LOCAL GOVERNMENT COMMITTEE

Tuesday 16 May 2000
(*Afternoon*)

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LOCAL GOVERNMENT COMMITTEE
16th Meeting 2000, Session 1

CONVENER

*Trish Godman (West Renfrewshire) (Lab)

DEPUTY CONVENER

*Johann Lamont (Glasgow Pollok) (Lab)

COMMITTEE MEMBERS

*Colin Campbell (West of Scotland) (SNP)
*Mr Kenneth Gibson (Glasgow) (SNP)
*Donald Gorrie (Central Scotland) (LD)
*Mr Keith Harding (Mid Scotland and Fife) (Con)
*Dr Sylvia Jackson (Stirling) (Lab)
*Mr Michael McMahon (Hamilton North and Bellshill) (Lab)
*Bristow Muldoon (Livingston) (Lab)
*Mr Gil Paterson (Central Scotland) (SNP)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

WITNESS

Mr Frank McAveety (Deputy Minister for Communities)

CLERK TEAM LEADER

Eugene Windsor

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Craig Harper

LOCATION

Committee Room 1

Scottish Parliament

Local Government Committee

Tuesday 16 May 2000

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:08*]

Ethical Standards in Public Life etc (Scotland) Bill: Stage 2

The Convener (Trish Godman): Good afternoon, comrades. We start this meeting with our first stage 2 debate of a bill. I shall take a minute to explain how we are going to proceed. I suspect that Donald Gorrie is the only member of this committee to have gone through the procedure before, at Westminster. Members of this committee who are also members of other committees may have gone through it, but we have not done so as a committee.

Members should have before them a copy of the bill, the marshalled list of amendments, which was published this morning, and the groupings of amendments that I have decided to take, after discussions with the Executive. I am all powerful and cannot be challenged in that matter. You will probably challenge me on other matters during the debate, but you cannot challenge me on that one. If you do not have those papers, Craig Harper will be able to help you out.

The amendments have been grouped to facilitate debate, and the order in which they will be called and moved is dictated by the marshalled list. You will have to get used to referring to two papers. All amendments will be called in turn from the marshalled list. We cannot move backwards in that list; once we have moved on, that is it.

There will be one debate on each group of amendments. Members may speak to their amendments when the group in which those amendments are included is being debated. Some amendments are technical and others are more substantive, and members will have to be aware of that.

I will call the proposer of the first amendment in the group, who will speak to that amendment and then move it. I will then call other speakers, including the proposers of all the other amendments in that group. Members may speak to those other amendments then, but should not move them at that stage.

I will call members to move their amendments at the appropriate point in the marshalled list. If the proposer decides not to move the amendment, any other member of the committee may do so. If any member does not want to move their amendment, they should say simply “Not moved” when the amendment is called. However, other members will then be able to move the amendment.

The order of speakers will be as follows: the proposer, the minister, any other proposers in the group and then anyone else who wants to speak. The proposer of the lead amendment will then close the discussion. Members should indicate their wish to speak in the usual way, and the minister will be called to speak on each group. In this case, the minister is Frank McAveety.

Following the debate, I will clarify whether the member who moved the amendment still wants to press it to a decision. If the amendment is pressed to a decision, the question will be put immediately. If the member seeks to withdraw the amendment, the agreement of the whole committee is required. If any member objects to its being withdrawn, I shall put the question on the amendment. When the question is put, if any member disagrees, we will proceed to a division by a show of hands. It is important that members keep their hands up for a couple of minutes, to give the clerks the opportunity to note down which way members are voting.

Only members of the Local Government Committee may vote. Other members of the Parliament, including Frank McAveety—so keep your eye on him—are not allowed to vote. At this stage of the proceedings, only members of the Local Government Committee are allowed to vote.

As well as deciding on amendments, the committee must decide whether to agree to each section and schedule. All the amendments in a section will be decided on before we agree on the section or schedule as a whole. Before I put the question on any section or schedule, I shall be happy to allow a short, general debate. However, if we have exhausted discussion in dealing with the amendments, there should be no need for that. Members may feel that they have had enough and that there is no need for further discussion; they are entitled to speak or not to speak, as they wish.

The only way in which it is permitted to oppose agreement to a section is by lodging an amendment to leave that section out, which should already have been done. Therefore, if members want to delete an entire section, they must have lodged an amendment to that effect. If a member wants to oppose the question that a section or schedule be agreed to, he or she has the option of proposing a manuscript amendment. If that happens, I shall have to decide whether to allow that amendment to be taken. As this is my first go at convening a stage 2 debate, I would rather that

members did not do that. However, it is entirely up to the committee.

I will not delay any division to enable members who are not present to return, but there will be a comfort break at some point in the proceedings. If there is a division, we will go straight to a vote. Committee members who choose to go out, for whatever reason, must do so on the understanding that, if they miss a vote, that is their responsibility.

14:15

Most members will have seen the announcement in the business bulletin last week, which states that we do not intend to go beyond section 18 of the bill today. In fact, we may not get that far. However, I have no intention of going further than section 18, if we get that far.

Throughout the passage of the bill, members will have to keep their eye on amendments as they appear in the business bulletin. The amendments that we are considering today appeared in print on Friday or Monday. Once lodged, amendments go into the business bulletin for the following day. Members who lodge amendments must check that what appears in the business bulletin accords with their amendments as lodged and must pick up any errors at that point. By the morning of the committee meeting, the marshalled list is printed and we cannot change it.

Everyone should know that amendments cannot be changed—they must either be agreed to or disagreed to. Any member who seeks to change an amendment must have lodged an amendment to the amendment, or an alternative amendment, with the clerks, two days prior to the meeting. It is also possible to lodge a manuscript amendment without notice, but I would need to be convinced that the importance of the proposed amendment outweighs the disadvantage of the lack of notice. I would not be easily satisfied, and I would not propose using that power except in an exceptional case. Members should be aware that there is an opportunity to propose amendments at stage 3, although there is no guarantee that they will be selected by the Presiding Officer.

Johann Lamont (Glasgow Pollok) (Lab): When a division is recorded, are abstentions recorded formally?

The Convener: Yes.

The Convener: I introduce the Deputy Minister for Local Government, Frank McAveety. He has come along with Ted Davison, Trudi Sharp, John McCluskie and John Paterson, who are all from his department. Frank will give us a presentation.

Section 1—Code of conduct for councillors

The Convener: I call amendment 1, which is grouped for debate with amendments 2, 3 and 4.

The Deputy Minister for Local Government (Mr Frank McAveety): I was worried when you said "presentation"—I thought that I was at some sort of Tupperware party.

I thank the committee for allowing me to come in on stage 2. A number of issues have been raised by members and a number of amendments have been lodged by members and by the Executive. I hope that we can move forward in our discussion on the Ethical Standards in Public Life etc (Scotland) Bill.

At present, sections 1 and 2 do not make express provision for the code of conduct for councillors and the model code of conduct for members of devolved public bodies to be laid before Parliament for its approval. That point was raised by the Subordinate Legislation Committee during its deliberations on the bill at stage 1. The Executive has recognised that, although strictly unnecessary, it would be desirable for the purposes of clarity to introduce express laying provisions for the codes. We agreed to introduce amendments to that effect. Amendments 1 and 4 have been lodged by the Executive for the purpose of introducing those provisions. Amendments 2 and 3 provide clarification.

Amendment 2 provides a power for ministers to fix the date on which the code of conduct for councillors comes into effect. That is consistent with the provision in section 3(7) in respect of the date when the code for members will come into effect. Amendment 3 reflects the necessary renumbering of subsections in section 1, consequential on the introduction of amendment 2.

On that note of excitement, I move amendment 1.

Amendment 1 agreed to.

Amendments 2 and 3 moved—[Mr McAveety]—and agreed to.

Section 1, as amended, agreed to.

Section 2—Model code of conduct for members of devolved public bodies

The Convener: I call amendment 35, in the name of Keith Harding, which is grouped for debate with amendments 36 to 43, also in the name of Keith Harding; and with amendments 6 and 7, in the name of the Minister for Communities.

Mr Keith Harding (Mid Scotland and Fife) (Con): All the amendments would leave out the word "model". The feeling is that if local

government is covered by a standardised code of conduct for members, why should there not be a standardised version for devolved public bodies? That would contain the mandatory principles and rules to which different types of organisation would have to comply. It would bring greater standardisation to ensure public clarity and to ensure similar standards to those that are proposed for councillors. It would remove the overly bureaucratic procedure of a large number of codes being submitted to ministers for approval.

I move amendment 35.

The Convener: I ask Frank to respond to that.

Mr McAveety: I thank Keith Harding for his contribution; however, I am about to suggest that he should not press amendments 35 to 43. In the bill, we wanted to ensure that we moved from our inherited position, which was primarily about local government and elected members, to one that concerned public bodies in the wider sense.

We recognise that all those bodies have different constitutions and experiences; we need to find a language and phraseology that reflects that. The bodies concerned cover a range in terms of their expenditure, practice, size and scale. It is important that we recognise that in the language of the bill.

The model code must be approved by the Scottish Parliament before it is issued by ministers. Each relevant body will be required to submit a draft code for its members to ministers for approval within three months of the issue of the model code. The purpose of the model code was to provide some sort of framework in which organisations could respond. That would be customised for the organisations to which it would apply.

The amendments proposed by Keith Harding would remove that flexibility and would impose a one-size-fits-all code on all public bodies in the bill. As I have said, the bodies listed in schedule 3 are a varied group; imposing a single code on them all would mean that local circumstances could not properly be dealt with.

I wish to reassure the committee that the councillors' code and the members' model code will be laid before Parliament for its approval. I hope that those arrangements will reassure everyone that the Parliament will have a proper overview of the content of the members' model code. That should give enough protection, so I reject the amendments lodged by Keith Harding.

The Convener: Does anyone else wish to come in on this?

Donald Gorrie (Central Scotland) (LD): I have some sympathy with Keith Harding's desire for simplification—it is always a good thing to delete two sections and to have a nice, simple rule. However, we might have a single code for everyone, but local enterprise companies and some of the obscure groups that Kenny Gibson has dredged up might have different interests. The minister's argument for flexibility seems to be a good one. Will Keith explain why he thinks his idea is better?

Mr Harding: I do not see why people in public life should not have the same code of conduct. In his evidence last week, the secretary of Scottish Enterprise admitted that that was not impractical. He would prefer that it did not happen, but it could be imposed on LECs as well as on Scottish Enterprise. That is what gave me this idea. I firmly believe that all people in public life should behave in the same manner. The code of conduct does not impact on articles and memorandums of association with companies and so on; it is about people's behaviour. The same code of conduct should apply to all bodies in public life.

The Convener: As no one else wants to speak on the amendment, I shall put the question.

The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Mr Keith Harding (Mid Scotland and Fife) (Con)

AGAINST

Colin Campbell (West of Scotland) (SNP)
Mr Kenneth Gibson (Glasgow) (SNP)
Trish Godman (West Renfrewshire) (Lab)
Donald Gorrie (Central Scotland) (LD)
Dr Sylvia Jackson (Stirling) (Lab)
Johann Lamont (Glasgow Pollok) (Lab)
Mr Michael McMahon (Hamilton North and Bellshill) (Lab)
Bristow Muldoon (Livingston) (Lab)
Mr Gil Paterson (Central Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 9, Abstentions 0.

Amendment 35 disagreed to.

The Convener: We move to amendment 36, which has been debated with amendment 35. Keith, will you move amendment 36?

Mr Harding: Does amendment 36 not fall as a result of amendment 35 being disagreed to?

Bristow Muldoon (Livingston) (Lab): As amendments 36 to 41 are consequential on amendment 35 and do not make sense if amendment 35 is disagreed to, I suggest that Keith Harding withdraw them.

The Convener: You can withdraw all the consequential amendments; do you wish to do that?

Mr Harding: Yes.

The Convener: You have to say that amendment 36 is not moved, and all the others can be withdrawn.

Mr Harding: Amendment 36 not moved.

Mr Gil Paterson (Central Scotland) (SNP): On a technicality, should we not agree that these amendments can be withdrawn?

14:30

The Convener: Yes, I said that we should have agreed that they can be withdrawn. There is a bit of dispute about that. We learn as we go along.

In fact, I have to ask Keith Harding to say "Not moved" for each amendment. If anyone else objects to that, they can speak at that point.

Amendments 36 to 38 not moved.

Amendment 4 moved—[Mr McAveety]—and agreed to.

Amendments 39 to 41 not moved.

The Convener: We now come to amendment 75, which is grouped with amendments 64, 76, and 65 to 68.

Mr Kenneth Gibson (Glasgow) (SNP): What about amendments 6, 7, 42 and 43? Are they not marshalled with amendment 41?

The Convener: They come later in the marshalled list. The amendments are in groupings. If you stick with the marshalled list, you will get there eventually.

I call members' attention to the fact that amendment 75 did not appear in the business bulletin until today. As it was lodged, it referred to a section that did not exist. The amendment to create the section, amendment 76, was lodged on Friday but was unintentionally omitted. Amendment 76 has been included later in the marshalled list. I call on the minister to move amendment 75.

Mr McAveety: This group of amendments relates to section 20, which makes special provision for the water industry commissioner for Scotland. Amendment 68 deals with the crossover effect for sanctions. It provides that, if a water industry commissioner is found to be in breach of his or her code and is also a member of a relevant devolved public body or is a councillor, the commission may disqualify the commissioner from those other public bodies or that office.

Amendment 75 provides that the members' model code may distinguish between mandatory and optional provisions for the purposes of section 20(2D), which relates to the water industry commissioner's code of conduct. As amended by amendment 76, section 20(2D) provides for the incorporation in the water industry commissioner's code of mandatory and optional provisions of the members' model code and provisions that are consistent with that code.

Amendment 76 provides further detail on the provisions of the water commissioner's code of conduct and, in particular, makes provision to achieve parity with the provisions relating to members' codes. Amendments 64 to 67 deal with consequential drafting changes.

I move amendment 75.

Dr Sylvia Jackson (Stirling) (Lab): We have jumped to section 20, but I had thought that we were only going up to section 18.

The Convener: We are working from the marshalled list and are grouping issues that are relevant to each other.

Johann Lamont: We cannot go back, but we can go forward.

The Convener: We are not going forward and back on the marshalled list.

Johann Lamont: We are dealing with the bill section by section, but that does not prevent us going forward to tidy something up.

Colin Campbell (West of Scotland) (SNP): I think that there is confusion, convener, because you said that we would not go beyond section 18 and we have now done that.

The Convener: If you look at your marshalled list, you will see that we are not going beyond section 18, but I take your point. I said that we were working from two papers, but members are essentially working from three. They will have to go back and forward. Frank McAveety has moved the amendment. Does anybody want to speak?

Mr Paterson: Sorry, convener, but I want to clarify the situation. The written advice given to us asked us to concentrate on the bill up to section 18. Quite frankly, I do not think that this issue will come to a hill of beans, but I hope that amendments have not been moved to anything controversial after section 18.

Bristow Muldoon: I want to help members, because I think that I understand. The minister has been asked to speak to the amendments relating to amendment 75, but if those amend sections of the bill after section 18, we will not vote on them today. Members will still have the opportunity to move amendments to later sections, as long as those amendments are competent, and to vote on any controversial amendments.

The Convener: That is right. That is what I was going to say.

Donald Gorrie: Can the debate on the amendments to sections after section 18 be resumed, or is this the only debate on them? Will amendments 65, 66 and so on simply be moved formally and voted on at the next meeting?

The Convener: I am checking that. I do not know the answer.

Donald Gorrie: According to what Bristow Muldoon said, an amendment could subsequently be moved on the same issue. We could get in a bit of a muddle if we can debate one and not the other.

The Convener: We cannot have another debate, but I think that the proposer can make a short statement when the amendment is moved before members vote. Members must pay attention now, as this is when the debates are happening.

Donald Gorrie: So, today will be the only debate on amendments 65, 66 and so on?

The Convener: Yes. This will be the only debate on that group of amendments.

Now that we have clarified that, does anyone want to speak to amendment 75 and the other amendments grouped with it? If not, I will put the question on amendment 75.

Amendment 75 agreed to.

The Convener: We move to amendment 5. I ask Frank McAveety to speak to and move the amendment.

Mr McAveety: Section 2 deals with the model code of conduct for devolved public bodies. Amendment 5 provides a definition of the word "business" in relation to devolved public bodies, to broaden the scope of the term to achieve parity with the definition of "council business" in section 1(7). Amendment 5 provides that

> the business of devolved public bodies shall, in relation to a member of such a body, be construed as including a reference to matters under consideration by any other body on which the member is a representative or nominee of the devolved public body.

I move amendment 5.

The Convener: Does anyone want to speak?

Donald Gorrie: As I understand it, if somebody is a member of, for example, an enterprise board and is put on the board of a new company, his activities on the board of the new company are covered by this bill. Is there any sphere in which that could conflict with his duties under the companies acts?

Mr McAveety: The thinking behind the amendment was to widen the scope and recognise that people operate across different public bodies. I have no example to contradict or provide information about the member's argument in relation to the companies acts, but I am happy to get that information for him for the next meeting.

Donald Gorrie: I am on the same side of the argument as the minister, but I wonder whether there might be a snag that we have not thought about.

Mr McAveety: We will clarify that for the member.

Bristow Muldoon: This may answer Donald Gorrie's question. My understanding is that section 2 refers only to someone who is a representative or nominee of a devolved public body. People are not nominated to local enterprise companies; they are invited on to the board by the organisation. That is the distinction.

Amendment 5 agreed to.

Section 2, as amended, agreed to.

Section 3—Codes of conduct for members of devolved public bodies

The Convener: I ask Frank McAveety to move amendment 6, already debated with amendment 35.

Mr McAveety: All amendment 6 does is to correct a drafting error in section 3(2)(b), which deals with codes of conduct for members of devolved public bodies.

I move amendment 6.

The Convener: Does anybody want to question or speak to that amendment?

Donald Gorrie: This may be a frivolous remark, but the concept of a model members' code is an attractive one, which we should pursue. I do not know who round this table would qualify, but somebody might.

Amendment 6 agreed to.

The Convener: Amendment 7 has already been debated with amendment 35, so cannot be debated again. I ask the minister to move the amendment.

Mr McAveety: Amendment 7 amends section 3(7) to make it clear that the members' code applies from the date fixed, rather than only on that date. It clarifies the situation.

I move amendment 7.

Amendment 7 agreed to.

Amendment 42 not moved.

Section 3, as amended, agreed to.

Section 4—Revisal etc of members' codes

Amendment 43 not moved.

Section 4 agreed to.

Section 5—Duties of councils and devolved public bodies

The Convener: We move to amendment 44, which is on its own. I ask Sylvia Jackson to speak to and move the amendment.

Dr Jackson: Amendment 44, which amends section 5(1) on page 3, line 32 of the bill, seeks clarification that prior to the issuing of any guidance to councils by the standards commission—to assist councils in fulfilling their duty to promote and assist councillors in observing the councillors' code on the highest standards of conduct—councils and professional associations such as the Society of Local Authority Chief Executives and General Managers and the Society of Local Authority Lawyers and Administrators in Scotland will be given the opportunity to contribute their expertise during the preparation of the guidance.

I move amendment 44.

Mr McAveety: I thank Sylvia Jackson for her amendment. As the bill is currently drafted, the commission will be able to consult relevant bodies such as the Convention of Scottish Local Authorities and the professional bodies when it prepares draft guidance. I am pleased to take this opportunity to confirm that the Executive expects the commission to prepare guidance on good practice in areas such as councils' and public bodies' duty to assist members to uphold the code. We would expect the commission, when it draws up such guidance, to consult bodies with an interest in those issues.

We may want to come back to this amendment and others at stage 3 to address how the issues will best be tackled and dealt with.

Dr Jackson: Convener, I am happy with that answer. How do I now proceed?

The Convener: You have already moved the amendment, so you will need to withdraw it.

Amendment 44, by agreement, withdrawn.

Section 5 agreed to.

After section 5

The Convener: I call amendment 45, which is on its own.

14:45

Donald Gorrie: We have discussed several times, in the committee and with the minister, the position of each council having a standards committee. The minister expressed approval of the idea of councils having standards committees, as some of them do. The committee felt that it would be helpful if the bill specifically mentioned standards committees and it was not just assumed that they might exist.

I worded this amendment not to compel a council to set up a standards committee, but to make it quite clear that they could do that or that a devolved body, as well as a council, could set up a standards committee, which could initially deal with complaints. That would help to deal with mischievous complaints or ones in which local knowledge of people or events was helpful. If the complainant were unhappy he would still have the right, under my amendment, to appeal to the standards commission. The standards commission could then consult the local standards committee before dealing with the matter.

The amendment is a way of putting into the bill what most of us felt should happen—that there should be an opportunity for, although not a compulsion on, councils and other bodies to have a standards committee. This is a constructive amendment, which I think is in accordance with most people's views.

I move amendment 45.

Mr McAveety: I would like the amendment to be withdrawn, on two grounds. I do not think that the problem is the principle of the existence of local standards committees; I think that they should be encouraged where possible. However, I am not convinced that this is the appropriate place in the bill for consideration of that.

The way that the amendment has been worded suggests that there would be a filtering process that was separate from the national standards commission. It is for the chief investigating officer to act on any breaches of the national code of conduct that we will establish. It will be for the national standards commission to investigate those. There may be processes that can be carried out locally, but it must be clear that the powers lie with the national standards commission. My encouragement of local standards committees is about ensuring that there is a body at a local level that people feel comfortable with, but it does not have a separate locus for investigation. A matter would be dealt with there and directly referred to the standards commission at national level.

I think that we should have a protocol between local standards committees and the national body. That would be helpful. The problem that could emerge would be variations across the country. Some parts of the country would have a local standards committee operating in the way that Donald Gorrie has suggested and other parts of the country might not have a local standards committee. Therefore, there would not be

consistency. The benefit of the bill at the moment is that there is a national standards commissioner and an expectation of national standards across public bodies in Scotland.

Those are the reasons why I think that the amendment should be withdrawn.

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): This is one of these difficult situations, when I agree with both the speakers who have gone before. Donald Gorrie is right. The committee said that we wanted uniformity and we wanted standards committees to be established wherever it was possible to do so. However, I am concerned that the amendment—I know that it is probably not Donald's intention and it might just be my reading of it—crosses over into the remit of the commissioner. I do not think that that is what we intended to happen. I am concerned that we might create a problem as this goes against the intention of the bill.

Mr Paterson: I take the opposite view from Michael McMahon. His statement about what we are seeking is correct, but I do not see a conflict. I thought that the committee was of the view that a filtering system might be quite good—that, if a local standards committee was set up and took action, there would be no need for national action to be taken. That would be a better procedure, whereby any conflicts or wrongdoing would be nipped in the bud. The best place for that to happen would be in a local standards committee, if one were set up. I do not recognise a conflict, minister.

You said that this may be the wrong place to insert a protocol on the relationship between the standards commission and local standards committees in the bill. Is there a better place? It might be helpful to identify that.

Bristow Muldoon: I agree with the points that Michael McMahon raised. As it stands, the proposed amendment could complicate what is being put in place, and could result in conflict between the local standards committee and the standards commission. In reference to Gil Paterson's last point, I do not think that either body could take the same action, as a local standards committee would not have the range of powers that the standards commission will have, for example, to suspend or to remove someone from office. There could be a danger of double jeopardy being introduced, with someone being tried by a local standards committee and then by the standards commission.

Having said that, local authorities should be encouraged to set up standards committees and, in our report, we note that the Deputy Minister for Local Government acknowledged the fact that it would be helpful for councils to do so. In summing up for this section, will he say whether the Parliament or the Executive could encourage local authorities, either in the bill or in some other way, to set up standards committees, and what relationship those committees should have with the standards commission?

Dr Jackson: I have two points to make. First, as Bristow Muldoon has said, it is important that we make clear what the committee has previously agreed on. Secondly, the main issue that we are talking about is the protocol. If it could be included in the bill, and if we could think a bit more about it, that would be useful.

Johann Lamont: I do not think that not supporting the protocol would preclude having local standards committees that operate effectively. However, one of the problems of writing the protocol into the bill may be the fact that a councillor's relationship with the standards commission would be different if their authority did not have a standards committee. There would be no consistency between different local authorities, even if they were experiencing the same problems and difficulties.

Nevertheless, I am anxious that we should find a way of fitting the protocol in, as it would make sense for local authorities to manage as much of their business locally as possible. The problem lies in formalising the relationship between the local standards committees and the standards commission, when those two levels do not exist throughout the country. I hope that the minister will be able to reassure us about the way in which the Executive proposes to urge good practice and promote the idea of local standards committees in all authorities without imposing it from the centre, which would pose another difficulty.

The fact that local standards committees do not exist in all authorities does not mean that, where they do exist, they will deal with matters in such a way that things will not come to a head and have to be referred to the standards commission. The formal relationship between the committees and the commission, which Donald Gorrie identified, will perhaps be difficult to establish.

The Convener: Minister, do you want to add anything before I ask Donald Gorrie to close?

Mr McAveety: First, the underlying principle of the bill was to establish a national standards commission, for which we had broad approval. It is important to enshrine that principle in legislation as the bill process progresses. Secondly, in principle, we are not opposed to the encouragement of local authorities to set up local standards committees. That recommendation may be included on page 3 of the bill, under section 5 (1), which states:

"Every council shall, in accordance with any guidance issued for the purposes of this section . . . promote the

observance by its councillors of high standards of conduct".

There is already something in the bill, in that section, to encourage local authorities to develop local standards committees.

Committee members have raised several points concerning the establishment of good protocol and guidance. It would be better to deal with that in a practical way, rather than through the legislation. The question is whether we can clarify—through the guidance notes and the activity of the chief investigating officer—how information should be shared, so that some of the burden of the investigative process, which may have been undertaken locally, can be shared with the chief investigating officer, who will continue with the inquiry as he or she sees fit.

Conversely, if there has been no thorough local inquiry, because of local circumstances or the political make-up of a council, the chief investigating officer might want to intervene. There has to be flexibility, which is why the Executive feels that it would be inappropriate for this amendment to be accepted: it would jeopardise the flexibility that we want in the bill.

Donald Gorrie: If local standards committees were set up, they would destroy the purity of the system that is represented by the national commissioner and the commission. If the minister accepts that local standards committees are to be welcomed, he must realise that their relationship to that national structure must be set down. I understand his point about flexibility. However, it must be stated where those committees fit into the system, as should the protocol of their relationship to the standards commission, whether in the bill or not.

Some people like uniformity, whereas others like local variety. We must agree to differ on that matter. The point about double jeopardy that Bristow Muldoon raised is relevant, and, if local standards committees are established, that will happen. Will the minister give a guarantee that the position of local standards committees in the system will be set out in the bill? If he promises that his version of the way in which local standards committees would fit into the system will appear in the bill, I shall, by agreement with its supporter, withdraw this amendment and resume battle at stage 3 of the bill process if I do not like what the minister produces.

The Convener: Minister, could you please respond to that.

Mr McAveety: Briefly. I would be happy to return to the committee with a protocol and guidance, and I hope to lodge an amendment at stage 3 that will satisfy Donald Gorrie. If I can do that, that will be a singular achievement in my life. [*Laughter.*]

Donald Gorrie: I am not that difficult.

The Convener: Donald, would you like to withdraw the amendment?

Donald Gorrie: I shall withdraw the amendment and wait to see what the minister produces. If he does not produce something satisfactory, I shall resume the attack.

Amendment 45, by agreement, withdrawn.

Section 6—Register of interests

The Convener: Amendment 46, in the name of Dr Sylvia Jackson, will be debated on its own.

Dr Jackson: Amendment 46 is similar to the previous amendment. It requires that, prior to any regulations and guidance being issued concerning registers of interests, the appropriate associations of the councils and relevant professional associations be consulted.

I move amendment 46.

Mr McAveety: My response is similar to my response to the previous amendment. I would like to return to the matter at stage 3. If Dr Jackson withdraws the amendment, I shall come back with some clarification.

Dr Jackson: If the minister is giving me an assurance, as he gave previously, that the legislation will require that the appropriate associations of the councils and professional associations be consulted, I am content to withdraw the amendment.

Mr McAveety *indicated agreement.*

Dr Jackson: The nod was a yes.

The Convener: Can you say yes, minister. The official report cannot record a nod.

Mr McAveety: Yes.

Amendment 46, by agreement, withdrawn.

Section 6 agreed to.

15:00

Section 7—Standards Commission for Scotland

The Convener: Amendment 8 is grouped with amendments 9 and 10.

Mr McAveety: Amendments 8, 9 and 10 relate to the power of ministers contained in section 7(2)(b) to confer additional functions on the commission by directions. At stage 1, the Subordinate Legislation Committee questioned the scope of those direction-making powers and noted that no formal procedure for the giving of directions was set out in section 7. The committee considered that, in line with similar provisions in

other recent legislation, the power should be exercisable by secondary legislation.

We have revisited the question, and amendment 8 provides that direction-making power should be conferred by order. Amendments 9 and 10 provide that such an order will be a statutory instrument, subject to negative resolution procedure.

I move amendment 8.

Amendment 8 agreed to.

The Convener: Amendment 47 is grouped with amendments 48, 50 and 51.

Mr Harding: Amendments 47 and 48 ensure that the standards commission is independently appointed after approval by the Scottish Parliament and not by the minister alone. That would ensure fairness in terms of political representation. Appointment in that way confers independence and impartiality, thus ensuring compliance with European convention on human rights legislation.

I move amendment 47.

Mr McAveety: I would recommend rejection of the amendments lodged by Keith Harding, primarily on the single fact that we are awaiting the consultation on the public appointments. I think that it would be premature to introduce such provisions in this piece of legislation while we are waiting for the full Parliament to determine the outcome of that public consultation. The Parliament will determine how individuals are appointed to public bodies, whether through the present process, through a modification of that or through substantial change.

Mr Paterson: If the text in those amendments is not inserted, will the Executive insert it?

Mr McAveety: Yes. Within the existing procedures, which have so far been accepted by parliamentarians—there may be modifications and amendments, to be determined by the Parliament, after the consultation period—ministers can appoint bodies, and ministers are accountable to the Parliament for those decisions. Whether that process is to the satisfaction of everyone in this committee remains to be seen in the broader debate, but I genuinely think that the measures are premature while we are awaiting the results of a major consultation.

This is a major piece of legislation that will impact on public bodies. I think that we should await the outcome of the consultation, and the members of the Parliament will determine how best we deal with public appointments.

Johann Lamont: People feel strongly about transparency in appointments to public bodies. I would be very keen for there to be transparency and accountability, particularly from the perspective of equal opportunities. There would need to be consistency for the whole range of public bodies, and I would hope that, as one outcome of the consultation, public bodies would have a radical view of how to achieve that, starting with making definitions of ability and talent. Such definitions are at the root of the matter.

Does that mean that the public consultation and subsequent decisions on how we are to deal with appointments are automatically brought to bear on the act, once passed, so that we could revisit this as a public appointment? The commission's work would come under the guidance.

Mr McAveety: Any decision made by the Parliament on public appointments would have consequences for acts and other legislation that have been passed. In that context, the points in the amendments would be allowed for.

Johann Lamont: Keith Harding is trying to find the most open process, but our debates on public appointments may not conclude that that is the most open way to do things. However, I do not want to include in the bill now a provision that ensures that members of the standards commission have to be appointed, if that could not be changed later on.

Mr McAveety: I am happy to confirm that there will be flexibility should there be any modifications or changes or an overhaul of the public appointments system. The bill would have to be amended to reflect that.

Johann Lamont: It is not flexibility that I am looking for. The bill presumes that members of the commission would be appointed publicly and that the same rules would apply as apply to other public appointments.

Mr McAveety: It is for the Parliament to determine where those appointments fall. If that results in a change in public appointments in the area that we are discussing, that is fine.

Mr Harding: On the basis of that assurance, I seek the committee's approval to withdraw amendment 47.

Amendment 47, by agreement, withdrawn.

Amendment 48 not moved.

Amendments 9 and 10 moved—[Mr McAveety]—and agreed to.

Section 7, as amended, agreed to.

Schedule 1

THE STANDARDS COMMISSION FOR SCOTLAND

The Convener: I call the minister to speak to and move amendment 11, which is grouped with amendments 12, 13 and 14.

Mr McAveety: Schedule 1 covers the status,

powers and arrangements for the setting up and administration of the standards commission for Scotland. The amendments in this group correct and clarify the existing text of the schedule. Amendments 11 and 12 correct drafting errors. Amendments 13 and 14 clarify and expand paragraph 3, which deals with the disqualification of persons from membership of the commission, and provide that any person disqualified from being a councillor should also be disqualified from being a member of the commission. Any person disqualified from being a member of a devolved public body or from being the water industry commissioner under the provisions of the legislation would also be disqualified from being a member of the commission.

I move amendment 11.

Amendment 11 agreed to.

Amendments 12 to 14 moved—[Mr McAveety]—and agreed to.

The Convener: I call Keith Harding to speak to and move amendment 49.

Mr Harding: It is important that a right of appeal is available following consideration of a case by the standards commission. Amendment 49 requires the commission to establish that appeals mechanism. This is especially important for devolved public bodies, which will not have the option of conducting an independent internal investigation through a standards committee, as councils can. The detail of the appeals mechanism is for the commission to decide. However, should ministers wish to set up a specific mechanism for appeals, they should bring forward their own amendments.

Amendment 49 is in line with the Local Government Committee's consideration that an appeals mechanism is required, and with the statement in the committee's report that it welcomes the Executive's intention to bring forward appropriate arrangements to introduce a right of appeal. I cannot see anything in the bill that addresses that issue.

I move amendment 49.

Mr McAveety: I have made commitments in prior discussions with the committee that I want to introduce an appeals mechanism. As far as the appropriate locus of that is concerned, whether it is with the commission or elsewhere, I would err on the side of its not being with the commission itself, as there might be a conflict of interests. However, I shall certainly introduce an appeals procedure to address the concerns raised by members.

Bristow Muldoon: I support there being an appeals mechanism and I note the minister's intention to introduce one. However, it would not be appropriate to establish an appeals mechanism as Keith Harding suggests, following the paragraph on why people might be disqualified from being members of the commission. It should follow systematically from the action that the organisation could take. It would be far more appropriate that, if such an appeals section were to be inserted, it should be inserted after section 18 of the bill.

Donald Gorrie: Is the minister promising us a section in the bill about appeals, or would it figure separately in the regulations?

Mr McAveety: It will be in the bill.

Mr Harding: On the basis of that assurance, I seek the approval of the committee to withdraw amendment 49.

Amendment 49, by agreement, withdrawn.

The Convener: I call the minister to speak to and move amendment 15.

Mr McAveety: Amendment 15 provides revised drafting of paragraph 11 and clarifies that ministers will provide the expenditure of the commission.

I move amendment 15.

Amendment 15 agreed to.

Schedule 1, as amended, agreed to.

Section 8—Appointment of Chief Investigating Officer and staff

Amendments 50 and 51 not moved.

The Convener: We now come to amendment 16.

Mr McAveety: Amendment 16 corrects a drafting error in the text of section 8(4), which deals with the appointment of the chief investigating officer's staff.

I move amendment 16.

Amendment 16 agreed to.

Section 8, as amended, agreed to.

Schedule 2 agreed to.

Sections 9 and 10 agreed to.

Section 11—Conduct of Chief Investigating Officer's investigations

The Convener: We now come to amendment 52, which is grouped with amendment 53.

Mr Gibson: Amendment 52 addresses a matter that we have discussed, and the minister has responded to some of our comments at previous committee meetings. However, I want to ensure that this will definitely be included in the bill. It is

my view that investigations should be undertaken only in response to allegations of misconduct made in writing and signed by the complainant. Of course, I understand that all investigations would be handled in confidence, and I fully support that. However, there must be a name attached to a complaint, so that the likelihood of malicious complaints is reduced.

The committee was in broad agreement that investigations should be concluded within 90 days, except with the prior approval of the commission, because we do not want investigations to hang like the sword of Damocles over the person who is being investigated. Amendment 53 provides that, where possible, all investigations should be tied up within a reasonable time frame.

I move amendment 52.

Mr McAveety: The amendments are based on experience, and I know that Kenny Gibson and others have raised the matter regularly in committee. In relation to malicious allegations, I hope that we will be able to put in place a system that will be thorough and rigorous in dealing with complaints. We all know that a hierarchy of complaints can emerge and that some individuals can pursue matters to incredible lengths.

15:15

I do not support the idea that every complaint should be put in writing, largely because that might discriminate against the substantial minority in our community who are not capable of putting that in writing, not just because they lack the skills—if the recent announcements about levels of literacy are to be believed.

Secondly, there is an issue about the safety of individuals who put a complaint in writing. I know that the committee has discussed the charter for whistleblowers before. Frequently, such complaints have to be dealt with anonymously for the general protection of the complainant. My own experience has shown me that a broadly anonymous route—in which matters are not put in writing—allows senior managers to be pointed in the right direction and so deal with the issue.

There needs to be a reasonable amount of flexibility. The role of the chief investigating officer is critical, rather than the form of the complaint. The amendment is too blunt and might result in a restrictive procedure that would not allow individuals to put forward their concerns about misconduct or breaches of the code. Amendment 52 is inappropriate.

I understand the intention behind amendment 53. Like members, I am concerned that investigations should be carried out swiftly. It is important that we recognise the time that such matters take. We have all had experience of internal investigations that take an endless length of time. Such investigations often do not reach a conclusion or do not have enough evidence to back up the original claims. In such cases, the individuals under scrutiny will have paid a heavy price and their families will also have been affected by the uncertainty.

We believe that the chief investigating officer should carry out investigations swiftly. However, there are legal issues about where a 90-day time limit might begin. We could come back with further analysis at stage 3. People might be able to string out investigations of their conduct and so invoke the time limit. There might also be difficulties that make the information-gathering process more complex. We need flexibility in the legislation, to allow the chief investigating officer to do their job; a strict time limit might make that more difficult. I should be happy to revisit the issue at a later stage, to satisfy the committee's concerns.

Mr McMahon: I have a few questions for Kenny Gibson. I know exactly where he is coming from because we discussed the matter and I agree that the veracity of allegations should be pinned down. However, the amendment is too prescriptive because it does not allow for anything other than written complaints. I am concerned that that would preclude some people from voicing genuine concerns.

I would like him to clarify what is meant by "prior approval". Does that mean prior to the beginning of the investigation? What if information comes to light that would extend the investigation process beyond the 90-day limit, but there is no longer time to gain "prior approval"? As amendment 53 reads, it might not provide the best way to reach the 90-day target. I agree that we need a fixed time scale, to deliver decisions as quickly as possible.

Bristow Muldoon: I am concerned about amendment 52 and the requirement to put complaints in writing. I understand Kenny Gibson's intention, which is to avoid individuals becoming subject to repeated, malevolent complaints. The standards commission will need to be very aware of that problem. However, as Frank McAveety has said, individuals might feel constrained from putting their name to something because of the position held by the person about whom they are making the complaint—even if they are assured that that is in confidence. The amendment strikes me as a sort of Watergate clause; Woodward and Bernstein might have found their job more difficult if they had had to rely on people giving evidence on the record. On balance, I do not think that we should pursue the amendment.

Donald Gorrie: I was just envisaging exciting scenes in the Parliament's underground garage—just like the film.

The two arguments against the requirement to put a complaint in writing are illiteracy and secrecy. The illiteracy argument is not substantial because someone who is not too good with a pen can get someone else to write down the compliant. If the person is serious about the complaint, they can give the details to someone who has the skill to write it down; the person can then sign the complaint. That seems reasonable.

The argument that some people might be afraid to make a legitimate allegation because they think that their name will come out is more substantive. We have to weigh that against the point about malicious complaints and a councillor or member of a quango being systematically harassed by a person as part of a private vendetta. Both arguments cannot be satisfied. However, if the commission is seen to be watertight, the complainant's identity should be kept confidential. I think that it is still worth pursuing Kenny Gibson's point.

The 90-day limit in amendment 53 is intended to encourage investigators to conclude within that time, or else go to the commission and present the reasons why they have not finished the investigation and ask to be allowed to continue. It would be somewhat embarrassing for the investigators to have to go before the commission to say that they had failed to meet the timetable. That might have occurred because of prevarication by the other party; the investigators might not be at fault at all. However, that process would provide a good inducement to people to conclude the investigation within 90 days. Something along those lines would be helpful.

Johann Lamont: The problem is that the amendments do not say anything along those lines; instead, they are both very specific. I think that it is reasonable in normal circumstances to expect a complaint to be made in writing and to be signed, but I acknowledge that there might be circumstances in which people are not prepared to do that. I do not accept the argument about illiteracy, as we can provide people in that situation with support. However, there might be instances in which it would unfortunate if an investigation could not be conducted—whether by Dustin Hoffman or someone else.

This is about balancing rights. We could, for example, indicate in a code for the investigating officer and in any literature that was sent out that it would be good practice for allegations of misconduct to be made in writing and signed by the complainant. We need to find a way of guarding against malevolent complaints, but on balance I would say that amendment 52 as it stands does not go as far as it might to ensure that people will feel able to use the procedure.

On amendment 53, I agree that investigations should be speedy, but they should also be thorough. There is a danger in specifying that they should be concluded within 90 days, as delays at the start of an investigation can cause problems. It should be good practice for investigations to be conducted as speedily as possible. However, under the amendment, it would be impossible not to conclude an investigation within 90 days without gaining prior approval. When someone starts an investigation, they do not know what will happen in the course of it—they do not know what sort of person they are investigating or whether that person will attempt to delay proceedings.

Although I agree with the principle of the amendment, I do not think that it is expressed appropriately. I hope that at stage 3 we can find a way of writing the principle into the bill, again as good practice, so that it is clear that investigations cannot be put on the back burner and that there is a means of calling the chief investigating officer to account for delay. I am not sure that the amendment is the best way of doing that.

Mr McMahon: I wish that we had not started conjuring up images of Woodward and Bernstein in the Scottish Parliament, as I am having problems working out who would be Deep Throat.

My major concern with the two amendments that we are debating relates to one word, "only". Amendment 52 states:

"Investigations shall be undertaken only in response to allegations of misconduct made in writing and signed by the complainant."

Under the amendment, verbal evidence would always be unacceptable. I do not believe that that should be the case. It may be possible for the commissioner to establish that verbal complaints can be sustained. There is no guarantee that a written complaint will meet the same criteria. The wording of amendment 52 is too prescriptive, in that it precludes anything other than a written complaint, and I would not be able to support it.

The same applies to what Johann Lamont said about the use of the word "prior" in amendment 53. We cannot insist that everything is done before an investigation has begun, as no one knows where that investigation will lead.

Mr Paterson: I can see the committee going back on this issue. I thought that we were agreed on what we were trying to achieve. We recognise that councillors can be targeted and that much of the flak that they take is meant to damage them rather than to sort out something that they have done wrong. I do not have a problem with the first contact being anonymous or verbal, but a distinction has to be made between an inquiry and action. It is the action bit that worries me. I am concerned about action being taken when the complainant is not prepared to put down a marker

and make a complaint formally. That could be a cowards charter. If someone is going to make a complaint that might a damage a person and their family, those who are investigating should be able to ask them to substantiate what they are saying. At the moment, I will restrict my comments to that issue.

Mr McAveety: Anyone who has experience of elected office will know that those who cause politicians the greatest grief do not lack the capacity to write. On the contrary, they write screeds about people—sometimes they even put things on Gestetner and post them up on lamp posts around George Square. Politicians do not have any legal protection. During my time in public office, I have had two stalkers. The issue is not a lack of writing skills on the part of complainants, but a lack of protection for elected members who are being victimised.

15:30

There is a strong argument for protecting individuals by regulating the information that can be brought to the attention of an investigating officer. However, sometimes a written complaint is not required for a chief investigating officer to initiate an investigation. They could hear about something, decide to look into it and decide that it was worth further investigation. That could not happen if we stipulated in legislation that an investigation could not be initiated unless a written complaint had been made.

As Johann Lamont said, the issues raised by the amendments could be dealt with more appropriately in guidance setting out the framework within which a chief investigating officer should work. I do not think that we should enshrine the provisions rigidly in legislation. We can indicate what we think is good practice—not just on the form in which complaints are submitted, but on the time scale for investigations. I do not think that it would be appropriate for the committee to agree to the amendments as currently worded. I hope that we can reach a consensus at stage 3 and uphold the spirit of what Kenny Gibson is proposing.

Mr Gibson: Amendment 52 is about balance. We need to protect the member of the public or the official who is making a complaint, but we also need to protect the individual about whom complaints are being made. Gil Paterson summed it up when he said that the section as it stands is a cowards charter. We are asking for people to stand up and be counted, in confidence. I do not think that that is too much to ask, although we need to be assured that everything will be kept in confidence.

Despite what appeared on the front page of yesterday's *Daily Record*, I am not convinced by the illiteracy argument. As Johann Lamont has indicated, there are ways of dealing with that issue. If we are to reassure people in public life that someone who does not like them will not be able simply to pick up the phone and make all sorts of allegations against them, amendment 52 must be agreed to. For that reason, I am unwilling to withdraw it.

I was pleased by the fact that the minister said that he was prepared to revisit the issue raised in amendment 53. Given his assurance that he wishes to look into expediting investigations, I am willing not to press amendment 53 to a vote.

The Convener: The question is, that amendment 52 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Colin Campbell (West of Scotland) (SNP)
Mr Kenneth Gibson (Glasgow) (SNP)
Donald Gorrie (Central Scotland) (LD)
Mr Keith Harding (Mid Scotland and Fife) (Con)
Mr Gil Paterson (Central Scotland) (SNP)

AGAINST

Trish Godman (West Renfrewshire) (Lab)
Dr Sylvia Jackson (Stirling) (Lab)
Johann Lamont (Glasgow Pollok) (Lab)
Mr Michael McMahon (Hamilton North and Bellshill) (Lab)
Bristow Muldoon (Livingston) (Lab)

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

There is nobody else left, which is rather sad as it means that, for the first time, I have to use my casting vote. I use my casting vote against amendment 52.

Colin Campbell: This is the first time that we have had a serious vote.

Amendment 52 disagreed to.

Amendment 53 not moved.

Section 11 agreed to.

Sections 12 and 13 agreed to.

The Convener: As the minister has been trying to vote—he has been nodding at me to indicate that he has been voting on all these sections and amendments—we will take a five-minute comfort break at this point.

15:35

Meeting adjourned.

15:49

On resuming—

The Convener: Before we begin again, I will give the committee another couple of points of clarification. If you have decided not to move an amendment, please say "Not moved" when I call it—that is better than "Withdraw", apparently. If you wish to move an amendment, listen to the debate, and then withdraw it, you have the right to do that. When I call an amendment, move only the one that I call and do not move all the other ones in that group. We have to record each one individually—I think we have been doing that.

Section 14—Publication of reports

The Convener: We now move to section 14. I call the minister to move amendment 17.

Mr McAveety: Section 14 deals with the manner of publication and distribution of reports. As those reports will be in the public domain, the amendment simply provides for the commission to distribute reports as it considers appropriate.

I move amendment 17.

Amendment 17 agreed to.

Section 14, as amended, agreed to.

Sections 15 and 16 agreed to.

Section 17—Findings of hearings

The Convener: We now come to amendment 18, which is grouped with amendments 19, 20 and 54. I call the minister to move amendment 18.

Mr McAveety: Section 17 deals with the written findings of the commission's hearings and the distribution of those findings. The purpose of amendment 18 is to enable the commission to give a copy of its findings to any person that it thinks fit. Where the person to whom the findings relate is also an ex-officio member or employee member of a devolved public body, a copy of the findings may be sent to that body.

I move amendment 18.

Amendment 18 agreed to.

Amendments 19 and 20 moved—[Mr McAveety]—and agreed to.

Amendment 54 moved—[Dr Sylvia Jackson]—and agreed to.

Section 17, as amended, agreed to.

Section 18—Action on finding of contravention

The Convener: We now come to amendment 21, which is grouped with amendment 55, in the name of Keith Harding, amendment 56, in the name of Sylvia Jackson, and amendments 22 to 30, in the name of the minister. I ask the minister to move amendment 21.

Mr McAveety: Amendments 21 to 30 deal with the sanctions available to the commission where it considers that a relevant code has been breached. In particular, they deal with the crossover effect of the sanctions. The standards commission will be able to impose sanctions on councillors, members of devolved public bodies and the water industry commissioner for Scotland.

As the Executive considers it important to ensure parity of treatment among people in Scottish public life, the amendments provide for the following situations: where a councillor is disqualified for breach of the councillors' code and is also a member of a relevant devolved public body or the water industry commissioner for Scotland; where a member of a devolved public body is disqualified for breach of the relevant members' code and is also a councillor, a member of another devolved public body or the water industry commissioner; and where the water industry commissioner is disqualified for breach of their code and is also a councillor or member of a devolved public body.

In each case, in addition to disqualification for breach of the relevant code under sections 18(1) or 20(6), the commission may disqualify the person concerned from any other office that he holds by way of being a councillor or a member of a devolved public body—if he is not an ex-officio member, an employee member or a Crown appointee—or the water industry commissioner. The rules on crossover apply equally to councillors, members of public bodies and the water industry commissioner for Scotland who are in breach of their particular code of conduct.

I move amendment 21.

The Convener: Keith, do you wish to speak to your amendment 55?

Mr Harding: Amendment 55 gives the standards commissioner an additional sanction, to allow all cases to be dealt with appropriately. It attempts to address the published views of the Local Government Committee following stage 1 consideration of the Ethical Standards in Public Life etc (Scotland) Bill.

There is no happy medium between censure and an immediate suspension of 12 months. In hung councils, that could be detrimental. My amendment allows for a lesser penalty to be given and for the person concerned to continue to operate as a councillor. I find it difficult to understand how a councillor could be suspended for 12 months and yet still be expected to carry out the duties of looking after his ward. That is why I lodged the amendment.

The Convener: Sylvia, do you wish to debate your amendment?

Dr Sylvia Jackson: I am not moving it.

The Convener: You do not have to say so right now.

Bristow Muldoon: I have sympathy with most of Keith Harding's amendment, apart from the part that mentions

"leadership of a political group",

which is problematic. I do not think that the commission should decide who can be leader of a political group, although it is appropriate for the commission to have a view on representational positions. In our report, the committee did not refer to that issue. Our report said that the sanctions of

"removal from convenership or representational office"

should be available.

Is the minister prepared to consider further the principle of a wider range of sanctions, in consultation with COSLA? I am unsure whether COSLA's views have been sought on this issue. I recommend that Keith withdraw his amendment and that the minister agree to take on board my suggestion that he consider the matter and enter into further discussions with COSLA.

The Convener: Keith has yet to move his amendment—we will come to that at the appropriate time.

Mr Harding: May I respond—

The Convener: I will bring in Michael McMahon first and then I will let you respond, Keith.

Mr McMahon: Sorry, convener—I have nothing to add, as I was going to make the same point.

Mr Harding: I am not asking for the commission to determine the leadership of a political group; I am emphasising that a leadership role carries a responsibility allowance. If an individual who perpetrates an offence has a leadership role, he would lose his special responsibility allowance. The same would apply to a provost or to the convener of a committee.

Bristow Muldoon: Perhaps the wording could be different, as whether being the leader of a political group carries a responsibility allowance varies from council to council. Often, the leader of a political group also holds another position, such as leader of the council, which attracts the responsibility allowance. Being leader of a group might not attract an allowance. Perhaps whether that is appropriate should be considered further. The views of local government should be sought before we make a final decision on this matter.

Donald Gorrie: With respect, the leadership of a political group can carry a responsibility allowance—I have benefited in a meagre way from that as the leader of an opposition group.

If Keith Harding's aim is that everyone who attracts a special responsibility allowance should lose that allowance as an intermediate sanction,

"leadership of a political group"

would be a legitimate category to insert in the bill.

The range of sanctions is helpful. In addition, Keith makes two very good points on the effect of a suspension on the balance of a marginal council and on its impact on councillors' carrying out of parochial work for their wards.

16:00

Mr McMahon: There is a problem with the specific attention the amendment pays to the leaders of political groups. The leader of the majority group and the leader of the opposition may receive SRAs, but the leader of the third party would not necessarily receive an SRA. There might be difficulties if the situation were left open. The reference to "leadership" would permit someone who did not receive an SRA to be removed from the leadership of a political group. The amendment would allow a political decision to be made, but no financial sanction would be imposed.

Mr Harding: The amendment says:

"or any other appointment attracting a special responsibility allowance".

It excludes political leaders who do not receive such allowances.

Mr McMahon: It says "or", not "only" if they receive an SRA. The punishment would be the removal of a person's political position rather than their SRA.

Johann Lamont: A political party that persisted in having as a leader someone who had been found guilty by the commission should bear the political consequences of that. People would have to judge it on that basis.

I agree that there must be other sanctions than the ones that have been set out. We should concentrate on anything that attracts public moneys. If someone receives an allowance for doing something, the standards commission should have the power to withdraw it: that would clarify where the authority lies. It is up to political parties whether they persist with such a person as a leader. I hope that the minister will return with a statement, or an amendment, that indicates that range of options.

The issue is one of public confidence in how public money is being spent. Some leaders of political groups attract such money. They should

not be forced to resign as leaders of their political groups, but it is reasonable to assume that that money would be withdrawn if they breached the code of conduct.

Bristow Muldoon: I want to emphasise that we should support a broader range of sanctions. The committee has expressed concern that the commission could lean towards a heavy penalty rather than a light one, as there would be no option other than admonishing the person or suspending them. I ask the minister to take that on board.

Mr McAveety: From the dialogue that we have had with COSLA and through letters that we have received, I know that there are concerns about this matter. I felt that COSLA was broadly comfortable with the sanctions, but I am happy to take the committee's suggestions on board and reconsider the matter, to come up with another option. We should consult COSLA on that, but I will get back to you on that as soon as I can.

Amendment 21 agreed to.

Amendment 55 moved—[Mr Harding].

The Convener: The question is that amendment 55 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Colin Campbell (West of Scotland) (SNP)
Mr Kenneth Gibson (Glasgow) (SNP)
Donald Gorrie (Central Scotland) (LD)
Mr Keith Harding (Mid Scotland and Fife) (Con)
Mr Gil Paterson (Central Scotland) (SNP)

AGAINST

Trish Godman (West Renfrewshire) (Lab)
Dr Sylvia Jackson (Stirling) (Lab)
Johann Lamont (Glasgow Pollok) (Lab)
Mr Michael McMahon (Hamilton North and Bellshill) (Lab)
Bristow Muldoon (Livingston) (Lab)

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

I use my casting vote against amendment 55.

Amendment 55 disagreed to.

Amendment 56 not moved.

Amendments 22 to 30 moved—[Mr McAveety]—and agreed to.

The Convener: We now come to amendment 57, which is grouped with amendment 58, in the name of Sylvia Jackson.

Amendment 57 not moved.

Dr Jackson: Amendment 58 relates to guidance that should be given to councils when a councillor or officer is suspended. It seeks consultation with appropriate associations of councils and relevant professional associations in the issuing of that guidance.

I move amendment 58.

Mr McAveety: I am not unsympathetic to what Dr Jackson says. There should be appropriate consultation with public bodies and I would like to indicate at stage 3 how we would give guidance on that. At that stage we can consider whether it would be appropriate to enshrine guidance in the bill or whether we should include it in the guidance notes the commissioner submits to local authorities and public bodies.

Dr Jackson: I take that as a reassurance that the appropriate associations and professional bodies will be consulted.

Mr McAveety: Yes. Absolutely.

The Convener: Do you want to withdraw amendment 58?

Dr Jackson: No.

Amendment 58 agreed to.

Section 18, as amended, agreed to.

The Convener: We do not intend to go beyond section 18 today. Thank you very much for coming, minister. No doubt we will see you next week. I am sorry that I did not mention Donald Gorrie at the beginning.

Thank you all for your attention and patience. Next week, we will be much more au fait with the procedure. I thank the officials for their help.

Meeting closed at 16:09.

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