

LOCAL GOVERNMENT COMMITTEE

Tuesday 30 May 2000
(*Afternoon*)

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CONTENTS

Tuesday 30 May 2000

	Col.
PETITIONS	965
ETHICAL STANDARDS IN PUBLIC LIFE ETC (SCOTLAND) BILL	967

LOCAL GOVERNMENT COMMITTEE

18th 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

THE FOLLOWING MEMBERS ALSO ATTENDED:

Brian Adam (North-East Scotland) (SNP)

Mr Brian Monteith (Mid Scotland and Fife) (Con)

WITNESSES

Ms Wendy Alexander (Minister for Communities)

Mr Frank McAveety (Deputy Minister for Local Government)

CLERK TEAM LEADER

Eugene Windsor

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Craig Harper

LOCATION

Committee Room 1

Scottish Parliament

13:54

Meeting adjourned.

Local Government Committee

*Tuesday 30 May 2000**(Afternoon)*

[THE CONVENER *opened the meeting at 13:51*]

The Convener (Trish Godman): Good afternoon, comrades. I am sorry that I am out of breath. Apart from being late, I do not climb stairs as niftily as I used to.

We have to agree—Kenny Gibson will love this—that we take the item on non-domestic rating revaluation in private. Apparently, I did not say that loud and clear last week. Is it agreed that we should take that in private? I look at Kenny because he always objects on these occasions. Will you please verbally agree?

Members: We agree.

The Convener: Good.

Petitions

The Convener: The first item on the agenda is petitions that relate to the proposed repeal of section 2A of the Local Government Act 1986. You received all the petitions, except for petition 103, at the end of March. As the Ethical Standards in Public Life etc (Scotland) Bill is being scrutinised by Parliament and we are dealing with section 2A this afternoon, I suggest that we tell the petitioners that their views have been noted. I am happy to listen to any discussion that members want to have on this, but I suggest that when we reach the vote on section 2A, we take cognisance of the petitions, one or two of which have many signatures.

Does anyone wish to say anything about the petitions? It appears not.

The next item will be a continuation of stage 2 of the Ethical Standards in Public Life etc (Scotland) Bill. If the ministers are here, we can bring them in early. While we are waiting for the ministers, I draw members' attention to copies of the letters that we received today. The first is from Norman Murray, the president of the Convention of Scottish Local Authorities, on the repeal of provisions on surcharge. The other is addressed to Wendy Alexander, the Minister for Communities, from the General Assembly of the Church of Scotland, on the repeal of section 2A.

As the ministers are not here yet, we will adjourn for five minutes.

14:03

On resuming—

Ethical Standards in Public Life etc (Scotland) Bill

The Convener: I welcome Brian Monteith and Brian Adam, who are visiting the committee today. We have had visitors in the past, and they are welcome. I point out that they can take part in debates, but they cannot vote, either by showing hands or by shouting out something that is not acceptable.

I also welcome the Deputy Minister for Local Government, Frank McAveety, the Minister for Communities, Wendy Alexander, and their array of civil servants who are becoming well known to us as they have been to the committee two or three times.

After section 24

The Convener: If members are ready, I will start by calling amendment 122, in the name of Kenny Gibson, which is grouped with amendment 135, in the name of Keith Harding. I ask Kenny Gibson to move amendment 122.

Mr Kenneth Gibson (Glasgow) (SNP): Although surcharge is not mentioned in amendment 122, it is about removing that archaic penalty on councillors. It has long been the view of many committee members—and of the Convention of Scottish Local Authorities and many other organisations—that the legislation on surcharge should be repealed. The bill has progressed to such an extent that its provisions include a number of penalties, and it is my view that it is unnecessary to continue with surcharge, which may also be incompatible with the provisions of the Human Rights Act 1998.

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

Mr Keith Harding (Mid Scotland and Fife) (Con): No. I wish to withdraw my amendment and to support that of Kenneth Gibson, as I accept what he said.

The Convener: Therefore, you will not move your amendment when we reach that point.

Mr Harding *indicated agreement.*

The Deputy Minister for Local Government (Mr Frank McAveety): During our pre-legislative discussions, everyone agreed that surcharge was an anachronism that has existed for a long time. As we are moving on to a new agenda, we should reflect on that. I have listened carefully to the

issues that were raised during earlier discussions and I would like to lodge suitable amendments at stage 3 of the bill on the repeal of the provisions on surcharge. Members may have received correspondence from COSLA over the past few days on replacing surcharges. We should take on board the fact that, on Friday, there was all-party support for COSLA's position, which is a commendable achievement for that organisation. We should also reflect on that during our deliberations this afternoon.

I would like to elaborate further on the process that we wish to follow at stage 3 and in the period between now and then. I wish to give a commitment that we wish to remove the financial penalty of surcharge, which is the element that is most offensive to individual elected councillors in Scotland. We will continue to try to ensure that there is some framework for intervention, which COSLA identified as a difficulty, should instances of clear negligence or misconduct arise.

We believe that the Accounts Commission would be the most appropriate body to deal with the investigation and determination of any allegations of misconduct or negligence. Given that we are trying to create parity of framework in the legislation, we think that the sanctions available to the Accounts Commission should parallel those that we are piloting through the bill, of which censure, suspension and disqualification are the three core elements.

We wish to remove surcharge and are happy to lodge amendments to this bill at stage 3, rather than waiting for the omnibus local government bill, as we had anticipated. In order to take on board COSLA's views, we want to find a period between now and stage 3 to work with COSLA and the lawyers to develop a framework that is acceptable to members of the committee. I hope that there is all-party support for that commitment.

Donald Gorrie (Central Scotland) (LD): I welcome the minister's statement that the Executive has moved from the proposal to deal with the issue of surcharge in the autumn, which was not acceptable to many of us, to that of dealing with it at stage 3 of the bill. The minister did not mention officials. I assume that the penalty of surcharge would be removed from officials as well as from councillors.

Mr McAveety: The only qualification is that employment law covers some of the sanctions, but our proposals will treat officials and councillors equitably.

Donald Gorrie: As a supporter of Kenny Gibson's amendment, I find the minister's proposal satisfactory. I look forward to his production of an acceptable amendment. If it is not acceptable, we will let him know pretty smartly.

Bristow Muldoon (Livingston) (Lab): I echo Donald Gorrie's comments. The fact that the minister has listened to the committee's view is welcome. I think that that was an all-party view, as we all wish to see the end of surcharging, as it is inequitable. While councillors can be surcharged, people who are guilty of similar offences of financial impropriety in many other public bodies cannot be surcharged. We welcome the minister's clear commitment to lodge an amendment that will remove surcharge.

We should also recognise that COSLA, which represents local government, is encouraging the committee to give the Executive sufficient space to lodge a suitably worded amendment. Such an amendment should include appropriate measures to ensure that the financial aspects of the management of local government are protected. Therefore, I encourage members of the committee to accept the minister's commitment.

Mr Gibson: Given the assurances that the minister has provided, and the comments that have been made by members of the committee, I welcome the minister's comments. I am glad to see that this matter will be brought forward again, as Donald Gorrie and others said, at stage 3. Therefore, I withdraw the amendment.

The Convener: That cannot be done. There is no more debate on this amendment.

Amendment 122 not moved.

Amendment 135 not moved.

The Convener: I hope that we are as agreeable as that for the rest of the afternoon. I call amendment 123, which is grouped on its own, and it is Kenny Gibson to move again.

Mr Gibson: Convener and ministers, this is an amendment for clarification purposes. A number of people who gave evidence to the committee and a number of committee members expressed concern about the overlap between the work of existing bodies and that of the commission that will be established. This amendment has been lodged to ensure that there is a clear and workable definition of the boundaries of each body's remit and sphere of operation.

Mr McAveety: I have had discussions on this matter. I am happy to try to address this issue. If Kenny Gibson will allow me to do so, I am happy to bring forward at stage 3 a framework that would allow further discussion between the Accounts Commission ombudsman and various other bodies to take place, which would ensure that we have something in the bill.

The Convener: This amendment is now open for debate.

Donald Gorrie: The previous statement by the

minister about how to deal with financial irregularity raised another potential area of overlap, in that the Accounts Commission would apply the same sort of sanctions as the standards commission, but they would be different organisations. There may well be councillors who have committed financial and other irregularities and who are being investigated by two different lots of people. That is another issue that needs to be raised. However, if the minister will promise to produce a watertight proposal, I could live with that.

The Convener: Does anyone else wish to contribute to this debate? Kenny, do you wish to say anything else?

Mr Gibson: As with the previous amendment, given the minister's assurances, I am happy to allow the Executive to come back with its own amendment at stage 3.

The Convener: I will put the question on amendment 123. Are we all agreed? Sorry, you are not moving it.

Amendment 123 not moved.

Section 25 agreed to.

Section 26—Councils' duties to children

The Convener: I call amendment 74, which is grouped with amendment 144. I ask Brian Monteith to move amendment 74.

Mr Brian Monteith (Mid Scotland and Fife) (Con): I am pleased to be here today to move this amendment. The form of words that I have put forward for consideration by this committee and the ministers is based upon a form of words that was agreed following some discussions by the Church of Scotland's various committees, and that was referred by them for debate last week at the General Assembly.

The purpose of the form of words is to show that all forms of parental commitment and family relationship—which encompasses relationships in which a child can be reared—can be mentioned in the section that repeals section 28, if we can call it that, alongside marriage. The section that was brought forward by the ministers in the bill was, I accept, an attempt to deal with the fears of the public that were raised during the debate about this section. However, although the attempt was well meaning and tried to be inclusive, it failed to mention marriage in a way that does not judge other family relationships. That was a mistake, and it could still be addressed.

14:15

I will develop my argument, which I will try to keep as brief as possible, but it does become fairly

technical. Marriage is recognised already in statute. It is not right to say that if we mention marriage, we will be making a judgment on other forms of family life. Marriage is not only a religious or common-law arrangement, it is distinct from the other forms of family relationship because it has the force of law. It is a contract that can be ended only under the terms of law. That recognition makes it distinct but that does not mean that a value judgment has been made—some people might prefer it, some might not.

I do not mean to demean, stereotype, devalue or stigmatise those families that exist outwith marriage or people who have chosen not to get married or who were married but are so no longer. I am attempting to have recognised the fact that marriage has legal backing and that that should remain the case. Mr McMahon's amendment is similar but slightly different. To emphasise the fact that the inclusion of marriage in the bill should not be taken to mean that a value judgment has been made, he has added another clause. Whether that is required remains to be seen.

Marriage is of value—I say that not merely because I am married. I know what the social mores of society are: my mother and father are divorced and my sister had a number of children before marrying the children's father. I passed no judgment on those members of my family and I would not pass judgment on anyone because of similar choices that they have made. However, I believe that marriage is under attack from many quarters. To deny marriage its legal definition is, knowingly or unknowingly, an attempt to devalue marriage.

My amendment seeks to include marriage in the bill in a way that does not judge other relationships but admits that marriage is different and that what makes marriage different is the fact of its legal recognition. Marriage is a legal entity or it is nothing more than a religious or informal vow. To deny its legal entity is to deny marriage. This Parliament should think carefully before it goes down the road of stripping away the legal recognition that marriage has. That is why it is possible, without being discriminatory, to respect marriage by including it in the bill.

I move amendment 74.

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): I want it to be put on the record that I support the repeal of section 2A. I have voted for its repeal on four occasions. I voted for repeal in this committee, I voted for repeal in the Equal Opportunities Committee, I voted for repeal at stage 1 of the bill and I voted against the earlier Conservative attempt to prevent the discussion of the repeal. I believe that it is right that the Scottish Parliament should repeal the section. It is a bad piece of legislation and it would be to the credit of

the Parliament if it were removed.

As politicians, we might not recognise why people have concerns about the repeal, but the letters that I receive and the people I speak to have convinced me that there are concerns. The Executive recognised that there would be concerns, and the Minister for Communities said from the outset that safeguards would be put in place.

Those safeguards were promised and there was consultation on them. I hesitate to say it, but we might have been accused of entering into the Henry Ford school of politics, which says, "You can have any safeguard that you want, as long as it is the one that we are going to give you." However, that would have been unfair. There has been genuine consultation, and the Executive is doing the right thing.

I lodged amendment 144 because I had listened to people's concerns. I have never knowingly or wilfully supported discrimination in any way, shape or form. I have been subject to discrimination myself. In lodging the amendment, it has never been my intention to discriminate against any section of society. One of the reasons why I could not support the Conservative amendment was that the Conservatives took out the phrase "stable family life". I wanted that phrase to remain paramount in the new section 26.

I have been unable to answer some of my constituents' questions. They are the same electorate who send 72 Scottish MPs to Westminster, and Westminster is attempting to repeal section 28. Are we saying that the electorate who can send 72 Scottish MPs to Westminster to repeal section 28 and bring in the recognition of marriage cannot send 129 MSPs to the Scottish Parliament to do the same? We represent the same electorate. Are we saying that our colleagues go to Westminster to discriminate, and that, if we were to vote for the same thing here, we would discriminate? I do not believe that to be the case.

I believe entirely in the principles of devolution. We must make decisions in Scotland that are in Scotland's interests. However, I do not understand how the Scottish interest in this matter is different from the English interest. The same concerns have been raised here as were raised in England. The same concerns must be addressed here as were addressed in England and Wales. Yes, a Scottish solution must be found, but we have not yet found that solution.

If the Executive cannot agree to my amendment, I ask that it try to find a way of improving it. Would it not be better to seek a way forward in a way that is better than mine, if the Executive cannot agree with mine? If the Executive believes that my

amendment discriminates, I ask it to find a way that avoids discrimination, and to propose something constructive.

This Parliament has been damaged by this debate—I believe that because I have listened to the views of people in my constituency. When I go about my constituency, I know that people are concerned about the issue and the damage that it is doing. Section 2A must be repealed. It will be repealed with or without public support, but surely it would be better to have the endorsement of the public and to take the public with us.

I give a guarantee to the minister that my efforts will end here if my amendment is not successful. However, I must represent the wishes of my constituency party and my constituents, which have been expressed loud and clear to me. I have lodged the amendment in an honest attempt to make progress on the issue, and I hope that that is recognised. If the Executive is not able to address the concerns that I have raised, so be it. I have done what I can. I believe in what I am doing, but I shall end it here.

The Convener: Thank you. I shall ask Keith Harding and Brian Adam to speak next, as they support amendments 74 and 144 respectively, then I shall open up the discussion to other members.

Mr Harding: As the Labour Government's replacement of section 28 in England and Wales would give statutory recognition to the institution of marriage, it is only common sense that the same recognition should be given here in Scotland. Today, the committee has the opportunity to speak up for the people of Scotland and to introduce a similar section that recognises the importance in Scottish society of marriage, the upbringing of children and the development of stable family relationships.

Until now, the Scottish Executive has stubbornly refused to put any mention of marriage in the statute book, although everyone—including its colleagues in Westminster, the Churches in Scotland, the people of Scotland and back-bench members of its own parties—has told it to think again.

Last week, the Church of Scotland spoke for the people of Scotland at its General Assembly. It is extremely sad that it has taken the eviction of Labour, Liberal Democrat and SNP politicians from the Assembly Hall for a resolution to be passed there that reflects public opinion in Scotland. As has been shown again today, with the overwhelming outcome of the section 28 referendum, the Executive's solution is simply not acceptable to the vast majority of fair-minded Scots.

Today, the committee has the opportunity to

right that wrong. It is an opportunity that we should grasp with both hands. If we fail to do so, once again, the Parliament will be seen to be failing in its duty to uphold the will of the Scottish people.

Brian Adam (North-East Scotland) (SNP): Thank you, convener, for giving me the opportunity to come and speak in support of Michael McMahon's amendment. I do not yet know how I will vote in the final debate, although if Mr McMahon's amendment is carried today, or if the Executive chooses to propose something in the same spirit, I am sure that I will be able to vote in favour of the bill. I am here not because I am a member of the SNP, but because I am an MSP. I have my own view on the matter. I think that I am in sympathy with the majority of the people whom I represent. That is certainly true in reference to the mailbag that I have received. I am sure that other members will have had heavy mailbags on the matter, too.

The idea of guidelines is all-important. However, we are not yet sure what will be in the guidelines. Because of the unfortunate nature of the debate over the past few months, guidelines on their own will not satisfy the people of Scotland; statutory support is required. That is one of the reasons why I support Michael McMahon's carefully crafted amendment.

The amendment recognises the place of marriage in our society. Marriage is more than a bit of paper. It is more than a legal contract, although I recognise the points made by Brian Monteith. Marriage is an appropriate unit, which helps to sustain society. If we act simply as individuals, the sum of the parts will be much less than if we act as units. The most appropriate unit in society that we should be supporting is the family unit. There might be some debate about what constitutes a family unit. However, marriage supports the family unit in a way that other relationships do not. The last thing that we want to do is to stigmatise children who are born out of wedlock. There used to be all sorts of nasty names associated with that, and I am particularly supportive of the element of Michael McMahon's amendment that tries to address such issues.

Perhaps another form of words will satisfy Michael McMahon or even me. I hope that the Executive can provide some comfort to the many people in Scotland who are concerned and who have expressed that concern through our mailbags and the referendum to which Keith Harding referred. I commend amendment 144 to the committee.

Donald Gorrie: I hope that the committee will bear with me if I go on at greater length than usual. This is an important issue, to which we should give full consideration and time. It is excellent that amendments 74 and 144 have been

lodged to allow us to debate the issue. The matter is of great public interest and it would have been extremely bad for the Parliament if such amendments had not been lodged. So far, the debate has been of an excellent temper and quality—I hope that I do not spoil it—and much better than one would find at Westminster, where those on the extremes of the argument would make themselves heard at great length and volume.

14:30

Those of us on my side of the argument must set out why we do not accept what appears to be widespread public opinion backing the other side of the argument. I will make a few main points. First, the issue has been badly handled by what I call our side, and we must do better. Secondly, I will discuss the relationship between religious groups, other pressure groups and the Parliament. Thirdly, I will consider the basic issue of section 28 and, fourthly, I will consider the amendments about marriage.

The Executive has mishandled the issue; we must learn from that. The appearance given was that we rushed in and made the announcement in such a way as to raise the maximum number of hackles. Since then, the Executive has twice made concessions without finding out whether those concessions were of any interest to the other side. For the record, within my group, I voted against making either of those concessions, but lost the vote.

We must learn from this. The Executive and the Parliament—the Equal Opportunities Committee and this committee—must go out much more and engage in discussions, debates and explanations for the public. I honestly feel that many members of the public have been told entirely the wrong story by some people on the other side of the argument. We have failed to sell what I think is the right side of the story. It is important that we try to take people with us and persuade them. That does not mean that we have to bow down to their opinion.

Religious groups are at liberty to have their own view, which their members sign on for and which they press the Government of the day to achieve, whether they are against divorce, against activities on Sundays or against homosexuality. There are many issues on which religious groups have valid views, but on which Parliament and the Government have taken a different view. That is as it should be. The Parliament makes the law for everyone. It should not be seen to give way to pressure. It should listen to arguments, and if it is genuinely convinced by the arguments, that is fine. For us to concede something just because a whole lot of people are making a noise about it

would give the wrong message.

The distinction between Parliament and religious groups is important. This is a quotation that I discovered yesterday, from John Clifford, who was the leading Baptist in England in the early 1900s, when education was a big religious and political issue—so things do not change. This gentleman—remember that he is a leading Baptist—said that

“the state is more sacred than any church . . . for the state stands for the whole people in their manifold collective life; and any church is but a fragment of that life, though one of the most important fragments.”

We must stand for the whole people in their manifold collective life. In my view, that means supporting the Ethical Standards in Public Life etc (Scotland) Bill as it stands.

With regard to section 28, it might be felt that the issue has been decided, but many people have lobbied all of us on the subject. Many people have a fear that schools will be invaded by missionaries on behalf of homosexuality, who will persuade all our children to become homosexuals. That is not realistic; it is not how the world works at all, but that is the fear that people have. We must explain to them that it is not realistic.

We must trust the good sense of teachers, who have dealt with the matter hitherto and, if the odd teacher steps out of line, we must trust local control by parents, which is built into the system. They can raise, through school boards and so on, the conduct of education on social responsibility, sex, relationships and so on. There is a perfectly good system; we should let those involved get on with it.

Therefore, it is important to remove section 28; it is genuine discrimination and has caused much harassment of homosexuals, as evidence given to the committee has shown. It is important to get rid of the section.

On the question of the amendments about marriage, it might be irrelevant, but—as I understand it—all members of the committee are married and the idea that we are somehow subverting marriage is not tenable. We have a lot of experience of marriage and, I presume, we all support it. We are certainly not attacking it. No marriage is perfect, but my partnership with my wife is of great value to me. Therefore, if I have to choose between antagonising my wife and antagonising Jim Wallace, there is no contest. *[Laughter.]* There is a sort of blackmail being employed and I do not like that. Some people have made out that those on our side of the argument are subverting marriage—that is not the case.

Brian Monteith argued that because marriage is in the law, it is okay to make this law about marriage. Marriage gets legal recognition, as does

divorce, and in recent legislation, children who were previously described as illegitimate have been given rights that are equal to those of other children. The law has recognised that, in such circumstances, marriage does not have primacy, and the issue that we are debating is whether marriage should have primacy. There is well-intentioned foolishness behind the amendments that seek to include marriage in the bill. If such amendments are agreed to, we will be seen to be saying that marriage is the top option and that anything else is inferior.

Let us take the example of a street of households. At No 1, there is a married couple with children, and the father beats and abuses his wife and children. At No 2, there is a couple who—for whatever reason—are unmarried, but who have children. They behave perfectly well and are good citizens. At No 3, there is a single parent who is bringing a family up well. A couple of homosexuals live at No 4. They have lived together for many years and are good citizens who contribute to the community. Two Roman Catholic priests live at No 5. They are not allowed to get married. A single lady who does great work in the community and has a job and so on lives at No 6. Are we seriously being told that the married household is to be preferred above the others and that life is some sort of league table, in which marriage, like Rangers, is permanently at the top? [MEMBERS: "No."] That would be an absurdity.

The amendments are well meant, but with all due respect, those who have proposed and supported the amendments have not thought the matter through. I will vote against them, although I respect the views of those who support them. I am happy to engage in debate with any of them at any time in the future. I hope that the committee will continue to debate the matter sensibly, but that it will vote against the amendments.

Dr Sylvia Jackson (Stirling) (Lab): I would like to make a couple of points. Donald Gorrie said that he would spend some time making his points—it was well worth it. My points will complement what he said.

I would first like to take up some of Brian Monteith's points. He mentioned that the bill as it stands denies and devalues marriage. That would go against a definition of stable family life. Donald Gorrie has said enough about that to illustrate the fact that we are talking about the use of an inclusive term. We are not subverting marriage in any way—we all sit here as parts of married relationships. It is clear that the essence of our proposal is not to devalue marriage.

Brian Monteith said that he does not demean other relationships with his amendment 74, but I think that he does. Again, Donald Gorrie hit the nail on the head when he said that Mr Monteith's

amendment would set marriage up as being more important than other relationships. At the heart of the matter is the importance of the child and of the stable, happy family life that should be provided for the child. As a former teacher, I am only too aware of that.

I take on board Michael McMahon's point about MPs and MSPs, but I think that we have a better answer and a more inclusive term that puts the child at the centre.

Michael McMahon also referred to the damage that has been done during the debate. That is due partly to the fact that it has not been handled terribly well—as Donald Gorrie said—but misinformation, particularly from parts of the press, has not been helpful. Keith Harding spoke about the referendum. We could spend a considerable amount of time talking about the validity of that.

Bristow Muldoon: I want to speak against amendments 74 and 144. Before doing so, I should say that Donald Gorrie probably owes Frank McAveety an apology for his very upsetting reference to league tables. I am sure that the minister will be extremely cut up about that.

Mr Gibson: Are you?

Bristow Muldoon: No.

The other thing that surprised me in Donald Gorrie's speech was his comment about upsetting Jim Wallace. I thought that he did that because he enjoyed it.

The first thing that we need to do is to recall what the repeal of section 2A is about. It is about removing from legislation a discriminatory measure that has existed for the past 12 years or so. The two amendments that are before us today attempt to insert a reference to marriage into the bill. Why, when the Conservatives introduced the original legislation back in 1986, did they not feel that it was important to include a reference to marriage? I suggest that this is an attempt by the Conservatives to play politics, rather than to address the serious issue of discrimination that exists.

Both Donald Gorrie and Sylvia Jackson argued that by mentioning marriage separately or insisting that local authorities and, by implication, schools give it preferential status, we might run the risk of reintroducing a form of illegitimacy. That is something that we want to guard against.

Brian Monteith referred to the dangers of stripping away the legal status of marriage. Nothing that is proposed in the bill would do that. Rather, the bill proposes that we strip away an element of discrimination that has nothing to do with marriage. Passing the bill as it stands would have no effect on the legal status of marriage. It seems as if the Conservatives are attempting a

reprise of the back-to-basics campaign of the John Major years. People should recall the problems that arose when politicians began to moralise about the way in which people should live their lives.

Keith Harding referred to the results of the opinion poll that were announced earlier today. I am bemused as to why that poll should in any way inform the debate that we are having, as it did not refer to either of the amendments that we are debating or to the principle that underpins them. The poll asked purely and simply whether people wanted to repeal section 2A. I cannot see, therefore, how Keith Harding is able to justify the Conservative amendment on the basis of that poll.

Members have referred to the mailbags that we have all received, containing letters both for and against the repeal of section 2A. In my mailbag, there has been a balance between people who are in favour of repealing the section and people who are opposed to it. Only a small percentage of the correspondence that I have received has mentioned the need to introduce a specific reference to marriage to the bill. For that reason, I am not sure what is driving the amendments.

I suggest that, if we are serious about promoting stable family life, it is far more important to give families stable economic backgrounds. The work that this Parliament and the Westminster Parliament are undertaking in that area will do far more to promote a good environment for bringing up children than anything that is proposed in either of the amendments.

In summary, the amendments add absolutely nothing to the bill and, in fact, introduce a new potentially discriminatory measure to the bill that it would be advisable to leave out.

14:45

Johann Lamont (Glasgow Pollok) (Lab): This issue is very serious, and I hope that the people who report it will recognise that everyone—whatever their position—is serious about what happens to our young people and the relationships that we all form throughout life.

On the subject of section 2A, the Executive recognised that many parents, grandparents and others involved with young people were anxious about what might happen in schools and that young people might be at risk. I welcomed the fact that the Executive's section focused on the needs of children and tried to meet those anxieties.

Furthermore, anxieties that parents would not be given their proper place in the running of the school have been acknowledged in amendments to the Standards in Scotland's Schools etc Bill. I hoped that people who felt uncomfortable with the

repeal of the section would have been genuinely reassured by the Executive's actions.

However, many people with anxieties about the repeal of the section would not necessarily take the same view of marriage as has been promoted by Brian Monteith and others. Indeed, many of them might not be married; they might simply be parents or grandparents who are worried about their children. Suggesting that the two are connected collapses one argument dangerously into another, and we should deal with both matters separately.

Brian Monteith said that people were driving to devalue marriage. However, any bill that includes the phrase "stable family life" recognises that marriage is a part of that. Although the phrase might not include all marriages and relationships, as many of them are unstable, it does not attack the legal entity of marriage at all.

I have two strong reasons for opposing amendments 74 and 144. First, I am married and have two very young children. I take my job as a mother seriously; sometimes I do it well, sometimes badly. However, my marriage lines do not define me as a good mother, and I have no right to say to my friends—who might, in many respects, be bringing up their children better—that they are somehow less committed to their children than I am. Although I am not in a position to judge other people because they are or are not married, I reserve the right as a citizen of this country to judge them by how they treat their children. We should focus on how our children are brought up.

Secondly, I was a teacher for 20 years and at different times have worked with children from many different kinds of families. From my experience, I would simply divide families into ones that were safe and secure and ones that were not; they did not divide on the basis of whether the parents were married. There are many safe and happy families where the parents are married, where there is one parent or where the grandparents do the parenting; equally, such things do or do not apply to unhappy families. The fault-line is whether people take their responsibility for their children seriously and put them at the heart of what they do. I want to ensure that children in school who are already struggling with different circumstances and backgrounds should not feel that they are somehow unworthy because of those backgrounds or that their happiness is somehow different from anyone else's; and that children can have the courage to speak up because their experience is unhappy, despite the fact that their parents are present and married.

The Executive's proposed section attempts to focus on children. It encourages them to think about issues such as building stable relationships in future or having respect for each other in the

light of zero tolerance issues and coming to a belief that women and men and boys and girls are equal. Sex education and parents should send out a message of respect and tolerance, and people obviously have the right to express such a message through marriage. However, no child should feel second-class if they do not come from such a family. In maintaining that focus, we should oppose the amendments and support every initiative in schools that will help our children to be safe as they grow up.

Mr Gil Paterson (Central Scotland) (SNP): I would like to say something about Michael McMahon's amendment. I am fairly relaxed about the definitions he uses and am sympathetic to the sentiments he expressed, but I am a wee bit concerned about the technical aspect of the amendment. I do not feel that it would add to the bill and I certainly feel that what it states should be contained in guidelines. It would worry me if for some reason this one clear guideline were included in the bill but others were excluded. It is a shame that we do not have the guidelines, as they would shape our thoughts and focus our discussion. I hope that the Executive will take on board the public's views and the views that Michael eloquently expressed, but it would be wrong to enshrine them in the bill. The Executive should do something positive and put this matter high in the list of guidelines that accompany the bill.

Mr Gibson: I wish to echo many of the sentiments that have already been expressed. Like others, I speak more in sorrow than in anger, as I had thought that, with the exception of Keith Harding, whose party's position is well known, we were united on this issue and were progressing fairly well.

Neither of these amendments reflects the complex society in which we live. I appreciate that those who have proposed the amendments have strong views. In particular, I know that Brian Adam, whom I know better than the other three members involved, speaks from the heart, but neither amendment takes the discussion forward—in fact, they both muddy the waters.

I dispute what Brian Monteith said about marriage being under attack. I do not believe that that is true. Perhaps people have more freedom than ever before to indulge in different types of lifestyle, but that does not devalue marriage. As has been pointed out, all the members of the committee are married with families.

I am concerned that Michael McMahon did not raise this issue in his excellent speech on the Ethical Standards in Public Life etc (Scotland) Bill on 27 April. On 20 March, at the Equal Opportunities Committee, he said to Patrick Rolink of the Keep the Clause campaign:

"You may have been referring to me, as someone who said that reassurance was needed. Donald Dewar gave that reassurance. Are you prepared to accept that the new section gives the same remedies in law as the existing section, and that if anyone breaches the new guidelines they will be subject to sanctions?"

Furthermore, he asked:

"do you consider the First Minister's commitments to be the reassurance that you were looking for?"—[*Official Report, Equal Opportunities Committee*, 20 March 2000; c 532.]

I do not understand why Michael McMahon has about-faced on this issue. Although he said that his constituents and constituency association had urged him to take this stance, he almost apologised for doing that and said that he would not pursue the matter if he lost a vote today. I hope that he will reconsider and withdraw his amendment before we reach a vote.

My views on this are personal. No child should feel disadvantaged or uneasy because of home circumstances. The amendments could undermine the professionalism of teachers in doing what is most appropriate for children. It is important that children should not be made to feel that their family relationships are in any way inferior to those of others. We all know how cruel children can be in the playground and how people are picked on because their backgrounds are different from those of others. As has been said, notably by Johann Lamont, we should encourage equality, tolerance and caring relationships. We will not promote equality, tolerance and caring relationships by supporting either of these amendments. If they go to a vote, I strongly urge members to vote against them.

Colin Campbell (West of Scotland) (SNP): As a parent and a grandparent of five, soon to be six and, by October, seven grandchildren, I share the concerns that all parents feel about this situation. As a grandparent, I share the concerns of my sons and their wives about what faces their children as they are brought up. I am particularly exercised by the fact that the Conservative amendment leaves out "stable family life". One or two colleagues have already suggested that marriage is not necessarily always a good thing. I have come across parents of children attending my school whose marriages were anything but stable and who would have been far better off not married than continuing in the hells that they were in.

Parental commitment is, on the face of it, a wonderful thing, but parents can be so over-committed that they damage their children by trying to make them aspire to things that they are incapable of. Family relationships are not always good. I say to Brian Monteith that I am not being deliberately destructive, but I am saying that none of those things stands up on its own. His amendment's exclusion of "stable family life" is

rather unfortunate. That phrase is a catch-all that embraces married life or any other kind of family relationship, provided it has a high degree of stability. That seems to be the major flaw in the amendment.

Michael McMahon wants to persuade the Executive to come up with a really good set of guidelines. It would have been wonderful if we had had that at the very beginning, rather than towards the end of the process. I hope that, whatever happens today, the press will recognise that this debate has been conducted in the normal, civilised way in which we conduct all our committee business. When this matter comes to a conclusion, I hope that the Executive will pick up all the messages that people are trying to give.

Bridges are being built from two extremes and people must push out a little bit further and reach to one another a little more than they have done until now. I think that people are doing that. There is a will on both extremes to come together and I think that it can be done, but much depends on the Executive's guidelines. I am afraid that I will not be able to support either of these amendments.

The Convener: Before I bring the minister in, I want to say a couple of words.

I prefer the wording of section 26 simply because the phrase "stable family life" is plain and there for all to see. I cannot support Michael McMahon's amendment, even though I am an old married lady and a grandmother with some rather staid views. What worries me about amendment 144 is that the second part stands in sharp contrast to the first. I find it difficult to accept that teachers and others who would be emphasising the importance of marriage, as the amendment suggests, could give equal emphasis to

"the importance of avoiding intolerance, stigmatization and stereotyping of children from alternative family units".

Units suggests do-it-yourself to me; I am not happy with "family units" and feel that "families" might have been better.

From all our oral evidence and written submissions, it is quite clear that there can be abuses in all classes of family relationship—not just in working-class or middle-class families. It can happen right across the board in all kinds of relationships; Donald Gorrie mentioned that in Parliament. I and other members were impressed by a comment made by a representative of the Association of Directors of Education in Scotland, who said:

"The future is not what older people think, but what younger people do."—[*Official Report, Local Government Committee*, 14 March 2000; c 708.]

I am of a generation that thought that you had to get married and remain married. That is what we

did in the main. Younger people sometimes choose to do something different. They get married and they do not always stay in the marriage if they feel that it is not for them, for all the reasons that Johann Lamont, Donald Gorrie and other members have mentioned.

Amendment 144 takes us right away from the issue. Others who have spoken about children are absolutely right; the issue is children and how sex education is taught. That is what it started out as and that is how it should have continued. As long as children are supported, accepted, encouraged and loved, and as long as they feel safe and secure, it does not matter what the family grouping is. The issue is not whether we are for or against marriage. Nobody in this committee is against marriage. Children and sex education is what we are about to vote on, and I hope that committee members remember that.

15:00

The Minister for Communities (Ms Wendy Alexander): Thank you, convener. In view of the widespread interest in this matter, I would like to treat the committee, this stage of the parliamentary process and the movers of the amendments with due respect. I therefore want to outline briefly why the Executive is urging rejection of the two amendments. I shall focus on three matters: the protections that the Executive has provided; the Executive's position on the specific question of marriage; and some of the concerns that have arisen in the debate today.

As Michael McMahon said, parental fears have arisen—some due to misinformation, some genuine concerns—and we have taken steps to allay them. As several members have observed, the new section 26 provides a general duty on local authorities, when exercising their powers that relate principally to children, to have regard to the value of stable family life in a child's development. It will apply across the full range of local authority functions that relate to children, not simply to school education. That is only part of the package of measures that we have introduced. On 27 January, we announced that a package of safeguards would be in place before any repeal of section 2A came into force, and that best practice advice would be available.

The package has four elements: strong and clear guidance to local authorities, in the form of a guidance circular to directors of education; advance consultation with parents by individual schools when planning sex education; simple and direct procedures for parents to raise concerns with their child's school and, if necessary, the education authority; and a review of curriculum advice and supporting materials for schools and teachers.

We also set up a working party, involving parents, teachers and the Churches, to consider a range of material for sex education in light of the proposed repeal of section 2A. We asked the group to examine the scope and general content of the package of safeguards. Its report on that initial consideration was made available to MSPs in early April. We were pleased to note that the group concluded that the package of safeguards was sufficiently complete, wide-ranging and robust to meet the concerns of the public, parents and teachers over the proposed repeal of section 2A.

The group is now continuing its remaining work to review existing resources, to consult on any changes or new materials and to recommend any revisions or additions that may be required. The group has been asked to report to the Minister for Children and Education by mid-June. It is committed to making its recommendations available to MSPs before a final vote is taken on the Ethical Standards in Public Life etc (Scotland) Bill. We have also lodged an amendment to the Standards in Scotland's Schools etc Bill to provide for a statutory underpinning of guidance on the conduct of sex education. That package of safeguards will ensure that the existing good practice continues after repeal of section 2A.

On the second issue that I mentioned—marriage—I hope I can offer some of the reassurance that Mr McMahon seeks. Marriage is recognised in law. The Executive made its position on marriage clear in the debate on family law on 20 January, expressing a recognition of the central role of marriage and the family in Scottish society.

We believe that the family, established by marriage, is the most secure unit in which to bring up children. We support marriage as the most recognisable and widely accepted way of signalling to society a couple's commitment to each other and to their life together as parents. However, many couples do not marry, but choose to live together. That too can provide a stable relationship in which to bring up children. In framing policy, we must recognise that, but take a positive, child-centred approach, in which the best interests of the child are the paramount consideration. That is what we said at the time of the family law debate in January.

Section 26 is about the duty of local authorities when exercising their powers relating to children. In the bill, the Executive again recognises the value of stable family life in bringing up children. Stable family life includes marriage, of course, and we recognise its importance to the majority of our community. However, we are anxious not to create a hierarchy of relationships. We do not honour marriage by denying the reality of other relationships that are well established in society today. We would be failing in our duty if we did not

ensure that legislation for this purpose acknowledged that diversity. We believe that it is important for children to be raised in loving, caring surroundings and relationships. Marriage frequently is such a loving relationship. The Executive, both in the February debate and in the stage 1 debate, acknowledged its importance—but it is not the only loving and caring home environment.

We do not wish to discriminate between children on the basis of the character of their parental home. The words that are being proposed by the Executive are not an attack on marriage. To suggest, as some have, that those who reject amendment 74 or 144 hate marriage is as fanciful and untrue as the claim that 100 MSPs voting at stage 1 wished some harm upon Scotland's children.

If we are to live in a tolerant Scotland that accepts a little more and condemns a little less, we should recognise that four in 10 children—almost half the children born in Scotland this year—will be born to people who are not married.

I will now deal with some of the issues that have arisen in today's debate. I will focus my remarks on those who are suggesting that we should perhaps support the amendments; I will not comment on the remarks of those who are suggesting support for the Executive's position.

There are four specific issues that I heard raised in the debate. I apologise if I have missed any. The first was raised by Mr Adam, and to an extent by Mr Paterson and some other members: the status of the guidelines and the guidance. It is tragic that the misinformation surrounding this debate has been so voluble that it has obscured some of the reality of the parliamentary process. The question was asked when the guidelines on the curriculum would be available. I am happy to confirm that they are in the Scottish Parliament information centre in full and summary form. They have been there since 1 March—the day on which the bill was introduced. They were placed alongside the draft circular, which is the substance of the guidance. The last question about the guidelines was whether they are being reviewed. It is indeed the case that the working party to which I referred earlier, which has been examining whether the guidance is robust in all respects, is now looking at them. It is due, as I said, to report to the Minister for Children and Education in mid-June.

The second point was raised by Mr Monteith in his opening statement and by Mr Harding. It is about whether there is a difference of approach north and south of the border—when the substance of the issue is essentially the same. As it is material to the debate, I point out for clarification that colleagues south of the border, in

political parties and in committees, have wrestled with the same difficult issues that we find ourselves wrestling with here.

I affirm to the committee that the Department for Education and Employment amendment is very similar to the provision that the Executive is proposing in section 26; that it makes no reference to marriage; that it was tabled on 18 May; and that it was accepted on 25 May by the Commons standing committee. I hope that that reassures colleagues that there is no essential difference of approach north and south of the border.

The third question, which was raised by Mr Harding, concerns the position of the Churches. We think it is unfortunate that there has been the suggestion in the debate surrounding this issue that Church opinion is united in favour of retaining section 2A. I note that last week the General Assembly of the Church of Scotland did not call for the retention of section 2A, which is what the Conservatives suggest we do, and that many prominent churchpeople, including last year's moderator and the past and present primuses of the Episcopal Church, have seen the case for repeal and have prominently advocated it.

The final point—that of Mr Gorrie—was that we have been unconcerned with parental anxieties. I concur with him that one can always learn lessons in a process that has been as long and as bruising as this one, but it is important, in the parliamentary consideration of this process, to note that when we announced support for repeal, certain things were made clear by Jackie Baillie in committee in September and announced by me on behalf of the Executive in October. We stated how important it was to reassure parents who were anxious and concerned. Indeed, it was a member of this committee—Sylvia Jackson—who raised it first in questions in the chamber. At that stage, we committed ourselves to the review of the existing guidance and to more detailed matters. That process has continued.

We are not debating our position on marriage—that is dealt with in legal forms elsewhere. We are dealing with what is right for this bill in respect of local authorities' duties when exercising their powers relating to children. All of us are acutely aware that, as part of the fledgling democratic process in Scotland, we are dealing with a very difficult issue. The process gives us the opportunity to protect vulnerable minorities as well as listen to the more voluble sections of our community.

As Johann Lamont, Colin Campbell, the convener, Kenny Gibson and many others have suggested, in years to come the quality of Scottish democracy may depend in part on how we treat each other in debates such as this. It is in that spirit that the Executive has chosen an inclusive

approach; we urge rejection of the amendments and ask for the committee's support in so doing.

The Convener: Thank you, minister. Does Brian Monteith wish to say anything before we move to the vote?

Mr Monteith: Yes, thank you.

The Convener: You do? There is a surprise. On you go.

Mr Monteith: Thank you, convener. I do not know whether there will be another opportunity at a later date to finalise discussion on this important matter, so it is best that I give some consideration to the points made by the members of the committee.

Sylvia Jackson accused me—that may be too strong—of seeing marriage as being the most important relationship. It is not so much that I want to emphasise marriage as being more important, but to recognise that it is different. Marriage is the only form of family life that is governed so overwhelmingly by law. That is a significant difference. One of the points made by the minister emphasised that the Executive has, in some ways, recognised that. My quibble is that that should be recognised in the bill. Of course, we are discussing something that should not have been included in the bill—the repeal of section 2A. That should have been done in a different way; however, it is included in the bill and that is why we must take the amendment process seriously.

15:15

Bristow Muldoon asked a pertinent question about why the Conservatives have introduced the term marriage when it was not deemed necessary in the Local Government Act 1986. I am clear that that is because section 2A was not about the issue of marriage but about what was then seen to be the promotion of homosexuality. The debate has moved on significantly since that time. However, my amendment includes marriage to try to satisfy people's genuine concerns.

Those concerns were recognised by Labour ministers in Westminster in an amendment to the Learning and Skills Bill, when it went through the House of Lords—that amendment mentions marriage. I made a similar proposal, but it was rubbished by the Education, Culture and Sport Committee during its consideration of the Standards in Scotland's Schools etc Bill at stage 2. People cannot understand why there have been two different approaches. I am interested to hear the minister's explanation of the change in tack and I look forward to seeing how that develops in another place.

Members have commented on Keith Harding's mention of the opinion poll. The mention of the

opinion poll is important not so much in terms of its veracity, but as a pointer towards the general concerns. It justifies the reasons for introducing the amendments. For all the faults of the referendum, there is no doubt that it polled higher than the most recent European parliamentary election. Whether that says something about European parliamentary elections I do not know, but the results cannot be dismissed lightly.

Gil Paterson made a pertinent point about the question of guidelines. However, it is worth pointing out that when, at stage 2 of the Standards in Scotland's Schools etc Bill, I lodged an amendment suggesting that marriage should be included in guidelines, it was voted down by the SNP members of the committee as well as the Labour members. Although there may be some movement towards my position, which I welcome, that approach has already been rejected, at a time when it might have been adopted.

Kenny Gibson mentioned that relationships might be something that people indulge in. I am not sure if he chose those words intentionally. The point is that marriage is not something that one indulges in; one might indulge in a relationship, but not in marriage. Again, the difference is the legal status of marriage. I am not trying to differentiate in a way that stigmatises, which is why I have said that I appreciate Michael McMahon's amendment. All I am trying to say is that marriage is already recognised in law; it is seen as a secure and recognised way of signalling a commitment.

I do not believe that marriage has a monopoly on love or care, but it is worthy of inclusion in the section that repeals section 2A. That will go a long way towards satisfying the concerns of the Scottish public. It seems an inexpensive way to ensure that those concerns are satisfied. I regret that the minister does not agree and I will seek to press the matter to a vote.

Mr McMahon: I thank the committee for conducting this debate in an appropriate manner. Given the record of this committee, I knew that we would have a genuine, honest and respectful debate. However, I was disappointed at one inappropriate note that was brought into the discussions. People have made valid points in expressing their concerns about my amendment. They were entitled to do so. I agreed with some points and did not agree with others. However, I did not think that Kenny Gibson should have tried to discredit me to make his point.

The Convener: The question is, that amendment 74 be agreed to. Are we all 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)

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

The Convener: The result of the division is: For 1, Against 10, Abstentions 0.

Amendment 74 disagreed to.

Amendment 144—[Mr McMahon]—moved.

The Convener: The question is, that amendment 144 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

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

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

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

AGAINST

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)

Bristow Muldoon (Livingston) (Lab)

Mr Gil Paterson (Central Scotland) (SNP)

ABSTENTIONS

Colin Campbell (West of Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 7, Abstentions 1.

Amendment 144 disagreed to.

Section 26 agreed to.

Section 27 agreed to.

Schedule 4 agreed to.

Section 28 agreed to.

Long title agreed to.

The Convener: We will move into private session. I ask the public and the official report staff to leave.

15:23

Meeting continued in private until 15:48.

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