LOCAL GOVERNMENT COMMITTEE

Tuesday 28 January 2003
(*Afternoon*)

Session 1

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LOCAL GOVERNMENT COMMITTEE
4th Meeting 2003, 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:

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 1

Scottish Parliament

Local Government Committee

Tuesday 28 January 2003

(*Afternoon*)

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

Item in Private

The Convener (Trish Godman): Okay comrades, we may begin. Before we deal with the Dog Fouling (Scotland) Bill, I ask the committee to agree to take item 4 in private, as it concerns our draft report on the Prostitution Tolerance Zones (Scotland) Bill.

Members *indicated agreement.*

Dog Fouling (Scotland) Bill: Stage 2

The Convener: I welcome the Deputy Minister for Finance and Public Services, Peter Peacock, and his officials, and Keith Harding, who is the member in charge of the bill and a member of the Local Government Committee.

We begin stage 2 of the Dog Fouling (Scotland) Bill.

Sections 1 and 2 agreed to.

Section 3—Exceptions to offence

The Convener: Amendment 1 is grouped with amendments 16 and 17.

Mr Keith Harding (Mid Scotland and Fife) (Con): At stage 1, I highlighted my intention to lodge an amendment to extend the definition of "assistance dog". I was pleased to note that the committee welcomed my intention to do so in its report. Section 3 provides that disabled persons who would have difficulty in clearing up after a dog that had been trained to help them with their disability will be exempt from the offence created by the bill, which is that of failing to clear up after a dog of which a person is in charge.

Only disabled persons in charge of assistance dogs trained by Scottish charities are exempt from the provisions of the bill as drafted. The purpose of amendment 1 is to widen that exception by removing the restrictive reference to Scottish charities. That would mean that a person with a disability that affects their ability to clear up after a dog trained to assist them with that disability would be excepted from the offence created by the bill, irrespective of where and by whom their assistance dog was trained. I would like to make it clear at this point that having an assistance dog is not enough—the person must also have a disability that affects their ability to clear up and the dog must have been trained to assist them with that disability. The exemption relates to the person with the disability; anyone else in charge of the dog would not be exempt and would be required to clear up after the dog.

Amendments 16 and 17 are consequential amendments to delete the definitions of "assistance dog" and "recognised body". The existing exceptions for blind persons in charge of dogs that are being used for guidance and for people in charge of working dogs such as police dogs, HM Customs and Excise dogs, rescue dogs and sheepdogs, are unaffected by the amendments.

I hope that the committee will feel able to support the amendment.

I move amendment 1.

The Deputy Minister for Finance and Public Services (Peter Peacock): Keith Harding has explained the position fully. The Executive supports his amendments.

Amendment 1 agreed to.

Section 3, as amended, agreed to.

Section 4 agreed to.

Section 5—Issue of fixed penalty notices

The Convener: Amendment 2 is grouped with amendments 3 and 4.

Peter Peacock: I will speak to amendment 4 first. Amendment 4 would require someone who was suspected of failing to clean up after their dog to give their name and address to a local authority officer when requested to do so. Failure to do so would, on conviction, result in a maximum fine of £500 being imposed by the courts.

It is important that, if local authority officers are to be largely responsible for enforcing the new provisions, they have sufficient powers to do so and that the primary purpose of the bill is not undermined. In the Executive memorandum, we indicated that we wanted to strengthen the powers of local authority officers to enable them to enforce the provisions. As members will recall, the committee welcomed that move in its stage 1 report and agreed that it would go a considerable way to meeting concerns about the ability of local authority officers to enforce the proposed provisions. The proposal would encourage offenders to co-operate because they would know that failure to do so could result in police involvement and a court appearance for committing a criminal offence. Amendment 4 has been consulted on and is considered by the Executive and local authority officers to be essential if the provisions of the bill are to be effectively enforced.

Amendments 2 and 3 are consequential to amendment 4.

Under the bill as drafted, the trigger for the exercise of the powers of a local authority officer or constable would be having "reason to believe" that a person has committed an offence. That is different from the test of "reasonable grounds for suspecting" in relation to the constable's powers under the Criminal Procedures (Scotland) Act 1995.

The amendments would ensure that there is no doubt that the constable's powers under section 13 of the 1995 act are exercisable in relation to the new dog fouling offence. Further, they would ensure that the test applied by the constable in issuing a fixed-penalty notice would be the same as that of a local authority officer.

I understand that Keith Harding, as promoter of the bill, recognises that the amendments would make important improvements to the workability of the bill and I trust that he will indicate his support for them.

I move amendment 2.

Mr Harding: The amendments address concerns that were expressed over difficulties that might be faced by authorised officers when enforcing the provisions in the bill. Those concerns were raised at an early stage and I am grateful to the minister for drafting the amendments, the aim of which I agree with. Indeed, I take this opportunity to thank the minister and his officials for all their assistance, both on this issue and throughout the progress of the bill.

The amendments would meet a concern that was expressed about people refusing to provide details to the authorised officers and might go a long way towards preventing such situations from arising.

I note that taking action under this power will require corroboration, unlike the situation in relation to the substantive provisions in the bill. However, it would remain a useful addition to the options available to the local authority and I am happy to support the amendments.

Amendment 2 agreed to.

Amendments 3 and 4 moved—[Peter Peacock]—and agreed to.

The Convener: Amendment 5 is in a group on its own.

Mr Harding: Section 5(1) provides that an authorised officer or constable may issue a fixed-penalty notice where they have reason to believe that an offence under section 1 has been committed. Section 5(2) provides that that fixed-penalty notice must be issued as soon as reasonably practicable and no later than 72 hours after the offence to which the notice relates.

At stage 1, the committee heard evidence from local authority officers that, in practical terms, the 72-hour period may be too short. Although fixed-penalty notices should be issued at the time of the offence or on the same day, that cannot be guaranteed. The committee and I accepted that the time limit of 72 hours should be extended.

In line with the suggestion that the committee made in its stage 1 report, amendment 5 would extend the maximum period for issuing a fixed-penalty notice to seven days, while still requiring notices to be issued as soon as reasonably practicable. That would take into account any problems generated by work or shift patterns or public holidays and any difficulty with establishing the suspected offender's full address or identity.

I hope that the committee will feel able to support the amendment.

I move amendment 5.

Ms Sandra White (Glasgow) (SNP): When we discussed the bill a couple of weeks ago, Keith Harding mentioned changing the period from 72 hours to seven days. That is eminently sensible. I thank him for taking the committee's recommendation on board.

Peter Peacock: Keith Harding has again set out the background fully. We anticipate that the majority of fixed penalties will be handed out on the spot by local authority officers or by the police.

However, for the reasons that Keith Harding has set out and others, there may be occasions when further inquiries require to be made before the fixed-penalty notice can be issued. In such circumstances, the fixed-penalty notice will require to be posted to the alleged offender's address.

I confirm that we have taken soundings from the informal focus group that we have on the subject. It, too, supports amendment 5, which the Executive therefore also supports.

Amendment 5 agreed to.

The Convener: Amendment 6 is grouped with amendment 7.

Mr Harding: Section 5(4) contains three methods of issuing a fixed-penalty notice: handing or delivering it to the person, leaving it at the person's last known address or posting it to their last known address. The reason for amendment 6 is to ensure that the authorised officer attempts to issue the fixed-penalty notice personally either by handing it or delivering it to the person before any other method is used. Only where personal service has been unsuccessful may the penalty notice be left at or sent to the person's address.

The second part of amendment 6—proposed subsection (4B)—has been drafted in response to concerns over what could happen if an offender gave someone else's name and address when the notice is issued personally. It would ensure that, when the notice is issued personally, a copy notice would be sent to the person's address. That would alert the recipient if their details had been falsely used and allow them to raise their concerns by requesting a hearing as provided for in section 8.

Amendment 7 is a consequential amendment.

I hope that the committee will feel able to support the amendments.

I move amendment 6

Peter Peacock: As Keith Harding has indicated, the purpose of amendments 6 and 7 is twofold. First, wherever possible, an enforcement officer should attempt to hand or deliver a fixed-penalty notice in person. The amendment clarifies the other methods that could be attempted if personal service were not possible.

Secondly, the Executive suggested to Keith Harding that a copy of any fixed-penalty notice that is issued in person should be forwarded within seven days to the address that the person provided. That would protect anyone whose name and address was falsely given to an enforcement officer by allowing him or her to contact the local authority with a view to having the penalty notice withdrawn. If the local authority were not prepared to withdraw the notice, it would be open to the person to notify the local authority that he wished a hearing.

The Executive therefore supports amendments 6 and 7.

Amendment 6 agreed to.

Amendment 7 moved—[Mr Keith Harding]—and agreed to.

Section 5, as amended, agreed to.

Sections 6 and 7 agreed to.

Section 8—Request for hearing

The Convener: Amendment 8 is in a group on its own.

Mr Harding: Amendment 8 is designed to assist the administration of the fixed-penalty notice procedure by local authorities. Section 8 provides that a person who has received a fixed-penalty notice and who disputes that they have committed an offence may request a hearing in respect of the offence. The request will be made to the local authority, which must notify the procurator fiscal.

Under the bill as drafted, only the officers who are authorised to issue fixed-penalty notices are able to refer requests for hearings to the procurator fiscal. Given that making those requests is a purely administrative task, it is unnecessary for those officers to be required to undertake that task. However, concern has been expressed that, as drafted, the bill could be interpreted as requiring those officers to do so. Amendment 8 would remove any doubt about the matter. It would give local authorities the flexibility to authorise any person to notify the procurator fiscal of requests for hearings under section 8.

I move amendment 8.

Peter Peacock: I am grateful to Keith Harding for lodging amendment 8. The Executive brought to the attention of Keith and his colleagues that the bill as drafted did not fully reflect the circumstances under which local authorities operate. The provisions could have prevented the

head of legal services or a legal officer from passing the relevant papers to the procurator fiscal. We are pleased that Keith Harding lodged amendment 8, as it clarifies the matter. We support amendment 8.

Amendment 8 agreed to.

Section 8, as amended, agreed to.

Section 9 agreed to.

Section 10—Increase in fixed penalty

14:15

The Convener: Amendment 9 is in a group on its own.

Mr Harding: Section 5 provides for fixed-penalty notices to be issued by authorised officers and constables who have reason to believe that a person has committed an offence under section 1.

Section 10 provides that the amount payable is automatically increased by 50 per cent if the original penalty is not paid within the period for paying. Under section 8(4)(a), a fixed penalty is not payable if a person has requested a hearing before the expiry of the period for paying.

A slight concern was expressed that section 10 as drafted could give rise to doubt as to whether a fixed penalty would still be liable to an automatic increase under that section, even when a request for a hearing under section 8 had been made.

Amendment 9 would make it clear that a fixed penalty would increase only if the original fixed penalty remained unpaid and a hearing had not been requested. Amendment 9 would put beyond doubt the circumstances in which an increase in the fixed penalty would become due.

I move amendment 9.

Peter Peacock: Amendment 9 is another helpful clarification and would make the provisions of the bill much more concise. We support amendment 9.

Amendment 9 agreed to.

Section 10, as amended, agreed to.

Section 11—Recovery of unpaid fixed penalties

The Convener: Amendment 10 is grouped with amendments 11 and 13.

Mr Harding: Amendments 10 and 13 would cover the withdrawal of a fixed-penalty notice, and amendment 11 would provide a mechanism to resolve certain administrative disputes that could arise.

As I indicated earlier, section 5 provides for fixed-penalty notices to be issued by authorised officers and constables who have reason to believe that a person has committed an offence under section 1. Section 9 provides that fixed penalties are payable to the local authority. Section 11 allows local authorities to take enforcement action to recover fixed penalties when the sum due has not been paid and a request for a hearing has not been made by the end of the period for paying.

Section 12 allows a fixed-penalty notice to be withdrawn in certain circumstances, for example when the offender has given a false name. In such cases, the notice should not have been issued to the person who is named in it. Concerns have been expressed that it is not certain whether the withdrawal of a fixed-penalty notice would prevent a local authority from taking enforcement action in respect of the fixed penalty. Amendment 10 would put it beyond doubt that the enforcement of unpaid fixed penalties is subject to the provisions in section 12. Therefore, section 11 would not apply and enforcement action could not be taken if a notice were withdrawn.

Section 12 provides that a fixed-penalty notice can be withdrawn in certain circumstances and that, when that occurs, any money that has been paid in respect of the fixed-penalty notice to the local authority must be repaid to the person who paid it.

I indicated earlier that section 10 provides for an increase in the fixed penalty if it has not been paid and a hearing has not been requested. Doubts have been expressed that the wording in the bill is not sufficiently clear that the withdrawal of a fixed-penalty notice means that there can be no liability for an increase in the fixed penalty under section 10. For the avoidance of any doubt, amendment 13 would make it clear that no amount whatsoever would be payable under a fixed-penalty notice that has been withdrawn.

If the period for paying has expired and no payment or request for a hearing has been received, and the fixed-penalty notice has not been withdrawn under section 12, section 10 provides that the amount payable for the fixed penalty is automatically increased by 50 per cent. Under section 11, the sum due by way of fixed penalty is enforceable by the local authority against the recipient of the fixed-penalty notice.

Under section 8(4)(a), a fixed penalty is not payable if a person has requested a hearing before the expiry of the period for paying. Following on-going discussions, I believe that it is conceivable that a dispute could arise between a local authority and a recipient of a fixed-penalty notice over whether a fixed penalty had been paid or whether a hearing had been requested before the expiry of the period for paying.

It is anticipated that disputes would usually be resolved between the local authority and the recipient without having to involve the courts, but concern has been expressed about the lack of a mechanism within the bill by which the courts could resolve any such disputes. As the bill contains no such mechanism, disputes might require to be determined by the Court of Session. Amendment 11 would introduce a mechanism to allow a summary application to be made to the local sheriff for a decision. Summary application is an established procedure and is used in numerous other statutes, particularly where administrative appeals are allowed.

Amendment 11 would make provision for the application to be made only on the limited grounds that I have indicated. Under proposed subsection (2) of the new section that would be introduced by the amendment, the sheriff could declare that the fixed penalty was or was not paid on time, or that a hearing was or was not requested within the time limit. Where the court finds in favour of the person who received the fixed penalty, the sheriff would also be able to declare that the penalty was not enforceable.

I move amendment 10.

Peter Peacock: We agree that amendment 10 would improve the drafting of the bill by making it clear that there could be no recovery of an unpaid fixed penalty where the notice had been withdrawn under section 12. Notwithstanding that, we are conscious that section 11 does not contain a mechanism for resolving disputes between the local authority and an individual over whether a fixed penalty had been paid or a hearing requested within the period allowed.

We expect that, in the vast majority of cases, such disputes could be resolved by the individual and the local authority without recourse to the court system. However, as a safeguard and to ensure that the bill complies with the European convention on human rights, we consider it necessary to provide the individual with the right to appeal to the sheriff court in the event that such a dispute could not be resolved by other means.

Amendment 13 is a technical drafting amendment and would make it clear that no sum would be payable if a fixed penalty were withdrawn.

The Executive is grateful to Keith Harding for lodging the amendments to address the concerns that have arisen. We fully support the amendments.

Amendment 10 agreed to.

Section 11, as amended, agreed to.

After section 11

Amendment 11 moved—[Mr Keith Harding]—and agreed to.

Section 12—Withdrawal of fixed penalty notice

The Convener: Amendment 12 is in a group of its own.

Mr Harding: Amendment 12 would clarify who has the power to withdraw fixed-penalty notices and the circumstances in which they may do so.

Section 5 will provide that an authorised officer or a constable may issue a fixed-penalty notice when they have reason to believe that an offence has been committed under section 1 of the bill. By virtue of section 15, an "authorised officer" is any person who is authorised in writing by the local authority to issue fixed-penalty notices.

Section 12 outlines certain circumstances in which a fixed-penalty notice can be withdrawn. Currently, only an authorised officer would be able to withdraw a fixed-penalty notice that had been issued by an authorised officer. Similarly, only a constable could withdraw a fixed-penalty notice that had been issued by a constable. It has been suggested that the bill as drafted is a little restrictive and that that could lead to operational difficulties because only local authority staff who have been authorised to issue fixed-penalty notices would be able to withdraw them.

Amendment 12 would allow local authorities to authorise persons—for instance, administrative or legal staff—specifically to withdraw fixed-penalty notices. The power would allow such staff to withdraw only fixed-penalty notices that had been issued by authorised officers within their own local authority area. Amendment 12 would not alter the position of fixed-penalty notices that had been issued by constables; such notices could still be withdrawn only by a constable.

I turn now to the grounds for withdrawal. Amendment 12 seeks to clarify the circumstances that must exist before a fixed-penalty notice can be withdrawn. The bill as drafted provides that a fixed-penalty notice can be withdrawn when it ought not to have been issued or when it ought not to have been issued to the person named. The only time when a notice ought not to have been issued is when no offence was committed—if, for example, the fouling took place in a permitted area or if one of the exceptions in section 3 applied. Amendment 12 would clarify that by substituting the words "was not committed" for

"ought not to have been issued".

The second ground, which relates to notices that have been issued to wrongly named persons, is unchanged.

I move amendment 12.

Iain Smith (North-East Fife) (LD): I thank Keith Harding for seeking to clarify section 12, but there is still a lack of clarity about the circumstances in which an individual can challenge a fixed-penalty because it was wrongly issued, and I am still not clear about the circumstances in which it would be possible to withdraw a notice. If, for example, a notice were issued to the wrong person, it would be a case of, "The big dug did it and ran away." If a person applies to say that they have been wrongly named, or that they are exempt under one of the exceptions in section 3, and if that person requests a hearing, it is not clear whether the local authority or constable concerned can then, having reviewed the case and accepted the person's evidence, withdraw the notice without the matter having necessarily to go to a hearing. I would like some clarity on that and further thought to be given to the matter before stage 3. I am concerned about the matter; it was raised at stage 1 and I thought that it might have been clarified by amendments at stage 2.

Dr Sylvia Jackson (Stirling) (Lab): I think that I am clear about the matter, but I would like to double check with Keith Harding. Are we saying that, if a constable has issued a fixed-penalty notice, any authorised person could now withdraw it?

Mr Harding: No—an authorised person can be nominated by council officials, but a constable must withdraw any notice that has been issued by a constable.

Dr Jackson: What is the difference between a constable issuing a fixed-penalty notice and a person who is authorised by the local authority issuing that notice?

Peter Peacock: Keith Harding set out fully the reasons for moving amendment 12. We are grateful to him for lodging that amendment and we support it.

I know that it is for Keith Harding to answer the question that Iain Smith asked, but it might be helpful and reassuring for Iain Smith and other members if, before stage 3, I were to give the Executive's interpretation of the situation. Iain Smith is unnecessarily concerned—there are mechanisms for dealing with the matter he raised. We will also be able to issue guidance that will cover some of the points that he has raised. Otherwise, we strongly support amendment 12.

Mr Harding: I am grateful to Iain Smith for raising his concerns with me before the meeting. As the minister said, we will look at the matter further and address it at stage 3, if necessary. However, we will come back to him in writing with our views.

In response to Sylvia Jackson's question about constables and authorised officers, there is no real difference between them, but they operate under different regimes. One group is employed by the council and the other by the police authority.

Dr Jackson: I thought that that was the reason.

Amendment 12 agreed to.

Amendment 13 moved—[Mr Keith Harding]—and agreed to.

Section 12, as amended, agreed to.

Section 13 agreed to.

Section 14—Orders

The Convener: Amendment 14 is grouped with amendment 15.

Mr Harding: I have lodged amendments 14 and 15 to take account of the view of the Subordinate Legislation Committee that statutory instruments made under sections 6(2), 9(2) and 10 should be subject to affirmative procedure. That means that an instrument cannot be made unless a draft of the instrument has been approved by a resolution of the Parliament. I will be happy to provide further details, if the committee wants them, about each of the powers concerned.

I move amendment 14.

14:30

Peter Peacock: Again, the Executive is happy to support the amendments that were lodged by Keith Harding to address the concerns that were raised by the Subordinate Legislation Committee.

Amendment 14 agreed to.

Amendment 15 moved—[Mr Keith Harding]—and agreed to.

Section 14, as amended, agreed to.

Section 15—Interpretation

Amendments 16 and 17 moved—[Mr Keith Harding]—and agreed to.

Section 15, as amended, agreed to.

Section 16 agreed to.

Section 17—Amendment of the Criminal Procedure (Scotland) Act 1995

The Convener: I call Keith Harding to move and speak to amendment 18.

Mr Harding: Section 302(9)(a) of the Criminal Procedure (Scotland) Act 1995 allows procurators fiscal to issue conditional offers in respect of offences that can be tried before district courts. A conditional offer is a fixed penalty that is issued as

an alternative to prosecution. Section 17 of the bill will amend the 1995 act to prevent procurators fiscal from making conditional offers. The intention behind that was to prevent offenders from requesting hearings in the hope that they will receive conditional offers from procurators fiscal that might be lower than the fixed penalty payable under the bill. Concern has been expressed that that will fetter the discretion of procurators fiscal. On reflection, I agree that it is not appropriate to restrict the options available to procurators fiscal, and amendment 18 would remove the restriction by deleting section 17 from the bill. It might be considered unlikely that any such conditional offer would be made or, if it were made, accepted given that an opportunity to pay without prosecution will already have been declined. However, the option to make the offer should properly be available to procurators fiscal. Amendment 18 is also appropriate given that one of the bill's aims is to keep such matters out of the courts.

I move amendment 18.

Peter Peacock: As Keith Harding indicated, section 17 sought to prevent people from requesting a hearing in the hope of receiving a fiscal fine that was lower than the fixed-penalty notice. The Executive took the view that it would not be appropriate to fetter the discretion of procurators fiscal in that matter, so I am pleased that Keith Harding has lodged an amendment to remove the restriction. We support amendment 18.

Amendment 18 agreed to.

Section 18 agreed to.

Long title agreed to.

The Convener: That ends consideration of stage 2 of the bill. I thank Keith Harding and members of the non-Executive bills unit for all their hard work. I also thank the minister and his staff—in particular for the amendments snapshot, which was helpful.

14:33

Meeting suspended.

14:34

On resuming—

Public Appointments and Public Bodies etc (Scotland) Bill

The Convener: Members will have seen among their papers a letter from Peter Peacock regarding the proposal by the Executive to lodge at stage 3 amendments to the Public Appointments and Public Bodies etc (Scotland) Bill. The amendments would have the effect of not dissolving the Royal Commission on the Ancient and Historical Monuments of Scotland, which is one of the bodies that were to be dissolved under the bill.

Given what happened the last time the committee experienced an Executive decision to do something at the last minute, I have put the matter on the agenda today because there are different ways in which to deal with it. We can accept that this was something that the Executive did not foresee and that, therefore, there will be a late amendment to the bill. There is time, however, for us to invite the appropriate minister—Dr Elaine Murray—to come to the committee next week to be cross-examined. We could seek answers to any questions that committee members have and I could thereafter write to Peter Peacock about any decision that the committee makes. We cannot return to stage 2 to change anything, however. We can either accept that, although it is late, the amendments are understandable, or we can ask the minister to come before the committee. It is up to members to decide what we should do.

Tricia Marwick (Mid Scotland and Fife) (SNP): I understand the convener's preamble and I welcome the fact that Peter Peacock has taken the opportunity to write to the committee. The suggested amendments are of the type that I would expect to see at stage 3. The issue was unforeseen and the suggested changes will be necessary to ensure good legislation. I regret the fact that, obviously, not enough work had been done before the bill was introduced; however, I welcome the fact that the minister has advised us of the amendments. It would be sensible for the amendments to be lodged at stage 3; otherwise, the bill would be incompetent.

Ms White: At first glance, when I saw that the letter was about the Public Appointments and Public Bodies etc (Scotland) Bill, I thought that we should take up the invitation to have the minister here to explain the amendments. However, after reading the letter, I think that it explains the issue regarding the Scottish Charity Law Review Commission. My main concern is that, once again, the Royal Commission on the Ancient and Historical Monuments of Scotland is involved.

Perhaps I am being ultra-cautious but, because that body is involved again, I wonder whether we should have the minister here to offer further explanation. The letter explains the fact that the new body would not have charitable status under the bill as drafted, but it is the same body that is at issue again, and that concerns me.

Iain Smith: It is a slightly unfortunate coincidence that the body in question is the one about which there has been most controversy at stages 1 and 2 of the bill. I am surprised that the information regarding the loss of its charitable status came to light only at such a late stage. To be frank, the constitution, funding and legal status of a body should be the first things that are examined in consideration of its future. It should not be possible to find out at the last minute that a body has a particular legal status that is disadvantageous. That is the one issue on which we should take evidence from the minister. We should ask her why that was not picked up earlier in the examination of the bodies. Nonetheless, Tricia Marwick is right to say that our only course of action, other than sending £400,000 down to the Treasury—which I am not keen to do—is to accept the amendments.

Dr Jackson: I agree with Iain Smith. I am concerned that the information has come to light only now—I would have thought that such information would have come to light earlier. I do not know who is responsible for that—whether civil servants or ministers—but we must address the issue.

Dr Richard Simpson (Ochil) (Lab): I do not disagree. However, we could find out the relevant information by writing a letter, rather than by calling the minister before us. We are all agreed that we have to accept the amendments; the question is why joined-up thinking was not applied. When the McFadden report was published, it was clear that there was going to be a problem with non-departmental public bodies that had charitable status. It is not just a Scottish issue; it is a UK issue, and sizeable sums of money are involved.

There really should have been joined-up action within the Executive, but there was not, and we should write to ask why. We should ask for an undertaking that the matter will be fully examined, and that other cross-cutting issues should be addressed properly. I propose that we write, rather than taking up our, and the minister's, time.

The Convener: It seems that there are three positions. Tricia Marwick has said that questions need to be asked about the matter coming to us so late, but does not see the need for us to see the minister. Others seem to think that the minister should come along to the committee. The other position, which could address both views, is for us to write to the minister, expressing our concerns and thoughts. We could then see whether we get an answer.

Tricia Marwick: I will put forward a fourth point of view. My reason for not wanting to call the minister before is that he would have to come before us next Tuesday. We consider the Public Appointments and Public Bodies etc (Scotland) Bill at stage 3 on Wednesday afternoon next week, so we will not really have the opportunity to question the minister about his further thinking on how we can proceed. We could still write to the minister, but I suggest that we invite him to speak to us a couple of weeks down the line, when he has had a chance to think about what went wrong. The Deputy Minister for Finance and Public Services says in his letter:

"We need to discuss this with RCAHMS, but we would expect this to be taken forward later this year."

We need to know how that will happen. Perhaps it would be appropriate to ask the minister questions about the matter in a couple of weeks—but not next Tuesday.

The Convener: The slight problem with that idea is that the bill will be considered next week. There is the possibility that the committee could write to the Executive and ask for its thoughts, but the matter of the RCAHMS might come up during the debate on Wednesday next week.

Iain Smith: Would it be competent for us to do what Tricia Marwick suggests? Our interest in the RCAHMS lies solely in the fact that it is named in a bill on which we are the lead committee. We will have no interest in it after Wednesday next week. If we are going to do anything about the matter, it has to be this week. I am happy to go along with Richard Simpson's suggestion to write to the minister.

Mr Harding: I, too, support Richard Simpson's idea. I think it is a better solution.

The Convener: So the committee—if we are all agreed—supports Richard Simpson's position, which is that we write a letter to the minister, rather than having the minister appear before us.

Dr Jackson: Can I just check that we are all agreed, and that we are not going to split on the matter in a debate?

The Convener: Are members agreed that the provisions in the bill covering the RCAHMS have to be withdrawn?

Members *indicated agreement*.

The Convener: That is fine. We will not have any split about that.

Tricia Marwick: There is no alternative.

The Convener: No, there is not.

Dr Jackson: The alternative is to have the minister come before us.

The Convener: No—the alternative is that members of the committee vote different ways when the bill gets to Parliament for stage 3.

Tricia Marwick: That is the alternative.

Dr Jackson: I meant that it is the alternative to Richard Simpson's idea of writing to the minister. Is Tricia Marwick quite happy that we write a letter, as opposed to have the minister come along to the committee?

Tricia Marwick: Absolutely.

The Convener: Is there anything specific that members want to put in the letter? I do not want us to miss anything out.

Ms White: We should ask why the situation was not noticed previously.

The Convener: Yes, and we should ask why the matter was not brought to our attention.

Tricia Marwick: We have spoken about cross-cutting issues. I know that we have responsibility for the Public Appointments and Public Bodies etc (Scotland) Bill, but the Education, Culture and Sport Committee also has an interest in it. I notice that the letter from the minister was addressed to us in view of our consideration of the bill as lead committee. Although it might not be appropriate for this committee to call the minister back before it, such action might be appropriate for the Education, Culture and Sport Committee. Can you find out whether that committee received a copy of the letter?

The Convener: We have copied the letter to that committee. It will make its own decision. I suspect that time, as it is against us, is against the Education, Culture and Sport Committee. Richard Simpson said it all: the knowledge about the situation with the RCAHMS existed and, as Iain Smith said, questions should have been asked in the first instance about how that body was funded. We can put together a letter making those points. Can we agree to that?

Iain Smith: I would also like us to ask the Executive how it intends to take things forward, and what proposals it has for the RCAHMS.

The Convener: Do we agree to write to the minister a letter along those lines?

Members *indicated agreement*.

14:43

Meeting continued in private until 15:31.

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