



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DEVOLUTION (FURTHER POWERS) COMMITTEE

Thursday 7 January 2016

Thursday 7 January 2016

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
TRADE UNION BILL	2

DEVOLUTION (FURTHER POWERS) COMMITTEE

1st Meeting 2016, Session 4

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)

*Linda Fabiani (East Kilbride) (SNP)

*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

*Alex Johnstone (North East Scotland) (Con)

*Alison Johnstone (Lothian) (Green)

*Stewart Maxwell (West Scotland) (SNP)

*Mark McDonald (Aberdeen Donside) (SNP)

*Stuart McMillan (West Scotland) (SNP)

*Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Councillor Billy Hendry (Convention of Scottish Local Authorities)

Dave Moxham (Scottish Trades Union Congress)

Jane O'Donnell (Convention of Scottish Local Authorities)

Shirley Rogers (NHS Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Devolution (Further Powers) Committee

Thursday 7 January 2016

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Bruce Crawford): Good morning, colleagues, and welcome to the first meeting in 2016 of the Devolution (Further Powers) Committee. I remind members to switch off their phones, or at least to put them into a mode that means that I cannot hear them and they will not interfere with our processes. Tavish Scott will be about 30 minutes late, as he has an important constituency meeting.

As we are going to discuss the United Kingdom Government's Trade Union Bill, it might be appropriate for members to declare any relevant interests in that regard.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I am a member of Unison and the Educational Institute of Scotland.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): I am a member of the Musicians Union.

Duncan McNeil (Greenock and Inverclyde) (Lab): I am a long-standing member of the GMB.

The Convener: Thank you. I just want to make sure that we do everything properly. I wish a happy new year to you all.

Agenda item 1 is to seek members' agreement to consider in private at future meetings our draft report on the Trade Union Bill. Do members agree?

Members indicated agreement.

Trade Union Bill

09:31

The Convener: Agenda item 2 is evidence on the UK Government's Trade Union Bill. I warmly welcome our witnesses. We have with us Councillor Billy Hendry, who is the strategic human resource management spokesperson for the Convention of Scottish Local Authorities. Councillor Hendry is supported by Jane O'Donnell. We also have Shirley Rogers, who is the director of the health workforce in NHS Scotland, and Dave Moxham, who is the deputy general secretary of the Scottish Trades Union Congress.

For the record, I point out that the committee clerks approached four individuals to provide an employer and business perspective, but they were unable to attend due to prior commitments. However, we might receive evidence from them in writing.

Just to get the proceedings under way, I will start with a general question to all of the witnesses. Will you give us your overall view of the bill and set out at a high level any concerns that you have? Obviously we will get into the detail of some of the concerns as we go through the session. What evidence exists to support the UK Government in introducing the bill? The Scottish Government's memorandum says that, since 2007,

"industrial disputes in Scotland have decreased by 84%."

Mr Moxham, would you like to begin?

Dave Moxham (Scottish Trades Union Congress): Thank you, convener. I was going to start with the statistic that you just cited. You will not be surprised to hear that the STUC's view is that the bill is designed to fix a problem that does not exist, given that strike levels are at an historic low across the UK. As the Scottish Government has pointed out, the levels are even lower in Scotland. We consider the bill to be an ideological attack on the very basis of trade unionism. Trade unionism is designed to provide an effective balance in the workplace between the interests of workers and the interests of managers.

I could spend an awful lot of time talking about a range of aspects of the bill. From a Scottish perspective, our particular concern is about the aspects of the bill that are designed to undermine the capacity of unions to represent their members in the workplace. We will go on to talk in particular about facility time. We know from an array of polling evidence that the primary reason why people join trade unions remains that they require security in the workplace and they want individual representation when they have a problem at work. A lot of the UK Government's focus has been on

strike thresholds, political levies and a range of other matters. Those are important subjects and I am happy to address them but, fundamentally, the bill will affect the capacity of unions to represent their members in the workplace. We believe that the Government calculates that, by removing that capacity from unions, it will undermine every single aspect of trade unionism as an institution.

The international evidence is very clear—countries in which trade unions and collective bargaining exist in the workplace are more equal. That is not a matter of left-wing dogma; the right wing agrees with that, too. The only difference is that the left wing thinks that it is a good idea while the right wing thinks that it is a bad idea. That rebalancing in the workplace obviously has implications for the individual worker, but it also has wide societal impacts. We believe that that feeds directly into the commitment of the Scottish Parliament and the Scottish Government to developing greater economic equality in Scotland.

I will leave it there for now; I will have plenty to say at other points in the proceedings.

Shirley Rogers (NHS Scotland): Thank you very much for giving me the opportunity to say a little about the circumstances that we find in the national health service in Scotland, which, as members will know, is one of the bigger employers.

For us, partnership working is already mature in the NHS; it is significantly developed and highly sophisticated and we see industrial relations as an absolute cornerstone of what we do in the NHS. We believe in co-production and we believe in co-producing in a tripartite relationship with Government, employers and staff, so partnership working arrangements are very well established and very highly regarded in the NHS. The independent study “Partnership in NHS Scotland 1999-2011” says of our working arrangements:

“partnership in NHS Scotland has matured into probably the most ambitious and important contemporary innovation in British public sector industrial relations”.

Therefore, it is not just me who is saying that partnership working does well for the NHS in Scotland; independent people are saying it.

I will reflect on Dave Moxham’s comments on unions’ rights as representatives of their members and all that stuff that is critical. It is also important, however, on a modern industrial-relations platform, that we see our trade unions as strategic partners in the design and development of services, and on our journey of continuous improvement. One of the anxieties that we have around the proposed facility time provisions is that they seek to compartmentalise how we relate with our trade union partners in a way that is, to be

frank, significantly less mature than the method that we have already developed.

Others have already commented on the industrial relations platform from the point of view of industrial action. We have had our partnership arrangements in place for almost 15 years, and in that time it is possible to count on the fingers of one hand the number of times when we have got into industrial disputes. That is simply because we co-produce: we work with partners and we value the contribution of our staff. It is a highly sophisticated workforce in a very sophisticated working environment. We believe that we get better results because we can co-produce. Frankly, we believe that our partnership working arrangements as they exist within the NHS are already more mature, more sophisticated and more fit for purpose as a result of the actions that we have taken over the past 15 years.

The Convener: Thank you.

Billy—would you like to comment?

Councillor Billy Hendry (Convention of Scottish Local Authorities): Yes—and I, too, thank you for your invitation to give evidence.

COSLA has a long-established commitment to joint working with trade union colleagues. That commitment extends beyond industrial relations to working in partnership on delivery of essential and valued public services across Scotland. Local authorities employ more than 250,000 people in Scotland, which is a considerable number.

COSLA leaders are extremely concerned that the changes that are proposed in the bill are being brought in without any evidence to back up the assertion that they would modernise industrial relations between councils and trade unions. At present, we have a constructive environment in which we work very well with our trade union partners to the benefit of all communities across the country. We are involved in many different forums with them; to date, COSLA has found those forums to be very helpful in maintaining positive industrial relations, which ensures that services are delivered smoothly to every community. We all want that to continue.

Through the bill, the UK Government would force councils to change the arrangements for check-off and facility time, which work well for both parties, and the cost of which is already covered by direct contributions from the trade unions. That is central. If that is in any way diminished, the opportunity to talk and, in some cases, to argue matters out will be lost. At the very least, the time that is spent on that affords us all an opportunity to have a say and to do the best, ultimately, for the communities that we serve.

Scottish councils are devolved public bodies and we wish to make it clear that we consider ourselves—as local government—empowered to make those types of decision with the trade unions for the benefit of the communities that we serve. After all, we are elected members and we are held to account for the decisions that we make on facility time and check-off.

To sum up, COSLA's position is that the Westminster Government should reconsider that unnecessary and unjustified imposition, which could ultimately lead to more industrial unrest across Scotland. That is our fear if the bill progresses as it stands.

The Convener: Thank you. You rightly touched on facility time. Malcolm Chisholm will lead the discussion on that.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I thank the witnesses for their opening contributions. I agree with all that has been said, in particular from the NHS angle, given my involvement in that from the start.

David Moxham has already touched on this and it is useful to put on record the advantages of facility time, not from the point of view of employees—which we take for granted—but from the point of view of employers. I believe that there is quite a lot of evidence on that. It would be useful to begin by establishing that in detail.

Dave Moxham: I am happy to speak generally on facility time. I will stay away from NHS and local government, in view of the bodies that the other witnesses represent.

People have talked about headline figures of a cost to the public sector across the UK of about £80 million or £100 million for facility time. That represents a very small proportion of the overall spend on public services. Two pieces of evidence are particularly useful. One came from BERR in 2010, and one from the University of Essex in 2012. I am happy to refer to both. Those pieces of evidence looked not just at the cost of facility time, but at the benefits. I think that they identified five areas in which the benefits of facility time could be gauged. Those include lower incidence of dismissals in workplaces where facility time is offered, lower use of tribunals and extrajudicial processes, and health and safety savings resulting from lower incidence of workplace injury and sickness. They came to the conclusion that for every £1 spent on facility time there is a gain on a spectrum between £3 and £9.

Nobody would expect the NHS to take a view on a particular treatment that it pays for without looking at the broader impact on health. The Scottish Trades Union Congress therefore argues that nobody should take a view on the cost of

facility time without taking a broader view on the problems that it might obviate.

At a very basic level, facility time provides the opportunity for union reps to cut off what might otherwise be quite serious problems in the workplace and to deal with them at a lower management level, which benefits everyone.

There is also very clear evidence that facility time, when it is properly used in a partnership environment, can help with changing workplace cultures. I will refer to public services in particular. We know that public services are incredibly person centred; there is no way that public services can be delivered without an effective person-to-person workforce. It is becoming increasingly vital that, as culture changes and the Government rightly looks to introduce public service reform, workforces are taken along on that. Facility time and partnership working are absolutely vital in delivering that.

Finally, some of the biggest private sector firms in Scotland fund facility time because they understand that even in the cutthroat world of profit-making private enterprise, facility time, trade union recognition and collective bargaining can play vital roles in the profitability of their companies.

09:45

Shirley Rogers: I would like to add to that with a little bit of detail about how the NHS facility time arrangements work. I start by saying that I am not aware of a truly world-class organisation that thinks that it can be world-class without talking to its staff.

When we talk about facility time, it is easy to revert to saying that it is about trade unions going along to represent somebody at a disciplinary hearing or whatever. Some years ago, we in the NHS took the view that we wanted to invest in co-production; we wanted to front-load our investment in facility time to allow us to have a better product rather than to spend our time in conflict resolution and dispute management. The proof of that pudding is that, during the past 10 to 15 years, we can count on one hand the number of disputes that we have had.

However, as far as I am concerned, that is one of the blunter and less valuable pieces of evidence. While we were wrestling with all the transformational change that the NHS has undergone, we have produced with our staff side a workforce strategy that is held in high regard. We have been able to put forward a series of proposals and policies around absence management, employee conduct and disciplinary procedures: you name it. We have proposed a whole suite of policies that have been a great deal more effective because they have not been about

management designing stuff that is applied, but have been co-produced and can be delivered.

The NHS is a big organisation. It employs not quite the number that Councillor Hendry cited for local authorities, but the figure is about 156,000 people. For partnership working to be effective in the NHS, we recognised that we needed structures and that we could not just hope that people would talk to each other. We therefore have the Scottish partnership forum across the NHS. It is co-chaired in a tripartite relationship between the Government, employers and the staff side.

Every NHS board in Scotland has a partnership agreement and an employee director whose focus, role and purpose is to be a representative at board level to ensure that staff views are heard. It should be remembered that when we talk about staff, we are talking about doctors, nurses, dentists—people across all the professions—whose voices we need to hear so that we can design services. We need those voices to be heard at board level so that they can influence from the outset the strategic direction that organisations in the NHS want to take. Some boards are much bigger than others; a board such as Greater Glasgow and Clyde NHS will have a variety of facility time arrangements, so some such individuals will be full time and others will be part time. Some of the smaller boards have part-time facility time agreements, with staff also doing other duties.

That means that, universally, when the boards are looking to do something, or when the Government is looking to implement a policy that can be implemented and which is designed to be effective, the measures are much more implementable and are not just sponsored by somebody like me saying that they must be implemented, but by our workforce agreeing and putting themselves behind the efforts.

Councillor Hendry: We have to remember that there are 32 local authorities and COSLA, which is the umbrella body. There are national and local partnerships between the employers and the trade unions, and every council is different.

There is nothing broken about the arrangement; it has been working for many years now. It has been some time since there has been a national strike in local government. There will always be some local tensions—that will always happen—but what makes things work is the forums that I alluded to in my opening remarks. I am talking about the partnership committees, and the formal and informal ways in which the employer and employee representatives try to iron out problems.

I have said that the existing structures work for local government, so we do not see the point in changing them. COSLA, which is an umbrella local

government organisation, very much agrees with and promotes localism. For example, COSLA promotes the idea that every single council should have a partnership agreement, and forums have been set up to fit councils' particular needs and geographical areas. Facility time must be preserved or we will face problems further down the road, including the potential for industrial action.

Malcolm Chisholm: Thank you. It seems clear that the proposal is a significant interference with areas of devolved policy and priorities. Although we are not here to consider legislative consent issues specifically, I wonder whether Dave Moxham would like to comment, because I think that the STUC believes that facility time is one of two areas where there is such significant interference with devolved competency that legislative consent should be sought.

Dave Moxham: We do. There is a question about the level of consultation that was undertaken by the Westminster Government. When we first met Westminster officials about the bill—it was just before they announced the check-off provisions, but the facility time provisions were known—we raised the devolved competency issue with them. At that point, which was more than eight weeks after the bill's first reading, they had not even considered the issue. It was one of those meetings where lots of scribbling takes place and quizzical eyebrows are raised. It was not a question of Westminster having considered and been ready to discuss the issue; rather, it dropped into their laps and they had not thought about it at all. That is the starting point.

A question that we put to BERR at the time—and that we continue to put to Westminster—is why the provision on facility time is in reference to only the public sector and not the private sector. If there was an ideological, political or administrative objection to facility time, why would the provision not apply to all employers across the whole of the United Kingdom? The response that came back to us was very clear: the UK Government considered that its role was to safeguard public money. Our immediate response was to say that that part of public money was not the UK Parliament's but the Scottish Parliament's, COSLA's or NHS Scotland's to safeguard. To start with, the fundamental problem for us was that if the basis of the facility time regulations was the protection of public money, that failed the test of devolution in Scotland.

We recognise that legislative consent is a complicated area and we certainly recognise that the UK Government not taking the view that legislative consent might be required and it being generated, if you like, in the Scottish Parliament itself is, I think, an unprecedented situation. We

are unsure of the view that the bill does not affect the administrative competence of the Scottish Parliament. The defence that the bill relates to an entirely reserved act—the Trade Union and Labour Relations (Consolidation) Act 1992—does not stand up either. It seems self-evident that a UK act that deals entirely with reserved matters could be amended in such a way that it has implications for the administrative competence of the Scottish Parliament, and that would be matter for this Parliament.

For a number of reasons, we were disappointed, to be frank, that the Presiding Officer took the view that she did, and we hope that a suitable mechanism will be found within this Parliament to allow it to bring forward an LCM.

Rob Gibson: I would like to bottom out the actual costs and savings. The UK minister suggested that there could be a saving of £150 million a year from reducing the spending on facility time. Shirley Rogers said that we have a more mature system already, with co-production and partnership. Can we quantify how that helps the NHS and local government to function more effectively? Can we counter the argument that reducing facility time will save money?

Dave Moxham: The quantification is not an easy science, because—

Rob Gibson: Yes. It is an estimate.

Dave Moxham: How do we estimate the value of a better-running NHS? We have to take the evidence from the experts, one of whom is sitting next to me.

We have the report that I mentioned, which is a UK-wide report that looks specifically at savings relating to a range of better employment, health and other outcomes. However, as you imply, that leaves aside how we quantify the effect of a better-operating organisation. The NHS, by and large, has nothing to compete with, so it does not have a set of figures that it can put alongside that of a similar private sector organisation and say, “We do better on this basis.” At the end of the day, we have to trust the professionals. They do not have money to throw around, whether they are in local government or the NHS—it is not as though they are not under budgetary constraints—and if they believed that facility time was a waste of money, they would be taking a clear view on that basis.

The Convener: Maybe Billy Hendry and Shirley Rogers can tell us what they think about that before we go back to Rob Gibson.

Shirley Rogers: It is difficult to refute the £150 million figure because I am not sure that I have seen the evidence on which it was constructed. It is also difficult to quantify how we do business. At

a granular level, good representation that prevents somebody from going to an industrial tribunal might save several thousand pounds. At a more strategic level, if we are serious about bringing forward a public services reform agenda and a journey of continuous improvement, it seems to me to be inconceivable that the NHS in Scotland would wish to do that without some opportunity to talk to the doctors, nurses, radiotherapists and people in all sorts of other professions who contribute to delivering that service. Change is not easy anyway, but change without talking to people becomes high risk and, I suspect, would make it highly unlikely that I would be sitting here as a successful workforce director in a couple of years’ time.

As I said earlier, I could look to various boards that can identify how much they spend on individuals who have facility time, but it is an unfair reflection of the mature system that we have if we think that somebody’s value is the number of hours and the pounds, shillings and pence that are spent on them being in the room. My difficulty with the facility time proposal is not about cost. Boards already see facility time as an investment, and those investments have already been made. My issue about the proposal is that, if we are honest and we have integrity in our view that we are looking for proper, mature engagement with our workforce, it seems somewhat retrograde then to say, “We’re going to give you 27 minutes and we’ll have another process if it’s going to take 28.”

10:00

Councillor Hendry: Following on from Dave Moxham’s point, I have absolutely no doubt that if my own council, East Dunbartonshire, thought that facility time was a waste of money councillors in that authority—and I am sure councillors right across Scotland—would be putting down amendments, motions or whatever to prevent it from happening. That opportunity already exists.

The general belief across the political spectrum and local government in Scotland is that there are benefits to this approach. However, quantifying that financially is difficult. You could put a figure on the amount of money that we save from not having to go to industrial tribunals, but it would be a very extensive exercise. From my point of view, the benefit for everyone is continuity of service delivery. That is the important thing. If there are no strikes, the men and women in each authority area get the services that they pay for, need and deserve.

Particularly through the Scottish Joint Council, we in COSLA are working very closely on new initiatives, and just now, we are looking at developing the health and wellbeing theme across local government. We want to reduce the fairly

high levels of absenteeism that exist in all areas of the public sector not through taking any draconian measures but through working with trade unions and seeing how we can make it better for people to be at and stay at work. Obviously, that will take pressure off the public purse as well as help co-workers.

As I said, it is difficult to quantify such things, but I think that we should be content to promote ways of getting more people to stay in work and deliver services.

The Convener: I believe that Duncan McNeil has a supplementary.

Duncan McNeil: It is a quick one, convener, which gives me a chance to put on the table my trade union credentials as a member of a trade union for nearly 50 years and a shop steward, a convener of shop stewards and a full-time official for 25 of them.

Coming back to Shirley Rogers's reference to what things were like 30 years ago, I knew, as a young shop steward, of the time and involvement that was required for dispute resolution—and that was multiplied by any amount of times across the health service—and was involved in the move to a more satisfying sense of involvement and partnership to support change. I did that not just in the public sector but in one of Scotland's most successful private enterprises—the whisky industry. Indeed, that is a classic example of what I am talking about.

As we know, the journey to build trust in order to bring about change and create a partnership in which on-going change could be agreed in a very constructive way was very difficult. How quickly does that trust go? How quickly would the system that we now have in place fall into disrepute, and how quickly would we slowly slip back into the situation where we have to resolve disputes and arguments every other day, causing managerial time to be taken up, progress to be stopped and projects to be changed and delayed? How quickly would we lose the hard-won gains that we have made over the past 25 years or so?

The Convener: Perhaps Shirley Rogers could start off on that.

Shirley Rogers: You are absolutely right to suggest that trust is hard won and easily lost. As I said in my opening remarks, partnership in the NHS is based on a tripartite relationship, and that works only if the three parties in question are mutually respectful and have a sense of each other's importance.

If we are to revert to asking, "Can I have 10 minutes off to go to a meeting about X?" that shades the conversation considerably in terms of how people can contribute. Thinking back over the

past couple of years, it is clear that any potential for dispute that has arisen in the NHS in Scotland has been resolved by reverting back to our partnership values and thinking about how we behave. Again, coming back to Rob Gibson's question about quantification, how do we quantify the cost of not addressing the dispute in that way?

Trust is absolutely critical. I referred earlier to our workforce strategy, which was co-produced with, in the first year, more than 10,000 NHS workers in Scotland who contributed to its development. The strategy is now three years old and I suspect that that number has doubled. Those workers said to us that the values of the NHS such as respect, care and compassion—the founding principles of our partnership working arrangements—were fundamental not just in the delivery of health services as they are now, but in helping us to address some of the challenges to which Billy Hendry referred such as health and social care integration and future services.

At present, we have an honest and trusting relationship. I speak regularly to trade union and STUC officials, and they speak regularly to me. There is not a day goes by that we do not have conversations, some of which are strategic and some of which are practical, focusing on how we resolve certain aspects of issues. Our ability to promote change depends fundamentally on those relationships of trust, and it would not be a good time for anything to divert us from that, even if we thought that it was a good idea.

The Convener: Is that substantial enough, or does any of the gentlemen want to add to that? If they do not, we will go to Stuart McMillan on the issue of consultation, followed by Alex Johnstone on some wider issues. Dave Moxham touched on his experience of consultation.

Dave, you mentioned BERR, which is the Government organisation. Can you put on record its longer title, please?

Dave Moxham: I will need to remember it now.

The Convener: That is all right—sorry.

Dave Moxham: It is the Department for Business, Enterprise and—

Malcolm Chisholm: Regulatory Reform.

The Convener: Thank you—I could not remember, so I had to ask.

Stuart McMillan (West Scotland) (SNP): Dave Moxham touched on consultation and mentioned his meeting at Westminster. Has any of the other witnesses been involved in the consultation process with either the UK Government or the Scottish Government?

Shirley Rogers: Only as a representative of the Scottish Government and an SG official in my role in the health workforce.

Councillor Hendry: COSLA decided that it would take up a lobbying role, and we will deal with the Governments via letter.

Stuart McMillan: Has the consultation process been adequate up to now?

Dave Moxham: As I indicated earlier, I do not think so. There are a couple of examples. The tried-and-tested mechanism—in our view—of introducing a first reading just before a summer recess was used, followed by fairly swift second and third readings and the Commons phase, which normally presages an attempt to rush a bill through.

I referred earlier to the non-preparedness of Government departments in the one visit that they made to Scotland to speak to us. There is a lack of recognition of the current devolved powers of the Scottish Parliament. People can take a view—as they are welcome to do—on the specific competence of aspects of the bill, but it is absolutely clear that the Scottish Government has key enterprise and economic functions, key functions as an employer and key strategic interests in a range of major industries. That suggests to us that the UK Government should at the very least have been interested not just in the perspective of the Scottish Government itself, and in the Scottish Parliament and the powers that it held, but in talking specifically to some of the leaders of industry in Scotland who are delivering on some of our key industrial targets.

None of that happened, and we moved very quickly to the committee stage. Anybody who witnessed the committee stage would have noticed that the quality of questioning by the Opposition—both Labour and the Scottish National Party—was very high and the quality of the engagement of the Tory representatives on the committee was, frankly, puerile. They did not at any stage seriously scrutinise the bill.

There was a failure to consult, a very rushed process, a committee stage that was, in our view, very poor and the introduction of a couple of key additional aspects of the bill in that process. We did not know about the introduction of the check-off arrangements until well after the first reading. That was not subject to any consultation or any assessment of costs.

In essence, we have a bill that has now passed its House of Commons stage and which asserts that there is a large cost to the public sector from check-off, but that is clearly not substantiated by any evidence. To us, that adds up to a very poor consultation process.

Shirley Rogers: Others are perhaps better placed than I am to comment on the politicking of that. We continue to look for the evidence that supports those initiatives, and that concerns me. In the absence of the full evidence to support them, our role now seems to be much more constrained than I would wish it to be in having to think about the impact. Others are better placed than I am to comment on the legislative and political framework for the approach, but the issue goes back to the question that Mr Gibson asked about cost. In the absence of an evidential platform that I can use to make assessments, it is difficult for us to comment on whether the end justifies the means. We are now more concerned with trying to ensure that we understand the potential impact.

Councillor Hendry: The timescales are undoubtedly very tight. In answer to the question about consultation, COSLA's position is that it would have been helpful if there was more time for us to engage in the process. However, we are where we are, and we must press ahead with our opposition to the various parts of the bill that we have discussed.

Stuart McMillan: Mr Moxham mentioned the lack of dialogue with Scotland. Was that down to the folk in the UK Government at the political level or the civil servant level not fully appreciating the powers that the Scottish Parliament has, or was something else at play at the time?

Dave Moxham: Because of the meeting with officials that I cited earlier, I am tempted to say that it just did not occur to them. In a sense, that is in many ways worse than if it did occur to them. However, through a series of questions and, in particular, through the action of Chris Stephens MP, who was the SNP lead on the bill committee, we have attempted to scrutinise and ask a number of questions that would identify whether that is a problem that the Government expected and chose to ignore. For instance, I can cite as evidence the response to a letter from Chris Stephens to Nick Boles, who is the responsible minister at Westminster, which asked how the Government foresaw the application of the regulations in relation to facility time and how that could affect organisations such as NHS Scotland. It was not clear to us how the Government saw them working.

I think that there was an element of the Government thinking on its feet. The letter indicates that a minister who is in charge of the NHS in England will be responsible for dictating the facility time arrangements in the NHS in Scotland and implementing the aspects of the bill as they relate to the NHS here. That is worth repeating, because there is more than one way in which the situation could be dealt with, but the way

that the UK Government seems to have chosen—as I said, Nick Boles has put this in writing—is that the minister who is responsible for the English NHS will be empowered to take the decision that facility time in the NHS in Scotland is too great and therefore should be cut.

It seems clear to us that the UK Government had not thought about that in July or August last year and that it simply had not considered the implications of what it was doing.

10:15

The Convener: We will come back to that point because I know that Linda Fabiani is particularly interested in it, but I need to give Alex Johnstone an opportunity to get in.

Alex Johnstone (North East Scotland) (Con): A few of the issues that I was going to raise have been covered, but it would be useful to get clarification on a couple of points. I am a good old-fashioned Tory whose opinions on the trade union movement were formed in the 1970s, and I am fully aware that things have changed radically since then. One issue that I want to clarify is something that Dave Moxham has touched on a couple of times—the distribution of trade union membership. The membership used to be rooted in the industrial base, but it has changed radically over time. My impression is that, when we talk about trade unionism in Scotland, we are essentially talking about something that manifests itself primarily, if not exclusively, in the public services. Is that a fair assumption to make?

Dave Moxham: It is not. It is true that the proportion of trade union members is far higher in the public sector—we estimate that it is 55 to 60 per cent—and significantly lower in the private sector. However, nearly as many members in Scotland are private sector employees as are public sector employees because the private sector is three times the size of the public sector.

In Scotland, more than half of the largest private sector companies that are listed on the stock exchange are unionised, have trade union recognition and offer facility time and in many cases check-off to their employees. We sometimes make the mistake of looking at the proportions rather than the absolute numbers. In Scotland, nearly as many people in the private sector as in the public sector are trade union members.

Alex Johnstone: We have talked about the way in which the bill applies to public services and those outside the public service sector. Taking that issue into account, are we talking about something that needs to be addressed in the broadest possible sense or is it disproportionately important to talk about the effects on public services?

Dave Moxham: The reason why we have talked most about the public services—here and possibly more generally—is that the UK Government has chosen provisions that will apply to the public sector but not to the private sector. In our view, the Government is differentiating between the rights of public sector employees to negotiate with their employer on check-off and facility time, and the rights of private sector employees in that regard. In a sense, it is the UK Government's choice that we have ended up talking more about the public sector, because it has chosen to differentiate between those rights and to treat public sector employers differently from private sector employers.

This might anticipate Mr Johnstone's next question, but we recognise that the Westminster Government might argue that, in many cases, the effect of industrial action in the public sector is somewhat different from the effect in the private sector. If you like, there is no issue of an employer's profitability—there is not a profit margin to be affected. The main effect is on the service that is provided. That is one of the reasons why the incidence of public sector strikes is so low—public sector workers do not like to harm the service that they provide. However, at the end of the day, the basic rights of a public sector employee should be the same as the rights of a private sector employee.

Alex Johnstone: I think that I have the information that I need. However, the convener noted in his opening remarks that some of the people who were invited to speak to us today were unavailable, for whatever reason. Given the spread of impacts, do you think that we need to work a bit harder to get a broader input of evidence on the subject?

Dave Moxham: To be frank, it has been difficult for Westminster or this Parliament—as can be seen from today—to garner much enthusiasm from business organisations for the bill. A number of the organisations that were initially listed on the Westminster evidence list did not get involved. We feel that some of the business organisations have had to be squeezed quite hard before they have said anything about the issue. That is because organisations such as the Confederation of British Industry are on the record just a few years ago positively welcoming the role of trade unions in the workplace, facility time and so on.

To be frank, the business organisations and most of the major private sector employers have not identified a problem. I think that it will be difficult to get a range of business organisations to sit here and robustly defend the bill, because I do not think that they are enthusiastic about it at all.

Shirley Rogers: My career has operated in the private and public sectors. From the dynamic that I

have observed over the past 30 years, I would contend that, if we can agree that we have moved away from the industrial age and we are now firmly in the age of engagement, the workforce expect to be engaged with their employer and to have a relationship with them that is different from the one that might have been typical 30 or 40 years ago.

I take your point that the evidence that has been presented here is from two of the biggest employers in Scotland, in volume terms. However, looking more widely across my industry—which we might call a professional workforce industry—the issues about how we ensure that our employees are engaged with are universal.

Alex Johnstone: The nature of what is happening makes this essentially a public sector issue. Should the committee be content to treat it as such or should we be trying to broaden it out?

Shirley Rogers: That is a matter for the committee, to be frank.

Duncan McNeil: Another objection concerns the matter of cross-fertilisation. Shirley Rogers mentioned that she has worked in the private and public sectors, and trade unions do that, too. Good practice is a benefit to all. If we can create change in a major industry such as the whisky industry by working in partnership, some of the benefits that come out of that are picked up by others, and good practice develops. However—I sound as if I am turning into a witness—if that is not allowed to happen, it can damage industrial relations across the board.

Shirley Rogers: My team and others were engaged with the working together review, which concerned precisely what you are talking about. It looked to adopt good practice in industrial relations across the public and private sectors to find a model that would be fit for Scotland.

Mark McDonald (Aberdeen Donside) (SNP): Listening to the arguments relating to the decision by the UK Government to focus on the public sector rather than on the whole UK workforce, I was struck by the notion, which Dave Moxham mentioned, of the Government viewing itself as having a responsibility for how public money is spent. I had always assumed that the Government also had a responsibility for how the wider economy functions.

We have just come through a period in which industrial action was narrowly avoided in the offshore sector, and one would have assumed that the impact that that could have had on the public finances would have led the Government to take a wider view. To me, that demonstrates the ideological nature of the bill—it is not simply about protection of public money.

Changes are proposed to the ballot thresholds. I have some sympathy with the argument about politicians who have been elected on very low turnouts claiming that they have some kind of authority to tell unions about turnout levels. If thresholds are altered in that way, what impact might that have on industrial relations?

Dave Moxham: I make the general comment—you will be glad to know that it is not about turnout in elections—that it is fundamentally and democratically wrong that an abstention should be counted as a no vote.

The threshold proposals misunderstand the process that unions go through to reach the point of potential industrial action. In the public sector, for example, we would expect members to be balloted in the first instance on whether a particular pay deal—if we are using pay as an example—was acceptable. Assuming that a lot of them said that it was not acceptable, members would then be balloted on whether they wanted to take industrial action or action short of a strike. If they decided that they were in favour of industrial action, they would, as individuals, have the right to take that industrial action.

Essentially, we are talking about a three-part democratic process. It is a process that is very hard for us to run because it is all done by postal ballot. All the way through that process—Duncan McNeil will remember this well, as will others—the union is taking a view about how likely it is that the third part—industrial action—will be successful. To be frank, you will not see many instances of industrial action based on a decision by 51 per cent of people on a 22 per cent turnout. That is because, in many cases, that third part will not be effective. If you march your troops up to the top of the hill, you had better make sure that they do not fall off the top.

There is a lot of misunderstanding about the breadth of what takes place and the judgment on the part of democratically elected officials. At the moment, there are quite a lot of stopping-off points along the way, where we say, “The views are not as strong as we thought” or, “Management is coming back with a deal.” We have a period of time in which we can take those judgments.

What the Government is doing through changes to thresholds and ballot notice periods is essentially to make the situation sharper for unions. Unions will probably have to decide more quickly, and potentially on a more aggressive basis, whether to move to industrial action. The real risk of all of that is not that there will be less industrial action but that there will be more, because it will be harder for unions to navigate the process without recourse to industrial action in the final analysis.

Mark McDonald: You have all alluded to the difficulties that could be created in industrial relations if the bill is passed. Can you quantify that in any way? What difficulties could be created?

Dave Moxham: Again, that is difficult, because we do not have a point of comparison. All that I can say is that, at present, following a ballot on industrial action, such action regularly does not happen because of a process and a time period that allow management and the union to get back round the table, have discussions and avert industrial action. Industrial action is averted far more frequently than it takes place, even after an industrial ballot is successful.

Mark McDonald: Is there potential for that incentive for management to get round the table and discuss things again to be diminished if management thinks, "They are not going to get a turn-out for the ballot that meets the threshold"?

10:30

Dave Moxham: There is a risk that incentives for both sides in a potential industrial dispute would be reduced because the window of opportunity for resolving it through further discussion would be smaller.

Mark McDonald: Shirley, do you want to comment on that?

Shirley Rogers: It is difficult to quantify it because, as I have described, partnership working is now a long-established practice in the NHS, so people are used to resolving difficulties through conversation and dialogue. The natural inclination of managers and the staff side in the health context would, I hope, be to continue to try to seek those opportunities for dialogue, and I am fairly confident that that would happen.

The Convener: We have 30 minutes left, folks. We still have check-off and regulation issues to cover, but Alison Johnstone wants to follow up on that area first.

Alison Johnstone (Lothian) (Green): As a committee, we have been scrutinising further powers. One of the things that we have been looking at closely is intergovernmental relations, because one of the impacts of increased devolved powers is that we will have to work more collaboratively with Westminster. However, here we have an instance where there seems to be an impact on our current devolved powers.

At the heart of this is what happens to workers' basic rights. I am concerned about that because the legislation is wide enough to affect the terms of employment of those who are working in our public authorities and in our local authorities. The issue that my colleague Mark McDonald raised is

a case in point. What concerns do the witnesses have about that?

Potentially, the bill could have a tremendously negative impact on relationships at all sorts of levels. Obviously the Scottish Parliament is seeking to ensure that the legislation does not impact on Scotland, but what are your concerns about the impact that it might have on workers?

Dave Moxham: It is important to point out, just in case anybody has any doubt, that nothing in the current legislation compels Shirley Rogers or anybody else to provide facility time for employees or check-off. We are essentially talking about the relationship between individuals and their representatives and employers on a workplace by workplace basis. Our view is that that should essentially be a contractual matter. Obviously a range of regulations are in place for where that happens and how it might happen but, essentially, at the end of the day, it should be a contractual matter between the individual and their representative and their employer.

When we talk about Government relations in this context, we are not talking about the Westminster Government somehow freeing the NHS in Scotland from something that it is forced to do. It is about preventing the NHS in Scotland from doing something that it currently chooses to do. Within the current devolved context, that should be approached with far more caution than the other example. It impacts on the individual, because the Westminster Government is not taking away a duty that the NHS has but an individual's right to request a contractual relationship with their employer, which individuals may currently have if their employer chooses to agree to it.

The Westminster Government is also going to tell the Scottish Government that it is forced to implement that change. That is a pretty poor state of affairs, particularly for a Government that says that it is committed to localism and employer choice. I know that I am probably talking more specifically about the Government relations aspect of the legislation but it impacts upon the individual because essentially it removes a right that the individual currently enjoys.

Shirley Rogers: I think that Dave Moxham has summed that up very nicely. We have chosen to make that investment because we believe that it has worked for us. The only other point that I will make is that I am concerned about the view that industrial relations are in a continual steady state. That has not been my experience.

The bill proposes to allow ministers to prescribe facility time. Will they do that on a normal Monday, when everyone loves one another, or on a day when we have a significant change agenda or,

indeed, a dispute? Industrial relations are by their nature flexible, because there are times when we spend more time fixing or developing things.

The only addition that I would make to the comments that Dave Moxham made is that we have chosen to do partnership working in the NHS in the manner in which we have because we have found it to be extremely beneficial to have flexibilities that reflect the NHS, in which there are daily occurrences that require discussions with staff.

The Convener: Billy, would you like to comment?

Councillor Hendry: I do not have anything to add.

Alison Johnstone: So it is fair to say that you think that the impacts on local and public authorities have not been fully considered.

Dave Moxham: I think that they have not been fully considered, and I think that it is properly a matter for local authorities and devolved employers to be the ones who make that consideration.

The Convener: From what we have just heard, if such a system for improving industrial relations did not exist in the public sector or in private sector organisations in the way that it does, we would go about creating that sort of architecture to make sure that things were proceeding in an appropriate way. That is a comment rather than a question. After all, I have not said anything for a while.

Stewart Maxwell (West Scotland) (SNP): I was missing your words of wisdom, so thank you for that. *[Laughter.]*

There is an issue that I wanted to ask about that was dealt with in response to Alison Johnstone's question. Given that it is not compulsory for any employer to do check-off, your organisations have chosen to do it because, in any analysis of the benefits and disbenefits of such a move, it has been shown that it is more beneficial to do it than to not do it. As you have addressed that, I will move on slightly.

If we look at things from the UK Government's point of view, are there any benefits that you can see, such as a reduction in costs, that might arise from the ban on check-off?

Shirley Rogers: It would be foolish to proceed with the notion that NHS pay is a number that is spat out once a month and that, in that process, check-off is the only variable that requires a vast amount of time to do. NHS pay covers employees from portering staff to senior consultants, it covers full-time and part-time staff, and it covers people who have varying allowances because they work on call or on variable shift patterns. Staff receive

particular allowances for public holidays, non-public holidays and all sorts of other things, from shift-working premiums to distinction awards.

If there is a sense that what is proposed on check-off will mean that pay that does not receive any attention in central payroll at the moment will become massively simplified and that that will reduce a significant cost burden, I think that that is a misguided premise. NHS pay is a complex thing. Thankfully, it runs well through good computer-based systems. I am not aware of any part of the system that has identified check-off as a significant burden on payroll costs.

Councillor Hendry: In all councils, many different types of deductions are made from salary—for example, for childcare or for the purchase of a bicycle to get to work. That causes us no problems at all and has no financial bearing. We have no issues with making such deductions. As far as I am aware, payroll departments have never flagged up any problems, so I think that changing the system is unnecessary.

Stewart Maxwell: Bill Hendry's response leads on to my second question: given that the ban is purely on check-off and no other payroll facility is to be affected—not charitable donations, loans or any other payments that can be made through a payroll system—can you come to any other conclusion than that the proposal is entirely ideologically driven?

Shirley Rogers: It is probably not for me to comment on the ideology, but—

Stewart Maxwell: No, but perhaps—

The Convener: There was a "but" there.

Shirley Rogers: But perhaps I could say that check-off is, by its nature, entered into on an individual basis over a period. People who have been trade union members have probably been so for some time and do not do that on a once-only, never-to-be-repeated special-offer basis. Although there is no significant cost to us in running check-off through payroll now, there may be a cost in removing all that information at any given point. The NHS has a workforce with up to 40 years' service. The arrangements with the workforce have built up over time. If it were required that all those check-off arrangements be removed at any one point, that would potentially have a cost to the system.

Dave Moxham: You will guess my conclusion, but if there were one form of payment that one might argue was legitimately made through payroll, that would be the payment that was most allied to a person's status—people work and they choose or choose not to pay dues to a union that is directly related to that employment. When the employment ceases, they certainly will not pay

dues through their payroll any more. No other payment, although one might argue the case for pensions, is so intrinsically linked to the fact that a person works and they get a wage for that work. If there was going to be one single payment that you would not touch—and I am perfectly in favour of payroll deduction for all that it is currently used for—it would be check-off.

Why is the proposal just to happen in the public sector? The evidence is quite clear that, in most cases, there is no meaningful cost to the public sector. That it is not to happen to the private sector tells the story that the proposal is ideologically driven. Why would the Westminster Government not want to do that to the private sector, too? The ideology of not interfering with the private sector is greater than that of wanting to make matters more difficult for trade union members.

Significant sections of the public sector, including teachers, collect dues through direct debit. Many unions are quite open to the idea of, over a period, moving across to direct debit payments as long as the member wants to and it is suitable for everyone else. What is behind the Westminster Government's approach? When the legislation is passed, a three, four or six-month window will be given in which the union will be required to transfer everybody from payroll deduction to direct debit. That is just a hard job to do. That will require going in and meeting and speaking in a diverse range of workplaces to every single person and getting their signature. The Government has done that in areas of the civil service in the past couple of years and it has evidence that that is difficult to do. Unions are forced to devote all their resources to doing that and even then, because there is always friction when changing from one system to another, they will lose members.

The proposal is an attack on the individual member's rights to have their dues paid in the simplest way that they choose; it is also an attack on trade union capacity and finances, because the UK Government knows that, however hard we work, we will not keep 100 per cent.

Councillor Hendry: I will comment on the mechanics of the proposal. If the system is to be changed, common sense tells us that that will create more work and cost. On costs, it is worth pointing that trade unions make a contribution. That takes us back to the localism issue, because there are different partnership agreements and contributions vary across Scotland.

As far as I am aware, the current system is cost neutral; it does not cost us anything at all. My fear is that local government is experiencing a difficult time financially, so any burden is a burden too far, and I would not like to see payroll systems being

changed. I think that most people associated with local government would agree. I just do not see the point of such a change.

10:45

The Convener: You can have one more question, Stewart, and then I must go to Linda Fabiani.

Stewart Maxwell: I understand, convener. This will be my final question, and it is for Dave Moxham.

If check-off were to be abolished and people had to pay by direct debit, how would you know whether they had moved from one area of work to another when it came to holding ballots or some other way of organising the workforce? With a large workforce dispersed over a number of sites, there could be a dispute in one site but not in another. If people had to pay their union through direct debit instead of through check-off, would that not create difficulties for the union in finding out who was or was not able to vote in a ballot and to organise things on those terms?

Dave Moxham: It is difficult. Fairly rigorous Certification Office rules already require unions to keep up to date not just with people's place of work in a diverse workplace but with their addresses and various other things. After all, the requirement to carry out postal ballots means ensuring that we can get ballot papers to members when we have to ballot them. That is already difficult and time consuming, and this measure will make things somewhat more difficult. I am not saying, though, that it is the largest problem that we face.

Let me give you an example. At least once a week, the STUC receives a call from a former union member who believed that they were still a member of a union until they phoned it up and found that they had not paid their dues for nine months. One of the reasons for that happening is that they had made a mistake with their direct debit. In some cases, unions will be able to say, "Listen, we'll be able to represent you anyway," but as you will understand there is a union rule that says that a union cannot let people not pay their dues and still represent them. That sort of thing does not happen with payroll deductions—ever—and the most important thing is that union members should be able to avail themselves of that security if they want to.

Linda Fabiani (East Kilbride) (SNP): First, I want to ask a quick question of clarification about check-off that Dave Moxham is probably best placed to answer. I have a memory of the Government trying to stop check-off to the Public and Commercial Services Union for Her Majesty's

Revenue and Customs employees. What happened with that?

Dave Moxham: Essentially, when the previous Westminster coalition Government tried to ban check-off for the whole of the civil service, it gave Liberal Democrat-led and all devolved departments a choice. When Mr Swinney was given the choice, he understandably chose not to ban it. Check-off was therefore banned in certain UK Government departments, including HMRC, but not in others. What we are seeing now is the endgame, with the banning of check-off in all civil service departments.

Linda Fabiani: So the Government trialled the ban and is now trying to expand it.

Dave Moxham: Yes. Wherever the Cabinet Office lead or relevant minister assented to the ban, it has already been put in place, and the rest is still to come.

Linda Fabiani: Thank you for that.

I want to pick up from where Alison Johnstone left off with regard to devolution and the respect agenda by asking about regulatory powers. The bill originally said that secretaries of state should be given the responsibility for making regulations on the various issues that affect us, but the reference to secretaries of state was changed to

“a Minister of the Crown”

being able to make changes to facility time and check-off regulations relating to the organisations in the public sector in Scotland that we have been talking about. It does not seem very clear to many of us, including me, whether that refers to a UK or Scottish minister. Dave Moxham talked earlier about the perception that he had at the meetings that he had attended, and I wonder whether he could expand on that now.

Dave Moxham: I will make sure that the committee has access to the response from Nick Boles to Chris Stephens MP, in which he appears to make the situation clear. In a sense, the civil service is an unusual case in part because it continues to be a UK Government department but, in our interpretation of what Nick Boles said, the situation is clear. Just so members are clear, there are two parts to the facility time provisions in the bill. First, all public sector employers should be required to give account of their current facility time and, secondly, there should be an optional power of intervention for ministers of the Crown to cap that facility time.

Linda Fabiani's question is about where that power will be vested. Everything that we have seen so far—I refer back to the letter from Nick Boles—suggests that it will be vested in the relevant UK department, even when that department has a devolved mirror in Scotland. We

cannot come to any conclusion other than that the minister for health at Westminster will dictate whether facility time in the NHS in Scotland should be capped.

Linda Fabiani: I ask for each of the witnesses' views on the workability of that arrangement. How would it affect relationships in Scotland in your organisations?

Shirley Rogers: I referred earlier to what one might plan for by way of steady state and what might actually present itself daily. We have an enormous change agenda. We discuss very frequently with our staff side both at national level and at health board level what such arrangements might look like in the future. We engage with the staff side regularly through either our partnership working arrangements or bilateral discussions. It would be very difficult for us to prescribe how often we were going to do that and seek that kind of cap. It also becomes worrying when the quantification of facility time could be viewed as simply a cost and boards may be in a position whereby they are required to justify why they are spending X amount on facility time without having the opportunity to influence the discussion with the kind of mature industrial relations stuff that I have been talking about this morning.

Linda Fabiani: I am interested in the witnesses' views on the difficulties that there may well be when you are responsible to devolved ministers, devolved cabinet secretaries and, indeed—in many ways—to the Scottish Parliament, but a UK Government of whatever ideology can hand down regulations over functions that are the responsibility of institutions here.

Shirley Rogers: It is fair to say that, in trying to steer the NHS in Scotland, we are responsible to the Scottish Parliament for the delivery of a health service that is fit for the people of Scotland. Of course, reflecting our history—if nothing else—we do that with very close relationships with the Department of Health, but our efforts over the past several years have been to clarify and simplify.

Councillor Hendry: In local government, our primary point of contact is the Scottish Government. We do not have many, if any, connections with the local government department in Westminster. From our point of view, that way of working has been established. How would the change to which Linda Fabiani refers affect relationships on the ground? I am sorry to keep going on about it, but we very much do not want the situation to change. We want to make the decisions in councils and not have anyone elsewhere deciding how we deal with our colleagues in trade unions.

Dave Moxham: I suppose that I am bound to speculate that it would be politically interesting

were such a diktat to be passed down by, let us say, a UK health minister at the same time as the Scottish minister for health was suggesting to the NHS in Scotland that it does something different.

Linda Fabiani: Thank you. We need absolute clarity on the issue from Westminster and the Scottish Government. It is a hugely important point.

The Convener: I accept that it is an important point but, given that the statutory instrument can be brought forward only in the UK Parliament, or the House of Commons, it is pretty clear that the only people who can promote it would be UK ministers. We will seek clarification, but I think that I am pretty clear about it.

We will go to Stewart Maxwell and then I have a couple of points that need to go on the record.

Stewart Maxwell: I seek clarification on a couple of points, to make sure that my assumptions are correct. The bill states that

“relevant public sector employers”

will be affected. I will give a quick example of the issue. If there are two councils and one has all its services in house while the other has arm's-length external organisations, leisure trusts and so on, would check-off be banned in the council that retains services but not in the council that uses leisure trusts and ALEOs?

Councillor Hendry: I invite Jane O'Donnell to answer that, because it is a technical point and she will know more about it than I do.

Jane O'Donnell (Convention of Scottish Local Authorities): That is potentially the case, but we need clarity on it. Local authorities have different decision making for different services and it would be difficult for us to deal with that. When colleagues are working in an ALEO, the council will have different arrangements.

Dave Moxham: The key word there was “potentially”, because the bill is far from clear not just about facility time and check-off provisions but on other aspects, such as what exactly will be defined as a public sector organisation. Arguably, the bill will be interpreted to include any organisation that primarily undertakes publicly funded functions, but it is not clear. Where ALEOs and even voluntary sector organisations might sit under the bill is not yet clear.

Stewart Maxwell: That takes me to my next question. Might third sector organisations also be affected?

Dave Moxham: They absolutely could be, because if a third sector organisation is delivering a key service with reference to certain provisions of the bill, or a public service, with reference to other provisions of the bill, it is entirely possible

that the final bill and instruments might interpret it as a public sector organisation.

Stewart Maxwell: Sorry, convener, but I have one more point of clarification. On check-off again, am I right in assuming that paying trade union fees through check-off would no longer be allowed but, if someone was a member of a staff association, that would not be banned?

Dave Moxham: I will need to check that.

The Convener: I have a couple of questions so that we can get some points on the record. We will have to produce our report on today's proceedings some time next week.

The UK Government's Regulatory Policy Committee described the impact assessment that supports the bill as not fit for purpose, and it highlighted a severe lack of evidence to support the legislation. Do you agree that the bill is not fit for purpose?

Dave Moxham: I will go for a yes on that one.

Shirley Rogers: I certainly agree that there is a lack of evidence.

Councillor Hendry: Ditto.

The Convener: It is unlikely that the UK Government will decide not to proceed with the bill but, if it does, would you support the proposal that the UK Government remove Scotland from the territorial extent of the bill through amendments at the House of Lords committee stage or report stage? Would it be a good idea to remove Scotland from the bill at a later stage in the House of Lords?

Dave Moxham: Yes. The STUC's position is that employment law, including the regulation of trade unions, should be devolved. It follows that any such legislation should be a matter for Scotland.

It is important to point out that that does not mean that we are careless of the interests of the broader trade union movement, nor would it be the case, were Scotland to be removed, that it would not feel some of the consequences of bad legislation.

Councillor Hendry: Speaking for local government, I would be happy for Scotland to be removed from the legislation.

The Convener: Shirley Rogers, the NHS is the biggest employer but are you in a position to say?

Shirley Rogers: I will defer to my colleagues on that. I am happy to say that the partnership arrangements that have existed for a long time in the NHS in Scotland would not necessarily be added to by any of the proposals that we have seen.

The Convener: If all that was to fail, would it be appropriate for the Scottish ministers to have conferred on them directly the power over regulation issues that are directly related to public services in Scotland, such as local authorities, the NHS, Police Scotland and other devolved matters?

Dave Moxham: Absolutely.

Shirley Rogers: As far as I am concerned, health is a devolved matter.

Councillor Hendry: Local government is a devolved matter.

The Convener: That was all just for the record, to help us to draw up our report. I am grateful to you all for coming along today and providing the committee with such substantial evidence. We now move into private session.

11:00

Meeting continued in private until 11:17.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

Information on non-endorsed print suppliers
Is available here:

www.scottish.parliament.uk/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@scottish.parliament.uk
