

JUSTICE COMMITTEE

Tuesday 17 November 2009

Session 3

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JUSTICE COMMITTEE

31st 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)

*James Kelly (Glasgow Rutherglen) (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)

THE FOLLOWING GAVE EVIDENCE:

Gerry Bonnar (Scottish Government Criminal Justice Directorate)

Anne-Louise House (Scottish Government Legal Directorate)

Kenny MacAskill (Cabinet Secretary for Justice)

Eric McQueen (Scottish Court Service)

Gertie Wallace (Crown Office and Procurator Fiscal Service)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Andrew Proudfoot

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 17 November 2009

[THE CONVENER *opened the meeting at 10:03*]

Decisions on Taking Business in Private

The Convener (Bill Aitken): Good morning, ladies and gentlemen. I formally open the meeting with the usual reminder to everyone to switch off mobile phones. There are no apologies at this stage.

Items 1 and 2 are decisions on taking business in private. The main business today consists of formal proceedings on two items of subordinate legislation—a negative instrument and a draft affirmative instrument. In each case, we will take oral evidence, which will be followed by a debate on a motion. The committee is required to report on each instrument to the Parliament, and the purpose of the first two agenda items is for the committee to decide whether those reports should be considered in private.

Does the committee agree to take in private later today consideration of a draft report on the Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) etc Order 2009 (SSI 2009/332)?

Members indicated agreement.

The Convener: Does the committee agree to take in private at its next meeting consideration of a draft report on the draft Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No 3) Order 2009?

Members indicated agreement.

Subordinate Legislation

Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) etc Order 2009 (SSI 2009/332)

10:05

The Convener: Item 3 involves oral evidence on the order and item 4 is a formal debate on a motion recommending annulment of the order, which has been lodged by Cathy Jamieson MSP. I draw members' attention to paper J/S3/09/31/1, which is a background note on the order, and paper J/S3/09/31/2, which is a submission from the Scottish Government.

Members will recall that, at our meeting on 5 May 2009, the committee considered a motion in the name of Elaine Murray MSP recommending annulment of an earlier order—the Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) Order 2009 (SSI 2009/115)—which dealt with the same subject matter. After debate, that motion was agreed to, and the order was then revoked by the Scottish Government before it came into force.

The Government has now laid the current order, the Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) etc Order 2009 (SSI 2009/332). The main difference between the current order and the earlier one is that, rather than closing Annan district court, as was proposed in the earlier order, the Scottish Government now proposes to establish it as a justice of the peace court. However, the current order would still result in the closure of Girvan, Cumnock and East Kilbride courts. On that basis, Cathy Jamieson MSP has lodged a motion recommending annulment of the order. The Subordinate Legislation Committee had no points to raise on the order.

I welcome Kenny MacAskill MSP, the Cabinet Secretary for Justice; Gerry Bonnar, from the criminal procedure division in the Scottish Government; Stephen Crilly from the Scottish Government legal directorate; Eric McQueen, director of field services in the Scottish Court Service; and Gertie Wallace, from the policy division of the Crown Office and Procurator Fiscal Service.

Cabinet secretary, do you wish to make a short opening statement?

The Cabinet Secretary for Justice (Kenny MacAskill): I will be brief, convener. Thank you for inviting me to speak to the committee.

The Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) etc

Order 2009 is intended to conclude the process of unifying the administration of Scottish summary courts under the Scottish Court Service. It is a significant step in the furtherance of an important programme. The unification will complete the implementation of one of the key reforms to the Scottish summary justice system that were proposed by the McInnes committee in March 2004. Court unification will improve planning, delivery and flexibility in our summary courts, and will bring summary courts in each sheriffdom under the responsibility of the local sheriff principal.

During the previous session of Parliament, members unanimously endorsed the reforms in the Criminal Proceedings etc Reform (Scotland) Act 2007, and the Parliament has overseen the implementation of those measures in the current parliamentary session. I am sure that the committee will join me in welcoming unification and acknowledging the hard work of all the stakeholders involved in delivering those important reforms.

The order will establish justice of the peace courts at Annan, Ayr, Coatbridge, Cumbernauld, Dumfries, Hamilton, Kirkcudbright, Lanark, Motherwell and Stranraer. In keeping with previous orders on sheriffdoms, the order will disestablish the district courts that operate in the sheriffdom and repeal the remaining provisions of the District Courts (Scotland) Act 1975. A separate commencement order—the latest in a series—will repeal the provisions of the Criminal Procedure (Scotland) Act 1995 that allow local authorities to determine where district courts sit. The effect of those changes will be that local authorities will no longer be required or entitled to operate district courts and will lose all administrative involvement in the summary court process.

The order provides for a staff transfer scheme to be established for any staff transferring into the employment of the Scottish Court Service. That scheme will be signed off before unification on 22 February. Members will recall that similar provision was made in earlier orders. The order also makes transitional provisions to assist the smooth transfer from the district courts to the new JP courts of on-going cases. Those provisions will allow the district courts to fix dates in the new court before the JP court is fully established; they will also allow for witnesses and accused persons to be cited in the new court in advance. The order also provides for the transfer of certain records in relation to penalties. Again, those are similar to provisions that have been used in previous stages of unification.

A consistent decision-making framework has been employed throughout the unification process in each sheriffdom. Decisions about where a JP

court should be established are based on a range of factors, including business levels, value for money and the standard of existing facilities.

The committee has already considered the issue of court unification in the sheriffdom of south Strathclyde, Dumfries and Galloway, with a vote against SSI 2009/115 on 5 May 2009 leading to the revocation of that order.

Members expressed particular concern about the travelling distances that will be involved in accessing JP courts in areas where a district court is to be disestablished and not replaced. In considering again the proposed court locations, I carefully reflected on the points that were raised in the spring. I acknowledge the concerns that were expressed about ensuring access to local justice and I weighed those concerns alongside the Scottish Court Service's professional assessment of the levels of business and the suitability of facilities at the locations where closure is proposed. On further reflection, I amended the proposals in the previous order, and if the current order is approved, a justice of the peace court will be created at Annan. I considered the points that members made in the debate in May, particularly the convener's concern about the increased travelling distance for those who live in the eastern part of Dumfriesshire.

Not all courts are being replaced directly. The court estate has evolved and changed over the years. Many district courts are situated as a result of history and no longer hear sufficient levels of business to justify their location, regardless of the quality of their facilities. The professional assessment of the Scottish Court Service is that the courts that are not being retained would require substantial refurbishment or outright replacement in order to continue at an acceptable standard. Although finance is not the principal reason behind the closures, there is obviously a limit to the budget that is available for refurbishment. The package that is proposed will allow us to concentrate the limited resources that we have available and provide secure and modern facilities for all court users.

I hope that my brief summary of the order has been helpful. I have provided the committee with information on the business profiles of some of the courts in the area, which I hope will help members with their consideration. If members have questions, I am happy to answer them.

The Convener: Thank you, cabinet secretary. I welcome to the committee Cathy Jamieson MSP, who has a particular interest in the Cumnock court. I ask Bill Butler to pose the first question.

Bill Butler (Glasgow Anniesland) (Lab): Good morning, cabinet secretary and colleagues. Cabinet secretary, will you outline why Annan has

been retained, albeit in a different guise, yet Girvan and Cumnock have not?

Kenny MacAskill: I mentioned the various factors that are involved, including the upgrade costs, the level of business, the historical factor and the need to consider the matter in the round. These matters are judgment calls for the Scottish Court Service. It is for that reason that representations have been made about, for example, East Kilbride. As you will know, representations were made to the committee in relation to the north Strathclyde order regarding Giffnock, Dumbarton, Clydebank and Milngavie. Such decisions are based not on one individual criterion but on the factors that I set out—the cost of refurbishment, travel distances and the level of business. On reflecting on those factors, the Scottish Court Service has taken the view that Cumnock's business should transfer to Ayr, in the same way as the committee concluded that Giffnock's business should transfer to Paisley and that business from Milngavie and Clydebank should transfer to Dumbarton.

Bill Butler: You mentioned that one criterion is the upgrade costs. If you had decided to retain Cumnock, for the sake of argument, how much more would that have cost?

Eric McQueen (Scottish Court Service): In the paper that we circulated to the committee, we tried to indicate the costs.

Bill Butler: Do you have a rough figure?

Eric McQueen: A rough figure for the capital costs would be about £800,000, with continuing running costs of between £60,000 and £80,000.

Bill Butler: I am grateful for that information.

Cabinet secretary, you also mentioned travelling distances as one of the criteria. You have agreed that travelling distances are important in respect of Annan, so why not say the same of Cumnock, for the sake of argument, in relation to the proposal for Ayr?

Kenny MacAskill: As I said, the decision was based not on one specific criterion but on a holistic view; it was taken in the round. Given that the costs would be £800,000 plus £60,000 to £80,000, we would have spent £1 million by the start of the next session of Parliament. In the current economic recession, that is not small beer. That was one factor, but we also considered the distances and other matters.

10:15

We accept that the change is not without inconvenience to some who live between Muirkirk and Cumnock. Equally, we recognise that the distance from Annan and the fact that it covered

places such as Langholm caused considerable problems because of the geographic factor of most routes heading into the town of Dumfries. We felt that there was much more of a rural peripherality issue in Annan than in Cumnock, even though I fully accept—it is doubtless why Ms Jamieson is here today—that there are some problems for people in the Cumnock area. However, the issue has to be considered in the round. That was done in north Strathclyde and, at the very outset, in Lothian and Borders, where Ms Jamieson kicked off the process.

Bill Butler: I have one more question. Are the estimated £800,000 capital costs for absolutely essential or simply desirable refurbishment?

Eric McQueen: We are trying to ensure that courts in future are of a standard that we think of as fit for a modern court environment. Security is a major issue in the courtrooms in respect of the accused, witnesses and defence agents. We believe that we should set the proper standard for courts for the future.

Bill Butler: Yes, but my question was whether refurbishment was essential or desirable. If refurbishment was not carried out, would that, in your view and for the sake of argument, present a security risk?

Eric McQueen: I do not think that there is any doubt that that would present a security risk for the operation of the court. It would also put a lot of pressure on the justice organisations; we would have to try to manage business in a different way without making physical changes and look closely at the security issues for Reliance, the police and the SCS. We would end up without the safe environment that we want, and significant on-going running costs would be involved in trying to manage business in a different way.

Bill Butler: I have one very last question—with the convener's indulgence.

Has lack of security in the court in Cumnock been an issue previously? Is there a real security risk? Have there ever been events that make you think that there is a security risk in the court?

Eric McQueen: In almost every court across Scotland there are events on a day-to-day basis that present security risks.

Bill Butler: Yes, but has there ever been something that could be seen as a security-type incident at Cumnock?

Eric McQueen: I cannot comment on what has happened in Cumnock, but I assure members that there is a significant security risk in every court on a day-to-day basis.

Bill Butler: I am sorry, but I like plain English. Does that mean that there has never been a security incident at Cumnock? Yes or no?

Eric McQueen: I cannot comment on whether there has been a specific security incident.

Bill Butler: Why not? I thought that you knew about Cumnock.

Eric McQueen: I am trying to say that security issues arise in courts on a day-to-day basis. We try to manage those—

Bill Butler: That is not what I am asking. With respect, I am asking a very simple question. For the sake of argument, has there ever been a security incident at Cumnock?

Eric McQueen: I cannot comment today on any specific incident, but I know from local justices that there is significant concern about the risk that exists at the court in Cumnock on a day-to-day basis.

Bill Butler: I had two shies at that, convener; I will not try a third time.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I will continue with that point. I note from the Scottish Government's further submission that the proposal for Cumnock is supported by the Association of Chief Police Officers in Scotland but opposed by East Ayrshire Council and East Ayrshire JPs—the people who work in the area on a day-to-day basis. It is difficult to understand why a group of JPs and representatives from the council would be opposed to the proposal if they felt that there was the danger of security risks.

Eric McQueen: I think that, although they opposed the proposal, they have concerns about security in the court. We have had discussions with the justices in Cumnock, and they have raised security and the police presence in the court. Security is clearly an on-going issue. They might object to the overall proposal to close Cumnock court, but that does not mean by any stretch of the imagination that they think that it is a safe and secure environment in which to perform court business.

Cathie Craigie: I will leave the subject and perhaps return to it later.

Robert Brown (Glasgow) (LD): Let us divide the security issue into bits. What about the custody court, where prisoners are in custody? How often do you have custody appearances in Cumnock—or East Kilbride, for that matter?

Eric McQueen: Custody appearances in Cumnock are fairly rare. That can change, depending on the particular occasion, but the level of custody appearances is not high. What we expect to see, and are starting to see following some of the justice reform changes, is the move in

business from the sheriff courts to the district courts. In time, there is a strong possibility of increasing levels of custody appearances.

Robert Brown: If custody appearances are so rare, one option might have been to deal with them elsewhere—at Ayr sheriff court, for example—while retaining a presence at Cumnock.

Eric McQueen: That is one option, but the other problem is that people can come into court off the street and be remanded in custody from there. There is an on-going risk in how we manage such people through the process—from Reliance and on to prison, or wherever they go afterwards. As has been said, there are wider security issues beyond custody appearances.

Kenny MacAskill: Security issues do not involve simply the person remanded in custody; the JPs' safety and the security of those giving evidence and members of staff are all involved. Robert Brown knows that a benefit of sheriff courts is that defence and Crown witnesses are physically kept separate—the toilets and other rooms are separate. I know from my experience of 20 years as a defence agent that when such arrangements are not in place the cases that cause the most concern come from left field.

Robert Brown is correct to raise the problems that can arise, which is why ACPOS takes the view that security has to be considered in the round by the Scottish Court Service. As I said, security concerns those who are giving evidence, who are an important part of the process; those who work in the courts, whether as JPs or clerks; and indeed members of the public who come in and watch proceedings. Courts are public buildings that are used by the accused or people giving evidence.

Robert Brown: Let us take those matters as given—they apply to your considerations across the court service. We are looking at Cumnock in particular. I do not know what Cumnock district court or its facilities are like. Can we be clear about the provision and limitations at Cumnock and put to one side—for the moment, if you do not mind—people appearing from custody or being put into custody?

Eric McQueen: There are no custody facilities at Cumnock district court. Prisoners are held in the van, or the court tries to make arrangements with the police about using the police station, which is not satisfactory because its cells are non-legalised. There are major difficulties with such arrangements. There is no custody provision in Cumnock court, which is an issue. There are no secure routes in the building, whether for JPs or Crown and defence witnesses, or for members of the public. There is a general lack of the facilities

that we would expect as a minimum in a court building.

Robert Brown: I am still unclear. What facilities are there? Are there separate rooms for prosecution and defence witnesses? Is there a separate room for the JPs? What exactly is there at Cumnock?

Eric McQueen: There is a room for JPs, but there is no secure access to allow them to get to the room. There is one witness room in the building, but there is no secure public circulation. The building is a mixed-traffic area.

Robert Brown: There were also concerns about and opposition to the proposed closure of East Kilbride court. By any account, it is almost as big as the Cumnock and Girvan courts taken together. It is also in one of the biggest urban communities in Scotland. It seems a little odd that East Kilbride should be chosen for closure. Perhaps you can give me some background to that decision. Again, I appreciate that there are accommodation issues.

Eric McQueen: East Kilbride sits one day a week on average, and about 340 cases go through it in a year. Our view is that there is more than sufficient capacity at Hamilton, which is a mere 6 miles away, and that there is no value-for-money argument that supports keeping a court in East Kilbride.

We base decisions about court locations largely on demand—where the crime comes from. In many ways, it could be a positive sign that in East Kilbride there is not a sufficient level of crime to support the argument that there should be a court there. The committee will remember that we moved the sheriff court from Linlithgow to Livingston because crime was more predominant in that area of West Lothian. Our view is that closure is not a major issue for East Kilbride, because it is a very short journey from there to Hamilton.

Concerns have been expressed about access to local justice and how that will be delivered in the future. There is already an exchange between the East Kilbride and Hamilton JPs. Over the past two years, they have sat in one another's courts. Almost one in five of the cases that go through is dealt with by JPs from either Hamilton or East Kilbride, who share knowledge and experience to ensure that community justice is in place and is being delivered.

We do not feel that there is a substantial argument for the retention of East Kilbride.

Robert Brown: You have given us figures on JP attendances at East Kilbride and sheriff court attendances at Hamilton. I would thought that it would have been more relevant to give us the figures for the JP attendances at Hamilton.

Gerry Bonnar (Scottish Government Criminal Justice Directorate): We provided the figures that we were asked for, as opposed to figures on the JP court, or district court, at Hamilton.

Robert Brown: Do we have any figures for how Hamilton compares with East Kilbride in that context?

Gertie Wallace (Crown Office and Procurator Fiscal Service): I think we have just given what we were asked for. From what I can recollect, I do not think that we have given JP figures for Hamilton.

Eric McQueen: Hamilton district court presently sits three days a week, so it is quite clear that there is ample capacity within it more easily to accommodate the business that will move from East Kilbride.

Robert Brown: Can you give me any sense as to why demand at Hamilton should apparently be three times greater than at East Kilbride? There is no movement of cases between the two at the moment.

Gertie Wallace: At the moment, cases are put into the appropriate local court that has jurisdiction. The greater demand presumably reflects levels of crime in the area.

Robert Brown: It is not a case of there being differences in practice or in what sort of cases get sent, because of the presence of the sheriff court.

Gertie Wallace: No. The same criteria are used in determining whether a case should go into the sheriff court or the district court. The cases come into the Hamilton procurator fiscal's office, so there should be good, standard marking practices.

Robert Brown: If you were to put to one side the need for custody facilities at Cumnock, which you have accepted would be needed only for a minimal number of people in any event, would that alter the capital or revenue cost that you are talking about? I presume that it would.

Eric McQueen: It would alter it to some degree, because, clearly, the provision of custody facilities is very expensive. At the same time, there remain the issues to which Mr MacAskill referred, to do with general security and circulation within the building, which we see as key to ensuring—

Robert Brown: I accept that, but if you eliminate the custody facilities, what might the capital cost be? I assume that you have some idea of the breakdown.

Kenny MacAskill: It is difficult to eliminate the custody facilities. The Crown could say that we will not cite anybody who is in custody. However, given the independence of the judiciary, we cannot preclude the ability of a JP to impose a custodial sentence. In that situation, Cumnock court would

face a significant problem. It would be hard for the Crown to say that we will mark only those cases that, as far as we can see, will never get a custodial sentence. That would either limit the number of cases to a very small number, which would increase the financial unviability of the court, or would mean that we were seeking to fetter and constrain the judiciary, which would be equally unacceptable. The Crown could do its best to try to ensure that only cases that were unlikely to require a custodial sentence went to Cumnock court, but it would be impossible to preclude the need to cater for custody cases.

I do not know whether during your years of practice you ever appeared in the sheriff court annexe in Edinburgh, which basically had a glorified cupboard that was turned into a cell facility, which was entirely unacceptable. Cases were cited there only if it was anticipated that a custodial sentence would not be given. Frequently, however, a custodial sentence was given, and the cell facility was entirely inappropriate for the court and the police, never mind the accused.

Robert Brown: How far away is the police office from the court in Cumnock?

Eric McQueen: It is very close to it—they are virtually next door to each other.

10:30

Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab): I was going to ask about that, too. For people who are not familiar with the location of Cumnock district court, it is adjacent to the refurbished police office in Cumnock, and my understanding is that the building actually belongs to Strathclyde Police. Has there been any discussion with Strathclyde Police about the possibility of upgrading the facilities inside the police office and thereby providing a secure entrance to the district court or on the provision of a firm costing for upgrading the court?

Eric McQueen: Yes. There has been some discussion with Strathclyde Police, and it is not looking to entertain such a proposal. The cells in Cumnock police station are currently used only when there is an overspill from Kilmarnock and Ayr. As they are not of the legalised standard, they should not be used to hold any remand prisoners.

Strathclyde Police has no intention of devoting resources to an upgrade of the facilities in Cumnock; in fact, it wants to achieve greater centralisation in custody management, particularly through the use of Kilmarnock and Ayr. As things stand, when a custody case is heard in Cumnock, a police officer has to be dedicated to going to the court, staying there during the day and managing the person until Reliance can come to collect them. That has a significant resource impact on

Strathclyde Police. Its strategic plan for custody management shows that it has no intention of making any changes in the way that business is managed.

Cathy Jamieson: I have a follow-up question on capital and on-going running costs. Although I have no specific knowledge of the situation at East Kilbride court, I have knowledge of the courts in Girvan and Cumnock. I find it surprising that the estimates for the capital cost of upgrading the three courts are exactly the same and that the estimated on-going running costs are also the same. For the record, will you give me a breakdown of what would require to be done at Cumnock and at Girvan and of how the figure of £800,000 has been arrived at?

Eric McQueen: The £800,000 figure is our professional assessment of what it would cost to provide a one-court environment of a certain size with a certain range of facilities. Our professional assessment is that to provide a one-court environment with defence rooms, Crown rooms, JP rooms, secure access and a custody unit would cost £800,000. That figure is based on industry-standard calculations, which we use to manage an enormous estate on an annual basis.

Quite often, the cost of refurbishment can be significantly higher than the estimate, and it is sometimes not possible to achieve the extent of the refurbishment that was intended to be delivered. The figure of £800,000 is a professional estimate of what it would cost to replicate facilities in those areas. Part of the project might involve new build and part of it might involve refurbishment, but there is not a vast variation in the costs that would be incurred. The estimate includes the full cost of the development and design work and the associated professional fees.

Cathy Jamieson: So the figures that you have provided are not specific to the locations in question. We are talking about a general estimate that would be used for any court.

Eric McQueen: Yes, but it is a lot more than a general estimate—it is a specific estimate of the development costs that is based on the professional advice that we receive in managing a complex court estate.

Cathy Jamieson: I have a follow-up that relates specifically to Cumnock. There is a proposal for some major work to be done as part of the Cumnock town centre regeneration, which will involve new council offices and various other facilities. Has any thought been given to retaining the existing court building on a temporary basis and building a new facility in Cumnock as part of the planned regeneration work?

Eric McQueen: The local authority has made no such approach to us in relation to its development plans.

Part of what the cabinet secretary said is that the proposal is about more than just the specifics of security; it is about how we provide a court estate and demonstrate best value. Our argument is that we believe strongly that keeping the court in Cumnock open simply does not stack up from the point of view of overall value for money or the level of business. Is it sensible to have a court in Cumnock that sits for one day a week when we have adequate capacity elsewhere that, for the vast majority of cases, is within a relatively short travelling distance?

Cathy Jamieson: Finally, how much money will be put into upgrading the facilities in Ayr to create the JP court?

Eric McQueen: I do not have the exact figure. However, given that we are retaining the JP court in Ayr, we are committed to developing and enhancing those facilities. Plans are being developed at the moment, and work will commence as soon as we take ownership of the building.

Cathy Jamieson: I apologise for coming back on that, convener, but I had expected to get a figure in response to my question.

Mr McQueen, I am surprised that you have estimates for the other developments but cannot give me even a ballpark figure for upgrading the facilities in Ayr to create a JP court. Local justices are concerned about the condition of the Ayr facilities, and it is not the case that the JP court will simply continue to sit in them.

Eric McQueen: Absolutely. We covered that issue fully at the previous meeting. We intend to undertake a major refurbishment of Ayr JP court to bring it up to standard.

Cathy Jamieson: So why can you not tell me how much that work will cost?

Eric McQueen: Because I do not have the figures to hand. They sit within the budget that we manage for the capital estate across the whole of Scotland. The fact is that, whether or not business was to be moved from Cumnock, we always planned to upgrade Ayr, and work will begin once we take ownership of the building. If you want a ballpark figure for upgrading a building, installing custody facilities and so on, I have to say that the cost of what we think it is possible to do in Ayr would be in the region of £500,000 to £600,000. However, I am not sure exactly what you are driving at with your question.

Cathy Jamieson: I want to know how much it will cost to upgrade Ayr. You must have a figure for that.

Eric McQueen: I can give the committee those details, but I do not have the figure with me today. I am still struggling to see how it is relevant to what we are discussing this morning.

The Convener: Mrs Jamieson's point is perfectly apposite. How much money is going to be spent? Is the figure in the region of £500,000 to £600,000 that you mentioned likely to be the commitment to the Ayr facility?

Eric McQueen: Yes but, if it helps, I will write to the committee to confirm the exact estimate.

Cathie Craigie: The question is relevant to our discussion because, after all, the proposal is to close two courts and move the business to Ayr. We have to make decisions today, so we need that information.

The Convener: At this point, we are simply asking questions of clarification. Do you have a question to pursue, Mrs Craigie?

Cathie Craigie: I simply think that it is important that we have that information.

Kenny MacAskill: There is a ballpark figure; the real figure will be slightly more or slightly less depending on the circumstances. If you want someone to build an extension to your house, they give you a ballpark figure, but the actual cost will vary depending on the structure of the house, the landscape and so on. Separation of facilities is another consideration. The Scottish Court Service's figures take all that into account.

We must bear in mind that we are not simply comparing one court facility with another; additional facilities will need to be constructed. We have a limited budget and, as Mrs Craigie knows, we have had debates in the main chamber about expenditure on the supreme court. We disagree on the matter, but we have to spend money on the supreme court, and it has been accepted that we will have to upgrade Ayr even though it is doing reasonably well and carrying out a certain volume of business. The costs that we are talking about this morning are in addition to those in the normal budget.

James Kelly (Glasgow Rutherglen) (Lab): You have indicated that £800,000 would be required to ensure that each of the facilities in Girvan and Cumnock is state of the art. Are you able to break down that figure into its main components?

Eric McQueen: The main components of a standard building would be a courtroom, the JPs' chambers, witness rooms, toilets, catering facilities, facilities for our staff, office and administration space for the Scottish Court Service, the Crown and other justice partners, and the plant room to house the mechanics and electrics. After we break down the various components into the square meterage required by

the industry standard, we calculate the cost impacts.

James Kelly: You indicated in previous answers that those were essentially the main components. I was trying to establish whether you can put a financial value on the main items within the £800,000. For example, what would it cost to upgrade the courtroom as opposed to the catering?

Eric McQueen: That is not a level of detail that I have with me today. I am not a building expert. Again, it is a question of looking at things in the round. We are trying to indicate clearly and honestly to the committee what we believe that the cost would be to upgrade those facilities. If you want to start ripping down into individual components, that is a level of detail that I do not have with me today and for which I do not have the expertise. I am also not quite sure what value it would add to the discussion.

The point that I make in connection with Ayr is that, irrespective of what happens to Cumnock, we will spend the money that we are spending in Ayr. Ayr is already a court that we are committed to keeping and upgrading. Plans are being developed as we speak, and it is in our budget to upgrade Ayr JP court. That will provide the additional capacity to take in the business from Cumnock. This is not about money being spent in Ayr depending on what happens to Cumnock; it will be done anyway.

James Kelly: My reason for asking is that I am interested in whether any items that would be down for expenditure could be abandoned or deferred. For example, you mentioned toilets. I assume that there are already toilet facilities, so that is something for which the potential expenditure could be deferred.

Eric McQueen: I do not think that anyone disputes that the buildings are in a very poor state of repair—the local authorities have certainly not disputed that. If we were going to refurbish the buildings, we would be talking about major refurbishment. There would not be a choice; for example, we could not say that the toilets would last another two years. There would need to be major refurbishment to bring them back up to an acceptable standard.

Kenny MacAskill: There are costs to other organisations. Ms Jamieson suggested that we should perhaps utilise the police. ACPOS has made it clear that it does not support the retention of Cumnock court. No one has suggested closing the court at Ayr—that is a court that we are pivoting around—but the cost is not simply the cost to the Scottish Court Service. If police assistance were to be provided—which it has to be at Cumnock because of the court—an officer

would have to be abstracted from elsewhere. I cannot remember whether this was sent to me and copied to Ms Jamieson, or sent to her and copied to me, but I have seen correspondence that indicates that people would like a visible police presence on the streets of Cumnock, and not located in Cumnock district court.

If we proceed in the direction of travel of keeping the court in Cumnock open, there will be not only a significant cost implication for the Scottish Court Service but a staffing implication for Strathclyde Police. If it has to abstract officers from another division, that will impinge on the resources that it can provide. I am sure that the committee would not want officers pulled out from Rutherglen on the day that Cumnock district court is sitting.

James Kelly: If the spend were to go ahead, would it would be incurred all in one financial year or spread over a number of financial years?

Eric McQueen: Are we talking about Ayr?

James Kelly: Any of the spends: Cumnock, Girvan or East Kilbride.

Eric McQueen: Given the time that it would take to programme the work and carry it out, it would be likely to be spread over a couple of years.

James Kelly: Okay. So the budget would not be £800,000 in one year, but £400,000 a year over two years.

Eric McQueen: It would depend exactly when we started the work and when we finished it, but we can assume that the likelihood is that expenditure would span two financial years.

Angela Constance (Livingston) (SNP): I have had the benefit of seeing the new court in Livingston, which replaced Linlithgow sheriff court. These days, are there minimum standards that we are expected to comply with for courtrooms and court buildings as a whole?

Eric McQueen: There are no defined minimum standards for courtrooms, although there are health and safety issues in that we have legal obligations and responsibilities in our management and operation of the buildings. There are standards that we try to set, in discussion with the police, the judiciary and the Crown, about the level of security that we provide, the appropriate size of a facility, and the services that we provide for Crown and defence witnesses. What emerges from that is the typical, ideal design for courtrooms in the future—and that is in our estate strategy on our website.

10:45

Angela Constance: Changing tack a bit, convenor, I have had a look at note 3 in the Government's written submission, and I can see

the numbers of accused people who have appeared at Cumnock and Girvan. Has any work been done that would allow you to advise the committee about the number of people who would be inconvenienced by the courts moving to Ayr? As well as the accused, witnesses and others will be affected.

Eric McQueen: Looking over the three months, we have tried to identify the likely numbers involved. For Cumnock the witnesses numbered about 25, and the figure for Girvan was about two, so the numbers of people inconvenienced are relatively low, at a fairly high cost to the public purse. In our view, we have improved facilities—or facilities that will be improved—within a short, comfortable travelling distance.

The Convener: According to the figure in note 3, at Cumnock three trials proceeded with evidence heard and there were 25 civilian witnesses. That cannot be correct—unless the trials were lengthy and complex.

Gertie Wallace: There might have been multiple charges or multiple accused. That is perhaps unusual but not outwith the bounds of possibility.

Gerry Bonnar: The figure of three trials refers to three trials that proceeded, with the 25 witnesses cited—

The Convener:—who could have been countermanded.

Gerry Bonnar: They could have been countermanded—they were not all necessarily witnesses who gave evidence, and they were not necessarily 25 different individuals. The figure refers to 25 citations of civilians for trials, but only three trials proceeded. We do not have a figure for how many witnesses actually gave evidence in the three trials.

The Convener: It just seemed odd to have 25 witnesses in three trials—unless there is a frequency of disorder in East Ayrshire with which I am not familiar.

Kenny MacAskill: There were 13 trials fixed to take place at Cumnock, with 25 civilian witnesses. Some of the cases might have been the classic two-cop breach. If we look at the number of trials fixed, as opposed to the ones that actually ran, it gives a better perspective.

The Convener: There being no further questions, we go on to item 4, which is formal consideration of the motion to annul the instrument. I invite Cathy Jamieson to speak to and move motion S3M-5169.

Cathy Jamieson: It gives me no great pleasure to be in this position, speaking on this issue yet again and moving the motion in my name. I had hoped that, after the committee previously decided

that the cabinet secretary would be well advised to reconsider the matter, an alternative proposal would be brought to the committee to ensure the continuation of a JP court in Cumnock, as well as in Girvan.

Most of the discussion this morning has focused on the circumstances surrounding the court at Cumnock, and it has reflected the fact that East Ayrshire Council and the local justices oppose the closure of the court there. That has perhaps been highlighted in a more significant way than the situation at Girvan.

I will make a couple of points about Girvan. My understanding is that, although the local justices and East Ayrshire Council do not oppose the closure of the court, a number of members of the community, including the local community council, have indicated their opposition. They feel strongly that there is a continuing agenda of centralisation away from Carrick into Ayr. They view the proposal as a further example of the local authority not listening to local people, and of the Scottish Court Service and, ultimately, the Scottish Government not listening to them either.

I am disappointed that further work has not been done to consider what might have been possible in Cumnock through working with Strathclyde Police. I heard what the cabinet secretary said about the need for a visible police presence in Cumnock, and I support that. I know that my constituents want that service, and that the local police want to provide it. However, I was surprised by the tone of the cabinet secretary's comments, which suggested that abstracting people for relatively few sittings in Cumnock district court would be a burden. I put it on record that people in Cumnock want not only a visible police presence but a locally accessible court that allows them to see justice being done in their community. They believe that that acts as a deterrent, as part of the wider justice system. That view has been demonstrated by the fact that many of Mr MacAskill's Scottish National Party colleagues on East Ayrshire Council support Cumnock district court. Indeed, the council as a whole supports its retention, as do the East Ayrshire justices.

Mr MacAskill referred earlier to general security issues around the courts, and I think that Mr McQueen suggested that the justices in East Ayrshire raised concerns about Cumnock. I refer people to the letter from East Ayrshire justices that was circulated when the matter was previously discussed, in which the justices raised a number of issues. They did not raise the security issues as their biggest concern; they believe that they can be overcome, particularly given that the court is adjacent to the police office. The justices are concerned to ensure that their local knowledge and understanding of the area and its communities

continues to be available in a newly set-up JP court rather than being dissipated because of a move to Ayr.

I am surprised to hear that no figure can be put on the refurbishment cost for the Ayr court. My understanding is that it will require significant investment. I acknowledge that the cabinet secretary said that the investment will go ahead, which obviously means that the decision has been taken, but I find it surprising that a figure cannot be given to the committee this morning and that we are relying on a general estimate of capital and running costs that does not take account of the nature of the different district courts.

As I said at a previous committee meeting, the issue is not simply about buildings or the location of court premises—to be fair, the cabinet secretary has recognised that. It is also about access to justice and ensuring that local communities can go to their local court to see justice being done. The proposals to close courts fly in the face of the McInnes reforms—indeed, they are against their spirit—which were intended to ensure that we could see justice being delivered in our local communities.

I am concerned, too, about suggestions that a number of justices may not wish to continue to serve, given that they may have travel and associated difficulties. However, to be fair to the East Ayrshire justices, they have not raised that particular point.

Given that the figures that could not be provided in detail today could be provided at some stage for further discussion, I hope that the cabinet secretary will be prepared to listen to the views of local people and to what the local justices are saying, to look again at the options for the future of a JP court in Cumnock alongside the regeneration programme there, and to come back with an alternative proposal that will allow Girvan and Cumnock to have district courts in the future.

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) etc. Order 2009 (SSI 2009/332).

The Convener: Thank you, Ms Jamieson. Are there any other contributions?

Stewart Maxwell (West of Scotland) (SNP): I find it interesting that we are in a situation in which legislation that was introduced by Cathy Jamieson as the Minister for Justice and which has led to the unification of courts across Scotland is being opposed by Cathy Jamieson when it is applied in her own area. I find that interesting indeed.

The Convener: She is, of course, perfectly entitled to do that.

Stewart Maxwell: She is indeed. I am not disputing her entitlement; I am just saying that it is interesting.

We all have local courts in our areas. Giffnock court is not more than one minute from my house. It is attached to and part of the same old, unsuitable building as the local police station. I have also visited Paisley court, which is in a much more suitable state to be used as a modern court facility. Giffnock court is used infrequently, and there are many analogies between the situation in Giffnock and Cumnock. It will be inconvenient for those who used to go to Giffnock to have to go to Paisley, but that is a minor inconvenience given the relatively small number of cases that are heard in Giffnock, and the fact that much better facilities are available for all at Paisley. I am therefore not objecting to the removal of Giffnock court and its replacement with Paisley court.

I cannot understand the argument that we should invest in a new building or the major refurbishment of a building for a court that sits on one day a week. That cannot be accepted as good value for money in anyone's eyes, particularly in the current situation. We have just concluded discussions on the budget, which is a tight settlement, and we have already had evidence that it will be much tighter in future years. We face some serious questions about how we are going to manage the budget for the next few years. Also, we have given the Scottish Court Service the opportunity to analyse the situation Scotland-wide and decide what is best for the Scottish Court Service as a whole. Its professional advice is that we should remove these courts and replace them with a single court in Ayr or elsewhere. That advice should not be thrown aside lightly.

I agree with some of the witnesses and do not see the relevance of whether the upgrades to Ayr court cost £1 or £1 million, because they are going to happen, irrespective of today's decision. What is important is whether we throw extra money at additional courts. The money will be spent on Ayr court, so, to go back to our current budgetary situation, would it be wise to spend many hundreds of thousands of pounds, if not more than £1 million, on Cumnock and Girvan courts? If we started there, where would we stop? That would be neither suitable nor sensible, so I will not support Cathy Jamieson's motion.

The Convener: Are there any other contributions?

Bill Butler: I will not be overly long, convener. I want to put on the record that I find it puzzling that Mr McQueen was able to give a general figure for three of the establishments that are under discussion, but was unable to put any kind of figure on the Ayr court refurbishment until pressed, and even then it was an approximation, even

though it had been in the SCS budget for some time. I find that astonishing. When a committee is being asked to make a serious decision on a serious issue, such an elementary fact should be readily available for committee members.

I am not convinced that the cabinet secretary's proposal is the correct one. Access to justice is important and it should not be sidelined or taken lightly. It would be beneficial if the cabinet secretary went back and thought again about some or all of the suggestions to modify the situation in Cumnock and Girvan. On that basis, I will not support what the cabinet secretary suggests, and I will support the motion to annul.

11:00

James Kelly: The important points that Cathy Jamieson made about local justice are backed up by the representations from the local area. In his opening remarks, the cabinet secretary touched on the fact that it is important that people see justice being administered locally—

Stewart Maxwell: Will the member take an intervention on that point? This is a debate, convener.

The Convener: It is indeed. It is a matter for Mr Kelly to decide whether to take an intervention.

James Kelly: No, I will not take an intervention.

The record shows that the proposal would mean that court users who have to travel by bus would incur longer journey times. We need to bear that in mind in reaching a decision on the matter. However, of greater concern is the lack of detail on the costs. As Bill Butler mentioned, the committee has been put in a difficult position, because we have been unable to get precise costings for Ayr or a detailed breakdown of the £800,000 capital spend for each of the locations that are proposed for closure.

With those factors in mind, I am not minded to support the cabinet secretary's proposals. Cathy Jamieson was constructive in asking the cabinet secretary to reconsider the proposals and come up with an alternative that is based on more detailed costings. The cabinet secretary should bear that in mind when he sums up.

Robert Brown: I must confess that I find the matter difficult, and it has been made more difficult by the way in which the cabinet secretary and his officials have given us information today. The issue has been lurking about for a while, and there has been a discussion and hearing on it. It is extraordinary that the evidence in the papers is entirely general and could apply as much to the courts in Aberdeen or Wick or wherever as to the court in Cumnock.

We are interested in the particular issues with the courts that are involved. I accept Stewart Maxwell's point that the general proposals aim to improve criminal justice in Scotland, but that is not relevant to our consideration of whether the specific proposals are appropriate for the courts that we are discussing. We must discuss the proposals on their merits. I am not so interested in the general health of the justice system as a whole, because that is not the point; I am interested in what is appropriate for the local areas that are involved.

There are undoubtedly geographical differences and difficulties in the relatively rural or far-flung villages and townships in Ayrshire. I do not pretend to know the individual details in the way that the local member does, but there seem to be a number of possible ways of tackling the matter. We start from the position that there have been courts in the places that we are discussing for quite a long time, so the onus is on the Government to prove that there should no longer be courts there. I am not sure that it has done that.

I am not at all clear about what there might be at Cumnock, what the nature of its work would be, what it would cost, whether it would be changeable and whether, indeed, custody provision would have to be as has been laid out. I presume that we are talking not about people being imprisoned indefinitely in the local police station but about their being held for a period of time until they are taken back to the prison from which they came or are taken to another prison. We are discussing a short-term holding situation. Against that background, it is relevant to know how much it would cost to improve the custody facilities at Cumnock and how significant the problems have been. I bet that they have not been remotely like the problems at the central district court, which has had major problems in that regard for a number of years and is only now getting the investment that it needs.

I remain to be persuaded about Cumnock, to be quite honest. I am persuaded about closing Girvan, because the case for retaining it is not strong. I am left with lingering doubts about East Kilbride. While I am conscious that none of the local members has made any representations on it, South Lanarkshire Council and at least one JP have expressed opposition to the proposal.

The cabinet secretary and his officials have not made a good enough case for their position on the courts to persuade us to back the cabinet secretary's proposals.

The Convener: As there are no further contributions at this stage, I invite the cabinet secretary to respond.

Kenny MacAskill: I oppose the motion to recommend annulment of the order. In defence of the civil servants and myself, I say that the issue of the cost of upgrading Ayr was not raised. We had meetings and provided costings to try to assist, but nobody raised that cost. The benefit of live transmission is that the case can be watched by those outside the court. I can advise the committee that it would cost £70,000 to upgrade Ayr JP court—that information has just been provided; we had not expected that it would come in time for us to bring it to you today. I hope that it is of some assistance to the committee.

As was mentioned by others, the JP courts order is the latest step in a summary justice reform programme that has attracted and continues to attract widespread support. It was started by my predecessor, Ms Jamieson, as Mr Maxwell mentioned. The programme has been carried out in a non-partisan and non-political way. It was started by the Liberal-Labour Administration under the auspices of the Scottish Court Service and has continued in that way. It is the logical conclusion of the SCS's analysis of the financial viability and use of the courts.

Figures from the Crown Office and Procurator Fiscal Service show that the reforms are resulting in fewer people in our communities having to attend court and that, where attendance is necessary, victims and witnesses are not required to appear as frequently. The figures also show that over 9,000 more cases met the 26-week target in 2008-09 than did in 2007-08.

Members have asked about the principles and rationale behind the establishment of JP courts and I welcome the chance to explain the process and the basis for decisions on unification in south Strathclyde and Dumfries and Galloway. That process was kicked off several years ago by Cathy Jamieson in Lothian and Borders, where it resulted in the closure of, for example, Loanhead and Linlithgow, as we heard from Angela Constance.

I welcome the opportunity to state again that I value the expertise and contribution of local justices of the peace. Under summary justice reform, JPs have better training and gain more experience through sitting more regularly. Concerns about the loss of local knowledge can be addressed effectively by the sharing of knowledge and experience among JPs. In the modern context of local lay justice, unification is intended to place the administration of our courts in the best possible hands—those of the professional administrators of the Scottish Court Service.

If we were to take the points that Mr Kelly made to their logical conclusion, we would probably seek to transfer the current powers of the sheriff court in

Ayr to the JP court in Cumnock. Nobody has put that proposal on the table and, indeed, the cost of creating local justice at the level that the member suggests—with some matters separated between JP and sheriff courts—would be significant.

We have to remember that many people will travel, as they already do, from Muirkirk, Cumnock and Girvan to Ayr and from East Kilbride to Hamilton for sheriff court business. That has always been the way. For example, significantly more people will travel to Ayr sheriff court from Cumnock than currently use the district court in Cumnock because the volume of business that is transacted at Ayr sheriff court for people in Cumnock will be greater than the volume of business that is transacted currently by the district court in Cumnock, which has significantly fewer sitting days.

I will revisit the benefits of unification that the SCS seeks to achieve: service integration, with one provider rather than 32 authorities; one information technology system; consistent delivery; greater simplicity and accountability; better estate use; and better and more suitable facilities for victims, witnesses and all court users. As we all know, going to court can be traumatic. The SCS looked to a number of guiding factors to inform its business. Those guiding factors were started under Ms Jamieson and I have continued with the same ones—business levels; value for money; the standard of existing facilities; the mix of more serious business to be dealt with; and local access—the proximity of other courts.

In Cumnock, Girvan and East Kilbride, the SCS had to take account of the very low volumes of business, the lack of adequate and secure facilities and the evolving summary justice system as it sought to ensure best value. The decision-making framework has been applied consistently for all sheriffdoms, and similar issues have arisen elsewhere. The plans for every other sheriffdom have been considered and approved by the committee at each stage of unification.

The proposals in the order attracted significant support during consultation. South Ayrshire Council backed the proposal to close Girvan district court. ACPOS recognised benefits in the new structure, stating:

“there will be immediate benefits to the police, particularly in those areas where the police have to provide a service to outlying District Courts and the proposed closure of some courts within the Sheriffdom will be a distinct benefit”.

That is not simply a case of ACPOS being critical of the current situation; it would be considerably more critical if we were looking for the police to enhance the level of service that they currently provide.

I carefully considered all the interests and the views that were previously expressed in the committee. I believe that the order represents the best arrangement for the provision of summary criminal courts in the sheriffdom of south Strathclyde, Dumfries and Galloway.

I have listened to arguments about local access to justice, and I have decided that retaining a court at Annan will spare users from having to travel excessive distances. The travel time from Langholm to Dumfries was shown to be more than double that from Muirkirk to Ayr. There was a significant argument to be made with reference to the bus services from Langholm to Dumfries.

Members have rightly asked about the effects on local people, pointing out that some might have to travel further than others. That is not untypical for other sheriffdoms and other rural areas. It kicked off in Lothian and Borders, where people in Midlothian now travel into Edinburgh, as a consequence of changes that were started by my predecessor. In some places, residents will find it easier to get to court following the changes. People from Maybole will find it easier to get to Ayr. Even some people who oppose our decision have recognised that we have carefully considered the arguments. In relation to Cumnock, East Ayrshire Council said:

"Whilst we remain disappointed by the outcome, we do at least understand and appreciate the relevant factors which have informed the final recommendation in favour of the proposed change and accept that this is not a decision which has been taken lightly."

District court locations were the responsibility of local authorities. The estate evolved, and locations changed over the years. We are committed to local justice and to improving facilities so that victims, witnesses and other court users can feel more secure and the court can deal appropriately with more serious business.

I seek to strike the right balance for the future. As was featured on the radio, I attended the Capability Scotland conference yesterday to talk about access to justice for people with disabilities. One of the criteria is provision for wheelchair users, which comes at a significant cost. We have inherited the situation. It is not a question of blaming anybody else, but the buildings were not and are not disabled friendly. If we are to live up to the aspirations that I spoke about on behalf of the Government, which were the same as those that my predecessor spoke out about, we must make some hard choices about the court estate.

This final court unification order is part of a wider programme delivering benefits to all, including the thousands of police and civilian witnesses who will be spared the need to attend court. A degree of change is required to deliver those benefits, and the programme has wide support. We live in a

world of finite resources, and the cost implications are severe as we face a recession and cuts. I urge the committee to reject the motion.

Cathy Jamieson: I make this clear for Stewart Maxwell and others: I have no difficulty with the legislation that was passed to reform summary justice. I promoted that, and I stand by its principles. Stewart Maxwell must also understand that, as a constituency MSP, I have a responsibility to speak up for my constituents, some of whom contacted me to express concerns about the proposals for the courts at Cumnock and Girvan. Having looked further into the proposals, I believe that the decisions do not appear to have been made on the basis of access to justice but have focused much more on the financial implications, which was reflected in the discussions this morning.

11:15

I have now heard the cabinet secretary say that the cost for the refurbishment at Ayr is some £70,000. That only clouds the position even further, given the earlier reference—unless I picked it up wrongly—to a cost of around £500,000. I still find it rather surprising that we did not get a straightforward answer about the budget costs in relation to Ayr and the breakdown of the costs of upgrading the other courts.

On note 3 of the paper that was issued to us, it is interesting that, although the issue of security is raised in relation to East Kilbride, it does not feature as one of the highlighted issues in relation to either Cumnock or Girvan—and yet a great deal of this morning's discussion focused on that issue.

I appreciate that the cabinet secretary said that transferring a considerable amount of business from the sheriff courts to the new JP courts is not on the cards. However, one of the principles that we discussed during the passage of the legislation to reform summary justice was that we expected it to be possible at some point in the future to move more of the business in the sheriff courts out into the community courts—the new JP courts—in order to make the connection with communities. I would be disappointed if, by removing a whole range of courts, particularly in our rural communities and some of our most disadvantaged communities, we would, in effect, rule that out.

I do not want to take too much longer to pursue points that have already been made. I believe that the proposal should be looked at again. I appreciate the points that have been made about achieving value for money, which everyone wants, but we must balance that with ensuring that local people feel that they are getting their fair share of the service and that they have access to justice in their area. I wish to press the motion.

The Convener: The question is, that motion S3M-5169 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)

AGAINST

Aitken, Bill (Glasgow) (Con)
Constance, Angela (Livingston) (SNP)
Don, Nigel (North East Scotland) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

My casting vote goes against the motion.

Motion disagreed to.

The Convener: On the basis of normal practice, I will state my reasons for voting as I have. A number of sound arguments have been made this morning in support of Cathy Jamieson's motion, which can be encapsulated in two themes: access to justice and the business case. The question of expenditure on the Ayr court is to some extent peripheral, but it is worth recording that there seemed to be clear inconsistencies in the amount of spend indicated. That said, the Government has indicated that the court will be upgraded to a satisfactory standard.

The business case for retaining the three courts cannot really be justified. Although the volume of work at East Kilbride is greater than elsewhere, the level of inconvenience to court users is minimal, bearing in mind the short distances that should have to be travelled.

The case for Girvan court is to my mind not arguable, in view of the very limited number of cases that go there.

I fully accept that the case for Cumnock is much more arguable. However, the low court usage and the limited number of trials with evidence heard convince me that, although there is greater travelling distance involved, there is a justification for that closure.

The proposals that the Government has brought before us are certainly far from ideal. In an ideal world, I would have hoped not to be considering this matter today, but I have to recognise the financial situation that exists. On that basis, I voted against the motion.

Before moving to item 5, we will pause briefly to allow the officials to change over.

11:20

Meeting suspended.

11:21

On resuming—

**Crime (International Co-operation) Act
2003 (Designation of Participating
Countries) (Scotland) (No 3) Order 2009
(Draft)**

The Convener: Item 5 is consideration of the draft Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No 3) Order 2009, which is subject to affirmative procedure. I draw members' attention to the cover note in paper J/S3/09/31/3. The Subordinate Legislation Committee had no points to make on the instrument. I welcome Gerry Bonnar, from the Scottish Government's criminal procedure division, and Anne-Louise House, from the Scottish Government legal directorate, who join the cabinet secretary, Kenny MacAskill, for this item. Cabinet secretary, do you have an opening statement?

Kenny MacAskill: I will make a brief statement. I welcome the opportunity to contribute to the committee's consideration of the draft order and I hope that my explanatory comments are of assistance. The designations that will be made under the order are required to implement the United Kingdom's international obligations under the second additional protocol to the 1959 European convention on mutual legal assistance on criminal matters. The Crime (International Co-operation) Act 2003 provides statutory powers under which the UK can both seek and provide various forms of mutual legal assistance concerning criminal matters. Some of the statutory powers can be exercised only where the state in question is a participating country as defined in section 51(2) of the 2003 act. The draft order designates Albania, Bosnia and Herzegovina, Croatia, Israel, Montenegro, Serbia, Switzerland and the Former Yugoslav Republic of Macedonia as participating countries in relation to sections 31, 47 and 48, and to paragraph 15 of schedule 2 to the 2003 act. It also designates those countries, with the exception of Switzerland, as participating countries for the purpose of section 6 of the 2003 act. Switzerland has already been designated as a participating country for that section.

The effect of the designations will be as follows. Designation for the purpose of section 31 of the 2003 act will allow for persons in the UK to give evidence via telephone to a court in the designated countries. Paragraph 15 of schedule 2 to the 2003 act will ensure that the court in the designated country supervises. In many cases, a witness may not wish to travel to the foreign country; providing evidence by telephone is a

method of ensuring that the interests of justice are served, without causing distress or inconvenience to a witness. The designation of the countries as participating countries in relation to sections 47 and 48 will mean that Scottish ministers will be able to facilitate the transfer of prisoners to and from those countries for the purpose of assisting with the investigation of offences. Designation in relation to section 6 means that service of a citation or other document must be done in that country by post, unless one of the listed exceptions applies. The aim of this direct transmission is to ensure that the relevant documents are served as expeditiously as possible.

The Home Office laid before the Westminster Parliament, on 4 November 2009, a draft order making similar designations in relation to the provisions that apply in England and Wales. That order and this order will help to ensure that the UK meets its international obligations. I therefore invite the committee to recommend that the draft order be approved by Parliament.

The Convener: Thank you, Mr MacAskill.

Robert Brown: The instrument obviously looks pretty sensible for the most part, but I am struck by the power that Scottish ministers will have to facilitate the transfer of UK prisoners to a participating country. I am also struck by the presence of Israel on the list. I am not sure whether there are background issues here, but there have been, of course, matters to do with blockade, the position of Palestine and the interrelation between Israel and Palestine. Without wanting to go into detail on that, does the Scottish Government have concerns about any issues there? In particular, will the Scottish ministers' power be entirely discretionary so that it will lie entirely in their hands to make those decisions?

Kenny MacAskill: Basically, the order designates those countries as participating countries. In the instrument's operation, ministers will quite correctly remain constrained by the European convention on human rights. Extradition, for example, is dealt with elsewhere: as Cabinet Secretary for Justice, I have no say in such matters except in cases that involve the death penalty.

We are simply seeking to close gaps. The countries in the list have, for various historical reasons, not been covered before, so together with the other parts of the UK jurisdiction south of the border we are moving forward to meet our wider European obligations.

Robert Brown: With great respect, I do not think that you answered my question. Is the power of Scottish ministers to facilitate the transfer of a UK prisoner—not for extradition but to assist an

investigation under section 47 of the 2003 act—entirely discretionary? I am aware that in certain civil matters the jurisdiction of foreign courts is dominant and there is no option to comply. I assume that we are not talking about that kind of situation.

Kenny MacAskill: As I said, the order will simply bring in the countries in the list. The provisions are dealt with by the member states of the Council of Europe, which issues the protocols that we sign up to. Quite correctly, the rules and regulations and procedures that we have to follow are dealt with in the main not by ministers but by the court system. Usually, a request is submitted to the Crown Office for determination and an application is made to the court. It is a legal matter, not only because we not only want to ensure that we do not have to deal with such matters but because, as you might imagine, one might have more concern about how political matters are dealt with in certain jurisdictions. The legal protections that are afforded as a matter of course will be afforded here.

Robert Brown: I am sorry to have a third go at this question, but I am not sure that what you have said is entirely right. The explanatory note mentions powers for the Lord Advocate to facilitate certain things and, separately, the power for Scottish ministers to facilitate others. That sounds more like a Scottish ministerial process over which Scottish ministers have discretion than a court process. Is that power entirely discretionary or must a transfer be made if the other country seeks it? I assume that the power is discretionary, but I am finding it difficult to get confirmation of that from the cabinet secretary.

Kenny MacAskill: We have to act in compliance with ECHR: if we fail to do so, we will be open to judicial review. The primary mover in most such matters is the Lord Advocate, and the power for Scottish ministers is, in many cases, simply about facilitating legislation that will allow others to deal with them. It is not the desire of the justice directorate to take such issues in-house; they are quite correctly dealt with under the separation of powers.

The Scottish Government is constrained by the ECHR, which, after all, is part of the Scotland Act 1998, so any such powers that we have are challengeable. As I have said, the issues at hand—and indeed many more issues under the Judiciary and Courts (Scotland) Act 2008, which has just received royal assent—are dealt with not by the justice directorates but through the court system, which is accountable to the Lord President.

The Convener: Yes, but are the powers in question discretionary? I think that that is what Mr Brown wants to know.

Kenny MacAskill: The powers are challengeable because we have to act in accordance with legislation and ECHR.

Robert Brown: Perhaps, convener, I can put this—

Kenny MacAskill: I think that you will have to specify to which powers you are referring.

Robert Brown: I thought that I had already made it clear that I am referring to the power for Scottish ministers to facilitate the transfer of a UK prisoner to a participating country to assist in an investigation under section 47 of the 2003 act.

Kenny MacAskill: The short answer is no: that power is not discretionary. I will be required to act in accordance with the existing legislation, any amendment to which will require Parliament's approval. If the power is felt to be oppressive, it can be challenged under ECHR but, as I said, the Crown will deal with the mechanisms and procedures—

Robert Brown: I am sorry to interrupt, but you said earlier that this is a matter for the courts, not for you. However, you now seem to be implying that it is a matter for you. Obviously the circumstances will not be quite the same as those surrounding Mr Megrahi's case, but the essential question is whether you have the right to say yes or no to such applications. Do you have automatically to comply with a request from a participating country—end of story, no discretion, no nothing—or are you able to consider the circumstances and say, “Yes, we will comply” or “No, in this instance and for various reasons that we think are good, we won't comply”? Do you have any discretion?

Kenny MacAskill: No. We require to implement the legislation that exists in terms of the protocols and international obligations that we have signed up to. In the main, implementation of those is not discretionary because it involves going through protocol and procedure. Such matters have to be supervised in court.

11:30

Robert Brown: Why is it a power rather than a duty? What you have said implies that there should be a duty on Scottish ministers, but we are talking about a power. One would imagine that there would be a choice about whether to exercise it.

Kenny MacAskill: Caveats might well apply, as is the case with extradition—for example, if the potential existed for the death penalty to be used—but, in the main, such matters are dealt with entirely through the court and do not come to the justice directorate.

Robert Brown: I am sorry, convener, but I am left in the position in which what the cabinet secretary is telling us does not seem to match what the paperwork suggests is proposed.

Kenny MacAskill: I will ask Anne-Louise House to comment.

The Convener: Perhaps she can shed some light on the matter.

Anne-Louise House (Scottish Government Legal Directorate): I do not know whether it is helpful to clarify that the relevant sections of the Crime (International Co-operation) Act 2003 make it clear that in relation to, for example, the transfer of a UK prisoner to assist an investigation abroad, there are certain conditions that require to be met before the prisoner can be transferred. Section 47 makes it clear that a warrant may be issued only if the prisoner consents or, in circumstances in which it is not appropriate for the prisoner to consent, a relevant person does so on their behalf.

Another point is that the powers in question relate only to temporary transfer—you may have realised that already. Sections 47 and 48 of the 2003 act make it quite clear that the authorisation of a warrant involves the transfer of the prisoner and their return, so it is a temporary transfer rather than anything more permanent.

Robert Brown: Can you confirm whether the use of the word “may” and the conditions that you mentioned mean that Scottish ministers have the discretion to say yes or no to a transfer and that that would be a proper exercise of their ministerial powers?

Kenny MacAskill: A warrant may be issued in respect of a prisoner, but the minister does not issue the warrant. Warrants are issued elsewhere. As the convener will know, in Scotland warrants are not issued by the Government. An application is made to the court. The issuing of warrants is a judicial function. It is not the Government that applies to the court for a warrant; in the main, it is the Crown or, in some cases, the police or the Scottish Crime and Drug Enforcement Agency that does so. It is a matter on which the powers of the Government are clearly separated from what is a function of the independent judiciary.

Robert Brown: Could we continue to pursue the matter in an effort to get some clear information? I am not satisfied with what I am being told and I do not understand the system or the procedure. We seem to be getting mixed up between ministerial powers, court powers, Lord Advocate powers and warrants, and I would like to have a clearer view of the process. Maybe we have little option other than to approve the order. I did not anticipate that there would be a major issue, but I am afraid that I do not feel that I am being provided with satisfactory answers by the officials.

The Convener: We will pursue the matter for a little while longer. I will revert to the minister.

Stewart Maxwell: Anne-Louise House's comments have provided a little clarification, but I share many of the concerns that Robert Brown has expressed. I, too, am not clear about what the process is. It might well be unfair, but some of us have concerns about people being automatically sent to some of the countries that are listed, even if, on paper, the transfer is temporary.

Paragraph 1 of our cover note says that we must report to the Parliament by 30 November, so it seems that we have time to return to the issue. I had not anticipated that it would be quite such a confusing picture, although I was and remain slightly concerned about the transfer of prisoners. Before we take our final decision, it would be helpful if a step-by-step process could be laid down that shows what happens, who does what and what options there are.

Bill Butler: I agree. If we have the time, no harm will be done. I am a bit confused about whether what is proposed is a power or a duty. In the best interests of all, including Parliament, we should defer a decision and get some clarification.

The Convener: Are there any further questions of fact that might be helpful?

Gerry Bonnar: I have something to add about context, convener. This is number 3 of a series of orders. How the orders proceed has not been an issue on previous occasions, but I am sure that we can set out in writing for the committee the processes that are involved. I am sorry that we are not in a position to set that out more clearly today.

On one point of clarification, the Scottish ministers' role is in facilitating the transfer of prisoners, which is separate from the granting of warrants and the like. We can set that out for you in writing, which might make it clearer.

The Convener: If I detect the committee's mood correctly, there is some unease, especially bearing in mind the sensitivity of potential transfers to some countries, which might put us in situation with which we are less than comfortable. The matter is not entirely clear so, as Robert Brown, Stewart Maxwell and Bill Butler have suggested, it would be appropriate to continue the matter. As such, the best procedure would be for the cabinet secretary to not move the motion today.

Kenny MacAskill: Certainly.

The Convener: You can come back to the next meeting with more information.

That being the case, I do not think that we require you any further, Mr MacAskill. I thank you for your attendance.

Police (Scotland) Amendment Regulations 2009 (SSI 2009/372)

The Convener: Item 7 is also subordinate legislation. The instrument is subject to negative procedure. I draw members' attention to paper J/S3/09/31/4.

The Subordinate Legislation Committee did not draw any matters to the attention of Parliament. Are we content to note the instrument?

Members indicated agreement.

The Convener: The committee will continue in private, as was agreed earlier.

11:37

Meeting continued in private until 12:18.

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