



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

### JUSTICE COMMITTEE

Tuesday 27 March 2012



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**Tuesday 27 March 2012**

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**JUSTICE COMMITTEE**

**11<sup>th</sup> Meeting 2012, Session 4**

**CONVENER**

\*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

**DEPUTY CONVENER**

\*Jenny Marra (North East Scotland) (Lab)

**COMMITTEE MEMBERS**

\*Roderick Campbell (North East Fife) (SNP)

\*John Finnie (Highlands and Islands) (SNP)

\*Colin Keir (Edinburgh Western) (SNP)

\*Alison McInnes (North East Scotland) (LD)

\*David McLetchie (Lothian) (Con)

\*Graeme Pearson (South Scotland) (Lab)

\*Humza Yousaf (Glasgow) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Nick Bland (Scottish Government)

Lorna Gibbs (Scottish Government)

Kenny MacAskill (Cabinet Secretary for Justice)

Lewis Macdonald (North East Scotland) (Lab)

Liz Sadler (Scottish Government)

**CLERK TO THE COMMITTEE**

Peter McGrath (Clerk)

**LOCATION**

Committee Room 6



## Scottish Parliament

### Justice Committee

*Tuesday 27 March 2012*

[The Convener *opened the meeting at 10:00*]

### Decisions on Taking Business in Private

**The Convener (Christine Grahame):** Good morning. I welcome everyone to the 11th meeting of the Justice Committee in 2012. I ask everyone to switch off mobile phones and other electronic devices completely, as they interfere with the broadcasting system even when they are switched to silent. No apologies for absence have been received. I welcome Lewis Macdonald to the meeting.

Under agenda item 1, the committee will decide whether to take items 5 and 6 in private. Do members agree to do so?

**Members** *indicated agreement.*

**The Convener:** The committee will also decide whether its consideration of the main themes arising from the evidence received on the Police and Fire Reform (Scotland) Bill and the draft stage 1 report on the bill should be taken in private at future meetings. Do members agree to do so?

**Members** *indicated agreement.*

## Police and Fire Reform (Scotland) Bill: Stage 1

10:00

**The Convener:** Item 2 is our final evidence session on the Police and Fire Reform (Scotland) Bill. I welcome to the meeting the Cabinet Secretary for Justice, Kenny MacAskill, who is accompanied by four Scottish Government officials. Liz Sadler is head of the policy and legislation unit; Nick Bland is head of the police reform unit; Lorna Gibbs is head of the fire and rescue reform unit; and Kevin Gibson is from the legal directorate.

I invite the cabinet secretary to make a short opening statement if he wishes to do so before I invite questions from members.

**The Cabinet Secretary for Justice (Kenny MacAskill):** Thank you for inviting me to speak to the committee about the Police and Fire Reform (Scotland) Bill. I will make some general comments before I take questions.

Both the police service and the fire and rescue service have done excellent work in recent years to contribute to making Scotland's communities safer and stronger, but the Scottish Government believes that, in the face of unprecedented cuts from Westminster, it is necessary fundamentally to restructure the services to protect and improve the service that they give local communities. Single services are the best way to achieve that aim. Sir Hugh Orde acknowledged that a couple of weeks ago in front of the committee in noting the deficiencies in England and Wales of relying on enhanced collaboration to create a service that is fit to deal with the demands of the 21st century.

Over the past couple of years, we have worked closely with the services, staff associations, trade unions and other stakeholders to shape the proposals for single services. The Minister for Community Safety and Legal Affairs, Roseanna Cunningham, her predecessor, Fergus Ewing, and I have undertaken visits and meetings in communities across Scotland, from the northern isles to the Scottish Borders. We have met senior officers, the men and women on the front line, support staff and the people and communities who rely on the services.

My officials have maintained regular dialogue with all key stakeholders, particularly in the services and local government. We have drawn on best practice by hosting an international policing summit, and I have visited the Police Service of Northern Ireland, which, as members have heard, is a successful single service. I welcome the positive way in which stakeholders have engaged

with us on reform and their commitment to ensuring that it is successful. Many have reiterated that commitment in their evidence to the committee.

This is a critical time for our work on police and fire and rescue reform, and the next few months will be vital to the success of the programme to develop single services, both in progressing the bill and in continuing the vital work on implementation. As the bill progresses, I am keen that we keep listening. With the services, unions, representative organisations, the Scottish Government and Scottish Parliament working together, I am confident that we will deliver a robust, effective and high-quality piece of legislation that meets the expectations of Scotland's communities.

The bill sets out, as never before in legislation, a detailed framework for the new services, and it will modernise the governance of the Scottish police and fire and rescue services. For the first time, the bill clearly defines the respective roles and responsibilities of the key players: the Scottish ministers, the Scottish police authority, the Scottish fire and rescue board and the chief officers of both services. In particular, it defines and clarifies the operational responsibilities of the chief constable more than ever before by making it clear that only the chief constable has direction and control of the police service and that only the Lord Advocate or the appropriate prosecutor can direct the chief constable in relation to the investigation of crime. It also makes it absolutely clear that the chief constable is accountable to the Scottish police authority, not to the Scottish ministers, and, for the first time, it provides opportunities for the Scottish Parliament to scrutinise policing and fire and rescue services on a regular and systematic basis.

The strategic police plan, the annual police plan, the SPA's annual report and accounts and the SFRS's strategic plan, annual report and accounts will all be laid before the Parliament. The national governance structures will also ensure an enhanced focus on local delivery of policing and fire and rescue services. I believe that the single services will strengthen the links between police and fire and rescue services and the communities that they serve by enabling individual local councils, not regional joint boards, to take on a new role at a national level and to shape services in the local area. They will do that through a range of detailed measures, for example by requiring the chief constable and chief officer to designate a local police commander and senior local fire officer for each council area.

Crucially, the bill clearly links the national and the local by providing that local authorities will be consulted on strategic priorities and strategic

plans, by placing duties on the chief constable and the SFRS tied to local service delivery and by ensuring that local plans reflect national strategic plans where appropriate, all while retaining the flexibility for local authorities to develop their own models of engagement and formulate local plans reflecting local priorities and circumstances.

The bill will also provide greater integration with community planning by placing specific duties on the local senior officers. These new local and scrutiny arrangements are already being trialled by 16 formal pathfinders and I expect more local authorities to be involved in the pathfinder network following the local government elections in May.

Having given this briefest of overviews of an enormously detailed piece of legislation, I am happy to respond to any detailed questions.

**The Convener:** I shall take Rod Campbell's question first. As we have a long agenda today, it would be very useful if members could ask short, sharp questions.

**Roderick Campbell (North East Fife) (SNP):** Good morning, cabinet secretary. Some individuals have suggested that there would be merit in delaying the timetable for reform. What is your view on that? In particular, what is your view on the merits of the early appointment of the chief officers?

**Kenny MacAskill:** There are two issues there. On the bill, I think it is appropriate that we have a start date, and we have specified 1 April 2013. As with anything, one has to set a date. We are clearly on course and on target and I do not see any merit in delay. If something untoward were to happen, we have fallback procedures, but at present it is important that we stick to that date. We have always made it quite clear that although some things will change and although that is the start date for a single service, many other things will take some time, and we will allow those to be operated out by the chief constable and the Scottish police authority. The start date should remain April 2013, and we are on course to achieve that.

We are obviously taking steps to try to ensure that we get the chief constable in, whoever he or she might be, at an optimum time. I am aware of the concerns that you have heard in evidence, to which I am prepared to listen and on which I will reflect. It is fundamental that we avoid any ministerial appointment but I am happy to give consideration to what is felt not only by the bodies that have given evidence but by you.

**Roderick Campbell:** On the question of how much parliamentary scrutiny there should be of the new set-up, we heard from the Auditor General for Scotland in particular, as well as from representatives of the Fire Brigades union, that

they thought that there was a need for an increased role for the Parliament. What is your view on that?

**Kenny MacAskill:** I think that I agree. A variety of suggestions have been made, including by Graeme Pearson. We take the view that it is not for the Government to decide how the Parliament should carry out its scrutiny role, but we accept that the Parliament has a particular role to play. We think that there is good merit in such matters being considered, but fundamentally it is for the Parliament to work that out. We have made provision for representations to be made and for the documents that would be laid before the Justice Committee. That is the Government's direction of travel. As I say, we accept the merits of the argument but think that it is for the Parliament to work out the detail.

**Graeme Pearson (South Scotland) (Lab):** You talk about parliamentary oversight of the governance of the police service, in particular, but also of the fire service. From your experience and knowledge of discussions on such matters, do you have any notion of how that would work out in practice?

**Kenny MacAskill:** Our experience and knowledge were gained from our international conference—although it would be fair to say that some of the international comparators do not have the same level of parliamentary scrutiny—and from visiting Northern Ireland. Northern Ireland has particular issues relating to the divide, but it was felt that there was merit in the approach that has been adopted there. In discussions, especially with Chief Constable Smith and other officers, it was felt that the involvement of the Justice Committee would be beneficial because of the breadth of its work, which covers all aspects of justice. Policing does not exist in isolation—it interacts with health, social work, prisons and so on—and those who serve on the Justice Committee are more likely to have a broader understanding of wider justice issues.

As a Government, we do not wish to be too specific. We think that it is for the Parliament to work out what the best method would be. I have seen what Mr Pearson has suggested, and I recognise the merits of parliamentary scrutiny. Given the significance of the body in question, that will be essential. How that is best dealt with and whether it is best done by the Justice Committee or by some other means is an issue that we think is for the committee, the Presiding Officer and the wider Parliament to reflect on. We think that what we have built in provides the opportunity for that, but it is for the Parliament to build on it.

**Graeme Pearson:** You sound as if you would welcome amendments on the matter.

**Kenny MacAskill:** It would be fair to say that we are happy to look at the issue. We do not think that it is for the Government to decide how the Parliament constructs itself. We have taken the view that there are aspects of what happens down south with the Metropolitan Police in London that we may not want to replicate, and that we would be better to have the breadth that exists elsewhere. However, we are happy to listen to what the committee and others have to say. We are open to discussing the matter, because we accept the principle that Mr Pearson and others have put forward that, with single services—both police and fire—it is important that there should be parliamentary involvement and scrutiny, and that it might be best for the Parliament to decide on the shape of that scrutiny. We accept the logic and the merit of that position, and we are open to discussion.

**Graeme Pearson:** I think that you would also accept that the move towards a single service involves a fundamental change in the relationship between Government, the police and the public, which is why it is so important that we ensure that proper democratic oversight and governance are delivered from the outset.

**Kenny MacAskill:** Absolutely. We accept that, which is why we are happy to enter into discussion.

**Lewis Macdonald (North East Scotland) (Lab):** I would like to ask you about some of the fundamentals of the reform proposals. You will be familiar with the evidence that the committee has heard and the submissions that it has received. I will refer to three of those submissions.

The position of the Convention of Scottish Local Authorities is that there are alternatives to a non-departmental public body model, one of which could be a single shared local government service. Likewise, Unison said:

“A national police force could still be a local government body and this would provide a better governance model than that proposed in this Bill.”

Professor Jim Gallagher, a former head of the Justice Department, said:

“There is no reason in principle why a single force could not be part of local government.”

How much consideration have you given to the proposition that a single force could be achieved by the police service remaining within local government rather than by its forming part of national Government? What were your reasons for your judgment not to pursue that option?

**Kenny MacAskill:** We have been considering the matter for several years. When we went into the election, some parties had formed the view that we should have a single service. It would be

fair to say that my party said that the status quo was not tenable, but that a single service model and a regional model—which would have been much more local authority based—were both possible. After further consideration, we have come down in favour of the single service model, which is also supported by some of, if not all, the parties that are represented on the committee. We felt that the best way to proceed was the way in which we have been proceeding.

The Scottish police authority and the Scottish fire and rescue service will be distinct legal entities and will be classified as other significant public bodies. We want to ensure that they have the necessary skills and democratic accountability, some of which will come from local authorities. That is why we will ensure that we build in local authority representation.

The Government's only caveat is that we believe that those who represent local government—some of whom are outstanding—should be able to meet the criteria and quality tests that the Public Appointments Commissioner for Scotland would have for any other member of that board. I am sure that that is a matter that will be appreciated, given the size and significance of the board. Equally, there are other people who can bring an array of other skills and talents that are relevant to the running of a public body.

We think that the method that we have arrived at strikes the correct balance between allowing some democratic oversight and scrutiny and ensuring that we have the appropriate skills and resources to run what is a major public body with a significant number of staff members and a significant public budget.

10:15

**Lewis Macdonald:** Do you accept the point that has been made by COSLA, Unison and others that the fact that there will be a single force does not require it to be a national force—in other words, the single force could operate in a local government context, with a combined board, as it were? Do you further accept that that model has advantages over the model that you have brought forward?

**Kenny MacAskill:** Those suggestions have come in at a late stage. We have formulated a method that ties in a significant public body and which strikes a balance between democratic scrutiny and the requisite skills and talents that we feel are necessary to assist the chief constable and the chief fire officer in their jobs.

I have to say that some of the other models that have been suggested are not fully fleshed out. Although we have given consideration to the suggestion that you mention, it still lacks clarity.

**Lewis Macdonald:** One advantage of such a scheme would be in relation to VAT. In a recent letter to Unison that I have seen, a Treasury minister was clear that the Scottish Government was aware from the outset of what the limitations were on VAT exemption in the event of the creation of a national body that is no longer, in any respect, part of the local government sector. That is a difference from the position south of the border, where the Police Reform and Social Responsibility Act 2011 included a provision on VAT exemption to favour the new commissioners of police.

Can you indicate how far that aspect was considered when you decided that you would not pursue a local government option for the creation of a single force and a single fire service?

**Kenny MacAskill:** First of all, the VAT situation applies in relation to the Scottish Police Services Authority. That method was set up by a Government of which you were a member, not me. We have been and still are involved in negotiations with the Treasury. We do not feel that the door is closed. Negotiations are on-going between it and my colleagues in the finance department.

It would be fair to say that we very much regret the Treasury's current position, given issues of the sort that you heard about in evidence from Her Majesty's inspector of constabulary for Scotland and the assistant chief constable in Northern Ireland. It is a matter of regret that we are still involved in negotiations when the Police Service of Northern Ireland and, ironically, the security services of the United Kingdom are not in this position.

The door is not closed. Regardless of that letter, we seek to negotiate and, as I said, negotiations are on-going between the finance department and the Treasury.

We think that the single service strengthens the link between the police service and the fire and rescue service and the communities that they serve. The system that we will put in place—a pyramid structure, built from the bottom up—creates better accountability in places such as Orkney where, currently, two councillors go once a month to the chief constable's office in Inverness. That will be replaced with a situation in which every councillor in Orkney sits in the council offices once a month and hears from the local commander, who has come to see them. Similarly, in the Scottish Borders, Councillor Parker and his colleagues have also realised that, rather than having to send delegations to the headquarters of Lothian and Borders Police in Fettes Avenue, they will be able to ensure local accountability through meetings with the local commander.



Having considered the matter, we believe that the arrangement that we propose enhances local accountability. We take on board the fact that it will be a national service. That goes back to the points that were made, correctly, by Graeme Pearson. That is why, as well as building in local accountability at the base of the pyramid structure, we have to ensure that, at the top of the pyramid, there is accountability and scrutiny by the Parliament of Scotland.

**Lewis Macdonald:** In the structure that you have created, is there a role for local government on the national boards of the new services?

**Kenny MacAskill:** Yes. We have already said that, if the board has 11 members, four of them should be local authority representatives. I have discussed the matter with COSLA and we are genuinely open to discussions about the make-up of the board. That said, given that it will probably be the biggest and most important board in Scotland—and will, indeed, be bigger than the health boards with regard to budget and, in many cases, staff—it is important to ensure that those who serve on it have the skills and talent to assist the chief constable and the authority that will hold the chief constable to account and to deal with certain matters. We think that our approach will secure the best possible array of talent from local authorities and provide democratic accountability and representation on the board; equally, it will ensure that those who serve on the board have the ability to be on the board.

**Lewis Macdonald:** I have a final, short question, convener.

**The Convener:** Please make it very short. There is a big queue behind you.

**Lewis Macdonald:** Indeed.

Section 26(2) provides for the authority to make arrangements with “a third party” in relation to police staff. What is the purpose of that provision?

**Liz Sadler (Scottish Government):** That provision replicates the provision in the Police Act 1967, which allows the police authority to employ on a contract basis as well as directly.

**Lewis Macdonald:** Does it reflect any intention or expectation of taking a different approach to such matters?

**Liz Sadler:** Not at all.

**Humza Yousaf (Glasgow) (SNP):** Following on from Lewis Macdonald’s question about the make-up of the board, I want to ask about the size of the board itself. Although the majority of witnesses have said that the issue is one of quality rather than quantity, reservations have been expressed about the proposal that the board have seven to

11 members. Might there be any scope or leeway to increase that number?

**Kenny MacAskill:** I welcome all comments and advice on the issue. We plumped for a board of 11 on the basis of the Auditor General’s comments about the boards of the top FTSE companies. One would need the wisdom of Solomon to stipulate that the board should have nine, 10, 11, 12 or 13 members, and we are happy to take advice on the matter.

Nevertheless, we are certain that the issue should be quality, not quantity. Frankly, we also think that a huge board would be unworkable. For good reason, there is an optimum size of committee in the Scottish Parliament; after all, if you cannot squeeze everyone around the table, you have a problem. As I have said, we are happy to take on board members’ advice and comments on the issue. I repeat that it is all about quality, not quantity, but we need sufficient membership not only to reflect the fact that this is a national service but to take account of gender, ethnicity and Scotland’s geographical differences.

**Humza Yousaf:** How do you intend to reflect those factors in the board membership? Are you suggesting a quota of some sort?

**Kenny MacAskill:** Not at all. However, if whoever is in charge of selecting and clearing ministerial appointments does not balance the numbers, they will leave themselves open to appropriate criticism. It is a pivotal issue that must be examined.

**Humza Yousaf:** If it is recommended that the board be slightly increased, will you welcome an increase in the representation of locally elected people?

**Kenny MacAskill:** I am not persuaded that the majority of the board should be local authority members but logic would dictate that, if the board were to be increased beyond the proposed figure, the proposed local authority representation of four members would also be increased. I am happy to take on board the committee’s advice and thoughts, and I assure members that I am not being dogmatic or drawing a line in the sand. As I have said, we based the proposal of an 11-member board on the Auditor General’s comments; many successful companies have fewer board members, although some have more. Much of this comes down to having the flexibility to address issues.

**Humza Yousaf:** I have another question on the fire and rescue service, convener, but do you want me to ask that later?

**The Convener:** Alison McInnes has a question on the size of the board. After she asks it, I will let you back in.

**Alison McInnes (North East Scotland) (LD):** Given the size of the board, will the members be full time or part time? Have you considered a salary yet for those roles?

**Kenny MacAskill:** The board members will not be full time. Obviously, there will be a full-time chief executive, but we do not expect the chair or the board members to be full time. Their roles will involve more than simply a couple of hours every month or so. It will be one of the most prestigious boards on which to serve and it will be one of the most important in our country. However, we expect that the board members will be part time to allow those who have a variety of other roles to give their commitment to the board.

**Alison McInnes:** And the salary?

**Kenny MacAskill:** We have not given any consideration to that, but we will look at how it ties in.

**Nick Bland (Scottish Government):** We are looking at a salary that would fit within the banding for that size of public body. It is a band 1 body, to be technical about it, so we are looking at probably £300 per day for members and £450 per day for the chair.

**The Convener:** If you want to apply, Ms McInnes, you know how much the salary is now.

**Humza Yousaf:** It is not a bad rate at all.

**The Convener:** You are probably barred from the board, being a member of the committee—it is an either/or.

**Humza Yousaf:** I have a brief point on the fire and rescue service. There must clearly be a balance between being far too prescriptive and being far too vague about the service's functions. The Fire Brigades Union in particular believes that the new service has an opportunity to broaden its functions and be more inclusive in its work. Is there merit in what the FBU suggests? I thought that it made a good case at the committee.

**Kenny MacAskill:** We think that we have got the correct balance. Even in my lifetime, the fire and rescue service has gone from being about fire to being much more about rescue. A fire officer is more likely to cut you out of a vehicle than to pull you out of a burning house. The Government recognises that, whether we are talking about dealing with floods or other situations, the nature of the fire and rescue service has changed. That is why we have sought to ensure that we do not restrict its range of functions. There is a danger that if it goes too far in that regard, the service will become too specific. We think that we have the appropriate balance, but we are happy to discuss that. Lorna Gibbs might wish to comment further.

**Lorna Gibbs (Scottish Government):** The service's functions were last reviewed by the Parliament in the Fire (Scotland) Act 2005. We have not been persuaded that anything has changed significantly enough in the intervening period to change what is in the legislation. That said, in addition to the legislation there is the fire and rescue framework, which we are consulting on at the moment. That document is much more flexible and easier to change, so our preference would be to have more detail on the Government's priorities in the framework, which is a document that comes before Parliament. That would be less rigid than putting something in the bill.

**Humza Yousaf:** The FBU feels that the 2005 act does not quite cover enough. The FBU gave good examples about flooding on plains and other areas, and I thought that it made a very good case. However, you are reiterating that the detail perhaps should not be in the bill but in the framework.

**Lorna Gibbs:** We think that the detail is more for the framework.

**Humza Yousaf:** Okay.

**Kenny MacAskill:** We can give an absolute assurance that we recognise that the nature of the job is evolving because of the nature of what we do as a society. For example, 50 years ago there would have been no anticipation of the kind of chemical transportation that we do now. We think that it is important to have the flexibility to allow those who serve in the FRS to do what they think is required. We think that flexibility and related matters are covered by the bill. We do not want to box ourselves in with regard to what the FRS does by putting in a particular line in a particular statute. We believe that we have the right balance, but we are happy to reflect on that.

**Jenny Marra (North East Scotland) (Lab):** We have heard evidence that police officers are filling civilian staff roles at the moment. Given that police officers are paid significantly more than civilian staff, is that an efficient use of resources?

**Kenny MacAskill:** That is not my understanding, nor is it the understanding of the Association of Chief Police Officers in Scotland. Police officers are employed in a variety of roles and are not all front-line officers. Indeed, I was late in arriving at the Parliament today because I was with community police officers at Castleview primary school's citizenship day as they tied in with those who look after the park. The Scottish Government will not go in the direction that the Winsor review pursued in dividing the police family. Police officers have to do back-office jobs, just as they have to do jobs that are not always what you might view as front-line jobs but which are nonetheless important. We do not accept the

suggestion that police officers are doing jobs that are routinely dealt with by civilian staff.

10:30

**Jenny Marra:** That is interesting, as we have heard in evidence that that is happening in many police forces throughout Scotland. The Government introduced 1,000 additional police officers while 2,000 backroom staff were being made redundant. Given the fact that we have heard evidence that police officers are doing civilian jobs, have you not just replaced civilian staff with higher-salaried staff called police officers? Is it not disingenuous, at best, to call those 1,000 extra officers police officers, and could that not be misleading to the public?

**Kenny MacAskill:** No. Our position is that the additional officers serve in a variety of ways. We have sought to put them into communities, and there are other officers who do the jobs in the back office. I am aware from my constituency involvement that there is an issue about redundancies among police custody support officers at the St Leonard's police station in Edinburgh. When I challenged the chief constable about that I was told that, although that was the case, a police constable is more flexible than someone who does nothing when nobody is in the police cell, which is frequently the case between 10 o'clock and 5 o'clock. I was told that a police constable can be redeployed and that there is, therefore, a significant difference in salary. That is a matter for the chief constable, both now and in the future, and I will not interfere in it.

I do not recognise the scenario that you have painted. Indeed, the evidence that I hear from the police officers whom I meet is that officers carry out a variety of tasks, not all of which are front line, but they are all essential to keeping our communities safe. I welcome the contribution of support staff in carrying out a variety of tasks, but we do not see a scenario in which police officers take over civilian roles except in the scenario that I have described concerning the police custody support officers in Lothian and Borders Police.

**Jenny Marra:** In these tight financial times, I am sure that you more than anyone appreciate that an appropriate balance must be struck between civilian staff performing a task on a lower salary and the scenario that you just painted, in which Lothian and Borders Police are being a bit flexible and the chief constable is putting police constables into roles that were previously carried out by civilian staff. Are you going to give chief constables a clear indication of how they should balance civilian staff and police officers, given the financial constraints?

**Kenny MacAskill:** The decision that was taken by the chief constable of Lothian and Borders Police was perfectly sensible given the cost constraints on his force. It is much better that, when there is nobody to guard or watch at the St Leonard's police station, a police officer goes out and does something to make our communities safer. I do not wish to be disparaging about police custody support officers, but they could not do that. They are employed as police custody support officers and, when there is nobody in custody, there is nothing for them to do. Although the decision that has been taken by the chief constable is regrettable for the constituents whom I met, it is perfectly understandable in the circumstances, as it maximises the use of a police officer.

**Jenny Marra:** I have one last question, convener.

**The Convener:** Before you ask it, Graeme Pearson has a supplementary question on the same issue.

**Graeme Pearson:** There is a real problem here, cabinet secretary. Last week, you acknowledged that about 1,000 support staff jobs had gone in the past 18 months. It would be challenging to imagine that all those 1,000 people could be missing from the service with nobody fulfilling their functions. Many of them must have been engaged in essential work and, if they are no longer there, police officers will necessarily have to do that work.

In the current environment, given the concentration on the fact that there are 17,234 officers in the service, it would be understandable if administrators used their budgets to maintain that number and made savings in some other part of the service. That does not mean that efficiency is being delivered. I am not suggesting that any of those 17,234 officers are not essential—the public want more police officers on the streets—but is any effort being made to see whether sufficient budget is available to chief constables to fully support staff posts? I am thinking of forensic accountants, analysts, people involved in warrants and so forth.

**Kenny MacAskill:** Those are fundamentally matters for the budget and, if people oppose the budget that the Cabinet Secretary for Finance, Employment and Sustainable Growth has allocated to the justice department and onwards to the police, that is a matter for them.

Given the significant financial cuts, the police have received well the fact that their budget has been preserved to an extent. You are right that there has been a reduction in support staff, but that is an operational matter for the chief constable. As I said to Ms Marra, I reflect on such

matters when a constituent comes to me with concerns about them but, equally, I leave them to the chief constable.

We would certainly be concerned if significant essential roles were being lost but, so far, my understanding from discussions with the police is that they are coping with the situation, which is still resulting in a 35-year low in recorded crime. We think that that is related in no small measure to the fact that we have 1,000 additional officers. The Government remains committed to that.

**The Convener:** I will allow two more questions on support staff, not because I do not think that the issue is important, but because we are discussing the bill and I want to get back to it. I know it has consequences for staffing. We will take a question each from Humza Yousaf and Lewis Macdonald, and then we will move back to Jenny Marra on staffing.

**Humza Yousaf:** Kevin Smith from the Association of Chief Police Officers in Scotland said that, in all his experience, he had never seen police officers directly fill the function of support staff. Calum Steele also rebuffed that suggestion. The cabinet secretary says that staffing decisions should remain in the ambit of the chief constable's power over operational matters. How can he assure us that that power will not be compromised by the bill's references to ministerial direction?

**Kenny MacAskill:** The power of ministerial direction does not allow me to interfere with operational matters, because it refers to the Scottish police authority. It is for the chief constable, who will be accountable to the board, to decide how resources will be balanced between police constables and support staff.

I am aware of the concerns of the committee and others, but we have built into the bill clear requirements to ensure that the Cabinet Secretary for Justice, whoever he or she is, cannot interfere with operational decisions by the chief constable, whoever he or she is.

**Lewis Macdonald:** We have discussed the current position. There are proposals, contingent on the bill, for substantial savings over 15 years. Once you have dealt with duplication at chief officer level, will any savings not inevitably fall on police officers and support staff? If there is a VAT liability, will that not increase further the number of police staff posts that will be lost and require constables to, as you say, spend time in the custody suite rather than out on the street?

**Kenny MacAskill:** No, it will not do that because the outline business case was predicated on there being no VAT exemption. We still negotiate hopefully with the Treasury on that and continue to argue that there is a manifest injustice, as the PSNI and security services are exempted.

To deal with the fundamental point, savings have to be made. That is why we are moving towards a single service. If we do not, we will face the scenario that is playing out south of the border, where Her Majesty's Inspectorate of Constabulary anticipates that 16,000 officers will be lost. That will also impact upon others. Indeed, through the Winsor review, there is also an attack upon the terms and conditions of those who serve.

The Scottish Government has made it clear that it believes that keeping up police numbers is not negotiable and provides a safer community. Equally, it is unacceptable that I should go to police officers, who do a difficult and sometimes dangerous job—often putting their lives on the line—and tell them that we will lower their starting salaries, vary their terms and conditions and seek to divide them between front-line and community police. We are not prepared to countenance that, so I accept that there must be savings. Many of them will come from stopping duplication, and not simply the duplication that is involved in having eight chief constables plus all the ancillary staff that go with them.

In everything that Deputy Chief Constable Richardson examined, there has been a clear obligation to improve matters. I remember his comments on the waste of resources. For example, we have motorcycle deployment in every area, but with more flexibility we could probably achieve the same with fewer resources.

Will there be a reduction in support staff? The answer is probably yes. No matter whether we have eight boards or one, however, it will still be necessary to type in data, so a catastrophic loss could not be accepted as credible. Data input and analysis will still be necessary, but there is duplication out there and there will have to be some reduction to reflect that. If the number of chief constables goes from eight to one, their back offices, which are not insignificant, will go from eight to one, so there will be a reduction there. However, in taking that approach, we will avoid the scenario that is being played out south of the border, which is a reduction in police numbers—we regard our numbers as non-negotiable—and an attack on the terms and conditions of officers who serve, which we view as reprehensible.

**The Convener:** Thank you. We will move on. Jenny Marra has a second question, then we will have questions from David McLetchie, Alison McInnes, Graeme Pearson and John Finnie.

**Jenny Marra:** I will follow up on the cabinet secretary's comments on the situation that is being played out south of the border. The bill provides that staff may be

"provided to the Authority under arrangements between the Authority and a third party."

Can you assure us that all staff will be directly employed by the new police service and that there will be no back-door privatisation of our police service, with an impact on terms and conditions for staff?

**Kenny MacAskill:** Yes. Those will be matters for the police authority as the employer, but there will be no back-door privatisation.

**Jenny Marra:** Okay, so the provision about “arrangements between the Authority and a third party” for staff employment is to come out of the bill, is it?

**Kenny MacAskill:** I will ask Liz Sadler to comment, but I recall that her evidence was that such a provision has been in place since 1967. I was alive then, unlike Ms Marra, and my memory is that there was a Labour Government at the time. Perhaps Liz Sadler can enlighten us.

**Liz Sadler:** There always needs to be some flexibility for particular short-term projects. For example, there could be a research project or other work that needs to be done on a short-term basis, so there is a requirement to enable the police authority to employ staff on such contracts. However, there is no intention that that is to be the norm for the employment of staff.

**Kenny MacAskill:** There are scenarios in which things cannot be dealt with in-house. We see that in relation to the technical wizardry that is now available. It is often necessary to put the information technology stuff out to IT people. It is one thing to train up a police officer, but it is quite another if one is starting from scratch. We have seen difficulties in the police with personal digital assistants and various other matters.

My experience is that, as is the case here in the Parliament, it is sometimes necessary to give tasks to the people who are the experts, and that might mean giving them to a third party—without privatising the jobs, as I said. In such cases, what we are doing is getting the experts to do the work.

**Jenny Marra:** You are saying that some of the IT services will be outsourced.

**Kenny MacAskill:** No, I am not saying that at all. I have given you a scenario and explained that, as some things are complicated, it is better to have the flexibility to hire in the best possible advice. We can do that in a whole array of areas—not just in IT, but in accounts, finance or procurement. There are areas in which we need to take advice from the best possible people to do the work.

I give you an absolute assurance that the privatisation scenario that seems to be being looked at south of the border is not being—and never will be—considered by this Administration.

**Jenny Marra:** Thank you, cabinet secretary.

**The Convener:** There are mumblings about IT, but I am sure that both Graeme Pearson and John Finnie were techie wizards when they were in the police service.

David McLetchie—at last, this is your moment. I hope it has been worth the wait. Let us see.

**David McLetchie (Lothian) (Con):** I hope so, too. Good afternoon. Sorry—I mean good morning, everyone. It is not that late. I am losing track.

**Humza Yousaf:** That was not a good start.

**David McLetchie:** It was not.

Cabinet secretary, I want to ask you about the further submission that we received from COSLA following our discussion with Councillor Watters last week on the additional police officers who are employed by our forces as a result of the supplementary funding that a number of councils make available. In that evidence, Councillor Watters estimated that some 600 to 800 police officers are employed by our eight forces as a result of the additional subventions.

10:45

He went on to say that one should not necessarily assume that that funding would be in place in the coming financial year, 2012-13, because some councils might fear that they would be expected to continue to fund what is a discretionary payment by them on an on-going basis, so that all the officers who are transferred to the national force continue to be paid. Can you explain how the Government intends to ensure that funding will remain in place for the officers who are currently employed as a result of the additional funding contributions?

**Kenny MacAskill:** As Councillor Watters said, there is no suggestion that the funding is about to be pulled. As you say, the funding is put in by local authorities because they see a particular need. They have discussed the issue with the police and that is how we see the arrangements continuing. It would be for the local authority to discuss the issue with the police and for councillors to account to their own electorate if the officers were removed.

The Government is clear that we provide funding to the police for 17,234 officers. If local authorities wish to remove from particular areas additional officers who they currently pay for, that is a matter for which they are accountable to their own electorate. It is not for us to backfill; it is for us to provide the chief constable with the requisite number.

**David McLetchie:** Indeed, but there was a suggestion that the additional officers might be pulled. That is apparent in COSLA's additional submission, which states that Councillor Watters

"questioned whether councils would continue to fund these posts in 2012/13, given that the additional funding being provided would likely transfer with the posts out of Local Government and into the new single service budget to subsidise the commitment to 1000 extra police officers in the new single service."

Councillor Watters's suggestion is that that funding might be pulled in the run-up to the creation of the new service, which would clearly create a difficulty with the continued employment of officers, who would transfer to the new service under the Transfer of Undertakings (Protection of Employment) Regulations arrangements.

**Kenny MacAskill:** It would make no difference to the employment of the officers but it would make a difference to their deployment, because it would clearly be for the local commander and the chief constable to decide where the officers are deployed. The specific reason that they are currently deployed where they are is that the local authority has thought it essential to have them there. The chief constable has clearly thought that they are not necessarily essential, but they are willing to have them put there.

We believe that we will maintain police numbers. If the local authority wishes to retain the visible deployment in a particular area and the situation is perhaps not seen in the same way as it was before those police were deployed there, they will have to enter into discussions on the matter with the police, because we are not in charge of operational directions. I do not see why local authorities would seek to withdraw officers from areas where they thought there was a clear need to put them in.

**David McLetchie:** Indeed, but does that mean that the present establishment number will be maintained, irrespective of whether the councils that currently give the additional funding continue to do so? Is that what you are saying?

**Kenny MacAskill:** We have made it clear that we will maintain the figure of 17,234. We believe that that is essential. It is clearly for the chief constable to deploy officers and it will be for the chief constable and local commander to negotiate with local authorities.

**David McLetchie:** That sounds to me to be a positive incentive for the councils not to continue the funding into next year, because the officers will be employed come what may.

It has been suggested that, if councils are to continue to provide additional funding to the new national force, which I would like to think that they will—and I am sure that you would, too—it will be

difficult to demonstrate the additionality of the deployment that you have described. Without some kind of local budget base, when a council puts additional money into a particular area—usually to do with some kind of community safety scheme—how will it know that its contribution is additional and is not just filling a gap that has resulted from a deployment elsewhere?

**Kenny MacAskill:** Nick Bland might want to comment.

**Nick Bland:** We would expect the arrangements that are currently in place to continue in the new single service.

Currently, where local councils choose to pay for additional police officers from their own funding, there is some form of service-level agreement with the force regarding the deployment and use of the officers. They are identified as being funded by the local authority, and are deployed in a specific way in agreement with that authority. There is no suggestion that that arrangement would not continue in a single service.

**David McLetchie:** Yes, but how do you know that that money is additional to the funding for the force in a particular area? At present you know, because the budget is based on the police board of which the council is part. Unless there is a budget with some kind of localised base, how do you know that the extra money is extra, and that it is not just filling a gap that has arisen as a result of deployment elsewhere? How can you be confident that that is the case?

**Nick Bland:** One of the benefits of a single service is that, in any local area, the local commander can draw on that wider service and bring in specialist expertise when and where it is needed. A local authority area not only has a dedicated set of officers, but can draw on wider resources, specialist expertise, assets and equipment when such things are required.

**Kenny MacAskill:** In my discussions with COSLA, it was at pains—understandably—to ensure that local authorities would know what the baseline was on 1 April 2013. We will have that in place, so that we know where each authority is and what is specifically funded.

The real reason that I do not see the emergence of a doomsday scenario—to which Pat Watters alluded only as a possibility—is that the local authorities have agreed on the basis that a single service will add to community safety. In Broomhouse, for example, as in other areas of Edinburgh, I would have thought that if the council sought to withdraw, the only alternative would be to put in community wardens, and there would be an argument over the cost of deployment.

We expect the local authorities to work through those matters with the local commander, as we work through the pathfinders, to see where they can get additional benefits that will apply to their communities. We will provide them with the core resource for April 2013. As Nick Bland pointed out, they will get the additional benefits of being part of a single national service, in which resources for particular events that we hope do not occur will be available.

**David McLetchie:** Let us hope that the councils see it that way.

**Alison McInnes:** Cabinet secretary, you said that you believed that the bill would improve links with local authorities and communities. Many of us—not least COSLA—disagree with that.

Some—in fact, quite a lot—of the evidence that we have taken in the past month or so has related to the national-local relationship and how we define it. The bill potentially sets up a conflict between the local policing plan and the strategic plan, but it is silent on how to resolve that conflict. Many people have said that the lines of responsibility and accountability are not clear enough in the bill. Have you had time to reflect on that, and do you intend to introduce some clarity at stage 2?

**Kenny MacAskill:** I think that matters are clear. We are trying to build a pyramid structure with a firm base. We will reflect on what comes out of the pathfinders; there are 16 of those already, and more local authorities wish to come on board.

We will have the benefits of a local plan and the chief constable will ultimately be in charge of directing it. As with a variety of other things in Scottish life at present, such issues will be worked out through discussion.

**Alison McInnes:** That goes to the heart of the matter. You say that the chief constable will determine how resources will be deployed, so we might have more dialogue at local level, but there will be less accountability and less ability to direct those resources. COSLA has called from the most senior level for a right of response and for the bill to be amended to include a definition of the relationship between the chief constable and local authorities. Will you consider that?

**Kenny MacAskill:** I am happy to consider that. I do not necessarily think that the inclusion of such a definition is necessary, but I will not prejudge the issue. We will see what emerges from the pathfinders. Areas such as Orkney and the Scottish Borders are working closely with their local commanders and they see the benefits in that. We are seeking not only vertical but horizontal benefits. Part of the issue is how we will engage with the other services that are necessary to keep our communities safe. We are using the

pathfinders to see how things work out. It is not only about the vertical police-silo level, but about how we mix the police in with other agencies to ensure that we get the best possible system.

**Alison McInnes:** That is why chief constables are best placed to be part of the local authority family. It is about horizontal integration.

That takes us on to community planning partnerships, which are key. We have heard evidence that, given the scale of the reorganisation, there will inevitably be a period of inward reflection when the police service is sorting itself out and it will not be so easy for it to be involved in the community planning partnerships. According to evidence that we have received, Northern Ireland looks fondly on our community planning partnerships and says that it is way behind us. It would be useful if you could define in the legislation the role of the community planning partnerships. As I understand it, the local commander has responsibility for responding to community planning partnerships at the moment. There would be real benefit in giving the chief constable that responsibility.

**Kenny MacAskill:** At the end of the day, we want to see what works. That is why we are doing the pathfinders. Not everything is dealt with at local authority level. That is why health boards are structured in a variety of ways; in my experience, we in Parliament have changed the number of health boards in Scotland. We must ensure that we get the best possible system of integration.

We recognise the benefits of community planning partnerships, and we think that the proposals add something. Instead of joint police boards sitting separately—apart from in the two parts of Scotland where there are unitary boards—we are putting them into the local government family, which they will enhance. We need to ensure that not just the services that rest within local authorities but services such as health co-operate in that. We are proceeding on the pathfinders to see what works. There might need to be some flexibility between various communities, which is why we are setting it in the legislation that it will be dealt with at local authority level and we have said that we will not interfere with local authorities if they wish to consider sharing.

**Alison McInnes:** You have said that there is quite a lot that we still need to sort out, yet you are determined to have all of this in place by 1 April next year. Is it time to draw breath?

**Kenny MacAskill:** No. We see the pathfinders as a way of ensuring that we have a seamless transition at 1 April 2013. We have always said that various matters will be for the chief constable and police authority to work out. It is accepted that

it will ultimately be good to have a single payroll and to reduce replication of functions times eight and, in some instances, times nine. It will be for the chief constable and the SPA to work out where those functions should be located, and whether they should follow a unitary or a regional model. We have to ensure that the currently outstanding provision by the police service and fire and rescue service continues to be outstanding as the clock strikes midnight and we head into 1 April 2013. Thereafter, it will be for the chief constable, working with others, to work out what happens.

**Roderick Campbell:** You talked about the pathfinder projects. Is there a case for the bill being more prescriptive in relation to local arrangements for scrutiny and engagement?

**Kenny MacAskill:** We are happy to consider that. We think that we may have a basis for doing that: it will to some extent depend on the outcome of the pathfinders. We will feed back into that. We have to recognise that things change and flow. Although we are ensuring that the set-up is built around the possibility of 32 local authorities acting individually, I have made it clear to local authorities that if they think that it is better to share with a neighbouring authority, I will not say that they cannot. If they think that that will add to democratic scrutiny and accountability and ensure that we get a better service, I am comfortable with that. We need a legislative base that not only provides for the separation of powers and the building blocks of the pyramid structure, but gives an element of flexibility. If, for example, Stirling and Clackmannan wish to share a police and fire committee, they can do so.

11:00

**Nick Bland:** Part of the purpose of the pathfinders, which will run through the coming year, is to inform the development of national guidance on operation of the scrutiny and accountability arrangements. Instead of putting any prescriptions in the bill, we will take what we learn from the pathfinder process and put it into guidance outwith primary legislation.

**The Convener:** Can I clarify the timetable in that respect? Will the outcome of the pathfinders not be known until the bill has concluded its passage?

**Nick Bland:** The pathfinders are separate to the bill.

**The Convener:** I know that, but there have been a lot of comments about knowing this or that when the outcome of the pathfinders is known. Will you know that outcome after the bill has been passed?

**Nick Bland:** Yes. Local authorities that have come forward to be pathfinders and are working with the services in their local areas will over the coming year develop their arrangements. We will take what we learn from those arrangements to inform the development of national guidance, which will be in place for 1 April 2013.

**The Convener:** You are talking about guidance, and not primary legislation.

**Nick Bland:** Yes.

**Kenny MacAskill:** As I have said, the legislation is meant not only to set out the necessary basics but to give flexibility to allow for other matters.

**Lewis Macdonald:** In your response to Alison McInnes, you acknowledged that the operational delivery of services might happen on a unitary or regional basis. If the structure is a regional one, how do you envisage democratic accountability working with regard to regional decisions on roads policing and other such matters?

**Kenny MacAskill:** That is for the police authority to work out; after all, it will hold the chief constable to account. Equally, I have no doubt that the local commander will be made aware by the police authority of any dissatisfaction at local level. However, it is up to the chief constable and those who work for him to deal with such operational issues. It might be best to deal with certain matters more flexibly.

**Graeme Pearson:** We need to put some flesh on how this is going to work, because it is a major concern for many of us around the table. Will the local commander be able to lay out to and share with the local committee a picture of the financial resources, the personnel and the other forms of support that will be at his or her disposal? Is that part of your plan?

**Kenny MacAskill:** Many local commanders are already allocated budgets. No matter whether we are talking about the police or anyone else, no organisation can work on an entirely centralised budget, and that will be the case when we move to a single service. The size of the budget will be a matter for the local commander to work out in conjunction with the chief constable, but I expect the local commander to discuss it and to interact with others on it. I presume that they will also seek added value from other agencies, which brings us back to the role of the CPP.

**Graeme Pearson:** What if, after that pen-picture of locally available services is shared with the board, there is disagreement in that forum? You have indicated that a divisional commander could raise with the chief constable any unhappiness at local level, but how will the political and democratic elements work themselves out in the



national board? Will there be a channel for making representations or for debating and resolving issues?

**Kenny MacAskill:** Any such issues will have to be dealt with by those who are involved at the time. It will depend on the nature of the problem. The authority can make representations to the commander, who can, in turn, make representations to the chief constable. Equally, it will be possible for the local authority board to make representations to the police authority. It is not up to me to work out how the police authority deals with such matters; we need to leave them to the police authority and the local authority police committee. They will have the opportunity to do so. I have no doubt that they will, that the situation will evolve and that things will work out.

**Graeme Pearson:** It is important that there be a channel to resolve issues. David McLetchie mentioned the possibility that a local authority might invest resources but be unhappy about whether it was getting value for money and about whether the resources were being used elsewhere. Will there be a democratic way to resolve such matters between the local committee and the national board?

**Kenny MacAskill:** I have no doubt that the local authority would go to the national board.

**Graeme Pearson:** Let us move on to national oversight—the governance that we spoke about earlier. Would you also welcome the fact that any parliamentary involvement would be proactive, in that rather than responding to reports, there would be a regular meeting of a group within the Parliament to review national strategy and how business was being done on the national board?

**Kenny MacAskill:** That would be best left for Parliament to work out.

**Graeme Pearson:** I am asking for your opinion.

**Kenny MacAskill:** My opinion is that we should get the balance right between avoiding having an authority like that in metropolitan London, which sits regularly and looks over the shoulder of the police authority and the chief constable, and ensuring that we have an authority that deals with matters that are correctly the remit of Parliament when there is significant concern, and which is equally able to ensure that it is satisfied with how things are going.

I welcome parliamentary involvement, although I caveat that with the thought that the Justice Committee is best placed to deal with such subjects because of its breadth of knowledge. By its nature, that would mean something more than the chief constable's appearing before you once a year and reporting to you when matters of concern arise. I have no doubt that the committee would

seek to investigate and to drill down and be available if there were issues of concern, such as a dispute between a local authority area and the national board.

**Graeme Pearson:** You would accept that the philosophy—certainly in Scotland—is that we have policing by consent and that that consent can be offered only knowingly. Although it is a great gift to have people such as you in the justice department, one looks to the future when others might not be so well-meaning. There needs to be some form of governance in such circumstances.

**The Convener:** I am missing this flirtation. I had drifted away; I see you smiling at each other.

**Graeme Pearson:** There is time to come to it.

Cabinet secretary, you must welcome the fact that the Parliament would proactively engage in such matters.

**Kenny MacAskill:** We do not want to specify what the Parliament must do. There is obviously this committee as well as the remit of the office of the Presiding Officer. As a Government, we think that the Parliament has a clear role. The authority will have a role in holding people to account and in ensuring that matters are dealt with as best they can be. There is a clear role in examining some of the more political aspects, if we can put it that way, of ensuring that we get policing by consent. That is why when issues such as Taser use have been brought to me, I have said that they are operational matters that are best dealt with by the authority or, ultimately, considered by the Parliament.

**The Convener:** I am just dwelling on the word “gift”. That does not mean that your amendments will go through on the nod, Graeme, although we will see.

**Graeme Pearson:** I know that.

**Colin Keir (Edinburgh Western) (SNP):** Good morning, cabinet secretary. What are your views on the effectiveness of any new local board that might spring up in the coming months in comparison with the current boards? How effective will the new boards be? A number of comments have been made about the accountability of the chief constable, who provides reports to the board, which then holds him to account, and the relative security clearance of certain members. How do you perceive the local aspect of the police boards being continued and how effective could they be?

**Kenny MacAskill:** First, as I said earlier, it will be enhanced. There is a dynamic change. Even in the unitary authorities, people will be going to the council as opposed to the office of the chief constable. It is a little like the fact that I have come here to give evidence today—if you were coming up to my office in St Andrew's house, that would

be vastly different. That would change the dynamic and it is important to consider that.

Secondly, as I said, in places such as Orkney, rather than two councillors, every councillor will be involved. Even in the Borders, rather than two or three councillors going up to Fettes Avenue—I cannot remember how many—if not a full council, then certainly a full council committee will be in charge of scrutiny.

We are conscious that there will be change, and we are looking to work with the current police board conveners, their clerks and COSLA to ensure that, after the local authority elections—when, doubtless, many current police and fire board conveners will be returned, but others might not be—we provide resources and support so that, in going towards the unitary authority, people who have already been quite immersed in police matters will move in when the local authority board is set up, as opposed to a person waking up on 1 April and discovering that they are the police convener in Orkney. It is a matter of working with the local authorities and the current police boards to ensure a seamless transition. I think that that will happen and that accountability will be enhanced.

**John Finnie (Highlands and Islands) (SNP):** Good morning, cabinet secretary. I want to ask about two apparent gaps in the bill, and part of the bill on which people have mixed views. The gaps relate to what might be referred to as mutual aid. We heard about the cross-border arrangements for the fire and rescue service from the Chief Fire Officers Association Scotland. It seems that a pragmatic approach is taken that is not necessarily supported by a legislative framework. That was perceived as one gap. The other gap is the bill's silence on mutual aid arrangements with the British Transport Police. To balance that, there are differing views on the police investigations and review commissioner. You may be familiar with the line of questioning on who would have primacy. It is important that there is public confidence in the arrangement.

Will you comment on those three issues, please?

**The Convener:** The police investigations and review commissioner is a separate issue from the other two.

**John Finnie:** There are two deficiencies, and there seem to be widely ranging views on the police investigations and review commissioner.

**The Convener:** That is fine. I am just separating the questions.

**Kenny MacAskill:** You are right. There are issues to do with cross-border mutual aid and how we would interact with the British Transport Police,

the Civil Nuclear Constabulary and Ministry of Defence police. Obviously, we want to ensure that that assistance continues. Officers require to be assisted, and we welcome the assistance that we receive from the BTP. In my experience, even Northern Constabulary quite often used to welcome assistance by the Civil Nuclear Constabulary.

We are working with UK departments on that, and amendments will have to be tabled down south. Suffice to say, we know what has to be done, and all parties want to ensure that officers, irrespective of their cap badge, continue to provide mutual support. We expect to be able to work that out, although I cannot give members precise details on that at the moment. The issue will have to be dealt with south of the border and, I presume, by a legislative consent motion here.

**John Finnie:** I also asked about the cross-border fire arrangements and the police investigations and review commissioner.

**Lorna Gibbs:** I will pick up the fire point. The approach is similar to that which is being taken with the police. We are discussing matters with colleagues down south to clarify the position and put beyond any doubt the fact that the new service will be able to have mutual arrangements with colleagues south of the border. Again, that will need to be done through the Scotland Act 1998. We are pursuing that matter positively with officials in the UK Government.

**John Finnie:** Will that pick up on any concerns about pension arrangements that the FBU perhaps has?

**Lorna Gibbs:** I need to double-check the point about pension arrangements. We can do that and get back to you.

**Kenny MacAskill:** We are happy to do that.

We are aware of comments that have been made about the police investigations and review commissioner. Obviously, it is about getting the balance right and ensuring that we maintain public confidence and meet our human rights obligations. We are willing to look at how we can best deal with matters; some will best be dealt with through regulations—section 67 of the bill specifies that—and we are happy to look at any further change to the bill if it is necessary to ensure that, while we maintain public confidence, we do not perhaps provide for a role that would be prospective rather than reactive.

**The Convener:** I thank the cabinet secretary for taking questions. I suspend the meeting to allow the witnesses to leave.

11:15

*Meeting suspended.*

11:16

*On resuming—*

## Subordinate Legislation

### Police Pensions (Contributions) Amendment (Scotland) Regulations 2012 (SSI 2012/71)

**The Convener:** Item 3 is further consideration of the Police Pensions (Contributions) Amendment (Scotland) Regulations 2012 (SSI 2012/71). We first considered this negative instrument at last week's meeting and agreed to write to the Cabinet Secretary for Justice, asking him for examples of the amount of contribution increases that serving police officers might face from 1 April 2012 and how those compare to contribution increases for firefighters and those who work in other areas of the public sector. I refer the committee to the cabinet secretary's response, which is in annex C of paper J/S4/12/11/3. Do members have any comments on the response?

**David McLetchie:** I raised the matter and I am grateful for the additional information. The cabinet secretary was vehement when he talked about attacks on the terms and conditions of police officers. I presume that this statutory instrument, which is being put forward by the Scottish Government and which increases police officers' pension contributions, does not constitute an attack on their terms and conditions.

**The Convener:** Does the committee agree that we do not wish to make any recommendation in relation to the instrument?

**Members** *indicated agreement.*

### Civil Legal Aid (Scotland) Amendment Regulations 2012 (SSI 2012/64)

**The Convener:** Item 4 is consideration of the Civil Legal Aid (Scotland) Amendment Regulations 2012 (SSI 2012/64). It feels like groundhog day. The Subordinate Legislation Committee has drawn the Parliament's attention to the instrument on the ground that its drafting appears to be defective.

**David McLetchie:** Oh, crumbs—not again.

**The Convener:** Two conflicting provisions with regard to transferring certain moneys held by the Scottish Legal Aid Board appear to apply at the same time. The Subordinate Legislation Committee considers that the instrument does not deliver the intended policy of transferring certain moneys from a general account held by the Scottish Legal Aid Board to the Scottish legal aid fund. As members will see from paper J/S4/12/11/4, the Subordinate Legislation Committee has expressed doubt over whether

Scottish ministers can rectify the conflict by using a ministerial determination.

What do we want to do? I am not sure whether the Subordinate Legislation Committee has written to the cabinet secretary about this.

**Peter McGrath (Clerk):** It has written to officials.

**The Convener:** Does the committee want to write to the Government or to ask the cabinet secretary to give us evidence on the instrument, or should we leave it be and let the Subordinate Legislation Committee deal with the matter?

**David McLetchie:** Is the Subordinate Legislation Committee dealing with the matter or has it referred it to us?

**The Convener:** It has referred it to us, so we must deal with it—you are quite right.

**David McLetchie:** The previous set of drafting errors, which cropped up last week, were, by and large, ignored on the basis that—if I remember correctly—they would just be ignored by anybody interpreting the instrument. However, in this instance the effect of the flaw seems to be a bit more fundamental and substantial than just ending up with some words in the legislation that would be ignored. Therefore, I do not think that we can ignore it. Why can the Government not withdraw the instrument, lodge another one and get it right from the start?

**Graeme Pearson:** Can we invite the Government to do that?

**The Convener:** Yes, we can write to the Government, asking whether it would consider doing that. If it would not, we can ask why not; if it would, we can ask when we will see the new instrument. What do members think?

**John Finnie:** Would the issue of the possibility of successors challenging to recover the moneys be covered? That seems to be an additional concern.

**The Convener:** We do not know the answer to that. David McLetchie has rightly stated that the error is a substantive matter and it seems to me that we should not let it pass, but I am not a minister. I think that we should write to the Government, asking whether it would be appropriate for the instrument to be withdrawn and corrected. Perhaps somebody could be rapped over the knuckles in the process for an "Oh, crumbs—not again" moment.

**Graeme Pearson:** We will get a snotty letter back, like the last time.

**The Convener:** We like snotty letters, Graeme. We feel that we are doing our job when we get

snotty letters. Good grief—they will put “snotty” in the *Official Report* now.

11:20

*Meeting continued in private until 12:42.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

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