

LOCAL GOVERNMENT COMMITTEE

Tuesday 23 May 2000
(*Morning*)

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LOCAL GOVERNMENT COMMITTEE **17th Meeting 2000, Session 1**

CONVENER

*Trish Godman (West Renfrew shire) (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 Local Government)

CLERK TEAM LEADER

Eugene Windsor

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Craig Harper

LOCATION

The Festival Theatre

Scottish Parliament

Local Government Committee

Tuesday 23 May 2000

(Morning)

[THE CONVENER *opened the meeting at 10:08*]

The Convener (Trish Godman): Comrades, we will start now because we are running late.

If you have a mobile phone, please switch it off because it affects the sound system.

Mr Kenneth Gibson (Glasgow) (SNP): What about Colin Campbell's pacemaker?

The Convener: Well, there's a thing. Can you switch it off, Colin?

Mr Gibson: A few of us would like to.

Colin Campbell (West of Scotland) (SNP): That is agist.

The Convener: Is the committee prepared to take items 3 and 4 in private? Item 3 is the report on the budget and item 4 is a discussion, which Kenny Gibson asked for, on restructuring the committees. We usually take draft reports in private. I know that members are not happy to take items in private. Are we agreed to take those items in private?

Members indicated agreement.

Bristow Muldoon (Livingston) (Lab): I had been asked to be a reporter to the Social Inclusion, Housing and Voluntary Sector Committee in relation to its views on the budget process. It is taking evidence from the minister on the budget process today and will discuss those matters. I am here because we are debating the Ethical Standards in Public Life etc (Scotland) Bill, so I advise the committee that I will not be able to attend that meeting of the Social Inclusion, Housing and Voluntary Sector Committee today.

Mr Gibson: I am in a similar position. I was hoping to take evidence from the Transport and the Environment Committee, but I cannot do so, because the two committee meetings clash.

The Convener: We will deal with those matters when we discuss the report.

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

The Convener: Before we continue our consideration of the Ethical Standards in Public Life etc (Scotland) Bill, I will reiterate some of the principles that I outlined last week.

Members need to have in front of them the bill, the groupings list and the marshalled list. It is important for members to check which group an amendment is in if they wish to speak on it. An amendment is called, other amendments are part of that group and that is when they are debated. You cannot take part in a debate on an amendment if you miss it, even if it is called some time later. You must keep your eye on which amendments are being debated. Only the first amendment in the group will be moved by the proposer. Other amendments in the group will be moved by their proposer when I call them.

I call the first amendment and it is debated along with the others in its group. The order of debate will normally be the proposer or the minister, followed by the minister, if he was not the proposer, then any other proposer of amendments in the group and anyone else, after which the minister or proposer will close formally.

If the member does not wish to proceed with an amendment, they should say that it is not moved when it is called. If they decide not to move an amendment, any other member can move the same amendment if they want it to be debated. Amendments can be withdrawn only once they have been moved and with the agreement of the committee. If the committee does not agree, there is a division.

We will wait for the minister.

Johann Lamont (Glasgow Pollok) (Lab): This is like one of those plays on the fringe when they do not say anything for the first fifteen minutes, they just move the props about.

The Convener: Now that the minister and his officials have moved their props about, we can get going.

The Deputy Minister for Local Government (Mr Frank McAveety): We are in a theatre.

The Convener: Good morning to the minister and his colleagues who are here this morning. We have had our preamble, so we will start now.

After section 18

The Convener: I call amendment 77, which is on its own, and ask Kenny Gibson to move it.

Mr Gibson: This amendment is self-explanatory. If someone is likely to be

investigated, it is important that the rules of procedure of that investigation and the range of available sanctions that could be imposed upon them are made clear to the individual.

I move amendment 77.

Mr McAveety: As we are in a theatre I do not know whether I should give the committee some Brechtian responses this morning rather than anything else. That is why movement was more important for the civil servants than words.

In response to Kenny Gibson's comments, it is important that the commission's workings are widely known. As I said last week, that would be more appropriately dealt with in general guidance notes to indicate how the procedure operates rather than having it enshrined in the bill. This amendment would introduce a level of inflexibility that does not need to be there.

This is about ensuring that the general guidance notes and procedures, together with information on the sanctions, would be available in the guidance that we would give to local authorities and public bodies. It would therefore be inappropriate to support the amendment.

Bristow Muldoon: The committee in its report was concerned that anyone facing any form of disciplinary action should have conveyed to them the rules of procedure that they would be adjudicated against. I do not think that it is unreasonable that we put a requirement on the standards commission to put such information in the hands of someone faced with any form of disciplinary action. That would be standard procedure in relation to disciplinary action in any other workplace. I cannot see that it would introduce inflexibility into the bill. If anything, it puts good practice into the bill, as it advises people of the form that the hearings will take and also the range of sanctions that may be applied to them.

Donald Gorrie (Central Scotland) (LD): I support that argument. I would have thought that, especially with the European convention on human rights bearing down on us, it is important that justice is seen to be done. It is therefore important that those rules should be on the face of the bill and not tucked away in guidelines, as those could be changed by a subsequent Government, which may be less benevolently disposed than the present Executive. As Bristow Muldoon said, those two procedures are standard in any civilised organisation so they should appear in this bill.

10:15

Mr Gibson: I am baffled by Frank McAveety's comments and pleased at the support from Bristow Muldoon and Donald Gorrie. Bristow

spoke very well on this issue in the parliamentary debate. As has been said, this is fairly straightforward. It is important that people are aware of what they are facing, and I do not think that the guidelines fully address that issue. We are not asking for the rules of procedure to be specified in the bill, but the rules of procedure and the range of available sanctions should be known to the individual concerned.

Amendment 77 agreed to.

Section 19—Interim reports on investigations and action thereon

The Convener: I call amendment 137, which is in the name of Donald Gorrie. Amendment 137 is grouped with amendments 59 and 60, which are both in the name of the minister, and with amendment 138, in the name of Donald Gorrie, amendment 61, in the name of the minister, amendment 139, in the name of Sylvia Jackson and amendment 62, in the name of the minister.

I will put the question on amendment 137 first following debate. I point out to members that if that amendment is agreed to, amendments 59 and 60 cannot be called, as they will be pre-empted.

Donald Gorrie: Amendment 137 should be read with amendment 138, which I shall move separately when we reach it.

The objective of both amendments is to remove the suspension of a councillor or other person as an effect of an interim report. The amendments accept the idea of an interim report, but they remove those parts of section 19 that deal with suspension. Following discussion in committee, the general feeling was that it was unreasonable to suspend someone until they were finally found guilty, as it were, and that an interim report was not a fair basis on which to suspend a councillor or other person. A related point is dealt with in the amendments on the pay of the councillor in question.

As I understand it, we may fall foul of the European convention on human rights if the present provisions of the bill are allowed to remain in place. I have no doubt that officials have advised the Executive on that point, but we seem to be falling into a number of traps as a result of the ECHR. The bill appears to me to breach the principle that someone is innocent until they are found guilty, as the use of interim suspension indicates that they have been found possibly guilty and therefore they are suspended. The overall effect of that is to find them guilty. If, ultimately, they are found not guilty, the stigma of guilt will stay with them, as people will remember that councillor X or official X was suspended for so long. They will assume that he or she had committed some great offence. It is more

reasonable and more just to allow interim reports, but we should not allow those reports to effect a suspension of a councillor or a member of a board.

I move amendment 137.

Mr McAveety: Section 19 deals with interim reports on investigations by the chief investigating officer, and amendment 59 sets out the rationale for imposing an interim suspension. I disagree with Donald Gorrie's analysis of the situation because, on occasion, someone remaining in a particular post might hinder the investigation. For example, if the complaint is about housing allocation and the individual concerned has a significant role in housing allocation or is a member of a committee that deals with that area, public confidence could be damaged by that individual remaining in his or her post pending inquiry. The amendment makes the matter more clear—it is not a policy change.

The Executive listened to the comments made in the committee on the period of suspension, and we wish to reduce the period from six months to three months. That reinforces the arguments that have been made about the swiftness of the investigation. While the purpose of Donald Gorrie's amendments 137 and 138 is to remove the sanction of interim suspension, including amendment 59 in the bill will make the rationale behind interim suspension more clear.

We have tried to take on board concerns that were raised about the speed of the investigation process by other bodies during the consultation period. On that basis, I recommend to members that they should not accept Donald Gorrie's amendments.

Mr Gil Paterson (Central Scotland) (SNP): I support Donald Gorrie's amendments. Having been an employer of a fair number of staff, I have never gone in for suspension, and I certainly would not consider interim suspension as a good way of dealing with complaints that arise regularly.

I do not agree with the minister's comments about individuals remaining in post during the investigation. I see that there might be a problem in situations such as housing allocation, which was a good example, but it would be possible to move an individual away from that area of work and to give them other duties. That is the way in which I handled such situations when I employed people, and a local authority employer could also do that.

Like Donald Gorrie, I think that imposing an interim suspension on someone is almost like finding them guilty. I have only ever suspended two people, whom I witnessed boxing like Mike Tyson. They were suspended without pay for one week—that is the only time I remember taking such action. I do not go for suspension at all. I prefer to take direct action after a full investigation.

Johann Lamont: People are suspended pending investigation in other walks of life following, for example, a complaint of sexual harassment, bullying or other inappropriate behaviour in the workplace, when it would cause an unacceptable level of distress for a person to remain in post. In education, for example, suspension is not an indication that the person suspended is guilty. If a parent complains about the way in which a teacher has behaved, suspension protects the teacher as much as anyone else, and one would hope that the subsequent investigation would be pursued quickly. We cannot afford to deal with the situation in the way proposed by Donald Gorrie.

Gil Paterson suggested moving someone into another job, but a person could say, "No, I'm not moving, because that implies that you think I'm guilty." In serious circumstances, it is reasonable to use the option of suspension. However, it should be made clear that such action does not establish someone's guilt; rather it indicates that the matter is so serious that it merits investigation. Suspension is an appropriate way in which to deal with the situation without being judgmental; it maintains good order and minimises the distress of all involved.

Dr Sylvia Jackson (Stirling) (Lab): Am I right in thinking that I can address amendment 139 at this point?

The Convener: Yes.

Dr Jackson: My amendment addresses the issue of interim suspension and what happens during elections. It is argued that the standards commission could consider a case after an election and could reimpose an interim suspension. However, it could also be argued that there is still a case to be made following an election. Amendment 139 addresses that issue.

Bristow Muldoon: We should reject Donald Gorrie's amendment, which Gil Paterson also spoke to, on the basis of Johann Lamont's argument. The use of interim suspension is not unusual in organisations when codes have been breached seriously. The power to impose an interim suspension should be used sparingly, but it is not inconsistent with the aim of bringing local authorities and other public bodies into line with many other organisations.

I welcome the fact that the Executive has moved its position and now proposes to reduce the length of time that an interim suspension can last from six months to three months. That will lessen concerns about the length of time for which an issue could hang over someone's head. It is important to stress that the use of interim suspension does not indicate that someone is guilty of an offence. As Johann Lamont said, imposing such action

indicates that a serious matter is being investigated. It also removes the possibility of a recurrence of the offence, if it is found at a later stage that an offence has been committed under the code. If there was no power of interim suspension, a public body or a local authority could be left open to claims of negligence by employees who were harmed if reoffending took place in the period between the commission being advised of the offence and the conclusion of the investigation. That would bring the organisation into disrepute.

Mr Gibson: I agree with Bristow Muldoon and Johann Lamont. It is important that we have the measure in place.

I do not agree with Sylvia Jackson's amendment. If it were approved, it would be possible for a member—who might be popular locally, but still suspect—to call a by-election and be re-elected by voters who were not fully apprised of the situation. Voters might give their support because the individual is a hard-working local member, or because they support the member's political party—if the party re-endorsed the member. If a member were facing investigation, it would set a dangerous precedent if the suspension were terminated by a successful by-election, or by the member's re-election.

I oppose both the amendments.

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): Amendment 139 reads, simply:

"In section 19, page 9, line 3, leave out subsection (7)".

If subsection (7) were left out, subsections (8), (9) and (10), which are consequential, would also have to be left out. There seems to be a technical problem. If those other subsections remained, the bill would contain sanctions that were consequential on something that had been removed.

The Convener: Would you like to sum up, Donald?

Donald Gorrie: On Sylvia Jackson's amendment, Kenny Gibson's point about by-elections does not stand. The phraseology is:

"the next following ordinary election of councillors",

which rules out a crafty by-election.

On amendment 137, in my name, and Executive amendment 59, I suppose the fact that the Executive has moved a bit is welcome; snails are better than monoliths. I do not see that the person being in office would prejudice the investigation. With respect, the minister led us down a false cul-de-sac when he talked about somebody who was in charge of housing allocations. That is not the sort of person we are talking about; we are talking about councillors or board members who are not

in charge of anything in that sense, so the minister's example does not apply. The councillor in question may be chairman of the housing committee, but I do not see how, if he or she were to continue in office while a proper investigation were under way, that continuance in office would prejudice temporarily such investigation.

10:30

We heard the argument that lots of other people have suspensions. Teachers were used as an example. Under the present system, once an allegation has been made against a teacher, he or she is suspended and it is quite clear that nobody is taking a position on whether they are guilty or innocent.

Under the proposal in the bill, there would be an interim report from the commission, which would have studied the matter, so we would not be starting from scratch and suspending the person when the allegation was made. Instead, we would be saying, "We have looked at this, we think there is a case against this person, and he or she should be suspended." That is quite different. In effect, we would be saying, "We really think this person is guilty; we have not yet managed to prove it, but we will do so in due course." That would be damaging to the person and extremely unfair.

The arguments that have been advanced on the other side do not stand up. The proposal is unjust and we will find that it does not satisfy our European friends. Members should support my amendment.

The Convener: The question is, that amendment 137 be agreed. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Donald Gorrie (Central Scotland) (LD)
Mr Keith Harding (Mid Scotland and Fife) (Con)
Mr Gil Paterson (Central Scotland) (SNP)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

AGAINST

Colin Campbell (West of Scotland) (SNP)
Mr Kenneth Gibson (Glasgow) (SNP)
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 4, Against 7, Abstentions 0.

Amendment 137 disagreed to.

Amendments 59 and 60 moved—[Mr McAveety]—and agreed to.

The Convener: Amendment 138 has been debated with amendment 137. If amendment 138 is agreed, amendments 61, 139 and 62 will fall.

Amendment 138 not moved.

Amendment 61 moved—[Mr McAveety]—and agreed to.

Amendment 139 not moved.

Amendment 62 moved—[Mr McAveety]—and agreed to.

The Convener: Amendment 140 is in a group on its own.

Mr Paterson: Amendment 140 concerns a matter that we know very well; we have discussed it at great length in the chamber and in the committee. The purpose of the amendment is to bring councillors in line with practice in private industry, whereby suspension is usually on the basis of full pay until any investigation has been concluded.

Many councillors, in particular those who have responsibility payments, are full-time and have no other way of generating income. If they were suspended, on an interim basis or otherwise, their livelihood would, in effect, be taken away. We should treat them equally, as happens in private industry. The amendment would ensure that people who do great public service, almost every day of their lives, are not mistreated by the Executive or the Parliament.

I move amendment 140.

Mr McAveety: We do not accept Gil Paterson's amendment, for several reasons. First, the basic allowance would still be provided for councillors; the special responsibility allowance is dependent on the councillor carrying out the duties of the post. The second big issue concerns the legislative process. The Kerley report will make recommendations that will be considered by the Local Government Committee and the Parliament in due course. The Kerley committee is examining the allowance structure and may well recommend a move away from the current SRA position, as we understand it, in many Scottish authorities.

The Convention of Scottish Local Authorities has had a number of concerns, but it supports the Executive's position as outlined in the bill on the impact of a period of suspension on a councillor's allowance. On that basis, we recommend that the committee does not accept Gil Paterson's amendment.

Colin Campbell: As Gil said, people in the private sector retain their whole salary when they are suspended. The same applies in the public sector and in education, where, in a previous life, if I had suspended Frank McAveety—had we been in the same building—he would have retained his

full pay, regardless of his rank or responsibilities. It is even-handed and reasonable for us to apply the same rules to councillors. To partition their money between basic salary and a responsibility payment is artificial. People who are suspended should not be punished in the period before a decision is made.

Johann Lamont: The difficulty is that the allowances system makes precisely that partition and is defined on the basis of special responsibility. If people are not carrying out that special responsibility, technically they are not entitled to the money. The allowance is not a salary. I am happy that the Kerley committee is fully discussing allowances. Although we do not want people who have done nothing wrong to be punished, the technicalities remain.

Because of the rather strange hybrid nature of the allowances system, a suspended councillor would keep their basic allowance but, as they were not carrying out the special responsibilities, would not be entitled to the special responsibility allowance. That creates a difficulty for us. We would want to tell those who are affected that we want to consider the allowances system and proper remuneration for councillors and that we are not looking to create problems for them. I am anxious that this matter should be progressed fairly quickly, so that these anomalies do not arise.

Donald Gorrie: I would like to counter what I think have been false arguments against Gil Paterson's amendment. The proposition that we should not accept the amendment because we are waiting for Kerley is a complete nonsense. Whatever system of pay or allowances Kerley produces will fit in with the proposal; what we are saying is that the councillor should not lose his or her allowances, so in this context Kerley is an irrelevance.

The point was made that if a person is not carrying out the duty, they should not receive the pay. That does not apply to schoolteachers, as Colin Campbell said, or to local government officials. If a director of housing and a chairman of a housing committee are involved in some evil machination and are suspended, the director will receive his pay and the councillor will not. The argument that the person is not doing the job and so should not get the money is, with all due respect, simply not correct.

As I understand it, the Executive's position is that there is a difference between allowances and salary. That really annoys me. If the money was in the form of salary, there would be no question but that the person would continue to receive it. No one can tell me that a councillor who gets £10,000, £20,000 or £30,000, as many of them do in senior positions, is not receiving a salary—it is a trick of language to say that that is an allowance.

This is a historical accident. The money is a salary. As Gil Paterson said, the person works full time at their job and for them to be treated quite differently from everyone else who receives a salary is totally unjust. The amendment is very good and should be supported.

Mr McMahon: This might not be the strongest argument, but I want to raise the issue of being paid for what you do. The salary of a person who works in industry may on occasions depend on overtime, bonuses or commission. If that person does not do that overtime or earn that commission, they are not paid for it. We must draw the distinction between what is additional to a basic allowance and what is paid because of what the person actually does.

I am glad that Donald Gorrie used the phrase "his or her" entitlement. Some local authorities have found it difficult to get women on to the council. We should not enshrine in legislation that the allowance is only "his" entitlement.

Mr Gibson: I am surprised that some committee members seem to be retreating on this issue, on which I thought we were fairly united. Donald Gorrie, Gil Paterson and Colin Campbell have hit the nail on the head. Colin used the analogy of a principal teacher. If a principal teacher was suspended, of course they would not be doing their job but they would still have their full salary. The example that Donald cited of the housing convener and housing director is also accurate.

I reject what Michael McMahon has said. Everyone is in the position that he described, not just some people. Johann Lamont said that this matter is a technical point, but we do not think that it should be treated as such. Conveners and sub-conveners see the allowance as a basic part of their salary.

As Donald said, we do not know what Kerley will recommend. The minister may have had a preview, but we certainly have not, and we do not know what aspects of the report will be agreed to. To reject the amendment on the basis of Kerley is spurious. Like Donald, I support Gil's well-written amendment.

Bristow Muldoon: The amendment is an attempt to deliver something that the committee drew to the minister's attention. The committee's report on the bill records the fact that the minister recognised at an early stage that there was a point to be dealt with and pledged to bring forward a workable scheme to cover the eventuality of someone who had been suspended and lost income subsequently being found not guilty of breaching the code.

It is widely recognised that the system of payments for councillors is archaic—that is what Kerley is dealing with. However, even if Kerley

reports shortly, it is unlikely that any of the recommendations will result in legislation this year—it could take a year or two before any legislation follows on from the report. We do not want to leave councillors in a position where, if they are subject to serious malevolent complaints and are suspended, they could lose their sole source of income. If they are in a senior position in the council, they and their families could be left in considerable financial distress, despite the fact that they had not committed an offence. That is a breach of natural justice.

The amendment has much merit. The minister pledged to introduce a workable scheme, so I hope that he will respond positively.

Mr Keith Harding (Mid Scotland and Fife) (Con): I support much of what has been said. We have to be realistic in this day and age. We are talking about nearly two thirds of the income of many councillors. How will they pay their mortgages and everyday living expenses if we do not accept the amendment? It would be totally unfair not to pay them. A teacher is paid for doing a specific job with specific responsibilities. The allowance is part of a councillor's pay—we must be realistic.

The Convener: Frank, do you want to add anything?

Mr McAveety: Yes, on a number of issues. No one has mentioned what the electorate might think if someone is suspended and still receives payment for duties that they are not carrying out. If the administration puts a replacement in, that person will either be paid for carrying out their duties or not be paid for carrying out their duties. I can imagine the political stushies and newspaper headlines locally about double payment for one job. We need to tread warily on this issue.

Bristow Muldoon spoke about recognising the impact that stopping payment of the additional income—the SRA—would have on folk. There are complications in talking about compensation—for example, where would you draw the line in making good any loss of earnings? However, we will certainly consider that issue.

I want to disabuse people of false notions arising from what Donald Gorrie said. I used to run a local authority. The overall sum for running that authority was £24,000, not £30,000—I was nowhere near earning that amount of money and I would like to find any council leader in Scotland who is.

The SRA increased only after reorganisation. Before that, there were substantial discrepancies in how payments were made for additional duties. Some people have argued that some of those payments were made on a rather flexible understanding of what additional duties meant.

That is why we want Kerley to address this issue. I should add that suspensions are made only at the discretion of the CIO.

10:45

If I were still in my previous position and my income was as dependent on allowances as has been claimed in some speeches this morning, that would concentrate my mind and I would ensure that I did not find myself in any complicated situations that could lead to conflict. The debate should take real cases into account. In real cases in the past, would we have gone for interim suspension? That is worth considering.

Mr Paterson: We all know that we get councillors on the cheap: when you consider their responsibilities, the money they get is buttons. It is quite wrong to punish someone who is innocent by taking their only income away from them. In every council in the land, a substantial number of councillors are full-time. It is time that we recognised that and treated them fairly. This committee and the Parliament should send the message that councillors are held in high esteem.

Amendment 140 tells councillors that they are regarded—and that they will be treated—just the same as anyone working in industry. The amendment is squaring the circle with regard to people who have been badly treated. Not that long ago, someone had serious complaints made against him that turned out to be a load of nonsense. By having complaints made against him—and it was a man—he was punished, first by the media and then by losing income. We have to address that sort of situation.

I agree with Frank McAveety that we should not worry about the baying animals that flock to any situation in which someone is suspended and someone else has to take over the responsibility, but that is just like what happens in private industry: if someone is suspended, someone else has to do the work. Why should we treat councillors any differently?

Amendment 140 agreed to.

Section 19, as amended, agreed to.

After section 19

The Convener: We now come to amendment 141. I ask the minister to speak to the amendment and to move it.

Mr McAveety: Amendment 141 has been lodged to meet the commitment, given by the Executive, on provisions for the right of appeal against decisions of the commission. With the exception of Crown appointees, the right of appeal covers all decisions taken by the commission, including interim suspension of a councillor or

member of a public body and sanctions imposed when a person is found to have breached the relevant code.

In the case of final determinations, it is proposed that an appeal should be available when the commission's finding was based on an error of law; when there has been procedural impropriety in the conduct of the commission's hearing; when the commission has acted unreasonably in the exercise of its discretion; or when the commission's finding was not supported by the facts found to be proved by the commission. That reflects established practice in relation to appeals from administrative tribunals and the courts in civil matters.

Decisions on interim suspension will proceed on the basis of an interim report by the CIO and the person affected will be given the opportunity to make representations. The circumstances in which interim suspension would be imposed are such that immediate action is necessary if it is to be effective. In cases of interim suspension an appeal will be available where the commission's decision was unreasonable.

I move amendment 141.

Bristow Muldoon: The committee should put on record its welcome for this Executive amendment. The minister gave a commitment at stage 1 to introduce such an amendment, so this shows the effective way in which the committee system can work in partnership with the Executive to improve legislation.

Mr McAveety: The snail has accelerated.

Mr Harding: Give him a job.

The Convener: Minister, do you wish to say anything else?

Mr Gibson: Apart from, "Thanks, Bristow."

Mr McAveety: Can I put on record my appreciation of those comments? Thanks, Bristow.

A number of issues have been raised in debates in this committee; this is one of the ones on which we listened carefully to the suggestions of the committee and felt that they were appropriate.

Mr Gibson: Shucks.

Amendment 141 agreed to.

The Convener: Amendment 125 is also on its own. I call the minister to move it.

Mr McAveety: Amendment 125 provides special provision for enforcement and suspension in the case of Crown appointments. At the moment, section 18, which deals with action on finding of contravention, section 19(2), on the imposing of sanctions, and the appeals provisions, do not apply to Crown appointees. The sanction or

suspension that can be recommended in the case of Crown appointees reflects those that can be imposed on a councillor or member of a devolved public body.

I move amendment 125.

Amendment 125 agreed to.

The Convener: Amendment 126 is grouped with amendments 128 and 69. I call the minister to move amendment 126.

Mr McAveety: Amendment 126 makes special provision for enforcement and suspension in the case of employees and ex-officio members of devolved public bodies. At the moment, sections 15 to 19—on action on receipt of CIO reports, commission hearings, findings of hearings, action on finding of contravention, and interim reports on investigations—and the appeals provisions do not apply to those persons.

I move amendment 126.

Amendment 126 agreed to.

Section 20—Special provision for the Water Industry Commissioner

The Convener: I call the minister to move amendment 64, which was debated on day 1 with the group of amendments—all lodged by the minister—containing amendment 75.

Mr McAveety: I have a long speaking note but I will be delighted to move amendment 64 formally.

Amendment 64 moved—[Mr McAveety]—and agreed to.

Amendments 76 and 65 to 68 moved—[Mr McAveety]—and agreed to.

Section 20, as amended, agreed to.

After section 20

The Convener: Amendment 127 is on its own. I call the minister to move it.

Mr McAveety: Formally moved.

The Convener: Do you not want to speak to it, Frank?

Mr McAveety: All I have down here on my paper is for me to move it formally.

The Convener: Far be it from you to have a mind of your own and say something.

Amendment 127 agreed to.

Mr McAveety: You see? If I do not speak, everybody agrees with me. We have worked it out.

Section 21 agreed to.

Section 22—Definitions

Amendment 128 moved—[Mr McAveety]—and agreed to.

Mr Harding: As the points in my amendment have been addressed by amendment 128, I will not move it.

Amendment 69 not moved.

Section 22, as amended, agreed to.

Schedule 3

DEVOLVED PUBLIC BODIES

The Convener: We now come to schedule 3. Amendment 31, in the name of the minister, is grouped with all the other amendments to schedule 3, which are in the names of the minister, Kenneth Gibson and Keith Harding.

Mr McAveety: Amendments 31, 33 and 34 insert into schedule 3 the three Scottish bodies whose membership consists entirely of Crown appointees. Those bodies were excluded from the bill while we consulted Her Majesty. Members will recall that those bodies were included in the draft bill for consultation.

Amendment 32 applies the bill to the Health Technology Board for Scotland by including that body in schedule 3. The board fits the criteria for application of the bill in that it is an Executive devolved public body whose members are appointed by ministers.

I move amendment 31.

Mr Gibson: My amendments ensure that all devolved public bodies are included in the bill, as the committee discussed. A number were included, but a number were excluded. We support the minister's amendments, which we would have lodged if the minister had not got there first.

Mr Harding: I have nothing to add to that. My amendments serve to tidy up the bill and to ensure that it covers everyone in public life.

Johann Lamont: This did not strike me until I saw the amendments, but I think that the bill should contain a definition of a public body. That would mean that anything that came within that definition would be included; it would prevent a body not being included because it was accidentally left off our list. I do not know why the bill was not drafted in that way, which would have been more logical.

11:00

Mr McMahon: I am not convinced that all the bodies mentioned are particularly relevant to the bill. Some of the bodies do not spend public

money; they are advisory bodies that take decisions on best practice and so on in relation to specific issues. They are not public bodies in the same sense that the other ones are. I wonder what criteria were used for determining which bodies to include.

Bristow Muldoon: I agree with the principle of including all public bodies. I ask the minister whether the Executive would be comfortable supporting the inclusion of some of the bodies. Do any legislative difficulties arise? A question has been raised about whether local enterprise companies would have a problem in relation to their duties under the Companies Act 1989. I do not think that the Scottish Enterprise representative who talked to us on the matter convinced us. Is there any legislative conflict in relation to industrial and provident societies, such as many housing associations? I do not think that we have fully explored these issues yet. We have taken no evidence from housing associations on what they think about their inclusion in the bill.

Donald Gorrie: Some groups might have been left out, but the list seems to be a good attempt to cover what are, in common parlance, quangos. The bodies spend public money or advise on the spending of public money. They have an impact on people's lives in the same way that a councillor does and the argument is that they should be treated in the same way.

Johann may have made a good point about the need for a definition but, in the absence of one, the bill will include a long list. Kenny Gibson and others thought that the list should be more comprehensive. We should support his amendments. The list can be tidied up at stage 3, if necessary.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I share the concerns of other members. Why should Highlands and Islands Airports Ltd be included but not Inverness Harbour Trust? That is woolly.

I would like to hear people's thoughts about the definition of spending bodies and non-spending bodies. Moreover, there are other public bodies that do not lie at the hand of the Scottish Executive. Each lord lieutenancy has a committee called a justice's advisory committee. Those committees work behind the scenes in the appointment of justices of the peace. They also appoint the general commissioners of the Inland Revenue. The general commissioners and the JPs have certain powers. How would that situation be affected by the bill? If the bill omits something, we could face a problem. I would support the inclusion in the bill of some indication of what a public body is. For instance, the Inland Revenue affects everyone's life and should be included.

Dr Jackson: I support what Jamie and Johann have said. I am uneasy about simply having a list. We need categorisation and definition. We should return to this at stage 3.

Mr McMahon: I would like to clarify my previous question. It might help if I gave a more specific example. Can someone tell me why the advisory committee on Scotland's travelling people, which is a collection of councillors and experts and which advises the Scottish Executive, falls under the remit of the bill? If someone can explain that to me, I might support the inclusion of all the bodies listed.

Let us have some explanation of why one group on the list is pertinent and others are not in relation to ethical standards in public life. What is the make-up of the bodies? Some of the people on them could be academics. There are no criteria for who should make up the advisory committee on Scotland's travelling people, for example, so how do we know that it would fit the remit of the bill?

Mr Gibson: We have tried to include all known devolved public bodies, as listed by the Scottish Parliament information centre. The minister should explain why some bodies are not included. For example, the Scottish Tourist Board is on the list, but area tourist boards are not. The Scottish Qualifications Authority is on the list, but the General Teaching Council for Scotland is not. I understand the points that are being made, but I think that we should err on the side of caution and ensure that all devolved public bodies are included, because there appear to be some anomalies. The Scottish Medical Practices Committee, constituted under section 3 of the National Health Service (Scotland) Act 1978, is included, but the Health Appointments Advisory Committee is not and nor is the Health Technology Board for Scotland.

I would like to achieve some consistency. I fully accept what Johann Lamont has said; perhaps there should be a definition of devolved public bodies. However, as there is already a list under schedule 3, I thought it appropriate to go into the subject. The bodies that the minister has added to the schedule are the ones that we intended to add anyway. I am taking a belt-and-braces approach to ensure that we do not end up with two sets of devolved organisations, some of which are covered by the bill and some of which are not. I want a further catch-all provision so that all organisations are included.

Mr McAveety: The Executive appreciates the positive elements of the committee's considerations and report. We would like to include in the remit of the Ethical Standards in Public Life etc (Scotland) Bill area tourist boards and the boards of further education colleges. We are committed to doing that—at stage 3, I shall

introduce amendments to bring those organisations within the scope of the bill.

The issue of LECs is slightly more complex. I am not disinclined to consider that they should be included in the bill. That is part of the evolving debate that we have been having. There is a question of legislative competence in terms of where the Scotland Act 1998 lies in relation to the Companies Act 1989, but I am happy to try to bring that forward. I understand that the committee would like LECs and other bodies to be covered by the bill.

We undertook a consultation process to inform the bodies in the original list that the bill was being introduced. We may have to address some of the issues raised by members to find out how those organisations fit in with the scope of the bill and whether it is appropriate to include them. That is a matter to consider and reflect on over a period of time. We can bring forward amendments in secondary legislation or even review the list as new bodies are created.

There may be undefined areas. As Johann Lamont said, there should be definitions. Just as economists have difficulty in defining the economy, five lawyers deciding on a definition of a public body might come up with five different statements. As politicians, we have to come to a conclusion about such definitions. It is a complex matter, but our debate has shown that we are trying to make progress on the issue and embrace a wider definition of public bodies. Tourist boards and FE college boards will be added to the list. We shall consider LECs, but we must determine how that will impact on the Scotland Act 1998. As the minister, I must explore our legislative competence in that area.

Johann Lamont: Minister, you seem to be saying that it is not possible to include a definition of a public body at stage 3. Will you comment on the bodies that we should exclude at this stage on the basis that we are not sure whether they have been consulted? Will you guarantee that you will provide a commentary on the appropriateness or otherwise of those bodies being included at a later stage when you have done whatever you need to do before stage 3? My anxiety is that, if we vote the amendments down now, there will be no possibility of including those bodies later.

Mr McAveety: My officer, Trudi Sharp, informs me that it would be impossible to do that in the time available between now and stage 3. However, we could consider those bodies in a review process and I can guarantee that that could be done by secondary legislation.

The Convener: What is the time scale for that?

Mr McAveety: It would be between four and six months. I do not know whether that is helpful, but

this area is grey rather than black and white.

Amendment 31 agreed to.

The Convener: We come to amendment 78, which has already been debated with amendment 31.

Amendment 78 moved—[Mr Gibson].

The Convener: The question is, that amendment 78 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)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

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 6, Against 5, Abstentions 0.

Amendment 78 agreed to.

Amendment 79 moved—[Mr Gibson].

The Convener: The question is, that amendment 79 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)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

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 6, Against 5, Abstentions 0.

Amendment 79 agreed to.

Amendments 80 to 82 moved—[Mr Gibson]—and agreed to.

Amendment 129 moved—[Mr Harding]—and agreed to.

Amendments 83 and 84 moved—[Mr Gibson]—and agreed to.

Amendment 142 moved—[Mr Harding]—and agreed to.

Amendment 130 moved—[Mr Harding]—and agreed to.

Amendment 85 moved—[Mr Gibson]—and agreed to.

Amendment 70 moved—[Mr Harding]—and agreed to.

Amendments 86 to 88 moved—[Mr Gibson]—and agreed to.

Amendment 32 moved—[Mr McAveety]—and agreed to.

Amendment 131 moved—[Mr Harding]—and agreed to.

Amendment 33 moved—[Mr McAveety]—and agreed to.

Amendments 89 to 94 moved—[Mr Gibson]—and agreed to.

11:15

The Convener: Amendment 95 has already been debated with amendment 31. I ask Kenny Gibson to move amendment 95 formally.

Bristow Muldoon: Is amendment 95 not more or less the same as amendment 130, which has been agreed to? Would we not be covering the same ground?

The Convener: Yes, so you do not have to move it, Kenny; it is up to you. If I may say so, Keith Harding's amendment is slightly broader than yours—it contains extra words—but they amount to much the same thing.

Mr Gibson: They are more or less the same amendment, so I am happy not to press mine.

Amendment 95 not moved.

The Convener: I have had word from the Executive that it would be happy for me to move the rest of this group of amendments en bloc. Will you agree to that?

Mr McAveety: I was enjoying the process. [Laughter.]

Mr Gibson: My mind was starting to wander.

Bristow Muldoon: There is an amendment that I had intended to vote against, on the basis that the Executive had advised us that it could give rise to a problem in relation to devolution. I would like clarification on that before I accept the amendment.

The Convener: Is it amendment 71, on the local

enterprise companies?

Bristow Muldoon: Yes.

Mr Harding: In evidence that was given to us by Scottish Enterprise, we were told that there was no constitutional reason for not including LECs in the scope of the bill.

The Convener: If amendment 71, which we debated with amendment 31, is giving us problems, I am prepared to call it first and call the rest en bloc.

Amendment 71 moved—[Mr Harding].

The Convener: The question is, that amendment 71 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)
Trish Godman (West Renfrewshire) (Lab)
Donald Gorrie (Central Scotland) (LD)
Mr Keith Harding (Mid Scotland and Fife) (Con)
Dr Sylvia Jackson (Stirling) (Lab)
Johann Lamont (Glasgow Pollok) (Lab)
Mr Gil Paterson (Central Scotland) (SNP)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

AGAINST

Bristow Muldoon (Livingston) (Lab)

ABSTENTION

Mr Michael McMahon (Hamilton North and Bellshill) (Lab)

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

Amendment 71 agreed to.

Amendments 96 to 104, 72, 105 to 108, 132, 109, 143, 110, 111, 34, 112 to 118, 134, 120, 119 and 121 moved—[Trish Godman]—and agreed to.

Schedule 3, as amended, agreed to.

Section 23—Effect of this Act on existing members of devolved public bodies

The Convener: We come now to amendment 73.

Mr McAveety: This is a drafting amendment, designed to clarify section 23(1), which deals with the effects of the bill on existing members of devolved public bodies.

I move amendment 73.

Amendment 73 agreed to.

Section 23, as amended, agreed to.

Section 24 agreed to.

The Convener: Thank you, comrades. I thank the minister for coming along.

11:26

Meeting adjourned.

11:47

Meeting resumed in private until 12:37.

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