

# **LOCAL GOVERNMENT COMMITTEE**

Tuesday 5 February 2002  
(*Afternoon*)

Session 1

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### LOCAL GOVERNMENT COMMITTEE

#### 5<sup>th</sup> Meeting 2002, Session 1

##### CONVENER

\*Trish Godman (West Renfrewshire) (Lab)

##### DEPUTY CONVENER

\*Dr Sylvia Jackson (Stirling) (Lab)

##### COMMITTEE MEMBERS

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

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

\*Tricia Marwick (Mid Scotland and Fife) (SNP)

\*Iain Smith (North-East Fife) (LD)

\*Ms Sandra White (Glasgow) (SNP)

\*attended

##### THE FOLLOWING ALSO ATTENDED :

Euan Robson (Deputy Minister for Parliamentary Business)

##### CLERK TO THE COMMITTEE

Eugene Windsor

##### SENIOR ASSISTANT CLERK

Irene Fleming

##### ASSISTANT CLERK

Neil Stewart

##### LOCATION

Committee Room 3



## Scottish Parliament

### Local Government Committee

*Tuesday 5 February 2002*

*(Afternoon)*

[THE CONVENER *opened the meeting at 15:03*]

**The Convener (Trish Godman):** Okay, comrades, we should start, as it is nearly 5 past 3. More people are sitting in the public gallery than are sitting round the table—probably the first time that that has happened in the Local Government Committee.

### Items in Private

**The Convener:** We have three main items to consider today, the first of which is the Marriage (Scotland) Bill. Before we move to that, I ask members to agree to take items 3 and 4 in private. Both items are on draft reports.

**Members** *indicated agreement.*

## Marriage (Scotland) Bill: Stage 2

**The Convener:** We move now to stage 2 of the Marriage (Scotland) Bill. Members should have in front of them a copy of the bill, the marshalled list of amendments and the groupings of those amendments for debate. The order in which amendments are called and moved is dictated by the marshalled list. You will have to work between the two papers, although I am sure that, by now, you are all aware of how to do that.

One debate will be held on each group of amendments. You can speak to amendments if you wish—as usual, you will have to catch my eye. I will call the proposer of the first amendment in each group, who should speak to and move that first amendment. I will then call other speakers before asking the proposer whether they wish to sum up. If the mover of an amendment wishes subsequently to withdraw that amendment, I will ask the committee's permission for that to happen. I am sure that you have all been on committees for stage 2 debates before and that you will easily follow the procedure.

Members have one other paper, which has just been handed out. It is a letter from Euan Robson on the Marriage (Scotland) Bill. The letter is not on today's agenda but the minister may speak about it when we come to the second group of amendments. The letter is provided to members for information. It will probably be spoken about more at stage 3 than at this stage.

Are members clear about the procedure?

**Members** *indicated agreement.*

**The Convener:** I welcome Euan Robson, who is the Deputy Minister for Parliamentary Business. He is here today because, originally, this was his bill. I also welcome Brian Philp, who is the deputy registrar general, Paul Parr, who is the head of registration, and Kay McCorquodale, who is the senior principal legal officer in the office of the solicitor of the Scottish Executive.

### Section 1—Solemnisation of civil marriages at places approved by local authorities

**The Convener:** Amendment 1, in the name of the minister, is grouped with amendment 2. I ask the minister to move and speak to amendment 1 and to speak to amendment 2.

**The Deputy Minister for Parliamentary Business (Euan Robson):** Thank you, convener. Amendment 1 is a technical amendment that follows on from amendment 2. During stage 1 consideration of the bill by this committee and other interested committees, the view was expressed that the right of appeal against a local

authority's decision should be set out in the bill rather than in the draft regulations. The draft regulations were published at the same time as the bill and were, in effect, an aid for the Parliament. During the stage 1 debate on the bill on 17 January, the same point was made by a number of members, including Tricia Marwick, Keith Harding and you, convener. At that debate, I made it clear that the Executive was indeed prepared to listen to the committees' views on this matter and I undertook to introduce Executive amendments at stage 2. Amendments 1 and 2 are those amendments.

If members will permit me, I will describe amendment 2 first, because it is the substantive one. Amendment 2 allows any person who has made an application to a local authority for the approval of a place for the solemnisation of civil marriage to appeal to the sheriff against the decision of the local authority. The appeal is made by summary application. Furthermore, an appeal may be made to the Court of Session against the decision of the sheriff, but only on a point of law.

Amendment 1 is consequential on amendment 2. As members will have seen, it deletes paragraphs (h) and (i) of section 18A(2). As the right of appeal will be in the bill, there is no need to make further provisions in relation to appeals in the regulations. As is the norm in such matters, the procedure of summary application is governed by rules of court.

I ask members to support amendments 1 and 2. I acknowledge the committee's concerns about the breadth of the appeals provision and I understand the committee's view that appeal should be limited to a point of law, with suitable provision in the draft regulations to allow an applicant to seek a review by the local authority of its original decision. We would have to consider whether such a combination would comply with human rights legislation.

I should point out that the local authority members of the working group, which the registrar general established to consider the regulations and guidance, were strongly opposed to provisions in the draft regulations in relation to review. They had two concerns. The first was about the fact that the normal practice under licensing procedures is for an applicant who is unhappy with a local authority's decision to take the matter immediately to a sheriff on appeal. That allows a clear differentiation of roles and is a practice with which local authorities and licensees are familiar. The second concern was on a practical matter. Local authorities do not normally have a second tier of committees that could review a licensing matter. A committee would have to be established for a review, which would add cost to the application and delay it a bit.

In the light of local authorities' views, the Executive is reluctant to reinstate the review provisions in the draft regulations. If the committee is not minded to accept the amendments or has reservations about them, we propose to lodge at stage 3 an amendment that would as closely as possible replicate the appeals process that is set out in regulation 17 of the draft regulations. That would allow a sheriff to uphold an appeal

"if the sheriff considers that ... in arriving at its decision"

a local authority has

"(a) erred in law ;

(b) based its decision on any incorrect material fact;

(c) acted contrary to natural justice; or

(d) exercised its discretion in an unreasonable manner."

Therefore, any appeal to the Court of Session would be limited to a point of law.

Those provisions are acceptable to local authorities and might be so to the committee. I am interested in the committee's views on the situation, which is quite complicated.

I move amendment 1.

**Iain Smith (North-East Fife) (LD):** I thank the minister for his comments, particularly those about the provision that I think the committee wanted. Such a provision would make it clear that it is not for a sheriff to second-guess the policy or discretionary aspects of a local authority's decision on an application and that a sheriff is part of an appeal mechanism that operates if a local authority gets something wrong by erring in law or in fact or by exercising its discretion unreasonably.

In the stage 1 debate, the convener referred to that point and asked:

"Will the minister assure me that the appeal will be allowed only on a point of law? We do not want sheriffs to be the final arbiter on what is an appropriate location. Given some of the sheriffs that I know, that would be rather bizarre."

I share the convener's view, although sheriffs are all wonderful people, obviously. The minister responded:

"On Trish Godman's point, the appeal to the sheriff is limited. Details are in the draft regulations, but the right of appeal will be in the bill."—[*Official Report*, 17 January 2002; c 5556, 5572.]

If the appeal provisions of the draft regulations are incorporated into the bill, that would satisfy some of my concerns that the scope of the appeal provisions in amendments 1 and 2 is too wide. Those provisions should be restricted to circumstances in which the local authority may have erred in law or in fact or exercised its discretion unreasonably, as the minister suggested.

**Dr Sylvia Jackson (Stirling) (Lab):** As the minister clearly has in mind the appeal system that we would like, would not it be easier if he did not press amendments 1 and 2, to allow for reconsideration at stage 3?

**Tricia Marwick (Mid Scotland and Fife) (SNP):** I agree with Sylvia Jackson. A happier way of proceeding would be not to decide on the amendments now, but to discuss the matter again at stage 3. That would be satisfactory. I do not think that we will be pushed for time at stage 3, so that will give us something to talk about.

**Mr Keith Harding (Mid Scotland and Fife) (Con):** I agree. Like others, I have suggested that the minister's aim could be delivered by amending the Civic Government (Scotland) Act 1982. Has the Executive discounted that idea?

**Euan Robson:** We have discounted that route.

I have listened carefully to the committee. When I answered the convener during the stage 1 debate, it did not occur to me precisely how the European convention on human rights would impact on the provisions, so the amendments were drafted to ensure that there is no doubt that they comply with the ECHR. However, given the committee's views, and in an effort to make progress, I ask the committee's agreement to withdraw amendment 1 and I will not move amendment 2. I will lodge further amendments at stage 3 to fulfil the committee's suggestions.

We will have to discuss the matter in detail with local authorities, because they must be happy with the way in which the bill is framed. We will speak to them and gain some assurances. I am happy to withdraw amendment 1.

*Amendment 1, by agreement, withdrawn.*

*Amendment 2 not moved.*

15:15

**The Convener:** Amendment 3 is grouped with amendment 4.

**Euan Robson:** Amendment 3 is technical; the substantive amendment is amendment 4. As with amendments 1 and 2, we tried to meet the committee's requirement that the affirmative procedure should be adopted for the regulations. Amendment 4 does nothing more than establish that. I hope that the committee will find that acceptable and that it provides what they asked for.

I move amendment 3.

**Mr Michael McMahon (Hamilton North and Bellshill) (Lab):** I thank the minister for doing that. It shows that he has taken on board our concerns. We continue to have concerns about the

regulations, but they can be thrashed out over time. By taking away the first group of amendments and by lodging the second group, the minister has shown that he is taking the committee's views seriously.

**Tricia Marwick:** I thank the minister for handling the process constructively. He has taken on board the committee's concerns and is to be commended. I hope that some of his colleagues will do something similar.

**The Convener:** Do not hold your breath.

*Amendment 3 agreed to.*

*Amendment 4 moved—[Euan Robson]—and agreed to.*

*Section 1, as amended, agreed to.*

*Section 2 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the bill. I thank the minister and his officials for attending.

15:17

*Meeting continued in private until 16:11.*



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