

# **LOCAL GOVERNMENT COMMITTEE**

Tuesday 10 December 2002  
(*Afternoon*)

Session 1

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## LOCAL GOVERNMENT COMMITTEE

32<sup>nd</sup> Meeting 2002, Session 1

### CONVENER

\*Trish Godman (West Renfrewshire) (Lab)

### DEPUTY CONVENER

\*Dr Sylvia Jackson (Stirling) (Lab)

### COMMITTEE MEMBERS

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

\*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

### THE FOLLOWING ALSO ATTENDED:

Karen Gillon (Clydesdale) (Lab)

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

The Hub



## Scottish Parliament

### Local Government Committee

*Tuesday 10 December 2002*

*(Afternoon)*

[THE CONVENER *opened the meeting at 14:02*]

### Items in Private

**The Convener (Trish Godman):** Okay comrades, we can start. We have a busy committee ahead of us. I am afraid that I have to ask members to agree to take agenda items 4 to 7 in private, which is a rather large number of items. Item 4 is an approach paper for the committee to decide its consideration of the Gaelic Language (Scotland) Bill, which will involve discussion about potential witnesses. Items 5, 6 and 7 are draft reports.

Is that agreed?

**Members** *indicated agreement.*

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

**The Convener:** We now move to stage 2 of the Public Appointments and Public Bodies etc (Scotland) Bill. I welcome again Peter Peacock, the Deputy Minister for Finance and Public Services. Even after his comments last week during the allotments inquiry, we decided to invite him back.

### Section 4—Dissolution of certain bodies

**The Convener:** Amendment 4 is in the name of Karen Gillon, whom I welcome to the committee. Karen has not been to our committee before, but she is very welcome. Amendment 4 is grouped with amendments 5, 86 to 88, 6, 64, 66, 7 to 9, 85, 89 and 90. I should point out that if amendment 6 is agreed to, I cannot call amendment 64, because it will have been pre-empted.

**Karen Gillon (Clydesdale) (Lab):** Thank you, convener. It is a pleasure to be at the Local Government Committee.

Members will be aware of the role of the Education, Culture and Sport Committee as a secondary committee at stage 1. The Local Government Committee's report reflected our comments, particularly about the Historic Buildings Council for Scotland and the Ancient Monuments Board for Scotland.

Amendments 4 and 5 are essentially probing amendments that would prevent the abolition of those two bodies and leave them unchanged. There has obviously been considerable discussion with the Executive, and the committee will today debate Executive amendments that would create an historic environment advisory council for Scotland.

The Education, Culture and Sport Committee was concerned particularly about the lack of independent advice that would be available to Scottish ministers if the Ancient Monuments Board and the Historic Buildings Council were abolished. In relation to that, a review was thought to be necessary about the role, function and remit of Historic Scotland. Our main concern was about the successor arrangements if the bill were passed without amendment. Therefore, I welcome the minister's amendments, although I have several questions on which I would like clarification before I make any decision on amendments 4 and 5.

The first question is about the chair of the new body. Concern has been expressed that it would be a civil servant, and it needs to be clarified that

the chair will be independent. Another issue is the consideration to be given to the effects of choosing institutional or individual membership. At the moment, membership is for prominent individuals, and I know that there are concerns about the move to institutional membership and the change that that could bring. I would welcome clarification on how we would manage to get the best range of people involved in such an organisation.

Another issue that needs consideration in developing the new body is whether it will have a wider remit than those of the Ancient Monuments Board and the Historic Buildings Council. That is particularly important in relation to the historic environment and public land management and may cover the national parks, Scottish Natural Heritage, the Forestry Commission, Railtrack and other such agencies. Ministers must be able to get independent advice on the entire historic environment. In creating the new body, we are starting with a clean sheet, and I hope that the minister will be prepared to examine that issue and undertake a review of the entire historic environment, linked to a review of Historic Scotland.

Those are the main concerns, and I will be grateful for the minister's comments.

I move amendment 4.

**The Deputy Minister for Finance and Public Services (Peter Peacock):** I will speak to all the amendments in the group, and it may take me a while to work through them all.

All amendments relate to the proposed abolition of the Ancient Monuments Board for Scotland and the Historic Buildings Council for Scotland. As I set out at stage 1, ministers have listened carefully to the concerns that have been expressed by the Education, Culture and Sport Committee, this committee and others.

Both the Ancient Monuments Board and the Historic Buildings Council were set up under statute when the range of expertise that they provide was not available to the Scottish ministers from their own officials. That is no longer the case, particularly in view of the advice that is available from Historic Scotland. We still believe that the two bodies should be abolished, but we accept that ministers should have a source of independent and external advice available to them following abolition. The proposed historic environment advisory council for Scotland puts in place successor arrangements to follow the abolition of the Historic Buildings Council and the Ancient Monuments Board.

I stress, in the light of Karen Gillon's comments, that the new body will be able to take a broader and more strategic advisory role than is offered by

the current arrangements and we believe that it will strengthen the arrangements for giving ministers independent advice.

As Karen Gillon has indicated, the Education, Culture and Sport Committee made clear all along that it did not oppose in principle the abolition of the Historic Buildings Council and the Ancient Monuments Board. However, that committee was concerned to ensure that there were appropriate successor arrangements and that the concerns that it and others had expressed about Historic Scotland were being taken seriously.

A review of Historic Scotland was due to have taken place in 1999. That was postponed because of the creation of the Scottish Parliament and all that that entailed. Now is an appropriate time to initiate the review process and my colleague Mike Watson, the Minister for Tourism, Culture and Sport, will put the necessary arrangements in hand for a formal review of the status and functions of Historic Scotland.

I am aware that Mike Watson has written to the conveners of this committee and the Education, Culture and Sport Committee, to advise them of that review. I believe that the new advisory body that the Executive proposes through the amendments that it lodged for debate today, when taken together with the planned review of Historic Scotland, meets in full the concerns raised by the Education, Culture and Sport Committee and supported by this committee.

I turn now to amendments 64, 66 and 85 to 90, and I will deal with amendment 86 first. As I have just outlined, and as I promised we would, we have given careful consideration to the concerns raised by the committees and by others outside Parliament. Following that further and careful consideration of the issues that have been raised, I have indicated that we propose to set up a new body to provide ministers with a clear source of independent advice on matters that affect the historic environment. We intend that that will be a statutory body, known as the historic environment advisory council for Scotland. Amendment 86 provides for that body to be established.

Amendment 87 deals with the remit of the advisory council. Its remit will be to advise the Scottish ministers on matters that affect the historic environment and on ministers' exercise of their powers and responsibilities with regard to the historic environment. I stress, in the light of Karen Gillon's comments, that the amendment also sets out a wide definition of historic environment; one that cannot in any way be said to circumscribe the council's role. Amendment 87 states:

"For the purposes of subsection (2), the historic environment means any or all of the structures and places in Scotland of historical, archaeological or architectural interest or importance."

There is no limit to what the council can consider in that context.

Ministers would expect to meet the advisory council as necessary and to require it to report to Scottish ministers annually, with a copy of its report being laid before the Scottish Parliament.

The advisory council will be able to take a broader and more strategic advisory role than is offered by the current arrangements. Moreover, I stress, as it is crucial to the independence of the new body, that the amendment gives the advisory council the right to submit advice to ministers even when such advice has not been requested. The council has complete latitude in that respect.

Amendment 88 provides a schedule that in effect sets out the constitution of the advisory council. I will pick up on two of the questions that Karen Gillon asked. The council will not be chaired by a civil servant; it will be chaired by a member appointed by a minister, using the usual criteria for public appointments. On the question about institutional representation, in line with the overall policy that we debated throughout the discussion on earlier parts of the bill, all appointments to public bodies are made on an individual basis and on merit. Therefore, it would be wrong to make reference to institutional representation as of right. That is not to say that people who are already involved in other institutions or other sectors in the area will not apply and be considered on merit. Some of those people will no doubt come through the appointment process, but appointments will be made on individual merit.

The committee will appreciate that those amendments are substantial and that, while they and the wider group of amendments should achieve our commitment with regard to successor arrangements, it is likely that some drafting to ensure clarity and provide further detail will be required at stage 3.

I will now speak to a number of technical amendments. Amendment 64 is a corrective drafting amendment. A consequential amendment must be inserted in the Historic Buildings and Ancient Monuments Act 1953, following abolition of the Historic Buildings Council for Scotland. However, section 3(3) of the 1953 act does not make sense when the words that are currently in the bill are inserted. The amendment ensures that the amendment in paragraph 2(b) of schedule 4 is inserted in the correct place in section 3(3) of the 1953 act.

The bill removes the duty that the Electricity Act 1989 placed on electricity generators or suppliers to consult the Ancient Monuments Board and the Historic Buildings Council in certain circumstances. It mistakenly also removed the duty to consult national park authorities. Amendment 66 simply reinstates that latter duty.

Amendment 85 is a technical amendment that repeals provisions in the Freedom of Information (Scotland) Act 2002, as that act applies to the Ancient Monuments Board and the Historic Buildings Council, which are being dissolved. Amendment 89 ensures that the proposed new historic environment advisory council is subject to the provisions of the 2002 act. Amendment 90 merely provides an entry for the proposed historic environment advisory council in the interpretation section of the bill.

I have set out a detailed Executive response to various concerns that the committees have raised during the passage of the bill to date. I believe that ministers have responded in full to those concerns and that our proposals deal with the issues that have been raised. In light of the substantial progress that has now been secured on successor arrangements, which concerned the committee, and in recognition of the fact that the Education, Culture and Sport Committee was never opposed in principle to the abolition of the Historic Buildings Council or the Ancient Monuments Board, I invite Karen Gillon to withdraw amendment 4 and not to move amendments 5 to 9.

14:15

**Dr Richard Simpson (Ochil) (Lab):** I welcome the minister's comments on the proposed broader and strategic role of the new historic environment advisory council. Is it intended that the council will have an input into the review of Historic Scotland?

The way that the bill is written, the historic environment advisory council is concerned entirely with places and physical buildings. When the council deals with the environment, will it take into account or have a specific relationship with other agencies, such as the General Register Office for Scotland and the National Archives of Scotland? Integrating the process of dealing with the historic environment and the other physical remnants of our history seems to me to be important. Will the way in which the bill is written preclude or allow that?

**The Convener:** I will allow the minister to answer that, but the way in which the rules are written means that that is up to the chair. However, that needs clarification because, technically, the minister should not come back into the debate in such circumstances. On reflection, that is probably unfair. Does anybody else want to ask the minister anything?

**John Young (West of Scotland) (Con):** I received the papers only 10 minutes ago and became a substitute for Keith Harding only a little before that, so if I display ignorance, make allowances. "Ancient monuments" is appropriate phraseology. Will there be any restrictions on the

age of appointees? The minister and I have had a debate on that before.

**Peter Peacock:** I will pick up John Young's point first. I am sorry that he was not at the meeting last week, when the Executive conceded to remove the retirement age for the commissioner for public appointments from the bill and leave the matter to the employer's discretion.

On an age limit for appointees, as I understand it, people will be appointed on merit, and age is not a criterion for that. We know from previous reports by the United Kingdom commissioner for public appointments that 10 per cent of all public appointments are of persons over the age of 65. I think that I am correct in saying that. In principle, people who are past normal retirement age would not be caught in the trap of an age limit.

Richard Simpson raised two broad points. He asked whether it is intended to give the new historic environment advisory council a place in the review of Historic Scotland. The answer to that will depend on the timing of the review, to which there are two component parts. One is that the Auditor General for Scotland has put on his work programme for the coming year a review of Historic Scotland's general performance and management. It is envisaged that the Executive's further review of Historic Scotland's functions, suitability and present reporting arrangements will be designed to coincide most effectively with that review. If both those reviews are carried out at a time when the historic environment advisory council is in existence, I see no impediment to seeking its views as part of the Executive's review. Ultimately, that will be a matter for the minister, but I am happy to make the point to him. I cannot see why it would not be appropriate for us at least to invite the council to comment.

I was asked about the relationship with other bodies. The role of the advisory council is to give advice to ministers. It has wide latitude—it gives advice not to a particular minister, but to the Scottish ministers on the exercise of their functions. If its advice covered functions that were not the responsibility of the minister sponsoring these bodies, that or any other minister could take it into account. The answer to Richard Simpson's question is that the advisory council is not precluded from offering advice that would have an impact on the other bodies that he has mentioned.

**Karen Gillon:** I welcome the moves that the Executive has made, which—with one exception—address the concerns that the committees and the Parliament expressed at stage 1. I welcome the review of the status and functions of Historic Scotland. For that reason, I will withdraw or not move my amendments.

*Amendment 4, by agreement, withdrawn.*

*Amendment 5 not moved.*

*Section 4 agreed to.*

### **Section 5—Property of the Scottish Hospital Trust**

**The Convener:** Amendment 50 is grouped with amendment 65.

**Peter Peacock:** Amendment 50 is a minor amendment that standardises the wording of the bill regarding the distribution of endowments from the Scottish Hospital Trust to health boards. The amendment makes clear that the endowments are being distributed from the Scottish Hospital Trust to a number of health boards.

Amendment 65 extends the provisions of the bill to repeal paragraph 17 of schedule 1 to the National Health Service (Scotland) Act 1978, which allows health boards to borrow and repay funds from the Scottish Hospital Trust. In the light of the changes that the bill brings about, that provision is no longer required. Amendment 65 ensures that it is repealed.

*I move amendment 50.*

*Amendment 50 agreed to.*

*Section 5, as amended, agreed to.*

*Sections 6 to 14 agreed to.*

### **After section 14**

*Amendments 86 and 87 moved—[Peter Peacock]—and agreed to.*

### **After schedule 2**

*Amendment 88 moved—[Peter Peacock]—and agreed to.*

*Section 15 agreed to.*

*Schedule 3 agreed to.*

### **Section 16—The National Survey's functions**

**The Convener:** Amendment 51 is grouped with amendments 52, 53, 55 to 57, 59, 60 and 63.

**Peter Peacock:** This is a group of technical amendments that seek collectively to remove the formal title "National Archive of Archaeology and Buildings in Scotland" from the bill.

We have lodged the amendments because we want to avoid the impression that the archive has a separate legal personality distinct from the national survey of archaeology and buildings. The existing archive has a separate identity as the National Monuments Record of Scotland, because part of it previously existed as a separate body—the Scottish National Buildings Record.

*It is not necessary to retain a separate body to*

curate the archive, which is already in effect part of the Royal Commission on the Ancient and Historical Monuments of Scotland and will move to the new body, the national survey. The separate titles have the potential to cause the public to misunderstand that functions are split between them. We want to rationalise the organisation of the new body by more fully integrating the work of compiling and recording the contents of the archive with the function of maintaining and providing access to it.

The royal commission has been consulted on the amendments and fully supports them.

I move amendment 51.

**Iain Smith (North-East Fife) (LD):** The minister has cleared up that issue.

*Amendment 51 agreed to.*

*Amendments 52 and 53 moved—[Peter Peacock]—and agreed to.*

**The Convener:** Amendment 54 is grouped with amendments 58, 61 and 62.

**Peter Peacock:** Amendment 54 introduces a minor change of wording to clarify the functions of the national survey and to ensure that it performs the same task as the body that is being replaced. It is intended to prevent the expansion of activities of the body by clarifying that its function is to record and understand a structure or place rather than to make an assessment of its value. The change is a reversion to the wording of the royal warrant that governs the Royal Commission on the Ancient and Historical Monuments of Scotland's activities.

Amendment 58 is intended to prevent the expansion of the body's activities by ensuring that it is not authorised to give advice on preservation or conservation, which is the remit of other bodies. The royal commission has been consulted on amendments 54 and 58 and it supports both. The Association of Regional and Island Archaeologists concurs with that.

We lodged amendment 61 to bring consistency in the use of the word "person" throughout section 16 and to avoid casting doubt on the meaning of "person" elsewhere in the section. "Person" means any natural or legal person and it includes bodies corporate or unincorporate. The inclusion of "body" in section 16(5)(b) would raise the possibility that "person" elsewhere in section 16 means only a natural person. I am sure that that is entirely clear.

Amendment 62 is a minor drafting change that we have introduced to clarify ministers' role in giving the body additional functions, to ensure consistency. It will ensure that section 17(1) is consistent in wording with section 3(2)(b), which gives ministers the power to confer additional

functions on the commissioner for public appointments.

I move amendment 54.

**Dr Simpson:** I listened carefully to the minister, because I was fascinated by the change of word from "evaluate", which I could understand, to "interpret", which I could not understand in this context. I have to say that it is no clearer. "Interpret" must have a legalistic meaning. If amendment 54 were agreed to, section 16(3)(a) would read:

"the National Survey is to identify, survey and interpret all structures".

How does one interpret a structure? I did not quite follow what that meant and I have some difficulty with it.

**Peter Peacock:** I suspect that I might have the same difficulty. We are trying to remove "evaluate" and replace it with "interpret", because there was a danger that "evaluate" could be equated with attaching a value to the building in a cash sense, rather than in the sense of interpreting its worth and value in a common sense. As to the phrase "interpret all structures", the interpretation rests on the professional skills of those involved. Various documents and records that are kept do that interpretation. Richard Simpson should be entirely confident that we have the wording right and he should not worry about it.

*Amendment 54 agreed to.*

*Amendments 55 to 61 moved—[Peter Peacock]—and agreed to.*

*Section 16, as amended, agreed to.*

### **Section 17—The National Survey's functions: further provision**

*Amendment 62 moved—[Peter Peacock]—and agreed to.*

*Section 17, as amended, agreed to.*

### **Section 18—Power of the National Survey to obtain information etc**

*Amendment 63 moved—[Peter Peacock]—and agreed to.*

*Section 18, as amended, agreed to.*

*Section 19 agreed to.*

**The Convener:** Thank you, minister. We are finished with the bill for today. We will have a couple of minutes' recess to allow the minister and his officials to leave.

14:29

*Meeting suspended.*

14:32

*On resuming—*

## Subordinate Legislation

### **Taxi Drivers' Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2002 (SSI 2002/500)**

**The Convener:** No motions to annul the regulations have been lodged and, as no other action can be taken, I assume that no one wants to comment.

**Dr Sylvia Jackson (Stirling) (Lab):** This is the second report that we have had from the Subordinate Legislation Committee that points out serious drafting issues. Indeed, the regulations seem worse than the previous instrument. On page 3, the report mentions defective drafting and "failure to follow proper drafting practice".

Perhaps we should note the matter in the committee's annual report.

**Iain Smith:** I support Sylvia Jackson's comments and I share her concerns about the sloppy drafting. Despite the fact that they are defective, we are allowing the regulations to go through because we do not want to delay their implementation. That is not good enough. Either the Executive must get its act together or we should examine the procedures to allow drafting errors to be corrected.

**Tricia Marwick (Mid Scotland and Fife) (SNP):** It is serious when the Executive produces such sloppily drafted regulations. It is not for the Parliament or the Subordinate Legislation Committee and the clerks to tidy up the Executive's work time after time. As Sylvia Jackson said, this is not the first time that an instrument has had drafting problems. The committee must put on record its concerns that, in effect, the Parliament is doing work that the Executive should carry out.

**The Convener:** Do members agree that our concerns about the sloppy drafting of the regulations should go in our report?

*Members indicated agreement.*

**John Young:** I have not seen the papers, so bear with me, but can I ask—

**The Convener:** Are you going to ask about the age of taxi drivers?

**John Young:** No. In Glasgow there have been occasional difficulties with the matters that the regulations cover. If the regulations are approved, will guide dogs for the blind and hearing dogs for the deaf carry a disc on their collars or something similar? A taxi driver could claim that they do not know whether a dog is a guide dog.

**The Convener:** I cannot answer that at the moment, but I will clarify the matter when we write our report.

**John Young:** It is a relevant point. There might be disputes.

**Tricia Marwick:** To be helpful, regulation 1(4)(b) sets out that the regulations refer to a dog that

"at the time that the disabled person whom it is assisting hires a taxi, is wearing a jacket inscribed with the name of the charity".

Perhaps that clarifies the matter.

**The Convener:** Yes. We will clarify the matter further for our report. Do members agree that the committee has no recommendation to make on the regulations?

*Members indicated agreement.*

14:36

*Meeting continued in private until 17:24.*

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