

# **FINANCE COMMITTEE**

Tuesday 26 January 2010

Session 3

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## **FINANCE COMMITTEE** **2<sup>nd</sup> Meeting 2010, Session 3**

### **CONVENER**

\*Andrew Welsh (Angus) (SNP)

### **DEPUTY CONVENER**

\*Tom McCabe (Hamilton South) (Lab)

### **COMMITTEE MEMBERS**

\*Derek Brownlee (South of Scotland) (Con)  
\*Malcolm Chisholm (Edinburgh North and Leith) (Lab)  
\*Linda Fabiani (Central Scotland) (SNP)  
\*Joe FitzPatrick (Dundee West) (SNP)  
\*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)  
\*David Whitton (Strathkelvin and Bearsden) (Lab)

### **COMMITTEE SUBSTITUTES**

Gavin Brown (Lothians) (Con)  
Lewis Macdonald (Aberdeen Central) (Lab)  
Stewart Maxwell (West of Scotland) (SNP)  
Liam McArthur (Orkney) (LD)

\*attended

### **THE FOLLOWING ALSO ATTENDED:**

John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

### **CLERK TO THE COMMITTEE**

James Johnston

### **SENIOR ASSISTANT CLERK**

Terry Shevlin

### **ASSISTANT CLERK**

Allan Campbell

### **LOCATION**

Committee Room 4



# Scottish Parliament

## Finance Committee

*Tuesday 26 January 2010*

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

### Budget (No 4) (Scotland) Bill: Stage 2

**The Convener (Andrew Welsh):** Good afternoon and welcome to the second meeting of the Finance Committee in 2010. I ask everyone to turn off their mobile phones and pagers.

The first item on today's agenda is stage 2 of the Budget (No 4) (Scotland) Bill. As well as having copies of the bill, members will have a note from the clerk. I draw members' attention to two procedural points in the paper. First, only a member of the Scottish Government can lodge an amendment to the bill and, secondly, as stated in paragraph 5 of the paper, it is not possible to leave out a section or schedule of the bill by disagreeing to it because, to do that, it would have been necessary to lodge an amendment.

Before I start our formal proceedings, it will be useful to allow the cabinet secretary to make some explanatory remarks about the bill and give members an opportunity to ask questions.

**The Cabinet Secretary for Finance and Sustainable Growth (John Swinney):** Thank you, convener. I am joined today by Alyson Stafford, our director of finance; and John Williams, of our finance directorate.

The committee will be aware that I have given consideration to the points that were raised and the recommendations that were made by the committee in the stage 1 process, and that I sent my formal response to the convener on 18 January.

Today's meeting of the Finance Committee focuses on the content of the Budget (No 4) (Scotland) Bill, as approved in principle by the Scottish Parliament last week. As members of the committee are aware, there are a number of differences in the presentation of budget information between the draft budget and budget bill. However, there are no changes to the spending plans that were outlined in the draft budget.

In order to assist the committee, I will explain the main differences with reference to table 1.2 on page 3 of the supporting document. Column A sets out by portfolio the 2010-11 budget as shown in table 2 of the draft budget document that was

published last September; column H in table 1 sets out the draft budget as it needs to be restated for the budget bill; and columns B to G provide the details of the adjustments that are necessary to meet the statutory requirements of the parliamentary process.

The major adjustments that are set out are: the exclusion of £91.8 million of non-departmental public body non-cash costs that do not require parliamentary approval, which are mainly in relation to capital charges and involve bodies such as the national institutions, Scottish Enterprise and Scottish Natural Heritage; the exclusion of local authority supported borrowing and judicial salaries amounting to a little over £330 million which, again, do not require parliamentary approval; the exclusion of an element of Scottish Water capital charges to reflect differences in budgeting and accounting treatment; and the inclusion of international financial reporting standards adjustments of a little under £300 million, which have been agreed with Her Majesty's Treasury in order to reflect the adoption of IFRS across central Government from 1 April 2009. I remind the committee that the conversion to an IFRS basis is spending-power neutral.

Adjustments have been made to portfolio budgets to reflect the requirement that a number of direct-funded and external bodies require separate parliamentary approval, including the National Archives of Scotland, the Forestry Commission and the Food Standards Agency Scotland.

The specific grants that were included in the overall 2010-11 local authority settlement have been restated. They remain under the control of the cabinet secretaries who have responsibility for the policies: for example, the police grant remains the responsibility of the Cabinet Secretary for Justice. Full details of all grants that are treated in that way are included in the summary table on page 74. I again make it clear that those are essentially technical adjustments and do not change in any way the budget that has been scrutinised by this and other committees, and which has been approved in principle by the Parliament.

At this point, I wish to acknowledge the agreement of the committee to the change in the format of the budget bill. That has led to simpler and clearer presentation in the bill itself, and it will also promote more effective in-year management of the resources that are available to us. However, the committee will note that the supporting document has remained unchanged and contains all the detail that was previously provided in order to ensure proper parliamentary scrutiny.

As I made clear to Parliament last week, I remain committed to an open and constructive

approach to the 2010-11 budget process, and I continue to seek consensus on a budget that will meet the needs of the people in Scotland during the difficult times that we now face.

I hope that members of the committee have found my remarks to be helpful. I will do my best to answer any questions.

**Derek Brownlee (South of Scotland) (Con):** I read with interest the Government's response to the committee's report. In relation to the unanimous recommendation that level 4 information be published, the response is that

"Budgets below Level 3 are the responsibility of individual portfolios"

and that they

"are not subject to Parliamentary scrutiny".

Is not that something that we, rather than the Government, should decide?

**John Swinney:** The level of presentation of information that the Government makes for budget bill purposes is to level 3, which is essentially the level to which parliamentary agreement is sought. That is the context within which I would answer that point.

**Derek Brownlee:** In previous years, whenever a committee has asked for level 4 information, that information has been provided. This year, it was, in some instances, provided rather later than the subject committees might have wished. Given that there has, in the past, been a practice of providing that information when it has been requested, what is the Government's objection to providing it as a matter of routine, as the committee suggested? That was a unanimous recommendation; it was not one that was reached following a division.

**John Swinney:** There is no objection in principle. The point is, as you have said, that when committees ask for level 4 information, the Government provides it. That remains my position. We have provided level 4 detail to committees on a number of occasions during my term in office as the Cabinet Secretary for Finance, and we will continue to do so.

**Derek Brownlee:** We also got a less than enthusiastic response to our call for more information on capital expenditure. The response to the unanimous recommendation that we should be given an indication of capital expenditure over 10 years seems to be that the infrastructure investment plan that follows the spending review gives sufficient information. Is that really the greatest level of detail that the Government is prepared to share with the Parliament about future trends in capital spending?

**John Swinney:** The level of information that the Government makes available to the committee on

capital expenditure is entirely consistent with all of the arrangements that were put in place by our predecessors and were subject to discussion with and the agreement of the Finance Committee.

The Government sets out, in a spending review period, a three-year expectation with regard to capital expenditure. Of course, as we all know, the pattern of the three-year expenditure over which I have presided has changed because of changes that have been applied to our capital budgets by the United Kingdom Government—some at our request, in relation to capital acceleration, and some not at our request, such as when the Department of Health baseline was changed.

That three-year picture is presented to Parliament and we report annually on performance in relation to capital expenditure and we set out the infrastructure investment plan, which is the longer-term document. The committee asked for 10-year information, which is why I referred in my response to the infrastructure investment plan, which provides a 10-year horizon on capital expenditure.

As Mr Brownlee will perhaps appreciate, it is difficult to be more specific about the timetabling of projects beyond an immediate three-year period in as much detail as I suspect he would like. For example, I do not yet have confirmed the size of the capital budget in 2011-12, which is only 14 months away. I am happy to put as much information into the public domain as possible, as Mr Brownlee will appreciate, given that he is a signatory to the letter that I have received from Opposition spokespeople requesting further information, which I am currently considering. The range of information that we put into the public domain is pretty comprehensive on this point. We report prospectively and retrospectively. I simply ask Mr Brownlee to understand the challenge of doing that when we do not even have certainty about the size of our capital budget in 14 months' time.

**Derek Brownlee:** We accept the challenge. On the specific recommendation, we accept that you do not have information on the top line of your capital budget, but what we asked for was an indicative profile. Beyond the information to which you have already referred, which is in the public domain, the Government must, for planning purposes, have more information than is published. Is that the case?

**John Swinney:** The Government will have further detail that underpins the material that has been published.

**The Convener:** I remind the committee that we have a very heavy agenda. I am anxious that committee members ask the questions that they want to ask, but please make them snappy.

**Derek Brownlee:** What I am asking about is material to one of the most significant areas of discussion about this year's budget. The committee made a unanimous recommendation about this information. It seems to me that the response from the Government is in effect, "You're not getting any more than what we choose to publish." That does not seem to me to be how a Government should respond to a committee of the Parliament.

**John Swinney:** If Mr Brownlee has taken my remarks in that fashion, I assure him that that was not the intention behind my explanation. I hear the convener's strictures about the ground that we have to cover today, but I was simply making the point that we have set out a 10-year infrastructure investment plan, which is a published document. At the start of a spending review, we set out our three-year horizon on capital expenditure with the projects contained in it. We have to revise that, as we have had to do during this spending review, because of external changes. In addition to that, we report on our performance in delivering against those capital budgets. That is a pretty substantial amount of information to put into the public domain. If the committee wishes us to put information beyond that into the public domain, I will certainly consider doing so. However, I would not want the committee to take from what I have said that I have any unwillingness to share information. What I am saying is that we have taken a considered view about what is available. I certainly consider that that gives a pretty broad understanding of the Government's capital priorities.

**David Whitton (Strathkelvin and Bearsden) (Lab):** Given that we are talking about the Government's capital priorities, I point out that, in the stage 1 debate, mention was made of the amount of slippage that there is in a number of major capital projects. Is the cabinet secretary giving any consideration to lodging an amendment at stage 3 that would put the Glasgow airport rail link back into the capital programme?

**John Swinney:** I certainly do not have any plans to do that.

**David Whitton:** You also said to Mr Brownlee that you are currently considering how you will reply to the letter from the various spokespeople. Even if that were to show that there was a fair amount of slippage, as far as you are concerned, GARL is not going to be in the 2010-11 budget.

**John Swinney:** As Mr Whitton knows, I have made no provision in the 2010-11 budget for the Glasgow airport rail link. My reasons for doing that are to do with the fact that it is abundantly clear that the one matter about which I am certain is that the budget will not be larger in 2011-12 than it is in 2010-11.

14:15

I can also see, as I have communicated publicly, that we have major capital projects that will be significant factors in our capital budget, such as the replacement Forth crossing—which is the subject of a bill that has been introduced to Parliament—and the Southern general hospital in Glasgow. I appreciate that, if those new commitments are emerging and I know that the budget will get smaller, we must ensure the long-term sustainability of our budgets, which Mr Brownlee is forever pressing us to face up to. That is why the Glasgow airport rail link is not in our plans, as it has a four-year time horizon and provision must be made for it over a four-year period. I see absolutely no sense in making provision for it in 2010-11 when I know full well that making provision for it in the three successive financial years from 2011-12 onwards will be nigh on impossible because of pressures on the budget. However, I have always made it clear that I am happy to discuss proposals as to how we might achieve that.

Let me say something about capital slippage, which I addressed in my closing remarks to Parliament in the debate last Wednesday. Inevitably, there will be capital projects that go slower or faster than we plan. For example, the Edinburgh tram project is going slower than planned, but the M74 project is going faster. As a matter of routine budget management, we take decisions about how to adjust to those pressures. As I told Parliament, the situation is reviewed frequently by the director of finance and me. A development can hit an operational problem and can be stalled. We need only look at Princes Street to see such challenges. At operational level, we take decisions to ensure that capital is spent fully and effectively.

The argument about there being an opportunity to spend because of slippage would have validity if I had reported a significant underspend on capital budgets, but I have not, and have never done so. We have spent to within £5 million of a multibillion pound capital budget. I hope that that helps the committee in its understanding of the challenges that we have in relation to the capital budget.

**The Convener:** We turn to the formal proceedings on the bill. We have no amendments to deal with but, under the standing orders, we are obliged to consider each section and schedule of the bill and then the long title, and to agree to each formally. We shall take the sections in order, with schedules being taken immediately after the section that introduces them, and the long title last. Fortunately, the standing orders allow us to put a single question when groups of sections or schedules are to be considered consecutively.

Unless members disagree, that is what I propose to do.

*Section 1 agreed to.*

*Schedule 1 agreed to.*

*Section 2 agreed to.*

*Schedule 2 agreed to.*

*Sections 3 to 5 agreed to.*

*Schedule 3 agreed to.*

*Sections 6 to 10 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the bill. Parliament has already agreed that stage 3 proceedings will take place on Wednesday 3 February 2010. Members might wish to note that the deadline for the Scottish ministers to lodge stage 3 amendments to the bill is therefore 4.30 pm on Thursday 28 January.

I suspend the meeting for a short time to allow the cabinet secretary's officials to change over.

14:19

*Meeting suspended.*

14:20

*On resuming—*

## **Public Services Reform (Scotland) Bill: Stage 2**

**The Convener:** Our next item is stage 2 consideration of the Public Services Reform (Scotland) Bill. Now that the cabinet secretary's officials have taken their seats, I will move straight to consideration of amendments.

*Section 1 agreed to.*

*Schedule 1 agreed to.*

### **Section 2—Transfer to Scottish Natural Heritage of functions of Advisory Committee on sites of special scientific interest**

**The Convener:** Amendment 1, in the name of the cabinet secretary, is grouped with amendments 2 to 8.

**John Swinney:** Amendment 1 and the other amendments in the group seek to respond to the Rural Affairs and Environment Committee's recommendation at stage 1 to amend section 2(3)(a) to allow existing committees within Scottish Natural Heritage to take on the advisory committee's functions on sites of special scientific interest. The amendment will also delete provisions that would have amended SNH's power of direction and delegation with respect to the committee on sites of special scientific interest that Scottish Natural Heritage would be required to establish, because those provisions will no longer be necessary.

Amendment 2 will place on SNH a duty to consider any representations to the notification of sites of special scientific interest made in accordance with section 21(6) and (7) of the Nature Conservation (Scotland) Act 2004, and to take such action as it thinks fit in relation to making a decision on whether to confirm or withdraw the notification.

Amendments 3 to 8 are consequential on amendments 1 and 2.

I move amendment 1.

*Amendment 1 agreed to.*

*Amendments 2 to 8 moved—[John Swinney]—  
and agreed to.*

*Section 2, as amended, agreed to.*

**The Convener:** I suspend the meeting to allow for a change of officials.

14:23

*Meeting suspended.*



14:24

*On resuming—***After section 2**

**The Convener:** Amendment 9, in the name of the cabinet secretary, is grouped with amendments 10, 11, 66 and 67.

**John Swinney:** Amendment 9 seeks to transfer Waterwatch Scotland's customer representation and complaints handling roles to Consumer Focus Scotland and the Scottish Public Services Ombudsman respectively, to allow for the transfer of staff to either body; and to require those bodies, together with the Water Industry Commission for Scotland, to form co-operation agreements.

Although the Review of SPCB Supported Bodies Committee did not decide in favour of the proposal for the SPSO to take on complaints handling for the water sector, it noted that its decision was finely balanced. The transfer of Waterwatch Scotland's functions will result in significant advantages for water customers, including a simplified landscape for service users; improved service as a result of Consumer Focus Scotland and the SPSO drawing on lessons learned in other sectors; and a reduction in overall costs. I have therefore looked to address that committee's concerns about this matter.

The Review of SPCB Supported Bodies Committee raised concerns about the Government's proposal to fund the SPSO's new role through a levy on water customers and wondered whether the ombudsman could deal with complaints about licensed providers who provide retail services to non-domestic customers. After consulting the Scottish Parliamentary Corporate Body and the ombudsman, I have agreed to implement their preferred option that the ombudsman be funded to handle water complaints through its existing funding stream from the SPCB. I have taken care to ensure that a mechanism is in place for the SPSO to handle complaints about licensed providers and have also taken the opportunity to strengthen protection for non-domestic customers.

The Review of SPCB Supported Bodies Committee also noted that it had not considered evidence on how Waterwatch Scotland's customer representation functions would be taken forward. That is a crucial part of the overall package. Consumer Focus Scotland already provides customer representation in a wide range of sectors and both its experience and its greater research and analysis resources will ensure that consumers in the water sector are well represented, while at the same time simplifying the landscape and reducing costs.

I move amendment 9.

**The Convener:** No member has indicated that they wish to intervene—

**David Whitton:** Forgive my lack of knowledge of the procedure, but is it all right for me to ask the cabinet secretary a question or do I have to lodge an amendment to do so?

**The Convener:** You may ask a question.

**David Whitton:** I understand that the proposal to move Waterwatch Scotland's complaints handling functions to the SPSO was not considered originally. Why has there been a change of mind?

**John Swinney:** It was not exactly a change of mind on my part. The issue was considered by the Review of SPCB Supported Bodies Committee, which, as I said in my remarks, did not support the Government's proposal to introduce such a mechanism, although its view in that respect was finely balanced. After reflecting on the matter, I have seen an opportunity to streamline not only the number of public bodies but the complaints handling process and have lodged a Government amendment to bring the proposal into the bill. Obviously, I have taken care to ensure that the financial arrangements, which were an issue for the SPCB, have been addressed to its satisfaction.

**David Whitton:** You say that the committee's view was finely balanced, but I understand that it voted against the proposal.

**John Swinney:** As I said, the committee did not decide in favour of the SPSO taking on complaints handling but noted that its decision was finely balanced. If Mr Whitton looks at the committee's report, he will see that the decision was indeed finely balanced, although in the end the committee voted against the proposal.

**David Whitton:** With regard to the Scottish Prison Complaints Commission, I understand that there was no disagreement about the proposal to move the handling of complaints about the Scottish Prison Service to the SPSO. However, complaints about prisons tend to fall into two categories—general complaints and complaints about medical issues—and a question has been raised over whether the SPSO could handle medical complaints. I assume that the cabinet secretary wishes to transfer the whole lot to the SPSO, so how will he ensure that the ombudsman is able to examine such complaints?

**John Swinney:** I will have to get back to Mr Whitton on that at stage 3. He is absolutely right to ensure that such issues are fully and properly considered, and I will write to the committee on the matter.

14:30

**The Convener:** It would be helpful if the cabinet secretary were to gather the questions from the committee and respond to them at the end.

**John Swinney:** If it helps, convener, we can return to and deal with that point later in the stage 2 proceedings.

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** On Waterwatch Scotland, I have some quotations from what the cabinet secretary said in evidence to the Review of SPCB Supported Bodies Committee. Perhaps I should not read out them all, but I will give you a flavour. You said:

"The Government will not take forward the proposals in the public services reform bill, because we consider them to fall much more within the scope of the Review of SPCB Supported Bodies Committee ... The Government's proposals will require a response from the committee. The committee must decide whether the proposals are appropriate and should be taken forward ... I do not think that it would be appropriate for the Government to add something else to the remit of the Scottish Public Services Ombudsman, as that would begin to contaminate the sense of judgment that members of the public will want to have."—[*Official Report, Review of SPCB Supported Bodies Committee*, 9 December 2008; c 28, 29.]

Obviously, politicians are entitled to change their mind, but do you accept that you have changed your mind and, if so, why have you changed it?

**John Swinney:** Throughout the process, I have thought that we have an opportunity to rationalise complaints handling processes. The Review of SPCB Supported Bodies Committee has taken a particular view. There are arguments about proposals that would benefit the way in which individuals can raise concerns and complaints. I believe that the bill is an opportunity to make progress on that. I will not sit here and tell the committee that I am unable to change my mind on certain questions. We have an opportunity to streamline complaints handling and give members of the public a better sense of how they can advance concerns in a more orderly fashion.

The proposal has been discussed in detail with the Scottish Public Services Ombudsman. He is of the view that his organisation will be able to deal satisfactorily with the new responsibilities. There have of course been other discussions in the past about adding to the SPSO's responsibilities. The current proposals seem to be a case in which that can happen.

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

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Brownlee, Derek (South of Scotland) (Con)

Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

**ABSTENTIONS**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**The Convener:** The result of the division is: For 5, Against 0, Abstentions 3.

*Amendment 9 agreed to.*

**After schedule 1**

*Amendment 10 moved—[John Swinney].*

**The Convener:** The question is, that amendment 10 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
Welsh, Andrew (Angus) (SNP)

**ABSTENTIONS**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
McCabe, Tom (Hamilton South) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**The Convener:** The result of the division is: For 4, Against 0, Abstentions 4.

In that case, I have to use the convener's casting vote. [*Interruption.*] No, I do not. I beg your pardon—I am very anxious and was power mad for a moment or two.

*Amendment 10 agreed to.*

*Amendment 11 moved—[John Swinney].*

**The Convener:** The question is, that amendment 11 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
Welsh, Andrew (Angus) (SNP)

**ABSTENTIONS**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
McCabe, Tom (Hamilton South) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**The Convener:** The result of the division is: For 4, Against 0, Abstentions 4.

*Amendment 11 agreed to.*

*Sections 3 to 6 agreed to.*

**The Convener:** We will have a short suspension, again to allow a change of officials.

14:34

*Meeting suspended.*

14:35

*On resuming—*

#### **After section 6**

**The Convener:** Amendment 12, in the name of the cabinet secretary, is grouped with amendment 13.

**John Swinney:** Amendment 12 seeks to dissolve the Scottish Environment Protection Agency's regional boards and to remove the agency's statutory duty to operate them. The SEPA board believes that the obligation to operate regional boards does not provide the level or format of local engagement and accountability that it now seeks with its customers and local communities and, in the course of 2009, it began to develop a new framework for local engagement and anticipated phasing out regional boards. The most recent regional board meeting took place in November 2009. The developments were initially endorsed by my colleague, Michael Russell, the then Minister for Environment, and are now fully supported by my colleague, Roseanna Cunningham.

Amendment 13 is a technical amendment to ensure that the reference to the section is correct.

I move amendment 12.

**The Convener:** The question is, that amendment 12 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### **FOR**

Brownlee, Derek (South of Scotland) (Con)  
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

#### **ABSTENTIONS**

Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

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

*Amendment 12 agreed to.*

*Section 7 agreed to.*

### **Section 8—Delegation of Ministerial functions under section 5 of Science and Technology Act 1965**

*Amendment 13 moved—[John Swinney].*

**The Convener:** The question is, that amendment 13 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### **FOR**

Brownlee, Derek (South of Scotland) (Con)  
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

#### **ABSTENTIONS**

Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

**The Convener:** The result of the division is: For 7, Against 0, Abstentions 1.

*Amendment 13 agreed to.*

*Section 8, as amended, agreed to.*

**The Convener:** I allow a short suspension for a change of officials.

14:38

*Meeting suspended.*

14:39

*On resuming—*

#### **After section 8**

**The Convener:** Amendment 14, in the name of the cabinet secretary, is grouped with amendment 15.

**John Swinney:** Through the national forest land scheme, communities are able to purchase land on the national forest estate for non-forestry purposes only. In its stage 1 report on the Climate Change (Scotland) Bill, the Rural Affairs and Environment Committee recommended that we incorporate in future legislation provisions to allow for community leasing.

Amendment 14 amends the Forestry Act 1967 to allow the Forestry Commission commissioners to delegate functions relating to the management of the national forest estate to community bodies. Forestry Commission Scotland will amend the national forest land scheme to include opportunities for communities to lease land for forestry purposes.

The forestry commissioners' powers to enter into joint ventures in relation to land that they manage

in England and Wales do not apply to Scotland. That has caused difficulties, for example with the legal constitution of Forest Holidays, which is a joint venture with the Camping and Caravanning Club. Amendment 15 will remove the cross-border anomaly, by extending to Scotland the powers that the forestry commissioners have to form joint ventures regarding land that they manage south of the border.

I move amendment 14.

*Amendment 14 agreed to.*

*Amendment 15 moved—[John Swinney]—and agreed to.*

*Section 9 agreed to.*

*Schedule 2 agreed to.*

**The Convener:** We will have yet another short suspension, to allow officials to leave.

14:41

*Meeting suspended.*

14:41

*On resuming—*

#### **Section 10—Public functions: efficiency, effectiveness and economy**

**The Convener:** Amendment 83, in the name of Jeremy Purvis, is grouped with amendments 84, 85, 16, 86 to 88, 21, 22, 26, 35, 91, 36, 92, 93, 37, 38, 94 to 96, 41, 43 to 47, 97 to 99, 50 to 54, 100 to 103, 55 to 60, 104 to 108, 61 to 65, 81 and 82.

If amendment 88 is agreed to, I cannot call amendment 20, which is in the group entitled “Order-making powers: bodies to which the powers apply”, because of pre-emption. If amendment 96 is agreed to, amendment 41 will be pre-empted, and if amendment 101 is agreed to, amendment 102 will be pre-empted.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** Given that we are debating how to slim down government in Scotland, it is worth noting that the frequent changes of officials to ensure that the minister is properly briefed and supported demonstrate that Opposition parties have considerably less back-up than the Government has.

There was much debate at stage 1 about the powers in part 2 of the bill. In my view, and in the view of the vast majority of witnesses who gave evidence at stage 1, the powers are too wide in scope, include parliamentary bodies that should not have been included, and provide insufficient safeguards to allow for full and proper scrutiny of orders. However, it was accepted that there would

and should be opportunities for the Government to bring forward proposals to make minor or consequential changes to public bodies, to improve their efficiency in the interests of public service.

The amendments in the group that I lodged have three main aims: first, to increase the Parliament’s power, through the procedure that would be followed if an order was laid; secondly, to limit the scope of powers, to allow for a balanced and proportionate approach to the Government’s ability to make changes to agencies and bodies; and thirdly, to remove from the scope of the bill the parliamentary commissioners and bodies that have been created by the Parliament, are directly funded by the Parliament, and are directly answerable to the Parliament. It should be up to the Parliament to decide how and when changes to those bodies are made. We will consider that issue when we debate the next group of amendments.

In essence, the improved procedures that are provided for in amendment 83 and the other amendments in my name in the group would allow the Parliament an opportunity to decide whether it agreed with the Government that an order was a proportionate means of making changes. If the Parliament did not agree, the Government would have to introduce primary legislation.

14:45

My amendments 83 and 84 would improve the scope of the power in section 10 by allowing the Government to bring forward proposals that would improve the efficiency, effectiveness and economy of public bodies, but not by abolishing bodies or creating new ones. I recognise the need to create an opportunity to make procedural, minor or consequential improvements or changes to bodies, but such a power should not also be used to abolish bodies or confer functions on other bodies. I set that out in amendment 85. I support the Government’s amendment 16, which is consistent with my thinking.

My amendment 86 would prevent the creation of bodies. There is nothing in the order-making power to limit the size of bodies, which means that, instead of creating small agencies, huge bodies could be formed. Amendment 87 seeks to ensure that the procedure that the Government has brought forward in the bill cannot be used to pass to local authorities the functions of any body listed in schedule 3, as that would be inappropriate.

Amendment 91 would deal with the issue that many people raised with the committee at stage 1 and which was debated in the stage 1 debate in the chamber. The Government says in the bill that

the measures are

“proportionate to the policy objective”,

without giving a definition of proportionate. It says that “the necessary protection” would be put in place, but it has not defined that. It also says that the measures would be “broadly consistent” with the policy aims of bodies, again without giving a definition. The deletion of paragraphs (d) and (e) of section 12(2) is consistent with the limiting of the use of the procedure, as I have outlined. Amendments 92 and 93 are consequential amendments.

Amendment 94 proposes the insertion into section 13 of similar wording on the abolition or creation of a body. Given the width of the power to remove or reduce burdens, the restriction is sensible. Amendments 95 to 99 are consequential amendments.

I lodged other amendments in the group to give the committee an opportunity to consider the removal of all sections in part 2. In the stage 1 debate, the Government stated that it was willing to consider amendments that would give Parliament a much greater opportunity to allow some procedural, minor and consequential changes to be made without the need for a wider set of powers. I am giving the minister and the committee the opportunity to remove or improve part 2, either now or at stage 3—the opportunity exists for the Government to come back with improvements along the lines that I have outlined.

I move amendment 83.

**The Convener:** I invite the minister to speak to amendment 16 and the other amendments in the group.

**John Swinney:** I will do that and address Mr Purvis’s proposals.

As Mr Purvis has made clear, his first choice is to remove part 2 and the related schedules, and he has lodged a series of amendments to enable that. If the committee does not agree to that proposal, his second choice is to weaken the order-making powers by restricting their scope to modifying or transferring functions, rather than allowing them to confer or abolish functions.

It makes no sense for the powers to be undone in that way. The purpose of the order-making powers is to improve the exercise of public functions and to reduce burdens. If, to achieve those gains, it is necessary to confer or abolish functions, the provisions should allow for that. I also do not agree that the purpose of the section 10 power should be confined to efficiency, effectiveness and economy, as proposed in amendment 83. The purpose of the power is to

“improve the exercise of public functions, having regard to—

- (a) efficiency,
- (b) effectiveness, and
- (c) economy”,

but it is not confined to those considerations. We seek to take a broader approach.

I turn to the proposals that the Government has brought forward to address the various concerns that were raised by the Finance Committee and the other committees that took evidence on the bill, which were also a major feature of the parliamentary debate at stage 1. I begin with the issue of the abolition of bodies. I accept that the bill, as drafted, did not make it explicitly clear that the abolition of a body could follow only as a consequence of other provisions in an order made under part 2. There was not—and is not—a free-standing provision to abolish bodies at will. We have now made it expressly clear that an order made under section 10 or section 13(1) can abolish a person, body or office-holder only if the body in question has no functions left to exercise—in other words, only if all its functions have been abolished or transferred elsewhere. A body can, therefore, be abolished only if it has effectively become an empty shell with no functions left to exercise.

At the Finance Committee’s suggestion, we have also lodged amendments to provide that “necessary protection”—the entrenched constraints on the use of the order-making powers—includes, among other things, provisions that protect the independence of the judiciary and judicial decision making, whether by courts, tribunals or any other office or appointment exercising functions of a judicial nature; civil liberties; and any existing duties to protect and preserve cultural heritage.

I turn now to procedure. We have lodged amendments that give full effect to the recommendations of the Subordinate Legislation Committee. In particular, at the start of the consultation process, a proposed draft order would have to be laid before Parliament together with an explanatory document. There would then be a period of 60 sitting days to allow full public consultation and to allow the relevant parliamentary committees to undertake scrutiny of the draft order if they wished to do that. Once laid, the draft order—I stress that it would be a draft order—would then be subject to the affirmative resolution procedure.

That approach, which was recommended by the Subordinate Legislation Committee, is simpler and more straightforward than what is proposed in the procedural amendments that have been lodged by Mr Purvis and Mr Whitton. Mr Whitton’s

amendments would potentially allow a majority Government to insist on important orders being dealt with by the negative resolution procedure because of its ability to command a parliamentary majority on the question. The Government's approach, which is a direct response to what the Subordinate Legislation Committee recommended, provides that a strong, uniform test would have to be passed when an order was produced. My proposals would allow full public consultation with interested parties on every draft order and an opportunity for committees to consider the draft order and for Parliament to approve it—or not—by affirmative resolution as a matter of course in every case. That is exactly what the Subordinate Legislation Committee suggested.

For those reasons, I invite the committee to resist Jeremy Purvis's amendments, which seek to remove or restrict the order-making powers, and to agree to the procedural amendments that I have lodged on the recommendation of the Subordinate Legislation Committee, which are preferable to those that have been lodged by Mr Purvis and Mr Whitton and which address specific concerns about the scope of the order-making powers.

**The Convener:** I call David Whitton to speak to amendment 101 and the other amendments in the group.

**David Whitton:** I note what the minister says about the Subordinate Legislation Committee. I am not sure that I agree with his views on what would happen if there were a majority Government. The committee has heard a lot of evidence on the effect that the order-making powers would have. We have also heard about the procedures that are followed elsewhere.

I believe that adding to section 20 the procedures that are listed in amendment 101 would put in place a better test of what the cabinet secretary or any future cabinet secretary does when changing—how do I describe it?—the make-up of a public body. That better test would give Parliament the chance to have a better say over what ministers propose.

**Derek Brownlee:** Amendments 81 and 82 are relatively straightforward and would impose a sunset clause on whatever remains of part 2, to require Parliament to vote to renew the provisions in part 2. The amendments are relatively self-explanatory.

**Malcolm Chisholm:** I am particularly interested in amendments 21 and 36—the cabinet secretary spoke to the former but not the latter—which take us to the heart of the matter in relation to section 10. My comments will be probing.

Amendment 21 says:

"An order under this section may"

dissolve a body

"only if the person, body or office-holder has, or will have by virtue of the order, no exerciseable functions."

The cabinet secretary referred to that amendment twice, but he did not read out the words

"or will have by virtue of the order".

The inclusion of those words might have a simple explanation but, on the face of it, they seem unnecessary and might make people slightly suspicious. The implication of such an order is that functions have gone, but those words suggest that residual functions might remain, to be abolished by the order. I would welcome a response on that from the cabinet secretary.

That takes us into what will happen to functions. The bill still contains the words "modifying", "conferring", "abolishing" and "transferring". The heart of people's concerns is that functions might be modified undesirably. The bill still refers to abolishing functions, so a residual concern is that functions might be abolished—perhaps that could be clarified.

Functions will certainly be able to be modified, which raises the concern that important functions will be changed fundamentally. Amendment 36 addresses that issue—it homes in on the concept of necessary protection by way of example. The examples in the amendment are interesting. I would welcome the cabinet secretary's comments on the amendment, the thinking behind it and the extent to which it might give reassurance.

The cabinet secretary knows of the various bodies that have had concerns about the matter. I have flagged up before the Mental Welfare Commission for Scotland's functions and its independence. He knows that concerns were expressed when its move into NHS Quality Improvement Scotland was proposed, because that would have meant that it lost its distance and independence from ministers. Proposed section 12(2A)(c) refers to the

"health and safety of persons".

Will he give the Mental Welfare Commission reassurance?

More generally, I would welcome more comments on the concept of necessary protection and on how we distinguish between functions that can be modified or possibly abolished and those that have a special status that relates to the words "necessary protection". When the concept was first discussed, it was said that necessary protection was clear and did not need to be reinforced, but the point of amendment 36 is to reinforce the concept, by example. However, the examples that are given might not capture all the elements of

necessary protection, so people will still be concerned that the fundamental nature of bodies such as the Mental Welfare Commission could be removed and that such bodies might be modified or moved into different bodies. I accept that the cabinet secretary has attempted to allay concerns, but many people will remain concerned about the loss of fundamental functions.

15:00

**John Swinney:** Mr Brownlee talked about introducing a sunset clause. That is a sensible additional safeguard and I am happy for it to be included in the bill to provide further reassurance. It would also create discipline in the use of the powers as the bill is applied.

I will concentrate on the issues that Malcolm Chisholm raised, because they included a number of substantial points. The first was about the inclusion in amendment 21 of the words:

“or will have by virtue of the order”.

In essence, those words are in the amendment to capture the circumstance in which a particular function had not been used over time, although it was statutorily within a body's gift to exercise it. The phrase is included to capture any remaining redundant functions that may be part of a body's role. The approach in amendment 21 is to try to provide the clarity that, as I accepted in my remarks following Mr Purvis's comments, was lacking in the bill.

Mr Chisholm's second point was about whether we had done enough to make a distinction between abolished functions and abolished bodies. I hope that, in my earlier remarks and in the clarification that I just gave, I made the distinction that the Government seeks to make between, on the one hand, the power in an order to address on the basis of economy, effectiveness and efficiency the functions of particular bodies and other considerations; and, on the other, the mechanism for tidying up the landscape of public bodies where functions have been removed from bodies by prior consent. By making that distinction, we are giving a direct response to concerns that were expressed in the stage 1 debate and in evidence, and I hope that that adequately conveys and captures the point.

Mr Chisholm's final point was on amendment 36. I welcome his acknowledgement that we have attempted to define necessary protection more clearly. The explanation that we have gone for in amendment 36 is designed not to be an exhaustive list of considerations or factors but to illustrate the essential characteristics that would have to be judged in certain circumstances. To satisfy the condition in section 12(2)(b) of not removing any necessary protection, there would

have to be consistency of direction and interpretation between proposals that were made and the characteristics of the organisations in question, which is essentially the definition of necessary protection that we are trying to drive at.

I hope that those remarks provide the reassurance that Mr Chisholm was looking for.

On the wider question about order-making powers, we have established by virtue of the amendments that I am promoting today a uniform test for any order under part 2.

Mr Whitton's amendments differ from the amendments that the Government has lodged, in that they apply a different level of test. They allow a Government to use its majority essentially to choose which level of scrutiny it intends to apply to any particular order. That option does not exist under the Government's amendments, which make it mandatory for all orders to go through the process that those amendments set out.

**Jeremy Purvis:** I understand the cabinet secretary's points, but I believe that the Government's position is flawed in two key respects, the first of which relates to what he has just mentioned. I believe that my amendment 100 takes a better position, as it broadly reflects the views of many witnesses who gave evidence to the committee; it also reflects the Westminster Parliament's legislation, which the cabinet secretary has on a number of occasions used as an example of where the Scottish Government is merely following.

If the Government wishes to bring forward an order to make improvements to public bodies in Scotland, it has the power to do so, but Parliament should decide on the appropriate mechanism by which that happens. If my amendment is agreed to, the Parliament would consider the Government's intentions, and would then be able to agree to a resolution. If it agreed to a resolution that an order was the appropriate mechanism, it would have the opportunity to consider whether the affirmative or the negative resolution procedure should be used. That is a safeguard that Parliament holds; it would not be relevant whether the Government had a majority or was a minority Government. Indeed, the Westminster Parliament has decided on a procedure whereby it decides on the appropriate procedure—and the Westminster Parliament is not unfamiliar with majority Governments.

Parliament should decide whether an order is the appropriate mechanism for bringing about any changes. If it decides that it is not, the Government would be required to introduce primary legislation to bring about those changes.

That leads us back to the scope of an order, which is the second area in which the

Government's position does not address the concerns that the committee heard from witnesses at stage 1.

Under amendment 83, the Government would have the ability to make changes to public bodies in Scotland, but for the purpose of ensuring, rather than simply "having regard to", the efficiency and effectiveness of those bodies. There is a substantive difference between an order whose purpose is to improve public services and an order whose purpose is to make changes— notwithstanding the preconditions set by the Government—to the entire list of bodies in schedule 3. Parliament should have the ability to state what the appropriate procedure is; that is the proper mechanism.

Any substantive changes over and above improving the efficiency and effectiveness of the body would probably sit more comfortably within primary legislation, as that would allow Parliament to consider whether to amend any proposals that were brought forward. Ultimately, my proposal in amendment 100 would allow Parliament to agree to a resolution to that effect, which is a better mechanism.

I turn finally to the Government's amendment 16, which allows for the ability to abolish a body only if it has no functions left to exercise. I understand that point entirely, and it sits comfortably with my amendment 83. If a body has changed so radically, measures to abolish it would fit more comfortably within primary legislation, rather than the Government bringing forward an order that would go far beyond the stated policy aims of improving a public body's efficiency and the effectiveness.

I press amendment 83.

**The Convener:** The question is, that amendment 83 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
McCabe, Tom (Hamilton South) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For, 4, Against 4, Abstentions 0.

I use my casting vote against the amendment.

*Amendment 83 disagreed to.*

*Amendment 84 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 84 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
McCabe, Tom (Hamilton South) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 4, Against 4, Abstentions 0.

I use my casting vote against the amendment.

*Amendment 84 disagreed to.*

*Amendment 85 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 85 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
McCabe, Tom (Hamilton South) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 4, Against 4, Abstentions 0.

I use my casting vote against the amendment.

*Amendment 85 disagreed to.*

*Amendment 16 moved—[John Swinney]—and agreed to.*

**The Convener:** Amendment 17, in the name of John Swinney, is grouped with amendments 18 to 20, 23 to 25, 89, 27 to 29, 90, 30 to 34, 42, 48 and 49.

**John Swinney:** Amendment 17 recognises that Parliament has only very recently legislated in relation to the Scottish Court Service in the Judiciary and Courts (Scotland) Act 2008. That act contains specific order-making powers that provide for the functions of the Scottish Court Service to be carried out by ministers in certain circumstances. It would not be right to cut across the very specific arrangements that the 2008 act



makes in respect of the Scottish Court Service, so amendment 17 and other related amendments, including amendment 21 in group 5, make it absolutely clear that the order-making powers in part 2 of the bill may not abolish or amend the constitution of the Scottish Court Service as defined in the 2008 act. Neither would it be appropriate to amend the constitution of cross-border public authorities, so we propose that the specific reference in section 10 to “the Forestry Commissioners” should be replaced with a reference to cross-border public authorities generally.

The Government has listened to arguments that particular safeguards are necessary in relation to some public bodies, and we have brought forward a series of amendments that are designed to meet those concerns. We recognise that the five parliamentary commissioners and the ombudsman are accountable to Parliament, not to ministers, and that their independence from ministers needs to be beyond question. We therefore propose that, in relation to those bodies, the power to initiate proposals should rest with the Scottish Parliamentary Corporate Body rather than with ministers, and that, following consultation, an order could be laid only with the consent of the SPCB. I am pleased to say that the Presiding Officer has written to me to say that the SPCB considers that proposal to be a workable compromise.

I have considered Jeremy Purvis’s amendments to remove the bodies from schedule 3 altogether, but I do not take that view, since removing them would make it impossible to use the order-making powers to make sensible adjustments to the functions and remit of the commissioners. We also propose to make it expressly clear that the power in section 11 to add bodies to schedule 3 does not apply to local authorities, which means that they could not at some future date become subject to the order-making powers.

On reflection, and after considering the evidence submitted to the committee, I propose that Audit Scotland and the Scottish Commission for Public Audit should be removed from schedule 3 altogether. Audit Scotland is in the unique position of being responsible for auditing both Government and Parliament, including the Scottish Parliamentary Corporate Body, and must therefore be seen to be independent of both. As the convener of the Scottish Commission for Public Audit pointed out during the stage 1 debate, the SCPA is responsible for scrutinising the budget and expenditure of Audit Scotland and providing assurance to Parliament that it is using its resources efficiently and effectively. In effect, as the convener of the SCPA pointed out, the SCPA audits the auditors.

15:15

I do not think that the arguments for excluding the parliamentary commissioners, the ombudsman and the two audit bodies apply to either the Accounts Commission or the police complaints commissioner for Scotland. Therefore, I do not support David Whitton’s amendments in respect of those bodies.

The Accounts Commission’s role relates entirely to local government, not central Government; it is not responsible for scrutinising or holding ministers to account. It does not, therefore, fall into the same category as Audit Scotland or the SCPA and there is no special case for removing it from schedule 3. The police complaints commissioner for Scotland is not a parliamentary commissioner. The PCCS is appointed by and is accountable to ministers. His or her role is to investigate complaints; the PCCS is not in any way responsible for overseeing ministers or investigating complaints against them. I do not think, therefore, that there are any special circumstances that would justify removing the police complaints commissioner for Scotland from schedule 3.

I move amendment 17.

**Jeremy Purvis:** At stage 1, the committee received evidence on the considerable concern about the position of bodies created directly by Parliament, answerable to and funded by it. Part of the scrutiny of those bodies is parliamentary rather than governmental, which is right and proper. The cabinet secretary is correct to say that it is absolutely appropriate that none of those bodies is seen to be part of Government, either directly or indirectly, and that they cannot be reformed dramatically by Government, regardless of where the intention to do so first arose. That applies to the Commissioner for Public Appointments in Scotland as well as to the Scottish Information Commissioner and it is broadly consistent with what the cabinet secretary said about Audit Scotland.

I recognise that Audit Scotland has a particular role that is distinct from the others, but an equally strong case could be made for withholding the statutory requirements from the information commissioner. It is absolutely necessary that the public views all those bodies as parliamentary bodies in how they were created—through an open and transparent mechanism of accountability. That would be diluted by their inclusion in schedule 3.

I looked closely at the letter from the Presiding Officer, but I am not satisfied that the Presiding Officer, as chair of the corporate body, should write in that manner to the Government agreeing to what could be a “workable compromise”. I am

sure that the cabinet secretary has the letter among his papers. We have to be clear about the language used and the way in which the corporate body recognises that a compromise could be formed with the Government on a bill that is still making its passage through Parliament. I do not believe that that is the corporate body's role; there needs to be much greater overall consideration by Parliament before that debate takes place.

Amendment 23 seeks to remove the parliamentary commissioners and the ombudsman from schedule 3. If changes are to be made, that would allow the Parliament to make those changes in any way it thinks fit.

It is worth noting that a bill is due to be introduced that would potentially allow a parliamentary committee to make changes to those bodies. It would be nonsense to pass the Public Services Reform (Scotland) Bill, having included those bodies and the power to change them by order, when different primary legislation is to be introduced. Removing the bodies from schedule 3 is a preferable way forward.

**David Whitton:** Having listened carefully to what the minister said, I will not move my amendments.

**Derek Brownlee:** I remind members that, along with four other MSPs, I am a member of the Scottish Commission for Public Audit. As this might not get much hearing elsewhere, I note the Government's moves in relation to Audit Scotland and the SCPA. It is worth noting that the proposal to withdraw the SCPA and Audit Scotland from schedule 3 was one of the options that the SCPA requested. An alternative would have been to put Audit Scotland under the potential direction of the SCPA, and the SCPA under the potential direction of the SPCB. Nonetheless, the amendments lodged in relation to Audit Scotland and the SCPA are a step in the right direction.

**The Convener:** If no other members wish to comment, I ask the minister to wind up the debate.

**John Swinney:** First, Mr Purvis raised a point about my letter from the Presiding Officer. In the interests of absolute clarity, I should say that the Presiding Officer, in the letter dated 22 January, wrote that my proposals could be a workable compromise. Earlier, I said that the corporate body considers the proposal to be a workable compromise, which overstated the corporate body's position. I am happy to put that on the record, and I apologise if I overstated the contents of the Presiding Officer's letter.

This is an important area of activity. Mr Purvis raised a fundamental question about the independence of the parliamentary commissioners and the ombudsman. I hope that I have made it clear during the passage of the bill that the

Government in no way wishes to question or constrain that independence. Today's proposals expressly remove from the Government a power of initiation in that respect in relation to the ombudsmen and commissioners, and put that power of initiation rightly and properly where it should sit, with Parliament and with the corporate body as a body elected by Parliament. That appears to me to be a powerful and effective way of demonstrating the independence of those bodies and their relationship to Parliament. I hope that the committee is reassured by the intention behind the Government's amendments. I very much welcome the corporate body's consideration of the issue and its understanding of the movement that the Government has been trying to make to recognise that the ombudsman and the commissioners are of a different character from the other bodies, and that therefore the power of initiation and the order-making powers should lie with Parliament and the corporate body and not with ministers.

*Amendment 17 agreed to.*

*Amendment 18 moved—[John Swinney]—and agreed to.*

*Amendment 86 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 86 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 86 disagreed to.*

*Amendment 19 moved—[John Swinney]—and agreed to.*

*Amendment 87 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 87 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 87 disagreed to.*

**The Convener:** Amendment 68, in the name of Derek Brownlee, is in a group on its own.

**Derek Brownlee:** Amendment 68 deals with the—admittedly very unlikely—scenario whereby ministers may decide to transfer functions to local government without providing the resources that would naturally go with the functions. Bearing in mind the importance of the relationship between local and central Government, and the Scottish Government's desire to maintain a good working relationship with local government, amendment 68 would enable ministers to confer powers on local government without anyone being under the mistaken impression that resources were not being provided. Amendment 68 seeks to provide additional protection to local government to ensure that its support for the bill's provisions is not taken advantage of by a future Government that might wish to pass on responsibilities without adequate resources.

I move amendment 68.

**John Swinney:** I have some sympathy with the intent of amendment 68, but I have concerns about how it would interact with existing arrangements for agreeing the funding of local authorities. The amendment would introduce a specific requirement, dealing only with the funding of functions transferred or delegated under an order under part 2, but that would risk the Government and local authorities having to consider the matter in isolation from the much wider discussions that are held with local authorities about the funding of the full range of their functions. It is important that any discussions about local authority funding can take the widest view of the functions that local authorities conduct and any changes to those that may from time to time be agreed.

The financial memorandum accompanying the bill makes clear the Government's commitment that there would be a fair transfer of resources to local government where there is an additional financial burden for local authorities. I hope that Mr Brownlee will accept that, when an order under part 2 of the bill is being considered, I am concerned to ensure that discussions with local authorities about whether there are any financial implications for them can be taken in the round. For those reasons, I do not think that it would be

either necessary or appropriate to impose a specific statutory duty on ministers about an aspect of local authority funding that relates to only one piece of the much more complex and comprehensive picture of local authority funding. On that basis, I invite Derek Brownlee not to press amendment 68.

**Derek Brownlee:** I am grateful for what the minister said. Of course, he cannot bind any successors in relation to what future Governments might do, but I have not been trampled over by local authorities in a rush to see the position transposed into legislation. On that basis, I am therefore happy to withdraw amendment 68, if the committee is so content.

*Amendment 68, by agreement, withdrawn.*

**The Convener:** Amendment 88, in the name of Jeremy Purvis, was debated with amendment 83. If amendment 88 is agreed to, amendment 20 will be pre-empted.

*Amendment 88 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 88 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 88 disagreed to.*

*Amendments 20 and 21 moved—[John Swinney]—and agreed to.*

*Amendment 22 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 22 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)

McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 22 disagreed to.*

*Section 10, as amended, agreed to.*

### **Section 11—Public functions: further provision**

*Amendment 23 moved—[Jeremy Purvis].*

15:30

**The Convener:** The question is, that amendment 23 be agreed to. Are we all agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 23 disagreed to.*

*Amendments 24 and 25 moved—[John Swinney]—and agreed to.*

*Amendment 26 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 26 be agreed to. Are we all agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 26 disagreed to.*

*Section 11, as amended, agreed to.*

### **Schedule 3—Improvement of public functions: listed bodies**

*Amendment 89 not moved.*

*Amendment 27 moved—[John Swinney]—and agreed to.*

*Amendment 28 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 28 be agreed to. Are we all agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 28 disagreed to.*

*Amendment 29 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 29 be agreed to. Are we all agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 29 disagreed to.*

*Amendment 90 not moved.*

*Amendment 30 moved—[Jeremy Purvis].*

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

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 30 disagreed to.*

*Amendment 31 moved—[John Swinney]—and agreed to.*

*Amendment 32 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 32 be agreed to. Are we all agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 32 disagreed to.*

*Amendment 33 moved—[Jeremy Purvis].*

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

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 33 disagreed to.*

*Amendment 34 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 34 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 34 disagreed to.*

*Amendment 35 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 35 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 35 disagreed to.*

*Schedule 3, as amended, agreed to.*

**Section 12—Preconditions**

*Amendment 91 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 91 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 91 disagreed to.*

*Amendment 36 moved—[John Swinney]—and agreed to.*

*Amendments 92 and 93 not moved.*

*Amendment 37 moved—[John Swinney]—and agreed to.*

*Amendment 38 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 38 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 38 disagreed to.*

*Section 12, as amended, agreed to.*

### Section 13—Power to remove or reduce burdens

**The Convener:** Amendment 39, in the name of the minister, is grouped with amendment 40.

**John Swinney:** During the external and committee scrutiny of the bill, the Federation of Small Businesses and others supported section 13—which provides the power to remove or reduce burdens—while arguing that it would be improved by the inclusion of a power to promote regulatory principles. Amendment 39 ensures that the order-making power in section 13 can be used to remove or reduce any obstacle to regulation being carried out in a way that is transparent, accountable, proportionate, consistent and targeted.

I move amendment 39.

*Amendment 39 agreed to.*

*Amendment 40 moved—[John Swinney]—and agreed to.*

*Amendment 94 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 94 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Brownlee, Derek (South of Scotland) (Con)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 4, Abstentions 0.

*Amendment 94 disagreed to.*

*Amendments 95 and 96 not moved.*

*Amendments 41 to 43 moved—[John Swinney]—and agreed to.*

*Amendment 44 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 44 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 44 disagreed to.*

*Section 13, as amended, agreed to.*

### Section 14—Preconditions

*Amendments 45 and 46 moved—[John Swinney]—and agreed to.*

*Amendment 47 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 47 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 47 disagreed to.*

*Section 14, as amended, agreed to.*

#### After section 14

*Amendment 48 moved—[John Swinney]—and agreed to.*

**The Convener:** Amendment 69, in the name of Derek Brownlee, is in a group on its own.

**Derek Brownlee:** Amendment 69 is perhaps best termed a novel amendment, in that it seeks to broaden the powers in the bill rather than to restrict them, as most of the other amendments seek to do. It relates to a scenario in which a minority Government may, in contrast to the prevailing view in Parliament, not wish to proceed with measures that would otherwise be potentially subject to the order-making powers in part 2.

Amendment 69 seeks to transfer those powers to either an individual member or, more likely, to a committee of the Scottish Parliament. It is probably accurate to say that that is without precedent. It is perhaps not the usual form for Parliament to seek to take upon itself the responsibilities that the Government seeks to take on, but nonetheless I believe that it is competent for it to do so if it wishes.

The amendment addresses the more serious point that there is not within the bill, as currently drafted, a mechanism for allowing alternative suggestions from outwith the Government on bringing bodies that are not parliamentary bodies into the process to be dealt with under the order-making powers in part 2.

This is a legitimate area that, in the years to come, will be the subject of greater debate. The proposed new section seeks to entrench the powers of Parliament and encourage the pace of public service reform.

I move amendment 69.

15:45

**Malcolm Chisholm:** I probably sound like an old Government minister. Derek Brownlee makes an interesting and novel suggestion, but he has admitted that it is anomalous. Members may be able to think of many bills of the Scottish Parliament that contain an order-making power that they would have liked to trigger. In fact, when we discuss section 4, members will probably observe that certain order-making powers in the Regulation of Care (Scotland) Act 2001 still have not been triggered. Perhaps some back bencher or a committee would have liked to do that.

As someone who is now fully devoted to the idea of giving as much power as possible to Parliament, I can see that the idea has certain attractions. Nevertheless, I do not think that it would be proper to do it for one bill out of the more than 100 that we have passed. We might refer the idea to the Standards, Procedures and Public Appointments Committee, but it would be inappropriate to implement it for this one piece of legislation, especially given the fact that some of us are unhappy about the order-making power in the first place.

**John Swinney:** I will not try to rival Mr Chisholm as an old Government minister, but as a current Government minister I agree fundamentally with what he has just said. There is a significant issue here, and it would be worth while for the Standards, Procedures and Public Appointments Committee to examine whether we want to go down the proposed route in general. In Parliament, we have clearly delineated responsibilities in relation to primary and secondary legislation, and the proposal would have to be considered as part of a wider assessment of what it is appropriate to take forward. Therefore, although I have some sympathy with the aspirations behind Mr Brownlee's proposal, I think that Mr Chisholm's wisdom on the matter is worth following.

**Derek Brownlee:** Uniting Mr Chisholm and Mr Swinney is a significant achievement, and I am always happy to defer to the greater wisdom of Mr Chisholm. On that basis, I accept that the suggestion that the proposal be looked at in a broader context is reasonable and seek the committee's agreement to withdraw the amendment.

*Amendment 69, by agreement, withdrawn.*

#### After schedule 3

*Amendment 49 moved—[John Swinney]—and agreed to.*

#### Section 15—Subordinate legislation and powers of direction, appointment and consent

*Amendments 97 to 99 not moved.*

*Amendment 50 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 50 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Brownlee, Derek (South of Scotland) (Con)

Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 50 disagreed to.*

*Section 15 agreed to.*

### Section 16—Local taxation

*Amendment 51 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 51 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 51 disagreed to.*

*Section 16 agreed to.*

### Section 17—Criminal penalties

*Amendment 52 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 52 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 52 disagreed to.*

*Section 17 agreed to.*

### Section 18—Forcible entry etc

*Amendment 53 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 53 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 53 disagreed to.*

*Section 18 agreed to.*

### Section 19—Prohibition on modification of this Part

*Amendment 54 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 54 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 54 disagreed to.*

*Section 19 agreed to.*

### Section 20—Procedure

*Amendment 100 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 100 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.



**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 100 disagreed to.*

**The Convener:** If amendment 101, in the name of David Whitton, is agreed to, amendment 102 will be pre-empted.

*Amendment 101 moved—[David Whitton].*

**The Convener:** The question is, that amendment 101 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 Welsh, Andrew (Angus) (SNP)

**ABSTENTIONS**

McCabe, Tom (Hamilton South) (Lab)

**The Convener:** The result of the division is: For 3, Against 4, Abstentions 1.

*Amendment 101 disagreed to.*

*Amendments 102 and 103 not moved.*

*Amendment 55 moved—[John Swinney]—and agreed to.*

*Amendment 56 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 56 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 56 disagreed to.*

*Section 20, as amended, agreed to.*

**Section 21—Consultation**

*Amendment 57 moved—[John Swinney]—and agreed to.*

*Amendment 58 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 58 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 58 disagreed to.*

*Section 21, as amended, agreed to.*

**Section 22—Explanatory document laid before the Scottish Parliament**

*Amendment 59 moved—[John Swinney]—and agreed to.*

*Amendment 60 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 60 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 McCabe, Tom (Hamilton South) (Lab)  
 Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 60 disagreed to.*

*Section 22, as amended, agreed to.*

**After section 22**

*Amendment 104 moved—[David Whitton].*

**The Convener:** The question is, that amendment 104 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
McCabe, Tom (Hamilton South) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 4, Against 4, Abstentions 0.

I use my casting vote against the amendment.

*Amendment 104 disagreed to.*

*Amendment 105 moved—[David Whitton].*

**The Convener:** The question is, that amendment 105 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
McCabe, Tom (Hamilton South) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 4, Against 4, Abstentions 0.

I use my casting vote against the amendment.

*Amendment 105 disagreed to.*

*Amendment 106 moved—[David Whitton].*

**The Convener:** The question is, that amendment 106 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
McCabe, Tom (Hamilton South) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)

Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 4, Against 4, Abstentions 0.

I use my casting vote against the amendment.

*Amendment 106 disagreed to.*

*Amendment 107 moved—[David Whitton].*

**The Convener:** The question is, that amendment 107 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
McCabe, Tom (Hamilton South) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 4, Against 4, Abstentions 0.

I use my casting vote against the amendment.

*Amendment 107 disagreed to.*

*Amendment 108 moved—[David Whitton].*

**The Convener:** The question is, that amendment 108 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
McCabe, Tom (Hamilton South) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 4, Against 4, Abstentions 0.

I use my casting vote against the amendment.

*Amendment 108 disagreed to.*

## **Section 23—Combination with powers under European Communities Act 1972**

*Amendment 61 moved—[Jeremy Purvis].*

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

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 61 disagreed to.*

*Section 23 agreed to.*

#### **Section 24—Order-making powers: modifications of enactments**

*Amendment 62 moved—[Jeremy Purvis].*

16:00

**The Convener:** The question is, that amendment 62 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 62 disagreed to.*

*Section 24 agreed to.*

#### **Schedule 4**

ORDER-MAKING POWERS: MODIFICATIONS OF ENACTMENTS

*Amendment 63 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 63 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 63 disagreed to.*

*Schedule 4 agreed to.*

#### **Section 25—Interpretation of Part 2**

*Amendment 64 moved—[John Swinney]—and agreed to.*

*Amendment 65 moved—[Jeremy Purvis].*

**The Convener:** The question is, that amendment 65 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
McCabe, Tom (Hamilton South) (Lab)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

*Amendment 65 disagreed to.*

*Section 25, as amended, agreed to.*

**The Convener:** That concludes day one of our stage 2 consideration.

16:02

*Meeting suspended.*

16:08

*On resuming—*

## **Subordinate legislation**

### **Public Contracts and Utilities Contracts (Scotland) Amendment (Amendment) Regulations 2009 (SSI 2009/439)**

**The Convener:** Item 3 is consideration of a Scottish statutory instrument. The Public Contracts and Utilities Contracts (Scotland) Amendment (Amendment) Regulations 2009 (SSI 2009/439) are subject to negative procedure and correct two defective drafting points in the Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2009 (SSI 2009/428), which the committee considered on 12 January. Is the committee content to note the regulations?

**Members** *indicated agreement.*

## **Housing (Scotland) Bill: Financial Memorandum**

16:09

**The Convener:** Item 4 is consideration of our approach to the scrutiny of the financial memorandum to the Housing (Scotland) Bill. The clerk's paper suggests that we may wish to adopt level 2 scrutiny, and provides a list of affected bodies from which we may wish to seek written evidence. Are members content with the suggestions in the clerk's paper?

**Members** *indicated agreement.*

**The Convener:** I remind members that the next meeting of the committee will be on 3 February, when we will continue to consider the Public Services Reform (Scotland) Bill at stage 2.

*Meeting closed at 16:09.*

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**Friday 5 February 2010**

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