LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Tuesday 4 May 2004
(*Afternoon*)

Session 2

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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE
12th Meeting 2004, Session 2

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

*Mr Andrew Welsh (Angus) (SNP)

COMMITTEE MEMBERS

*Dr Sylvia Jackson (Stirling) (Lab)
Mr Bruce McFee (West of Scotland) (SNP)
*Michael McMahon (Hamilton North and Bellshill) (Lab)
*Paul Martin (Glasgow Springburn) (Lab)
*David Mundell (South of Scotland) (Con)
*Tommy Sheridan (Glasgow) (SSP)
*Iain Smith (North East Fife) (LD)

COMMITTEE SUBSTITUTES

Bill Butler (Glasgow Anniesland) (Lab)
Colin Fox (Lothians) (SSP)
*Mr Kenny MacAskill (Lothians) (SNP)
Mr Brian Monteith (Mid Scotland and Fife) (Con)
John Farquhar Munro (Ross, Skye and Inverness West) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

George Lyon (Argyll and Bute) (LD)
Mr Andy Kerr (Minister for Finance and Public Services)
John Farquhar Munro (Ross, Skye and Inverness West) (LD)
Tavish Scott (Deputy Minister for Finance and Public Services)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Euan Donald

LOCATION

Committee Room 2

Scottish Parliament

Local Government and Transport Committee

Tuesday 4 May 2004

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:01*]

Subordinate Legislation

Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Amendment Regulations 2004 (SSI 2004/134)

The Convener (Bristow Muldoon): The first item on the agenda for today's meeting is consideration of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Amendment Regulations 2004 (SSI 2004/134). No members have lodged motions to annul the regulations and no points have been raised about them. Do we agree that the committee has nothing to report with regard to the regulations?

Members *indicated agreement*.

Local Governance (Scotland) Bill: Stage 2

14:02

The Convener: The main item on the agenda for today's meeting is stage 2 consideration of the Local Governance (Scotland) Bill. I am advised that Bruce McFee will not attend and that Kenny MacAskill will come along as a substitute for him. We will get Kenny to confirm that when he arrives.

I welcome to the meeting the Minister for Finance and Public Services, Andy Kerr; the Deputy Minister for Finance and Public Services, Tavish Scott; and some non-members of the committee who are here to speak to amendments. They are John Farquhar Munro MSP and George Lyon MSP. I also welcome Sarah Morrell and Rosemary Lindsay, who are here to assist the ministers with their contributions.

I advise members that, from the number of amendments that have been lodged so far, it is likely that we will complete stage 2 consideration of the bill at next week's meeting, unless there is a deluge of amendments between now and then. For assistance, members should have copies of the bill, the marshalled list of amendments that will be considered today and the list of groupings of amendments. Do all members who intend to participate have those documents?

Members: Yes.

David Mundell (South of Scotland) (Con): I want to say something about the amendments that have been selected. I accept that it is your duty and right to rule on the admissibility of amendments, convener, but I am most disappointed that my amendment decoupling the local government and Scottish Parliament elections has been ruled out of order. I accept the basis on which you have made that ruling, but I do not agree with it and intend to lodge the same amendment at stage 3. At that stage, the Presiding Officer will be able to make a judgment on the matter. I feel that the bill is wide enough in scope to allow discussion of, and to be amended on the basis of, the date and timing of elections.

The Convener: It is not normal for either the Presiding Officer or the Conveners Group to go into detail about the reasons for inadmissibility. However, I assure you that I ruled the amendment inadmissible on the basis of considered judgment and on the basis of the guidance that I received from the parliamentary clerks. Obviously, you are entitled to submit your amendment at stage 3, but I expect that the Presiding Officer will receive the same guidance that I received on its admissibility.

It was not just on an amendment from you that I ruled in such a manner; I also ruled inadmissible a similar amendment from Tricia Marwick. Basically, I have reached the decision and that is the position. As I said, the Presiding Officer will receive similar guidance at stage 3.

David Mundell: Okay.

Mr Andrew Welsh (Angus) (SNP): My colleagues and I certainly share the view that decoupling should take place, but of course we accept your ruling, convener.

Section 1—Electoral wards

The Convener: Amendment 1 is in the name of Tricia Marwick, but I understand that Andrew Welsh will speak to and move all the amendments in Tricia Marwick's name.

Mr Welsh: Yes.

The Convener: In that case, I call Andrew Welsh to speak to and move amendment 1, which is grouped with amendments 42, 43, 2, 44 and 48. I should point out that, if amendment 1 is agreed to, I will not be able to call amendment 42, which will be pre-empted. I should also point out that amendments 1 and 43 are direct alternatives so, if amendment 1 is agreed to and amendment 43 is agreed to, amendment 43 will replace amendment 1.

Mr Welsh: I note the shades of complication that are perhaps to come.

For many years, the SNP has supported proportional representation by single transferable vote for local government. We can all see that the first-past-the-post system has truly failed to reflect the actual votes cast by the electorate. Although STV is by no means a perfect system, that version of PR reflects much more closely the actual votes cast by the electorate.

The bill will introduce proportional representation in local government, but the system is not as proportional as it could or should be. Amendment 1 provides for two, three, four and five-member wards. Amendment 2 provides that two-member wards should not be the norm but should be available because of geography or sparse population. That is important for the Highlands and Islands and for other rural areas; without that provision, local government wards could be almost the size of small countries. It is also necessary to maintain the councillor-ward link in those areas.

The Executive's justification for having only three-member wards or four-member wards under STV is that that achieves the right balance between providing proportionality and maintaining the member-ward link. The evidence, however, shows that that important balance is better achieved by wards that include two, three, four or five members. It is accepted that the more members there are per ward, the more proportional the system is. It is also accepted that the councillor-ward link must be maintained.

The balance between those two considerations was a central concern of both the Kerley report and the STV working group's interim report. Both reports concluded that that balance is best achieved with wards of two members in exceptional circumstances, but in other cases with wards of three, four or five councillors. In other words, adding a provision allowing for wards of two members meets the needs of remote or sparsely populated areas, which is exactly what amendments 1 and 2 would achieve. The benefit of having two, three, four or five-member wards is that that ensures proportionality, maintains the councillor-ward link and provides flexibility for areas where two-member wards would be both appropriate and practical.

I note that Tommy Sheridan's amendment 43 is similar to the SNP amendments, but provides only for two, three and five members per ward. I also note that the Liberal Democrat amendment 42 excludes five-member wards, whereas the Executive allows for only three or four-member wards. Although I have some sympathy for the Liberal Democrat amendments, I still believe that our amendments 1 and 2 would provide the flexibility to allow the Local Government Boundary Commission for Scotland to do its work. Expert witnesses have backed that up. Professors John Curtice and David Farrell both argued that restricting wards to three or four members would make the system significantly less proportional. If Scotland were to adopt three or four-member wards, it would have one of the least proportional STV systems in the world.

As I said, the Liberal Democrat amendments are close to our amendments, but their purpose is covered by our amendments. Although I am sympathetic towards amendment 44, I believe that it would place unnecessary restrictions and further complications on the boundary commission. Amendment 2 deals with the matter in a much more straightforward fashion.

If the new system is to work and to best serve the wishes of the electorate, ward size and voting method must work together. Our amendments 1 and 2 will ensure that the boundary commission has the full flexibility that is required to match communities to wards.

I move amendment 1.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): I will start with amendment 42, which relates to section 1, page 1, line 10 of the bill. I am suggesting that we should replace the word "either" with the word "two". That simple

amendment would lead to the election of two, three or four councillors, as determined by the order that is mentioned in section 1(2).

Members will note that my intention is to recognise the problems that are involved in joining together what are already very large geographic areas while still employing the proportionality, multimember principle and acknowledging the need for some degree of parity. That is the reason for my proposed alteration of section 1(2).

My second amendment, amendment 44, relates to section 1, page 1, line 14. I am suggesting that we should introduce the wording:

"but the number of councillors returned in a ward may be two only if the Boundary Commission has so proposed on the grounds that—

(a) the area encompassed by the ward is remote or sparsely populated or comprises an island or islands,

(b) (having regard to paragraph 1(2) of Schedule 6 to the 1973 Act) the number of electors in that area does not merit the return of more than two councillors, and

(c) the ward better reflects local community ties than would a ward comprising a greater number of electors."

The introduction of two-member wards would provide for greater flexibility. As well as allowing wards to be bolted together in groups of two and three—which, in many cases, would satisfy the concerns of those people who have argued for five-member wards—it would ensure that super-sized wards could not be created. That situation could develop in much of rural Scotland. The introduction of two-member wards would allow for maximum flexibility and would ensure a degree of geographical consistency, but would retain the principles that are set out in the partnership agreement and the policy memorandum to the bill.

Members will note that the boundary commission, which is guided in its deliberations by the parity principle, seems to think that such a departure would be defensible; if it did not, it would not have recommended greater flexibility in the number of members per ward. In the event that the committee feels that the circumstances in which such a departure could be justified need to be specified more clearly than they are in schedule 6 to the Local Government (Scotland) Act 1973, it would be within the legislative competence of the bill to provide for that and an amendment to that effect could be lodged later in stage 2 or at stage 3.

The boundary commission has made it clear that it sympathises with the aims of my amendment. It suggests:

"If we are given the discretion to have different numbers of members per ward, our task of fitting the requisite number of wards to create the requisite number of councillors within the overall authority boundary is made easier and we will be more likely to comply with perceptions of community ties than we would if we were too tightly constrained."—[*Official Report, Local Government and Transport Committee,* 13 January 2004; c 581.]

The boundary commission is therefore sympathetic to the suggestion that we amend the number of councillors per ward, particularly in sparsely populated areas, from four to two.

14:15

Tommy Sheridan (Glasgow) (SSP): On reflection, I should say that the way in which amendment 43 has been constructed is my fault, but I accept 100 per cent Andrew Welsh's arguments about the greatest flexibility: although amendment 43 allows more flexibility than does the bill, it is restrictive in relation to four-member wards.

We have a difficulty with consistency. The evidence on this welcome bill that we heard at stage 1 was consistent with McIntosh, Kerley, the academic evidence that we received by the barrel load and the evidence from the Executive's STV working group. All the evidence recommended that there should be the facility for at least five-member wards to be created, yet the Executive seems to want to resist that.

It should be borne in mind that, even if we created five-member wards, we would still be joint bottom in the world in terms of proportionality in the operation of STV. If we restrict ourselves to four-member wards, we will be bottom, below Ireland. From that point of view, I do not think that we are striking the right balance between the member-ward link and proportionality.

Obviously, there is a justifiable argument that we have to retain the member-ward link as far as possible and that, if wards become too large, that link will be lost. However, the idea that five is the magic number that takes us beyond retaining the member-ward link is rejected in all the independent and academic evidence and by the independent working group. The weighty tomes of written evidence that we received and the oral evidence that we heard in the committee stated clearly that, in order not to break the back of the proportionality of the system, we should allow for five-member wards.

My amendment 43 would achieve the flexibility to enable us to stretch to five-member wards when that was justified and to have two-member wards when that was justified. To restrict the number of members per ward to a maximum of four tips the balance between proportionality and the member-ward link too much in favour of the member-ward link. That argument comes not just from one source, but from various sources consistently, the most powerful of which is the Executive-established independent group, because it has no

axe to grind in relation to the operation of STV in practice. I will move amendment 43 and support Tricia Marwick's amendments 1 and 2.

George Lyon (Argyll and Bute) (LD): In response to Andrew Welsh's comments, I make it clear that John Farquhar Munro's amendments 42 and 44 and my amendment 48 are not Liberal Democrat proposals. Indeed, John Farquhar Munro's amendments have more to do with Highland Council lobbying than with taking a Liberal view on the matter. My support for amendment 42 and my amendment 48 respond to my concern about the islands of Tiree and Coll in my constituency. I make it clear that I do not intend to move my amendment. On advice from the clerk, I lodged it purely as a probing amendment to allow me to raise a specific issue.

Tiree and Coll have a unique geographical problem. Under the bill, they could be amalgamated into a three-member ward with the closest islands of Mull and Islay, despite the fact that getting from Tiree or Coll to Mull or Islay requires a four-hour ferry journey to the mainland followed by a three or four-hour journey to Mull or Islay. It is interesting that, during the last local government reorganisation, Tiree and Coll were recognised as a special case and, despite having only 500 electors, were made a single ward represented by one councillor.

When I spoke to the committee clerk about devising an amendment to deal with Tiree and Coll, I requested that the bill should recognise the unique circumstances of those islands and deem them to be a single-member ward with a councillor elected under the STV system. I was informed that such an amendment would not be admissible, because it would not comply with the general principles of the bill on transferable votes. The clerk suggested a probing amendment that would enable me to draw my concern to the committee's attention and seek reassurance from ministers that they will consider the problem.

I believe that the clerk's interpretation is wrong. He is mixing up a single-member ward in which the councillor is elected by transferable vote with a first-past-the-post single-member ward. The two are completely different. A single-member ward in which the councillor is elected by votes transferred between all those who stand for election in that ward would comply with the terms and general principles of the bill. I seek the committee's permission to request that ministers go away with the problem, examine it carefully and return at stage 3 with an amendment that will deal with the islands of Tiree and Coll on their own.

I do not support two-member wards in Argyll and Bute. Three and four-member wards will address the majority of situations in my constituency. John Farquhar Munro's amendments 42 and 44 are directed purely at Highland concerns, not Argyll and Bute concerns.

I thank the committee for its indulgence and seek assurances from ministers that they will take seriously the matter that I have raised, so that the islanders of Tiree and Coll are not disfranchised. Under the bill as drafted, it will be impossible for them ever to elect a councillor to represent their interests.

Iain Smith (North East Fife) (LD): I do not intend to support any of the amendments. We discussed three and four-member wards in the committee at stage 1 and in the Parliament during the stage 1 debate. I accept that the situation is a compromise, but it is a compromise between those who want the retention of the member-ward link to be the primary objective and those who want proportionality to be the primary objective. The Kerley committee clearly indicated that the norm should be four-member wards and that only in exceptional cases should the situation be otherwise.

No case has been made that five-member wards are required as an exception. However, I am willing to accept that, in certain exceptional circumstances, two-member wards might be required. I ask the Executive to keep an open mind on that issue in the run-up to stage 3. We should take advice from the boundary commission and the STV working group and examine whether in relation to island communities such as those in the Highlands and Islands, Argyll, the Western Isles and the northern isles, there might be a few cases in which two-member wards are required.

Those who argue on the one hand that we must have more members, because three to four members per ward is not proportional enough, and then argue on the other hand that we should have fewer members are trying to have both ends of the candle. Their proposals neither work nor make sense.

The idea behind three and four-member wards is to ensure that, when we introduce STV, it is acceptable to the local government community and to local communities. We have to strike the right balance between proportionality and the member-ward link and, although we might want to review the situation in future, I believe that three to four members per ward will achieve that balance initially. However, I ask the minister to keep an open mind about whether there might be one or two exceptional cases where geography dictates that four-member wards will not necessarily work.

David Mundell: Had I thought that you would have allowed it, convener, I would have lodged an amendment suggesting that part 1 of the bill be deleted. Even Mr Kerr might have been able to support that. However, I have not done that,

because I have accepted—as has the Conservative group—the decision of Parliament to proceed with the bill. That decision was overwhelming, although I believe that it was misguided.

Having decided to proceed with a system of proportional representation, we should at least try to make sure that the system is reasonably proportional. The evidence that was laid before the committee indicated that three or four-member wards are not proportional; as Iain Smith has conceded, they are a compromise.

Parliament should come down clearly on one side or the other in relation to voting systems. Either we have first past the post or we have a proportional system. Because Parliament has rejected first past the post, I will support Tricia Marwick's amendment 1, as it would introduce the possibility of five-member wards, which are the most proportional option on the table.

Given that Mr MacAskill is not yet here to substitute for Mr McFee, I do not expect amendment 1 to be passed. The decision on whether there will be three to five-member wards will come down to the stage 3 debate and will depend on those of Mr Iain Smith's colleagues who like to have both ends of the candle. It should be put on the record that the majority of members of the Scottish Parliament would vote for five-member wards.

I make it clear to Liberal Democrat members and their activists that, should the five-member amendment be accepted at stage 3, the Conservative group will not vote the bill down. Mr Lyon and others have used that red herring to say to independent-minded Liberal Democrat members that they must toe the line because, if they do not, the bill could be voted down after the final stage 3 debate by a combination of Conservative and Labour forces. However, during the stage 1 debate, the Conservatives made it quite clear, and I make it clear again today, that we will not vote the bill down if it contains a provision for five-member wards.

I am glad that George Lyon's amendment 48 is a probing amendment. It would be wrong to restrict the provision for two-member wards, if it is agreed to, to the Highlands and Islands. I have suggested that the island of Arran might be a single-member ward, because of its unusual circumstances within North Ayrshire Council. There are some enormous wards across mainland Scotland, as was highlighted in the evidence that we heard. The Duneaton and Carmichael ward in South Lanarkshire is bigger than 14 of the member states of the United Nations. If John Farquhar Munro's amendment 44 is passed or Tricia Marwick's amendment 1 is passed—which is unlikely—I would not wish their provisions to be restricted to the Highlands and Islands.

14:30

Paul Martin (Glasgow Springburn) (Lab): I will make a point that I believe is important for the committee. I understood that our purpose was to interrogate legislation as objectively as possible. Representing our party views at committee is unhelpful. I point out to David Mundell that it is important that we amplify our views as members of the committee rather than as members of our respective party groups.

The member-ward link is an important issue, which has been raised on several occasions. It is important to make comparisons, as Tommy Sheridan said, with evidence from other parts of the world. However, we could not implement in Scotland the kind of member-ward links that exist in New South Wales, for example. The member-ward link provision was agreed to at stage 1 and I believe that having three or four members to a ward would be the most effective way of implementing that provision.

I would consider John Farquhar Munro's proposal for two-member wards if that opportunity were extended to the rest of Scotland. He might wish to return to that issue at stage 3 and consider whether wards in urban communities should have the opportunity to have only two members. I would not accept the proposal to extend the number of members in a ward to five. However, it is worth exploring the possibility of having two members per ward, not only in the Highland and Islands, but in other parts of Scotland.

The Convener: I do not want to invite double contributions from members. However, given that John Farquhar Munro has been asked a specific question, I will allow him to respond briefly after other members have spoken.

Michael McMahon (Hamilton North and Bellshill) (Lab): I am concerned about the tenor of the debate. Through all the consultation and all the evidence that we have heard and discussed, we have been trying to achieve a fairer voting system. However, the amendments that we are discussing have a political intention behind them and, if they were agreed to, they would make the bill inherently unfair. It is clear that some members seek a differential between wards in rural areas and wards in urban areas. In my consideration of the bill, I have sought to find an electoral balance between rural and urban areas, so that one would not be disadvantaged compared with the other.

We have heard evidence about the geographic size of rural communities. However, having five-member wards in certain urban areas would create wards that would sometimes have in

excess of 25,000 electors, whereas the suggested rural wards would have no more than 1,000 or 2,000 electors. That would create an intolerable imbalance. We want the bill to be fair. I am amazed at the Conservative's attitude this afternoon, which seems to be, "I don't like apple pie, but if I am going to have it I would like a bigger one than the one you are offering." We should try to avoid adopting that type of attitude.

The Convener: I will make a brief contribution, then I will allow John Farquhar Munro to answer the question that he was asked. I will come to the minister after that.

I have some sympathy for George Lyon's proposal regarding remote islands. Obviously, I wait with interest to hear what the minister will say about that. However, I very much agree with the comments made by Paul Martin and Michael McMahon. It is a bit rich to support a bill that will introduce proportional representation and then to propose having one degree of proportionality for urban areas and a lower degree of proportionality for rural areas. That is flawed thinking. If the Executive were to accept any amendment proposing two-member wards, that option should not be restricted to rural areas but should be available to the boundary commission, in specific circumstances, across the country.

The other issue that has been missed in the argument is that the existing boundaries already take cognisance of the geographical difficulties that arise in relation to representing rural areas. Most rural wards have only 2,000 electors, semi-urban wards often have 4,000 electors and the big city wards have 6,000 electors. That takes account of many of the geographical issues. In my experience as a councillor, it was not fields, mountains or farms that came along to surgeries and brought issues to my attention; it was people. The people whom we represent create far more demands than the geography that we represent. I am sceptical about the amendments lodged by John Farquhar Munro, although I recognise that George Lyon has highlighted the specific, extreme circumstances of some islands.

I think that David Mundell is expressing naked opportunism. I find the Conservatives' position astounding—Michael McMahon summarised my view effectively. The reality of the matter—which will perhaps become apparent to people throughout Scotland—is that those who thought that they would save first past the post with the support of the Conservatives will have that illusion dashed. The opportunism of the Conservatives in that regard is something that I hope Mr Mundell is extremely uncomfortable with and something that the Executive should expose fully. David Mundell's position is ludicrous.

Other members have lodged amendments to allow five-member wards, but those amendments would mean that we could create wards of up to 30,000 electors, which I think would be a ridiculous size. Previously, I was a councillor on Lothian Regional Council and had a ward in which I represented up to 15,000 electors. Getting round school boards, community councils and all the various communities represented in that ward was very demanding. To try to do that in a ward of 30,000 electors would be too heavy a burden to put on individual councillors, many of whom, we must remember, will still have full-time jobs as well. The demands on a councillor truly to represent an area with 30,000 electors would be too much. I urge members to reject all the amendments in the group.

I shall now allow John Farquhar Munro to respond to the question that was put to him by Paul Martin. Answer briefly, John, and then I shall come to the minister.

John Farquhar Munro: I just wanted to clear up a misunderstanding about amendment 44, in which I am suggesting that

"the number of councillors returned in a ward may be two only if the Boundary Commission has so proposed on the grounds that—

(a) the area encompassed by the ward is remote or sparsely populated or comprises an island or islands".

That provision is not identified directly with the Highlands and Islands, but is Scotland-wide. I thought that I should just clear that up.

The Convener: I do not think that there was any dubiety about that. I think that Paul Martin was asking why the provision could not apply to urban areas, but, anyway, that is your response. I invite the minister to respond to the debate.

The Minister for Finance and Public Services (Mr Andy Kerr): I think that I shall stay above the fray, for the good reason that the Executive's position has been laid out on a number of occasions. Although the committee agreed with the Executive's position that there should be three or four members per ward, I realise that there are still differing views on the matter. However, as I have said previously, the partnership agreement is clear. We have opted for three or four members per ward to strike a balance between proportionality, the size of the ward and the councillor-ward link. Clearly, as one increases the number of members per ward, one weakens the councillor-ward link. As one decreases the number of members per ward, one strengthens the councillor-ward link but decreases the proportionality. In both cases, one moves closer to one McIntosh criterion but further away from another one.

Some people may be seeking the perfect system, but I do not think that the perfect system exists. Paul Martin cited some international examples. STV is used in a number of countries around the world and in each case it has been adapted to meet local circumstances. That is what the Executive is doing. The number of members per ward is one of the most obvious variants in the version of STV that is used.

We believe that having three or four members per ward strikes the right balance for Scotland. I was certainly pleased that, after weighing up the evidence, the committee accepted that view. We should also bear in mind the fact that STV has operated well in Ireland with a minimum of three members per ward. Given that many parts of Ireland are not dissimilar to parts of Scotland, the argument against two-member wards is helped by examples from elsewhere.

Without going on at length and describing our previously indicated position on the issue, I believe that we have struck the right balance with three to four members per ward. I therefore ask that Mr Welsh withdraws amendment 1 and that Mr Munro, Mr Sheridan and Mr Lyon do not move their amendments.

Mr Welsh: I hate to disappoint the minister, but I will press amendment 1. We are facing a major change in an electoral system that will affect everyone. All changes give rise to concerns, as we have heard around the table and during our inquiry. Those are genuine concerns and we have to take them into account.

The truth is that, as the minister said, there is no ideal system on which we can all instantly agree. However, as far as we can, we have to ensure that the fundamental principles of greater representation and the reflection of the will of the electorate are put into the commas, dots and details of the bill. That is not an easy task and, from what we have heard, I do not believe that anyone is 100 per cent happy with the end product. The new system has to be as fair and as representational as possible and that is what we have tried to ensure.

In amendment 1, I have tried to produce a balanced amendment that meets some of those objectives. We will never have 100 per cent agreement, but we all have to try to achieve the right balance between the councillor-ward link and the actual votes cast by the electorate. I intend to press amendment 1.

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

Members: No.

The Convener: There will be a division.

FOR

Mundell, David (South of Scotland) (Con)
Sheridan, Tommy (Glasgow) (SSP)
Welsh, Mr Andrew (Angus) (SNP)

AGAINST

Jackson, Dr Sylvia (Stirling) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Iain (North East Fife) (LD)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 1 disagreed to.

The Convener: Do you want to press amendment 42, John?

John Farquhar Munro: No. In the circumstances, I do not want to proceed with it. I have had discussions with my parliamentary colleagues and some of the wider parliamentary team and I am hopeful that some consideration might be given at stage 3 to the issue that my amendment raises.

Amendment 42 not moved.

The Convener: I remind the committee that other members may move an amendment if the member who lodged it does not move it.

Amendment 43 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Mundell, David (South of Scotland) (Con)
Sheridan, Tommy (Glasgow) (SSP)
Welsh, Mr Andrew (Angus) (SNP)

AGAINST

Jackson, Dr Sylvia (Stirling) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Iain (North East Fife) (LD)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 43 disagreed to.

Amendment 2 moved—[Mr Andrew Welsh].

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Sheridan, Tommy (Glasgow) (SSP)
Welsh, Mr Andrew (Angus) (SNP)

AGAINST

Jackson, Dr Sylvia (Stirling) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Iain (North East Fife) (LD)

ABSTENTIONS

Mundell, David (South of Scotland) (Con)

The Convener: The result of the division is: For 2, Against 5, Abstentions 1.

Amendment 2 disagreed to.

David Mundell: I abstained because I was not clear that amendment 2 should stand on its own.

Amendments 44 and 48 not moved.

Section 1 agreed to.

Section 2—Single transferable vote

The Convener: Amendment 27, in the name of Andy Kerr, is grouped with amendment 28.

14:45

The Deputy Minister for Finance and Public Services (Tavish Scott): Both amendments 27 and 28 are purely technical and clarify how the voting process will work. They make it clear that the number of preferences that are marked on the ballot paper is entirely for the voter to decide. There is no requirement on the voter to express more than one preference if he or she does not wish to do so. I move amendment 27.

Amendment 27 agreed to.

Amendment 28 moved—[Tavish Scott]—and agreed to.

Section 2, as amended, agreed to.

After section 2

The Convener: Amendment 45, in the name of David Mundell, is grouped with amendment 47.

David Mundell: I suppose that, to use George Lyon's language, these are probing amendments. I do not believe that, when Mr Kerr and Mr Scott first gave evidence to us or in the stage 1 debate, there was sufficient discussion about, or undertakings given by the Executive on, the understanding of the STV system. It is easy for, and a bit patronising of, politicians to say, "Do not underestimate the public. They will get it right." The reality is that a very complicated new form of voting is being introduced. If we did not already know that, we would have only to look at the report of the review that the Electoral Commission has undertaken in respect of the Northern Ireland Assembly elections. The summary of that report states:

"Despite the fact that the Single Transferable Vote (STV) has been used in Northern Ireland for 30 years, over 10,200 invalid votes were cast at the election. According to EONI statistics, the vast majority of ballot papers were spoiled because of a lack of understanding of the STV system of voting."

The detail of the report also shows that that was the case. In some of our deliberations, it has been suggested that there were spoiled ballot papers because people deliberately chose to spoil them; however, the information from the Electoral Office for Northern Ireland indicates that the significant majority of spoiled ballot papers were spoiled because people either did not clearly indicate a first preference or indicated more than one first preference. As Paul Martin has previously suggested might happen, people put two or three crosses on their ballot papers.

The committee and Parliament need to be clear what exactly the Executive will do to ensure that there is an understanding of the operation of the STV system of election, especially if it still intends to proceed with local government elections on the same day as Scottish Parliament elections, which will be conducted under a different form of election—at least, that is the plan at the moment. I hope that the minister can clarify what the process will be for ensuring greater voter understanding of the system. I would be interested to hear what he feels is an acceptable level of ballot papers that are spoiled because voters have not understood the system.

Even some of our academic witnesses rather dismissed the fact that the number of spoiled ballot papers in Northern Ireland was three or four times the number in Scotland. For anybody interested in ensuring greater voter engagement in the electoral process, the issue of voter understanding of the system is serious and needs to be addressed; we cannot just dismiss concerns and say that it will be all right on the night. We need to hear detailed proposals about how greater voter understanding is going to come about. The purpose of lodging amendment 45 was to get those explanations and to tease out what the Executive thought was an acceptable proportion of spoiled ballot papers for a system to be judged to be working.

I move amendment 45.

Mr Welsh: I am reassured that amendment 45 is a probing amendment, because it is indeed a strange beast. It provides that if 3 per cent of the electorate spoiled their papers, a second election would be triggered automatically. That represents a power of veto for a small minority of electors, which is designed to seize up the electoral process rather than improve it. Perhaps it is a sign of the electoral standing of the Scottish Tories that they look on 3 per cent as a reasonable electoral target to get back some power. We are out to

measure positively what the voters are telling us; we are not out to allow them to act negatively. If someone wants to spoil their paper, they will do so, but that should not cause the whole system to come to a juddering halt. We should listen to what the voters say and not allow for such a means of delay and inaction based on the negative actions of a small minority of the electorate.

Tommy Sheridan: There is an important point to make here, because spoiled and rejected papers have been confused in the discussion. If we are talking about spoiled papers, the points that Andrew Welsh has just made are spot on. David Mundell must take some of the responsibility for the confusion, because in his speech he talked about spoiled papers, but in amendment 45 he refers to rejected papers. There is a concrete difference between the two. If a voting system is so complicated that it leads to a large number of papers being rejected through no conscious fault of the electors, it needs to be addressed.

I am a bit worried about the threshold of 3 per cent of the ballot papers cast, because I think that it should be higher. However, I would like to hear the Executive's position. If we got to a situation where, as well as having a pile of spoiled ballot papers, which we get at every election, we had an even bigger pile of rejected ballot papers, we would have to address that difficulty. Amendment 45 could be useful in drawing out the Executive's attitude on this issue.

Obviously voter education will be vital in any new system, but if that does not work and we end up with a large number of rejected ballot papers, that in itself could undermine democracy and some of the arguments that Andrew Welsh made could be turned around, because the voter might not be getting the chance to express their opinion, through no fault of their own but through a misunderstanding of the process. I would like to hear the Executive's position. I do not know whether the returning officer can differentiate between a spoiled paper and a rejected paper. It is hard to understand whether, when a voter fills in their ballot paper wrongly, their purpose is to spoil it or they just do not understand how to fill it in. With a new voting system being introduced, it is worth while monitoring that and being aware of it.

Iain Smith: Andrew Welsh hit the nail on the head. I hope that amendment 45 is a probing amendment rather than a wrecking amendment, because David Mundell has lodged a number of amendments that are designed to try to prevent the implementation of the bill for the 2007 local government elections. The problem with amendment 45 is that it would enable any relatively small group of people to run an organised campaign to go to the ballot box, spoil the ballot paper and prevent the election result from standing. I would not put it past some groups who oppose the introduction of proportional representation to organise such a campaign deliberately to undermine the credibility of the PR system in the first elections in which it is used. I do not think that that is acceptable; it is a breach of basic democratic principles. The majority of people who vote and who get it right would have their choice made null and void by a small minority who chose to organise a rejection campaign.

The simple answer to David Mundell's question about what is the legitimate or acceptable level of spoiled ballot papers is none. We do not want any ballot papers to be rejected and we must do everything that we can to reach that target in every set of elections. I do not think that that target will ever be achieved, however, as ballot papers can be rejected for a number of reasons including the fact that someone has signed their name on their ballot paper—if someone can be identified, that is a reason for rejection. It is wrong to assume that the system is the cause of the problem, although it might not assist at times when there are complications; David Mundell said that the level of rejected ballot papers in the Northern Ireland elections was three or four times that in the Scottish elections. In fact, that is not the case; the level in Northern Ireland is about twice as high. David Mundell's claim is simply not true.

Clearly, voter education is extremely important. Although STV is a difficult system for the counter, it is not a difficult system for the voter to understand—essentially, it is as easy as 1, 2, 3. We simply have to make clear to people that all that they have to do is to mark their ballot paper with a series of preferences—1, 2, 3—and not with a series of crosses, which is what they would have been used to doing in elections to date. It is neither a difficult system for the voter to learn nor a particularly difficult system for the education process to convey.

The number of spoiled ballot papers in elections in Northern Ireland has varied enormously, but it has been well below 1 per cent on occasions; I think that it was 1.5 per cent at the most recent elections. That is nowhere near the 3 per cent level that David Mundell suggests as a target figure. His proposal is unacceptable and is clearly designed to act as a wrecking amendment. I hope that he does not seriously intend to press amendment 45.

Paul Martin: Although David Mundell has raised a serious question, he has not provided a serious answer. I hope that the minister can clarify that voter education will be provided. Again, I return to the Northern Ireland analogy. People in Northern Ireland are used to a system that requires numerical preferences to be used. Voters in

Scotland are not educated about using numerical preferences and that fact presents us with serious challenges. Voters will be aware of the X mark on the ballot paper, but they will be faced with a numerical preference system.

Some voters will have to be educated—I use the term in a constructive manner. They will need voter education on the system so that they know that if they mark the number 1 on a ballot paper, it will be counted as a vote. We face a challenge, but David Mundell has not provided the answer. It will be left up to the Executive to ensure that we can introduce ways of dealing with the serious challenge of voter education.

The Convener: David Mundell introduced the Northern Ireland example. As Iain Smith indicated, however, David Mundell is wide of the mark when he says that the level of spoiled papers is three or four times higher in Northern Ireland. In the previous elections, 1.46 per cent of ballot papers were spoiled, which covers the mix of rejected ballot papers and spoiled ballot papers. That is not three or four times the most recent Scottish level, which was 0.7 per cent for the first-past-the-post constituency vote in the Scottish Parliament elections. Therefore the level in Northern Ireland is at most twice the level in Scotland.

In the course of the preparation of our committee report, we heard that the constituency of West Belfast, which had the highest level of spoiled ballot papers in the STV elections, has consistently had the highest level of spoiled ballot papers in first-past-the-post elections since 1973. There are probably factors at play there other than just the question of voter confusion.

The issue of people spoiling ballot papers accidentally because they do not understand the system is a serious and genuine one and it has to be addressed through education. I hope that the minister will explain how the Executive intends to deal with the problem. I think that to come forward with the solution that David Mundell has come forward with is to show a perverse understanding of any meaning of the word democracy. To put the power of invalidating an election into the hands of 3 per cent of the people would be a recipe for chaos. It would lead to democratic institutions being seriously undermined.

I hope that David Mundell has not quite understood his amendments 45 and 47 because, if he does understand them, he will know that they seriously undermine his commitment to democratic elections. If he presses both amendments, they should be roundly rejected.

15:00

Tavish Scott: The issue is serious, and I accept the committee's concerns. It is important to reflect on the points that members have made about the Northern Ireland experience. We should note that the Electoral Commission expressed its concern at the level of rejected ballot papers in its recent report on the conduct of those elections, but it also noted that the electoral administrators who observed the elections in Northern Ireland expressed the view that although the level of rejected ballots was a cause for concern, part of the problem may have been due to less rigorous conducting of the election by election staff than would be expected in Scotland. That was particularly the case in relation to the lack of guidance on categorising rejected ballot papers. There were some material issues in the context of Northern Ireland that it is important to reflect on.

We recognise that big challenges are ahead in voter education and that there is a danger that the introduction of STV may result in an increased number of rejected ballot papers. However, as we have discussed before, the difficulties and barriers are not insurmountable and we have the capacity and resources to overcome them. It is somewhat condescending to suggest that voters cannot work out a new system that requires them to cast their votes on the basis of 1, 2 and 3.

The STV working group is now considering practical implementation issues such as voter education and publicity. We will also be discussing voter awareness and related issues with returning officers, and working with them to minimise the number of rejected ballot papers. It is important that we work with the practitioners, who have considerable experience of those practical issues.

The provisions proposed by amendment 45 would not be adopted for UK elections and, more important, they would be open to abuse by those who wished to orchestrate a campaign to render an election void. Andrew Welsh, the convener and Iain Smith made important points about that.

In relation to amendment 47, I agree that there is a need to specify what constitutes a rejected ballot paper. That is covered by the current election rules, and it will be covered by the election rules for the STV system. However, the matter is best left to secondary legislation.

I encourage David Mundell to withdraw amendment 45 and not to move amendment 47.

The Convener: Before I invite David Mundell to respond to the debate, I welcome Kenny MacAskill to the committee. Are you acting as a substitute for Bruce McFee?

Mr Kenny MacAskill (Lothians) (SNP): Yes, I am.

Tommy Sheridan: I have a question on your contribution, convener. Were two elections taking place in Northern Ireland, or was there just one

election? My concern with what Iain Smith said is that it sounds great if people have only to mark 1, 2 and 3, but what if people have to use an X as well, on the same day and in the same polling booth? That is not easy. Obviously, that is an argument for decoupling elections. Are we talking about Northern Ireland using two separate voting practices on the same day?

The Convener: The example I quoted was from 2003, which was just STV elections to the Northern Ireland Assembly. However, in recent years local elections by STV took place on the same day as the UK parliamentary elections by first past the post. I do not have the figures to hand, but I am sure that they will be available for members. From recollection, I think that the rejection rate was not dramatically higher as a result, but I am sure that Stephen Herbert will be able to issue us with a precise figure.

David Mundell: Tommy Sheridan is right. In the 2001 elections the rate of spoiled ballots in the Belfast City Council area was well over 3 per cent, as can be seen in the body of evidence. Indeed, both the election that required an X on the paper and the election that required 1, 2 and 3 had high rejection rates. That is a serious issue.

The minister has not given us any concrete detail on what will be done to deal with that and to make it clear to people who will be asked for the first time to vote using three different systems on the same day; on how that will be managed; and on how we will get the education process off the ground. Iain Smith still glibly dismisses the issue.

If STV is the holy grail, I can understand that it would not matter that people might find it difficult. I am quite clear that people might be able to put 1, 2 or 3 on a ballot paper, but will they know the ramifications and be clear what that action is going to lead to in terms of electoral outcomes? Will they be clear that it is that piece of paper and not the pink or aquamarine piece of paper that requires 1, 2 or 3 to be marked on it in an election with multicoloured ballot papers? Those are all serious issues that require a much more detailed response than we have heard today.

If amendment 45 had been a wrecking amendment, it would not have been allowed by the convener. The purpose of lodging the amendment was to tease out answers to some of those serious issues. I do not have a solution to the question. The Executive is taking a step too far in trying to run the two elections on the same day. It should heed common sense and what the professionals are saying, and it should decouple the elections.

Having facilitated this debate, if we can call it that, I will seek leave to withdraw amendment 45 and I will not move amendment 47.

Amendment 45, by agreement, withdrawn.

Section 3—The quota

The Convener: Amendment 29, in the name of Andy Kerr, is grouped with amendments 16, 30, 17, 31, 4 to 6, 18, 19, 7, 32, 33, 33A, 33B, 8, 25, 36, 20, 9, 21, 37, 10, 22 to 24, 11 to 15 and 38. Amendments 31 and 4 are direct alternatives, so if amendment 31 is agreed to and then amendment 4 is agreed to, amendment 4 will replace amendment 31. If amendment 33 is agreed to, it will pre-empt amendment 8. If amendment 36 is agreed to, it will pre-empt amendments 20, 9 and 21. If amendment 37 is agreed to, amendments 10, 22, 47, 23, 24 and 11 will all be pre-empted. If amendment 10 is agreed to, amendment 22 will be pre-empted. I will now issue members with a questionnaire to see how well they have followed that.

Mr Kerr: I will speak to the whole group of amendments and perhaps take a wee bit longer than I have on earlier amendments.

There is a great deal of common ground in the amendments that have been lodged by me, by Tricia Marwick and by David Mundell. We are all heading in the same direction, but taking different routes to get there.

The key principles of the STV system that we propose to introduce are set out in the bill. The key elements of such a fundamental change to the electoral system should be subject to Parliament's full scrutiny of primary legislation rather than be done through secondary legislation. That approach accords with the approach that has traditionally been taken in Scotland. However, we also recognise the case for including the detailed provisions in secondary legislation. The arguments are finely balanced.

The committee has suggested that putting the detail of the STV process into secondary legislation would give us flexibility over the system of STV that is used in the future. Electoral administrators and others have also indicated that having the detail in secondary legislation would make it easier to make any necessary adjustments in future. I have therefore lodged a series of amendments that will remove the detail from sections 3 to 8 and have it dealt with in secondary legislation. Amendment 29 is the first of the series of amendments that I have lodged for that purpose; it will remove section 3—which sets out the procedures for calculating the quota—and insert a provision that will ensure that a method of calculating the quota will be included in the order to be made under section 9(1) of the bill. That change recognises the fact that, if a different system of STV from that which is currently specified in the bill is chosen, the method of calculating the quota may need to change.

Amendment 30 will remove section 4 of the bill, which deals with the provisions for the return of councillors. Amendment 31 will remove section 5, which deals with the transfer process, and will replace it with a provision that will ensure that the transfer process will instead be set out in secondary legislation. Sections 4 and 5 are, of course, the sections that Tricia Marwick and David Mundell propose to amend or replace. I have no difficulty with what they propose, but I hope that they will agree that the Executive's approach, in taking a general order-making power that will include those elements, is the most appropriate one. The section 9 power that is proposed by amendment 33 also includes a reference to candidates being "deemed to be elected". I therefore ask David Mundell and Andrew Welsh not to move amendments 4, 16 and 17.

Amendments 5, 6 and 7, which were lodged by David Mundell, would remove sections 6, 7 and 8, which deal with situations in which two or more candidates have surplus votes and which set out the procedures for dealing with exclusion of candidates and filling last vacancies. The thinking behind the amendments is entirely consistent with the approach that I have just outlined, so I ask the committee to support those amendments. That will, of course, affect amendments 18 and 19, which were lodged by Tricia Marwick. Again, our view is that, although we have no specific difficulty with the changes that are proposed, we intend that the issue be dealt with in secondary legislation rather than in the bill. I therefore ask Andrew Welsh not to move amendments 18 and 19.

Amendments 32 and 33 will clarify and expand the order-making powers in section 9, following the deletion or amendment of sections 3 to 8, which deal with the detail of the STV system. The existing power in section 9(1)(a) is sufficient to enable ministers to make provision equivalent to that which is set out in sections 3 to 8, which we have proposed removing. For the avoidance of doubt, amendments 32 and 33 will amend section 9 to require ministers to make an order containing provisions that will implement the key elements of an STV system, such as determining the quota and dealing with the transfer of ballot papers. In addition, amendment 33 will expand on the general power to make provision as to the conduct of elections, to give an indication of how the power may be exercised. That would affect amendment 8, which was lodged by David Mundell. We propose to replace a substantial part of the text in section 9, so I ask him not to move that amendment, because our amendment 33 encompasses the aim of amendment 8.

David Mundell has also lodged two amendments—33A and 33B—to Executive amendment 33. The amendments are intended to introduce the weighted inclusive Gregory method, under which all ballot papers are transferred at each stage of the count. The committee has agreed the general principle that we will keep our options open. David Mundell's amendments would cut across that because they would commit us to a specific type of STV on the first occasion on which it is used, without our necessarily having the technology in place to support that. If we were to accept David Mundell's amendments, we would be putting the cart before the horse, so I ask David Mundell not to move amendments 33A and 33B.

Amendment 25, which was lodged by Tricia Marwick, would insert after section 9 a new section to deal with the declaration of the result, and is similar in intent to amendments that I discussed earlier. Although I have no difficulty with what the amendment proposes in terms of procedures, that sort of detail is traditionally set out in secondary legislation. I therefore ask Andrew Welsh not to move amendment 25.

Amendments 36 and 37 would remove defined terms, which would no longer appear in the bill with the removal of sections 3 to 8. Those are straightforward consequential amendments, and I invite the committee to accept them. Amendments 36 and 37 would affect amendments 9 to 15, which were lodged by David Mundell, and amendments 20 to 24, which were lodged by Tricia Marwick. Again, there is a great deal of common ground between us, so I ask that those amendments be not moved.

Finally, amendment 38 is a consequential amendment to the earlier Executive amendments to section 9. It will ensure that orders that are made under section 9 and that contain provisions that are central to the establishment of the STV system, are subject to the affirmative procedure. The negative procedure will apply to other orders that are made under section 9(1) so long as they do not amend or repeal primary legislation. I invite the committee to accept amendment 38.

As I said, it is clear that we are heading in the same direction and we have no difficulty with many of the non-Executive amendments in group 4. In view of the recommendation in the committee's stage 1 report, we accept that secondary legislation is the best way forward. Therefore, I recommend that colleagues accept my amendments and amendments 5, 6 and 7 in the name of Mr Mundell, and I ask them not to move the other non-Executive amendments on sections 6, 7 and 8 of the bill.

I move amendment 29.

15:15

David Mundell: I was interested to hear Mr Kerr's comments, including his belief that I wanted to delete sections 6, 7 and 8 not to undermine the

bill but to allow for the process to which he alluded. We have had a lengthy discussion on the voting system. Again, my position is not as Michael McMahon described it—that, having originally rejected apple pie, I am now asking for a bigger slice of it. My position is that I would now like at least some sugar on the apple pie to make it more palatable.

If we are to have an STV system in Scotland, I believe strongly that we should use the weighted inclusive Gregory system, which allows all preferences to be considered. I do not feel comfortable about the Executive's proposed system. As much of the committee debate has shown, the Executive's proposed system would mean that a significant number of voters might not have their second or subsequent preferences considered. Indeed, some voters' preferences would be considered again and again. I do not believe that that would be a fair system, although I accept that it is not possible to have a perfect system.

I am happy to proceed on the basis that the minister set out, apart from in respect of amendments 33A and 33B. I want to hear a bit more from the Executive about its view of the weighted inclusive Gregory system and the possibility of its implementation in the future.

Mr Welsh: I will speak on behalf of my colleague Tricia Marwick to amendments 16 to 25, which are in her name. The amendments have been lodged to correct what we believe is a mistake in the bill. If the Executive does not accept the amendments, there will exist the potential for serious problems at voting counts under the proposed system. The amendments might be technical ones, but they are important and concern the point in a PR election at which a candidate is elected as a councillor.

Under the current first-past-the-post system, a returning officer will call the candidates and agents together, ensure that they are all satisfied, then make the declaration that one candidate has been elected as a councillor. However, under an STV count, as soon as a candidate has reached the quota, they are technically elected and the surpluses are redistributed among the continuing candidates. Obviously, that goes on until all the places are filled. However, we believe that, to allow a count to continue, when candidates reach the quota they should be "deemed to be elected". The bill proposes that candidates are declared to be elected councillors once they reach the quota. However, if a mistake were found in the later rounds of the count, the count would have to be suspended until a court sorted out whether the candidate who had been declared elected had been duly elected.

If a candidate is "deemed to be elected" for the purpose of allowing the count to continue, at the count's conclusion, when all the places have been filled by candidates who have reached the quota, the returning officer would declare them to be elected. That system would add a safeguard because, at the count's conclusion, candidates and agents would be shown the figures for the distribution of the surpluses for each round and they would declare themselves satisfied or not. If they were satisfied, the declaration could be made. The "deemed to be elected" process operates in STV elections in Northern Ireland, where there is long experience of PR elections. We could follow that lead.

If the Executive does not accept the amendments in Tricia Marwick's name, there might be chaos at counts, which might be followed by complicated court proceedings. The problem is predictable and can easily be solved. Amendment 25 would require returning officers to declare who was elected as a councillor at the end of a count. Before making such a declaration they would have to be

"satisfied that the count has been carried out in accordance with the provisions"

in the bill. That is a sensible precaution, which would protect everyone who was involved in the process.

Executive amendment 29 reflects what might well be a parting of the ways as far as the bill is concerned. It is one of five amendments that, by deleting certain provisions, would emasculate the bill and massively change its nature and content. The Executive has proposed those deletions at the last minute. The minister mentioned secondary legislation several times: if the Executive amendments were to be agreed to, the fundamentals of the new system would be determined by the Executive, which would use its majority to hammer its provisions through Parliament. That would hardly be liberal or democratic. I have had too much experience of the evils of secondary legislation at Westminster to want those evils to be imposed too often on the Scottish Parliament.

To deal with the fundamentals of the new system through secondary legislation rather than include them in the bill might well hogtie the boundary commission. That would hardly be a confidence-boosting start to the new system of electing councillors. If the Executive amendments were agreed to, ministers would have the power to control the system; they would set the quota, determine how councillors would be declared to be elected, determine how ballot papers would be counted, determine how electoral boundaries would change and decide how candidates would be eliminated from the count.

The Executive's proposals on matters that are crucial to the democratic process have been shoved in at the last minute and, unless the minister is more forthcoming than ministers normally are, we will not even know how the Executive intends to deal with those matters until they reappear in secondary legislation. At the last minute, the Executive intends to transfer five detailed aspects of the bill to secondary legislation, which the Executive would use its majority to get through Parliament. I believe that, as far as possible, the basic rules should be in the bill and that they should be as uncomplicated as possible. PR is important, but although it is easy to vote in a PR system—voters put down 1, 2 and 3 instead of X—the counting is more complicated than in a first-past-the-post system.

In other elections, the boundary commission deals with the question of how boundaries are decided on the basis of stated, open principles that have been agreed by Parliament. We should proceed on that basis. However, as our consideration of the bill moves into its final stages, the Executive has proposed that we deal with such matters through secondary legislation.

The last thing we want is gerrymandering of the new system. The system will be complicated, but it must reflect communities as fairly as possible, through fair and agreed rules on voting and ward boundaries. I am very disappointed that such matters might be dealt with through secondary legislation and that we might have no indication of the Government's thinking on those important democratic issues before they reappear in statutory instruments which, as I understand it, must be fully accepted or fully rejected. That is no way to treat the Scots Parliament; I saw enough of that at Westminster and we should act differently. The rules should be contained in the bill as far as possible and it is unacceptable that the minister intends to make five major changes to, and deletions from, the bill to ensure that matters would be dealt with through secondary legislation.

Iain Smith: I was going to start by welcoming the Executive's amendments, because the Executive has accepted recommendations that I thought the Local Government and Transport Committee agreed unanimously to make in its stage 1 report. I thought that the committee agreed that the details of how counts should be conducted would be better placed in secondary legislation because they would be easier to amend in order to improve the system and in particular to introduce electronic counting, if that were to become possible. That would achieve the outcome that David Mundell seeks in relation to the counting system.

I am very surprised that, at this late stage, Andrew Welsh seems to be doing a volte-face on that position, especially as, during the previous session, he voted for Tricia Marwick's PR bill, which contained no detail of how the count would be conducted and made a virtue of that fact. I am sorry, but I do not see the logic of Andrew Welsh's position on this point. He also seems to be slightly mixed up. As far as I am aware, the Executive has lodged amendments to include in the bill the issues regarding the ward boundaries, which he has referred to in relation to the count.

The definition of the count should rightly be placed in secondary legislation, as it is technical information that needs to be readily amendable should problems arise or should we decide to improve the method of counting by moving to electronic counting or, ultimately, to electronic voting. That makes sense and I prefer the Executive's approach, in amendment 33, which sets out the basic principles of the count. I would be very surprised if the Executive introduced secondary legislation that differed vastly from what is currently in section 3. If the Executive introduced a system that clearly undermined the principles of STVPR, which the committee has supported in its report and which Parliament has supported, it could not guarantee its majority on the matter. It would, therefore, be foolish of the Executive to produce secondary legislation that did not comply with the basic requirements of the STV system.

I agree with David Mundell's position. He wants us to move to a system in which all transfers of preferences are accounted equal. However, if only three or four members are being elected, votes cannot be transferred again and again. There is a limit to the number of candidates to whom one's vote can be transferred when there is a maximum of four candidates. I believe that all votes should be taken into account, but I do not think that it is appropriate for us to agree to amendments 33A and 33B at this stage. The matters that they contain are for more detailed secondary legislation. I will, therefore, support the Executive's amendments and those of David Mundell that are required to bring the Executive's amendments into effect.

I agree with Tricia Marwick in principle on the issue of replacing the word "returned" with the phrase "deemed to be elected", but if the committee is minded to agree that the matter be addressed in secondary legislation, there does not seem to be any point in our wasting time by her amendments being moved at this stage. Nevertheless, I hope that the Executive will, in drafting secondary legislation, take those points on board.

Dr Sylvia Jackson (Stirling) (Lab): I acknowledge most of what Iain Smith has said, but I have some specific questions for the minister.

First, he mentioned flexibility and the fact that different STV systems would need different quotas. Can he explain that a bit more? I do not remember much being said about that when we collected evidence. Secondly, there is a lot of support for the weighted inclusive Gregory method of transferring votes. In order to adopt that method, we would need the requisite technology. Does the minister know anything about the timescale for that and whether that method will be in place? I am sure that we would all urge the Executive to use that method.

My third point is on the scrutiny that the subordinate legislation will come under. Can the minister reassure us about the level of scrutiny that will take place? Fourthly, I thought that the boundary commission said that it did not have a preference for whether some of these matters were included in the bill or in secondary legislation. I would like to know why, in the light of that, the minister is so adamant about the Executive's amendment 33.

15:30

Mr Kerr: I thank Mr Welsh for repeating my stage 1 speech on where we thought these matters would best be placed in legislation. The Executive came to the committee and said that we felt that, as is the tradition in Scotland, much of what is at issue could be carried in the bill. The committee's view was that we should drop it down into secondary legislation, which is what we have sought to do. I therefore find Mr Welsh's contribution to be quite ironic; when we do something that the powerful committees of the Scottish Parliament want us to do, we are berated for it. That is a bit odd, but I shall scratch my head and move on.

I think that David Mundell used the phrase "if technically possible", and that is a big "if". I have said in the past that, when the technology becomes available and when we have assessed it and are satisfied with its ability to cope with e-voting and e-counting, we will perhaps use it. While we do not have that technology or that faith in systems, we shall settle for what we have. That substantiates the argument for having the provision in secondary legislation; when that time comes and we can use that technology, we will be able to do so more easily.

I understand that the Irish backed out of e-voting because they do not have faith in the technology at the moment. That is an interesting point to bear in mind. As we go round the world and examine different systems and different ways of voting and counting, we will learn from that process. Nonetheless, we are not satisfied at the moment that we could use the weighted inclusive Gregory system, because the counting technology is not available to us. I am sure that we shall reconsider that point in future.

It is important to consider the text of amendment 33, which makes instructions about what the Executive must do under the secondary legislation. There are a lot of must-do provisions, and I feel that we should show more faith in the parliamentary system and in the committee system of this Parliament. To put it bluntly, if the Executive wants to hoodwink the committee in the future, the people from interested organisations who will be sitting in the public gallery and the politicians around the table will spot that. However, there is no intention to do that, which is why amendment 33 makes it pretty clear that the must-do powers cover many of the points that Mr Welsh raised.

On Sylvia Jackson's point about changing various systems in future, other STV systems that are in use around the world require quotas to be recalculated at each stage of the count, irrespective of the differences between systems. We need to be careful about that and we need to give ourselves flexibility. On Mr Mundell's point, although it would be attractive to say that we had fully scrutinised the system and that we had absolute faith and confidence in the weighted inclusive Gregory system, we do not have that faith. It would therefore be slightly disingenuous to put the horse and the cart in the wrong order; that would undermine what the legislation is all about.

The point about the phrase "deemed to be elected" is a reasonable one, as I tried to indicate in my opening remarks. However, I feel that the best place for it, now that we are adopting the secondary legislation route, in line with the committee's wishes, is in secondary legislation. Although I agree with Mr Welsh's substantive point about the phrases "deemed to be elected" and "declared to be elected", those matters should be and will be dealt with in secondary legislation. I hope that that addresses the points that have been raised, but I am in your hands with regard to that matter, convener.

Dr Jackson: I asked about the degree of scrutiny for secondary legislation.

Mr Kerr: I understand from my experience of convening the Transport and the Environment Committee that such legislation is taken seriously, particularly when the affirmative procedure is used. First, I have faith in parliamentary systems and I trust that one of the politicians round the table would seek to expose any inappropriate behaviour by the Executive. Secondly, there are enough parties with an interest in the matter to ensure that that does not happen.

The Convener: The question is, that amendment 29 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Jackson, Dr Sylvia (Stirling) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mundell, David (South of Scotland) (Con)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Iain (North East Fife) (LD)

AGAINST

MacAskill, Mr Kenny (Lothians) (SNP)
Welsh, Mr Andrew (Angus) (SNP)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 29 agreed to.

Section 4—Return of councillors

The Convener: Mr Welsh, do you wish to move amendment 16?

Mr Welsh: Given what the minister has said, I shall not move any of the amendments.

Amendment 16 not moved.

The Convener: The option to move the amendments will remain open to any other member who wishes to do so. However, I hope that, given what the minister has said, that will not be the case.

Amendment 30 moved—[Mr Andy Kerr]—and agreed to.

Section 5—Transfer of ballot papers

Amendment 17 not moved.

Amendment 31 moved—[Mr Andy Kerr]—and agreed to.

Amendment 4 not moved.

Section 6—Provision where two or more candidates have surpluses

Amendment 5 moved—[David Mundell]—and agreed to.

Section 7—Exclusion of candidates

Amendment 6 moved—[David Mundell]—and agreed to.

Section 8—Filling of last vacancies

Amendments 18 and 19 not moved.

Amendment 7 moved—[David Mundell]—and agreed to.

Section 9—Power to make further provision about local government elections

Amendment 32 moved—[Mr Andy Kerr]—and agreed to.

The Convener: I remind members that, if amendment 33 is agreed to, amendment 8 is pre-empted.

Amendment 33 moved—[Mr Andy Kerr].

Amendments 33A and 33B not moved.

Amendment 33 agreed to.

Section 9, as amended, agreed to.

After section 9

Amendment 25 not moved.

Section 10—Reviews of electoral arrangements

The Convener: Amendment 34, in the name of David Mundell, is grouped with amendments 49, 50, 39, 35, 40 and 41. If amendment 39 is agreed to, amendment 35 will be pre-empted.

David Mundell: During stage 1, there was considerable debate over whether the boundary commission should start from scratch with ward boundaries or simply bolt together existing wards. I support the option of starting from scratch and amendment 34 seeks to make that clear in the bill.

Arguments for and against the two options have been well rehearsed. Given the boundary commission's evidence to the committee that it was capable of undertaking the exercise in a relatively short time by using new mapping and other technologies, it is clear that it could start from scratch. I know, as I am sure many other members do, that many existing ward and polling district boundaries have thrown up anomalies, mainly because of formulation on the basis of the number of electors that wards had to have. Therefore, we should give the boundary commission a clear green light for starting its deliberations. If electors can cope with a new voting system—as we have been assured today that they can—I am clear that they can cope with new ward boundaries, too.

Mr Kerr's amendments require considerable explanation from him. I am not minded to support them and I wait to hear what he will say. I am concerned about the extent to which the Executive can give directions at any point in the process under proposed new section 18(2A) of the 1973 act, which amendment 50 would add. In the stage 1 debate, Mr Kerr made it clear that he is uncomfortable with any political organisation that would attempt to gerrymander boundaries, and I

am sure that he will give a commitment that the Executive would not seek to do that.

The committee has discussed the role of councils in the process, which is extremely important. Councils have much local knowledge, but they also played a significant role in creating the existing ward boundaries. No one would argue that those boundaries are always perfect. I am happy for councils to be given a role in the process along the lines that were suggested in the committee's stage 1 report, but their role should not have greater weight than the role that is given to other stakeholders who may wish to contribute.

I move amendment 34.

Mr Kerr: I will speak on amendments 34, 49, 50, 39, 35, 40 and 41. In line with previous practice, I shall ask Mr Mundell to withdraw amendment 34 and not to move amendment 35 and I will ask the committee to agree to Executive amendments 39 to 41, 49 and 50.

The bill as introduced would have repealed the rules under which the boundary commission operates and new rules would have been brought forward in due course. That would have meant that the revised rules were in secondary rather than primary legislation. However, we have listened to the view that the committee expressed in its stage 1 report that the rules under which the commission conducts a review should be in primary legislation. We have also taken account of the STV working group's interim report, which concluded that any necessary changes to the rules could be achieved by amending schedule 6 to the Local Government (Scotland) Act 1973, which sets out the current rules.

We have therefore decided that schedule 6 should remain in place. Amendments 39 to 41 will achieve that but will make two significant changes to the schedule. The first change will ensure that the ratio of electors to councillors is the same in each ward in a local government area. That is essential to achieve equality of representation. The second change will ensure that when any conflict arises between the commission's duty to have regard to identifiable boundaries and the duty to have regard to local ties, greater weight shall be given to local ties, although parity will remain paramount. That point has been raised regularly in discussions about the criteria for the ward boundary review. Councils in particular have suggested that greater weight needs to be given to local ties. We agree that the importance of local ties should be recognised in that way.

When taken together with amendment 49, amendments 39 to 41 will prescribe how the boundary commission should devise the ward boundaries for the next local government elections. We recognise that the committee and the STV working group favour the so-called starting-from-scratch approach. However, we disagree with that and, in order to minimise the upheaval for those who are involved in the first elections that are held using STV, we believe that the boundary commission should use the existing wards as building blocks for the new ward boundaries.

15:45

However, we recognise that there will be circumstances in which the commission will need to be able to propose changes to the existing boundaries to allow them to take account of other factors, such as parity, other easily identifiable local boundaries or local ties. Therefore, amendment 49 will ensure that, where the commission's draft proposals recommend changes to the existing ward boundaries, the commission will be required to explain to councils why those proposals differ from those that it would have made if it had bolted together the existing wards.

We believe that the approach that I have outlined will address the concerns that have been expressed about the need for the revised boundaries to reflect natural communities and about some anomalies that occurred as a result of the previous review.

Amendment 50 seeks to increase the involvement of councils in the review process. It proposes to introduce additional consultation procedures, which the commission will be required to follow in conducting all future administrative and electoral reviews of council boundaries.

Amendment 50 takes account of the committee's comments at stage 1. It will add a new stage to the consultation process and provide councils with an opportunity to comment on the commission's draft proposals for revised ward boundaries, and for those comments to be considered before the commission publishes proposals for wider consultation. The amendment will also provide ministers with the power to issue a direction to the commission on matters relating to the initial consultation process that is required by virtue of section 18(2)(a) of the 1973 act. That legislation already requires the commission to consult councils and others at an early stage, but we want to ensure that there is no uncertainty about the degree of consultation that is required.

For example, we want to ensure that there is more than a formal exchange of letters about the review process. We might want to direct the commission to seek views on the ward boundaries in the councils' areas or to offer to meet each council. We might want to direct the commission to take account of the councils' views and we might

want to place a time limit on that consultation process to ensure that the timetable for the review process remains on track. Amendment 50 will provide ministers with the power to require councils to respond to the commission within a specific timescale.

We are seeking to strike a balance between the desire—which committee members share—to ensure that councils are fully involved in the review process and the need to ensure that that process is completed in time for the next elections. I have discussed the timetable for the review with the chairman of the boundary commission, which understandably has concerns about the effect that the additional consultation requirements will have on it in meeting its target for completing the review. That is why we are clear that there will have to be very tight time limits on the consultation process, and why we will liaise closely with the commission throughout the review to ensure that the ward boundary review process remains on track.

I believe that the amendments will provide a strong foundation for the review process and therefore invite committee members to agree to amendments 39, 40, 41, 49 and 50, although I will be interested to hear the views of members on each amendment that is discussed.

Amendments 34 and 35, which were lodged by Mr Mundell, would provide for the boundary commission, in formulating proposals, to have regard to any local ties that may be broken. That is already a requirement of schedule 6 to the Local Government (Scotland) Act 1973, which will be retained if amendments 39 to 41 are agreed to.

Amendment 34 proposes that, in undertaking the review, the boundary commission should not have regard to existing ward boundaries, unless local ties are an issue. I have already made it clear that we disagree with that approach and believe that the boundary commission should use the existing wards as building blocks for the new ward boundaries.

Amendment 35 proposes that the rules that govern the boundary review under section 10 of the bill must not be inconsistent with the provisions that are proposed in amendment 34. However, amendments 39 to 41 will ensure that the criteria for the ward boundary review will be in primary legislation rather than secondary legislation, as recommended by the committee. The power to make rules governing the ward boundary review would no longer be necessary and would therefore be removed from the bill.

I invite the committee to agree to the Executive amendments, and, as a consequence, I ask Mr Mundell not to press amendments 34 and 35.

Tommy Sheridan: Many of the amendments are important and necessary and they take cognisance of some of the points that the committee made in its stage 1 report, but I am worried about amendment 50.

The minister talked about trying to delineate the Executive's role in relation to the boundary commission's role. The boundary commission was created because it was felt to be inappropriate that politicians should draw up boundaries. There was a fear that politicians might deliberately interfere with and gerrymander specific boundaries to suit themselves. That is why the boundary commission was established as an independent body.

My worry about amendment 50 is that we would, in effect, undermine the boundary commission's independence. Giving Scottish ministers the power to direct the commission under proposed new section 18(2A) of the 1973 act oversteps the mark and is unnecessary. The amendment provides for direction not just in relation to consultation but in any

"particular reviews or particular aspects of reviews".

My worry is that amendment 50 would give far too much power to the Executive in relation to the role of drawing up the new boundaries.

I accept that the Executive might be worried that the process could take so long that the boundary review would not be complete in time for the next local government elections in 2007. The committee has been absolutely clear that it wants the process to be complete for 2007, but perhaps the Executive feels that the additional power that is provided for in amendment 50 would allow it to intervene if progress were not made quickly enough. That is not the type of mallet that is required to crack that particular nut, and it could be dangerous in the wrong hands. People have their views on whether the current Executive would overstep the mark, but such a power could be dangerous if it were in the hands of a political party of any other colour.

Amendment 50 is unnecessary and there are other ways in which the timescale that we seek could be delivered. I will not vote for the amendment.

Iain Smith: I do not share Tommy Sheridan's fears. As far as I understand the proposals in amendment 50, they relate only and specifically to consultation in relation to any review. Although proposed subsection 2B states that

"Such directions may be given generally or in relation to particular reviews",

I understand that to refer to the whole of Scotland; that a "particular review" means a review in a particular council area; and that "particular aspects of reviews" refers to elements within those

reviews. The proposals are not for a power to direct the review, but for a power to direct the consultation on the review.

Those proposals would make an important and useful addition to the boundary commission proposals on introducing timetables for reviews. In the past, councils that have not wished the boundary reviews to progress have dragged their feet, and the lack of a timetable to which the boundary commission and local authorities are required to adhere has meant that we have had problems in completing the boundary reviews in a reasonable timescale. I welcome an additional power that will ensure that boundary reviews are conducted sensibly and I do not think that amendment 50 will undermine the independence of the boundary commission.

I have concerns about some of the other amendments in the group. I cannot support David Mundell's amendment 34 because, although the committee was of the view that the boundary commission should operate from a clean-slate position, an amendment that says that the boundary commission cannot take cognisance of the existing boundaries is not helpful. The existing boundaries do not all have links to local ties, although some do, but it does not help to direct the boundary commission in that way. I would rather see no direction in that area. Amendment 34 may be well intentioned, but it is not helpful.

I have significant difficulties with Executive amendment 49. I do not agree with the Executive's position that we should take a building-blocks approach. There are a number of problems with that approach and the only way in which I would find it to be acceptable would be if the timescale would not permit a full review. The Executive has not convinced me, in its response to the committee, with its arguments about fuss and upheaval in the new system. There will be fuss and upheaval in the new system, but the primary aim should be to ensure that the boundaries are right, or as right as they can be. When areas are being enlarged, almost by definition building blocks are being used. Most of the existing wards will be wholly or largely part of new wards; only at the margins will changes be seen. The Executive's proposals will still allow changes at the margins, so I do not see a huge difference between its proposals and simply asking the boundary commission to go away and provide wards that make sense.

The drafting of amendment 49 does not make a great deal of sense. There could be significant and unnecessary delays in the drafting of proposals if the boundary commission has to draw up bolted-together wards and then decide whether they meet all the criteria of schedule 6 to the 1973 act. If the new wards do not meet those criteria, the boundary commission would have to draw up other wards, which could cause knock-on effects in other areas. That could end up very messy and I suspect that people would have many opportunities to challenge any proposals that resulted from the approach suggested by amendment 49. The amendment does not provide a neat solution. As I said, I would not object to the boundary commission being given some indication that it should consider existing boundaries as part of its consideration of local ties. However, amendment 49 is not the way to do it.

Amendment 49 has another fundamental problem. In section 18 of the Local Government (Scotland) Act 1973—which is on general proposals for whenever a boundary review is conducted—the amendment seeks to include wording that is specific only to the first review of local government boundaries for STV elections. That does not strike me as very sensible. Sticking the wording of amendment 49 into section 18 of the 1973 act, where it would be ill fitting, will be a problem. I ask the Executive to consider not moving amendment 49 and coming back with something that is drafted a bit more sensibly and that takes more accurate account of the views that were expressed by the committee in its stage 1 report. We felt that, if the boundary commission believes that it can be done in the available time, having a proper review from the start is the right way to go ahead.

Another factor has to be taken into account. The boundaries that will come into effect for the first set of elections for STV need to be robust. I hope that they will last for at least three sets of elections. The existing local government boundaries, which the Executive proposes should act as building blocks for new boundaries, are scheduled for review between 2007 and the next set of local government elections. The boundary commission is required to review boundaries between eight and 12 years after the previous set of reviews. I understand that the last reviews were done in 1998. Eight years from then would take us to 2006, so reviews could start in 2006 but would have to finish by 2010—that is, 12 years after 1998. Because the boundaries are up for review, the issue arises of whether they are robust enough to be used as building blocks. If a new system has to be changed after only one or two sets of elections, that is not very satisfactory and will not give the system time to bed in.

For all those reasons, I ask the Executive seriously to consider not moving amendment 49 and to reconsider the issue for stage 3.

Paul Martin: A number of points arise in connection with this group of amendments. We have spoken about boundary anomalies in a number of communities in Scotland. I appreciate

that councils have some responsibility for those anomalies, but a number of them have arisen in the first place because of boundaries that were created by boundary commissioners. We should not necessarily think that a boundary review will solve all the anomalies. We have always faced challenges with boundaries—that has certainly been the case since I was first elected as a councillor 10 years ago. Those who have been around even longer will appreciate that boundary challenges will always be there, despite our best efforts to deal with them.

The start-from-scratch option is not necessary, and it is not unusual for a boundary commissioner to use existing boundaries as building blocks. That is the way in which many Westminster boundary reviews have been conducted, and previous reorganisations of local government have used existing boundaries as building blocks. Iain Smith has argued against himself: he asks us to involve ourselves in the bureaucratic nightmare of starting from scratch because it will not make much difference, but why not use the existing wards as building blocks?

Let us not get carried away with ourselves on this issue. Significant costs would be involved in starting from scratch, but we do not mention that often enough. I would appreciate it if the minister could give us any information on what that option would cost local councils; that would be helpful. I recall that significant costs were involved in the previous reorganisation of local government, so we should avoid what would be, in effect, another reorganisation by using the existing wards as building blocks and accepting that boundary reviews will never sort out all the anomalies that face us. People will disagree during the boundary review process, and there will be casualties, as many politicians and political parties will confirm, but we must accept that we will not solve all the problems and we must move forward by accepting the proposals in amendments 49 and 50.

16:00

The Convener: Amendments 49, 50, 39, 40 and 41 are an attempt on the Executive's part to respond to issues that the committee raised in its stage 1 report. The boundary commission's proposal to start from scratch, which the committee endorsed, and the Executive's original position of bolting wards together are two extremes; the position that the Executive is now trying to take is halfway between those two extremes. Initially, I was attracted to starting from scratch, partly because I am aware of anomalous boundaries—for example, in West Lothian, relatively small towns such as West Calder and Blackburn are split into two different electoral wards—but the degree of flexibility that the Executive proposes would allow the boundary commission to respond to some of those issues and draw up proposals that have genuine connections with local ties.

I therefore support the Executive's amendments 49, 50, 39, 40 and 41. In light of Mr Smith's comments, I look forward to hearing whether the Executive will press them, but they are a genuine attempt to address some problems that the committee raised with the original proposals.

I call Mr Mundell—[*Interruption.*] I am sorry, I have not given the minister his chance to respond.

Mr Kerr: Thank you, convener; I was getting a wee bit worried about that.

Mr Sheridan raised a point about the power to give directions under amendment 50. We are trying to reflect what the committee wanted us to do. The committee's stage 1 report says:

"The Executive's timetable for the LGBCS should, therefore, allow time for consultation with councils and other interested bodies, and for revision of draft proposals before full public consultation",

and we are seeking to do that. To be absolutely clear about the matter, any direction must be

"in relation to consultation under subsection (2)(a)"

of section 18 of the 1973 act. That is nothing to do with anything else about boundaries, who is in what boundaries or what part of a town or village appears within certain boundaries; it is about the consultation process and that alone. That is important. We are not attempting to take powers on the setting of boundaries, nor is there any evidence to suggest that we would do so. We seek powers only in relation to the consultation.

I am sympathetic to one aspect of what Mr Smith said: the fact that amendment 49 may have an impact on future boundary reviews. In other words, not only will it affect the first review of the STV boundaries, but it could affect future boundary reviews ad infinitum. However, I am not sympathetic to the position that he adopts on the traditional approach of starting from scratch as opposed to the building-blocks approach.

The convener summed up fairly well what the Executive has sought to do. As I have said in evidence to the committee, I strongly believe that we must sort out problems that have arisen because of past difficulties or because of boundaries that do not make sense to communities or to local ties. Iain Smith's point that the existing boundaries must be worth something is somewhat contradictory. Under our proposals, the boundary commission will have the power to resolve problems with boundaries that do not mean anything to communities and that cause only difficulties.

I am happy to have discussions with Iain Smith on how to improve the wording of amendment 49 in a way that allows us to retain the principle of what we seek to do. We must also think about the impact that such an amendment will have on boundary reviews ad infinitum rather than, as the member indicated, on the first boundary review for STV elections.

David Mundell: You disappointed me, convener. I thought that I was going to be allowed to sum up for Mr Kerr. In fact, I might have made the same comments as he did, which is a little worrying.

I intend to press amendment 34, because I share Andy Kerr's opinion that, on this issue, Iain Smith's position is again contradictory. Amendment 34 seeks to make local ties, not the location of burns or other prominent geographical features, the predominant element of mapping boundaries. If local ties are already served by existing polling districts and wards, the boundary commission would no doubt take them into account and make them the building blocks for the new wards. Given that a vote on an earlier amendment means that we will not have an entirely proportional voting system, the combination of existing wards and new wards will be extremely significant in determining the outcome of elections. Any suggestion of combining existing wards would give rise to genuine concerns about gerrymandering and I am not prepared to support any proposal to bolt together existing wards. As a result, I will not support amendment 49.

Having read section 18 of the Local Government (Scotland) Act 1973, I am reassured that amendment 50 is not as draconian as it might appear out of context. I will support it and the other amendments that Mr Kerr has lodged that are consistent with my position.

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

Members: No.

The Convener: There will be a division.

FOR

MacAskill, Mr Kenny (Lothians) (SNP)
Mundell, David (South of Scotland) (Con)
Welsh, Mr Andrew (Angus) (SNP)

AGAINST

Jackson, Dr Sylvia (Stirling) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Iain (North East Fife) (LD)

ABSTENTIONS

Sheridan, Tommy (Glasgow) (SSP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 34 disagreed to.

Amendment 49 not moved.

Amendment 50 moved—[Mr Andy Kerr]—and agreed to.

Amendment 39 moved—[Mr Andy Kerr].

The Convener: The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Jackson, Dr Sylvia (Stirling) (Lab)
MacAskill, Mr Kenny (Lothians) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Iain (North East Fife) (LD)
Welsh, Mr Andrew (Angus) (SNP)

AGAINST

Mundell, David (South of Scotland) (Con)

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

Amendment 39 agreed to.

Amendments 40 and 41 moved—[Mr Andy Kerr]—and agreed to.

Section 10, as amended, agreed to.

The Convener: I have had a request from a couple of members for a short break. I suspend the meeting for five minutes.

16:10

Meeting suspended.

16:17

On resuming—

The Convener: I recommence the meeting. It is just as well that David Mundell has now returned, as committee members were inciting me to deal with his amendment in his absence.

David Mundell: Given the commitment to democracy that we have heard today, I would have been most surprised by that.

After section 10

The Convener: Amendment 46, in the name of David Mundell, is in a group on its own.

David Mundell: Amendment 46 is intended to be helpful and its wording was chosen for that purpose. As members know, a polling station is

not the building but the table or area where polling takes place.

The committee has discussed the opportunity for confusion and for people to make mistakes. The amendment would prevent people from being given in the same hand one ballot paper that required a cross and one that required 1, 2 and 3 to be marked to take into the same polling station booth to mark at the same time. If elections under different systems were being held on the same day, people would have to go into two separate booths.

That would significantly counter confusion, because it could be clearly displayed in one booth that 1, 2, 3 and 4 were to be written on the ballot paper and in another booth that a cross had to be marked. If any other system is adopted, people will be given contradictory information if an attempt is made to hold different elections under different systems on the same day. If the minister can suggest other ways of dealing with that confusion, I will be prepared—as ever—to listen. Voter confusion is an important issue and needs to be debated.

I move amendment 46.

Iain Smith: I welcome Mr Mundell's constructive contribution in moving the amendment. I suspected that the amendment was another attempt to bring in by the back door an issue that he was told he could not bring in by the front door—the decoupling of elections—but I was pleased to hear that it is intended to ensure better management of elections.

Mr Mundell's suggestion of making separate polling stations available for local government elections may be a sensible way forward, but putting that in the bill is unnecessary. That matter would more sensibly be dealt with in discussions between electoral administrators, the Electoral Commission and ministers about the conduct of an election. The details of the conduct of elections have never been a matter for statute; they are for regulations and guidance. The subject would be better handled in that way, rather than by putting a provision in the bill, which could be misinterpreted as another attempt to raise the issue of decoupling.

Mr Welsh: If the amendment were agreed to, what would its effects be on returning officers and local councils? They would have to make separate provision, which would be expensive. Voters are more intelligent than the amendment makes them out to be. They can figure out the system just as well as anybody.

The provision would be a substitute for decoupling the elections. I absolutely agree that the elections should be decoupled, which would mean that the problem never arose. Decoupling of elections is needed, but the amendment is not.

The Convener: I take David Mundell's amendment in the spirit in which it was proposed, but if he chooses to press it to a vote, it should be rejected, as it would be impractical to implement. Andrew Welsh mentioned the costs that would arise. The amendment would also create practical difficulties for local authorities in organising such a system and would add to the number of people who would have to be employed to run elections.

The amendment could have a detrimental effect on whether a voter used all their votes. If they had to queue again for another ballot paper, they might decide to cast only the first vote that they had been given and not to cast their subsequent votes.

The suggestion that voters will not understand the system is being overplayed. To the degree that it exists, that problem will be best addressed through education. Provided that sufficient resources are given to education and to displays in the press and perhaps at polling places to re-emphasise the message about which ballot paper requires which type of vote to be cast, the vast majority of voters will cast their ballots accurately and in a manner that allows them to be counted. The amendment is unnecessary and I urge David Mundell not to press it to a vote.

Tavish Scott: I agree with the convener about the spirit behind Mr Mundell's amendment. I accept, as I imagine we all do, the need to keep voter confusion and the scope for invalid ballot papers to a minimum. I also hope that Mr Mundell will accept, given discussions earlier this afternoon, that if the bill is passed we will work closely with returning officers, electoral administrators, the Electoral Commission and others to consider how best to develop matters. That process will involve examination of many practical issues, including the procedures in polling stations and the support that is available to ensure that voters understand the new system and use it properly.

If Mr Mundell's amendment were agreed to, voters would be asked to mark their Scottish Parliament ballot papers in one polling station and to mark their local government ballot papers in a separate polling station. He made a point about handing out separate papers, but the amendment does not require staff in a polling place to hand out ballot papers separately, although returning officers may wish to consider that.

The amendment would mean that voters could still have three ballot papers—the convener made that point a moment ago—as they go into the first polling station to mark the first paper. I am not convinced that that would reduce the scope for confusion. Moreover, it raises security questions

where, for example, two polling stations are in two separate rooms. There are also issues relating to lengthening the voting process—having two separate polling stations might mean doubling the time that is needed to vote. We should also examine what the amendment would do for turnout. It might unintentionally discourage people from using one of their votes, which concerns me.

I have no difficulty with the concept of different polling stations, but we must carefully consider all the implications, as members have said. I would prefer to leave such details to those who have experience of running elections and working in polling places. If such administrative details need a legislative basis, I suggest to Mr Mundell that the elections rules would be a much more appropriate place for them than the bill would be.

I fully acknowledge David Mundell's concern about voter confusion, but I ask him to let us take forward the matter with practitioners and returning officers, who have expertise in the area. On that basis, I ask him to seek to withdraw amendment 46.

David Mundell: We are discussing important issues and I am pleased that our discussions will be in the *Official Report*, as I do not share everyone else's total optimism that things will be all right on the night. When voters reflect or come to us or to other politicians to complain about arrangements in three or four years' time, they will know that such issues have been raised.

I hope that both ministers will work closely with the various electoral organisations, most of which have given evidence to the committee, on how to deal with the issue. Like my previous amendments, amendment 46 was lodged in an attempt to ensure that the issues would be discussed. Earlier, other members alluded to the fact that the debate on the bill sometimes becomes focused on one or two political elements. It is incumbent on us to ensure that the bread-and-butter issues are debated.

As I said earlier, I agree with Andrew Welsh that the elections should be decoupled, which would be one way of resolving the matter. Of course, the other way—which Mr Darling may prefer—is through having elections for the Scottish Parliament by STV. We will have to wait and see what happens about that.

I will not press amendment 46.

Amendment 46, by agreement, withdrawn.

Section 11 agreed to.

Section 12—Interpretation of Part 1

The Convener: Amendment 36 has already been debated with amendment 29. If amendment 36 is agreed to, it will pre-empt amendments 20, 9 and 21.

Amendment 36 moved—[Mr Andy Kerr]—and agreed to.

The Convener: Amendment 37 has also already been debated with amendment 29. If amendment 37 is agreed to, it will pre-empt amendments 10, 22, 47, 23, 24 and 11.

Amendment 37 moved—[Mr Andy Kerr]—and agreed to.

Section 12, as amended, agreed to.

The Convener: We have reached the end of part 1 of the bill, which was agreed as the target for today's meeting. Stage 2 consideration of the Local Governance (Scotland) Bill will continue at next week's meeting, on 11 May. A new target for that meeting will be published in the *Business Bulletin*. I expect that the target will be to complete stage 2, unless there is a flurry of activity and many amendments are lodged by the end of the week.

I thank members for their participation and the ministers and officials for their contributions.

Meeting closed at 16:29.

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