LOCAL GOVERNMENT COMMITTEE

Tuesday 5 November 2002
(*Afternoon*)

Session 1

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now trading as The Stationery Office Ltd, which is responsible for printing and publishing Scottish Parliamentary Corporate Body publications.

CONTENTS

Tuesday 5 November 2002

LOCAL GOVERNMENT COMMITTEE
27th Meeting 2002, Session 1

CONVENER

*Trish Godman (West Renfrewshire) (Lab)

DEPUTY CONVENER

*Dr Sylvia Jackson (Stirling) (Lab)

COMMITTEE MEMBERS

Mr Duncan Hamilton (Highlands and Islands) (SNP)
*Mr Keith Harding (Mid Scotland and Fife) (Con)
*Iain Smith (North-East Fife) (LD)
*Elaine Thomson (Aberdeen North) (Lab)
*Ms Sandra White (Glasgow) (SNP)

COMMITTEE SUBSTITUTES

Robert Brown (Glasgow) (LD)
Angus MacKay (Edinburgh South) (Lab)
Tricia Marwick (Mid Scotland and Fife) (SNP)
John Young (West of Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Kate Maclean (Dundee West) (Lab)
Peter Peacock (Deputy Minister for Finance and Public Services)

WITNESSES

Jim Hunter (City of Edinburgh Council)
Allan Sim (Scottish Kennel Club)
John Sleith (Royal Environmental Health Institute of Scotland)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Ruth Cooper

ASSISTANT CLERK

Neil Stewart

LOCATION

Committee Room 1

Scottish Parliament

Local Government Committee

Tuesday 5 November 2002

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:01*]

The Convener (Trish Godman): Comrades, it is 2 o'clock, so we may begin. We have a very full agenda.

Items in Private

The Convener: Do members agree to take items 4, 5, 6 and 7 in private? Item 4 is consideration of a draft report on the budget. Item 5 is consideration of a draft report on the Mental Health (Scotland) Bill. Item 6 relates to an expenses claim. Item 7 is consideration of a draft report on the committee's civic participation events.

Members *indicated agreement*.

Local Government in Scotland Bill: Stage 2

The Convener: Before we move on to stage 2 consideration of the Local Government in Scotland Bill, I will outline some housekeeping arrangements. I welcome to the committee Kate Maclean, the convener of the Equal Opportunities Committee. It is nice to see a new face at our meeting. We will hear from Kate later.

All members should have a copy of the bill, a copy of the marshalled list of amendments and a list of groupings to help them on their way. I will not outline the procedure for dealing with the bill, as members will pick that up as we proceed. I am sure that members are aware of it anyway, as they sit on other committees.

If a member of the committee or Kate Maclean is to move an amendment, they will speak first. Next I will open up the debate to committee members. After we have heard from the minister, the person who moved the amendment will have another opportunity to speak. If the minister moves an amendment, he will speak first. After other members have spoken, the minister will have an opportunity to sum up. At the end of the debate on an amendment, the member who moved it will be asked whether they wish to press it. If they decide to withdraw the amendment, I will ask the committee whether it agrees to that.

I welcome the Deputy Minister for Finance and Public Services, Peter Peacock, and his officials. I was excited for a moment when I thought that a large number of people were attending the meeting, but then I realised that they were all the minister's officials rather than members of the public. However, they are all very welcome.

Section 1—Local authorities' duty to secure best value

The Convener: The first amendment to be debated is amendment 60, which is grouped with amendments 61 and 64.

Ms Sandra White (Glasgow) (SNP): The original intention behind amendment 60 was to create a new subsection. On the advice of the clerks, I am seeking instead to add the new wording that is proposed by the amendment between paragraphs 1(3)(b) and 1(3)(c). I will speak to amendment 60 and what is meant by

"the impact on the community".

The Local Government in Scotland Bill is important, and mentions community and best value throughout. The addition of amendment 60 would reflect the strong community theme that runs through the bill.

Amendment 61 refers to

"the need to provide equitable treatment of providers or potential providers".

Again, I originally wanted that wording to form a new paragraph—paragraph 1(1)(e)—but I have accepted the advice of the clerks about where it should go.

Amendment 61 seeks to put an obligation on local authorities to make a fair, like-for-like comparison of the costs and benefits of the available options for the provision of a service. It also seeks to secure a level playing field for all prospective providers of services that are purchased by local authorities. That is very important.

Amendment 64 is slightly different, in that it is about the publication of information on performance. It is important that councils are transparent and that the public are aware of councils' performance. It is crucial that the best value process is as transparent as possible. Amendment 64 would ensure maximum transparency for the three key elements of the process.

I move amendment 60.

The Deputy Minister for Finance and Public Services (Peter Peacock): I regret to say that I have real reservations about Sandra White's amendments, even though I recognise the spirit in which they were proposed. I understand why the voluntary sector would prefer to have its interests in the duty of best value recognised in the bill through amendments 60 and 61. The definition of best value that is used in the bill is not a random shopping list; it has been developed carefully with one eye on the fact that best value is, to a significant extent, a regulatory regime.

My main concern about amendment 60 relates to definitions. To which community, and to what kind of impact, does the amendment refer? Best value is about considering the impact on the community of how services are delivered and the other factors that have to be weighed when local authorities make judgments. Seeking a separate reference to the impact on the community simply makes that impact one of the balancing factors within best value and not a fundamental purpose of best value itself.

We are proposing to add to best value through amendments 1 and 31 and we support amendment 62, in the name of Sylvia Jackson. Those amendments contain all the clarification that was sought by the committee and the Parliament and they will have much the same effect as amendment 60, but in a way that works with the decisions that are required under best value.

Reference to the need to consider sustainable development, which is the subject of amendment 31, would help to promote the interests of exactly the groups that Sandra White's amendments seek to recognise, particularly the community and the voluntary and business sectors. Sustainable development cannot be achieved without consideration of the interests of those sectors.

Amendment 62 would help to emphasise that what matters under best value is what works, but not just for the local authority. The outcomes or impact of decisions that are taken under best value are what matter. I think that that is the point that Sandra White is trying to get at through amendment 60, but we think that amendment 62 covers more ground than could be captured effectively by amendment 60, which is why I ask Sandra White to withdraw it.

That leaves amendments 61 and 64 and their references to the equitable treatment of service providers. I appreciate that those amendments seek to secure a level playing field for all prospective providers of services that are purchased by local authorities, but I repeat that I have doubts about them. The voluntary sector might well feel that the principle of equality of treatment is not always upheld as it would like. However, local authorities are already subject to United Kingdom and European Union law on equal treatment of contractors when deciding whether to put services out to tender. Amendment 61 would push local authorities further than they are required to go under the law on equal treatment when they make decisions about whether to provide services themselves, rather than put them out to tender. It is worth pointing out that we think that equitable treatment and equal treatment are not the same. Equal treatment is a readily understood legal principle. We are not sure what the legal effect of substituting "equitable" for "equal" would be. In one view, equitable treatment could go further than equal treatment. I know that this stuff is not straightforward, but the common definitions and usage of "equitable" imply treatment that is free from partiality, self-interest or preferences of any kind. Sometimes, a preference can be justified. That is the reasoning behind the changes we are seeking to make in section 10.

That said, we believe that we can assist the objectives that underpin amendment 61 in a way that is rigorous and effective. I hope that that goes a long way towards meeting the desires that Sandra White has expressed in amendment 61. We prefer to use the powers under the bill to ensure that those issues will be covered in guidance.

We are clear that equal treatment is a fundamental issue that underpins best value and that it is not just another factor for authorities to

add into the balance when they make decisions about where their best interests lie. For those reasons and with those assurances, I ask Sandra White not to move amendment 61.

On amendment 64, we expect local authorities to pay serious attention to their arrangements for communicating with the public. Section 15 makes appropriate provisions in that regard. The list of matters that would be covered by regulation is intended to describe information that must be published. We must be clear when we impose a specific obligation, and, when amendment 64 is examined closely, I am not sure that it is clear. I have mentioned the problems with the reference to "equitable treatment", but I also have problems with the rest of the amendment. What is the meaning of requiring a local authority to report on

"measures it has taken to assess best value"?

Does that mean that the authority would have to report that it is subject to performance audit and that it has to publish audit reports? Does it mean that the authority would have to report every decision it takes, however trivial, on the basis that they are all subject to the duty of best value? Does it refer to the way in which the authority addresses whether the arrangements that it has in place to secure best value are adequate?

I also wonder what effect is intended by the inclusion in amendment 64 of a duty to report on the consultation process. The Executive intends to cover in guidance the need to include information about the use that will be made of consultation responses. That is the more important point and it underlies much of Sandra White's thinking on the issue. For those reasons and with the reassurances that I have given, I hope that Sandra White will agree not to move amendment 64.

The Convener: I ask Sandra White whether she wishes to press or withdraw amendment 60.

Ms White: As I accept the minister's explanation with regard to amendment 60, I will withdraw it and I will support Sylvia Jackson's amendment 62.

However, I will move amendments 61 and 64, as they are important. The minister said that the provisions of amendment 61 would be covered by guidance. If that is the case, I am not sure why he does not accept the amendment. The words "equitable" and "equal" are similar and I do not accept the minister's explanation on that point.

Amendment 60, by agreement, withdrawn.

Amendment 61 moved—[Ms Sandra White].

The Convener: The question is, that amendment 61 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

White, Ms Sandra (Glasgow) (SNP)

AGAINST

Godman, Trish (West Renfrewshire) (Lab)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Jackson, Dr Sylvia (Stirling) (Lab)
Smith, Iain (North-East Fife) (LD)
Thomson, Elaine (Aberdeen North) (Lab)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 61 disagreed to.

The Convener: Amendment 1 is grouped with amendment 31

Peter Peacock: We were happy to respond positively to the committee's recommendation that sustainable development should be referred to in the duty of best value that is included in the bill. Sustainable development, which is one of the Executive's cross-cutting priorities, seeks to combine economic progress with social and environment justice. We welcome the progress that local authorities have made to integrate sustainable development into their plans and processes and we agree that it would be useful to have an explicit reference to sustainable development in the bill.

As we make progress on the bill, we will, of course, produce guidance following consultation with a full range of bodies, individuals and communities that cover social, economic and environmental interests. With amendment 1, we have developed an amendment that best accommodates local authority performance management arrangements and the scrutiny regimes that support them. The issue is one in which even a small contribution is important. We want authorities to consider sustainable development as a matter of course in the decisions that they take. The proposal in amendment 1 to put the reference to sustainable development in section 1 ensures that that is the case.

I will raise a further point that I have not yet covered and that relates to how we achieve the application of best value across the rest of the public sector. I have written to the committee on the subject, but it may be beneficial for me to put the thinking behind that on the record today. If the committee wishes, I would be happy to do that when I respond to the debate.

I move amendment 1.

14:15

Iain Smith (North-East Fife) (LD): I welcome the minister's acceptance of the committee's recommendation in its stage 1 report that the bill should include sustainable development and

sustainability as key factors in best value. It is extremely important that that happen, because it will allow local authorities to take those factors into account in relation not only to best value but to other duties stipulated in the bill with regard to the power of well-being and community planning, which all refer back to best value. As a result, amendments 1 and 31 are extremely important.

The Convener: I ask the minister to wind up. It would also be helpful if you could expand on the issue of best value in public bodies.

Peter Peacock: I welcome the committee's support for amendment 1. As far as best value throughout the rest of the public sector is concerned, I said in my opening speech in the stage 1 debate that the Executive has no policy difference with the committee on that; in fact, we share absolutely the committee's ambition to make best value a statutory duty throughout the public sector. Our only problem is in finding ways and means by which to meet in full the committee's desires. We have been told that an amendment that would impose a statutory duty of best value throughout the public sector is outwith the bill's scope. Although we have explored a range of possibilities in order to lodge such an amendment in other bills that are being considered during this session, I am afraid that we have come up against the same problem of scope.

As a result, we currently have no suitable vehicle with which to move the issue forward. However, I want clearly to indicate that the Administration intends at the earliest opportunity to introduce a statutory duty of best value throughout the wider public sector. In the meantime, we can and will amend, and will put the rest of the public sector under a duty of best value through administrative means using existing powers. In fact, we have already acted to ensure that best value is among the duties of accountable officers throughout the public sector. That might not be as certain a route as the committee wishes, because administrative action that we have already taken could be reversed by any future Administration without reference to Parliament and I know that that is at the core of the committee's concerns. However, what we have done means that, in the short term, committee members can be confident that a duty to seek best value has been placed on the wider public sector and that the matter will be pursued further.

When the Parliament approves the bill, we will use our existing powers under the Public Finance and Accountability (Scotland) Act 2000 to amend those duties further to bring them into line with the bill's intentions. That will ensure that those who run other public bodies that are involved in community planning and wider matters will be under the same duty of best value as that which is described in the bill as it leaves Parliament. I repeat for the record that the Administration intends at the earliest opportunity to introduce a statutory duty of best value throughout the public sector

Amendment 1 agreed to.

The Convener: I call Kate Maclean, on behalf of the Equal Opportunities Committee, to speak to and move amendment 2, which is grouped with amendment 9.

Kate Maclean (Dundee West) (Lab): Amendments 2 and 9 seek to implement the 10th recommendation of the Equal Opportunities Committee's stage 1 report on the Local Government in Scotland Bill. That recommendation states:

"The Committee recommend formal recording of the employment practices of partners/suppliers/contractors in order to examine the potential to establish criteria which local authorities can take into consideration before deciding to enter into or continue contracts."

Committee members might be interested to know that our stage 1 report quotes the Greater London Authority's statement that in the purchase of "goods, services and facilities", it would

"not use agencies or companies who do not share our values on equality of opportunity and diversity".

Since the requirement to comply with the relevant equalities legislation is already a given and the bill demonstrates an overarching equal opportunities approach, the Equal Opportunities Committee considers that amendment 2 represents neither a prohibition nor a regulation but is firmly an intra vires encouragement.

Amendment 9 seeks to place a duty on local authorities to take reasonable steps to ensure that the high standards that are set in their equal opportunities policies are reflected favourably in the equal opportunities policies of organisations that are contracted to work with the local authorities. The Equal Opportunities Committee and members of this committee are aware of the fact that the previous compulsory competitive tendering legislation resulted in staff terms and conditions of service becoming a casualty when that issue was dealt with by local authorities.

There are already duties on local authorities under section 19 of the amended Race Relations Act 1976; however, they cover only persons who are specified in new schedule 1A to that act. The Equal Opportunities Committee seeks to widen that out and to impose a duty on local authorities to ensure that, as a minimum requirement, contractor policies match the equal opportunities policies of the local authorities. The committee considers that the amendment represents neither a prohibition nor a regulation, but that it is firmly an intra vires encouragement.

On behalf of the Equal Opportunities Committee, I move amendment 2.

Mr Keith Harding (Mid Scotland and Fife) (Con): I have some concerns about amendment 9. I understand where the Equal Opportunities Committee is coming from and I am supportive of its point of view. However, in evidence from the small business community we heard that what amendment 9 proposes would place unreasonable burdens on it. It is unreasonable to expect small businesses to adopt the policies of their local councils. The mere fact that they say that they are equal opportunities employers should be sufficient; they should not have council policies imposed on them.

Ms White: I support amendments 2 and 9. It is important that the Scottish Parliament leads the way. Local councils support equal opportunities; under law they should support and promote equal opportunities. We would be missing a valuable lesson if the committee did not support equal opportunities throughout the Parliament and beyond. I support fully the two amendments.

Peter Peacock: I listened carefully to what Kate Maclean said. She knows that the Executive is keen to advance the cause of equalities wherever that is feasible. The Equal Opportunities Committee's report is supportive of what the bill does in that regard. However, today she presents us with a real problem in meeting her requests.

The Executive's clear view is that amendment 2 goes beyond the legislative competence of the Parliament. Amendment 9 may also be beyond our legislative competence. Amendment 2 would place a duty on local authorities, in securing best value, to include in contracts a requirement on the contractor to put in place equal opportunities policies that meet the standards that are set by the local authorities. The amendment therefore addresses matters that are reserved under paragraph L2 of part II of schedule 5 of the Scotland Act 1998, as its association with best value takes it into what is regarded in law as a regulatory regime because the best-value duty is backed by audit and the possibility of enforcement and ministerial action.

More generally, amendment 2 would regulate the equal opportunities policies of contractors, which would go beyond encouragement of equal opportunities. What is proposed also goes beyond placing a duty on local authorities, in that the amendment would place a requirement on contractors to have in place equal opportunities policies that are of a standard at least equal to those set for local authorities. Surely we cannot give to local authorities powers to regulate matters in other bodies in which we do not have the competence to regulate.

There must also be some doubts about amendment 9, which relates to matters to which a local authority may have regard when entering into contracts. We believe that it cannot be right to give local authorities powers to insist on matters that we do not have the competence to insist on ourselves. The amendment also talks about the contractors matching or exceeding the standards that are set by the authorities' policies, but it is not clear how such standards could be measured. In many cases, local authorities are extremely large organisations that have extremely well-developed equal opportunities policies that they can have trouble living up to. How could we measure whether a small contractor had matched the standard that was set by a council? If a contractor had excellent equal opportunities policies which happened not to match or exceed those of the council, even by a fraction, would the local authority be justified in taking that matter into account in disqualifying that contractor? How could we tell whether the local authority had truly excluded a contractor only on the basis of such a provision rather than on any other basis, when the truth is that it could have excluded its competitors for the same reasons?

Contractors are already obliged to comply with general equal opportunities legislation on equal pay and other matters. That is already a serious responsibility and we must be careful about where and how far we try to push it. Given those concerns, we should look more closely at the mechanisms that exist in the bill to address the concerns of colleagues on the Equal Opportunities Committee. A clear reference is made to equal opportunities in section 1 on the duty to secure best value. That reference is enhanced by the general equalities provisions in section 32 of the bill, which establish a positive framework and culture for improvement in equalities issues in local government.

More specifically, section 10 of the bill is already designed to allow local authorities to take the terms and conditions of employment of contractors into account when making procurement decisions. That will allow local authorities significant flexibility and will allow for an approach that is more tailored to specific circumstances and builds on the culture of equalities that we all want.

Beyond the bill, we know that we can say more about what can be done to promote and encourage equalities, not only on terms and conditions but in wider service-delivery matters. That might also lie behind what Kate Maclean seeks on behalf of the Equal Opportunities Committee. The Convention of Scottish Local Authorities, on behalf of the best-value task force and with the assistance of the equalities co-ordination group, on which all the main equality organisations are represented, is currently drafting

focused and practical guidance on best value and equalities. I am confident that the bill and the supporting guidance will be effective in further improving local authority practices on those matters and that there will also be a real improvement in the outcome for individuals.

As we all know from dealing with legislation in the Parliament, it is a complex matter for the Scottish Parliament to make provision for equal opportunities. I hope that the committee will agree with the earlier comments made by the Equal Opportunities Committee that the preparation of the bill has been exemplary from that point of view.

I do not like to disappoint my colleagues, but I think that in the measures that we have taken on equalities we have already gone literally as far as we can. I repeat the Executive's clear view that amendment 2 is outwith competence and that amendment 9 might also be. Given my assurances, I ask Kate Maclean to seek to withdraw and not to move her amendments. I know that Kate Maclean is today representing the Equal Opportunities Committee's decision, so I appreciate that she might not feel that she has the authority to seek to withdraw the amendment that she has moved. In that case, I ask the committee, for the reasons that I have set out, to reject the amendments.

Kate Maclean: I am unable not to press the amendments because they were lodged on behalf of the Equal Opportunities Committee. The committee discussed the issues that the Deputy Minister for Finance and Public Services raised. As I said when I spoke to the amendments, the committee felt that, given the requirements to comply with relevant equalities legislation and the overarching equal opportunities approach that is demonstrated in the bill, the amendments did not represent prohibition or regulation and were intra vires—or within powers—in respect of encouragement for local authorities. I will press amendment 2.

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

White, Ms Sandra (Glasgow) (SNP)

AGAINST

Godman, Trish (West Renfrewshire) (Lab)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Jackson, Dr Sylvia (Stirling) (Lab)
Smith, Iain (North-East Fife) (LD)
Thomson, Elaine (Aberdeen North) (Lab)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 2 disagreed to.

The Convener: Amendment 62 is in a group of its own.

Dr Jackson: Amendment 62 is a technical amendment. It would solve a problem that was first raised by the Scottish Parliament information centre—SPICe. I am grateful for its close scrutiny of the bill, which highlighted the problem.

In section 1, best value is referred to as being

"continuous improvement in the performance of the authority's functions."

Amendment 62 would ensure that improvement in the outcomes that local authorities achieve will be captured in the bill, as well as the processes by which the outcomes are arrived at. Auditors would be able to test and comment on whether there is evidence that outcomes are improving. The amendment will help to tie scrutiny of performance indicator information into best-value scrutiny processes.

Such information on outcomes could come from a variety of sources. It might be information that is collected by local authorities for their own use. It might be that which is collected and provided by local authorities in response to a direction from the Accounts Commission for Scotland under the Local Government Act 1992, as amended by section 15, which looks for outcomes that are suitable for national best value and community planning agendas. The information might even have been collected by other organisations, such as through the "Scottish Household Survey". The important criteria will be whether available information has something to tell us about outcomes and is reliable—not who is responsible for producing it.

I move amendment 62.

The Convener: As no other member wishes to speak to the amendment, I invite the minister to wind up.

Peter Peacock: As I said, we are more than happy to support amendment 62. There should be continuous improvement in what a local authority achieves, not simply in how the local authority achieves it, and in the impact that that improvement has where it counts, which is on service users. I hope that the committee will support the amendment.

Amendment 62 agreed to.

Section 1, as amended, agreed to.

Sections 2 and 3 agreed to.

Section 4—Hearings under section 3 above

The Convener: Amendment 3 is grouped with amendments 4 and 5. I invite the minister to speak

to and move amendment 3 and to speak to the other amendments in the group.

14:30

Peter Peacock: The amendments are technical amendments that are designed to achieve as much consistency as possible between the two hearings procedures of the Accounts Commission for Scotland, to which local authority officers and members or other witnesses may find themselves subject.

In the bill, we have taken care to ensure that the procedures for what we call an ordinary hearing into failures in best value, and matters arising from accounts, give rights to individuals who appear as witnesses, even though we are content that the Accounts Commission for Scotland has always taken care with witnesses and we are satisfied that the hearings will not assign blame to individuals or impose sanctions on them. There is a separate procedure for that and we are content to leave it. We are simply ensuring consistency as a matter of good practice.

I move amendment 3.

Amendment 3 agreed to.

Amendments 4 and 5 moved—[Peter Peacock]—and agreed to.

Section 4, as amended, agreed to.

Section 5 agreed to.

Section 6—Enforcement: preliminary notice

The Convener: Amendment 41 is grouped with amendments 49, 50, 42, 43, 6, 7, 63, 8 and 65. I invite the minister to move amendment 41 and speak to all the amendments in the group.

Peter Peacock: I will speak to amendments 41, 49, 50, 42, 43, 6, 7 and 8. At this stage, I am happy to indicate support for amendments 63 and 65, which are in the name of Iain Smith.

Again, we are happy to respond to the committee's call for us to clarify the enforcement provisions in the bill. In the stage 1 debate, I made it clear that there are two routes to ministerial intervention in the bill's provisions. The first is after a recommendation by the Accounts Commission for Scotland, following comprehensive investigations and a public hearing. The second route is when exceptional circumstances mean that ministers must intervene directly and immediately.

Amendments 41, 49, 50, 42, 43 and 6 are intended to clarify and extend the grounds on which ministers can take the first route. We are further extending the grounds on which ministers can act using the first route, which is an Accounts Commission recommendation. That is in order to cover not just the duties in section 1, but those in sections 15, 16 and 18; that means the duty of best value, the duty to report on performance, the duty of community planning and the duty to report on community planning. Amendment 41 is a technical amendment and is essential in order to ensure that ministers are able to act on the full range of issues over which the Accounts Commission for Scotland can make recommendations to ministers. We are also providing that, when ministers receive such recommendations from the Accounts Commission, the only further decision that they must make is whether to act on the recommendation; they will not have to assess whether the case meets any other criteria.

Those other criteria, including whether the public interest is at risk of substantial harm, are intended to govern cases in which ministers are minded on their own volition to intervene, without having received a formal recommendation to do so. The criteria apply solely to a failure in best value, which is a very narrow test that represents a high hurdle for ministers to clear. Ministers will need to be ready to defend decisions to intervene in the light of the test and of the availability of the route one procedure. I have referred to the Accounts Commission process.

Amendments 7 and 8 will further clarify the enforcement provisions. Accountability for enforcement decisions can be increased by ensuring that there are clear and effective links between ministers and others who are charged with scrutinising local authority activity. For that reason, we have lodged an amendment that makes it clear that ministers can make recommendations to those other bodies or to whomever else they think appropriate. That may be seen as an alternative form of, or an addition to, intervention.

We want to make it clear that ministers have a range of options from which to choose when intervention is under consideration. They do not have to choose between issuing an enforcement direction and doing nothing; rather, they can make recommendations to local authorities that are under the threat of enforcement. They can make recommendations to other bodies whose procedures and performance might have something to do with a local authority's situation. It is important that ministers should tailor their approach to local circumstances and to the circumstances of particular cases.

I move amendment 41.

The Convener: I ask Iain Smith to speak to amendments 63 and 65. If he wishes, he may also speak to the other amendments in the group.

Iain Smith: Amendments 63 and 65 are a response to the Local Government Committee's concern that the enforcement direction procedures do not appear to have parliamentary scrutiny attached to them. The committee suggested that the negative procedure might be appropriate. In the light of subsequent discussions with the minister, it is clear that that would not necessarily be appropriate when a minister was acting in an emergency to deal with a problem that had to be dealt with quickly.

However, I believe that scrutiny should be required when enforcement directions are issued against local authorities. Amendments 63 and 65 suggest that ministers should be required to make a report to Parliament when they use their powers under sections 7 and 25. That would allow the appropriate committee—the Local Government Committee, assuming that it is still in existence—to bring the minister and representatives of the local council before it, and to conduct an inquiry into the issue, if it felt that that was necessary.

Lessons might be learned as a result of such a procedure. It would also ensure that enforcement directions were being used properly, rather than for party-political purposes, as might otherwise be the case. We have experience of decisions by previous ministers and Administrations—perhaps controlled by different parties—that have not stood up to scrutiny. However, because their powers were not subject to parliamentary scrutiny, they were able to get away with that. Amendments 63 and 65 would prevent that from happening.

I would like to speak briefly to a couple of the other amendments in the group. I thank the minister for the helpful way in which he has dealt with the committee on the bill. Last week the committee met the minister and his team informally and he has spoken personally to members. Those discussions have helped to clarify some of the amendments, which were a little confusing to those of us who find that going through amendments is like swimming through treacle.

I ask the minister to clarify in his summing up that the recommendations to which amendment 7 refers will not have the same statutory force as enforcement directions. If they are to have such force, they should be subject to the requirement to report.

Mr Harding: Will the minister clarify his reasons for moving section 6 of the bill to after section 23? That leads to confusion throughout the bill.

Peter Peacock: I will answer Keith Harding's question first. Amendment 43 is a purely technical change. The amendments to section 6 refer to sections 15, 16 and 18. If the change were not made, the eventual act would not work properly. I will be happy to write to Mr Harding about the matter. If he still has reservations at stage 3, we can pick them up.

Mr Harding: I would appreciate that.

Peter Peacock: On Iain Smith's points, I am more than happy to support his amendment 63. As he said, the committee and I have corresponded about the particular approach that the committee wanted in its stage 1 report and why that might create all sorts of difficulties.

However, Iain Smith has proposed a helpful amendment that would allow Parliament to receive a report when ministers make serious decisions; ministers would be held to account, however uncomfortable that might be. It is only proper for Parliament to be given such an opportunity. Amendment 63 is a good hook to hang that on, so we are happy to support it.

In response to Iain Smith's question, I can clarify that amendment 7, which looks to the recommendations, would not have the same statutory force as the remaining parts of the enforcement action, so it would not require to be subject to a report in the way that Iain Smith indicated.

Amendment 41 agreed to.

Amendments 49, 50, and 42 moved—[Peter Peacock]—and agreed to.

Section 6, as amended, agreed to.

Amendment 43 moved—[Peter Peacock].

The Convener: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Godman, Trish (West Renfrewshire) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Smith, Iain (North-East Fife) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

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

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 43 agreed to.

Section 7—Enforcement directions

Amendments 6 and 7 moved—[Peter Peacock]—and agreed to.

Amendment 63 moved—[Iain Smith]—and agreed to.

Section 7, as amended, agreed to.

Amendment 8 moved—[Peter Peacock]—and agreed to.

Section 8 agreed to.

Section 9—Auditor's duty in relation to aspects of best value

The Convener: Amendment 51 is grouped with amendments 44, 34, 35 and 36. I ask the minister to move amendment 51 and to speak to all amendments in the group.

Peter Peacock: Amendments 51, 44, 34, 35 and 36 are a further group of technical amendments that will clarify the oversight role of the Accounts Commission, its auditors and the controller of audit in relation to parts 1 and 2 of the bill. Specifically, we want to amend the audit duty of local authority auditors to allow them to audit for community planning. In addition, amendment 35 would ensure that the controller of audit could report to the Accounts Commission on all the duties in part 1, on "Best value and accountability", and in part 2, on "Community planning". That relates in particular to section 15, "Publication by local authorities of information about finance and performance", and section 18, "Reports and information".

Amendments 36 and 44 are needed to adjust the ordering of sections in the light of other amendments that we are proposing. In particular, they allow us to group together the enforcement provisions in the bill.

I move amendment 51.

Amendment 51 agreed to.

Section 9, as amended, agreed to.

Amendment 44 moved—[Peter Peacock]—and agreed to.

Section 10—Local authority contracts: relaxation of exclusion of non-commercial considerations

Amendment 9 moved—[Kate Maclean].

The Convener: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

White, Ms Sandra (Glasgow) (SNP)

AGAINST

Godman, Trish (West Renfrewshire) (Lab)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Jackson, Dr Sylvia (Stirling) (Lab)
Smith, Iain (North-East Fife) (LD)
Thomson, Elaine (Aberdeen North) (Lab)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 9 disagreed to.

Section 10 agreed to.

Section 11—Relaxation of restrictions on supply of goods and services etc by local authorities

The Convener: Amendment 54 is grouped with amendments 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 55, 21, 56, 23, 24, 37, 58, 38, 59, 45, 46 and 47. I call the minister to move amendment 54 but, I hope, not to speak to all of the others.

Peter Peacock: I may detain the committee for some time. I will not repeat the list, but I am speaking to amendments on the relaxation of restrictions on the supply of goods and services. As the convener noted, the list is large, and members could be forgiven for thinking that we are deliberately trying to cause confusion. However, as members always expect, we are trying to reduce confusion and clarify a complex series of sections. I will try to explain as much as I reasonably can.

For the most part, the amendments are technical. They are intended to help us to achieve objectives that we have already declared rather than to change those objectives to any material extent. To do so, they will make substantive changes to two sections. They are section 11, which amends the controls over commercial trading imposed by the Local Authorities (Goods and Services) Act 1970, and section 23, which describes what we consider to be inappropriate uses of the new power to advance well-being.

The provision to local authorities of new freedoms and flexibilities on what they can deliver directly in their dealings with others is important but technically difficult to achieve. That is because we are reversing the tide of many years of legislation, which was based on the assumption that local authorities should do only what Parliament specifically permitted them to do. Now, instead, we are creating an assumption that they can do anything they want, unless they are told specifically that they cannot do it. That means that we have to restate or amend certain restrictions, which were previously understood or implicit but did not need to be described in the same way as they do in the new statutory framework post the bill.

It is our intention not to impose impractical, unwarranted or petty constraints, but to clarify some basic ground rules. We have rigorously tested the case for every restated or amended constraint. We have examined whether the change in our approach will make any parts of the surviving provisions that are affected by the changes ambiguous or different in interpretation. That takes time, which explains the number of

amendments that I am moving today. I will try to work through them as quickly as possible.

The first part of amendment 54 and amendments 10, 13, 15, 17, 18 and 21 have been lodged so that the references to what must be counted and accounted for in trading operations under the 1970 act, which we are asking Parliament to amend in section 11, are consistent with the definitions in use in the best-value accounting code of practice, or the BVACOP as it has become affectionately known. Amendment 16 is consequential, as it simply removes wording that those amendments make redundant.

The next parts of amendment 54 and amendments 23, 37 and 58 have been lodged to achieve consistency in references to what can be provided to others, whether that is under section 11 trading agreements or agreements relating to the use of the power to advance well-being.

The last part of amendment 54 removes buildings maintenance activities from the remit of the Local Authorities (Goods and Services) Act 1970. That is because we propose to make separate and special provision in the bill for construction and maintenance activities. I will speak to that in the next group of amendments.

Other measures in section 11 are designed to change the current arrangements for the supply by local authorities of surplus goods and services. At present, those focus the attention of the public and the authorities on whether the intended recipient of a service is eligible to receive the service by virtue of being described on a list drawn up by the Scottish ministers. Anyone on the list can get goods and services and anyone not on the list cannot. We came to the conclusion that that was an inflexible approach and the bill that was introduced abandoned it. Amendment 24 is consequential to that abandonment.

Amendments 11, 12, 14 and 55 restate how the constraints imposed by section 11 on certain agreements differ. In doing so, we also get rid of some technical difficulties in the bill as introduced.

We want to be able to set limits on the money that local authorities are able to make from agreements entered into with no particular public purpose. The only exception to that is where ministers have given consent to an agreement that would otherwise breach the limits. Amendment 19 provides that such a consent can be given even where no limit has been issued and so it must be regarded as being zero. Setting the limits will be done by order and will be subject to the negative resolution procedure; issuing a consent will not. That is the intention of amendment 20.

We are content for the rule about surplus capacity not to apply to agreements between local authorities. We realise that we need to make it clear when agreements should be caught by section 11 and when they should not, and what happens when they are not. Amendment 56 is designed to make that position clear.

Amendments 38, 59 and 46 are designed to make it even more clear that the power to advance well-being should not be relied on to justify agreements entered into with commercial intent, with the proviso that its use can be resourced by imposing a reasonable charge.

Amendments 45 and 47 remind authorities that, historically, charges could not be levied on certain functions, such as education in schools, the provision of a public library service, firefighting and the registration and conduct of elections. Such prohibitions, which already exist in other bits of legislation, should apply to charges imposed under the power of well-being, as they do under the other pieces of legislation.

We will consider whether we need to change the drafting of the list before stage 3 and whether it needs to be specifically applied to commercial agreements entered into under section 11. I may come back at stage 3 with some further tidying amendments, but the amendments before the committee today should make our intentions clear.

The committee should note that we are taking an order-making power to add functions to the list after appropriate consultation and subject to the negative resolution procedure. That is in case it becomes clear, after the bill has been approved, that restrictions hitherto implied should be made explicit.

One part of amendment 47 requires authorities, when they impose charges for things done under the power of well-being, to declare why they think a charge is necessary and what it represents financially. We do not mean that to be an extra administrative burden on local authorities nor one that leads to complex calculations and long-winded explanations being given to service users. However, taxpayers generally pay their taxes so that they do not have to buy public services individually. If a requirement of transparency will build trust and discourage critical comment, that is worth while, which is why we have included the provision in the amendments.

As everything will now be entirely clear to the committee, I move amendment 54.

Mr Harding: Will you expand on the reasoning behind amendment 17? Does it represent a change in policy?

The Convener: I ask the minister to do that when he sums up.

Iain Smith: The minister will know that we have had some discussion of amendments 23 and 24 today. Will he clarify what the amendments mean,

as there seems to be some doubt? It can be quite difficult to follow amendments that refer to other pieces of information. This is a classic example of that, as it is impossible to follow what the amendment means without having other legislation in front of you. Even then, it takes a bit of work. I thank the minister for clarifying the matter for me personally, but it might be helpful if he were to clarify it for the rest of the committee.

Peter Peacock: On Keith Harding's point, amendment 17 is simply a technical amendment that is designed to bring the terminology that is used in section 11 into line with definitions that are used in the best-value accounting code of practice. It is simply a clarification.

On Iain Smith's question about amendments 23 and 24, the intention is to remove from the Local Authorities (Goods and Services) Act 1970 the reference to public bodies and replace it with a section in relation to property. The definition of property in amendment 23

"includes land, accommodation, vehicles, plant and apparatus".

To that extent, amendment 23 is purely technical and tries to clarify where we are in reference to the 1970 act.

I appreciate in examining amendment 23 that a small "(i)" may require to be added to the bill. If it would be helpful, I would be more than happy to put in writing an explanation of amendment 23 and its impact on the 1970 act before getting to stage 3, in case members have any residual concerns. However, members can be entirely relaxed that it is all in proper order; it just may not appear that way.

Amendment 54 agreed to.

Amendments 10 to 20, 55, 21 and 56 moved—[Peter Peacock]—and agreed to.

The Convener: I point out that the other amendments in the group will be voted on next week.

Amendment 57 is grouped with amendment 25.

Peter Peacock: We have considered carefully the representations that we received during consultations on the bill. We are already abolishing compulsory competitive tendering for defined activities, such as buildings operations, and subjecting them to the best-value regime and to a requirement for significant trading operations to break even every three years.

Several submissions argued that, with the abolition of CCT, the time has now come to consider whether the current ban on local authorities undertaking new building work for others, regardless of whether they have spare capacity to do so, could be moderated or repealed. We took time to consider the issue and to discuss it with those who made representations to us, because there are many interests to balance in the construction field, which is a vital part of the Scottish economy. We have concluded that the current arrangements for local authorities are overly restrictive and inflexible. In reaching that view, we considered why the current ban was imposed, the current state of the construction industry in Scotland, which employs 120,000 people, and the pressures that are forecast for the industry in the short and long term.

We understand that the ban on local authorities undertaking new-build construction services for other authorised organisations was imposed because of concerns about: authorities becoming overly committed in an area that demands high levels of up-front capital investment and tight management of profit margins; authorities distorting the market in an area where there was no evidence of market failure and; authorities using their position to create more jobs locally in the short term, but at the expense of the private sector, and therefore the economy. There was also the potential for conflicts of interest in planning consent decisions.

That stance now has to be reviewed against: evidence of steady improvements in the management of buildings direct labour organisations; the introduction of best value, with its emphasis on considering the views and interests of others, taking decisions according to sensible criteria and taking decisions about competition with the private sector; housing stock transfers and resulting changes to the working patterns of local authority buildings and maintenance work forces; potential skills shortages in construction projects across Scotland and the potential for local authorities to contribute to the aims and objectives of the rethinking construction initiative; and increasing work in partnership with the private sector in, for example, PPP projects.

We want to introduce a new system to govern the management of local authority buildings activities, regardless of whether those activities are to construct or maintain buildings or works, and regardless of whether they are undertaken for the local authority or for other parties.

We have decided to suggest that such activities be governed by a new regulatory regime. We propose to provide ministers with a number of powers, which would be subject both to a requirement to consult and to the negative resolution procedure in Parliament. First, ministers would have the power to set limits for the total amount of buildings activity that is devoted to the construction or maintenance of buildings or works for others as a proportion of total building

construction or works activity and for all works of maintenance that the authority is already undertaking.

Secondly, they would have a power for later use to issue regulations that move buildings maintenance and construction into a prudential regime, which balances local authorities' self-interest against the interests of the local economy and the local need for public capital investment.

15:00

We have lodged the amendments at stage 2 so that we can explain our basic proposals. We intend to amend or refine the provisions as necessary at stage 3, after we have consulted further. Whatever the further refinements at stage 3 are, we will not commence section 11 until such time as satisfactory consultations are complete. We think that such a prudential regime would not be wholly dissimilar to our proposed new capital expenditure regime, in that it would rely on a prudential code of practice, to be negotiated with authorities. Under that code, local authorities would determine and keep under review their own construction programmes and plans, subject to certain conditions set out in regulations. The regulations would set out the overarching framework with which local authorities must comply in determining such programmes.

In practice, that would enable local authorities to determine local prudential indicators, thereby establishing what they could afford to undertake for themselves and others and how much to undertake in partnership or to subcontract. Local authorities would be able to publish those indicators and to limit their investment and borrowing in construction to what they could afford, having regard to those indicators.

Local authorities would be required to submit to ministers at prescribed intervals their buildings programmes and to outline how they have kept them under review. The setting of the indicators and consequent decisions on buildings would be auditable and publicly reported. We think that all regulations, in draft, should be subject to consultation with local authorities and whomever else ministers think appropriate. We think that, with proper consultation, subjecting the regulations to negative resolution procedure would be sufficient.

I move amendment 25.

The Convener: Would you move amendment 57, not amendment 25?

Peter Peacock: I beg your pardon, convener. I move amendment 57. That is better.

Ms White: I welcome the new section that amendment 25 would introduce after section 11. It is commendable—not just of the Executive, but of the Local Government Committee—that we are considering such measures to give local authorities special provisions. I thank the minister for his remarks. I am sure that amendment 25 will be supported and that, this time, an amendment will not fall, despite the fact that I am supporting it.

Iain Smith: I wish to raise one potential concern regarding the setting of limits. One size does not necessarily fit all. The situation in Glasgow is very different from that in Shetland, to take two extremes. I seek an assurance that the individual circumstances of each authority will be considered when limits are set, and that there will not just be a single limit for the whole of Scotland.

Peter Peacock: I am grateful for Sandra White's support for amendment 25. I wish to put that on record. I hope that that will not affect the passing of the amendment.

On Iain Smith's point, there will be the opportunity to vary the limits, depending on the circumstances. In fact, the prudential regime that we envisage will be designed around local indicators, because of varying circumstances throughout Scotland. I give that assurance.

Amendment 57 agreed to.

Amendments 23 and 24 moved—[Peter Peacock]—and agreed to.

Section 11, as amended, agreed to.

After section 11

Amendment 25 moved—[Peter Peacock]—and agreed to.

Section 12—Trading operations and accounts

The Convener: Amendment 26 is grouped with amendment 27.

Peter Peacock: I will speak to amendments 26 and 27, and I hope to move the correct amendment at the end of my speech.

Amendment 26 was lodged at the instigation of financial commentators, who are concerned that the bill does not reflect the practical outcome that local authority finance directors assumed we intended the bill to achieve. I am happy to put the matter beyond doubt. The amendment is intended to do that.

Local authorities will be required to show that each trading operation broke even each year, when the latest financial year results are taken with those of the previous two years. That will ensure that deficits are possible in any one year and may even be planned for, but only when they are affordable.

Amendment 27 is technical and corrects an error in the drafting.

I move amendment 26.

Amendment 26 agreed to.

Amendment 27 moved—[Peter Peacock]—and agreed to.

Section 12, as amended, agreed to.

Section 13—Disposal of land by local authorities for less than full value

The Convener: Amendment 28 is grouped with amendment 29.

Peter Peacock: Amendments 28 and 29 are technical and are intended to tidy the provisions that relate to the disposal of land at less than full value. They clarify the parliamentary procedure for any regulations that are laid by ministers. They also ensure that the legislation that covers the disposal of land by fire authorities is consistent with the new regulatory framework for local authorities, which will replace the current ministerial consent regime.

I move amendment 28.

Amendment 28 agreed to.

Amendment 29 moved—[Peter Peacock]—and agreed to.

Section 13, as amended, agreed to.

Section 14 agreed to.

Section 15—Publication by local authorities of information about finance and performance

The Convener: Amendment 30 is in a group of its own.

Kate Maclean: I thank the committee for allowing me to attend the meeting and move my amendments. I will have to leave after dealing with amendment 30. It is quite a while since I was a member of the Justice and Home Affairs Committee and I had forgotten how interesting stage 2 can be.

I lodged amendment 30 on behalf of the Equal Opportunities Committee. It would implement recommendation 9 of that committee's stage 1 report on the bill, which says:

"The Committee recommend that local authorities conduct equal pay audits in line with Executive Agencies and NDPBs."

The Equal Opportunities Committee is aware of the Executive's commitment to extend equal opportunities to all local authority functions that are conducted under the best-value regime, together with community planning work. We noted that all Scottish non-departmental public bodies and Executive agencies have been asked to conduct an equal pay review by April 2003. In the light of that, we felt that the absence from the local government sector of a requirement to complete an equal pay review was an anomaly, given the number of people whom the sector employs.

As people are aware, despite the 30-odd years since the Equal Pay Act 1970, there is still an average disparity of 18 per cent between the pay of men and of women. That is why the Equal Opportunities Committee lodged the amendment.

I move amendment 30 on behalf of the Equal Opportunities Committee.

Ms White: I am, if nothing, consistent in supporting the Equal Opportunities Committee's amendments. No doubt the vote will also be consistent in going against me. I welcome amendment 30 from the Equal Opportunities Committee. Kate has said all that needs to be said on the committee's behalf. As I said when I spoke to the committee's previous two amendments—amendments 2 and 9—the Parliament should lead the way and should not shirk its responsibilities. I fully support amendment 30.

Mr Harding: I am not in disagreement, but if we go down the road of supporting the amendment, I suggest that the financial memorandum should take account of the additional burden.

Peter Peacock: As Kate Maclean knows, the Executive accepts the importance of equal pay, but I am concerned about the approach that amendment 30 signals. The Equal Pay Act 1970 gives employees the right to equal pay and local authorities are bound by that legislation. Much of the Local Government in Scotland Bill is about trusting local government more within the clear framework that we are trying to establish. Amendment 30 is out of keeping with the general thrust of that approach because it puts a specific instruction in the bill, notwithstanding the fact that councils are already under a statutory duty under the 1970 act.

It is the responsibility of local authorities to determine how they ensure that they meet their statutory obligations. There is currently no statutory requirement on employers to carry out equal pay reviews per se as a means of meeting their statutory equal opportunity requirements. I am reluctant to place on the face of the bill such a detailed requirement for local authorities.

That said, we all know that there is still inequality in men and women's pay and that the pay gap between men and women's earnings should be eradicated. I recognise that equal pay reviews can contribute to that process and I fully support moves that are made to encourage employers to undertake such reviews. Therefore, I propose that we explicitly promote equal pay reviews in our guidance to support the best-value regime.

I am happy to give a commitment to work with COSLA and the Equal Opportunities Commission on the development of that. Indeed, as part of our formal statutory processes, I will meet COSLA this evening to discuss a range of matters. I plan to raise with COSLA the issue that has been raised today by amendment 30. I will invite COSLA to write to us to indicate what progress is being made across the local government community on such matters.

Based on the arguments that I have just made and on the commitments that I have given, I ask Kate Maclean to withdraw the amendment. As she is acting on the Equal Opportunities Committee's behalf, I know that she may be unable to do so. In that case, I would urge the committee to reject amendment 30 for the reasons that I have set out.

Kate Maclean: I take some comfort from the commitment that the minister has given to promote equal pay reviews with local government. As someone who was involved with local government, I know that I was sometimes unhappy with central direction. However, given the fact that quangos and executive agencies are conducting pay reviews, I believe that local government will not be too unhappy about such a move. I take comfort from the assurances that the minister has given, but I will press amendment 30, as it was lodged on behalf of the Equal Opportunities Committee.

The Convener: The question is, that amendment 30 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

White, Ms Sandra (Glasgow) (SNP)

AGAINST

Godman, Trish (West Renfrewshire) (Lab)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Jackson, Dr Sylvia (Stirling) (Lab)
Smith, Iain (North-East Fife) (LD)
Thomson, Elaine (Aberdeen North) (Lab)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 30 disagreed to.

Amendment 64 moved—[Ms Sandra White].

The Convener: The question is, that amendment 64 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

White, Ms Sandra (Glasgow) (SNP)

AGAINST

Godman, Trish (West Renfrewshire) (Lab)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Jackson, Dr Sylvia (Stirling) (Lab)
Smith, Iain (North-East Fife) (LD)
Thomson, Elaine (Aberdeen North) (Lab)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 64 disagreed to.

Amendment 31 moved—[Peter Peacock]—and agreed to.

The Convener: Amendment 32 is in a group of its own. I ask the minister to speak to and move the amendment.

Peter Peacock: Amendment 32 is a technical amendment, which allows the Accounts Commission to specify whatever reporting period it thinks fit when directing a local authority to collect and submit performance information. The amendment provides extra flexibility, which is needed in particular for areas such as education in which the appropriate accounting or reporting period is not always tied directly to the financial year.

I move amendment 32.

Amendment 32 agreed to.

Section 15, as amended, agreed to.

The Convener: I thank the minister for attending. We shall see him next week.

We will have a comfort break for five minutes.

15:15

Meeting suspended.

15:26

On resuming—

Dog Fouling (Scotland) Bill: Stage 1

The Convener: Okay, comrades. We move to stage 1 consideration of the Dog Fouling (Scotland) Bill, which is a members' bill that has been introduced by a member of the committee, Keith Harding. Today, we will take evidence from three organisations, the first of which is the Royal Environmental Health Institute for Scotland. I welcome John Sleith, who is the chairman of the professional development and education committee of the institute.

Thank you for your written submission and for coming to the committee. You are welcome to say a few words, after which I shall open up the debate for members' questions. I will then sum up.

John Sleith (Royal Environmental Health Institute for Scotland): Thank you for allowing me the opportunity to appear today to give the view of the Royal Environmental Health Institute for Scotland. Approximately 70 per cent of our members are environmental health officers, the majority of whom are employed in local authorities. Our members welcome the bill, which should go a long way towards reducing the scourge of dog fouling in our communities. In particular, our members welcome the fact that the bill will for the first time permit local authorities to take steps themselves to tackle the problem.

Dog fouling is a major public issue. It has a large nuisance value and there are health implications. Unfortunately, from our point of view, under the existing legislation—the Civic Government (Scotland) Act 1982—the remit lies with the police, who have competing priorities and cannot always deal with the problem as we would wish. There is a great deal of frustration among our members, as local authorities receive a large number of complaints, generally through their environmental health departments, yet find that they are unable to take any enforcement action in most cases although there are some local schemes in place, about which you will hear later. We welcome the provisions of the bill, which will ensure that a consistent and effective approach is taken to tackling the problem in communities throughout Scotland.

The Convener: Thank you. As an ex-councillor, I suspect that I know what your answer to this question will be. In your experience, how big a concern for local communities is the problem of dog fouling?

John Sleith: It forms a large proportion of the overall number of public health complaints that we get. I have no specific statistics on it. The Royal Environmental Health Institute of Scotland gathers information from local authorities on such matters, but until now there has been no separate grading of complaints about dog fouling. However, we are taking steps to change that, and the annual report that we are compiling will show figures for dog fouling.

From anecdotal evidence, I can say that complaints about dog fouling form a large proportion of complaints. The number of such complaints is probably second only to the number of complaints that we receive to do with pest control—wasps, rats and mice. You can imagine the level of our frustration: we get a large number of complaints and not many legal powers to back us up in dealing with them.

The Convener: In a sense, you have answered my second question. Before the Parliament could change current legislation, it would have to examine how that legislation is working. What challenges do local authorities and the police face under the current legislation? Where are they stuck?

15:30

John Sleith: The problem is largely one of corroboration. Local authority officers who try to apprehend offenders or take evidence on offences under the Civic Government (Scotland) Act 1982 often need corroboration, so at least two persons need to be present to take the evidence. Under the existing legislation, the police have to enforce that. Some authorities have protocols with the police under which they have joint patrols in which a police officer is present. That seems to be successful in the limited areas in which it has taken place. The difficulties that face local government and our members are that we simply cannot have joint patrols unless police resources are available for specific projects in particular areas.

Iain Smith: What strategies can local authorities employ to deal with dog fouling? Do you have any examples of what you consider to be best practice?

John Sleith: I am aware of a number of authorities that have a dog warden in place. I believe that there is a statutory duty on local authorities to appoint a dog warden to round up strays. Those dog wardens often double as educational officers and visit schools and community clubs, for example. In some cases, they even take on an educational role in the community and visit parks where dog walkers regularly exercise their animals and approach

people gently and persuasively to put them right on what they do.

I am aware of a number of such projects. For example, the authority for which I work, Renfrewshire Council, has a protocol with the police and has started patrols with the dog warden and a police officer. The approach of carrying out education in the community, having patrols, and putting in place and emptying specific dog litter bins seems to be successful. A fair amount of investment is going into tackling the problem.

Iain Smith: In your written evidence, you refer to a view that section 4 should be amended to include a requirement for local authorities to engage staff in an educational role. Given that you have already indicated that best practice suggests that that educational role is part of what they do, is a legislative requirement for that necessary? Should local authorities not be left to undertake that as part of their best-value and best-practice guidance?

John Sleith: We come from the viewpoint that community education is important. I am not aware of staff having an educational role in many local authorities. We felt that, if a specific duty was placed on local authorities to appoint someone to enforce the law, the same person or persons could be asked to take on an educational role in parallel. That is why we felt that it was useful to couple those roles in the bill.

Ms White: As a former Renfrewshire Council councillor, I know that when I was in office that council led the way in trying to educate people. It also installed dog bins and gave out free poop scoops. I want to ask about the cost implications of giving things away free. We received evidence at committee and elsewhere that the bill should include provision for the introduction of a system of registration and licensing. It was said that that would help to identify owners and provide for the costs involved in educating people and employing dog wardens. Is that a good idea? If so, should it be introduced in the bill or by individual councils?

John Sleith: I am not sure that I caught the question.

Ms White: Although the costs involved are not great—the sum of £6,632 has been mentioned for all 32 local authorities—councils need to recover their costs. People have suggested that a system of registration and licensing should be introduced to identify owners and offset the costs of employing wardens, educational officers and so forth. Is it a good idea for such a system to be introduced for local authorities?

John Sleith: I am not sure that such a system would be cost-effective in the long run, as the costs of servicing and implementing a licensing or registration scheme might be prohibitive. Provision is made in the bill for income from fixed penalties to go to local authorities and it may be that the number that are served will produce a method of providing income that will offset the costs involved.

I am not certain that the bill will end up being cost neutral. It may be that, as at present, local authorities that embark on such schemes will have to find the money from somewhere. As far as I am aware, no specific funding is available for such schemes.

Ms White: Are you saying that a registration scheme could be more cumbersome than fixed penalties? If the bill comes to fruition, which I am sure it will, as everyone supports it, should extra money be forthcoming from the Executive to implement it or should local authorities have to find the money from other pots of funding?

John Sleith: The imposition of a registration and licensing scheme would not raise the funds that would be required. If the problem is to be tackled in the way that it should be, I imagine that the number of fixed penalties would raise quite a substantial income to offset the costs involved. That would certainly be the case in the first instance.

Ms White: So you do not think that the Executive should give extra moneys to local authorities to ensure that the bill—or a registration and licensing scheme—is operational.

John Sleith: I am sure that such moneys would always be welcome.

Dr Jackson: What increase in staff might be needed at local authority level? We have talked about enforcement and education, which you see as the ways forward. What differences will be required in staffing levels to make the bill effective? What will be the financial implications of taking on those staffing levels?

John Sleith: I do not envisage local authorities needing to take on additional staff. They may be able to appoint existing members of staff, including environmental health officers, dog wardens or even parking wardens—who are on the streets as it is. Those types of officers could have some of their time allocated to the duties of issuing and enforcing fixed penalties for dog fouling.

Dr Jackson: Did you say that it might be possible for a parking warden to be multipurpose? Did you say that they could also look out for dog fouling and issue penalties for that offence?

John Sleith: As far as I can see, there is nothing in the bill that would prevent that from happening.

Mr Harding: At the outset, I thank you for your general support for my bill. The suggestion that you made in an answer to Sandra White is outwith

the scope of the bill, which is intended to address only dog fouling. I understand that the Executive is considering a dog identification bill. The Presiding Officer has approved the financial aspects of the bill, which I understand are not being questioned by the Scottish Executive.

The Convener: Thank you. That is very interesting.

Mr Harding: I would like to change the subject slightly. Dog fouling is not only the mess out there; it is a health hazard. Could you provide details of the health problems that are caused by dog fouling? How many complaints do you receive about it? How do you deal with the problem?

John Sleith: It is recognised that dog faeces carry a number of diseases, some of which are outlined in the papers that accompany the bill. The most common organisms include E coli, salmonella and campylobacter. It is interesting to note that Scotland has a higher incidence of infections of those types than is the case elsewhere in the United Kingdom or in other countries. I am not sure whether a direct correlation can be drawn with the dog fouling problem, but it may be that the bill will make a positive impact on those figures.

The numbers of cases that are notified to us annually do not amount to a great deal. For a small number of individuals, as has been reported elsewhere, the diseases caused by dog fouling cause health problems. For greater numbers of individuals, the issue is one of nuisance and inconvenience. The bill will go some way towards assisting in the removal of that nuisance.

Dr Jackson: I want to ask about one aspect of the wording that is used in the bill. Public space is defined in the bill as

"any place which is open to the air to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of

express or implied permission; and

(b) any common passage, close, court, stair, back green, garden, yard or other

similar common area."

As ever, such definitions are complex. The committee received evidence that suggested that the definition is too wide and that that might lead to enforcement difficulties. Do you have a view on that issue?

John Sleith: I do not agree that the definition is too wide. From my reading of it, I feel that that definition is fairly clear and acceptable. A public open space is generally any place to which the public has right of access. I am fairly comfortable with the definition as it is. I do not envisage that our members would have a problem in interpreting it.

The Convener: We have no more questions. I was interested in what you said about the health issues and the health differences that exist between Scotland and other places. That is an area that we will perhaps examine later in our evidence taking. Although the percentage is small, it is important. I thank you for coming before the committee. I am sorry that you had to wait for some time before you were called.

John Sleith: I have a question. The bill does not contain guidance on a lower age limit for the issuing of fixed penalties. It occurs to me that a situation could arise in which an enforcement officer comes across—say—a nine-year-old girl walking a dog. If the dog defecates, our officer is put into the difficult position of knowing whether to take action. That situation may be left to the individual discretion of the officer or for the local authority to issue guidelines. Is it intended to have guidance on that matter accompanying the bill?

The Convener: Before I bring in Keith Harding, I want to say that I would vote against any suggestion that such an offence would go before the children's panel. I think that we are talking about the parents.

Mr Harding: I will give evidence to the committee next week on the subject. In the meantime, I will write to the witness and tell him how we are trying to overcome the difficulty that he has pointed out. It is being addressed.

15:45

The Convener: It is an issue that has been brought up by others in written evidence.

I now welcome Allan Sim, who is general secretary of the Scottish Kennel Club. I know that he has been sitting in the public gallery for some time, so he knows the drill.

Allan Sim (Scottish Kennel Club): I do not wish to add very much to our written submission and I assume that anything that I will have to add will be teased out by your questions.

However, I would like to say a few things at this point. First, I would like to voice our general support for the Dog Fouling (Scotland) Bill. We encounter the problem as much as anyone. Indeed, dog walkers encounter the problem more often than the average person in the street does, as we walk dogs where other people do and where the irresponsible are seen to be irresponsible.

Secondly, the health hazard has been mentioned. I am pleased that it has been played down because, although it is important, it is not of major significance, and I would not want it to be taken out of proportion.

Thirdly, I would not like comments made in certain sections of the press this morning, about a row breaking out over the enforcement provisions, to be taken out of proportion. That was typical press reporting. We merely made a statement about it in relation to our submission. However, we are concerned about how those provisions will work out in practice, about who is to be responsible for issuing the notices and about what the connection is between the alleged offence and the issuing of a notice. What is the process that is to be gone through? If doggy people could be reassured on that point, then it would not be as much of a concern as we have outlined in our submission.

The Convener: How much of a concern is dog fouling to local communities? How often do you get complaints? How serious is the problem?

Allan Sim: We get virtually no complaints about dog fouling. I cannot recollect ever having written a letter about it, and if one person a year gets on the phone about it, that is a lot. If complaints are made, they generally go to local authorities, because people think that local authorities can do something about it.

The Convener: If we are going to change legislation in the Parliament, we have to consider what is currently in force. What are the challenges that face local authorities and the police under the current legislation? I now know that you do not receive complaints, but you are obviously aware that people are concerned about dog fouling. What are the difficulties for the police and local authorities under the current legislation that could be addressed through the Parliament making some kind of change?

Allan Sim: The main difficulty is the general impossibility of applying the current legislation. We know that it is virtually impossible to catch someone in the act, as it were. If we are trying to educate people, there is no point in telling them, "Look, if you let your dog do this, we'll catch you." That is plainly silly. The current legislation does not address the real problem, which is people not picking up afterwards. We cannot legislate for dogs deciding to do it at a particular time, although most of us can regulate it with reasonable timing. This is where the bill has a lot of merit: it addresses the problem in a sensible fashion.

Dr Jackson: Could you outline in detail the difficulties to do with the enforcement provisions under the bill? Are there any ways in which we could get over those issues?

Allan Sim: I see the practicalities as follows. Two confirmed dog haters live quite close to me. Let us not underestimate this—there are a lot of people like that around. They constantly accused me of letting my dog foul the pavement when I was clearly not doing so, because I was the only owner of a small dog in the area. Those people were going to report me, but as far as I know they did not. However, the point is that it would not be right for the bill to make it easier for them to do so and for me to be wrongly penalised. It would be wrong to let the bill go forward on that basis.

Dr Jackson: How could we improve the bill to get over that problem?

Allan Sim: That is difficult because unless there are two witnesses, one is a bit hamstrung. I assumed that the bill would provide that the person who issued the fine would be the person who witnessed the incident, but it is not clear to me that that is the case. The bill would seem to allow a notice to be issued without requiring any real evidence. For example, my local dog hater could just phone up and say that they wanted a notice to be issued to me because I had allowed dog fouling to be left on the pavement. If I can be reassured that the practicalities of the bill would ensure that such a situation could not happen, I will be happy.

Ms White: I have a question for Allan Sim about the paragraph in his written evidence on "Authorised Persons". The paragraph states that the most suitable personnel might be

"dog wardens and environmental health officers."

The submission goes on to say:

"it is not considered acceptable for a wide range of other local authority persons"

to be authorised persons. John Sleith said that nothing in the bill would prevent traffic wardens from being authorised persons. Can you elaborate on what you said in your submission?

Allan Sim: Again, the bill does not make it clear who an authorised person should be. We have no problem with people being specifically appointed and trained to carry out the enforcement tasks. However, the bill seems to suggest that just about any local government employee, including street cleaners, could be authorised to issue tickets. Frankly, the mind boggles and it would boggle even further if traffic wardens, particularly in Edinburgh, were to be appointed. God help us all.

Ms White: I could not agree with you more. I have a further brief question on the issue of education. I am a dog owner and I find that the best way to deal with dog fouling is to embarrass owners by telling them that they have not picked up after their dog. Do you think that the bill, or the guidance, should provide for a relevant education programme, which perhaps could be run by local authorities or schools?

Allan Sim: I do not think that local authorities should embark on such education. Local

authorities should support those, such as the Scottish Kennel Club, the Scottish Society for the Prevention of Cruelty to Animals and Canine Concern Scotland Trust, who provide education. There is a wide body of knowledge and experience on education matters. The problem is that local authorities do not always recognise and support that. If they did so, it would probably cost them little or nothing. Education is definitely the way forward, but I do not think that local authorities should have to spend vast wads of money on education. Skilled people already provide education that promotes responsible dog ownership.

Ms White: Are you suggesting that, if the bill had provision for an education programme, local authorities could ask organisations such as the Scottish Kennel Club and the Scottish Society for the Prevention of Cruelty to Animals to run educational programmes in schools?

Allan Sim: Absolutely. That already happens. We have excellent relations with, for example, dog wardens, who have been trained in the education of dog owners. That education has undoubtedly worked in relation to the number of stray dogs. Closer partnerships between local authorities and those responsible for educating dog owners would bear great fruit.

Iain Smith: I want to return to the question whether the local authority official who would issue the spot fine—as I sometimes call it—must witness the event. Your oral evidence seems to accept that a major problem with the existing legislation is that the people who enforce it—the police—are not necessarily there when the offence is committed and do not see the dog fouling. Is there a danger that a similar problem would arise from the new legislation, which would place a requirement on the local authority officer to witness the event?

Allan Sim: I do not think so. Presumably, those who would be appointed would already have an active role outdoors, in parks and in the streets. Certainly, when I walk dogs in Edinburgh, I see vans going around from time to time containing people who are called environmental wardens. They already go around the area, not only to look out for us but to care for the parks. I think that the environmental wardens already have a general watching brief, so there is no reason why they could not deal with the problem. That will not change the situation of the person who walks their dog down the street at 10 o'clock at night. Keeping watch for that is just not a practicality. As Sandra White said, tackling that situation is all about peer pressure, but the very existence of the legislation would help.

Iain Smith: Given those circumstances, if a member of the public is aware of someone, such as a neighbour, who allows their dog to foul persistently without clearing up after it—which would become an offence under the bill—and makes a complaint to the local authority, the only way that the local authority could deal with that would be to stake out the person until they see the offence being committed. Is that not a bit extreme? One would have thought that the bill's purpose was to allow the authority to take action on such complaints from the public.

Allan Sim: This may sound extreme, but if someone is a persistent offender, they deserve to be spied upon.

Mr Harding: I agree that the article in today's press contained no argument.

My question follows on from Sandra White's question. You said that you would not consider it acceptable for a wide range of local authority officers to be authorised to issue the fixed-penalty notices. Do you agree that the training and abilities of the authorised persons are more important than their job title?

Allan Sim: There is no doubt about that. As long as the people who are appointed are recognised as being capable of doing the job, their title does not matter. I am tempted to say that they will acquire a title anyway, as I suspect that they will become known as the "faece police", but the title does not matter.

Mr Harding: Is the concern about street cleaners and others being authorised less to do with the bill and more to do with the way in which the local authorities may operate under the new legislation? Surely the solution is for local authorities to act sensibly rather than to amend the bill.

Allan Sim: I am not sure about that one.

Mr Harding: If I may return to Iain Smith's point, I can understand your concern about what might, for want of a better word, be called whistle-blowing, but surely there is a parallel with all other offences. The police rarely witness a murder, but they must still prosecute the crime by proving that the offence took place. The same would apply to dog fouling.

Given my background as a councillor, I anticipate that the vast majority of fines will be issued on the spot for offences that were witnessed by an authorised officer. However, there must be a way of dealing with persistent offenders. You are right to make the point about stake-outs. I walk my dog in exactly the same place every day, so people could catch me if they wanted to, but they would catch me with a bag full of carrier bags.

I welcome your general support for the bill and I will take on board your comments. Thank you.

Allan Sim: Our worry was about how people would move from being a suspect to being an offender. I am sure that enough evidence could be built up on someone who was a persistent offender, but there could be a problem regarding the average person who might offend only once or twice.

Mr Harding: Sorry, I have one further question. Your submission mentions that dogs are involved in a range of recognised working activities. Will you expand on what you want to be incorporated into the bill?

Allan Sim: Funnily enough, when I wrote that, I had plenty of examples in my head, but I am not sure that I can come up with any off the cuff. I suppose that I am saying that the legislation should not be so restrictive, so that it will not need amending too often. The phrase that is used in the bill should be a bit more general and should not be so specific about the type of working activity to which it refers. Dogs might perform working activities that are not included in the exceptions that are listed in the bill, and it would be wrong for those activities not to be exempt.

Mr Harding: The more that we include in the bill, the more challenges there will be in the courts. We must be fairly specific. As I said in my original comments, it should be up to local authorities to train their staff to be responsible and sympathetic. I do not seek massive fines. I am trying to educate irresponsible dog owners, not to punish the responsible ones.

Dr Jackson: I admit—perhaps mischievously—that what comes to mind is somebody going out at night with a camera to take pictures.

You seem to be saying that education is important, whether the bill is passed or not. Do you have any evidence or statistics on how your organisation goes into schools and works with communities? Clearly, education is not working because dog fouling is a problem.

16:00

Allan Sim: I cannot produce any statistics on that, nor can I produce any statistics to argue against the view that dog fouling is a major problem, although I am not sure that it is. I think that it is a problem, but I do not think that it is as big a problem as some people imagine. In everything that we do, we emphasise responsible dog ownership. We discuss from A to Z what is involved in the responsible ownership of a dog. We work closely with other organisations such as the Canine Concern Scotland Trust, which goes into schools and has a good educational programme for children. Rather than setting up our own system, we support that one. That is how we try to reach kids. At the end of the day, they are the people who will learn. If they do not learn, it will not be for the want of trying.

The Convener: Are there any measures that are not in the bill but that you want to be there?

Allan Sim: Not directly, although I have a thing about receptacles for dog fouling and litter. It is a grave error to do away with litter bins. There are few such receptacles around the countryside. I believe firmly that if bins were available, that would be a major encouragement to people to pick up. Some people are quite happy to pick up, but they do not like putting it in their pocket or bag and having to take it home. That is worse than picking it up. I make no apology for mentioning that again. I think that in local authority areas where receptacles are provided, the problem is smaller.

The Convener: There are no more questions.

I was interested in your answers to Sylvia Jackson's question on education and your comments on health issues. Both you and the previous witness have said that you do not see dog fouling as a great problem. Perhaps I see the matter differently, which must be something to do with being a councillor. There are four ex-councillors and one current councillor here. The issue is raised all the time. At every surgery, people complain about dog fouling.

Thank you for coming to the committee and for answering our questions. If we have to get in touch with you again, we will.

Allan Sim: Thank you for your time.

The Convener: I welcome Jim Hunter, who is a divisional officer of environmental wardens with the City of Edinburgh Council, and thank him for coming. He can speak to us for a few minutes, after which we will ask questions.

Jim Hunter (City of Edinburgh Council): Members have a copy of the City of Edinburgh Council submission, which was approved by the council's executive before it was sent to the committee. The submission states that we broadly welcome the principles of the bill and that we support its aims. In particular, we welcome the bill's proposal for a fixed-penalty system for dealing with dog fouling, along with the continuing use of the court system.

We are concerned about a couple of small issues in the bill. The first is the inclusion of private land as a place where it would be an offence to foul unless consent had been given, which might lead to intimidation of co-owners of land to indicate that they had given their consent to the fouling taking place.

We also have a minor concern about the time period that is specified for the issuing of a fixed-penalty notice. We think that 72 hours is too short

a time and that the period could easily be increased to seven days with no detriment to the administration of justice. Overall, however, we welcome what is proposed.

The Convener: How has the City of Edinburgh Council utilised the existing legislation to tackle the problem of dog fouling?

Jim Hunter: The council has taken a proactive approach to dealing with dog fouling. We accept the fact that the existing legislation, which is set out in the Civic Government (Scotland) Act 1982, lists dog-fouling offences under the powers of constables. That implies that the issue is for the police to deal with. However, some time ago we discussed the matter with the procurator fiscal, who said that he was quite happy to accept reports from us as a non-police reporting agency. The first 24 offenders who were detected by our officers not picking up after their dogs in a place where it is an offence to foul were reported to the procurator fiscal. I understand that all those cases were dealt with by the use of conditional offers—sometimes known as fiscal fines.

Recently, we have taken a slightly different tack. The Environmental Protection Act 1990 allows the use of fixed penalties for littering offences, and the Litter (Animal Droppings) Order 1991 defines dog fouling as littering in certain locations. We realise that the intent of that order was to require local authorities to clean up the mess that is left, but we took the view that it might be appropriate to use the order to offer the offenders the opportunity to accept a fixed-penalty fine, which is currently £25, for dog-fouling offences. If the offenders decline that opportunity—it is entirely at their discretion—we simply proceed according to the normal route, which is to prepare a report and to send it to the procurator fiscal.

The enforcement of the dog-fouling legislation used to be done principally by environmental health officers and similar enforcement staff. Recently, it has been done by officers called environmental wardens, whose core remit involves dealing with dog fouling.

Dr Jackson: You raised concerns about the issue of public space, and I think that you were in the room when I read out the list of places that is contained in the bill. The obvious question is, where can the dog go if all those areas are excluded? What are your reservations about that issue?

Jim Hunter: I take your point, although I do not think that I was in the room when you read out the list. There are two issues. First, there is the difficulty with the existing legislation in so far as it defines areas where it is an offence to allow a dog to foul. There is some confusion among dog owners and, more important, the public. I have lost count of the number of times that I have had to explain to a complainer that, because the dog fouling is on the roadway, it is not an offence. They say to me, "If it was 6in the other way, on the pavement, you would deal with it, wouldn't you?" and I have to admit that we would. It is not an offence for the dog owner to allow the dog to foul on the roadway. The dog owner can walk away and there is absolutely nothing that we can do about it.

To turn the question on its head slightly, the fact that the current legislation defines places where it is an offence to foul creates as many difficulties as trying to say that it is okay to allow the dog to foul in specified locations.

Secondly, dog owners should pick up no matter where the animal fouls. There are very few safe places to allow a dog to foul. There are very few places where visual amenity is not affected by a dog's being allowed to foul there. Our view is that extending the offence of dog fouling to all space to which the public are entitled to have access is a sensible way to approach the problem.

Dr Jackson: What guidance would you give the public about how they could keep their dog on the right side of the bill? I am a bit confused about communal areas, which are not one person's private property. A lot of people live in those conditions. What guidance would people need about how to keep their dog within the law?

Jim Hunter: Are you talking about public open space or communally owned land such as that which is owned by several landowners?

Dr Jackson: I am talking about both aspects. What difficulties do you see with the bill as drafted? If the bill were enacted, what advice would you give to dog owners who wanted to keep on the right side of the law? Obviously, dog owners will not take the bill out with them when they take the dog for a walk. I want you to say in simple terms what you think is wrong with the bill. For example, what is wrong with its definition of "public open space"? Are there other problems concerning where the dog is allowed or is not allowed to foul?

Jim Hunter: There is nothing wrong with the bill's proposal to make it an offence in any public open space not to pick up the dog's fouling. Our advice to dog owners has always been, and will continue to be, that they should be prepared to pick up any fouling that their dog leaves behind. If they take the dog out for exercise, or indeed leave their property with the dog, they should be prepared to pick up any mess that the dog leaves behind. They should have in their pocket something that allows them to pick up the fouling and remove it. That could be an old plastic carrier bag or whatever.

Iain Smith: Or indeed a copy of the bill.

Jim Hunter: It is as simple as that.

Iain Smith: Has the council had any enforcement problems with its interesting technique of using provisions within the litter legislation to issue fixed-penalty notices? One problem with the bill is that, although it would give local authority officers the power to issue fixed-penalty notices, it appears not to give them the power to obtain the alleged offender's personal details. Is that a problem with the fixed-penalty notices that are issued under the existing litter legislation? Ought the bill to address that issue?

Jim Hunter: Our experience to date is that not having the power to demand a person's details does not present a huge difficulty. It would be nice to have that facility, or at least to have a charge of obstruction for those who refused to give their details. Under current legislation, our only means of dealing with that situation is to ask for the assistance of the police. The police in the City of Edinburgh Council area have been extremely helpful in that respect. In fact, the police now ask us to help them deal with dog-fouling offences.

Your question was about whether people have been obstructive when they have been detected. To date, of the 26 offenders who have been offered fixed-penalty notices, 24 have chosen to accept the notice and pay. We have had to make only two reports to the procurator fiscal. Of those who were detected—there were in fact 27—three did runners. One, I have to admit, was too fast. The second one ran straight into their own house. On the third occasion, the wardens decided to hang around a bit and the dog did what dogs normally do—it came trotting back to its own door. In those circumstances we were able to approach the person again and say, "Look, we know where you live. Please give us your details" and they did. No further action was required on our part.

The simple fact is that most people are not hardened criminals. If they are pulled up for the offence, they are generally so surprised, shocked and embarrassed that they will give their details when asked. I realise that it could be a problem if people started to be obstreperous about it.

16:15

Iain Smith: On a related issue, one of the previous witnesses raised the issue of juveniles and young children who take their family dog for a walk and an offence is committed. Have you any thoughts on whether there should be an age limit in the legislation, and on how to deal with situations in which fouling takes place and a young person who is below the age limit is in control of the dog?

Jim Hunter: The practicalities of the situation are such that it would be difficult to pursue someone who was aged under 16. The Criminal Procedure (Scotland) Act 1995 states specifically that someone under the age of 16 cannot be prosecuted, except on the express instructions of the Lord Advocate. That is why we do not issue fixed-penalty notices for littering to people under the age of 16. We realise that practical difficulties are involved in doing that. We take the view that a warning letter to the parent or guardian of the child is usually the best way to approach the matter in those circumstances.

Ms White: You talked about children under 16 being exempt. As the bill stands, various groups are exempt from the provisions, for example the blind and the disabled. The committee has received representations on the fact that the definitions of blind and disabled in the bill are too rigid, and seeking the inclusion of partially sighted and old and infirm people, who may have difficulty clearing up after their dogs, in the exemptions. Do you have any concerns about the exemptions? Should they be widened?

Jim Hunter: I take the point. When one attempts to define who should be exempt, the risk is that the list of people becomes very long. Keeping the exemptions fairly narrow gives some latitude to the enforcement officers who deal with the situation on the ground. Even as the law currently stands, our officers have some discretion about whether to pursue a person. If somebody is clearly having some difficulty in controlling a dog because of age, infirmity or, in some cases, mental illness, the officer has discretion. If they decide that they want to issue a fixed penalty or that the person should be reported to the fiscal, they have to set out the reasons for that and justify their action. Knowing the fiscal system as I do, unless there are sound reasons for a prosecution, a fiscal will not take the case.

Mr Harding: Thank you for your submission and your general support for the bill.

Your submission expresses a couple of concerns, one of which is that private property should be included in the definition of a public open place. The bill deliberately excludes private property. If a property owner wants their dog to defecate on their property, that is fine. If the owner of another property is not concerned about dog fouling on their property and gives permission, that is okay. How and why would you try to implement the bill on private property, to which council employees have no access?

Jim Hunter: We would not try to implement the bill on private property. That would involve difficulties. Unless the bill has changed since I received a copy, it implies that if co-owners consent to dog fouling on co-owned land, that is all

right. Our concern is that co-owners could be intimidated to say that they had consented. Pursuing somebody in such circumstances would be difficult.

Mr Harding: We are talking about private property. How would designated officers know what had taken place?

Jim Hunter: I presume that the occurrence would have to be reported to the officers.

Mr Harding: If it were reported to them, it could be assumed that one owner had not consented.

Jim Hunter: That assumption is reasonable. However, by implication, when the offender is tackled about the matter, they will know that the other owners will have to say that they do not consent. That is when intimidation could arise.

Mr Harding: Surely intimidation is a criminal offence. Arguably, it is more serious, so the police would be involved and the matter would not be dealt with under the bill.

Jim Hunter: I cannot argue against that. We merely raise our practical concerns.

Mr Harding: I appreciate that. I just wanted to discuss the matter.

Your submission refers to the time scale for issuing a fixed-penalty notice. Why would not designated officers carry fixed-penalty notices at all times, if issuing them was part of their job?

Jim Hunter: If a designated officer's sole responsibility were to deal with dog fouling, it would be reasonable to expect them to carry a fixed-penalty notice book at all times. However, if an authorised officer has a range of duties, that expectation would be unreasonable. In such circumstances, I presume that the notice would be written later, back at the office or somewhere else, then sent to the offender. Some combinations of weekends, shift patterns and public holidays might make it difficult for an officer to do that within the 72-hour limit that the bill proposes. We suggest that a slightly longer period should be acceptable and would not infringe on the administration of justice.

Mr Harding: How long does the council take to issue fixed-penalty notices?

Jim Hunter: That is normally done on the same day as the offence occurs, but I cannot guarantee that. Sometimes, it might take two, three or four days to establish the offender's full address and identity, which must be done before the notice is issued. That is why our submission suggests that seven days would be an appropriate period.

Mr Harding: Is your recommendation based on your experiences?

Jim Hunter: Yes.

The Convener: The committee received evidence that suggests that the bill should introduce a registration and licensing system, which would allow authorities to identify more quickly the owner of a dog that was fouling. That would also help to raise funds to improve dog warden services and public education programmes, if we were interested in such services. Do you agree that such a scheme would do that?

Jim Hunter: It would be nice to have additional funding, especially if it were ring fenced for those purposes, but I am not sure whether that would happen.

I am not sure whether a dog registration scheme would assist in the practical aspects of enforcing the provisions on dog fouling. If somebody is determined to let their dog foul and to avoid detection, their dog's registration somewhere will not help us to catch them. If somebody is determined to run away, their dog's registration somewhere is unlikely to help us. The person who is happy to let their dog foul anywhere it likes might well be the person who does not care about registering their dog.

The Convener: I probably agree with that. Members have no more questions, so I thank Jim Hunter for attending and answering the committee's questions. If we have to get in touch with you again, we will do so.

16:25

Meeting continued in private until 16:58.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Friday 15 November 2002

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75
Special issue price: £5
Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF12BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178