FINANCE COMMITTEE

Tuesday 2 February 2010

Session 3

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FINANCE COMMITTEE
3rd Meeting 2010, Session 3

CONVENER

*Andrew Welsh (Angus) (SNP)

DEPUTY CONVENER

Tom McCabe (Hamilton South) (Lab)

COMMITTEE MEMBERS

*Derek Brownlee (South of Scotland) (Con)
*Malcolm Chisholm (Edinburgh North and Leith) (Lab)
*Linda Fabiani (Central Scotland) (SNP)
*Joe FitzPatrick (Dundee West) (SNP)
*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)
*David Whitton (Strathkelvin and Bearsden) (Lab)

COMMITTEE SUBSTITUTES

Gavin Brown (Lothians) (Con)
*Lewis Macdonald (Aberdeen Central) (Lab)
Stewart Maxwell (West of Scotland) (SNP)
Liam McArthur (Orkney) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Jackie Baillie (Dumbarton) (Lab)
Fiona Hyslop (Minister for Culture and External Affairs)
Shona Robison (Minister for Public Health and Sport)
John Swinney (Cabinet Secretary for Finance and Sustainable Growth)
Karen Whitefield (Airdrie and Shotts) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Bruce Beveridge (Scottish Government Rural Directorate)
Iain Dewar (Scottish Government Rural Directorate)
John King (Registers of Scotland)
Iain Matheson (Scottish Government Rural Directorate)

CLERK TO THE COMMITTEE

James Johnston

SENIOR ASSISTANT CLERK

Terry Shevlin

ASSISTANT CLERK

Allan Campbell

LOCATION

Committee Room 1

Scottish Parliament

Finance Committee

Tuesday 2 February 2010

[THE CONVENER *opened the meeting at 14:00*]

Public Services Reform (Scotland) Bill: Stage 2

The Convener (Andrew Welsh): Good afternoon and welcome to the third meeting in 2010 of the Finance Committee in the third session of the Scottish Parliament. I have received apologies from Tom McCabe; I welcome Lewis Macdonald, who is his substitute.

I ask everyone to turn off their mobile phones and pagers, as they interfere with the broadcasting system.

Agenda item 1 is stage 2 consideration of the Public Services Reform (Scotland) Bill. I welcome to the meeting the Cabinet Secretary for Finance and Sustainable Growth, John Swinney MSP, and his officials.

I intend to move straight to consideration of amendments, as we did in last week's meeting. I should say at the outset that we have two weeks to complete consideration of the bill to the end of part 5.

After section 25

The Convener: Amendment 70, in the name of Derek Brownlee, is grouped with amendments 70A, 70B, 71, 71A, 71B, 72, 72A, 72B, 72C, 73, 73A, 73B, 73C, 74, 74A, 74B, 74C, 75, 75A, 75B, 75C, 76 to 79 and 109. I point out that an amendment to an amendment is disposed of before the original amendment.

Derek Brownlee (South of Scotland) (Con): I will explain in broad terms what the amendments in my name seek to achieve.

Amendment 70 requires bodies that are listed in schedule 3 to conduct their functions to the extent that it is possible for them to do so in a way that best promotes the Government's main purpose of achieving sustainable economic growth and to report on the steps that have been taken to do so. Nothing in amendment 70 will dilute the organisations' main roles or responsibilities. The provisions are analogous to those on user focus in part 6.

The design of amendment 71 is similar to that of amendment 70, except that it places a duty on bodies that are listed in schedule 3 to conduct their functions in a way that improves efficiency and reduces the cost of conducting them to the extent that that can be done. Again, nothing in amendment 71 will dilute the organisations' roles or responsibilities.

Some might consider that quarterly reporting is too onerous. Under amendments 70A, 70B, 71A and 71B, reporting would be done on an annual basis.

Amendments 72, 73, 74, 75 and 109 require listed bodies to provide details of expenditure on certain items, such as hospitality and overseas travel. Amendment 79 allows those provisions to be amended by order, and amendments 72A, 72B, 72C, 73A, 73B, 73C, 74A, 74B, 74C, 75A, 75B and 75C move the reporting requirement from being quarterly to annual in case anybody considers quarterly reporting to be too onerous.

Amendments 76 and 78, which form a distinct sub-group within the group, concern the publication of payment details for remuneration and non-contractual payments in certain circumstances. Amendment 77 is a general provision that requires bodies to publish statements on expenditure of more than £25,000. It is not intended to require the disclosure of employees' remuneration.

The amendments are founded on the basic principle that greater transparency in spending is, of itself, likely to be a restraint on spending. They are based on our successful experience of the Freedom of Information (Scotland) Act 2002 and openness with MSPs' allowances, which demonstrates that it is possible to have greater transparency on expenditure without some of the wilder fears that some have expressed coming to fruition. Transparency is a helpful principle, and it underpins the amendments. Promoting transparency is consistent with the overall aim of the bill of improving the efficiency and effectiveness of public services in Scotland.

I move amendments 70 and 70A.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I understand the rationale behind the amendments, but they have significant flaws that could make the efficiency of the public sector considerably worse. Amendments 70A and 70B would reduce the frequency of reporting by public bodies on reaching their targets for sustainable growth—there would be annual reports rather than reports every quarter. I understand that that is intended to increase organisations' efficiency and reduce their burdens.

However, I cannot understand amendment 77, which would create a statutory duty to produce quarterly reports on every item of expenditure over £25,000. There is no indication of the cost of providing such reports. Given that schedule 3 includes public bodies with expenditures in excess

of billions of pounds, the burden of producing such reports could be considerable, but Mr Brownlee has not referred to that. I acknowledge that he said that amendment 77 is not intended to cover employees. However, the amendment refers to

"any individual item they have procured or purchased",

which would not eliminate staff, particularly contract staff, who are used in considerable numbers in the national health service and the public sector generally, from being regarded as an "item". Such contract staff are an item of procurement and amendment 77 would therefore make it a statutory duty for information on all such items to be published quarterly. Bodies would be mired in that task every three months, which would outweigh almost every aspect of the bill that is intended to improve efficiency in the public sector. Amendment 77 is therefore significantly flawed.

John Swinney (Cabinet Secretary for Finance and Sustainable Growth): I will respond to what has been said and go through the detail of the amendments. I am broadly sympathetic to all the amendments in this group and I support a number of them as they stand, but I have comments on some details. It might therefore be helpful for me to address the amendments in the group in four sub-groups, the first of which comprises amendments 72 to 75, 79 and 109, as further amended. Those amendments impose statutory duties on all persons, bodies and office-holders—large and small—listed in schedule 3, including the Scottish Government, to publish annually a range of information about certain types of expenditure, thus improving public understanding of the way in which public money is spent. I agree with and welcome Mr Brownlee's further amendments requiring publication on an annual rather than a quarterly basis in order to minimise the burden on public bodies, so I am happy to support amendments 72, 73, 74, 75, 79 and 109, as further amended.

I want to consider further some points of detail, with a view to tidying them up at stage 3. For example, we will wish to ensure that definitions are sufficiently clear to achieve consistency in reporting. There might also be merit in modifying the order-making power to be introduced by amendment 79 to make it possible to add to, delete or modify the categories of information and the frequency of reporting, adjust the relevant reporting thresholds and the bodies to which the requirements apply, and publish guidance on exactly what is required.

The second sub-group comprises only amendment 77, which would impose a duty on

"each person, body and office-holder ... in schedule 3"

to publish quarterly a statement of items

"procured or purchased ... which cost in excess of £25,000."

I am happy to support amendment 77 in principle, but I think that careful consideration needs to be given to ensuring that information should not inadvertently be published in breach of confidentiality, data protection or security arrangements. We also need to ensure that the cost to the public sector of operating such a scheme is kept to a minimum. It is possible for the application of amendment 77 across the public bodies listed in schedule 3 and the reporting frequency to be proportionate to their size and level of expenditure. My comments about amendment 79 cover that point.

The third sub-group comprises amendments 70 and 71, as further amended. On amendment 70, the committee will be aware that public bodies throughout Scotland are expected to align their activities with the Government's national performance framework. I am therefore sympathetic to the proposition that key public bodies should be required to report—possibly as part of their annual reporting arrangements—on how they contribute to sustainable economic growth in a way that is consistent with their statutory functions. I am not convinced that amendment 70, as drafted, is sufficiently focused or clear in its effect, but I am happy to give an assurance that we will discuss with Mr Brownlee the possibility of developing an appropriately focused duty on bodies to make it clear what specific actions they have taken to promote sustainable economic growth. On that basis, I invite Mr Brownlee not to press amendment 70.

Similarly, although I am sympathetic to the thinking behind amendment 71 and welcome the support for a greater focus on efficiency throughout the public sector, I am not convinced that the amendment as drafted is sufficiently focused or clear in its effect. I am therefore unable to support it as it stands.

Best-value principles already apply to public bodies. In addition, all accountable officers have duties imposed on them in respect of their financial authority. For instance, accountable officers in the Scottish Administration have a duty to ensure that the resources of the Administration are used economically, efficiently and effectively. Individual organisations already publish details of efficiencies and the Scottish Government's annual report on the efficiency programme for the whole of the public sector is scrutinised by Parliament. Although I believe that existing structures provide the safeguards that the amendment seeks, I am happy to give an assurance that we will work with Mr Brownlee with a view to considering whether further steps are necessary to underpin the delivery of public sector efficiencies and, if

necessary, to lodge an amendment at stage 3. On that basis, I invite Mr Brownlee not to move amendment 71.

Finally, on amendments 76 and 78, I fully recognise that there is growing public interest in the disclosure of public sector pay and performance payments and there ought to be transparency and accountability about the remuneration of top public sector earners. However, the committee will appreciate that these arrangements touch on complex data protection and employment law issues, on which it is crucial to ensure that terminology is accurate and unambiguous and that any new arrangements are constructed carefully. Although amendment 76 seems to introduce a straightforward duty, which does not require the names of the relevant employees to be disclosed, there may be instances where the number of staff in relevant positions is so small that individuals may be identifiable. In those circumstances, there will be data protection issues to take into account.

Another key consideration is that disclosure arrangements are already in place for the Scottish Government and a number of larger bodies whose accounts are prepared in accordance with a financial reporting manual that requires the publication of a remuneration report. A consultation is due to conclude shortly on whether the financial reporting manual should be amended to include additional disclosures about remuneration and exit packages. I am keen to ensure consistency in reporting arrangements for bodies that are covered by the reporting manual and to ensure that the drafting of any amendment in this complex area is clear and unambiguous. I therefore invite Mr Brownlee not to move amendments 76 and 78. I give an undertaking to explore whether it is possible to find a way of delivering the intended effect of the amendments that neither cuts across existing disclosure requirements nor falls foul of data protection and employment law requirements.

Derek Brownlee: I am grateful to the cabinet secretary for the tone of the Government's response to the amendments, which are intended to produce greater transparency and to take reporting by government bodies in a way that should not cause any party in the Parliament significant concern. I will address the points that he made on the four sub-groups. I am grateful for the general support for the first sub-group, on the reporting of information. I take on board the concerns that have been raised about some aspects of confidentiality or data protection in relation to the second and fourth sub-groups. None of us would wish inadvertently to place a statutory requirement on bodies that would put them in an awkward position in relation to pre-existing statutory obligations. I am grateful to the Government for its response in relation to amendments 70 and 71, particularly on whether a better way can be found to focus the attention of bodies on these important areas. I suspect that I will need some guidance from you on the amendments, convener. I think that I have moved amendment 70A.

The Convener: You have moved amendments 70 and 70A.

Derek Brownlee: Given the commitments that the Government has made, I seek the committee's approval to withdraw amendments 70 and 70A.

Amendment 70A, by agreement, withdrawn.

Amendment 70B not moved.

Amendment 70, by agreement, withdrawn.

Amendment 71 not moved.

Amendments 71A and 71B not moved.

14:15

Amendment 72 moved—[Derek Brownlee].

Amendments 72A, 72B and 72C moved—[Derek Brownlee]—and agreed to.

Amendment 72, as amended, agreed to.

Amendment 73 moved—[Derek Brownlee].

Amendments 73A, 73B and 73C moved—[Derek Brownlee]—and agreed to.

Amendment 73, as amended, agreed to.

Amendment 74 moved—[Derek Brownlee].

Amendments 74A, 74B and 74C moved—[Derek Brownlee]—and agreed to.

The Convener: Mr Brownlee, do you wish to press or withdraw amendment 74?

Derek Brownlee: After all that, I had better press it.

Amendment 74, as amended, agreed to.

Amendment 75 moved—[Derek Brownlee].

Amendments 75A, 75B and 75C moved—[Derek Brownlee—and agreed to.

Amendment 75, as amended, agreed to.

Amendment 76 not moved.

Amendment 77 moved—[Derek Brownlee].

The Convener: The question is, that amendment 77 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brownlee, Derek (South of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Welsh, Andrew (Angus) (SNP)
Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

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

Amendment 77 agreed to.

Amendment 78 not moved.

Amendments 79 and 109 moved—[Derek Brownlee]—and agreed to.

The Convener: Amendment 195, in the name of Karen Whitefield, is grouped with amendment 196.

Karen Whitefield (Airdrie and Shotts) (Lab): Both amendments in the group place duties on local authorities. Amendment 195 requires local authorities to prepare a kinship care strategy by 12 months after royal assent to the bill. Amendment 196 requires local authorities to prepare and publish a strategy on support for disabled children and their families and to explain what financial support they have provided under that strategy.

Committee members will be aware that kinship care and support for disabled children and their families are issues to which the Parliament and the Government have given considerable priority in the past few years. It is for that reason that the amendments would be helpful additions to the bill. I do not believe that Scotland's local authorities will not be working in these areas. They already do so, and the vast majority of them have already prepared or are preparing strategies on kinship care and support for disabled children and their families. However, placing a duty on them to do that will ensure that it happens, that we can easily access the information and that there is a degree of transparency and openness that might not otherwise exist.

Amendment 196 responds to the concerns of the for Scotland's disabled children coalition and its current campaign. The parents of disabled children campaigned long and hard for additional resources to support their children and to provide respite care. The Scottish Government benefited from £43 million-worth of budget consequentials from that and there is a campaign to find out exactly where that money has been spent. I believe that local authorities will spend it wisely on such services, and amendment 196 will allow a degree of transparency in how it is being spent.

I move amendment 195.

John Swinney: Amendments 195 and 196 run the risk of cutting across the philosophy and practice of community planning and the getting it right for every child approach to services for children.

Amendment 195 seeks to impose an additional statutory function on local authorities to produce kinship care strategies. Requiring a kinship care strategy by statute would run the risk of distorting local priorities by placing emphasis on the system at the expense of the child's needs. Similarly, amendment 196 proposes the creation of a duty on local authorities to establish, review and report against an annual strategy for supporting families with disabled children. Users of children's disability services identify inflexible bureaucracy as the single greatest barrier to achieving the child-centred services that meet their children's needs.

In addition, amendment 196 seeks to supplement existing frameworks for identifying and addressing additional support needs under the Education (Additional Support for Learning) (Scotland) Act 2004, the Disability Discrimination Act 1995 and the disability equality duty. In particular, the disability equality duty includes a specific requirement for any public authority to develop and implement a disability equality scheme for the whole authority and a separate education disability equality scheme that must report on the opportunities that are made available to disabled pupils and on their achievements. Therefore, additional frameworks are unnecessary.

Rather than tying authorities to dedicated single strategies that are directed and resourced from the centre, we seek to encourage agencies to adopt voluntarily a common language and approach that focus on the child and are accompanied by flexible working to support individual children and families. That means working across boundaries between education, social work, health, police and the third sector so that families experience support from a single team. We have a clear relationship with local authorities through the concordat and single outcome agreements, but amendments 195 and 196 would serve to re-establish much of the systemic inflexibility that the concordat with local government was designed to remove.

On that basis, I invite Karen Whitefield to withdraw amendment 195 and not to move amendment 196.

Karen Whitefield: I am not terribly surprised at the Government not wanting to support the amendments.

I disagree with the cabinet secretary that amendment 195 would be inflexible and cause difficulties with community planning—I simply do not accept that. Most local authorities are already

working on kinship care. The Scottish Government, in partnership with the Convention of Scottish Local Authorities, published a kinship care strategy, so it would not give local authorities great cause for concern if people were able to access local kinship care strategies for all Scotland's 32 local authorities.

On amendment 196, there are real and considerable concerns among parents of disabled children. They are very aware of their children's needs, not all of which are being met. I understand the cabinet secretary's point about making sure that we take an holistic approach to supporting disabled children, but it does not address the fundamental issue of how much money is being spent on them, particularly when we know that a considerable amount of money has been set aside to support the children. I am willing to have further discussions with the Government, particularly about amendment 196, but at this point I inform the convener that I am minded to press amendment 195.

The Convener: The question is, that amendment 195 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Brownlee, Derek (South of Scotland) (Con)
Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Welsh, Andrew (Angus) (SNP)

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

I will use my casting vote against the amendment.

Amendment 195 disagreed to.

Amendment 196 moved—[Karen Whitefield.]

The Convener: The question is, that amendment 196 be agreed to. Are we agreed?

Members: No.

FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Brownlee, Derek (South of Scotland) (Con)
Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Welsh, Andrew (Angus) (SNP)

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

I use my casting vote against the amendment.

Amendment 196 disagreed to.

The Convener: I suspend the meeting briefly to allow the next minister and her officials to take their seats.

14:31

Meeting suspended.

14:32

On resuming—

Section 26—Establishment of Creative Scotland

The Convener: For the groups of amendments on creative Scotland, I welcome to the committee Fiona Hyslop MSP, the Minister for Culture and External Affairs. Amendment 113, in the name of the minister, is grouped with amendments 114 and 115.

The Minister for Culture and External Affairs (Fiona Hyslop): Amendment 113 gives equal legal status to the Gaelic name for creative Scotland, Alba chruthachail. The amendment will insert the Gaelic name directly after creative Scotland's English-language name in section 26(1). The amendment is in accordance with the Government's strong commitment to the principle of according the Gaelic and English languages equal respect.

Amendments 114 and 115 ensure that the chief executive designate, to be recruited by Creative Scotland 2009 Ltd, becomes the first chief executive of creative Scotland, the statutory body and non-departmental public body. Amendment 114 will insert new sub-paragraphs into paragraph 7 of schedule 5 to make provision for that. If, for whatever reason, no chief executive designate is employed by Creative Scotland 2009 Ltd when creative Scotland comes into being, the Scottish ministers will appoint the first chief executive. As a related and consequential amendment, amendment 115 amends paragraph 7(3) of schedule 5 with the effect that the second and subsequent chief executives will be appointed by creative Scotland.

I am pleased that paragraph 101 of the committee's stage 1 report stated that creative Scotland should be established "as soon as possible". To bring that about, Creative Scotland 2009 Ltd is carrying out the recruitment process. I hope that it will be able to announce the name of the chief executive designate shortly.

I move amendment 113.

David Whitton (Strathkelvin and Bearsden) (Lab): You said that the first chief executive will be appointed shortly. Can you give the committee some idea of the salary level that they will enjoy and whether it was agreed under the terms of the Government's salary procedures for senior appointments?

Fiona Hyslop: The terms and conditions and salary will have been set under the arrangements for public sector bodies. However, the salary negotiations in the current recruitment process are on-going, so it is not a matter that I can give you information about now.

David Whitton: It was reported that you were having difficulty getting a chief executive because the salary level was not as much as £120,000. You might want to help the committee by shedding some light on that.

Fiona Hyslop: There was speculation in one media source that there was some difficulty, but my understanding is that some high-calibre candidates have come forward. You are right to identify that all public appointments under this Administration—the position was similar under the previous Administration—must provide value for money and that the contracts and salaries must be acceptable to and at levels expected by the public.

David Whitton: We might get into an argument another day about whether some of the appointments that have been made recently give value for money, but we will not go there today.

Is a bonus attached to the salary package for the chief executive post?

Fiona Hyslop: As I said, the terms and conditions will be negotiated with the candidate who comes forward. However, I have made it clear to my officials that any bonuses or any other additional aspects of the terms and conditions should be in keeping with what the First Minister said at First Minister's question time last week.

David Whitton: But you are creating a new position, so it is in your gift to say, "There will just be a salary; there won't be a bonus." Is there any particular reason why you are not doing that?

Fiona Hyslop: The terms and conditions of any contract will obviously not be for just one year; the contract will be in place for future years. If there are any bonuses, they will be restricted under the arrangements in a way that was not done by previous Administrations. As I said, I am taking a close interest in that and have given the instruction that any salary or bonuses are to be in keeping with what is expected by the public and, indeed, by this Administration.

Jeremy Purvis: I understand that the amendments propose that the new agency would inherit the chief executive without the new agency's constituted board putting forward appropriate proposals for ministers to approve. If I understand the position correctly, the impact of the amendments would be that the chief executive's terms and conditions, remuneration, allowances and expenses, including pension entitlements, would not be recommended to ministers by the board but would be approved purely by ministers. That is a curious situation, given that the bill sets up the board of creative Scotland, a key function of which will be to determine the chief executive's pay and conditions and to seek approval of those by ministers.

In the absence of members of creative Scotland's board making such recommendations, does the Government think that it would be in order to publish details on the remuneration, allowances and expenses of the chief executive now? If not, we will find ourselves in the same position as we were in with the Scottish Futures Trust, when the Government said that it was moving ahead with great speed to appoint a chief executive, whose terms and conditions were outwith the Government's pay policy for senior executives. Parliament then learned that there was a salary of £180,000 and that there was no legislative scope for scrutinising the arrangement. The situation here sounds identical to that situation, which is far from being my preference. No genuine reason has been given for why the board of creative Scotland, which this Government is going to establish, should not have the power to set the framework for the pay, conditions and allowances of the body's chief executive.

Fiona Hyslop: If we waited until the new board was established, there would be a delay in ensuring the leadership of creative Scotland's administration by a chief executive.

Jeremy Purvis is right to recognise that the amendments will put in place transitional and interim arrangements, but the provisions that they contain are no different from provisions that the previous Administration introduced, for example in the development of the Scottish Further and Higher Education Funding Council. Arrangements were made so that the chief executive could be appointed before the Further and Higher Education (Scotland) Act 2005 came into force. The same happened in 2006 with the Scottish Police Services Authority and the Scottish Crime and Drug Enforcement Agency, so there are examples of when, under the previous Government, arrangements similar to those in the amendments were put in place to enable the appointment of a chief executive while legislation was going through Parliament.

The Convener: As no other member has indicated that they want to speak, I ask the minister to wind up.

Fiona Hyslop: Amendment 113, which provides for the Gaelic name Alba chruthachail, is an important proposal in recognising the Gaelic language. As I have said, amendments 114 and 115 provide for interim arrangements, should Creative Scotland 2009 Ltd not be able to appoint a chief executive designate. On that basis, I am happy to support the amendments.

Amendment 113 agreed to.

Section 26, as amended, agreed to.

Schedule 5

CREATIVE SCOTLAND: ESTABLISHMENT ETC

Amendment 114 moved—[Fiona Hyslop].

The Convener: The question is that, amendment 114 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brownlee, Derek (South of Scotland) (Con)
Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Welsh, Andrew (Angus) (SNP)

AGAINST

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Whitton, David (Strathkelvin and Bearsden) (Lab)

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

I use my casting vote in favour of the amendment.

Amendment 114 agreed to.

Amendment 115 moved—[Fiona Hyslop].

The Convener: The question is that, amendment 115 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brownlee, Derek (South of Scotland) (Con)
Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Welsh, Andrew (Angus) (SNP)

AGAINST

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Whitton, David (Strathkelvin and Bearsden) (Lab)

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

I use my casting vote in favour of the amendment.

Amendment 115 agreed to.

Schedule 5, as amended, agreed to.

Section 27—General functions of Creative Scotland

The Convener: Amendment 187, in the name of Malcolm Chisholm, is in a group on its own.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): Section 27 has been widely welcomed. It describes the various functions of creative Scotland, but as I read them I was struck by the way in which the word "culture" is used in subsection (1)(e), which is different from its use in the other subsections.

We all know that culture has different meanings in different situations. In section 27, the word usually means culture in terms of artistic and creative endeavour, but in subsection (1)(e) there is some ambiguity. As I read the policy memorandum, it was clear to me that the intention was to refer to culture in its broad sense,

"as a way of life".

I have lifted those words directly from the policy memorandum.

When I read the evidence and written submissions from the witnesses who appeared before the Education, Lifelong Learning and Culture Committee, I noticed that the definition of national culture was broadly welcomed, so it seemed to me a pity that the definition of Scotland's national culture was explicit in the policy memorandum but not in the bill.

14:45

The wording of my amendment serves the interests of clarity and distinguishes the broader meaning of culture in subsection (1)(e) from that in other sections in part 3. It emphasises the relationship between culture, in the narrow sense, and society. I think we all recognise that that is an important dimension of culture and the arts. I hope that the cabinet secretary will support amendment 187, particularly given that I lifted the wording directly from her policy memorandum.

I move amendment 187.

The Convener: No member wishes to speak in the debate. Do you have anything to add, Mr Chisholm? [*Interruption.*] I beg your pardon, minister—I forgot to call you. Would you like to respond?

Fiona Hyslop: Yes. I welcome Malcolm Chisholm's comments. However, having considered the matter, I do not believe that the

amendment is necessary. There is no need to add superfluous wording to section 27.

It is important to stress that, in its entirety, section 27 sets out creative Scotland's six functions; it does so clearly, simply and with no extra wording. No other definition is provided for in section 27. As the Finance Committee noted in its stage 1 report,

"definitions on the face of the Bill would be undesirable".

I assure Malcolm Chisholm that we agree that Scotland's national culture is to be interpreted in its broadest sense. We made that clear in paragraph 60 of the explanatory notes. I want also to be clear that, having thought long and hard about definitions, the Education, Lifelong Learning and Culture Committee came to the conclusion that a focus in the bill on definitions would

"be undesirable due to their likely restrictive nature."

I know that that is not what Malcolm Chisholm is trying to do, but his amendment has implications for definitions elsewhere in section 27 and other parts of the bill.

Amendment 187 may seem straightforward, but it could introduce a late debate on definitions, which the Education, Lifelong Learning and Culture Committee anticipated could result in restricting creative Scotland, rather than making it inclusive, which I think we all are trying to achieve.

For those reasons, I oppose amendment 187. Having heard my argument about the unintended consequences for other provisions in the bill and my concerns about definitions in relation to the arts and culture, I invite Malcolm Chisholm to seek leave to withdraw amendment 187.

The Convener: Thank you, minister. I regret that my inadvertent censorship almost prevented you from responding.

Malcolm Chisholm: I understand the cabinet secretary's point about definitions, but I am not arguing that every word in section 27, or in part 3, should be defined. It makes sense to add to "culture" in section 27(1)(e), which is the only place in part 3 where that word is used in a broad sense. To give clarity to the general reader and to avoid ambiguity, it would be better to include a definition. Indeed, it would do no harm to include one, and doing so would not make it inevitable that every word in part 3 would have to be defined.

I understand the general point that the cabinet secretary makes, but I press amendment 187.

The Convener: The question is, that amendment 187 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brownlee, Derek (South of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Welsh, Andrew (Angus) (SNP)

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

Amendment 187 agreed to.

Section 27, as amended, agreed to.

Section 28—Advisory and other functions

The Convener: Amendment 116, in the name of the minister, is grouped with amendment 117.

Fiona Hyslop: Taken together, amendments 116 and 117 make it clear that creative Scotland will have the widest powers to engage in different forms of financial support and involvement in the exercise of its functions. Amendment 116 inserts a new provision into section 28 to clarify that "assistance" under section 28 concerns the provision of advice, information and non-financial assistance, for example, with the provision of training or assistance by way of secondment.

Amendment 117 removes section 29(6), which might be read as having the effect that creative Scotland may only provide financial assistance by way of grants and loans under section 29(4). Grants and, where appropriate, loans will remain the conventional forms of financial assistance provided by creative Scotland. That is dealt with in section 29, with advice, information and non-financial assistance being dealt with in section 28. Where appropriate, creative Scotland's powers under paragraph 10 of schedule 5 may take their full effect, allowing other forms of financial assistance, support and involvement by way of contracts or equity investments, for example.

I move amendment 116.

Amendment 116 agreed to.

Section 28, as amended, agreed to.

Section 29—Grants and loans

Amendment 117 moved—[Fiona Hyslop]—and agreed to.

Section 29, as amended, agreed to.

Sections 30 to 33 agreed to.

Schedule 6 agreed to.

The Convener: I thank the minister for her attendance.

14:51

Meeting suspended.

14:54

On resuming—

The Convener: For the groups of amendments to parts 4 and 5, we are joined by Shona Robison, the Minister for Public Health and Sport. Again, I intend to move straight to consideration of amendments.

Section 34—Social Care and Social Work Improvement Scotland

The Convener: Amendment 188, in the name of Malcolm Chisholm, is grouped with amendment 189.

Malcolm Chisholm: The minister should be pleased that one of the major controversies around part 4 is the name of the new body. There will be some other discussions, but part 4 has generally been welcomed in the field. However, anyone to whom I have spoken who is working in the area—and that is quite a few people—is appalled at the name, first because of its length and secondly, because it does not lend itself to any obvious acronym. I am not saying that it has been easy to find an alternative, and no doubt people will raise objections to my suggestion, but I seriously think that people should exercise themselves about an alternative name because this point is causing a lot of concern.

The name that I have suggested is based on what I saw in section 36, which says, helpfully:

"In this Part, 'social services' means—

(a) care services, and

(b) social work services."

That led me to the obvious conclusion that the body could quite easily be called social services improvement Scotland, without any change being made to the definitions in the bill. There are two advantages to that. First, it gives the idea of integration. Some people have complained that the new body might just house two old bodies under the same roof. The original name suggests that two old bodies have come together, whereas putting the names together in the way that I propose suggests that there will be a new, integrated body. Secondly, it makes an acronym possible. I accept that the acronym is not ideal, especially given its first two letters, but I expect the body to be called SSIS out in the world. That fits quite nicely with HIS, which is the acronym for the part 5 body, which we will discuss later. We should change the name, and I suggest social services improvement Scotland as an acceptable alternative to what was originally proposed.

Obviously, my amendments would change only two lines in the bill. Those who have spent their evenings reading the bill will realise that the relevant words are peppered throughout the bill, so clearly, if my amendments are agreed to, further amendments will be needed at stage 3 to change all the other references to the body.

I move amendment 188.

The Minister for Public Health and Sport (Shona Robison): I do not support the amendments regarding SCSWIS. There is no legal reason why the change cannot be made, but the term "social services" does not adequately cover the range of services that SCSWIS will regulate. SCSWIS might not be a particularly elegant name, but it was decided after numerous discussions with stakeholders and it describes well the services that the body will cover—social work and social care services. Once the body is established, it would be open to it to use another name on its publicity if it felt that that would be more meaningful to the public. That happened with the Scottish Commission for the Regulation of Care, which is commonly known as the care commission.

I hope that I have reassured the member.

Malcolm Chisholm: I was astonished by the minister's opening statement that the term "social services" does not cover all the relevant services, given that section 36 says

"'social services' means—

(a) care services, and

(b) social work services."

It would be interesting to know what services are not covered. If that was the heart of her argument, I am not persuaded. I will press amendment 188.

The Convener: The question is, that amendment 188 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Brownlee, Derek (South of Scotland) (Con)
Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Welsh, Andrew (Angus) (SNP)

ABSTENTIONS

Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 3, Against 4, Abstentions 1.

Amendment 188 disagreed to.

Amendment 189 not moved.

Section 34 agreed to.

Schedule 7

SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND: ESTABLISHMENT ETC

The Convener: Amendment 118, in the name of the minister, is grouped with amendments 119, 145, 155, 156, 177 and 182 to 185.

15:00

Shona Robison: Amendments 118 and 119 give Scottish ministers the power to appoint the first chief executive of SCSWIS. The amendment is required because it is not possible for SCSWIS itself to appoint a chief executive to be in place before it has been established. Amendments 182 and 183 serve the same purpose for health improvement Scotland.

Amendments 155 and 156 are consequential amendments that make minor changes to the following acts: the Ethical Standards in Public Life etc (Scotland) Act 2000, the Scottish Public Services Ombudsman Act 2002, the Public Appointments and Public Bodies etc (Scotland) Act 2003, the Mental Health (Care and Treatment) (Scotland) Act 2003, the Adult Support and Protection (Scotland) Act 2007 and the Protection of Vulnerable Groups (Scotland) Act 2007. The amendments remove references to the care commission and replace them with references to SCSWIS.

Amendments 184 and 185 are consequential amendments that make minor changes to the following acts: the Ethical Standards in Public Life etc (Scotland) Act 2000, the Scottish Public Services Ombudsman Act 2002, the Public Appointments and Public Bodies etc (Scotland) Act 2003, the Mental Health (Care and Treatment) (Scotland) Act 2003, the Human Tissue (Scotland) Act 2006, the Adult Support and Protection (Scotland) Act 2007, the Protection of Vulnerable Groups (Scotland) Act 2007 and the Public Health etc (Scotland) Act 2008. The amendments remove the reference to NHS Quality Improvement Scotland and insert reference to HIS where appropriate.

Amendment 145 removes the provisions regarding the liability of persons in exercising their functions. It is considered that the provisions represent a reduction in the common-law protection for public bodies and their staff. Removing section 83 will mean that the status quo is maintained for the public bodies and staff, whereby the common-law protection is relied on. Amendment 177 makes the same change to HIS.

I move amendment 118.

David Whitton: I ask the minister the same question that I asked the cabinet secretary. Under what terms and conditions will the new chief executive be employed? Will you follow the senior salaries pay guidelines, and will a bonus be included?

Shona Robison: No decision has yet been made on salaries or bonuses, but the appointments would follow the public sector pay policy guidance. There is nothing new in the principle of ministers moving to ensure the appointment of chief executives before the establishment of a new body—that is exactly what happened with the care commission under the previous Administration. It is a practical measure to ensure that, on day one of the establishment of a new body, a chief executive is in place. Of course, both of the appointments will follow public pay policy guidance.

David Whitton: I press the point that it is for the Government to set the tone and take a lead in making appointments to such positions. Recent appointments have attracted unfavourable publicity because of the salary levels attached to them. I am thinking of the new chief executive of Scottish Enterprise and the chief executive of the Scottish Futures Trust. I hope that the minister can assure us that due notice will be taken of that kind of thing when the salary levels are set.

Shona Robison: Of course. That is how the guidance will operate. No bonus has ever been awarded to the chief executive of the care commission, and the chief executive of NHS QIS operates under agenda for change conditions. The new chief executive of HIS will also operate under agenda for change conditions because of the different establishment of the bodies.

I have probably given as much reassurance as I can. There is nothing new in the principle of ministers making such appointments, and the issues surrounding public sector pay are an important backdrop to the salary levels and culture of any public body.

Jeremy Purvis: The glaring omission in that regard is the Scottish Futures Trust, which the Government set up but whose chief executive's appointment did not come within the remit of the Government's pay policy for senior executives. It would be useful to have it on the record that the terms and conditions of SCSWIS's chief executive will be published on appointment. I made a similar request of the Minister for Culture and External Affairs regarding the appointment of a chief executive of creative Scotland.

Why was the approach in amendments 118 and 119 not provided for in the bill, if it is easy to continue the approach that has been taken in previous legislation? Was there simply an error?

Did you forget to include such provision?

Shona Robison: I certainly do not think that there is anything untoward in the situation. What is important is the principle, which was followed under the previous Administration. There is nothing new in our approach. As I said, the appointment of the posts will follow public sector pay policy—there is nothing more to the matter.

Amendment 118 agreed to.

Amendment 119 moved—[Shona Robison]—and agreed to.

Schedule 7, as amended, agreed to.

Section 35—General principles

The Convener: Amendment 190, in the name of Malcolm Chisholm, is in a group on its own.

Malcolm Chisholm: Section 35 is an important section, which sets out the general principles that SCSWIS will follow in exercising its functions. Subsection (3) refers to "independence" of service users and subsection (4) refers to "diversity" in the provision of social services, but the concept of personalisation is missing from the bill.

Personalisation has been at the heart of talk about social services for several years, but there are concerns about the extent to which it is observed in practice. For example, there has been great controversy recently about retendering for adult social care in Edinburgh, and in the midst of the debacle it has been obvious to everyone that the principle of personalisation has not been followed. There are many examples in which personalisation is a principle that is ignored in practice.

By the term "personalisation", I mean the taking into account of a person's specific needs and wishes in developing services and—crucial—the involvement of individual service users in deciding the nature of the service that they will receive.

It might be argued that because "choice" is mentioned in subsection (4) there is no need to use the word "personalisation". However, personalisation cannot be reduced to choice. A range of services might be on offer, but it might well be that none of the choices has been developed with the direct involvement of the service user or meets their specific needs. The concept of personalisation is recognised as being central in social services and should therefore be a principle that is explicitly mentioned in section 35.

I move amendment 190.

Shona Robison: I do not support amendment 190, for the following reasons. Although personalisation is absolutely a key focus of the Government's social care policy, its meaning as a legal term is not clear. It is also not clear what Mr Chisholm envisages that is not covered by the principles in section 35, which include the promotion of independence of service users and the promotion of diversity in the social services that are offered. We think that there would be duplication if amendment 190 were agreed to.

I am content to have further discussion with Mr Chisholm, if he thinks that that would be helpful, so that I can understand better what he thinks is lacking in the current set of principles. However, on the basis of what I have said, especially about the fact that "personalisation" is not clear as a legal term, I ask him not to press amendment 190.

Malcolm Chisholm: Given that the minister has agreed to think and talk further about the issue, I seek leave to withdraw the amendment. I may lodge it again later.

Amendment 190, by agreement, withdrawn.

Section 35 agreed to.

Sections 36 and 37 agreed to.

Schedule 8

CARE SERVICES: DEFINITIONS

The Convener: Amendment 120, in the name of the minister, is grouped with amendments 121 to 123, 135 and 136.

Shona Robison: Amendment 120 updates the definition of "school care accommodation service" to the current definition, which was amended in the Regulation of Care (Scotland) Act 2001 by the Smoking, Health and Social Care (Scotland) Act 2005.

Amendment 121 seeks to remove the current anomaly that exists in the provision of adult placement services. Those services, which are described in the 2001 act and in the bill as being provided to persons over the age of 18, are frequently provided to 16 and 17-year-olds. The amendment will close that gap and ensure that persons who provide services to younger adults can be subjected to the same level of scrutiny as persons who provide the same services to those aged 18 and over.

Amendment 123 ensures that people looking after children by virtue of a supervision requirement under the Children (Scotland) Act 1995 or those defined as a "kinship carer" under the Looked After Children (Scotland) Regulations 2009 do not require to be registered as child minders before a child is placed with them and are, therefore, not subjected to scrutiny by SCSWIS. It is the duty of the local authority to consider the suitability of a person to care for a child under supervision.

Amendments 122 and 136 are technical amendments. Amendment 135 gives Scottish ministers the power to confer on SCSWIS by regulations additional functions in relation to care services. As SCSWIS's role develops and the scrutiny landscape changes, it may be considered appropriate to confer additional functions on the body. The amendment would allow that to happen without recourse to primary legislation. Any regulations that were made under the power would be subject to the affirmative procedure, and any new functions that were conferred on SCSWIS would have to relate to its existing purpose and functions.

I move amendment 120.

Amendment 120 agreed to.

Amendments 121 to 123 moved—[Shona Robison]—and agreed to.

Schedule 8, as amended, agreed to.

Section 38 agreed to.

Schedule 9 agreed to.

Section 39 agreed to.

Section 40—Standards and outcomes

15:15

The Convener: Amendment 191, in the name of Malcolm Chisholm, is grouped with amendment 192.

Malcolm Chisholm: Amendment 191 would amend section 40, which deals with the important subject of standards and outcomes. The heart of this group of amendments is amendment 191, which would replace "may" with "must".

I will comment on standards and outcomes in a moment, but let me first note that the requirement to publish standards was a great landmark event in the development of what became the Regulation of Care (Scotland) Act 2001. People in Scotland are rightly proud of that legislation, which was enacted just under 10 years ago. Indeed, the publication of standards was the foundation of the Scottish Commission for the Regulation of Care, which has used the standards for its inspections ever since.

The great advantage of having published standards is that the public can be aware of what to expect from care services. The standards are also a crucial guide to those who inspect services in considering what criteria should be observed by care providers to achieve a successful inspection. Therefore, I was alarmed to see that the bill proposes to replace the obligatory publication of standards and outcomes with a discretionary element. In other words, the provision that

"Ministers may prepare and publish standards and outcomes"

presumably means that they may also choose not to do so. It is important that the bill says "must" rather than "may".

Amendment 192 suggests another change in relation to standards and outcomes on which I seek the minister's comments. The reason for the proposed change is that many people have put it to me that standards and outcomes are becoming ever more similar, so it might be that a good standard is actually a description of the outcome that the service user should expect. Given that amendment 191 proposes that ministers should be under an obligation to publish standards and outcomes, amendment 192 proposes that ministers must publish either the standards or the outcomes or both, because in some cases standards and outcomes might be more or less the same thing.

I would welcome the minister's comments on amendment 192, on which I am prepared to be open-minded. However, I will certainly not be open-minded or flexible on the heart of my proposal in amendment 191, which seeks to replace "may" with "must".

I move amendment 191.

The Convener: No one has asked to speak in the debate, so I ask the minister to respond.

Shona Robison: I do not support amendments 191 and 192 for the following reasons.

The national performance framework and single outcome agreements define the outcomes for people that public services should deliver. Those outcomes will be achieved by services operating together. Likewise, the new scrutiny bodies will be expected to co-operate in the inspection of services where providers are working together to deliver outcomes. That means that the scrutiny bodies will need to consider the effect on service providers in more than one sector—for example, in the health and care sectors—and the standards that are appropriate to those sectors.

Standards such as the national care standards help to drive continuous improvement of services. In future, it might be necessary to have standards that apply in more than one sector or that apply to more than one scrutiny body. Therefore, it is important that the scrutiny bodies are able to take account of more than one set of standards and are able to consider the impact of service quality on the outcomes that are achieved for people. For that reason, we have sought to retain flexibility in the provision for the future development of the standards and outcomes against which SCSWIS will be required to inspect services. It is important that the new scrutiny bodies take account of

relevant published standards and outcomes, but it is important not to limit their work to a single set of standards by prescribing the relevant standards in primary legislation, which would be the effect of amendment 191.

On the basis of the assurance that I have given about the intention behind section 40, I urge the committee not to support amendments 191 and 192.

Malcolm Chisholm: I am in the curious position of agreeing with most of what the minister said, but I do not quite see why that should lead to the conclusion that the wording should not be "must". The nature of the standards and outcomes might be different from the original care standards that were devised about 10 years ago, but I do not quite see why that means that there should not be a guarantee that the range of standards and outcomes that are relevant to care services and social work services will be publicly available. As I said, I am quite prepared to be flexible in not pressing amendment 192, but I will press amendment 191.

I have a slight sense of déjà vu because, although the 2001 act includes the word "shall", the bill as introduced used the word "may". It was a famous occasion when John McAllion changed "may" to "shall" and told the Parliament that that was the first time in his parliamentary experience that he had succeeded in having an amendment agreed to—he had never achieved that at Westminster. I will not press too much the point that Shona Robison was part of the committee that supported that amendment, but an important principle was enshrined back then.

I will press amendment 191, although I shall not move amendment 192, given what the minister has said.

The Convener: The question is, that amendment 191 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brownlee, Derek (South of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Welsh, Andrew (Angus) (SNP)

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

Amendment 191 agreed to.

Amendment 192 not moved.

Section 40, as amended, agreed to.

Sections 41 and 42 agreed to.

Section 43—Inspections

The Convener: I welcome back Karen Whitefield. Amendment 197, in the name of Karen Whitefield, is grouped with amendment 197A. Again, I point out that amendments to amendments are disposed of before the original amendment.

Karen Whitefield: I am pleased to be back to talk about my amendments, which relate to the role of Her Majesty's Inspectorate of Education within the new inspection and regulation body that the bill will establish.

We all welcome the establishment of SCSWIS and believe that it will declutter the inspection and regulation landscape somewhat. However, HMIE has provided an invaluable service in scrutinising and regulating our child protection services in Scotland, and I am keen that that expertise should not be lost. I do not believe for one minute that that is the Government's intention. I have introduced the amendments for a simple reason: it is important that we have a child-centred approach to the inspection of services that look after and protect our children and young people.

We heard earlier from the Cabinet Secretary for Finance and Sustainable Growth that my previous amendments were not child centred enough. However, my amendments are very much child centred. I suggest that there should be a central role for HMIE in SCSWIS when it comes to child protection services, which is why I lodged amendments 197 and 197A. The aim of the amendments is to get a sense from the Government of whether we can find a way forward that recognises the invaluable work that HMIE would do and ensures that HMIE is still an integral part of the inspection and regulation process in future.

I move amendments 197 and 197A.

Shona Robison: I do not support amendments 197 and 197A. Amendment 197 does not appear to take account of the fact that the requirement to collaborate with HMIE in the inspection of children's services already exists in the bill. Part 6 provides for joint inspections of children's services that will require SCSWIS, HMIE and Her Majesty's inspectorate of constabulary—and others, as appropriate—jointly to inspect children's services as directed by ministers. In addition, under section 94, SCSWIS and HMIE will be required to co-operate in the inspection of all services where they have a shared interest, for example school care accommodation and day care services for children.

On a technical point, section 43(3)(b), which amendment 197 seeks to amend, applies to services for adults as well as for children. There should be no role for HMIE in inspecting services for adults.

The amendments do not add anything to the arrangements. I hope that Karen Whitefield is reassured that there is already enough comfort for her in the bill, and will therefore seek to withdraw amendments 197 and 197A.

Karen Whitefield: I listened carefully to what the minister said. I understand and appreciate that the Government believes that the bill will ensure that there is a role for HMIE, but I am not convinced that that goes far enough. I would prefer the provision in amendment 197 to be included in the bill, because that will give us far greater confidence that there will be an integral and central role for HMIE.

I will seek to withdraw amendment 197A, but I will press amendment 197.

Amendment 197A, by agreement, withdrawn.

The Convener: The question is, that amendment 197 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Brownlee, Derek (South of Scotland) (Con)
Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Welsh, Andrew (Angus) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0. My casting vote is against the amendment, so the amendment falls.

Amendment 197 disagreed to.

The Convener: Amendment 124, in the name of the minister, is grouped with amendments 198, 125, 125A, 126 to 128, 163, 164, 199, 165, 165A, 166 and 167. I point out again that amendments to an amendment are disposed of before the original amendment.

Shona Robison: There are quite a lot of amendments in the group, so I hope that you will have patience with me.

Amendments 124 and 125 on SCSWIS and 163 to 165 on HIS insert new provisions that require the bodies to develop plans in line with best regulatory practice for carrying out inspections of social services, health and independent health care services. The plans will therefore have to be transparent, accountable, proportionate and consistent. They will detail a programme of inspections to be carried out by SCSWIS and HIS and will require to be approved by Scottish ministers. Any review of the plans will also require Scottish ministers' approval.

The plans will also be subject to consultation with key stakeholders, which will give them an opportunity to contribute to the way in which the new bodies work. That is particularly important, given that the bill creates new powers such as that in section 43(1) to allow the inspection of the organisation of social services. It will be vital to get stakeholders' views on how the inspection powers are implemented in order to ensure that the new bodies deliver their scrutiny functions effectively and appropriately. The draft inspection regulations have been provided to the committee and paragraph 3 sets out some of the types of information that we expect the two bodies to take into account in developing their plans. Full consultation will be undertaken with stakeholders before the regulations are finalised.

Amendment 126 provides the power to make regulations that identify circumstances in which access to and availability of SCSWIS inspection reports or parts of reports can be restricted, refused or withheld. Occasionally, the inspection reports that are currently provided by the Social Work Inspection Agency deal with personal or sensitive information and general publication is therefore neither appropriate nor necessary. The amendment allows regulations to be made that set out the circumstances in which it is appropriate for such information to be withheld. Amendment 166 makes the same provision for HIS.

I cannot agree to amendments 198 and 125A. Amendment 198 requires SCSWIS to take account of self-evaluation that service providers carry out and requires it to conduct an inspection of a provider when it is notified that the provider has carried out such evaluation. Surely that would act as a bit of a disincentive to services to carry out any self-evaluation. The inspection plan that SCSWIS will produce for its inspection work under the amended section 43 will need to show, among other things, how SCSWIS intends to handle self-evaluation reports in the wider context of its overall risk assessment. Whatever the plan says on that point, it would not be sensible to require SCSWIS always to inspect a service after a self-evaluation, regardless of what other information SCSWIS already has about the quality of that service and the inherent risks.

15:30

The moves to more proportionate evidence and risk-based scrutiny should lead, over time, to less cyclical inspection, but they might also lead to

more unannounced inspections. Automatic inspection following self-evaluation would not be an efficient use of resources. However, I agree that self-evaluation will complement the everyday performance and quality-management activities of service providers and should not be relied on by SCSWIS completely to replace inspections.

The effect of amendment 125A could be to suggest that some inspections could be carried out that are not in line with best regulatory practice, so I cannot agree to it. However, I can assure Malcolm Chisholm that section 43, as amended, will ensure that all inspections that are conducted by SCSWIS will be carried out in line with best regulatory practice.

Amendment 127 provides the power to make regulations on holding information subject to prescribed conditions and making further disclosures in accordance with prescribed conditions. That reflects an existing power in the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006, and it is necessary to ensure that information that is given for the purposes of inspection under parts 4 and 5 of the bill is held appropriately.

Amendment 167 sets out the same arrangements for HIS. Amendment 128 is a technical amendment that defines "prescribed" as used in section 47.

I move amendment 124.

Malcolm Chisholm: In some ways, this group of amendments is the most important and interesting group that relates to part 4, because the role of inspection vis-à-vis self-evaluation is the big underlying issue. It reflects a great change in the nature of inspection, given the increasing importance of self-evaluation. The biggest change that this bill will make to the situation that has pertained since the Regulation of Care (Scotland) Act 2001 came into force concerns inspection arrangements. It is absolutely right that the shift in the nature of inspections should be debated. My amendments were lodged to raise that issue and to ensure that people know what is going on and take a view on it.

On amendment 198, I was surprised by the minister's suggestion that making an inspection necessary would be a disincentive to self-evaluation. However, the fact of the matter is that, as she must know, the care commission currently inspects after self-evaluation. It is quite routine for care services to conduct a self-evaluation, but the care commission always follows up on that, which means that the two are not necessarily mutually exclusive. It is quite possible to have a regime that involves a degree of self-evaluation as a prelude to inspection rather than as a substitute for inspection. Self-inspection might determine the nature of the inspection, but it does not cancel out the need for the inspection. The main concern that has been expressed to me is that the movement towards self-evaluation might go too far—that is why I am trying to keep some connection between the two things.

I might not have got the wording exactly right in amendment 198, although to a large extent it mirrors the language of the bill. When the minister replies, she should say a bit more about

"the organisation or co-ordination of any social services",

in section 43, because that adds a completely new dimension to inspection. I am not saying whether that is a good or a bad thing, but it should be recognised that it is a new dimension. The minister will know that some voluntary sector providers are concerned that that might involve a corporate inspection, which they feel might not be appropriate.

I incorporated

"the organisation or co-ordination of the social services"

in amendment 198 to make the connection between inspection and self-evaluation. I am minded not to move that amendment but to move amendment 125A, which would at least put in the bill the idea that an inspection must be done and that self-evaluation is not a substitute for inspection. Amendment 125 will make inspections part of a plan and discretion will remain about the exact relationship between self-evaluation and inspection, but amendment 125A will at least allow us to acknowledge that inspection has a role, following self-evaluation.

As I have said, there is concern that there is too much of a drift towards self-evaluation. It would be interesting to know whether research has been done on the relationship between the self-evaluations that local councils' social work services conduct and the reports that they receive when they are eventually inspected. The issue applies mainly to the work that the Social Work Inspection Agency covers because, as I have said, the care commission is still obliged to undertake inspections, since that is specified in the 2001 act.

People should be aware not only of changing practices—many of which might be justifiable and positive—but of how the bill differs fundamentally from previous legislation, because all the other details about inspections are to be in regulations, a copy of which members received just before 12 o'clock. From a quick glance at the regulations, I am not reassured that the public will have great confidence about exactly what the new system involves. For example, regulation 4 says:

"An inspection carried out by SCSWIS ... may include some or all of the following ...

(a) visits to ... premises ...

(b) review of documentation".

We do not know the extent to which the traditional inspections that the care commission has undertaken for nine years will be a thing of the past. In accordance with the new regulations, the commission could do most of its work by reviewing documentation and going through self-evaluation reports, for example.

The public and members need a bit more reassurance that the role of inspection is recognised clearly. Self-evaluation is not a substitute for inspection. We need to be very well informed about what is intended, so at least the Parliament can approve or not approve what is proposed. We are talking about a big shift, but the danger is that it is not terribly explicit in the bill—it is emerging only because we have amendments to debate.

Shona Robison: Malcolm Chisholm raises important points, and I hope that I will be able to give reassurance. I agree absolutely that self-evaluation is not a substitute for inspection—it is not intended to be. We should remember that the thrust behind the provisions is risk-based scrutiny and inspection. The principle is that the scrutiny bodies will focus more of their time on the services that require more time and less time on services that are well managed and are running well. I think that we all agree that that is good, to ensure that the extra focus is on the services that need it. The bill sets out how that will happen. Ministers will also require to approve the inspection plan.

SCSWIS might well choose to follow up a self-evaluation report with an inspection. At the moment, such reports do not automatically have to be followed by inspections, although that might happen in many cases. Malcolm Chisholm's amendment 198 would make that automatic, but that would not be in line with the principle and the direction of travel of risk-based inspection and scrutiny—such an approach would fly in the face of that.

Malcolm Chisholm mentioned corporate inspection of service headquarters. The reason why that has been introduced is simple. Where there is a concern about systemic issues or the headquarters functions of an organisation—which go beyond local service provision—it is right and proper that SCSWIS should be able to go in and inspect whether something is not working as it should. I hope that I have been able to provide enough reassurance to the member about our intentions that he will not press his amendment 198.

Amendment 124 agreed to.

Amendment 198 not moved.

Section 43, as amended, agreed to.

After section 43

Amendment 125 moved—[Shona Robison].

Amendment 125A moved—[Malcolm Chisholm].

The Convener: The question is, that amendment 125A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brownlee, Derek (South of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Welsh, Andrew (Angus) (SNP)

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

Amendment 125A agreed to.

Amendment 125, as amended, agreed to.

Sections 44 and 45 agreed to.

Section 46—Inspections: reports

Amendment 126 moved—[Shona Robison]—and agreed to.

Section 46, as amended, agreed to.

Section 47—Regulations: inspections

Amendments 127 and 128 moved—[Shona Robison]—and agreed to.

Section 47, as amended, agreed to.

Sections 48 to 53 agreed to.

After section 53

The Convener: Amendment 129, in the name of the minister, is grouped with amendments 130 to 132 and amendments 169 to 171.

Shona Robison: Amendment 129 will make provision for SCSWIS to make an application to the sheriff for the emergency cancellation of the registration of a care service, which if approved would have the effect of closing the service. Under those procedures, the application could be heard more quickly than it would be in current procedures under the Regulation of Care (Scotland) Act 2001, which will ensure swift closure of a service if appropriate. That is an important power, which is required to protect users of services.

The test that has to be met before the sheriff could approve such an application is a high one. The orders are intended for use only in extreme circumstances in which it is considered that a service is seriously failing and there is a real and immediate risk to the users. The service provider and the local authority and health board in which the service is situated would be informed of the making of the order. The service provider, and any other party, has a right to appeal to the sheriff against the order, but the order, and therefore the closure of the care service, will remain in effect while the appeal is being considered.

15:45

Amendment 130 will give SCSWIS the power to issue an emergency condition notice. Such a notice would immediately impose conditions in relation to registration if, in the view of SCSWIS, there was

"a serious risk to the life, health or wellbeing of persons."

That is a new power for the body, but it will be helpful—for instance, to prevent a service taking any more clients while it responds to a condition notice.

Amendment 131 will exempt emergency condition notices from the 14-day period that is required before the imposition of a normal condition notice.

Amendment 140 outlines the appropriate appeals procedures to SCSWIS and to the sheriff for emergency condition notices, and amendments 169 to 171 set out the same measures for HIS in respect of registered independent health care services.

I move amendment 129.

Malcolm Chisholm: What was the thinking behind the measures not being in the bill as drafted and introducing them at stage 2? What is the difference between the amendments and the legislative status quo?

Under section 54, a condition notice has quite a general description. It is not clear to me what the particular features of an emergency condition notice are. Section 54 does not describe all the relevant time periods, so it is not clear to me why it is not possible to have a condition notice for a particular extra condition or to modify a condition, which is how it is described in section 54. Will the minister clarify that?

Shona Robison: I will try to answer the questions. The impetus behind the amendments came from the Scottish Commission for the Regulation of Care which, in the light of practice, feels that the matter is important and requires to be addressed. It felt that such emergency measures were an important development to deal with difficult cases, albeit that such cases are few.

The status quo is the summary procedure. The care commission says that the procedure is not fast enough—it can take a number of weeks to go through it, which leaves people in a state of limbo, sometimes in serious situations. Therefore, it is not adequate to enable the commission to respond quickly enough.

Were you concerned about the lack of detail on timeframes in relation to a condition notice under section 54?

Malcolm Chisholm: I was just not sure why an emergency condition notice could not be covered by the terms of the condition notice.

Shona Robison: Regulations will provide some of the detail that you are looking for on that. I have already discussed the provision of 14 days to appeal. We could write to the committee with some of the detail on the condition notice, if that would be helpful, because it is complex. I hope that I have given you some reassurance on the two other points.

Malcolm Chisholm: That is fine. I did not ask the question clearly.

Jeremy Purvis: I have some more questions. The first is about what the relationship will be between the process for emergency cancellation of registration and the improvement notice process, if an improvement notice has already been served and the process has begun. I know of such a case involving a care home in my constituency. The improvement notice process had started and the threat existed of action in the sheriff court. That situation was averted because the process has worked so far, in that it has ensured that services have improved. However, if services were to deteriorate slightly, what effect would the fact that the improvement notice process was already under way have on the seeking of an emergency order?

My second question—forgive me for not knowing this; the answer may well be in the amendments—is whether emergency condition notices and emergency cancellation of registration orders will apply to a local authority if it is the provider of the services. I see that a local authority is an appropriate authority, but that relates to the making of an order. Given that section 52 makes provision for services that are provided by local authorities, how do emergency condition notices and emergency cancellation of registration orders relate to such services?

My final question concerns a point about financial considerations relating to care providers that I made in a members' business debate. Could an emergency cancellation of registration order be

used if SCSWIS or a local authority knew that an emergency financial situation had arisen—as opposed to a situation that related to the quality of care that was provided—whereby a provider had suffered a financial collapse or their finances had changed substantially? Would such a situation fall into the category of presenting a

"serious risk to the … health or wellbeing of persons"?

Shona Robison: If I understood you correctly, your point about improvement notices relates to situations in which the service provider has already been served with an improvement notice. If that process were going along, the provider would obviously be under quite a lot of scrutiny by the care commission—or, in the future, by SCSWIS. The simple answer on how that situation would relate to the potential use of the emergency procedures is that it would depend on the progress that was being made. If things took a turn for the worse during the improvement notice process and the situation deteriorated quickly, with the result that a judgment was made that the service users were under threat in some way, the emergency procedures could be used. The fact that the improvement notice process was under way would not stop emergency procedures being used if things deteriorated suddenly.

However, given the way in which improvement notices work, that would probably be unlikely because of the level of scrutiny that the organisation would be under. A lot of assistance would be given following the serving of an improvement notice, although it is not outwith the realms of possibility that that would happen.

As far as local authority-provided services are concerned, a care service that a local authority was statutorily required to provide could not be closed or cancelled, although a condition notice could be served. That is the case with the current process, under which the care commission operates. There is no difference in that regard.

I know that Jeremy Purvis has previously raised the financial issue.

There is a distinction to be made. An emergency procedure would be followed only in rare circumstances. It would, for example, be followed if there was such concern about the care that was being provided that immediate action had to be taken to protect residents' life and limbs. Financial concerns do not come into that category; they are different from what we are talking about, which is the quality of care and immediate threats to life and limb.

I understand Jeremy Purvis's on-going concerns about whether the care commission takes enough cognisance of financial concerns coming down the line that can indicate that problems are ahead. We have had a number of discussions about that. It is clear that, at the point of registration of a care service, the organisation's financial viability is considered, but members will appreciate that care organisations do not always want to share their financial business with the care commission, and may be unlikely, for commercial reasons, to do so with SCSWIS. Therefore, it is not always possible for the care commission to know the details of an organisation's financial circumstances, and it will not always be possible for SCSWIS to know such details, unless they are shared with it. If such details are shared, SCSWIS or the care commission would want to be alive to what they could mean for the future viability of the care service.

The Convener: Do you wish to wind up, minister?

Shona Robison: I think that I have said enough.

Amendment 129 agreed to.

Section 54 agreed to.

After section 54

Amendments 130 to 132 moved—[Shona Robison]—and agreed to.

The Convener: That ends our consideration of amendments on day 2 of stage 2 of the bill. I suspend the meeting.

15:57

Meeting suspended.

16:04

On resuming—

Crofting Reform (Scotland) Bill: Financial Memorandum

The Convener: I welcome to the committee John King, registration director at the Registers of Scotland; Bruce Beveridge, head of the rural communities division in the Scottish Government; and Ross Scott, interim finance team leader for rural affairs and environment finance at the Scottish Government. That is the longest title so far, but there is one bigger to come, and that is Iain Dewar, bill team leader in the future of crofting team at the Scottish Government. Finally, I welcome Iain Matheson, head of the crofting branch in the Scottish Government. I invite the witnesses to make an opening statement.

Iain Dewar (Scottish Government Rural Directorate): As I am sure all members are aware, this is the second bill on crofting to come before the committee and the Scottish Parliament in the past four years. During consideration of the Crofting Reform etc Bill in 2006, the Executive of the day decided to withdraw sections of the bill at stage 2 and to establish a committee of inquiry on crofting to take an independent look at what was required to secure the future of crofting. Professor Shucksmith was appointed in December that year and brought together a committee that gathered written and oral evidence before submitting a report to ministers in May 2008. The Government considered the report and, in its response, which was published in October 2008, accepted some of the recommendations, rejected others and agreed to give further consideration to still others.

Some of the proposals have been taken forward administratively, but others require changes to legislation. To that end, the Government prepared a draft bill for consultation. The consultation took place from May to August 2009 and included a partial regulatory impact assessment. Comments were invited on the estimated impact of and costs associated with the draft bill. Responses to the consultation were analysed and published in November, and a bill was introduced in December.

The financial memorandum that accompanies the bill includes the best estimates of costs associated with it, based on information supplied by a number of sources, including local authorities, the Registers of Scotland, the Crofters Commission and the Scottish Land Court. Making such estimates has been a challenging task, not least because many of the costs associated with the bill will depend to a large extent on a number of variables, such as the number of regulatory cases that require a full enforcement mechanism to be implemented and the number of challenges or appeals that are made to the Land Court. In those cases, we have sought to be helpful by providing information on the current costs and the number of cases and by presenting scenarios that show what the effect of the bill would be in certain circumstances. Other variables in relation to meeting the costs associated with the regulation of crofting include the extent to which ministers make use of the proposed power to charge for regulatory applications and the extent to which the regulator—the Crofters Commission—delivers on its efficiency target of 5 per cent per annum.

David Whitton: There was a fair bit of questioning about the bill in the Rural Affairs and Environment Committee, so you will not be surprised by the fact that we want to ask a question or two. The Crofters Commission does not appear to have costed much, even within the ranges that you provide, but there are clearly additional work implications for it. Although the financial memorandum hints that there is extra work for the commission, no costs for that are provided. Can you indicate what you think the increased costs for the commission will be?

Iain Dewar: In the financial memorandum, we set out the costs that the Crofters Commission is likely to face in those areas where we think that it will incur costs, such as the compilation of an electoral roll for elections to the reformed commission. However, some of the costs that the commission will incur are difficult to estimate because, as I said in my opening statement, they will depend largely on, for example, the extent to which the full enforcement measures require to be implemented.

The costs are not necessarily additional, as much of the bill replaces existing parts of the principal act, the Crofters (Scotland) Act 1993, as amended by the Crofting Reform etc Act 2007. There is plenty of scope for efficiencies. An example in that regard is the registration form for the proposed new crofting register, when that is triggered by certain regulatory applications. In the course of its work to assess regulatory applications the commission will review the information that is contained in the registration form, a lot of which will be broadly the same.

Additional costs that we have identified include an estimate that the requirement to compile an electoral roll will cost about £25,000. There is also a cost associated with the proposal to increase the number of commissioners from seven to nine—I have information on that in my notes, so I will come back to the issue. Other costs are associated with the reform of the Crofters Commission. The cost of the conduct of elections will be borne by local authorities, which will be reimbursed by central Government, because local

authorities will oversee the elections, given their experience and expertise in that regard.

David Whitton: You are asking the commission to undertake additional work to combat the problem of absentee crofters. It is clear from the bill that you want to bear down on absenteeism. I am sure that all members agree with that approach and want crofts to be occupied. However, you seem to be claiming that no additional costs will be attached to chasing absentee crofters. Surely that cannot be right.

Iain Dewar: The Government has provided £100,000 of additional resource to begin to tackle absenteeism. The resource was made available to the commission following the transfer of crofting development to Highlands and Islands Enterprise and is expected—

David Whitton: Must the tracking down of absentee crofters come from that £100,000?

Iain Dewar: The £100,000 is certainly being used to start the process. The commission announced in January that it had started its absentee initiative and had posted in the order of 500 or 600 letters to people who have been absent from their crofts for 10 or more years. The expectation is that the money will enable the commission to deal with the initial pulse of activity. The resource will remain available to the commission in the foreseeable future.

David Whitton: Must that extra money also pay for the map that the commission will be asked to produce to show where all crofts are?

Iain Dewar: No. The maps relate to the registration of crofts. The Government has agreed to fund the establishment of the crofting register, but the cost of individual registration will be borne by crofters. A crofter may choose to submit their own map with their registration form, or they may acquire a map from Registers of Scotland for a fee.

Bruce Beveridge (Scottish Government Rural Directorate): As Mr Dewar said, the bill will replace large chunks of administrative provisions with new provisions. The opportunity for the commission to take action on absenteeism is already there in one form or another; what is new is placing a duty on the commission to strengthen that action. So activity is already under way, and the additional resource—the £100,000-odd that Mr Dewar mentioned, which was saved by the staff—are to bolster that activity in preparation for the bill. The undertaking is not entirely new.

We anticipate that the commission as newly constituted might want to review how it carries out activities. We have used the current evidence on numbers to give such information as we can, but we acknowledge that there might be opportunities for efficiencies and that the new commission might want to consider that further down the line. It is therefore quite difficult to predict accurately the activity that the bill will generate and what its implications will be in an arrangement that might differ in detail from existing one.

16:15

David Whitton: Does Mr King want to add anything before I ask my next question?

John King (Registers of Scotland): The intention is that the crofting register be map based. The impact on the crofter will be that they will have to supply a plan that shows the croft's boundaries. That will have to be submitted along with the application to the commission and subsequently to ourselves.

David Whitton: As I understand it, the commission is being asked to do a lot of extra work to establish the new map while it maintains the existing register. It has to receive new applications, check the details against existing records and perhaps even ask for more details. That information has to be forwarded to the keeper of the records, and the commission has to receive anything that comes back from the keeper of the records, notify the croft's neighbours of the registration, and arrange for a period of time in which to hear objections—I am told that there might be some objections given that some people have not been on their croft for 10 years or more. After that, Land Court hearings would have to be held as a result of disputes about boundaries. Is the Government seriously suggesting that that can all be done without any extra cost to the commission?

Iain Dewar: I am sorry; perhaps you have been misinformed. When the Crofters Commission receives a registration form, it does not even look at the accompanying map because the current register is not map based—there is nothing against which to compare the map. The crofting commission will be required to confirm only details such as the names of the tenant and the landowner; those already exist on the current register of crofts, which is largely an administrative database. Where there is a discrepancy—for example, if a registration is submitted in the name of Andy McDonald, but the current register of crofts has the name Archie McDonald—the commission will want to know why the existing register is incorrect. It might well be that Archie McDonald was Andy McDonald's father, and the commission was never notified of the bequest. That type of issue would have to be sorted out.

David Whitton: But there might also be an Arthur McDonald who says that he has a claim to the croft. How do you sort that one out?

Iain Dewar: The commission will seek to resolve such discrepancies during the course of its business in any case, because it is important that the commission has an accurate administrative database. Following that process, the commission will forward the registration application and the map to the keeper, who will then register the application on the new crofting register.

The commission will notify those people who have land adjacent to that croft that the croft has been registered, which is an additional task. It is anticipated that that will be done through existing provision and more efficient processes in the undertaking of the regulatory work—

David Whitton: You say that that additional task will be met from existing provision. If there are a lot of objections, surely the commission will face extra costs.

Iain Dewar: The commission would not have a particular role in relation to objections to the registration of a croft. The objection or challenge to the registration would be made directly to the Land Court.

David Whitton: If there were an objection or disagreement about who owned a croft, there would be a dispute in the Land Court. Presumably, the commission would have to go to the Land Court hearing, would it not? There would be a cost associated with that.

Iain Dewar: No. The objection would be raised by someone who disputed the tenancy of a croft and they, rather than the commission, would go to the Land Court to resolve that dispute.

David Whitton: Is it correct that the Government is paying for the new map of all common grazings?

Iain Dewar: That is right. The Government will fund that exercise.

David Whitton: At a cost of about £1.5 million.

Iain Dewar: No. That is the cost of establishing the whole crofting register. There are currently about 800 common grazings. A common grazing is land that has a number of shareholders, each with a souming. There are many interests in a common grazing; there are potentially 100-plus shareholders, plus the landowner. It was therefore considered that the most effective and efficient way in which to register common grazings would be to undertake a rolling programme of registering both the area of common grazings and the shareholders.

David Whitton: And you are confident that that would take around four years.

Iain Dewar: Yes. As I said, there are about 800 common grazings. We have drawn on the experience in our department to estimate the time that it will take to map and digitise those vast tracts of hillside.

David Whitton: So you would dispute estimates that it is not possible to do that in four years and that it is more likely to take eight.

Iain Dewar: I would be interested to hear why people thought that it would take eight years rather than four.

David Whitton: We will see whether we can get you that opinion.

Can you give us a bit more detail on the cost to crofters? Apparently, in the consultation, the cost to register was given as about £250. You now say that that figure is down to between £80 and £130, but that does not seem to include all the costs associated with registration, such as having to advertise in a local paper—that is an interesting thing to have to do, given that last week we debated taking public notices out of local papers, but there we go, that is just the way these things happen. Advertising in a local paper could cost a couple of hundred quid, depending on the paper. The crofter might require the services of a surveyor to detail the boundaries of their particular croft, and might even need the services of a lawyer. It is therefore not really true to say that it will cost the crofter only £80 to £130, is it? There are associated costs.

Iain Dewar: Certainly, the £80 to £130 is associated with registering the croft on the crofting register. As I am sure the committee is aware, most people pay a certain amount of money to register their title on the land register.

About half of the regulatory trigger points that trigger registration require public notification. For example, if someone wanted to apply to decroft—that is, take part of a croft out of crofting tenure—that would be a regulatory trigger point for registration in a new register. That process requires public notification—that is, the crofter must advertise in a local newspaper that they are going to do that. It is perfectly possible for them to advertise at the same time the fact that they are registering their croft on the new crofting register, so it is not the case that at every regulatory trigger crofters are required separately to notify the public about their registration.

I am sorry, I have forgotten the other point.

David Whitton: The cost of a surveyor to determine the boundaries of a croft.

Iain Dewar: That was it. Throughout the consultation, there was some concern about other costs. There was a general fear that it would be necessary for crofters to engage surveyors to map the area of their croft and so forth, but that is not a requirement. The requirement that is set down by the keeper of the registers of Scotland is simply to

delineate clearly the boundary of the croft on a map. I will ask John King to add to that.

John King: There is not much more that I can say on that point. The requirement is set out; how the crofter goes about meeting it is up to them. We will provide all the guidance on preparing the plan that we can, and for some crofts it may well be very straightforward for the crofter to prepare the plan themselves. In other circumstances—for instance, if there is a large estate in which a number of crofts are being registered—it may be more appropriate to involve a surveyor, but it is very much up to the crofter or person involved.

David Whitton: There could therefore be a cost to the crofter apart from the registration cost. They will have to advertise, and they may have to hire a surveyor to be absolutely certain where the boundaries lie. There might also be an objection for which they are taken to the Land Court and have to hire a lawyer.

Bruce Beveridge: There could be those additional costs—

David Whitton: And you have not factored them in.

Bruce Beveridge: I will take the costs in reverse order. Disputes on land ownership already go to the Land Court—that happens already. We are still working on the detail of how we can best ensure that the registration process happens with agreement and as quickly and cheaply as possible, especially as a potentially large number of registrations may happen around the same time. We are working closely with the keeper on that. The work is still in train, but we have a clear eye on that.

On advertising, as Mr Dewar said, a lot happens already and it is not a new requirement. In many cases, the regulatory trigger—the action that triggers registration—is something that requires advertisement under the existing procedure. You asked about the work that the commission has to do on registration applications and, in the same way, the commission is already considering these matters because registration is a regulatory application that it has to process anyway. Any increase in the work will be marginal because it already deals with the same information to process the regulatory action that triggers registration.

David Whitton: Just for my own interest—or even amusement, I suppose—what would be the likely outcome if the registrations were put on the internet rather than in local newspapers?

Bruce Beveridge: I had in mind the statutory instrument that the committee debated last week. I do not think that it was intended to apply to the advertisement that we are discussing, certainly not at the present time. I do not think that we would propose at present that the advertisement went on the internet. As with what you discussed last week, internet publication will be closely watched.

David Whitton: I welcome your views, Mr Beveridge. I would not recommend such advertisements going on the internet either, but that is something else.

Linda Fabiani (Central Scotland) (SNP): I was interested in the submission from the Scottish Land Court. It feels that its comments are accurately reflected in the financial memorandum, but it suggests that it has now thought matters through further. It has concerns that the numbers of registrations and resultant appeals have been underestimated. You recognise in the memorandum that it is difficult to estimate the numbers and that, at the start of the new system, there may be a lot of additional appeals, with the rolling effect of one decision leading to someone's neighbours making an appeal. How confident are you, as a team, that the figures in the financial memorandum relating to the Land Court are feasible and accurate?

16:30

Iain Dewar: The figures in the financial memorandum are not so much estimates as illustrations. As you rightly pointed out, it is difficult to ascertain any evidence on the likely number of appeals. At the moment, roughly six boundary disputes are heard by the Land Court each year, and I am not terribly convinced that there will be a huge surge in the number of disputes as a consequence of the regulatory trigger point, which will be the main trigger for registration. It is estimated that the regulatory trigger point will result in around 13,000—sorry, 1,300 registrations a year.

Linda Fabiani: Your colleagues got a fright when you said 13,000.

Iain Dewar: Another trigger point will be an application to resume croft land heard by the Land Court. That will ensure a steady process of registration, unless people take the opportunity voluntarily to register their crofts on the proposed crofting register. We expect that the process will be relatively gradual.

There is absolutely no way of telling how many crofters have boundary disputes that are lying dormant. The Land Court's written submission suggests that there might be a 5 per cent appeals rate, and we provide an illustration of the effect if the rate were 2 per cent. It could as easily be 1 per cent or 3 per cent. As I said at the outset, the purpose of citing the figure of 2 per cent was to illustrate what the effect would be if 2 per cent of registrations were challenged in the Land Court.

Jeremy Purvis: I have two quick questions regarding the finance and how it is scheduled. Where is the money going to come from?

Iain Dewar: Where is the money going to come from?

Jeremy Purvis: Yes.

Iain Dewar: The crofting budget is currently the crofting assistance line that appears in the budget documents. That is the primary source of funding for the Crofters Commission, for example. It also includes provision for the croft house grant scheme. The funding for the measures in the bill will come from that budget line. As I said, the Crofters Commission also has an annual time efficiency saving target of 5 per cent, which will release time that it could redeploy in, for example, increasing its efforts to address absenteeism and neglect. There is also the funding for the crofting register.

Jeremy Purvis: I see that part of the expenditure is due in 2010-11. Has provision for that been made in the 2010-11 budget? I am talking about the £25,000 plus the £187,500 for the establishment of the register.

Iain Dewar: I am sorry, but I did not hear that, Mr Purvis.

Jeremy Purvis: Sorry. Two items of expenditure are due in 2011—the establishment of an electoral roll and the establishment of the crofting register—which amount to £212,500. Is there provision for that in the 2010-11 budget?

Iain Dewar: Are you referring to the table at the end of the financial memorandum?

Jeremy Purvis: Yes. It is described as

"known additional costs associated with each part of the Bill."

I refer to the 2010-11 column.

Iain Dewar: We have included the establishment of an electoral roll in the 2010-11 column, but the spend will be determined largely by ministers' decision on when to hold such an election. Clearly, the decision will depend on other electoral cycles. There is a need to ensure that there is no interference with local government, Scottish Parliament or United Kingdom Parliament elections and so forth. The figure is included in the 2010-11 column, but there is flexbility in the crofting assistance budget to cover it. Bruce Beveridge may want to add something on the crofting register and the funding for that.

Bruce Beveridge: Registers tend to be built on the payment-based model. Three rolling years of funding are shown in the table for the register, but we have already identified the resources with which we intend to defray the entire costs of its set up. The years that we have shown happen to be the budgeting time during which the costs are likely to occur.

Jeremy Purvis: Have you indicated provision in the budget for 2010-11 for these additional costs?

Bruce Beveridge: We have identified where the funds for the total cost for the register will come from and we have set them out over those three years. As Iain Dewar said, in terms of electoral and other costs, there is sufficient flexibility in the crofting assistance budget to cover the arrangements. That is certainly the case for 2010-11.

Jeremy Purvis: How did you do that? The overall cost of £1.5 million for the register is spread over three years to 2012-13. How can you know now what is in your budget for that year, particularly as there is no 2010-11 budget line for the implications of the bill?

Bruce Beveridge: That is why I separated out the two things. The set-up costs for the crofting register are intended to come from the realisation of a surplus capital asset that has been lying unused or unrealised. The intention is to realise that—

Jeremy Purvis: What is that asset?

Bruce Beveridge: The intention is to use a large number of acres of unused land outside Inverness that are not productively used at present. The receipt of the set-up costs of the register will come from that. Ministers have agreed that.

Jeremy Purvis: That is now public knowledge, but has the intention to sell off the land been stated publicly in the past?

Bruce Beveridge: I think that it is no secret. It was mentioned somewhere in the consultation document.

The Convener: If I heard you correctly, you mentioned efficiency savings of about 5 per cent to address and reduce absenteeism and neglect. Will you explain how?

Iain Dewar: I beg your pardon. I did not catch that.

The Convener: If I heard you correctly, you are looking for efficiency savings that are part of reducing—or addressing and reducing—absenteeism and neglect. How will you get those efficiency savings?

Iain Dewar: The total budget for the commission—including staff and operating costs—amounts to about £3.5 million. Five per cent of that gives a figure of about £175,000-worth of efficiencies—

The Convener: How will you get them?

Iain Dewar: Through redesigning the regulatory decision-making process. That will be precipitated by the requirement of the newly created commission to produce a policy plan in which it sets out its policies on certain regulatory matters.

In doing that, we have stripped out a lot of what are termed special conditions in the legislation, which means that the commission will no longer have to consider particular regulatory applications of specific points. The reference point will be the policy plan, which will be set out at the start. That should lead to more efficient decision making in relation to the routine regulatory application work that the commission does, which will release efficiency savings that can be deployed to address the absenteeism and neglect that are considered to be damaging to crofting interests—I have previously mentioned the £100,000 that has already been made available to the commission to begin its work in that regard.

Other efficiency savings are being made, such as the move from Castle Wynd to Great Glen house, which is due to take place this month. That will enable the commission to share services with Scottish National Heritage, which will also be located in that building. The commission is committed to driving towards efficiencies and to focusing its efforts on tackling absenteeism and neglect, which is consistent with the Government's purpose of sustainable economic growth.

The Convener: So the efficiencies are to be made by doing less of one thing and directing resources to another. I would like to see that in practice.

Bruce Beveridge: That is pretty much what people in public sector bodies are likely to have to do as a matter of course. I am operating on the expectation that I will have to do that. There are always opportunities to consider how one does things. Although the figure is bullish, we do not consider it to be unreasonable.

The Convener: Every part of the public services faces restrictions. I am just interested to know how you are going to achieve such efficiency savings in practice. I am not quite sure that I have been told that so far.

Iain Dewar: The bill presents the commission with the opportunity to review its decision-making process because of the changes that are being proposed to regulation, which we consider will enable it to be more streamlined and efficient in terms of the routine applications to divide crofts, apportion common grazings and so on.

Bruce Beveridge: The issue is not only to do with what is in the bill; it is also about modernising work processes and so on.

Iain Matheson (Scottish Government Rural Directorate): A lot of processing of applications is done in the way that it has been done for years, with application forms and reports being sent by post from the area offices to the commission and from the commission to the common grazings clerks and so on. However, with e-mail, the work can be done a lot more quickly, which means that the timescales can be shortened. Work that has previously taken about three or four weeks to complete could be done within 10 days.

The Convener: I wish you well in that.

David Whitton: I was just thinking of crofters sitting at their keyboards and filling in forms—

Linda Fabiani: They do. Do not be so patronising.

David Whitton: I was not being patronising; I was just interested in that.

How many crofts are there and how many absentee crofts are there?

Iain Dewar: There are currently about 18,000 crofts, and there are about 13,000 crofters—it is possible for a crofter to have more than one croft. The absenteeism rate is currently around 10 per cent of crofts. That figure was included in the Shucksmith inquiry report. The rate varies from area to area. In Sutherland, for example, it is about 15 per cent.

The Convener: I am afraid that this market day is wearing late. Do you wish to make any final comments?

Iain Dewar: I have no final comments to make.

The Convener: I thank you for your attendance.

Decision on Taking Business in Private

16:45

The Convener: Our final item on today's agenda concerns a decision on whether to discuss in private at future meetings our draft report on the financial memorandum of the Crofting Reform (Scotland) Bill and our consideration of our work programme. Do we agree so to do?

Members *indicated agreement.*

The Convener: The next meeting of the committee will take place on 9 February, when we will continue to consider the Public Services Reform (Scotland) Bill at stage 2 and take evidence on the financial memorandum of the Alcohol etc (Scotland) Bill.

Meeting closed at 16:45.

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