

# **LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**

Wednesday 13 May 2009

Session 3

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## LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

### † 14<sup>th</sup> Meeting 2009, Session 3

#### CONVENER

\*Duncan McNeil (Greenock and Inverclyde) (Lab)

#### DEPUTY CONVENER

\*Alasdair Allan (Western Isles) (SNP)

#### COMMITTEE MEMBERS

\*Bob Doris (Glasgow) (SNP)

\*Patricia Ferguson (Glasgow Maryhill) (Lab)

\*David McLetchie (Edinburgh Pentlands) (Con)

\*Mary Mulligan (Linlithgow) (Lab)

\*Jim Tolson (Dunfermline West) (LD)

\*John Wilson (Central Scotland) (SNP)

#### COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)

Paul Martin (Glasgow Springburn) (Lab)

Alison McInnes (North East Scotland) (LD)

Margaret Mitchell (Central Scotland) (Con)

\*attended

#### THE FOLLOWING GAVE EVIDENCE:

John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

#### CLERK TO THE COMMITTEE

Susan Duffy

#### SENIOR ASSISTANT CLERK

David McLaren

#### ASSISTANT CLERK

Ian Cowan

#### LOCATION

Committee Room 1

† 13<sup>th</sup> Meeting 2009, Session 3—held in private.



# Scottish Parliament

## Local Government and Communities Committee

*Wednesday 13 May 2009*

[THE CONVENER opened the meeting at 10:00]

### Subordinate Legislation

#### Local Government and Housing Act 1989 Amendment (Scotland) Order 2009 (Draft)

**The Convener (Duncan McNeil):** Good morning and welcome to the Local Government and Communities Committee's 14<sup>th</sup> meeting in 2009. As usual, I ask members and the public to turn off mobile phones and BlackBerrys.

Moving to agenda item 1—committee members must catch up, as I have opened the meeting—we welcome the witness panel: John Swinney MSP, who is the Cabinet Secretary for Finance and Sustainable Growth, and David Henderson, who is head of the Scottish Government's local government finance division. I offer the cabinet secretary the opportunity to make some brief introductory remarks.

**The Cabinet Secretary for Finance and Sustainable Growth (John Swinney):** The Local Government and Housing Act 1989 Amendment (Scotland) Order 2009 will tidy up the legislation by removing a superfluous reference to politically restricted posts in local government in Scotland in the Local Government and Housing Act 1989.

Through section 9 of the Local Governance (Scotland) Act 2004, the Scottish Parliament repealed provisions that disqualified local government employees who were in receipt of an annual salary above a certain level—by 2007, the level stood at £33,423—from being politically active. However, it has subsequently become clear that, although the 2004 act achieved that purpose, it left a loose end in that it did not repeal part of section 3 of the Local Government and Housing Act 1989. As a result, while the reference in the 1989 act is still extant, it has no purpose, because the subsection to which it refers has been repealed. The existence of such a loose end does not really matter, although it is clearly untidy in legislative terms.

The United Kingdom Parliament is currently considering the Local Democracy, Economic Development and Construction Bill, which will remove the salary band on politically restricted posts in local authorities south of the border to match the position in Scotland. As a result of that

consideration, the UK Government identified the anomaly in our legislation and offered to correct it under that bill. In the circumstances, I decided that we should take steps to address the issue and that the most appropriate route was through the Scottish Parliament. The affirmative order that is before the committee is the result.

In summary, the order will make a consequential amendment that repeals part of section 3 of the Local Government and Housing Act 1989 relating to politically restricted posts in local government. The provision to be repealed, although extant, has no purpose as the subsection to which it refers was repealed by the 2004 act. I will be happy to discuss any of the issues with the committee.

**The Convener:** Thank you. Do members have any questions for the cabinet secretary?

**David McLetchie (Edinburgh Pentlands) (Con):** Good morning, cabinet secretary. This zealous tidying up of the statute book is welcome, and I commend such diligence and attention to detail. However, given that this repeal using the affirmative procedure will have no purpose other than a little bit of tidying and will have no legal effect, is it a valid application of Government time, resource and energy to take a sledgehammer to crack a nut?

**John Swinney:** I would not describe the order as a sledgehammer. Through our dialogue with the UK Government on its legislative proposals, we have identified an anomaly that was left by previous legislative change. By and large, our view is that, when such issues are identified, they should be remedied as efficiently as possible.

**David McLetchie:** Do you have a team of officials scouring the statute book to look for superfluous references that should be tidied up, or does this little gardening exercise apply only to issues to which you have been alerted by the UK Government?

**John Swinney:** I assure Mr McLetchie that I have not directed officials to spend their lives scouring the statute book for anomalies. However, it is certainly within the scope of ministerial responsibilities to take action to remedy such issues when they become apparent.

**David McLetchie:** An alternative would have been to let Westminster repeal the provision in the context of the Local Democracy, Economic Development and Construction Bill, on which this Parliament has already passed a Sewel motion, if I remember correctly.

**John Swinney:** A Sewel motion on provisions in the bill has been passed, but I judged that this specific legislative point in the 1989 act would be most efficiently dealt with by making the order.

**David McLetchie:** Would it not have been more efficient to refer to the superfluous subsection in the context of the Sewel motion that has already been considered and approved by the Parliament? You would thereby have been spared the time and energy that you have devoted to laying an order under the affirmative procedure to tidy things up. Should we not just have stuck all this in the Sewel motion to tidy up everything?

**John Swinney:** We have the legislative competence to handle the matter here, so we have gone ahead and done so. I frequently hear complaints, although perhaps not from Mr McLetchie, that the Government is not bringing sufficient legislation before Parliament. Here is an example of some legislation.

**David McLetchie:** I argue that you should caannie in bringing legislation to the Parliament.

**John Swinney:** I will cite Mr McLetchie as an aide when the Government is being criticised for its legislative programme.

**David McLetchie:** You will not hear any criticism of a lack of legislation from me, especially considering all the wrong things that you are doing. However, I should not detain you any further, because there must be more important pieces of gardening for you to deal with on your watch today.

**Jim Tolson (Dunfermline West) (LD):** Thank you for your introductory remarks and for the explanation that we received previously in writing, cabinet secretary. I cannot speak for all my colleagues on the committee, but I imagine that none of us here or at Westminster would want to see too many restrictions on people exercising their democratic rights, particularly if they wanted to be elected to local or national Government.

I seek your views on whether there is another anomaly. We are talking about politically restricted posts, but it seems that we are restricting them according to a salary cap. There might be people with salaries above any level that might be set in legislation who are not in posts that have a great deal of influence in the political process of their local authority. Should there be more of a focus on the post, rather than on the salary level, to make the whole system more competent in the first place?

**John Swinney:** That really is the effect of current legislation. The 2004 act essentially moved us away from an arbitrary salary level being the cut-off point that determined whether political restriction applied. Four categories of politically restricted posts are specified in legislation and are now in place: posts that are separately and individually identified in legislation; posts that are defined by their relationship to others; undefined posts, the duties of which have certain

characteristics that are defined in legislation; and posts to which duties have been delegated.

The 2004 act moved the focus away from the arbitrary salary level and towards what the people in posts do. Restricted posts include statutory chief officers of local authorities, which I think we all accept should be in that category, and monitoring officers, the responsibilities of which I am sure we all accept preclude them from political activity. Current legislation deals with the arrangement adequately.

**The Convener:** No other members want to ask questions, so we will move quickly to item 2. I ask the cabinet secretary to move motion S3M-4037, that the Local Government and Communities Committee recommends that the draft Local Government and Housing Act 1989 Amendment (Scotland) Order 2009 be approved. Do members approve?

*Members indicated agreement.*

**The Convener:** Sorry, the cabinet secretary has to move the motion.

*Motion moved,*

That the Local Government and Communities Committee recommends that the draft Local Government and Housing Act 1989 Amendment (Scotland) Order 2009 be approved.—[*John Swinney.*]

**The Convener:** I was in a hurry to let you get on with more important things, cabinet secretary.

**John Swinney:** You were in a hurry to let me leave, which is admirable.

**The Convener:** The cabinet secretary has moved the motion. Do members agree to it?

*Members indicated agreement.*

*Motion agreed to.*

**The Convener:** I thank the cabinet secretary and Mr Henderson for their evidence and attendance this morning.

As previously agreed, we move into private session for item 3.

10:09

*Meeting continued in private until 11:28.*

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