LOCAL GOVERNMENT COMMITTEE

Wednesday 8 December 1999
(*Morning*)

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LOCAL GOVERNMENT COMMITTEE
11th Meeting

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*Mr Gil Paterson (Central Scotland) (SNP)
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*attended

WITNESSES:

Eddie Bain (Convention of Scottish Local Authorities)
Norman Grieve (Society of Local Authority Lawyers and Administrators in Scotland)
Trevor Jones (Scottish Health Boards General Managers Group)
Mr Frank McAveety (Deputy Minister for Local Government)
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COMMITTEE CLERK:

Eugene Windsor

ASSISTANT CLERK

Craig Harper

Scottish Parliament

Local Government Committee

Wednesday 8 December 1999

(*Morning*)

[THE CONVENER *opened the meeting at 10:09*]

The Convener (Trish Godman): Comrades, I call this meeting of the Local Government Committee to order, because we have quite a lot of business to get through. If people would stop talking, they would hear me.

First, I hope that committee members will agree to go into private session for the last few minutes of the meeting to allow us to decide on potential advisers. The standing orders require the committee to agree that that part of the meeting be held in private, which allows the official report—or OR, as I call it—to go away. Do members agree to go into private session for that part of the agenda?

Members *indicated agreement.*

Draft Ethical Standards in Public Life etc (Scotland) Bill

The Convener: This morning, we will take evidence on the Ethical Standards in Public Life etc (Scotland) Bill. I welcome Andy O'Neill, the policy officer of the Convention of Scottish Local Authorities; Councillor Corrie McChord from Stirling Council, whom Sylvia Jackson will know; and Eddie Bain, the chief solicitor of City of Edinburgh Council.

We will follow the normal procedure of asking the witnesses to give their presentation and then opening the meeting up to questions. Members have one question and a supplementary. If they want to pursue an issue, that is entirely up to me, but we usually manage to do that without falling out.

Councillor Corrie McChord (Convention of Scottish Local Authorities): COSLA welcomes and appreciates this opportunity to give evidence at an early stage in the consideration of the bill, which we look forward to helping to shape.

Although COSLA's position on the bill is not yet fully formed, we have a long history of involvement with the issues it covers. We fully support the Committee on Standards in Public Life and have addressed that committee's report on standards of conduct in local government. We have also supported the principle of the ethical framework consultation process. However, as yet, we have not collected all the councils' responses to COSLA on this bill, for which the cut-off date is 14 January. We hope to collect those views soon and to formulate a full COSLA response. As a result, our evidence will be a mixture of past policy and recent informal stances on standards in public life.

I have spoken to Frank McAveety, the Deputy Minister for Local Government, on the issues and COSLA welcomes his commitment. Through COSLA, councils have an open invitation to participate in the debate on standards in public life in Scotland.

The COSLA document "Ethical Standards in Public Life" is not about just local government but about public life, in particular the areas that are devolved to the Scottish Parliament. We do not wish to comment substantively on other areas of public life such as public agencies, except to set local government in the context of those agencies and how they might be involved in the process. Although it is difficult to have a one-size-fits-all piece of legislation for local government and every public agency, we hope that, throughout the process, local government will be treated with equity with other public agencies. Perhaps, when the time comes, we might say something about the agencies that were not involved in the initial COSLA document.

I have said enough for the moment. As Andy O'Neill has been working closely with issues arising from the Nolan report, perhaps he will take us step by step through COSLA's position in the document.

Andy O'Neill (Convention of Scottish Local Authorities): COSLA thanks the committee for its invitation to give pre-legislative evidence on the bill. As Corrie stated, our views are at a preliminary stage. We are consulting the member councils on the consultation paper.

10:15

Our views today are based on our earlier comments on the Scottish Office consultation paper "A New Ethical Framework for Local Government in Scotland", together with informal political discussions with senior councillors in COSLA. For the record, COSLA has long supported the need for a review of the ethical framework in public life.

We welcome the Nolan committee's findings and recommendations on local government that were produced in July 1997, in which Lord Nolan said that he

"found an enormous number of dedicated and hard working people"

in local government. While he noted that there had been a few, highly publicised cases of

wrongdoing, those cases needed to be put

"in the context of more than 20,000 councillors and 2 million council employees in local government."

In a pertinent comment on local government, Lord Nolan pointed out that:

"Despite the profusion of rules, the lack of clarity over standards of conduct persists."

COSLA thinks that the Scottish Office consultation paper seeks to remove some of that lack of clarity.

COSLA has been involved in the debate for a number of years. It has served on Department of the Environment, Transport and the Regions working groups on ethics, and on the Scottish Office working group that produced the new ethical framework document. It has also produced the document "Ethical Standards in Public Life". The Scottish Executive document "Standards in Public Life" is part of the next stage in the development process of ethics in Scottish civic life, and we welcome it.

Our comments will address two areas that we feel require further discussion prior to the bill's introduction into Parliament. First, we will comment on matters of general principle, followed by detailed comments on the proposals as they stand in the consultation paper.

The first matter of general principle that we wish to highlight is the fact that we still support the introduction of a general framework of ethical standards in Scottish public life. Annexe C of the consultation paper is a good starting point for discussion. We believe strongly that, at the end of the day, ethics are ethics; to create equity of treatment, the same framework of principles needs to apply across the whole of the public sector—to councillors, MPs, MEPs, MSPs and quango members. The public will not understand why councils are governed by one set of rules, MPs by another, MSPs by another and so on, but we accept that because of the different nature of quangos compared with councils, the individual codes will have to be slightly different.

Another point of general principle is the need for self-regulation. We continue to support Lord Nolan's view that local government should be given the lead responsibility for its own ethical standards, with appropriate safeguards by way of external scrutiny and appeal mechanisms, to ensure that action can be taken if internal mechanisms prove insufficient. A balance between internal self-regulation to secure ownership, and external validation to ensure probity and public confidence, is essential. That can be achieved with standards committees in councils for internal regulation, and the standards commission to provide external scrutiny.

Councils could establish standards committees to enforce codes of conduct, but at the same time we accept that the public will want—rightly—to be sure that those committees act fairly. That could be achieved in a number of ways, such as the co-option of independent persons to standards committees, which has already happened in Dumfries and Galloway Council.

All standards committees that have been established to date have been politically balanced, but not all would necessarily need to be. Powers that allow standards committee members to refer cases to the committee individually, and that allow a call-in procedure to enable the standards commission to call in a case from an individual council if a complainant is dissatisfied with the consideration given to the case, would ensure public confidence. Having said that, if standards committees are not established, we want local government to be given ownership of the standards commission. We can elaborate on that later.

I will now turn to a number of details of the consultation paper that we would like to highlight.

We support the call for a single code of conduct for all councillors. Initial consideration was given to individual councils establishing their own codes of conduct. We thought that was the wrong way to go since it could mean that, for example, Clackmannanshire and Stirling had two different codes despite being close and the public would not understand that.

There are a number of omissions from the scope of the bill. It is about ethics in public life so we would want board members of local enterprise companies to be included. We note the reference in the bill to the Companies Act 1989 but think that

"it should not be impossible for the tendering process by which the LECs obtain their contracts to include in the tender specification a requirement to impose upon their Board members a code of conduct which fitted into the general framework of ethical principles."

Corrie McChord may want to speak about that later on. We are aware that Forth Valley Enterprise is looking at such a code.

The further education college boards should be included in the bill as they are part of public life. Further consideration should be given to expanding the scope of the code to include people serving on committees who are not councillors, such as religious and teacher representatives. There should be discussion on including community councillors and school board members in the scope of the code. Since we are trying to achieve joined-up government, the quangos that are established by reserved matters legislation should be included in the code. We should aim for Westminster colleagues to establish similar codes.

We very much support the duty of councils and

relevant public bodies to assist members in upholding the code. We note that

"the Standards Commission may issue guidance to councils and relevant public bodies about the discharge of this duty".

If such guidance is issued, the bill should require the commission to consult COSLA and relevant professional bodies such as the Society of Local Authority Chief Executives and General Managers and the Society of Local Authority Lawyers and Administrators in Scotland. We also welcome the requirement to establish registers of interest, and again we suggest that if the commission issues guidance on that, it should consult COSLA and relevant professional associations.

If the standards commission is to be

"established with sole responsibility for dealing with allegations of breaches of the codes, then local government would wish to ensure that those with relevant experience are appointed to ensure that local government has a sense of ownership of the Commission".

COSLA is concerned

"that whilst elected councillors will be judged by the Commission with no right of appeal, un-elected appointed quango members will not, and a recommendation will be passed to the person who appointed them".

That is usually a minister and they would make the decision on whether the recommendation was actioned. COSLA strongly rejects that proposal. We would want a change to the bill so that if the commission is established, it will judge both councillors and quango members. We also strongly believe that there should be a right of appeal to a sheriff against decisions of the standards commission. We note that judicial review of the process by which the standards commission comes to a decision is possible, but not of the decision itself.

Turning to the suggestion in the consultation paper that Scottish Executive staff could be seconded to the commission, we believe that that could lead to a questioning of the impartiality of the commission and that, if established, the commission needs to be seen as independent, with its own staff. We welcome the proposal for a uniform and clear set of sanctions for breaches of the code; that has not existed to date. We accept the need for the sanctions but would like clarification from the Scottish Executive about the circumstances in which the penalties would be imposed. I stress that we strongly support a right of appeal being included in the bill.

On the question of interim action, we believe that clarification is necessary about the circumstances in which such interim suspension would be imposed and that the public would perceive anyone suspended on an interim basis to be guilty. We feel that a presumption of innocence should be maintained. If interim suspension were imposed, it would be essential that the grounds for the suspension should be clearly and publicly stated. We hope that such investigations by the commission's chief investigative officer would be so quick that interim suspension would not need to be used.

Corrie McChord and I wish to talk about this later, but we want to highlight what we see as potential problems as a result of the imposition of suspension on councillors; that needs to be clarified. Although suspended for up to 12 months or on an interim basis, under the text of the consultation paper, the councillor remains a councillor and will continue to be entitled to consult their constituents and make representations on their behalf. The paper suggests that councillors will only be suspended from taking an active part in council or committee meetings. The councillor will continue to have all the legal rights of a councillor, such as rights of information, use of council facilities and so on. We feel that the suspension will also affect the public perception of the councillor and, importantly, the relationship the councillor has with council officials. There needs to be further discussion on the implications and realities of the interim suspension before it is enacted.

As I suggested in the consultation paper, we support the removal of any special responsibility allowance from councillors who are suspended. Further consideration should be given to whether basic allowances should be withdrawn as well. When a councillor is suspended under current legislation, if they do not attend a council meeting for six months without what the council accepts as good reason, they are deemed to have vacated the office of councillor. The bill should recognise that and be changed accordingly.

A final point on suspension is that although councillors can be suspended, they can stand for re-election, and indeed be re-elected. In that case, the commission may reimpose the suspension. COSLA is of the view—and is open to discussion on this—that if the concept of interim suspension is accepted, and if there was good reason to impose it in the first place, it should automatically continue, even though the person has been re-elected.

Turning to the repeal of section 2A of the Local Government Act 1986, COSLA supports the announcement of the Minister for Communities that the Scottish Cabinet has decided to repeal this legislation, as we agree that it is intrinsically unjust and picks on a particular, uniquely disfavoured part of the community. We would be happy to answer any questions on our statement. In the fullness of time, once we have finalised them, we will supply our comments on the

consultation paper to the committee.

The Convener: Do you wish to add anything to that before we open it up for questions?

Councillor McChord: No, I think that Andy O'Neill has comprehensively covered all the points that we wish to make. There is a small aberration in terms of other public bodies, such as local enterprise companies, which are not included. Andy O'Neill mentioned Forth Valley Enterprise, which has been working closely with COSLA and taking advice on standards in local government. That is a voluntary commitment. We should take on board that there is a willingness to do that in some quarters.

The other area that Andy O'Neill mentioned was community councils and individuals co-opted on to committees. Quite clearly, although those are non-remunerated positions, COSLA agrees that there should be a strong commitment from community councils and individuals in local areas, based on the subsidiarity principle. However, if they were covered by the bill it would make community councils and individuals recognise that they have not only rights in terms of active citizenship, but responsibilities.

The Convener: I will open up the discussion to questions.

10:30

Mr Keith Harding (Mid Scotland and Fife) (Con): I wonder whether COSLA would consider the question of the surcharge. I regard it as unfair that the only sector of public life that is subject to surcharge is councils and councillors. Do you have any views on that?

Councillor McChord: COSLA has a historical position, but Andy is probably best equipped to answer your question.

Andy O'Neill: We oppose surcharging and advocate its abolition. However, we accept that it should continue until a replacement has been devised. The issue was raised in the new ethical framework consultation paper, and that was the policy that we held to. I can give Keith Harding details, if he wishes.

Mr Harding: I would appreciate that. However, you agree that surcharging should be removed. It is interesting that in the Local Government Bill that is currently being considered at Westminster it has been removed.

Councillor McChord: Yes. However, there needs to be a check on collective maladministration and surcharging is the only mechanism that we have to do that at the moment. As Andy O'Neill said, we need to think through carefully what the other options may be.

Colin Campbell (West of Scotland) (SNP): I am interested in the question of suspending councillors and the presumption of innocence. When a situation arises in which something has gone radically wrong, a decision is taken to suspend someone pending investigation. The guilt of that person is not decided on until the investigation has been completed. I am curious to know why you are suggesting that the special responsibility allowance should be removed during that interim period. If there is sufficient evidence to justify an investigation, but innocence is presumed, why should the allowance be removed?

Andy O'Neill: People receive the SRA for duties above the basic councillor duties: chairing meetings, leading policy development and so on. If they are suspended, they will be suspended from any post of chair or convener of a committee that they occupy. That is why they will no longer be entitled to the SRA.

Colin Campbell: Is it not illogical that such people should still be councillors and entitled to stand for re-election during the interim period?

Councillor McChord: The system creates illogicality. However, a councillor has up to four or five roles. He has responsibilities to his area, his constituency or his ward—I am sorry for using the masculine pronoun, which applies to me. Being a councillor is complex. It is not like being the member of a board, because councillors meet their constituents on a regular basis and are responsible for their actions collectively and individually.

As has been pointed out, there are two kinds of remuneration: remuneration for special responsibility and the responsibility allowance that councillors receive for servicing individuals in communities and community councils. That representative role must continue. If a party member were suspended, their party would obviously try to cover the deficit. That would not necessarily happen in areas where the council was independent. Constituency work must go on. However, I believe that, if there is an investigation, the councillor involved should be removed from special responsibility until their name has been cleared.

Donald Gorrie (Central Scotland) (LD): I did not find much to disagree with in what was said. Does COSLA have any views on how we could sharpen up the rules so that people do not get in trouble in the first place? That should cover all elected people.

Should those rules and the general code apply to councils, health boards, LECs and so on, or are they adequately covered by other legislation? A planning official is as open to corruption as a

member of a planning committee, so should they not be treated in the same way?

Councillor McChord: It is difficult for an elected member to comment, particularly on the planning example that Donald Gorrie used, because the planning process is open and transparent in local government, as there is no whipping system. That should be considered in relation to the McIntosh commission's view on the whipping system. Until its proposals are implemented, local government is probably most transparent in areas where it is not whipped, such as liquor licensing and regulatory functions over many other areas.

Those matters may be open to corruption, like any other area, but I feel safer on those matters than I do on matters of political maladministration, where the whipping system might cover up something.

Eddie Bain (Convention of Scottish Local Authorities): There is a need for a code for officers that replicates the principles that apply to elected members. However, there are significant distinctions between the two roles, which requires some separation of the codes.

On Donald Gorrie's first question about how councillors could be advised not to breach the code, the bill seems to place a clear duty—certainly as far as local authorities are concerned—to promote the standards set out in the code. Local authorities have a clear responsibility to ensure that, armed with comprehensive guidance, which we hope will be available, members are adequately trained and briefed on all relevant issues. Having said that, councillors will always be ultimately responsible for taking advantage of training and advice made available by council officers.

Andy O'Neill: There is a national code of conduct for local government employees, which we developed a couple of years ago with the Scottish Office, the Accounts Commission, the ombudsman and a few other bodies. All councils have accepted that code. I have a copy here, if members would like to read it.

Bristow Muldoon (Livingston) (Lab): When a councillor is suspended under the proposed sanctions, is it workable that they could continue part of their duties—the local representation part—while they are suspended? The ethical breach might be in relation to a constituent issue, for example, a gross breach of confidentiality. Would it not be appropriate for the person to be suspended from all duties, after having been found guilty of the breach, for the period of the suspension?

Councillor McChord: That is a difficult question to respond to, because I agree that whether the councillor could do their duties adequately would depend on the nature of the breach. There might be a public response to that locally. Sometimes breaches might not affect the councillor's ability to carry out their duties, but there may be a public perception of not wanting to deal with that councillor. That may be a difficulty.

The document bases part of its considerations on the concept that the electorate decides. That could be a difficult issue in relation to the nature of the breach. The ballot box could decide that. A difficult issue arises, as Andy O'Neill pointed out, when the sanction straddles an electoral period so a councillor may come in with a new mandate. COSLA suggests that the sanction would have to carry over from the old mandate to the new mandate. That would be fair and equitable in terms of the breach. There is a difficulty in terms of the nature of the breach, which we should keep in mind. I do not think that there can be an adequate overall response to that at this point.

Mr Kenneth Gibson (Glasgow) (SNP): You talk about standards committees having political balance. How would you define that? Do you take the view that they should contain an equal number from each political party that is represented on the council, or should a standards committee reflect the balance, by proportion, of councillors from each political party? Do you think that the chairs should rotate?

Councillor McChord: Andy O' Neill may have a position on that. I could answer as a member. Obviously, there are different situations in different councils. Some council administrations have one party in the majority, some are evenly balanced and some are independent. This is about what fits for a particular council. Where one party has an overwhelming majority, it would be inappropriate—in terms of political balance—for that majority to be reflected in the standards committee. Any imbalance on such a committee could be tempered if people from outside the council were invited to sit on it. External representation could provide a counterbalance to the political make-up of the council. That would probably alleviate difficulties that may arise if the process were considered politically unfair.

Mr Gibson: Do you think that the Glasgow model is a good one? There—despite the fact that one party had an overwhelming majority on the council—half the members of the standards committee were from the opposition and half were from the administration. Moreover, the chair rotated.

Councillor McChord: I would not recommend that model to my council.

Andy O'Neill: In any system where the council has established a standards committee with enforcement powers, individual members of the

committee would need to have the power of referral to the commission. If the minority councillors in a council where the overwhelming majority were from one party felt that the process was not being adhered to correctly, they could refer it to the commission.

Mr Gibson: If you take the politics out of the system by having an equal balance, surely all the political parties can trust it. I am a former Glasgow member—as indeed is Trish Godman—and the reason why the council adopted the model that it did was that we would not have served on any committee in which one political party dominated, as we felt that that may have led to difficulties. I understand COSLA's position, however, as its structure is not the most politically balanced.

Councillor McChord: There are different models for different types of councils—urban, rural, independent, politically balanced and politically strong. No model of a local standards committee is universally appropriate. We have to take what we have on the ground at the time. I would not wish to criticise Glasgow's way of doing things; all that I am saying is that it would not be appropriate for my authority.

Mr Gil Paterson (Central Scotland) (SNP): Are you recommending that a flexible framework should be put in place, with all the regulations and paraphernalia that go with it?

Councillor McChord: Breaches could run the gamut from major to minor. Some may be dealt with adequately at local level, with the results given to the commission to consider. There may be the call-in process that Andy O'Neill talks about, or even a local appeals system—something that a national standards commission may want to consider.

Mr Paterson: Do you think that the ombudsman should have an enhanced role? Perhaps the ombudsman should have more powers.

Councillor McChord: I was surprised that the document made no reference to the ombudsman. There could be links between what we are discussing and the ombudsman's role in relation to maladministration by local government and by individuals. Andy O'Neill or Eddie Bain may want to comment.

10:45

Eddie Bain: There are similarities between the role of the ombudsman and the proposed standards machinery. However, it is easy to envisage types of complaint where there might be a conflict, such as where the ombudsman is investigating a complaint of maladministration that straddles several areas and that is not confined to issues of personal conduct. On the role of standards committees, COSLA feels that there is room for a dual system. We do not play down the difficulties. Breaches of the code can be more or less serious. There are difficulties in assessing immediately—without investigation—whether a breach is serious.

We feel that it is possible to build in some kind of call-in or referral system, as well as a right of appeal that would provide duality, while retaining the concept of local ownership, which the Nolan committee favoured for council self-regulation.

Dr Sylvia Jackson (Stirling) (Lab): It is a little unfair to press you too hard, as you are obviously still coming to a view on many of these important issues, but internal and external regulation is at the heart of the matter. I have two questions. First, are you able, at the moment, to say a bit about the councils that have set up standards committees? I know that Aberdeen has started to use a standards committee and you have mentioned Dumfries and Galloway. Secondly, will you examine the use of standards committees to inform your view? I know that you will be getting general responses from councils, but can you say more about standards committees in particular?

Andy O'Neill: A number of councils have established standards committees. You mentioned some; others are West Dunbartonshire and West Lothian. The problem is that none of them has any powers to enforce the codes of conduct that they have established. The bill would go a step further towards doing that. As part of the consultation process within COSLA, the councils will tell us about their experience of the workings of the committees that have been set up. At the moment, we cannot say anything beyond that, as we are in a consultation process.

The Convener: Did you have another question, Sylvia?

Dr Jackson: That is fine. I just wanted to know what the state of play was.

The Convener: Thank you. I have a point of clarification and a question. Did you say, Andy, that any right of appeal for a councillor should be before a sheriff? I accept that there is no right of appeal at the moment.

Andy O'Neill: Yes.

The Convener: Your comment that there is no right of appeal for councillors is made clear in the document. However, it is also stated that the decision should rest with the electorate. It is not clear whether the Executive means that a by-election would be called immediately after a councillor's responsibilities were taken away so that the electorate could decide by that method. Would that be acceptable? Do you see that as a proper form of appeal? Would that be the ultimate

way of dealing with the situation?

Councillor McChord: It depends on the finality of the sanction.

The Convener: Suppose that the councillor was found guilty. At the moment, there is no system of appeal. It is not clear what the Scottish Executive means by the wording on page 22. Does it mean that a by-election would immediately be called? If so, would that satisfy you?

Eddie Bain: If the councillor is found guilty, the sanction may be suspension. However, the bill does not consider suspension a final sentence of unfitness. The punishment is to suspend someone from sitting on the council or perhaps just on one of its committees.

Councillor McChord: A final sanction of removal from office would incur a by-election in any case.

Eddie Bain: A sanction of disqualification must trigger a by-election. A suspension, however, is intended as a parallel to the system employed in the House of Commons, where a member of Parliament may be suspended from attending the house for a period of days or months according to the severity of the misdemeanour. A suspension would not disqualify a member permanently.

The Convener: Removal from office would cause a by-election. In a sense that means that there is no form of appeal, but the document seems to be saying that it would be left up to the electorate.

Councillor McChord: There is another anomalous situation. If a councillor is suspended for more than six months, that councillor is automatically removed from office under the Local Government (Scotland) Act 1973. If the sanction of suspension is intended to remove the councillor from office—and I doubt that it is—there is a problem. If councillors are not to be removed from office, the law must be changed to ensure that the suspension straddles an electoral period.

The Convener: It seemed to me that the document meant that councillors would be removed from office, but it is not at all clear. There seems to be no possibility of appeal, but I wonder whether the Executive means that, if someone loses his or her position, that is an end to the matter. It is not clear to you or to me, so we need clarification on that point.

Bristow Muldoon: That is the point that I wanted to clarify. The draft bill at the back of the document says that a period of disqualification may be associated with a sanction of suspension. That period could be up to five years, which would prevent that person from standing in a by-election, so a by-election could not be used as a form of appeal.

The Convener: I am trying to establish whether the Executive considers leaving things to the public to decide to be a form of appeal.

Bristow Muldoon: There would also be a period of disqualification, during which the disqualified person would not be able to be a member of that body. A by-election could not, therefore, be used as a means of appeal.

The Convener: The appeal system certainly needs to be clarified.

Councillor McChord: It seems anomalous that disbarment from office and suspension for six months would achieve the same end. How that is to be handled over an electoral period must be clarified.

Bristow Muldoon: Is COSLA concerned about the imposition of interim suspensions on people in the run-up to an electoral period who are subsequently cleared of any breaches of the code? The political party may drop those people because of the interim suspension, and the electorate may reject them because there is a shadow hanging over them. I can see that an interim suspension would be acceptable if a councillor were found guilty of a breach, but if they were suspended and then cleared, would not that be an unjust penalty?

Councillor McChord: In terms of natural justice, absolutely. There is a third problem—media intervention at local level would not help the person involved at all. Sometimes the media do not set much store by natural justice. It is unfortunate that the process would give the electorate the perception that you suggest. We have to be clear about how the process is carried out.

Eddie Bain: Your question underpins our concern about the concept of interim suspension. If that sanction is necessary, it should be used only in circumstances that clearly justify it, and reasons should be given. It is our perception that interim suspensions should be very rare indeed; instead, there should be as swift an investigation as possible.

Mr Paterson: Are interim suspensions not a good reason for having political balance?

Councillor McChord: All that I was suggesting was that the political dimension should be tempered by external representation on a local standards committee—that is a personal view.

Mr Paterson: Does COSLA think that there are any circumstances in which a five-year suspension would be inadequate and in which there should be disqualification rather than suspension?

Councillor McChord: COSLA does not have a view on that, but I have a personal view. If

somebody is suspended for six months or more—five years seems incredible—one would question whether they are fit for public office.

Mr Paterson: I meant to say disqualification rather than suspension. Are there any circumstances in which disqualification for periods longer than five years would kick in?

The Convener: Mr Paterson means sine die.

Councillor McChord: The last example I remember of that was Willie Woodburn—poor Willie was not treated with natural justice.

Mr Paterson: You are saying that five years is the limit.

Eddie Bain: There might be a human rights issue over a disqualification sine die, just as the human rights issue of imprisonment without fixed time limit is being tested in Europe.

Mr Paterson: You have hit the point to which I was coming. Disqualifications might go hand in hand with criminal proceedings. For example, the law might suggest that somebody be put away for seven and a half years.

Councillor McChord: That person would not be available for election.

Eddie Bain: If I remember correctly, under the 1973 act, if a member is found guilty of an offence that results in a sentence of imprisonment of more than three months, that in itself disqualifies the member from holding office or standing as a candidate.

Mr Paterson: Thank God for lawyers.

Colin Campbell: I understand your reservations about interim suspension. I have come across difficulties in that area. We all understand that, when there is an enormous crime to be investigated, the only way of saving the reputation of the council in question is to get the person out the door.

Councillor McChord: There is a two-way process.

Colin Campbell: We do not disagree on that point.

The Convener: I thank the witnesses for coming. I appreciate that you have not had replies from every council and that you will probably produce a fuller report. I am pleased that you support the idea of an ethics and standards bill. That is a good message to get across to the public, as, collectively, MSPs receive bad publicity about this issue.

We have had an interesting discussion. We look forward to reading your report. As I say to other witnesses, if we need to meet you again, we hope that you will oblige us by returning. Some interesting issues have been thrown up for this committee to consider and to report on to the Executive.

Representatives of SOLACE will not be here, as they did not think that they had enough time. I wrote to them to tell them that the committee could have insisted that they appeared but that, on this occasion, I had decided not to use that power—we have never used it before. I told them that I wanted them to come to this committee at the end of January, once stage 1 had been completed.

We will have a comfort break until about 11.15 am.

10:59

Meeting suspended.

11:16

On resuming—

The Convener: I welcome the Society of Local Authority Lawyers and Administrators in Scotland, in the form of its secretary, Norman Grieve, its chair, Margaret Quinn, and John O'Hagan, who is the chair of the ethical standards working group.

We must finish at about 12 o'clock as Frank McAveety is coming to the committee. I want to take a couple of minutes to tell members why he will be here. He will only be here for a short space of time, so we are two minutes later than I had hoped to be.

We will follow the same procedure as before. You will give your presentations, then I will open it to members for questions. They will ask one question and usually a supplementary. If we want to pursue an issue, we may come back to it.

John O'Hagan (Society of Local Authority Lawyers and Administrators in Scotland): The clerk has made a folder containing three documents, which we have prepared, available to members. The first document is our preliminary consideration of the Ethical Standards in Public Life etc (Scotland) Bill and our comments to the committee on it. The other documents in the folder are ones that we have prepared in the past.

In chronological order, the second document is a commentary on the Nolan report on local government conduct, which was the society's response to that a couple of years ago. The third document is the society's response to the consultation document, produced by the former Scottish Office, on the new ethical framework for local government.

On our preliminary consideration of the bill, which is the most recent document, the first pages comprise an introduction to the society. We were

formerly known as SODA—every organisation must have an acronym these days—the Society of Directors of Administration in Scotland. As a consequence of a change in our constitutional arrangements, the membership base has widened. We represent people who are practitioners of local government law, practice and administration.

The first page of our paper also mentions the previous consultation papers that the society has prepared and made available, and welcomes the opportunity to comment on the consultation paper and the bill. We will be doing so directly to the Executive and we welcome the opportunity to talk to you today.

In the time available, we have had a fairly close look at the bill. The views that are contained in this paper represent for the most part a consensus of views across the society. At this stage the paper is not intended to be exhaustive, but I think that it fairly represents the view of practitioners who are members of the society.

In paragraph 2.1, we say that these proposals are warmly to be welcomed. At the moment, what we have in terms of a statutory ethical framework are the provisions outlined in sections 38 to 42 of the Local Government (Scotland) Act 1973, which required declarations of pecuniary interests by councillors. Under separate legislation, the Local Government and Housing Act 1989, there is provision for a code of conduct governing principally non-pecuniary private or personal interests. There is also a requirement for a register of members' interests under section 19 of the 1989 act.

Those different pieces of legislation and mechanisms do not fit together well. They do not readily overlap and there is a differential of treatment when, for instance, the interest of a spouse might be an interest of a councillor. A breach of the pecuniary interests rules is a criminal offence, but there is no sanction available for a breach of the code of conduct, which in many cases might be a more substantial and effective breach of an ethical standard than an accidental omission of a pecuniary interest. For that reason, we very much welcome the idea of a single framework and system.

We also welcome the idea outlined in the consultation paper that similar standards should be applied to local government councillors and to the public bodies referred to in the consultation paper. We have noted that the bill makes provision for the Scottish ministers to issue a code for councillors, but to require the public bodies to prepare their own codes. That may be necessary in one or two situations, but we feel strongly that there should be an attempt to prescribe a national code. Scottish ministers have declared that the standards should be universally applicable, and we feel that, as far as is possible and feasible, the code should have a universal application as well. We venture to suggest that, in as much as the code would refer to all elected and appointed persons, consideration might be given to its being applied to MSPs.

In paragraph 2.3, we mention that there are certain categories of public body that will not be covered by the code, such as the enterprise trusts and the further education colleges. We are not quite clear why that should be, although there may be reason for it. The explanation given in the consultation paper is that in some cases the form of incorporation under the companies acts or the friendly societies acts may be sufficient to govern the constitutional arrangements. That may well be the case, and it may guard against criminal activity in the form of fraudulent practice, but it is not an obvious explanation of why those bodies should not be governed by an ethical code.

The framework set out in the bill envisages a standards commission for Scotland. We very much welcome that. We think that standards must be applied nationally. Nolan proposed that each local authority should prepare its own code, but we feel that that could lead to differential standards. We would welcome a single set of standards and a single prescriptive code.

In our earlier consultation paper, we said that local councils could take better ownership of standards in public life if they had a self-policing mechanism. A standards commission also gives rise to the opportunity for an appeals mechanism, but that has not found a place in the bill, and that omission should be examined carefully. If local government has to take ownership of the ethical standards of its councillors, there is a role for a local standards committee. The extent to which that policing might be applicable would be subject to guidance from the commission, because we cannot afford to allow different standards to apply in different parts of Scotland.

Paragraph 2.6 of our document states:

"Clause 8 of the Bill makes provision for the Commission to appoint, as one of its employees, a Chief Investigating Officer".

The Scottish Executive's consultation document, which accompanies the bill, declared the intention that that should be amended so that the chief investigating officer would be appointed by Scottish ministers, on the grounds that that is where the funding for staffing may well come from.

We think that there is another reason why that amendment is appropriate: the potential for challenges under human rights legislation. If a chief investigating officer is appointed by, draws a salary from and is accountable to the commission,

and the commission is to adjudicate on his inquiry, there is merit in the appointment of that chief investigating officer being handled by Scottish ministers. We welcome the Executive's intention to propose that amendment to the bill, which should make it more human rights proof.

We have looked at the model for the Accounts Commission for Scotland. Until the new arrangements came into force, there was a controller of audit, who had a separate investigatory and statutory role. In certain circumstances, that person could undertake a hearing and the commission would be guided by its clerk. We think that there is merit in making provision for a separate clerk to the standards commission, who would assist the commission in the adjudication process at a hearing and keep an arm's-length distance from the chief investigating officer.

Paragraph 2.7 of our document states:

"Clause 18 of the Bill sets out the options of the Commission following on a finding that a councillor has contravened the Code".

We think that there should be more flexibility in the bill, so that the range of sanctions that can be imposed would range from a simple reprimand to removal from a committee. It may be the member's service on a particular committee that gives rise to the problem that the commission considers at a hearing, so the flexibility to remove someone from certain committees would be useful.

We have doubts about the proposal that suspension should be from entitlement to attend meetings, without the status of the councillor being otherwise affected. If a breach of the code has been sufficiently serious to warrant a suspension for a year, it would be difficult—in practice and in public perception—for a suspended councillor to continue to be entitled to represent his constituents at ward level, to have his surgeries arranged by the council, to attend his political group or to be an influential member around the council chambers.

The idea that removing the entitlement of members to attend meetings is an effective sanction might well be misconceived. We can envisage situations in which the requirement not to participate in a difficult decision, such as the budget-setting process, might be a welcome relief to a recalcitrant member, who would still be entitled to enjoy the trappings of office and drawing his allowance. We think that that idea should be reconsidered.

11:30

Paragraph 2.8 raises a point about drafting. Section 35 of the Local Government (Scotland) Act 1973 provides that if a councillor fails, for six months, to attend meetings of the council or a committee, the office of councillor is vacated, and that councillor is automatically disqualified from office, unless the council excuses him, for example, because of ill health. The drafting of measures relating to that will have to be considered as there is no consequential amendment to or repeal of section 35.

A similar drafting issue, which we address in paragraph 2.9, is that an additional section is required to make specific provision for what will happen in the event of disqualification. The bill simply provides that the order of the commission be sent to the local authority. We feel that something more needs to be done about the statutory effect of disqualification. For example, it might be necessary to examine the nomination forms for new elections. Nomination forms require candidates to declare that they are not politically restricted or bankrupt and so on; a requirement to declare that they are not disqualified by reason of an order of the standards commission might be needed.

In paragraph 2.10, we welcome the opportunity that is given by the code to incorporate the proposed new register of members' interests, but the bill does not provide for repeal of section 19 of the Local Government and Housing Act 1989, which is the present governing provision. We think that such a repeal would be appropriate.

Paragraph 2.11 relates to the intended repeal of section 2A of the Local Government Act 1986. This society welcomes repeal on the grounds of equality. We had a debate on whether, as legal practitioners, we had found that section to be a difficulty for schools' curriculums or the funding of voluntary groups. The consensus was that in reality it had not. Nevertheless, as a principle, repeal is to be welcomed.

On page 6, we have listed some omissions from the bill to draw attention to a few issues that are not covered. One such issue, which was drawn to our attention this morning—one might not expect it to be covered in this bill—is what the Nolan committee described as the archaic mechanism of surcharge. That is a relic of a past age, which was abolished elsewhere in the public sector some time ago. We do not want the issue of surcharge to slip from any legislative agenda.

The Nolan committee had something to say about the statutory officers of the council: the head of paid service, the monitoring officer and the chief finance officer. Nolan raised the issue and recommended that it needed to be examined more intensely. That issue has not been flagged up. It requires to be addressed, if the ethical standards framework is to work. In recent years, there have been examples of councils arguably treating

certain officers in a way that might not be best practice. If there is a move towards cabinet systems or political executives, there will be a shift away from having a neutral officer corps to an alignment with the majority party. Possibly there will be different groups of officers carrying out the executive and scrutiny functions.

If that is to work, and if that shift in attitude is to happen, some officers with responsibility for the ethical framework require protection, which does not exist at the moment. We are not saying that we should be a protected species—we live in the real world. If an officer has lost a council's confidence, there might have to be a parting of the ways. In England and Wales, a mechanism has been found that ensures that a head of paid service cannot be fired without separate investigation by someone from outside the council. We think that such a mechanism should be the minimum consideration for people such as monitoring officers who can, at times, be unpopular.

We want to reaffirm our view that the function of a monitoring officer should be separate from that of the head of paid service, and should be at chief officer level. There will, perhaps, be an opportunity in the near future to examine those possibilities.

On the last page of our submission on the ethical standards bill we referred to an intended code of conduct for employees. We feel that such a code should be developed, and COSLA has produced a simple model, which is welcome. We wish simply to point out that there should be a mechanism whereby a standard form—rather than ad hoc arrangements—is included in the national conditions of service as part of the collective bargaining process.

The Convener: Does anybody else from the Society of Local Authority Lawyers and Administrators in Scotland wish to add anything, or will you just answer questions?

Margaret Quinn (Society of Local Authority Lawyers and Administrators in Scotland): We are happy to answer any questions. I think that John O'Hagan has given a fair synopsis of our views.

Mr Gibson: I would first like to thank you for producing an excellent, comprehensive document. It has given us pause for thought.

I want to ask a question about what you said towards the end of your presentation. Could you expand on how the formation of an executive means that officers would be more biased towards an administration than they are under the current committee system? The setting-up of executives is—as part of the McIntosh recommendations—at the forefront of our minds. We would like to hear more about that, not only in relation to the points that you have made, but so that we can consider our views on executives per se.

John O'Hagan: Under the McIntosh proposals and the Executive's response to them, there is a move towards some sort of model, review or self-renewal in local authorities, which might—depending on each authority's circumstances—lead to some form of cabinet or political executive system.

Our understanding is that the Scottish Executive's view is that local authorities should make such decisions. We are conscious that that transition is to be anticipated, or at least encouraged. Behind that is the recognition that, in many councils, there is a group of between half a dozen and a dozen members who can be described loosely as the leading members—committee conveners, leaders and so on. The McIntosh report says that that should be recognised.

Our society has a slightly different view about that. The current committee system has served us well, and should not be dispensed with too lightly. If, however, there is to be a move towards political executives, such executives' deliberations will require servicing by an officer corps. Either the chief executive's office or a separate group of officers would service that cabinet. They would produce policy papers, options, recommendations and the like.

In the past there has been a provision whereby officers prepare reports, which they might discuss with committee conveners or chairmen. Those reports are then published in full as officers' recommendations and are put on a committee agenda for members to make a decision on them. We think that that system will fade slightly. The papers that come to the council for scrutiny might represent—as would be expected—the views of the political executive.

To that extent, there would be an expectation that the officers concerned would work more closely with the political executive. That raises the possibility of a separate group of officers servicing the plenary council and some other audit or scrutiny committee scrutinising the political executive. Although that model is foreign to our traditions, it is not unworkable—it certainly works in many other jurisdictions and in central Government in the UK and Scotland. However, it represents a move away from the political neutrality of officers.

Mr Gibson: Your advice is to proceed with caution.

The Convener: My understanding of McIntosh is slightly different. His recommendations seem to say that if a system is working, it need not be fixed. He is not suggesting that we should decide

on a cabinet or an executive model. If the system is working, he is quite happy with it. However, I take the points that you have made.

I want to ask a question on law, as there are lawyers present. In the proposed set-up there does not appear to be a system of appeal for councillors. Is that your understanding of the situation, and do you consider that to be fair? If that is the case, will there be legal problems? If someone was suspended or lost his or her position as a councillor, what right of appeal would they have in any civil court? Would that be appropriate? I ask those questions, as there are three free lawyers present.

John O'Hagan: If there is to be a single commission to adjudicate on those matters without the requirement for a formal review mechanism in the bill, the only means of redress available to the member concerned will be a judicial review in the Court of Session. It is not inexpensive for an individual councillor to fund an action at the local sheriff court, never mind the Court of Session. If he has fallen foul of his political party, that party might not be sympathetic towards funding such an action. There is also the issue of the councillor's local reputation.

A review mechanism ought to be built into the bill—that is appropriate. Although there are differing views on this, the option of a local committee—which would act strictly under guidance from the commission—is attractive because it would provide a review and appeals mechanism. As matters stand, that would be the only mechanism for review.

Dr Sylvia Jackson: On page 4 of your submission, when you talk about the commission and the chief investigation officer, you use the phrase,

"with other staff possibly seconded to the Commission from the Scottish Executive".

Do you have any further views on the composition of that commission?

11:45

John O'Hagan: I referred to the consultation document that accompanies the bill, although the bill makes provision for the commission to appoint a chief investigating officer. The preamble suggests that after further reflection the Executive will bring forward an amendment to the bill, which would have the effect that Scottish ministers would appoint the chief investigating officer and make provision for civil servants to be seconded to the commission. We understand the reasons for that, but nobody knows how busy the commission will be.

I hope that the commission will not operate too often, but it might be that the existence of the commission generates its own business. We understand why the Executive wants it to operate with a degree of flexibility. Our principal point is that as well as it being practical, there is a human rights reason why ministers should appoint that officer, not least because of the recent experience of the temporary sheriffs and the ex officio justices in local authorities.

Dr Jackson: Sorry, I missed that last bit.

John O'Hagan: There is a good human rights reason why ministers, rather than the commission, should appoint the chief investigating officer.

Dr Jackson: I can see your point about the chief investigating officer. Are you happy with the proposal that the staff of the commission be seconded from the Scottish Executive?

John O'Hagan: Yes. There are previous models for that; for example, the staff commission at our organisation was staffed by secondees.

Mr Harding: Thank you for a very comprehensive report. I am pleased to see that you recommend the abolition of surcharge. What interim arrangements should be put in place while the proposed offence of abuse of public office is being drawn up?

John O'Hagan: Pending the development of a new criminal offence of abuse of public office, surcharge should remain. It is not in the public interest to have a gap; in other words, the abolition of surcharge should not happen now, pending the creation of an offence of abuse of public office. Those two things should happen simultaneously and we would like to see a commitment to that.

We agree with the Nolan report about the archaic nature of surcharge—it is quite offensive. It is unique to local government and is applicable to officers and councillors. However, a sanction of some kind is required, and we would not want surcharge to be abolished without a substitute being in place.

Mr Harding: Would you favour the advisory notices that are being considered in the Local Government Bill at Westminster?

John O'Hagan: The sanction ought to bite, but we would rather encourage the development of the new criminal offence at an early stage.

Mr Paterson: Do you feel that an ombudsman could play an enhanced role and that there is an opportunity for that?

John O'Hagan: No. We know that Nolan canvassed the idea that the commissioner for local administration—or ombudsman—might have a role in investigating and issuing determinations on that. However, we feel that that is not applicable. The ombudsman has a role to play in relation to

maladministration on the part of the authority. If something has gone wrong with the system in terms of the standard or quality of the service provided—if a planning application has not been dealt with properly or there is an inappropriate decision-making process—that is the jurisdiction of the ombudsman. We do not think that he has a role to play in adjudicating on ethics of individual councillors.

Mr Paterson: Can you imagine a mechanism whereby, in a committee that was overloaded by one particular party, a political decision to suspend someone could be taken? Where would be the right of appeal?

Margaret Quinn: I think that I understand your point. Local authorities' standards committees that are distinct from the independent standards commission might not inspire the same public confidence. Our response refers to a role for a local standards committee, because we do not feel that that should be severed totally from the local authority. Local authorities should be supportive of and involved in the new ethical framework. The Scottish arrangements proposed in the bill are slightly different from the English and Welsh arrangements, where the investigating officer—called the ethical standards officer—can remit issues back to a local standards committee. However, we do not believe that the public would have the same confidence in the impartiality of local standards committees in cases where there were substantial allegations against elected members.

Colin Campbell: First, I want to welcome two former colleagues from Renfrewshire Council to the committee. That is my interest declared for the public record.

The society has reservations about the possible outcomes of inquiries in which a councillor has been found guilty of an offence, especially the option to suspend for up to a year that councillor's entitlement to attend meetings. The submission says that difficulties might arise from public perception of such an arrangement. It makes an appeal for flexibility, indicating that the councillor could instead be suspended from duties on the committee in which the offence was committed. However, would not the public perception of a councillor's suspension from one committee carry over into the councillor's other business?

John O'Hagan: I might have explained that badly. The commission should have the flexibility to determine the appropriate sanction, which could mean removal from a particular committee, from a range of committees or from the council itself. The commission should judge the severity of the sanction by the gravity of the offence.

Colin Campbell: There was no difficulty with the clarity of your comments. I was trying to say that if a councillor is found guilty of an offence in committee A, and is suspended from that committee for a year or five years, the public's perception of the offender will probably remain the same over the whole piece.

Norman Grieve (Society of Local Authority Lawyers and Administrators in Scotland): Perhaps I can answer your question with a practical example. As John said, it is up to the commission to decide that a councillor should have no involvement with a council or any of its committees. For example, a councillor serving on a planning committee might have contacts with someone who regularly submitted planning applications. It might be deemed totally inappropriate for that councillor—as committee convener or committee member—to get involved in those applications. However, the breach might not be so great that it called into question the councillor's whole moral character. In that case, the commission might decide that it would be more appropriate to suspend that councillor from a particular committee instead of banning him or her from the council.

Dr Sylvia Jackson: Do you have any further ideas about the composition of the local standards committees?

John O'Hagan: If such committees are to be formed—we think that they could have a role—it is paramount that they are politically balanced. It is not just a question of arithmetic—it is about the attitude of the council. The committee would have to be composed of members of some standing in the council, whose views would be listened to with care. It is about the credibility of the composition—there is no way to legislate or prescribe that.

Johann Lamont (Glasgow Pollok) (Lab): You say that there are clear benefits in making the code universal. I want to return to the point about the exclusion of enterprise trusts and further education colleges. Are there difficulties in bringing them into the code that would explain why they have been excluded?

John O'Hagan: We are not aware of any obvious reason.

Johann Lamont: There is no legal reason?

John O'Hagan: No.

The Convener: Thank you. The document was excellent—the first one produced by lawyers that I have understood.

John O'Hagan: We have obviously failed. [*Laughter.*]

The Convener: As I have said to other groups who have given evidence, we might need to call you back at a later date.

Subordinate Legislation

The Convener: We now move to the part of today's business that involves the minister. If members can pay attention for a few minutes—Mr Campbell—I will tell them that the minister is here to lay before us a subordinate legislation order. He will not be able to answer technical questions—that is not his role. I will stop members if they put such questions. He has brought civil servants with him who may be able to give clarification on some points.

This is a formality. Such orders arise in other committees and among members' notes there should be a note from the Executive that fully explains the order. I do not think that it is very complicated. Mr McAveety is here to present the order; he will not answer technical questions. We can debate the order, although I am not sure that we need to.

We are all on a learning curve.

The Deputy Minister for Local Government (Mr Frank McAveety): It is not as if I have spent sleepless nights worrying about trying to bring together a draft order on the breeding of dogs—it has not been one of the biggest priorities.

I want to run through the purpose of the statutory instrument before responding to any questions that may arise. The purpose of the draft Scotland Act Order 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 1999 is to transfer two regulation-making powers from the minister of the Crown to the Scottish ministers.

Earlier this year, the UK Parliament approved a private member's bill, tabled by James Clappison MP—the Breeding and Sale of Dogs (Welfare) Bill—the main aim of which was to improve the welfare of dogs, particularly at licensed breeding establishments. The bill received royal assent on 30 June and will come into effect on 30 December.

Two provisions conferred regulation-making powers on the Secretary of State to be exercised by statutory instrument. Those relate primarily to the breeding records that must be kept by the licensed breeder and made available for inspection and the information other than the place where the dog was born that must be shown on the identity tags of certain dogs sold by such establishments. Those regulations are currently subject to negative resolution procedure in the UK Parliament. However, in terms of the Scotland Act 1998, matters relating to dogs and their welfare fall within the devolved competence of the Scottish Parliament. That means that it is for the Scottish ministers to make the regulations as regards Scotland subject to the scrutiny of this Parliament, which we all support and believe in.

The powers contained in enactments made before the Scotland Act 1998 came into effect have been passed to Scottish ministers by the transfer arrangements. Unfortunately, the provisions of the Breeding and Sale of Dogs (Welfare) Act 1999 did not provide ministers with the necessary powers. Therefore, subject to approval elsewhere, the draft order in council will address that anomaly by transferring the regulation-making powers to the Scottish ministers. It does not transfer any additional legislative powers to the Scottish Parliament; it transfers regulatory powers to the ministers responsible for the subject that Parliament has agreed should fall within the competence of Scottish ministers and the Scottish Parliament.

I move,

That the Parliament Local Government Committee in consideration of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No 2) Order 1999 recommends that the Order be approved.

The Convener: I cannot believe that you are going to ask a question, Gil.

Mr Paterson: I have to. Does the order include all dogs—poodles, for instance?

Mr McAveety: Welfare rights organisations have lobbied us for a long time and the bill has widespread support. Its purpose is to improve welfare standards at commercial dog-breeding establishments by strengthening the Breeding of Dogs Act 1973. Therefore, it applies to all dogs that are bred in such establishments.

The legislation has been brought about because of the changes in dog breeding in the past 10 years, particularly with regard to the breeding of fighting dogs. We want to ensure that the dogs are not misused. A number of establishments had treated their dogs badly with regard to their breeding pattern.

Motion agreed to.

Mr McAveety: If only it were always that easy. I hope that I get the same response when we deal with a local government bill.

12:03

Meeting suspended.

12:05

On resuming—

The Convener: I welcome Trevor Jones, who is the secretary of the Scottish health boards general managers group. He will give a presentation on the Ethical Standards in Public Life etc (Scotland) Bill from the group's point of view and answer questions. I am sorry that we are rushing you in—at one point I thought that we were running late,

but we have made up some time.

Trevor Jones (Scottish Health Boards General Managers Group): I will be very brief. In the health service we are keen to have the highest standard of public practice; we strongly support the principle of having common standards of service right across the Scottish public sector.

We believe that the health service is well placed to respond to the bill and have no problems with it. Since 1994, following the establishment of the Nolan committee, we have been introducing common standards across the service. We have codes governing corporate governance and probity, and audit committees are in place in all the health organisations with responsibility for standards. We operate in an open way—health board meetings have always been held in public and NHS trust meetings have been held in public since 1 April. We operate in the spirit of the draft bill and we are keen for it to be implemented. The only change that will hit the health service if the bill becomes law is the introduction of a standards commission, but we do not foresee any problems arising from that.

There are probably two issues that we will need to think about. First, the bill proposes that employees should be excluded from the legislation. That is interesting from the perspective of a health board or a national health service trust board, which consist of both executive and non-executive members. Although executive directors are employees of the organisation, they are also full corporate members of it. We need to consider whether the bill should apply to executive directors of NHS organisations. As executive directors, we are covered by our contracts of employment and the organisation's grievance and disciplinary procedures, which ensure a particular standard of public behaviour. However, I suggest that the same standard should apply to executive directors as to non-executive directors, as they are full voting members of boards.

Secondly, chief executives of NHS organisations are sub accounting officers and report to the chief executive of the NHS in Scotland, who is the accounting officer for expenditure on health services in Scotland. We need to think about how the role of the chief executive of the NHS in Scotland in respect of performance—currently, he has a responsibility for the performance and probity of NHS organisations—will relate to the standards commission.

In general, we warmly welcome the proposal. We do not envisage any problems arising from its implementation as far as the health service is concerned, subject to consideration being given to the two issues that I mentioned.

The Convener: Thank you. Are there any questions?

Dr Sylvia Jackson: This is a bit of a naive question, but is your situation similar to that of local government in the sense that some local health boards already have a standards committee?

Trevor Jones: As we are appointed to NHS boards, there is a code of accountability and a standards code. We sign up to a style of operating. In each health organisation there are audit committees comprising non-executive directors of the organisation. Those committees are charged with upholding the organisation's standards, in line with the Nolan committee's recommendations. The existing audit committees comprise individuals who would be covered by the terms of the act, so there is an issue there.

Dr Jackson: Do you see that structure being changed to bring it in line with the bill?

Trevor Jones: I do not think that it needs to change. We would need to check the detail of the audit committees' terms of reference, but the introduction of the bill would not require changes to the spirit in which they operate.

The Convener: It is unusual for there not to be more questions—members of the committee are usually a very chatty lot. Thank you for coming. If we need to clarify anything, we will invite you back.

We will now move into private session. I ask the official report, members of the public and the press to leave.

12:10

Meeting continued in private until 12:40.

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