

ENTERPRISE AND CULTURE COMMITTEE

Tuesday 1 March 2005

Session 2

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ENTERPRISE AND CULTURE COMMITTEE

6th Meeting 2005, Session 2

CONVENER

*Alex Neil (Central Scotland) (SNP)

DEPUTY CONVENER

*Mike Watson (Glasgow Cathcart) (Lab)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)
*Chris Ballance (South of Scotland) (Green)
*Susan Deacon (Edinburgh East and Musselburgh) (Lab)
*Murdo Fraser (Mid Scotland and Fife) (Con)
*Michael Matheson (Central Scotland) (SNP)
*Christine May (Central Fife) (Lab)
*Mike Pringle (Edinburgh South) (LD)

COMMITTEE SUBSTITUTES

Mark Ballard (Lothians) (Green)
Mr David Davidson (North East Scotland) (Con)
*Fiona Hyslop (Lothians) (SNP)
Margaret Jamieson (Kilmarnock and Loudoun) (Lab)
George Lyon (Argyll and Bute) (LD)

*attended

THE FOLLOWING ALSO ATTENDED

Allan Wilson (Deputy Minister for Enterprise and Lifelong Learning)

CLERK TO THE COMMITTEE

Stephen Imrie

SENIOR ASSISTANT CLERK

Douglas Thornton

ASSISTANT CLERK

Seán Wixted

LOCATION

Committee Room 1

Scottish Parliament

Enterprise and Culture Committee

Tuesday 1 March 2005

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

Items in Private

The Convener (Alex Neil): I welcome everybody to the sixth meeting of the Enterprise and Culture Committee in 2005 and remind people to switch off their mobile phones. We have received apologies from Susan Deacon, who will be slightly late. I welcome to the meeting the Deputy Minister for Enterprise and Lifelong Learning, who is here for items 2 and 3. I also welcome back our colleagues who have just returned from Africa.

Item 1 is to consider whether to take items 5 and 6 in private. I take it that that is agreed.

Members indicated agreement.

Christine May (Central Fife) (Lab): On a point of order, convener. I apologise for not noticing this until now—it is not on the agenda—but I need to update my entry in the register of members' interests and I would be grateful for a chance to do so at the earliest opportunity.

The Convener: Do you want to do so now?

Christine May: Yes. I advise the committee that I have been appointed as chair of the Scottish Library and Information Council, the activities of which are relevant to the committee's work.

The Convener: Congratulations.

Christine May: Thank you.

Subordinate Legislation

Renewables Obligation (Scotland) Order 2005 (draft)

14:03

The Convener: Item 2 is subordinate legislation. Allan Wilson, the Deputy Minister for Enterprise and Lifelong Learning, will move motion S2M-2403, that the Enterprise and Culture Committee recommends that the draft Renewables Obligation (Scotland) Order 2005 be approved.

The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson): Fairly technical provisions are before the committee today. I am accompanied by Neal Rafferty, who will be familiar to you and who is from the Scottish Executive Enterprise, Transport and Lifelong Learning Department's renewable energy team. He may be able to assist with any technical issues that concern the committee.

Members will be familiar with the background to the renewables obligation, which is a vital mechanism for us to achieve increased generation of renewable energy. It is important that that work continues as intended and that we remain responsive to the needs of the market here in Scotland and in the United Kingdom more generally.

We are proposing three changes to the existing order. First, the draft order extends eligibility to electricity from renewable sources from Northern Ireland and therefore introduces UK trading. There is a reciprocal provision in an order that is being made under Northern Ireland legislation. That will be of benefit to suppliers in the Northern Ireland market, but it will also give opportunities to suppliers and generators on this side of the water.

Secondly, the draft order raises the percentage of electricity that is to be generated from renewables to 15.4 per cent by 2015-16. That measure is designed to increase investor confidence in the stability of the renewables market as we move forward into that period. I believe that the increase will stimulate investor confidence in our intent in that regard.

Thirdly, the draft order secures the obligation buy-out fund by introducing mutualisation and changing the buy-out recycling procedure. That is principally a response to market demand. Mutualisation will protect generators and suppliers against shortfalls in the buy-out fund, while the change to the recycling provisions offers transparency and reduces uncertainty for suppliers in the market. Other amendments include the introduction of surcharges for late payments to the buy-out fund and the introduction of flexibility for

small generators. Those are mainly technical amendments that are designed to improve the operation of the ROS mechanism.

More generally, as the committee will know, work is under way on a more fundamental review of the operation of renewables obligations in Scotland. Among other issues, we will consider how the ROS mechanism might offer increased support for emerging and more expensive technologies. That action is a response to the committee's recent report on renewables.

In conclusion, the draft order is designed to improve the operation of the existing obligation and I am sure that it will increase market confidence in the mechanism.

I move,

That the Enterprise and Culture Committee recommends that the draft Renewables Obligation (Scotland) Order 2005 be approved.

The Convener: Do any members wish to speak?

Christine May: I would probably be failing in my duty to the Subordinate Legislation Committee if I did not draw to the attention of the Enterprise and Culture Committee the fact that a minor problem with the drafting was identified. Rather than withdraw the draft order, ministers have agreed to come back with an amendment to it at the earliest opportunity. The Subordinate Legislation Committee was content with that assurance and I am sure that this committee will watch for that amendment to come through.

The Convener: Members were apprised of the situation in the clerks' briefing.

Christine May: Indeed.

Richard Baker (North East Scotland) (Lab): My question might be obtuse—the minister might have covered it—but I wonder where the draft order that we are discussing today sits in relation to the overall review of the renewables obligation certificate structure, because the committee has flagged up its desire for extra incentives to be given to marine energy, for example, through that system.

Allan Wilson: I made passing reference to the current review, which should be seen as separate from the amendments that are contained in the draft order that we are discussing, which amend the operation of the existing ROS mechanism. The review will cover the concerns of members of the committee to ensure that emerging technologies—which, it could be argued, are more expensive—are properly catered for in the forthcoming renewables obligations.

The Convener: On Friday, an announcement was made on the new proposals for BETTA—the

British electricity trading and transmission arrangements. I think that I am right in saying that the draft order does not impact on those proposals, but I would like confirmation that BETTA does not impact on the draft order and that the draft order does not impact on BETTA.

Allan Wilson: No is the short answer. I discussed that yesterday with the National Grid Company. I wanted to ensure that the arrangements that we had in place would secure a smooth transition to BETTA, which, as the committee knows, is crucial to the future of Scottish renewables generating capacity and Scottish generating capacity more generally. The draft order will have no impact on that process, although the renewal of the renewables obligations and the review of those obligations will have an effect in the fullness of time.

The Convener: No other members wish to speak or ask questions. Do members agree to recommend approval of the draft order to the Parliament? I assume that the committee is unanimous in making that recommendation.

Members indicated agreement.

Further and Higher Education (Scotland) Bill: Stage 2

14:09

The Convener: We move to item 3, for which the minister will remain with us. I welcome Fiona Hyslop, who is exercising her right to move amendments and participate in the debate. However, the voting member for the Scottish National Party, in addition to me, is Michael Matheson.

This is the second day of stage 2 consideration of the Further and Higher Education (Scotland) Bill and I hope that we will complete our consideration of the bill today. This is a continuation of the debate that began last week. I remind members that today we will have to vote on some consequential amendments that were debated last week, as they relate to sections 9 and beyond. We got up only to section 8 last week. Amendments 16, 18 and 19 were debated with amendment 7, and amendments 5 and 21 were debated with amendment 1. When we come to those amendments, I will remind committee members that we have debated them and need only vote on them.

Sections 9 and 10 agreed to.

Section 11—Funding of fundable bodies

The Convener: Amendment 34, in the name of the minister, is grouped with amendments 15 and 17.

Allan Wilson: Section 11 places a duty on the council to consult the governing body of a fundable body before imposing terms and conditions when making grants, loans or other payments to it. Section 11 also places a duty on the council to consult other persons whom it considers appropriate before laying down such terms and conditions. The council deliberately has more discretion to decide in which situations consultation with others is appropriate. It is worth emphasising that a reference in statute to consultation implies consulting in a meaningful way and having regard to responses. That issue was raised last week.

The existing councils have expressed concerns that the first duty to consult governing bodies may be restrictive at times when money has to be passed to institutions quickly—for example, in allocating additional moneys or, as is the case now, end-year flexibilities in budgets. This year, we have made additional moneys available to support investment in capital and infrastructure. Under the bill as drafted, it is possible that an absolute duty to consult could hamper the

council's ability to allocate such sums late in the financial year. Amendment 34 will allow the council, when it considers it not expedient to consult, to set terms and conditions without consultation. As drafted, this places the onus on the council to consult unless it has good reason not to do so. That strikes what we see as the appropriate balance between ensuring that the council has the flexibility to react quickly to specific situations and safeguarding institutional input in terms and conditions of grant.

In considering amendment 34, we considered the council's other duties to consult in sections 11, 13 and 22. As drafted, those are currently limited to consultation "as it considers appropriate". After further consideration, we felt that there may be some ambiguity in that phrase. It is felt that a wide discretion as to how to consult is implicit in the duty to consult if the bill is otherwise silent on that consultation—that is, if the council has a duty to consult, it will do that in a way that it considers appropriate. It is important, in setting a duty to consult, that we do not deny the council the ability to act swiftly when it considers that necessary and appropriate—for example, in the allocation of end-year flexibilities. In general, consultation is desirable, but it may not be justified or possible in limited circumstances such as those which I have described. That has led us to lodge amendments 15 and 17, which propose to change the duty from "as it considers appropriate" to

"if it considers it appropriate to do so".

A similar amendment, amendment 20, has also been lodged in relation to section 22, but it has been grouped with other amendments to that section and will be debated later.

These amendments provide consistency at the points in the bill at which the council is given a duty to consult. That will ensure a correct balance, so that the council has the flexibility to act swiftly as required. At the same time, it must, as it does now, consult in an appropriate and meaningful way with others before making the important decisions that it will undoubtedly make. Clearly, the council is best placed to make that judgment, and it will be required to justify any decision not to consult in the limited circumstances that I described.

I move amendment 34.

14:15

The Convener: No members wish to comment on the amendments. Before I put the question, I remind members that, if any vote comes to the point at which I have to use a casting vote, I am not obliged to vote in any particular way other than to vote, as I usually do, on the basis of the merit of the arguments.

Amendment 34 agreed to.

Amendment 15 moved—[Allan Wilson]—and agreed to.

Section 11, as amended, agreed to.

Section 12—Persons with learning difficulties

Amendment 16 moved—[Allan Wilson]—and agreed to.

Section 13—Quality of fundable further and higher education

Amendment 17 moved—[Allan Wilson]—and agreed to.

Section 13, as amended, agreed to.

Section 14—Credit and qualification framework

The Convener: Amendment 35, in the name of the minister, is grouped with amendments 36 and 37.

Allan Wilson: Amendments 35 to 37 address issues raised by the committee in paragraphs 74 to 78 of its report, which relate to the role of the council in adopting and promoting a credit and qualifications framework. The changes that we propose should, I think, make our intentions clearer. We expect the council to take a central role in promoting the use of a credit and qualifications framework, such as the Scottish credit and qualifications framework, among fundable bodies. We do not expect the council to have a central role in promoting such a framework more widely. For example, the council will not be expected to promote such a framework to other bodies, such as schools or private providers.

In addition, our amendments also clarify that the council is not solely responsible for choosing which framework to adopt. That should be done having regard to guidance from ministers and to the views of fundable bodies among other relevant stakeholders. The amendments will create the correct balance of responsibility in regard to the promotion of a framework such as the SCQF, which is becoming an increasingly important part of the Scottish further and higher education landscape.

I move amendment 35.

Amendment 35 agreed to.

Amendments 36 and 37 moved—[Allan Wilson]—and agreed to.

Section 14, as amended, agreed to.

Sections 15 to 19 agreed to.

Section 20—Council to have regard to particular matters

The Convener: Amendment 33, in the name of Christine May, is in a group on its own.

Christine May: I draw members' attention to paragraph 73, on sustainable development, on the final page of the policy memorandum that accompanies the bill. It refers to the fact that the bill recognises the role that colleges and higher education institutions have to play in working towards a more sustainable Scotland. The bill ensures that fundable bodies make decisions at an appropriate level. However, the bill contains no reference to sustainable development. Amendment 33 seeks to amend section 20(1) so that the matters that councils should have regard to include sustainable development.

I move amendment 33.

Murdo Fraser (Mid Scotland and Fife) (Con): I listened with interest to what Christine May had to say. I have no difficulty with the bill referring to sustainable development but I wonder whether that subject is not already covered by section 20(1)(b), which says that the council should have regard to

"issues affecting the economy of Scotland".

Would not that automatically include sustainable development?

Apart from that point, I am relatively relaxed about the amendment.

Chris Ballance (South of Scotland) (Green): I support Christine May's amendment. I am not quite sure to which section Murdo Fraser referred.

Murdo Fraser: I referred to section 20(1)(b)—not section 21—which is just above the point at which the amendment would insert the reference to sustainable development.

Chris Ballance: In that case, I think that there is cause for making specific mention of sustainable development.

Allan Wilson: I thank Christine May for lodging amendment 33. Sustainability is an important theme for the Executive. As members know, when I was a minister in another department, I had responsibility for introducing particular regulations and I know that sustainability features strongly in the funding councils' joint corporate plan and that both councils are involved in supporting various initiatives in the further and higher education sectors.

I am supportive of the suggestion that a reference to sustainability be included in the bill. There is no problem with that, but we have some concerns about the amendment, some of which have been prompted by the funding councils.

As I have said, the funding councils support sustainable development but they have expressed concern about the way in which listing sustainable development as a core consideration alongside other fundamental concerns, such as skills and economic development needs, might affect their operations.

There is also a concern about the way in which sustainable development is defined. As members know, that concern is not peculiar to the funding councils. Definitions are contested in various areas and there is a danger that the new council would end up having to spend a degree of its time debating the meaning of sustainable development in relation to everything else that it does. There is also some concern that sustainable development might not be relevant to every function of the council.

We want to recognise the importance of sustainable development without placing unnecessary burdens on the council. We need to set duties that recognise what the council can achieve.

If Christine May is agreeable, I propose to take her amendment away and come back with an amendment at stage 3 that will meet her objective by referring to the duty of the funding council to take account of and have regard to issues of sustainable development in its funding decisions. We will either incorporate that in those terms in the existing paragraphs under section 20(1) or add an additional paragraph—as we had occasion to do in other legislation—to enshrine the principle of sustainable development in the work of the council.

The Convener: I ask Christine May to wind up and state whether she intends to press or withdraw amendment 33.

Christine May: I am grateful to the minister for his comments and also to Murdo Fraser for his suggestion. Sustainable development is partly covered by section 20(1)(b), but not entirely. It is not about woolly socks and jumpers entirely; neither is it about the economy alone. It is not purely about green issues but about building communities and about building appropriate skills within those communities.

Having listened to what the minister said and to his proposal to bring back something at stage 3—when we will have another chance to consider the matter—I propose not to pursue amendment 33.

Amendment 33, by agreement, withdrawn.

The Convener: Amendments 18 and 19, in the name of the minister, were debated with amendment 7 last week.

Amendments 18 and 19 moved—[Allan Wilson]—and agreed to.

Section 20, as amended, agreed to.

Section 21 agreed to.

Section 22—Consultation and collaboration

The Convener: Amendment 20, in the name of the minister, is grouped with amendments 30, 38, 39, 31, 21 and 22.

Allan Wilson: Amendment 20 has been lodged to clarify the nature of the duty on the council to consult. We wish to change that to be consistent with what I just said in relation to amendments 15 and 17. It will not always be appropriate to consult everybody listed in section 22(4). Amendment 20 will make it clear that the council must consult only when it considers that it is appropriate to do so.

Amendments 21 and 22 relate to section 22, which is on consultation and collaboration, and will give ministers the ability to alter, add to or remove from the list of bodies to be consulted or collaborated with, as listed in section 22(4). The Subordinate Legislation Committee highlighted the need for powers to amend and delete from the list of bodies. The Enterprise and Culture Committee also identified that point in its stage 1 report. As ever, we are pleased to be helpful and to take that point on board.

With amendments 38 and 39 we propose one other change to section 22, which will place an additional duty on the council to consult, where appropriate, bodies that are representative of staff and students in both sectors. That will include trade and student unions. Both councils, as members will appreciate, have close contact with those bodies. However, including that in statute will make clear our commitment that it is an essential part of the council's core business that should continue. Following the discussion last week about consultation with the National Union of Students, I have asked officials to investigate bringing forward an amendment at stage 3 that will refer more specifically to trade and student unions in that context.

I know that the aim of amendments 30 and 31 was raised by representatives of the council in evidence to the committee. However, amendments 30 and 31 would seriously alter the way in which the council wants to operate. The drafting of the bill deliberately requires the council in its operations to seek to secure the collaboration of the bodies that we list in section 22. The current duty to secure collaboration is not absolute because the council clearly could not do that itself. Instead, it makes it clear that ministers expect the council to seek to operate and to take forward all its activities in a collaborative manner. Amendment 30 seeks to remove that duty and instead require the funding council to collaborate only where it considers such an approach to be

appropriate. It is probably critical that as a default position the council should always look to work collaboratively with all the organisations mentioned and others that have been listed as important to its operations. That should be the nature of the beast.

14:30

Meanwhile, amendment 31 seeks to put a duty on ministers to secure collaboration of the bodies in section 22(4). I have to say that that is already covered in section 22(3), which puts a duty on those bodies to provide the council with any information that it reasonably requires to carry out its functions. The two provisions come together in the bill to provide the council with very important tools and mechanisms to secure the collaboration that we seek. Whether ministers are able to secure collaboration in any other way is open to debate. In any case, I argue that collaboration per se cannot be imposed from above; it must be built from below among stakeholders to the system. Collaboration is best driven and secured from the bottom up.

That is why the duty should rightly be on the council to seek to secure collaboration with others. As we seek to make the council more collaborative in its workings and to impose in section 22(3) a duty on other bodies to provide the council with relevant information, I ask Fiona Hyslop not to move amendments 30 and 31.

I move amendment 20.

Fiona Hyslop (Lothians) (SNP): I feel that the other amendments in the group are sensible and especially welcome amendment 38.

However, in speaking to amendment 30, I should point out that paragraph 81 of the committee's stage 1 report states:

"Whilst we welcome the provisions in the Bill to encourage collaboration between the funding Council and others, we consider that the Council—and other organisations—should have a statutory duty to collaborate, but that the duty to secure collaboration should be ministerial. In essence, a statutory duty to collaborate is different from a statutory duty to secure collaboration."

I listened with interest to the minister's comments and certainly agree that no one can force collaboration from above. It is a two-way process and has to be entered into voluntarily. Indeed, in many ways, it has to be organic. Anyone who works in the further and higher education sector will know that the purpose of collaboration is to secure innovative solutions. People cannot be force-fed in that respect.

I acknowledge the minister's remark that, as a default position, the council should always seek to collaborate. However, we find the same problem

not just in this bill but in bills in general. Parliament places duties on bodies to work with other organisations, but when there is a silo culture in Executive departments or in different councils, local authorities or bodies, it is extremely difficult to place a duty on one body to force another body to do something. The committee sensibly recognised that problem.

As far as amendment 31 is concerned, I believe that ministers should have a duty to secure collaboration. After all, as Esther Robertson quite clearly pointed out in her evidence to the committee at stage 1, it is not possible for the council to force collaboration. However, it is possible for ministers to ensure that those organisations that are included in the council's remit co-operate and collaborate. Amendments 30 and 31 respect the spirit and the letter of what the committee wanted at stage 1.

Mike Watson (Glasgow Cathcart) (Lab):

Amendment 38 will be a welcome addition to the bill, but I have one comment on it. Like me, the minister is a former full-time trade union official, so he will know about the disputes that can often occur between unions, never mind between unions and employers. Under amendment 38, the council will have to consult

"any body of persons which appears to it to be representative".

The word "appears" is wide open to interpretation—it could mean almost anything or almost nothing. I understand what the minister is trying to achieve and I support that but, to employ the minister's argument in relation to the term "sustainable development" in amendment 33, the amendment is not tightly enough defined. Although I do not advocate voting against amendment 38, it needs to be tightened up, perhaps at stage 3.

Murdo Fraser: For clarification, are we dealing with amendments 21 and 22?

The Convener: Yes. We are debating amendments 21 and 22, as well as amendments 30, 38, 39, 31 and 20.

Murdo Fraser: I am grateful for that, because I wish to speak against amendment 22, although the minister did not refer to it in his comments.

Amendment 22 would give the Scottish ministers the power to modify by order sections 22(4) and 22(5). Section 22(4) is a list of the bodies with which the council should seek to collaborate. At present, under section 22(4)(j), ministers may add other names to the list, but amendments 21 and 22 will remove paragraph (j) and replace it with a power to modify the list. In other words, ministers could by order remove from the list any of the bodies that appear there. The committee should

always be jealous of the rights and powers of the Parliament and, wherever possible, restrict ministers' powers, except where they are absolutely necessary. It would be adequate for ministers to have the power to add to the list, but I would be reluctant for ministers to have the power to remove from the list any of the bodies that currently appear there. I would be interested to hear the minister's views on that issue in his summing up.

Christine May: In view of what Murdo Fraser has just said, I seek clarification on one point. Would an order that changed the list be subjected to parliamentary scrutiny?

Allan Wilson: The order would be subject to the negative procedure, so the Parliament would have the opportunity to scrutinise it. We were asked to alter the bill by the Subordinate Legislation Committee because we had given ourselves powers to add to the list, but not to amend it more generally. I suppose that one of the august bodies that are listed might cease to exist, at which point we would want to amend the list to delete a body rather than to add one. I assure Murdo Fraser that there is no hidden agenda to restrict the bodies that the funding council should consult.

I agree with Mike Watson's point. In the wake of the committee's deliberations on the matter, I asked my officials to consider the terminology that is used and the references to the obligations that will be imposed on the council to consult with trade and other—principally student—unions. I will come back to the committee on that. The wording, I am reliably informed by my colleagues, is required so that ministers fulfil their legal obligation to be seen to be acting reasonably—something that I know should go without question in these parts—hence the reference to “appears” in the amendment. The phrase

“appears to it to be representative”

is deemed to be most flexible in terms of any test of reasonableness that may subsequently be applied—so there you go. The substantive point is one with which I would concur. As I said in my preamble, it is one that I would want to come back to the committee on, so that the wording is as definitive as it can be while retaining at least the appearance of reasonableness.

I assume that Fiona Hyslop is having some second thoughts about her amendments. I have asked her not to move them, on the reasonable grounds that the duty that we seek to impose of seeking to collaborate is the most appropriate in the circumstances. Amendments 30 and 31, as Fiona Hyslop would recognise, would leave the default position as being that there was no such duty on the council to collaborate. I suspect that that is not what she wants.

Amendment 20 agreed to.

Amendment 30 moved—[Fiona Hyslop].

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

Members: No.

The Convener: There will be a division.

FOR

Matheson, Michael (Central Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)

AGAINST

Baker, Mr Richard (North East Scotland) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
May, Christine (Central Fife) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)

ABSTENTIONS

Ballance, Chris (South of Scotland) (Green)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 30 disagreed to.

Amendments 38 and 39 moved—[Allan Wilson]—and agreed to.

Amendment 31 not moved.

Amendment 21 moved—[Allan Wilson].

The Convener: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Baker, Mr Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Matheson, Michael (Central Scotland) (SNP)
May, Christine (Central Fife) (Lab)
Neil, Alex (Central Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)

AGAINST

Fraser, Murdo (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 8, Against 1, Abstentions 0.

Amendment 21 agreed to.

Amendment 22 moved—[Allan Wilson].

14:45

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

Members: No.

The Convener: There will be a division.

FOR

Baker, Mr Richard (North East Scotland) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Matheson, Michael (Central Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Pringle, Mike (Edinburgh South) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)

AGAINST

Fraser, Murdo (Mid Scotland and Fife) (Con)

ABSTENTIONS

Ballance, Chris (South of Scotland) (Green)

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

Amendment 22 agreed to.

Section 22, as amended, agreed to.

Section 23—General powers

The Convener: Amendment 23, in the name of the minister, is grouped with amendments 24 and 25.

Allan Wilson: Amendment 23 is a technical amendment that removes doubt about whether there is an absolute prohibition on the council issuing guarantees on indemnities, and it allows for that with ministerial consent. That doubt, which is also present in the 1992 act, has caused some practical difficulties for the existing councils, as many standard commercial contracts include a requirement for indemnities. In practical terms, ministers will delegate authority to the council for such standard commercial contracts through the financial memorandum. The committee will note that, under the amendments, giving any guarantee or indemnity and creating any trust or security will no longer be linked to property that is derived from Scottish ministers' funding. Specific consent will be required before the council can charge any asset or security or, with the exception of the standard commercial contract, give any guarantee, indemnity or letter of comfort or incur any other contingent liability.

I move amendment 23.

Amendment 23 agreed to.

Amendments 24 and 25 moved—[Allan Wilson]—and agreed to.

Section 23, as amended, agreed to.

After section 23

The Convener: Amendment 32, in the name of Fiona Hyslop, is in a group on its own.

Fiona Hyslop: Amendment 32 raises an issue that is of concern to the higher and further education bodies in relation to another bill that is before the Parliament. Members who have

followed the progress of the Charities and Trustee Investment (Scotland) Bill will be aware of the concern about the third-party right of direction and the definition of what organisations are charities. I wrote to the minister when I wanted to lodge the amendment in order to raise the issue. The Further and Higher Education (Scotland) Bill contains clear directions for the council over further and higher education bodies, and we need to send out a strong message and ask the minister to liaise with Malcolm Chisholm to ensure that colleges, in particular, do not fall foul of the Charities and Trustee Investment (Scotland) Bill because of what we are doing in this bill.

Because of their constitutions, universities are autonomous bodies that have more protection than colleges have. I know that colleges have concerns about the audit inspection of accounts, which is a provision of the Charities and Trustee Investment (Scotland) Bill. I would be interested to hear the minister's comments. We would not want—either through the Charities and Trustee Investment (Scotland) Bill or through the Further and Higher Education (Scotland) Bill—to put the charitable status of any further education institution in jeopardy. I am sure that the Executive would not want to do that either.

The Charities and Trustee Investment (Scotland) Bill is the most appropriate place in which to address such concerns. However, I lodged amendment 32 to raise those concerns now. If necessary, the amendment could be regarded as an insurance policy to ensure that further education colleges in particular are not affected by third-party right of direction that then affects their future charitable status.

I move amendment 32.

Murdo Fraser: I am grateful to Fiona Hyslop for raising this issue. She is right to do so and has identified a genuine concern. I will be interested to hear the minister's response.

However, for two reasons, I do not think that amendment 32 is appropriate. First, the correct forum in which to deal with the issue is the debate on the Charities and Trustee Investment (Scotland) Bill and not the debate on the Further and Higher Education (Scotland) Bill. I understand that that is the view of the Association of Scottish Colleges.

The second reason has to do with parliamentary procedure. The bill that we are discussing today is ahead of the Charities and Trustee Investment (Scotland) Bill in the queue. Referring to a bill that has yet to reach the end of stage 1 would be inappropriate. We do not know whether the Charities and Trustee Investment (Scotland) Bill will ever become law. The chances are that it will, but it might not.

However, the issue that Fiona Hyslop raises is important and we should address it.

Christine May: I wanted to make broadly the same points as Murdo Fraser has made. I will not repeat them; all I will say is that I agree with him.

Allan Wilson: I welcome amendment 32, which is an entirely legitimate probing amendment to elicit a response on the Executive's stance on this issue. The amendment also gives us an opportunity to explore the issue in committee.

I can give Fiona Hyslop complete assurance that the Executive is well aware of the issue. Not only Ms Hyslop but the Association of Scottish Colleges and Universities Scotland have written to ministers recently about the prospective implications of the definition of charities in the Charities and Trustee Investment (Scotland) Bill—implications that might militate against the educational institutions.

Officials in my department are working with the team that is working on the Charities and Trustee Investment (Scotland) Bill to establish precisely what can be done to protect the interests of universities and colleges. However, as Fiona Hyslop would acknowledge and as Murdo Fraser has said, agreeing to amendment 32 would clearly be bad practice procedurally. The correct place for such a change would be the Charities and Trustee Investment (Scotland) Bill. I am sure that Fiona Hyslop would agree that it would not be good practice for a bill to deal with changes that might appear in future legislation. I would argue that the Further and Higher Education (Scotland) Bill cannot confidently predict the way in which Parliament will determine the separate issues to be set out in the Charities and Trustee Investment (Scotland) Bill. Because of the concerns over the potential impact of the Charities and Trustee Investment (Scotland) Bill, changes could be made to the provision to which amendment 32 relates. We should not pre-empt that process.

Amendment 32 is a legitimate probing amendment. We are trying to find a solution to the issue that it raises. If Fiona Hyslop has continuing concerns, it would probably be best for her to lodge amendments directly to the Charities and Trustee Investment (Scotland) Bill rather than to the Further and Higher Education (Scotland) Bill. I therefore urge Fiona Hyslop to withdraw amendment 32.

I assure Fiona Hyslop that the office of the Deputy First Minister will continue to liaise with her and the committee to keep everyone advised on progress and on the implications for the higher and further education sector, if any, of the definition of charities in the Charities and Trustee Investment (Scotland) Bill. I assure Fiona Hyslop that we take the issue seriously—not least

because of the possible financial implications for the institutions concerned.

Fiona Hyslop: I thank the minister for his assurances—there are indeed major financial implications. As a former business manager who is used to timetabling pieces of legislation, and as a former member of the Procedures Committee, I acknowledge that we would not want to set the precedent that has been mentioned. However, it is appropriate to raise the issue during discussions on the Further and Higher Education (Scotland) Bill, because it will greatly affect the sector. We have to be alert to the appropriate ways of addressing issues when different bills are running concurrently.

I look forward to further communication with the minister and I will not press amendment 32. However, we obviously have to keep a vigilant eye on the progress of the Charities and Trustee Investment (Scotland) Bill.

Amendment 32, by agreement, withdrawn.

Sections 24 to 30 agreed to.

Schedule 3

AMENDMENTS OF ENACTMENTS

The Convener: Amendment 26, in the name of the minister, is grouped with amendment 27.

Allan Wilson: Amendment 26 modifies the Further and Higher Education (Scotland) Act 1992. It is a purely stylistic amendment and maintains the consistency of style used in the 1992 act. It has no effect on the substance of the bill.

Amendment 27 relates to schedule 3, which deals with the consequential amendments to other legislation necessary as a result of the bill. The Education (Graduate Endowment and Student Support) (Scotland) Act 2001 refers to sections 4 and 40 of the 1992 act to define “publicly funded institution” for the purposes of the 2001 act. Sections 4 and 40 of the 1992 act will be repealed by section 6(2) of schedule 3 to the bill. The equivalent provisions in the bill are those in section 11. The 2001 act will therefore refer to section 11 of the bill when it is enacted.

I move amendment 26.

Amendment 26 agreed to.

Amendment 27 moved—[Allan Wilson]—and agreed to.

Schedule 3, as amended, agreed to.

Section 31 agreed to.

Section 32—Orders and regulations

The Convener: Amendment 28, in the name of the minister, is in a group on its own.

Allan Wilson: Amendment 28 is a response to the recommendations of the Enterprise and Culture Committee and the Subordinate Legislation Committee, which we have discussed. It will mean that the order-making power under sections 5(7) and 7(1) will use the affirmative procedure. That will provide an appropriate level of accountability for any decision to create or remove fundable bodies or to change the definition of fundable further and higher education.

I move amendment 28.

Christine May: I want to express the gratitude of all members of this committee and, I suspect, the Subordinate Legislation Committee, to the minister for honouring the promise that he made when we raised the matter with him originally.

Amendment 28 agreed to.

Amendment 5 not moved.

Amendment 29 moved—[Allan Wilson]—and agreed to.

Section 32, as amended, agreed to.

Sections 33 and 34 agreed to.

Long title agreed to.

The Convener: That ends our stage 2 consideration of the bill. It is fair to say that the bulk of the committee's stage 1 recommendations were implemented at stage 2. I thank the minister for his co-operation.

Allan Wilson: I am happy to liaise with the committee between now and stage 3 on the matters that we have discussed at stage 2.

Scottish Rugby Union

15:00

The Convener: Item 4 is consideration of issues arising from the discussions at our last meeting with a range of representatives from the Scottish Rugby Union. I remind members that we are in public session—we do not move into private session until item 5.

The purpose of this session is threefold: first, to decide whether to invite other appropriate people to give evidence on the subject and, if so, whom; secondly, to decide whether to prepare some kind of commentary or report; and thirdly, if so, to give the clerks a steer as to the first draft.

Christine May: What we heard last week centred on an event that is still to happen, which will determine the future governance structure of Scottish rugby. A committee report would be premature at this point. What could we say other than that we await with great interest the outcome of the meeting? We know that governance is a key issue, but I am not sure that if we were to say so, it would add a huge amount to the debate on the future of Scottish rugby.

The Convener: Are you suggesting that we carry over the item until there are further developments? Are you suggesting that we do not make formal comment until after that meeting happens?

Christine May: I am curious to hear what other members think of my comment. I am an observer in all of this. Unlike Susan Deacon, I know very little about the internal workings of the SRU. I will be guided by other members on the subject.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I do not profess to be an expert on the internal workings of the SRU. The important decision that the committee has to take is whether—consciously and deliberately—to express an opinion that would predate the key decision point in April. We should say something in advance of the meeting, but if we do, we should tread carefully. It would be wrong of us to be prescriptive in any sense about the detailed structure of governance in the governing body of any sport.

That said, we should be prepared to say something along the lines of, "We state our desire that whatever arrangements are put in place comply with the requirements of UK Sport"—that is the correct terminology. Colleagues will recall the range of the discussion that took place last week. On the face of it, all the witnesses seemed to indicate that the arrangements should be compliant in that way. Although all the witnesses

seemed to indicate that there is a need for one body to oversee the sport, it is clear that there are different views about how to get there and what the body might look like.

As I said, it is absolutely up to those who will be at the meeting in April to decide on the detail and to put flesh on the bones. That said, it would be proper for us to note our concerns and say that we expect that the requirements that UK Sport has set down should be met.

The Convener: Much of the discussion hinged on the working party report, which I think is due to be published this week. I got the feeling from the first panel of witnesses—Fred McLeod, Gordon Dixon and Ian McGeechan—that they were of the view that there should be one governing body. Phil Anderton underlined that and stressed that much of the problem, if not the whole problem, was caused by there being two bodies governing the sport. I was not totally convinced when I heard the two members of the SRU general committee, particularly the one who is a member of the working party, say that that will happen in the short term.

There are two issues. First, we are involved because of the importance of rugby and because the Scottish public sector, through sportscotland, supports the Scottish Rugby Union to the tune of approximately £0.5 million every year. We are responsible for ensuring that a not insubstantial amount of public money is wisely invested.

The second point is about meeting UK Sport's guidelines on governance. It would be reasonable for the committee to say at this stage that, in return for continuing public sector support through sportscotland, we expect the SRU to implement those guidelines sooner rather than later, and that we reserve the right to revisit the situation. We do not need a detailed report or any further evidence at this stage; I think that we have probably heard enough to be able to say that.

Our job is to make sure that public money is being invested wisely. If there is more than one governing body, it is quite clear that there will be a repeat of past problems. It is reasonable for the committee to say that.

Christine May: I will take another bite at the cherry. I think that you are right. The committee discussed this matter and heard from the witnesses because there was concern over the future of Scottish rugby. Whatever we say about governance, we should be clear that there is a need to sustain the professional sport, and to grow players through schools and the amateur clubs for the future of rugby. If the governance arrangements do not allow both those strands of the game to operate effectively, the future is still in doubt. If it is appropriate for the committee to say

that—and I think that it probably is—we should say it, assuming that the other members agree with me.

The Convener: Would it be reasonable to suggest that we write a formal letter to the SRU along those lines? There has to be some kind of response from last week's meeting and, given the level of co-operation that we received from all who participated, it should be a formal one. If the committee is quite happy to delegate it to Mike Watson and me to approve a letter reflecting the view of the committee, we will do that. Is everyone happy to agree to that?

Members indicated agreement.

The Convener: We will copy the letter to the minister and to sportscotland. Is that agreed?

Members indicated agreement.

The Convener: That probably covers that item so if everyone is happy, we will continue in private for items 5 and 6.

15:08

Meeting suspended until 15:15 and thereafter continued in private until 15:46.

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