



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 24 April 2012

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EDUCATION AND CULTURE COMMITTEE

12th Meeting 2012, Session 4

CONVENER

*Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

*Neil Findlay (Lothian) (Lab)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)

*Marco Biagi (Edinburgh Central) (SNP)

*Neil Bibby (West Scotland) (Lab)

*Joan McAlpine (South Scotland) (SNP)

*Liam McArthur (Orkney Islands) (LD)

*Liz Smith (Mid Scotland and Fife) (Con)

*Jean Urquhart (Highlands and Islands) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Fiona Hyslop (Cabinet Secretary for Culture and External Affairs)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 4

Scottish Parliament

Education and Culture Committee

Tuesday 24 April 2012

[The Convener *opened the meeting at 10:01*]

National Library of Scotland Bill: Stage 2

The Convener (Stewart Maxwell): Good morning. I welcome members to the 12th meeting of the Education and Culture Committee in 2012 and remind members and the people in the public gallery to ensure that all mobile phones and other electronic devices are switched off at all times.

No apologies have been received—we have a full turnout of committee members.

Our first item of business is to consider the National Library of Scotland Bill at stage 2. We are joined by the Cabinet Secretary for Culture and External Affairs, Fiona Hyslop, and her officials. Members should note that all questions should be directed to the cabinet secretary, because officials cannot speak at stage 2. I welcome to the meeting the cabinet secretary and David Seers, who is the head of cultural excellence in the Scottish Government; Carole Robinson, who is the bill team leader; Greig Walker of the directorate for legal services; and Max McGill from the office of the Scottish parliamentary counsel.

Members have the marshalled list of amendments and the groupings of amendments. We will take in turn the amendments on the marshalled list.

Section 1—The National Library of Scotland

The Convener: Amendment 1, in the name of the minister, is in a group on its own.

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): Amendment 1 will give equal legal status to the Gaelic name for the National Library of Scotland, which is Leabharlann Nàiseanta na h-Alba. It will insert the Gaelic name directly after the English name in section 1. The amendment acknowledges the importance of the Gaelic language and Gaelic culture, and is in accordance with the Government's principle of according the Gaelic and English languages equal legal respect. It will allow the National Library to use its Gaelic name when it enters legal contracts.

I move amendment 1.

Jean Urquhart (Highlands and Islands) (SNP): I am happy to welcome amendment 1.

Amendment 1 agreed to.

Section 1, as amended, agreed to.

Schedule 1—NLS

The Convener: Amendment 2, in the name of the minister, is in a group on its own.

Fiona Hyslop: Following the constructive debate on the minimum board size of the National Library during stage 1, and to address concerns that were raised by the National Library, the Faculty of Advocates and the Scottish Library and Information Council, I gave a commitment during the stage 1 debate to lodge an amendment to increase from six to eight the minimum number of board members in order to give the National Library board a range of between nine and 14 members, including the chair. The committee's stage 1 report looked for assurances that the Scottish Government would consult all relevant parties in respect of that matter. I give my assurance that the National Library, the Faculty of Advocates and the Scottish Library and Information Council have been consulted on the number and that all the organisations—most important of which is the National Library—are content with the increase in the minimum number of board members from six to eight.

I move amendment 2.

Liam McArthur (Orkney Islands) (LD): I welcome the approach that the cabinet secretary has taken throughout stage 1, which has culminated in amendment 2, which I hope will be helpful in the longer term. I am conscious of the cabinet secretary's undertakings on managing a smooth transition.

Liz Smith (Mid Scotland and Fife) (Con): I, too, welcome amendment 2. We were all struck at stage 1 by the professionalism and expertise of many members of staff of the National Library of Scotland, particularly people who are on the board. At a time when we have agreed that there will be a huge amount of change in the National Library of Scotland, it is important that we garner that expertise and ensure that it drives us forward.

We debated whether that could happen through co-options on to the committee; to some extent it can, but wider scope will allow for the greater expertise that is the hallmark of the National Library of Scotland, and I am grateful to the cabinet secretary for working on that.

The Convener: I, too, welcome amendment 2. All committee members supported the change when we discussed the stage 1 report, and we got a strong feeling from members of the current NLS board about the necessity for such a change, so I

am grateful to the Government for lodging amendment 2.

Fiona Hyslop: I welcome the comments from members; Liz Smith and Liam McArthur raised the same point at stage 1. In the letter that I wrote to the convener on 27 March, I explained that we were proposing that five members of the existing board carry on as members, which will address some of the transition issues that the committee raised.

Amendment 2 agreed to.

Schedule 1, as amended, agreed to.

Section 2—Functions of NLS

The Convener: Amendment 3, in the name of the minister, is in a group on its own.

Fiona Hyslop: Amendment 3 has been lodged to clarify the National Library of Scotland's function in promoting collaboration and the adoption of good practice. It takes up a point that was raised in the response from the Chartered Institute of Library and Information Professionals in Scotland to the committee's call for evidence and in feedback from the committee.

Amendment 3 will revise the wording of section 2(2)(d) to clarify that the National Library's function is to promote collaboration with other organisations that provide library and professional services, as well as between other organisations. NLS currently undertakes that function with a variety of local authorities, national bodies and educational institutions. Library staff are members of different forums and use their experience to share good practices throughout the sector. The bill's current wording could be interpreted solely as enabling NLS to act as a facilitator rather than to be actively involved. Amendment 3 provides clarity, as other organisations such as CILIPS, the Scottish Library and Information Council and the Scottish Confederation of University and Research Libraries also play important roles in sharing good practices with the library community.

I move amendment 3.

Amendment 3 agreed to.

Section 2, as amended, agreed to.

Section 3—Acquisitions, deposits and disposal of objects

The Convener: Amendment 4, in the name of the minister, is grouped with amendment 5.

Fiona Hyslop: Amendments 4 and 5 are technical. Amendment 4 amplifies the point that is made in the explanatory notes that, as well as acquiring items by purchase, exchange, gift or on deposit, as referred to in section 3(1) of the bill,

the National Library may receive acquisitions by virtue of other legislation. As one of six legal deposit libraries in the United Kingdom and Ireland, the National Library of Scotland receives around 90 per cent of its acquisitions through the system that was established under the Legal Deposit Libraries Act 2003.

Amendment 5 complements amendment 4 in clarifying that, as well as borrowing objects for exhibition, study or research and lending objects from its collections under section 4(1) and (2) of the bill, the National Library may also borrow and lend objects by virtue of other legislation. The amendment has particular relevance for the borrowing or accepting of electronic publications under the draft Legal Deposit Libraries (Non-print works) Regulations 2013 for non-print material, on which the Department for Culture, Media and Sport is consulting. The amendment is broad enough to accommodate any future legislative developments that might apply to the National Library.

I move amendment 4.

Clare Adamson (Central Scotland) (SNP): It is good that we are future proofing the bill, because electronic media are changing so fast that we do not know where we might be in a few years. I welcome the inclusion of the provision.

Amendment 4 agreed to.

Section 3, as amended, agreed to.

Section 4—Borrowing and lending of objects

Amendment 5 moved—[Fiona Hyslop]—and agreed to.

Section 4, as amended, agreed to.

Section 5—Legal publications

The Convener: Amendment 6, in the name of the minister, is grouped with amendments 7 to 10.

Fiona Hyslop: I hope that the committee will bear with me as I explain the amendments, which are largely technical.

Amendment 6 will tidy up section 5(3) by removing the reference to subsection (2), which is not required. The amendment was suggested by the Faculty of Advocates in its stage 1 written evidence.

Section 5(1) sets out that legal publications that are delivered to the library under the Legal Deposit Libraries Act 2003 in print or offline electronic format—for example, CD-ROM—must be sent to the faculty and, once they are accepted by the faculty, will become its property. Section 5(3) provides that that rule will not apply to online publications. The National Library and the faculty

accept that separate delivery rules are required for online electronic publications, such as websites and e-books. Those are in sections 5(4) and 6(1)(e).

Section 5(2) of the bill requires the library to make a claim for any conventional print legal publications that the faculty wishes to receive under section 5 of the 2003 act. The section continues a requirement from the National Library of Scotland Act 1925. Section 5(3) currently states that section 5(2) of the bill does not apply to online electronic publications but, as section 5 of the 2003 act—which members will note is referred in section 5(2) of the bill—applies only to conventional print material, there is no requirement for that reference and, therefore, it can be removed from section 5(3). That is the explanation for amendment 6.

Amendment 7 has also been lodged to address concerns that the Faculty of Advocates raised in its response to the committee's call for evidence. When I gave evidence at stage 1 on 21 February, I indicated to the committee that I would lodge the amendment, which has been seen by, and discussed with, the faculty. Amendment 7 is designed to narrow the scope of the items that the joint arrangements between the faculty and the National Library have to cover. The current provision refers to "their respective collections" and is therefore wide enough to include the faculty's non-library collections, which include coins and artwork. Those collections have never been brought within the joint arrangements with the library, although the faculty can provide public access directly on request. By narrowing references in section 6 to

"the faculty's collections of legal publications",

amendment 7 makes it clear that the National Library and the faculty should agree joint arrangements with regard to the library's collections—which are, of course, library collections—and the faculty's collections of legal publications. That is consistent with the 1925 act.

As I confirmed when I gave evidence at stage 1, the National Library and the faculty signed two memoranda of agreement on 22 December 2011. One of them sets out guidelines for how both bodies will work together on access to the National Library's collections and the faculty's collections of legal publications. It is open to the NLS and the faculty to agree exceptions to the general principle of access, as they have done in their memoranda of agreement.

Amendment 8 has been lodged for the same reason as amendment 7: to narrow the reference to the faculty's collections to make it clear that only legal publications are within the scope of the joint arrangements. Once again, that is consistent with

the scope of the 1925 act and has been discussed with the faculty.

Amendment 9 will extend and simplify the current wording of section 6(1)(d). At present, the provision refers to the "preservation and conservation" of print and offline legal publications that are sent to the faculty, but the amendment will ensure that the joint arrangements for preservation and conservation relate to all material that is exchanged between the National Library and the faculty. It will also allow the library and the faculty to agree how to share duties of preservation and conservation, where that is appropriate.

The wording of amendment 9 remains neutral on the format of legal publications in order to future proof the provision in relation to new publication formats that may develop in years to come. That is consistent with the memoranda of agreement between the National Library and the faculty that were signed on 22 December 2011, which contain provisions about the storage, handling and treatment of legal deposit material in all formats.

10:15

With regard to amendment 10, the committee will recall from stage 1 the debate between the NLS and the Faculty of Advocates over who should be required to specify which items are to be requested under electronic legal deposit. Amendment 10 will insert a new paragraph that will enable those organisations to enter into joint agreements about requests for electronic legal material in online and offline form, and will place a duty on both to reach an agreement on operational details. The provision is intended to be flexible and future proofed in order to ensure, for example, compatibility with regulations that the DCMS is introducing under the Legal Deposit Libraries Act 2003. The amendment has been agreed by the NLS and the Faculty of Advocates.

I move amendment 6 and urge members to support it and the other amendments in the group.

Joan McAlpine (South Scotland) (SNP): I welcome the fact that the concerns of the Faculty of Advocates have been addressed and I think that this move will ensure joint collaborative working in the future.

Amendment 6 agreed to.

Section 5, as amended, agreed to.

Section 6—NLS and the Faculty: joint arrangements etc

Amendments 7 to 10 moved—[Fiona Hyslop]—and agreed to.

Section 6, as amended, agreed to.

Section 7 agreed to.

Section 8—Directions and guidance

The Convener: Amendment 11, in the name of Liam McArthur, is grouped with amendment 12.

Liam McArthur: I am sorry to have to break the harmony that we have had so far, convener.

Amendments 11 and 12 seek to deal with the issue of ministerial powers of direction. They go to the heart of the relationship that ministers have—or should have—with a body such as the NLS and reflect a commitment that I gave at stage 1 to reflect further on the extent and nature of the powers ministers were seeking and to return to the issue if necessary. I certainly think that further consideration of what the Government is seeking to do is justified.

First of all, however, I reiterate my belief that overall the cabinet secretary deserves credit for the way in which she has engaged with the committee on the bill. I acknowledge her willingness to listen and to respond constructively in a number of areas—notably in relation to the size of the board. The number of amendments and the way that we have rattled through them are testament to that.

That said, I remain concerned by the powers that are being sought under the bill and do not accept that, with regard to the functions over which they are being sought, they are a necessary power of last resort. In its evidence, the NLS said that it regretted the principle of ministerial direction and although it went on to recognise the steps that have been taken to restrict that power and to achieve a balance, we should not lose sight of that principle in respect of the NLS's functions, if not its general powers.

Moreover, in her response to the committee, Ms Hyslop accepted that

"a power of direction has never been applied to cultural public bodies".

Indeed, in her oral evidence, the cabinet secretary struggled to identify circumstances in which it might be appropriate for such a power to be used or where it could be used safely without impinging on the curatorial, cultural or professional functions of the National Library and its staff.

That reticence might well stem from Ms Hyslop's genuine desire to respect the boundaries between the Government's role as principal funder and the NLS's role in managing the library as a national resource. Nevertheless, when we are asked to include in a bill powers that have never been used and for which no compelling case can be mounted as to why, when and where they might be needed, I have grave concerns. Either we are making a rod for our own back with regard to future legislation or

we are providing a rod for ministers to use whenever the fancy takes them—or, perhaps, both.

History is littered with examples of Governments taking powers that were meant to deal with specific circumstances or perceived problems, but which have been used in all manner of different and less appropriate situations. Indeed, I am on record as opposing very strongly some of the ways in which this Government has concentrated power more and more in the centre, including in policing, fire and rescue, economic development and areas that are covered by the committee. Too often in the current Administration—particularly so in the case of Ms Hyslop's colleague and successor as Cabinet Secretary for Education and Lifelong Learning—there has been intolerance of those who hold different views, and there has been a tendency among ministers to believe that they know best. Neither of those characteristics is healthy.

I am not saying that any power of direction would be unjustified. The powers of direction that relate to the general powers of the NLS, which are set out in schedule 1, seem to be more straightforward and are unlikely to cut across areas of the NLS's functions that require to be independent. However, it is difficult to see how a power of direction that covers the promotion of collaboration and/or diversity could be used in a way that would not fall foul of the restrictions that ministers have rightly accepted. In fact, it is difficult to see why ministers would want to go down such a route, rather than make use of the other significant powers of persuasion that they have at their disposal.

There are many things that would make the lives of ministers easier or the functioning of Government smoother, not all of which—possibly very few of which—can be said to be desirable. That is certainly not reason enough to enshrine something in law; it is not good enough to say that the powers in section 8 are for a "just in case" scenario. I look forward to hearing what the cabinet secretary and committee colleagues have to say, before I decide whether to press amendment 11 to a vote.

I move amendment 11.

Liz Smith: I thank Liam McArthur for lodging amendments 11 and 12, which he is right to say go to the heart of the relationship that ministers have—or should have—with a body such as the National Library of Scotland. There is perhaps an issue in that regard that goes beyond the scope of the bill, which we must debate. There is a need for a cast-iron guarantee that the provisions in the bill are very much about increasing the efficiency and accountability of a public institution, rather than increasing ministerial power.

Mr McArthur expressed concern about the powers that are sought in the bill. They might be powers of last resort, but we cannot be satisfied with the efforts that have been made to modify the extent of ministerial direction, given the considerable concern that stakeholders expressed at the consultation stage.

It is clear that there is a strong argument about the balance that must be struck between ministerial powers, in the context of legitimate concern about how public money is spent—the cabinet secretary has talked about that—and the professional judgment and expertise of trustees and librarians. That is a difficult balance to strike. However, at stake is an important principle, which is the public interest.

Like Mr McArthur, I am not entirely convinced by the examples of circumstances in which it might be appropriate for the powers in section 8 to be used, especially in the event that the board disagreed with the Scottish Government. To empower ministers with such authority is a departure from the norm. Before we consider whether to support amendment 11, I would welcome far more evidence on why conferring such power on ministers will better serve the public interest.

There is a wider argument about the extent of ministerial power. Mr McArthur gave examples of the Government's record of wanting to take more power. Sometimes there have been good reasons for doing so; at other times there have been serious questions about why that happened. It is worth opening up the issue to further debate.

Joan McAlpine: It is clear that the powers of direction will not cover curatorial matters, so librarians will continue to have 100 per cent academic freedom to act. The powers cover access, and it is important that we ensure that there is access to the collections for all sorts of people, throughout society. It is not beyond the powers of imagination to envisage librarians suggesting in the future that they must charge for access, which would restrict people's ability to see the collections, on the basis of wealth. We need to guard against that. I hope that ministers will never use the powers, but I think that if they do use them they will do so for the good, to ensure that all people in Scotland have access to the collections.

Clare Adamson: We are considering the bill, rather than the Government as a whole. The powers of direction are limited to two specific areas, which shows restraint on the part of the Government.

The NLS is a Government-funded body that gets a significant amount of public money, so it is right that the bill provide some form of ministerial direction. If the Government were attempting to

control things, the power of ministerial direction would relate to all areas of the bill rather than just to two specific areas.

Neil Findlay (Lothian) (Lab): I share the concerns of Liz Smith and Liam McArthur about the Government's centralising tendency but, in the context of the bill, we face a dilemma. The bill will give ministers the power to step in to act in the public interest in circumstances in which the board has done something that is clearly contrary to the public interest but, at the same time, there is a danger that the power could be used for other more questionable reasons. Therefore, I think that we need a bit more clarity from the cabinet secretary when she sums up.

Jean Urquhart: I am sure that the cabinet secretary will defend the part of the bill that we are talking about, which I reiterate is about specific areas of governance. It is unfortunate that comparison has been made with the governance arrangements for the police. Sadly, that diminishes Liam McArthur's argument about areas in which he thinks clarification is required. It has not helped the debate.

Marco Biagi (Edinburgh Central) (SNP): As ever, I record my membership of the board of the National Library of Scotland under the current governance arrangements, as the MSP for Edinburgh Central.

Other amendments are about future proofing the bill against unforeseen circumstances. It strikes me that a ministerial power of last resort is part of that. There are very strong safeguards, but if we are to cover all eventualities and prepare for what we cannot necessarily foresee, we need such a power of last resort. I am quite content that, regardless of its political colour, any Government would consider a power such as the one that is proposed, which relates to a major artistic institution, to be a power of last resort.

The Convener: I have a few comments of my own. I ask the minister to clarify the Government's intention with regard to the elements of the bill that are in question—in particular, sections 2(2)(d) and 2(3)(c). I hope that she will respond to the comments of Liam McArthur and others on the legitimate concerns that have been raised about the ministerial power of direction, but I point out to members that ministerial powers of direction are not unusual—such a power was included in the bill to set up Creative Scotland—and that they were introduced by the previous Administration. I remember objecting most strongly to the inclusion of powers of direction in bills of the previous Administration. The Labour ministers at the time rewrote some of those powers to create balance because they felt that, initially, they had gone too far. That said, ministerial powers of direction

remained in the bills in question, which is probably to the good.

I acknowledge the concerns of members and others on the matter, but I expect that the cabinet secretary will be able to provide us with evidence and reasoning for the Government's position on amendments 11 and 12.

Fiona Hyslop: The debate has to be about balance and accountability; those are the two watchwords when it comes to assessing what is proposed. In addition, we need to view the issue in context; this is not a debate about powers of ministerial direction in general. As the convener quite rightly indicated, powers of direction exist in relation to 17 of the 21 bodies that have been established as statutory bodies since 1990.

We need to focus specifically on the amendments. Amendments 11 and 12 would remove the Government's ability to direct the NLS on two of its functions. It is important to differentiate between the two aspects—as, I hope, Liam McArthur will acknowledge when he sums up. The first function, under section 2(2)(d), is the promotion of

“collaboration ... and ... sharing of good practice”

with and between

“other persons providing library and information services.”

The second, under section 2(3)(c), is the promotion of

“diversity of persons accessing the collections”.

By agreeing to amendment 3, the committee has already revised the function in section 2(2)(d) so that it is about the NLS promoting collaboration with other bodies.

10:30

From previous debate, I can appreciate why Liam McArthur has lodged amendments 11 and 12. It is important that we discuss the intention and effect of section 8, and I accept that any ministerial power of direction should be carefully constructed to ensure that ministers do not interfere with the curatorial independence of the National Library. Compared to the draft culture bill in 2006, which had a wide-ranging ministerial power of direction, we have deliberately ensured that we are respecting the importance of there being no ministerial direction over curatorial independence. It can be difficult, though: for example, on Thursday, Liam McArthur's colleague Tavish Scott asked for ministerial direction on another of our collections. That is an example of the stresses and strains of getting the balance right.

However, we want to protect curatorial independence, and section 8 will ensure that that independence is preserved while allowing

ministers to direct the National Library on matters that are separate from its curatorial and cultural functions. In reflecting on Elizabeth Smith's point, I say that it also supports the efficient running of the National Library. That is why I cannot support Liam McArthur's amendments.

On amendment 11, I emphasise that section 2(2)(d) concerns the promotion of

“collaboration ... and ... sharing of good practice”.

It is important to make that distinction. The function does not mean that the National Library could be directed to enforce collaboration or the sharing of good practice by others. I think that we have got the balance correct there.

I want to make it clear why I believe that Scottish ministers should have a power of direction. The National Library and other libraries operate in a rapidly changing technological age. I want the bill to be sufficiently future proofed to cope with such demands and uncertainties. The National Library will have a duty to promote

“collaboration ... and ... sharing of good practice”.

which will, therefore support public sector performance—bearing in mind that 86 per cent of the funding of the National Library comes from taxpayers. It will also support efficiencies, which will be increasingly important, and shared services. For example, in current digitisation work, I am sure that we all agree that services should be shared wherever that is practical in order to avoid duplication and unnecessary additional costs. Our public bodies should be working together on that wherever possible. I agree that a great deal of collaboration already takes place; the issue is how we prepare for what might happen in future organisations and with future boards.

Overall, the ability of ministers to direct in respect of promoting collaboration and good practice is in the interests of the public purse and public efficiency. It is a mechanism for influencing, if needs be, the broader public duty that will be placed on the National Library by section 2(2)(d), as distinct from the functions that are related to its curatorial independence.

On amendment 12, it is important that the Scottish ministers have the ability to direct in relation to section 2(3)(c). The Government is committed to the equality and diversity agenda. I believe that the issue of the National Library's promotion of the diversity of people accessing its collection is a matter of public-policy interest rather than being purely a matter for the Library's curatorial independence. The function at section 2(3)(c) is a duty to promote diversity. It places a wider responsibility on the National Library than current equalities legislation, since it could encompass, for example, linguistic, geographical

and socioeconomic diversity. In representing his constituency, Liam McArthur, will recognise that.

The importance of diversity and equality of access was raised by Labour members during the stage 1 debate. It is important that if, in the future, the National Library does not carry out its responsibility on equality of access, we should be capable of ministerial direction.

Equality of access is consistent with the founding legislation for Creative Scotland, and with other areas; the public policy arguments in relation to the National Library are the same in that regard. Ministers should be able to direct the NLS if at some point in the future it fails in that area. Overall, we must have balance. It is important that ministers use ministerial direction wisely, if at all—it is preferable that they use it not at all. Liam McArthur said that he does not think powers of direction are justified “just in case” we might need to use them, but that is exactly why we might need to use them.

I do not want either me or anyone else round the table who might be a minister in the future, in having to account to Parliament for that 86 per cent public investment in NLS, to face the criticism that they failed to take action when they needed to do so. In the interest of future proofing the legislation, that is an important area to consider.

Should the power be used as a last resort? Yes—that is exactly when it should be used. The fact that it has not been used does not mean that it will not need to be used at some point in the future. We need to strike the right balance. I appreciate Liam McArthur’s arguments, but we have worked hard to get the right balance in the bill, and I am pleased with the support that we have had from the National Library of Scotland, which recognises that.

The Convener: I call on Liam McArthur to wind up and press or seek to withdraw amendment 11.

Liam McArthur: I thank the cabinet secretary for her detailed and constructive response. We have had a useful debate, which has progressed the discussions that we had throughout stage 1. I also thank Liz Smith for her comments and her support for my amendments, and Neil Findlay for his supportive comments.

I fully accept that the powers do not cover the curatorial role. However, Joan McAlpine was perhaps in danger of suggesting that the board would not necessarily be able to act in the public interest and that only ministers would have that at the forefront of their minds. I do not think that that argument could be sustained.

Clare Adamson and Jean Urquhart rightly drew attention to the restraint that has been shown in the limited number of areas that are covered by

the bill, and I fully acknowledge that. Nevertheless, in response to Jean Urquhart’s suggestion, I do not believe that I was diminishing the arguments by setting them in a wider context, nor do I accept that that is an illegitimate thing to do. The vast bulk of what I said in moving amendment 11 was focused on the powers in the bill.

Marco Biagi was right on the need to future proof the bill, and Clare Adamson acknowledged that in relation to earlier amendments. However, I still have concerns about use of the power as a last resort. The convener was right to draw attention to the principles that previous Administrations accepted, and to the fact that he fought the good fight in trying to either restrict or remove such powers on previous occasions.

I turn to the cabinet secretary’s remarks. It is absolutely the case that there needs to be a balance and accountability. She is also right—it is probably an error that I made in speaking to my amendments—that I did not draw enough of a distinction between the two. I would have to go back through the previous evidence to be sure, but I think that I previously expressed greater concern about the power over collaboration than about the power over access. That remains my concern. I am far more interested in seeing where we might be able to progress in relation to amendment 11 than in relation to amendment 12. The minister’s point about the importance of linguistic and geographic access as well as financial access is valid.

The extent to which the NLS relies on funding from the Scottish Government is a clue to how it is that ministers already have considerable influence over the actions that the board will take, but at some point it needs to be entrusted to take decisions. To hark back to one of the earliest amendments that we discussed this morning, I note that we are expressing our confidence in its ability so to do. Although every member has said that the power is simply a power of last resort, at some stage there might be a clash between the board and ministers about the expression of the public interest. The way in which that is arbitrated and the way in which we would weight that contest between different approaches is an issue of legitimate concern about the bill.

I am minded to press amendment 11, but on the basis of the legitimate points that the cabinet secretary and one or two others made about access, I will not move amendment 12.

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

Members: No.

The Convener: There will be a division.

For

McArthur, Liam (Orkney Islands) (LD)
 Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 Urquhart, Jean (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 11 disagreed to.

Amendment 12 not moved.

Section 8 agreed to.

Sections 9 and 10, schedules 2 and 3 and sections 11 to 13 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the cabinet secretary and her officials for their attendance.

Subordinate Legislation

General Teaching Council for Scotland (Legal Assessor) Rules 2012 (SSI 2012/86)

10:41

The Convener: Agenda item 2 is consideration of a Scottish statutory instrument that is not subject to parliamentary procedure. Does the committee agree to make no recommendation to Parliament on the instrument?

Members *indicated agreement.*

The Convener: With that, I close the meeting.

Meeting closed at 10:41.

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