COMMUNITIES COMMITTEE

Wednesday 19 January 2005

Session 2

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COMMUNITIES COMMITTEE
2nd Meeting 2005, Session 2

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Donald Gorrie (Central Scotland) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
Linda Fabiani (Central Scotland) (SNP)
*Christine Grahame (South of Scotland) (SNP)
*Patrick Harvie (Glasgow) (Green)
*Mr John Home Robertson (East Lothian) (Lab)
*Mary Scanlon (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)
Christine May (Central Fife) (Lab)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
John Scott (Ayr) (Con)
Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

David Caldwell (Universities Scotland)
Michael Clarke (National Galleries of Scotland)
Mark Ewing (Link Group Ltd)
Fraser Falconer (Scottish Grant Making Trust Group)
Mike Gilbert (Institute of Chartered Accountants of Scotland)
Tom Kelly (Association of Scottish Colleges)
Martin Meteyard (Co-operation and Mutuality Scotland)
Dr Gordon Rintoul (National Museums of Scotland)
Martyn Wade (National Library of Scotland)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 6

Scottish Parliament

Communities Committee

Wednesday 19 January 2005

[THE CONVENER *opened the meeting at 09:37*]

Charities and Trustee Investment (Scotland) Bill (Witness Expenses)

The Convener (Karen Whitefield): This is the second meeting in 2005 of the Communities Committee. I remind all of those present that mobile phones should be turned off. Item 1 on the agenda concerns the Charities and Trustee Investment (Scotland) Bill and expenses for witnesses who attend the committee. The item relates to the payment of witness expenses under rule 12.4.3 of standing orders. The committee may arrange for the payment of expenses that are incurred by any witness who is invited to give evidence at a committee meeting.

The committee is invited to delegate to me, as the convener, the responsibility for arranging for the Scottish Parliamentary Corporate Body to pay any witness expenses that arise during the committee's consideration of the bill. Members have received a paper that explains those points. Is the committee content with the proposal?

Members *indicated agreement*.

The Convener: It is agreed that the responsibility for deciding witness expenses is delegated to me, as the convener of the committee.

Christine Grahame (South of Scotland) (SNP): I pass on Linda Fabiani's apologies for not being in attendance today. She is unwell this morning.

The Convener: Thank you for that, Christine.

Charities and Trustee Investment (Scotland) Bill: Stage 1

09:39

The Convener: Item 2 on the agenda concerns the Charities and Trustee Investment (Scotland) Bill. I welcome the first panel of witnesses. We are joined by Martin Meteyard, the chair of Co-operation and Mutuality Scotland, and Mark Ewing, a voluntary board member of Link Group Ltd, which is one of Scotland's major providers of housing services and is a registered charity. Thank you for coming along today and for providing written evidence to the committee prior to your attendance.

I will start by asking about the Executive's consultation on the legislative proposals. Did the Executive consult well? Were you included in the process? Has the Executive considered sufficiently the points that you made?

Mark Ewing (Link Group Ltd): I very much support the way in which the Executive has consulted on the bill. Having the opportunity to see a draft bill and the further information that was provided in the consultation document has been helpful to the sector. Certainly, the consultation generated considerable debate in the housing association, or registered social landlord, sector, both in individual organisations such as the Link Group Ltd and sector-wide organisations. I have gone through the bill that has been introduced to Parliament and a number of important issues that came through in the consultation process appear to have been addressed. The process was welcome.

Martin Meteyard (Co-operation and Mutuality Scotland): I echo that, particularly as I represent an organisation that is not traditionally part of the charitable sector, but which obviously has issues that overlap with what happens in the charitable sector. We were happy to be included at an early stage and to be invited to a meeting with the Executive before the bill went out to public consultation. Since then, the dialogue that we have had has certainly enabled us to start to identify issues relating to the bill and to re-examine our own purposes and their relevance in the 21st century.

Christine Grahame: Obviously, you are aware of the role of the Office of the Scottish Charity Regulator. We are all interested in whether OSCR should give advice and guidance to the charitable community, rather than being concerned only with regulation, auditing and so on.

Mark Ewing: I will kick off on that question. Creating a true regulator of the sector is an

important development and is welcome. Obviously, OSCR will have a key role in facilitating and enabling the sector in the future. As we have an RSL or housing association background, we are used to regulation from Scottish Homes and now from Communities Scotland. An important part of that regulation is the provision of guidance and support from the regulator, which has considerably benefited the housing association sector. It would be helpful to the charity sector in progressing its business if OSCR had a similar role.

I suspect that we will deal with public benefit later.

Christine Grahame: Yes. I ask you to—

Mark Ewing: I will hold back.

Martin Meteyard: I echo what has been said. It is always helpful if a regulator is seen not only as wielding a big stick, but as being there to help, support, advise and guide people through the process. Therefore, I would certainly welcome an extension of OSCR's role beyond simply regulating.

Christine Grahame: Are you concerned that there might be a conflict of interest if the adviser is also the disciplinarian—if I can put things in such a way—and gives advice or guidance and then must be in a position of judgment?

Martin Meteyard: I can see that there might be conflict in certain circumstances, but that should not occur if the organisation is well run and well regulated.

Mark Ewing: Communities Scotland has fulfilled exactly those roles until now. It provides guidance and it can discipline—it has a regulatory and a monitoring function. It seems to be able to undertake both functions without undue conflict.

Donald Gorrie (Central Scotland) (LD): The Co-operation and Mutuality Scotland submission states that the organisation would like to explore further with the committee the complexities for co-operatives, mutuals and credit unions in respect of charitable status. For me and for other members, that might be quite a jungle. Will you steer me through it?

09:45

Martin Meteyard: It is quite a jungle. I have to be honest with the committee and say that the co-operative movement has not traditionally regarded itself as having anything to do with the charitable sector. Just as you have heard evidence about the importance of strong charitable branding, equally the co-operative movement sees a need for strong co-operative branding.

It is interesting and helpful to explore where their purposes might overlap. Historically, co-operatives were set up for strong public benefit reasons. The Rochdale pioneers were the most prominent early example. They set out to provide unadulterated food at an affordable price. Although it was a membership organisation, membership was open, and clearly it benefited all members of the public who chose to take advantage of it.

Traditionally, charity has been part of a hand-out mentality, and has not been about self-help. Importantly, the bill seeks to update that approach. We in the co-operative movement have something to learn by examining whether there is an overlap. Under the bill, it might be possible for co-operatives—should they wish to do so and should they wish to accept certain restraints—to say, "Our purpose is clearly one of public benefit. We fall under one of the heads, therefore we wish to apply for charitable status." You then get into the issue of multiple regulation. Co-operatives that are industrial and provident societies are regulated through the Financial Services Authority, for example. However, the bill lays down a framework for co-operation.

It is a jungle, and we have not worked our way through to the other side. However, we believe that the bill is an important part of allowing charities to update their image and their functioning in the 21st century. Being business-like and doing business for clear public benefit is quite different from the way in which normal private business operates.

Donald Gorrie: I am sure that everyone around the table thinks that credit unions, co-operatives and so on are useful parts of society, and would be unhappy if a well-intentioned bill put obstacles in the way of them developing as well as they might. What is the best way forward? If it is very technical, would you like to meet the bill team or draft amendments to address the specific points? We will not sort it out in five minutes of conversation.

Martin Meteyard: No, absolutely. There are issues. For instance, some credit unions choose to pay a dividend to members, which the bill potentially rules out, given the provision on the distribution of property other than for public benefit. It might not be ruled out—we need to clarify that with the bill team.

A number of co-operatives would say that their primary purpose is to trade for a particular purpose, which might overlap with but not be entirely consistent with public benefit. They might choose not to go down that road. There is an issue with credit unions, housing co-operatives—which we might come to later—and food co-operatives, and it might be helpful to go through the process that you outlined.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): The committee held a number of pre-legislative meetings throughout Scotland prior to taking formal evidence. At the meeting in Glasgow, the difficulties that housing co-operatives and other co-operative organisations might face were highlighted. Will you indicate the number of co-operatives, mutuals and housing co-operatives in Scotland that currently benefit from charitable status, and the number that might wish to apply in future?

Martin Meteyard: The problem is that housing co-operatives are not eligible for charitable status at present. I understand that some of them have had meetings with the bill team. One of the bill's advantages is that it will introduce an overlap and will allow housing co-operatives to be eligible for charitable status, which will make a big difference to them in terms of corporation tax, rates relief and so on.

We are happy for the housing co-operative sector. One problem of its being ineligible for charitable status is that housing co-operatives have drifted towards becoming housing associations, which has involved a reduction in tenant empowerment, tenants' rights and tenants' benefits.

From the public benefit point of view, the co-operative model is important, because it allows people to exercise real control and to act fully as citizens in their community. We are happy that the bill recognises that and will allow housing co-operatives to benefit from charitable status. Given the way in which things were going, under the existing regime, only one or two housing co-operatives might have been left in a couple more years.

Cathie Craigie: Do any barriers exist? What changes are needed?

Martin Meteyard: The existing regime has barriers but, given the clarification that some of our member co-operatives have received from the bill team, we see no barriers to housing co-operatives enjoying charitable status under the bill.

Donald Gorrie: A bit of guidance would help. Why are some housing co-operatives not fully mutual? What obstacles are so important to them that they do not become fully mutual, which would allow them to benefit more under the tax system?

Martin Meteyard: One traditional principle of the co-operative movement is open membership. That means not only that membership is open to anybody who wants to become a member and use the services, but that membership is voluntary, not compulsory. We in the co-operative movement have different views about the relative advantages of being fully or non-fully mutual, but the argument for being non-fully mutual is that it leaves the tenant with the choice of whether to become a member, rather than imposing that on the tenant, which advocates of that and other organisations see as giving tenants an additional element of choice and control over what power they exercise in their accommodation environment. The justification is that tenants are given more choice.

Donald Gorrie: Can we retain that system and change the tax system? It seems to be more punitive for such co-operatives.

Martin Meteyard: If the bill is passed, that should no longer be the case. That is why the housing co-operative sector welcomes the bill and regards the provisions on its status as overdue. Under the bill, the sector will enjoy the same rights and obligations as does the rest of the social housing movement.

An Inland Revenue regulation makes fully mutual co-operatives exempt from corporation tax because they trade only with their members. As I said, under the bill, the sector will enjoy the same rights as does the rest of the social housing movement. They will also be able to propagate the values of tenant participation and control and playing a full citizenship role.

Donald Gorrie: What you have said does not to my mind—which is obviously at fault—correspond fully with the four points on the last page of your submission.

Martin Meteyard: Those points refer to the current charity regime, rather than the proposals in the bill.

Donald Gorrie: That explains it.

Christine Grahame: Before I ask my question, I declare an interest: I am a credit union member.

Do you agree that we should—as your paper says—separate mutual and non-mutual co-operatives, which might well be granted charitable status, from credit unions, which make dividend payments to investors such as me? Would that be appropriate?

Martin Meteyard: Some credit unions pay dividends, but some smaller credit unions will probably never be in a position to do so. If that is the dividing line, credit unions could choose whether to be eligible for charitable status.

The other obvious point—which is one that I think the credit union movement itself would make—is that credit unions are reluctant to see themselves as being part of the charity brand; they are about self-help in the community. We are talking about changing the public perception of what charities are about. I think that using the concept of public benefit is an excellent way of doing that.

Christine Grahame: Regardless of whether credit unions actually issue any dividend, the fact that their constitutions allow them to do so would prohibit them from having charitable status, would it not?

Martin Meteyard: I think that that is the case. I am not a lawyer, so I have a limited understanding of the wording in the bill, which I think refers to the allocation of property not for public benefit.

Christine Grahame: So there is a clear distinction between housing co-operatives—whether mutual or non-mutual—and credit unions.

Martin Meteyard: As I am not a credit union expert, I do not know whether all credit unions' constitutions state explicitly that they retain the power to issue a dividend. In the new circumstances once the bill becomes law, they might choose to change their rules.

Scott Barrie (Dunfermline West) (Lab): From the CMS submission, it appears that the Association of British Credit Unions Ltd has indicated that, as of April this year, discretionary powers will be available to local authorities to grant rates relief. That will go a long way towards resolving some of the difficulties that the credit unions spoke about during the consultation on the bill. I do not know whether you want to amplify that point.

Martin Meteyard: That is our understanding of the position according to ACBUL. As you say, that will go a long way towards allaying some of the concerns that have been expressed in the past.

The Convener: I have a question for Mr Ewing that relates to housing associations. The bill proposes that the charitable status of housing associations would be regulated by Communities Scotland rather than by OSCR. The committee has received varying evidence on that. Some witnesses have said that the bill has got it right; others have suggested that the same criteria and rules should apply to every charitable organisation and that they should all be regulated by OSCR. As a representative of the housing association movement, what is your view on that?

Mark Ewing: I firmly support the position that is adopted in the bill. The housing association sector is highly regulated—periodically, Communities Scotland undertakes onerous and intrusive inspections of housing associations and their activities are closely scrutinised. There is a considerable body of guidance for housing associations on governance arrangements and other relevant matters. If housing associations were subject to a further tier of regulation from OSCR, the movement's concern would be that that would inevitably result in duplication and that the views of the two regulators could diverge. In my opinion, that would be an unnecessary additional level of bureaucracy.

There is a recognition that, with the passing of the bill and the arrival of OSCR in its new form, charities will be regulated in a much more meaningful way than at present. The housing sector welcomes that. There is an expectation that Communities Scotland will take a greater degree of interest in matters relating to charitable housing associations' compliance with charity law and so on. However, it is unnecessary for such matters to be addressed through the introduction of yet another regulator, as they could easily by covered as part of the work that Communities Scotland undertakes.

The Convener: How will it be possible for the same interpretation of the legislation to be applied by both Communities Scotland and OSCR to ensure that everyone is treated in exactly the same way? That is where some of the concerns come from. Although we do not want to add to the bureaucracy that housing associations have to deal with and work through, there is a slight possibility that housing associations might not be regulated in the same way as other charities because they will not be regulated by OSCR.

10:00

Mark Ewing: The bill will apply to charitable housing associations, so the legal framework within which RSL charities operate will have to be the same as the legal framework with which non-housing association charities have to deal. There is an overriding obligation on housing associations to comply with the law, so to that extent the playing field will be the same for housing association charities and non-housing charities. What we are examining is the way in which compliance with the legislation is monitored and scrutinised by the regulator. The answer is in the Executive's response to the consultation process. That response suggests that OSCR and Communities Scotland will work closely together on how the regulation of charitable housing associations is projected through Communities Scotland. I suspect that that is the answer rather than involving a second regulator.

Donald Gorrie: As I understand it, because access to borrowing and resources is important for housing associations, there is a tendency for them to merge and develop into bigger organisations, some of which might not be charitable. Non-charitable bodies might have a degree of influence over housing associations, which in the bill might rule them out from being charities. Should we be concerned about that issue?

Mark Ewing: I do not see that as being an issue, particularly given the uncertainty that has existed for a while over the withdrawal of what is known as a section 54 grant, which was the Communities Scotland grant that, in effect, repaid

non-charitable housing associations for their corporation tax payments. Over the past couple of years, there has been a tendency for housing associations to convert to charitable status. More than 50 per cent of housing associations in Scotland are now charities.

The current legal position is that a charitable housing association could not be taken over by a non-charitable housing association. The point that you make is about independence. I support the position in the bill. The bill highlights the importance of independence for charities and states that they should not be subject to the control of a third party. There are a number of provisos when the third party is not a member of the charity. There is sufficient flexibility in the proposals in the bill and the principles are supportable.

The Convener: Those are all the questions that we have from committee members. I am grateful to the witnesses for appearing before the committee today and for CMS's written submission to the committee.

I suspend the meeting for a five-minute break.

10:03

Meeting suspended.

10:09

On resuming—

The Convener: Our second panel represents the national collections institutions, which are the National Galleries of Scotland, the National Library of Scotland, the National Museums of Scotland, the Royal Botanic Garden Edinburgh and the Royal Commission on the Ancient and Historical Monuments of Scotland. We have with us Dr Gordon Rintoul, who is the director of the National Museums of Scotland; Martyn Wade, who is the national librarian at the National Library of Scotland; and Michael Clarke, who is the director of the National Gallery of Scotland, which is one of the National Galleries of Scotland. Dr Rintoul will make a short opening statement on behalf of all the national collections institutions.

Dr Gordon Rintoul (National Museums of Scotland): We are pleased to be able to give evidence on behalf of the five national collections institutions. I will make a few key opening points. First, the prime purpose of our institutions is to hold collections in trust for the people of Scotland, both for their benefit and for that of visitors from abroad. The collections are held in trust not just for this generation but for future generations.

In our view, the Charities and Trustee Investment (Scotland) Bill marks an important step forward for the charity sector in Scotland. We fully support the general principles and aims of the bill, but we must point out to the committee that the national collections institutions would not be granted charitable status under the bill's proposed charity test because of the criterion forbidding third-party control. In our collective view, the public interest can best be served by enabling the national collections institutions to remain accountable non-departmental public bodies that are charities.

The loss of charitable status would have a severe impact on our institutions' ability to continue maintaining, developing and enhancing our services and facilities for people in Scotland and across the world. Among those impacts would be a loss of charitable rates relief; a loss of charitable discounts in purchasing; a significant loss in individual and corporate donations; a significant loss of grants from charitable foundations; and the creation of a competitive disadvantage with respect to our counterpart institutions in London. Under the bill that is going through the UK Parliament in Westminster, our related institutions in London look likely to continue as charities that are regulated by the Department for Culture, Media and Sport. The financial impact to our institutions would be the loss of many millions of pounds per annum. Essentially, that would be a loss to the public benefit.

We see no strong reason why the national collections institutions cannot be maintained as NDPBs and retain their charitable status. We do not consider that there is any irreconcilable conflict between being funded by the Scottish Executive and being regulated by OSCR. Scotland seems to have taken a different view on that from the one taken in England, where the DCMS will continue to be the regulator. We believe that it is perfectly appropriate and feasible for us to be regulated by OSCR.

To sum up, our view is that the interests of the people of Scotland would be best served by provision being made in the bill for the national collections institutions to continue as accountable NDPBs that retain their charitable status.

The Convener: I am sure that many of the points that Dr Rintoul has touched on will be explored further by committee members.

Let me start by asking a general question. Do you believe that the Executive's consultation process for the bill was comprehensive? Were the representations that you made listened to and have they been reflected in the bill? It appears to me that you are at variance with at least one of the principles of the bill—the one that would affect your status—so I am particularly keen to hear your views on that.

Dr Rintoul: I will answer first, convener, and my colleagues may want to add points. I think that the consultation process was comprehensive. However, the full ramifications of some of the emerging issues were not quite appreciated by our institutions. We discussed the matter with Scottish Executive officials and understood that the current situation of NDPBs and charities would continue. In hindsight, that assumption was wrong. It was only when the draft bill was published that the full ramifications began to be appreciated by many people, including our institutions.

10:15

Scott Barrie: I will ask a question that we have asked every witness who has come before us. Do you think that OSCR's statutory duty should be to provide advice to the sector on good governance as well as on adherence to the law?

Martyn Wade (National Library of Scotland): I think that we would agree with that. As Dr Rintoul said, we see no issue with our being regulated by OSCR. Anything that OSCR can do to ensure the most effective governance of all charities is to be welcomed; we would welcome that advice to help to support charities in fulfilling their functions in line with the legislation.

The Convener: I want to ask about accountability and transparency. In your written submission to the committee, you state that the status of an NDPB

"creates a higher standard of accountability and transparency for the public."

However, one of the defining principles of the bill is that there should be independence from political control. How will you be able to get round that and address those issues?

Dr Rintoul: Our organisations are run by boards of trustees who give up their time freely and voluntarily: none of them is paid. It is fair to say that we are very much at arm's length from the Scottish Executive, with which we do not have day-to-day involvement. The kind of political involvement that you are talking about does not happen on a daily basis. I report to my board of trustees, who look after the day-to-day operations of the institution. What they have in mind is the development and preservation of the collections for the public benefit—that is what they focus on.

None of us executes Government policy or is primarily involved in giving out grants or a host of other activities in which other NDPBs are involved; our five institutions are markedly different from other NDPBs. The reason why we are NDPBs is that we hold the collections in trust for the people. They do not belong to us; we hold them on behalf of everyone else. We do not, therefore, see what you mention as a real issue for us.

Martyn Wade: On transparency, the institutions have a long tradition of being open, especially since the passing of the Freedom of Information (Scotland) Act 2002. The discussions of the trustees are recorded and are in the public domain. The corporate planning process and the financial processes of all the institutions are completely open and transparent. The whole operation of the institutions is fully transparent, in line with existing practices and with our being regulated by OSCR, and that will continue.

The Convener: Do you believe that, if the general principles of the bill are agreed to without any recognition of the points that you have made about your position, real difficulties could be created for the future of the national collections?

Dr Rintoul: Absolutely. The only thing that marks us out as different from other NDPBs is the fact that we raise significant sums of money from a range of benefactors in Scotland, the United Kingdom and abroad, especially the United States. Our view is that the majority, if not all, of that would be at considerable risk. That would be to the detriment of the public because public services would suffer.

There is another point worth making that, although not a financial one, is important. Our institutions operate museums, galleries, libraries and archives for the public benefit and the public get involved in our activities. For example, there are 300 volunteers in the National Museums of Scotland. There is a bond between the public and our institutions and there would be a question of public trust and public involvement in our institutions if we did not remain charities.

Michael Clarke (National Galleries of Scotland): I amplify that, convener, with a concrete example. The recently completed Playfair project cost about £30 million, of which we raised £13 million from outside sources. Trusts, foundations and sources abroad gave that money on the basis that it was going to a charitable institution. In the modern world, institutions such as ours are increasingly plurally funded for the public benefit. If that facility were to be compromised or reduced in any way, everyone would be a loser.

The Convener: Would you go as far as to suggest that, unless the general principles of the bill as they relate to your institutions are altered, they will be flawed?

Dr Rintoul: We are not legislative experts, but from reading the bill it appears to us that a relatively simple amendment could be lodged that would not affect the main thrust of the bill but would retain the five national collections institutions as charities regulated by OSCR in the normal way.

Mr John Home Robertson (East Lothian) (Lab): Other colleagues may want to explore that issue further. Is there anything to be made of the possible distinction between the right of ministers to appoint board members to the institutions and any residual authority for the minister to direct board members? Those are clearly two different things, but the issue is crucial. Would you like to say anything more about that? Can you cite any examples of cases, within the national collections institutions, of ministers directing boards to do things that have gone against their duties as the trustees of a charity?

Dr Rintoul: Absolutely not. That is something on which we have compared notes and none of us has ever come across anything remotely of that nature.

Scott Barrie: The written submissions that we have received from you have been useful in enabling us to crystallise the main issues. The submission from the National Museums of Scotland states:

"Many objects in the NMS collections are priceless and are uninsurable under commercial cover."

It then talks about eligibility for Government indemnity, which brings collections to Scotland and allows collections to be loaned abroad. To your knowledge, is your eligibility for Government indemnity solely a function of your NDPB status? If that status were removed, would the collections be uninsurable?

Michael Clarke: As far as the status of the national collections is concerned, the answer to your question is yes. Our specific indemnity arrangement with the Government is dependent solely on that being the case. Other institutions, which can have indemnity for loans in, are not eligible for indemnification of their permanent collections. The Government takes the view that it does not commercially insure its collections; therefore, a form of indemnity is granted to national institutions collections. That is essential for our smooth and sensible running.

Dr Rintoul: If any of us were to insure commercially loans in from abroad, the costs would be astronomical. The insurance value of a loaned-in exhibition at the National Museums of Scotland or the National Galleries of Scotland could run to the high tens of millions of pounds. Without such indemnity, it is likely that such international collections—whether they be from China, from Russia or from the United States, to name some recent examples—would not come to this country. The system here is the same as that in the rest of the UK and we would certainly be at a disadvantage in Scotland if the people of Scotland were unable to see those treasures from abroad.

Mary Scanlon (Highlands and Islands) (Con): That leads on very well to my question. In your opening statement, you mentioned the severe impact of the loss of charitable status, including in relation to collections from abroad. For the record, could you clarify any further costs—to your institution and to Scotland as a nation—of losing out in that way?

Dr Rintoul: We are working out the full ramifications of the costs, but the exercise is not straightforward. You want to know the order of magnitude of the costs. If we look at the situation over the next decade, we cannot see that the loss could be less than £10 million to £15 million per annum. That is partly driven by capital developments and by the large sums that we all raise. Michael Clarke mentioned that £13 million was raised from individuals and foundations for the Playfair project. The National Library of Scotland and other institutions are all engaged in major fundraising campaigns.

There are also other losses, which would either be to the detriment of service or would lead to increased costs. For example, we have 300 volunteers. If any member of the public from Scotland, the UK or abroad goes into the Museum of Scotland on any day of the week, they can arrange to have a personal guided tour with one of our volunteer guides, who give up their time freely. One of the things that drives them is the fact that they are doing that for a charity. Our view is that we would lose quite a bit of volunteer input and that we would therefore have to cease the service, reduce the service or pay some people to do it instead. There is a whole series of monetary and service ramifications.

Mary Scanlon: I think that you would agree that not all costs are financial.

Dr Rintoul: Yes.

Mary Scanlon: In the National Museums of Scotland submission, you mention the competitive disadvantage and you say that loss of charitable status will

"undermine our ability to perform our core duties as custodians—and champions—of our cultural heritage, but will also impact on the attractiveness of Scotland as a tourist destination and as a major business centre in Europe."

I would like to hear on the record a comment that measures your concerns, even beyond the significant financial concerns.

Dr Rintoul: Our view is that the bill as it stands would inevitably mean that we would have to reduce our service to the public. We would not be able to mount the major exhibitions that we currently mount, which are certainly a factor in helping to make Scotland an attractive tourism destination, as VisitScotland and others recognise.

The work that we do is a key part of the tourism economy. Tourists from abroad come to our institutions to see some of our treasures. We have some of those treasures only because donors have given them to us or lent them to us because they believe that they are doing that for the public benefit. Our being charities is a key part of that picture.

Mary Scanlon: You have spoken quite a bit about losing charitable status. If you lost NDPB status and became a charity regulated principally by OSCR, what would be the implications for public accountability?

Martyn Wade: The issue for us is the complexity and cost of changing the status of the organisation from being an NDPB to being an entirely new organisation. The issues would relate to the transfer of staff, their pension rights and the sheer cost and complexity of setting up a new organisational structure.

Going back to the more important element of the issue, we are custodians of national collections on behalf of the nation, which are currently owned, in effect, by the NDPB. The status of those collections, the responsibilities attached to them and the ability of the organisation to manage, care for and grow those collections could also be at risk if a completely independent body were looking after collections that are owned on behalf of the nation. For example, the National Library has well over 8 million items. Every year our collections grow by 300,000 items. We also provide significant public access services. The status of the collections and our ability to manage, control and grow them would be put at risk if we had to set up a completely new organisation.

10:30

Mary Scanlon: The financial memorandum states that

"The value of tax relief, non-domestic rates relief and donations flowing from the charitable status of"

the 13 NDPBs

"is estimated to be approximately £10 million per annum, including some £3 to 4 million of local rates relief."

I appreciate that the national collections represent only five of the 13 NDPBs, but do you think that the financial memorandum provides an accurate estimate of the cost of the loss of charitable status to NDPBs?

Dr Rintoul: Absolutely not. We think that the figures in the financial memorandum do not reflect the real picture. We cannot say where the figures came from, but they certainly did not come from the institutions that we represent. The estimate that we are developing is in the range of £10 million to £15 million per annum, just for our institutions. We do not believe that the financial memorandum presents an accurate picture of the financial impact of the loss of charitable status.

Mary Scanlon: It would be helpful if the witnesses could give us what they believe to be an accurate estimate.

The Convener: Perhaps you can supply us with that information, once you are in a position to do so. Committee members would find that helpful in their deliberations on the bill.

Mr Home Robertson: Am I right in thinking that any loss of access to Government indemnity insurance would make it much more difficult for you to exhibit items from the national collections outwith the institutions? I know that the National Galleries of Scotland has outstations in different parts of Scotland and that from time to time exhibitions are laid on in schools and other places around the country. Surely the loss of indemnity would make that much more expensive and difficult.

Michael Clarke: It would reduce enormously our operating flexibility and our ability to serve all the different parts of Scotland. Internationally, it would make the temporary grant of export licences much more complicated, so Scotland's treasures could not be seen so easily around the world.

Cathie Craigie: Thank you for your written submissions, which made interesting reading. They highlighted the issues about which you have serious concerns and the adverse effect that you believe the bill will have on Scotland's national collections and the bodies that organise them. The same concerns were raised in England and Wales. In your submissions and in the evidence that you have given orally this morning, you point out that a workable solution has been identified in England and Wales. Have you had discussions with the Scottish Executive about finding a similar solution in Scotland?

Dr Rintoul: Individually and collectively, we have all had discussions with the Scottish Executive and impressed on it the consequences of the bill as it stands. We have communicated to the Executive our view that in the Scottish context it would be much more appropriate for us to be regulated by OSCR than by a Government department, as is the case for the equivalent national institutions in England. We actively believe that it is right and proper in the Scottish context for us to be regulated by OSCR.

Cathie Craigie: How has the Executive responded to the suggestions that the national collections institutions have made?

Dr Rintoul: It appreciates that the bill will have a significant impact. I believe that it is considering the matter.

Cathie Craigie: In your submission and this morning you have spoken about the impact of the bill on the national collections institutions and the fact that they will be at a disadvantage as compared with their counterparts in England and Wales. Can you expand and share more of your thoughts on that point?

Michael Clarke: We have looked into the issue of charitable giving. All people in the charity market are out there looking for funding and, if donors and institutions in countries such as the United States were looking to Britain, they would naturally be more likely to favour our equivalents south of the border if the bill were to go through as currently phrased.

Dr Rintoul: It is fair to say that Scotland has a long philanthropic tradition of people giving for the benefit of future generations. However, in comparison with London-based institutions, we are at a relatively early stage in raising significant sums from a wide range of sources in this country and internationally. We raise a significant amount, but a lot more could be done—as was shown by the Playfair project, or the Museum of Scotland campaign, which raised significant sums. However, some funds that currently come to Scotland and benefit people here will go to London.

Martyn Wade: I can give a specific example. The National Library of Scotland is starting to move in that fundraising direction very quickly for the first time and we have been taking advice from experts in the field. Those experts have gone so far as to tell us that

"loss of charitable status would so dramatically limit your ability to fundraise that we could not recommend you proceeding with your proposed campaign"

in respect of the John Murray archive. The target for that campaign was to raise £6.5 million towards the purchase of an internationally important archive for the library. Leverage is important, because the inability to raise £6.5 million would prevent the bringing to Scotland of an archive that is valued at £45 million. There is an impact on fundraising and an impact on the leverage that fundraising produces, which affects the scales of the projects that we can deliver.

Cathie Craigie: The submission from the National Museums of Scotland talks about philanthropic support for major cultural projects. It was interesting to note that £7 million of the £10 million raised for one project came from 61 different contributors, which is a lot. Do you feel that people who might want to contribute to a public organisation that holds archives and treasures in trust might be attracted not to where the organisation operates from, but to south of the border?

Dr Rintoul: There will be a range of impacts. For example, many charitable foundations can give money only to charities, so they would not have a choice. Other people, such as residents of the United States who may have Scottish ancestry or heritage, will generally give money to a not-for-profit organisation in the United States, under the federal tax code. That organisation can give money to an organisation in this country only if it is a charity. Again, there would not be a choice.

The National Museums of Scotland received several million pounds-worth of donations from the United States, but that would not be able to happen in future. The National Galleries of Scotland received substantial funds from donors from the United States for the Playfair project but, again, that would not be able to happen in future. The US system is built on tax benefits and flows through not-for-profit organisations. The system is integrated with the system in this country.

Michael Clarke: Not only will donations from the United States be affected, but donations from south of the border will be, too. For example, the education facilities in the Playfair project—which ran to millions of pounds and aim to offer the widest possible access to the collections—were funded by bodies south of the border that can give only to charitable institutions. That sort of giving, which is of enormous benefit to everyone, would be under threat.

Christine Grahame: The case that you are acting as charities is proven beyond reasonable doubt, as is the case that you have made about losses. You want to be regulated by OSCR but you have rightly identified a hurdle—section 7(3)(b) of the bill, which mentions "a third party". I agree with John Home Robertson that there is a distinction between direction and the appointments system. That is where you have some problems. I ask you about this matter because I would like to be of assistance.

There is a distinction between the National Museums of Scotland and the National Galleries of Scotland—where I believe that all your trustees are appointed one way or another by the Executive—and the National Library, where there is a more diverse appointments system, which might get through the net if the current arrangements were to continue. I do not want to divide and rule; I am just making a point.

Is there a solution that would mean that you did not have to seek some specialist status? I am thinking of the judicial appointments system where a committee has been set up and that has built something of a Chinese wall between the Executive and the judiciary. Perception is almost as important as fact and I make no comment about the integrity of the existing trustees; it is just that there are difficulties with the manner of appointment.

I have not gone into this in detail, but you might look at the constitution of the National Trust for Scotland, which also allows that organisation to get over the problem. Have you taken legal advice to investigate means by which to overcome the charity test?

Michael Clarke: I am not expert on the National Trust for Scotland arrangements, but an important point about trustee liabilities is that trustees appointed through Government have their liabilities underwritten by Government.

Christine Grahame: That makes it even more important that all trustees are seen to be the same and that some are not more equal than others because of the particular ramifications of presumptions of mismanagement elsewhere. Will you answer my question about whether you have investigated other processes? The problem is surely not insurmountable.

Dr Rintoul: We have taken advice from other sources. It is not clear to us that there is a straightforward way to get over that hurdle in the way that you suggest. It strikes us that in the real world, when one looks at the impact that the changes could have and at the public benefit, the simplest course of action is often the best. The fact that we operate very much at arm's length from Government makes us different from other NDPBs. Government control is not really an issue in practice.

Christine Grahame: With respect, the appointments system is the problem here. I make no comments about individual trustees, I just think that you require to tease out the process through which the judiciary has had to go. I hope that you will forgive me for saying that you should take senior legal advice on the matter. There must be a device whereby you are not left at risk under the test.

Dr Rintoul: I take your point, although it is not just a question of the appointment of trustees; it is also a question of ministerial direction.

The Convener: Am I right to think that ministerial direction might be required from time to time? If the bill were passed unamended with regard to the national collections and they became independent to allow them to retain charitable status, would there be anything to stop those who managed the collections from selling part of them off? The organisations would be completely independent and able to do what they wanted, despite the fact that some parts of the collections were given so that they could be safeguarded for future generations of Scotland. There might be nothing to stop items being sold off to finance something else because the money could not be found any other way.

Dr Rintoul: That is certainly conceivable. That we hold the collections in trust for the people of Scotland is underlined by the fact that our institutions cannot dispose of things except under some very limited criteria. That is buried in an act of Parliament. My trustees cannot just decide to sell something to raise some money. You are right to say that there could well be a problem if those collections were no longer held in trust for the public in quite the same way.

Michael Clarke: One of the charities that benefits us all greatly is the National Art Collections Fund. One of its specific conditions is that it will allow works to go to institutions only on the condition that they are never sold off. There would be questions about works that have already come to the collections through the National Arts Collections Fund. That would open up a hornets' nest.

10:45

Patrick Harvie (Glasgow) (Green): I have a question about the practical implications of making the changes that you are suggesting. You have made it clear in your written and oral evidence that you are comfortable with regulation by OSCR—you seem almost enthusiastic about it, in fact. Dr Rintoul described the required change to the bill as being quite small. The written evidence of the National Library of Scotland said:

> "There would be a need for clear directions on the powers and responsibilities of OSCR in respect of charitable NDPBs."

I wonder whether there is a difference between what various people expect from the changes and whether it would be a simple change that would be required or whether an entirely different regulatory regime would be required if you were to retain your status of being a charitable non-departmental public body.

Martyn Wade: We recognise that a number of different solutions could be delivered by amending the bill. Two or three routes have been pointed out. At this stage, we want the committee to support us by recommending that an amendment be made to enable the national collections institutions to retain their charitable status as NDPBs. We recognise that there are various routes by which that can be done and that that is best explored in the form of the discussions that we have had with the Executive and others. We view the outcome as being the most important element—we do not have a preferred route.

Dr Rintoul: We do not think that there is a difference between us, other than in the language that we have used. The legal advice that we have taken is that there need not be any additional regulatory framework in any meaningful sense.

Clearly, one would need to state quite clearly how we would relate to OSCR and so on, but we see no need for any different regulatory framework.

Patrick Harvie: Are you saying that you would expect the powers and responsibilities of OSCR to be broadly the same as they are at the moment?

Dr Rintoul: Yes.

Donald Gorrie: If the committee wants to pursue the point that you have made strongly that what is proposed in the bill would be detrimental to you, there would seem to be three options. One is that, as you have proposed, your organisations would be designated special charities and the status quo would continue, except for the fact that OSCR would have some say with regard to your business. The second option would be to do what John Home Robertson and others have talked about and adjust to some degree the rules governing your appointed board. The third option, which is mentioned in all the papers that you have given us, would be to set up a charitable trust through which donations and all the other charitable stuff would be channelled. On the whole, you argue against that last option. Could you elaborate on why it would be a bad idea if we were minded to pursue that option?

Dr Rintoul: The suggestion is that we would remain a non-departmental public body, but would have a separate charitable arm. We do not believe that that would be to the public benefit; we think that it would not be advisable at all. The charitable trust would have to be wholly independent of the organisation, which would be unable to have any control over it, otherwise the charitable trust would fall foul of the third-party rule in section 7(3)(b). Basically, the charitable trust would raise money for the institution and would also decide what the money could be used for. Essentially, a body that was entirely separate from the organisation would be determining the activities and capital programmes of a public institution that owns assets on behalf of the public.

Elsewhere in the United Kingdom, there have been significant conflicts when other organisations have set up such a framework. South of the border, for example, some charitable trust museums organised themselves in such a way that the museum was run by one charity and a separate charity raised funds. However, they found that, over the years, the two charities were at loggerheads because the fundraising charity did not agree with the direction in which the museum charity was going. One can quite easily imagine that sort of thing happening.

Further, there is a question of the people who donate. Often, donors want to know the use to which their money will be put. If Michael Clarke and Sir Tim Clifford were to talk to a donor about a possible donation, that donor would want to be assured by the director of the National Galleries that their money would be used for a certain purpose. Clearly, if there were a separate charitable trust involved, the director of the National Galleries could not give that assurance because it would not be his decision but that of the trust.

Donald Gorrie: You have said in your submission that, in practice, it is a long time since ministers have interfered. Would it be possible, in your view, to have the bill state that they absolutely could not interfere in improper ways?

Dr Rintoul: That is a difficult question for us to answer. It is not something that we have considered. Perhaps it is something for ministers to consider.

Donald Gorrie: It might help in relation to the independence bugbear.

Dr Rintoul: It is not something that we have considered.

Donald Gorrie: Would you reiterate that, in practice, none of your institutions has had any ministerial interference in recorded memory?

Dr Rintoul: Absolutely.

The Convener: I thank our panel members for joining us. You have provided us with interesting information that we will reflect on in our further deliberations.

10:52

Meeting suspended.

11:01

On resuming—

The Convener: I welcome our third panel of witnesses, who are David Caldwell, the director of Universities Scotland, and Tom Kelly, the chief executive of the Association of Scottish Colleges. I thank them for appearing before the committee and for their written submissions. I will start by asking the question on consultation that I have asked the previous panels. Did the Scottish Executive consult fully on its proposals and give sufficient consideration to the responses that it received?

David Caldwell (Universities Scotland): I can give a positive answer to that because the consultation was a good example of such a process. That is generally true of the Executive's consultation on draft bills. We have experienced two consultations relatively recently. In both cases, we had significant concerns about the draft bill, but when we articulated those concerns, they were taken on board before the bill was introduced.

Clearly, a consultation will not resolve all the issues, as was evident in your discussion with the previous panel, but the universities and higher education institutions are impressed with how the consultation was conducted.

Tom Kelly (Association of Scottish Colleges): I endorse those general points about consultation. There is a difficulty with bills that come before the Scottish Parliament in which sectors such as ours have a minority interest. We are well aware that we are not the primary target of the proposed legislation—the bill is not constructed with further education colleges primarily in mind—which means that we had to react quickly to a complex bill that does not relate to our main business or that of the colleges. There was one slip-up in the original consultation, in that a number of colleges were not included in it, but that simply drew attention to the extent to which the previous charity regulation regime was not comprehensive. We certainly support the general principle that we should have a comprehensive and effective charity regulator in Scotland.

Scott Barrie: Do you have any opinion on the view that OSCR's statutory duties should include providing advice on good governance to the sector, as well as on adherence to the law?

Tom Kelly: We certainly accept that greater clarity is needed on what trusteeship in terms of charitable purpose represents. Good, clear guidance on what is expected in that respect would be helpful. We do not envisage that OSCR would provide training for boards of management, because trusteeship is only one aspect of the good governance that boards of management are expected to undertake, but it is a feature that we would hope to develop in co-operation with OSCR. We hope that it will have the capacity to contribute to that work, but not necessarily to lead it.

David Caldwell: I have little to add to what Tom Kelly said. It will be helpful if OSCR provides guidance on how it will interpret its responsibility, but the advice and guidance role should be limited to that sort of activity.

Scott Barrie: I will ask about charitable purpose. It would help me and other committee members if you could tell us what benefits charitable status brings to the further education sector.

Tom Kelly: There are three. One relates to the tax regime to which the organisation is subject: colleges do not pay corporation tax. That is a substantial benefit, because it is an acceptance that any surplus that is generated on the college's operations will be recycled for the purposes of the college.

There is also the local taxation benefit of rate relief. If we did not have a form of rate relief that was provided through charitable status, there would need to be an alternative to that. I have no doubt of that.

It must be acknowledged that alumni and other donations to colleges are not large in comparison to those to, for example, community colleges in the United States of America. Colleges do not have large endowments and reserves that are gifted to them by the their former students or local businessmen, for example, but they have the facility to raise funds in that way, which is particularly important for specific projects Therefore the Association of Scottish Colleges would not want to lose the opportunity and tax advantages of the sorts of income that go with charitable status.

David Caldwell: The main difference for the higher education sector relates to the last of the factors that Tom Kelly mentioned, because charitable giving to universities is, in some cases, very significant. Moreover, the Government in the UK as a whole and in Scotland in particular is at present strongly encouraging universities to engage even more actively in fund raising and to raise more of their income in that manner.

That is terribly important for competitiveness internationally, as well as in the UK. If one looks across the Atlantic at practice in the United States, one finds that universities there typically enjoy public funding at least as generous as the funding that is provided in the United Kingdom—in fact, it is at a slightly higher rate. On top of that, however, they have the benefit of huge charitable giving, so that the overall level of funding for the great majority of United States universities is very much higher than that for universities in the UK, and in Scotland in particular. That sets us a big challenge, because it is extremely important that we remain internationally competitive. On the whole, we do pretty well, despite the gap in funding, but universities have an extremely strong interest in improving their fund raising from charitable sources. That is very important.

Scott Barrie: What would be the effect on that source of funding if your institutions did not retain charitable status?

David Caldwell: It would be very serious indeed, but I do not believe that there is any serious danger of universities failing the charity test. Universities are in a different position from the national collections: universities are autonomous bodies, not NDPBs, and Government ministers have no role in making appointments to the governing bodies of universities, nor do they have direct powers to instruct universities or the trustees who serve on their governing bodies. In a number of respects, universities would have no difficulty satisfying the charity test or the charitable purposes that are listed in the bill. The issue does not cause us any immediate concern.

Tom Kelly: The situation is slightly different for colleges, in the sense that ministers have powers to make, close and merge colleges that are consequential to their general duty to provide further education. Most of that duty is now delegated to the Scottish Further Education Funding Council, which the Further and Higher Education (Scotland) Bill will merge with the Scottish Higher Education Funding Council later this year. So there are powers that mean that colleges can be imposed on. Ministers can remove the board of management from a college. We do not see that as necessarily being at odds with a college having charitable status, because the legal entity would still be the board of management of the college, albeit that it would comprise different people if the previous board were removed. In the light of the earlier discussion, perhaps we need to consider the issue more carefully than we have done so far.

Cathie Craigie: My question is directed mainly to Mr Kelly, as it is on the ASC submission. You said that further and higher education institutions in England and Wales were designated as exempt charities under schedule 2 to the Charities Act 1993. You also said that you are having discussions with the Executive on the issues relating to this part of the bill that are concerning you. How are the discussions going, and what are the details of the issues involved?

Tom Kelly: The key issue for us is that we want to ensure that there is light-touch regulation in two senses. We want to ensure that we are not re-regulated on something that is already regulated by statute with full public accountability. We were particularly concerned about the accounting provisions, which are stringent for colleges. We did not see why OSCR should spend a lot of time trying to understand college mechanisms when colleges already have accounts that are audited independently by auditors appointed by the Auditor General for Scotland and submitted to the Scottish Parliament. We did not see the need for such duplicate functions. Those accounts ought to provide sufficient evidence and assurance for OSCR. It can tick the box and move on to do other things that only it has the capacity and expertise to do.

Part of our concern is that accounting, as anyone who gets deeply involved in it knows, is highly technical and serves many purposes. We are anxious to ensure that we can satisfy those who are concerned about charitable purpose that we are delivering that purpose. We do not in any way resist the notion that we need to account for our charitable purpose—we are clear about that—but we need a simple, straightforward method of incorporating that in the statutory accounts that we are already producing.

The other point was on the control issue, which we were reasonably satisfied about, but which we need to take another look at.

David Caldwell: I would like to add to that, because the issue affects the universities as well. The universities are entirely happy to come under the ambit of OSCR. That is not an issue as far as we are concerned. It is significant that that is different from how things appear to be working out in England. It appears that the universities there will be recognised as a group of charities that will be regulated not by the charities regulator but by the Higher Education Funding Council for England. We do not particularly want to go down that route in Scotland. We do not think that the English always get things right. Indeed, in relation to their incarnation as charities, it is more appropriate for universities to come under OSCR rather than to be answerable to the Scottish funding council.

The Scottish funding council has a serious responsibility to ensure that we apply appropriately the public funds that it distributes. That is the funding council's role, and it ought not to extend beyond that role into dealing with money that is derived from other sources, such as voluntary and charitable giving. That is the first point; we are content that OSCR should have responsibility for universities.

That said, I agree with Tom Kelly on the general principle that the burden of regulation should be no greater than necessary. There is an important underlying principle that, in the same way as every other body, OSCR will have limited resources to carry out its responsibilities. It is therefore very important that in deciding how to concentrate its effort, it should engage in risk assessment and take account of relevant factors in deciding how deeply it has to get into the regulatory business.

One of those factors is the scale of activity, but it is only one factor and it is not necessarily the most important; there are others. Do the charities in question have well-established governance and management structures in which people can have confidence? What other lines of accountability exist? What is the track record of the institutions concerned? Have they existed for a long time and if so, have they given few problems during that period?

A key issue arising from that is that higher education institutions and further education colleges represent a low level of risk in comparison with many other organisations. The charities regulator should take that into account. However, the principle that the charities regulator should have responsibility is absolutely reasonable and we support it.

11:15

Cathie Craigie: Thank you. I would like to follow that up, but my colleague Mary Scanlon will be asking about the area into which you led us.

Christine Grahame: You seem to have dealt with everything. We all agree that there should be a light touch in regulation and that the accounting systems should be married or paired with the systems that OSCR wants. That will come out in the guidance.

Do you agree with the principle of proportionality that the regulations should be less stringent in certain areas for the wee charity shop than they are for the big university?

David Caldwell: I go back to my previous answer and say that the scale of the operation is a factor, but it is only one factor. The charities regulator should be responsible for making sure that the money that charities gather from a variety of sources—most importantly, from members of the public—is applied appropriately. Scale has to be one of the factors because a charity that gathers a lot of money represents a bigger risk than one that collects small amounts. However, scale is only one factor and the solidity of the governance and management structures that are in place also have to be considered. You might find that some of the large charities—and I acknowledge that universities represent pretty large charities—are a lower risk than some of the smaller ones.

Christine Grahame: But do you concede that, although you are less of a risk, you are subject—quite rightly—to many other procedures and to regulation by other sources because of your funding and other obligations to society? The two-man or two-woman charitable operation might be subject to different tests by OSCR because there is much less to deal with. I am not saying that the principle should not be the same for it or that it should not be carrying out its work in good faith, for public benefit and so on, but proportionality is a relevant issue.

David Caldwell: I return to my previous answer. The criterion must be a global risk assessment that takes account of size and all other relevant factors.

Tom Kelly: We do not accept that a college with a higher turnover is inherently more of a risk than one with a smaller turnover. However, as far as the law of proportionality is concerned, I accept that a distinction can be made between very large and very small organisations and that what can be asked of a very small organisation is different. We should remember that the larger the organisation, the easier it is to separate powers, which is a key matter when it comes to safeguarding funds. A small organisation finds it more difficult to separate such powers and functions.

When we prepared our submission, we had not yet met bill team officials. I think that they understand our position. We do not wish to avoid the requirements to satisfy the charitable test or to meet the safeguards that will apply to charities in general. We are simply seeking the best mechanism for doing that and will continue discussions to that end.

Christine Grahame: In a pre-evidence session, OSCR made it clear that it would try not to cause onerous duplication but to use the mechanisms that institutions had already put in place.

Mary Scanlon: On that point, both of your submissions contain substantial evidence to back up concerns about dual or multiple regulation. The ASC submission says that there are

"existing robust accountability checks and audit processes".

I believe that you have answered most of the committee's concerns. Universities Scotland's submission says that it

"has had informal discussions with OSCR and OSCR has indicated that it is sympathetic to any proposal which will ensure adequate regulation and monitoring without increasing administrative burden."

I also note that you are asking for

"a clear Ministerial statement indicating that the OSCR should avoid placing … unnecessary"

burdens on organisations. Are you quite satisfied with the discussions that you have had with OSCR or should we do more in that respect?

Tom Kelly: I have to say that we are never fully satisfied. After all, every additional regulator represents an additional burden and cost that we would prefer to avoid.

More work needs to be done on the matter, but we are pursuing the general principle. Someone referred earlier to plural funding. Colleges are not unique in this respect, but we take money from quite a range of sources, all of which bring with them burdens of accountability and sometimes even specific accounting requirements. It is the gradual accretion of those burdens that makes the business of accounting for what we do so onerous and complex. That is why we are seeking a general statement on the general principle; I believe that what we have set out is simply a specific application of that principle.

Mary Scanlon: Are you satisfied that the duty that is being imposed on OSCR

"to seek to secure co-operation between it and other relevant regulators"

will ensure that unnecessary duplication is unlikely to occur?

Tom Kelly: We were uneasy because the provision was not sufficiently explicit about the

relevant regulatory and statutory framework that applies to us, in particular the Public Finance and Accountability (Scotland) Act 2000 and Audit Scotland; and the Further and Higher Education (Scotland) Act 1992 and its derivatives and the Scottish Further Education Funding Council. I think that we are moving towards meeting that concern.

Mary Scanlon: But you still feel that there is a need for a ministerial statement.

Tom Kelly: We would like that, but we are pressing the Executive on the general point, not just on this specific case.

David Caldwell: We are relatively happy about the way in which things are going and believe that OSCR will interpret its duties in a reasonable and commonsense way. There will always be on-going discussions and it is important that they take place.

The regulations that are written in association with the bill once it has become law will be important. There is every indication that they will be written in a sensible way that avoids unnecessary duplication and an excessive burden. It will be important for us to engage with those who draft the regulations to ensure that they properly understand the circumstances of our sectors and ensure that the regulations are drafted appropriately.

Donald Gorrie: I want to explore that point further and a point that Tom Kelly made earlier. As I understand it, there are two issues to do with the accounting. The first is that you have to be audited to ensure that the people in a college or university do not take a lot of the money and head for the Bahamas. Secondly, there is the issue of whether you are fulfilling the charitable requirements that are set out in the bill.

I understood Tom Kelly to say that your existing auditing could cover the first point and that, in discussion with OSCR, you could slip a few questions in to satisfy OSCR. Would the best way forward be for universities and colleges to negotiate with OSCR individually to find out what is needed, and then for that to be incorporated into your existing audit, so that you only have one big audit?

Tom Kelly: Yes. The accounts direction and the audit regime for colleges embrace anything that is required for OSCR purposes. For example, if a stronger statement were required about trusteeship in relation to charitable purpose, that could easily be included in the annual statement of accounts, as long as people know in advance that it will be required. We do not want to have to produce a supplementary or duplicate set of accounts for OSCR in addition to those that are already produced for statutory purposes.

David Caldwell: It is an important part of the audit process that the auditors certify among other things that the institution complies with all the obligations that are placed on it as a charity.

Donald Gorrie: Is that the existing situation?

David Caldwell: That happens now as part of the audit process.

The Convener: As no member has indicated a desire to ask further questions, that concludes our questions to you. Thank you once again for attending and for your written submissions.

I ask members to remain in their seats. The meeting will be suspended for a couple of minutes to allow the changeover of witnesses.

11:27

Meeting suspended.

11:29

On resuming—

The Convener: I welcome our fourth and final panel. We have Mike Gilbert, who is the chairman of the charities working party of the Institute of Chartered Accountants of Scotland, and Fraser Falconer, who is the chair of the committee on charity law reform of the Scottish Grant Making Trust Group. Before the committee proceeds to questions, Donald Gorrie has something that he would like to say.

Donald Gorrie: I put it on the record that I am a colleague of Fraser Falconer as a trustee of the small Nancy Ovens Trust.

The Convener: Thank you for your written submissions to the committee. I will start by asking the same question that I have asked all previous panel members this morning, on the Executive's consultation process. In consulting on its legislative proposals, did the Executive fully consult all interested parties, and has it reflected the submissions that it received in the bill?

Mike Gilbert (Institute of Chartered Accountants of Scotland): The system has worked very well indeed. I would give it a very good mark. Recognition has been given to the points that we submitted in the consultation. In addition, we appreciate the opportunity to participate in the continuing consultation on Scottish charitable incorporated organisations. We are very pleased.

The Convener: I call Scott Barrie—

Fraser Falconer (Scottish Grant Making Trust Group): I agree with Mike Gilbert.

The Convener: You did not look too keen to say anything, which is why I moved on.

Scott Barrie: I hope that you will give this committee a very good mark for its stage 1 scrutiny. I have a question that I have asked a couple of times already this morning, on schedule 1, which seeks to establish OSCR as a corporate body. Should OSCR have a statutory duty to provide advice to the sector on good governance as well as on adherence to the law?

Mike Gilbert: No, it should not. We have to take into account proportionality, which has been mentioned. I suspect that a new organisation such as OSCR might not have sufficient resources to do everything at present. It should work towards that duty. The current duties are enough for OSCR to cut its teeth on. It should not be asked to run before it can walk. I am not suggesting that that duty should not be placed on OSCR in future, but initially we should leave it as it stands. We are not as big as England anyway, and we do not have the same requirements. I have checked OSCR's objectives against those in the English Charities Bill, and they are not that different.

Fraser Falconer: Many charitable trusts work part-time and on a shoestring. OSCR could be helpful as a central source of supportive information for the charitable and voluntary sectors. There is a strong view among grant-making trusts that OSCR should be as strong and as visible as possible in the voluntary sector and public life in Scotland.

Scott Barrie: Those responses are interesting. The question arises because, during our pre-legislative consultation, different organisations said different things about what they wanted from OSCR. The two answers have encapsulated the two arguments that are around, on which it will be necessary for the committee to deliberate. It is useful to get everyone's view on the issue.

On charitable purposes, the ICAS submission states:

> "a level playing field throughout the UK is necessary to prevent legislation influencing a charity's choice of location to the detriment of individuals and communities".

What are the key deviations in respect of the charity test between the Westminster bill and the Scottish bill that will cause the most difficulties for charities?

Mike Gilbert: Our concern is that a charity might be recognised in England but not in Scotland, even though the regimes might have the same objectives. When the legislation comes into force throughout the UK, we will have the undesirable possibility that an organisation that wants to set up in Scotland might decide to migrate to England because it would not be recognised here, which would be counterproductive. The organisation would be going to what it saw as a softer jurisdiction.

That leads on to the Inland Revenue. We hope that the Inland Revenue will recognise OSCR's decisions on charitable status and not take a separate view. In other words, we want to know whether anything can be done to ensure that, by liaison, agreement or arrangement between OSCR and the Inland Revenue, when OSCR makes a decision on charitable status, the Inland Revenue accepts it.

Scott Barrie: We probably all agree with that, but I want to return to the point in your submission about the different charity tests. There will be nothing to stop charities registering in both jurisdictions, which will be made clear when the system is in operation. You have highlighted the disadvantages of the system, but do you accept that there are also advantages if charities can claim that they are recognised under two regulatory regimes, even if there are differences?

Mike Gilbert: Given the size of the United Kingdom, there should be a level playing field in relation to what is, or is not, a charity. We should remember that each charity will at some stage have to prove its charitable objectives in both jurisdictions. However, it would be wrong if an organisation that wanted to set up in Scotland deliberately moved south because it was easier to set up there.

Mary Scanlon: Is the relationship between OSCR and the Inland Revenue sufficiently clear? In its submission, ICAS recommends that the Inland Revenue should defer to decisions by OSCR. Will you clarify that? Is it a working practicality that a charity could be recognised by the Inland Revenue but not by OSCR?

Mike Gilbert: I would have thought that that is a possibility, but it would be highly undesirable. We should have the situation that exists in England, where the Charity Commission decides whether an organisation is a charity and the Inland Revenue accepts that decision. I would like to ensure that the same happens here. It is unlikely that the Inland Revenue would recognise as a charity an organisation that OSCR did not recognise, but as OSCR will be the primary decision maker on whether an organisation is a charity, the Inland Revenue should defer to OSCR's decision.

Mary Scanlon: So you suggest that the bill is not sufficiently clear on the relationship between OSCR and the Inland Revenue and that a memorandum of understanding is required to clarify that issue.

Mike Gilbert: That is correct.

Donald Gorrie: ICAS's written evidence has a couple of paragraphs that deal with inquiries into charities, which are covered in section 28. You express concern about the damage that might be

done to charities during the period in which an investigation is being carried out into whether the organisation is a proper charity or into alleged misconduct. How should that issue be dealt with? Could such inquiries be kept absolutely private until a decision is made, or is that not realistic?

Mike Gilbert: I would like to think that that is realistic, unless something major legislates against it. We are concerned about the benefit to the public interest. If an inquiry is launched into a charity that has been collecting funds that it appears to have been using to provide a service that is required, the charity might suddenly find itself in limbo. Even if the charity is subsequently cleared, it might find that all its good work has gone to waste.

I think that OSCR will be able to deal with situations that might arise in which the shutters need to come down because of a major fraud, but there is an issue to do with cases that are not quite as clear-cut. During the investigation and perhaps during the appeal, neither the charity nor the public should be disadvantaged until a final decision has been reached. For example, if the organisation has received charitable rates relief and tax recovery, those benefits should continue until OSCR reaches a decision that it is not a charity. If such an organisation's funds are perceived to be used properly, any services that it provides or grants that it receives should continue during the inquiry. Otherwise, the public could be disadvantaged.

Christine Grahame: The submission from ICAS states that the thresholds for independent examination of accounts that are proposed for England and Wales will be too high, at least initially, for Scotland. What are those thresholds? Can you provide a few examples to put some flesh on that for me? What would be an appropriate banding in Scotland?

Mike Gilbert: We have been told that there are around 20,000 operating charities in Scotland. According to Martin Currie's "Top 1000 Charities in Scotland"—the book is published by Caritas Data Limited and a charity's entry in it is voluntary, not mandatory—only 275 of Scotland's top 1,000 charities have an income of more than £1 million and the next 225 have an income of between £380,000 and £1 million. Therefore, only 500 of those 20,000 charities have large incomes.

Under the English bill, any charity that has an income of more than £500,000 will be audited. We feel that such a figure would be too high for Scotland. Unfortunately, we do not at present have enough information on the sector to work out what the appropriate level in Scotland should be. We must remember that OSCR will need to perform sufficient audits and independent examinations of charity accounts if we are to ensure public confidence. If we were to pick a figure of £500,000, so many charities would drop out that public confidence would not necessarily be ensured.

At the other end of the scale, we think that the level at which independent scrutiny begins, which is currently £25,000, should be increased. Again, we lack enough information on the sector to be able to reach a firm conclusion on what the level should be. I believe that we will find that out only once OSCR starts receiving returns and makes that information available.

Christine Grahame: Thank you; I was able to follow that. An accountant has made me understand something—that is one of life's miracles. A miracle has happened today.

The question that follows on from that is how OSCR will know what to do. At what point in time after it starts registering charities will OSCR be able to make a rule about the level of income at which independent examination will be required? What do you foresee for that? The nub or root of the issue is that charities could be brought into disrepute by unscrupulous management of funds.

Mike Gilbert: To be honest, I do not know. We need information from the sector to be able to select even a broad guideline. Whether that should be done in conjunction with OSCR or how it should be approached, we just do not know because we do not have the information. However, if fewer than 500 out of the 20,000 charities end up being audited, that would not serve the public. Personally, I might argue that we should halve the figure that is used in England and Wales. However, even a threshold of £250,000 might be too high. We just do not have enough information on the sector.

Christine Grahame: Who should deal with that issue? Should the minister's department not deal with it, given that it is fairly fundamental?

Mike Gilbert: We do not have the information. Perhaps the Executive does not have it either.

Christine Grahame: We can ask the minister.

Mr Home Robertson: He might not have it either.

Christine Grahame: We can still ask him, so that he can tell us whether he has it.

11:45

Cathie Craigie: Chapter 3 is on co-operation and information. Section 25 will remove restrictions on the disclosure of information to OSCR by charity trustees and independent examiners or auditors of charities' accounts. The Institute of Chartered Accountants of Scotland recommends in its written submission the

introduction of a right and a duty for auditors to report to OSCR. You make a number of detailed comments on that—they take up almost a page of your submission—and you are obviously worried that auditors who disclose information to OSCR will not have the proper protection of the law. For the benefit of the committee, will you summarise the main issues and talk us through them?

Mike Gilbert: I will try. The bill refers to a right to report, but we believe that there should also be a duty to report, so that if an auditor comes across something that should be reported they are bound to report it. That compares to whistleblowing in relation to pension schemes, for example, although we should avoid falling into the same trap. With pension schemes, there was a requirement to report absolutely everything and the authorities were inundated with matters that were not significant. Discretion must be left not just to auditors but to reporting accountants and independent reporters to report to OSCR only material items—in other words, things that they cannot sort out with the charity concerned. In that process, however, we are destroying client confidentiality, and we think that there must be some protection for reporters so that they cannot be pursued by the people on whom they report, be they the charity's staff or individual trustees. That is a summary of our position.

Cathie Craigie: Can you give us some practical examples? Perhaps some of your members have dealt with such cases in the past and have been concerned about them.

Mike Gilbert: I would have to do that on a personal basis, and unfortunately I cannot think of any examples at the moment. I use pension schemes as a parallel; if a pension scheme produced its accounts later than the specified date by a matter of a few days, we were required to report that. There can be all sorts of simple reasons for such lateness, which, to my mind, is not reported nowadays unless accounts are significantly late and no attention is being paid.

If a charity has not followed the rules but the mistake will be corrected, there is no point in reporting that. However, if a charity is taking deliberate action—for example by paying a trustee when it has no authority to do so—that should be reported.

Cathie Craigie: We had discussions with previous witnesses about mismanagement and misconduct. You are seeking protection for accountants or auditors in cases in which they think that there has been genuine misconduct in an organisation and in which a phone call to say that things are not okay has not satisfied them.

Mike Gilbert: That is correct. They should not be sued for breaking confidentiality, because it is their duty to report that something is wrong.

Donald Gorrie: The Scottish Grant Making Trust Group argues that, for the recipients of money, one of the merits of grant-making trusts is that they have a lighter touch of regulation than public bodies. Will you be able to satisfy OSCR that that light touch is adequate? Is it possible to have a regime in which you can continue to support innovative and perhaps slightly risky ventures that might fail, given that OSCR might say that they are not a proper use of charitable money?

Fraser Falconer: Grant-making trusts will ensure, under good audit and compliance procedures, that the money that they have donated to a playgroup or youth club has been spent for the purpose for which it was given and that there will be basic reporting back from a community organisation that has received a grant. I think that we can satisfy the existing regulations or any new regulations that are introduced with regard to ensuring that we are good stewards of money.

The second point is strong, and is at the heart of many grant-making foundations. We are talking about organisations such as the Carnegie Trust, the Robertson Trust and others that have built up a history of funding unfashionable causes. There is a risk in funding such causes. We think that the risk is often that the project will not work, rather than that money will not be spent properly. Many grant-making trusts are concerned that, for example, a grant could be given to a new Streetwork project that works with young homeless people, a worker could be funded and all the receipts and payment details might be available, but the project might not work for other reasons. It might not work as a result of the nature of dealing with vulnerable people. We think that we can separate audit and compliance in our heads, and spending money for the purpose for which it was given and the outcomes from doing so. We have wanted to encourage grant making and philanthropy in such high-risk areas, because society will not change unless somebody takes a flier or a calculated risk.

Donald Gorrie: So OSCR must accept a project's right to fail.

Fraser Falconer: Yes. It should look into projects and say that money was given for a purpose and was spent on that purpose, but that the outcome was not achieved for some other reason.

Christine Grahame: The Scottish Grant Making Trust Group's submission makes a salient point when it states:

"A 1% increase in UK Trust's (usually based in England) grant making into Scotland would represent £60m per annum to Scottish charitable and voluntary organisations."

A plea could be made for that now, but will the bill have any effect on existing contributions from south of the border?

Fraser Falconer: We are aware that, for every 10 miles further from Edinburgh that a person goes, the more mysteries and mystiques there will be about how we do our business in Scotland.

Christine Grahame: I say to John Home Robertson that that includes East Lothian.

Fraser Falconer: I am sure that members have come to recognise that over the past couple of years. People who manage UK trusts have a UK responsibility and can spend money throughout the UK. From our contact with those trusts, there is nervousness and a wait-and-see attitude, as parallel legislation is going through at Westminster. We are keen for people not to take their eye off the ball in Scotland, but we do not detect any reluctance to come and fund at the moment. Our submission tries to look at how OSCR and the Charity Commission for England and Wales could consider similar registration processes for grant-making trusts, so that if a grant-making trust is based in London and wants to fund in Scotland, things that do not prohibit them from doing so are considered. The phrase "prohibit them" might not be right, but the regulation regimes are quite similar. If somebody is running a grant-making trust in London and it is a legal requirement that it must register with OSCR if it is operating in Scotland, some documentation and paperwork should look similar.

Christine Grahame: As matter of interest, do UK trusts that are based in Scotland reciprocate?

Fraser Falconer: Yes. The Carnegie Trust is the most famous example.

Christine Grahame: Do you have figures for that?

Fraser Falconer: No, but I think that we are talking about a fraction. Only one or two major UK trusts are based in Scotland.

Mary Scanlon: You heard the evidence from the national collections institutions, which said that they would be unable to attract funding from grant-making trusts and foundations if they lost their charitable status. What prevents a grant-making trust or foundation from giving to organisations that are not run for profit but which do not have charitable status?

Fraser Falconer: It comes down to the trust deed of the individual trust. For instance, some grant-making organisations can give grants to organisations in Scotland that are not charitable trusts. In my day job, I run the BBC children in need appeal in Scotland. We fund playgroups, youth clubs and residents associations that are not companies limited by guarantee with charitable status, as recognised by the Inland Revenue. It is down to the individual trust deed. Other prominent members of the Scottish Grant Making Trust Group—the Robertson Trust and Lloyds TSB, for example—have it written into their trust deeds that they can give only to registered charities. It is a double whammy.

Mary Scanlon: But it is more financially beneficial for an organisation to be registered as a charity.

Fraser Falconer: Yes. If you were setting up an organisation and it was your wish eventually to trade, hold assets and employ staff, we would think that you, as a trustee, should go for charitable status because that would limit your liabilities. However, if you were setting up a playgroup in your area and your sole activity was to run the playgroup, collect payments and employ one member of staff for that single purpose, as things stand, we would say that you should go for unincorporated association as a normal self-help organisation. To be honest, Scotland thrives at community level through nurturing and encouraging those groups that often get left out of the funding from other bodies. The matter is complex, but most voluntary organisations aspire to do more and grow; therefore, they would eventually want to become registered charities.

Mary Scanlon: Is there any threat in the bill to those small groups to which you give that are not registered as charities?

Fraser Falconer: I do not think so. There is a sensitivity to the process that is going on whereby small self-help groups will become recognised.

Mary Scanlon: It will also depend on the thresholds, which you discussed with Christine Grahame.

Fraser Falconer: Yes.

Christine Grahame: I have a specific question on section 93, on the power of investment. I will give an example. I feel that I am a poacher turned gamekeeper, although I am sure that I will get it wrong. Let us imagine that a trust and a company are in close association. The trustees may be family members—they may not be, but let us say that they are—and the company is a family company. The trust invests in that company and its members are shareholders in the company. What impact would the bill have on that arrangement? Could the trust no longer have shares in the company, given the need for trustees to have regard to

"the suitability to the trust of the proposed investment"

and

"the need for diversification of investments"?

Under the current circumstances, does the trust have charitable status with the tax benefits that flow from that? I hear a snort from someone, so I think that I am getting it wrong.

Mr Home Robertson: You have lost me.

Christine Grahame: There are two issues. First, there is the question about the investment. Would the trust no longer be entitled to have shares in that company because of the closeness of association, which would not be diversification? Secondly, would the trust lose its current charitable status? Or am I asking the wrong questions? Could shares in that company no longer be taken out by the trust because of the circumstances that I have described?

12:00

Mike Gilbert: I would have thought that the trust could invest in a family company, but I would not have thought that the trust would have had charitable status in the first place.

Christine Grahame: That one is out of the way. That is fine.

Mike Gilbert: That is one of the matters about which we have concerns. In proposed new section 4A(4) of the Trusts (Scotland) Act 1921, the trustees are allowed, or permitted, to make an investment without reference.

Christine Grahame: Proposed new section 4A(4) states:

"If a trustee reasonably concludes that in all the circumstances it is unnecessary".

It is up to the trustee to take that view.

Mike Gilbert: Yes. It would be a very bold trustee who would do that, and that is where our concerns lie. What is laid down is fine up to a point. I hope that that subsection will cover a situation in which, for example, a trust has surplus funds for a short time. A trust may have collected £10,000 that it does not need to spend for six months, so it could put the money in a short-term deposit. The trustees would not need to take independent advice in such an investment.

Christine Grahame: But the situation would be different when, as in my example, there is a more structured investment.

Mike Gilbert: Yes. I believe that the trust should take advice. That is one of our concerns. I like to think that we would get guidance from OSCR on that aspect. As an institute, we have a concern about giving trustees free rein to do something that might end up being reportable. They may find that the rules do not let them do that, but I think that there needs to be guidance on the matter from OSCR for charitable trusts, so that the trustees do not fall foul by doing something that they should not do.

Christine Grahame: I appreciate that and I also follow that. I wish that you had taught me accountancy; I would not have failed it the first time.

Would the situation that I described be unusual or would many small trusts find themselves in such a situation?

Fraser Falconer: I think that it would be very unusual.

Mike Gilbert: Because of the connected persons, there would have to be full disclosure in the accounts in any event so there would be no way in which the situation would not be above board.

Christine Grahame: Absolutely.

Donald Gorrie: The Institute of Chartered Accountants of Scotland expressed concern in its submission about the genuine independence of OSCR because the minister will say how many members OSCR should have and will continue to appoint the board. As I understand it, you suggest that the minister should appoint the initial board but that, after that, OSCR should be independent and appoint its own members. Is that what you are saying? Why are you saying that?

Mike Gilbert: That is absolutely correct. We seek to ensure that OSCR is not only independent but is seen to be independent. It is inevitable that the minister will have to appoint the initial members of the board, but thereafter those who are appointed should elect their own chairman and additional members. That should be subject to approval, but nevertheless the objective was not for OSCR to be seen to be linked to the minister in any way but for it to be seen to be independent. That is the purpose behind our suggestion.

Donald Gorrie: Would it help if the Parliament, rather than a minister, appointed the members? Are we more independent than ministers? We can perceive that OSCR could become a small inward-looking clique that would appoint like-minded people.

Mike Gilbert: Yes. There would have to be an approval mechanism somewhere. To be fair, we had not thought about how the board would be appointed under those circumstances.

Donald Gorrie: You have made your point.

Mary Scanlon: I asked Fraser Falconer what would prevent a grant-making trust or foundation from giving to bodies that were non-profit-making organisations but which did not have charitable status. Would the same situation apply with regard to giving to other trusts?

Fraser Falconer: A grant-making trust can give money to another grant-making trust, provided that it has recognised charitable status. For example,

an organisation such as the Scottish Community Foundation raises a lot of its money from and is sometimes an agent for spending money on behalf of other grant-making trusts in the United Kingdom.

Mary Scanlon: Nothing in the bill would change the existing situation.

Fraser Falconer: That is right. I think that it is okay.

Mr Home Robertson: To return to evidence that we heard earlier, if any of the national collections were to fail to qualify that would be a problem for grant-making trusts.

Fraser Falconer: Yes.

The Convener: As members have no further questions, I thank Mr Gilbert and Mr Falconer for their attendance and for sitting through all the evidence sessions.

Meeting closed at 12:05.

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