Stage 3 proceedings on the Public Services Reform (Scotland) Bill are scheduled to take place on 25 March 2010.

This briefing considers a number of key Stage 2 amendments.
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INTRODUCTION
The Scottish Government introduced the Public Services Reform (Scotland) Bill in the Parliament on 29 May 2009.

The Parliament’s Finance Committee was designated as lead committee for parliamentary consideration of the Bill. Its Stage 1 Report was published on 11 December 2009. The Scottish Government provided an initial written response to the Stage 1 Report on 5 January 2010. The Bill completed Stage 1 (consideration of general principles) with the Stage 1 Debate on 7 January 2010.

Stage 2 (detailed consideration) was completed by the Finance Committee on 2 March 2010 and was followed by the publication of the Bill (as amended at Stage 2).

Stage 3 (final consideration) is scheduled for 25 March 2010.

Other SPICe briefings, providing information on the Bill as introduced, are also available on the Parliament’s website:

- Public Services Reform (Scotland) Bill: Finance Committee Scrutiny (Burnside 2009)
- Public Services Reform (Scotland) Bill: Social Services (Kidner 2009)
- Public Services Reform (Scotland) Bill: Healthcare Improvement Scotland (Payne 2009)
- Public Services Reform (Scotland) Bill: Creative Scotland (Earle 2009)
- The Public Services Reform (Scotland) Bill: Rural and Environment Bodies (Edwards 2009)

Key dates in the Parliament’s consideration of the Bill are set out in the following table.

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The remainder of this briefing looks at some of the main issues raised during Stage 2 consideration of the Bill. It does not seek to outline all of the issues debated or changes made to the Bill.

STAGE 2

The Finance Committee held five sessions on Stage 2 of the Bill. What follows is a summary of the main amendments proposed to the Bill and how the Committee dealt with them. It is not an exhaustive discussion of all the amendments lodged and passed and does not comment in detail on consequential amendments.

PART 1: SIMPLIFICATION OF PUBLIC BODIES

The Government lodged amendments to Part 1 of the Bill which were agreed to by the Finance Committee. Amendment 1 responded to the Rural Affairs and Environment Committee’s recommendation at Stage 1 to amend section 2(3)(a) to allow existing committees within Scottish Natural Heritage (SNH) to take on the advisory committee’s functions on sites of special scientific interest (SSSIs). Amendment 2 places on SNH a duty to consider any representations to the notification of SSSIs made by any person with an interest in land, and then to take such action as it thinks fit in relation to making a decision on whether to confirm or withdraw the notification (amendments 3 to 8 were consequential on amendments 1 and 2).

Amendment 9 (and amendments 10, 11, 66 and 67 in the same group) transfers Waterwatch Scotland’s customer representation and complaints handling roles to Consumer Focus Scotland and the Scottish Public Services Ombudsman (SPSO) respectively, to allow for the transfer of staff to either body and to require those bodies together with the Water Industry Commission for Scotland, to form co-operation agreements.

Amendments 12 and 13 seek to dissolve the Scottish Environment Protection Agency’s (SEPA) regional boards and to remove SEPA’s statutory duty to operate them.

Through the national forest land scheme, communities are able to purchase land on the national forest estate for non-forestry purposes only. In its stage 1 report on the Climate Change (Scotland) Bill, the Rural Affairs and Environment Committee recommended that the Scottish Government incorporate in future legislation provisions to allow for community leasing for forestry purposes.

Amendment 14 amends the Forestry Act 1967 to allow the Forestry Commissioners to delegate functions relating to the management of the national forest estate to community bodies. Forestry Commission Scotland will amend the national forest land scheme to include opportunities for communities to lease land for forestry purposes.

The Forestry Commissioners' powers to enter into joint ventures in relation to land that they manage in England and Wales do not apply to Scotland. That has caused difficulties, for example with the legal constitution of Forest Holidays, which is a joint venture with the Camping and Caravanning Club. Amendment 15 is intended to remove the cross-border anomaly, by extending to Scotland the powers that the forestry commissioners have to form joint ventures regarding land that they manage south of the border.
PART 2: ORDER-MAKING POWERS

The proposed order-making powers in Part 2 were the most controversial element of the Bill during the Finance Committee’s Stage 1 scrutiny, leading to a number of amendments at Stage 2. This section only covers the amendments that were agreed to by the Finance Committee.

Part 2 of the Bill as introduced contained two order-making powers:

- **Section 10** – allows Ministers to make any provision which would improve the exercise of public functions. This includes modifying, conferring, abolishing, transferring, or delegating any function. It also includes abolishing or creating, or amending the constitution of, public bodies.

- **Section 13** – allows Ministers to make any provision to reduce or remove ‘burdens’. This can also include abolishing, conferring, transferring or delegating functions, or creating or abolishing a public body.

The Scottish Government lodged amendments to provide greater constraints on the use of the order-making powers. Amendment 21 provides that an order under section 10 or 13 of the Bill to abolish a person, body or office-holder can only be brought forward if the person/body/office-holder in question has no functions left to exercise – ie only if the functions have been abolished or transferred elsewhere.

Other amendments were designed to deal with points related to further definition of “necessary protections” on the use of the “public functions” power in section 10. These amendments included provisions to protect the independence of the judiciary and judicial decision making; civil liberties; and any existing duties to protect and preserve cultural heritage (amendment 36).

In terms of the parliamentary procedure for both order-making powers, the Scottish Government lodged amendments that responded to the recommendations of the Subordinate Legislation Committee, which would require proposals for an order under section 10 or 13 of the Bill to be subject to an enhanced form of “super-affirmative” procedure. In its amendment 57, the Scottish Government proposed that if Scottish Ministers intend using the order-making power, they must lay before the Parliament a copy of the proposed draft order and the proposed explanatory document and send copies of that order to any person who is required to be consulted. There would then be a period of 60 sitting days to allow consultation and to allow scrutiny by parliamentary committees should they wish. Once laid, the draft order would be subject to the affirmative resolution procedure.

Stage 1 scrutiny by the Finance Committee also led to much comment as to whether the Parliamentary Commissioners and Ombudsmen should be listed in schedule 3 as bodies subject to the order-making powers. All the Parliamentary Commissioners to respond to the Finance Committee consultation on the Bill were unhappy at their inclusion in the list of bodies subject to order-making powers in Schedule 3 of the Bill, but some like the SPSO pointed out that change which requires primary legislation can be slow, and there is a need to consider how changes can be done more quickly. They all cited the importance of Parliamentary bodies being seen to be independent of, and outwith the direct influence or control of, Ministers. Amendment 48 was an attempt to address this concern and provides that the Scottish Ministers may not use the order-making powers in respect of the parliamentary commissioners or ombudsmen unless requested to do so by the Scottish Parliamentary Corporate Body (SPCB).

Other amendments related to Part 2 of the Bill and passed at Stage 2 were:
AMENDMENTS TO PART 2 NOT PASSED

There were amendments lodged at Stage 2 on the order-making powers which were not agreed by the Finance Committee. In amendments 83 and 84, Jeremy Purvis proposed that the scope of the power in section 10 of the Bill should allow the Government to bring forward proposals that “would improve” the efficiency, effectiveness and economy of public bodies, (rather than the Bill as introduced which provided that the Government must “have regard to” efficiency, effectiveness and economy) but not allow the abolition or creation of new ones. These amendments were defeated on the casting vote of the Convener.

In amendment 23, Jeremy Purvis proposed removing all Parliamentary bodies from the list of bodies listed in schedule 3 of the Bill and subject to the order-making powers. This was defeated by 5 votes to 3.

David Whitton’s amendment 101 and the others in that group proposed bringing the order-making powers in Part 2 of the PSR Bill into line with the procedure for Regulatory Reform Orders contained in the UK Parliament’s Legislative and Regulatory Reform Act 2006 (clauses 12 to 18).

NEW PART 2A PROVISION OF INFORMATION ON THE EXERCISE OF PUBLIC FUNCTIONS

Derek Brownlee proposed amendments at Stage 2 (72, 73, 74, 75, 79 and 109) which required the bodies listed in schedule 3 to provide details annually of expenditure on certain items, for example, hospitality and overseas travel. These were supported by the Finance Committee, however the Cabinet Secretary for Finance and Sustainable Growth, while supportive of them, said there was a case for “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” (Scottish Parliament Finance Committee 2010b, col 1807).
Amendment 77 lodged by Derek Brownlee required that bodies listed in schedule 3 publish quarterly statements on expenditure of more than £25,000 (but not employees’ remuneration). This was supported by the Committee after a division (7 in favour, 1 against). The Cabinet Secretary, while supportive of the amendment in principle suggested that consideration needed to be given to ensuring that information is not published which breaches confidentiality, data protection or security arrangements. He also stated that the cost of operating such a scheme must be kept as low as possible, with reporting frequency proportionate to the size and level of expenditure of a body.

Unsuccessful amendments lodged after Part 2
Karen Whitefield proposed amendments 195 and 196 at this point in the Bill which were defeated on the casting vote of the Convener. Amendment 195 proposed requiring local authorities to prepare a kinship care strategy by 12 months after Royal Assent of the Bill. Amendment 196 proposed requiring local authorities to prepare and publish a strategy on support for disabled children and their families, and to outline what support they have provided under that strategy.

PART 3: CREATIVE SCOTLAND
This section covers the Stage 2 amendments passed which related to the establishment of Creative Scotland.

Amendment 113, proposed by the Minister for Culture and External Affairs, gives equal legal status to the Gaelic name for Creative Scotland, Alba Chruthachail. Amendments 114 and 115 propose interim arrangements to allow Ministers to appoint the first Chief Executive of Creative Scotland if, for whatever reason, no Chief Executive designate is in place when Creative Scotland comes into being.

The Minister for Culture and External Affairs also proposed amendments 116 and 117 which she argued make 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. Such forms of financial support and involvement might include contracts involving “recoupment” and equity investments, in addition to financial assistance by way of more conventional grants and loans.

Amendment 187 in the name of Malcolm Chisholm proposes defining culture “in its broad sense as a way of life” in section 27 subsection (1)(e). Malcolm Chisholm argued that this provided greater clarity to the broader meaning of culture in that part of the Bill. This amendment was agreed to by division of 5 votes to 3.

PARTS 4 AND 5: SOCIAL CARE & SOCIAL WORK AND HEALTH CARE: SCRUTINY IMPROVEMENT
This section covers the Stage 2 amendments passed which related to parts 4 and 5 of the Bill, and the creation of Social Care and Social Work Improvement Scotland (SCSWIS) and Health Improvement Scotland (HIS).

Amendments 118 and 119 give Scottish Ministers power to appoint the first Chief Executive of SCSWIS as it is not possible for SCSWIS to appoint a Chief Executive to be in place before it has been established. Similar powers in relation to the Chief Executive of HIS are contained in amendments 182 and 183.
Amendment 121 changes the age of an adult in relation to an “adult placement service” from 18 to 16. The effect of this is to ensure that services that provide an “adult placement service” to 16 or 17 year olds are subject to the same scrutiny as those who provide services for the over 18s. Amendment 123 adds to the definition of those who are not considered child minders when looking after a child that is not their own. The effect of this amendment is to ensure that those considered “kinship carers” under the Looked After Children (Scotland) Regulations 2009 or who are supervising a child under the Children (Scotland) Act 1995, are not considered child minders and as such are not subjected to scrutiny by SCSWIS. Amendment 135 gives Scottish Ministers power to confer on SCSWIS by regulations additional functions in relation to care services. The effect of this amendment is that it allows additional powers to be conferred on SCSWIS without primary legislation. However, any regulations made under this 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.

Amendment 191 in the name of Malcolm Chisholm amended section 40 of the Bill and replaced “may” with “must” – namely “Ministers must prepare and publish standards and outcomes” in relation to care services and social work services. Malcolm Chisholm argued that it was important for the public and providers to be aware of the standards to expect from care and social work services (Scottish Parliament Finance Committee 2010b, col 1827). This amendment was agreed to on division by 5 votes to 3.

Amendments 124 and 125 on SCSWIS and 163 to 165 on HIS require the bodies to develop an inspection plan in accordance with best regulatory practice that will set out the arrangements for the inspections of social services, health and independent health care services in a way which is transparent accountable, proportionate and consistent. SCSWIS and HIS should have regard to any guidance issued by Ministers and must obtain approval of Ministers for the plan or any revisions to the plan. 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. Malcolm Chisholm lodged amendments 125A and 165A which proposed that services were subject to inspection in accordance with best regulatory practice, “including” those services which are “subject to self-evaluation”. He was concerned that “there is too much of a drift towards self-evaluation” and that there was a need to make explicit that inspection has a role following self-evaluation. This amendment won the approval of the Committee by 5 votes to 3.

Amendments 126 (SCSWIS) and 166 (HIS) provides the power to make regulations that identify circumstances in which access to and availability of SCSWIS or HIS inspection reports or parts of reports can be restricted, refused or withheld. On occasion, the inspection reports that are currently provided by the Social Work Inspection Agency (SWIA) deal with personal or sensitive information making general publication inappropriate or unnecessary. The effect of the amendments is to outline the circumstances where is it appropriate for such information to be withheld.

Amendment 127, 128 and 167 have the effect of setting out the conditions under which information provided for inspection by SCSWIS and HIS should be held, ensuring such information is held appropriately.

The purpose of amendment 129 is to enable SCSWIS to apply to the sheriff for an order cancelling the registration of a care service. The sheriff may make such an order where he considers that unless the order is made there will be a serious risk to the life, health or wellbeing of users of the service or others. The order, which SCSWIS must give to the service provider, can take effect from the day it is made or another specified date. SCSWIS must also make the health board and/or local authorities in whose area the service is located, and any other relevant persons, aware of the order. The care service may appeal the decision to the sheriff within 14
days of the order being made, but the order, and therefore the closure of the care service, remains in force while any such appeal is being considered. The effect of this amendment, by cancelling the service’s registration, would be to close the service on the date specified in the order. SCSWIS may only make an application for a cancellation of the registration of a care service, where it has reason to believe that there is serious risks to the users of the service (or others) if the service continues to operate. Amendment 169 sets out the same measures for HIS in respect of registered independent healthcare services.

Amendment 130 gives 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." The service provider may make representation to SCSWIS to vary or remove the emergency condition notice. This power is intended to prevent a service taking any more clients while it responds to a condition notice. Amendment 131 ensures the immediate action of the emergency condition notice and exempts them from the 14-day period that is required before the imposition of a normal condition notice. Amendment 132 outlines the appropriate appeals procedures to SCSWIS and to the sheriff for emergency condition notices. Amendments 170 and 171 set out the same measures for HIS in respect of registered independent health care services.

Amendment 133 gives people who provide a service the power to request that SCSWIS add a condition in relation to their registration. Amendment 172 sets out the same amendments for HIS. Amendment 178 proposes that if any local authority health board or special health board makes arrangements for the supply of an independent health care service on its behalf, it must ensure that the service is registered appropriately with HIS.

Section 64 requires SCSWIS to establish a procedure to handle complaints made by users (or someone on their behalf) about the provisions of a care services. The provisions as currently drafted require SCSWIS to consult Scottish Ministers when drawing up the procedure and to obtain the consent of Scottish Ministers to their procedure. The purpose of amendment 137 is to require SCSWIS to consult the SPSO (rather than Scottish Ministers) when drawing up the procedure. It also removes the requirement for SCSWIS to obtain the approval of Scottish Ministers to their complaints procedure and to any revisions of it (amendments 138 and 139). The effect of this amendment is that the SPSO has a specific role in commenting upon the SCSWIS complaints procedure. Amendments 174 to 176 make the same amendments for HIS procedures for handling complaints about independent health care services.

Section 81 requires SCSWIS to establish a procedure to handle complaints made by users or someone on their behalf about SCSWIS’ exercise of its own functions. The provisions as currently drafted require SCSWIS to consult local authorities and others on their procedures and to obtain the consent of Scottish Ministers. The purpose of amendments 142, 143 and 144 is to require SCSWIS to consult the SPSO as part of this consultation (and any revisions of it) and to remove the requirement to obtain the consent of Scottish Ministers.

Amendment 141 will require SCSWIS to consult the Mental Welfare Commission for Scotland (MWCS) where SCSWIS is exercising its functions in relation to the provision of guidance, advice or information. SCSWIS is required to consult the MWCS where it appears to SCSWIS to be appropriate, having regard to the MWCS’ similar powers to promote best practice and publish information or guidance under the Mental Health (Care and Treatment) (Scotland) Act 2003. Amendment 180 makes the same amendment requiring HIS to consult the MWCS. Amendments 147 (amended by 147B and 147C) and 179 (amended by 179A and 179B) will require local authorities and health boards, in providing care services or arranging for others to provide such services, to “take into account” (amendment 147B) as far as is reasonably practical, any reports, information or notices that SCSWIS or HIS have produced. In doing that, the authorities must follow any guidance that the Scottish ministers issue, including published
inspection reports, gradings and any other relevant information, such as condition notices produced by the regulator. The information from SCSWIS and/or HIS could also be about services that are provided elsewhere in Scotland by providers that are tendering to provide a service.

Amendment 160 adds the Independent Ambulance Services to the list of independent health care services (10F) to be regulated by Healthcare Improvement Scotland. Independent Ambulance Services is an umbrella term for a variety of services which involve healthcare in a mobile or temporary setting. The types of activities that would be captured here would be:

- Patient transport to or from a place of medical treatment.
- Attendance at events (such as sporting events and music festivals) and the provision of first aid services (which might range from minor treatment to defibrillation), and the transport of persons from events to permanent medical facilities.

In relation to transport services, this transport must be accompanied by medical or other care element. Where ambulance services are provided or secured under the NHS these will fall instead to be regulated through HIS inspection under section 90(10I). Where the Scottish Ambulance Service undertakes activity privately (i.e. not provided or secured under the NHS) they will be subject to regulation under section 90(10F).

AMENDMENTS TO PARTS 4 AND 5 NOT PASSED

Under the Bill, responsibility for inspections of child protection services passes to SCSWIS. The intention behind amendments 197 and 197A was to attempt to ensure that Her Majesty’s Inspectorate of Education (HMIE) continues to play a key role in inspections of child protection services.

Malcolm Chisholm’s amendments 193 and 194 proposed changing the provision in the Bill that HIS “may” establish a new Scottish Health Council to HIS “must” establish a new Scottish Health Council. This was designed to effect a change recommended by the Health and Sport Committee in its Stage 1 report. The Minister for Public Health and Sport opposed this amendment because she felt that it would reduce the flexibility for HIS to potentially absorb over time the role and functions of the Health Council more fully. The amendments were disagreed to after division on the casting vote of the Convener.

MENTAL WELFARE COMMISSION FOR SCOTLAND

The Government brought forward amendments at Stage 2 relating to the functions of the MWCS. These were not included at Stage 1 of the Bill because after representations from mental health stakeholders, the Scottish Government opted to consult further on how best to protect the rights of those with mental disorders and bring forward amendments at Stage 2, which are summarised below.

Amendment 201 provides a range of amendments to Part 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003, which is the Part of the 2003 Act that deals with the Commission’s functions. The Scottish Government’s stated main purpose of this amendment is to give clarity on the commission’s focus as being a body whose role and functions are about protection of the welfare of the individual, to better reflect the Commission’s practice in some areas, and to ensure joined up working. Section 5 of the 2003 Act is amended to narrow its focus so that the Commission’s current general duties to “monitor the operation of the Act and promote best practice” are now in relation to the practical application of the principles of the Act,
in other words promoting legal and ethical care. The intention is that the Commission will issue best practice guidance on legal and ethical care of patients, while it will be for HIS or SCSWIS to issue guidance on service improvement, and to co-operate with the commission in doing so. The changes proposed in amendment 201 to section 13(5) of the 2003 Act also alters the focus of the current provision on Commission visits to make it clear that the primary purpose of the visits is to check on the welfare of individuals, and is not about service inspection. Section 8A of amendment 201 places a duty on the Commission to raise service concerns with HIS, SCSWIS and other relevant groups.

Other changes in amendment 201 and amendment 202 relate to updating and improving the Commission’s governance structure. In terms of amendment 202, the main purpose of the changes is to replace the current arrangements for the appointment, size and role of the members of the Commission (its Board and Commissioners); to make new provision for the arrangements for Commission Visitors, principally their appointment; and to make transitional provision in relation to existing members and the Chief Officer.

Amendments 201 and 201 were passed by the Committee on the casting vote of the convener: 3 for, 3 against, and 1 abstention.

Concerns
Concerns were expressed by Finance Committee members about the removal of the Commission’s function of monitoring the operation of the 2003 Act as whole (Finance Committee 2010d, col 1922).

Malcolm Chisholm was also concerned that the proposed new section 9A of the 2003 Act, whereby the Commission could charge for advice, might inhibit people from seeking advice in the first place. In reply, the Minister for Public Health and Sport said that it is not expected that individual service users would be charged, and that the provision is similar to the one that exists for HIS and SCSWIS and that it simply give the Commission the power to charge where that is appropriate (Finance Committee 2010d, col 1927).

Other issues arising during consideration of the amendments relating to the MWCS surrounded the appointment and removal of commissioners, the number of commissioners and the role of Ministers in the process. Responding to these points the Minister for Public Health and Sport said the following:

“the proposed provisions will bring the Mental Welfare Commission into line with the standard set of provisions for governance that exists for every other public body. The number of commissioners is set at a level that is proportionate to the size of the body. The commission will be able to appoint up to 10 commission visitors, who will do the actual work on the ground. On the governance arrangements, we believe that the proposed number of commissioners is adequate.

Board members are currently appointed by the Queen on the recommendation of Scottish ministers. Amendment 202 will simply take that bit out of the process. That will make no difference at all to the independence of the body. At present, the Scottish ministers recommend commission members and the Queen rubber-stamps their recommendation. In effect, the amendment will just cut out that bit of the process.

In fact, in some ways, there will be greater constraints on the Scottish ministers in appointing board members with the introduction of the new criteria to which ministers will have to have regard under proposed new paragraph 2B of schedule 1 to the 2003 act, which refers to “the desirability of including ... persons who have experience of"
delivering or receiving mental health services. Amendment 202 tightens up the appointments process.

It is standard practice that Government officials should be able to attend board meetings. Those meetings should be open to scrutiny because public money pays for the bodies concerned. Of course, any matters that concerned individual patients could be taken in private. I simply do not see why the board of the Mental Welfare Commission should be treated any differently from the board of any other publicly funded body” (Finance Committee 2010d, col 1928).

The Minister did acknowledge that there was a case for having user and carer representation among the commissioners and said that she would consider that point and come back with proposals at Stage 3 “if members felt that would strengthen the governance arrangements for the Commission” (Finance Committee 2010d, col 1929).

PART 6: SCRUTINY

Amendment 209 provides a new set of powers and duties for the SPSO and aims to standardise and simplify the arrangements for handling complaints, in order to offer a better service to users of public services and to ensure that their concerns and complaints are resolved more quickly and effectively. The amendment gives Parliament a key role in approving a statement of principles concerning relevant complaints-handling procedures of bodies and persons that are listed in schedule 2 to the Scottish Public Services Ombudsman Act 2002. The SPSO will have powers to publish model complaints-handling procedures and to specify who must comply with them. That will allow the SPSO flexibility to design procedures for specific sectors and to target improvement where it is most needed. The ombudsman may make a declaration of non-compliance if a listed authority has not complied, and will have a duty to promote best practice, to co-ordinate training for relevant service delivery staff and to report on outcomes and on how lessons can be learned.

PART 6A: CHARITIES

Amendment 210 introduces a requirement that a charity that has a website must display certain information relating to its charitable status on such pages as may be specified in regulations. This is designed to assure the public that they are dealing with a properly registered and regulated charity.

Amendment 212 introduces a new section into the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) to provide that the Court of Session may make an order which has the effect of removing a person from the management or control of a charity, even if that person is no longer involved with the charity, the charity has ceased to exist or the body is no longer a charity. The effect of this amendment is that a person who receives such an order is disqualified from acting as a charity trustee in the future.

Amendment 211 allows the Office of the Scottish Charity Regulator (OSCR) to vary or revoke a direction that has been issued to a charity and gives the charity the right to a review of the decision to issue a direction to it.

Amendment 214 inserts a new provision to the 2005 Act which allows OSCR to approve a charity reorganisation scheme, where the charity is proposing to insert a new administrative provision to its constitution, and the new amendment will enable the charity to be administered
more effectively. The amendment prevents OSCR from approving the reorganisation scheme if it would allow changes to the purposes that are not within the spirit of the Charity’s constitution.

Amendment 215 introduces a new power for OSCR to approve a variation or removal of a restriction that has been placed on the use of an asset. That means that charities that were given funds for a particular purpose – for example a church that was given money to provide coal for the poor at Christmas – will be able to modernise those funds and put them to good use in a more modern context, subject to certain conditions and limitations. OSCR would not be able to approve the reorganisation if the charity had not taken reasonable steps to contact the original funder or donor, wherever possible. The amendment aims to give OSCR more power to approve the variation of the use of charitable funds, to allow them to be used more effectively for the benefit of the public.

Amendment 216 will allow OSCR to appoint additional charity trustees to help charities when they are unable to operate because they have a lack of charity trustees and no mechanism for appointing additional trustees. However, OSCR may appoint a charity trustee only if three conditions are met: first, the charity has insufficient charity trustees to appoint further charity trustees; secondly, it has no mechanism for the appointment of additional charity trustees in the circumstances; thirdly, it has asked OSCR to act. The amendment will allow charities in that situation to become operational again.

All the above mentioned amendments related to charities were unanimously agreed by the Finance Committee.

PAY BARGAINING COMMITTEE AMENDMENTS

David Whitton’s amendments 217 to 222 proposed the creation of a single pay bargaining committee for non-Civil Service NDPBs and public corporations. He argued that this would speed up the negotiation process, compared with the many different strands of pay negotiation that currently exist. The Cabinet Secretary opposed this amendment, saying that while he agreed with the proposition that there should be fewer pay bargaining units, he wanted to achieve this by consensus rather than implementing via the statute book. Amendment 217 fell after a division by 4 votes to 3 with 1 abstention, and the other amendments were not moved.

PART 7: MISCELLANEOUS AND GENERAL

There were some technical amendments to Part 7 passed at Stage 2. Amendment 227 is a technical amendment, which will enable ministers to make necessary orders to ensure effective implementation of parts 6 and 7 of the bill. Amendment 228 is a technical amendment to the long title of the bill and is required to reflect the provisions in the bill as amended in relation to the MWCS.

AMENDMENTS TO PART 7 NOT PASSED

Derek Brownlee lodged a number of amendments to Part 7 of the Bill. Amendments 80 and 110 related to limiting the number of Special Advisers from 12 to 10. Amendment 110 was rejected by the Finance Committee by 7 votes to 1. Amendment 111 proposed allowing the Finance Committee or Parliament to require specific information on budget proposals. Amendment 112 proposed placing on a legislative basis the requirement to provide information on capital projects over a 10 year time horizon. Amendment 111 was rejected by the Finance Committee by 6 votes to 1 with 1 abstention.
SOURCES


RELATED BRIEFINGS

SB 09-54 Public Services Reform (Scotland) Bill: Social Services (posted 25.08.2009)

SB 09-55 Public Services Reform (Scotland) Bill: Finance Committee Scrutiny (posted 26.08.2009)

SB 09-57 Public Services Reform (Scotland) Bill: Healthcare Improvement Scotland (posted 02.09.2009)

SB 09-61 Public Services Reform (Scotland) Bill: Creative Scotland (posted 08.09.2009)

SB 09-64 The Public Services Reform (Scotland) Bill: Rural and Environment Bodies (posted 10.09.2009)

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