

# **FINANCE COMMITTEE**

Tuesday 27 October 2009

Session 3

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## FINANCE COMMITTEE 24<sup>th</sup> 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 Fitz Patrick (Dundee West) (SNP)

\*James Kelly (Glasgow Rutherglen) (Lab)

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

\*David Whitton (Strathkelvin and Bearsden) (Lab)

### COMMITTEE SUBSTITUTES

Gavin Brown (Lothians) (Con)

Kenneth Gibson (Cunninghame North) (SNP)

\*Lewis Macdonald (Aberdeen Central) (Lab)

Liam McArthur (Orkney) (LD)

\*attended

### THE FOLLOWING GAVE EVIDENCE:

John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

### CLERK TO THE COMMITTEE

Dr James Johnston

### SENIOR ASSISTANT CLERK

Mark Brough

### ASSISTANT CLERK

Allan Campbell

### LOCATION

Committee Room 1



## Scottish Parliament

### Finance Committee

*Tuesday 27 October 2009*

[THE CONVENER *opened the meeting at 13:31*]

### Decisions on Taking Business in Private

**The Convener (Andrew Welsh):** Good afternoon and welcome to the Finance Committee's 24<sup>th</sup> meeting in 2009. I have received apologies from Jackie Baillie and I hope to welcome Lewis Macdonald, who will attend as the Labour Party substitute. I ask all committee members and members of the public to turn off mobile phones and pagers.

Agenda item 1 is to decide whether to take in private item 3, which is a discussion of the evidence that we have heard to date on the Public Services Reform (Scotland) Bill. Is that agreed?

**Members indicated agreement.**

**The Convener:** I also propose that we take discussion of our draft stage 1 report on the bill in private at future meetings. Is that agreed?

**Members indicated agreement.**

## Public Services Reform (Scotland) Bill: Stage 1

13:32

**The Convener:** Item 2 is to conclude our programme of evidence taking on the Public Services Reform (Scotland) Bill at stage 1. I welcome the Cabinet Secretary for Finance and Sustainable Growth, John Swinney MSP, who is the member in charge of the bill. He is accompanied by Scottish Government officials: Nikki Brown, deputy director, creative Scotland division; Keith Connal, deputy director, public sector policy division; Mike Neilson, director; and Shane Rankin, head of the scrutiny bodies project team. They are all welcome.

Members have received a supplementary letter from the Scottish Government that was circulated as a late paper. We also have reports from various secondary committees. However, we will concentrate today on the parts of the bill that the Finance Committee has considered.

I invite the cabinet secretary to make an opening statement.

**The Cabinet Secretary for Finance and Sustainable Growth (John Swinney):** I will touch on the comprehensive nature of the policy behind the Public Services Reform (Scotland) Bill, which is a key strand of the Government's determination to put in place a more simplified, coherent and effective approach to the delivery of public services.

We want to define a much clearer role for public bodies, streamline decision making, increase transparency and apply much tougher tests to the creation of new bodies. As I said in my statement to Parliament last November, the key drivers behind the move to simplify the landscape are obvious. First, we want to tackle the complexity of organisational structures so that a reduced number of bodies can concentrate on delivering high-quality services that are focused on users. Secondly, we want to achieve more outcome-focused, efficient and streamlined public services that provide better value for the public pound.

We have already made considerable progress in simplifying public services without legislation. We started by focusing on broad themes and strategic objectives, by reducing the number of ministers and portfolios, and by putting in place the national performance framework. Clearly, however, more is required. We want public bodies to co-operate in providing public services to their users, but that is difficult if there are too many bodies with similar and overlapping remits. We now have a single sports body in sportscotland, a single skills body in

Skills Development Scotland and a single marine body in Marine Scotland. We have removed duplication in housing and regeneration by abolishing Communities Scotland, and we have refocused the enterprise networks. The bill will establish a single cultural body—creative Scotland—and streamline the delivery of health care and social care inspection and improvement. Reorganising the existing scrutiny bodies into healthcare improvement Scotland and social care and social work improvement Scotland will facilitate more effective collaboration and will significantly reduce the complexity of external scrutiny. Part 1 also dissolves a number of advisory bodies that are no longer necessary.

We have made it clear that the simplification programme is not primarily about cutting costs or staff numbers. However, bringing together existing bodies makes it possible to streamline business processes and target scarce resources on improving the quality and the efficiency of services. In the current financial climate, that is more important than ever before.

It is equally important to put the focus on the user rather than on the provider of public services. Together with other proposals, the bill will deliver significant reforms in relation to complaints handling and scrutiny as well as new duties of user focus and co-ordination.

The reforms will create more effective and efficient bodies that can work together with each other and the other major bodies, such as Her Majesty's Inspectorate of Education and Her Majesty's inspectorate of constabulary, to ensure that scrutiny is co-ordinated and conducted jointly where that is appropriate. We will also have powers to direct the new bodies to conduct joint inspections of any services.

I have already referred to creative Scotland. I am pleased that the sector is now positively engaging in shaping creative Scotland and that many organisations and individuals have expressed their support. We are working to ensure that creative Scotland is up and running in the first half of next year. It will remove the compartmentalisation of responsibility for related aspects of our cultural and creative life, which many in the sector find unhelpful. The bill gives the new body the scope to consider a range of flexible new funding models and methods, which could include grants, bursaries, loans or equity stakes, as well as using existing models.

There are other examples of the progress that has been made in taking forward the public services reform agenda. The number of public bodies has been reduced from a baseline of 199 to 162 and we are on track to reduce the number to around 120 by April 2011, thus meeting in full the target that was set by the First Minister to

reduce the number of public bodies by 25 per cent. All public bodies are putting in place outcome-based approaches that are aligned to the national performance framework and, with our encouragement, public bodies are increasingly working across boundaries with each other and partners in local government and the third sector. Public bodies are also contributing to the efficient government programme, which will deliver savings of £3.2 billion over the period 2008 to 2011.

Nevertheless, the process of streamlining the public bodies landscape and improving the services that they deliver is a continuing one. That is why the order-making powers in part 2 of the bill are vital. I firmly believe that, to pursue continued improvements in the delivery of public services in Scotland, the Government and the Parliament need the flexibility to make further changes quickly, as and when opportunities arise. The order-making powers allow ministers to make proposals to Parliament for the purposes of improving the exercise of public functions and removing or reducing burdens—and only for those purposes.

I am aware that concerns have been raised about the scope of the powers. I emphasise that the process is a parliamentary process that is subject to stringent statutory and procedural safeguards. Any proposals must be proportionate to the policy objective; they cannot remove any necessary protection in existing legislation and any new or modified functions must be consistent with the general objects or purpose of the body in question. Nothing can be done without prior consultation with interested parties, parliamentary scrutiny and parliamentary approval by affirmative resolution.

The order-making powers in part 2 are designed to be narrowly focused and balanced by careful safeguards. However, I am perfectly happy to consider the balance that we have tried to strike between the scope of the powers and the accompanying safeguards. The Subordinate Legislation Committee has made some constructive suggestions for additional procedural safeguards. Those might include, for example, a duty to publish a draft order and allow time for consultation and scrutiny and, if necessary, amendment before the order is laid before Parliament. I am perfectly prepared to consider those and any other proposals during stage 2, but we should be clear that, in the current climate, using primary legislation to give effect to relatively minor adjustments around the margins of the public bodies landscape—such as the proposals in part 1—is taking a hammer to crack a nut and is a luxury that we cannot afford. I hope that we can all agree about the importance of driving forward the public services reform agenda. The order-making powers will give us the scope and the flexibility to

do just that, subject to the approval of Parliament, and that is why they form an important part of the package of proposals that is set out in the bill.

**The Convener:** I thank the cabinet secretary for that statement. We will move straight to questions from the committee.

**David Whitton (Strathkelvin and Bearsden) (Lab):** I thank the cabinet secretary for his opening statement. I will take him straight to the last part of it—I am sure that he was expecting that anyway.

Can you outline to us exactly what you are trying to achieve by the section 10 power? You seem to be trying to usurp the parliamentary process and give ministers—what did you say?—more flexibility because you cannot afford to waste time. Are you giving all that power to ministers just so that you can get on with things?

**John Swinney:** I fear that—quite out of character for him—Mr Whitton may not have followed my statement closely. Perhaps I was talking too fast for Mr Whitton, but I was trying to get across a lot of detail and protect the time for the committee. For the record, I reiterate what I said. I emphasise that the process is a parliamentary process that is subject to stringent statutory and procedural safeguards. I concede that the bill gives ministers the power to make suggestions, but every suggestion must be set out in detail and must form the basis of an order. There must be statutory consultation on the effect of such an order on every public body that is concerned and, once that statutory consultation is complete, the order requires to be the subject of affirmative procedure in Parliament. In all that, I see no increase in the power of ministers.

Alternatively, ministers could make similar propositions in the form of primary legislation. We could make primary legislation to implement some of the suggestions that are made in part 1 of the bill, each of which could have been the basis of a bill and could have been subjected to the full legislative process of the Parliament. My point to the committee—and the point of section 10—is simply that, when we have the opportunity to streamline public bodies, there will be a way for us to do that, with parliamentary safeguards, through a parliamentary process and with protection built in. These are not all-encompassing powers; there are limitations on the powers that can be exercised under section 10. None of the decisions can be taken by ministers except in so far as ministers will have votes when Parliament considers the orders.

I do not see section 10 as an accumulation of ministerial power; I see it as an approach that uses the parliamentary process and gives Parliament its full and proper place to decide on such things once a process of statutory

consultation has taken place on each and every change.

**David Whitton:** Thank you for that very full answer. You said that the Subordinate Legislation Committee has made some suggestions that you are willing to consider. Can you outline what those are? Is one the use of the super-affirmative procedure?

**John Swinney:** The Subordinate Legislation Committee has suggested that changes could be made to the limitations and constraints on the powers. As I said to Mr Whitton in my first answer, a number of constraints can be applied to the powers. The Subordinate Legislation Committee has suggested further limitations that could be applied, which I am willing to consider. It has suggested, in particular, that the Parliament may wish to consider the term “necessary protection”. That has been deliberately drafted as a very open phrase to restrict ministers’ ability to make provisions; however, it could be differently defined if Parliament felt that that was appropriate. The Subordinate Legislation Committee has also suggested, as Mr Whitton says, that a super-affirmative procedure could be applied and I am certainly willing to consider that. There have also been suggestions that orders under section 11 that add bodies to schedule 3 should be subject to affirmative procedure. Ministers would be happy to consider those points into the bargain.

13:45

**David Whitton:** Thank you. I have no doubt that you have studied the evidence that we received from eminent witnesses, including some legal academics, who made the point that ministers were taking powers away from the Parliament. It was not us but the learned professors of law who made that point. They would have preferred primary legislation to be enacted. One of them made the point that we do not exactly have a surfeit of primary legislation to deal with, so there seems to be space in the parliamentary calendar for dealing with rationalisation. I am sure that Mr Swinney will not agree with that, but I welcome his thoughts.

**John Swinney:** The Government has a full legislative programme. The bill looks like a full piece of legislation, if my eyes do not deceive me. We will certainly work our way through the bill, and the Government is introducing many other bills.

Far be it from me to question the wisdom of the learned professors, but I have heard the argument that the legal profession likes to have ever more legislation to make the country’s legislative and statutory position more complex. However, I am in the business of simplifying that position.

If I have not made it clear already, I make it absolutely clear that I simply cannot understand how any objective analysis of the bill would suggest that it grants ministers more powers. If it does anything, it gives Parliament—as properly should be the case—the decision-making role on any changes that are made because any change under section 10 would be subject to Parliament's agreement to an affirmative order, before which there would have to be statutory consultation on the proposals and consideration of them in Parliament.

In my opening remarks, I also made the point that I can see the merits of the argument, which has come from the Subordinate Legislation Committee, for us to publish draft orders that are not within the tramlines of the parliamentary process but are used for pre-legislative consultation with interested parties. The Government could reflect on some of the issues that arose out of such consultation before it formally laid an order before the Parliament for statutory consultation and consideration. Those are helpful suggestions, but the crucial point is that, in the bill, the Government is trying to create a system that provides for a more efficient way of rationalising the public body landscape of Scotland, which I think we all agree is required.

**David Whitton:** You said that you were on target to reduce the number of public bodies by 25 per cent by 2011. How did you come up with that figure in the first place? Is there scope to extend it?

**John Swinney:** Obviously, I am a servant of Parliament. If it wishes to go beyond that target, it is free to do so.

**David Whitton:** It is not Parliament's bill; it is your bill.

**John Swinney:** It is my bill. I have heard complaints that 25 per cent was far too much, but now Mr Whitton encourages me to go yet further. That just goes to show that it is not possible to please all the people all the time.

**David Whitton:** I am not encouraging you to do that; I asked how you came to the figure in the first place.

**John Swinney:** We considered the range of public bodies, considered where the scope and opportunity existed to rationalise them in this parliamentary session and came to the conclusion that the number rested round about 25 per cent. We did not pluck that number out of thin air; we worked through a process of identifying opportunities for rationalisation where duplication currently existed, which brought us to a number. We considered the matter in the context of what could credibly be delivered in one parliamentary session, and we arrived at a figure of around 25 per cent.

**David Whitton:** Do you agree that, as we heard from Mike Neilson when he first appeared before the committee, the programme is not a money-saving exercise, but is more to do with improving the governance of Scotland?

**John Swinney:** It will be about both. It is clear that the programme saves money; that is a statement of fact. Secondly, it will improve—

**David Whitton:** But that is not the main driver.

**John Swinney:** It is not the main driver. The bill is about tidying up the landscape of Scotland's public bodies to ensure that they are able to work better together, that we can break down the barriers that exist in public service provision and that we can more effectively put in place a focus on the user among the organisations that are involved. In making that last point, I might sound as if I am stating the obvious, but such a focus can be absent from time to time in public service.

I am interested in finding financial savings. The bill produces them, and the order-making powers assist in providing further opportunities to make such savings in the years to come.

**James Kelly (Glasgow Rutherglen) (Lab):** You and the Minister for Public Health and Sport have written to the committee on amendments that may be lodged at stage 2. I am interested in the progress of that work.

**John Swinney:** We are in the process of drafting those amendments, and we will lodge them at the appropriate time. I am happy to discuss in advance with the committee some of the terms of the amendments, if there is an opportunity to do so in a fashion that suits the committee. We are certainly making progress in drafting the various amendments that we have suggested.

**James Kelly:** Has any work been done on the costs that relate to the amendments?

**John Swinney:** A financial analysis will be undertaken as part of our responsibility to ensure that we keep Parliament abreast of the financial issues. We have a duty at stage 1 to publish a financial memorandum, which we have done, and if any material change is made that must be reported to Parliament, we will do that in the normal course of events.

**James Kelly:** The financial memorandum makes it clear that no money will be saved until 2014. We have heard evidence from some people who have expressed concern about that, and about the scale of ambition of the bill. Given the fact that economic circumstances have changed since the bill was first drafted, how do you feel about the comments that the savings that will be realised are simply not enough?



**John Swinney:** The savings from the Government's efficiency programme, the bill and the various initiatives that I announced when I introduced the 2010-11 budget amount to very substantial savings in public expenditure. The efficiency programme that I set out will realise savings of £3.2 billion over the period 2008 to 2011. The proposals that we introduced in relation to the reduction in the Government's administration budget are obviously significant for 2010-11.

There are savings in the bill that contribute to that process, and there are savings as a result of previous initiatives that ministers have taken, particularly in relation to the work of Scottish Enterprise. The simplification programme, for example, on which I published an update some time ago, will produce financial savings of about £127 million between 2008 and 2013.

The committee is as aware as I am of the changing landscape of the public finances. There are big challenges out there in the years to come for public spending and public services. Our approach makes a helpful contribution to that agenda, and the order-making powers that I mentioned to Mr Whitton will contribute to the process into the bargain.

In evidence that the committee took—it might have come from one of the committees that reported to the Finance Committee—it was suggested that because of the changed economic climate we should delay the proposals rather than contemplate implementing them. I take a completely different view. We can always put off taking action, but over the years all members of the Parliament have witnessed the growth in the number of public bodies. I hope that there is a consensus in the Parliament that we need to counter that process and simplify the public sector landscape. Therefore, although the financial climate is challenging, this is the appropriate time to proceed with reform.

**James Kelly:** Why do you think that it will take until 2014 for savings to exceed the costs that will be associated with the bill?

**John Swinney:** We should consider the overall financial position in the simplification process—not all the issues that are raised as part of the simplification agenda must necessarily be addressed in the bill. The financial savings during the first five years are estimated to be £127 million, with annual recurring savings of £36 million thereafter. In certain circumstances there will be short-term transition costs, but, as you know, there will be pressure on the public finances not for one or even two financial years but for a significant number of years. As a consequence, the estimated annual saving of £36 million as a

result of simplification will make a significant contribution to public expenditure in Scotland.

**James Kelly:** Mr Whitton mentioned the concern that has been expressed in evidence about the order-making powers and about the bodies that are included in schedule 3. Are you minded to lodge amendments at stage 2 as a result of the evidence that the Finance Committee and other committees have taken?

**John Swinney:** I am actively considering that point, which has been made in different committees during the scrutiny process. I will pay close attention to the evidence and to the Finance Committee's conclusions.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** Yesterday, you kindly wrote to me to respond to a number of parliamentary written questions that I had lodged, on the head count in public bodies in Scotland. I understand that you have also written to the committee. Why has the number of jobs in quangos and executive non-departmental public bodies in Scotland gone up since the Scottish National Party came into office?

**John Swinney:** The way to approach the issue is to consider total employment in public bodies. In quarter 3 of 2007, the total number of staff in the 199 bodies that were included in the simplification programme's baseline list was 186,675. In quarter 2 of 2009, the remaining 161 bodies employed 188,707 staff, which represents an increase of 2,032 during the period. That increase reflects an increase of 2,828 front-line health care staff in the 23 national health service bodies, and a reduction of 796 in the remaining non-NHS bodies.

The reason why I use that piece of analysis is that, when we get down into the detailed composition of public sector employment statistics, we see many transfers of staff from one category into another—from agencies that are getting brought into core Government and from parts of core Government that are going outside and so on. The core position is that we have had an increase of nearly 3,000 staff in the NHS but, in the remaining non-NHS bodies, there has been a reduction of 796 since the Government came into office.

14:00

**Jeremy Purvis:** The Government holds information on the increase in core Government civil service staff, taking into account the staff moves from executive agencies that you have mentioned. What is the figure for growth in core Government staff?

**John Swinney:** There has been a decline of 22.

**Jeremy Purvis:** So, staff have been transferred from executive agencies into the core staff of civil servants, but there has been a net reduction. Is that correct?

**John Swinney:** That is correct.

**Jeremy Purvis:** Why, when I asked him about it in the Parliament, did the First Minister tell me that

“The increase in staff to which he referred—”

that is, to which I referred—

“has been caused by central Government taking in staff from Communities Scotland, the Scottish Agricultural Science Agency, the Scottish Building Standards Agency, Fisheries Research Services, the Scottish Fisheries Protection Agency and, of particular interest, the Mental Health Tribunal for Scotland”?—[*Official Report*, 17 September 2009; c 19733.]

**John Swinney:** The First Minister would have been basing his answer, essentially, on the fact that, without taking transfers into account, there would be an increase of 1,216 in the number of staff.

**Jeremy Purvis:** Is that core staff?

**John Swinney:** Yes—Scottish Government core staff.

**Jeremy Purvis:** I am confused as to why the First Minister believes that it is an increase.

**John Swinney:** There has been an increase. If one was to consider the base statistics, they would show that there were 4,437 people employed in the Scottish Government core staff in quarter 3 of 2007 and, in quarter 2 of 2009, the number was 5,653. Therefore, I am not in any way surprised that the First Minister used the word “increase”—because there is an increase. It is necessary, however, to ask about the effective transfers. Once we take transfers into account, we end up with a reduction of 22—

**Jeremy Purvis:** But, cabinet secretary—

**John Swinney:** Just let me complete my sentence. Actually—I am being reminded of this, because I do not have the benefit of having the *Official Report* in front of me, nor do I have Mr Purvis’s encyclopaedic recollection of first ministerial statements—the First Minister said that, after transfers, the total went down, which is exactly what I have told the committee.

**Jeremy Purvis:** But there is a no-man’s-land in the figures that you are providing. The Government provides figures for the executive agencies and non-NHS staff, which show a reduction—which is because of staff moving over to the civil service. Then, the Government issues figures for the civil service, but when it does so, it deletes the transferred staff. There is therefore a no-man’s-land with respect to the staff who have been transferred. It suits the information that is

being provided to show a reduction. Is that factually incorrect?

**John Swinney:** In terms of the information that has been published, the Government produces a total reconciliation of those numbers, so there is no “no-man’s-land”.

**Jeremy Purvis:** Okay. So, the figures that were issued yesterday are absolutely the figures that we should be basing things on.

**John Swinney:** They should be.

**Jeremy Purvis:** Can you explain why the figures for the Scottish Futures Trust show that it has no staff?

**John Swinney:** On the point in quarter 2 of 2009, when the information on that would have been taken, I cannot give Mr Purvis a definitive answer about the staff numbers, but I am happy to write to him about it.

**Jeremy Purvis:** You wrote to me yesterday.

**John Swinney:** I will give Mr Purvis a definitive answer on that point.

**Jeremy Purvis:** I will read out the figures for the *Official Report*: the Scottish Futures Trust staff head count for quarter 4 of 2008, quarter 1 of 2009 and quarter 2 of 2009 is zero.

**The Convener:** We can wait for a ministerial dispatch on that, unless an answer can be given.

**Jeremy Purvis:** I would be grateful if it could be given as soon as possible.

**The Convener:** The minister will respond.

**John Swinney:** We will give you a definitive answer on that. I cannot explain to you why it is not covered in the numbers, but that is the total position as I understand it.

**Jeremy Purvis:** I cannot understand why you wrote to me yesterday saying that the Scottish Futures Trust had no staff.

I have a question on part 2 of the bill. When the Government introduces a bill, is it best practice for it to consult the organisations that that bill will cover?

**John Swinney:** There has been a vast amount of consultation on the issues that are covered in the bill.

**Jeremy Purvis:** So there was a vast amount of consultation saying that all the bodies that are in schedule 3 could be affected by the order-making powers in the bill.

**John Swinney:** The organisations that are included in schedule 3 were listed as being part of the Government’s approach to simplification that was set out by the Government’s statement in January 2008.

**Jeremy Purvis:** I am asking about the bill, cabinet secretary.

**John Swinney:** The bill is essentially a product of the dialogue and consultation that started with the Crerar review. The previous Administration commenced that review; we inherited it and took it forward. We then put together the statement that the First Minister made to Parliament in January 2008, which was followed by the publication of the simplification update, which has led to the publication of the bill. Therefore, in my view, the subject matter and contents of the bill have been the subject of extensive consultation.

**Jeremy Purvis:** You thought that there would be no justification for consulting the bodies that would be included in schedule 3 and which could be affected by the order-making powers.

**John Swinney:** All those organisations were clearly designated to be part of the simplification process that the Government set out in January 2008. They have been part of the overall analysis of the issue.

**Jeremy Purvis:** All the ombudsmen who gave evidence to the committee stated that, if they had been consulted, they would have told the Government that they did not wish to be in schedule 3.

**John Swinney:** Bodies are absolutely entitled to their opinion: I am not at all surprised that they do not want to be in schedule 3 because no body ever wants to be abolished.

**Jeremy Purvis:** Are you going to abolish the ombudsmen?

**John Swinney:** No, I am not.

**Jeremy Purvis:** You said “abolished”.

**John Swinney:** My point is that no body ever wants to be abolished. Bodies will be abolished through part 1 of the bill. No body ever wants to be in the scope of such consideration, so I am not at all surprised to hear that the ombudsmen do not want to be included in schedule 3.

**Jeremy Purvis:** Is that why you did not consult them?

**The Convener:** We are extending the boundaries of the questioning. The minister is making himself clear.

**John Swinney:** Let me answer the point, convener. There is no issue about which there has been more talk than there has been about simplification. The previous Administration commissioned the Crerar review. We did not leave that review on the shelf but decided to implement it, which we have done through the simplification process and in other respects. I understand that people always want more consultation—we can

always argue for that—but the Government has arrived at a proposal that gives us an efficient way to handle such questions.

**Linda Fabiani (Central Scotland) (SNP):** Since I was elected more than 10 years ago, we have been talking and talking under successive Governments about bonfires of the quangos and reforming public services, with consultation after consultation. Do you agree that the bill is a natural progression from a lot that has gone before, with a bit of courage thrown in for good measure? What is the potential success of our at last achieving simplification of the landscape of public bodies in Scotland, given that that there is a minority Government and that a lot of discussion and negotiation is on-going? Do you agree that, at last, probably 11 or almost 12 years down the line, we will have streamlining of public services in Scotland?

**John Swinney:** That depends entirely on the reaction to the bill. Through the powers that ministers already hold, we have tried to simplify the public sector landscape. That is why I went through the examples on the enterprise network, Communities Scotland, the proposals in the bill on creative Scotland and the other points that we are advancing on simplification of that landscape. The Government has that agenda—we believe that government has to be simplified. The bill gives us the opportunity to advance that agenda, but that is entirely in the hands of Parliament.

As well as that, Parliament should have the opportunity to be constantly involved in the process, which is why the order-making powers require a parliamentary procedure if any further public bodies are to be rationalised. We need to advance the agenda. Whether we do so is dependent on the attitude that Parliament takes to the proposed legislation, as is properly the case. In addition, we must ensure that our approach delivers real improvements in a landscape that I think we all accept is too congested and in which there is too much duplication and where, in many respects, that congestion makes it difficult to deliver all that we want to deliver.

**Linda Fabiani:** What do you say to those who prevaricated for eight years and who now say that you are not going far enough?

**John Swinney:** I am always happy to welcome converts to the process of simplification of the government of Scotland.

**David Whitton:** I have been here for only two years, so I do not think that Linda Fabiani’s point applies to me.

**John Swinney:** You have never prevaricated.

**David Whitton:** Indeed. I have two brief questions. I take the cabinet secretary back to his

use of the word “abolished”. Are you sure that that is the word that you wanted to use in relation to people such as the Scottish Information Commissioner and Scotland’s Commissioner for Children and Young People? Those were the people to whom Mr Purvis was referring.

**John Swinney:** I was not referring to any particular organisation; I was making the generic point that, in my estimation, no body has ever been particularly keen to have its role transferred somewhere else. Kevin Dunion, the Scottish Information Commissioner, told the committee:

“I do not want Parliament to become preoccupied with relatively minor changes.”—[*Official Report, Finance Committee*, 22 September 2009; c 1538.]

The Scottish Public Services Ombudsman said:

“we need to have a good look at how we bring about change if we do not have powers such as order-making powers on the agenda.”—[*Official Report, Finance Committee*, 29 September 2009; c 1568.]

The clear evidence from the commissioners and the ombudsman is that they can see merit in the order-making powers. I am interested in a discussion with Parliament about how we can ensure that Parliament, while accepting the need for rationalisation and for the process to be simplified, can have the assurance that it is in control of that process—I agree unreservedly that that should be the case—and that it has adequate safeguarding opportunities to ensure that any proposals are consulted on adequately, adequately scrutinised and appropriately decided on by Parliament.

**David Whitton:** All the bodies that you have listed were created by Parliament and are answerable to the Scottish Parliamentary Corporate Body and so not to ministers, in a sense. That is where the fear has come in.

In evidence, the Rural Affairs and Environment Committee and the Education, Lifelong Learning and Culture Committee have commented that those order-making powers are going too far.

14:15

**John Swinney:** I am a bit surprised by that, because the order-making powers in the bill are not particularly new. At heart, they give the ability to change primary legislation through affirmative order. Such powers were included in section 57 of the Local Government in Scotland Act 2003, which provides powers for ministers to modify any enactment that prevents or hinders local authorities from complying with their duties under that act or from exercising the powers that it gave to them. That particular power was tempered by the requirement to lay an order—which is exactly what we have in this bill—that had to be consulted upon, and the Subordinate Legislation Committee

of the day regarded those powers for ministers as being entirely appropriate. That is why I am a bit surprised that members are concerned about this section of the bill. Parliament has already enacted section 57 of the Local Government in Scotland Act 2003, which essentially confers the same powers that say that ministers are entitled to propose to amend primary legislation by an order that is subject to statutory consultation and to the agreement of Parliament. That is exactly the mechanism that we propose in section 10 of the bill. I never initiated the 2003 act. It was agreed by Parliament and it is part of our current statute.

**David Whitton:** As I said earlier, we have heard lots of evidence about that aspect of the bill from learned legal academics who have taken a view on it. We have heard from members of different committees and from the minister, who said that he is going to study all this. Being the reasonable man that he is, I am sure that he will take note of it all.

I have a question about the amendments to the Public Finance and Accountability (Scotland) Act 2000. The chair of the Accounts Commission and the Auditor General for Scotland suggested that the Scottish Commission for Public Audit should take over responsibility for determining the Auditor General’s terms and conditions. Indeed, we heard from the Auditor General himself that he thinks that that is actually quite a good idea. Does the cabinet secretary have any views on that proposal?

**John Swinney:** I can see why there is an argument in favour of such a proposal. Undoubtedly it would put another element into the necessary independence of the Auditor General’s role; we all know about the independence of the Auditor General’s position, but the proposal would put a bit more distance into the role. As Mr Whitton knows, that view is not shared by the Scottish Parliamentary Corporate Body, although I can understand why the argument has been made. Of course, if the committee reflects on the issue, I will consider it very seriously.

**David Whitton:** In the same evidence session, I think that it was the Auditor General himself who suggested that the post should have a fixed term of two periods of four years that would overlap three parliamentary terms. Do you have any thoughts on that, cabinet secretary?

**John Swinney:** That is a sensible suggestion. The idea of re-appointment of an Auditor General feels instinctively like a bad one. Whether the requirement or process of facing re-appointment affects the Auditor General’s independence or not, it might be perceived to do so. I would therefore consider it to be undesirable. The suggestion of an eight-year term commencing mid-way through a parliamentary session sounds like a sensible proposition to me.

**The Convener:** There is some concern about sections 10 and 11, and I seek a little clarification. The Law Society of Scotland told us that the bill would “radically change” the balance of power between Parliament and Government. It has also been suggested that the section 10 power appears to be unprecedented. It includes abilities concerning

“modifying, conferring, abolishing, transferring, or providing for the delegation of, any function,”

and abolishing or creating a public body or amending its constitution.

You have said that you would consider using the power in an attempt to reduce burdens, but you can appreciate the reasons for people’s concerns. We have heard from witnesses and secondary committees the concern that the power could have unintended consequences beyond the life of the current Parliament—for example, if there were a majority Government. How would you respond to such concerns?

**John Swinney:** First, I fundamentally disagree with the Law Society of Scotland about the view that section 10 results in a transfer of powers to ministers. I think that that is a baseless view, if you want my honest opinion. This is not the first time I have disagreed with that body, so I do not think that anyone will be terribly surprised to hear me say that.

You say that the power is without precedent.

**The Convener:** That is the suggestion that has been made to us. Iain Jamieson said that the power is also unprecedented in its width.

**John Swinney:** I return to the point that I made in an earlier answer, when I cited section 57 of the Local Government in Scotland Act 2003, which provides for ministers to modify any enactment that prevents or hinders local authorities from complying with their duties under that act or exercising the powers that it gave them. That is a wide power and many safeguards are, quite rightly, associated with it. The power that I am proposing in section 10 of the Public Services Reform (Scotland) Bill is a power that has to have necessary safeguards. I simply do not understand how a view could be formed that it increases the power of ministers.

We are talking about putting in place a parliamentary procedure that enables us to be able to take decisions that can simplify the landscape of the public sector in Scotland but which will, crucially, enable us to do so only with the consent of Parliament and after statutory consultation.

**Joe FitzPatrick (Dundee West) (SNP):** I was one of the lucky MSPs who sat on the Review of SPCB Supported Bodies Committee. During that

process, we heard lots of evidence about consultation on aspects of the bill. One of the stark things about the evidence was that people were extremely protective when they were talking about their own empires. However, when we speak to users, we find that they are less protective of the empires and structures and more protective of the essential functions of those bodies. We need to ensure that the functions of those organisations are protected by whatever new structure comes about. Could you go over the protections that are envisaged in the bill to ensure that the functions of our organisations will continue, and could you say why the bill does not have more specific wording in that regard?

**John Swinney:** Essentially, the nub of the matter is about ensuring that the types of rights and protections that exist in law at present are entirely outwith the scope of the order-making powers, so that if there is an element of law that currently gives an individual or organisation a particular legal right or a particular entitlement, that could not be altered by the use of the order-making powers. What would be amended by the order-making powers would be the landscape of bodies that supervise those responsibilities. That is as it should be. The order-making power has been defined sufficiently tightly to focus on that point and to ensure that the basic rights and protections of individuals are well protected.

Secondly, later in the bill, we have included the duty of user focus. It may be an obvious remark for a Government to say that such a focus should be implicit in all public services, but our view is that we need to make the point—we need to assert it—to ensure that user focus is properly and fully taken into account by the public services in the design of and approach to their activities. In those two respects, having security around rights, entitlement and powers and a duty of user focus provide the necessary reassurance that members of the public who use those services require to see.

**The Convener:** We are moving to a close. I give the final question to Lewis Macdonald.

**Lewis Macdonald (Aberdeen Central) (Lab):** As I am a substitute member of the committee, this is my first opportunity to scrutinise the bill. I am intrigued by John Swinney’s absolute certainty that none of the order-making powers in the bill confers additional powers on ministers. In his time, Mr Swinney has been a committee convener. I ask him to look again at the question from that perspective and say whether he believes that removing these matters from primary legislation will diminish in any way the opportunity for committee members to influence the content of legislation.

**John Swinney:** I do not think so, because we treat primary and secondary legislation differently in the Scottish Parliament. Committee members—and, obviously, all members of Parliament—have the opportunity to amend primary legislation, word by word. Secondary legislation is treated differently—if one were being pejorative, one could say that it is treated on a take-it-or-leave-it basis.

The question then is whether the legislative process excludes in any way committee members from the consideration of secondary legislation. We all accept that it is appropriate to deal with some issues by primary legislation and others by secondary legislation. The order-making powers in the bill give us the opportunity to try to undertake the rationalisation of public bodies more efficiently. We have had to wait for the bill to bring forward the measures in part 1. There are matters—Kevin Dunion referred to them as “minor”—that cannot be dealt with in primary legislation because of the length of time that it takes to find an appropriate legislative vehicle or slot. Notwithstanding Mr Whitton’s comments on the volume of legislation, it is challenging to find appropriate legislative slots in which to make such changes.

**Lewis Macdonald:** You accept the point that a take-it-or-leave-it approach is appropriate for minor amendments and adjustments, but not for significant changes such as changes to the constitution or purposes of a public body.

**John Swinney:** Section 10 speaks for itself in terms of what is appropriate or inappropriate. The safeguards that are in place are abundant. As the bill stands, there is the safeguard of statutory consultation on any proposal, which then has to be the subject of an affirmative order.

Today, I suggested to the committee that there may even be an earlier stage during which a draft order is produced that could be the subject of more open discussion on whether all the provisions were correct. That could inform the publication of a more definitive order. It is entirely open to Parliament to choose that option.

14:30

**Lewis Macdonald:** However, you recognise from your own experience of both government and opposition that, although the Government and the Opposition often agree on a principle or a general direction, they disagree on the detail. Sometimes, those disagreements on the detail are best resolved by a vote on an amendment.

**John Swinney:** With the greatest of respect, you might not have said that when you were sitting on this side of the committee table, in the old days. I do not mean to be discourteous.

On section 57 of the Local Government in Scotland Act 2003, ministers at the time saw fit to propose to Parliament giving ministers a very wide-ranging power to modify enactments without recourse to primary legislation. I dare say that the same arguments could have been deployed in those circumstances, but Parliament came to the view that appropriate safeguards were in place to guarantee the position. That is the point that I put today.

**Lewis Macdonald:** You have highlighted a particular precedent, but I refer you to the proposed primary legislation on children’s hearings and children’s panels. A draft bill was offered to Parliament in the summer, but then withdrawn, and I understand that a new piece of legislation on the subject will be introduced. I am interested in your comments on the extent to which matters that might have been covered by that bill will now be subject to secondary legislation, given the order-making powers in the Public Services Reform (Scotland) Bill.

**John Swinney:** The children’s hearings bill will be an entirely separate piece of legislation, so I do not think that any issues covered in it will be the subject of these order-making powers. Essentially, the children’s hearings bill will take its course without reference to the order-making powers in the Public Services Reform (Scotland) Bill.

**Lewis Macdonald:** That is understood, but were the Public Services Reform (Scotland) Bill to get on to the statute book prior to the introduction of the children’s hearings bill, might there be matters in the children’s hearing bill that, at present, would be dealt with in primary legislation, but which would no longer be dealt with in that way?

**John Swinney:** We are getting into a hypothetical question that does not deal with the circumstances that we are in. The children’s hearings bill will take its parliamentary course. Obviously, it will have a relationship with the Public Services Reform (Scotland) Bill, in so far as it will contribute to the achievement of the Government’s objectives on simplifying the landscape. However, its contents will be subject to parliamentary scrutiny.

**Lewis Macdonald:** I appreciate that, and I do not expect a more detailed response. I hope, however, that you appreciate the thrust of my question, which goes back to the convener’s question about how to make the distinction between minor matters that it is appropriate to deal with in secondary legislation and matters of principle that ought to be dealt with in primary legislation, with amendments considered in committee.

**John Swinney:** I will have a view on that but, ultimately, I am not the decision maker, as the

point will be decided by Parliament. I might well lay an order that I think is entirely consistent with the principles of the order-making powers in the bill, and that order might satisfy the tests of competence that would have to be passed, but Parliament could disagree with my view. That would be Parliament's view, and I would have to rest on that.

**Lewis Macdonald:** But Parliament could not amend the order—that is the critical difference.

**John Swinney:** That is where I hope what I am saying to the committee is helpful in relation to the creation of conditions in which we can explore other opportunities to achieve greater consensus. For example, in the consultation process on a draft order that I mentioned earlier, it might be possible to arrive at a consensus around the proposals, which could lead to the laying of a definitive order that would be considered by Parliament under the procedure that I am talking about and which would be subject to statutory consultation thereafter. The ultimate test for any measure is whether Parliament agrees to it. That is in no way diminished by the process, the argument for which I am advancing today.

**Jeremy Purvis:** I seek clarification. A statutory instrument made under the proposed power to reform or abolish a body could cover any of the bodies listed in schedule 3. One statutory instrument could reform relevant functions and responsibilities, and it could abolish any or all of the bodies listed in schedule 3. Is that correct?

**John Swinney:** The concept that underpins section 10 is that one statutory instrument would be made to effect one particular change in each body—there would be one statutory instrument per body.

**Jeremy Purvis:** Where is that in the bill?

**John Swinney:** That is the thinking behind the proposal. If it would be helpful to clarify that point in an amendment, the Government would consider doing that.

**Jeremy Purvis:** There is an important point here, convener.

**The Convener:** Make your point quickly, please.

**Jeremy Purvis:** The cabinet secretary has made the point. The concern is that one statutory instrument—

**The Convener:** I suggest that we might be previewing future proceedings. The matter could crop up during normal parliamentary proceedings, and I would like to stick to what is before us.

**Jeremy Purvis:** My point is that, in the bill as it stands, one statutory instrument, which cannot be amended, might cover many of the organisations that are listed in schedule 3. I think that the

cabinet secretary has confirmed that that could happen.

**John Swinney:** Any reading of the proposed legislation would suggest that there would be one statutory instrument to change the function of a particular body. If that is not crystal clear, we will consider the point.

**The Convener:** I think that that is the answer to your question, Mr Purvis.

**Jeremy Purvis:** We will perhaps take it up at stage 2.

I have a final question about the preconditions in relation to the order-making powers. Section 12(2)(b) says:

“the provision does not remove any necessary protection”.

Where is the definition of “necessary protection”? Is it defined in statute?

**John Swinney:** It is not defined in statute. It is a term that we have inserted into the bill essentially to address the point that I dealt with in answer to Mr FitzPatrick: where an individual or organisation has some protection under the law, that could not in any way be hindered by the application of an order under section 10. As I said earlier, the Subordinate Legislation Committee has already considered the matter, and it suggested that the term could be defined more specifically. As I have said about all the proposals from the Subordinate Legislation Committee, the Government will actively consider the matter.

**The Convener:** We appear to have heard a trailer for forthcoming attractions.

Does the minister wish to make any final comments to wind up the session?

**John Swinney:** No, thank you.

**The Convener:** I thank the cabinet secretary and his officials for attending. The committee will now consider its report on the bill. We move into private session to consider the evidence that we have heard.

14:38

*Meeting continued in private until 15:05.*





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