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Official Report

JUSTICE COMMITTEE

Tuesday 1 March 2011

Session 3

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JUSTICE COMMITTEE
7th Meeting 2011, Session 3

CONVENER

*John Lamont (Roxburgh and Berwickshire) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Nigel Don (North East Scotland) (SNP)
*James Kelly (Glasgow Rutherglen) (Lab)
Stewart Maxwell (West of Scotland) (SNP)
*Dave Thompson (Highlands and Islands) (SNP)

COMMITTEE SUBSTITUTES

Claire Baker (Mid Scotland and Fife) (Lab)
David McLetchie (Edinburgh Pentlands) (Con)
Mike Pringle (Edinburgh South) (LD)
*Maureen Watt (North East Scotland) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

James How (Scottish Government Directorate for Justice)
Kenny MacAskill (Cabinet Secretary for Justice)
Colin McKay (Scottish Government Directorate for Justice)

CLERK TO THE COMMITTEE

Andrew Mylne

LOCATION

Committee Room 1

Scottish Parliament

Justice Committee

Tuesday 1 March 2011

[The Deputy Convener *opened the meeting at 10:01*]

Interests

The Deputy Convener (Bill Butler): Good morning, colleagues. I welcome everyone to the seventh meeting in 2011 of the Justice Committee and ask everyone to switch off their mobile phones and other electronic paraphernalia, please.

Apologies have been received from Mr Stewart Maxwell. I welcome Maureen Watt, who will act as his substitute.

Under agenda item 1, I ask John Lamont to declare any interests that are relevant to the committee's remit.

John Lamont (Roxburgh and Berwickshire) (Con): I refer members to the interests that I have already disclosed. In particular, I refer them to the fact that I am a member of the Law Society of England and Wales and a former employee of Brodies LLP.

The Deputy Convener: Thank you very much, Mr Lamont.

Convener

10:02

The Deputy Convener: Under agenda item 2, the committee will choose a new convener. Following the resignation of Bill Aitken, the committee is required, as colleagues know, to appoint a new convener. Only Mr John Lamont, as the new Conservative member, is eligible. Do members agree to choose John Lamont as the committee's new convener?

John Lamont was chosen as convener.

The Deputy Convener: I invite Mr Lamont to take the convener's chair.

The Convener (John Lamont): Thank you very much.

Decision on Taking Business in Private

10:03

The Convener: Under agenda item 3, the committee will decide whether to take item 10 in private and whether its consideration of a draft legacy paper and of draft reports on the instruments that will be considered under items 4 to 7 should be taken in private at future meetings. Does the committee agree to take those items in private?

Members *indicated agreement.*

Subordinate Legislation

10:04

The Convener: Agenda item 4 is subordinate legislation. There are five draft affirmative instruments for the committee's consideration. We have an opportunity to take evidence on them from the Cabinet Secretary for Justice and his officials before we formally consider motions to approve them under the next agenda item.

I welcome the Cabinet Secretary for Justice, who is accompanied by Scottish Government policy officers and lawyers. Because of the number of officials here, they will appear at the table in groups. Officials will swap over after the first and third instruments have been dealt with.

Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 (SSI 2011/45)

The Convener: The first instrument is SSI 2011/45. I draw members' attention to the cover note, which is paper 2 of the committee papers.

The Subordinate Legislation Committee was content with the order under its criteria, but has drawn it to the attention of the Justice Committee on the basis that this committee might wish to explore the power that amends the maximum notification periods. The power can both shorten and extend the maximum notification periods.

I invite the cabinet secretary to make a short opening statement; I will then ask members whether they have any questions for him.

The Cabinet Secretary for Justice (Kenny MacAskill): Thank you, convener.

The order was made and laid before Parliament on 27 January, and it came into force on 28 January. It is an urgent order, as provided for under sections 12 and 14 of the Convention Rights (Compliance) (Scotland) Act 2001. As such, it came into force upon laying. I am here to ask the Scottish Parliament to approve it to ensure that it can remain in force.

I will give some background and context. On 25 October 2010, I made the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2010 (SSI 2010/370). Again, that order had immediate effect. The 2010 order was the first of its kind in Scotland. It was introduced, as a matter of urgency, to address a United Kingdom Supreme Court judgment that ruled that requiring sex offenders to register indefinitely on the sex offenders register without the opportunity for review was incompatible with the European convention on human rights.

The 2001 act procedures provide that, upon making the remedial order, the Scottish ministers must give appropriate public notice of the contents of the order and invite comments, which are to be made in writing within a period of 60 days. That consultation period ended on 23 December 2010. Members should have before them a copy of the consultation report that we published on 8 February, which provides a summary of the comments that were received, together with details of the resulting changes that we have made to the original 2010 order, which are incorporated into the 2011 order.

Members should know that public safety has been our absolute priority. In recent years, we have improved the safeguards that have been in place—for example, we have improved the risk assessment of sex offenders and rolled out the successful community disclosure scheme. Our focus must be on enabling the police to manage offenders who pose a continuing risk of sexual harm. Accordingly, the review mechanism that is contained in the remedial order provides a number of significant safeguards and conditions. Those who receive a sentence of 30 months or more will still be put on the sex offenders register for life, and therefore indefinite registration for serious sex offenders will continue.

In reviewing the extent to which the value of the notification system would be eroded by the introduction of such review procedures, the Supreme Court noted:

> "it is open to the legislature to impose an appropriately high threshold for review".

The order sets an appropriately high bar. Adult offenders will have to be on the sex offenders register for 15 years before they are considered for review. For young offenders, the period will be eight years. That will not include time spent in prison for the index offence. No offender will be automatically removed from the register when the review date is reached. The police will carry out a robust assessment of every offender who reaches the review date, and will take into account a comprehensive range of information, including any risk assessments that have been carried out as part of the multi-agency public protection arrangements, or MAPPA, process. A senior police officer will decide whether the offender should remain on the register, and offenders who pose a continuing risk of sexual harm to the public will remain on it. When offenders are kept on the register, the police or, on appeal, the court will set a timescale of up to 15 years for a further review. The offender will be able to appeal the police decision to a sheriff, and the sheriff's decision to grant or refuse an appeal can be appealed to the sheriff principal, whose decision will be final.

Members will no doubt have picked up on the fact that the UK Government also has to comply with the Supreme Court ruling. The Prime Minister, David Cameron, said that he was "appalled" by the ruling. I share his distaste for the measures, but regardless of how objectionable I feel they are, the Scotland Act 1998 places a specific duty on the Scottish ministers and the Scottish Parliament to act in accordance with convention rights. Therefore, I have been compelled to bring forward the order for members' consideration in order to ensure that our legislation no longer contravenes the ECHR.

The UK Government has followed our lead in opting for the 15-year and eight-year review periods and entrusting the decision to the police. The review process sits alongside a range of other measures that we have taken to strengthen the management of sex offenders in our communities. For example, registered sex offenders are already required to provide details of their bank accounts, credit cards and passports, and we will shortly be able to require sex offenders to comply with positive obligations as part of any sexual offences prevention order.

I believe that Scotland's review mechanism, which the police support, will ensure that public protection is the foremost consideration in meeting the requirements that ECHR places on us. We will continue to monitor all aspects of the remedial order and, if necessary, we will bring forward further measures to improve its operation. In that regard, we have also built in powers to amend the 15-year and eight-year review periods that are set out in the order. Such a flexible power is sensible because it will allow us to calibrate the review mechanism to recognise developments in policy, practice and evidence-based knowledge and understanding.

I am sure that committee members will have questions and I am happy to answer them.

The Convener: Thank you, cabinet secretary. Are there any questions?

James Kelly (Glasgow Rutherglen) (Lab): Cabinet secretary, you will be aware that the Subordinate Legislation Committee has drawn to the attention of the committee new section 88H of the Sexual Offences Act 2003, which allows the Government to vary the maximum notification periods. In your comments, you quoted the Supreme Court saying that it is open to the legislature to set the periods and that they should be set at a suitably high bar. I acknowledge that point, but what is your response to the Subordinate Legislation Committee?

Kenny MacAskill: I go back to my opening statement. We recognise that it is difficult to deal with sex offenders and that we have to monitor and review the situation. We have to see the information and analysis that come in, whether from our jurisdiction or elsewhere.

It could be argued that the 15-year and eight-year review periods, which have been copied south of the border, are fairly arbitrary. Why are they not 16 years or 14 years, or six years or nine years? The periods were set after discussion with those who monitor and are involved in these matters, so the 15-year and eight-year review periods that are used north and south of the border are based on the best evidence that we have at present. If they do not work, or are too harsh or whatever, we or any other Administration can review them.

We need to ensure that we do not fetter the hands of a future Administration or of those who work with a difficult minority of people. We need to give some flexibility so that change can be made if necessary.

Robert Brown (Glasgow) (LD): As the cabinet secretary rightly says, this is a difficult area. I am not all that sure about what his objection is to a right of review, particularly for young offenders who are convicted when they are under 18 and therefore before they are mature. What is his objection to a right of review, especially when it is accepted that a review could mean that the person would continue to be on the register?

Is there any place for input into the decision-making process by victims?

Kenny MacAskill: There is an on-going debate about the ECHR as it relates to these matters. We took the view that the system was working—fair enough. We accept the decision of the European Court of Human rights on the ECHR; we are obliged to follow it, and we have done so. There is a broader debate to be had about the rights and wrongs of such matters and how they impinge on us.

There is no provision for victim input as such—we are not talking about a victim notification scheme such as the one that is used when someone is released or put on parole. However, we are happy to consider the issue. I would have thought that the police would consider the victim at the time of the review, because after 15 years or eight years, they would have to look at the likely danger posed by the individual concerned, whether there has been any on-going misbehaviour, the effect on the community, where the victim is, and so on.

It is fair to say that the victim does not have any direct input into the review as such, but it clearly follows that the victim's interests will be considered—initially by the police during the review and subsequently by sheriffs and sheriff principals in any appeal.

Robert Brown: I accept that the reviews will be dealt with using professional standards and protocols. However, will the cabinet secretary follow up my suggestion a little bit? It is a bit like the rights that have been given to victims in relation to parole hearings. Could the cabinet secretary and his officials consider introducing such rights as a more formal part of the process when they are looking at the exact arrangements that will come out of the remedial order?

10:15

Kenny MacAskill: I am more than happy to feed that suggestion back so that those who are working under the MAPPA process—especially the police—take it on board. In many cases, there might not be just one victim; there might be many victims, especially in cases that involve internet paedophile offences, for example, in which victims might be difficult to contact. When we are talking about a horrendous rape or something similar, we need to consider the interests of the victim and the community.

Mr Kelly asked why we are seeking to build in a review. The answer is that we are continually working to improve public safety. Many offenders will not reoffend but, tragically, some do so with calamitous consequences. We have to make sure that we learn every day and take appropriate action. I will feed that suggestion back.

Nigel Don (North East Scotland) (SNP): Going back to James Kelly's point, I note that page 10 of the executive note says that section 88H means that the 15-year or eight-year period can be amended by affirmative order. Presumably such an order would come to the Justice Committee. Can the cabinet secretary confirm that? If so, using the same process for the order that we are considering is totally unobjectionable.

Kenny MacAskill: That would be the case.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I ask you to say a wee bit more about a concern raised by the Law Society of Scotland, which responded to the consultation. The society is concerned about the chief constable doing the initial review. You said that the chief constable or a senior police officer would do that review and that there could be a subsequent appeal. Are you confident that that addresses the issues that the society raised in its response to the consultation? It questioned whether the order is compatible with articles 6 and 8 of the ECHR.

Kenny MacAskill: We are confident that the order is compatible with the ECHR. We would not have laid it if it was not compatible. We think that the police are best placed to make an initial decision on public safety because, ultimately, they have to deal with the regular monitoring and with the consequences of a review.

The police operate within the broader MAPPA process, which takes on board everything from social work to housing, but the primary protection of the public comes from the police, which is why we think that the additional sift should be done by the police, taking into account information received from other agencies. A right of appeal to the sheriff and ultimately to the sheriff principal is built into the order. That approach covers ECHR challenges.

The Convener: As there are no further questions for the cabinet secretary, I suspend the meeting briefly to allow the officials to change over.

10:18

Meeting suspended.

10:18

On resuming—

Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011 (Draft)

The Convener: I draw members' attention to the draft order and the covering note, which is at paper 3 of the committee's papers.

The Subordinate Legislation Committee has not drawn the draft order to the attention of the Parliament or the Justice Committee. I invite the cabinet secretary to make an opening statement. I will then invite questions from committee members.

Kenny MacAskill: The draft order proposes an exercise of the powers that are conferred by sections 142(6) and 142(3) of the Proceeds of Crime Act 2002, which I shall refer to as POCA.

The draft order will do two things. It will add to the list of criminal lifestyle offences that is in schedule 4 to POCA, and it will reduce the criminal benefit amount from £5,000 to £1,000 for the non-schedule 4 criminal lifestyle test.

POCA has been highly successful. Since its inception in 2003, more than £57 million has been ordered for recovery by the courts in Scotland. Despite that success, the Scottish Government is determined to strengthen powers under the act where the Scottish Parliament has the power to do so.

The serious organised crime task force strategy considers that improving that increasing effectiveness in seizing assets and confiscating criminal profits is a key strand in disrupting serious organised crime and, importantly, deprives

criminals of the resources that allow them to pursue their criminal activities. That is what the order will help to achieve.

Part 3 of POCA allows the courts in Scotland to make criminal confiscation orders where the accused is deemed to have a criminal lifestyle. Various criminal lifestyle tests are set out in POCA. The first and most straightforward is the schedule 4 test whereby, if someone is convicted of an offence that is listed in schedule 4, the court can assume that unexplained assets from the previous six years are the benefit of general criminal conduct unless the accused can prove that they have been gained by legitimate means, or that there would be a serious risk of injustice in making that assumption. The court can then make an order to confiscate that benefit. Under schedule 4, there is no statutory minimum amount.

Schedule 4 currently lists a number of offences, including drug trafficking, money laundering and arms trafficking. The draft order before the committee sets out the additional offences that we propose should be included in schedule 4, including offences such as directing or being involved in serious organised crime, selling and distributing obscene material, copyright offences, illegal money lending and using unlicensed security operatives. Other criminal lifestyle tests are more complex. The second test is that the conduct forms part of a course of criminal activity and the third test is that the offence has been committed over a period of six months. For the second and third test to become active, the accused must have obtained criminal benefit of at least £5,000. The draft order reduces that criminal benefit amount to £1,000. The proposed reduction in the criminal benefit amount responds to the joint inspection report on the POCA by Her Majesty's inspectorate of constabulary and Her Majesty's inspectorate of prosecution, which suggests that the legislation should be used to tackle all levels of criminality. The Scottish Government welcomed that report, and we believe that the proposal will broaden the scope of POCA to allow all levels of criminality to be tackled.

To summarise, the proposed changes should be seen as providing additional tools that will assist law enforcement and prosecutors to disrupt all levels of criminality. They are sensible additions to the existing legislation and will help us to maximise the effectiveness of POCA and to target criminals, from those involved in high-level, serious organised crime to those involved in lower-level but high-volume crime, by reducing the criminal benefit amount. I therefore ask the committee to recommend to Parliament that the draft order be approved.

The Convener: Do committee members have any questions?

Dave Thompson (Highlands and Islands) (SNP): Does the cabinet secretary have any figures to suggest how many people might be caught by the reduction in the criminal benefit amount from £5,000 to £1,000 and how much money might be taken in for redistribution to communities?

Kenny MacAskill: I do not know whether we have a way of identifying how much extra the proposal will deliver. However, the proposal is driven not by how much money will be taken but by how much disruption will be caused to criminals.

From my discussions with the inspectorate of constabulary, I understand that, for example, officers are frustrated by the fact that, when they pull a vehicle over, whoever has the stash of money divides it between the others in the vehicle before they get out, so that the money that each holds falls below the threshold. The proposal is about closing down that ruse, as opposed to collecting more money.

Robert Brown: What is the underlying rationale for having a lower limit at all, given that a criminal conviction is needed in order to trigger the confiscation process?

My second question is the opposite of my first, in a way. Is there a risk that reducing the limit might take the focus of the police authorities off the more serious criminals, with the police concentrating on the more trivial offences?

Kenny MacAskill: If we were to take £160 off someone, there might be ECHR difficulties. We live in a world in which people frequently pay bills with cash, whether it is the winter fuel bill or the mortgage—some of us might use direct debit, but some individuals do not. There has to be some bottom line. We think that £5,000 is too high, given the scams—if I can use that term—that I mentioned.

The view of the police and the serious organised crime task force is that it is not a matter of either/or but of both. Clearly, we wish to get the Mr Bigs, and on-going work is being done in that regard. Equally, in many communities in Scotland, the foot soldiers, who interact with communities to a greater degree, have an infuriating lifestyle. They do not work and they drive around with money in their pockets. We want to disrupt the criminal empires and ensure that those who flaunt the fact that they do not have a legitimate lifestyle are no longer able to do so. The proposal will not mean that we target those lower down the ladder at the expense of a lack of focus on those higher up. However, we want to ensure that we do not have to tolerate these people flashing their cash in our housing schemes.

Legal Profession and Legal Aid (Scotland) Act 2007 (Modification and Consequential Provisions) Order 2011 (Draft)

The Convener: The third instrument is the draft Legal Profession and Legal Aid (Scotland) Act 2007 (Modification and Consequential Provisions) Order 2011. The Subordinate Legislation Committee has not drawn the draft order to the attention of the Parliament or this committee. I invite the cabinet secretary to make a short opening statement.

Kenny MacAskill: The draft order is made in exercise of the powers that are conferred by section 78 of the Legal Profession and Legal Aid (Scotland) Act 2007, and makes amendments to primary legislation simply to tidy up the statute book in consequence of the 2007 act.

Articles 3 and 6 remove references to a number of provisions that appear in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 and in the Solicitors (Scotland) Act 1980, but which were repealed by the 2007 act, as a consequence of passing the Law Society of Scotland's powers to impose sanctions in inadequate professional service complaints to the Scottish Legal Complaints Commission. Articles 4, 5 and 7 fix problems with the numbering of provisions in the Legal Aid (Scotland) Act 1986. Specifically, article 4 remedies some duplicate numbering issues in section 4(2) of the 1986 act, and articles 5 and 7 prevent a similar duplication of numbering in section 17 of the 1986 act, which would have been created had provisions in the 2007 act applied without amendment.

The Convener: As members have no questions, I suspend the meeting to allow a new set of officials to come to the table.

10:27

Meeting suspended.

10:28

On resuming—

Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011 (Draft)

The Convener: The fourth instrument for our consideration is the draft Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011. The Subordinate Legislation Committee has not drawn the instrument to the attention of the Parliament or this committee.

I invite the cabinet secretary to make a short opening statement.

Kenny MacAskill: The regulations, together with the Scottish Charitable Incorporated Organisations Regulations 2011, create exclusively for Scottish charities a new form of corporate body—the Scottish charitable incorporated organisation. The idea of a form of corporate body that is designed exclusively for Scottish charities was originally proposed by the Kemp commission in its 1997 report on the future of the voluntary sector in Scotland and was endorsed by the McFadden commission in 2001. That led to the inclusion of provisions for the creation of the SCIO in the Charities and Trustee Investment (Scotland) Act 2005. The creation of the SCIO has long been anticipated by the Scottish charity sector. We have taken our time in developing the SCIO because we wanted to get it right: we wanted it to be of value to Scottish charities and to be something that would enable the sector to flourish. I think that we have achieved that.

10:30

Both sets of regulations have been tested in the public arena with a discussion period. That followed a public consultation on the policy proposals that were developed by the SCIO working group, which was set up to develop options for implementation. The regulations have been developed on the basis of the working group's preferred option, which took charity law as the starting point and added only requirements that it was felt were necessary.

The regulations set out how a SCIO can be dissolved and removed from the Scottish charity register, with different approaches for solvent and insolvent SCIOs. We have tried to develop processes that are designed to meet a SCIO's circumstances.

For solvent SCIOs, we have developed a scheme that allows them quickly to wind up their affairs and be dissolved by the Office of the Scottish Charity Regulator. It is similar to the voluntary winding up of a company, but without an insolvency practitioner being required to handle the process. That approach provides for a SCIO a cheap and simple method of ceasing to exist. By allowing representations to be made, it affords protection to creditors and any other persons who may have an interest in the SCIO.

On the slightly more complex issue of dissolving an insolvent SCIO, I begin by saying that anecdotal evidence suggests that very few charities are currently dissolved using existing insolvency processes. The approach that we have adopted allows the SCIO or a creditor to apply for the SCIO's sequestration. The SCIO can apply for its own sequestration through OSCR and the Accountant in Bankruptcy, or a creditor can

petition the sheriff court for sequestration of a SCIO.

We believe that allowing a SCIO to apply for its own sequestration offers the most cost-effective way for a SCIO that is in financial difficulty to cease to exist. A SCIO applying for its own sequestration will be subject to a £100 fee. The other option was to apply full corporate insolvency, which could cost several thousand pounds. The lower cost will greatly increase the chances of creditors achieving a better settlement and will also increase the chances of there being surplus assets, which can continue to be used for charitable purposes.

As well as setting out the process for a SCIO's ceasing to exist, the regulations will also disapply certain sections of the 2005 act; parts of sections 16, 18 and 30 will be disapplied to ensure that there is no conflict between the requirements of that act and the regulations.

The regulations provide a cheap and simple way for a SCIO to be brought to a close, whether it is solvent or insolvent. Taken together with the other set of SCIO regulations, they create a package that is designed to meet the needs of Scottish charities now and in the future.

The Convener: Do members have any questions?

Members: No.

Cross-Border Mediation (Scotland) Regulations 2011 (Draft)

The Convener: We move on to the fifth and final instrument, which is the draft Cross-Border Mediation (Scotland) Regulations 2011. I draw members' attention to the regulations and the covering note, which can be found in paper J/S3/11/7/6. The Subordinate Legislation Committee has not drawn the regulations to the attention of the Parliament or this committee.

I invite the cabinet secretary to make an opening statement before I invite members of the committee to ask questions.

Kenny MacAskill: The directive on mediation requires member states to make by 21 May 2011 provision on certain identified fundamentals of mediation. The directive's aim is to promote the use of mediation as a means of settling cross-border disputes.

Cross-border disputes are defined as disputes

"in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party"

or parties, when mediation is agreed. The directive does not, therefore, cover disputes between parties that are resident in different jurisdictions in the United Kingdom. It covers only disputes that relate to civil and commercial matters and it deals solely with mediation, not with other forms of dispute resolution. Scotland is already compliant with a number of the requirements under the directive; the regulations will ensure compliance with the remainder.

The regulations will ensure that, subject to a few exceptions, a mediator or person—other than the parties themselves—who is involved in the administration of mediation in relation to a relevant dispute cannot be compelled to give evidence or produce anything in civil proceedings or arbitration regarding any information arising out of, or in connection with, mediation.

Disclosure of information about the mediation will be possible where the parties to the mediation agree to the disclosure. It will also be allowed where disclosure is necessary for overriding considerations of public policy, such as the protection of children, or in order to implement or enforce a mediation agreement.

The regulations will also amend a number of statutes to ensure that in order to encourage parties to use mediation, the rules on limitation and prescription periods will not prevent them from going to court or to arbitration if their mediation attempt fails.

The Convener: Thank you. Do members have any questions?

Members: No.

The Convener: Agenda item 5 is the formal debate on the five affirmative instruments that we have just considered. I invite the cabinet secretary to move the five motions.

Motions moved,

That the Justice Committee recommends that the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 (SSI 2011/45) be approved.

That the Justice Committee recommends that the Proceeds of Crime Act 2002 Amendment (Scotland) Order 2011 be approved.

That the Justice Committee recommends that the Legal Profession and Legal Aid (Scotland) Act 2007 (Modification and Consequential Provisions) Order 2011 be approved.

That the Justice Committee recommends that the Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011 be approved.

That the Justice Committee recommends that the Cross-Border Mediation (Scotland) Regulations 2011 be approved.—[*Kenny MacAskill.*]

Motions agreed to.

The Convener: I suspend the meeting to allow a new set of officials to come to the table.

10:35

Meeting suspended.

10:36

On resuming—

Legal Aid and Advice and Assistance (Solicitors' Travel Fees) (Scotland) Regulations 2011 (SSI 2011/41)

The Convener: Item 6 is evidence on the Legal Aid and Advice and Assistance (Solicitors' Travel Fees) (Scotland) Regulations 2011, which is a negative instrument and is therefore subject to annulment. A motion to annul has been lodged by James Kelly MSP, and will be dealt with under the next agenda item. The committee is now taking evidence to inform the next agenda item, under which the motion to annul will be considered.

Members have the written submissions that have been received in relation to the instrument—papers J/S3/11/7/7, J/S3/11/7/19 and J/S3/11/7/20. I again welcome the Cabinet Secretary for Justice, who has been joined by Scottish Government officials James How and Colin McKay from the legal system division and Fraser Gough, from the Scottish Government legal directorate.

Does the cabinet secretary wish to make any opening remarks?

Kenny MacAskill: Yes.

The effect of the regulations will be to reduce the fees that are paid to solicitors for travelling. Up to now, there has not been a specific prescribed fee for travelling time. Solicitors were paid a non-advocacy rate, depending on the aid type. That is not how fees are commonly paid for travel in other jurisdictions.

The regulations will deliver savings to ensure that legal assistance can be targeted at those who are most in need. I am determined to take action now to ensure the long-term sustainability of the legal aid system in Scotland and to preserve access to justice.

Unlike other jurisdictions, we are not proposing any significant cuts to the scope or eligibility of legal aid. The president of the Law Society of Scotland congratulated the Government on not taking that alternative path in his letter to the committee earlier this year.

Our not making savings now would only store up problems for the future. Slowing down the spend of a legal aid system that operates on demand takes time. Because of the £1.3 billion cut to Scotland's budget next year, the legal aid budget for 2011-12 has been reduced by 8.2 per cent; this is at a time when the fund is under pressure in a number of areas and when demand for advice is increasing as a result of the economic downturn.

Making the savings has meant difficult decisions, but they have been taken in close consultation with the Law Society of Scotland. The savings are part of a package that has been agreed with the Law Society. The package includes a larger percentage reduction in the Scottish Legal Aid Board's administration costs, and savings from the fees that are paid to counsel and to criminal practitioners.

There is no suggestion that solicitors should not be paid a reasonable rate for travel time. That will still happen—although in many cases there are alternatives to travel and there are circumstances in which local provision is preferable.

Concerns have been raised with the committee in the area of mental health, in respect of which there is a particularly vulnerable client group. Let me say right away that I take questions of access to justice very seriously in all cases, but I recognise that the importance of access to justice in this area is perhaps even more pronounced. Following extensive consultation of stakeholders, the board has published its best-value review of work in the area, which has considered the availability and quality of legal services. The review shows that many practitioners deliver a high-quality service, but finds evidence of concern in relation to some practices that appear to be of no benefit to clients but that incur costs and cause inconvenience for the legal aid fund, the tribunal and the health service. Expenditure on those cases has increased from £1.8 million in 2006 to £4.2 million in 2010, and the average case cost has increased from £918 to £1,272 in the same period. The two top firms earn more than £2.2 million between them. Travel was picked out as an area in which costs were especially high, and a number of recommendations were made on that.

The Government believes the review to be an important piece of work and will actively consider its recommendations, including the recommendation that we move towards the development of a block or fixed-fee structure that reflects and incentivises best practice and local provision wherever possible. Concerns have been expressed that certain firms might reduce the amount of work that they do in the area as a result of the regulations. That is a decision for those firms, and the board has been pressing them on their intentions. The board is managing the situation closely and has been in contact with several firms in various locations that carry out some mental health work and which have indicated a willingness to do more. That has not been possible up to now as a result of the

considerable barriers to entering the market. The network of board-employed solicitors in the civil legal assistance offices already undertakes mental health work and there are several experienced practitioners in the field. They are ready to take on more cases and to refer cases to private practitioners. The board has been in close contact with the Mental Health Tribunal for Scotland and the Scottish Association for Mental Health to advise them of the arrangements.

The Convener: Thank you, cabinet secretary. I invite questions from members.

James Kelly: The financial saving from the SSI is projected to be £1.75 million for 2011-12. Are figures available that show the portion of that saving that will be derived in relation to solicitors who are involved in mental health tribunals?

James How (Scottish Government Directorate for Justice): Roughly 70 per cent of the £1.75 million will come from the criminal side and the remainder will come from civil and children's cases. We estimate that the vast majority of the savings will come from the criminal side.

As the cabinet secretary said, the cost of mental health cases comes to about £4.2 million a year. It is difficult for the board to estimate the exact proportion that is spent on travel, but roughly a quarter of the money that is spent on mental health cases is spent on travel. That is the kind of saving that we are talking about.

James Kelly: Did you say that £2.1 million is the total figure for mental health cases and that a quarter of that is spent on travel?

James How: The board spends £4.2 million a year on mental health cases and it estimates that roughly a quarter of that is the cost of travel.

Robert Brown: I have one or two questions. I will pursue James Kelly's point so that we understand exactly what the saving will be. Thirty per cent of the £1.75 million that will be saved on civil cases is about £600,000 a year. Not all of that—in fact, only a small percentage of that—will be saved from mental health cases, as I imagine that civil cases beyond that will also involve some travel. So, I presume that we are dealing with a figure that is more like £200,000 or £300,000—or maybe not even as much as that.

Kenny MacAskill: The total figure is £4.2 million and two firms account for £2.2 million of that. I do not think that they have multiple offices.

Robert Brown: I am not really talking about that; I am talking about travel. I am trying to identify what the saving will be relative to mental health cases. That is fundamental if we are to know what we are talking about in the context of the issue over which there has been dispute.

10:45

Kenny MacAskill: Yes.

Although, as I said, we are trying to reduce unnecessary travel, travel is still being funded and provided for, albeit at a lower rate, although it is a higher rate than is claimed by members of the Parliament. Fares such as air fares can be met in full. The figure is a rough estimate. It is clear that action must be taken, but we must balance that against how we provide for areas that are geographically distant. That is a matter for the Scottish Legal Aid Board's civil legal assistance offices, and we must also encourage local firms to step forward and do the work as opposed to having solicitors travelling.

Robert Brown: With respect, given the importance of the issue and the number of representations that we have had on it, can you or your officials give us your best guesstimate of the saving, as a consequence of the regulations, on travel costs from mental-health-related cases? Clearly, £600,000 is the most it would be, if such cases were to take up all the civil work—which, I presume, they do not. Do you have a rough notional idea of the saving?

Kenny MacAskill: The notional idea is that the saving will be several hundred thousand pounds, which is important in the totality of what we are facing.

Robert Brown: On the broader issue, you have referred to the overall costs and we can see that some changes in the figures have taken place. The Scottish Legal Aid Board has sent me the review paper to which you referred, which addresses a number of issues. It appears that the principal issue is the fact that the number of cases that are paid for under this heading has gone up from 1,940 in 2006 to 3,287—almost, but not quite, a doubling of the figure. Can you give us any idea of what lies behind that? I accept that there may be more than one case involving the same client, but what is the reason—if there is one—for the doubling of the figure? That seems quite a big change that does not reflect the population.

Colin McKay (Scottish Government Directorate for Justice): A number of factors have contributed to that. If you look at the table in the review, you will see that there was a sharp rise in the number of cases between 2006 and 2008, from about 2,000 cases to 3,434 cases, and that the figure levelled off thereafter. There is a system of two-year reviews for people on long-term detention and, as the 2005 act came fully into effect, there would have been an upward curve for

the first couple of years. I expect that that contributed to the rise in the number of cases. Other factors will be that people are more aware of the 2005 act and their rights and that solicitors are now seeking to allow people to enforce their rights. The figure has levelled off, since 2008, to a reasonably steady state.

Robert Brown: Do you expect it to stay at the 3,000-plus level? Is that your projection?

Colin McKay: Concern has been expressed generally about the number of detentions, although I would not want to give you a figure. There has been an increase in the number of detentions since the 2005 act was passed, but I do not think that it is going to change massively. I think that that figure is broadly in the right area for the future.

Robert Brown: In terms of comparisons with other jurisdictions—

The Convener: I am sorry. Can I just check how many questions you have, Robert? Other members want to speak.

Robert Brown: I would just like to pursue this one. I have some others, but I can come back in later, if that is all right. I beg your pardon, convener.

Do you have any comparative information on the level of costs in other jurisdictions, not least England? One of the letters that the committee has received indicates that a typical base fee in England is about £750, whereas in Scotland it is £400 plus other bits and pieces on top of that. Do you have any information on how the cost in Scotland compares with the cost in England, where there is, I presume, a similar expenditure challenge?

James How: You have given a comparative figure for England and Wales. As the cabinet secretary said, the average case cost has risen from £918 in 2006 to £1,272 today. However, case costs vary quite a lot among different areas of the country. Where there is good local provision, costs are much lower, but where firms have to travel long distances, the average case cost can be significantly higher.

Robert Brown: I was asking what the comparison was with the situation in England. With respect, is not the average fee more relevant than the average cost per case?

James How: As far as I am aware, the money is paid in blocks, which is a system that the best-value review suggested we move to. The block payment is in the region of £750.

Maureen Watt (North East Scotland) (SNP): My understanding is that the travel fees in Scotland have got way out of line with those in other jurisdictions such as England and Wales. Why has that happened over the years?

Kenny MacAskill: We are not sure, but given that two firms are doing £2.2 million-worth of the £4.2 million-worth of work, it is clear that they probably do a significant amount of travel. We propose that the travel-time fee should go down to a level that is more in line with that in England and Wales.

I think that there has been a change—it is not simply that fewer people suffered from mental health problems when I or Mr Brown practised. There is a greater awareness of the issue and firms are dealing with that. We must ensure that we balance the paying of an appropriate fee to firms of solicitors with the system's not being abused in any shape or form. That is why we want to ensure that although travel will be paid for at a reasonable rate—akin to that south of the border—we do not have people travelling round the country to deal with matters that could be dealt with more expeditiously by a local solicitor, a local firm or a civil legal practitioner who is provided by the Scottish Legal Aid Board.

Dave Thompson: I want to focus on the particular difficulties in rural areas and in the Highlands and Islands, which are even more rural and remote than other parts of Scotland, and where the remoteness of some communities means that great distances have to be travelled even within the Highlands and Islands.

I notice that the Law Society says that there are still many solicitors working in the field, although the number is smaller than in most practice areas. I believe that several firms wish to do more work at local level across Scotland. Are some of those firms in the Highlands and Islands? If so, are they spread throughout the Highlands and Islands?

Kenny MacAskill: Yes, they are. I was asked a question about that by one of your colleagues who represents the Western Isles. We recognise that Scotland is diverse.

I note, for the record, that there was only one such case in the Western Isles in 2010, and it was dealt with by a local firm. There is another local firm that does legal aid work. I understand that although it has not done mental health work, it has expressed a willingness to do so. We can rest assured that there is provision in the Western Isles and in other areas of Scotland. It is clear that the legal profession has taken a bit of a battering through the recession. Many local firms that in the past might not have dealt with some aspects of legal aid work are now prepared to do so.

We want to ensure that we provide for those who suffer from mental health problems and who must have their rights protected, regardless of where in Scotland they are. We can do that by

using competent firms. I would prefer that the money went into providing front-line services by local firms than into providing travel all over Scotland by a few firms.

The Convener: The Government is trying to identify savings and is having to make extremely tough decisions in that context. If the proposed change is not approved today, does the Government have any alternative plans on how it might be able to make similar savings?

Kenny MacAskill: There is a plan B, which will be significantly worse. Such matters are not easy for the law profession. I should record my gratitude to the Law Society. We have asked its members to take a cut and it has discussed the matter with us. The initial proposals—certainly with regard to criminal legal aid—involved a greater expansion of the Public Defence Solicitors Office. The society asked us whether we would row back on the roll-out of the PDSO if its members took a reduced fee. As a Government, our position has been that we require to make savings because of the reduction in the budget. Beyond that, we are happy to work out an agreed shared solution. I am not suggesting that the Law Society is delighted at what is proposed—that is far from the case—but I think that it accepts that it is the best option that is on offer.

If the regulations do not go through, the Legal Aid Board would have to bring in changes. As those changes would be brought in later, the cuts would require to be deeper and would probably be made in a manner that was not acceptable to the Law Society. I am grateful to members of the Law Society for their fortitude in being prepared to accept a tightening of their belts. If we do not go down the route that is proposed, the Legal Aid Board will have to make an arbitrary decision, the effect of which will probably be significantly worse for the profession as a whole, which is why it is where it is.

Dave Thompson: I want to follow up on my earlier question. I presume that moving to a fixed, or block-fee, system would encourage local firms to become involved in such cases. How quickly can we move in that direction?

Kenny MacAskill: We will be working towards that. The direction of travel is clear. We want to work with stakeholders and take them with us. I am talking not simply about the legal aid lawyers, but the mental health charities, the Mental Welfare Commission and health boards. We are looking at the matter.

People's understanding of their rights as regards mental health has grown. That is correct, but there has been a significant increase in the cost to the public purse. We need to ensure that that expenditure is on providing front-line services and rights for individuals, rather than on supporting lawyers being transported around the country.

Colin McKay: I have a supplement to that. I make it clear that a fixed fee would require further regulations to be brought before the committee. In addition to the time that it would take to develop and negotiate such a package, there would be the question of when the legislation could be put through. September is perhaps the earliest that could realistically happen.

Dave Thompson: If there was seen to be a problem in the meantime, are you confident that the board's solicitors could fill that gap throughout Scotland?

Kenny MacAskill: We have made inquiries of local firms and we think that there would be local provision in most places. Equally, the civil lawyers who are provided and paid for by the Legal Aid Board—the civil equivalent of those who work for the PDSO—are on standby and are ready to intercede, either by dealing with a matter directly or by acting as intermediaries and passing it on to a local firm that is willing to act.

Robert Brown: I think that the essence of the problem is reconciling the current position and the issues that the cabinet secretary has identified with a position in which more localised provision is in place. We should bear in mind the element of choice, as well. I wonder about the phasing of the introduction of the regulations, the bringing in of the block fees—which, as your colleague Mr McKay said, will take a little time—and the supply of new firms with expertise. I am well aware from my knowledge of this area that a degree of specialised knowledge is required. I presume that that will require an element of training, which will take some time to bring in. Is the problem not the gap between where we are now, as the regulations come in, and six or nine months down the line, when the training would have to have been done, new firms would have to be available and a new system would be beginning to feed in?

I am told that there are 100 cases in Elgin, for example, so it is clear that the potential exists for more localised arrangements, but the timescale is a problem, is it not?

Kenny MacAskill: The matter has not been dealt with overnight. Discussions have been held with the Law Society and in specific geographical areas. Through the Law Society, provision is made for post-qualifying legal education. Assistance can and will be provided by the civil lawyers who are contracted by the Legal Aid Board.

If you are suggesting that we should just wait for the block fee to come in, I come back to the convener's point. If we cannot act until September, I or someone in a new Administration will have to

make cuts that are deeper and more severe. That is why the Law Society prefers the option that is currently on the table, followed up by continuing discussions—the regulations are not the final word on the issue. If we do not act now, we would find, come September, that the block fee would probably be considerably lower than it might be were we to act now.

11:00

James How: There are probably three levels. There are the firms that are doing the work now that have indicated concerns about the fee reductions. We need to see whether they reduce the work that they do.

There are other, local firms that have been doing some of the work, as they have the necessary qualifications, and that have indicated that they want to do more. The board is monitoring the situation closely and is looking at particular areas of the country. There are firms with the relevant qualifications that are prepared to do the work.

As the cabinet secretary and Colin McKay said, the third level is the network of civil legal assistance offices and their solicitors, who have training. At the close of last year, the civil legal assistance office in Inverness ran a seminar on mental health that raised awareness of work in the area and made contact with many firms that made it clear that they were prepared to do that work and to make referrals to other firms that are prepared to do it. There are three levels for the current period.

Nigel Don: I am beginning to make rather more sense of the regulations. It makes sense not to spend public money on getting people to travel, if we can get the work done locally. If that is the bottom line, it makes perfectly good sense. We all understand that those who are currently doing the work and will see a reduction in fees will not welcome that.

I want to bring two issues to the cabinet secretary. First, is he prepared to give an undertaking to keep specifically the mental health and welfare issues under review over the coming months? I know that SLAB now has a general duty to consider all those issues, but a commitment to look specifically at them on a rolling basis and to report appropriately—I have no idea what that might mean—would be welcome.

The other issue is the step change in fees that seems to be being suggested. I and, I think, other members have received representations from a solicitor who points out that he will need to travel a considerable distance to continue work that he is currently doing for a hearing that will probably call in a month's time. I wonder whether SLAB has or could be given the flexibility not to reduce fees and to allow existing rates to be paid in particular cases to which people have some kind of obvious commitment. I may be misinterpreting how the regulations will work, but I am a bit concerned that people who have taken on a task in good faith will suddenly find that their recovery is no longer as they would have expected, which may be unreasonable.

Kenny MacAskill: I invite Colin McKay to comment on the payment issue; there is a catch-all provision to assist with that. We are happy to undertake that we, any successors and the Scottish Legal Aid Board will continue to monitor the issue that the member has highlighted. It is work in progress, because the way in which matters are handled is being changed. The issue will be monitored to ensure that we maintain discussions and that there is no diminution of service, irrespective of jurisdiction, in this country.

Colin McKay: One of the spin-off benefits of the best-value review is that the board has developed good working relationships with the Mental Health Tribunal for Scotland. I am sure that the tribunal will want to monitor how the system is working.

I am afraid that a further regulatory change would be required to address the issue of existing commitments. As the regulations stand, the fees will change with effect from Monday. I do not think that it will be possible for the board to put in place some sort of transitional extra payment. Some solicitors will have a choice to make. They will have to balance their professional obligations to the client against the reduced remuneration that they will receive. Our general view is that, although they will get less than they thought that they would get at the start of such cases, they will still get paid. Overall, they will not receive terribly unfair remuneration for the cases. To some extent, they will just have to decide what they want to do.

Kenny MacAskill: As Robert Brown, the convener and I know from experience, rather than travel to future cases, solicitors may arrange for a local agent who is willing to attend a case to do so. In some instances, firms that would have attended cases by sending a variety of their qualified assistants to jurisdictions such as the Western Isles or Elgin will simply ask local firms to appear for their clients on their behalf.

Nigel Don: The point has been fairly made that, in this instance, we are dealing with fairly fragile people and that relationships with professional advisers may mean rather more in those cases than in general legal cases. I suspect that some solicitors will really want to attend. The other side of the argument, which has not been articulated, is that the profession has had considerable notice of the proposed change. One could argue that a solicitor who took on a case three months ago

knew that they were doing so with the risk that the rate would change on the date in question.

Kenny MacAskill: The regulations have been laid with the consent of and in discussion with the Law Society. It is not an easy matter for the society. In these regulations and others that will come in, we are not providing more money, but we are working with the society on how appropriate savings can be made. We are acting with its consent and are grateful for its forbearance.

Maureen Watt: Much work in this area seems to have been concentrated in a small number of firms. How have we got into that situation? Has it arisen because people advising those who require legal aid have been directed to particular firms that are known to be involved in the area and because there has been a lack of knowledge of local availability?

Kenny MacAskill: There are a variety of reasons for that. When I practised, no firm was a specialist mental health firm—such firms did not exist. Our practice at that time may have been wrong. Some firms have seen a niche market and have gone for it; it is their right and entitlement to do so. Equally, other cases have arisen.

In a time of financial austerity, we must ensure that we provide the rights that individuals need in the way that best ensures that the public purse is protected. There is not one simple reason for the current situation. It is partly about rights awareness, partly about firms starting up and going for this market, and partly about people being in the know and genuine, appropriate referrals being made to them. We take the view that we are where we are and that we must both protect the rights that every member wants to protect and take account of our responsibility, at a time of limited resources, to balance that with appropriate use of the public purse.

The Convener: You have covered all the questions that have been asked.

We move to the formal debate on the motion recommending annulment of the regulations on which the committee has just taken evidence. I invite James Kelly to move motion S3M-8012.

James Kelly: Like all members, I have received a number of submissions in recent weeks—especially in recent days—on the regulations, particularly on the issue of travel to mental health tribunal hearings. I have given the matter careful consideration. I acknowledge that the instrument has been laid to make financial savings and that it is attempting to bring Scotland into line with other jurisdictions on the issue of solicitors' fees. The figures that have been provided suggest that three firms dealt with 70 per cent and 10 firms dealt with 90 per cent of the 3,287 cases that have been heard by mental health tribunals. We must move away from that situation. I recognise that we need to get more firms involved in this area of law, so that clients have greater choice and greater ability to access legal practices locally. However, I believe that the cabinet secretary's proposals are flawed in respect of mental health tribunals.

As we have heard, and as we have seen in written submissions to the committee, firms that are involved in that area of law are required to travel substantial distances and the introduction of the new fees could result in their withdrawal from current or future cases, so I suggest that there is an access to justice issue. It is particularly pertinent because mental health tribunals obviously deal with vulnerable members of society. It is important that people have access to proper legal representation, but it is very important that clients with mental health issues have appropriate support. The proposals could undermine that support and legal representation.

The cabinet secretary also recognises that there is a problem with his proposal. In his letter to the committee, he deals with what would happen if there was a shortfall in solicitors who were able to take up the work and indicates that he would put in place transitional arrangements. That would involve grant funding being made available so, in effect, he would be putting in place a commitment to cover costs to address a shortfall.

We heard that the savings for 2011-12 would be £1.75 million, 30 per cent of which is accounted for by civil legal aid. Therefore, the portion that relates to travel to mental health tribunals is perhaps about £200,000. We must consider that in the context of what may have to be spent to make up a shortfall if solicitors are not able to travel to mental health tribunals. A position starts to emerge in which the savings on the mental health part of the proposals are not at all high, which contradicts the doomsday scenario that the cabinet secretary presents as resulting if we do not proceed with the regulations.

The best way forward would be for the cabinet secretary to withdraw the part of the proposals that affect mental health tribunals. As has been said, the Scottish Legal Aid Board recently published a best-value review and the Law Society also has proposals on moving to a block fee system. It would be sensible for the cabinet secretary to withdraw the regulations, because it would allow all parties to work on the block fee system, which may produce a more efficient method of remunerating solicitors who service mental health tribunals in future. It would also come at less cost to the public purse. Working through those arrangements over the coming months and thereby putting in place a more sensible and sustainable position would give clients better service and, it is to be hoped, open up the number

of law firms that practise in mental health cases. Crucially, it would not undermine representation for vulnerable clients in such cases.

I acknowledge that the matter involves complex issues, but the sensible way forward would be to work with the Legal Aid Board and the Law Society to put in place a more sustainable solution, as opposed to compromising the rights of vulnerable clients in mental health tribunals.

I move,

That the Justice Committee recommends that nothing further be done under the Legal Aid and Advice and Assistance (Solicitors' Travel Fees) (Scotland) Regulations 2011 (SSI 2011/41).

The Convener: I invite other members to speak, but I ask them to keep their comments as brief as possible as we are running a bit over time.

11:15

Dave Thompson: I, too, am concerned about the mental health aspects of the regulations but have been reassured by the cabinet secretary and his team. They have explained what is behind the proposals and have assured us that there will be a review, which is exactly what SAMH asked for in its submission. It asked for the matter to be kept under review and for a report to come back at about six months, once a bit of experience has rolled in on how the proposals work.

I am very keen to boost local provision for representation at mental health tribunals. We have been assured about interim cover from the Legal Aid Board's own solicitors if there are problems. The move towards block fees in the medium term may encourage local firms to get involved in such representation, which would be a good thing.

The problem with James Kelly's motion is that it recommends that the Parliament annul the regulations that relate to not only mental health expenses, but as a whole, so all the savings would go, which would create a much bigger problem. I am afraid that I am not able to support him on that.

Robert Brown: I confess that I had considerable worries about the provisions on mental health expenses, some of which have been assuaged by the cabinet secretary's comments.

I was struck by one observation in the best-value review report, which indicates that the reviewers contacted the two largest firms—the ones that had large amounts of money from mental health work—but they chose not to engage in the review. That seems a bit unsatisfactory.

I am satisfied on the principal, central point: that the current regulations provide a perverse incentive, which is not helpful to the proper operation of the system. Against that background, I cannot go along with James Kelly's suggestion that the regulations as a whole be annulled. He makes a good point about the £200,000 being offset by other costs.

I have some concerns. Let us say for the sake of argument that 1,000 of the 3,287 cases involve substantial travel—I may be a bit wrong, but I think that the figure is in that area. That is a lot of cases to be taken up by the public officials or other private firms.

There is a question of choice, which is important, and relationship. There is also a significant question about expertise. I am bothered about the time gap between the introduction of the new system and the acquisition of that expertise. The cabinet secretary said some things to reassure me on that, but we must pay attention to ensuring that there are experienced people with the knowledge and practice to be able to take the work on, that the perverse incentive is removed, that the Legal Aid Board and others keep a close eye on what happens and that there is a report to our successor committee, perhaps among others, as the new arrangements bed in, as SAMH suggested.

The sooner that the new system is brought in, the better. However, the best-value review is a complex report with a lot of implications, so the other side of the coin is that we should not hurry reform beyond what is necessary.

I am struck by the fact that there are a number of other drivers, such as the doubling of the number of cases. There are also suggestions that the Legal Aid Board is not doing enough to control inappropriate applications. There is a lot of work for the justice directorate to do to ensure that the proposals work. Above all, we must have as much of a guarantee as the cabinet secretary can give us that no person who faces such difficult issues will go without mental health representation as a result of the changes that the regulations make.

Kenny MacAskill: I take on board the points that Robert Brown made. He is correct that, as Mr Thompson said, we are talking about vulnerable people whose rights—sometimes a tribunal deals with a significant infringement of their rights—must be protected. Therefore, I am happy to assure Mr Brown that the Scottish Legal Aid Board will ensure that those individuals' needs are met through its own contracted lawyers—who are already paid for, which offsets worries about cost—and through additional beefing up of provision, training and working with local firms.

It is equally a fair point that we should review the arrangements. I cannot bind my successors' hands, but I can ensure that work goes on in the justice directorate and the Scottish Legal Aid Board that will be available to a cabinet secretary

and enable that person to ensure that information is provided to the successor committee after the next election. That would keep the committee apprised and tie in with action that will be taken fairly early in the term of a new Administration. The work will be going on and, by the time that those of us who are returned after 5 May reconvene, we will be getting closer to that action, which could be taken early in September. I assure Mr Brown that, in the interim, the Scottish Legal Aid Board would take on board all the matters that he raised.

James Kelly: The regulations will come into force immediately and, as Nigel Don said, might therefore impact on current cases and undermine the ability of vulnerable people to be represented. That is a concern.

Dave Thompson talked about interim cover. I reiterate that interim cover comes at a cost, which would reduce the level of savings.

If the motion to annul the regulations is successful, there will be an opportunity for the cabinet secretary to bring back amended regulations that do not cover mental health tribunals. I will press the motion, because I believe that we need a more collective approach to addressing the issue than the one that is outlined in the regulations.

The Convener: The question is, that motion S3M-8012, in the name of James Kelly, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

Brown, Robert (Glasgow) (LD)
Don , Nigel (North East Scotland) (SNP)
Lamont, John (Roxburgh and Berwickshire) (Con)
Thompson, Dave (Highlands and Islands) (SNP)
Watt, Maureen (North East Scotland) (SNP)

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

Motion disagreed to.

Scottish Charitable Incorporated Organisations Regulations 2011 (SSI 2011/44)

The Convener: There are four negative instruments for consideration, the first of which is SSI 2011/44. The Subordinate Legislation Committee drew no matters to the attention of the Parliament in relation to the regulations. If members have no comments, are we content to note the regulations?

Members *indicated agreement.*

Act of Sederunt (Fees of Sheriff Officers) 2011 (SSI 2011/47)

The Convener: The Subordinate Legislation Committee has drawn the instrument to the attention of the committee and the Parliament on the basis that it combines negative procedure and no procedure. In its report, the Subordinate Legislation Committee advised that it considered such an unusual use of the enabling powers to be inappropriate, as it could give rise to technical difficulties in the event of a successful motion to annul the instrument.

If members have no comments, are we content to note the instrument?

Members *indicated agreement.*

Scottish Crime and Drug Enforcement Agency (Scotland) Regulations 2011 (SSI 2011/61)

The Convener: The Subordinate Legislation Committee drew no matters to the attention of the Parliament in relation to the regulations. If members have no comments, are we content to note the regulations?

Members *indicated agreement.*

Police Grant (Scotland) Order 2011 (SSI 2011/62)

The Convener: Finally, the Subordinate Legislation Committee drew no matters to the attention of the Parliament in relation to the order. If members have no comments, are we content to note the order?

Members *indicated agreement.*

11:24

Meeting suspended.

11:31

On resuming—

Double Jeopardy (Scotland) Bill: Stage 2

The Convener: Item 9 is stage 2 consideration of the Double Jeopardy (Scotland) Bill. Members should have in front of them the bill, the marshalled list and the groupings.

Section 1—Rule against double jeopardy

The Convener: Amendment 32, in the name of Robert Brown, is grouped with amendments 33 to 41.

Robert Brown: Amendment 32 and the other amendments in the group all relate to section 3. We heard evidence at stage 1 on the background to the provisions on admissions evidence. We also heard suggestions from the Scottish Law Commission that, if it had been faced with the bill's present major proposals when it prepared its report, it might have taken the view that admissions evidence was just a species of new evidence and should be treated accordingly. That is broadly my position on the matter. As I suggested in the stage 1 debate, it would be more logical, straightforward and appropriate if that reality were recognised and admissions evidence were incorporated into the new-evidence rules because, it seems to me, the same criteria apply.

I accept that the argument about what happens about the new-evidence exception has the nuance that the Government intends to apply it to a wider range of offences, but I ask the cabinet secretary whether that is based on reality and what justification there is for having two different approaches. The rule against double jeopardy has its foundation in the idea that people should not have to undergo a second trial except in the most exceptional circumstances. We have all accepted that a tainted trial is one such circumstance—that is perfectly straightforward—and there would be a public outcry if major and substantial new evidence came forward that could not be considered. I also know that particular people have made representations about the question of admissions, when people boast after their acquittal. There are other ways of tackling some of those things, for example with perjury charges, charges of wasting police time and all sorts of other arrangements so, in terms of the efficiency of the system, there is a lot to be said for confining the operation of the new provisions at least to cases that go on indictment. I think that the same arguments apply in the case of admissions and new evidence.

That is the background to what I am proposing. I am not necessarily against the cabinet secretary's move to make High Court cases the cut-off for new evidence. Perhaps the exception could be a bit wider for admissions evidence and take in cases on indictment more generally but, broadly, the rule and test should be the same and new evidence should include admissions because it is the same sort of evidence. I do not see the justification for dealing with it in two different sections and for having two different types of starting-off criteria, as is proposed.

I move amendment 32.

The Convener: Before I invite other members to speak, I note that I should have drawn members' attention to the pre-emption information on the groupings. I do so now.

Nigel Don: Now that I have heard Robert Brown and have a clearer idea of where he is going on the issue, and knowing where the cabinet secretary is proposing to go on it, I think that the idea that we separate admissions from new evidence is entirely appropriate. If I am right in thinking that we will agree that the new-evidence exception should be only for those cases that are heard in the High Court on indictment, I do not believe that the admissions exception should have such a narrow focus.

If the new-evidence exception were going to apply to much wider range of cases, the idea of having admissions in the same packet might have made sense. However, if we are narrowing the new-evidence section, as the cabinet secretary will propose and which I will certainly support—I said as much at stage 1—then separating out the admissions exception and allowing it to have a wider locus is entirely appropriate. I understand why Robert Brown lodged his amendments but, in light of the cabinet secretary's proposals, his approach may now be entirely inappropriate.

James Kelly: I broadly agree with Nigel Don. It comes down to the central issue of seeing that justice is done. If an admission is made either pre or post-acquittal by someone who is found not guilty, the victim will feel that they have been badly done by. Our drive should be to ensure that justice is done for victims. I therefore believe that the bill's provisions and the cabinet secretary's proposed amendments in this regard are correct.

Kenny MacAskill: As members have said, the amendments in this group relate to the new-evidence test and the admissions exception. Mr Brown is right that good arguments have been proposed south of the border in this area. However, I think that the bill is right in treating admissions as a distinct form of new evidence. An admission is evidence that flows entirely from the actions of the acquitted person. The Scottish Law

Commission in its report made a persuasive case that, by making the conscious decision to admit the crime, the acquitted person is in effect waiving their right not to be tried again. That argument simply does not arise with other forms of new evidence.

The court will have to consider the circumstances of individual cases, but there can be no disputing that it is undesirable, disrespectful and offensive to have an acquitted person openly brag about their guilt. Permitting that to happen without censure risks bringing our justice system into disrepute. That is why it is important to allow an admission to justify a new trial for any type of offence under the bill.

Amendment 33 would remove section 3, which would mean that an admission could justify a retrial only where the case was prosecuted originally in the High Court. Because I do not think that admissions should be limited in that way, I believe that section 3 should be retained. Although I fully accept that it would be rarely used in less serious cases, I feel that it is important to the public's perception of justice that an admission should be capable of permitting a new trial in any case, whatever the crime. That would send a strong signal that bragging about one's guilt will not be tolerated in our society, regardless of the nature of the offence in question.

The second effect of amendment 33 would be to limit the use of an admission so that only one double jeopardy retrial would ever be possible on the basis of an admission. That is of course broadly as it should be. There is no suggestion that acquitted persons should ever be subjected to repeated double jeopardy trials. That is why section 4, on new evidence, is limited to one use only, even if further new evidence were to come to light. The reason why section 3 on admissions is not limited to one use is to defeat the prospect of a person acquitted at both the original trial and a double jeopardy trial publicly bragging of having twice evaded justice. The effect of amendment 33 would be to allow such bragging to occur with no risk of retrial for the offence. Once again, such a situation will be unlikely, but it is still desirable, as a matter of public policy, to close the door on such bragging and allow the potential for action to be taken.

Amendment 4, which we will debate later, will apply the rigorous tests in section 4 to admissions. The High Court will subject any application under the bill to a stringent review and will always have to be confident that any new trial would be in the interests of justice. That provision should safeguard against any acquitted person being prejudiced by the differences between section 3 and section 4 that I have outlined.

I therefore invite Mr Brown not to pursue amendment 33. I also suggest that his other substantive amendments—amendments 34 and 35—are simply not needed. Those amendments would insert specific reference to admissions into section 4 and would apply two additional tests to admissions: one on sufficiency of evidence and one on credibility. I do not think that amendment 34 is required, because if section 3 were to be removed, section 4 as currently worded can already cover admissions. No amendment is required to achieve that aim.

On amendment 35, I can see why Mr Brown would wish to insert provisions on the quality of any admission, but I do not think that it is necessary, because the other tests in section 4 would already capture the provisions on credibility and sufficiency that amendment 35 seeks to insert. The two tests being applied will ensure that, to justify a retrial, any admission will have to strengthen substantially the case against the accused and it will have to be highly likely that a reasonable jury would have convicted had the admission been available before. I do not think that it would be possible for any court to conclude that an admission that satisfied both those tests would somehow fail to be credible or provide sufficiency of evidence. The elements that amendment 35 would add would not assist either the court or the defence; indeed, there is a risk that their addition in relation to admissions alone might have an unintended impact by suggesting to the High Court that a somehow different standard should be applied for other types of new evidence.

I therefore invite Mr Brown not to press his amendments.

Robert Brown: I have listened carefully to the arguments, because this is an important issue. If I may say so, I thought that the cabinet secretary overegged the pudding greatly with regard to the possibility of repeat trials. It seems to me that there are good reasons why there should not be repeat trials in relation to this or other matters. The idea of there being a second retrial after an initial double jeopardy retrial seems positively ridiculous.

Two issues arise out of this, and perhaps I concentrated too much on one of them. The first is whether the tests that apply to new evidence and admissions evidence should be the same. The second is whether the type of offences covered by the two areas should be the same. Because the cabinet secretary was making changes by removing schedule 1 and putting in the High Court as the cut-off point, I left over the issue whether we should widen or narrow the type of offences in admissions cases, which could be looked at later. I invite the committee to concentrate on whether there are substantial differences between new evidence in general terms and new evidence in

admissions that make it necessary to apply different tests to them—leaving aside the issue of what sort of cases they should apply to.

As I have said before, admissions are notoriously unreliable. The committee and the Parliament have already had to deal with the question of the use of admissions evidence following the Cadder judgment, which is obviously a broader issue. Every significant publicised murder can lead to a large number of people coming forward to confess to the crime, which they did not commit. There are therefore definite limitations to the extent to which this sort of evidence can be used.

I stand by the position that, as the cabinet secretary said, admissions are a distinct form of new evidence and should be treated in that way in the bill. I invite the committee to agree to amendment 32 and to leave aside the question whether a wider category of offence should be covered, because there is a subsequent debate to be had on that matter.

Given the probable line-up of votes on this issue, I will take a test vote on amendment 32 and will not press other amendments in the event that amendment 32 is defeated.

The Convener: The question is, that amendment 32 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brown, Robert (Glasgow) (LD)

Against

Butler, Bill (Glasgow Anniesland) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Don , Nigel (North East Scotland) (SNP)
Kelly, James (Glasgow Rutherglen) (Lab)
Lamont, John (Roxburgh and Berwickshire) (Con)
Thompson, Dave (Highlands and Islands) (SNP)
Watt, Maureen (North East Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 32 disagreed to.

Section 1 agreed to.

Section 2—Tainted acquittals

11:45

The Convener: Amendment 1, in the name of the minister, is grouped with amendments 2, 5 to 9 and 11.

Kenny MacAskill: This group of amendments makes some minor changes to the bill to remove text that is considered to be unnecessary. Amendments 1, 2 and 5 will ensure that there is sufficient flexibility in relation to the charges to be heard at any new trial. Amendment 6 acknowledges that the subject of an application under section 4 is not at that point an accused person in the usual sense, their having been acquitted in the earlier trial. Amendments 7 to 9 and 11 are intended to improve and simplify wording in the bill.

I move amendment 1.

Amendment 1 agreed to.

Section 2, as amended, agreed to.

Section 3—Admission made or becoming known after acquittal

Amendment 2 moved—[Kenny MacAskill]—and agreed to.

The Convener: Amendment 3, in the name of the minister, is grouped with amendments 4, 12 and 13.

Kenny MacAskill: Amendments 3 and 4 respond to the committee's stage 1 report. They replace part of the test for the High Court to use in assessing whether an admission would justify a double jeopardy retrial with elements of the general test for new evidence that is used in section 4. Although I think that the current test in section 3 would have worked, I accept the argument that there is merit in applying the same test to all forms of new evidence. We have already considered the appropriate way to assess admissions in double jeopardy cases, and I do not propose to revisit those arguments.

Amendment 4 applies the essential elements of the new-evidence test to admissions and, with amendment 3, removes the parts of the existing test for admissions that become unnecessary as a result of amendment 4, that is, the references to credibility and sufficiency, which were discussed in relation to Robert Brown's amendment 35. As indicated, those elements are no longer necessary because of the adoption of the more rigorous tests of section 4.

Amendments 12 and 13 carry forward the change of tests to admissions considered under section 8, which deals with situations in which murder was not charged at the original trial but evidence later emerges that the acquitted person admitted to committing murder.

I move amendment 3.

Amendment 3 agreed to.

Amendment 4 moved—[Kenny MacAskill]—and agreed to.

Amendment 33 not moved.

Section 3, as amended, agreed to.

Section 4—New evidence

The Convener: Amendment 20, in the name of the minister, is grouped with amendments 21 to 25 and 28 to 31.

Kenny MacAskill: The amendments alter the range of criminal cases that will be covered by the new-evidence exception to double jeopardy. Members will recall that the Scottish Law Commission originally recommended that the new-evidence exception should be restricted to murder and rape. The bill as introduced went further than that by listing specific offences, such as culpable homicide and serious sexual crimes.

Although there is a consensus that the exception must be restricted to serious cases, deciding exactly where to draw the line has proven to be extremely difficult. Compelling arguments and examples can be and have been made and provided in relation to a range of serious criminal conduct. I therefore accept the merits of the argument made by the committee in favour of applying a restriction based on the seriousness of the case and identified by reference to the court where the original trial took place.

I am strongly of the view that an exception for all solemn cases would be too broad. The range of offences that could be tried on indictment is wide—indeed, too wide for that to be an acceptable limit. However, I agree that a restriction to all cases that were originally tried at the High Court provides certainty that the new-evidence exception will remain focused on the most serious of cases. Amendment 20 therefore adopts that change, with amendments 23 and 29 removing the restriction to the list of offences and the schedule that contains the list.

It is true that applying a High Court-based restriction has potential to widen the application of the new-evidence exception. For example, the bill will now encompass crimes such as attempted murder and serious drugs offences. However, it seems right for compelling new evidence sometimes to justify including such cases, where they have been tried in our highest criminal court. Each case will have to be carefully assessed on its own facts and circumstances, in terms of whether the new evidence makes the argument for a retrial compelling and whether it is appropriate to invoke the exceptions to double jeopardy in that instance. That will be a demanding decision for the Lord Advocate and the High Court to assess in each and every case that is considered under the legislation. I am confident that they will rigorously assess the public interest and the interests of justice in reaching their decisions.

I move amendment 20.

Robert Brown: I welcome the cabinet secretary's proposals, as they are a more elegant and satisfactory solution than the existing one, which involves all the usual difficulties with having a list. The measures will keep intact the unusualness of an exception to the general double jeopardy rule. I am glad to support the cabinet secretary's recommendations.

Nigel Don: I echo Robert Brown's comments. The proposals will cover cases such as attempted murder. I do not see why an attempted murder should be treated differently from a murder just because it did not happen to succeed. What is the difference in the crime? The proposals also recognise that the issue is one of public perception. It is about the public outcry when the law cannot cope. The bill should be about only the most serious offences, and the proposals are an elegant way of getting to the most serious offences, regardless of what they happen to be.

Amendment 20 agreed to.

Amendments 5 and 21 to 25 moved—[Kenny MacAskill]—and agreed to.

Amendment 34 not moved.

The Convener: Amendment 26, in the name of the minister, is grouped with amendment 27.

Kenny MacAskill: Amendments 26 and 27 uphold the general principle that the Lord Advocate may only ever make one new-evidence application in relation to any one offence, but they elaborate on the situation in which the indictment at the original trial contained several distinct offences. Should new evidence be relevant to only one or some of the offences from the original trial, the amendments will allow the Lord Advocate to focus the application on those particular offences. If, at a later date, further new evidence emerges in relation to the remaining charges, they could in theory be subject to a further application under the bill. That is important when the indictment contains a number of serious matters and is not focused on a single serious offence.

I move amendment 26.

Amendment 26 agreed to.

Amendments 27, 6 and 7 moved—[Kenny MacAskill]—and agreed to.

Amendment 35 not moved.

Amendment 28 moved—[Kenny MacAskill]—and agreed to.

Section 4, as amended, agreed to.

Schedule 1—New evidence: relevant offences

Amendment 29 moved—[Kenny MacAskill]—and agreed to.

Section 5—Applications under sections 2, 3 and 4

Amendment 36 not moved.

Section 5 agreed to.

Section 6—Further provision about prosecutions by virtue of sections 2, 3 and 4

Amendments 37 and 38 not moved.

Amendment 8 moved—[Kenny MacAskill]—and agreed to.

Amendment 39 not moved.

Amendment 9 moved—[Kenny MacAskill]—and agreed to.

The Convener: Amendment 10, in the name of the minister, is in a group on its own.

Kenny MacAskill: Amendment 10 ensures that either party in a new trial authorised under one of the exceptions to double jeopardy can lead evidence that could have been employed at the first trial, subject to it still being admissible under the rules of evidence as they apply at the time of the second trial. It will ensure that evidence can be led about other related charges from the original trial. That will allow a full range of evidence to be deployed at the second trial, enabling the court to consider all aspects of the case.

Amendment 10 ensures that any prosecution evidence that it is competent for the Crown to lead only because of this provision must be drawn to the attention of the accused, to ensure that the accused has fair notice that the evidence will be led.

I should also inform the committee that the Government is considering the disclosure regime that is applicable to double jeopardy issues under the bill, and will write if it is thought that consequential amendments are needed at stage 3.

I move amendment 10.

Amendment 10 agreed to.

The Convener: I point out that if amendment 11 is agreed to, I cannot call amendment 40 for pre-emption reasons.

Amendment 11 moved—[Kenny MacAskill]—and agreed to.

Section 6, as amended, agreed to.

Section 7—Plea in bar of trial that accused has been tried before

Amendment 41 not moved.

Section 7 agreed to.

Section 8—Plea in bar of trial for murder: new evidence and admissions

Amendments 12 and 13 moved—[Kenny MacAskill]—and agreed to.

Section 8, as amended, agreed to.

Section 9—Plea in bar of trial: nullity of previous trial

The Convener: Amendment 14, in the name of the minister, is grouped with amendment 15.

Kenny MacAskill: Section 9 applies where the prosecutor argues that a trial should continue because a previous decision on the same or substantially the same issue was null and void. The committee in its stage 1 report queried the need for section 9, but amendments 14 and 15 illustrate the need for its retention.

The section ensures that where a question of nullity arises at the sheriff court, it will be referred to the High Court for consideration. That is a special procedure for this unusual situation, which does not appear in the more general section that covers pleas in bar of trial. Amendments 14 and 15 extend that provision to cases that are first heard in a justice of the peace court. I stress that section 9 is restricted to very rare cases in which the prosecutor was unaware of the nullity when beginning proceedings. The application procedure in section 12 should be used where the prosecutor was already aware of any nullity.

I move amendment 14.

Robert Brown: I have one small query for the cabinet secretary. Amendment 14 refers to justices of the peace as well as sheriffs, and it crossed my mind to wonder whether stipendiary magistrates will be covered by the expression "a justice of the peace", or indeed by the expression "sheriff".

Kenny MacAskill: They will be, yes.

Amendment 14 agreed to.

Amendment 15 moved—[Kenny MacAskill]—and agreed to.

Section 9, as amended, agreed to.

Section 10 agreed to.

Section 11—Eventual death of injured person

12:00

The Convener: Amendment 16, in the name of the minister, is grouped with amendments 17 to 19.

Kenny MacAskill: Amendments 16 and 17 provide that where a person is acquitted of an

offence involving the physical injury of another person, and the injured person subsequently dies, apparently from their injury, the prosecutor will require to apply to the High Court for authority to prosecute for the death. In considering the application, the High Court will have to be satisfied that the prosecution would be in the interests of justice.

The Government carefully considered the committee's suggestion that we consider whether some form of new-evidence test should be applied to such a case. Although the situation concerns a related topic, it is not a double jeopardy situation—I stress that point, having looked again at the matter. I appreciate that the concerns that were expressed were well intentioned, but I consider that the approach in amendments 16 and 17 will provide the right safeguards for the accused. The Lord Justice Clerk indicated to the committee that an application procedure would be appropriate. Amendments 16 and 17 will ensure that High Court scrutiny will be applied at a preliminary stage. The bill will ensure that a higher test for the prosecutor and the courts will apply than is currently provided for by the common law where the person was acquitted at the earlier trial.

Amendment 18 provides that the application procedure that amendments 16 and 17 create will be subject to the terms of the Contempt of Court Act 1981, which makes it a contempt of court to publish any material that would create

"a substantial risk of prejudice"

to the proceedings.

Amendment 19 will remove the interests-of-justice test in schedule 2, which requires that the court must be satisfied at a preliminary hearing in any second trial that it is in the interests of justice to proceed to trial. The provision will no longer be required, as a result of amendments 16 and 17.

I move amendment 16.

Nigel Don: The proposed approach will shift the balance appropriately in what is a rather strange situation that does not occur often. The amendments probably get the balance about right.

Amendment 16 agreed to.

Amendment 17 moved—[Kenny MacAskill]—and agreed to.

Section 11, as amended, agreed to.

Sections 12 and 13 agreed to.

Section 14—Subordinate legislation

Amendment 30 moved—[Kenny MacAskill]—and agreed to.

Section 15 agreed to.

Schedule 2—Consequential amendments

Amendments 18 and 19 moved—[Kenny MacAskill]—and agreed to.

Schedule 2, as amended, agreed to.

Section 16—Short title, interpretation and commencement

Amendment 31 moved—[Kenny MacAskill]—and agreed to.

Section 16, as amended, agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill.

12:03

Meeting continued in private until 12:47.

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