# COMMUNITIES COMMITTEE

Wednesday 20 April 2005

Session 2

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## COMMUNITIES COMMITTEE
**12th 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 ALSO ATTENDED:**

Johann Lamont (Deputy Minister for Communities)

**CLERK TO THE COMMITTEE**

Steve Farrell

**SENIOR ASSISTANT CLERK**

Katy Orr

**ASSISTANT CLERK**

Jenny Goldsmith

**LOCATION**

Committee Room 6

# Scottish Parliament

## Communities Committee

*Wednesday 20 April 2005*

[THE CONVENER *opened the meeting at 09:33*]

## Charities and Trustee Investment (Scotland) Bill: Stage 2

**The Convener (Karen Whitefield):** I open the 12th meeting in 2005 of the Communities Committee. I remind all those who are present that mobile phones should be switched off.

The first and only item on the agenda is the Charities and Trustee Investment (Scotland) Bill, which the committee will consider at stage 2 for the first time today. Members should have before them a copy of the bill, the marshalled list of amendments, the correction note to the marshalled list, which was issued yesterday by the clerks, and the revised groupings list for day 1, which was also issued yesterday.

Members have been issued with a copy of a letter that was received last week from the Deputy Minister for Communities, in which the minister explains the Executive's position on several issues that she did not have the chance to address during the stage 1 debate. I welcome Johann Lamont and her officials to this morning's meeting.

It might be helpful if I point out a few things before we start, so that we can speed things along. If a member does not want to move their amendment, they should just say, "Not moved." In the event of that happening, any other member can move the amendment at that point, but I will not specifically invite other members to do so. Assuming that no other member wants to move the amendment, I will go to the next amendment on the marshalled list. If a member wants to withdraw an amendment, I will ask whether anyone objects to the amendment being withdrawn. If any member objects, I will immediately put the question on the amendment. If I am required to use my casting vote, I intend to vote for the status quo, which, on this occasion, will be the bill as it stands.

### Section 1—Office of the Scottish Charity Regulator

**The Convener:** Amendment 6, in the name of the minister, is grouped with amendments 8 to 27 inclusive and 61 to 65 inclusive.

**The Deputy Minister for Communities (Johann Lamont):** Thank you very much. I am very happy to be here. I used to enjoy doing stage 2 because I did not have to do any thinking; I just got to boss people about. I shall try to think harder and not be bossy on this occasion.

We are at an important stage in the bill process and I welcome the general consensus that there has been around the bill. I also welcome the commitment of the Executive, the committee and the Parliament to act in the best interests of the sector and to seek to produce legislation that will support the charitable sector and encourage it to flourish. It is an interesting combination; ordinary people will understand the bill's consequences and care about them, but the bill is also very technical, so we might end up having some technical arguments about things that might seem to be a bit obscure. However, we should never forget our common commitment to legislating to protect and develop a sector that we all recognise as important.

The amendments in the first group are technical. They relate to the legal framework that is required to set up the charity regulator, but they do not change our policies. The Executive consulted widely on what form the Office of the Scottish Charity Regulator should take to ensure that it would be both independent and effective. The conclusion, with which I was pleased to see that the committee agreed, was that OSCR should be a non-ministerial office-holder in the Scottish Administration and a body corporate.

Setting up the regulator as an office-holder will require an order to be made under section 104 of the Scotland Act 1998, which allows for necessary or expedient amendments to be made in consequence of an act of the Scottish Parliament. That was discussed extensively with the Scotland Office, because OSCR will be the first office-holder in the Scottish Administration that is a body corporate rather than an individual. We have agreed that, for the purposes of the order under the Scotland Act 1998, we will first create a specific office in our bill. The Scottish charity regulator, which is a body corporate, can hold that office. The regulator can then be added to the list of office-holders in the Scotland Act 1998 by an order at Westminster.

Choosing such a form for OSCR will allow it to be independent, free from direction from Scottish ministers and responsible to the Parliament. With a board of members, OSCR will meet the modern governance practices that are recommended by the better regulation task force in its report "Independent Regulators". Board members will be appointed by ministers under the normal public appointments process, which is overseen by the commissioner for public appointments.

Following enactment, the necessary affirmative order under the Scotland Act 1998 will be progressed through both houses of the United

Kingdom Parliament. That is the procedure that we must follow to establish the regulator as a non-ministerial office-holder in the Scottish Administration.

The amendments in the group make the necessary technical adjustments to pave the way for that order. Specifically, amendment 6 first establishes an office or position that will be known as the Office of the Scottish Charity Regulator. A separate body corporate is then established—that is a body with a legal personality, which is known as the Scottish charity regulator. That body is then appointed to be the holder of the position that was firstly established.

To minimise the number of changes, and because we have all become used to referring to the charity regulator as OSCR, that term is used throughout the bill to mean the office-holder. The functions that are set out in the bill will remain the functions of OSCR, because only a legal personality can hold functions and powers. However, some of the provisions in the bill—such as the details in schedule 1 on membership and constitution—have to be more specific and must be changed to refer to the Scottish charity regulator or the regulator.

Amendment 8, which is merely consequential to amendment 6, updates the reference in section 1(6) to "the Regulator" instead of "OSCR". Amendment 65, which is also consequential to amendment 6, updates the interpretation section to make it clear that OSCR will be the holder of the Office of the Scottish Charity Regulator. Amendments 9 to 27 and 61 to 64, which are similarly consequential, update the references in schedules 1 and 4 respectively.

I move amendment 6.

**The Convener:** Thank you. No other member wants to participate in the debate. The minister might well not want to wind up the debate.

**Johann Lamont:** That is right.

*Amendment 6 agreed to.*

**The Convener:** Amendment 7, in the name of the minister, is grouped with amendments 80 and 91.

**Johann Lamont:** We lodged amendment 7 following a recommendation by the committee in its stage 1 report. The amendment, which adds a new function for OSCR to section 1(2), makes it clear that OSCR may give information and advice, or make proposals, to Scottish ministers on matters that relate to its functions. As the committee noted, that will allow OSCR to advise ministers during the preparation of regulations under the bill. I know that OSCR supported the committee's recommendation and I am sure that there will be other occasions when it will want to make use of the provision.

Amendment 80 would add a specific reference to OSCR providing guidance on its functions and require it to consult on any guidance that is produced. We are concerned that placing a requirement on OSCR to consult sector representatives on every item of guidance or advice that it issues would place too onerous a burden on the regulator. OSCR will produce guidance on a variety of subjects, including minor administrative issues. It is right that OSCR should, and will, consult on the guidance in relation to the charity test, but to expect OSCR to consult on all other minor issues is unnecessary and perhaps over-burdensome. I appreciate that there are concerns about how the consultation process will work and perhaps those concerns can be highlighted in the debate. We want to ensure that an inclusive approach is taken to consultation. In addition, OSCR's decisions are appealable. If a charity believes that OSCR has made a bad decision, it can appeal. If the charity's appeal is successful, OSCR will have to amend any guidance on the issue accordingly.

I believe that amendment 91 is unnecessary. OSCR already has a function under section 1(2) to encourage and facilitate compliance by charities. Section 1(3) further states that OSCR may do anything that is calculated to facilitate the performance of its functions. Those provisions allow OSCR to provide advice on compliance. Further detail on the procedure for applying for entry on the register will be set out in regulations under section 6. OSCR has begun to produce guidance on the current regulatory regime and I expect it to continue to do so. Amendment 91 would repeat powers that OSCR already has and attempt to encourage actions that OSCR is already taking.

I therefore ask members not to move amendments 80 and 91.

I move amendment 7.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I will restrict my remarks to the amendment in my name, which is amendment 80.

During the committee's deliberations on the Charities and Trustee Investment (Scotland) Bill and prior to the bill coming to the committee, almost every member of the public and every representative of an organisation who gave evidence to the committee felt that the consultation and their involvement in preparing the legislation could be held up as an example for other areas of the Executive's work. We would like OSCR, when it carries out its functions under the bill, to maintain such an inclusive process, to involve and consult people and to at least give the charitable sector the opportunity to comment on what is being proposed.

I listened carefully to what the minister said. She spoke about OSCR being expected to consult on every issue and I accept that that might be a burden for it. Nevertheless, we must ensure that OSCR continues with the good practice that has been established, so that charitable organisations—and anyone with an interest in the sector—are involved and have the opportunity to shape the way in which OSCR will operate.

09:45

**Donald Gorrie (Central Scotland) (LD):** I will speak to amendment 91. I hope that the minister will clarify a few points; she has already clarified some matters.

Amendment 91 seeks to clarify the position on the giving of advice. It seems that there is a risk of turf wars developing between OSCR and existing umbrella organisations for charities—of which there are quite a few—on matters such as the provision of advice. I have sought to make it clear that OSCR is the body that should give advice on how to obtain registration, but that it should not provide general advice for the sector as a whole.

Amendment 91 has two objectives. First, it seeks to avoid conflict on the giving of advice. Secondly, it seeks to make it clear that OSCR should have dialogue with people and organisations, whether they are existing charities or would-be charities. OSCR should not just say, "No, you do not qualify," but should help them and explain to them the rules under which they must operate. The amendment has a positive side and a negative side: the positive side is that it seeks to ensure that OSCR will be constructive in helping applicants and the negative side is that it seeks to avoid turf wars. It was suggested that other amendments on the provision of advice would be lodged, but they have not been. That indicates that the issue is not as difficult as it might have been.

It would help if the minister made it clear that OSCR is the body that will give advice on its activities and that it should be encouraged to do that rather than to rush into stopping organisations becoming charities. The Executive should do its best to ensure that OSCR and the voluntary sector come to an amicable agreement on advice giving in general. That is the purpose behind amendment 91. I am interested in hearing what the minister has to say.

**Johann Lamont:** Important issues have been flagged up. Although we do not want amendments 80 and 91 to be supported, we acknowledge that important issues underpin them. We will make progress on consultation and the need to be inclusive. Cathie Craigie identified, rightly, the principles that underpin consultation. Consultation exercises must be inclusive and recognise those bodies that have a particular interest in being involved in developing guidance and which have a particular understanding of the issues.

In the past, the fact that some consultations have been tokenistic has been flagged up. We are keen to ensure that any consultation that OSCR conducts is not tokenistic. Sometimes everyone has been consulted, but the consultation has not been real because people have not had the time to contribute to it. It is a question of ensuring that OSCR consults fully on significant matters. On less important issues, or on issues that are very technical or narrowly defined, OSCR should not have to go through a process that is technically inclusive, but which perhaps just creates work.

We feel that amendment 80 is too broad, in that it would pin down OSCR to having to consult everyone on everything. Cathie Craigie is right to say that what underpins consultation is recognition of the different elements in the sector and ensuring their involvement in the process. I reassure Cathie Craigie that if she were not to move amendment 80, we would take the view that OSCR would have to recognise the importance of the sector and work alongside it. I do not have any sense that that is not understood.

In relation to amendment 91, Donald Gorrie made a point about turf wars. Sometimes that debate is characterised as being a question of whether a body can be the police and a pal at the same time. There are some anxieties around that, on which we hope to give reassurance. It is obvious that OSCR's primary role is as a regulator. That said, it is not OSCR's role simply to say to one body, "No, you cannot be a charity" and to another, "Yes, you can be a charity." If an organisation were to approach OSCR for advice on what they had to do to become a charity, it would be nonsense for OSCR not to give them that advice. We hope that that is understood. Indeed, if someone were to seek general information about the sector, OSCR may not have the responsibility for giving such advice, but it certainly has a responsibility to signpost the organisations or people who can provide information on the broader issues that are involved in gaining charitable status.

I confirm that OSCR's primary role is that of a regulator and of giving advice on how to become a charity. It also has a role in supporting charities that want to comply. The Executive's intention for OSCR is not for charities to be left to their own devices and for them simply to be given a mark at the end of the process. Our intention is for OSCR to support those organisations and not make life more difficult for them. I hope that that clarifies the points that were raised.

*Amendment 7 agreed to.*

**The Convener:** Amendment 80, in the name of Cathie Craigie, was debated with amendment 7.

**Cathie Craigie:** In the light of the minister's assurances, I will not move amendment 80. Between now and stage 3, I hope that I will have the opportunity of speaking to the minister in more detail on the matter.

*Amendment 80 not moved.*

*Amendment 8 moved—[Johann Lamont]—and agreed to.*

*Section 1, as amended, agreed to.*

### Schedule 1

OFFICE OF THE SCOTTISH CHARITY REGULATOR

*Amendments 9 to 27 moved—[Johann Lamont]—and agreed to.*

*Schedule 1, as amended, agreed to.*

### Section 2—Annual reports

**The Convener:** Amendment 28, in the name of the minister, is grouped with amendment 66. If amendment 28 is agreed to, I cannot call amendment 66 because of pre-emption.

**Johann Lamont:** The amendments in the group relate to section 2, which deals with OSCR's annual reports. Amendment 28 is our response to paragraph 38 of the committee's stage 1 report. We have considered the committee's recommendations carefully and agree that it is not necessary for ministers to have powers to direct OSCR on the form or content of its annual report.

Each year, OSCR will lay a copy of its annual report before the Parliament. I am sure that it will wish to ensure that the report clearly describes the outcome of its work, the results of any actions that have been taken and other issues relating to its functions over the year. I hope that the removal of the power of direction will provide the committee with the necessary assurance that the Executive is committed to OSCR being an independent charity regulator that acts in the interests of the public and the sector that it regulates.

However, I reassure the committee that OSCR, as a public body, will not be completely free of financial controls. Public accountability will be provided by the fact that OSCR will be part of the Scottish Administration. Under the terms of the Public Finance and Accountability (Scotland) Act 2000, OSCR's accounts must be prepared in accordance with directions that are issued by the Scottish ministers and must be sent to the Auditor General for Scotland for auditing.

If the committee agrees to Executive amendment 28, Christine Grahame's amendment 66 will be unnecessary. If the committee does not agree to our amendment, we ask the committee to resist amendment 66. I bow to no-one in terms of my grammatical expertise. I am assured—I trust that I will not be proven wrong on the matter—that the inclusion of the word "But" at the beginning of section 2(4) is not a grammatical error. The word is used deliberately to make it clear that OSCR must comply with a direction notwithstanding the fact that the forgoing provision otherwise allows complete discretion to OSCR.

I move amendment 28 and ask Christine Grahame not to move amendment 66.

**Christine Grahame (South of Scotland) (SNP):** With respect, I disagree with the minister's assessment of what is grammatical. It is very clumsy to begin a subsection with the word "But", but I will not push the matter because we are content with the minister's comments.

**The Convener:** Minister, do you want to wind up?

**Johann Lamont:** I might wind myself up about whether something that is clumsy can also be grammatical, but I will leave that thought sticking to the wall.

**The Convener:** The question is, that amendment 28 be agreed to. Are we agreed?

**Linda Fabiani (Central Scotland) (SNP):** Okay, but.

**Members:** Yes.

*Amendment 28 agreed to.*

**The Convener:** I am delighted that we agreed to the amendment, despite Linda Fabiani's "but". Amendment 66 is therefore pre-empted.

*Section 2, as amended, agreed to.*

### Section 3—Scottish Charity Register

**The Convener:** Amendment 81, in the name of Patrick Harvie, is grouped with amendments 103, 107, 108 and 114.

**Patrick Harvie (Glasgow) (Green):** I acknowledge that my amendments might be out on a limb, but I appreciate having the opportunity to debate the matter again. Members know that I raised the matter of designated religious charities a number of times at stage 1. I assure members that I tried to do so with an open mind. I have been genuinely interested in trying to identify the reasons for making certain religious charities subject to a level of regulation that is different from that for other charities. I am atheist and a secularist, but I have no problem with religious organisations being granted charitable status and I want to say on the record that I acknowledge the significant public benefit that they provide and the dedication with which many of their members work.

Surely a large part of the bill's purpose is to establish clearly what charity is and to introduce a common regulatory regime that can inspire confidence in the concept. No system will be perfect and, regrettably, some exceptions might be required, but we should keep exceptions to a minimum and be clear about the reasons for them. I have heard no convincing reasons why the bill should provide for designated religious charity status. It is not about the capacity of the regulator, as OSCR told us. It is not about placing heavy obligations on small charities, because if that were the case we would be concerned about not just small religious charities but all small charities. It is not about being consistent with the views of the sector. I have spoken to a good number of people in the voluntary sector who share my view.

In evidence, the Scottish Churches Committee seemed to imply that by seeking to regulate religious charities, the civil authority—Parliament—was in danger of crossing a line. During the stage 1 debate, I argued that in a democracy it is for the civil authority to draw that line and that the bill attempts to do that for all charities.

The only clear explanation that I have heard for having a different level of regulation for selected religious charities was provided by the Deputy Minister for Communities, who told the committee that the approach reflects

"The status of religion in society".—[*Official Report*, *Communities Committee*, 2 February 2005; c 1728.]

However, legislation should not be regarded as a mirror that reflects society as it is, as a piece of art might do. By passing the bill, we define the status of religious organisations in law. In a modern, pluralistic society such as ours, in which faith plays a less significant role in most people's lives than it used to do and in which many people are not religious and many more are only nominally so, a religious charity should be valued, supported and regulated in the same way as any another charity is.

Even if we accepted that the bill should reflect the status of religion rather than try to define it, DRC status would seem an odd choice. If we were honest about the status of religion in most people's lives, I regret to say that we would have to put shopping on a higher pedestal. I say that with real regret, as an atheist and as a Green, because the over-consumption of meaningless consumer junk is far more destructive than superstition. However, that would be our position if our intention were to reflect people's priorities.

Some members might think that I am being a bit trivial or needlessly provocative about all this, but even if the only effect of lodging the amendments in this group is to prompt a more substantial explanation of the purpose of the arrangement, it will have been worth while.

I move amendment 81.

10:00

**Donald Gorrie:** Patrick Harvie raises an important point that deserves debate. We cannot divorce ourselves from history and, for many years, religion—in Scotland's case, the Christian religion—performed such social do-gooding activities as there were and provided a lot of charitable support for the sick, the poor and other disadvantaged groups. We have to accept that that history is in our main stream.

As I understand it, under the bill, designated religious charities must have structures that ensure reasonable good management and good behaviour within the organisation. Part of the purpose with which we have approached the bill has been to try to remove duplication of effort and, if a particular religion organises its affairs correctly, I see no reason for OSCR to be involved in duplicating that work.

The parts of the bill that do not apply to designated religious charities are relatively minor. Under the main thrust of the bill, it is still the case that, if a designated religious charity is seriously misconducting its affairs, OSCR can get involved. The bill strikes a reasonable balance between the state getting too involved in affairs of church—our ancestors slaughtered each other cheerfully on that issue for many years and the bill does not trespass too much, or perhaps at all, over that barrier—and reasonable control of any misconduct in designated religious charities that OSCR can control better. On the whole, I am content with the bill and against the amendments in the group.

**Scott Barrie (Dunfermline West) (Lab):** Patrick Harvie said that he hoped that he was not being unnecessarily provocative. I do not necessarily think that he is being provocative; he is just wrong. I, like him, have no religious beliefs and describe myself as an atheist—that is what I recorded in the official census that took place a few years ago—but I agree with Donald Gorrie that we must acknowledge the role that religion and religious organisations have played in the shaping of Scotland and the role that they continue to play in civic Scotland.

Section 64 clearly defines designated religious charities. As Donald Gorrie says, we are not exempting designated religious charities from regulation; there is a slightly different regulatory framework for them but, in many respects, the differences are minor and regulation is not the issue that Patrick Harvie suggests it to be. It is unnecessary to delete the whole section on designated religious charities, which strikes a

good balance between acknowledging that that sector requires to be regulated and acknowledging that it has had and still has a different role in Scotland. That role should be recognised.

**Johann Lamont:** I thank Patrick Harvie for lodging amendment 81 to bring the issue to debate. We are starting not with a fresh sheet and no history, but with bodies that were deemed to be charities and activities that were deemed to be charitable. With the bill, we are attempting to find a way of regulating the sector without destroying the bits of it that are lively, eccentric and do not fit comfortably into boxes, and religious charities are one such bit.

Patrick Harvie suggested—and this has been said by others—that there will not be the same level of regulation for designated religious charities. I contend that there will be significant regulation, but that it will be managed in a slightly different way. The test for the legislation is whether those charities will be regulated and the committee must satisfy itself that they will be rather than ask whether we are giving too much place to religion in society.

Patrick Harvie mentioned the broader issue of priorities in our communities and priority being given to shopping over religion. There are broader issues such as whether the Church of Scotland should have a particular place, but we should not be discussing such issues when we are debating the Charities and Trustee Investment (Scotland) Bill. We are in the business of regulating the sector as it is and must decide whether the fact that there are designated religious bodies that will be designated religious charities should impact on our ability to regulate the sector rather than whether that says something about our society. A different test is involved.

I will talk about my experience, for what it is worth. As a young woman, perhaps I thought that charities should not do three quarters of the things that they did and that the state should do such things. I certainly thought that religious organisations should not do such things. As an elected member, one of the most humbling things that I have seen is people of faith and people of no faith combining and working to support their communities through charitable and voluntary endeavours. We should not be debating the role of religion in society, but we should recognise that religion drives some people's charitable activities. Rather than arguing about religion as a result of the bill, I simply want it to be recognised that folk come to the charitable sector for all sorts of reasons. We are determined that people will not abuse the sector and to promote and support bits of the sector that will make a difference in our communities so that those bits flourish. I hope that that makes sense.

I do not think that people want to resist arguing about the role of religion; for me, however, the test is simply that the bill will ensure that the regulatory framework for charities is in place. We have said that, under existing charity law, religious charities that satisfy strict criteria, including having an established system of internal controls, may be granted exemption from some of OSCR's regulatory controls, and we want to continue that approach. Members may wish to note that in the consultation on accounts, no exemption will now be proposed for designated religious charities, so the same regulation that has been proposed for other charities would apply to them.

A balance has been struck in the bill, which recognises the diversity of the sector. In the past, religious bodies have been designated if it can be established that they have internal controls that match our regulatory demands. We do not see the need to stop that process, with which people have been comfortable, especially if that were seen to be done as a consequence of an argument about where we view religion in society. That is such a big issue that it should be dealt with in a different place.

**Patrick Harvie:** The minister mentioned communities in which people of faith and people of no faith work together in a dedicated way to create clear public benefit in the sense that the bill seeks to define it. We should recognise that the dedication of those people is of an equal measure and that society should regulate their activities equally.

I accept that the status in question is reserved for organisations that can demonstrate a level of internal structure, regulation or internal controls and that those are established. However, there could be designated charity status rather than designated religious charity status and it would not matter for which charitable purpose an organisation qualified—it would merely be a question of whether the organisation had internal controls. Other, non-religious organisations might, today or eventually, meet that criterion.

I question the suggestion that removing DRC status would undermine the ability of churches to continue to provide the public benefit that they provide or to contribute to civic society. The suggestion that removing that status would risk destroying a part of the voluntary sector overstates the case significantly.

I hope that that addresses the points that members have made. I press amendment 81.

**The Convener:** The question is, that amendment 81 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Harvie, Patrick (Glasgow) (Green)

**AGAINST**

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Fabiani, Linda (Central Scotland) (SNP)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Home Robertson, Mr John (East Lothian) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

**The Convener:** The result of the division is: For 1, Against 8, Abstentions 0.

*Amendment 81 disagreed to.*

*Section 3 agreed to.*

*Sections 4 and 5 agreed to.*

### Section 6—Applications: further procedure

**The Convener:** Amendment 29, in the name of the minister, is grouped with amendment 30.

**Johann Lamont:** Amendment 29 is a purely technical amendment that adds to section 6 references to the sections relating to applications to convert to a Scottish charitable incorporated organisation or for SCIOs to amalgamate. Its purpose is to ensure that those applications are included in the ministers' regulation-making powers that are contained in section 6. Those powers will allow ministers to make further provisions covering the details of the application procedure for entry on the register for charitable companies and registered friendly societies that want to be SCIOs and for SCIOs that are amalgamating.

Amendment 30 is also a technical amendment to section 6. It follows a recommendation by the Subordinate Legislation Committee that the references to sections 4 and 54(2) in section 6 are superfluous, as both those sections also refer to the regulations made under section 6(1).

I move amendment 29 and encourage the committee to support amendment 30.

*Amendment 29 agreed to.*

*Amendment 30 moved—[Johann Lamont]—and agreed to.*

*Section 6, as amended, agreed to.*

### Section 7—The charity test

**The Convener:** Amendment 1, in the name of Scott Barrie, is grouped with amendments 82, 4, 67, 31, 31A, 31B, 68, 32, 84, 83, 33, 33A, 33AA, 33B, 33C, 111 and 112. If amendment 84 is agreed to, I will not be able to call amendment 83, as there will be a pre-emption.

10:15

**Scott Barrie:** This is a rather eclectic group of amendments. The purpose of amendment 1 is to extend the definition in section 7 of "charitable purposes" to include provision of non-formal education opportunities and, in particular, to recognise the significant contribution that youth work makes to the wider education agenda.

Both in the committee and in the chamber, several of us have highlighted the importance of youth work. If we are serious about making life and opportunities better for young people in particular, and for society in general, the status of youth work must be recognised and built on. The Scottish Executive's proposed youth work strategy focuses on a number of issues, including the significant role of youth work in the lives of many young people throughout Scotland. It is expected that the strategy will raise several challenges and opportunities for the youth work sector, including that of securing sustainable funding. Extending the definition of education under "charitable purposes" to include youth work would assist the sector in meeting future challenges and in maximising the opportunities for young people under the proposed national youth work strategy by increasing its access to funding.

One purpose of amendment 1 is to enhance the attractiveness of youth work organisations to potential funders. However, amending the bill in such a way would also highlight the significant contribution that the youth work sector—including voluntary organisations and local authority youth work services—makes to supporting the development of young people in our society. In addition, it would help to recognise the significant number of voluntary organisations in the youth work sector and their provision of a wide range of youth work services and activities.

I turn to amendment 4. We should recognise as a charitable purpose, along with the advancement of health, the saving of lives. I realise that section 7(2)(m) talks of

"any other purpose that may reasonably be regarded as analogous"

and that, to some extent, the saving of lives and the advancement of health might be regarded as the same side of one coin. Nevertheless, I believe that the saving of lives goes further than the advancement of health. I do not think that anyone would argue that the advancement of health should not be included in the charitable purposes; nevertheless, there are charities that might not fit strictly into that definition, but which would clearly fit into a definition that included the saving of lives. For example, I am not sure whether we could say that the Royal National Lifeboat Institution is about the advancement of health, although it is clearly about the saving of lives. We should recognise

that, and amendment 4 would help to clarify what is meant, bringing such organisations firmly within the definition of "charitable purposes".

There are many other amendments in the group, in the name of the minister and of other members of the committee; however, I will touch only on amendment 82, in the name of Patrick Harvie. I believe that amendment 82 should be resisted. The issue goes back to the debate that we have just had about the advancement of religion. We must be careful that we do not go much further than the vast majority of people in Scotland would want us to go, irrespective of whether they hold any religious beliefs or follow religious practices.

I move amendment 1.

**Patrick Harvie:** I was disappointed to hear what Scott Barrie just said. I hope that members will consider amendment 82 to be rather less controversial than amendment 81 on designated religious charities. Amendment 82 is an attempt to propose a more straightforward way of recognising the charitable purpose that is currently listed, without causing some organisations to feel that they are being misrepresented.

The minister's amendment 33 suggests that the advancement of religion should remain listed as a charitable purpose and that other philosophical beliefs should be regarded as analogous. Many humanists would be less than thrilled to think that they are thought of as analogous to a religious organisation. Whether members have sympathy with that feeling or not, it seems pretty clear that religion is a subset of philosophical belief; therefore, it is odd to list it as the charitable purpose and then to extend coverage to other philosophies by interpretation. That is like replacing the existing purpose in section 7(2)(g), on sport, with "the advancement of football" and inserting a later clause saying that tennis and rugby are to be considered as analogous to football. Amendment 82 would be a more straightforward way of achieving the same end and would be less likely to make philosophical organisations that do not have gods feel like they have been shoehorned into the bill.

On Scott Barrie's amendments 1 and 4, as someone with a background in youth work, I am extremely supportive of the intention to ensure that youth work and the development of young people are seen as a charitable purpose. I will support those amendments.

**Donald Gorrie:** I have six amendments—some of which are amendments to amendments—in the group. They centre around four words: citizenship; harmony; activities; and analogous.

Amendment 67 suggests deleting the term "civic responsibility" and inserting the word "citizenship". That has been suggested by a number of organisations and has some merit. "Citizenship" includes the concept of civic responsibility but is wider, in that it includes volunteering. The use of that word might encourage voluntary organisations to do things locally that might not be seen as being to do with civic responsibility but which are to do with good citizenship and should be encouraged. "Citizenship" is a good, wide term that meets what all of us want to happen in our communities. I recommend amendment 67 to the committee.

Amendments 31A and 31B are amendments to a Government amendment. Amendment 31 deals with the provision of recreational facilities. In amendments 31A, 31B and 33B, I have suggested that "or activities" be added. To my mind, facilities are buildings, pitches and so on whereas activities are the things that you do in them, on them or, indeed, somewhere else. Leading a group of young people to go camping in the hills is an activity, but the facilities are provided by God or by a big park regime rather than by the charity.

From a previous conversation, I understand that the Executive thinks that "facilities" covers activities. I will be interested to hear what the minister has to say about that, because my understanding of the English language must be different. However, if the Government believes that the term "facilities" covers activities, I suppose that that would stand up in a law court. I believe that we must realise that people who, for example, run football leagues but who own no pitches are doing good charitable work that we should support.

Amendment 68 deals with the promotion of religious or racial harmony, equality and diversity. We would all agree that those are good things that should be supported. One could argue that equality and diversity cover a wide range of things, but I assume that OSCR would take account of what form of diversity was proposed and, if it was a perverse form of diversity, would decide not to accept the organisation as a charity. The areas that I mentioned have been developing recently and deserve encouragement. I hope that members will support amendment 68.

Amendment 84 relates to the word "analogous". Section 7(2)(m) defines a charitable purpose as being

"any other purpose that may reasonably be regarded as analogous to any of the preceding purposes."

To my mind, "analogous" is a curious word to use in that sense. It comes from the word "analogy", which concerns spiritual, artistic or individual views on things, and is not suited to a bill. If the Executive believes that "analogous" is a good word and means what the Executive wants it to mean, I can live with that. However, the intention of amendment 84 is to set out a simple system of

extending the list of charitable purposes so that OSCR, Scottish ministers and Parliament would have to agree that a new type of activity was a suitable purpose. If that is felt to be too cumbersome a way forward, I am happy to listen to arguments. However, I am concerned about the use of the word "analogous". I have some sympathy with Cathie Craigie's amendment 83, which tries to deal with the issue in a different way by widening the definition. It will be interesting to listen to that debate.

On the other amendments, I have great sympathy with Scott Barrie on the issue of youth work. If there is some technical objection to his amendment 1, I would listen to that, but I am very supportive of the purpose of amendment 1 and of the inclusion of "the saving of lives" in amendment 4.

Executive amendment 33 clarifies much of what it thinks things mean. It is helpful and should be supported, although it uses the dread word "analogous". Despite that, it covers Patrick Harvie's point, so I am prepared to support the Executive's amendment rather than Patrick Harvie's amendment 82.

I hope that members will support amendments 67 and 68, which deal with the concepts of citizenship and harmony. I will be interested to hear the Executive's response on the insertion of the word "activities" and on how we will deal with new purposes that we have not thought of.

**Johann Lamont:** With the permission of the convener, I will respond on all the amendments and highlight the Executive amendments. As the debate is substantial, the committee will forgive me if I go on a bit and have less time to sum up.

Scott Barrie's amendment 1 is the first of several amendments to section 7(2) on the list of charitable purposes. It might be useful if I first set out the Executive's general intentions in relation to charitable purposes. Charitable purpose forms the first part of the charity test. At present, having a charitable purpose will be the main test for most bodies that seek charitable status, especially for those under the first three heads, which encompass the advancement of religion and education and the relief of poverty. However, under the new regime, that will form only one part of the test, as all bodies will also have to show that they provide public benefit.

The list of charitable purposes in the bill is a reasonably full listing of all the purposes that are agreed as being charitable. Generally speaking, it is a continuation of the existing position in charity law. It is hoped that that consistency will bring reassurance to bodies that are already accepted as charities. However, it is also intended to give a clearer picture of what is considered charitable, and to meet more closely what we consider to be the public's expectation of what a charity is.

To turn to the specific amendments, I understand the point made by Scott Barrie, echoed by Donald Gorrie, on youth work. My professional background emphasised to me the fact that not all education takes place in a classroom; indeed, it could be argued that sometimes little education takes place in a classroom. For some of the young people I worked with, informal education through youth work—not only that provided by local authorities but in particular that provided by the voluntary sector—was very important.

To suggest that we do not think it necessary to support Scott Barrie's amendment 1 is not to gainsay the importance of organisations such as YouthLink Scotland. I understand that the amendment's purpose is to attempt to clarify the fact that non-formal education, especially through youth work, is included within the advancement of education purpose. However, an issue arises in that the amendment makes no attempt to define the term "youth work". Further, the amendment could potentially narrow the definition of "the advancement of education", rather than widen it, which I do not think is Scott Barrie's intention.

If we were specifically to include a particular matter, there would be a danger that other types of non-formal education might be excluded because they were not listed. I hope that Scott Barrie is reassured by what I said about our commitment to youth work and our acknowledgment of its role in education and by the fact that I have confirmed that non-formal education will be covered by the wide definition of the phrase "the advancement of education". If Scott Barrie wants further reassurance, we might discuss the matter before stage 3.

10:30

As Patrick Harvie said, amendment 82 would remove special treatment for religious charities and provide equal opportunities for bodies that are concerned with beliefs that do not relate to a deity or fall within the commonly understood definition of a religion. We could have a philosophical argument about whether religion is a subset of philosophical belief, but I think that some religious people would contend that it is not and I do not know how far forward such an argument would take us.

We have tried to be helpful in relation to analogous purposes—I will return to that. We are not saying that humanism is a religion; we are saying that some of its features are analogous to religion, which is intended to be helpful. My concern is that amendment 82 would make the

charitable purpose too wide and move away from the historical position. The current charity heads include "the advancement of religion", which reflects the important historical position of religion in society—a position that still holds for some. As I have said, the decision about the status of religion in society is not necessarily a matter that we want to deal with in the bill. I hope that Patrick Harvie will not move amendment 82 and instead accept Executive amendment 33, which addresses the substance of the point that he makes.

Scott Barrie will be happy to know that the Executive supports amendment 4, which would add "the saving of lives" to the list of charitable purposes. The amendments that have been lodged highlight the challenges that we face when we draft legislation. We must attempt to capture the nature of the charitable sector and what it can be without unnecessarily excluding organisations that it would be common sense to include and that people think should obviously be charities. The committee's stage 1 report noted that unless the bill included the clarification that amendment 4 will provide, bodies such as the RNLI or mountain rescue services might not be able to be charities. That is not our intention.

The Executive supports Donald Gorrie's amendment 67, which would improve the charitable purpose in section 7(2)(e) by replacing the phrase "civic responsibility" with the word "citizenship". Amendment 33 will provide more detail of the activities that will be covered by several of the items in the list of charitable purposes. Amendments 33A and 33AA are relevant in that context and would clarify that "the advancement of citizenship or community development" includes

"rural or urban regeneration, and … the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities".

Therefore, the Executive supports amendments 67, 33, 33A and 33AA.

Executive amendment 31 relates to recreational charities. The committee's report recommended that the advancement of recreation and play should be included in the list of charitable purposes in section 7(2). The Recreational Charities Act 1958 states that the provision of recreational facilities in the interests of social welfare is charitable. The 1958 act applies in Scotland only for the purposes of tax and the Inland Revenue considers the act in relation to the conferral of charity status in Scotland. I understand that the Inland Revenue estimates that some 1,700 Scottish charities qualify for charitable status under the 1958 act, although it is clear that many of those organisations could have qualified through the "other purposes" route. Although amendment 31 makes no reference to the 1958 act, it will ensure that bodies that were engaged in purposes that were regarded as charitable under the act will continue to be charities if they also meet the public benefit test.

Members will be aware that had the Charities Bill survived the pre-election rush it would have amended the 1958 act in relation to recreational facilities in England and Wales that are provided in the interests of social welfare and would have removed from that act the special provision for miners' welfare trusts. Amendment 31 will add a purpose to the list in section 7(2), which will ensure that bodies that provide

"recreational facilities with the object of improving the conditions of life for the persons for whom the facilities are primarily intended"

will be charitable. Proposed new paragraph (c) in amendment 33 will add further detail on what is to be covered by that purpose.

I understand and appreciate the point that Donald Gorrie highlights in amendments 31A and 31B and I am aware that other members share the concern that the definition of "facilities" could exclude "activities". We all know of organisations in our local communities that do not have buildings but still provide benefit to youngsters who play football, for example. I do not want to be in a position in which, like Humpty Dumpty—I think it was Humpty Dumpty, anyway—I say that words mean what I want them to mean, so I very much appreciate Donald Gorrie's point. However, the intention is to ensure not only that physical objects are covered, such as a village or community hall, but that activities such as coaching may also be included in "recreational facilities". We believe that the wording of our amendment already covers the organising of activities previously included in the provisions of the Recreational Charities Act 1958.

There might be a concern that distinguishing between "facilities" and "activities" could lead to an unnecessary and artificial consideration of what constitutes facilities on the one hand and activities on the other. One could argue that getting people on to a mountain by whatever means could mean that someone has facilitated their mountain climbing. I am concerned that the substance of Donald Gorrie's argument could unnecessarily exclude groups, and I undertake to revisit what the Executive understands to be the definition of "facilities" before stage 3. I hope that, given my commitment actively to revisit the matter, Donald Gorrie will not move amendments 31A and 31B at this stage, because I would be concerned if what we understood "facilities" to mean could not be tested at a later stage with unhelpful consequences for local organisations.

The Executive supports Donald Gorrie's amendment 68, which adds additional purposes to the list to cover the promotion of religious or racial

harmony and the promotion of equality and diversity. Not only will the additions provide reassurance that those important purposes are indeed charitable, but they will lead to a list of purposes that is more consistent with what is proposed in the Home Office bill. There is merit in both those reasons, but I think that the committee will agree that most important is that those vital issues, which support the Executive's commitment to mainstreaming equalities and the Parliament's founding principle of equal opportunities, be included. Indeed, the committee recommended such changes in paragraphs 102 and 103 of its report.

The Executive's amendment 32 responds to paragraph 106 of the committee's stage 1 report, which called for clarification of the fact that support and advice relating to the provision of accommodation and care are a charitable purpose. The amendment will replace the purposes in sections 7(2)(j) and 7(2)(k) on the provision of accommodation and care. The new purpose will cover

"the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage."

That is sufficiently wide to cover what was suggested, especially when taken in conjunction with proposed new paragraph (d) in amendment 33, which will provide further clarification and will ensure that the provision of accommodation or care is included in the provision of relief in amendment 32.

I have already mentioned several parts of amendment 33, which the Executive has lodged to clarify the extent of a number of the main purposes in the test. As well as providing reassurance to the sector, the changes will also bring greater consistency with the Home Office proposals.

Proposed new paragraph (a) in amendment 33 will clarify that "the advancement of health" includes

"the prevention or relief of sickness, disease or human suffering."

That will cover many well-known charities that are close to the public's view of the charity sector.

Proposed new paragraph (b) in amendment 33 confirms the existing position that

"the advancement of amateur sport"

refers to

"sport which involves physical skill and exertion".

That reflects the historical position of sport being considered to be a charitable purpose mainly because of the benefits to health that it can provide. That might restrict the types of sport that can be considered as charities, probably ruling out snooker, darts and chess from the heading, but many such sports could qualify as charitable under other purposes, such as section 7(2)(e) on community development or the new purpose in relation to recreational facilities. In other cases, sports clubs might choose to register with the Inland Revenue as community amateur sports clubs. If such applications are successful, they will be able to benefit from many of the same benefits as charity status would have brought.

Proposed new paragraphs (c), (d) and (e) in amendment 33 have already been mentioned. They will provide further clarification of the definition of "recreational facilities", the provision of "relief" and

"the advancement of…philosophical belief"

respectively. Donald Gorrie's amendment 33B would amend proposed new paragraph (c) in the same way as his amendment 31A proposes, to include recreational facilities "or activities". I repeat the commitment that I gave earlier to take that forward.

Patrick Harvie lodged amendment 33C as a consequence of his amendment 82. If "religion" were replaced by "philosophical belief" in section 7(2)(c), amendment 33 would not need to make further reference to philosophical belief. However, if amendment 82 is not agreed to, amendment 33C should also not be agreed to.

I move on to amendments 84, 111 and 112 from Donald Gorrie. I said at the beginning that the bill takes us into interesting highways and byways, but I never thought that I would have to reach a comfortable definition of the word "analogous". If we cannot even agree on how to pronounce it, I am not sure whether we will agree on what it means.

Section 7(2)(m) includes in the list of purposes in relation to the charity test

"any other purpose that may reasonably be regarded as analogous to any of the preceding purposes."

That gives the list the necessary flexibility to evolve as the sector grows and changes while still providing a relatively tight list of purposes that are to be considered charitable. If it is any comfort to Donald Gorrie, I understand that the word has been used in legislation for 100 years, so it might have gathered meaning over time.

Amendment 84 would remove that flexibility and would allow the list of charitable purposes to change only if ministers extended it by affirmative order on OSCR's recommendation. As well as removing the flexibility for OSCR and the courts, the amendment would introduce the potential for the purposes to be widened to include any matter that OSCR recommends, whether or not it is analogous to the other purposes.

The list of purposes is set out in primary legislation and is being fully debated by Parliament. The purposes are designed to give everyone a clear picture of what is to be considered charitable. Ministers should not be able to change that, even under the affirmative procedure, without the full legislative scrutiny that the list is being given. Therefore, I urge Donald Gorrie not to move amendment 84.

Amendment 83, from Cathie Craigie, has not yet been debated. I will listen carefully to what she says. The amendment would replace section 7(2)(m) with a much wider definition that would include any purpose that is

"intended to provide community benefit."

The amendment is so broad in scope that it would allow almost any activity to be regarded as charitable, including many that the public might not consider should qualify. Given that the second part of the charity test examines public benefit, it might be argued that if the amendment were agreed to, we might as well abandon the list of charitable purposes.

Widening the test in such a way would greatly increase the potential for a different definition of charities in other parts of the UK, which would cause difficulties with access to tax relief, although that is not the testing point of the amendment. As I said, I recognise some of the concerns that drove the amendment. I wait to hear what Cathie Craigie says, but the anxiety is that the scope would be so broad that it would work against our commitments in the rest of the bill.

**Cathie Craigie:** The minister is probably right that section 7(2) covers a variety of charitable purposes and gives a clear picture of the sector. However, we return to the word "analogous". I am scared to speak when we have so many English scholars at the table and I was grateful for Donald Gorrie's definition, which I hope he found in a dictionary. The meaning of "analogous" is up in the ether and could be anything.

In her opening remarks, the minister spoke about clarity in the bill so that people who are involved in or who are outwith the sector can understand the meaning and intentions of the legislation. Section 7(2)(m) is not as clear as I would like it to be. However, I accept what the minister said. In no way do I wish to propose an amendment that would render the purposes meaningless. We have enough information on the record from the minister to allow people who will have to interpret the legislation to understand the intention behind the provisions clearly. I do not know whether it is appropriate to say so at this stage, convener, but, having heard what the minister said, I will probably not move amendment 83.

10:45

**The Convener:** You will be asked that formally later.

**Cathie Craigie:** I was worried about when to say it, convener.

**The Convener:** Thank you for your comments.

I invite Christine Grahame to speak to amendment 33A and any other amendments in the group.

**Christine Grahame:** I am trying to get my head round all of this. Just as I get my head round it, I am pre-empted by the minister, who accepts my amendment, or my amendment falls. I formally move amendment 33A—

**The Convener:** I should say at this point—

**Christine Grahame:** That I do not move it.

**The Convener:** That is correct. It is not appropriate to do so. You will be asked at a later point. I am just asking you to speak to your amendment.

**Christine Grahame:** I am dreadfully sorry. I am without a script.

I am grateful for the minister's comments. I accept Donald Gorrie's amendment 33AA, which seeks to amend my amendment 33A. My amendment speaks for itself and seeks to extend the concept of civic responsibility.

I have a great deal of sympathy with Scott Barrie's amendment 1. I was ready to support it, until the minister developed her argument about the advancement of education, which addresses the situation. Patrick Harvie's amendment 82 is covered by amendment 33, as Donald Gorrie suggested.

I am sympathetic to Donald Gorrie's amendment 33B, but I presume that the issue will be dealt with at a later stage if necessary. However, I was persuaded by Donald Gorrie that amendment 68 is necessary. I had thought that

"the advancement of human rights"

in section 7(2)(h) was sufficient, but having heard the debate I believe that it is not. The minister is right to agree that amendment 68's provisions should be on the face of the bill.

Cathie Craigie's amendment 83 is far too broad. I am quite happy with the word "analogous". Whether I say it properly or not, it is an appropriate word—10 brownie points for the grammar there. For the same reason, I am not content with Donald Gorrie's amendment 84, which would replace the paragraph containing the word "analogous". Has that dealt with most of the amendments?

**The Convener:** That is entirely up to you.

**Christine Grahame:** I think that it has. I had wanted to say something, given that my amendment 33A had been accepted.

**The Convener:** If that concludes your comments, I invite those few members who have not participated in the debate so far to comment.

**Mary Scanlon (Highlands and Islands) (Con):** I was already prepared to support Scott Barrie's amendment 4, but, like the minister, I just want to mention on the record the mountain rescue teams, who go out in all sorts of weather and risk their lives to save others. I fully support them and I am pleased that the minister has accepted amendment 4.

**The Convener:** Minister, do you have anything to add?

**Johann Lamont:** I would need to be awful hard hearted not to support an amendment that referred to saving lives—that would be a step too far, even for me. Amendment 4 reflects the complex issues with which we are grappling.

It is a positive part of the process that all sides can introduce provisions that it would be impossible for a single group of folk to identify on their own. The process has been helpful. I hope that I have given Scott Barrie enough assurances on youth work. I re-emphasise my commitment to re-examine the issue of facilities and activities.

**The Convener:** I ask Mr Barrie to wind up and to indicate whether he wishes to press or withdraw amendment 1.

**Scott Barrie:** I listened carefully to what the minister said. It is with fear and trepidation that I venture to disagree with her. As a former English teacher, I think that it was Lewis Carroll's Mad Hatter and not Humpty Dumpty who said that words meant what he wanted them to mean, not what someone else wanted them to mean. However, it is a long time since I read "Alice in Wonderland", so I could be wrong.

By lodging amendment 1, I was in no way trying to close other avenues—I take on board what the minister said about that. My intention was to include youth work in the bill because of the importance that I, others and the Executive attach to it, but I take the point that including a specific reference to it might disadvantage other parts of the non-formal education sector. If the bill defines education in its widest possible sense, including all forms of non-formal education, I am content to withdraw amendment 1, with the committee's approval. I might want to discuss the matter with the minister before stage 3 to make sure that that is the case, but I do not want to disadvantage other parts of the sector at the expense of youth work.

*Amendment 1, by agreement, withdrawn.*

*Amendment 82 moved—[Patrick Harvie].*

**The Convener:** The question is, that amendment 82 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Harvie, Patrick (Glasgow) (Green)

**AGAINST**

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Fabiani, Linda (Central Scotland) (SNP)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Home Robertson, Mr John (East Lothian) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

**The Convener:** The result of the division is: For 1, Against 8, Abstentions 0.

*Amendment 82 disagreed to.*

*Amendment 4 moved—[Scott Barrie]—and agreed to.*

*Amendment 67 moved—[Donald Gorrie]—and agreed to.*

*Amendment 31 moved—[Johann Lamont].*

**The Convener:** Does Donald Gorrie wish to move amendment 31A?

**Donald Gorrie:** In the light of the reassurances from the minister, I will not move amendment 31A.

*Amendments 31A and 31B not moved.*

*Amendment 31 agreed to.*

*Amendment 68 moved—[Donald Gorrie]—and agreed to.*

*Amendment 32 moved—[Johann Lamont]—and agreed to.*

*Amendments 84 and 83 not moved.*

*Amendment 33 moved—[Johann Lamont].*

*Amendment 33A moved—[Christine Grahame].*

*Amendment 33AA moved—[Donald Gorrie]—and agreed to.*

*Amendment 33A, as amended, agreed to.*

*Amendments 33B and 33C not moved.*

*Amendment 33, as amended, agreed to.*

**The Convener:** I would be grateful for members' assistance at this point. As you have been so good over the last group, I will suspend the committee for a short comfort break. We will return at 11:05.

10:57

*Meeting suspended.*

11:07

*On resuming—*

**The Convener:** Amendment 34, in the name of the minister, is grouped with amendments 85, 86, 35, 87, 49 and 52. That seems to be a long list, but it is not nearly as long as the previous one.

**Johann Lamont:** In dealing with this group of amendments, the first thing on which we should all agree is the importance of all charities being independent bodies. Perhaps the stage 1 discussions illustrated some of the complexities in establishing how we ensure that independence in law. I believe that we would also all agree that we have to be very careful about the mechanism that we employ to ensure that.

As it was introduced, the bill sought to prevent bodies whose constitution allows control by a third party from passing the charity test. Several potential problems were identified during committee evidence, especially in relation to the national collections non-departmental public bodies. We have reviewed the test, and the amendments that we have lodged reflect the best way of dealing with the matter, which was clearly of concern to the committee and to others. Any body that has a ministerial power of direction in its constitution will not be eligible for charitable status, but other bodies that are under some form of control by a related body or other third party will continue to be eligible. Those bodies will, of course, still be subject to the important provisions in section 65, which require charity trustees to act in the interests of the charity. Trustees will additionally continue to be required to comply with existing duties under other legislation or legal commitments.

To fulfil our commitment in respect of the five national collection NDPBs, the affirmative order-making power in amendment 35 will allow ministers to seek specific exemptions from that requirement. Ministers will also be able to grant exemption from the requirement in section 7(3)(a) that a charity's constitution cannot allow for distribution or application of its property on its being wound up, or at any other time, for a purpose that is not charitable. Amendment of the bill in that way will allay the committee's concerns and it will meet, as far as is possible, the sector's wish that charities be independent of Government control.

I understand the motives behind amendment 85, but I do not believe that it would solve the difficulties that it seeks to address in relation to the independence test; it could be argued that it might create new difficulties. It would not only exclude all the bodies that the existing section 7(3)(b) would exclude, but might exclude even more by prohibiting any "external interference". That term is undefined, which perhaps reflects earlier discussions about third-party control, which created difficulties, as the committee acknowledged. The amendment partly restates the general obligation on charity trustees to act in the interests of the charity as part of the exclusion test, but it does not refer to duties that might arise from other legislation, such as health and safety requirements and contractual obligations. As well as being technically defective, amendment 85 would have an impact that I believe Donald Gorrie does not intend, so I ask him not to move it.

Amendments 86 and 87 seek to incorporate the McFadden proposals for the independence of charities. In the past, it has been discussed whether that approach to independence would get to the nub of what we seek. It is my view that the approach to independence that is outlined in amendments 86 and 87 does not address the principle of independence, in that they are about how charity trustees are appointed and not about how they act once they have been appointed. It might be argued that the amendments make presumptions about whether how someone is appointed defines how they act later, but I am not convinced by that argument. We have said that before and, although we will listen to the debate, we see no reason to change our position. Amendment 86 does not address in any way the concerns about the national collections NDPBs, which would be excluded from charitable status under the test. I ask Christine Grahame not to move amendment 86.

I move amendment 34.

**Donald Gorrie:** As the minister said, section 7 is a difficult section to get right and we must get the independence issue as well organised as possible. I am not a great admirer of the ladies and gentlemen who draft bills; they seem to live in their own universe.

**The Convener:** They look crushed.

**Donald Gorrie:** In this case, however, I give them due credit. They have produced an elegant solution to a difficult question. The Executive amendments are helpful and the various people who contacted me because they were concerned about the bill as it stood believe that the Executive amendments will solve their problems.

Amendment 85 is my endeavour to approach the issue differently. As it stands, the bill rests entirely on the constitution of a charity expressly permitting a third party to direct and so on. To found too much on the constitution of an organisation is a mistake in that no one in any organisation ever reads its constitution unless

there is a crisis of some sort; they just get on with the job. How the bill, rather than the constitution, will work in practice is the issue. I was trying to say that there should be no external interference in the operations and management of the day-to-day work of a charity, but there is an argument that my wording could cause other problems even if it sorts out some problems. I am content to let members consider carefully what the Executive proposes. If they think that it will solve the problem, that is fine. At the moment, I am inclined not to press amendment 85. We will find out at stage 3 whether anyone has pointed out any problems with the Government's intelligent way of trying to deal with the problem.

On amendment 86, I have some sympathy with the concern about the number of outside appointees, but in amendment 85 and elsewhere I have tried to concentrate on the fact that, once they are appointed, charity trustees should have to focus entirely on the purposes of the charity and not on those of some other body. I think that that is a better way of dealing with the issue than counting heads would be, although I will be interested to hear what Christine Grahame has to say.

11:15

**The Convener:** I invite Christine Grahame to speak to amendment 86 and to any other amendments in the group.

**Christine Grahame:** I preface my statement in support of amendment 86 by saying that I do not seek to impugn the current trustees of the various national collections; that is not my intention at all. I accept that the test that trustees should act with integrity and in the interests of their charity is an undercurrent in the bill. Amendment 86 does not question that. That said, there is an issue not just about independence but about perceived independence. It is necessary that there be distance between the people who act as trustees and the bodies that may appoint them.

The minister was right to refer to the proposal of the McFadden commission—amendment 86 seems to be the most appropriate formulation of that test. I do not have the relevant set of evidence in front of me, but I think that the National Library of Scotland fulfils the stated criteria—fewer than one third of its trustees are appointed in the manner described. The fact that one of the national collections is already in that situation suggests that the proposal in amendment 86 would not imperil the national collections. It is my understanding that there could still be Government involvement, but that it would not be as direct as it has been.

It is extremely important that the same test that applies to a charity that is a two-person band working in a particular area should also apply to the grander charities. At the moment, I do not think that that is perceived to be the case with some of our larger charitable bodies, such as the national collections. I suggest that the application of the formula that is set out in amendment 86 would provide a rigorous test that could never be challenged. The application of that formula would ensure not only that such independence exists, but that it is seen to exist, which is extremely important.

**Patrick Harvie:** In general, I am much more inclined to support Christine Grahame's amendments than—

**Christine Grahame:** Did you want me to speak to amendment 87, which is consequential on amendment 86? [*Interruption.*]

**The Convener:** I would be grateful if members would remember to keep their mobile phones switched off, which seems from time to time to be a problem for some members. I remind them that it is not acceptable to leave mobile phones on.

Christine Grahame was invited to speak to all the amendments in the group. I will allow Patrick Harvie to speak first and will—

**Patrick Harvie:** I am happy to let in Christine Grahame—

**The Convener:** I convene the committee and I will decide when people speak.

**Patrick Harvie:** I beg your pardon.

**The Convener:** I will use my discretion to allow Christine Grahame to comment on other amendments in the group.

**Patrick Harvie:** I am more inclined to support Christine Grahame's amendments than I am to support amendment 34. Although the distinction between the method of appointing trustees and the way in which they behave once they are appointed is an important one to understand, it is not the end of the story. The way in which trustees are appointed may affect the relationship between the two organisations—one being part of the state and the other being independent, or so we hope. Even if the trustees behave absolutely impeccably and with independent minds once they are appointed, the organisation knows that its future trustees will be appointed in a particular way, which would undermine the concept of independence. I support Christine Grahame's amendment 86; it provides a more robust way of establishing the required independence.

**The Convener:** Perhaps Ms Grahame would like to cease her conversation and contribute to the debate?

**Christine Grahame:** I apologise, convener, but it was more than a conversation; it was a dialogue about the amendments in the group.

I am sympathetic to what Donald Gorrie had to say and my reading of what he said is that we may return to the issue. I, too, will return to the substance of my amendment 86. Obviously, amendment 87 is consequential on—or married to—amendment 86.

**The Convener:** I invite the minister to wind up the debate on the amendments in the group and to indicate whether she will press or seek agreement to withdraw amendment 34.

**Johann Lamont:** I think that politicians have to be careful; there is a touch of the pots and kettles about a politician suggesting that anybody else lives in a parallel universe. Nevertheless, I welcome the general support that the committee has given to the Executive's approach to the independence of boards and to amendment 34.

Donald Gorrie made the distinction between the everyday workings of trustees and constitutions. The fact of the matter is that a constitution is central to any decision that OSCR takes about whether an organisation should become a charity. Constitutions govern how trustees conduct themselves, so it is legitimate that reference be made to the constitution in section 7.

I accept what Christine Grahame said about not impugning people's motives and about perception. However, the danger is that amendment 86 would give the perception but not the reality of independence. I heard her argument, but it could equally be argued that someone who was appointed from anywhere could go on to influence inappropriately the conduct of business. The test of being a trustee is whether the person acts in the best interests of their charity, regardless of where they come from. That is the significant element of their appointment.

It could also be argued, in respect of the point that Patrick Harvie seemed to be making, that the way in which someone is appointed affects the way in which they conduct their business. He suggested that, even if trustees appeared to be conducting business independently, they would remember how they were appointed. Surely that charge applies equally to all trustees regardless of where they were appointed from?

The test that has been laid down in the bill is a harder test than those which members have proposed. The danger is that amendment 86 appears to offer a comfort zone, but it is not the harder test of the way in which a trustee conducts their business.

I welcome the fact that Donald Gorrie has indicated that he will not press amendment 85. I make the commitment, as I have done previously, to reconsider the issue; it is clear that people are grappling with it. If some of the issues that have been highlighted need to be addressed before stage 3, I am comfortable about doing so.

I press amendment 34.

**The Convener:** The question is, that amendment 34 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Home Robertson, Mr John (East Lothian) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

**AGAINST**

Fabiani, Linda (Central Scotland) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)

**The Convener:** The result of the division is: For 6, Against 3, Abstentions 0.

*Amendment 34 agreed to.*

*Amendments 85 and 86 not moved.*

*Amendment 35 moved—[Johann Lamont]—and agreed to.*

*Amendment 87 not moved.*

*Section 7, as amended, agreed to.*

### Section 8—Public benefit

**The Convener:** Amendment 69, in the name of Donald Gorrie, is grouped with amendments 70 and 88.

**Donald Gorrie:** The purpose of amendment 69 is to try to prevent anyone from arguing that because he or she as a member of the public has not benefited individually from a charity, that charity's right to charitable status should be removed. The phrase "by the public" could be interpreted as meaning that each individual member of the public must benefit, which is clearly not the case for almost every charity because many of them are limited to a specific group of people or geographical area.

Instead of using the phrase "by the public", which is to my mind ambiguous, I think that we should say that benefit should be felt

"directly or indirectly by the community as a whole".

With a housing association, for example, tenants benefit directly, but the rest of the community also benefits if it is a well-run housing association that provides housing and creates community activity. The Executive should think seriously about supporting amendment 69, which would clarify the meaning of the bill and prevent objections to OSCR on false grounds.

The purpose of amendment 88 is to clarify the rules that govern charities that serve specific groups,

"including, for example, religious or ethnic groups, former members of a particular organisation or sufferers of a particular disease".

Many charities have been set up to help specific groups of people. I have bored colleagues about the old Edinburgh charity that used to try to help teetotal tailoresses in Leith, but which ran out of customers. Many charities have a defined group that they try to help, and amendment 88 tries to set out a rule whereby such an organisation would still qualify as a charity despite its being aimed only at a specific group if

"(a) the body's purpose is to assist members of that group,

(b) the body acts fairly between all members of the group, and

(c) the community as a whole benefits directly or indirectly".

The first of those provisions is obvious. On the second point, there is a risk that a clan charity, Gorrie family charity, ethnic minority charity, religious charity or charity that involves any other particular group might sound okay but might actually benefit a wide family connection rather than the whole group. For example, a charity might not act fairly with all the members of a clan or religious or ethnic community. We should prevent that from happening, and OSCR should check that a charity acts fairly with its various members. As a result, amendment 88 endeavours to clarify the rules about charities that deal with particular groups. I am interested to hear whether the minister has a better proposition.

I move amendment 69.

11:30

**Mr John Home Robertson (East Lothian) (Lab):** I am not yet sure whether amendment 70 is a probing amendment or whether it clarifies the effect and purpose of section 8. In any case, I hope that the debate will serve a useful purpose. I will decide in due course whether to move the amendment.

As we know, the bill is rightly intended to clear up a rather loose and muddled framework of regulation for Scottish charities, with the objective of enhancing the status and work of thousands of genuine charities and, where necessary, weeding out any bodies that might not comply with the criteria that we are setting for OSCR.

As a result, we have the list of charitable purposes in section 7, which has just been debated, and the crucial overriding public benefit criterion in section 8. Initially, I felt that the terms of section 8(2)(b) were perfectly clear. It says:

"In determining whether a body provides … public benefit, regard must be had to … where benefit is, or is likely to be, provided to a section of the public only, whether any condition on obtaining that benefit is unduly restrictive."

I assumed that that would permit charitable status to be granted to bodies that provide services or facilities to everyone. However, I also assumed that that would, perfectly legitimately, permit charitable status to be granted to bodies that provide benefits to justifiably restricted groups, such as people who live in a particular area, who are affected by a particular disability, who have special needs or whatever.

However, until the question was asked during the stage 1 debate, it never occurred to me that section 8(2)(b) could possibly sanction restriction of access to benefits in the form of unaffordable charges or fees. It would not be in anyone's interests to leave any room for doubt on that fundamental point. In an intervention on Christine Grahame in that debate, I said that I thought that she was advancing a characteristically contrived point and that if she was serious about the matter, she might have been expected to seek to amend the bill at this stage: she has not done so and people can reach their own conclusions on that. However, I am serious about this issue. I think that it would be a travesty if the provision of a benefit that is primarily for well-off people were to be endorsed as a charitable purpose. I invite the committee to consider whether amendment 70, which would change the words of the proviso in section 8(2)(b) by inserting specific reference to charges and fees, would help to clarify the point.

I suppose that the obvious example is the case of private schools. Most people think it quite bizarre that schools that are primarily for the education of children from high-income families are treated as charities. In my East Lothian constituency, people find it very odd that a local secondary school such as Musselburgh Grammar School is liable to pay more rates than the neighbouring private school, Loretto School, in the same town. Of course, Loretto has the benefit of charitable relief from rates; that is the kind of matter that ought to be clarified.

I stress that I do not want to get into a debate about whether private schools are a good or a bad thing. For the record, I attended a private school, but I did not have any choice in the matter. My children attended state schools, and people can draw whatever conclusions they like from that. The issue is neither here nor there. Instead, the committee needs to address the question of what should be regarded as charitable and what should not be regarded as charitable under the proposed legislation.

I think—and I hope—that the current draft of the bill is sufficient to ensure that access to charitable benefits cannot primarily be for people who can afford to pay expensive fees or charges. However, if there is any doubt whatever on that point, and if amendment 70 would help to clarify an important

principle in Scotland's new charity legislation, I urge the committee and the Executive to consider agreeing to it. If the amendment were to be accepted, section 8(2)(b) would read, "where benefit is, or is likely to be, provided to a section of the public only, whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive." I hope that that is helpful. I will be interested to hear what colleagues, the minister in particular, have to say about amendment 70.

**Patrick Harvie:** I agree with John Home Robertson that a large part of the purpose of our considering this bill is to define what is charitable and what is not. Although some of the words in the middle of his speech were clearly not charitable, when he was addressing the substance of the argument, he spoke well. Unless the minister's response is extremely robust, I hope that John Home Robertson will move amendment 70, which I will support, as I will amendment 88.

To be honest, I am less clear about the value of amendment 69. I will wait to hear the arguments of the minister in reply.

**Christine Grahame:** I am delighted that John Home Robertson lodged amendment 70. He got there first. Like John Home Robertson, I make no comments about the worthiness or otherwise of the fee-paying school sector or the fee-paying health sector. That is a separate issue and the point that we are concerned with is one of principle. Well before John Home Robertson spoke about the amendment, I was minded to support it because it supplies an extremely important clarification and develops the phrase "unduly restrictive". In a charitable manner, I thank John Home Robertson for lodging the amendment and will give it my full support if it is moved.

**Mary Scanlon:** I am pleased to say that I will not be giving amendment 70 my full support, which is hardly a surprise.

I have concerns about section 8(2)(b), which I raised during our stage 1 discussions. I realise that I have not lodged an amendment in this regard, but the term "unduly restrictive" causes me and many others concern. Before I address amendment 70, I would like to refer to some of the evidence that we gathered during stage 1. The written submission from the Scottish Council of Jewish Communities particularly registered with me. It said that the fact that it raised and disbursed money within the Jewish community might mean that it would be seen to be unduly restrictive and would therefore be unable to pass the public benefit test. Another example that I gave during stage 1 related to the Highland clans. People come from all over the world to clan gatherings in the summer and of course the clans are unduly restrictive. I raise the issue because I feel that the provision could be abused at some point.

On amendment 70, during stage 1 I asked whether the fees that are charged at private schools could be considered to be unduly restrictive. I believe that Jane Ryder from OSCR said that the issue would be considered. I do not feel that it is OSCR's role to decide what is unduly restrictive. If people choose to send their children to Loretto—and to pay a fee for that on top of their taxes, rates, council tax and so on—rather than Musselburgh Grammar School, that should be their choice. If they choose to send their child to Fettes College that should be their choice; it should be a matter of individual choice. We received a letter from Fettes following the stage 1 discussions. I do not have it in front of me, but it mentions the enormous upkeep of the buildings at Fettes, which are not only a cultural asset but a community benefit to Edinburgh. Members may not agree with that, but part of the reason for the charging of the fees is to pay for the maintenance of those enormous historical buildings.

John Home Robertson said that private schools are primarily for people who are well off. When we took pre-legislative evidence in Perth, we heard from a trade unionist who said that he had made significant financial sacrifices in order to send his child to a private school. Let us not all assume that only people who are well off send their children to private school. Many people on all sides of the political spectrum choose to make such sacrifices to send their children to private school.

I am deeply against amendment 70 because it is a step too far. It is not for OSCR to take away the freedom of choice that individuals have to pay for their child's education.

**Linda Fabiani:** As a trade unionist who is fairly well off, I think that amendment 70 has been pretty well covered.

I will focus on amendments 69 and 88, about which I have concerns. My first concern is that both those amendments contain the word "indirectly". I am not comfortable about having that term in the bill, because it is very hard to define in this context.

I understand where Donald Gorrie is coming from on amendment 88. I have sympathy with the sentiments behind the amendment and I hope that the Executive will take those on board. We should consider other ways of covering the issue. I am not keen on including examples of groups in the bill, as is done in brackets in amendment 88. To be unduly picky, as we are all on about grammar today, I point out to Mr Gorrie that paragraph (b) of the proposed new subsection should say "among" all members of the group, rather than "between".

**Scott Barrie:** I did not intend to say much, if anything, on this group of amendments, but some of what Mary Scanlon said cannot go

unchallenged. I said in the stage 1 debate that it was unfortunate that too much of that debate focused on the issue of private schools. Of course, I went on and did exactly the same as most other members.

Mary Scanlon has missed the point in her criticism of amendment 70, which I support. The amendment is not about taking away choice; it is about whether institutions that operate in a restrictive way should be deemed to be charities. The amendment does not say that nobody will be able to send their children to private school if they choose to do so, nor does it say that we will abolish the private education sector. It is saying that private schools that operate in an unduly restrictive way will no longer be deemed to be charities. That is in keeping with what the vast majority of the people of Scotland understand a charity to be. Amendment 70 clarifies considerably the point that the vast majority of committee members raised during stage 1 and bears out the sentiments that members expressed in the parliamentary debate. The amendment is worthy of support.

11:45

**The Convener:** I intend not to participate in most of the debates during stage 2, but I feel that I need to say something at this point because I have a constituency interest.

It has been unfortunate that most of the debate on the reform of charity law has concentrated on whether some independent schools should get charitable status. I certainly have my own views about that: if parents want to pay to send their children to a particular school, that is entirely their choice, but the public purse should not subsidise them for exercising the right to express that choice.

However, a number of public schools in Scotland provide a valuable service to many children. I refer to schools such as Glencryan School—I mean the Craighalbert centre—in Cathie Craigie's constituency, or St Philip's School in my constituency, which provides an education for some of Scotland's most vulnerable and damaged children who are creating difficulties in the communities in which they live. Local authorities refer such young people to St Philip's so that they can be educated and receive assistance to address some of their behavioural problems. Such independent schools are concerned that any changes to charity law in Scotland should allow them to continue to receive charitable support. That is vital and I hope that, in her response to the points that have been raised in the debate, the minister will acknowledge those concerns.

**Johann Lamont:** The public benefit test is one of the main pillars of the bill and the fact that, in future, no charity will be presumed to provide public benefit is a major step forward. Instead, each body will have to be able to demonstrate to OSCR that it provides public benefit.

I accept that the committee has been concerned about how strict the public benefit test should be. That was debated in the committee and the Parliament at stage 1, and paragraphs 149 and 150 of the committee's report recognised the complexities of providing a definition of public benefit and concurred with the Executive's approach in the bill. The committee also recognised the importance of ensuring that only organisations that have as their overriding purpose the provision of benefit to the public should qualify for charitable status and suggested that consideration should be given to the bill placing greater emphasis on the need to pass the public benefit test.

I am grateful that the committee concurred with our approach and I have emphasised my view that the provision that is set out in the bill is the best way of achieving a rigorous, fair and transparent test that can adapt to changing opinions. We must rely on OSCR, as the independent regulator acting in the public interest, to operate the test fairly. However, the test could not be more central to the bill and unless a body can pass the test, it will not be a charity.

I turn to the amendments on public benefit. Amendments 69 and 88 attempt to specify that benefit can be provided directly or indirectly and that bodies that provide benefit to particular groups of people can be charities. I make the point that "directly or indirectly" covers everybody. The public benefit test does not exclude indirect benefit and already acknowledges that bodies that provide benefit to particular groups of people can be charitable provided that any conditions that are placed on receiving the benefit are not unduly restrictive. In such instances, it will be for OSCR to decide in each case whether any conditions are unduly restrictive.

I understand the point that Donald Gorrie is wrestling with. He used the example of a Gorrie clan charity. The first question would be whether there could be public benefit in doing anything to support the broader Gorrie clan; if not, the body might fall at the first hurdle. That reinforces the point that we want OSCR to deal with such issues case by case because such instances are specific, and OSCR is challenged to do that. Because of our commitment to equal opportunities, the public benefit test does not affect a charity that targets a particular group because it is discriminated against.

We are concerned that if amendments 69 and 88 are accepted—in particular, if the reference to a body acting

"fairly between all members of the group"

is incorporated into the bill—it could lead to a body's resources being spread too thinly to offer any real benefit. It is important for OSCR to be able to consider such bodies case by case. OSCR will be required to consult on the guidance that it will use to determine public benefit.

Amendment 70 further clarifies how the public benefit test applies to charging.

The point that the convener made about independent schools and the diversity of the independent sector probably encapsulates why the bill promotes the formula that it does. The bill guarantees an objective test. The aim is not to attack independent schools—some of them will be in and some will be out. It will be a matter for OSCR, having consulted on the guidance, to determine the public benefit test.

The convener highlighted well the fact that independent schools are diverse—indeed, in a former life, I would probably have supported youngsters who were referred to schools such as St Philip's School. Some people suggested that we should simply use the bill as a vehicle for acting against private or independent schools, which is impossible, and I think that some people wished to debate issues that are different from those that the bill covers—it could be argued that Patrick Harvie tried to do that earlier. However, the quality or value of the independent sector, excluding the special needs sector, is a separate issue that does not relate to the bill.

Can bits of the independent sector qualify under the public benefit test? We have set up an objective system that will not judge people's choices but which establishes that there must be public benefit if charitable status is to be secured. Considering whether a condition is unduly restrictive is reasonable and it is the Executive's view that amendment 70 clarifies the position. It is possible that certain organisations—I am not talking specifically about independent schools—may use the level of fees that are charged as a means of being exclusive, even in the sector in which they operate. Therefore, it is reasonable for OSCR to be asked to have regard to whether a condition is unduly restrictive, with the clarification that amendment 70 will provide. Therefore, I urge the committee to support amendment 70 and urge Donald Gorrie to seek to withdraw amendment 69 and not to move amendment 88.

**Donald Gorrie:** First, I want to comment on amendment 70, which I did not do previously. It is clear that we are not talking about the future of fee-paying schools—Mary Scanlon was misleading in that respect. The issue is whether fee-paying schools will qualify as charities, which OSCR must judge in accordance with the rules that we lay down when the bill is passed. The Executive's argument might be that amendment 70 is covered anyway, because "any condition" obviously includes fees. However, I am all in favour of stating the obvious and am pleased that the Executive agrees to the amendment, which states the obvious—that is, that fees are included. We are not talking simply about fee-paying schools. A sports body with a modest subscription might be okay, but OSCR might reasonably think that an organisation with a golf course—which shall be nameless—that it is expensive to be a member of is not a charitable organisation. Amendment 70 covers a wider sphere and clarifies matters. I therefore support it.

I still think that amendments 69 and 88, which are my amendments, make a good point—I even think that my grammar is correct and may argue about that with Linda Fabiani later. Such amendments are always difficult and I may not have got things right yet, but my purpose is correct and I am prepared to—

**The Convener:** It is all right, Mr Gorrie. You do not need to say what you intend to do at this point.

**Donald Gorrie:** I will accept further discussion with the Executive to try to clarify the points that I have raised about the need for the bill to be as clear as possible on how the charities that help particular groups of people should operate.

*Amendment 69, by agreement, withdrawn.*

*Amendment 70 moved—[Mr John Home Robertson].*

**The Convener:** The question is, that amendment 70 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Fabiani, Linda (Central Scotland) (SNP)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Home Robertson, Mr John (East Lothian) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

**AGAINST**

Scanlon, Mary (Highlands and Islands) (Con)

**The Convener:** The result of the division is: For 8, Against 1, Abstentions 0.

*Amendment 70 agreed to.*

*Amendment 88 not moved.*

*Section 8, as amended, agreed to.*

### Section 9—Guidance on charity test

**The Convener:** Amendment 71, in the name of Donald Gorrie, is in a group of its own.

**Donald Gorrie:** Like many of my amendments, amendment 71 states the obvious. As it stands, section 9 states:

"OSCR must, after consulting such persons as it thinks fit, issue guidance".

My suggestion is that section 9 should state that OSCR is required to consult "representatives of the charitable sector and such other persons as it thinks fit". Arguably, OSCR would do that anyway, but legislation should guard against the possibility that a future occupant of the post will not be as reasonable as the present one and will fail to do things that might appear obvious to others. I hope that the minister will consider my proposed wording a useful addition.

I move amendment 71.

**The Convener:** As no other members want to speak, I ask the minister to respond.

**Johann Lamont:** One of my frustrations is that it is not always obvious when I am stating the obvious. That can cause its own difficulties.

The bill already places OSCR under a duty to consult whomever it thinks fit, which of course includes the charitable sector. OSCR will also be expected to be reasonable and proportionate in all its actions. Therefore, it is unlikely that OSCR would ever consider it reasonable not to consult the charitable sector on such an important matter as the guidance that it issues on the charity test. However, I understand that amendment 71 would provide the sector with reassurance about our intention, so I am happy to accept the amendment.

Although amendment 71 perhaps deals with the same area of thought as amendment 80, in the name of Cathie Craigie, I would draw a distinction between them. Amendment 71 will require OSCR to consult the charitable sector specifically on the guidance that it issues on the charity test rather than on everything that comes out of its door. However, I recognise that both amendments are motivated by the same concern. I recognise the importance of clarity about the role of the charitable sector in such matters, so I am happy to accept amendment 71.

**Donald Gorrie:** I am very happy with what the minister has said.

*Amendment 71 agreed to.*

*Section 9, as amended, agreed to.*

### Section 10—Objectionable names

12:00

**The Convener:** Amendment 89, in the name of Patrick Harvie, is grouped with amendments 72, 36 and 73.

**Patrick Harvie:** I hope that amendment 89 will allow us to explore the meaning and consequences of section 10(1)(d), which makes it clear that charity names that are offensive will not be acceptable. I am unclear exactly to whom names would have to be offensive in order to be ruled out of order. A number of small charities in England and Wales, particularly those serving the lesbian, gay, bisexual and transgender community, have had problems as a result of people believing that their names are objectionable. Examples are the use of the word "queer" or perfectly innocent innuendos, particularly by organisations that are targeting a client group who would not find the name offensive in any way and who are in no way being in your face to people who might find the name objectionable or offensive. I hope that the minister will be able to explain to us who a name would have to offend in order to be ruled out of order. If the response is reasonable, I will be happy not to press my amendment, but I look forward to hearing her comments. I have no comments to make on the other amendments in the group.

I move amendment 89.

**The Convener:** I ask Christine Grahame to speak to amendment 72 and any other amendments in the group.

**Christine Grahame:** Which amendment am I speaking to?

**The Convener:** Amendment 72.

**Christine Grahame:** Ah yes. Amendment 72 simply adds to the information considered under section 10, which currently provides that reference to a body's purposes can determine whether its name is misleading. According to paragraphs (a) and (b) of section 10(2), those purposes must be set out in the statement that accompanies an application to OSCR or in an entry in the register. Therefore, in the case of a charity, its purpose would be set out in its entry in the register; the amendment would add to that its constitution, which is also a useful source of information. The purpose of the amendment is simply to provide additional information—I see that I am getting a smile from the minister for that one.

Amendment 73 is a technical amendment, which I hope I understand. I am about to explain it—I was distracted earlier because I was thinking about it. Section 11 relates to change of name. The amendment relates to the interaction of the

bill with company law. It is my understanding that a special resolution involving 21 clear days' notice to members has to be given in relation to a resolution to change the name of a company that is a charity. If notice were given to OSCR under section 11 42 days before the date set for the extraordinary general meeting or the annual general meeting in question and OSCR did not respond within the 28 days allowed under section 11(3), the effect of deemed consent would be lost since it would then be too late to issue 21 days' notice of the resolution. I hope that the minister understands that, but I put it to her as a technical matter—the interaction of two pieces of legislation—that must be addressed seriously.

I have a great deal of sympathy with amendment 89, and I will be interested to hear what the minister has to say about it.

**Johann Lamont:** I am a bit concerned that I may have misled Christine Grahame by smiling, which I know is unusual. However, she should not interpret my body language too closely or I will be in real trouble.

Amendment 36 corrects a technical omission by ensuring that section 10, on objectionable names, extends to applications for SCIOs as well as applications relating to other charities.

Patrick Harvie's amendment 89 seeks to restrict the definition of objectionable names to those that are intentionally offensive. I absolutely understand the point that he is making; however, I would put the opposite argument. If someone were to give a charity a name that I found offensive—perhaps a misogynist or racist name—but the person said that they did not mean to be offensive and claimed ignorance, that might be a defence for the charity continuing under that name. The objectivity of OSCR in relation to the matter is helpful. I take the point that he makes, which is that organisations may give themselves names that other people—inappropriately—find offensive. Nevertheless, we would not want organisations that we would deplore out of our commitment to equal opportunities to be able to use the defence of ignorance. I hope that he accepts my assurance that we recognise the role of OSCR in looking at the names of charitable organisations.

Amendment 72, which would add the constitution of the charity to the places that OSCR can consult in identifying a charity's purpose, is unnecessary. Section 10 refers to the purposes that will be outlined in a charity's entry in the Scottish charity register. In applying to be placed on the register, a body will send OSCR a copy of its constitution and OSCR will use the purposes that are listed in the constitution, as well as those that are stated in the application, in compiling the entry on the register.

Amendment 73 would reduce from 28 to 21 the number of days that OSCR has to respond to a notice from a charity that it intends to change its name. The amendment is intended to allow a charitable company 21 clear days, following OSCR's notice period, to notify members of the special resolution to change the company's name. I believe that a notice period of 21 clear days is required under the Companies Act 1989.

Notice of the proposed change must be given by a charity to OSCR at least 42 days in advance of the change taking effect. In the case of a charitable company, that will be 42 days before the annual general meeting—the date of the name change. However, the 42-day notice period is the minimum that is required, and a charitable company could give OSCR more than 42 days' notice before the AGM. That would enable the company to be confident of OSCR's agreement once the 28 days were up and allow it to give its members 21 days' notice of the special resolution to change its name. In practice, a charitable company would have to give OSCR a minimum of 49 days' notice before the name change to ensure that, after the 28-day period in which OSCR would consider the change, it would still have sufficient time to give its members notice. Therefore, we do not believe that amendment 73 is necessary.

Moreover, OSCR has expressed concern that the time periods in which it must act are often tight. It is, therefore, against the adoption of amendment 73, which it considers too onerous in giving it a tighter time period in which to make decisions for all charities, not just for charitable companies. I hope that Christine Grahame will accept that explanation.

I ask Patrick Harvie to withdraw amendment 89 and Christine Grahame not to move amendments 72 and 73. I urge the committee to support the Executive's amendment 36.

**Donald Gorrie:** The minister has said what I intended to say about Patrick Harvie's amendment 89. It is well-intentioned but lacks sensitivity. The fact that someone did not mean to be rude to someone else is not a satisfactory defence. Amendment 89 does not, therefore, stand up totally.

On amendment 73, I am now totally confused about the 21-day rule. Like other members, I received a brief from a worthy organisation that explained it all; however, the minister has now explained it completely differently. For the moment, I will go with the minister, but I will have to try to understand it in due course.

**The Convener:** I ask Patrick Harvie to wind up and to press or withdraw amendment 89.

**Patrick Harvie:** I entirely take the point that the minister makes. Although I still feel some

uncertainty about the way in which the provision in the bill will be implemented, I am happy to withdraw my amendment and explore other options in advance of stage 3.

*Amendment 89, by agreement, withdrawn.*

**The Convener:** Amendment 72, in the name of Christine Grahame, has already been debated with amendment 89. Ms Grahame, do you intend to move amendment 72?

**Christine Grahame:** In the light of what the minister said, I will not move amendment 72. On amendment 73—

**The Convener:** I must stop you there because we have still to reach that point.

*Amendment 72 not moved.*

*Amendment 36 moved—[Johann Lamont]—and agreed to.*

*Section 10, as amended, agreed to.*

### Section 11—Change of name

**The Convener:** Amendment 73, in the name of Christine Grahame, has already been debated with amendment 89. At this point, Ms Grahame, you may indicate whether you intend to move the amendment.

**Christine Grahame:** Thank you. My head is turning to mince as the day goes on. In the light of what the minister said, I will not move amendment 73 at the moment. Donald Gorrie and I will have to have a long, slow drink and work out what it all means.

**The Convener:** What an interesting proposal.

*Amendment 73 not moved.*

*Section 11 agreed to.*

*Sections 12 to 14 agreed to.*

### Section 15—References in documents

**The Convener:** Amendment 37, in the name of the minister, is in a group on its own.

**Johann Lamont:** Amendment 37 will allow ministers to exempt charities transferred to the register under transitional arrangements from the regulations made under section 15. It is designed to give those charities time to use up old stationery—how practical—and to order new stationery that complies with the regulations made under section 15.

I move amendment 37.

**The Convener:** Do committee members have any desire to speak about this practical amendment?

**Christine Grahame:** I am terribly grateful to the minister because I thought that there was some sinister motive behind the amendment, but now I understand that it is about paperwork.

*Amendment 37 agreed to.*

*Section 15, as amended, agreed to.*

*Sections 16 to 18 agreed to.*

### Section 19—Removal from Register: protection of assets

**The Convener:** Amendment 38, in the name of the minister, is grouped with amendments 50 and 53.

**Johann Lamont:** The provisions in section 19 ensure that a body removed from the register must continue to use its charitable assets for the purposes set out in its entry on the register before it was removed. It also allows OSCR to apply to the Court of Session to protect the charitable assets. The court may approve a scheme proposed by OSCR for the transfer of the former charitable assets to another charity if it is necessary or desirable to do so, or if the existing charitable purposes would be better achieved by transferring the property to a charity.

If the bill is enacted, some charities with property purchased with public funds might lose their charitable status. Although section 19(8) allows ministers to disapply the provisions in relation to property that they consider of national importance, there has been some uncertainty about what property that would cover.

Amendment 38 will change section 19(8) to allow ministers to protect any property specified in an order under that subsection. Examples that make the amendment necessary are that some NDPBs might, in due course, not continue to hold charitable status. Ministers might consider that such bodies' property, particularly heritable property such as buildings and offices, should not continue to be subject to charitable control, applied to existing charitable purposes or transferred to other bodies that are not charities but which remain public property. In recognition of the fact that that widens the power in section 19(8), amendments 50 and 53 change the process for making the order from the negative to the affirmative procedure.

I move amendment 38.

*Amendment 38 agreed to.*

*Section 19, as amended, agreed to.*

**The Convener:** I am sure that committee members, the minister and her officials will be delighted to learn that that brings us to the end of day 1 of our stage 2 consideration of the bill.

I propose that at our next meeting we should consider amendments to the end of section 69, which is the end of chapter 9, on charity trustees. All amendments up to that section should be lodged with the clerks by 12 noon on Friday 22 April. Should members have amendments to later sections, they are welcome to submit them as soon as possible.

12:16

*Meeting closed.*

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