998 in relation to time bar will then be introduced in the Scottish Parliament. Our aim is to secure the

passing of that bill before the summer recess, to enable the time bar to come into effect as soon as possible thereafter—all as announced by the First Minister last month.

I hope that that brief explanation was helpful. I am happy to answer any questions.

The Convener: Thank you, Mr MacAskill. I remind members that we have received a letter dated 4 May from the Law Society of Scotland, which is pertinent to our considerations.

Bill Butler: Good morning, cabinet secretary. As the convener stated, we have received a letter from Mr Clancy of the Law Society of Scotland. He states:

"It is unfortunate that the Scottish Government did not take the opportunity to consult widely on this proposal as it will have the effect of limiting the capacity of many people, who may have had their human rights infringed by Scottish Ministers from taking appropriate action to vindicate their human rights."

Do you share the Law Society's concern?

Kenny MacAskill: I understand why the Law Society would welcome consultation; however, we had to act expeditiously. We could not move until there was agreement with the UK Government, although the matter was of great concern both here and south of the border. Once we had agreement, rather than compound the agony that is caused in many communities by people receiving money while they are serving sentences, we chose to move urgently. That is not the norm for us and it was not the norm for previous Administrations, but we reserve the right to protect the broader public interest. That is why we acted as we did.

Bill Butler: The Law Society also states:

"It is a point of debate as to whether one year is the correct period for the time bar."

You obviously feel that a year is the correct period. Why?

Kenny MacAskill: That is the period that applies in the Human Rights Act 1998 and that is viewed as the norm in such matters, not simply in UK jurisdictions but elsewhere. We are satisfied with that. If others have other suggestions to make, we would be happy to consider them. Nevertheless, one year seems to be the appropriate period. The matter has been considered, consulted on and discussed, and we are happy that we now have that protection.

Bill Butler: I am obliged.

The Convener: There is always the fail-safe position that, on application and cause shown, the one-year period can be extended—is that not the case?

Kenny MacAskill: Absolutely, as it is with other aspects of claims in Scotland on cause shown. The time bar period was considered in great detail before the Human Rights Act 1998 was passed and was viewed as providing the appropriate balance.

11:30

Nigel Don: I am sure that I join many in welcoming the instrument, which puts Scotland in the same position as England and Wales. It is a matter of huge regret that it has taken us so long to do that. We all recognise that we have much better things to do with £50 million or so. Can the cabinet secretary give an indication of how soon he thinks that the measure can be put into effect and the £50 million can be moved from a reserve into front-line funding? We recognise the importance of doing that in today's climate.

The Convener: The member asks his question without wishing to indicate what is likely to happen under the next agenda item, of course.

Nigel Don: Indeed.

Kenny MacAskill: I can indicate what the First Minister has already indicated clearly. There are procedures to be gone through, and we seek to do so as expeditiously as possible. Good will from elsewhere has allowed us to address issues at the appropriate juncture. We hope to have dealt with the matter by the summer recess, if all goes smoothly. What follows falls within the financial domain. We want to ensure that the money is used to protect and preserve public services for good citizens, instead of being paid out to prisoners.

Robert Brown: I want to explore two issues relating to the effects of the committee agreeing to recommend that the Parliament approve the order. Proposed paragraph 4A(4) refers to

"such longer period as the court or tribunal considers equitable having regard to all the circumstances."

It strikes me that that is a lesser test than the phraseology of prescription limitation legislation more generally, which refers to exceptional circumstances. Has the Cabinet taken a view on the extent to which the provision will allow other sorts of cases to go through—which is relevant to the £50 million that has been mentioned—and on which cases may be affected by the change from the existing three-year provision to the one-year period for which the instrument provides?

Kenny MacAskill: The wording is lifted directly from the Human Rights Act 1998. As you and I know, different terminology and nomenclature are used in legislation north and south of the border. When setting the one-year limit, we considered the need to strike a balance. The wording that we

chose does not refer to the ability to pursue claims outwith the triennium—the convener referred to claims outwith the period—but it is used in the Human Rights Act 1998. It is meant to be a fail-safe, where there is a manifest injustice that could not otherwise be recognised. We are open to suggestions. However, given that the wording appears in the Human Rights Act 1998, we believe that it is perfectly reasonable for us to incorporate it into the Scotland Act 1998.

Robert Brown: Has any assessment been made of the extent to which this secondary option will be pursued and of the effect that that will have on the number of cases that come before the courts, both with regard to slopping-out arrangements and more broadly?

Kenny MacAskill: Not that we are aware of. The assumption is that those slopping-out cases that have sneaked under the wire will have to be dealt with. Thereafter it is a matter for the courts, to some extent. I cannot prejudge what they may decide on any argument that is made, but it is fair to say that, once the one-year time limit has been set, the circumstances in which a longer period is considered equitable will have to be exceptional.

Robert Brown: Can you or your officials give an indication of the sort of cases that may be affected by the provision? The Law Society of Scotland refers to people losing their rights as a consequence of the instrument. A consultation might have given a flavour of which cases would be affected. However, you have explained the reasons for not conducting such an exercise in this instance.

Kenny MacAskill: Some of the same exceptions that apply to human rights cases subject to the triennium will apply to cases subject to the one-year limit. I refer to cases in which, through fault on the part of their lawyers or because they have slipped and broken their leg, people bring proceedings one week after the end of the limitation. There is a balance that needs to be struck. It is difficult to set absolute parameters for the circumstances that would apply.

It is about manifest injustice. It is about circumstances beyond someone's control, because of ill health, incapacity or whatever. It is about providing that justice can be served by allowing matters to happen outside the one-year time limit, which is the approach that applies in Scotland in relation to the triennium or quinquennium. It is about ensuring that when something has gone fundamentally agley, and people have not just sat on their hands and failed to take action, the scales of justice can come down in favour of allowing a late application.

The Convener: It is difficult to envisage circumstances in which the kind of individual that we are talking about would not be very much on the ball about their claim.

Cathie Craigie: Under the heading, "Policy Objectives", the executive note on the order says:

"Under section 7(5) of the Human Rights Act, proceedings brought under section 7(1)(a) must generally be brought within one year from the date of the alleged breach, unless a stricter time limit applies to the proceedings in question."

What circumstances do you envisage in that regard? Could a stricter time limit apply in the cases that we are talking about?

Kenny MacAskill: The wording is a straight lift from the Human Rights Act 1998. Off the top of my head, I am not aware of proceedings that involve a time limit of less than a year, but there might be such instances. For reasons partly of urgency and partly of consistency, we simply took the wording from the Human Rights Act 1998, even though the act is perhaps written in more English than Scottish terms. There is no hidden agenda to target certain cases; it was simply about getting Scotland back in kilter with the rest of the UK, because UK bodies are protected whereas bodies in Scotland are not. That is the situation that we seek to remedy.

Cathie Craigie: Was it deemed to be easier and better to go for equity throughout the UK and a one-year limit than to go for a limit of six months or nine months in Scotland?

Kenny MacAskill: It was not simply about equity throughout the UK. The UK Human Rights Act was discussed and debated and much discussion and debate about the issue had taken place at European level. The one-year period emerged from those discussions. The Human Rights Act was passed contemporaneously with the Scotland Act, and the reason why we got into difficulties is that it was assumed that matters had been incorporated; there was no problem until legal eagles discovered the lack of protection for Scottish bodies. We are not seeking to reinvent the wheel; we are seeking to get Scotland into the position that we thought it was in until the Somerville judgment. We have simply sought to build in the protection of the Human Rights Act, which was the intention way back in the previous millennium, at the end of the 1990s, when the act was passed.

The Convener: Agenda item 4 is formal consideration of the motion to approve the order. I invite Mr MacAskill to move motion S3M-3961.

Motion moved,

That the Justice Committee recommends that the draft Scotland Act 1998 (Modification of Schedule 4) Order 2009 be approved.—[*Kenny MacAskill*.]

The Convener: If there are no comments from members, I take it that our consideration has concluded. The matter has been of considerable public concern, and considerable animosity has been directed towards the recipients of damages over the years, so the issue is fairly straightforward.

Motion agreed to.

11:39

Meeting suspended.

11:40

On resuming—

Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) Order 2009 (SSI 2009/115)

The Convener: I welcome Elaine Murray MSP and Cathy Jamieson MSP, who are attending for items 5 and 6. Item 6 is a motion for annulment, which has already been lodged. The purpose of item 5 is to take evidence on the order from the cabinet secretary. I draw members' attention to the order and the cover note. The Subordinate Legislation Committee did not draw any matter to our attention. A letter from Elaine Murray has been circulated.

I welcome again Kenny MacAskill, the Cabinet Secretary for Justice; Gerard Bonnar, head of the summary justice reform branch in the criminal procedure division of the Scottish Government criminal justice directorate and Stephen Crilly, principal legal officer in the Scottish Government legal directorate.

I invite Kenny MacAskill to make a short statement and to introduce the officials who accompany him.

Kenny MacAskill: I am accompanied by Nadya Stewart from the Crown Office and Procurator Fiscal Service and by Eric McQueen from the Scottish Court Service.

The order is part of the unification of court administration that has already taken place in four of the six sheriffdoms in Scotland. I will begin by explaining some of the details of what the order does.

The order is made under the Criminal Proceedings etc (Reform) (Scotland) Act 2007. It establishes justice of the peace courts in the sheriffdom at Ayr, Coatbridge, Cumbernauld, Dumfries, Hamilton, Kirkcudbright, Lanark, Motherwell and Stranraer.

The order also makes consequential and transitional provision. It includes repeals of provisions of the District Courts (Scotland) Act 1975. At the same time as it enters into force, a commencement order will bring into force for the sheriffdom the repeal of the provisions of the Criminal Procedure (Scotland) Act 1995 under which local authorities can determine where their district courts will sit. That and various other functions will be repealed for the relevant local authorities, so that they will no longer be required or entitled to operate district courts within the sheriffdom of south Strathclyde, Dumfries and Galloway.

The order makes provision for a staff transfer scheme to be made for any staff transferring to the employment of the Scottish Court Service. That scheme will be signed off before the unification date of 29 June 2009. The order also provides for the transfer of certain records in relation to penalties that are not specifically covered by the transitional provisions in the 2007 act.

The order makes transitional provisions to assist in the smooth transition of on-going cases from the district court sittings at Airdrie, Ayr, Cumnock, Dumfries, Hamilton, Kirkcudbright, Lanark and Stranraer to the new JP courts. The provisions will allow the district courts to fix dates in the new court before it is fully established and also for witnesses and accused to be cited in advance. The provisions for transfer of records and transitional arrangements complement and supplement the provisions of section 66 of the 2007 act.

A further order amending this order will be made by early June to deal with any property transfer issues arising from the unification. That will be by way of amendment because of the nature of the powers in the act.

While establishing JP courts in the sheriffdom, the order also disestablishes the district courts sitting there. In some areas, a JP court is established in a different location. A decision on whether to establish a JP court in a particular location was made in accordance with section 59 of the 2007 act, which requires at least one JP court for each sheriff court district except where ministers determine it unnecessary.

A consistent decision-making framework has been employed throughout the unification process in each sheriffdom. Decisions as to where JP courts are established are based on a range of factors including business levels, value for money and the standard of existing facilities. I have provided the committee with information on the business profiles of some of the courts in the area and I hope that that assists members in their consideration of the order before the committee today.

I hope that that brief summary of the order was helpful. I understand that members may have questions. I am happy to answer them in conjunction with the officials who accompany me today.

11:45

The Convener: Do members have questions?

Elaine Murray (Dumfries) (Lab): I am not quite sure whether it is appropriate for us to lodge our objections at this stage in proceedings, or whether you will take those under item 6.

The Convener: We are at the questioning stage. If there are any questions that you wish to ask, I would be more than happy to accommodate those.

Elaine Murray: I do not want to ask any questions; I want to make the opposite case.

Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab): I would like to ask a number of questions.

The Convener: Please proceed.

Cathy Jamieson: I will keep them brief. They relate, in particular, to the Cumnock and Girvan courts. Strong representations have been made to me by East Ayrshire Council and the JP committee in East Ayrshire about the closure of the Cumnock court. They assert that the facilities there, which are mentioned in your note, are no worse, if I can put it that way, than the facilities at the Ayr court, where it is proposed that all the business will be located. They feel strongly that the proposal does not take account of local access to justice. I invite the cabinet secretary to explain the basis on which the decision was taken. Was it taken on purely financial grounds? What account has been taken of the representations that have been made by East Ayrshire Council and the local JP committee?

Kenny MacAskill: It might be best if I get Eric McQueen from the Scottish Court Service to answer that. It is clear that the decision has not been made simply on financial grounds; the reason for it is to do with the standard of accommodation and facilities.

Eric McQueen (Scottish Court Service): I would be happy to try to cover that. We have met council officials and JPs in the area concerned to go over the points that have been raised. Our position is that the court facilities at Cumnock are not of the standard that we would require to run criminal business in the future. The fact that the building has major shortcomings was reflected in our discussion with the JPs. Those shortcomings relate, in particular, to the custody arrangements, secure access, interview rooms and witness provision. There is an issue with the provision of safe access throughout the court complex at Cumnock.

We fully understand that there are issues with the Ayr justice of the peace court, which is why we are investing money in it to bring it up to the standard that is required. The decision was not just about money; it was based on consideration of where it would be best to target our investment, given the levels of business. Our view is that the size and environment of the present district court in Ayr give us the capacity to create a highly satisfactory JP court there in the future, which will be able to take the business at Ayr and the business at Cumnock.

Cathy Jamieson: I have a supplementary. What consideration has been given to the fact that people from the more outlying parts of East and South Ayrshire will need additional travel time? For example, for people from Muirkirk who will now have to travel to Ayr, the through buses are only once every two hours. If they were to change buses, they would do so in Cumnock, right across the road from the existing district court. To what extent has that been taken into account? In addition, people who would have gone to the Girvan court will now be required to travel to Ayr.

As regards the custody position, I understand that the number of custody cases at Cumnock and Girvan is extremely low. Given that we are talking about cases that involve situations in relation to which local communities have a genuine interest in seeing justice being done, rather than some of the more serious cases, surely it would be beneficial for the communities to retain the courts in their areas.

Kenny MacAskill: The proposed reform is partly driven by the need to ensure that local justice can be done and that better-quality cases can be dealt with by JPs. You are quite correct—the number of custody cases at the courts in question is extremely low. However, if the changes go through, one would hope that there would be an improvement in the level of cases that could be dealt with in Ayr, given the investment there, which would benefit JPs. I invite Eric McQueen to deal with some of the specific issues that you raised.

Eric McQueen: We have to take a wide look at the impact on different communities and on witnesses travelling. In relation to the closure of Cumnock district court, our view, on balance, is that, given the low volume of witnesses coming through the system, the travelling distance from Cumnock is not significant. We understand that there are places such as Muirkirk from which travel can be more problematical, given the limited availability of public transport. However, we looked at the figures for the period November 2008 to February 2009 and found that no witnesses from

Muirkirk were cited to court. On average over a year, only a small number of people, if any, will therefore be affected by the more difficult travel from certain areas.

The point about travel largely applies to Girvan, too, because although it might be inconvenient for witnesses from outlying areas to travel to Ayr, the statistics showed that the number of such witnesses at Girvan was either nil or very small. The task is to try to balance overall business levels, the impact on witnesses and costs. It is our firm belief that our investment would be better targeted in one area that can serve a wider community and provide a better service to all court users who attend that JP court in future.

Cathy Jamieson: I have a further question. It has been brought to my attention that the local JPs in East Ayrshire made a submission to the consultation. They are concerned about Kilmarnock district court, which is in the same local authority area as the Cumnock court but in a different sheriffdom—I am sure that the question of the boundaries there will be considered at some stage. The Kilmarnock court appears to have an increasing workload, and the local JPs are concerned that different policies have been applied in the procurator fiscal's office in Kilmarnock and in Ayr that have led to a deliberate decision to send fewer cases to Cumnock recently in order to be able to make the case for its closure. Could the cabinet secretary comment on that?

Kenny MacAskill: I do not know whether Eric McQueen or Nadya Stewart wants to comment on that. It would be inappropriate for me to comment on Crown Office and Procurator Fiscal Service matters.

The Convener: I think that it is a question for Ms Stewart.

Nadya Stewart (Crown Office and Procurator Fiscal Service): The allocation of cases to Cumnock court or any other court is based on the location of the crime and from where the report is received. There is no deliberate process of marking cases to a preferred location. The appropriate marking decision is based on the crime; the location of courts and their facilities are not taken into account.

Robert Brown: I have a couple of questions on Annan district court. Elaine Murray's letter makes a point about the custody facilities in Annan that echoes my earlier representations on Rutherglen district court. It states that the courtroom is 20yd away from Annan police station, which has full detention facilities. What is wrong with an arrangement that makes use of those facilities?

Kenny MacAskill: I will ask Eric McQueen to comment on a variety of matters relating to custody. The issue is not simply cell facilities but how prisoners are moved and how defence witnesses are segregated from prosecution witnesses. It is not simply about having them in separate rooms; it is inappropriate for them to be in adjacent rooms or to have to use the same toilet facilities because there could be contamination of evidence or intimidation, which we must protect against—the police support that position. Understandably, we want a visible police presence in our communities, not to have officers babysitting people in a court or required to be available for that. That would be likely to occur if we had to ensure that officers were stationed in Annan district court because of custody requirements. I think that the people of Annan would prefer the police to be out patrolling, protecting and guarding, not sitting drinking a cup of tea because a case may or may not be sent 20yd across the road.

Eric McQueen: I echo Mr MacAskill's comments on that issue. I would add only that the Scottish Prison Service has responsibility for the safe transfer and conduct of prisoners, which is now outsourced to Reliance as part of its contract. The intention of that was to relieve police of the burden of managing custody on a day-to-day basis so that they could put officers on the street. The Association of Chief Police Officers in Scotland and the police would strongly oppose any move back from that position, for the reasons that Mr MacAskill outlined.

Robert Brown: I have two further questions, one of which relates to the level of business in Dumfries district court. It is suggested that that cannot be sustained without special courts being arranged. If that is correct, there appears to be a challenge there. The other question relates to the issue of distance, because we must consider the far points as well as the medium points in district court areas. The note on the order makes the point that the distance from Langholm to Dumfries is around 40 miles, but it also makes the more important point that Dumfries is not the most convenient place for Langholm residents to get to. In all these cases, account must also be taken of the ability of witnesses, the public and accused people to get to the court. How far has that been done? You are minimising the issues, but in rural areas they are quite important because of the transport situation.

Kenny MacAskill: The general issues have had to be considered elsewhere. We have agreed that there were transport difficulties in getting to Inverness from Kingussie and Nairn, and getting from Inverurie to Aberdeen was a matter of concern. In my constituency, there have been transport difficulties to Loanhead and Penicuik, which is where the court was before it was in Loanhead. Those difficulties are factored in, although we do not deny that some communities find themselves further away. As I say, these

matters must be viewed in the round, along with a variety of factors to do with improving the service at the venue at which the proceedings are located and getting best value from the service.

There are other matters that must be dealt with, such as improving public transport and ensuring that court sittings take transport difficulties into consideration. However, such matters are addressed frequently in Scottish courts. I have appeared in sheriff courts in places such as Lochmaddy, for example, and know the difficulties that people face not only in getting to district courts, which may close depending on the outcome of today, but in getting to sheriff courts that are still sitting.

The Convener: With respect, Mr MacAskill, I suggest that if you were to attend Lochmaddy sheriff court, you would be there the night before and would have no travelling distance to concern you.

Eric McQueen: In Dumfries, there is no issue with court capacity. It is our intention to run a further two or three sittings if that is required to deal with the volume of business. We are confident that the business levels now or in the future, even if they grow, could be accommodated comfortably in Dumfries without additional works being required there.

Travelling in from the outlying areas has been an issue for us in all the sheriffdoms but particularly in Nairn and Kingussie, where we have addressed the issues before. In the vicinity of Annan, although there are outlying areas, only very low numbers of people are being cited to court as witnesses. None at all was cited from Langholm during 2008, and only three people were cited from Lockerbie, which has better travel arrangements and provision although similar distances are involved.

We are looking at marginal numbers given the type of investment required. We are trying to ensure that we have a court system that is the best for Scotland's needs, taking account of rural areas.

Cathie Craigie: The order that we are considering mentions the Airdrie sheriff court district and Cumbernauld as a location for a justice of the peace court. What does it mean for the Airdrie sheriff court district and for Cumbernauld?

Eric McQueen: Our intention for the Airdrie sheriff court district is, over time, to move the JP court at Coatbridge into Airdrie. Immediately on unification, it will stay within the Coatbridge building. However, once we have provided sufficient space in Airdrie, we will consider moving the JP court there. That suggestion has been well received by the council and by JPs in the area.

Cathie Craigie: What about Cumbernauld?

Gerard Bonnar (Scottish Government Criminal Justice Directorate): There is a court established at Cumbernauld under the order. I do not think that the Scottish Court Service has any proposals to reconsider that in the near future.

Eric McQueen: No, the court will stay exactly where it is. Sorry.

Stewart Maxwell (West of Scotland) (SNP): You mentioned in one of your earlier answers that very few people would be inconvenienced by the change from Annan to Dumfries and the other change to Ayr. Will people benefit from such changes? Clearly, there are people who are currently inconvenienced by having to travel to Annan, Cumnock and Girvan. I just wonder what the other side of the coin might be if the courts are moved to Dumfries and Ayr.

Eric McQueen: The residents of Lockerbie will certainly benefit. As I have said, the travel arrangements for people travelling from Lockerbie will be far better than for those travelling from other parts of the country. It is a given that there will be swings and roundabouts. In some areas a small number of people will be disadvantaged, but in other parts of the community in which we propose to have courts, where bus services are more frequent and there is more regular travel into the area, the number of people who are disadvantaged will be small.

12:00

Kenny MacAskill: None of the changes that we are making can be entirely cost free; there will be a cost to some individuals in some communities. It is important to remember that 70 per cent of cases at Annan appear to relate to road traffic offences on the M74. Cases are arising not from traffic between Langholm, Annan, Lockerbie and Dumfries but from traffic that passes through Dumfries and Galloway. Some of the accused might be residents, but in the main they appear to come from outwith the jurisdiction. Indeed, at times more than 95 per cent of cases have related to incidents on the M74 and people who had no relationship with Annan but were simply passing through Dumfries and Galloway.

Stewart Maxwell: I was going to ask about that. The information that has been provided to the committee indicates that the vast majority of cases are to do with road traffic offences. From the list, it seems that people travel from London, Glasgow, Washington and other far-flung places outwith Dumfries and Galloway. I am sure that the cabinet secretary agrees that it is probably easier for such people to get to Dumfries than to Annan.

Kenny MacAskill: A check during a particular period showed that 94 per cent of cases were dealt with without a personal appearance being required. That ties into the point about people who were travelling from starting point A to destination B, both of which are outwith Dumfries and Galloway.

Bill Butler: I understand that the average court roll in Annan district court is around 90 cases. Will it be possible for Dumfries district court to absorb an additional 180 cases per month without a substantial increase in regular court sittings?

Eric McQueen: The point was made that the vast majority of those cases relate to road traffic offences in which pleas are made by letter. The number of accused who are required to appear at court is small.

Bill Butler: How small, on average?

Eric McQueen: In January and February there were 187 new cases at Annan, in which only 10 accused were required to be present, only one of whom was from the Annan area. We are talking about marginal numbers.

Bill Butler: Are you confident that the additional cases can be absorbed by Dumfries district court without substantial—or indeed any—increases in court sittings?

Eric McQueen: As I said, we might have to increase sittings by two or three days, and we are considering the issue. The court has the capacity to do that and we are confident that the business will be managed within the court.

Bill Butler: I thought that no additional diets were proposed for the Dumfries court.

Eric McQueen: We have considered the volume of business that comes through the courts and we have the capacity to run two or three further sittings if that proves to be required.

The Convener: Do you mean two or three additional sittings per month?

Eric McQueen: Yes, if they are required.

The Convener: What is the layout of Dumfries sheriff court? Are there two courtrooms or one?

Eric McQueen: There are two: one very small civil room and one large criminal room.

The Convener: How many sheriffs are there?

Eric McQueen: I think that Dumfries has two sitting sheriffs.

The Convener: Therefore, if a JP court moves in, a sheriff will have to move out. Will that add to the pressure?

Eric McQueen: As is the case in all our courts, the courts do not sit every day. A programme of business is marrying business in the JP court with business in the sheriff court.

Kenny MacAskill: Writing time and a variety of other matters are factored into sheriffs' diaries, as the convener knows—

The Convener: We need not go there.

Kenny MacAskill: Sheriffs work hard, but they are not in court from 10 am until 4 pm every day.

Eric McQueen: I categorically assure members that accommodating two or three additional sittings a month in the sheriff court would not be an issue.

The Convener: Does the High Court sit at Dumfries on circuit?

Eric McQueen: It did in the distant past, but it has not done so recently.

The Convener: Members have no more questions, so that disposes of item 5.

Item 6 is formal consideration of the motion to annul the order. I invite Elaine Murray to move motion S3M-3927.

Elaine Murray: I thank the convener and the minister and his officials for agreeing to postpone this item in order that I could be here for it.

I will not try to argue that it would be appropriate to spend £800,000 on Annan district court or on replacing the court in Annan. I argue that it is unnecessary to spend anything like that amount in order to meet the required standards. Local solicitors, councillors and my fellow MSPs Jim Hume and Derek Brownlee—who have both opposed closure of the court—believe that the information on which the proposal to close it is based is inaccurate, and that the court building is a lot more flexible than has been suggested. We suspect that the closure is a cost-cutting exercise.

The building that is used is the old town hall. A modern extension is the main access point for members of the public coming in for council facilities, to pay their rent to local housing associations and so on. There are security staff in the part of the building where the court is and where some council meetings are held, because parts of the building are accessible to the public.

The court serves the whole of Annandale and Eskdale, which includes Langholm, Canonbie, Gretna and Ecclefechan—communities from which people do not generally go to Dumfries for services such as hospitals and so on, because Carlisle is a lot closer. In the past 10 years in which I have represented Dumfries, I have never had a complaint from residents in Lockerbie or Moffat about their not being able to access Annan court; it has never been an issue. I note that nobody from Langholm has been cited to the

district court in the past year. Perhaps that is testament to the law-abiding nature of my constituents in Langholm. This is not just about accused persons: it is about the ability, when necessary, of members of the community, witnesses and relatives to see justice being done.

Annan is the third-largest town in Dumfries and Galloway. We do not have courts dotted around Dumfries and Galloway in every small community. Annan is a significant community; it is a royal burgh and I believe that the court has been there for many centuries, so it is part of the history of the town.

I turn to specific issues that are raised in the consultation document. First is the matter of having separate entrances. That is possible, because the court does not sit in the council building; it sits outwith the council building, so it is possible to separate the entrances. There was also the issue of witness rooms. There are three witness rooms at present: one for the police, one for the defence witnesses and one for the accused. It is not necessary for those people to mix or for their health and safety to be compromised.

There are cells at Annan police station, which is across the road—a stone's throw from the court. It is significantly nearer the court than Dumfries police station is to Dumfries court. I am not suggesting that the cells would be required in many instances. They would probably be rarely required, given the sorts of cases that might come to Annan court.

A question was raised about police officers: however, in Dumfries it is in fact Reliance that takes prisoners from the police station to the court. I can see no reason why Reliance would not be able to fulfil the same function in Annan, if necessary.

The question of witnesses and accused persons having to use the same toilets was also raised. The building is quite flexible and there are toilets in the old part and in the new part. With a bit of imagination, it would be possible to restructure use of the toilet facilities for such instances.

Dumfries and Galloway Council has indicated willingness to help to address some of the problems with the building. Some £20,000 has been identified for health and safety matters. I should say that the council has been committed to the building. It has recently spent £350,000 on improvements, including dry-rot works. The building is now in good condition.

The workload for the Dumfries court should also be considered. We have heard that the Dumfries court has only two rooms, one of which is small. I do not think that it is any bigger than the small room in Annan district court, so transfer of business from one small room in Annan to another small room in Dumfries will not improve the situation.

I argue that this is centralisation of the services of a rural area. At present, I think that there are only three courts in Dumfries and Galloway—certainly, there are only two in my constituency. I think there is another one in Stranraer, but it covers a large rural area. The centralisation of services in the town of Dumfries goes against the grain of how we would like to decentralise services in rural areas such as mine. It is not the central belt of Scotland where people can easily nip from one place to another. It is a dispersed rural area, and I argue that the current number of courts is appropriate for Dumfries and Galloway.

I cannot say as much on the Girvan and Cumnock courts, but I believe my colleague Cathy Jamieson has made a strong case for their retention.

I hope that the committee will give consideration to these specific issues in respect of such rural areas.

I move,

That the Justice Committee recommends that nothing further be done under the Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) Order 2009 (SSI 2009/115).

Cathy Jamieson: The point that Elaine Murray raised in relation to the centralisation—or apparent centralisation—of justice is very important. I refer to comments that have been made to me by the East Ayrshire justices, who recalled the early discussions following the McInnes committee report when it was proposed that lay justice would be dispensed with and that justice would be a totally professionalised service. I was involved then, as were other members who are sitting around the committee table today.

The decision to retain lay justice was very much based on ensuring that communities could see justice being done and that crimes and offences that had been committed in communities and which were particularly relevant locally could be dealt with there. With regard to the justices, the modernised system of lay justice would ensure that a wider range of people would be involved and that those who dispense justice would have knowledge of the area and understand the circumstances.

My concern in relation to Girvan and Cumnock courts is not simply about the buildings, although they are very important. It is also about the wider message that their closure would send to communities: that we are moving away from a system that is based on community involvement in the justice system to something that is literally more remote from such communities.

I have made a number of comments that are particular to Girvan and Cumnock. I do not intend to go over them again other than to say that my recollection of discussions on the summary justice reforms is that it was never the intention that we would end up with JP courts and sheriff courts sitting side by side in the same town or area. The intention was to try, where possible, to rationalise the court estate in a way that would ensure that we spread to local communities the opportunity for justice to be done. I will rest on that point.

Robert Brown: I wish to add a little from my perspective on the matter. Obviously, I do not have the same knowledge as the local members do on these matters. I am subject to their comments and the comments of the cabinet secretary in response, but this centralisation process is not something with which I am particularly comfortable.

The important point that has been made is not so much to do with where the accused or witnesses come from; it is the fact that the crimes take place in the communities in question. I accept the point that was made on traffic offences; that is perhaps a different issue, although only to a degree in that communities get exercised by road traffic incidents as well.

An issue that has not been touched on is the ability of local newspapers to report on such matters. In some communities, local newspapers fulfil that facility, such as in Rutherglen, which I mentioned when I made the point previously.

I am not particularly persuaded by arguments about the condition of courts. Quite often, with regard to the closure of schools, hospitals and courts across the land, we see an architect's report that tells us how dreadful conditions are, when in fact the building has operated perfectly reasonably for quite a long time. It may well be that a number of things have to be done for the buildings to meet certain modern requirements but—as has been mentioned—with a bit of imagination that is not impossible in some of the buildings we are discussing.

Police time can be an issue, too. A reasonable case has been made for the proposed closures not to go ahead. I do not know the full local position, but I would be interested to hear the cabinet secretary's response to the specific points that the local constituency members have made.

12:15

Bill Butler: I agree with much of what Robert Brown said. I am not convinced by the Government's case. I am grateful to Cathy Jamieson for reminding the committee—or me, at any rate—that the decision to retain lay justices was taken so that justice could be seen to be done in the communities in which offences were alleged to have been committed. I am also grateful to her for reminding me that JP and sheriff courts were not intended to sit side by side.

I am desperately unconvinced by the argument that has been made about the conditions at Annan court. The constituency member, my colleague Elaine Murray, made the point that it has three witness rooms. The cells at Annan police station are a stone's throw away—that is perhaps an unfortunate phrase, but you know what I mean. There are sufficient toilets and the building has, to the tune of £350,000, been refurbished recently and Dumfries and Galloway Council is offering £20,000 of investment, so I remain unconvinced about its closure. Perhaps the cabinet secretary will be able to convince me. I look forward to his attempt so to do.

Stewart Maxwell: I will not comment on the nature of the buildings in Annan, Cumnock, Girvan, Ayr or Dumfries, because the local members will know more about that than I do, but I have an important point to make about the level of inconvenience that it has been claimed people will suffer and how the closures will impact locally. It is clear that the number of people who will be inconvenienced by the proposed changes is exceptionally small. The fact that at least the same number of people, if not more, will benefit from the moves to Dumfries and Ayr must be taken into account.

It is important to take into account the number of cases at Annan court that are to do with road traffic accidents. I think that of the sample of 187 cases that was mentioned, only one involved an accused who was from Annan. That gives us an idea of the impact of moving the court away from Annan. The argument about the impact on the area is somewhat spurious.

I must also point out to members that the process has already taken place in other parts of the country with no ill-effects. I do not think that the south of Scotland is different in its rurality from some of the other parts of Scotland in which the changes in question have been implemented. Unfortunately, I am not convinced by the arguments of Elaine Murray and Cathy Jamieson that their areas are different from those other areas to such an extent that the changes that the cabinet secretary has suggested should not take place.

The Convener: I call Cathy Jamieson—I am sorry; I meant Cathie Craigie. There is a plethora of Cathies around the table.

Cathie Craigie: All the Cathies in the Labour Party answer to anything—we are used to being confused.

There is a point that I would like the cabinet secretary to address when he responds. Like all courts, the purpose of JP courts is to serve the public for the good of the communities that they serve, so I support my colleagues' argument that they should be located in the communities that they seek to serve. I invite the cabinet secretary to deal with that issue.

The Convener: As there are no further contributions from members, I will make a final point. Given the points that have been raised, it seems that my vote will be decisive. Unfortunately, the order that we are considering today is in composite form. My use of the word "unfortunately" is deliberate: despite the able advocacy of Cathy Jamieson, the same arguments do not apply in each case. I can with ease dispose of a number of issues. For example, I am not persuaded about the difficulty in respect of the building at Annan. I believe that other practical problems can also be overcome. In the past, when similar situations have arisen, I have made it clear that two principles are involved and must be followed. The first consideration is whether the cost relates to case numbers. Under that heading, the Scottish Government's case for Annan is probably met.

The second consideration is access to justice. I accept that the case load is very low and that the profile of cases is exactly as Elaine Murray outlined in her correspondence and the cabinet secretary put in evidence today. That said, access to justice continues to be an issue. Unless the cabinet secretary persuades me otherwise, it is inappropriate for people to have a four-hour return trip to attend court. I am not concerned about court sittings happening in the same building. That is not necessarily a problem, particularly given the clear cost implications of separate premises. However, I am significantly concerned that people in the eastern part of the Annan court catchment area will have to take a fairly convoluted, time-consuming and possibly expensive trip either to appear as an accused person or give evidence.

I ask Mr MacAskill to wind up.

Kenny MacAskill: In addressing the points that have been raised, I turn first to accommodation. Clearly, a variety of factors are involved, including the safety of clerks, fiscals and others. St Andrews house does not deal with matters such as this on a whim or a fancy: the matter is for the experts in court programming who are employed in the Scottish Court Service. We have continued to deliver the accommodation programme that the previous Administration established and we have allowed it to continue without my involvement and without change being made.

I turn to centralisation of services. We have based our work on the "Smarter Justice, Safer Communities: Summary Justice Reform—Next Steps" document, which the previous Administration published in 2005. Paragraph 2.16 says:

> "Some towns currently have both a sheriff and district court – neither of which is fully employed. In those situations we would take the opportunity to realise sensible efficiencies through rationalisation and upgrade of the estate".

We are simply building on the position of the past Administration.

I oppose the motion to recommend annulment of the Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) Order 2009. The JP courts order is the latest step in a summary justice reform programme that has attracted—and which continues to attract—wide support. The result of the reform is that fewer people in our communities are having to attend court. Where attendance is necessary, victims and witnesses are not required to appear as frequently.

Members have asked about the principles and rationales behind the establishment of JP courts. I welcome the chance to explain the process and the basis for our decision on unification in South Strathclyde, Dumfries and Galloway. The intention behind court unification is to place the administration of our courts in the best possible hands—the professional court administrators of the Scottish Court Service. Seeking to ensure local justice in a modern context, the SCS sought to gain the benefits of unification, including service integration, one provider rather than 32 authorities, one IT system, consistent delivery, greater simplicity and accountability, better estate use, and better facilities that are suitable for victims, witnesses and all court users. The SCS used in driving its decision a number of guiding factors including business levels, value for money, the standard of existing facilities, and the business mix. Of course, it also considered local access and the proximity of courts in Annan, Cumnock, Girvan and East Kilbride.

While seeking to ensure best practice, we also had to take account of the very low volume of business and the lack of adequate and secure facilities in an evolving summary justice system. Where similar issues have arisen, we have applied the decision-making framework consistently across all sheriffdoms. As Mr Maxwell pointed out, we have dealt with the matter in the Highlands and Islands, plans for which the committee considered and approved at each stage of unification.

I value the expertise of local justices of the peace and the contribution that they make. Consideration of the volume and profile of business in the district courts in the area that would be affected by this order shows that local

access to justice would not be significantly compromised. Issues relating to local knowledge can be effectively addressed by the training that is being introduced under the reform of summary justice and by the sharing of knowledge and experience among JPs. JPs will, in fact, be better equipped and will be able to deal with a new and more serious mix of business in courts with secure and adequate facilities.

The new courts structure would bring specific benefits to communities in south Strathclyde and in Dumfries and Galloway. For example, it would free officers to patrol the streets. The Association of Chief Police Officers in Scotland acknowledged that point in its response to the SCS proposals, and said that there would be immediate benefits to the police, especially in areas where the police had to provide a service to outlying district courts. The proposed closure of some courts within the sheriffdom would be a distinct benefit.

The Government has had to make difficult decisions in approving the recommendation of the Scottish Court Service. We are satisfied that the recommendation takes careful consideration of all the interests and that it represents the best arrangement for the provision of summary criminal courts in the sheriffdom of south Strathclyde, Dumfries and Galloway.

This is not the first time we have had to consider such a recommendation. We took difficult decisions to close courts in Glasgow and Strathkelvin, Grampian, the Highlands and Islands, and Lothian and Borders, where similar issues arose. For instance, the district courts in Kingussie and Midlothian were closed during previous rounds of unification, and there was a subsequent transfer of business to the JP courts in Inverness and Edinburgh.

Members have rightly asked questions about the effects on local people, and have pointed out that some people will have to travel further. That is not untypical in rural areas; indeed, in some areas, people have to travel further than would be required with the order. We were asked how the residents of Langholm might be affected: they might have to travel further. However, as Mr Maxwell pointed out, in 2008 no civilian witnesses from Langholm were required at Annan district court. It could also be argued that many other services in Dumfries and Galloway require people to go to Dumfries, anyway.

In some places, residents would find it easier to get to court. Several people from Maybole who, over the past few months, have had to attend at Girvan, would have found it easier to get to Ayr. Court locations were for many years the responsibility of local authorities. Over the years, the estate evolved and the locations changed. We are committed to local justice and to improving facilities so that victims, witnesses and other court users can feel more secure and so that the court can deal appropriately with new and more serious business.

In agreeing with the recommendations, I am seeking to strike the right balance. This order is part of a much wider programme that delivers benefits to all, but which requires a degree of change in order to deliver those benefits. The programme has the widest support, so I urge the committee to reject the motion to annul.

The Convener: I invite Elaine Murray to wind up.

Elaine Murray: The contributions from Cathy Jamieson, me and other members of the committee have probably rehearsed all the arguments. I will not repeat them, other than to say that I do not believe that it is in the best interests of access to justice that the court service for an area as large as the Dumfries area be centralised in one town.

The Convener: The question is, that motion S3M-3927 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)

AGAINST

Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stuart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Motion agreed to.

That the Justice Committee recommends that nothing further be done under the Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) Order 2009 (SSI 2009/115).

The Convener: I thank Mr MacAskill and his officials for their attendance.

12:29

Meeting continued in private until 12:49.

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