

FINANCE COMMITTEE

Tuesday 1 September 2009

Session 3

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CONTENTS

Tuesday 1 September 2009

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DECISION ON TAKING BUSINESS IN PRIVATE.....	1391
PUBLIC SERVICES REFORM (SCOTLAND) BILL: STAGE 1	1392
INTERPRETATION AND LEGISLATIVE REFORM (SCOTLAND) BILL: FINANCIAL MEMORANDUM.....	1411
CONTROL OF DOGS (SCOTLAND) BILL: FINANCIAL MEMORANDUM	1412

FINANCE COMMITTEE

† 18th Meeting 2009, Session 3

CONVENER

*Andrew Welsh (Angus) (SNP)

DEPUTY CONVENER

*Jackie Baillie (Dumbarton) (Lab)

COMMITTEE MEMBERS

*Derek Brownlee (South of Scotland) (Con)

Linda Fabiani (Central Scotland) (SNP)

*Joe FitzPatrick (Dundee West) (SNP)

*James Kelly (Glasgow Rutherglen) (Lab)

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

*David Whitton (Strathkelvin and Bearsden) (Lab)

COMMITTEE SUBSTITUTES

Murdo Fraser (Mid Scotland and Fife) (Con)

Kenneth Gibson (Cunninghame North) (SNP)

Lewis Macdonald (Aberdeen Central) (Lab)

Liam McArthur (Orkney) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Ian Mitchell (Scottish Government Strategy and Ministerial Support Directorate)

Mike Neilson (Scottish Government)

John St Clair (Scottish Government Legal Directorate)

CLERK TO THE COMMITTEE

Dr James Johnston

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Allan Campbell

LOCATION

Committee Room 6

† 17th Meeting 2009, Session 3—held in private.

Scottish Parliament

Finance Committee

Tuesday 1 September 2009

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

Decision on Taking Business in Private

The Convener (Andrew Welsh): Good afternoon and welcome to the 18th meeting of the Finance Committee in 2009, in the third session of the Scottish Parliament. I ask members and the public to turn off their mobile phones and pagers, please. I have received apologies from Linda Fabiani.

Item 1 is a decision on whether to take in private item 5, which is a further discussion on our approach to stage 1 scrutiny of the Public Services Reform (Scotland) Bill. Does the committee agree to take item 5 in private, as I propose that we do?

Members indicated agreement.

Public Services Reform (Scotland) Bill: Stage 1

The Convener: Item 2 is evidence taking on the bill at stage 1. As members know, although the Finance Committee has been designated as the lead committee on the bill, three other committees have been designated as secondary committees and will scrutinise sections of the bill that are relevant to their remits. The Finance Committee will therefore focus its scrutiny on part 1 of the bill, on simplification of public bodies, although we will exclude the sections that deal with the Deer Commission for Scotland and the Historic Environment Advisory Council for Scotland. We will also consider part 2, on order-making powers, part 6, on scrutiny and changes to the Public Finance and Accountability (Scotland) Act 2000, and the minor provisions in part 7. The committee will also consider and report on the contents of the bill's financial memorandum, as we do with all bills. We will have a separate evidence session on the financial memorandum on 6 October.

I welcome Scottish Government officials to today's introductory session. Mike Neilson is director with responsibility for the simplification programme; Ian Mitchell is deputy director of public bodies policy scrutiny; Colin Miller is from the public bodies policy team; John St Clair is a lawyer from the constitutional and civil law division in the legal directorate; and Fiona Tyrrell is legislative change leader in the scrutiny bodies project team—those are fair job titles, which we could not include on your name-plates.

I start with a general question. The bill is only one part of the Government's wider public services reform programme. Therefore, it would be useful for the committee if you would set the bill in the wider context of public services reform and give us a brief update on the elements of the programme that lie outside the scope of the bill.

Mike Neilson (Scottish Government): I will make a start. I am relieved that your description of what you will cover today was in line with what we were expecting. That is a good start, and it means that the right people are here.

The bill is the part of the overall simplification programme that requires legislation; a lot of stuff on simplification is going on elsewhere. Simplification is one part of a broader approach to public services reform, which is about simpler and more effective public services that are aligned behind the Government's core purpose of sustainable economic growth.

As the convener said, there is a wide range of aspects of that broader approach. I will outline one or two. First, the national performance framework, alongside the purpose, has a set of core

outcomes, purpose targets and indicators, which provide the framework for all public services in Scotland. It has been a priority of Government to ensure alignment across the public sector with that framework. The Scotland Performs website is the public face of reporting on progress on the national performance framework.

Secondly, we have a new relationship with local government and other local players, which is set out not just in the local government concordat but in the single outcome agreement process, which is crucial. Single outcome agreements have been established with all 32 local authority areas and focus on delivery of local outcomes and contribution to national outcomes. As I said, we have a strong policy of aligning the work of all those public bodies with the Government's core purpose and the key outcomes.

Beyond the individual sectors, we have a cross-cutting efficient government programme with targets of 2, 4 and 6 per cent over the three years of the spending review. We are broadly on target on that. An important element within the programme is our commitment to shared services.

Finally, there is the subject of the bill—the simplification programme: reducing the number of public bodies and simplifying the landscape—and the linked approach of reducing the regulatory burden and simplifying scrutiny.

That is an initial run over the ground.

The Convener: Simplification and quangos do not necessarily go together. Quangos have been remarkably resilient and keep reappearing as opposed to submitting to quangocide. How have you struck a balance between transferred powers and duties, the dissolution of quangos and the creation of quangos?

Mike Neilson: The starting point for that must be the Government's purpose—the outcomes that we are trying to achieve—and the range of activities that is needed to achieve it. The Government starts with the view that there needs to be a justification for activities to be carried out by a body other than local or central Government, but that there is a case for separate public bodies for well-defined functions that would be more effectively carried out at a degree of arm's length from the Government. An important point is that a country of 5 million people, such as Scotland, might need a different number of separate bodies compared with the United Kingdom, which can afford to build up more than one area of expertise on a particular issue. In Scotland, we need to ensure that we do not duplicate expertise.

That is the general approach to identifying when we should have arm's-length bodies and when a function should be retained in local or central Government.

The Convener: We wish you well in that process.

James Kelly (Glasgow Rutherglen) (Lab): I thank Mike Neilson for his opening statement. I will concentrate on the financial memorandum, which outlines various costs and savings. It moves from a cost-neutral position in 2013-14 to one in which, thereafter, greater savings than costs will be associated with the bill. For 2008-09 to 2010-11, it predicts savings of £1.642 million and costs of £5.495 million. The 2010-11 budget will come up for consideration in the course of this term. What implications do the figures that are quoted in the financial memorandum have for that budget?

Mike Neilson: The main costs probably relate to creative Scotland and the work on the proposed health bodies. We anticipate that they will be covered in the budget in future. On creative Scotland, there is a clear commitment that transitional costs will not eat into the core spending.

The Convener: I remind the committee that we will have a full evidence-taking session on the financial memorandum on 6 October, so we will be able to ask detailed questions at that point.

James Kelly: I appreciate that, but it was useful to get some background information.

One of Dr Dyer's submissions indicated that, because of the recession and the pressure on budgets, it would be better not to proceed with the Public Services Reform (Scotland) Bill at this time, given that there will be greater costs than savings up to 2012-13. Dr Dyer put the case that it would be better to suspend the bill until then, rather than to take on the issues now. Can you give us your view on that?

Mike Neilson: There is a twofold reaction to that. First, the bill is not primarily a cost-saving exercise; it is about more effective public services. However, we expect savings to emerge, as the financial memorandum sets out. We do not anticipate that the financial position of the public sector will improve even over the short timescale that you mention. We need to spend to save in order to deliver a simpler and slightly leaner public sector, although it will take time.

My second point, which I am sure the committee will come on to, is about the bill's enabling powers for making structural changes, which are important in the broader context of tighter finances and the need to respond quickly.

Jackie Baillie (Dumbarton) (Lab): I wish to explore with Mr Neilson—or indeed anybody else—why you have arrived at a reduction target of 25 per cent.

Mike Neilson: That is a really good question. The purpose of the simplification programme is not

simply to reduce the number of public bodies; it is to have simpler and more effective public services. The 25 per cent figure is, in many respects, a symbol and indicator of the degree of change that the Government has been looking for, based on an initial review of the overall shape of the landscape. The Government is committed to hitting the 25 per cent target because it is a broad measure of the extent of simplification that is needed and justified.

Each individual proposition has a justification on its own merits. There is a degree of diversity among the range of proposals, which I think the committee has spotted. Each proposal has a different balance of justifications. Some of them involve bringing policy and delivery closer together; some of them are about getting better strategic leadership; some of them are about getting synergies in expertise. The 25 per cent figure is the symbol of ambition, as well as being a target.

Jackie Baillie: I am glad that you have clarified that. Symbols and targets are different things in Government. I am clear that 25 per cent is a firm target, which the Government is driving towards, and that it illustrates the extent of its purpose. The Government will be held to account on that.

You have supplied a very helpful document, "Public Services Reform: Simplification and improvement update – May 2009". The executive summary contains a useful table, which states the baseline total of public bodies. My understanding is that, leaving aside the reductions to justice of the peace advisory committees, the bill proposes eight simplifications—a reduction of eight bodies. Is that correct?

Mike Neilson: Yes.

Jackie Baillie: In effect, however, you are looking for a further 45 reductions beyond what you have done through Executive action. Is that correct?

Mike Neilson: I will need to check this carefully, but I think that the reduction of eight that you are talking about is included in the 45.

Jackie Baillie: Yes, it is—sorry. I should have made that clear. However, in effect, you had delivered 11 as of May and you seek to deliver another 45. We have agreed that eight will come forward through the bill. My question therefore relates to where the other 37 bodies will arise. My understanding is that a key part of the process is that you hope to deliver a reduction of 31 bodies with the implementation of the children's hearings (Scotland) bill, which I understand has been delayed by at least a year, although it will possibly be introduced in March 2010. I am slightly nervous about your achieving your objective, given that people on children's panels—and, indeed, people

in local authorities across Scotland—felt that it was most undesirable to move away from local children's panels to a central body; that was the basis of their distress and the representations, hence the delay in the bill.

Will the Government listen to those representations and move back from its position of abandoning all 32—as it happens—local children's panels, or will it ignore the outcry and deliver the numbers that you require to meet the target? I am curious about how you will achieve that reduction, which matters so much to your delivery against the Government target.

14:15

Mike Neilson: I am not sure that I accept the choice that you gave at the end. The picture from the Government's perspective is that the bill is an incredibly important piece of legislation but that a number of concerns have been raised, so it is wise to provide further time to address those concerns and discuss them with the stakeholders who raised them, in order that we have broad support for going forward. The intention remains to go forward with the broad approach of a single body. We would expect to have royal assent in the course of 2010.

Jackie Baillie: If I may, convener, I want to come back at Mr Neilson on that. I have not been absolutely close to this issue, but I have received representations on it from constituents. The fundamental concern of the draft children's hearings (Scotland) bill is the removal of children's panels. If the Government is delaying simply to spend more time convincing people, that is one thing. However, if the delay is to address the policy issue, does that not give you a difficulty? If you proceed as planned, you may get the bill passed. However, will you get enactment and implementation by April 2011? Or are you refining your pledge into something perhaps more realistic that will appear post April 2011?

Mike Neilson: There were quite a lot of hypotheticals in there. It is important to say that the Government's proposal remains as it is and that we will make every effort to implement it by April 2011. Clearly, the critical issue is to have an effective system that delivers on the outcomes. We come back to the overall discussion in that regard, because it is the outcomes that are critical.

Jackie Baillie: Just for my sake, and for clarity for the record, you are saying that you can achieve the target by April 2011.

Mike Neilson: I am saying that the Government decided to provide more time to ensure that the bill is good legislation and that the system is effective. We are still aiming for April 2011, but we

recognise that the timescale is a lot tighter than it was originally.

Jackie Baillie: I am a simple person and I simply want to know whether you will achieve the target by April 2011, given the constraints that you operate under.

Mike Neilson: As I said, we will make every effort to achieve that target, but the overriding requirement is to have a system that is robust and commands support.

Jackie Baillie: Thank you, convener.

The Convener: I am sure that you will pursue that in other places.

Derek Brownlee (South of Scotland) (Con): The bill is certainly long and, given some of the evidence that we have received, it is controversial in parts. However, if we leave aside for the moment part 2, the Chartered Institute of Public Finance and Accountancy has commented that the bill would not reform public services as we might think that it would simply from the title and that it represents only a tentative step towards reform and simplification, and a missed opportunity—that struck a chord with me.

Is there any inclination in the Government's broader public services reform agenda to go beyond what is already in the public domain and in the bill, and not just to reduce the number of bodies but to take cost out of the business of government and effect more far-reaching reform of public services?

Mike Neilson: Given the tight financial climate that we are moving rapidly into, there is no doubt that the delivery of public services that are more cost effective will be high on the agenda. The overall simplification programme is the core of the Government's plans for structural change. In using the enabling provision—we can talk a bit about that—other specific proposals are likely to come forward. It will be for ministers to take a view, over time, on the role of structural change alongside all the other aspects of public services reform that we are talking about, including shared services and efficient Government, in order to get a public sector that can operate within a tighter financial environment.

Derek Brownlee: Clearly, some of the proposals that you allude to will not be worked out until and unless the bill becomes an act. However, a range of possibilities must have been considered in order to get you to the position in which you thought that it was worth bringing them forward as primary legislation. Are all the proposals that are at a relatively advanced stage included in the estimates that you make for the longer term savings that might arise as a result of the bill?

Mike Neilson: If I have understood the question correctly, we have not included in the financial memorandum savings as a result of any future changes that might come under the enabling power. However, what we are proposing here would mean that that information would be available in the case of each proposal that comes forward.

Derek Brownlee: But that is not included in the figure in the financial memorandum. That is helpful.

David Whitton (Strathkelvin and Bearsden) (Lab): I am interested in what you said about this not being a cost-saving exercise. I would have thought that cutting the public sector by 25 per cent would be a cost-saving exercise, yet—if I am right—in 2013-14, the savings are £3.8 million. That does not seem like an awful lot for taking out a quarter of the public sector.

Mike Neilson: I repeat that this is not primarily a cost-saving exercise; it is about a simpler and more effective public sector landscape to deliver services, which will also generate financial savings. I think that the figures to which you refer relate to what is in the bill, which is a subset of the simplification programme. If you look at the programme document that Ms Baillie referred to earlier, there are figures for the overall picture, which is more like between £36 million and £40 million of on-going savings annually from about 2013.

David Whitton: My colleague Mr Kelly mentioned the Government's budget for 2010-11, which the committee is also considering. Evidence that we have received about that says that 50 per cent of expenditure for the Government is in salaries and pensions and the like for Government staff. It is laudable that the Government says there will be no compulsory redundancies, but if you are going through such an exercise, surely jobs must be being taken out of the public sector.

Mike Neilson: As you say, there is a commitment to no compulsory redundancy.

David Whitton: Sure, but the jobs will be taken out of the public sector at the end of the process.

Mike Neilson: The programme can be delivered without compulsory redundancy—

David Whitton: But not without job losses.

Mike Neilson: Any job losses would be through redeployment, natural wastage or, in some cases, voluntary redundancy.

David Whitton: Do we have an overall figure for what you are looking to achieve by that?

Mike Neilson: We do not think that it would be right to have a job reduction target.

David Whitton: Okay. I thought that we might have expected to see a figure that would indicate to the public what will happen to their services.

Mr Kelly also asked about Dr Dyer's views. Dr Dyer said that because the savings are so little, now is not the time to be cutting the public sector. Indeed, I think that the Cabinet Secretary for Finance and Sustainable Growth has been berating people for saying that there should be cost savings in the public sector. How do you answer Dr Dyer?

Mike Neilson: If Dr Dyer's proposition is that we should not make the changes because we are in a tight financial situation, we do not go along with it. The changes are desirable in the context of improving public services; they would also deliver some financial savings, so we should not hold off on making them.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): When Mr Whitton asked about head count, you said that there is no global figure. Is the exclusion of such a figure a policy position? Is head count for employment in the public sector in Scotland irrelevant to the simplification process, or do you expect a reduction in employment in the public sector as a result of the process?

Mike Neilson: Do you mean in respect of the simplification programme itself?

Jeremy Purvis: Yes.

Mike Neilson: The key is the overall financial climate. Employment in the public sector is primarily being determined by the overall financial context, with tighter budgets. The savings that we are talking about are not necessarily cuts in budgets. Some of the savings can be redeployed elsewhere to allow a better level of service provision. I do not think that we can translate those savings into specific figures for jobs.

Jeremy Purvis: I do not want to put words into your mouth, but it sounded like you were saying that there is no policy intention that the head count for employment in the public sector in Scotland will go down as a result of the simplification process.

Mike Neilson: That is not one of the drivers of the simplification process.

Jeremy Purvis: Are mechanisms in place for monitoring employment? Official statistics for employment in Scotland that came out in March—shortly before the simplification programme began—showed an increase of more than 2,000 in employment in executive agencies, non-ministerial departments, public corporations, executive non-departmental public bodies, advisory NDPBs, tribunals, commissioners and ombudsmen, national health service bodies and other significant national bodies. That is your tracker when it comes to the simplification process.

I do not know whether the figures have been updated since March, when the statistics showed that the overall head count was going up. The thrust of what is being presented is that the public sector is being slimmed down because there are fewer bodies, but if the bodies are employing more people we will not have a smaller public service in Scotland.

Mike Neilson: I understand that there was an update on the numbers in June and that there will be another update in September. A critical point about the numbers is that the growth in the broad category that you identified is more than explained by the presence of NHS bodies in that category. If we take out the NHS bodies, we will find that there has been a modest reduction.

Jeremy Purvis: Is the NHS excluded from the Government's simplification process?

Mike Neilson: It is not excluded.

Jeremy Purvis: Why is that point relevant, then?

Mike Neilson: Because one aim of the simplification process is to move activity into front-line service delivery. A slimmer and more effective—

Jeremy Purvis: That can apply to the NHS as much it does to anywhere else.

Mike Neilson: If you consider the NHS figures, you will find that it is front-line services that have grown—that is well-trodden ground elsewhere.

Jeremy Purvis: When it comes to changing Scottish Enterprise, for example, why would the argument not be used that more resources are being directed to front-line services and there has been a reduction in jobs? That is the information that is presented on Scottish Enterprise.

14:30

Mike Neilson: Well—

Jeremy Purvis: Shall I ask another question? You can think about that one and come back to the committee if that is appropriate.

The Convener: If you want to, you can respond to the committee in writing.

Jeremy Purvis: Has any external or objective mechanism been put in place to gauge the success of the simplification process against its stated objectives? I will give an example. It is just short of two years since the decision to get rid of the local enterprise companies was announced. What mechanisms has the Government put in place to gauge whether that has been a success?

Mike Neilson: I think that the answer to your question is that we have been looking at the

matter in terms of the individual changes concerned and that we would have to follow up by giving you more detailed information about the way in which the enterprise networks or others have measured their success. There has been substantial progress in refocusing the enterprise networks.

Jeremy Purvis: My question was about what mechanisms you have put in place. Page 24 of the Government's update document from May states:

"The reforms to SE and HIE have resulted in a greater focus on activities that should have the greatest economic impact".

What mechanisms have you put in place to judge whether that is the case?

Ian Mitchell (Scottish Government Strategy and Ministerial Support Directorate): In part, that is achieved through the processes that are already in place—the operational planning process, the corporate planning process and our efforts to focus public bodies more on outcomes rather than processes—so at an individual level performance is being gauged through the operational planning processes. I reiterate the point that was made previously, which is that we do not at this stage have a more global assessment of how the simplification process has benefited a range of bodies.

Jeremy Purvis: But it has been two years since the decision was announced. How are we to judge whether the bill will be effective given that you are not even judging what you announced two years ago as a success in comparison with the arrangements that were in place beforehand?

Mike Neilson: We should perhaps examine the issue in the context of a particular organisation. The aim with the enterprise networks has been to focus on the areas where there is the greatest potential for growth. None of us here is a specialist in that area of business, but processes are in place that are intended to judge whether that approach is having an impact.

Jeremy Purvis: I know that you are not officials in the enterprise department, but as far as I am aware you are running the improvement process, so you are the right officials to gauge whether the restructurings are in place. I am quoting from your document, which states that the reforms

"have resulted in a greater focus",

and I am asking what mechanisms you have in place to judge that. The document makes the statement in the past tense. Was it just a guess?

Ian Mitchell: As I said, the mechanisms for determining how efficient or otherwise Scottish Enterprise has become as a result of those changes are through the operational planning process. There is a process in place to consider

how effective or otherwise we are being in meeting the national outcomes. In that context, two years is not a massive amount of time. Scottish Enterprise is working in a grouping with VisitScotland, Highlands and Islands Enterprise and the Government to assess its contribution to issues such as productivity. That is medium-to-long-term work, and the process is also in place. Scottish Enterprise's contribution to that will benefit from the leaner structure, to which you refer, that has been achieved. There are processes in place.

Jeremy Purvis: Yes, but would it have been more accurate to say, "the reforms to Scottish Enterprise may result in a greater focus" rather than that they

"have resulted in a greater focus"?

In my constituency, since the abolition of Scottish Enterprise Borders, there is greater confusion, a lack of clarity and not the right kind of framework. That is my judgment as a local member; what mechanism does the Government have in place to judge it?

Mike Neilson: We will follow up in writing your question on the assessment that was made on the enterprise network and the justification for the sentence that you quote.

The Convener: Will you clarify whether the 25 per cent by which public and scrutiny bodies will be reduced is an aspiration or a guiding concept? How do you respond to Dr Dyer's point that a

"Much better and safer"

way to proceed

"is a pragmatic approach which identifies unhelpful and wasteful overlap of functions or excessive scrutiny"

and which would allow sensible adjustments to be made?

Mike Neilson: As I said in response to an earlier question, the 25 per cent is a symbol and a driver for change. Experience has shown that there is a lot of inertia in the system, which makes it difficult to take action to reduce the number of public bodies. The actual programme is based on an assessment in each individual case of the benefits through improved services and potential savings. Each individual proposal or project has been justified on its own merits, but it is important that there is an overall driver for change in the 25 per cent target.

The Convener: Do you understand the concern about the 25 per cent figure, as opposed to the flexibility that you outline, driving everything else?

Mike Neilson: I am saying that the 25 per cent figure was based on a broad assessment of what could be achieved and is now embodied in a set of specific proposals, each of which is justified on its own merits.

Joe FitzPatrick (Dundee West) (SNP): One complaint that we hear as elected members—or, certainly, that I hear as an elected member—from front-line providers, particularly local councils, is that they are overinspected to the point that the inspections affect front-line services. Will you give us a flavour of how the proposals to change scrutiny might reduce that overinspection but ensure that we inspect appropriately to make certain that our front-line services deliver?

Ian Mitchell: In Professor Crerar's review of scrutiny and the parliamentary debate that followed it, there appeared to be a consensus that, first and foremost, we must maintain independent assurance of services. That was not up for grabs. However, it was also agreed that the system of scrutiny that had built up over the past 10 years was disproportionate, that it was not particularly joined up and that there was a burden on service providers—local government in particular was cited in that regard.

I will outline what more is happening on that. Some of the proposals in the bill attempt to tackle the duplication and overlap. The new bodies for health, social work and social care and the mergers that are proposed in those areas simplify the landscape of scrutiny bodies. The landscape is not covered entirely by measures in the bill: another seven bodies have been dealt with outwith it.

The important point is that simplifying scrutiny is about not only the number or structure of bodies but the way that scrutiny is conducted. There are a number of important projects under the scrutiny improvement programme. I will cite one: the role that the Accounts Commission has been given to improve co-ordination of, and act as a gatekeeper for, the scrutiny of local government.

The Accounts Commission is developing a shared risk assessment so that all the bodies that impact on local government can plan together, and a single corporate assessment because it was thought that the corporate parts of local government or health boards, for example, were bearing the brunt of several scrutiny visits. That approach is beginning to bear fruit. The Accounts Commission group's last report shows a 25 per cent reduction in scrutiny contact and, I think, a 23 per cent reduction in scrutiny visits over the past two-year period. It is not all about structural change and simplifying the landscape; it is also about how we conduct scrutiny. That is an example of a key project.

David Whitton: I am sure that Mr Neilson and his colleagues are aware that the part of the bill that received most comments was part 2, which deals with order-making powers. You managed to upset the Lord President of the Court of Session among others. How was schedule 3 drawn up?

Mike Neilson: The basis of the list in schedule 3 was the original 199 national public bodies at the beginning of 2007, when the overall review of the landscape took place. We saw those bodies, which vary widely, as part of the public bodies landscape at that time.

David Whitton: Far be it from me to be the great protector of all our parliamentary commissioners, but you managed to get most of them to say that they were unhappy with their inclusion in that list. The Scottish Human Rights Commission, Scotland's Commissioner for Children and Young People and indeed the Scottish Information Commissioner are unhappy at being included in it. All of them claim that they should not be included because they are under the direction of the Scottish Parliamentary Corporate Body. What do you say to them?

Mike Neilson: Do you mind if I say a bit about the order-making powers in general terms before I come to that question?

David Whitton: Please do.

Mike Neilson: From a Government perspective, the order-making powers are meant to be an additional parliamentary mechanism for making structural changes to public bodies in a relatively rapid way without having to wait for primary legislation. In the current context in which the Government is looking to align all the activities of public bodies with its purpose, much can be done without legislative change as it looks at particular areas, but what is proposed in the bill provides opportunities when legislative change is needed.

The approach has benefits. First, cost savings can be got through as quickly as possible in a difficult financial environment. Secondly, long periods of uncertainty for organisations are damaging. Waiting for a primary legislation slot and a suitable bill can take a long time, and the purpose is to allow speedy decision making. A lot can be done when reviews of particular areas are carried out, but modest things sometimes require primary legislation, and things can be held up. That is part of the logic behind what has been proposed.

We have put in place relatively wide definitions so that we can transfer and modify functions. We did that because it is difficult to predict exactly what shifts will be needed. We have established a strong affirmative procedure that includes requirements for consultation and for full explanations of why something is justified, and a set of safeguards that are intended to ensure that necessary protections are not removed and that the power is not used in a way that is inconsistent with the body's general objectives.

14:45

You mentioned the Lord President's position. We have relatively wide coverage, with careful safeguards, to allow the changes that we are talking about to be made, but the safeguards will apply in a way that respects the independence of the judiciary, for example, because that is a necessary protection and a core purpose of the body. We are carefully considering all the comments that have been made on the provisions, but we think that the safeguards provide a strong degree of response to concerns about independence and so on.

David Whitton: I hear what you are saying, but it is not as if the Parliament has been overburdened with a legislative programme during the past couple of years—notwithstanding what the First Minister will say later this week. If some of what is proposed is just minor tweaking along the way, it could have started already.

I am sure that this would be an unintended consequence, but much difficulty seems to centre on people thinking that ministers will take back power from some bodies. That is what HM inspectorate of constabulary for Scotland, HM chief inspector of prosecution in Scotland, Alzheimer Scotland and indeed the Lord President are saying. Is there room for change? Will you have to listen again to what those people are saying and amend schedule 3?

Mike Neilson: There is a clear rationale and there is a set of safeguards, but of course we will look carefully at the range of comments that have been made and we will talk to a number of the bodies about how their particular situation fits in, to reassure them and to identify issues.

The Convener: You can see that sensitivity is required in balancing efficiency and democratic safeguards. Commissioners and others guard their independence jealously, which is important in a democratic system. A balance must be struck: safeguards must be effective and a Government cannot act excessively towards people who should be independent on our behalf.

Mike Neilson: On the parliamentary bodies, we had a certain amount of difficulty with timing, in that the Parliament's Review of SPCB Supported Bodies Committee was considering some of the issues in parallel. We had to finalise the bill in advance of that committee's consideration being complete. We have had correspondence with the Parliament on the area, which is clearly linked to the specific responsibility of the Parliament for bodies. In particular, we will listen carefully to the view that the Scottish Parliamentary Corporate Body takes.

Jeremy Purvis: Part 2 would confer on the Scottish ministers powers to make changes to

persons and their functions in respect of listed bodies. Is that correct? What preconditions or protections would apply if ministers wanted to remove the functions of a person who was appointed by another body, thereby in effect making them obsolete? For example, would the bill allow the functions of someone appointed by Parliament to be changed substantially?

Mike Neilson: The critical point is that there would be a parliamentary procedure. For any changes to be made there would have to be an affirmative resolution of the Parliament. The situation that you describe was certainly not envisaged when the powers were being drawn up.

Jeremy Purvis: I apologise—I missed that the affirmative procedure would have to be used. Where in the bill is that?

Mike Neilson: It is in section 20, on procedure.

Jeremy Purvis: Even with a debate, the bill would give ministers the power. That would be within the scope of the bill.

Mike Neilson: It would be in the scope of the bill to do what?

Jeremy Purvis: Under "Improving the exercise of public functions", section 10(3)(b) includes the power to bring forward an order to change a person who has been appointed by another body or to change their duties, for example a commissioner who has been appointed by Parliament. Would it be within the scope of the bill to bring forward an order in that regard? As you know, the Parliament makes nominations to the Queen for certain appointments. I assume that they would come under the scope of the bill. What preconditions would prevent the use of the order-making power?

Mike Neilson: The bodies are in the scope of the bill. The core preconditions are "efficiency, effectiveness and economy". There is also the need to be "proportionate" and for changes to maintain the "necessary protection". Those are the main preconditions. One would have to look at how the safeguards apply in each case. The core point is that ministers would have to comply with the preconditions and that there would need to be an affirmative resolution of the Parliament in order to make such a change.

Jeremy Purvis: I am sure that any Government would explain why it was doing something, but my point is about what would be within the scope of the legislation. I want to know whether any precondition would prevent, for example, a commissioner or a parliamentary appointee being removed from office or having the functions of their office changed so substantially that, in effect, their office was rendered obsolete.

Mike Neilson: The power could not be used in the first example. In the second, in practice it would be very difficult to use it to change a set of powers with related protections if there were no good reason for doing so.

John St Clair (Scottish Government Legal Directorate): If you are thinking, for example, of an official who has been given the role of protecting children's interests, human rights, a freedom or civil rights, it would not be within the scope of the order-making power to whittle down their function in any way, but it would be within the power to transfer the function with all its protections to another body. For example, in England, under the Equality Act 2006, several commissions that used to deal with equality issues, human rights, race relations and so on were amalgamated into the Equality and Human Rights Commission. All the protections that were implicit in the former bodies were retained in the new commission.

Jeremy Purvis: That is a good example, except for the fact that all of those bodies were changed by primary legislation. My question relates to the commissioners that the Scottish Parliament has established and the bodies that are included in the Government list, all of which were established by primary legislation. If the Government decided that the efficiency and effectiveness of the public sector would best be served by the children's commissioner's functions being wrapped up into the Scottish Public Services Ombudsman, it would be within the scope of the bill to do that by order. Primary legislation would not be required. That is part of the concern that has been expressed by many of the bodies that have submitted evidence to us. Your example relates to bodies that were changed by primary legislation, with proper pre-scrutiny and then a full scrutiny process, whereas any orders under the bill would be subject to much less scrutiny, even under the affirmative procedure. Is that not the case? Do you acknowledge those concerns?

Mike Neilson: The proposed power has a lot of safeguards. It is an additional mechanism that will allow us to make changes without requiring the full parliamentary process of primary legislation. It provides for a rather quicker process for more modest matters. Ultimately, it would be for the Parliament to judge whether anything that came forward was suitable for that avenue or for primary legislation. That is a critical part of the overall picture.

The Convener: Did you wish to contribute on that point, Mr St Clair?

John St Clair: No.

The Convener: Have you finished, Mr Purvis?

Jeremy Purvis: I have a further point to make, but not on this part of the bill—you might wish to keep to it.

The Convener: Jackie Baillie has been very patient.

Jackie Baillie: I am a model of patience—what can I say?

I wonder why you did not consult on the power before introducing the bill.

Mike Neilson: The aim is to consult on proposals individually. We see our proposition as relatively clearly defined, and we are now carefully examining the material that came in during the summer.

Jackie Baillie: Sure, but I would have thought that it is much better to include people—either to reassure them or to listen to their fears—at an early stage, rather than at stage 1. Perhaps, with the benefit of hindsight, pre-legislative consultation would have been desirable in this case.

Mike Neilson: We have had a range of consultations on different aspects of the bill, and we have tried to get them all on the same timescale. That has had an impact.

Jackie Baillie: But would it be fair to say that there has been none on the proposed power that we are discussing—unless I have missed it?

Mike Neilson: Yes.

Jackie Baillie: So there has been none. Okay.

There might be a valid reason for this, but I am not sure what it is. You have included the Scottish Futures Trust and Skills Development Scotland, neither of which was created under primary legislation. Why are they on the list?

Mike Neilson: They were on the original list of 199 organisations because they are significant bodies. At some future date, functions might be transferred to or from them. The judgment was taken that we should include them at the outset, because of their significance. There is provision to add or remove bodies from the list in the future, so there is a degree of flexibility at the margins.

The Convener: You had a further point to make, Mr Purvis.

Jeremy Purvis: Yes. In fact, it is connected to the Scottish Futures Trust, and goes back to the question of how the Government presents information. In the update document that you published in May 2009, one of the bodies that the Government baselined was NHS hub procurement Scotland. Correctly, the document says:

“after consideration of options the Scottish Government decided that a separate organisation was no longer needed.”

It is now fully up to the Scottish Futures Trust to take that proposed organisation's work forward. When we had representatives of the Scottish Futures Trust in front of the committee, they explained that their budget increase of more than £2 million was due to the transfer of staff who were delivering hub procurement Scotland's functions within Government to the Scottish Futures Trust. However, a net saving is shown against hub procurement Scotland. How accurate is that? What mechanisms exist to judge whether there is a net saving if the functions of a body are transferred to another body—which, coincidentally, has had an increase in budget that is not part of the simplification process?

15:00

Mike Neilson: At the outset, both NHS hub procurement Scotland and the Scottish Futures Trust were on the list of 199 public bodies, which explains the effect on the numbers. Admittedly, in this particular case, we would need to come back to the committee on where exactly the net savings come from. The savings tend to come from savings in governance and the administrative costs of running a separate organisation, but I cannot say whether that is the case here.

The Convener: If there are any further clarifications, please do not hesitate to come back to us in writing.

The last question will be from David Whitton.

David Whitton: The Cabinet Secretary for Finance and Sustainable Growth sent us a helpful letter about possible Government amendments at stage 2. Can we be brought up to speed on where we are with the amendments on the leasing of forestry, on the Mental Welfare Commission and on the proposed changes to the Charities and Trustee Investment (Scotland) Act 2005?

Mike Neilson: The intention is still to lodge stage 2 amendments on the leasing of forestry land to local communities along the lines set out in the cabinet secretary's letter. Likewise, we still intend to lodge tidying-up amendments on the health, social work and social care bodies. On the Mental Welfare Commission, there is on-going consultation that will end in September. In the light of that consultation, ministers will decide whether to lodge amendments at stage 2 to include the Mental Welfare Commission in the bill.

David Whitton: That brings us back to Jackie Baillie's comment that a bit of consultation beforehand might have saved the Government some grief.

The Convener: That is a statement rather than a question. I think that our questions are now

finished. Do members of the panel wish to make any last comments?

Mike Neilson: I am conscious that the committee is dealing with a rather complex process. If any points arise as the committee brings together all the material, we will be very happy to help.

The Convener: That is appreciated. I thank our witnesses for their presence today and for their evidence. I will suspend the meeting for a second or two while the witnesses leave.

15:02

Meeting suspended.

15:03

On resuming—

Interpretation and Legislative Reform (Scotland) Bill: Financial Memorandum

The Convener: Item 3 is consideration of our approach to scrutiny of the financial memorandum on the Interpretation and Legislative Reform (Scotland) Bill. As members will note from the clerk's paper, the financial memorandum states:

"There will be no new material costs or savings to the Scottish Administration ... Scottish local authorities ... or ...other bodies, individuals or business in Scotland with the enactment of the provisions in the Bill."

On that basis, is the committee content simply to write to the lead committee to inform it that we have no comments to make on the financial memorandum?

Members indicated agreement.

Control of Dogs (Scotland) Bill: Financial Memorandum

15:04

The Convener: Item 4 is consideration of our approach to scrutiny of the financial memorandum on the Control of Dogs (Scotland) Bill. The clerk's paper recommends that we adopt level 1 scrutiny. The recommendation is that we seek written evidence from the Scottish Government, all local authorities, the Scottish Court Service, the Association of Chief Police Officers in Scotland, the Scottish Legal Aid Board and the Crown Office and Procurator Fiscal Service. Are members content with that approach?

Members indicated agreement.

The Convener: As previously agreed, we will now move into private session to discuss further our approach to stage 1 scrutiny of the Public Services Reform (Scotland) Bill. I will allow a minute or two for members of the public to leave.

15:04

Meeting continued in private until 15:09.

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