LOCAL GOVERNMENT COMMITTEE

Tuesday 3 December 2002
(*Afternoon*)

Session 1

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LOCAL GOVERNMENT COMMITTEE
31st Meeting 2002, Session 1

CONVENER

*Trish Godman (West Renfrewshire) (Lab)

DEPUTY CONVENER

*Dr Sylvia Jackson (Stirling) (Lab)

COMMITTEE MEMBERS

*Mr Keith Harding (Mid Scotland and Fife) (Con)
*Tricia Marwick (Mid Scotland and Fife) (SNP)
*Dr Richard Simpson (Ochil) (Lab)
*Iain Smith (North-East Fife) (LD)
*Ms Sandra White (Glasgow) (SNP)

COMMITTEE SUBSTITUTES

Robert Brown (Glasgow) (LD)
Angus MacKay (Edinburgh South) (Lab)
John Young (West of Scotland) (Con)

*attended

WITNESS

Peter Peacock (Deputy Minister for Finance and Public Services)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Ruth Cooper

ASSISTANT CLERK

Neil Stewart

LOCATION

Committee Room 4

Scottish Parliament

Local Government Committee

Tuesday 3 December 2002

(*Afternoon*)

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

Items in Private

The Convener (Trish Godman): Okay comrades, we can start.

Does the committee agree to take agenda items 6 and 7 in private? We will be considering a draft report in both items, so are we all agreed?

Members *indicated agreement*.

Subordinate Legislation

Scottish Local Government Elections Regulations 2002 (draft)

The Convener: Our first business today is a piece of subordinate legislation that is subject to affirmative procedure. We are joined for this by Peter Peacock, the Deputy Minister for Finance and Public Services. Peter, the committee members have suggested that we make you an honorary member, as you will be here for most of the day, as well as next week and the week after that. Indeed, you have been here for about three weeks already. It is up to you. If you would like to be an honorary member, we will set something up.

As far as I know, there have been no comments from members about the regulations, which were sent to members some time ago. The report of the Subordinate Legislation Committee has been included in the papers for today's meeting. That committee drew the attention of the lead committee and Parliament to several instances of defective drafting in the regulations.

Members will know the procedure, but I will remind them quickly. I will ask the minister to give evidence and then open it up to questions only. I will then ask the minister whether he wants to add anything else before I open it up for debate.

The Deputy Minister for Finance and Public Services (Peter Peacock): Thank you very much, convener. I look forward to receiving the brochure on the benefits of honorary membership in due course.

The Convener: There is no salary.

Iain Smith (North-East Fife) (LD): There are no benefits.

Peter Peacock: As you said, convener, the Subordinate Legislation Committee brought to our attention some minor drafting errors. We advised that committee that although the errors should not have occurred, they are minor in nature. None of the provisions requiring amendment will cause any difficulties in practice, but amendments will be introduced to correct them at an early opportunity. We have it in hand to do that soon.

We are introducing a package of measures that deal with procedures at local government elections. The regulations are part of the package. The purpose of the regulations is covered in the Executive note and is straightforward. They deal with revised procedures for the issue and receipt of postal ballot papers for local government elections. The procedures were introduced for the general election in February 2001 and are now being introduced for local government elections to

bring both sets into line with each other. I will be happy to answer any questions.

The Convener: Does anyone have any questions?

Iain Smith: This is not so much a question as a comment. I just want again to indicate my concern that when drafting defects are brought to the attention of the Executive, the statutory instrument procedures mean that they cannot be rectified as the instrument passes through the parliamentary process. That strikes me as madness. Perhaps the Procedures Committee should re-examine the rules governing consideration of statutory instruments for the future. It is mad that if we spot a drafting error we cannot correct it without either throwing out the whole instrument or introducing an amending instrument.

I would like to comment generally on the issue of postal ballots. Recently, it was brought to my attention that, because of new rules for the rolling register, the register that comes into effect after the annual canvass on 1 December replaces the register that is in effect at that time, even if an election is under way. The new register may come into effect after the closing date for postal ballots. If a local authority were running an all-postal-ballot election but the register changed between the postal ballots being sent out and the announcement of the election result, that could create an interesting situation. The anomaly must be addressed. It may not be possible to do so in this legislation, but I believe that the Electoral Commission is considering the matter.

Tricia Marwick (Mid Scotland and Fife) (SNP): I share Iain Smith's concern about the regulations and the drafting changes that need to be made to them. I am worried that it was left to the Subordinate Legislation Committee to identify instances of defective drafting in the instrument.

The regulations are very comprehensive, but they stop short of instructing when counts should take place. Given the huge problems that we experienced in Edinburgh in 1999, should the Scottish Executive and the Parliament suggest when counts for Scottish Parliament and local authority elections should take place?

Peter Peacock: Both Iain Smith and Tricia Marwick raised the issue of the drafting of instruments. That is a matter for the Parliament and its procedures. If the parliamentary authorities were considering how the matter should be handled, I am sure that the Executive would be happy to share with the Parliament its experience of drafting statutory instruments. I understand the point that Iain Smith makes—there would be merit in our being able to correct drafting errors in instruments without having to bring them before the committee for a second time. However, I am sure that there is logic in the current position.

Iain Smith raised the issue of the relationship between postal ballots and the rolling register. I am aware of the problem to which the member refers. It is not clear that the Executive is specifically responsible for dealing with it, but the authorities that are responsible for such matters are aware of it, as a recent case has brought it to their attention. I am sure that they will examine the implications of that case and whether the problem can be rectified in future.

Strictly speaking, the issue that Tricia Marwick raised is outwith the terms of this statutory instrument. We are not examining the issue of election counts at this point. My understanding—I would be happy to confirm it to the committee in writing—is that the arrangements for Scottish Parliament elections are governed by the Scotland Office, rather than the Scottish Executive. Tricia Marwick should raise this issue with the Scotland Office, which has prime responsibility for Scottish Parliament elections.

Motion moved,

That the Local Government Committee, in consideration of the draft Scottish Local Government Elections Regulations 2002, recommends that the instrument be approved.—[*Peter Peacock*.]

Motion agreed to.

14:09

Meeting suspended.

14:10

On resuming—

Interests

The Convener: Before we begin again, I welcome Dr Richard Simpson, who is joining the Local Government Committee. I am sure that you will find it very interesting, Richard, but I am afraid that I have to ask you whether you have any interests that you need to declare.

Dr Richard Simpson (Ochil) (Lab): I have no interests additional to those that I have already declared in the register of members' interests.

The Convener: Thank you.

As we are in a particularly warm room this afternoon, people may take their jackets off if they feel they have to, but I would not go much further than that—at the moment, anyway. Please feel free to do that. I think that, by the time that we get to the end of the meeting, though, there might be more than jackets off.

Public Appointments and Public Bodies etc (Scotland) Bill: Stage 2

The Convener: We welcome Peter Peacock, the Deputy Minister for Finance and Public Services; Fiona Robertson, the head of the public body and executive agency policy unit; Dorothy Wusteman, the bill team leader on the Public Appointments and Public Bodies etc (Scotland) Bill; and Kirsty Finlay from the office of the solicitor to the Scottish Executive.

We move now to stage 2 of the bill.

Section 1 agreed to.

The Convener: I remind members that, if they nod, that cannot be recorded, so they have to shout out.

Schedule 1

THE COMMISSIONER

The Convener: Amendment 2 is grouped with amendment 29.

Tricia Marwick: When I was looking through the bill, it became quite clear that a number of persons are disqualified from appointment as commissioner. One omission is

"a member of the House of Lords".

A member of the House of Commons is disqualified, as are members of specified authorities and members of the Scottish Parliament. These days, the membership of the House of Lords represents the pinnacle of patronage, so I find it surprising that somebody who is appointed to the House of Lords can then become the commissioner who is responsible for looking at public bodies. I lodged amendment 2 to correct that omission, and I hope that the minister will accept it. I also support amendment 29.

I move amendment 2.

Ms Sandra White (Glasgow) (SNP): I would like to put on record Alex Neil's apologies, as he is unable to attend. As members will see, he supports the amendments that have been lodged in my name, so I hope that everyone will bear with me as I go through them all.

My reason for lodging amendment 29, to include

"a person holding national office in a political party"

as someone who should be disqualified, must be self-explanatory. Depending on party affiliation and the political make-up of the Executive, such an appointee could have undue influence.

Before he became First Minister, Jack McConnell said in a public briefing:

"The Scottish public must have full confidence in the system of appointments to public bodies".

That is why I intend to move amendment 29.

Dr Sylvia Jackson (Stirling) (Lab): Could you define what you mean by "national office"?

14:15

Ms White: Somebody in high office. I considered this matter closely. Some folk told us that disqualification should apply to any member of a political party, which we felt was far too discriminatory. I believe, on the other hand, that no one who holds a national office should be an appointee. By

"a person holding national office in a political party",

I mean someone very high up in the political arena. Members may make up their own minds as to how to vote on amendment 29, but I would imagine the definition to mean someone who holds a national office within a political party, such as national secretary or national treasurer, and who is very much in the limelight. We did not want just to refer to anyone in a political party; that is why "holding national office" is in the amendment.

I am aware that Sylvia Jackson put the same question to Alex Neil during consideration of the Public Appointments (Parliamentary Approval) (Scotland) Bill—I have looked through the papers. I think that she received a similar answer then.

Peter Peacock: I regret Alex Neil's absence today—I have been enjoying my tussle with him over the past few months on this issue, and had hoped to continue it today.

As their movers have explained, amendments 2 and 29 relate to exclusions of particular groups of people from holding the office of commissioner for public appointments. I understand the points made by the amendments and the reasons why they have been lodged, and I have some sympathy with their principle.

The proposed exclusions would support the establishment of a commissioner to oversee the public appointments system in Scotland who is independent from Government, ministers, the civil service and the influence of any other legislature. However, we must be careful to ensure that exclusions are made with a full appreciation of their implications. There are no equivalent statutory disqualifications in respect of the Scottish public services ombudsman, for example, so the Parliament has no precedent to look to. Nevertheless, the commissioner is overseeing a ministerial process, and I can see the arguments.

Exclusion on the basis of membership of the House of Lords may seem appropriate on the basis that membership of another legislature is in conflict with the role of commissioner, and I recognise the arguments about that, too. However, as a result of House of Lords reform, a number of hereditary peers will remain members of the Lords but will no longer have any right to sit there or have any involvement in the United Kingdom Government. It is at least arguable that those people should not be excluded from taking up office as commissioner.

Again, I see the point that is being made in relation to holders of national office in political parties, but we have concerns about the definition used in amendment 29. What is the actual definition of

"a person holding national office"?

Is it the same for every political party? I am concerned that the description in amendment 29 would be unworkable. For it to be workable, we would need a definition in the bill of what is meant by "political party" and what is meant by "national office".

I am happy to undertake to look further at both the points that have been raised in an effort to refine them and lodge suitable amendments at stage 3 that would give effect to the underlying intention of both amendments 2 and 29 and make them fully workable and appropriate. On that basis, I ask Tricia Marwick to withdraw amendment 2 and Sandra White not to move amendment 29.

Tricia Marwick: I will press amendment 2, because I cannot see what the minister could produce for stage 3 that would satisfy me in asking that a member of the House of Lords be excluded from holding office as a commissioner. We are either in favour of that or not, and I do not think that the minister can come up with any fudge or do anything to satisfy me beyond the inclusion of the provisions of amendment 2.

It is important that we recognise that the commissioner for public appointments should be seen by the public as free from any outside influence. I accept the point that some hereditary peers have not been appointed by the Government, but many peers have been appointed by the present Government. That is why I said that the House of Lords is the "pinnacle of patronage". It is unacceptable to me—and, I am sure, to many others—that we can exclude a member of the House of Commons from appointment to the post of commissioner for public appointments but not members of the House of Lords.

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

Members: No.

The Convener: There will be a division.

FOR

Marwick, Tricia (Mid Scotland and Fife) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

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

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 2 disagreed to.

The Convener: Amendment 29, in the name of Sandra White, has been debated already with amendment 2. Will Sandra White move the amendment?

Ms White: I would like to say a few words about the minister's remarks. Everyone knows what a political party is and we do not need to define it. We also all know what a national office bearer is. I welcome the fact that the minister intends to lodge amendments at stage 3. That is open and we need an open Government. I would like to say that I will not move the amendment, but I cannot.

Amendment 29 moved—[Ms Sandra White].

The Convener: The question is, that amendment 29 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)
Jackson, Dr Sylvia (Stirling) (Lab)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)

ABSTENTIONS

Harding, Mr Keith (Mid Scotland and Fife) (Con)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

The Convener: The result of the division is: For 1, Against 4, Abstentions 2.

Amendment 29 disagreed to.

The Convener: Amendment 3, in the name of Tricia Marwick, is in a group on its own.

Tricia Marwick: Amendment 3 results from the stage 1 debate. Most members who spoke in that debate were concerned about the fact that the commissioner would have to vacate office in the year in which he reached the age of 65. John Young, Colin Campbell and many others felt that that was an unfair restriction that could be regarded as agist.

When speaking about amendment 2, which is in my name, the minister said that other legislation does not disqualify somebody from the House of Lords and gave that as one of the reasons why the committee should not accept the amendment. There is, in one of the acts passed by the Scottish Parliament—the Scottish Parliamentary Standards Commissioner Act 2002—a precedent for not having an age limit; that is why Mike Rumbles supports amendment 3. When the Scottish Parliamentary Standards Commissioner Bill was considered in committee, we discussed at length whether we should impose an upper age limit. We concluded that there should not be an upper age limit for the appointed standards commissioner for Scotland. It is entirely consistent that if one piece of legislation does not impose such an age limit, the bill that we are considering should not impose an upper age limit, either.

I move amendment 3.

Peter Peacock: I am happy to support amendment 3, which will remove the retirement age of 65 for the new commissioner.

As drafted, the bill's terms and conditions of appointment follow the same model that applies to other appointments that are made on the recommendation of Parliament; for example, the freedom of information commissioner, the public services ombudsman and the Auditor General for Scotland. On the other hand, as Tricia Marwick said, the Scottish Parliamentary Standards Commissioner Act 2002 does not specify an upper age limit for what is a part-time pensionable appointment that is made by the Scottish Parliamentary Corporate Body. Pension determination for public bodies is set up on an individual basis. As the parliamentary corporation will determine the commissioner's other terms and conditions of appointment, I have no problem with its deciding the pension age as part of that package.

When Dame Rennie Fritchie gave evidence to the committee at stage 1, she said that about 10 per cent of public appointees are aged 66 or over. For the commissioner to have to leave office at 65 is inconsistent with that, although I note that the public appointments that fall within the commissioner's remit are not normally pensionable. In its stage 1 report, the committee indicated that, although it agreed with Dame Rennie Fritchie, it thought that the condition must apply,

"given that it was included in order to meet current civil service regulations regarding pensionable posts, which the terms of this appointment must adhere to."

On further investigation, it transpires that there is more flexibility than was first thought. The Public Appointments and Public Bodies etc (Scotland) Bill focuses strongly on diversity and equal opportunities, and removing the retirement age from the bill would be consistent with it. I therefore support amendment 3. John Young will be pleased.

Tricia Marwick: John Young and Colin Campbell will be delighted, and I am very happy that the minister has taken the point on board. It signals that the Parliament is truly an equal opportunities Parliament in all matters, including age and gender.

Amendment 3 agreed to.

The Convener: Amendment 10, is in a group of its own.

Peter Peacock: Amendment 10 is designed to remove a section of the terms of appointment for the incoming commissioner that are laid out in the bill. The provision was originally included in line with the terms of the Scottish Public Services Ombudsman Act 2002.

The thinking behind the provision was that a person who is drawing a salary from the public purse as commissioner for public appointments should not also benefit from a full public sector pension. However, after consultation, it has been agreed that placing that condition in the bill might be less appropriate for the commissioner for public appointments than it was for the Scottish public services ombudsman because the commissioner might be a part-time job. We are reluctant to include a provision in the bill that might disadvantage certain individuals or discourage applicants.

Other terms and conditions for the appointment of the commissioner, such as remuneration and time commitment, are dealt with by the Scottish Parliamentary Corporate Body, and we now feel that it would be best for it to consider the pension along with the rest of the package. The SPCB has been consulted and, I understand, agrees with the amendment.

I move amendment 10.

Amendment 10 agreed to.

The Convener: Amendment 30, in the name of Sandra White, is grouped with amendments 46, 47 and 1. I should point out that if amendment 47 is agreed to, amendment 1 will be pre-empted.

Ms White: Amendment 30 is self-explanatory. It refers to the code of practice and the annual reports that the commissioner must lay before Parliament on any breaches of the code. Agreement to the amendment would mean that such reports would have to include a summary of each case reported under section 2(7), and the action taken by the commissioner on the case.

I am sorry; members will have to bear with me. Which other amendments did you mention?

The Convener: Amendments 46 and 47.

Ms White: I will get there eventually. I took the opportunity to write notes, but I am all over the place.

The Convener: Have you found it?

Ms White: I have found it.

The Convener: On you go.

Ms White: I shall do my best.

Amendment 46 would mean that the commissioner must, as soon as is practicable, report who has failed to comply with the guidelines, when the failure occurred and the way in which the code has not been complied with. As I said, we believe that the bill is all about transparency and accountability; amendment 46 would ensure that the code of practice is fully adhered to and that Parliament is kept fully informed of non-compliance. As has been mentioned—not only by Jack McConnell—everyone must see the Public Appointments and Public Bodies etc (Scotland) Bill as being fair and open, and the Parliament, as the accountable body, must be seen to take full responsibility for the matter.

I move amendment 46.

The Convener: I ask you to move amendment 30.

Ms White: I have already spoken to amendment 30.

The Convener: You were speaking to the other amendments in the group, but you must move amendment 30.

Ms White: I move amendment 30.

The Convener: I invite Tricia Marwick to speak to amendment 1 and to the other amendments in the group. I remind members that if amendment 47 is agreed to, I will not call amendment 1 because amendment 47 pre-empts amendment 1. Tricia Marwick must fight her corner.

14:30

Tricia Marwick: Amendment 1 is supported by Mike Rumbles because, like me, he believes that the commissioner must report cases to the Parliament. Amendment 1 would replace the word “may” in section 2(8)(a) with “must”. If that small amendment is not made, it will be for the commissioner to decide whether to report a case to the Parliament.

We must be clear about what we mean by reporting a case to the Parliament. It does not mean that there must be a debate on the case or that it must be referred to a committee. The provision would ensure that the commissioner made a report to the Parliament and it would be for the Parliament to decide how to proceed. It is far better that the Parliament should decide whether to act on a report that the commissioner submits than that the commissioner should judge whether to submit a report to the Parliament. I accept that there is a need for independence in the process and that the commissioner should be given the independence that he needs. However, the commissioner is responsible to the Parliament.

Iain Smith: I disagree with the views that my colleague Mike Rumbles expressed on this issue during the stage 1 debate on the bill. It would be counterproductive to state on the face of the bill that the commissioner must report to the Parliament every case of failure to comply. Amendments 30 and 46 would take that proposal to extremes.

I hope that we will appoint as commissioner for public appointments in Scotland someone who is of sufficient standing that they can act independently. It is important that the commissioner should have some independence. The commissioner should be independent of the Parliament as well as of the Executive. The commissioner will not be a servant of the Parliament, because the Parliament is a political body and could interfere in the public appointments process, if it chose. I opposed the Public Appointments (Parliamentary Approval) (Scotland) Bill because I did not want the Parliament to interfere in public appointments for political reasons.

The commissioner must have the independence to make judgments. Many failures to comply with the code of guidance might be minor matters that make no material difference to the decision as to who is appointed. There might be failure to include a small detail in an advert for a job or to send a piece of paper to an applicant. There is no need for every technical breach of the guidance—the omission of a full stop or a comma—to be reported to the Parliament. The Parliament needs to know whether there has been a breach of the code of conduct that is causing people incorrectly to be appointed or not to be appointed to posts. We must allow the commissioner to judge whether a failure to comply is significant.

If the Executive fails consistently to correct an error or to issue the right pieces of paper, the commissioner will become fed up with issuing notices to comply and will report that dissatisfaction to the Parliament. Surely we should give the commissioner that discretion. Some amendments would tie up the commissioner so much that they would fail to be independent because they would always have to consider what the Parliament said, and the Parliament is a political animal that will not behave independently. That is why we are appointing an independent commissioner.

Dr Jackson: I agree with everything that Iain Smith said. I would like a little clarification and I think that my question is aimed at Tricia Marwick. Is it suggested that if her amendment 1 were agreed to, paragraphs (b) and (c) of section 2(7) would have to be added to paragraph (a), which says:

"it appears to the Commissioner that the code of practice has not been complied with"?

The Convener: I will let Tricia Marwick respond later.

Dr Jackson: The word "and" at the end of subsection (7)(b) implies that paragraphs (a), (b) and (c) should be read together. As I understand it, Iain Smith's argument is that paragraph (a) could require the commissioner to report on anything. Paragraph (a) says:

"it appears to the Commissioner that the code of practice has not been complied with".

However, paragraphs (b) and (c) suggest that something more serious must have happened.

The Convener: Were you speaking to an amendment that was lodged by Sandra White or by Tricia Marwick? I think that you were speaking to one of Sandra White's amendments.

Dr Jackson: No. I was speaking to Tricia Marwick's amendment 1, which would replace the word "may" with the word "must" in section 2, page 2, line 34.

Peter Peacock: Amendments 30, 46, 47 and 1 relate to an obligation on the commissioner to report breaches of the code of practice to the Parliament.

Like Iain Smith and Tricia Marwick, I will make some general points of principle before I deal with the amendments individually, because a fundamental difference of approach is emerging between several amendments today and the arguments that Iain Smith made, with which the Executive aligns itself closely.

The approach that is taken by several amendments—particularly those that have been lodged by Sandra White, supported by Alex Neil—is to tie the commissioner's hands by including prescriptive provisions in the bill. Fundamental to the commissioner's successful operation will be his or her independence from ministers and Parliament. Iain Smith made that point.

It must be remembered that the commissioner is likely to have considerable experience in public life in Scotland and to be someone of standing and integrity, who has objectivity and sound judgment and who will be rigorous and scrupulously fair in all that they do. The commissioner will be appointed by the Queen on the recommendation of the whole Parliament. No person without the qualities that I described—and many more—will be likely to receive Parliament's approval.

Parliament will not be appointing an office junior who needs explicit instructions as to how to order their work on their first day in office. The bill provides some basic rules but allows flexibility in the code's interpretation in consideration of the diversity of the organisations that it covers and the diversity of appointment circumstances. That is important.

During the afternoon, my approach to the bulk of the amendments that have been proposed by Sandra White and Alex Neil will be founded on the principles that I have just set out. I make those points now so that I do not have to repeat them in response to every amendment.

I understand the rationale behind amendment 1, but I am concerned that, in practice, it would fall into the category of seeking to remove discretion from the commissioner. It is inflexible and would mean that technical breaches of the sort that Iain Smith described and which have no bearing on the outcome of an appointments round would be required to be reported to Parliament.

Subsections (6) to (8) of section 2 should be read together as a rising scale of involvement on the commissioner's part in the making of public appointments. The commissioner will initially issue guidance on compliance with the code of practice. If the code of practice is not complied with, the commissioner will intimate that fact to the Scottish ministers and, if the commissioner feels it appropriate, he or she may report the case to Parliament.

To insist in the bill that the commissioner must report to Parliament every breach—no matter how minor or whether it was material to the outcome of the appointment round—would be to fetter the commissioner's discretion unreasonably. However, I take the point that the commissioner should report to the Parliament significant breaches of the code of practice on which no resolution is reached with ministers.

The existing provision for a whistleblower role for the commissioner already extends beyond the role of the current commissioner, but amendments 46 and 47 would take the matter a step further. The independence of the commissioner is vital in order to allow him or her to operate effectively and to secure public confidence in the person and the office. It is undoubtedly important that the bill will enable the Parliament to scrutinise breaches of the code and to act on reports that are made by the commissioner, but amendments 46 and 47 would tip that balance too far from the proper discretion that the commissioner should have towards an obligation to report.

To make reporting of breaches compulsory and to specify the nature of such reporting might have the undesirable effect of raising the threshold of reporting; that is, the commissioner may choose not to pursue minor issues on the basis that the mechanism—reporting to the Parliament—appears to be excessive. That would undermine the commissioner's valuable role in educating users of the code and, indeed, would eventually undermine transparency. Such mandatory reporting during a recruitment process might also cast doubt on perfectly valid appointments. I can foresee a situation in which a good candidate would be compromised because of a technical breach surrounding his or her appointment.

Furthermore, there are good practical reasons why that is not a sensible way of working. It would mean additional unproductive work for the Parliament and could result in unnecessary delays in appointments.

In summary, any move to place an obligation on the commissioner to report every breach of the code to the Parliament is inappropriate. We must have confidence that the commissioner will report when to do so is appropriate. A vital part of the commissioner's role is to resolve informally possible breaches and to educate those who are bound by the code in its correct use—giving discretion is the best way in which to allow that to happen.

On amendment 30, I do not agree that it is appropriate to be too specific in the bill about the detail that is to be contained in the annual report. The bill as drafted will place a duty on the commissioner to report on the exercise of the functions of that office and to comply with any direction from the Scottish Parliamentary Corporate Body. That is appropriate and I fully anticipate that a report would include some detail on reported breaches, together with other activities. Experience of the existing commissioner reveals that that happens.

In summary, I am happy to say that although I believe that amendment 1 points to a current potential gap in drafting, it is too inflexible. However, I am prepared to consider an amendment that meets the spirit of amendment 1, but which is not completely inflexible. I have it in mind to lodge an Executive amendment at stage 3 that would place the commissioner under a duty to consider the seriousness of any breach in relation to invalidating an appointment or potentially

invalidating an appointment, and to require the commissioner in such circumstances to consider that they should report such breaches.

On that basis, I ask Tricia Marwick not to move amendment 1 and Sandra White not to press amendment 30 or to move amendments 46 and 47, which seek unnecessarily to constrain the discretion that the commissioner will require to act effectively. If they choose to press the amendments, I ask the committee to reject all the amendments in the group. I will deal with the spirit of amendment 1 and therefore to some extent the spirit of amendments 46 and 47 at stage 3.

The Convener: I invite Sandra White to wind up on amendment 30. We will deal with the other amendments later.

Ms White: I take on board what the minister said about amendment 30, but I still want to press it. A summary of each case should be reported to the Parliament. I keep talking, and will continue to talk, about transparency. I know that there will be a report, but there should also be a summary.

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)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)

ABSTENTIONS

Marwick, Tricia (Mid Scotland and Fife) (SNP)

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

Amendment 30 disagreed to.

Schedule 1, as amended, agreed to.

Section 2—The Commissioner's functions

The Convener: Amendment 31 is grouped with amendments 40 and 42. I invite Sandra White to move amendment 31 and to speak to all the amendments in the group.

Ms White: Amendment 31 is also about transparency. Its intention is to lay the code of practice in draft before the Parliament in order to ensure utmost scrutiny by the Parliament.

I move amendment 31.

Iain Smith: On the face of it, it seems sensible to say that the guidance should be subject to approval by a resolution of the Parliament, but we must bear it in mind that the commissioner is meant to be independent of Parliament and of the Executive. If there is a dispute as to what should be in the guidance, the commissioner should have the final say to ensure independence.

Let us remember that it is not impossible that there could be a single party majority Government at some point in the future. Because of the proportional representation system, that is unlikely, but it could happen. It would then be possible for the one party that was running the Executive also to be running the Parliament, and it would be able to block any proposals that it did not like from the commissioner on the code of guidance. Surely that is not what is intended. I am sure that that is not what Sandra White intends with amendment 31, but it could be an unfortunate consequence of agreement to it. We should allow the commissioner to have the final say on what should be in the code of guidance, in order to prevent undue political interference from either the Executive or the Parliament.

14:45

Peter Peacock: I am not able to support amendments 31, 40 or 42. As I said, the independence of the commissioner is primary to his or her effective functioning. Amendments 31 and 40 would significantly undermine that independence. The commissioner must retain the right to the final say over the content of the code in order for him or her to act independently of the Parliament and to exercise discretion in consideration of breaches of the code. Iain Smith made that point rather well a moment ago.

To have the code approved by the Parliament would mean that the commissioner could, in effect, be directed in the exercise of his or her functions. Again, Iain Smith made that point rather well. If, at some future date, there were ever a single majority party in the Parliament, Sandra White's proposals could have the effect that he described.

The public will be able to build and retain confidence in the commissioner if he or she is able to act on his or her judgment, both in developing the code and in investigating independently breaches of the code. The amendments in the group extend the role of the Parliament significantly beyond that which the Executive—and the Local Government Committee in its stage 1 report—believed would be appropriate.

Amendment 42, which proposes consulting the public on the code of practice, has merit. There is already provision for the commissioner to consult ministers and the Parliament on the code of practice and for him or her to keep the code under review to ensure that it remains an effective tool.

After all, the commissioner is being established partly to improve public confidence in the appointments process.

However, I consider the drafting of amendment 42 to be unnecessarily detailed and a bit cumbersome. The parameters and timetable for consultation with Scottish ministers are not prescribed in the bill, and I do not think that those for public consultation should be either. I undertake to introduce an Executive amendment at stage 3 to ensure that public consultation is included in the bill in a way that is consistent with the provisions for consultation with Scottish ministers and the Parliament.

On that basis, I ask Sandra White to seek to withdraw amendment 31 and not to move amendments 40 and 42.

Ms White: What Iain Smith has said about what would happen if we had a single party majority in the Parliament is eminently sensible. However, we are talking about the independence of the commissioner, and I think that it is better for things to be brought out in the public eye through the Parliament, so that parliamentarians can decide which way they will vote. I therefore cannot seek to withdraw amendment 31.

I take on board what Peter Peacock says about amendment 42, and I am happy not to move it.

The Convener: You can do that when we come to that point in the marshalled list.

Ms White: Okay.

The Convener: The question is, that amendment 31 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)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 31 disagreed to.

The Convener: Amendment 11 is grouped with amendments 32 and 12 to 23.

Peter Peacock: I am unable to support amendment 32 for reasons that I shall set out in a moment. Amendments 11 to 23 would affect section 2, which sets out the scope of the functions and powers of the commissioner for public appointments. The amendments would extend the remit of the Scottish commissioner to include appointments made by other bodies, usually the Queen, on the recommendation of the Scottish ministers. It is important that recommendations for appointment made by ministers are subject to the same rigorous scrutiny as direct appointments. The amendments would mean that the remit and functions of the commissioner in relation to recommendations made by ministers for appointments are exactly the same as they are for direct appointments.

The UK commissioner's remit extends to appointments made on the recommendation of ministers. It was always the Executive's intention that the Scottish commissioner should have the same powers as the UK commissioner. Reference to those recommendations for appointment was omitted from the bill as introduced due to time pressures. Accordingly, the purpose of amendments 11 to 23 is to address that omission. Examples of Crown appointments that are covered by the UK commissioner are appointments to the Mental Welfare Commission for Scotland and to the Royal Fine Art Commission for Scotland.

As I indicated, I cannot support amendment 32. It displays a desire to widen fundamentally the scope of the bill and fails to make a distinction between a public appointment to a board that is made by a minister and the offer of employment that is made by a public body to a prospective employee. As such, the appointment of a chief executive is subject to a body's clear procedures for employing staff. For that reason, it would not be appropriate for the appointment of chief executives to fall within the code of practice of the commissioner for public appointments. The bill is intended to regulate the system of ministerial public appointments to the boards of public bodies, not the employment of staff. Quite properly, the remit of the UK commissioner does not extend to the staff of public bodies. I therefore invite Sandra White not to move amendment 32.

I move amendment 11.

Amendment 11 agreed to.

Amendment 32 not moved.

The Convener: Amendment 33 is grouped with amendments 39, 45 and 48.

Ms White: I apologise for jumping back and forth between papers, but we have just received the groupings. They did not come through the computer, but at last we have them. I certainly did not receive the groupings, and I do not think that other committee members received them, before the meeting. I will speak first to amendment—sorry, convener, did you say amendment 33?

The Convener: Yes, I asked you to speak to amendment 33.

Ms White: Amendment 33 seeks to ensure that there is fairness in the appointments system by ensuring that no appointment is prejudiced by the applicant's political affiliation.

I move amendment 33.

Iain Smith: I understand and agree with the sentiments behind amendment 33, but I am not sure that it is appropriate to single out a specific aspect of the appointments process. We could ask people whether they support Celtic or Rangers, to take a daft example—perhaps that would not be so daft in Scotland. Why single out political affiliation for consideration? The process is intended to operate, as the bill states, "fairly and openly". If political affiliation were covered by the bill, could not it be argued, "Well, we haven't mentioned other affiliations, so we don't have to take them into account"? It is unnecessary for the bill to cover political affiliation. That will be an important part of the code of practice, but I am not sure that it should be in the bill.

Peter Peacock: I am afraid that I cannot support amendments 33, 39, 45 and 48, which seek to single out political affiliation—but not similar issues—in the appointments process. Section 2(9)(a) states that the commissioner is to exercise his or her functions

"with a view to ensuring that—

(a) appointments to the specified authorities are made fairly and openly".

That specific provision was carefully drafted to capture everything that is required to ensure that appointments are made on merit. If appointments have not been made fairly and openly, they cannot, by definition, have been made on merit; therefore, they would be capable of being scrutinised. It should go without saying that for an appointment to be made fairly and openly, political affiliation or activity cannot and should not be a consideration during the appointments process.

On that basis, amendments 33, 39, 45 and 48 are not only unnecessary, they actually cause problems. By singling out political affiliations and not picking out other potential criteria, they imply that selection or rejection based on other criteria would be acceptable. If the amendments were agreed to, we might be forced to place in the bill a list of other criteria that it would not be acceptable to consider, such as religion, ethnicity, disability, geography, membership of pressure groups or the example that Iain Smith cited. Once one gets into that process, inevitably one misses something, which, by omission, is given credence.

Under the existing system, applicants are asked only if they have been politically active to enable the monitoring of applicants' political activity in so far as that information is already in the public domain. Applicants are not asked to declare their political affiliation—membership of a political party or voting preferences—as such information is, quite rightly, private and personal.

As members know, the intention is that ministers and Parliament will be consulted on, and will directly contribute to, the specifics of the code of practice. It would be inappropriate at this time to prescribe in detail what the code of practice should contain.

Amendment 39 asks that all political activity be declared. I suspect that no one round the table could recount to me all the political activity that they undertook in a three-month period four years ago, let alone absolutely all such activity over a five-year period. Further, to establish new law on political donations is potentially beyond the powers of the Parliament. The UK commissioner's code details in an entirely sensible way the definition of political activity and asks that applicants tick the appropriate boxes, including one for a recordable donation to a political party as defined by the Political Parties, Elections and Referendums Act 2000. I fully expect the Scottish code to cover similar ground. In any event, we all will be invited to have a say on its contents, and we can deal with the matter then.

I believe that amendment 45 is unnecessary. Further, it seeks fundamentally to change the role of the commissioner from being independent with powers to exercising decisions as part of the selection of individual candidates. That could mean that the commissioner's decisions became the cause of contention and complaint. We fully expect the code to cover conflicts of interest—not just those that arise from political activity—in line with the UK commissioner's code of practice. Best practice dictates that the selection process explore whether an applicant for appointment has any conflict of interest, political or otherwise, that might affect their selection.

As matters stand, amendment 45 runs contrary to the UK commissioner's code, as it would raise the issue of political activity before the appointment is made, rather than when an announcement is made. It would be for the selection panel to decide whether a potential conflict of interest is sufficiently serious to warrant disqualification. The selection panel would have to be able to exercise discretion in making decisions about appointments; otherwise, the effect would be to remove responsibility from it for making the appointment. It is important to bear in mind that an independent assessor would be involved in the process and that advice from the commissioner would be available, should that be considered necessary. No other potential conflicts of interest

are specified in the bill and it does not seem right to single out one particular issue.

In keeping with the principle of openness and transparency, all successful applicants' declared political activities will be publicised in an appropriate way when an appointment is announced by the Scottish ministers. Accordingly, I invite Sandra White to withdraw amendment 33 and not to move amendments 39, 45 and 48.

Ms White: I welcome Iain Smith's comments about the need to ensure fairness in the appointments system, which my amendments are trying to achieve.

While I understand that the political affiliations of the successful applicant would be made public, I point out to the minister that that would happen only after their appointment. I remind the committee that, in a written answer, Andy Kerr confirmed that, from 1 April 2001 to 20 September 2002, of the 88 appointees to non-departmental public bodies who declared political activity, eight declared political activity in support of the Conservatives, 53 declared activity in support of Labour, nine declared activity in support of the Liberal Democrats, eight declared activity in support of SNP and three declared activity in support of other parties. My amendments were designed to prevent such a situation from arising. If there are no checks and balances in the appointments system, the situation will not change. Therefore, I intend to press amendment 33.

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Marwick, Tricia (Mid Scotland and Fife) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

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

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 33 disagreed to.

The Convener: Amendment 34 is grouped with amendments 35, 36, 37 and 38.

Ms White: I will jump between amendments because they have changed since I saw them on Thursday night. In the interests of clarity and focus, amendments 34 and 35 seek to replace "include guidelines as to" with "specify" in section 2(2). Section 2(1)(a) uses the word "specified", so I think that my proposed change is reasonable.

Amendment 36 is designed to complement section 2(2)(c) and would ensure fairness and accountability.

Amendment 37 would ensure that non-compliance would be reported. It is good practice to specify how non-compliance should be reported and the sanctions that could be imposed. Amendment 37 is all about transparency. The commissioner should know about non-compliance. If the sanctions are not put before the Parliament in an accessible form, fairness, transparency and accountability will not be forthcoming.

I move amendment 34.

15:00

Peter Peacock: I am afraid that I cannot support any of the amendments in this group. Amendments 34 and 35 seek to make the code of practice highly prescriptive and therefore inflexible. It would be extremely unwise to attempt to provide specific instructions—in one document, at one moment in time—on how operational procedures in all Scottish public bodies must work, irrespective of their diversity and operating circumstances. That would lead to inflexibility and would stifle innovation and development. In common with other amendments that Sandra White has lodged, amendments 34 and 35 would lead to an utterly inflexible system. They would also raise the question of the commissioner's discretion to operate effectively.

It must be remembered that the commissioner would be appointed on the recommendation of the Parliament for the purposes of producing a code and ensuring that it will be complied with. The code would allow independent assessors and the commissioner, who would scrutinise the code, to exercise appropriate discretion.

The UK commissioner has been keen to promote proportionality in her code of practice and to allow a degree of flexibility for all parties in some aspects of the process. Excessive prescription would not be consistent with that considered view. It is important to remember that the Parliament and ministers would be consulted on the code. That should be sufficient to ensure that the code delivers on our high expectations. Amendments 36, 37 and 38 seek to include in the bill too many restrictions on the contents of the code. It is not necessary to be overly prescriptive about what the code of practice should contain, given that the Parliament and ministers would be consulted on it. There will be ample opportunity to provide input. The existing provisions merely ensure that broad functions are covered.

Amendment 36 is unnecessary, given the detail that the bill already provides. Section 2(2) already states that the code of practice must include guidelines that deal with

"the basis on which persons are to be considered for appointment".

Given that a person will be considered for appointment under the guidelines, it is inconceivable that the appointment would be made by a different method.

As I have said in relation to other amendments, section 2(9)(a) states that the commissioner must exercise his or her functions with a view to ensuring that appointments are made "fairly and openly". Amendment 36 adds nothing to the existing provision on the appointments process and is therefore unnecessary.

Amendment 37 seeks to restrict the reasonable discretion with which the commissioner should be entrusted in reporting breaches of the code. To be so prescriptive would be unnecessary and unhelpful. Amendment 37 is also confused, in that it has the potential to draw into a regime of sanctions that is proposed in amendment 38 people who do not follow the code fully in reporting a lack of compliance. In all the circumstances, amendment 37 is unhelpful.

My disagreement with amendment 38 is based on principle; the amendment is also unnecessary. The commissioner's powers in relation to breaches of the code are already clear. It would be dangerous for the code of practice to provide sanctions against individuals, without stating what those sanctions should be. If there are to be sanctions against individuals, they should be spelled out now.

Depending on the nature of any sanctions that were suggested, it is not clear that it would be possible legally to enforce them on an individual if, for example, they had any effect on the individual's livelihood, employment or future employment and were not identified as punishable offences in legislation passed by the Parliament. The proposed provisions would take us into new and unspecified territory and it would be extremely unwise to move in that direction.

The real sanction that the commissioner would have in relation to ministers would be the ability to report to the Parliament their actions in not meeting the code, for which they would have to face the consequences. The First Minister can exercise sanctions over any of his ministers if he feels that they have erred. The possibility of a minister being reported to the Parliament and the knowledge of the First Minister's powers would be sufficient to ensure compliance with the code. It would be unwise to draw the commissioner into setting down sanctions.

I invite Sandra White to withdraw amendment 34 and not to move amendments 35, 36, 37 and 38.

Ms White: I thought that amendment 34 was the most innocuous of all the amendments. It seeks to take out "include guidelines" and put in the word "specify", which I thought was a better word. Is it just amendment 34 that I have to press?

The Convener: Yes.

Ms White: That is great. I will press amendment 34. I hear what the minister says about guidelines, but "specify" is a much stronger word. If it is included in the bill, we will at least know what we are dealing with.

The Convener: The question is, that amendment 34 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)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)

ABSTENTIONS

Marwick, Tricia (Mid Scotland and Fife) (SNP)

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

Amendment 34 disagreed to.

Amendment 12 moved—[Peter Peacock]—and agreed to.

Amendment 35 not moved.

Amendment 13 moved—[Peter Peacock]—and agreed to.

Amendment 36 moved—[Ms Sandra White].

The Convener: The question is, that amendment 36 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)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 36 disagreed to.

Amendment 37 moved—[Ms Sandra White].

The Convener: The question is, that amendment 37 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)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)

ABSTENTIONS

Marwick, Tricia (Mid Scotland and Fife) (SNP)

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

Amendment 37 disagreed to.

Amendment 38 moved—[Ms Sandra White].

The Convener: The question is, that amendment 38 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)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 38 disagreed to.

Amendment 39 moved—[Ms Sandra White].

The Convener: The question is, that amendment 39 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)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)

ABSTENTIONS

Marwick, Tricia (Mid Scotland and Fife) (SNP)

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

Amendment 39 disagreed to.

Amendment 40 moved—[Ms Sandra White].

The Convener: The question is, that amendment 40 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Marwick, Tricia (Mid Scotland and Fife) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

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

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 40 disagreed to.

The Convener: Amendment 41, in the name of Sandra White, is grouped on its own. I ask Sandra White to speak to and move amendment 41.

Ms White: Amendment 41 seeks to take out the word "promote" and insert "ensure". The word "promote" is weak, means nothing and gives no teeth to the bill. If the bill is to mean anything, it must make sure that the code of practice is complied with. The insertion of "ensure" will require that to happen.

I move amendment 41.

Tricia Marwick: I disagree with amendment 41. I think that "promote" is the right word because the bill cannot require the commissioner to ensure that something happens without prescribing what should or should not happen to the commissioner if they fail in that task. The word "ensure" is prescriptive and unhelpful. The word "promote" is preferable in the circumstances.

Peter Peacock: I take this rare opportunity to agree with Tricia Marwick. I, too, cannot support amendment 41. The amendment would not only do what Tricia Marwick suggested, but would remove an important function of the commissioner, which is to promote compliance with the code. Section 2(3)(c) intends for the commissioner to inform and educate those who make appointments to public bodies about the intent and purpose of the code and what should be undertaken to achieve compliance with it.

The wording of amendment 41 would mean that the commissioner had to "ensure" compliance with the code of practice. The code of practice will detail how appointments are to be made. Section 2(9) of the bill states that the commissioner is to exercise his or her functions

"with a view to ensuring that … appointments to the specified authorities are made fairly and openly",

which I believe is the intention behind amendment 41.

The commissioner could ensure compliance with the code of practice, but only if he or she carried out each appointment, to ensure that each step of the process was in line with the code of practice, or if he or she instigated such rigorous reporting systems for the specified authorities as to render the whole appointments system unwieldy and unworkable. That would clearly be unacceptable.

The duty that amendment 41 would impose would conflict with and remove the responsibilities of others in the appointment process. Clearly, that would be unwise. The commissioner's purpose is to promote compliance with the code and the commissioner will have tough, whistle blowing powers if he or she believes that the code is not being complied with. Those powers should not only be sufficient, but should make the role of the commissioner legally workable.

The powers should be sufficient to seek to ensure compliance with the code. Therefore, I invite Sandra White, on reflection, to withdraw amendment 41.

Ms White: The minister used the word "ensure" in his penultimate sentence, but did not mention the word "promote". The word "ensure" is much stronger. I am not having much luck today, but I disagree with my colleague Tricia Marwick and the minister. The word "promote" seems to suggest an advertising firm's activity, whereas the word "ensure" would ensure compliance with the code of practice. Therefore, I press amendment 41.

The Convener: The question is, that amendment 41 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)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 41 disagreed to.

The Convener: Amendment 42, in the name of Sandra White, was debated with amendment 31. I ask Sandra whether she is moving the amendment.

Ms White: I move amendment 42.

The Convener: The question is, that amendment 42 be agreed to. Are we agreed?

Members: No.

Amendment 42 disagreed to.

The Convener: I clarify that Sandra White did not say that she agreed to amendment 42.

Mr Keith Harding (Mid Scotland and Fife) (Con): She did.

Ms White: I moved amendment 42. I was waiting for the convener to say that there would be a division, because Iain Smith was going to raise his hand.

The Convener: But when I asked whether amendment 42 was agreed to, you did not say anything.

Ms White: I said that I moved amendment 42.

The Convener: No, my first question was to ask whether you were moving the amendment, but then I asked "Are we agreed?" and you did not say anything.

Ms White: Well, I apologise if that is the way that you read it.

Amendments 14 to 16 moved—[Peter Peacock]—and agreed to.

The Convener: Amendment 43 is in a group on its own.

Ms White: I will try once again. Perhaps someone will take pity on me by abstaining or even voting for my amendment.

Amendment 43 concerns the publishing of investigations into complaints and so on. I feel that any investigations that are carried out should be published. I simply ask that they be published within a reasonable time scale. If complaints are investigated, it is only reasonable that the results should be published so that the Parliament and the public can see what the results are.

I move amendment 43.

Tricia Marwick: My difficulty with amendment 43 is that I do not understand what the amendment means by "within a reasonable time". If the amendment had perhaps said that the results of investigations should be published within three months, it would have been a bit more acceptable. I do not think that "within a reasonable time" is sufficient for the purposes of a piece of legislation.

15:15

Peter Peacock: I recognise the point that Sandra White seeks to cover with amendment 43,

but again I fear that the amendment is overly prescriptive. It also lacks a specific measurement of how its terms would be regarded as being met. The effect of amendment 43 would be to place on the commissioner an obligation to publish details of every complaint that is brought to his or her attention, however insubstantial an investigation revealed the complaint to be.

It may be instructive to consider how Parliament dealt with the Scottish Public Services Ombudsman Act 2002, which made provisions for an office that receives complaints all the time. A range of options is available to the public services ombudsman in reaching a decision on whether to pursue an investigation. The ombudsman has an extensive role in resolving complaints informally. That allows a degree of discretion in how complaints are handled and how the results of investigations are made public. I believe that we should follow a similar route with this bill.

Amendment 43 would undermine the ability of the commissioner to exercise appropriate discretion in how he or she conducts operations. It would also detract from the commissioner's key role, which is to ensure that any complaint is resolved satisfactorily. It would not be at all useful to place in the bill a requirement that the commissioner publish the details of every complaint that is investigated, down to the most trivial phone call or letter.

As the committee will be aware, the commissioner will be under a duty to produce an annual report. The bill will allow the commissioner to make a judgment about which cases might be published in the public interest or for educational purposes. Indeed, summary information on complaints is likely to be included in the commissioner's annual report.

Like previous amendments that we have debated, amendment 43 could have a significant negative effect by undermining the independence of the commissioner. It is possible that the amendment could unnecessarily cast doubt on individual appointment rounds even though the commissioner was satisfied that the appointments were not in any way compromised.

The commissioner should have the discretion to decide whether it would be helpful, useful or in the public interest to report on investigations by publishing the results of an investigation. We must remember that the commissioner has major powers to intervene and to stop an appointment proceeding if he or she believes that any breach of the code has occurred or is likely to occur. Such a process already requires a report to Parliament.

Beyond that, the commissioner may use his or her discretion to use the annual report to raise any matter that he or she may wish to raise. We know from the most recent annual report that the existing commissioner chooses to use that power in ways that confront the Executive with challenges to the procedures that are used. That is right and proper and should be left to the discretion of the commissioner.

For those reasons, I invite Sandra White to withdraw amendment 43.

Ms White: I take full responsibility for the phrase "within a reasonable time", as I decided that a proposal for a limit of one or two months would be argued against as being unreasonable.

I do not take on board the minister's explanation. It is right and proper that the commissioner should publish any investigations that occur. I do not think that investigations would occur for every tiny little thing. I press amendment 43.

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

Members: No.

Amendment 43 disagreed to.

Ms White: Is this a ploy?

The Convener: No. Again, Sandra White did not respond.

Ms White: I accept the chair's ruling, although as we have found before, you can be a very hard chair. I will not argue the point for amendment 43.

The Convener: Amendment 44 is in a group on its own.

Ms White: Amendment 44 is much the same as amendment 43. I believe that, if the commissioner issues guidance to Scottish ministers on how they should comply with the code of practice, the Parliament must be informed. That is why I have lodged amendment 44.

I move amendment 44.

Tricia Marwick: I understand exactly where Sandra White is coming from. She is suggesting that the guidance should not only be given to ministers but should be made available to the Parliament. I have a certain amount of sympathy with Sandra White's aim; however, I am not entirely convinced about the terminology that amendment 44 uses to get the point across. For example, it is not clear whether the phrase

"must lay a copy of any guidance so issued before the Parliament"

means that the Parliament would be expected to debate the guidance, or whether it would just be a matter of a document being placed in the Scottish Parliament information centre.

Because I am unclear about Sandra White's thinking on the matter, I am not inclined to support amendment 44.

Peter Peacock: I think that the debate revolves around the definition of "guidance". I am afraid that, because of the way in which amendment 44 is drafted, it seeks to constrain the reasonable discretion of the commissioner. It would be wrong for the provision to be included in the bill. In my view, the commissioner must be allowed to proceed with discretion in giving guidance on compliance with the code.

I can envisage circumstances in which issues might arise about the advice given by the commissioner to ministers on individual cases, particularly if it relates to applicants for a post and not just to someone who has been given office. It is not clear that it would be in the public interest if the commissioner were required to disclose advice that was given confidentially to ministers, particularly if that advice related to someone who was never appointed.

Furthermore, given the fact that we expect the relationship between the commissioner and ministers to be a dynamic one, the sheer volume of advice given by the commissioner could mean that the commissioner would have to spend most of their time setting out in detail what advice they had given. Parliament could be snowed under with reports of varying degrees of importance.

Guidance is fundamental to the commissioner's remit. It would be farcical to force the commissioner to report to the Parliament his or her every move. That said, if the commissioner, at his or her discretion, wished to make general guidance available, that would be a matter for the commissioner. No doubt, if the commissioner felt that it would strengthen his or her hand in their scrutiny role to inform Parliament of guidance that had been issued, they could choose to do so. That is properly a matter for the commissioner's judgment.

On the basis of the sheer impracticality of the proposal that it contains, as well as the issues of principle, I invite Sandra White to withdraw amendment 44.

Ms White: I think that I have already said it all regarding amendment 44. The amendment is all about transparency. I feel that most of my amendments are about transparency and accountability. None of them so far has succeeded; nevertheless, I wish to press amendment 44.

The Convener: The question is, that amendment 44 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)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)

ABSTENTIONS

Marwick, Tricia (Mid Scotland and Fife) (SNP)

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

Amendment 44 disagreed to.

Amendment 45 moved—[Ms Sandra White].

The Convener: The question is, that amendment 45 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)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)

ABSTENTIONS

Marwick, Tricia (Mid Scotland and Fife) (SNP)

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

Amendment 45 disagreed to.

Amendments 46 and 47 not moved.

The Convener: Amendment 1 has already been debated with amendment 30. Does Tricia Marwick wish to move the amendment?

Dr Jackson: On a point of order, convener. I seek clarification. I thought that the member was going to be allowed to answer the question that I raised earlier.

The Convener: I am sorry—I will allow Tricia to respond. You are absolutely right to remind me of that.

Tricia Marwick: I thank Sylvia for that. I think that amendment 1 is quite clear. The only thing that I seek to do is to insert "must" in the place of "may" in section 2(8)(a). The rest of the section remains the same; I intend only to make a single-word change.

I welcome the minister's general acceptance of amendment 1 and acknowledge his sympathy for it. However, my problem with the bill is that there is no definition of the circumstances in which the

commissioner would report. That is why I lodged amendment 1.

I believe that the minister will return to the committee on the subject and that he will address the point about significant actions. On that basis, I will not move amendment 1.

Amendment 1 not moved.

Amendments 17 to 20 moved—[Peter Peacock]—and agreed to.

Amendment 48 moved—[Ms Sandra White].

The Convener: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Marwick, Tricia (Mid Scotland and Fife) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

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

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 48 disagreed to.

Amendments 21 to 23 moved—[Peter Peacock]—and agreed to.

The Convener: Amendment 24 is in a group on its own.

Peter Peacock: Amendment 24 seeks to extend the obligation on the commissioner to consult on the diversity strategy to consulting the Parliament as well as ministers. The committee offered helpful comments on the issue at stage 1, pointing out that the consultation on the diversity strategy was at odds with that on the code of practice.

Although the final say in drafting the diversity strategy will be left to the commissioner, it is right that he or she should consult the Parliament in preparing the strategy.

I move amendment 24.

Amendment 24 agreed to.

Section 2, as amended, agreed to.

Schedule 2

THE SPECIFIED AUTHORITIES

The Convener: Amendment 25 is in a group on its own.

Peter Peacock: Amendment 25 adds any special health board to the list of bodies to be regulated by the commissioner for public appointments in Scotland. Since the bill was drafted, the national waiting times centre board has been set up. It falls within the UK commissioner's remit but was not previously covered by schedule 2.

Amendment 25 will ensure that appointments to all special health boards now and in the future will be regulated by the commissioner for public appointments in Scotland without the need for an order.

I move amendment 25.

Iain Smith: Will the minister clarify whether the amendment will exclude any of the bodies that were previously listed? Are those bodies now included under special health boards?

Tricia Marwick: I, too, seek clarification. I understand what the minister is trying to do, but I am concerned about the wording of the phrase "any Special Health Board". At some point in the future, the lack of definition could allow some health bodies not to be drawn into the remit of the commissioner for public appointments in Scotland.

Peter Peacock: First, in response to the point that Iain Smith made, I confirm that amendment 25 does not have the effect that he suggested. I say to Tricia Marwick that there are geographic health boards and also groups of special health boards that cover specific functions. Amendment 25 seeks to ensure that all special health boards are covered. That will ensure that the whole of the health service is consistent with the rest of the public sector in respect of the appointments that might be made.

Amendment 25 agreed to.

Schedule 2, as amended, agreed to.

Section 3—The Commissioner's functions: further provision

15:30

The Convener: Amendment 26 is grouped with amendments 27, 28 and 49.

Peter Peacock: Amendments 26 and 27 seek to extend the remit of the commissioner to cover appointments to bodies not yet in existence in law. The effect of amendments 26 and 27 is to ensure that appointments processes that are started while bodies are set up are carried out in the same way as any appointments that are made once the body is fully established.

The start-up period is an important time for recruitment for any organisation. It is important that no question is raised about the validity of subsequent appointments. The amendments will ensure that initial appointments rounds are not

overlooked and that the commissioner will have the power to scrutinise the appointments process for new organisations from the outset. A recent example of a new body being set up in such circumstances is Scottish Water.

Amendments 28 and 49 are intended to change the mechanism for making changes to schedule 2 from a negative to an affirmative resolution. It was previously considered that negative resolution would be sufficient for the purpose, in that it would allow for a debate if a member felt that that was appropriate. However, I appreciate that the committee feels strongly about the matter, and I am happy to concede the point.

Schedule 2 sets out the public bodies over which the commissioner will have jurisdiction in regulating appointments. As such, it sets out the commissioner's core remit and changes should be made to it only following proper consideration. An order subject to affirmative resolution will undoubtedly achieve that.

I fully recognise that Sandra White's amendment 49 is intended to have exactly the same effect as amendment 28. However, it does not take into account the addition to the commissioner's remit of bodies that do not yet exist in law under amendments 26 and 27.

I ask Sandra White not to move amendment 49, as the point is covered in the Executive's amendment in the group.

I move amendment 26.

Ms White: Amendment 49 set out to do exactly what the minister said it was intended to do. I had great difficulty in finding out about negative and affirmative instruments, but eventually I got to the point. I will withdraw amendment 49 in favour of amendment 28, as that amendment sets out to do everything that amendment 49 was intended to do.

The Convener: Sandra White cannot withdraw amendment 49 at the moment. She can do that next week, when we get to that point.

Amendment 26 agreed to.

Section 3, as amended, agreed to.

The Convener: That ends our consideration of the bill today. We will pick it up again next week. We will now have a comfort break of five minutes to get some fresh air if nothing else.

15:32

Meeting suspended.

15:40

On resuming—

Tricia Marwick: On a point of order, convener. At least three members of the committee did not receive the marshalled list of amendments until half an hour before the meeting. I did not receive the list of groupings of amendments until I asked for it this morning. That is unacceptable, as we are dealing with complicated legislation. It is discourteous, to say the least, to members of the committee and has hampered our ability to scrutinise the bill to the extent that is required.

Ms White: When speaking to the amendments that I lodged, supported by Alex Neil, I indicated that I had not received copies of the marshalled list and the list of groupings before I arrived at the meeting, although I had e-mailed the clerk to request them. I lay no blame on the clerks, who work very hard. Friday was a holiday within the Parliament, rather than a public holiday. Amendments had to be lodged by 7.30 pm on Thursday and the clerks worked hard to process them. However, I did not see the redrafted amendments until today.

Most of us work in our constituencies on Mondays and Fridays; we do not come through to the Parliament until Tuesday. I do not know whether the matter is governed by standing orders, but it is very difficult if we do not receive papers until 10 minutes before a meeting or have to ask the clerks for them when we come through the door. That is unacceptable.

Mr Harding: Unfortunately, we often receive material late on Tuesdays. At 1.20 pm today, I still had not received the marshalled list of amendments. I telephoned the clerk and it was e-mailed to me just before 1.30 pm. I was required to assimilate a great deal of information in a very short time. Even now I do not have a copy of the groupings.

The Convener: Members are supposed to collect lists of groupings from the document supply centre. Members may not know that—I would not have known it. We must deal with that failure of communication. The clerks to the Local Government Committee provide members with lists of groupings as a courtesy. This week, they were very busy—I did not receive my list until about 9 o'clock last night, when I returned from a meeting, although the fax arrived slightly earlier. However, members of the Local Government Committee and all other committees are expected to collect lists of groupings themselves.

Mr Harding: I am aware of the rule to which the convener refers. However, the letter from the clerk enclosing the agenda and papers for this week's meeting states:

"The marshalled list of amendments and groupings for Stage 2 of the Public Appointments and Public Bodies (Scotland) Bill will be e-mailed to you early next week."

I assumed that those documents would be e-mailed.

Iain Smith: It is helpful if copies of the list of groupings and the marshalled list are e-mailed in advance of the meeting. However, the marshalled list is accessible on the Parliament's website under "Bills".

Ms White: I reiterate the point that Keith Harding has made. I received the letter indicating that copies of the list of groupings and the marshalled list would be posted to us. As I said, I am in my constituency on Mondays and Fridays. I do not arrive at the Parliament until Tuesday and attend meetings in the morning. It is very difficult to get hold of the documents.

The Convener: We are all usually in our constituencies on Mondays and Fridays. The clerks to the committee provide members with copies of the list of groupings as a courtesy. Usually the list is available sooner, but on this occasion there was a delay because over the past few days the clerks have been extremely busy.

Allotments Inquiry

The Convener: Members will remember that we began the allotments inquiry in 2001. About three of us here were on the committee at the time. The rest of the members will have no idea what they are talking about—that will not be new. I asked the clerk to include a summary of evidence, which is on the last page of the briefing paper. We now have the opportunity to complete our inquiry before the end of the parliamentary session. I would certainly like to tidy the matter up.

Today we are taking evidence from the Executive. I welcome, once again, Peter Peacock, the Deputy Minister for Finance and Public Services; Sarah Morrell, the head of branch 1 of the local government, constitution and governance division; and Heather Aitken, the policy officer of the local government, constitution and governance division. Peter Peacock will make an opening statement and then I will open up the meeting for questions.

15:45

Peter Peacock: I recognise the importance of allotment facilities, which I know are of particular interest to the convener. The matter is obviously of interest to people who do not possess or have access to land, or sufficient land, for cultivation or recreation.

Allotments are a local matter. The issues that surround them will vary from area to area. What works in an urban area will not necessarily work in a rural setting, although I recognise that allotments are probably more of an issue in urban areas than in rural areas. The Executive believes that local authorities are best placed to assess the needs of their communities, to develop policy on allotments and allotment provision and to administer allotments as they see fit. Current legislation, even though some of it dates from the 19th century, does not appear to cause difficulties for local authorities. The Executive is therefore not planning to introduce additional legislation.

However, I recognise that there is concern about the continuing provision and management of allotments. We feel that that can be best dealt with in the shape of best practice guidance for councils. Guidance produced by the former Department of the Environment, Transport and the Regions for England and Wales has met with strong approval at grass-roots level.

We would like to see similar advice for Scotland and have raised with the Convention of Scottish Local Authorities the question of best practice guidance for councils on provision and management of allotments. I know that COSLA

has been considering using the City of Edinburgh Council's strategy as a basis for best practice guidance. I look forward to seeing progress on that.

The Executive values the benefits that allotments bring to individuals and families in Scotland. As the committee will have heard from previous evidence, allotments provide the means to meet a variety of needs: involvement with the community; exercise and healthy diet; social interaction; and improving the environment. Those are the obvious benefits. Getting respite from one's partner may be a less obvious but nonetheless important benefit. I am not sure that research exists on whether the marriages of allotment users last longer than those of people who are not allotment users. The Executive has a legitimate interest in at least most of those benefits.

The physical activity task force consultation document recommended that every adult should take 30 minutes of physical exercise—the equivalent of brisk walking—a day, with strength and balance exercises, as part of their daily activities. The opportunity to walk, cycle or garden is as important as the opportunity to play a sport. Allotments can provide an opportunity for people who do not have a garden at home to incorporate activity into their daily lives. Allotments also provide the opportunity to grow healthy and fresh food cheaply.

Through the forthcoming planning advice note on open spaces, we are looking to local authorities to ensure that current and future open-space needs, including allotments, can be met. The planning advice note will look to local authorities to consult relevant user groups or carry out necessary survey work in order to establish the demand for facilities. In discussing the value of open space, we recognise that allotments provide economic benefits in their own right.

Garden for life is an Executive initiative, which aims to use gardening to help to raise people's appreciation of biodiversity through their involvement in, enjoyment of and care for their gardens throughout Scotland. Garden for life is a partnership project and future membership is to be expanded to include the Scottish Allotments and Gardens Society, Thrive, which is a horticultural charity, the Federation of City Farms and Community Gardens and the British Trust for Conservation Volunteers.

The project's aims are to help people to enjoy and understand more about Scotland's biodiversity—the variety of wildlife and habitats—to show how anyone involved in gardening can improve their quality of life and do something practical to help to conserve and promote Scotland's biodiversity, particularly in our urban areas.

Convener, I hope that the issues that I have covered today will give you a flavour of how we regard the value of allotments. I know that you will want to dig into and rake over what I have said. We await your report with interest, lest we need to prepare the ground for the seeds of new policy ideas that you might generate.

Tricia Marwick: Stop now.

Peter Peacock: I am sorry; there is more to come.

Convener, you might want to cultivate my support for any new ideas and I am sure that you would want any new ideas to germinate properly, take root and blossom into new opportunities. We all want to nurture and tend for our communities in ways that reap a rich harvest of rewards for them. You will want to ensure that any new ideas do not fall on stony ground and you will recognise that the Executive is fertile ground for making progress on important issues. You might be able to graft existing provisions on to our thinking and to propagate new growth and policy towards allotments. I look forward to your questions and trust that you did not find the latter part of my evidence too much manure.

The Convener: We have just withdrawn your honorary membership.

Tricia Marwick: I am stunned by your last remarks, minister.

In England, local authorities have to seek permission from the relevant secretary of state to close allotments. That is not the situation in Scotland. Given the pressure on space for development ground, particularly in cities, do you think that the Executive should examine some way of ensuring that local authorities have to seek permission from a minister before any closure?

Peter Peacock: I understand the point. The difference dates back to the Town and Country Planning (Scotland) Act 1959. As I understand it, if the local authority wants to change the use of an allotment, it has to seek the permission of a minister; if it wants to sell an allotment ground below market price, it has to seek the permission of a minister. However, in the circumstances that Tricia Marwick described, in which a local authority sells at market price, it does not have to seek permission. I suspect that that was an oversight in 1959 rather than a deliberate action, but it is difficult to say with the distance of time.

Our view is that, in practical terms, the difference does not seem to cause a particular problem. As I said, the forthcoming planning advice note will encourage local authorities to take a view about land use generally and open space in particular. In the circumstances described by Tricia Marwick, in which a local authority wants to

sell land because of its potential premium price—in city locations, in particular—the evidence is that it would seek alternative ground for people to continue to have access to an allotment. In that way, there is both the benefit of the capital receipts to the local authority, which can be invested for wider community purposes, and the maintenance of provision for allotments.

In practical terms, we are not sure whether it is necessary for us to act on the difference. However, we will be interested in what the committee's report says on that point and will pay close attention to its recommendations.

Tricia Marwick: I accept your point. However, you are talking about existing sites and we have already established that, although local authorities have the responsibility for allotments, there are guidelines about the need for physical exercise, nurturing, digging and all the other words that you used. If allotments are allowed to close without reference to the minister, that will undermine other Executive policies.

My other concern is that there is an increased demand for allotments, particularly in the city areas. We have concentrated our remarks on what happens if local authorities want to close allotments. However, there does not seem to be anything to encourage local authorities to look for space in which to create allotments. Will the Executive examine that?

Peter Peacock: We are examining best practice guidance and believe that it would be best and most practical to pursue that with COSLA, perhaps by using the helpful examples produced by the City of Edinburgh Council. Guidance in the south was also helpful. We have no inhibitions about encouraging the use of such guidance.

The Allotments (Scotland) Act 1892 puts local authorities under a duty to consider representations about the need for allotments. If they believe that the land is needed, they must acquire land for allotments. There is a duty on local authorities to listen to what people have to say. If a clear demand is articulated, they would have to have regard to their duty.

As I said, the planning advice note that is being introduced will point out the need to plan for such demands. I do not want to give the impression that we are not paying attention or not wanting to act on the issue. The question is whether there is a necessity to change the current provisions given that the local authorities are under certain duties and that they seem to be reacting responsibly to the demands of their communities.

Mr Harding: From the evidence that we have taken, financial support for allotments from councils tends to be somewhat limited. Does the Executive consider that such financing is solely a matter for local councils or could it provide incentives for local authorities, given the contribution of allotments to Scottish Executive policies? Given your evidence, perhaps you would consider seed-corn finance.

Peter Peacock: Splendid. Primarily, we regard financing as a matter of discretion for the local authorities. It would not be right for us to impose more duties on them than they have already. In that context, practices in local authorities vary in relation to the amount of financial support and infrastructure that they provide to allow people to utilise allotments properly and effectively.

In the evidence that was submitted to the committee, questions were raised about the availability of lottery funding. We have checked the situation. The national lottery neither rules in nor rules out allotments as beneficiaries of funding, so there is potential for funding. On my way to today's meeting, I spoke to someone who told me that the Esmée Fairbairn Foundation also provides something like £500,000 a year to support the development and infrastructure of allotments. Potential funds are available beyond the local authorities, but local authorities can devote resources to allotments at their discretion.

On the scale of local authority funding—apart from the land values, which might be significant in some cases—the expenditure on an allotment is not heavy and is therefore within the discretion and capability of the local authority.

Mr Harding: In England, the New Opportunities Fund highlights the fact that allotments are eligible for funding. You do not mention allotments in the documents on Scottish funding or in relation to the representations that you made to NOF Scotland.

Peter Peacock: That was the point that I was making. We spoke to the NOF, which told us that it is open to applications for resources to support allotments. The NOF has not ruled that out.

Mr Harding: That is not mentioned in the funding document.

Peter Peacock: You mean the NOF funding document, I believe. In view of the evidence that the committee received, one of our officials spoke to the NOF to tease out that question. As we understand it, the NOF has not mentioned applications specifically, but it has not ruled them out either. Perhaps it would be helpful if we wrote to the convener with what we discovered. Alternatively, we could speak to the NOF and ask it to clarify the matter.

Ms White: The Local Government in Scotland Bill deals with community planning and best value. In that context, could an incentive be given to councils to manage better or advertise allotments?

Peter Peacock: The general spirit of the Local Government in Scotland Bill is about better co-ordination of services and how we address matters in the round. Allotments contribute to improving health, providing recreational opportunities and promoting exercise—all part and parcel of Government and local thinking about how to improve the individual's quality of life—and local authorities want to work with others to find funding to co-ordinate those efforts better. The general provisions of the bill help those efforts. Under the general powers of well-being in the Local Government in Scotland Bill, more resources are available to local authorities to seek to utilise or purchase land for those purposes. However, local authorities have the powers already under previous legislation.

Ms White: Following on from what Keith Harding said, will you say whether the Executive has considered carrying out an audit or a mapping of allotment plots to discover how many there are and how they can be promoted? In evidence to the committee, it was mentioned that there should be an allotments working group. Have you thought about establishing such a group? I apologise if you mentioned that in your opening speech.

16:00

Peter Peacock: The Executive has not sought to do a mapping exercise of allotment plots in Scotland because it believes that that is a matter for local authorities, which are best able to exercise judgment over what needs to be done in their areas. I am not sure what a national mapping exercise would add. As I stated earlier, the Executive has suggested that COSLA might help with work on guidance and, if COSLA was to establish a working group on allotments, those who want to see best practice for allotment management throughout Scotland would welcome it. Therefore, although the Executive feels that it is not the most appropriate body to carry out a mapping exercise, it is not in principle against the existence of one.

Ms White: I am as concerned as other members. Allotments are marvellous and, as the minister said, they improve people's health. However, people who live in deprived areas, in Dundee and elsewhere, often do not know that allotments are available, which is perhaps why the Executive should get involved. If COSLA were to initiate a mapping exercise and advertise that allotments are available, people in deprived areas would benefit most. It seems that, unlike in some areas that I will not mention, the poorer areas that would benefit most do not have allotments. Would the Executive be prepared to work with COSLA on that?

Peter Peacock: I have no problem with discussing that with representatives of COSLA. Equally, if the committee's report recommends such a measure in relation to how people access allotments in the future, a partnership with COSLA might prove to be helpful. I do not want to embarrass the BBC technician, but before the meeting started she asked me how a person could acquire an allotment, which is a legitimate question. I hope that, through the efforts of the committee and the Executive, that issue will be addressed. I am afraid that I have embarrassed the technician.

Dr Jackson: Tricia Marwick referred to the progress of the national planning guidelines. Following from her question, does conflict occur in, for example, urban areas where there is a great demand for building land and where alternative sites that might be suggested are not good choices for allotments? Would the national planning guidelines help in such situations, or would a further measure, such as ministerial intervention, be required?

Frank McAveety said that he was considering best practice guidelines and that he was working with COSLA. You seemed to imply that those discussions are just beginning. What progress has been made?

Peter Peacock: The Executive does not have the active relationship with COSLA that Sylvia Jackson suggested. However, it has no inhibitions about discussing the matter with COSLA. I suspect, given the issues that COSLA has dealt with in the past few years, that the national planning guidelines have not been at the top of its agenda.

The planning advice notes are forthcoming, but I will advise the committee of the statistics after the meeting because I do not have the date to hand. Tricia Marwick asked whether the planning advice notes would help to create guidelines against which it might be judged whether it is right to sell a piece of ground. In principle, they might help with that because that would put land use and open-space use in an area in proper perspective.

I am not sure what the benefit would be of ministers having the power of veto over the sale of allotments. I suspect that, generally speaking, local authorities will not seek to sell ground that is currently used for allotments unless there is a very high premium attached to that—in other words, if there is significant community benefit to be gained from selling the ground. If ministers were to become involved in the process, the same factors would come into play. Ministers will have to consider whether it is right to protect a piece of ground for all time, given its value and the fact that the proceeds of any sale could be used for much wider community purposes.

I suspect that, in practice, before making a decision ministers would tell local authorities that they might be prepared to sanction the sale of ground if alternative ground for allotments could be provided. The same considerations already apply to local authorities. Local authorities will want to consider providing alternative ground for allotments in order both to keep faith with the people who currently have allotments and who would be dispossessed of them through no fault of their own, and to comply with planning guidance.

Although people might see it as helpful for ministers to be able to block the sale of allotments, I am not sure where that would take us in practical terms. Local authorities are bound to take into account the same factors that a minister would take into account and will probably reach the same conclusions that ministers would reach. If there is an overriding reason for selling a piece of ground, the authority's concern will always be to find alternative ground for the local community's use. However, such sales do not happen every day.

Iain Smith: Most of the issues have been covered, but there are a couple of areas that I would like to explore further. The evidence that we received from allotment owners and groups suggests that there has in recent years been a significant lack of investment in allotments and that many allotments that are under-utilised might be better utilised if investment were made in improved drainage, water facilities, toilets and so on. One problem is local authorities' lack of access to capital resources. Will the combination of the new prudential regime for capital and the power of well-being provide local governments with opportunities to explore imaginative ways of developing their allotments to make them more attractive?

Peter Peacock: Indeed. Iain Smith points to important changes that are being made under the Local Government in Scotland Bill. Those changes are backed up by practical provisions, such as the abolition of section 94 consents and the move to a prudential regime, which will increase significantly local authorities' ability to make capital investment and to make judgments about where to allocate that investment.

The recent quality of life fund did not apply specifically to allotments. In future rounds of funding we might revisit that issue. Funding for allotments could be introduced as a permissive rather than a mandatory category. The quality of life fund was about genuinely improving the quality of people's lives by improving open spaces, removing derelict cars, cleaning up graffiti and so on. If allotment ground is fully used and has the proper infrastructure, that benefits the area in which it is situated—it benefits both the environment and individual families. In the near future there will be more opportunity for investment. Such investment runs with the grain of what the Executive is seeking to achieve.

Iain Smith: We have touched on the issues of whether there is a latent demand for allotments and whether people do not demand allotments because they do not know that they exist. It is possible the local authorities are able to say that there is no demand for allotments because they do not advertise them. Will the guidance—if it ever emerges from COSLA and the Executive—encourage local authorities actively to advertise allotments in order to establish how much demand for allotments really exists?

Peter Peacock: That is a good question. If the committee emphasises that issue in its report, that will have a bearing on events.

Let us consider the matter in commonsense terms. Since I became a member of the Parliament, I have been resident in a flat in Edinburgh during the week, but I have not managed to get my window box properly up and running yet. That is the only access that I have to any kind of ground. I refer to developments in Edinburgh as an example of what is happening in other cities and big towns in Scotland. Many people are moving into residency and different occupancy patterns are developing in Scotland. It is almost certain that there is hidden demand for allotments.

When the legislation that created allotments was passed, and during the war years, there was high awareness of allotments. Recent fashions and trends have diverted attention from them, but changes in lifestyle are restoring the need for such facilities to exist within easy striking distance of heavily residential areas. People should be encouraged to understand how they may gain access to an allotment and what that involves.

Dr Simpson: You stress the wide variety of policy linkages in respect of allotments. Apart from the health issues, which I obviously have some interest in, there are the questions of social inclusion, recycling, waste management and so on. What is the Executive's view of the possibility of fostering some sort of national grouping to promote and protect allotments, advise the Executive and inform the public of the issues? Such a body might provide a counterbalance to local situations.

Peter Peacock: I have no reason to be opposed to that suggestion. If people feel that having a national working group on allotments that would try to ensure that all of our policy provisions in relation to allotments were proper would be a good idea, I would not stand in their way. However, I question whether the Executive is the right body to do that. Those who have practical insight into the

working of allotments—the users and the local authorities—might be in a better position than the Executive to organise work at a national level. If we can offer support and opportunities to fine tune Executive policy, we will be more than happy to do so.

Tricia Marwick: The issue shows the importance of the work of the Scottish Parliament and its committees. The petitioners came to the Parliament in the hope that there would be an inquiry or an investigation into their situation and that is what has happened: the Local Government Committee has conducted an inquiry, we have a minister before us and a report on the issue will be produced.

Peter Peacock: We will listen carefully to what the committee has to say, as you have been taking evidence on the matter for a long time. If there is anything that we can reasonably do to ensure that progress is made, we will do it. I characterise our approach as being more carrot than stick on this occasion.

The Convener: The minister finishes the way he started.

One of the reasons why we conducted the inquiry was to find out whether we could have a national plan in Scotland whereby someone who had an allotment in Glasgow and who moved to Edinburgh, for example, would have the same support system and so on. My understanding is that, in Edinburgh, if a piece of land is sold to a developer for housing, part of the deal is that the developer must provide space for allotments within a certain area. I do not know whether that happens throughout Scotland.

The minister said that during the war people had allotments—he obviously remembers the war, but I do not. Those allotments were at the side of railways, but I understand that such land must be cleaned up now before it can be used for allotments. I am an allotment holder, so I make this point on behalf of people who are not, such as the woman who talked to the minister during the break. It is difficult to get an allotment; people usually have to wait a couple of years before getting one because there is such great demand.

You have said continually that you will take up issues that are raised in the committee's report and I hope that you will do so. However, I must say that I was disappointed to learn that you did not get your window boxes organised. I thought that you might at least be growing some herbs to cook with, but it appears that you are not.

Peter Peacock: Not yet. That was my firm intention—the road to hell is paved with good intentions.

I accept the point that you make about the practice in Edinburgh. That is why I said in my statement that people have been looking to Edinburgh to identify best practice. Given the increasing mobility of labour, access to allotments in the area to which one moves is important. As the convener indicated, the City of Edinburgh Council has done some thinking in that regard. The point about transactions involving land being released for development is a good one because it is clear that developers have an interest in the matter. The progress that you say Edinburgh has made in that area is interesting and is an example of the kind of initiative that we need to learn about. There is a lot of good practice around that we need to share.

The point that has come through to me most clearly today is that we must ensure that people are aware that they can get allotments. Allotments might not be as fashionable as they once were, but that is not to say that there is not great demand for them, in addition to the hidden demand that could be drawn out. I am more than happy to reflect on that with COSLA; indeed, I will raise the matter at the meeting with COSLA that I am about to go to.

The Convener: It is important to remember that the issue links to other areas of Executive policy, such as social inclusion and keeping fit. I am actually 105 years old, which will come as a surprise, but I have had an allotment for 12 years.

We move now into private session to discuss our draft stage 1 report on the Proportional Representation (Local Government Elections) (Scotland) Bill.

16:16

Meeting continued in private until 17:05.

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