COMMUNITIES COMMITTEE

Wednesday 27 April 2005

Session 2

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COMMUNITIES COMMITTEE
13th 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 1

Scottish Parliament

Communities Committee

Wednesday 27 April 2005

[The Convener *opened the meeting at 09:31*]

Item in Private

The Convener (Karen Whitefield): I open the 13th meeting in 2005 of the Communities Committee. I remind all members and visitors that their mobile phones should be switched off.

Item 1 is to ask whether members agree to take item 4, on the committee's draft annual report, in private. Are we agreed?

Members *indicated agreement*.

Charities and Trustee Investment (Scotland) Bill: Stage 2

09:32

The Convener: This is our second day of stage 2 consideration of the Charities and Trustee Investment (Scotland) Bill. Members should have before them a copy of the bill, the marshalled list of amendments and the list of groupings, which was issued on Monday. I welcome Johann Lamont, the Deputy Minister for Communities, to the committee.

After section 19

The Convener: Amendment 90, in the name of Christine Grahame, is in a group on its own.

Christine Grahame (South of Scotland) (SNP): Thank you, convener. As you can hear, I have a cold and am rather the worse for wear. I think that I am turning into a baritone.

Amendment 90 reflects the committee's views as expressed in paragraph 67 of our stage 1 report. The committee recommended that,

"in addition to a list of current and active charities, there would also be merit in maintaining a list of charities that are no longer functioning. It considers that this would be of particular benefit where charities that are no longer functioning have remaining revenue or other assets. It would also allow such charities to be revived where appropriate and their assets to be used for the public benefit."

Such a list would also make the status of charities clear to the public. As we know, the lack of such information was part of the problem that arose prior to the introduction of the bill, when there were—if I may use the colloquialism—iffy charities. Amendment 90 would make charities if-less.

Donald Gorrie might want to speak about the amendment at some point. He, too, was in favour of maintaining such a list.

I move amendment 90.

Donald Gorrie (Central Scotland) (LD): Christine Grahame is correct that I shared the concern that some of the groups from which we heard expressed about information being available on defunct charities. I believe that we should make it as easy as possible for local communities to pursue issues about local charities. Indeed, I have a separate amendment about that. The wording of amendment 90 may not entirely fit the bill, but I will be interested to hear the minister's comments.

We certainly need to make it as easy as possible for communities to seek out and revive defunct charities. In aggregate, there are huge amounts of money lying about here and there in

small sums in the accounts of defunct charities. It would also be helpful to have a list of the charities that have been removed from the register. We should certainly do something about the defunct charities. I hope that the minister will agree to help in that regard, even if she cannot support the amendment.

The Deputy Minister for Communities (Johann Lamont): Whether a list should be kept of those organisations that have been deemed to be no longer charities and what action should be taken when a charity becomes defunct are probably two separate issues.

Arguably, amendment 90 would not achieve its aims and might do more harm than good. The public need the register to be clear, so only bodies that are charities should appear on the register. We need to consider what purpose would be served by requiring a list to be maintained of ex-charities, possibly including their previous charity numbers. Such an argument may not be absolutely compelling, but amendment 90 could add to confusion. Under the bill, the Office of the Scottish Charity Regulator is already required to publish a report on action that it takes against charities, including every case in which a charity is removed from the register.

If the information on the proposed list is required simply as a matter of historical record, we believe that OSCR could be requested to provide that information in the isolated instances in which it was necessary to establish whether a body was previously a charity. If, in time, I am proved wrong and OSCR is overwhelmed with requests for such information, it will be free to set up such a list and make it publicly available without the need to amend the legislation.

I am aware that the committee recommended a similar list for charities that are no longer functioning but have remaining revenue and assets. However, such a list is unnecessary, as section 47 allows financial institutions to inform OSCR of any dormant charity accounts. In addition, the consultation on the accounting regulations proposes that regulations made under section 45 should require that accounts for dormant charities must continue to be sent to OSCR. That would allow OSCR to intervene if the assets of a charity that disappears could, under section 41, be better used by another charity.

I hope that I have been able to give Donald Gorrie the reassurance that he sought. As I have indicated, I believe that Christine Grahame's amendment 90 is unnecessary.

Christine Grahame: I am not satisfied with what the minister has said. Amendment 90 is not about a major issue, but the whole point of the legislation is to give ordinary people clarity, which is what my simple amendment would give them.

Amendment 90 also states clearly:

> "The Scottish Ministers may by regulations make further provision as to the nature of the information to be contained in the list and the manner in which it may be held."

Therefore, for instance, regulations could prescribe that charities that are removed from the register should continue to be listed for a year before all reference to them is removed. The amendment would give OSCR flexibility on what appears on the register.

It would be useful to allow people to see which charities have been removed from the register. People could click on OSCR's website to see the list of charities that have been removed from the register and the date on which they were removed. If people want to find out about defunct charities, they should be able to see which charities are defunct and which defunct charities still have assets. Amendment 90 would simply provide people with a point of reference so that they would not need to check all the accounts that have been submitted. The whole point of the bill is to ensure that ordinary people feel secure about the various charities and their status at any time. A defunct charity might be revived at some point.

Amendment 90 is a simple, straightforward amendment that would require OSCR to keep a record. The amendment reflects views that were given to the committee and it reflects the committee's unanimous views. We thought that such a list would be useful to people.

Although I am prepared to seek the committee's leave to withdraw amendment 90, I am keen to hear what the Executive will have to say at stage 3. If the Executive produces amendments that would alleviate the concerns, it might not be necessary for me to relodge my amendment. However, I give the minister notice that, if I am given leave to withdraw amendment 90, I would be prepared to bring back a similar amendment at stage 3 to advance the argument further.

The Convener: In light of Ms Grahame's comments, I ask the minister whether she has anything further to add.

Johann Lamont: If amendment 90 is withdrawn, I would be happy to clarify matters and to pursue some of the practical points that Christine Grahame has raised.

Amendment 90, by agreement, withdrawn.

Section 20—Co-operation

The Convener: Amendment 138, in the name of Christine Grahame, is grouped with amendments 139 to 143.

Christine Grahame: I think that I am sinking; I am trying to remember why on earth I lodged amendment 138. It looks technical.

Scott Barrie (Dunfermline West) (Lab): That will explain it then.

Christine Grahame: I think that I lodged amendment 138 because it is not appropriate for section 20(3) to refer to section 38(1) when defining who must co-operate with OSCR. I am dreadfully sorry that I cannot do any better than that. If anyone else can help, they would be welcome to do so.

The Convener: The minister might have a slight advantage. She might understand Christine Grahame's mind a little better than Christine Grahame understands it.

Johann Lamont: I will try not to demolish Ms Grahame's arguments. Amendments 138 to 143 deal with Communities Scotland's regulation of charitable registered social landlords.

I welcomed the committee's agreement in its stage 1 report that it was appropriate for Communities Scotland to continue its regulatory role in relation to charitable RSLs. That is in keeping with our desire for proportionate regulation. I acknowledge that there are concerns that that might lead to the bill being interpreted and enforced differently with different types of charity, but my response to those concerns continues to be that OSCR will retain control over the charity test and entry in the register. RSLs will have to register with OSCR and OSCR will continue to apply and review the charity test. I believe that that provides sufficient comfort to those people who may have anxieties. Again, we have tried to strike a balance between the exercise of regulatory functions and recognition of how the sector operates in the real world. Anyone who has connections with RSLs will be aware of the degree of regulation by which they are covered.

Members will have noticed that the Executive has lodged amendments that seek to clarify that decisions that are made by someone with delegated powers will be subject to the bill's full appeals process; I will speak to those amendments later. At this stage, it is sufficient to highlight the fact that OSCR must review decisions that have been taken by a person to whom its functions have been delegated when it is requested to do so. I hope that that provides further reassurance that OSCR will retain control over the bill's interpretation, although its decisions will, of course, be subject to appeals that are made to the Scottish charity appeals panel and judgments that are made by the Court of Session. I ask members to resist the amendments in this group.

The Convener: I hope that the minister has clarified why Ms Grahame might have lodged amendment 138. In her haze of confusion, Ms Grahame failed to move her amendment.

Christine Grahame: I move amendment 138, although I do not intend to press it. Amendments 138 to 143 are in my name, but Linda Fabiani was to speak to them. That is why I am so ill informed.

Linda Fabiani (Central Scotland) (SNP): And so ill.

Christine Grahame: I did not speak to any of the other amendments in the group. I do not know whether it would be appropriate for Linda Fabiani to do so now.

Amendment 138, by agreement, withdrawn.

Section 20 agreed to.

After section 20

09:45

Donald Gorrie: It is difficult to remember but, in the light of the discussion that we had last week, I agreed not to move my amendment 91 because the matter was adequately covered in other ways.

Amendment 91 not moved.

Section 21 agreed to.

Section 22—Power of OSCR to obtain information from charities

The Convener: Amendment 144, in the name of Donald Gorrie, is grouped with amendment 145.

Donald Gorrie: Both amendments insert the word "reasonably", to ensure that OSCR acts reasonably in requiring information from a charity. The amendments have been suggested by the Law Society of Scotland, which, I am sure, is a very reasonable body. I am sure that OSCR is also a reasonable body; nevertheless, the law should cover against some future OSCR not being so reasonable. It is fair to state in the bill that OSCR must have good reasons for requiring information under sections 22 and 29. It is not a matter of life and death, but the word "reasonably" improves both sections.

I move amendment 144.

Johann Lamont: The embodiment of reasonableness, I will attempt to respond to Donald Gorrie's comments.

I do not believe that amendments 144 and 145 are necessary. As the Law Society has acknowledged in suggesting the amendments, OSCR is a public body and is therefore already under a duty to act reasonably. OSCR will be covered by the Ethical Standards in Public Life etc (Scotland) Act 2000 and will have to live up to modern expectations of good regulation.

Amendment 144 relates to OSCR's powers to obtain the documents and information that it

requires in relation to a charity's entry in the statutory register. By its nature, that information is confined to what is required specifically for that narrow purpose. Additionally, there is a restriction in section 22 so that OSCR may not require the disclosure of confidential information in connection with proceedings at the Court of Session.

More generally, section 1(4) specifically provides that OSCR may not do anything to contravene any express prohibition that is contained in any enactment, including the provisions of the bill. OSCR is therefore subject to all the restrictions that are contained in the Data Protection Act 1998 and other legislation relating to the exchange of information and it must act only within the confines of the powers that are granted to it by the bill.

Amendment 145 relates to OSCR's powers to obtain documents or information for inquiries. One of OSCR's fundamental functions is to identify and investigate apparent misconduct. It must make inquiries to ensure that charities comply with the requirements of the bill. Again, we expect OSCR to be reasonable in making demands for information for its inquiries. The restriction on disclosure of confidential information under section 29 is identical to the restriction under section 22. There is a further provision in section 29(4), under which documents or information that are disclosed in connection with an inquiry can be used only in connection with that inquiry. Finally, a requirement on any person to provide documents or information under section 29(1) is subject to a specific right of review by OSCR under section 70. In addition to the above, a person who does not consider that OSCR has acted reasonably may seek judicial review.

The existence of those checks and balances should provide sufficient comfort to those who are concerned that OSCR would not act reasonably. Therefore, I do not support the amendments, as they are not necessary. I am also concerned that, if passed, they may raise the question why every other action that is taken or decision that is made by OSCR should not be subject to similar specific qualifications in the bill. I urge Donald Gorrie to withdraw amendment 144 and not to move 145.

Donald Gorrie: I am content to withdraw amendment 144. I would not wish indirectly to encourage OSCR to be unreasonable under other sections of the bill. The minister has also given reasonable assurances about the reasonableness of OSCR.

Amendment 144, by agreement, withdrawn.

Section 22 agreed to.

Sections 23 to 27 agreed to.

Section 28—Inquiries about charities etc

The Convener: Amendment 74, in the name of John Home Robertson, is grouped with amendments 92, 93 and 95.

Mr John Home Robertson (East Lothian) (Lab): I will leave it to Donald Gorrie to address the three amendments in his name. I will speak to and move amendment 74, which would specifically enable OSCR to make inquiries about a charity when the regulator has received relevant information or representations from a third party about that charity. Colleagues may recall my suggestion at an earlier stage that there could be some form of public notification of applications for charitable status. I offer amendment 74 as an alternative way of ensuring that people who have genuine concerns about either the objectives or the conduct of a charity can be heard and that OSCR can react to such information.

I stress that I do not want—and I am sure that nobody on this committee would want—OSCR to waste time on frivolous or malicious complaints; however, there should be a system to enable the regulator to act on genuinely relevant information when that comes to OSCR's attention. Charities depend on public confidence, so it is in the interests of the charitable sector to have an effective mechanism to deal with information about organisations that go wrong.

In 26 years in Parliament, I have come across just two cases of what I regarded as serious concerns about individual charities. I raised both those cases in the House of Commons at different times, and it soon became clear that the old regulatory system was pretty much incapable of dealing with such concerns. It might be helpful if I describe those two cases briefly. I express the hope that the new system might be able to react better to such circumstances.

First, the Atlantic Salmon Conservation Trust (Scotland) made it its business to acquire the net fishing rights on several Scottish rivers and to close down long-established legal netting stations—which, incidentally, destroyed a significant number of jobs in remote areas. The objective of conserving wild salmon is perfectly legitimate; however, it came to my attention that there was a separate motive for some of those who were involved in the organisation in seeking to increase the number of salmon that would be killed by anglers, which would increase the value and revenue of rod fishing at beats elsewhere on the rivers. I obtained a copy of a letter to rod fishing proprietors from the Duke of Roxburgh, no less, on behalf of the trust, dated 23 August 1988, which said:

> "As all the Tweed proprietors, and proprietors of all the main tributaries are likely to benefit enormously over the course of the next few years from the removal of the bulk of

the netting presence and the subsequent control of the Tweed salmon stocks for conservation, it would be nice to think that all proprietors interested in salmon conservation would contribute to the A.S.C.T.(S)"—

the Atlantic Salmon Conservation Trust (Scotland)—

"possibly in proportion to their assessable value."

So, the trust was not just a conservation body; it was also a vehicle for a tax-efficient investment by proprietors so that their businesses could, to quote the Duke of Roxburgh, "benefit enormously". That is not recognisable as a charitable purpose, and a lot of people protested about that case; however, nothing was done about it. The investment worked, and the Atlantic Salmon Conservation Trust (Scotland) is still a charity that owns extensive fishing rights throughout Scotland. The Inland Revenue in Scotland made its decision that the trust was a charity, and there was no way of getting its status reviewed, regardless of the Duke's letter or any other information.

The other example that I cite is a rather more worrying and distressing story involving the Algrade Trust, which used to operate a residential home for people with learning difficulties in the village of Humbie, in East Lothian. The trust's constitution refers to providing for the

"spiritual, physical and material welfare and education of the mentally handicapped".

The word "spiritual" is the worrying one.

The operation of the home went badly wrong. When I raised the matter in the House of Commons in June 1996, I pointed out that the trust was getting £420,000 from the Department of Social Security to care for its residents, but was spending just £36,000 on staffing. I will quote *Hansard*, because I need to be a little bit careful. I said:

"I believe that large sums of money that should have been spent on the care of handicapped people have been diverted into the former trustees' religious organisation, and into property that now belongs to individual former trustees." —[*Official Report*, *House of Commons*, 16 January 1996; Vol 269, c 648.]

The home was closed following the intervention of the local authority and proper care arrangements were made for the former residents, but the Algrade Trust still exists and still has substantial assets. According to the most recent accounts that I have seen, it has £587,000, and the site at Humbie was sold in 2000 for £350,000. One might expect that all that money would be applied for the benefit of former residents and other people with learning difficulties, but I see from the trust's accounts that there is £124,000 in what is called a Christian work fund, which I presume is for the trust's religious activities.

I have made repeated attempts to get the authorities to intervene to resolve the problems at the Algrade Trust, but, 10 years on, questions still need to be answered. I hope that OSCR will be able to address such issues.

I apologise for going on at length, but the examples that I gave are relevant. Obviously the overwhelming majority of Scottish charities do their jobs well and conscientiously, but it is inevitable that things will go wrong occasionally. I have given a couple of examples from my experience of cases in which the old system for the supervision of charities appears to have failed, despite the best efforts of whistleblowers. That is why I am suggesting that it would be useful to give OSCR a specific power to act on information when it sees fit. I put that point to the minister and suggest that it would be useful to have provision for that in the bill. I appreciate that the drafting of amendment 74 might be technically inappropriate, but I urge the minister and colleagues on the committee to consider the point that it makes. If we cannot deal with it now, it might be appropriate to return to it at stage 3.

I move amendment 74.

Donald Gorrie: I have three amendments in this group; the final two are on the same subject, which I will come to in a moment.

Amendment 92 relates to the same issue that John Home Robertson raised, but focuses on a different aspect of it. I do not think that the point was drawn to our attention when we took evidence on the bill, but, since then, a colleague produced a case from his constituency that raised it. The bill is thorough in dealing with clear financial or other irregularities. Amendment 92 is concerned with people who have been lazy or incompetent or, for whatever reason, have not pursued actively what their charity is supposed to do.

The complaint to which I refer came from a community council in connection with an organisation in which, for various reasons, there had been changes in the trusteeship and which seemed to be failing to pay out the money that it should have been paying to advance people's education. There seemed to be high running costs and little benefit to the community.

Amendment 92 is a first stab at the issue and I do not necessarily expect the committee or the minister to accept it. There should be provision to enable a community—a community council is a good vehicle for this—to ask OSCR to intervene. It would not be open to any Tom, Dick or Harry to create lots of trouble. However, if a community council is persuaded that a trust or charity is not helping the local community as much as it should, it could draw OSCR's attention to the situation. If, after looking into the matter, OSCR thought that the complaint had substance, it would contact the charity and get it to discuss things with the

community council and other local representatives. Following the outcome of that discussion, OSCR could pursue the matter further—or not. In any case, there should be some mechanism that allows an organisation such as a community council to be able to put its case to OSCR with regard to examining how a local charity is doing.

Amendment 93 concerns an issue that I feel strongly about. The changeover from the existing system to the new system in the legislation will be difficult for a lot of charities, and OSCR might at first sight decide that many quite worthy organisations that are currently charities should not keep that status. It might well be that such organisations did not present their case as well as they should have done.

Amendment 93 seeks to give those organisations a second kick at the ball. OSCR should have to specify why a charity is not meeting the charity test, as that would allow the charity in question to put forward better arguments or alter its operation to meet OSCR's points. Members might have views on the amendment's wording, but it is important that existing charities should get as much of a chance as possible to retain their charitable status. I hope that the minister will be sympathetic to amendment 93.

Amendment 95 is consequential on amendment 93.

10:00

Christine Grahame: I have a great deal of sympathy for amendment 74. Allowing third parties to come forward in the circumstances that John Home Robertson described would strengthen OSCR's powers. Whistleblowing can be so important and although it might be implied in section 28, it is not explicitly stated.

I see where Donald Gorrie is coming from with amendment 92. However, I cannot agree to it, because I really do not feel that community councils are always representative of their communities. Some are representative, but others are made up of people who have bees in their bonnets about things. Indeed, sometimes, a community council might well be simply six folk who have nominated themselves without having a huge election—would that community councils were more democratic in some cases.

I was quite sympathetic to amendment 93, but my problem is that it is a mandatory, not discretionary, provision. It says:

> "Before concluding that a charity no longer meets the charity test OSCR must … inform the charity that it may no longer meet the charity test".

Perhaps the minister will outline the circumstances in which such a course of action would be inappropriate. OSCR might have to act quickly on a certain matter and use its discretion over whether time should be given to a charity to come up with other arguments. For example, informing a charity

> "that it may no longer meet the charity test"

might simply alert the charity in question, which could manage to salt away some of its funds while it is busy coming up with reasons for retaining its status.

Linda Fabiani: I was interested in what John Home Robertson had to say about amendment 74, which I think is worthy of support.

As far as amendment 32 is concerned, my constant concern, which was reflected in some of the questions that I raised about RSLs, is that the regulation of charities should be kept fairly tight and that OSCR should be on top of everything. I worry about giving community councils a role in regulating charities. When we discussed the RSL issue, I was quite satisfied by the minister's comments with regard to intention. Is she able to tell us whether the view that communities should be consulted can be reflected in the bill without having to set things out or name community groups such as community councils? I feel that things should be kept as tight as possible to ease OSCR's management and operation.

On amendment 33—

Christine Grahame: You mean amendment 93.

Linda Fabiani: Did I say amendment 33?

Christine Grahame: Yes—you said "32" and "33" rather than "92" and "93".

Linda Fabiani: I am so glad that Christine Grahame is here to keep me right this morning. She is so on the ball.

On amendment 93, I share Christine Grahame's worry about the word "must". I am not sure that the provision should be mandatory, but I will be interested to hear the minister's comments on that.

Johann Lamont: I will deal with the amendments in turn.

On amendment 74, without knowing the details I cannot comment on the individual cases that John Home Robertson identified, but the experience that he mentioned is perhaps a useful reminder of why we are considering the bill in the first place. However, members who have concerns at the moment about any charity should be aware that they can refer those concerns to OSCR. Obviously, OSCR's current powers are different from those that it will acquire under the bill, but that option already exists. I recognise John Home Robertson's long-standing concern on the issue.

Amendment 74 seeks to make it clear that OSCR may make inquiries following the receipt of information or representations, which would presumably come from members of the public or others who believe that a body is not a charitable organisation and should not be entered on the register. The amendment perhaps reflects concerns that we have wrestled with about the current system, which is to be changed under the bill.

I believe that amendment 74 may not be necessary. The amendment perhaps comes from the same concern that prompted the committee to recommend in its report that the bill provide for a publicly accessible list of bodies that have applied for charitable status. As I said in my letter to the committee earlier this month, I can reassure members that the power that is given to OSCR under section 28—which provides that

"OSCR may at any time make inquiries, either generally or for particular purposes"—

covers the circumstance in which OSCR considers that it should make an inquiry as a result of information or representations that it has received from the public.

People will have ample opportunity to communicate to OSCR their views on whether certain types of charity should pass the charity test. Also, OSCR will be able to react to any complaints that it receives about any organisation that is said not to provide public benefits. Therefore, I think that both examples that John Home Robertson identified would be covered.

As we discussed last week, OSCR will consult on how it will determine whether a body meets the charity test. That will give everyone a chance to submit their views on how the test should operate. OSCR will also be able to conduct inquiries if anyone complains about a charity and, if necessary, that process can lead to the charity being removed from the register. Given that OSCR will have the powers to do the things that John Home Robertson wants it to do, I urge him to withdraw amendment 74.

Amendment 92, in the name of Donald Gorrie, aims to ensure that small local charities continue to provide the important benefits for which they were set up. That is commendable, but the amendment is unnecessary. It would not be appropriate to give community councils specific powers to request an inquiry or for OSCR to have different powers and duties in relation to local charities. As others have pointed out, community councils vary enormously across the country, being strong in some places but less strong in others. Before giving a power to such bodies, we would need to ensure that they were consistent across the country.

The bill already provides OSCR with a range of powers that it can use to deal with any charity—including a small local charity—that is in some way failing. In addition to its powers to direct a charity to take action to fix problems, OSCR can give advice on how a charity can ensure that it complies with the law. In any case, as I mentioned, it is open to anyone to raise concerns with OSCR at any time about any charity that operates in Scotland. By definition, that includes community councils.

OSCR's role is not to advise the sector on best practice but to encourage, facilitate and monitor compliance with the law. As members will be aware, the Scottish Council for Voluntary Organisations has strongly stated that good practice guidance is a matter for the sector and for umbrella organisations such as the SCVO.

I am also not sure whether Donald Gorrie has in mind a specific definition of what would constitute a "local charity", which would need to be clarified if the amendment were agreed to. I ask Donald Gorrie not to move amendment 92, as it is unnecessary.

Amendment 93 seeks to require OSCR to inform any charity that it believes is failing to meet the charity test and to listen to the charity's response before it uses its powers under section 30 to remove the charity from the register. That is unnecessary because section 30 already provides OSCR with an alternative power to direct a charity to take such steps as it considers necessary to ensure that it meets the test. That means that OSCR can decide whether to issue a charity with such a direction before deciding whether it needs to remove the charity from the register.

In practice, if there is a straightforward way of ensuring that a charity can continue to meet the charity test, OSCR is unlikely to remove it from the register without first giving it a chance to remedy the problems and allowing it time to respond. In any case, OSCR is required to prepare a report on the subject matter of inquiries that result in the removal of a charity from the register. Of course, any decision that OSCR makes to remove a charity from the register can be reviewed or appealed if the charity disagrees with OSCR's decision. Removal from the register does not occur until the period that is set out under the appeals mechanism has elapsed. If a review or appeal is requested, that process must run its course. That means that a charity will have time to consider OSCR's decision and to respond to or remedy the problems that have been identified.

We do not think that amendment 93 or amendment 95—which is consequential on amendment 93—are necessary, so we ask Donald Gorrie not to move them.

Mr Home Robertson: I am grateful to the minister and to colleagues who have taken part in the discussion. I highlighted the two bad experiences that I have had in what has been rather a long career of involvement with charities. I welcome the fact that fresh legislation has been introduced; we have waited for it for a long time. The bill is necessary to avoid the sorts of problems that I have mentioned and to underpin the quality of the Scottish voluntary and charitable sector.

The minister said that amendment 74 "may not be necessary"—her choice of words was interesting—and made the point that OSCR has the power to make inquiries in any circumstances. That is what the bill says, but I am still keen that third parties should have clear opportunities to make representations. I accept the minister's point that it would be for OSCR to act on any such representations.

I have referred to what I consider to be two bad cases. We have been waiting for a new legislative framework for charities for a long time and it is imperative that we get it right. At the moment, the bill gives OSCR an implicit right to take account of representations that it receives, but I want OSCR to have the authority to act on such representations when it sees fit to do so. The minister has heard what I have had to say on the matter and has listened to the views of committee colleagues, but has not rejected the idea out of hand. I welcome the fact that the Executive is prepared to think about that aspect of the bill.

I ask the minister to consider the possibility of the Executive lodging an amendment at a later stage. Depending on what happens, I might return to the issue; that is something that we can talk about. At this stage, the sensible thing would be for me to withdraw amendment 74 and to leave the matter open to further consideration.

Amendment 74, by agreement, withdrawn.

Section 28 agreed to.

After section 28

Amendment 92 not moved.

Section 29—Power of OSCR to obtain information for inquiries

Amendment 145 not moved.

Section 29 agreed to.

Section 30—Removal from Register of charity which no longer meets charity test

10:15

Donald Gorrie: I still have concerns about the basic issue, but in the light of what the minister has said, I will not move amendment 93.

Amendment 93 not moved.

The Convener: Amendment 94, in the name of Cathie Craigie, is grouped with amendments 96 to 102.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Members will recall that, at stage 1, concerns about the use of the term "satisfied", especially in section 34, were raised in oral and written evidence to the committee. The Charity Law Association commented that the bill would better fall into line with other legislation if, instead of the phrase "OSCR is satisfied", it used the phrase "it appears to OSCR". I am not a lawyer, but I understand that the word "satisfied" implies that there is unquestionable evidence—the term is far too wide ranging. The committee was persuaded by that evidence and highlighted the issue in its stage 1 report. When the Deputy Minister for Communities gave evidence to the committee, she suggested that the Scottish Executive should tighten up the language. Amendments 94 to 102 satisfy the will of the committee and are based on the evidence that the committee received from individuals who have an interest.

I move amendment 94.

Johann Lamont: We recognise the committee's support for Cathie Craigie's amendments. The view of the Executive was expressed in evidence at stage 1 and continues to be that we would prefer to use the term "satisfied". A change in wording would not change the legal effect of the provisions. The committee stated in its report that it was inappropriate to use the term "satisfied" in sections 30 and 31 because that implied a deduction from evidence. The contrary argument, in support of using the term "satisfied", has always been that it will be appropriate for OSCR to take action only after considering evidence.

It is OSCR's responsibility to act reasonably and proportionately and it will not remove bodies from the register or suspend trustees under the powers conferred by sections 30 and 31 without first considering all the information from its inquiries. Indeed, the powers can be used only following inquiries, so OSCR will always have evidence to back up its decisions. OSCR's actions following inquires are subject to review and appeal and it must publish a report on its decisions. OSCR will, therefore, wish to ensure that its actions can be fully justified.

However, given the strongly expressed concerns of the committee about the use of the term "satisfied" and its support for a change to the wording, and considering that we continue to think that that would result in no change to the effect of either section 30 or 31, we are prepared to accept the amendments.

On that basis, we are also prepared to accept the similar amendments in relation to the powers of the Court of Session under section 34. Again, the amendments make no difference to the effect of the section. The court will always have to consider the evidence that is presented to it before making a judgment.

Amendment 94 agreed to.

Amendment 95 not moved.

Section 30, as amended, agreed to.

Section 31—Powers of OSCR following inquiries

Amendments 96 to 98 moved—[Cathie Craigie]—and agreed to.

Section 31, as amended, agreed to.

Section 32 agreed to.

Section 33—Reports on inquiries

The Convener: Amendment 119, in the name of the minister, is grouped with amendments 120 to 123.

Johann Lamont: It is right that OSCR should have to produce a report on the outcome of its inquiries if a charity requests it to do so. Section 33(1)(b) already provides for that. However, there will be occasions when OSCR will undertake more general monitoring inquiries into a number of charities or in relation to every charity on the register—for example, when it seeks annual monitoring returns or information on a specific type of charity. OSCR has raised concerns that, in such instances, section 33 as currently drafted could force it to have to produce individual reports for every charity on request. Amendments 119 and 120 are therefore intended to clarify that OSCR can produce a general report following general inquiries into a number of different charities as opposed to having to produce a separate report on each charity.

Amendments 121, 122 and 123 are technical amendments. Amendment 121 clarifies that OSCR is under a duty to send a copy of reports that are produced to the person concerned only when it has taken regulatory action or when someone has requested that a report be produced. Amendments 122 and 123 make it clear that all reports or statements of results that are produced by OSCR must be published regardless of whether regulatory action is taken.

I move amendment 119.

Amendment 119 agreed to.

Amendments 120 to 123 moved—[Johann Lamont]—and agreed to.

Section 33, as amended, agreed to.

Section 34—Powers of Court of Session

Amendment 99 moved—[Cathie Craigie].

The Convener: The question is, that amendment 99 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)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

Fabiani, Linda (Central Scotland) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 99 agreed to.

Amendment 100 moved—[Cathie Craigie].

The Convener: The question is, that amendment 100 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)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

Fabiani, Linda (Central Scotland) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 100 agreed to.

Amendment 101 moved—[Cathie Craigie].

The Convener: The question is, that amendment 101 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)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

Fabiani, Linda (Central Scotland) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 101 agreed to.

Amendment 102 moved—[Cathie Craigie].

The Convener: The question is, that amendment 102 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)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

Fabiani, Linda (Central Scotland) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 102 agreed to.

Section 34, as amended, agreed to.

Section 35—Transfer schemes

The Convener: Amendment 146, in the name of Donald Gorrie, is in a group on its own.

Donald Gorrie: As the bill stands, the Court of Session may, on an application by OSCR, approve a scheme. The point made by amendment 146 is that the court should also hear

"representations from the charities or bodies specified in the scheme"

put forward by OSCR for reorganisation

"and from any other person with an interest"

in the subject. As the bill stands, the Court of Session could go ahead just on the basis of OSCR's representations. However, I believe that the bill should specify that, in the interests of natural justice, the court—it would probably do this anyway—should hear the views of the charities, which might be unhappy about the scheme that has been prepared by OSCR for the transfer. Other people who have an interest should also be allowed to speak. The amendment is clear and it is in the interests of fairness and justice.

I move amendment 146.

Linda Fabiani: I am unsure about amendment 146. I am interested to hear what the minister says. I am concerned about the use of the phrase

"from any other person with an interest".

I have worries about how someone "with an interest" would be defined. I ask Donald Gorrie to deal with that point when he sums up.

Mary Scanlon (Highlands and Islands) (Con): That is exactly the point that I was going to make. I am not sure who

"any other person with an interest"

might be, so I look forward to hearing some clarification.

The Convener: The Tories and the SNP are speaking with one voice on this occasion.

Johann Lamont: Although I understand the motivation behind Donald Gorrie's amendment, I do not believe it to be necessary. The procedures of the Court of Session are such that the charities and bodies involved would be given the opportunity to be heard without the bill conferring express permission. If amendment 146 were agreed to without a similar power being added to section 34, which sets out the powers of the Court of Session following misconduct, there could be an unintended inference that the rights of the parties in an action that involved the court's general powers in relation to misconduct were different. I am content that, as the bill stands, the court would be able to take evidence from everyone involved, in both situations. In the light of those concerns and the reassurance that I have given, I ask Donald Gorrie to withdraw amendment 146.

10:30

Donald Gorrie: Colleagues have raised fair queries. I thought that a person with an interest would be someone who receives benefits from a charity. If OSCR changes a charity's system, not only the charity itself but the recipients of benefits from the charity will have an interest. However, I do not wish to prejudice other sections of the bill and, in the light of what the minister said, if it is quite clear that the people to whom I referred will get a say, I will seek the leave of the committee to withdraw amendment 146. It is useful to have the matter on the record.

Amendment 146, by agreement, withdrawn.

Section 35 agreed to.

Sections 36 and 37 agreed to.

Section 38—Delegation of functions

Amendments 139 to 143 not moved.

Section 38 agreed to.

Sections 39 to 44 agreed to.

Section 45—Accounts

The Convener: Amendment 147, in the name of Cathie Craigie, is in a group on its own.

Cathie Craigie: Chapter 6 deals with charity accounts. Committee members were reasonably content with the bill's provisions in that regard, which will increase the openness and accountability of charities. The committee took evidence from the Chartered Institute—sorry, I am thinking about the Housing (Scotland) Bill. We took evidence from the Institute of Chartered Accountants of Scotland which—although it was fairly positive in its support for the bill—expressed concerns about the duty to report. The committee thought that there was merit in the point that ICAS made about the difficulties that auditors might face in relation to client confidentiality if they reported concerns to OSCR or another party. ICAS felt that, as it stands, the bill does not give protection in law to auditors and others who disclose information that they hold in order to bring it to OSCR's attention, so the profession might feel nervous about making such reports.

It was difficult to be sure where to insert amendment 147 into the bill, so I will be interested to hear whether the minister thinks that the amendment relates to the right section. The amendment deals with a serious concern that was brought to the committee's attention and, as far as I recall, the committee agreed unanimously with ICAS on the issue.

I move amendment 147.

Johann Lamont: I understand what amendment 147 seeks to achieve and why it has attracted the support of the whole committee, but I do not believe that it is necessary.

Amendment 147 would provide that the manner in which accounting irregularities should be brought to OSCR's attention would be prescribed in regulations, but the amendment would not place on auditors the additional duties that would give them the protection that Cathie Craigie seeks. We are aware of the arguments that have been made by the Institute of Chartered Accountants of Scotland and others, but we feel that it is unnecessary to place on auditors an explicit duty either on the face of the bill or in regulations. Auditors and other examiners should not sign off any accounts or statements of accounts if they have any material concerns. OSCR would be alerted to any potential problems in a charity's accounts by the fact that the accounts had not been approved.

Section 25(2)(d) already provides that a person who carries out an audit or independent examination may disclose information to OSCR for the purpose of assisting OSCR with its functions. Therefore, auditors will be free from any secrecy restrictions that are imposed under Scots law, such as a confidentiality agreement with the auditor's client. The provision allows wide discretion to provide information that could be used in connection with an inquiry. That could cover accounting irregularities that the auditor believes are relevant to OSCR's functions.

I recognise the strength of feeling behind the committee's arguments and am happy to commit to exploring further whether anything else could be done within the Scottish Parliament's responsibilities in relation to the matter, but I ask Cathie Craigie to seek to withdraw amendment 147.

The Convener: Mrs Craigie needs to decide whether she wishes to press or withdraw amendment 147.

Cathie Craigie: I thank the minister for her comments, which have been useful. As I said, I was not sure whether amendment 147 would amend the right section. Given that difficulty, I accept the minister's commitment to consider the issue further. Perhaps the Executive can discuss the matter with ICAS to see whether a satisfactory solution can be found.

Amendment 147, by agreement, withdrawn.

Section 45 agreed to.

Sections 46 to 55 agreed to.

Section 56—Conversion of charity which is a company or registered friendly society

The Convener: Amendment 124, in the name of the minister, is grouped with amendments 125 to 133 and 137.

Johann Lamont: The amendments in the group result from our discussions with Companies House about the interaction between the process for a charitable company converting to a Scottish charitable incorporated organisation—or SCIO—and procedures under the companies acts. In particular, difficulties were identified in connection with the process for removing bodies from the existing companies and friendly societies registers prior to their incorporation as SCIOs. The amendments attempt to resolve those difficulties.

The placing of a duty on the existing regulators to remove a converting body from the existing registers may need to be provided for by an order under the Scotland Act 1998. We are discussing the matter with relevant colleagues and if the amendment proves to be unnecessary, further amendments may be required at stage 3.

Amendment 128 will insert a new section after section 56 to deal with the determination of applications to convert. In determining whether to accept an application to convert, OSCR must

consider the same issues as it does when it considers an application to establish a new body as an SCIO. However, the new section will also place a duty on OSCR to consult with the registrar of companies or the Financial Services Authority and other such persons as it thinks fit before determining an application to convert. Other persons could include existing security holders.

The new section will further provide that although a body would meet the charity test following conversion to a SCIO, OSCR may refuse an application to convert as a result of representations it receives from consultees. OSCR may refuse such an application on that basis only if the representations that it receives satisfy it that refusal is appropriate. In that way, amendment 128 addresses the concern of Companies House that the bill gives it no opportunity to advise OSCR that a company that applied for conversion was in default under the companies acts.

Amendments 124 to 127, 130 and 132 are consequential on amendment 128.

Amendment 133 will extend the regulation-making power in relation to SCIOs in section 63. It will ensure that regulations can set out the details of other registers that OSCR can establish about SCIOs. On a body's conversion to a SCIO, OSCR may be required to set up registers to replicate existing registers for incorporated bodies, such as a register of charges. The United Kingdom Charities Bill also provides for such a possibility.

Amendment 137 will add to the list of amendments in schedule 4. It will disapply section 380 of the Companies Act 1985 in relation to resolutions for conversion to a SCIO by a Scottish charitable company. Section 380 of that act provides for most company resolutions to be submitted to the registrar of companies within 15 days of their being passed. If that provision were not disapplied, the registrar of companies would have to record a resolution to convert before OSCR had agreed to that conversion.

I move amendment 124.

Donald Gorrie: The committee felt that the SCIO proposition was basically good, so we welcome the new section and what the minister has said. How does the Executive expect the bill to work in practice for charities that run profitable enterprises? An increasing number of community enterprises—social economy-type organisations—that are good for their communities, run profitable enterprises, the profits from which they put back into their community. Will those bodies just be charities, or will they have to be charities that establish SCIOs as arm's-length companies?

Similarly, some bigger charities run fundraising shops and some sports clubs make money from a bar, which is used to promote their sporting activity. Will such organisations have to have two parts—a pure charity and a fundraising SCIO—or will they still be charities while parts of their activity make a profit, provided that the profit is put back into the community or an activity?

Johann Lamont: I will clarify the situation, because I do not want to put on record something that is not absolutely right. A general issue arises over co-operative and social economy organisations that generate surpluses. McFadden suggested that such bodies could not be deemed to be charities, although there is an obvious crossover. People recognise the distinction.

A SCIO must be a charity. A body that is trading might be seen to be separate from that and would not be a charity. I will respond in writing to the specific points that you made about the relationship between the two types of organisation.

Amendment 124 agreed to.

Amendments 125 to 127 moved—[Johann Lamont]—and agreed to.

Section 56, as amended, agreed to.

After section 56

10:45

Amendment 128 moved—[Johann Lamont]—and agreed to.

Section 57—Conversion: supplementary

Amendments 129 and 130 moved—[Johann Lamont]—and agreed to.

Section 57, as amended, agreed to.

Section 58—Amalgamation of SCIOs

Amendments 131 and 132 moved—[Johann Lamont]—and agreed to.

Section 58, as amended, agreed to.

Sections 59 to 62 agreed to.

Section 63—Regulations relating to SCIOs

Amendment 133 moved—[Johann Lamont]—and agreed to.

Section 63, as amended, agreed to.

Section 64—Designated religious charities

Amendment 103 not moved.

Section 64 agreed to.

Section 65—Charity trustees: general duties

The Convener: Amendment 148, in the name of Donald Gorrie, is grouped with amendments 75, 104, 76, 149 and 39.

Donald Gorrie: I have four amendments in this group, all of which are relatively small, but they aim to clarify and safeguard the position of trustees. The bill as it stands states:

"A charity trustee must … act in the interests of the charity".

There could be cases where, in retrospect and taking an historical view, what a trustee had done proved not to be in the interests of the charity, but that would be unfair to him or her because, at the time, he or she may have considered that their action was in the best interests of the charity. Amendment 148 would provide that a charity trustee must act in

"what the trustee considers to be the best"

interests of the charity, when that trustee makes a judgment based on the information that is available. That would be fairer on trustees. There is an element of the bill that some people see as being a discouragement to people who might come forward as trustees; we want to avoid that. Amendment 148 would help to safeguard their position. I hope that the committee and the minister will look favourably on it.

Amendment 75 is perhaps unnecessary, but it deals with an aspect of the argument that we had last week about clarifying the independence of charities. I suggest that trustees must act in the interests of the charity, or what they consider to be the best interests of the charity,

"and not in the interests of any outside body".

Amendment 75 would reinforce the importance of that idea by indicating clearly that—for example—councillors who are on an arm's length body looking after the sporting, cultural or other activities of the council must act in the interests of the charity rather than in the interests of the council. Amendment 75 would underline that point. I am all for stating the obvious repeatedly as often as possible, because to do so can emphasise a point that might otherwise be ignored. That is the purpose of amendment 75.

Amendment 76 seeks to safeguard the position of charity trustees. The bill says:

"The charity trustees of a charity must ensure that the charity complies with any direction".

I am suggesting that the charity trustees must

"take all reasonable steps to"

ensure compliance. If OSCR asks a charity to produce some documents and a trustee's secretary is idle, incompetent, ill or whatever and fails to do that, the trustee could be hung out to dry for not ensuring compliance with the instruction. I do not know what a trustee is supposed to do in such a situation. Is the bill suggesting that they should burgle the secretary's house and send the documents off? Charity trustees cannot ensure compliance with such a direction because they do not have that sort of power. The wording of section 65(2) is unrealistic; it would be much better—and much fairer—to say that the charity trustees must

"take all reasonable steps to"

ensure compliance.

Amendment 149 relates to the provision in section 65(4) that states:

"Any breach of the duty under subsection (1) or (2) is to be treated as being misconduct".

I suggest that such a breach "may" be treated as being misconduct. That would leave the judgment to OSCR, which is what we pay the organisation to do. Next week we will come on to the subject of misconduct, in relation to which the committee had grave doubts about the bill's wording. It should be left to OSCR's judgment whether a breach of the duty is to be treated as being misconduct; we should not prescribe that OSCR will have to treat every minor breach as being misconduct.

Amendments 148, 75, 76 and 149 are all helpful. It may be that amendment 75 is considered to be unnecessary, but the other three amendments make new and important points and I hope that the minister will respond favourably.

I move amendment 148.

Patrick Harvie (Glasgow) (Green): It is useful that there are a number of amendments to section 65, which deals with charity trustees and their duties. Even if the committee decides to leave the section more or less unchanged, it will be helpful to have a discussion on some of the issues.

Amendment 104 seeks to introduce a reference to public benefit. It would add to the provision that charity trustees must

"seek, in good faith, to ensure that the charity acts in a manner which is consistent with its purposes"

the phrase

"and with the provision of public benefit".

For a number of charities, especially those that make the transition from being small-scale charities that were set up by people who were enthusiastic about a particular issue, most of whose revenue came from fundraising, to being voluntary sector service providers, most of whose income comes from grants, there is always a balance to be struck between their original intentions and the expectations of funders.

Whatever condition we leave section 65 in, that balance will still need to be struck. However, it would be helpful if, in addition to acting in a manner that is consistent with charitable purposes, trustees were also expected to act in a manner

that was consistent with the provision of public benefit. It could be argued that acting in the interests of the charity includes the idea of public benefit, because it would be in the interests of the charity to remain a charity, in which case it would have to continue to pass the public benefit test. However, I argue that including in the duties of trustees a specific reference to public benefit would increase the emphasis.

Of Donald Gorrie's amendments, the one with which I have greatest sympathy is amendment 148, but amendments 75, 76 and 149 are also helpful.

I will wait to hear the minister's comments on amendment 39. The amendment would leave out subsection (5), which refers to an offence. I would be interested to know whether the reference will be moved to another part of the bill. If not, what is the rationale behind removing it completely?

Johann Lamont: We understand—and the committee has expressed this clearly—that there is a deal of concern about the potential impact of trustee duties on charities. Most of the amendments in the group are aimed at addressing those concerns. However, a concern remains that, in trying to protect the recruitment and retention of charity trustees, we should not undermine the basic concept that each charity trustee has a duty to act in the interests of the charity that he or she represents. That is an important principle. The cumulative effect of the amendments to this section could lead to trustee duties being so diluted that trustees would not bear much responsibility at all for the charities that they govern. Obviously, that would not be acceptable.

Amendment 148 is an attempt to dilute the duty of charity trustees to act in the interests of the charity. Having "the interests of the charity" determined subjectively by a charity trustee would be unnecessarily obstructive to OSCR's supervisory function. Any charity trustee who was faced with an allegation of breach would only have to argue that they believed that what they had done—or not done—was in the interests of the charity. The argument would be about their belief rather than about the actual of their act or omission.

Amendment 76 tries to alleviate concerns about the personal burden placed on trustees by attempting to soften the duty of charity trustees to comply with the law. We would be extremely concerned if the amendment was agreed to as it could be construed as allowing trustees to derogate their legal responsibilities. On Donald Gorrie's point, I would say that we must also consider the issue of OSCR itself being reasonable in its actions.

Amendment 149, too, would undermine the value of section 65 by amending it in such a way that a breach of a trustee's duties would no longer require to be considered to be misconduct. We are not convinced that that would have a helpful impact because, in any event, OSCR will have to exercise discretion in deciding what, if any, action will be taken once misconduct has been identified. We oppose amendment 149 because it dilutes the value of OSCR having a clear basis on which to take action if it thinks it necessary to do so.

Patrick Harvie asked about amendment 39, which proposes to address concerns about the personal burdens on trustees by removing the criminal offences under section 65. Much of the concern about section 65 may have been partly because of a mistaken belief that those offences applied to the breach of any of the trustee duties in the section. In fact, they related only to the breach of certain specific duties.

On reflection, we have concluded that it is not necessary to have specific offences for those cases. Breach of the duties will still be considered to be misconduct, and OSCR will still be able to investigate and take the necessary action under the powers in sections 30 and 31, or to apply to the Court of Session under section 34 if it believes it necessary. Removing those offences will, we believe, go a long way towards reassuring charity trustees, while maintaining OSCR's ability to take action when charity trustees act inappropriately.

We are not discussing it today, but I see that Scott Barrie has already lodged an amendment to the definition of misconduct such that it would not include minor mismanagement.

Amendment 75 has a slightly different focus. It attempts to address concerns about the independence test by requiring that trustees act only in the interest of the charity

"and not in the interests of any outside body".

We have already discussed the question of independence of charities and, I believe, agreed amendments that provide a suitable way forward. There are three main concerns about charities' independence. The first relates to the requirement that charities be free of third-party control. That has been dealt with in the amendment to section 7(3)(b). The second relates to the fact that a charity must have exclusively charitable purposes, as set out in section 7(1)(a). The third relates to the conduct of charity trustees, which is what amendment 75 seeks to address.

The duty of charity trustees to act in the interests of the charity is an important concept and seeks to prevent charity trustees from undermining the charity and its purposes, regardless of whether their motivation is to benefit an external body. If amendment 75 were agreed to, there is a danger that that would be taken to mean that charity trustees could not act in the interests of an outside

body. Amendment 75 could exclude some charities that seek to achieve their charitable purposes by supporting external bodies. Examples of that would be grant-giving bodies or the friends of a gallery. The amendment would not address the problems of independence in relation to non-departmental public bodies. Therefore, we do not think that amendment 75 would achieve its aim; indeed it might create additional problems.

The last amendment that I want to talk about is amendment 104, which seeks to add the provision of public benefit to trustees' duties. If that is intended to place greater emphasis on the provision of public benefit, we believe that it is unnecessary. A body cannot be a charity if it does not provide public benefit, as it would not pass the charity test. I fear that such a change would raise questions about how charity trustees could make judgments about what satisfies OSCR's view of public benefit.

I ask Donald Gorrie to withdraw amendment 148 and not to move amendments 75, 76 and 149. I also ask Patrick Harvie not to move amendment 104. I seek support for the Executive's amendment 39.

11:00

Christine Grahame: I agree with much of what the minister said about amendment 148, which is attractive superficially but is terribly subjective; if the trustee considered something to be in the best interests of the charity but nobody else thought so, that would be an example of an honest man or woman making a ghastly mistake. I support the minister on that.

Similarly, on amendment 75, I wrote down that one might be able to be both: trustees could act in the interests of the charity and in the interests of an outside body and there would be no conflict of interest, because there would be mutual goals. I thought that the amendment would handicap charities in some respects. The charity must always come first, but I can think of instances of there being no conflict of interest.

I am sympathetic to Patrick Harvie's amendment 104. We cannot stress often enough that we must have the provision of public benefit, but I would not go to the wire on it.

At first I was attracted to Donald Gorrie's amendment 76, which would insert the phrase

"take all reasonable steps to"

into section 65(2), which states:

"The charity trustees of a charity must ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of this Act."

However, I do not think trustees would be in a position to say whether they were taking reasonable steps. If they are directed to do something, they must do it. A reasonable step to one trustee might not be a reasonable step to another. There is no clarity.

I am attracted by Donald Gorrie's amendment 149, which would provide that a breach of a duty under section 65 "may" be treated as misconduct. Severity is reflected in misconduct and mismanagement.

I agree with the removal of sections 65(5) and 65(6), as proposed in the minister's amendment 39.

Linda Fabiani: I will focus on amendment 149, which is important in relation to whether trustees are mismanaging or exercising misconduct. I like the idea of "is to be treated" being altered to "may be treated". In section 65(1)(b) there is a test of reasonableness, which would seem to counter the strictness of the phrase "is to be treated".

The bit that worries me is section 65(4), which states:

"Any breach of the duty under subsection (1) or (2) is to be treated as being misconduct in the administration of the charity."

If I am right—no doubt I will be corrected if I am wrong—the phrase

"any duty, notice, requirement or direction imposed on it by virtue of this Act"

in subsection (2) could get us into the realms of regulations further down the line. We would then be in danger of saying, for example, that if an annual return, however minor, was not submitted in time, that could be deemed to be misconduct, because the charity would not have complied with one of the directions imposed by virtue of the act.

The words "may be treated" would be much fairer and would reflect what the committee spoke about before and the spirit of the amendment that will be discussed next week.

The Convener: Minister, would you like to add anything? Do not feel obliged.

Johann Lamont: I do not feel obliged, but I want to emphasise the important matter of subjectivity, which was mentioned earlier. We do not want to end up in a position that allows somebody to say, "Well that's what I thought." We had a related debate last week about causing offence and deliberately causing offence, which was along the same lines.

The only other point is about amendment 149. We want to emphasise again that OSCR has discretion and must be proportionate and reasonable in its actions. That should address some of the concerns that there might be. Of course, there are some things that charities will have to do and one of those is to submit an annual report.

Donald Gorrie: That debate was interesting and, on the whole, helpful. One of the enjoyments of our position is listening to ministers justifying what their advisers tell them about why not to accept amendments. It is highly irritating, but also highly entertaining.

The difficulty with amendment 149 is that we are not discussing until next week the definition of misconduct. That is a serious point. It seems to me that, without my amendment, the text as it stands is contrary to what Scott Barrie is to propose next week, which we all support. As it stands, the bill says:

> "Any breach of the duty under subsection (1) or (2) is to be treated as being misconduct".

Next week, we will say that minor bad administration should not count as misconduct, whereas, as Linda Fabiani said, under section 65(2), if one is late putting in a return in relation to some notice or requirement, one would be treated as being guilty of misconduct.

It is important to leave the matter open, so I will move amendment 149. We can put the matter right at stage 3 if the minister still feels that the wording is wrong, but at the moment, if I do not move the amendment, we will invalidate the amendment about misconduct that we will discuss next week.

I accept the argument that amendment 148 would open the door to subjective argument. I might lodge a further amendment with better wording. I still think that amendment 76 is reasonable because, from my knowledge of charities, many trustees might not be aware that the management of the trust is not replying to all the e-mails or whatever rubbish that it receives. I have some enthusiasm for amendment 76, but I will abandon it and stick by amendment 149. I seek leave to withdraw amendment 148.

Amendment 148, by agreement, withdrawn.

Amendment 75 not moved.

Amendment 104 moved—[Patrick Harvie].

The Convener: The question is, that amendment 104 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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)

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

Amendment 104 disagreed to.

Amendment 76 not moved.

Amendment 149 moved—[Donald Gorrie]—and agreed to.

Amendment 39 moved—[Johann Lamont]—and agreed to.

Section 65, as amended, agreed to.

Section 66—Remuneration for services

The Convener: Amendment 134, in the name of the minister, is grouped with amendments 40, 105, 135, 136, 150, 151, 77, 152 and 106.

Johann Lamont: This group of amendments is important. There are strong and various views on all sides and I hope that it is recognised in the debate that we are wrestling with difficult issues. There is no black-and-white position and I commit myself to being neither irritating nor irritated during the discussion.

The amendments relate to the remuneration and employment of charity trustees. Those issues led to much interest and debate during the Executive's consultation on the draft bill and in the committee's evidence sessions. It is clear that some people in the charity sector strongly believe that, in order to cement their position in the voluntary sector and to avoid any conflict of interest, charity trustees should not be remunerated for any work that they carry out as charity trustees. The contrary argument is that the level of service that is required by the trustees of some charities requires payment, otherwise people may not agree to be charity trustees in the first place.

In some charities, charity trustees are paid or receive a benefit for their services as trustees—for example, in many student associations, students are paid to be charity trustees of the association to allow them to take a sabbatical from their studies for a limited period. Other issues include inclusiveness and opportunities for people from disadvantaged backgrounds to be charity trustees. Moreover, there are arguments about the payment of expenses. There is agreement that, whatever way payments are made, the process should be transparent, but which approach is the most transparent is also the subject of argument.

In other cases, employees must be charity trustees to bring adequate representation to the board. The board structure of some colleges and universities, for example, is set in statute and includes representatives of both academic and non-academic staff. We understand that it is common in smaller charities for charity trustees to provide other services to the charity that are not part of their normal duties.

I emphasise that we do not intend that there should be a wholesale move towards there being a norm in the sector that charity trustees are paid or that charity employees become charity trustees. We want to establish a regime with sufficient flexibility for the wide range of charities in the sector to operate successfully—that principle underpins our approach to the bill—and we want to encourage the sector to flourish.

Any exceptions to the norm should be clearly justified and apparent, as we believe they will be under section 66. The section lays out the conditions that are to be met when payments are made and it emphasises the need for transparency. It also recognises the need for flexibility. The conditions that are set out in the section will ensure transparency and permit payment with suitable restrictions so that charities can operate effectively.

The provisions restricting payment to only a proportion of trustees and not allowing payment for small charities with only one or two trustees are intended to avoid the risk of charities being set up mainly for the benefit of the trustees. Section 66 also permits the continuation of existing provisions in limited but appropriate circumstances. It allows employees to be trustees but sets limits on the proportion of trustees who can be paid. As we have said, trustees are charged with the responsibility of operating in the best interests of the charity.

11:15

We understand that there was some confusion about what section 66 as drafted covered. The Executive's amendments are designed to clarify who can be paid and in what circumstances those payments can be made. Amendment 134 clarifies that charity trustees may be paid, subject to the conditions in subsections (1) to (4) of section 66, for the provision of services as a charity trustee or for the provision of other services. That is what was previously intended, but it is made clearer by amendment 134.

Amendment 40 removes section 66(3), which would have disapplied section 66(2)(c) in the case of a charity with fewer than three charity trustees. The effect of the amendment is to make it clearer that charities with only one or two charity trustees will not be able to pay them. That should encourage charities to widen the responsibilities for control, which would remove the temptation to establish charities mainly for the trustees' benefit.

Amendment 135 qualifies section 66(5)(a) to refer only to "any authorising provision" of

"the charity's constitution which was in force on the day on which the Bill for this Act was introduced in the Scottish Parliament".

Subsection (5) is intended to ensure that the existing rights of charity trustees who are already entitled to receive payment from their charity by virtue of the charity's constitution are preserved. However, those rights are preserved only if they were specifically set out in existing provisions last November. The amendment is designed to prevent other charities from moving swiftly to avoid the new conditions before the new regime comes into force.

Amendment 136 defines the term "authorising provision" as

"a provision which refers specifically to the payment of remuneration"

to a specific service provider, a charity trustee or a person who is connected to a charity trustee. A "connected" person is already defined in section 67(2). The effect of amendments 135 and 136 is to clarify what and whom the authorising provision in section 66(5)(a) is intended to cover.

There are also several non-Executive amendments in this group. Cathie Craigie's amendment 105 would ensure that any payment of charity trustees could be made only if the conditions that are set out in subsections (2) to (4) of section 66 were satisfied. The amendment would remove the concession that is set out in subsection (5), which allows charity trustees to be paid, irrespective of those conditions, when an existing provision allows payment in the charity's constitution at the date of the introduction of the bill, or by virtue of a Court of Session order or by any enactment. We are concerned that such a change could be construed as removing the existing rights of those charity trustees and, in some cases, effectively enforcing a change to existing constitutions and contracts of employment or taking away the powers of the Court of Session and overruling existing specific legislation. I therefore ask Cathie Craigie not to move amendment 105.

Donald Gorrie's amendment 77 aims to clarify, through the interpretation section on remuneration, that services provided by charity trustees and covered by section 66 are only those that are undertaken under a contract with the charity. The amendment would bring about a similar effect to that of the Executive's amendment 134, which we think is a better way of achieving the objective. I therefore ask Donald Gorrie not to move amendment 77.

Donald Gorrie's amendment 152 relates to the definition of a "connected" person in section 67, in relation to person who is close to a charity trustee. Section 67 provides that any person who is married to a charity trustee is "connected" in terms of section 66 and is therefore considered to be of the same status as any other trustee from the

point of view of any provision in the constitution that authorises the payment of remuneration. The effect is that, when a connected person is paid for services, the connected person must fulfil the same conditions as they would if they were a trustee. Since the bill was drafted, the Civil Partnership Act 2004 has been enacted, so it is correct that other equivalent legal relationships to married relationships should be covered. I am pleased to say that the Executive supports amendment 152.

Amendments 150, 151 and 106 relate to whether an employee of a charity should also be allowed to be a trustee of that charity. Donald Gorrie's amendment 150 aims to allow a charity that already includes a number of its employees as charity trustees to continue so doing as long as OSCR is satisfied that that is reasonable in the charity's circumstances and provided that only a minority of the charity's trustees are employees. Amendment 151 adds a provision to prevent the payment of charity trustees for the provision of services in their capacity as charity trustees if they are also employees of the charity. On the other hand, amendment 106 would prevent any employee of a charity from being a charity trustee.

I agree that it is important to avoid conflicts of interest, but I want to ensure that there is sufficient flexibility in the regime to allow the wide variety of the sector to operate most effectively. Amendments 150, 151 and 106 do not quite achieve what is needed. Amendment 150 does not sit well with the rest of section 66. It refers to what charities did in practice prior to the coming into force of the bill provision as opposed to what the bill provisions allow. It also ignores the possible difference between being paid for a service under a contract of employment—or for the provision of specific services—and simply being paid for being a charity trustee.

Amendment 106 similarly ignores that distinction and could prevent many student associations, and many other charities whose charity trustees are paid, from functioning effectively. Amendment 151 proceeds on the basis that someone cannot be employed to carry out normal trustee duties as opposed to other duties provided under a contract of employment. The amendment is impractical, as it does not make it clear where the distinction between those two sets of duties lies.

I ask the committee to support amendments 134, 40, 135, 136 and 152 and I urge members not to move amendments 105, 150, 151, 77 and 106.

I move amendment 134.

Cathie Craigie: I thank the minister for the detailed information that she has given in speaking to the amendments in this group. My intention in lodging amendments 105 and 106 was to generate some debate on the issue. Those amendments are supported by the SCVO, although other organisations have grave concerns about their implications.

During the committee's consideration of the bill, we spoke informally to people around Scotland. There was concern that a trustee might abuse their position if remuneration was involved—people making decisions might have a pecuniary interest that they might not have to declare. The Association of Scottish Colleges and Universities Scotland raised major concerns about amendment 105 in particular. The law already states that universities and colleges must ensure that there is at least one elected member of the teaching staff and one elected member of the non-teaching staff on the board. Invariably, those members are trade union representatives. The principal of the college must also be on the board. Similarly, other larger charities have trade union representatives on the board. That is a good thing, but we must find the right balance.

I am of a mind not to move amendments 105 and 106 at this stage, although we need further discussion between the minister and the committee. This is not the final stage of the bill and we have an opportunity to get the matter right at stage 3. I would welcome the opportunity for further discussions with the minister.

Donald Gorrie: I feel that the minister and her advisers are muddling up issues that should be kept separate. There are differing views on the matter and we need further, thorough discussion about it before stage 3. I cannot support amendment 134, because it alters the bill in a way that I cannot accept. If the minister withdraws amendment 134, I will not move amendments 150, 151 and 77, and if Cathie Craigie agrees not to move amendments 105 and 106, we will be able to have a more thorough discussion about the matter before stage 3.

There is a clear distinction between a trustee who is paid for their work as a trustee and a paid employee of an organisation who acts as a trustee but is not paid for doing so, which is how trusteeships should operate. Students who take a sabbatical to work in student associations are paid for their work as servants of the student union; they are not paid for being trustees. It would be damaging to the cause of the voluntary sector if we were to agree that people can be paid for their work as trustees. The essence of the voluntary sector is that people give their time freely to promote an activity.

An employee should be allowed to be a trustee of the organisation that employs them. As Cathie Craigie said, universities, colleges and many other organisations have employees on their boards.

That is quite right and should continue. Amendment 77 would allow a trustee to have a contract with the trust to provide a particular service, because the person might have particular knowledge to contribute. For example, I am involved with a trust whose information technology and website design are done under contract by a trustee. However, he is not paid for being a trustee—none of the trustees is paid.

It seems reasonable that a trustee should be allowed to provide a service to a charity under a contract, or that they can be a paid employee of the charity, but a trustee should not be paid for being a trustee. Amendment 134 would destroy that clear-cut approach. The issue goes to the heart of how we encourage the voluntary sector, so I strongly oppose amendment 134. I think that my amendments 150, 151 and 77 cover the issue intelligently, although members might think differently. I would be prepared not to move the amendments if there were general agreement to consider the issue thoroughly before stage 3.

Amendment 152 is a minor, technical amendment. Now that the Civil Partnership Act 2004 is in place, civil partners should be mentioned in the bill. I appreciate the fact that the minister supports the amendment.

Scott Barrie: I will not speak to a particular amendment. The minister made a reasonable point when she explained the purpose of some of the Executive amendments, but Donald Gorrie's comments went to the heart of what we expect of charity trustees and the onus of responsibility that is placed on such people. Most of us understand that the vast majority of trustees take on their responsibilities willingly and would never expect to be remunerated for their work. I have a slight fear that the debate around the amendments might create the impression that the bill will somehow change that approach. It will not do so. Throughout the bill's passage, all members and witnesses have stressed that we want to acknowledge and support voluntary endeavour and I do not want anything to detract from that. I hope that we can move away from the current debate and get back to recognising the job that people do.

11:30

Patrick Harvie: I agree with much of what Donald Gorrie said and I hope that members will be open to his arguments. He dealt clearly with the issue of sabbatical officers in a student union, but I do not think that that is enough of a concern for us to accept amendments 134, 135 and 136. The umbrella bodies for the sector have expressed their concerns to members and we should take those concerns seriously, particularly for charities that previously have not had staff but develop and grow to a point where they have to take on staff.

Staff members, as well as service users and the general public, must retain trust in the objectives of the charity as a charity. That is a vital issue, to which the voluntary status of trustees—or boards of directors, as we call them today—is fundamental. There is a risk that, when organisations grow, a gap in understanding and perception is created between the people who work for the charity and the people who are running it. If anything in the bill leads to the perception that those who run the charity as trustees are doing so in order to pay their bills rather than to benefit the public, the bill will be going down the wrong route. I urge members to resist the amendments.

Linda Fabiani: I think that I agree with everything that Donald Gorrie, Scott Barrie and Patrick Harvie have said. Fundamental governance issues are at stake, such as whether an employee can also be a trustee, and those issues require to be considered further.

There is also a huge concern about the idea of a trustee being paid for undertaking that role. That is not acceptable and I cannot support it in any way. The issue is fundamental to the bill, so I am concerned about passing the amendments today. I know that we can reconsider the matter at stage 3 and I have sympathy with Donald Gorrie's view that we should not press the amendments at the moment. We should consider them further and try to reach an agreement that will satisfy the Executive and the committee.

Mary Scanlon: Genuine concerns have been raised and I hope that we will come back to the subject at stage 3. There are two separate issues. I absolutely agree with Linda Fabiani's point about not paying people to be trustees. The minister said that we do not want charities to be set up for the benefit of trustees—we all agree with that.

While I was listening to other members, I remembered the stage 1 evidence from the Church of Scotland, which said that a minister, who is the service provider, would automatically be officially titled a trustee. We are talking about people who are service providers, whom it would be wrong to exclude from any decision making by the charitable organisation. When that person is sitting as a trustee, he is not being paid to be a trustee; he is accountable to the board for the service that he provides and for which he receives a salary.

I saw the same thing as a lecturer in further education. Trade unions fought hard to get members of the lecturing and support staff on to the board of management. Prior to that, in my seven years at Inverness College, I never met anyone from the board of management. I used to ask them, "How do you know the problems of the college when you never talk to us?" When

someone who was paid as a lecturer or other member of the staff became a trustee, they were not paid any additional money for being a member of the board of management.

We must make that distinction. Such people are paid to provide a service and they have the experience of providing that service. They take that experience to the board of management—the charitable board—and they are not being paid for their role on the board. Boards of management in FE colleges and in churches would be far less representative if lecturers and ministers, who are the main providers of the service, were not included. We need to distinguish between people whose main employment is providing the service and people who are raking in money because they are a trustee.

I hope that I have made myself clear. I accept that the system has to be more transparent, but we have to be careful that we do not exclude representatives who have a major input into the work of the charity.

Mr Home Robertson: The tone of the debate so far indicates a fairly broad consensus among committee members. I will add my tuppenceworth. I was happy with section 66(1) as drafted. It states:

> "Where a charity trustee of a charity … provides services to or on behalf of the charity … the person providing the services (the 'service provider') is entitled to be remunerated".

If someone is doing professional work, physical work or whatever it might be that is part of the work of the charity, it is fair enough that they should be remunerated for that. Likewise, I do not have a problem—subject to appropriate rules being in place—with the appointment of an employee of the charity as a trustee.

The Executive amendments go a lot further. They would specifically authorise the remuneration of trustees simply for being trustees. We are talking about the voluntary sector. The reputation of the voluntary sector relies heavily on public support and public respect for the commitment of volunteers. If we start to pay trustees as trustees, we will run the risk of undermining an important element of the reputation of voluntary charities. If we start to do that, where will it stop? It is invidious to pay some trustees but not others or to remunerate trustees of one charity but not trustees of another charity.

The minister said that she does not want a wholesale move towards the payment of trustees, but I am afraid that, with the amendments, she risks opening a can of worms. If we were to take the step that the Executive proposes, we would risk conveying a confusing and potentially harmful message. I do not want to be difficult, but I hope that the minister can take the amendments away and reflect on the matter. We could, in the light of the discussions that we have had, come back to the general issue at stage 3.

Johann Lamont: There are two distinct issues. I will deal first with the one that is perhaps more straightforward—whether employees should be on the board. Mary Scanlon makes a good point about the way in which employees can strengthen a board of trustees; over time, a lot of people have argued for that. We must be robust in managing conflicts of interests. I have sat on boards where people withdraw at certain points in the meeting, for example, which can be a comfort. I hope that the proposal can gain the support of the committee.

I recognise that, as has been reflected in the committee's discussion, there is a debate on these issues. Different people argue different cases, but we have to make a judgment.

John Home Robertson said that he is content with section 66(1) as it stands, but in fact the committee's report stated that there was not

> "sufficient clarity on the remuneration of trustees and whether staff can be trustees."

It asked

> "that the Executive looks at ways of tightening the provisions concerned."

That is precisely what section 66 does. Contrary to what has been suggested, section 66 does not open a can of worms; it sets out a series of conditions, which would restrict payment either for services or to trustees.

Underpinning the debate is the need for transparency and for the procedures to operate in the interest of the charity. A charity could not have an income of £100,000 and let £99,000 go back out the door to trustees. In what circumstances could it be established that it was in the interests of a charity for the vast majority of its income to be paid to trustees?

I emphasise that we do not expect payment of trustees to be the norm. I recognise the points that members have made about people being employed or contracted to undertake certain tasks and about the payment of expenses. However, such payment is no less transparent and might be more transparent than finding a different way of remunerating people who bring their expertise or views on a matter to the job. I recognise that members are concerned about the matter because it concerns the sector as a whole. However, an issue arises about how the sector is to be sustained.

Mary Scanlon asked whether a person becomes an employee if that person is contracted to do work and whether a contract of employment might

debar a person from being a trustee. However, John Home Robertson pointed out that a person can be a trustee but be contracted to do architectural drawings, for example, or other work. Such duties might define a person in a different way and debar him or her from a position on a board. The issue is difficult.

We are wrestling with the definition of what the sector is. Elements of the sector exist where people are paid to be trustees. In the example that Donald Gorrie gave, there is a fine distinction. If a person works for a student representative council, he or she is carrying out a service. However, a person might not be able to carry out that service on behalf of the council except as a trustee, unless we are saying that the service can be contracted out to anyone who might wish to apply to do it. The issue is not as simple as it was characterised as being.

It is important that we get these measures right. I recognise the difficulty that I would place on the committee by asking it to support an Executive amendment when members were not absolutely satisfied that the amendment would not open a can of worms. I accept that there are issues in regard to the management of these matters. I am happy not to press the Executive amendments at this stage, but that is without prejudice to the Executive's position.

I recognise that members seek clarity and that there are concerns on the issue. I am more than happy to write to the committee and engage in dialogue with individual members. However, I emphasise that my not pressing the Executive amendments is not an indication that I take the view that there is no case for charity trustees to be paid. I hope that members will accept that point when we come to stage 3.

The Convener: Most members of the committee—probably all of us—welcome your comments, minister, and your desire to try to address our concerns. In those circumstances, and if there is no objection, you may withdraw amendment 134.

Amendment 134, by agreement, withdrawn.

Amendment 40 moved—[Johann Lamont]—and agreed to.

Amendment 105 not moved.

The Convener: I ask the minister to move amendment 135.

Amendment 135 moved—[Johann Lamont].

11:45

Mr Home Robertson: The minister was going to not move that amendment.

The Convener: Unfortunately, because the amendment has been moved, it would appear that we will have to have a vote on it. Alternatively, the minister might wish to seek leave to withdraw the amendment.

Amendment 135, by agreement, withdrawn.

Amendments 136, 150 and 151 not moved.

Section 66, as amended, agreed to.

Section 67—Remuneration: supplementary

Amendment 77 not moved.

Amendment 152 moved—[Donald Gorrie]—and agreed to.

Section 67, as amended, agreed to.

Section 68—Disqualification from being charity trustee

Amendment 106 not moved.

Section 68 agreed to.

Section 69 agreed to.

The Convener: That ends day 2 of our stage 2 consideration of the Charities and Trustee Investment (Scotland) Bill.

Linda Fabiani: I am glad that the minister has agreed that we should all talk together about the issues that have been raised. Can we ensure that we get a date for that discussion that is suitable for everyone so that everyone can attend?

The Convener: It will be for the minister to decide how she wants to engage with the committee. In the light of today's discussions, she can go away and consider how best the Scottish Executive can address our concerns.

I thank the minister for her attendance. Before she leaves, I remind members that amendments to the remaining sections and schedules of the bill should be lodged by 12 noon on Thursday, not Friday, because Monday is a public holiday.

11:48

Meeting suspended.

11:54

On resuming—

Subordinate Legislation

Building (Forms) (Scotland) Regulations 2005 (SSI 2005/172)

The Convener: The regulations, which are subject to the negative procedure, set out forms for applications, standard notices, certificates and so on that are required under section 36 of the Building (Scotland) Act 2003. The forms will be used mainly by verifiers of the building standards system, who have been consulted on them. The Subordinate Legislation Committee considered the regulations and agreed that no points arose in relation to them. Do members have any comments?

I assume that the deafening silence means that members have no comments to make and agree to make no recommendation on the regulations in our report to the Parliament. Is that agreed?

Members *indicated agreement.*

11:56

Meeting continued in private until 12:05.

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