



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

FINANCE COMMITTEE

Tuesday 2 March 2010

Session 3

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FINANCE COMMITTEE
6th 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:

Fergus Ewing (Minister for Community Safety)

THE FOLLOWING GAVE EVIDENCE:

David Cullum (Scottish Parliament Chamber Office)

Trish Godman (West Renfrewshire) (Lab)

John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Committee Room 6

Scottish Parliament

Finance Committee

Tuesday 2 March 2010

[The Convener *opened the meeting at 14:04*]

Subordinate Legislation

Budget (Scotland) Act 2009 Amendment Order 2010 (Draft)

The Convener (Andrew Welsh): Good afternoon and welcome to the sixth meeting of the Finance Committee in 2010, in the third session of the Scottish Parliament. I ask all members of the committee and the public to turn off mobile phones and pagers.

Agenda item 1 is to consider the Scottish statutory instrument that provides for the spring revision of the 2009-10 budget. The draft Budget (Scotland) Act 2009 Amendment Order 2010 is subject to affirmative procedure, which means that Parliament must approve the order before it can be made and come into force. A motion in the name of the Cabinet Secretary for Finance and Sustainable Growth, John Swinney, invites the committee to recommend to Parliament that the draft order be approved. Before we come to the debate on the motion under agenda item 2, we will have an evidence session to clarify any technical matters or to allow explanation of detail.

I welcome to the meeting the cabinet secretary, John Swinney MSP, who is accompanied by Alyson Stafford, director of finance, and John Williams, head of finance co-ordination, from the Scottish Government. I invite the cabinet secretary to make an opening statement explaining the order, and I remind him not to move the motion at this point.

The Cabinet Secretary for Finance and Sustainable Growth (John Swinney): The order that is before the committee relates to the final changes to the budget for 2009-10. Today's budget revision is the last opportunity that we have to amend the budgets for the current financial year, so it includes a number of transfers between budget lines to enable them to be aligned with predicted spend for the rest of the year. It also confirms that our management of the Scottish budget this year has allowed us to invest more money in economic recovery.

The changes that are proposed in the spring budget revision will result in an increase in the approved budget of approximately £59 million from £34.711 billion to £34.77 billion. Table 1.4 on page 5 of the supporting document shows the latest

budget that was agreed in the autumn budget revision and the changes that are sought in the spring budget revision.

I would like to draw the committee's attention to a few of the main points of the spring budget revision. Additional funding of £79 million for the health and wellbeing portfolio is made up of £59.2 million of United Kingdom budget consequential and £19.6 million of additional annually managed expenditure cover for impairments. The budget consequential will allow additional capital spend of £31 million on affordable housing, with the balance of £28 million being applied to cover costs that are associated with the flu pandemic. It has also been possible to transfer a further £45 million to help to cover flu pandemic costs. The switching of that budget from the justice portfolio is a result of the release of funds that were previously held in the provision to meet anticipated claims against the Scottish Prison Service.

There is a technical change to the presentation of the Scottish Water cost of capital, which has led to a reduction of about £85 million. That reflects income from the interest payable on loans, which was previously not included in the parliamentary approval. The change allows alignment between the draft budget, the Budget (Scotland) Bill and the consolidated accounts, and has no impact on the resources that are available to Scottish Water or the Scottish Government.

Other significant changes include a transfer of £20 million to provide additional support to the higher education sector and the making available of £10 million of finance and sustainable growth provided funding for the Scottish investment bank. Other adjustments include revisions to AME to reflect revised estimates for national health service and teachers' pensions, for which provision has increased by £33.1 million, and a reduction in student loan moneys of £13.3 million. Full budget cover for that net increase is provided by Her Majesty's Treasury.

The committee will recall that with the adoption of international financial reporting standards across central Government, we are required to convert our UK generally accepted accounting-practice-based budget to one that is based on IFRS. The first tranche of the technical adjustments that were agreed with HM Treasury was included in the autumn budget revision. The £44.4 million that is included in the spring budget revision represents what we expect to be the final element of those adjustments for 2009-10. Again, the changes are spending-power neutral. They are largely non-cash adjustments or transfers from resource to capital, to reflect the different treatment of certain transactions under IFRS.

What appears to be a net transfer from within the Scottish block of -£3.2 million reflects the transfer of budget provision to support non-departmental public body capital charges, which relate primarily to VisitScotland. The committee will recall that under current budget arrangements, NDPB budgets must be presented for parliamentary approval in simple cash terms. Details of NDPBs' non-cash costs are provided in table 1.2 on page 3.

Details of all significant changes in the spring budget revision were sent to the committee by the Scottish Government prior to this meeting. Further information in respect of other items can be supplied, should the committee wish more detail. I would be happy to answer any questions that members might have.

Derek Brownlee (South of Scotland) (Con): I have questions on some of the details in the budget revision document. Page 19 sets out details of proposed increases for concessionary fares, with separate elements for demand-led increase and smart card costs. Will you say a bit more about each of those items and perhaps give an indication of the spending profile for concessionary fares in the later years? The anecdotal feedback that we get from bus operators is that the spending pressures in the programme are significant and that there is an expectation that demand will continue to increase. It would be interesting to know what the Government's expectation is.

John Swinney: I will start with the smart card programme, which is putting in place the technology to automate the transactions in the concessionary travel scheme. The project has been under development since 2005 and it would be fair to say that there has been concern about the development and deployment of the technology. All of us, including my predecessors, would probably have preferred the technology to be in place from day 1, but it was not, and a pretty assiduous process has been required in getting the smart card technology applied across the board in all bus operators.

There has been an increase in the resources that are being allocated because the programme has been slow in development but, as a consequence of efforts in the past 18 months, we have seen a marked improvement in the pace of deployment of the technology. In essence, we are paying to have that application done sooner rather than later. The current position is that 85 per cent of ticket machines are available and we expect 98 per cent to be available by the end of the financial year. There has been a marked upsurge in the pace of the activity recently, which is why we have had to make a further allocation of resources. Obviously, if that had not been done, we would

have wanted to make good that resource in the next financial year.

The concessionary fares line includes not only the concessionary fares for senior citizens—I am sorry, I should say for the over-60s—but the various schemes for young people's concessionary travel. Demand has been increasing over time, although we consider that it has plateaued in recent months and that the financial provision that is in place will be sufficient to tackle the demands on the budget for the programme in the course of this financial year.

Derek Brownlee: Page 69 sets out a proposed increase in administration costs of £1.8 million, which is offset by increased income. What is the underlying reason behind the increase? Perhaps more important, given the reduction in the same administration line in the 2010-11 budget, will the increase in 2009-10 make it more difficult for the Government to achieve the savings in 2010-11 that have been talked about?

John Swinney: I ask Mr Brownlee to give me the reference again.

Derek Brownlee: It is the second last item in the first table on page 69.

John Swinney: The key point is that that is the balancing of the items on the line above. In essence, the issue is to do with the contract that the Government has with Oracle, which deals with contracts for public bodies for information technology projects. There is a transactional arrangement. The use of those services is increasing, which is increasing costs on the Government, but there are increasing transactional activities in reclaiming those.

On the implications of that for realisation of the budget savings that are required of the administration budget in 2010-11, the 2010-11 performance will have to be delivered: that is the requirement of the budget.

14:15

Derek Brownlee: You mentioned the £10 million allocation to the Scottish investment bank. There is more detail on that in the budget announcement. In view of where we are in the financial year, does the Government expect that the £10 million will be actively spent or invested in 2009-10?

John Swinney: I do not imagine that all of it will be spent in the financial year 2009-10, but the Scottish investment bank holds a number of resources in relation to other funds, such as the proof of concept fund and the Scottish Enterprise seed fund, which are clearly not dispensed in any given financial year.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I have a question about the £30 million for housing. The Barnett consequentials were first announced a year ago at the time of the Westminster budget, so why was that item not in the autumn budget revision?

John Swinney: I simply sought the available opportunity for me to advance the provision for that figure. We had announced that it was coming forward: deploying it in the spring budget revisions is simply a technical process.

Malcolm Chisholm: I understand that.

John Swinney: It does not affect the ability to spend.

Malcolm Chisholm: It just seemed a bit odd because the money was announced last May or June and there was an opportunity to include it in the autumn revision. However, that is perhaps not an essential point.

We have an interest in the capital budget, which will be discussed in another context soon. I have a particular interest in the slippage on the Edinburgh trams project. We do not need to go into all the details for that, but it is clear that part of it is the problems with Bilfinger Berger. We certainly support robust negotiations with that company. There is £53 million slippage on the trams, £20 million on minor rail programmes and the much-discussed £35 million for the Glasgow airport rail link. What have those underspends been spent on? Those three items alone represent more than £100 million.

John Swinney: We have spent the money on a variety of items. Some has been deployed to cover the increased cost in 2009-10 of the M74 because that contract has moved faster than the Government had programmed. That is one of the features of capital programmes: we have projects that go behind schedule, which the Edinburgh trams project clearly is, and projects that go ahead of schedule, which the M74 clearly is.

We have used the opportunity of the resources to acquire land that is essential for the M74, the M80 and the Aberdeen western peripheral route. We have also deployed some of the amount to cover the increase in the cost of the smart card technology that was required. There have been other requirements. Mr Chisholm mentioned the minor rail programmes; some of the resources have been deployed to cover a higher-than-predicted cost of the settlement decision from the Office of Rail Regulation on the rail programme for this financial year.

There is a variety of destinations for the resources that have been deployed.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Good afternoon. I will start with

a technical question. I understand that "A Brief Guide to the 2009-10 Spring Budget Revision" has been prepared by the Scottish Government—it is a Government document with which the committee has been presented. I looked at the bullet points under the headings for "Health and Wellbeing" and "Finance and Sustainable Growth" in the guide, but found no reference to the Scottish Futures Trust. However, I think that I am right in saying that, on page 17 of the spring budget revision document, there is a transfer of £1.3 million from the health department to the Scottish Futures Trust. What is that?

John Swinney: It is for the running of the hub programme.

Jeremy Purvis: In previous budget discussions, the committee discussed the increase in the Scottish Futures Trust consideration and the transfer of the hub programme to the trust. Is that transfer additional to previous ones from the health department?

John Swinney: A transfer is being made to the Scottish Futures Trust in respect of the hub programme. On previous occasions we allocated the budget provision for the operation of the Scottish Futures Trust.

Jeremy Purvis: Is that the only transfer from health with regard to the staffing and costs of the hub initiative, or is it an additional transfer?

John Swinney: In so far as there were any inherent costs in the original allocations to the Scottish Futures Trust relating to the hub programme, the transfer is, with that exception, a transfer of resources to enable the hub programme to be undertaken.

Jeremy Purvis: Staying with health, am I right in saying that the transfer from justice was the slopping-out money, and that that formed the provision for the flu pandemic, in effect?

John Swinney: That is correct.

Jeremy Purvis: There are also the UK consequentials. If we take the two amounts together, the total is £73.3 million. Has that money been spent?

John Swinney: Yes.

Jeremy Purvis: I will move on to slippage. You wrote to the four party spokespeople and, in the attachment to that correspondence, you outlined the lack of slippage in capital programmes, compared with the 2010 budget. Given that there has been slippage in the Scottish Prison Service capital budget, which is being used for the purchase of the Dundee forensic laboratory, and bearing in mind the information regarding trams, what has the overall slippage been? What flexibility do you have in the capital budget?

John Swinney: I do not have that number added up in front of me but, as I explained to Mr Chisholm, there are projects that go ahead of schedule, which we must meet, and there are projects that go behind schedule. It is a case of making judgments in-year in order to utilise the available resources. The objective of the management of resources in-year is to minimise the resources that are not fully utilised for the purposes of our expenditure programme, in particular the capital programme. That is the approach that we have taken in the course of this financial year.

Jeremy Purvis: Is there a total in the spring budget revision for the overall reallocation of the capital?

John Swinney: I thought that the guide that we produced provided a pretty clear exposition of how resources had been allocated in one direction or another. I thought that that would assist the committee but, if more detail is required, I am delighted to provide it.

Jeremy Purvis: I appreciate that. I cannot see it, although that does not necessarily mean that it is not there: is there an overall capital amount? Your answer to Malcolm Chisholm regarding the trams and the GARL reallocation—and the indication that you gave regarding the purchasing of land and the M74 completion—did not give the total amount. The figures did not add up.

John Swinney: If I was to give such a list today, it would contain a whole host of different transfers. I am happy to share that information with the committee—I gave some of the major elements to explain where the changes had come. A considerable level of detail is involved.

It goes down to the fact that I allocated £1 million for structural improvements to improve Campbeltown harbour's ability to cope with the new larger wind turbines that will be going to the Skykon factory, and the allocation of £3.8 million to move the centre for regenerative medicine in Edinburgh to a further stage of development. I am certainly happy to give the committee further detail, if that would help.

Jeremy Purvis: You are committed to publishing every item over £25,000, are you not? That will have to be the means of providing that information.

John Swinney: That will be done by routine transaction. The Government will do that in a seamless fashion.

Jeremy Purvis: I have a final question, convener, if I may ask it. I notice that there is additional funding of £2.2 million for the Bellwin scheme. Has it been agreed with local government that the Bellwin scheme will be open for

applications, given the severe weather over the new year?

John Swinney: It is not that the Government needs to "open" the Bellwin scheme. The scheme is always there. It is a mechanism that is activated in certain circumstances. We consider claims within that. The fact that a local authority says, "We want to make a claim under the Bellwin scheme," does not mean that the claim will be approved. However, I recognise that exposure to Bellwin claims is likely, which is why I made the provision. I am considering a number of applications and am verifying whether they qualify for assistance under the scheme.

Jeremy Purvis: It is not true, therefore, that the Government said to the Convention of Scottish Local Authorities that Bellwin is not the scheme for the additional cost of the severe weather.

John Swinney: The Government has made provision for the additional costs of the severe weather, which is to be allocated to all local authorities. I announced that, if my memory serves me correctly—

Jeremy Purvis: In the local government debate.

John Swinney: Yes. Thank you.

The possibility of Bellwin scheme claims is envisaged in the spring budget revision. I have to create the headroom to allow me to spend in that fashion. Without some provision for that, I would face an issue with the local government budget line. I stress that I am considering Bellwin applications, but if I did not have that headroom, I would not have the flexibility to spend, because the local government control total is at its limit.

Jeremy Purvis: Just very finally—

The Convener: Your final, final question.

Jeremy Purvis: I am sorry, convener. Is the additional £2 million a consequential?

John Swinney: Of what?

Jeremy Purvis: Is the £2.2 million for the Bellwin scheme a Barnett consequential?

John Swinney: No.

David Whitton (Strathkelvin and Bearsden) (Lab): I want to return to the capital slippage, cabinet secretary. Have you spent all of the capital slippage on other things?

John Swinney: It is certainly my plan to be able to spend all of that in the course of the financial year.

David Whitton: Okey-dokes.

John Swinney: The exception is that, clearly, I have to settle the budget with enough flexibility to cover the end-year flexibility that I have told

Parliament I will be required to put into the Treasury to allow me to avoid any implications on the 2010-11 budget of the reduction in the Department of Health capital baseline of £129 million. On that basis, I need to send an EYF contribution of approximately £40 million to the Treasury to ensure that we have enough EYF stock to avoid any impact from the reduction in the Department of Health capital baseline.

Obviously, I also need to ensure that we have sufficient budget cover in the event that any accounting adjustments are required after the close of the financial year and before the settlement of the accounts, which will probably be by the end of September.

With those two caveats, my answer is yes—I intend to spend all the slippage.

David Whitton: So, I am right in thinking that roughly half the slippage is being set aside for end-year flexibility—that £40 million of the £100-plus million is being sent to the Treasury.

14:30

John Swinney: No. I put the figures in the document only to make it clear that I must consider such matters in my budget management. I look to ensure that we manage within the budget totals that we have throughout the Government. That is a requirement of our Administration.

David Whitton: Does any of the changes that are being made help you to prepare for the impact of the next three years, in which you forecast budget cuts? Does any change now anticipate what is down the track?

John Swinney: There are several examples of our doing that to the extent that we can, given our limited financial flexibility. The investment in the Scottish investment bank contributes to long-term activities, as does the investment in affordable housing. The acquisition of land for the M74, the A80 and the Aberdeen western peripheral route avoids costs that we would have to fund in later years. The budget revision contains several examples of our trying to anticipate the situation, within the limits of our flexibilities.

Another major consideration is end-year flexibility. The view that maximising public expenditure at this stage in the economic cycle is beneficial is supported broadly across the political spectrum. If I were somehow to reserve money for later years—with the exception of the modest steps that I have taken with the Scottish investment bank, affordable housing and land acquisitions for major capital projects—I would be remitting funding that could be deployed on public spending in Scotland to the Treasury for end-year flexibility. I have an agreement with the Treasury

to use end-year flexibility up to the end of 2011, but I have no agreement beyond that. In the context of the wider pressures on, and the significant levels of, public debt, I would not be confident that resources that we deployed in end-year flexibility would necessarily be accessible in the fashion that we would want in the years to come.

David Whitton: Spending on pandemic flu and so on totals about £120.5 million. On what has that money been spent?

John Swinney: Some of the spending was on equipping us with what I might call the infrastructure to deal with pandemic flu, such as face-masks, antibiotic drugs, other equipment that is required and storage arrangements. A large proportion was spent on the vaccine and its delivery, the primary care response that has been required and the support that NHS 24 has been required to provide, to deal with an increase in the volume of activity. That is a summary of what the money was spent on.

David Whitton: I take a constituency interest in the reduction of £67.9 million in the Scottish Prison Service's budget. That budget has taken quite a hit. Has the transfer of money out of that budget to other activities contributed to a slowing in the Low Moss prison building programme?

John Swinney: No. The biggest transfer from the justice portfolio is the sum of £46.5 million that had been reserved for meeting the costs of legal action on slopping out. Essentially, we have been able to release that provision, which has supplied the predominant help with the costs of pandemic flu, although those costs have also been offset through a transfer of resources from firelink.

The Low Moss prison development is now under way—I recently saw the Cabinet Secretary for Justice on television cutting the first turf, if that is the right term—and carries the full support of the capital programme of the justice portfolio.

The Convener: The final question will be from Joe FitzPatrick.

Joe FitzPatrick (Dundee West) (SNP): I have a very quick question. Obviously, as one of the constituency members for Dundee, I am pleased that the Scottish Government has decided to forge ahead with the new forensic laboratory, which will secure much-needed public service jobs in Dundee. I should probably declare an interest by putting on record the fact that my partner works for the Scottish Police Services Authority and is looking forward to moving into the new building in the next few weeks. However, I want to ask the cabinet secretary what the thinking was behind the move from leasing to purchase of the new laboratory.

John Swinney: Essentially, the approach was driven by value-for-money considerations. Purchase of the building was assessed over the defined period of a finance lease as providing a comparatively better proposition for the public purse. Obviously, such an approach also satisfies the interests and requirements of the Dundee economy, where there has been a clear appetite to attract public sector employment. Our ability to deliver that for the city of Dundee has been welcomed.

The Convener: As there are no other questions, we will now move to item 2, which is the formal debate on the motion. I invite the cabinet secretary to move motion S3M-5736. He may make an opening speech if he so wishes.

John Swinney: I have nothing to add, so I will simply move the motion.

I move,

That the Finance Committee recommends that the draft Budget (Scotland) Act 2009 Amendment Order 2010 be approved.

The Convener: In inviting contributions from members, I remind all members of the time constraints that we face. Does no one wish to speak in the debate?

I invite the cabinet secretary, then, to make any final statement if he so wishes.

John Swinney: I have no further comments, convener.

Motion agreed to,

That the Finance Committee recommends that the draft Budget (Scotland) Act 2009 Amendment Order 2010 be approved.

The Convener: The committee will formally communicate its decision to the Parliament by way of a short report, which will provide a link to the *Official Report* of today's meeting. Are members content with that approach?

Members indicated agreement.

The Convener: Before we start the next item, I will allow a short suspension so that the officials can change over. I thank them again for their attendance.

14:38

Meeting suspended.

14:39

On resuming—

Public Services Reform (Scotland) Bill: Stage 2

The Convener: The next item is our final consideration of the Public Services Reform (Scotland) Bill at stage 2. I welcome back to the committee John Swinney, the Cabinet Secretary for Finance and Sustainable Growth, and his officials.

As with the proceedings on the bill during the past few weeks, we move straight to consideration of amendments. Our target for today is to finish consideration of the bill at stage 2.

After section 98

The Convener: Amendment 209, in the name of the cabinet secretary, is grouped with amendment 229.

John Swinney: Amendment 209 is intended to bring about a simpler, more consistent and more effective approach to dealing with complaints about public services. Amendment 229 makes a consequential change to the long title. The changes that will be made were recommended in the Crerar review in 2007, considered in a parliamentary debate, and considered in detail last year by the ad hoc Review of SPCB Supported Bodies Committee. That committee recommended that the Government introduce the required changes through an amendment to the Public Services Reform (Scotland) Bill at stage 2.

The provision will place Scotland as a world leader in its approach to the handling of public service complaints. First, amendment 209 gives Parliament a key role in approving a statement of principles concerning relevant complaints-handling procedures of bodies and persons that are listed in schedule 2 to the Scottish Public Services Ombudsman Act 2002. Secondly, the ombudsman will have powers to publish model complaints-handling procedures and to specify who must comply with them. That will allow the ombudsman the flexibility to design procedures for specific sectors and to target improvement where it is most needed. The ombudsman may make a declaration of non-compliance if a listed authority has not complied, and will have a duty to promote best practice, to co-ordinate training for relevant service delivery staff and to report on outcomes and on how lessons can be learned.

At the Finance Committee's meeting on 26 January, David Whitton asked about prisoner complaints; it might help if I respond briefly on that to make the position clear. The committee is aware that the ombudsman's role in relation to prisoner complaints is within the scope of the Scottish Parliamentary Commissions and Commissioners etc Bill. It will be for the

Parliament, through its consideration of that bill, to decide how best to ensure that the ombudsman's existing powers are adjusted to fully accommodate the prisoner complaints that were formerly dealt with by the Scottish Prison Complaints Commission.

In summary, amendment 209 confers new duties and powers on the ombudsman to ensure that bodies and persons within his remit deal with complaints simply, consistently, quickly and locally and that best practice in complaint handling is promoted and encouraged.

I move amendment 209.

Amendment 209 agreed to.

The Convener: Amendment 217, in the name of David Whitton, is grouped with amendments 218 to 222. I invite David Whitton to move amendment 217 and to speak to all amendments in the group.

David Whitton: Thank you, convener—I will do that, if I can find my speaking note.

The Convener: I am sure that we can—

Linda Fabiani (Central Scotland) (SNP): Do you want me to do it for you?

David Whitton: No, I am fine—luckily, I have found it. I am grateful for Linda Fabiani's offer of help; I hope that she will show the same support when we come to the vote in a minute or two, but I fear that I may be barking up the wrong tree.

Amendments 217 to 222 are intended to tackle a problem that the committee identified when it considered the issue of public sector pay in the summer of last year. Members will remember that we heard evidence from Unison in March about the problems that it has experienced in reaching timely settlements, especially for its members who are employed in non-departmental public bodies.

14:45

Unison pointed out that the negotiating process was tied very much to civil service process and the civil service pay unit, which deals not only with the normal civil service pay deal but with more than 40 separate agreements with non-departmental public bodies. Unison suggested the solution that there should be one negotiating table for the civil service and civil service-related NDPBs, and a separate negotiating group for those NDPBs that have little or nothing to do with the civil service. In his evidence to the committee, Dave Watson, senior officer of Unison, explained the advantages of such a system, which would enable human resources professionals from organisations such as Scottish Water and the Scottish Environment Protection Agency to operate on the employer side. Members will recall that the lack of HR

expertise in the civil service pay unit was criticised. The pay bargaining committee's approach would be like the approach that is taken in the local government health service negotiations. Of course, there would still be a role for the finance department of the Scottish Government.

A one-stop negotiating table for non-civil service NDPBs would speed up a process that is often dogged by delay. In paragraph 59 of its report on public sector pay, the committee quoted Unison's comment that the approach would be

"entirely consistent with Scottish Government policies around streamlined processes, efficient government and the Crerar review."

I remind members that the committee recommended without division

"that the Cabinet Secretary explores ways of reducing the number of bargaining areas and the practicability of direct negotiations with other representative bodies involved."

In a spirit of consensus, I offer the cabinet secretary a solution, which would reduce bargaining areas from the current 42 to just two, thereby streamlining the process and saving time and money into the bargain.

Amendment 217 would establish the non-departmental public bodies and public corporations pay bargaining committee and its remit. Amendment 218 would establish the committee's constitution and membership; amendment 219 sets out the procedure for orders; amendment 220 provides for the procedure on orders to establish the committee; amendment 221 provides for procedures to modify the list of bodies; and amendment 222 sets out the list of NDPBs and public corporations that would be covered by the new committee.

I move amendment 217.

Malcolm Chisholm: I declare an interest as a member of Unison. I support the proposals that David Whitton has put forward because of my experience of the existing pay and negotiating system. I am sure that I am not the only member whose constituents have been annoyed and frustrated by protracted negotiations that have led to long delays before pay settlements were agreed. Such issues were reflected in the Finance Committee's report on public sector pay, which was published before I joined the committee. The fundamental point is that the current process is lengthy, costly and has a detrimental effect on staff and therefore on the delivery of public services.

The proposals would streamline the pay process and avoid the time-consuming and expensive charade of local negotiations on matters that are really decided elsewhere. It is quite difficult to understand the current process, whereby there

appears to be local negotiation but everything has to be referred, sometimes many times, to a central point in the finance department. That is inefficient and costly. The objective of the amendments in David Whitton's name is very much in keeping with the Government's wish to streamline government and make it more efficient. The approach would reduce costs and bureaucracy and help to deliver better public services in Scotland. I am keen to support the amendments.

Jeremy Purvis: I am tempted by the amendments, which have been lodged in good faith as a result of evidence that the committee heard. However, I am worried that they could have unintended consequences. We have witnessed, through agenda for change, the difficulty of job matching across different functions and divisions in the health service. There is the potential for difficulty in trying to do that across all other public bodies.

I understand that the thrust of the amendments is to do with simplifying the negotiation process. That might be better done through a wider review of the Scottish Government's pay policy, in line with the committee's recommendation for a thorough review of pay bargaining mechanisms throughout Government and the role of the Government's finance department. It might be better to take forward reforms that I think we probably all want to see in such a context rather than through the bill.

John Swinney: I am always reluctant to turn down any offer of consensual assistance from Mr Whitton but on this occasion, although I have, as I will explain, some sympathy with the thinking behind amendment 217, I must recommend that the committee does not support it.

Amendment 217 seeks to build on trade union support for an all-embracing collective bargaining arrangement, which Unison has suggested to the committee. Under the proposals for a pay bargaining committee, Scottish ministers would, as members, become directly involved in NDPB pay negotiations; Mr Purvis talked about unintended consequences, and I certainly think that that is one.

Under existing arrangements, individual bodies have the freedom to negotiate their own pay settlements within the context of an overarching pay policy set by ministers. That raises an important point. Mr Chisholm referred to the inefficiency of some arrangements, which is partly a result of pay policy not being available to settle pay remits by 1 April and the protracted discussions that then arise. I assure Mr Whitton and the committee that, in all circumstances in which it is able to do so, the Government intends to ensure that pay policy is available in advance of

the start of the financial year so that proper discussions can be undertaken.

Our position is that ministers should not have a role in negotiations, because we are not the employers. Pay negotiations are properly undertaken between staff and the employers at the body in question. I also do not agree that it makes sense for the Government to impose its view of what the pay bargaining landscape should look like. Although we agree with the Finance Committee that it makes sense to have fewer pay bargaining units, we want to achieve that through consensus, not by imposition.

Last September, after a meeting with Unison, I asked NDPB employers for their views on how to achieve fewer pay bargaining units. They indicated that although they supported moving to fewer units, especially by reducing the number of very small units, they wished to retain the flexibility to agree pay arrangements that took into account their individual organisations' specific needs. We will continue to discuss those important matters with trade unions and the bodies concerned.

I assure the committee that we will continue to improve processes so that pay remits are agreed quickly and efficiently, which is fair to employees and the bodies themselves. There is really no excuse for dragging our heels on such matters.

Against the background of consultation and of progressive improvements in the current arrangements, we have to take the view that imposing pay bargaining arrangements by statute is not the right way ahead. I am also concerned that such an approach would, as Mr Purvis pointed out, carry with it pressures for pay harmonisation, with the inevitable cost implications that that would bring at a time when public bodies would simply be unable to afford them.

I acknowledge that David Whitton's objective is to simplify and streamline processes for settling pay across NDPBs. We are making progress with public bodies, their staff and staff representatives towards that objective, but we have further to go. However, we do not believe that imposing new arrangements by statute is the correct approach. On that basis, I invite David Whitton to withdraw amendment 217 and not to move the other amendments in the group.

David Whitton: I knew that it was too good to last and that the spirit of consensus would falter.

I hear what the cabinet secretary has said. However, a very strong case for streamlining the process was made to the committee, and amendment 217 seemed to be a good way of doing that. Just for the record, I point out that the Government's pay unit is apparently a month late in processing the agreement for the care commission, and staff at Skills Development

Scotland have still to receive a pay offer for 2009-10, even though the settlement date was October 2009. There is clearly a problem, and I believe that one of the ways of addressing it would be to simplify the pay bargaining process.

I hear what Mr Purvis has said and accept that he believes that we lodged these amendments in good faith. He says that the issue should be addressed in a different bill, but I still think that this bill, which is about public service reform, gives us an opportunity to do so. After all, reforming the way in which pay is negotiated and dealt with is a key element in all this.

As a result, I press amendment 217.

The Convener: The question is, that amendment 217 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)
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

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

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

Amendment 217 disagreed to.

Amendments 218 to 221 not moved.

After schedule 14

Amendment 222 not moved.

After section 98

The Convener: Amendment 231, in the name of Derek Brownlee, is in a group on its own.

Derek Brownlee: Amendment 231 is probably rather tortuous to read, but its purpose is relatively straightforward: it is to prohibit publicly funded bodies from spending money on public relations outwith their core remit—in effect, that is the Government-lobbying-Government argument. It does not seek to prevent public organisations from spending on public relations in its entirety. Spending on PR that is directly related to the organisations' functions would be untouched by the amendment. The amendment does not seek to prevent any public authority from participating fully in discussions in Parliament or providing evidence

to committees. The purpose is to draw a line around which forms of PR are acceptable and which are not. In what everyone accepts is an increasingly tight financial climate, preventing public bodies from spending money on PR that is not core to their functions seems a sensible move. That is what amendment 231 seeks to do.

I move amendment 231.

Jeremy Purvis: I understand the rationale behind amendment 231, but, as with David Whitton's amendments in the previous group, there could be unintended consequences. If I understand it correctly, the limit would make it illegal for communications staff to do what could be termed promotional activity to promote the policies of another public body. In my constituency, a local authority communicated on behalf of the health board under a shared initiative to transform older people's services. Unfortunately, that would have come within the scope of amendment 231, which would have made it illegal. I am not sure what the penalty would be if a public body were to breach that rule—Mr Brownlee might be able to say. I understand why the amendment has been lodged, but I do not think that it is that well drafted.

John Swinney: I understand the thinking behind amendment 231, which Mr Brownlee has explained, but I can see a number of legal and practical difficulties with the proposal as it stands. First, the definition of "public authority" is wide and not entirely clear, as it would include

"any person whose functions comprise or include functions of a public nature".

On the face of it, that would catch private contractors providing services that could be regarded as public functions, which might include anything from private prisons to private care homes. Without further definition, it is certainly not self-evident exactly what constitutes

"functions of a public nature"

in this context.

The definition of

"use of resources on public relations"

is also both wide and arguably somewhat subjective, as it includes

"work undertaken by communications or other staff"

and

"any other promotional activity".

If we intend to prohibit a public authority from incurring expenditure on certain types of activity, we need to be clear and precise about exactly what type of expenditure will be caught by that prohibition.

Finally, it is important that statutory public bodies continue to have the flexibility to do things that relate either directly or indirectly to the exercise of their functions. If any such body acts outwith its powers, it may be subject to judicial review by the courts.

15:00

If amendment 231 is intended to prohibit expenditure by public bodies that relates to the exercise of their functions but only indirectly, we are in danger of creating a very difficult and essentially subjective test of whether expenditure is lawful or unlawful. The distinction between expenditure that is directly related to a particular purpose and that which is indirectly related is by no means clear or straightforward.

I am therefore unable to support amendment 231 as it stands, although I fully agree with Mr Brownlee that there is a need for greater transparency in this area, as in others. An alternative approach would be to create an additional duty on ministers and public bodies to publish information annually about expenditure on public relations. That would fit in very well with the duties that Derek Brownlee has already proposed, and which the committee has agreed, to publish annually a range of financial information. That would mean that chief executives could be held to account by the Parliament and the public for the decisions that they and their organisations take, without giving rise to difficult legal issues about what expenditure should or should not be prohibited. If that approach commended itself to the committee, I would be happy to work with Mr Brownlee and the committee with a view to lodging a further amendment at stage 3. On that basis, I invite Derek Brownlee to withdraw amendment 231.

Derek Brownlee: It seems to be a rule of politics that an amendment drafted by the Government is always clear and exceptionally well drafted and that any amendment proposed by an Opposition member always contains a glaring loophole that will lead to the end of the world as we know it. Having said that, I understand some of the concerns that the cabinet secretary raised and the good point that Jeremy Purvis made about joint working, which none of us would want to be prohibited.

There is an issue that will become clearer over time as budgets are squeezed, but I am happy to withdraw the amendment and consider the cabinet secretary's offer on greater transparency and whether it might be more appropriate to redraft the amendment and try again at stage 3.

Amendment 231, by agreement, withdrawn.

The Convener: We will have a short suspension to allow Mr Ewing and his officials to take their seats. I thank the cabinet secretary and his officials for their presence and information.

15:02

Meeting suspended.

15:03

On resuming—

The Convener: I welcome to the committee Fergus Ewing, the Minister for Community Safety, and his officials.

Amendment 210, in the name of the minister, is grouped with amendments 212, 223 to 226 and 230.

The Minister for Community Safety (Fergus Ewing): Thank you convener. Good afternoon to you and fellow members.

Amendments 210 and 212 are designed to ensure that we have a regulatory regime for charities in which the public can have confidence. Both are the result of recommendations by the Office of the Scottish Charity Regulator.

Amendment 210 introduces a requirement that a charity that has a website must display certain information relating to its charitable status on such pages as may be specified in regulations. Websites are becoming a common way for the public to find out information about bodies and it is only right and proper that the public have as much information as possible about those bodies. By including websites in the list of documents on which a charity has to declare its status, we are ensuring that the public can be assured that they are dealing with a bona fide, properly registered and regulated charity.

I will now describe what amendment 212 seeks to do. We need to ensure that the regulatory regime that was put in place by the Charities and Trustee Investment (Scotland) Act 2005 is robust enough to deal with unscrupulous people who are or have been involved in the management of charities. The 2005 act allows the Court of Session to remove from their position a person who is in the management or control of a charity. As a result, they are disqualified from being a charity trustee in future. However, the power of the court applies only when the person is still in the management or control of the charity; if they have left the charity, or the body is no longer a charity, or it has ceased to exist, the power of the court no longer applies. That is wrong, because it allows a person to escape sanction on a technicality. If we are serious about effective regulation and protecting the charity brand in Scotland, we must ensure that someone who has been at it in a charity cannot escape the consequences of their

actions. The court must have the power to deem someone removed and, in so doing, disqualify them from being a charity trustee in future even if they are no longer involved in the management or control of their charity. I therefore urge the committee to accept the amendment.

Amendments 223, 224, 225, 226 and 230 are consequential changes to the bill as a result of amendments 210 and 212. Amendments 223, 224, 225 and 226 would add references to the 2005 act and define what that means; amendment 230 would amend the long title to ensure that it captures all the charity law amendments.

I move amendment 210.

Linda Fabiani: I was involved with the committee that put the OSCR legislation in place. It was always recognised that it would be sensible to see how things panned out a few years down the line and whether any legislative changes were necessary. It is useful that some of the anomalies that were forecast at the time have now been picked out.

The Convener: Minister, do you wish to respond?

Fergus Ewing: I do not wish to butter up those who were involved with it—more than one is present—but the 2005 act is a solid piece of legislation. As Linda Fabiani suggests, these relatively minor and technical amendments are designed to improve minor aspects of it.

Amendment 210 agreed to.

The Convener: Amendment 211, in the name of the minister, is grouped with amendments 213 to 216.

Fergus Ewing: The amendments are all recommendations for change that the Office of the Scottish Charity Regulator made in its recent annual report, following its experience discharging its functions. They are designed to assist charities in certain circumstances.

A key feature of our charity legislation is that it does not automatically award charitable status to any particular class of body, but neither does it exclude any type of body—except political parties—from being a charity. It is left to OSCR, our independent regulator, to decide whether a body meets the charity test. That applies as much to bodies that are already charities as it does to bodies that are applying to become charities. OSCR will look at those that are already charities under the rolling review to ensure that they continue to meet the charity test. When OSCR decides that a charity no longer meets the test, it has two options: it can direct the charity to make any necessary changes in order to meet the requirements of the test, or it can remove the charity from the register.

If OSCR issues a direction to a charity that no longer meets the charity test, setting out the changes that the charity must make—as it has done in the majority of cases—it is not able to take account of new information, a change in circumstances or an unforeseen event, and to change the direction. For example, if the charity had almost made the changes that OSCR had told it to make but lost the paperwork involved in a fire or flood, so that it was unable to put in place the final piece of the puzzle and to prove to OSCR that it had made the necessary changes, at present OSCR would have no option but to take it off the register. That does not seem right or fair and does not seem to fit with OSCR's duty to be a proportionate regulator. Is it not better that, in such a situation, the charity should be able to ask OSCR to vary the terms of the direction that has been issued—for example by giving the charity more time to comply with it? That is part of what amendment 211 seeks to allow.

The other part of the amendment gives a charity the right to request a review of OSCR's decision to issue a direction to it. Currently, charities do not have that right. A charity has the right to a review of a decision to remove it from the register, but only after it has not done or has refused to do what the regulator told it to do to meet the charity test. Surely it makes more sense to allow a review to be carried out earlier, after the direction has been given.

In short, amendment 211 does two things: first, it allows OSCR to vary or revoke a direction that has been issued to a charity; secondly, it gives the charity the right to a review of the decision to issue a direction to it.

Amendment 214 makes a change to the charity reorganisation provisions in the 2005 act, which allow charities that have outdated purposes to modernise them, as long as they do not move too far from the original purpose, and to make changes to their founding document, where it contains administrative provisions to which effect can no longer be given or that are no longer desirable. However, the provisions do not allow a charity to add a new administrative provision. That can have a detrimental impact on a charity that is trying to modernise its administration, as it allows only the removal or amendment of an existing provision. With amendment 214, we propose to rectify the difficulty. The amendment allows the insertion of a new provision that will enable the charity to be more effectively administered. To ensure that the amendment is not used as a means of getting around the restriction on substantially changing the purposes of the charity, the amendment prevents OSCR or the Court of Session from approving the reorganisation scheme if it would allow changes to the purposes that are not within the spirit of the constitution.

Amendment 215 introduces a new power for OSCR to approve a variation or removal of a restriction that has been placed on the use of an asset. That means that charities that were given funds for a particular purpose—for example a church that was given money to provide coal for the poor at Christmas—will be able to modernise those funds and put them to good use in a more modern context, subject to certain conditions and limitations. OSCR would not be able to approve the reorganisation if the charity had not taken reasonable steps to contact the original funder or donor, wherever possible. The amendment aims to give OSCR more power to approve the variation of the use of charitable funds, to allow them to be used more effectively for the benefit of the public.

Amendment 216 will allow OSCR to appoint additional charity trustees to help charities when they are unable to operate because they have a lack of charity trustees and no mechanism for appointing additional trustees. However, OSCR may appoint a charity trustee only if three conditions are met: first, the charity has insufficient charity trustees to appoint further charity trustees; secondly, it has no mechanism for the appointment of additional charity trustees in the circumstances; and thirdly, it has asked OSCR to act. The amendment will allow charities in that situation to become operational again, which would clearly be to the benefit of the public.

Amendment 213 delegates the power in amendment 216 to the Scottish Housing Regulator in respect of registered social landlords.

I move amendment 211.

The Convener: Mention of these ancient charities reminds me of the time when I was provost of Angus.

15:15

Linda Fabiani: My question is on amendment 216, under which OSCR can appoint charity trustees. I recognise the conditions that have been made, but will a charity retain the right to refuse a suggested trustee if it feels that the person is unsuitable for the role?

Fergus Ewing: Yes. My advice is that we would expect the charity to approach OSCR with the name of someone whom they would like to be appointed rather than OSCR making suggestions of individuals who may be unknown to the charity. The provision is designed to enable OSCR to work with a charity that has insufficient trustees to enable the charity to appoint more trustees and thereby continue to carry out its charitable purposes.

Linda Fabiani: Will that be noted in the operating agreement that OSCR has with charities in Scotland?

Fergus Ewing: I gather that it will be an operational practice. Indeed, OSCR has confirmed that to us, perhaps in anticipation of members' interest in the matter. That practice will govern OSCR's operational actions in this area. Plainly, no one would wish to impose unwanted or unwelcome trustees on a charity. In the kind of situation that the provision is envisaged to assist, I am sure that a trustee would be anxious to find a colleague who shared his or her interest in the charitable purposes. They would work together to see that the charitable acts and purposes can be continued.

The Convener: Do you wish to wind up, minister?

Fergus Ewing: No.

Amendment 211 agreed to.

Amendments 212 to 216 moved—[Fergus Ewing]—and agreed to.

Section 99—Charity trustees' indemnity insurance

Amendments 223 to 225 moved—[Fergus Ewing]—and agreed to.

Section 99, as amended, agreed to.

After section 99

Amendment 226 moved—[Fergus Ewing]—and agreed to.

Section 100 agreed to.

The Convener: There will be a short suspension to allow a changeover of officials.

15:17

Meeting suspended.

15:19

On resuming—

The Convener: I welcome back to the committee John Swinney MSP, Cabinet Secretary for Finance and Sustainable Growth, and his officials, for the conclusion of stage 2 proceedings.

After section 100

Amendments 66 and 67 moved—[John Swinney]—and agreed to.

The Convener: Amendment 80, in the name of Derek Brownlee, is grouped with amendment 110.

Derek Brownlee: I have no wish to get on the wrong side of a group of very important people,

and I recognise that special advisers have a role. Indeed, some of them have gone on to very distinguished careers—and some of them have gone into elected politics. Nonetheless, there is a serious issue in relation to expenditure on special advisers, and I am sure that all parties agree that there is a balance to be struck between how much can be spent on special advisers and the role of the civil service more generally.

I will pre-empt the minister, who will tell me that amendment 80 has a gaping flaw in it, which is that the Civil Service Order in Council 1995 is in the process of being amended. Having seen that, I lodged amendment 110, which would insert into the bill a prohibition on budget proposals that would fund more than 10 special advisers. That would achieve the same means by a different end, and I am sure that all members will accept that as a reasonable way to deal with the issue.

I move amendment 80.

David Whitton: I am not sure whether to declare a decade-old interest as a special adviser to the first First Minister. It was certainly a job that I was privileged to hold at the time.

It is interesting that we are debating this point, as it has been pre-empted by the Conservative party press office—presumably there are no special advisers there—which has already issued a press release headed “Conservatives aim to curb wages of spin”. The press release even names me as a member of this committee and a former special adviser, and wonders how I will be voting. In order to disabuse Derek Brownlee, I can say that I will not be voting in favour of his proposal, and for a very good reason. The number of special advisers was set at 12 for a particular reason. They are not all press officers. That might be how the Scottish National Party Government uses them, but I know that most of them in the previous Administration were policy advisers, and only one or two were press advisers. For that reason, I oppose the move by Mr Brownlee.

The Convener: We are certainly into, if not deep, then devious waters.

Tom McCabe (Hamilton South) (Lab): There is a degree of irony that Mr Brownlee should move such an amendment and concern himself with the number of special advisers, given that his party is never likely to be anywhere near government—unless, of course, he has plans to formalise his arrangement with the party of government. On the basis that that is not going to happen, however, I suggest that people with experience of such matters know that the number of special advisers was set for good reasons, and that there is no reason for changing it at the moment. I urge members to reject the amendments.

John Swinney: The two amendments in the group seek to reduce the ceiling on the number of special advisers who may be appointed by the First Minister at any one time from 12 to 10. Although I am entirely sympathetic to the thinking behind the amendments, bearing in mind that the present Administration has reduced the number of special advisers to 10, I do not think that there is a requirement for the measure to be put in place. We have no intention of appointing any more than 10 special advisers at any one time, and I am happy to give the undertaking that we will not do so during this session.

I point out that the Parliament approved a legislative consent motion—Derek Brownlee referred to it—in respect of the UK Constitutional Reform and Governance Bill on 28 January. Among other things, that bill, if passed, will remove the current ceiling of 12 on the number of special advisers who may be appointed by the First Minister.

Furthermore, it would be inappropriate for the Parliament to seek to bind the hands of any future Government, which would have to defend any decision to appoint additional special advisers and to incur expenditure in doing so. For those various reasons, I do not think that the issue is one on which it would be right for us to seek to legislate.

Amendment 80 also seems to raise issues of legislative competence.

For my part, I am happy to give an undertaking that the present Government will appoint no more than 10 special advisers at any one time for the duration of this session. I invite Mr Brownlee to withdraw amendment 80—also given the issue of legislative competence—and not to move amendment 110.

Derek Brownlee: It is interesting to see that I have managed to bring some unity to the committee, even if not quite in the way that I had intended. It is flattering to my good friends in the Conservative press unit to see how closely Labour members follow their actions but, unless something dramatic has happened since I came into the room at 2 o'clock, we are not in government and none of them is a special adviser.

I accept the cabinet secretary's comments in relation to the current Government, although I note the caveat that they apply only to this session. Often we seek in legislation to bind future Governments; that is not an alien concept. On amendment 80, I accept the point that was made about legislative competence and the legislative consent motion in respect of the Constitutional Reform and Governance Bill, so I seek the committee's leave to withdraw the amendment. However, I intend to move amendment 110.

Amendment 80, by agreement, withdrawn.

Amendment 110 moved—[Derek Brownlee].

The Convener: The question is, that amendment 110 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brownlee, Derek (South of Scotland) (Con)

Against

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)

Fabiani, Linda (Central Scotland) (SNP)

FitzPatrick, Joe (Dundee West) (SNP)

McCabe, Tom (Hamilton South) (Lab)

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

Welsh, Andrew (Angus) (SNP)

Whitton, David (Strathkelvin and Bearsden) (Lab)

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

Amendment 110 disagreed to.

The Convener: Amendment 111, in the name of Derek Brownlee, is grouped with amendment 112.

Derek Brownlee: These amendments are grouped together but are quite different in nature. Amendment 111 would, in practical terms, place the agreement between the Finance Committee and the Scottish Government on a statutory footing, allowing either the committee or the full Parliament to require specific information on budget proposals, either in relation to the financial unit in question or more generally. That would help to maintain the balance of power between Parliament and Government.

Amendment 112 is rather more detailed and reflects a section of the Finance Committee's report on the 2010-11 budget in relation to capital projects. The intention behind the amendment is to place on a legislative basis the requirement to provide information on capital projects over a longer-term horizon than has been the case so far. That has been a live issue in discussion of the 2010-11 budget. I understand that, inevitably, the further out we get from the current financial year, the more assumptions will creep into information that is held in government. When the committee agreed the section of its report to which I have referred, it accepted that, to some extent, there would be issues with the availability of information.

The purpose of amendment 112 is simply to place the requirement on a statutory footing. It is arguable that, in the same way, amendment 111 would allow the committee to make a request for whatever level of detail on whatever capital projects it wished. If the committee thinks that amendment 112 is too prescriptive to be part of primary legislation, it may be possible to achieve

the same result by approving an order under paragraph (b) of subsection (1) of the new section that amendment 111 would insert in the bill.

I move amendment 111.

Jeremy Purvis: I understand why Derek Brownlee has lodged these amendments and have considerable sympathy with both of them. However, amendment 111 does not necessarily strengthen the agreement between the Finance Committee and the Government, which is based on an understanding between the two bodies, given that the amendment would enable a majority of members of the committee at a particular time to vote to reduce the level of detail that we receive. We want to guard against that. I know that that is not at all the intention behind amendment 111, but I would like Mr Brownlee to reflect on that, because we want to increase the level of detail rather than reduce it. It would be possible to reduce the detail under the amendment, but it is harder to do that under the current agreement between the Government and the committee, which has evolved over time and is based on the Parliament's founding documents from the consultative steering group and the financial issues advisory group.

15:30

Amendment 112 could be presented in a stronger way. It relates to

"capital projects which the Scottish Ministers are undertaking",

but there is no definition of what that means even though, as we know, the vast bulk of capital projects in Scotland are carried out by bodies such as the health boards, Transport Scotland and other agencies that receive their funding from the budget but are not necessarily

"projects which the Scottish Ministers are undertaking".

For example, I do not think that amendment 112 would have allowed any information to have been provided on how the town centre regeneration fund—which was a capital initiative—was delivered, what its consequences were and how the resource was found to pay for it.

Even though the intentions are good, there are problems with both amendments, unfortunately.

Linda Fabiani: I have some concerns about amendment 112. Paragraph (a) of subsection (2) of the section that it would insert concerns

"projects which the Scottish Ministers are undertaking".

However, paragraph (d) is about the intention to commence capital projects, so we require more clarification about the point at which detail would be required to be set out. I am aware of the role of commercial confidentiality, not just in protecting

contractors but in enabling public works to get best value for money. I am also concerned that there is no detail about whether we are talking entirely about capital works costs or whether project costs would be included.

The amendment is generally flawed in that the information for which it asks is not clear enough to give any real terms of reference for any minister who was to lay out such information.

John Swinney: The present Government is committed to working closely and constructively with the Finance Committee and the Parliament as part of the budget process. I fully recognise and accept the importance of providing detailed and timely information in support of budget proposals to facilitate parliamentary scrutiny. There will always be scope for improvement in the way in which budget documents and supporting information are presented and I am happy to continue to work with the committee with that in mind.

We have already agreed to engage in a budget strategy phase with the Finance Committee at least once each parliamentary session to help to ensure that the Parliament has a proper evidence base to help with its scrutiny of future budget proposals. As part of the strategy phase that the committee announced on 9 February, my officials wrote to the convener on 3 February undertaking to provide a range of information, including information about progress against the national outcomes, efficiency and capital budgets.

Detailed written agreements and protocols are already in place governing the provision of budget information, including information on the cost of capital projects. I acknowledge that more can always be done to enhance that information and am happy to find other ways in which we can develop the capital information to the committee's satisfaction.

We have committed to provide regular updates to the Public Audit Committee on our major capital projects. Our infrastructure investment plan provides details of proposed infrastructure projects over a 10-year horizon. As Mr Brownlee correctly acknowledges, that information becomes less definitive the further out in the plan it moves, but there would undoubtedly be an opportunity for us to provide by agreement a strengthened information base on capital projects if the committee sought it.

Against that background, I am not persuaded that it is necessary or desirable to legislate for specific statutory requirements in this respect. However, I am more than happy to give a commitment that we will continue to work constructively with the committee and the Parliament with a view to achieving continuous

improvement in the quality, relevance and timeliness of the information we provide, particularly in relation to capital projects.

I hope that Derek Brownlee will be prepared to withdraw amendment 111 and not move amendment 112.

Derek Brownlee: I am grateful to members for expressing their views. On amendment 112, I appreciate what the cabinet secretary said about information on capital projects. We have seen the information that is provided to the Public Audit Committee, although—if memory serves me correctly—it is not broken down by financial year in every instance; in some multiyear projects there is no breakdown of spend by financial year, which would be helpful.

A balance must always be struck over how prescriptive primary legislation is. I entirely accept that amendment 112 might seem too prescriptive to some people. On the basis of what the cabinet secretary said, I am inclined not to move amendment 112. I am less inclined to seek leave to withdraw amendment 111, which would provide an important safeguard in the context of the Parliament's power in relation to the Government, by putting more power behind a request from the committee or the full Parliament.

On the point that Jeremy Purvis made, I do not think that amendment 111 can be fairly viewed as permitting the Parliament, by requesting less detail, to prevent the Government from providing the current level of detail. It is clear that amendment 111 would place a minimum requirement on the Government but would not prevent the Government from going above and beyond that, as indeed the current agreement does not prevent the Government from going beyond its terms. I do not share Jeremy Purvis's concern.

I press amendment 111.

The Convener: The question is, that amendment 111 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brownlee, Derek (South of Scotland) (Con)

Against

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 1, Against 6, Abstentions 1.

Amendment 111 disagreed to.

Amendment 112 not moved.

Section 101 agreed to.

Section 102—Orders and regulations: Parts 6 and 7

The Convener: Amendment 227, in the name of Shona Robison, is grouped with amendment 228.

John Swinney: Amendment 227 is a technical amendment, which will enable ministers to make necessary orders to ensure effective implementation of parts 6 and 7 of the bill. Amendment 228 is a technical amendment to the long title of the bill and is required to reflect the provisions in the bill as amended last week in relation to the Mental Welfare Commission for Scotland.

I move amendment 227.

Amendment 227 agreed to.

Amendment 81 moved—[Derek Brownlee]—and agreed to.

Section 102, as amended, agreed to.

After section 102

The Convener: Amendment 200, in the name of Derek Brownlee, is in a group on its own.

Derek Brownlee: Amendment 200 is a probing amendment.

In 2008, the regulatory review group published its interim report, which recommended replacing the existing regulatory impact assessments—it considered that such assessments happened only occasionally and were done in a box-ticking fashion—with new business impact assessments. The intention was that such assessments would be mandatory for all legislation and subordinate legislation that would have an impact on business, and to produce more focused assessments of the costs of legislation. Although the report was published in April 2008, we have yet to see any movement to business impact assessments.

In considering the bill, we have already taken into account the views of the regulatory review group, which has been a successful attempt to bring together people with interests in achieving better regulation. Its report was widely welcomed as a sensible contribution to the debate on regulation.

As I said, amendment 200 is a probing amendment. The aim is to chivvy the Government along. An amendment that I have lodged to

another piece of legislation would do rather more than chivvy the Government along; it would place a statutory obligation on it to produce business impact assessments. However, I hope that getting to that stage will be unnecessary, given that the regulatory review group's recommendations were not particularly controversial when they were produced.

I move amendment 200.

John Swinney: The Scottish Government already completes proportionate and justified full regulatory impact assessments. Those assessments include assessments of the impacts of proposed measures on the competitiveness of Scottish business that thoroughly analyse the sectors and the number of businesses likely to be affected and set out the associated costs and benefits to businesses. As a matter of course, completed assessments are laid before the Parliament and published on the Government's website. Codifying those established procedures in a limited fashion in the bill may inhibit the wider development and implementation of better regulation best practice.

We intend to go further by introducing changes to impact assessment arrangements that will enhance in a proportionate way how we work with businesses to develop legislative proposals. We intend to replace the existing RIA process with a business and regulatory impact assessment from 1 April 2010, as recommended by the regulatory review group chaired by Professor Griggs.

I understand the thinking behind amendment 200, but cannot recommend it to the committee. I hope that what I have said about the implementation of the regulatory review group's recommendations will persuade Mr Brownlee to seek to withdraw the amendment.

Derek Brownlee: I am grateful to the cabinet secretary for that clarification, which is welcome. The review group's recommendations were welcomed, and it will be good to see them put into practice. On the basis of what the cabinet secretary has said, I am content to seek to withdraw the amendment, but I would like to reflect on the specific details of what the Government will produce before I consider my position on my amendment to the other piece of legislation.

Amendment 200, by agreement, withdrawn.

Section 103—Short title and commencement

Amendment 186 moved—[John Swinney]—and agreed to.

Amendment 82 moved—[Derek Brownlee]—and agreed to.

Section 103, as amended, agreed to.

Long Title

Amendments 228 to 230 moved—[John Swinney]—and agreed to.

Long title, as amended, agreed to.

The Convener: That ends stage 2 of the Public Services Reform (Scotland) Bill.

15:44

Meeting suspended.

15:47

On resuming—

Scottish Parliamentary Commissions and Commissioners etc Bill: Financial Memorandum

The Convener: Item 4 is evidence on the financial memorandum to the Scottish Parliamentary Commissions and Commissioners etc Bill. I welcome to the committee Trish Godman MSP; David Cullum, head of the non-Executive bills unit; and Janice Crerar from the allowances and office-holders department of the Scottish Parliament. I invite our witnesses to make an opening statement.

Trish Godman (West Renfrewshire) (Lab): I am pleased to appear today in front of the Finance Committee in relation to the financial memorandum to the Scottish Parliamentary Commissions and Commissioners etc Bill.

In many respects, I am presenting the committee's own bill, as many of its provisions derive directly from a Finance Committee report from session 2. In relation to bodies that are supported by the Scottish Parliamentary Corporate Body, the bill takes forward the recommendations that responsibility for support should remain with the SPCB; that strategic plans should be required; that the SPCB should have additional budgetary control powers to improve financial monitoring; and that the SPCB should have powers to require the sharing of services and to determine the location of offices. In addition, the bill merges three bodies into one, with the loss of a commissioner; increases the corporate body's responsibilities by bringing the Standards Commission for Scotland and the chief investigating officer under its control; and transfers prison complaints to the Scottish Public Services Ombudsman, with the loss of a further commissioner.

I turn to the financial memorandum. There is no initial startling reduction in overall running costs as a result of the bill, largely because of the start-up costs for the new commission for ethical standards in public life in Scotland. However, there will be savings in the running of the new commission in future years, compared with the cost of running three separate bodies.

The early estimate is of reductions of between £18,000 and £25,000 in accommodation costs and of a further £10,000 from merging the chief investigating officer and Scottish Parliamentary Standards Commissioner posts, both of which were part-time. Significant savings will arise from the ombudsman taking over prison complaints, amounting to £163,000 in the first full year. In addition, the potential for future savings exists after the corporate body receives its new powers,

particularly through the sharing of services and premises.

It is important to note that the bill is not about the functions of the sponsored bodies; it fully respects their independence while delivering significant governance powers to the corporate body.

I am happy to answer any questions that the committee has. If I cannot answer them, I am sure that Janice Crerar and David Cullum will be able to—if not, we are in trouble.

Linda Fabiani: My first question is basic. The Scottish Parliamentary Standards Commissioner, the chief investigating officer and the Commissioner for Public Appointments in Scotland will be reduced to two groups, one of which will be the commission for ethical standards in public life in Scotland. That will leave the Commissioner for Public Appointments in Scotland separate. Why are we going from three bodies to two, rather than three to one?

David Cullum (Scottish Parliament Chamber Office): In effect, the number will be one. A new body with two commissioners, who have discrete functions, is being created. The principal reason for that is that the chief investigating officer's duties and role—

Linda Fabiani: I am sorry to interrupt, but I still do not understand. Will you explain that again? I am mixed up about what is happening with the Parliamentary Standards Commissioner, the chief investigating officer and the Commissioner for Public Appointments and how that relates to the commission for ethical standards in public life. I am not quite getting something.

David Cullum: The bill merges the existing positions of chief investigating officer and Parliamentary Standards Commissioner to form one new commissioner.

Linda Fabiani: Which is the ethical—

David Cullum: No—it is one new commissioner.

Linda Fabiani: Right. I am sorry—I will not interrupt again.

David Cullum: The existing post of Commissioner for Public Appointments is retained, but the posts will be put together under one commission, so the same support staff will work for two commissioners. Each commissioner's functions will be reserved to them, so one commissioner will be unable to interfere in the other commissioner's decisions about investigations. The commissioners will work together on the running and servicing of the commission to provide an office and staff. Does that make the situation clear?

Linda Fabiani: So we end up with one commission that has two commissioners.

David Cullum: That is correct.

Linda Fabiani: Okay. I will think about that for a wee while before I ask another question.

Tom McCabe: Paragraph 322 of the financial memorandum refers to increasing opportunities for the SPCB, office-holders and the Scottish Government to consider further procurement savings. Have any estimates been made of what those savings could be?

Trish Godman: The bill will not directly bring about such opportunities, but I understand that the corporate body shares several contracts with the Scottish Government, and arrangements are being made to allow office-holders to have access to contracts when they are let or re-let. That should negate the need for each office-holder to undertake individual and resource-intensive tendering exercises, which could result in more competitive fees being agreed.

Tom McCabe: Perhaps somewhat strangely, the Scottish Government has questioned the wording of paragraph 305, because it is concerned that it might be liable for appointment costs from 2013-14. For the record, will you confirm that the corporate body will meet those costs?

Trish Godman: I understand that the Scottish Government currently meets such costs centrally and that savings will result for the Government in future years. We seek a transfer of appointment costs, given that the corporate body will incur direct costs and that those costs are not included in the Standards Commission for Scotland's budget provision.

Malcolm Chisholm: Paragraph 301 itemises transitional costs, which include removal and furnishing costs, that amount to an estimated £48,000. Who will incur those removal and furnishing costs?

Trish Godman: The furnishing costs arise in part because the Commissioner for Public Appointments is currently in furnished accommodation, so the figure includes the costs of required furnishings and fittings. Business system changes include the need for a reprogramming of the telephone system, enhanced IT hardware and software upgrades. They also include the need to communicate changes of organisation and address to stakeholders, and to get in and get on with business planning, awareness raising, training and team development. There will also be a website redesign.

Malcolm Chisholm: Will there be scope for savings on items such as telephones and banking and payroll arrangements, given that there will be only one commission?

Trish Godman: There will be no savings initially, but there will be eventually.

The Convener: Does Linda Fabiani want to ask another question?

Linda Fabiani: Yes, now that I have had time to digest my misunderstanding of what I had read. I think that David Cullum was going on to explain this, but why was it felt necessary to maintain the two commissioners under one commission, rather than combining all the posts? Why was it felt necessary to retain the Parliamentary Standards Commissioner and the Commissioner for Public Appointments posts?

Trish Godman: That is a policy question, which is not relevant to the financial memorandum. The Review of SPCB Supported Bodies Committee deliberated and arrived at the conclusion to which you refer. We regarded that as the best way forward in terms of what the committee was charged with.

The Convener: It was a nice try, Linda.

Linda Fabiani: I ask for clarification, convener. Given that there is no lead committee for the bill, where do we get the opportunity to ask policy questions on it?

The Convener: The opportunity here is to look at the financial memorandum, but there may be other opportunities in Parliament for you—

Linda Fabiani: Where?

The Convener: You may have the opportunity through parliamentary questions or committees, or direct to the Scottish Parliamentary Corporate Body. The purpose today is purely to consider the financial memorandum.

Linda Fabiani: That is fine. It is just that I have questions but do not know where to put them if there is no lead committee.

The Convener: I am sure that we will find some way round that.

Trish Godman: Can I help? We can provide a briefing to the committee, if it wishes, to clarify the situation that Linda Fabiani asked about. However, we are just giving evidence on the financial memorandum today.

Linda Fabiani: But there must be recourse for parliamentarians to ask the type of question that I have asked.

The Convener: To reassure you, the issues to which you refer were considered by another parliamentary committee, so they have already been investigated.

Linda Fabiani: That is fine, but I am still entitled, not having been a member of that committee, to ask questions. Perhaps I will have

the opportunity to do so when the bill comes back to the Parliament.

The Convener: I am sure that you will.

Malcolm Chisholm: To whom are we sending our report on the financial memorandum?

James Johnston (Clerk): The committee will report directly to the Parliament.

Malcolm Chisholm: How will the bill progress through the Parliament?

James Johnston: There will be a stage 1 debate.

Malcolm Chisholm: Who will deal with the bill at stage 2?

James Johnston: The lead committee has not been agreed yet. It will be a matter for the Parliamentary Bureau to refer the bill to a committee. However, the lead committee is likely to be the Finance Committee.

Linda Fabiani: Oh, right, so I can ask my questions next time, then.

The Convener: This is a case of the biter bitten. Instead of our asking the witnesses questions, the questions are coming the other way.

Linda Fabiani: I am frightened now.

The Convener: Members have no more questions. Do our witnesses wish to make any final comments?

Trish Godman: No, thank you.

The Convener: Thank you for your presence and evidence today.

Decision on Taking Business in Private

Members *indicated agreement.*

Meeting closed at 15:59.

15:58

The Convener: The final item is to consider whether to take our draft report on the financial memorandum to the Scottish Parliamentary Commissions and Commissioners etc Bill in private at future meetings. I propose that we do so. Is that agreed?

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