JUSTICE 1 COMMITTEE

Tuesday 5 February 2002
(*Afternoon*)

Session 1

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JUSTICE 1 COMMITTEE
4th Meeting 2002, Session 1

CONVENER

*Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

*Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Lord James Douglas-Hamilton (Lothians) (Con)
*Donald Gorrie (Central Scotland) (LD)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Paul Martin (Glasgow Springburn) (Lab)
*Michael Matheson (Central Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Jim Wallace (Deputy First Minister and Minister for Justice)

CLERK TO THE COMMITTEE

Lynn Tullis

SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 1

Scottish Parliament

Justice 1 Committee

Tuesday 5 February 2002

(*Afternoon*)

[THE CONVENER *opened the meeting at 13:51*]

The Convener (Christine Grahame): I convene the fourth meeting in 2002 of the Justice 1 Committee. I remind all members and anyone else in the venue to turn off their mobile phones and pagers.

Item in Private

The Convener: Item 1 is to ask for the committee's agreement to consider item 4—our forward work programme—in private. Are we agreed?

Members *indicated agreement*.

Freedom of Information (Scotland) Bill

The Convener: I am required to move motion S1M-2667.

I move,

That the Justice 1 Committee consider the Freedom of Information (Scotland) Bill at Stage 2 in the following order: sections 1 to 3, schedule 1, sections 4 to 8, sections 10 and 11, sections 14 to 42, schedule 2, sections 43 to 54, schedule 3, sections 55 to 61, section 9, sections 12 and 13, sections 62 to 73.

I ask the Deputy First Minister and Minister for Justice to say a few words about the proposals for fees under section 9, 12 and 13, which relate to the reasons for the motion.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): As a preliminary, I will introduce the officials who are here with me. Keith Connal heads the Executive's freedom of information unit. The committee has already met John St Clair of the office of the solicitor to the Scottish Executive. Diane Barbirou of the office of the Scottish parliamentary counsel has not been here before.

I also crave your indulgence. As I told your clerk, this is the first time I have done stage 2 of a bill, so I look for guidance; you will no doubt correct me when I go wrong.

The Convener: The problem is that this is the first time I have convened a meeting dealing with a bill at stage 2—we will be holding each other's hand.

The position is that any comments that the officials want to make must come through you.

Mr Wallace: Absolutely.

I express my gratitude for the fact that an arrangement has been made to consider sections 9, 12 and 13, which deal with the fees scheme, towards the end of stage 2.

At stage 1, I said that I have been reviewing the fees structure that was set out in "An Open Scotland". We are concluding that review. I hope to be able to announce those conclusions when the committee considers the appropriate sections. We are more than grateful that there has been a postponement—my speaking note says until next week. That might be optimistic—we can but hope. The postponement will allow us time to finalise proposals and make an announcement when the committee discusses those sections.

The Convener: Thank you minister.

As no one has any comments to make about the motion, I will put the question.

The question is, that motion S1M-2667 be

agreed to.

Motion agreed to.

That the Justice 1 Committee consider the Freedom of Information (Scotland) Bill at Stage 2 in the following order: sections 1 to 3, schedule 1, sections 4 to 8, sections 10 and 11, sections 14 to 42, schedule 2, sections 43 to 54, schedule 3, sections 55 to 61, section 9, sections 12 and 13, sections 62 to 73.

Freedom of Information (Scotland) Bill: Stage 2

The Convener: We now move on to consideration of the bill at stage 2.

I ask members to check that they have before them a copy of the bill, the marshalled list of amendments and the suggested grouping of amendments. If at any time members feel that we are going through the procedure too quickly, they should give me a nod and let me know.

Members will be pleased to note that I intend to finish dealing with amendments by about 3.30. Although we may not get through them all by then, that is quite enough time for us to spend on this matter today. If we do not get through all the amendments, we will continue at the next meeting where we leave off today.

Section 1—General entitlement

The Convener: Amendment 59 is in a group of its own.

Donald Gorrie (Central Scotland) (LD): The purpose of amendment 59 is to delete section 1(4), which I understand from discussion with the minister is supposed to prevent anyone from being prosecuted if the person doing the destruction of records had not got word through the bureaucracy of the organisation concerned that a request had been made. Our system of preventing people from destroying records is weak. Any provision such as section 1(4), which gives those people comfort in doing so, is a bad thing. It could be interpreted as allowing a public authority to destroy a lot of information. If an organisation knew that an MSP or somebody else was on the warpath about a particular issue, people within the organisation could destroy documents and say that the people at the sharp end where destruction takes place had not received the request for information. Subsection (4) is not helpful and should be removed. If the minister thinks that some such provision is necessary, could he say whether another form of wording that might be acceptable could be introduced at stage 3? I wait to find out what his response will be. Anything that gives comfort to people who are destroying records, as subsection (4) does, is a bad thing.

Lord James Douglas-Hamilton (Lothians) (Con): I have some sympathy with the amendment, owing to my experiences. The minister will recall that the records of ministers, other than the Secretary of State for Scotland, were all destroyed. The papers for the previous 18 years were systematically destroyed by the civil service after the 1997 general election. The BSE inquiry came up after that; when ministers wanted to see the papers, they could not do so because

those papers had been systematically destroyed without authorisation from any minister. Mr Gorrie's request is reasonable. Although the officials concerned may think that what they are destroying is of no consequence, it might be required in an inquiry thereafter.

The Convener: Before the minister replies, I remind Donald Gorrie that he did not move the amendment.

Donald Gorrie: I move amendment 59.

When the minister has replied, I will give the matter some thought.

Mr Wallace: First, I will pick up on the point that Lord James Douglas-Hamilton made. The bill throws into sharp relief the issue of record keeping and records management. The committee will be aware from the working draft of the code of practice on records management, which will be required under section 61, that the code will offer guidance on keeping, managing and destroying records.

14:00

It is recognised widely to be good practice for records management systems to destroy records in a proper, considered and orderly way. Otherwise, as we readily recognise, such systems would become unmanageable. Donald Gorrie identified correctly that subsection (4) relates to circumstances in which, as part of an authority's records management programme, records would be ordinarily destroyed. I know what Donald Gorrie is driving at and have much sympathy with his point, which is that there should not be a means of subverting the bill's purpose.

Amendment 59 appears at first to be an innocuous amendment that would prevent a public authority from destroying records that are the subject of a freedom of information request, if it had decided to destroy those records prior to receiving the request. However, I will explain why I believe that amendment 59's effect would be to make the obligation on the authority unworkable.

Subsection (4) states that the information that is communicated to an applicant is to be the information that the authority holds

"at the time the request is received."

That is an important provision that would be lost if subsection (4) were deleted. The provision is there for a good purpose because, given a public authority's statutory requirements and duties, it establishes that the requested information is to be regarded as that which is held by the public authority at the time of the request's receipt.

It is important, for the purposes of certainty, that the authority knows precisely what it is being asked to supply. The held information could be added to or changed between the request's receipt and the date when the public authority fulfils the request. Therefore, it is reasonable to expect that the held information should be defined as that which was held when the request was received.

Without that provision, the public authority might be obliged not only to supply information that was held at the date when the request was received, but to supply new information that could be created between the date of the request's receipt and the date on which the public authority responded to that request. The authority's obligation could continue indefinitely. Therefore, for reasons of certainty, we had to fix on a point that defined the information that should be supplied. That provision would be lost if subsection (4) were removed.

Secondly, subsection (4) allows the public authority to

"make any amendment or deletion, which would have been made, regardless of the receipt of the request, between that time and the time it gives the information."

That is a practical measure that is intended to ensure that requests for information under the bill do not interfere with what would otherwise be the day-to-day work of an authority and its sound records management. The planned destruction of some information is a proper feature of a records management system.

If the decision to destroy had been taken, but the record file was readily accessible, I believe that a public authority ought to supply that information. However, I hope that the committee will recognise readily that it would be unreasonable to require a public authority to recover papers by searching refuse sacks or recalling a load of files that had been collected by a recycling firm, if the decision to destroy that information had been taken before the request was received.

I fear that amendment 59 could severely affect records management programmes. In an extreme example, applicants could completely frustrate a public authority's records management arrangements by continually requesting information that the public authority was proposing to dispose of. In addition, without subsection (4), if a requested document were destroyed on the day following the receipt of a request because the request had not filtered down to the relevant body, the public authority could be in default, albeit innocently, of the provisions of the bill. The authority would have destroyed information as part of its normal records management on the day after the receipt of a request, of which the relevant official was perhaps oblivious.

Therefore, for the practical reasons of good records management and the orderly working of the bill, I invite Mr Gorrie to withdraw amendment 59. If he does not, I ask the committee to reject amendment 59.

Donald Gorrie: I accept the point that there must be a moment in time at which held information should be delivered, without the obligation continuing thereafter. That would be covered if section 1(4) were amended so that it ended at the word "received". It would read:

"The information to be given by the authority is that held by it at the time the request is received".

I could go with that. I pay due respect to the minister, who has produced a bill that is in essence, excellent. We strongly applaud it but seek to improve even more. I do not buy the other argument about thwarting sensible records management, as it is fanciful.

I accept the minister's first point. It would be helpful if the minister could re-examine the wording of the section to find out whether his goal of ensuring orderly records management could be achieved without there being an apparent invitation to people to destroy information. Some less-than-honest public authority could use the section to escape the duty to give out information. If the minister gives an assurance that he will consider whether the wording can be improved to achieve his goal without opening up a way for bad people to do bad things to the records, I will withdraw amendment 59.

Mr Wallace: I cannot accept amendment 59 as it stands, because, as Donald Gorrie recognises, it would remove an important point. The committee would not wish public authorities acting in good faith in carrying out a proper records management programme to find themselves in default of the law by sheer inadvertence or lack of knowledge. I will consider how the section can be phrased so that, where there is clear evidence that the authority knew that the record was still in its possession—albeit that perhaps on day 19 of the 20 days it was due for slaughter—and carried on with its destruction, we can do something about that. I cannot guarantee anything on the spot.

It would be an extreme burden to place on an authority if the bill forced it to ransack black bags on the way to the incinerator. However, we will try to find a way to ensure that there is no malpractice. I cannot guarantee that we will come up with appropriate wording, but I am prepared to address the mischief that Donald Gorrie identifies.

Donald Gorrie: In that case I will withdraw the amendment.

Amendment 59, by agreement, withdrawn.

Section 1 agreed to.

After section 1

The Convener: Amendment 28 is grouped with amendment 51.

Michael Matheson (Central Scotland) (SNP): In the bill, "information" refers only to information that is recorded, so information that is not recorded is not subject to the provisions of the bill. I am concerned that that could be used as a loophole by some organisations, which might choose not to record information that in the past they would usually have recorded. An example of such information might be something that an authority would consider embarrassing if it were recorded. The primary purpose of amendment 28 is to close down the possibility of public authorities getting round the system by choosing not to record information in the first place.

Amendment 51 is consequential to amendment 28.

I move amendment 28.

Mr Wallace: As Michael Matheson has indicated, the purpose of amendment 28 is to cover unrecorded information held by a member of, a member of staff of, or a person acting on behalf of, a Scottish public authority. It attempts to cover the recollections of officials and information that would be held in the minds of such persons. It is difficult to say that information that is held in someone's brain is held by a public authority.

The interpretation section of the bill talks about

"information recorded in any form".

Our intent is that the bill should be as wide as it can be, consistent with common sense. As life would be difficult if the bill were wider than that, we do not think that it is practical to include access to unrecorded information. It is important to point out that in the investigation of an appeal, the Scottish information commissioner would be able to question officials and seek information, which, although it was not recorded information, might give some indication as to what information was recorded.

The amendment lacks specification as to how unrecorded information would be gathered. The Data Protection Act 1998, the UK legislation that governs freedom of information, is concerned with recorded data. That is important with regard to the importance that we attach to good record keeping in the bill.

The bill requires applicants to describe the information requested and it is not easy to see how one would describe accurately the recollections of an official. The bill makes the altering of records to prevent disclosure a criminal offence. I am not sure how that would work with regard to unrecorded information. By extending

the right of access to unrecorded information held by a person acting on behalf of a public authority, the amendment covers not only officials but people who may not even be members of that authority. However, if that person is not covered by the scope of the bill, an applicant would not have a legal right to request the unrecorded information held in the mind of that person.

As we try to produce a culture of openness, I understand that there is a concern that people might not write anything down in case they have to disclose it later on. However, the experience of other countries that operate freedom of information regimes is that there has not been a rush to stop putting things in writing. I—and, I am sure, Lord James—can vouch that the system is very much an on-paper one. That does not mean that someone would not try to circumvent the legislation by storing information in their mind, but I think that doing so would create more problems that it would avoid. When I was in Ireland, I raised that question and was told that the freedom of information regime might cause recording of information to improve.

The committee acknowledged the practical difficulties in assessing whether unrecorded information could be disclosed. However, the committee recommended that the commissioner should issue guidelines to prevent public authorities omitting to record information that might be of interest to the public. Such guidelines will be in the code of practice. Ministers must consult the commissioner before the code of practice is issued or revised. That provision is important and I urge that amendments 28 and 51 be rejected as they sit ill with the general structure of the bill and are unworkable.

Michael Matheson: My understanding is that the code of practice on access to Scottish Executive information—the openness code—operates on the basis of unrecorded information as well. Is that correct?

Mr Wallace: The openness code applies to information. When one is creating legal obligations, penalties and rights in relation to the disclosure of information, which is the point of the bill, it is important to be clear about what that information is.

We have built up to a considerable volume the information that is to be legitimately covered by the bill by including information that is recorded in any form. In addition, the commissioner has a right, on appeal, to question officials, and the contents of the code of practice will reflect the committee's concerns that the commissioner should issue guidelines to prevent officials from omitting to record information that may be of interest to the public.

I do not think that the code of practice on access to Scottish Executive information applies to unrecorded information. The code says:

"There is no commitment that pre-existing documents, as distinct from information, will be made available in response to requests. The Code does not require the Scottish Executive and other public bodies to acquire information they do not possess".

Arguably, information that is held in someone's mind does not belong to the public authority. I do not think that Mr Matheson's point is valid.

14:15

Michael Matheson: I am not necessarily convinced by the minister's interpretation of the code of practice, although I take his points on board. As I understand his comments, the recording of information in any form could, in his view, cover unrecorded information.

Mr Wallace: Section 70, which is the interpretation section, says that, subject to two exceptions, "information" means

"information recorded in any form".

Michael Matheson and I are coming from the same direction—we want to make the regime as open as possible. We deliberately did not specify formats because doing so could have limited the formats to be covered. That is why the bill refers to information that is "recorded in any form". I believe that our approach has discharged the obligation to encourage openness.

Amendment 28, by agreement, withdrawn.

Section 2—Effect of exemptions

The Convener: Amendment 29 is in a group of its own.

Michael Matheson: The purpose of amendment 29 is to ensure that, where the public interest in disclosure is evenly balanced with the public interest in maintaining an exemption, the public interest in disclosure prevails, as it is not clear which interest would prevail under the bill. Clarification is essential if the proper balance is to be struck. It would not be appropriate for applicants with scarce resources to have to prove public interest in disclosure, given that they will often be taking on public bodies that have sufficient resources to allow them to argue against that position. Amendment 29 seeks to clarify the situation and to ensure an equal balance.

I move amendment 29.

Gordon Jackson (Glasgow Govan) (Lab): I do not know what the minister is going to say, but, although I am in total sympathy with Michael Matheson, I believe that the bill achieves that balance. My impression is that the bill is pretty

clear and that the balance of proof is as Michael Matheson desires it. For someone not to gain access to information would mean that their request was outweighed by an exemption. If the balance is level, the request is not outweighed by an exemption and therefore the person would receive the information. As confirmation of that point, I note that section 1(1) says that people are meant to get information and that there is a presumption that people should get information. In my view, the wording of section 2 means that disclosure is not outweighed by exemption—in other words, if the balance remains level, disclosure wins. I repeat that I am in total sympathy with Michael, but my instinct—perhaps I am reading the bill as a lawyer—is that his objective has been achieved and that the bill is on his side. I am curious to know what the minister has to say on the subject.

Mr Wallace: Gordon Jackson has hit the nail on the head so I hope that I can deal with the matter briefly. Like Gordon Jackson and Michael Matheson, I want the bill to be tilted in favour of openness. That is the intent of section 2. Put plainly, section 2 means that information can be withheld only when the public interest in withholding it is greater than the public interest in disclosing it. The bill specifically provides that information must be disclosed when there is doubt about where the public interest lies or when the interest in withholding and disclosing the information is equal. The bill provides that if there is doubt about the public interest, information should be disclosed. In response to the consultation on the draft bill, we amended section 2 to try to make that clear. I share Michael Matheson's objective and I hope that he is reassured. I welcome the opportunity to clarify the intent of section 2.

The Convener: Did Michael Matheson move amendment 29?

Michael Matheson: Yes.

The Convener: I thought so. I ask him to sum up.

Michael Matheson: I am reassured by what the minister said. I have spoken to him about the matter; he knows that some of my concerns are about the balances in the bill. If the bill is to change the culture on information, it is important that the balance should be in favour of disclosure. Otherwise, the bill will inhibit the change of that culture, which often means that public authorities do not disclose information unless they have to.

I seek to withdraw amendment 29.

Amendment 29, by agreement, withdrawn.

Section 2 agreed to.

Section 3—Scottish public authorities

The Convener: Amendment 107 is grouped with amendments 53, 108, 109, 110, 111, 113, 60, 57, 114 and 115. If amendment 107 is agreed to, amendment 53 is pre-empted and cannot be called—I will explain that if it happens. I hope that Michael Matheson has lots of bottles of water.

Michael Matheson: Amendment 107 would insert in the bill a general definition of a public authority. The bill's aim is to provide a general right of access to information that is held by bodies that provide a public service or carry out a public function. At present, the bill has a two-tier system. Some bodies provide a public service or carry out a public function but are not listed in schedule 1 or covered by section 6. To include many bodies in schedule 1 is awkward, primarily because of their sheer number, but also because there are difficulties with organisations such as housing associations, social housing providers, social inclusion partnerships and voluntary charitable organisations, which provide a public service either directly or in partnership with a public authority. There are concerns that the bill does not specify organisations such as fire boards, licensing boards, district courts and local enterprise companies.

Ministers should not be free to decide which organisations should be covered and which should not. It is not helpful to add or remove organisations and to limit the areas to which the bill applies. Over time, updating schedule 1 could become a low priority. Alternatively, the schedule could become out of date fairly quickly. The best way of covering public authorities as a whole is to include a general definition of a public authority in the bill. That is the purpose of amendment 107. It is important to bear in mind that, given the increasing use of public-private partnerships, there is a danger that an increasing number of public services will fall outwith the provisions of the bill, for a variety of reasons. If companies want to do business with the public, they should have to be open and transparent. The best way of ensuring that is to include in the bill a general definition of a public authority.

The Convener: Would you like to speak to any of the other amendments in the group? I have ringed the amendments that are yours.

Michael Matheson: Amendments 109, 111 and 113 are consequential on amendment 107. Amendment 60 concerns the way in which public bodies can be designated in schedule 1 of the bill. Under the amendment, Scottish ministers would have to designate by order a Scottish public authority for the purposes of the bill. If a person, office holder or body not listed in schedule 1 were carrying out a function that was previously carried out by a Scottish public authority, they would

automatically be covered by the provisions of the bill. Amendment 60 is primarily consequential on the provisions of amendment 107, with its general definition of a public authority. Amendments 57, 114 and 115 are also consequential amendments.

I move amendment 107.

Maureen Macmillan (Highlands and Islands) (Lab): Like Michael Matheson, I want to bring private organisations that provide public services more firmly within the scope of the bill. That is the purpose of amendment 53.

The minister will have noted that paragraphs 7 to 12 of the committee's stage 1 report address how we should deal with organisations that are not public bodies but that provide public services. Such arrangements are becoming increasingly common, as councils and health boards enter into partnerships with the private and voluntary sectors.

After hearing evidence from unions, local authorities and voluntary organisations, the committee came to the conclusion that, rather than leaving it to the minister to declare which organisations should be covered by the bill, such organisations should be covered automatically, without the minister having to designate them as public authorities. That would also be fairer to the organisations concerned. They would know that, when they went into partnership with a public body, they would be subject to the same scrutiny as that public body. Human rights legislation will protect private organisations from having to reveal details to private functions.

In the stage 1 debate on the Scottish Public Sector Ombudsman Bill on 31 January, the Minister for Finance and Public Services said that the ombudsman would be able to investigate a private organisation that was carrying out a public function, without any designation having been made by a minister. If such information can be supplied to the ombudsman under the Scottish Public Sector Ombudsman Bill, why cannot it be supplied to the public under the Freedom of Information (Scotland) Bill? Perhaps the minister can explain why the Executive proposes not to designate which private organisations can be investigated by the ombudsman, but to designate which organisations will be subject to the provisions of the FOI bill.

The Convener: Do you wish to speak to any of the other amendments in the group?

Maureen Macmillan: Amendment 57 is a consequential amendment.

The Convener: I ask Donald Gorrie to speak to amendment 108 and the other amendments in the group.

Donald Gorrie: Besides amendment 108, amendment 110 is in my name. I move amendment 108.

The Convener: Do not move your amendment at this stage, Donald. We will deal with it later.

Donald Gorrie: So I do not get to move it.

The Convener: You just speak to it now and move it later.

14:30

Donald Gorrie: Okay. The objective of amendment 108 is largely the same as that of Michael Matheson's amendment 107 and Maureen Macmillan's amendment 53. The Executive's method of dealing with the ever-changing position is to have a schedule to which it will add the names of organisations as they are brought to its attention. That seems to be a cumbersome way of dealing with the matter. The reasoning seems to be that, unless organisations are listed in the bill, no one will be clear which organisations the bill covers.

There is a straightforward understanding of what we mean when we refer to people providing services to the public under a contract with one of the public authorities. In addition to private finance initiative-type commercial companies—which, as Maureen Macmillan says, have an increasing role in what we do—there are arm's-length companies that are created by councils and various quangos. I am well acquainted with councils' arm's-length companies. It is extraordinarily difficult for a councillor to get any information about those companies, which may, for example, run all the recreational facilities in the council area. Any inquiries are met with the answer that the information is commercially confidential. The bill should cover arm's-length and PFI-type companies with regard to any work that they do that is of service to the public.

The counter-argument is that, if the bill covers such organisations, it will also cover lots of small organisations, which will be onerous for them. There may be some substance to that argument about excessive bureaucracy, but, if a person cleans the windows of the Scottish Parliament building, all that they need to do is to keep their receipts and invoices and they are in the clear. However, given that three people from different parties have lodged similar amendments, the minister should take the issue seriously and come back with a proposal that meets those members' desires without causing some of the problems that he thinks may be caused.

Amendment 110 is, I hope, less controversial. It seeks to make the information commissioner the ultimate referee, so that he or she will

"determine whether a body, person or office holder is a

Scottish public authority within the meaning of subsection (1)."

It is helpful to say who will decide and it is good for the commissioner, rather than a minister, to decide. I hope that amendment 110 will be agreed to when we get to it.

The Convener: Does anyone else wish to speak to this group of amendments?

Donald Gorrie: Will I move my amendment?

The Convener: No, you will do so when we come to it, Donald. You are determined, but believe you me your time will come. Your pun about the window cleaner being in the clear was missed, by the way. We thought that that was quite funny, but then we are sad at the top of the table. Does anyone else wish to speak to the group?

Gordon Jackson: There is a general feeling in the committee that, as Glasgow City Council said in its submission,

"openness is the price of doing business with the public sector".

We all have a lot of sympathy with that view. However, I do not much like Michael Matheson's amendments, because I have a horrible feeling that, if we take away the list in schedule 1 and in effect replace it with the phrase

"has functions of a public nature",

there will be litigation until the cows come home. That is the sort of phrase that lawyers can argue about for ever. I quite like Maureen Macmillan's idea of retaining schedule 1 and adding to it, but I would be interested to hear whether the minister is prepared to examine how we might better tackle this matter. There is a general feeling among committee members that openness is the price for getting money out of the public purse.

Mr Wallace: Donald Gorrie makes a serious point when he says that similar amendments have been lodged by three different parties. Obviously, one takes those amendments seriously. I assure the committee that I have spent considerable time deliberating on the amendments and their intentions and also—as Gordon Jackson said quite fairly—their consequences.

The concerns that motivated the amendments can be distilled into two general points. The first deals with the general approach to defining the bill's coverage. I will speak to why I believe that the approach of the bill, which delivers certainty of coverage—an important point—is appropriate.

The second point is to do with the extent to which the bill does and should extend from the public sector—I emphasise "does" and "should"—beyond the traditional confines of freedom of information bills to cover the private sector. I will speak to the mechanism by which the bill would provide for that so as to ensure certainty of coverage for all concerned: applicants, public authorities and the Scottish information commissioner.

I understand the concern that the bill should be broadened to catch—by one means or another—elements of the private sector that provide public services. One of Donald Gorrie's first remarks was about our ever-changing needs with regard to the boundaries between the public and private sectors. The fact that those needs are ever changing throws up some doubts that are best resolved by the certainty of a name's inclusion in a schedule of the bill. There is no doubt that there has been a change in the boundaries between the public and private sectors. I appreciate members' concerns that there should be means by which to extend, where appropriate, the coverage of the bill to the private sector. There is no dispute between the committee and me on that principle.

Let me make it clear that the bill provides for the private sector—and other organisations that provide services to the public—to be caught by the proposed legislation in a manner that delivers clarity and certainty of coverage. In setting up a new and long-overdue institution, clarity and certainty of coverage are vital.

The approach of the bill recognises that steps to extend freedom of information from the public sector to the private sector should not be taken without due consideration. It would be wrong to try to catch automatically the elements of the private sector that are involved in contracts to provide public services, except in the tightly defined circumstances in section 6 of the bill. That section deals with wholly owned bodies that are considered to emanate from the public sector.

Major private sector suppliers of public services—such as those involved in Her Majesty's Prison Kilmarnock—should, arguably, be candidates for designation under the bill. However, to use Donald Gorrie's example, I do not think that a contractor who cleans the windows of St Andrews House ought to come under the bill. The convener said that that would not happen, but it could happen if amendment 108 were accepted. We have just had the first dispute about whether or not a company would be covered by the bill. Gordon Jackson is right that our legal friends would be laughing all the way to the bank if we were to allow the uncertainty that would arise from agreement to the amendments that are before us. We believe that, if caught by the bill, all information that was held by that window cleaner would be covered, not just receipts and invoices.

Let us consider some of the voluntary sector bodies that provide public services. Dial-a-bus in my constituency received a grant from the Scottish

Executive last week; it also received help recently from Orkney Islands Council. Dial-a-bus provides a valuable service to disabled people in Orkney and I would hate to think that it would have to fulfil all the duties that would be incumbent upon it if it was brought within the scope of the bill because of the amendments.

Clarity of coverage is important. Consider for a moment that, under the bill, a considerable number of statutory duties will be placed immediately on organisations that are caught by it. Those duties will fall not only on receipt of a request for information, but will apply even where an authority receives no requests for information. That goes to the heart of Maureen Macmillan's point. The difference between what we suggest and the local government ombudsman's investigating a private company as part of a complaints investigation is that, with our suggestion, a specific complaint would have to be received by the ombudsman who would then be able to go and investigate that complaint.

In contrast, the amendments would impose on so-called public authorities—however they are defined—a range of statutory duties under the freedom of information legislation. I will remind the committee of some of the duties, although I warn that this is not an exclusive list. The duties will include: preparing and publishing a publication scheme that is approved by the commissioner; complying with two codes of practice that will be issued under sections 60 and 61—I am not sure that the window cleaner would be up to that; having regard to other guidance issued by the commissioner; ensuring that the authority is ready to respond timeously to requests, including ensuring that staff are aware of the authority's responsibilities under the bill; having in place machinery to consider requests for review; and generally being ready fully to comply with all the provisions of the act. Those are the statutory duties that we are obliging those who are designated in the bill to fulfil. That is why it is vital that public authorities and other persons who are covered by the bill are clear from the outset as to whether they are covered. If they are covered, they are required to make the necessary preparations. For the legislation to be fully effective, people should not be able to slide out by saying that they were not sure whether it applied to them. The commissioner will be able to engage with authorities on issues such as the publication scheme.

Schedule 1 is an important means by which to make coverage clear. That approach is not uncommon in similar legislation and has been generally welcomed. For example, in Ireland, the roll-out of the Freedom of Information Act 1997 has been accompanied by reference to lists of bodies that are subject to the act. I regard the approach in the amendments—of defining coverage by way of general description—to be impractical. It could also give freedom of information a bad name. Such an approach could lead to the commissioner—who will have important duties in the early stages of the act's implementation—being bogged down in deliberations as to whether particular bodies are subject to the legislation. It is foreseeable that where a general description is to be used, an authority might become aware that it is covered only when an applicant complained about it to the commissioner. Given the responsibilities and duties that authorities have, I do not believe that we should allow them to be put in that position.

I have considered the arguments that coverage should be defined by applying freedom of information to all bodies that fit a particular description. For example, amendment 53 refers to authorities delivering

"functions of a public nature",

which parallels the Human Rights Act 1998. That approach works for the Human Rights Act 1998 because its application involves one-off legal challenges and the court can determine in each case whether the authority in question is subject to the terms of the act.

In the Freedom of Information (Scotland) Bill, daily administrative duties must be fulfilled. The provisions under section 5 are subject to affirmative resolution and provide for the designation of bodies that

"(a) appear to the Scottish Ministers to exercise functions of a public nature; or

(b) are providing, under a contract made with a Scottish public authority, any service whose provision is a function of that authority."

It is our intent that that provision will be used to bring within the scope of freedom of information legislation private companies that are involved in significant public work, such as private companies that are involved in major PFI contracts.

Under section 7, any order made under section 5 would apply only to a company's involvement in public work. In consequence, the legislation would not apply to other areas of a company's business. Such provisions are essential in order to deliver the required certainty of coverage for all concerned, and to ensure that any limitations on coverage of a private company are also spelled out for the benefit of all concerned. Let us remember, too, that in relation to other organisations—such as Dial-a-bus, which I used as an example—the Scottish Executive and the appropriate minister will be accountable and covered by the freedom of information regime. Orkney Islands Council is accountable and covered by the regime. It is not as though there is

no way in.

I have considered the issue in detail—as demanded by the amendments that have been lodged—and I have serious misgivings about the amendments' workability and the bureaucratic burden that agreement to them would place on small businesses and small groups in the voluntary sector. I hope that members will acknowledge that that could be to the detriment of the freedom of information scheme, to those who will use it and to those who will operate and enforce it. Uncertainty about coverage might lead to many legal challenges, which would not enhance the status and reputation of the freedom of information regime.

I am as anxious as members of the committee are to make the bill good and workable—I think that that is the committee's general mood. I have no doubt that the amendments are well intentioned and I have no doubt about what they are trying to achieve. However, I submit that acting with certainty and making provision for names to be added is the most effective way in which to achieve what we all want.

14:45

The Convener: I thank the minister for his full answer. I will not comment on its merits, but a full answer is certainly helpful.

We are not getting very far. I appreciate that we are debating a big group of amendments, which is why I let the discussion continue. I ask Michael Matheson to be brief as he winds up.

Michael Matheson: I am glad that the minister has taken the group of amendments seriously. The committee report stated that we would like to see in the bill some form of words that would ensure that organisations that were undertaking a public function would be covered automatically by the bill. The committee's report recognised that that was necessary.

The minister has said much that will have to be reflected upon and considered further; that is what I intend to do. My concern is that if something that is currently undertaken by a public authority is transferred to a private company, there will be difficulty in accessing much information that would otherwise be obtainable through the public authority's inclusion in schedule 1 of the Freedom of Information (Scotland) Bill.

I am increasingly concerned about the way in which local authorities are being encouraged to enter into partnerships with private companies. I understand what the minister said about private finance initiatives. Such situations might be slightly different because there will exist contractual arrangements. The way in which local authorities enter into relationships with housing providers, for example, gives rise to concern about people's ability to access information. If that information were within a public authority it would be readily available under schedule 1. It will not be readily available as the bill stands.

The Convener: I do not really want the minister to respond to that. I would rather hear members winding up. Those matters can be raised at stage 3. They are having a good airing. Does Michael Matheson wish to press or withdraw amendment 107?

Michael Matheson: Do you want other members to wind up first?

The Convener: I just want to hear whether you want to press or withdraw amendment 107 before I go on.

Michael Matheson: I want to reflect upon what the minister has said. At this stage I do not feel sufficiently reassured that a general definition is not the best way in which to address some of the concerns that the committee's report highlighted. However, at this stage I seek to withdraw amendment 107.

Amendment 107, by agreement, withdrawn.

The Convener: In those circumstances, do Maureen Macmillan or Donald Gorrie wish to say anything or comment on substantive points?

Maureen Macmillan: I echo what Michael Matheson said. I am almost reassured that those who should be caught by the act will be caught by the act, but I still have concerns about how robust that will be.

I am prepared to reflect on what the minister has said.

Amendment 53 not moved.

The Convener: Does Donald Gorrie wish to say something about his window cleaner?

Donald Gorrie: First, the minister—understandably—concentrated on other issues. He did not animadvert on amendment 110, about the commissioner deciding whether a body is a public authority. I can see the argument that the people providing the information should be the public bodies that are listed in schedule 1. Would it be possible to approach the matter in a different way to deal with arm's-length companies and with partnership and PFI companies, which have been mentioned? Would it be possible to insert a section that said that a public authority must ensure that the arm's length, partner or PFI company would co-operate with it in providing the required information?

A member of the public could go to the council to ask, for example, how many people use the

local swimming pool. The contract between the council and the arm's-length company that provides the leisure facilities could include a requirement for that company to co-operate in providing that information. That might offer a way of meeting our aims.

The Convener: As you have completed your summing up, now is your moment, Donald. Do you wish to move amendment 108?

Donald Gorrie: Is the minister allowed to comment on my comment?

The Convener: From what you said, I thought that you were going to go away and ponder what had been said. It is possible to lodge another amendment at stage 3.

Donald Gorrie: I was not pondering; Michael Matheson was the ponderer.

The Convener: Donald Gorrie says that he is not pondering. Does the minister wish to comment?

Mr Wallace: I apologise to Donald Gorrie if he felt that I did not respond on his amendment 110, which is consequential on agreement to amendment 108. In any event, I indicated that the freedom of information regime would not set off with its best foot forward if the commissioner's early days—indeed, more than the early days—were taken up mostly with disputes about who was and who was not covered. I hope that, in the early days, the commissioner will have much to do to set the general tone for openness and freedom of information. We should not forget that, in making such determinations, the commissioner could be subject to judicial review about his or her interpretation of section 3 of the bill. That would be a problem for the commissioner that could overspill into the courts. That was one of the particular concerns that I had about amendment 110.

It is also fair to say that the situation will vary from company to company and local authority to local authority. However, we could investigate whether many of the so-called arm's-length companies are subsidiaries of the local authorities. If they are wholly owned, they are already entirely within the ambit of the bill.

Donald Gorrie indicated that public authorities could ensure compliance of PFI companies. While that is superficially attractive and might be the sort of thing that could be done in the code, it does not fit easily into the bill. The bill will apply the obligation to the company rather than put the onus on someone else.

However, subject to the decision of the commissioner, it might be worth examining whether the code of practice that will apply to public authorities could encourage engagement with public authorities. I also make the point that the bill would not exclude designation of a private company if it had a substantial operation in the public sector.

The Convener: Now that Donald Gorrie has heard the minister's response, I ask him—

Donald Gorrie: I will not move amendment 108.

Amendments 108 to 110 not moved.

Section 3 agreed to.

Schedule 1

SCOTTISH PUBLIC AUTHORITIES

The Convener: I call amendment 54, in the name of the minister, which is grouped with amendments 52, 55 and 56.

Mr Wallace: There are four amendments in the group, three of which concern housekeeping matters. Amendment 52, in Michael Matheson's name, aims to extend coverage of the bill to registered social landlords or "housing providers", as Michael Matheson referred to them in his previous remarks. I am aware that, during the passage of the bill, it has been suggested that housing associations should be covered. I assure the committee that consideration has been given to that suggestion.

First and foremost it is important to say that the bill, like freedom of information regimes worldwide, is focused on the public sector and it is generally understood that housing associations are not part of the public sector. There are practical reasons why it would not be appropriate to cover housing associations as a group. Committee members will all know housing associations from experience. A huge variety of housing associations exist throughout Scotland; each is unique in size, constitution and role in the community. Bearing in mind my earlier comments about all the responsibilities that fall upon housing associations—or other publicly designated bodies—it would not be appropriate for them all to be covered. Some are very small, informal and community based, so coverage would not be practical and would impose an unnecessary burden on them.

We accept that individual housing associations might appropriately be covered by the bill. That is why section 5 of the bill includes powers to bring individual housing associations within the scope of the bill. I assure the committee that ministers would consider whether such inclusion within the scope of the bill would be appropriate, but we would want first to consult the housing association concerned. It is not as if housing associations are to be totally excluded; the decision should be made on a case-by-case basis. That would allow, after consultation, for some of the major players to

be included within the scope of the bill but would not impose a huge burden on the smaller players.

I will now discuss the three Executive amendments. Amendment 54 will remove professional advisory committees from schedule 1. Those bodies do not have an individual legal personality and therefore should not be listed in schedule 1. The information that is held by those committees should be regarded as being in the hands of the relevant health board and consequently could be requested from the health board. Amendment 55 will remove the Scottish national rural partnership from schedule 1. That partnership is a committee that is administered by the Scottish Executive and therefore should be regarded as part of the Scottish Executive. Accordingly, all information that is held by the Scottish national rural partnership is held by Scottish ministers and can be requested from the Scottish Executive. Amendment 56 will remove the Scottish Studentship Selection Committee from the schedule, for the simple reason that it has been abolished.

I move amendment 54.

Michael Matheson: The minister has explained my amendment for me. I will probe deeper on his views about the size of housing associations that he thinks should be covered by the bill. Does he have an idea of the criteria that he would apply in deciding on the size of housing associations that should be considered? I take on board the fact that some housing associations might have only a handful of properties, while others might have 2,000 properties—Glasgow Housing Association is an even bigger player. How would the minister classify housing associations by size? What would the justification be for a decision on whether to include an association?

Mr Wallace: Well—

The Convener: No, minister. I would prefer you to answer that point in your winding-up comments. Other members might want to speak to amendments in the group. The minister can deal with all the points that are raised when he winds up.

Donald Gorrie: Any housing association should be prepared to enter into the freedom of information arrangements. Housing associations are quite efficient administrative organisations. There might be a case for some very small associations being excluded. However, I cannot see it being regarded with great favour by the housing association movement if the Executive starts picking and choosing and saying that housing associations A and B will be included, but that C will not be included, although D will. That does not seem to be a good approach. Will the minister reconsider his approach?

Michael Matheson: I think that the convener said that she wants the minister to wind up.

The Convener: Yes. I want the minister to wind-up. I would prefer it if members could make their points in one go so that we can make progress.

Michael Matheson: This debate illustrates one of the problems with the minister's approach; it goes back to the discussion that we had about a general definition. A housing function that is provided by a local authority will be covered because the local authority is a public authority; however, when the houses transfer to a housing association they will no longer be covered by the FOI legislation. That illustrates the limitations in the way in which schedule 1 would currently operate. I understand the point about small housing associations, but I have difficulty in understanding how the minister would select which housing associations would be covered by the bill.

We should also bear it in mind that housing associations choose to take over public sector housing. If they choose to do that, they should be expected to be open. We could end up in a situation in which housing on one side of a street was in council hands and housing on the other side of the street was in housing association hands. Council tenants would be able to access information under the freedom of information regime, but housing association tenants—living in identical houses but on the opposite side of the street—would not be able to exercise the same powers.

15:00

I understand the point that has been made about small housing associations—we do not want to overburden them. However, I find it difficult to see how a system such as the one that is set out in the bill could be applied.

Mr Wallace: Quite fairly, Michael Matheson accepted that housing associations differ in size and that that could make a difference. However, I will be candid—I have not yet gone into the detail of the criteria for determining which associations would and would not qualify. Michael Matheson made a fair point when he suggested that, if a body takes over a sizeable proportion of formerly publicly owned housing stock, that might be a criterion for its inclusion under the terms of the bill. In many ways, his point argues for the kind of approach that is set out in the bill. It makes sense to deal with bodies one by one, rather than to try to find a general definition. There is not an infinite number of housing associations in Scotland.

We also indicated that we would proceed on the basis of consultation. We set considerable store by consultation. To designate all housing

associations without consultation would cause grief. However, I have said that we would be willing to countenance the provisions of the bill being extended to housing associations. There is benefit in considering such bodies individually and in designating accordingly and after consultation. We will no doubt bear in mind the sort of factors to which Michael Matheson referred.

It is important that we do not lose sight of the provisions that exist. All housing associations operate in a regulatory environment that requires them to be open and transparent. That ought to give reassurance that a regulatory environment exists. However, there is a difference between such an environment and the specific duties to which housing associations as a class would be subject if amendment 52 were agreed to. A proper case can be made for differentiating, rather than for having a catch-all provision. We want to work up the criteria that would be applied when deciding which housing associations should be designated. When debating the relevant designation order, the Parliament would have an opportunity to decide whether we had got that right.

Section 5(3) also makes provision for designation by class. If a ready definition were at hand, that could be applied. However, we should not lose sight of the benefit of designating on an individual basis.

The Convener: That was very helpful.

Amendment 54 agreed to.

Amendment 52 moved—[Michael Matheson].

The Convener: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Douglas-Hamilton, Lord James (Lothians) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)

AGAINST

Jackson, Gordon (Glasgow Govan) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 52 agreed to.

Amendments 55 and 56 moved—[Mr Jim Wallace]—and agreed to.

Amendment 111 not moved.

Schedule 1, as amended, agreed to.

Section 4—Amendment of schedule 1

The Convener: Amendment 1 is grouped with amendment 112.

Lord James Douglas-Hamilton: The purpose of amendment 1 is to make certain that ministers cannot remove themselves, the Parliament or the Scottish Parliamentary Corporate Body from the coverage of the bill. The reasoning is that ministers do not require an escape hatch of that nature. If the Executive truly believes in open government it will surely want the bill to cover those three bodies and should not object to ensuring that there is no escape route for ministers.

I move amendment 1.

The Convener: I think that that is called a grenade. Do you wish to speak to the other amendment in the group?

Lord James Douglas-Hamilton: I have great sympathy with amendment 112, which is an altogether sensible amendment.

Michael Matheson: Amendment 112 seeks to limit ministers' powers to remove bodies from the scope of schedule 1. Ministers would be limited to removing bodies only if they no longer exist or no longer operate under the name or description given by their entry in schedule 1. There are concerns about the way in which the schedule may operate and about the powers that ministers have to remove bodies from or add bodies to schedule 1. It is only right that if bodies are to be removed there should be good grounds for their removal. I would have thought that the best grounds would be that the bodies are no longer doing the job that they are described as doing or that they no longer exist.

The Convener: I am sorry—I have become a bit entangled here. You are speaking to amendment 112, but have we not already debated it?

Members: No.

The Convener: I beg your pardon—I was distracted for a moment. I draw members' attention to the fact that, although they do not pre-empt each other, if amendments 1 and 112 were both passed, they would clash—Lord James and Michael Matheson may be fond of each other's amendments, but we should bear that in mind when we come to vote. Perhaps I am building up a relationship between them that does not exist.

Michael Matheson: Are you saying that the amendments are not compatible?

The Convener: They could both be passed. They are not pre-emptive.

Michael Matheson: But the grammar that would remain would be difficult.

The Convener: They are similar in some ways—I simply remark on that in passing. However, the situation is not the same as it would be if the committee agreed to remove a line from a section, so that the line could not then be amended.

Lord James Douglas-Hamilton: I am concerned not about the drafting but about the principles. The principles established in each amendment are worthy of serious consideration by the committee.

The Convener: Of course. That is the point of a stage 2 debate.

Donald Gorrie: Lord James has gone up greatly in my esteem. I am glad to find somebody who is even more suspicious of public bodies than I am.

The Convener: Is there a love-in between the three of them over there?

Donald Gorrie: I am attracted by amendment 112. The phrase

"for the time being listed there"

suggests that some people could be removed on a minister's whim. I am sure that Jim Wallace would not do that, but we must look ahead to the day when a less attractive person is the Minister for Justice.

Michael Matheson: Name them.

Donald Gorrie: In private.

Michael Matheson might not have chosen the right wording, but it is sensible to delete bodies that no longer exist or do not operate. I am attracted by his amendment because of my suspicion of the phrase

"for the time being listed there".

I do not know why that wording was chosen.

Mr Wallace: To be fair, I should say that Lord James had difficulty keeping his face straight while speaking to the amendments. It is inconceivable that the Executive should try to exclude itself from the legislation and I hope that the Parliament and the parliamentary corporation would never try to exclude themselves. Doing so would be like having Hamlet without the Prince of Denmark and would bring into question the purpose of the bill. That is why amendments 1 and 112 are unnecessary.

If a future Executive tried to do what has been suggested, I am sure that a future Opposition would not readily allow that to pass. Furthermore, the amendments would not secure against such intent, because primary legislation could be introduced to repeal the provision. The matter is so fundamental to the bill's operation that I do not think that much, if anything, would be achieved by passing amendment 1. I have fundamental doubts about its effectiveness.

Amendment 112 would prevent Scottish ministers from removing bodies that continue to operate. I appreciate Donald Gorrie's confidence that I would never seek to abuse the position and we appreciate the concern that the amendment is intended to address—that we might seek to remove from schedule 1 something because it is inconvenient.

The arguments are not quite so fundamental, but many of them are the same as those I used against amendment 1. Such behaviour would be contrary to the purpose of the bill. The bill provides Scottish ministers with a power to bring bodies within its scope. As a matter of balance, it also provides them with powers to remove bodies. The power was considered by the Subordinate Legislation Committee, which did not consider it inappropriate. It thought the negative procedure appropriate. Parliamentary scrutiny will provide checks and balances. The commissioner will keep a close watch on the matter and would be able to speak out publicly, should he or she consider that the power was being abused.

Five or 10 minutes ago, we passed two amendments to delete items from schedule 1. We could not have removed those items if amendment 112 had been adopted.

Lord James Douglas-Hamilton: There is considerable merit in having drafting so clear that its meaning is beyond reasonable doubt now and in the future. For that reason, I will press amendment 1.

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Douglas-Hamilton, Lord James (Lothians) (Con)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)

AGAINST

Gorrie, Donald (Central Scotland) (LD)
Jackson, Gordon (Glasgow Govan) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 1 disagreed to.

The Convener: Does Michael Matheson wish to move amendment 112?

Michael Matheson: I am not sure whether the minister will consider whether the phrase "for the time being listed" could be tidied. If he is prepared

to reconsider the wording, I will not move amendment 112. Otherwise, I will move the amendment, because the drafting has to be tightened.

Mr Wallace: I am told that there are drafting reasons why the phrase is necessary. The provision means nothing more sinister than that a body or holder is currently listed.

15:15

The Convener: Well, Michael, this is the big moment. Open the box or take the money.

Amendment 112 moved—[Michael Matheson].

The Convener: The question is, that amendment 112 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Douglas-Hamilton, Lord James (Lothians) (Con)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)

AGAINST

Gorrie, Donald (Central Scotland) (LD)
Jackson, Gordon (Glasgow Govan) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 112 disagreed to.

Amendment 113 not moved.

Section 4 agreed to.

Section 5—Further power to designate Scottish public authorities

Amendments 60 and 57 not moved.

Section 5 agreed to.

Section 6—Publicly-owned companies

Amendment 114 not moved.

The Convener: Amendment 30 is grouped with amendment 31.

Michael Matheson: Amendments 30 and 31 seek to ensure that the bill applies to companies that are controlled by public authorities covered by the bill. At present, a private company in which a public authority has a controlling interest will not be covered by the freedom of information regime. The City of Edinburgh Council has a controlling interest in Savacentre, for example, so it is only right that Savacentre should be governed by the bill.

Amendment 31 seeks to define a controlling interest to cover three sorts of companies: a company in which one or more Scottish public authorities jointly or singly hold a majority; a company in which one or more companies to which the section relates jointly or singly hold a majority; or a company in which a combination of Scottish public authorities and companies—or someone acting on their behalf—hold a majority together. The amendment relates to the increasing partnership arrangements between local authorities and private companies. If a local authority or a public authority has a controlling majority in a company, it seems only right that the bill should apply to it.

I move amendment 30.

Gordon Jackson: I am curious about Michael Matheson's proposals and I am interested to learn what the minister has to say about them—I find Michael's ideas interesting. Am I right to say that, if amendments 30 and 31 are not agreed to, the provisions of section 6 could be got round by creating a company that was, in practical terms, wholly owned, but in which 1 per cent of the shareholding was kept out of public ownership? That would avoid the legislation applying automatically and the debate would then concern whether people were prepared to use the designation provisions in section 5. It would be rather odd if the bill created a loophole that allowed people to avoid the regime simply by taking 1 per cent—or 0.001 per cent—of the shares in a company out of public ownership. I can see the point of an argument about a company in which the shares are split 50:50, but we should avoid the rather odd situation that would arise if someone were to give a private individual one share out of 1 million.

Donald Gorrie: Michael Matheson and Gordon Jackson have made an interesting point. Councils and other bodies have a tendency to set up companies, many of which deliver the basic public services that the public has a right to be interested in and ask questions about. I am attracted by the suggestions that are made in amendments 30 and 31 and I am interested in the minister's response.

Lord James Douglas-Hamilton: Companies that have been set up by local authorities should not be exempt from the bill. Councillors and elected representatives naturally seek information. They sometimes find it difficult to get detailed information even if companies have made considerable use of public funds. The issue should be addressed in depth.

Mr Wallace: We have considered the proposals that are made in amendments 30 and 31—some of the arguments that have been made relate back to earlier groups of amendments.

Bodies that are subject to the bill, as introduced, are: the Scottish public authorities that are listed in

schedule 1; bodies that are designated under section 5; and publicly owned companies, as defined in section 6. We have sought to include automatically all companies that are 100 per cent publicly owned. Amendments 30 and 31 seek to extend the definition of publicly owned companies to those that carry out public functions. It is important to remember that the existing public bodies could consider applications for information about wholly owned companies. Such wholly owned companies emanate from public authorities—that is why we thought it appropriate for the bill to cover them automatically.

We believe that it would be inappropriate to extend the definition of publicly owned companies and the automatic consequences to companies that are not wholly owned. Private sector companies that are not wholly owned by a Scottish public authority are capable of designation under section 5—that is the appropriate means of extending the scope of the bill from the public sector to the private sector. If anyone who was trying to get round the legislation thought that they had found a loophole by putting 1 per cent of a shareholding into the hands of an individual, they would have another think coming. Such actions would not be consistent with the spirit of the bill and we would catch people who tried to take that approach simply by designating the company under section 5.

I am not sure whether those comments address the specific situation that Michael Matheson has in mind. Perhaps he wishes to indicate that we should consider designating certain companies under the existing provisions of section 5. I am more than willing to consider extending section 5 to any such companies. The commissioner ought to have a role in suggesting bodies and persons to which section 5 ought to extend.

There is a further important, non-technical point. Section 6 will apply automatically, but everything is up for grabs and will depend on the ambit of the eventual act and the responsibilities that flow from that.

On the question of companies that are designated under section 5—[*Interruption.*] Sorry. Where there is an amendment under section 4—[*Interruption.*] Sorry. Section 7(3) states:

"Nothing in this Act applies to information held by a person designated as a Scottish public authority by order under subsection (1) of section 5 if the order is made by virtue"—

[*Interruption.*] Sorry. The point that I am trying to make is that the public functions to which the bill will apply can be specified. That will not happen under section 6, but there will be blanket coverage, which might include a legitimate private sector partner of a publicly owned company. The coverage would not be limited to the company's public functions. For example, I can think of fishing vessels in which equity shareholdings have been taken out by, for example, Highlands and Islands Enterprise or a local council. I am not readily persuaded that everything that that fishing company does—its logbooks or whatever—should automatically fall within the ambit of the bill.

The advantage of the section 5 route is that the application of FOI can be limited to those functions of the company that are of a public nature. That strikes the proper balance; it does not try to create a loophole for companies, but it properly restricts the ambit of the bill's impact.

The Convener: I will let Michael Matheson wind up. I know that Gordon Jackson may have a point to raise. If Michael Matheson does not raise it, I will let Gordon Jackson do so.

Michael Matheson: The minister stressed the point that the bill covers companies that are wholly owned by public authorities. I cannot see much difference between a company that is 75 per cent owned by public authorities and one that is 100 per cent owned by public authorities. I do not accept that there should be a two-tier system in which FOI applies when a public authority wholly owns the company, but when the public authority owns only 75 per cent of the company, or even 95 per cent, the legislation does not apply.

I take on board the minister's point about section 5, but the principle should be that the legislation applies when a public authority has majority ownership of a private company as well as when it has 100 per cent ownership of the company.

I take on board the minister's point about the fishing vessel. I am sure that we could all find wee examples that would highlight the view that we should not do this. Local authorities enter into partnerships with private companies. I am not convinced that amendments 30 and 31 would create any burden; given the general principle of the bill, they would make the bill's provisions fairer.

Gordon Jackson: I am not convinced by Jim Wallace's fishing boat example. My instinct is that if the majority of a company's money is public money, the company should be publicly accountable—full stop. However, I am not saying that I will vote for such a principle at this stage, because there might be an in-between situation.

Jim Wallace said that anybody who used a loophole to take 5 per cent or 10 per cent out of public ownership would get short shrift from the Executive. However, one can envisage that a future Government might not like freedom of information, but does not have the bottle or the political nerve to repeal freedom of information legislation—which would be difficult to do—and so would like to have ways round FOI. It could get round the provisions, first, by ensuring that certain

bodies are 5 per cent privately owned and, secondly, by not designating them.

The minister says that he would designate bodies under section 5 and I have no doubt that he would, but there is no power to make the Executive make a designation under section 5. If an Executive wanted a loophole, it has got it. It could cut its holdings in a body down to 95 per cent and then not designate it. Such bodies would no longer automatically be subject to the provisions of the bill, because they would not be wholly owned and the Executive could decide not to designate them. All members of the committee know that the minister would never make use of such a loophole, but the situation is serious nonetheless.

I am far from persuaded that bodies should be subject to the provisions of the bill if they are 51 per cent publicly owned, but I do not like the idea that a body could be exempt from the provisions by 5 per cent of it being taken out of public ownership. The minister will correct me if I am wrong, but I can see nothing to stop a future Executive that did not like freedom of information taking the approach that I have described. It would merely have to take 5 per cent of a body out of public ownership and then not designate.

15:30

The Convener: As this is an important point, I would like the minister to respond before Michael Matheson decides whether to press amendment 30.

Mr Wallace: I note the strength of the arguments that have been made and would be appalled were anyone to use section 6 as a loophole. There is no intention to create such a loophole. It is not a question of certain bodies escaping the provisions of the freedom of information regime or of their getting away with it. The bill does not set up a two-tier system, as Michael Matheson put it: once bodies are within the system, all the statutory duties will apply. I made the point that, by designating companies under section 5, one can confine scrutiny to the public functions of a company.

We are not just talking about a fishing boat. As we all know, a number of public development agencies and local enterprise companies take equity holdings, perhaps as great as 51 per cent, in companies in order to assist them. Such companies operate in the private sector. If there were free access to such companies' information, that could defeat the point of giving them assistance.

I hear what is being said, but amendments 30 and 31 would extend the provisions of the bill to companies that are 51 per cent publicly owned, rather than companies that are 95 per cent publicly owned. Because of doubts about what constitutes a controlling interest, I would not want the committee to support the amendments as they stand.

I would like to consider further the full implications of the automaticity—if that is a proper word—of the application of the bill's provisions. As I have said, a public development agency may have invested money in a private company. If the committee will bear with me, I would like to consider further the question of a loophole—which none of us wishes to see—to ensure that we do not create unintended consequences if we close it.

The Convener: That is an interesting response.

Michael Matheson: Before I decide whether or not to press amendment 30, I need clarification from the minister. I accept that you would not want the freedom of information regime to apply to bodies that are no more than 51 per cent publicly owned, but are you sympathetic to having a provision that covers bodies that are not wholly owned by public authorities? Perhaps the threshold should not be a simple majority.

Mr Wallace: I am concerned that having full automaticity and trying to deal with the perfectly legitimate cases to which Michael Matheson refers might be detrimental to companies in which a public body that is not wholly involved in providing public services has had a controlling interest. I am also advised that issues of competency may arise.

Michael Matheson: That is an old chestnut.

Mr Wallace: I will do my best to find a way to address the potential abuse that members have highlighted without that having unintentional damaging effects.

The Convener: Is that an undertaking to reconsider the issue? It is serious.

Mr Wallace: Yes. I will address the potential for abuse that has been highlighted.

The Convener: It would be helpful if the committee received an early sign of your thinking on the matter.

Mr Wallace: We must also consider competency.

The Convener: Given the minister's commitment, does Michael Matheson wish to press or withdraw amendment 30?

Michael Matheson: In the light of the minister's comments, I am willing to withdraw amendment 30. I hope that after considering the matter, the minister will not tell us at stage 3 that he cannot do anything about it. The problem is potentially serious.

Mr Wallace: I will do my best.

The Convener: Michael Matheson could lodge a similar amendment at stage 3.

Amendment 30, by agreement, withdrawn.

Amendment 31 not moved.

Section 6 agreed to.

The Convener: I said that we would conclude the consideration of amendments at 3.30. However, it is now after that time and we have reached only section 6. Was the minister advised that we would go on only until 3.30?

Mr Wallace: I was advised that we would go on much longer than that.

The Convener: We will make the times plain for the next meeting. The minister's time is precious.

Mr Wallace: I was not complaining.

The Convener: If the committee agrees, we will press on. We have not got very far. If we continue until 10 minutes to 4, that will allow us to complete another two sections.

Gordon Jackson: Next week we should plan for a longer meeting. Today was difficult because we did not plan for a longer meeting, but that does not matter because the Executive will pay the parking fines.

The Convener: It was discourteous or remiss of us not to advise the minister of the timetable. We will certainly do that next time.

Sections 7 and 8 should take us up to about 10 minutes to 4.

Section 7—Public authorities to which Act has limited application

Amendment 115 not moved.

Section 7 agreed to.

Section 8—Requesting information

The Convener: Amendment 24 is grouped with amendments 32, 26, 118, 84 and 27.

Lord James Douglas-Hamilton: Amendment 24 would insert in section 8:

"(or, where the request is made by a person who by reason of disability is unable to make the request in writing, in an alternative format)".

We believe that section 8 discriminates against people who are blind or partially sighted and many others with physical and/or learning difficulties. Amendment 24 would allow disabled people to make requests in alternative ways.

I will mention one or two background facts that support the amendment. Recent research by the Royal National Institute for the Blind revealed that around 180,000 people in Scotland suffer from serious and uncorrectable sight loss. Unfortunately, that figure rises year on year, largely because the population is growing older.

Many other citizens with an element of disability—such as those with hearing loss, physical or learning disabilities or dyslexia—find it hard or impossible to request or read written information. Amendments 24, 26 and 27 would extend to disabled citizens the same rights that are envisaged in the bill for sighted citizens. I hope that they will be supported.

There is a good deal of merit in the view that it should be possible to submit in writing or by electronic means requests for information or for a review of a refusal. Unamended, the provisions in the bill will discriminate, as I mentioned earlier, against print-disabled citizens. The latest research found that only one in nine visually impaired people are computer users. If amendments 24, 26 and 27 are accepted, requests for information or for a review of a refusal will be accepted if they are made, for example, in Braille, on tape, and via telephone, textphone or typetalk. The bill has the potential to set a new standard for the inclusive provision of information.

Currently, the bill lacks clarity on the crucial matter of providing disabled people with information in their preferred format. Clarity and the removal of confusion would better achieve the aims of the bill. It is essential that any regulations or guidance that accompany the bill should make it clear that it would be discriminatory to pass on to disabled people any extra cost involved in providing information in their preferred format. If he cannot give a final response today, I hope that the minister will take away these matters with a view to looking upon them sympathetically.

I move amendment 24.

Michael Matheson: Amendment 32 broadly seeks to do what Lord James Douglas-Hamilton's amendment 24 does, but on a slightly wider basis. It would place a requirement on public authorities to accept requests for information in a form other than in writing, and place a duty on them, in so far as is practical, to record that request. That would enable applicants to make requests in person or by telephone.

I understand that the Scottish Executive's current code of practice on access to information does not prevent requests in person or by telephone, which ensures that people who have difficulty with writing—for example, disabled people—are not excluded from making requests. However, there are also people who, because of language or literary difficulties, would have difficulty making a request in writing. Amendment 32 seeks to widen the provisions in the bill to

address the needs of not only disabled people, but people who have other communications problems such as a language difficulty or difficulties as a result of a literacy problem.

Amendment 118 seeks to place a similar duty on local authorities when a request for a review is made. Amendment 84 places applications to the information commissioner on a similar footing.

The Convener: Do any other members wish to speak to these amendments?

Gordon Jackson: I seek clarification. Are Lord James Douglas-Hamilton's and Michael Matheson's amendments mutually exclusive? Is it a case of one set of amendments or the other?

The Convener: No.

Gordon Jackson: We could accept both sets?

The Convener: Yes.

Maureen Macmillan: I supported Lord James Douglas-Hamilton's amendments 24, 26 and 27, as did Kate Maclean as convener of the Equal Opportunities Committee. I know that the Executive has no intention of excluding people with disabilities, but it is important to have the measures in those amendments in the bill, otherwise we will send out the wrong signal to disabled people. I support amendments 24, 26 and 27.

Paul Martin (Glasgow Springburn) (Lab): I also support Lord James Douglas-Hamilton's amendments 24, 26 and 27. The minister should make it clear why we have sought to exclude people such as those with English-language difficulties. The minister and I have spoken about those difficulties in relation to other matters. There are also issues relating to disabled people. I would like the bill to state explicitly that we will assist those groups. The bill does not do so, which is why Lord James has submitted amendments 24, 26 and 27.

The Convener: Do any other members wish to comment on any of the amendments in this group? You will have the opportunity to sum up, Lord James. I am trying get organised. I will take the minister's reply and if anyone wants to come back with a question before I ask Lord James to sum up, I am happy with that.

Mr Wallace: I recognise the importance of the amendments. At the outset, I want to say that it is not the intention of the bill that it should be discriminatory in any way. I also believe that, far from being discriminatory, the bill and the codes of guidance are intended to help those people who have disabilities. It is a fundamental principle that the system should be straightforward, user-friendly and open to all. At the same time, people will recognise that if we are to have an effective freedom of information regime, it has to be efficient and workable from the point of view of those who are providing the information.

15:45

Paul Martin raised the question of people making requests in another language. Without anticipating amendment 2, where Lord James Douglas Hamilton is seeking for information to be in English only, I can indicate that that amendment will be resisted. It is not our intention that there should be a restriction to applications in English.

The bill as drafted provides that all an applicant need provide is their name, address and details of the information requested to make a formal freedom of information request. That is a minimum of formality. It does not exclude local authorities or public authorities responding to informal requests, such as a request over the telephone, but is intended to make simple the formalities and machinery of freedom of information.

Many other freedom of information regimes require there to be a specific requirement to cite the legislation. We have not done that, again for the purpose of making the system accessible and open to all. That is why any subsequent exercise of the appeal should be in writing. It is obvious that a written record of a request makes the handling of that request much easier. The committee has expressed plenty scepticism about people and public bodies wanting to slide out of their obligations.

The Convener: It is a healthy scepticism and that is what we are here for.

Mr Wallace: Absolutely, but I am trying to suggest that there is nothing easier than saying "That is not what I remember you saying on the telephone". That is why there is a requirement that there should be a written record. In earlier evidence to the committee, COSLA indicated that a request will often be passed from person to person, from officer to officer. That is why there is an advantage in having a written record. A written request provides authorities with a clear and easily transferable record of requests.

Amendments 24, 26 and 27 would provide an authority with a record of the request, albeit in an alternative format. It was for practical reasons that we provided that requests should be made in writing. It is important that I make clear to the committee that writing includes any format of writing. Writing is defined for the purposes of the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc of Acts of the Scottish Parliament) Order 1999:

"'Writing' includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form, and expressions

referring to writing are construed accordingly."

That would include e-mail or other communications via the internet. It would include Braille textphones that are often used by the deaf. However, I stress that it does not exclude authorities accepting requests in other formats.

As a matter of practice, we hope that authorities would be helpful to applicants and accept requests in alternative format where it is reasonable to do so. However, we have not relied upon hope and goodwill. Section 15 is a very small but important section of the bill. Section 15(1) says that a Scottish authority must—and that imposes a duty on the authority, not a discretion:

"so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it."

Section 15(2) says:

"A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1)."

Section 15 is small, but its impact on the day-to-day operation of freedom of information ought to be substantial. It can play an important part in ensuring that the system is straightforward and user-friendly for applicants. Authorities will be required, under statutory duty, to provide advice and assistance to all applicants, including those considering whether to make an application. They will be under a specific statutory duty to help applicants to make requests. That will work in tandem with the code of practice under section 60.

As a result of the duty to assist, if an authority departs from the code of practice in providing advice and assistance, it will need to be able to persuade the commissioner that the level of advice and assistance provided was reasonable. If the commissioner was not persuaded of that, the authority would be in breach of its legal obligations and could be liable to legal sanction. At the end of the day, we want to ensure that the authorities are flexible and helpful to applicants in administering freedom of information.

I do not believe that it would be helpful or appropriate for an authority to refuse to process an application simply because it is in an alternative format. For example, it is not unreasonable to ask many of the larger authorities to process applications received on audio tape, although it may be difficult for smaller authorities. I expect that an independent commissioner specifically charged with promoting culture change would take a dim view of an authority that he considered not to be taking the duty to assist seriously.

That leads us to the code of practice under section 60, a working draft of which has been provided to the committee. We will improve on that draft. It stresses the importance of helping all applicants make a request and makes specific mention of supporting those unable to make a request as a result of disability. I accept that that is central to the effective operation of the bill.

I want to ensure that the views expressed by the committee are part and parcel of the development of the code. Including the provision in the code rather than the bill does not make it substantially weaker. We must consider the bill as a whole. Section 15, on the duty to assist, gives the advice and assistance section of the code of practice particular force—arguably as much if not more force than specific provisions, which might create loopholes. If an authority departs from the guidance in that section of the code, it must be able to justify its actions to the commissioner.

Although I agree with the good intentions behind the amendments, I hope that the committee will be persuaded that the Executive has good intentions too, which we have sought to implement through the bill, supplemented by the code.

I fully accept the intentions behind amendments 32, 118 and 84. They would require authorities to accept oral requests from individuals unable to make a request in writing. The amendments are unnecessary. The duty to assist, alongside the code of practice under section 60, will be important in ensuring that authorities are helpful to all applicants, specifically those with a disability or literacy problems.

The draft code sets out that reasonable assistance could include taking a note of the applicant's request made over the phone and then sending it to the applicant asking for confirmation of the details of the request. If the applicant was present at the public authority—for example, in the reception area—it is clear that an authority, to provide a reasonable level of service, would have to accept an oral request in person. The official would have to take down the information and ask the applicant to confirm the request. The duty to assist in section 15 is specifically included to tackle anyone who might try to wriggle out of an obligation to be helpful.

In the course of the bill's development, we discussed whether certain provisions were more appropriately set out in the bill or in the guidance. The substantive body of guidance, which deals with issues such as the facilitation of requests, taken in connection with the statutory duty to assist, is a proper approach and an appropriate framework. The code of practice is the appropriate place to set out the detail of how the regime should operate. We will finalise the codes and the important and salient points raised in committee will be fed into that process.

I recommend that the amendments be withdrawn because I believe the amendments to be unnecessary and that the scheme of the bill adequately meets the objectives.

The Convener: I would like to ask a question before inviting James Douglas-Hamilton to wind up. Would it not be appropriate to include in section 70, the interpretation section, the reference to the definition of writing that you have provided, minister? There are other cross-statutory references in the code of practice. Are you relying on that?

Mr Wallace: I am told that the interpretation is there anyway. Off the top of my head, I cannot see what damage would be caused by including a definition of writing but, no doubt, there would be some unintended consequence in some future bill in which the word was not defined. Someone could then query whether the definition—which is in fact there and which applies to all acts of the Scottish Parliament—would have to be incorporated in that future bill, probably one that was unrelated to the one before us. Some clever lawyer would probably pick up on that.

Lord James Douglas-Hamilton: I have listened with great care to what the minister has said. He has moved some way in our direction. Unfortunately, he has not moved far enough. I do not believe that issues of disability should be left to a code of practice. I see them as matters of top priority, and think that the rights of people with disabilities should be enshrined in legislation, not downgraded to a code of practice. I will therefore seek to press amendment 24.

I might add that Kate Maclean's name is on the amendment particularly because of the fact that she is convener of an all-party group concerned with disability matters. I feel that disability should be given a much higher priority than the minister is prepared to give it, judging from his comments today.

The Convener: The question is, that amendment 24 be agreed to. Are we all agreed?

Members: Yes.

Mr Wallace: So be it.

The Convener: Indeed, so be it. That was a very sanguine response from the minister.

Amendment 24 agreed to.

The Convener: Amendment 2, in the name of Lord James Douglas-Hamilton, is in a group of its own. I ask Lord James to move and speak to the amendment.

Lord James Douglas-Hamilton: Should the other amendments in the previous grouping not be moved, convener?

The Convener: No, not at this moment.

Lord James Douglas-Hamilton: I beg to move amendment 2, which inserts the words "and in English". Amendment 2 ensures that requests for information should be made in English. I should make it quite clear that I have no objection whatever to requests being made in other languages; I believe that they should be made in English as well as other languages. I say that in response to a query that was raised earlier.

By way of background, some 60 ethnic community languages are spoken in Scotland. In response to parliamentary questions, however, it appears that the Executive or Administration is not in a position to say which those are, on the grounds that that information is not held centrally. The Executive is apparently undertaking a review in that regard. I feel that the issue is a pressing one, particularly as many residents in Scotland may speak a language other than English as their first language.

On the practicalities, I suggest that there should be no objection to other languages being mentioned, provided that there is also an English translation. That would avoid any possibility of misinterpretation. As the bill stands, requests for information may be submitted from any country in the world and in any language. The consequent translation burden would add enormous expense and delay to providing the information. It is therefore appropriate that the language in which requests should be made should be English, whatever other languages are also included.

Gordon Jackson: I know that James Douglas-Hamilton would not mean to be discriminatory but, on the surface, it appears that he has followed one anti-discriminatory amendment with a very discriminatory amendment. I know that that is never James's intention.

I take the point about there being millions of languages all over the place, and it not being possible to translate them all. A way round that may be to include a schedule whereby lots of languages are specified. I would be a bit disappointed if requests always had to be made in English, which seems to be going too far, bearing in mind the ethnic groups in this country. There are thousands and thousands of them, and there is no bother getting translation services. I take James's point, but to require all requests to be in English seems to lose the balance, and I would resist that move. There may be a middle ground whereby the ridiculous situation of it not being possible to translate things could be avoided.

The Convener: I think that James Douglas-Hamilton's point is that a request could be made in an ethnic language and in English—it would not be an either/or situation. Do any other members want

to comment on this issue?

Donald Gorrie: As it stands, amendment 2 could suggest that only requests in English would be accepted. However, there is an argument that people should be able to write in in their own language and get somebody to translate it, especially—as James Douglas-Hamilton said—people from abroad. As Gordon Jackson said, the amendment looks a bit anti certain people—perhaps even anti my friend John Farquhar Munro.

The Convener: Perish the thought.

Donald Gorrie: The idea is excellent and perhaps the minister can respond to it. However, I think that the wording of the amendment is not right.

16:00

Mr Wallace: Donald Gorrie is right. The effect of James Douglas-Hamilton's amendment would be to require requests for information to be in writing and in English. Therefore, only requests in English would count as valid under the bill. If the previous amendment was intended to facilitate, this one is intended to make life difficult, given the fact that requests can be submitted from anywhere in the world.

We do not agree that authorities should never accept requests in a language other than English, and Donald Gorrie latched on to the point that I was about to make. It might be entirely reasonable for many public authorities in Scotland to accept requests and give responses in Gaelic. The bill requires authorities to respond to all requests that they understand, and it would be very unfortunate if the suggested restriction were to be introduced.

Gordon Jackson suggested adding a schedule of languages. However, the scheme of the bill helps considerably. Section 1(3) states:

"If the authority—

(a) requires further information in order to identify and locate the requested information; and

(b) has told the applicant so …

then, provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information."

If a request was made in one of the world's most obscure languages, which no one had heard of and for which there was no translator readily to hand, it would be reasonable for a public authority to seek a translation of the request from the applicant. If no translation was forthcoming, the authority would not be obliged to respond. The committee will recognise that in Scotland, where a number of languages are used, amendment 2 could disqualify some people from making requests. I therefore ask the committee to reject the amendment.

Lord James Douglas-Hamilton: I do not seek to press amendment 2. However, I ask the minister to take it away and look at it. The Executive is undertaking a review of ethnic community languages. If requests are to be allowed in any language under the sun, the minister must be prepared to ensure that there are sufficient interpreters and be certain that the bill can be implemented. I reserve the right to return to this matter at a later stage, and I hope that the minister will do so too. The practicalities are such that the current drafting of the bill is insufficient.

The Convener: You did not move the amendment, James. For propriety, you must say that it is not moved.

Lord James Douglas-Hamilton: I do not move amendment 2.

Amendment 2 not moved.

The Convener: Amendment 32, in the name of Michael Matheson, has been debated with amendment 24.

Michael Matheson: I did not get the chance to respond to the minister when he commented on amendment 32. You moved straight to Lord James, convener. The purpose of amendment 32 was to widen the scope of the bill to include people who speak in another language. I am reassured by what the minister has said about the code of practice, which will cover people's ability to make an application in another language. There is a need also to ensure that local authorities are sympathetic towards those who have literacy problems, who are unable to put a request in writing and for whom it could be embarrassing to admit to someone that they are unable to do so. From what the minister has said, it appears that the code of practice will also cover that.

Mr Wallace: I think that the code of practice specifically mentions literacy, and I am prepared to consider the point that Michael Matheson makes.

Amendment 32 not moved.

Section 8, as amended, agreed to.

The Convener: That has been rather grinding, but we will no doubt accelerate as we go through the bill. We will stop stage 2 consideration of the bill there and we will write to the minister prior to the next meeting on the bill.

We move on to item 4 on the agenda—our forward work programme—which we have agreed to take in private. I ask for the room to be cleared.

16:05

Meeting suspended until 16:10 and thereafter continued in private until 16:40.

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