

COMMUNITIES COMMITTEE

Wednesday 25 February 2004
(*Morning*)

Session 2

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COMMUNITIES COMMITTEE

† 8th Meeting 2004, Session 2

CONVENER

*Johann Lamont (Glasgow Pollok) (Lab)

DEPUTY CONVENER

*Donald Gorrie (Central Scotland) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

*Patrick Harvie (Glasgow) (Green)

*Campbell Martin (West of Scotland) (SNP)

*Mary Scanlon (Highlands and Islands) (Con)

*Elaine Smith (Coatbridge and Chryston) (Lab)

*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)

Christine May (Central Fife) (Lab)

Shona Robison (Dundee East) (SNP)

Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

John Scott (Ayr) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Tricia Marwick (Mid Scotland and Fife) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Richard Arnott (Scottish Executive Development Department)

Quentin Fisher (Scottish Executive Development Department)

Catrina Hardman (Scottish Executive Legal and Parliamentary Services)

Mrs Mary Mulligan (Deputy Minister for Communities)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Gerry McNally

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 3

† 6th and 7th Meetings 2004, Session 2—held in private.

Scottish Parliament

Communities Committee

Wednesday 25 February 2004

(Morning)

[THE CONVENER opened the meeting at 10:00]

Companies (Audit, Investigations and Community Enterprise) Bill

The Convener (Johann Lamont): Welcome to this meeting of the Communities Committee. Agenda item 1 is consideration of the Companies (Audit, Investigations and Community Enterprise) Bill. I welcome Mary Mulligan, the Deputy Minister for Communities; Richard Arnott and Quentin Fisher from the voluntary issues unit at the Scottish Executive Development Department; and Catriona Hardman from the office of the solicitor to the Scottish Executive. I also welcome Tricia Marwick, who is with us today.

I ask the minister to make an opening statement; we will then move on to questions.

The Deputy Minister for Communities (Mrs Mary Mulligan): Good morning, everybody. I will take a couple of minutes to outline the reason behind the Sewel motion and to explain what it is intended to achieve.

Some of the legal forms that have been used by social enterprises—that is, non-profit-distributing organisations that want to use their profits and assets for the public good—are dated and inappropriate for their purposes. Through the proposal for the creation of a new companies structure, the United Kingdom Government seeks to support the sector, to raise its profile and to create a modern and appropriate legal vehicle for it.

The concept of community interest companies, which will be known as CICs, was originally outlined in a strategy unit report in September 2002. A CIC will be a new type of company that is designed specifically for social enterprises. It will be easy to set up, with all the flexibility and certainty of the company form, but with some special features to ensure that it works for the benefit of the community. Among those features are the requirement for the company to pass a community interest test before it is registered and the fact that the company will be subject to an immovable statutory asset and profit lock. An independent CIC regulator will be created.

The Companies (Audit, Investigations and Community Enterprise) Bill gives a distinct form or brand to social enterprises. The CIC brand should give confidence that an organisation is a well-run business as well as a body that is dedicated to social objectives, and we hope that that will allow CICs to access alternative forms of funding or public sector contracts. It has been decided that CICs will not be able to enjoy the benefits and burdens of charitable legal status, even if their purposes are wholly charitable. That will help to reduce the risk of public confusion and avoid the problem of overlap between the statutory requirements of charitable status and those of CIC status. However, it is intended that CICs should be able to convert to charitable status if they wish to do so. It will also be possible for a charity to convert to a CIC, although demand for that option is expected to be limited because CICs will not enjoy charitable tax status.

All that is reserved and outwith the legislative competence of this Parliament. Nevertheless, as the bill allows for English and Welsh charities to convert to CICs, it is important that Scottish charities are not discriminated against in this area. As charity law is a devolved matter, we intend to make a provision in our charities bill to enable the Office of the Scottish Charity Regulator to consent to charities relinquishing their charitable status. We will also make a provision to lock the assets of such bodies at the time of conversion into the charitable purposes for which they were originally intended, and we will empower OSCR to continue to regulate those assets. However, the regulation of the process whereby a body becomes a CIC remains a reserved matter, so a Sewel motion is required to allow the UK Parliament to include in its legislation provision for a power that relates to a reserved issue—that is, the authorisation for an organisation to become a CIC—and for that power to be given to OSCR, which is a devolved body. That means that, instead of taking decisions away from Scotland, the motion will give a devolved body the right to make decisions regarding Scottish bodies. I hope that that is clear.

The Convener: Thank you. We will soon judge whether that is clear. What input did the Scottish Executive have in the development of the proposals for community interest companies?

Mrs Mulligan: The development of community interest companies is part of a continuing process at Westminster and it is the result of consultation that has been taken forward there. All the responsibilities within that process are reserved matters, on which it is therefore competent for Westminster to legislate. Today, we are considering and dealing with the interface between the establishment of CICs and charitable organisations; the rest of the matter is reserved.

I ask Richard Arnott to outline the interface with the Westminster Government.

Richard Arnott (Scottish Executive Development Department): As the minister has said, the Department of Trade and Industry has been preparing the proposals on CICs, which are mostly a reserved matter. However, in doing so, the DTI has consulted the Executive on the issue, and has carried out a public consultation and discussed the proposals with a number of Scottish organisations and umbrella bodies to ensure that people understand them. The DTI has taken on board the point that has been made in the discussions that Scottish charities need to be able to convert to CICs. Indeed, we are before the committee this morning to discuss how we can make that feasible.

The Convener: Did the Scottish Executive discuss the proposals with the social enterprise sector in Scotland?

Richard Arnott: Yes. The Scottish Executive was involved with the DTI in discussions with a number of charity and co-operative groups. The Scottish Council for Voluntary Organisations also attended a number of meetings.

The Convener: So you have had some dialogue with the co-operative and mutual sector.

Mrs Mulligan: Yes.

The Convener: Will you provide some examples of other non-profit-making organisations apart from charities that you envisage will convert to CICs? I am finding it difficult to get a picture of which organisations would take that opportunity. How do the proposals fit in with the Scottish Executive's overall social economy strategy?

Mrs Mulligan: We, too, have found it difficult to envisage organisations that would want to establish themselves as CICs. After all, it is obvious that those organisations that are interested in the community good would benefit from establishing themselves under charity legislation. However, I can provide a few examples. Registered social landlords might be interested in becoming CICs, although even that might be questionable given the regulatory framework under which they operate. Until we find out which organisations will come forward to convert to CICs, it is difficult to envisage exactly what the proposals will mean.

The proposals might also interest arm's-length bodies that have been established by local authorities. For example, the recreation and sports facilities in Edinburgh and West Lothian have been moved away from the councils and are run as companies limited by guarantee. However, because their role is to benefit the public and not to make a profit, such organisations might be interested in becoming CICs.

As members know, the proposals have been discussed with various organisations; they did not have a problem with the introduction of CICs. However, we have had some difficulty in envisaging exactly who would fit in that particular role. That said, as far as the Executive's priorities are concerned, we are keen to acknowledge that organisations in the social economy that are dedicated to providing for the public good or the local community, instead of making profits for shareholders, should be able to operate effectively and efficiently. Perhaps CICs could fill what might be a current gap in provision.

The Convener: Jean McFadden said that co-operatives cannot come under charity legislation because they distribute their surplus through dividends and so on. Would such organisations take up this option?

Quentin Fisher (Scottish Executive Development Department): Co-operatives could take up the option. As the minister said, we do not have a waiting list of organisations that want to establish themselves as CICs. We understand that the DTI, in introducing the legislation, envisaged trying to capture organisations that fall between purely commercial and purely charitable operations. For example, an organisation that operates for the community good might do so in a commercial manner. If co-operatives meet the requirements that are set out in the legislation on CICs, they might well be able to take up the option.

The Convener: I think that co-operatives might dispute the distinction relating to operating in a commercial or businesslike manner. Some co-ops are very large and very businesslike.

Quentin Fisher: The term "co-operative" covers a wide range of bodies. I suppose that they would have to be considered individually.

Elaine Smith (Coatbridge and Chryston (Lab): The minister mentioned registered social landlords. Is it correct that if an RSL with charitable status took on CIC status, the right to buy would have to be reintroduced, for example, whereas that right would currently not exist if an RSL had charitable status?

Catriona Hardman (Scottish Executive Legal and Parliamentary Services): I think that that is right. Currently, if an RSL is registered as a charitable RSL, there would be a freeze on the right to buy for 10 years. Obviously, the RSL would have to take that into account because they would no longer be a charitable registered social landlord.

Elaine Smith: What advantage might there be for a registered social landlord who did not have charitable status in changing to a CIC?

Mrs Mulligan: The RSL would have to consider the exact remit within which the CIC is established in order to decide whether changing would be an advantage to them. Perhaps we are talking in a vacuum, as we do not know the exact structure that will arise. It would be up to individual RSLs to consider such matters and to decide whether changing would be of benefit to them.

We need to be clear. Currently, charities cannot stop being charities. That is one of the issues that will be discussed in respect of the charities bill that we will introduce. We will propose that OSCR will be allowed to tell charities that they can stop being charities and that they will then have the option of becoming CICs. That is currently not possible. The issue is part of on-going discussions on legislation that the Scottish Parliament will introduce.

Patrick Harvie (Glasgow) (Green): Given that some Scottish organisations that responded to the consultation were concerned about CICs' ineligibility for charitable status, would it be technically possible for future charity reform to give CICs the ability to take on charitable status?

Mrs Mulligan: I think that CICs could become charitable bodies, just as charitable bodies could stop being charitable bodies and become CICs, as I have said. However, we must be clear that the distinction between the two must be kept and that a body could not be both.

Patrick Harvie: So it would not be possible for a CIC to call itself a charity.

Mrs Mulligan: No.

Patrick Harvie: You mentioned a community interest test and talked about the public good. How will that equate to the public benefit test? Will there be a difference between the charitable public benefit test and the CIC community interest test?

Mrs Mulligan: Details of community interest companies and the way in which the benefit to the community will be established have not yet been finalised. We suspect that the test will be not as stringent as the test that will be put in place for charities, but, as you know, we have not yet introduced the charities bill, so I cannot compare the two.

Patrick Harvie: What do you think that "not as stringent" will mean?

Mrs Mulligan: I invite the officials to say what is being proposed.

Richard Arnott: The DTI recently published a set of regulations for the bill, which set out proposals for the community interest test. The idea is that the CIC would benefit a narrower range of people than we would expect a charity to benefit. It will be proposed that the test for a charity will be that it will have a wide public benefit, whereas the

CIC community interest test could be for a more restricted group of people—perhaps it could relate to a community hall in a village, for example. It could be said that the freedom with which funds could be used would be more restricted.

10:15

Stewart Stevenson (Banff and Buchan) (SNP): I want to pursue a point that has just been made. The explanatory notes that accompany the Companies (Audit, Investigations and Community Enterprise) Bill make it clear that, under clause 51 of the bill, a CIC cannot be established in Scotland without a written statement from the Inland Revenue

"confirming that the CIC has applied for recognition as a Scottish charity, and would be granted such recognition if it ceases to be a CIC".

In other words, under the bill an organisation cannot be a CIC in Scotland unless it qualifies to be a Scottish charity. However, if an organisation becomes a CIC, under clause 23(3) of the bill it is not allowed to be a charity. This is the Schleswig-Holstein question revisited. I had the impression that you were saying that an organisation would be a CIC only if it could not be a charity. Can you run that by me again? If I heard you correctly—I think that I did—your comments appear to conflict with the explanatory notes and the bill.

Richard Arnott: You are right to say that an organisation cannot be a CIC and a charity at the same time. However, it will be able to convert from being a charity to being a CIC.

Stewart Stevenson: And vice versa.

Richard Arnott: Yes, although an organisation cannot be both a charity and a CIC at the same time.

Stewart Stevenson: However, it can be a CIC only if, at the time that it becomes a CIC, it meets the qualifications to be a charity.

Richard Arnott: No. An organisation can become a CIC if it qualifies under the community interest test, which is separate from the charity tests.

Stewart Stevenson: So an organisation can be a CIC without meeting the requirements for recognition as a charity.

Mrs Mulligan: Yes.

Richard Arnott: That is correct.

Stewart Stevenson: I said that the bill was complicated, and I am struggling.

I move to the questions that I planned to ask. This is my key question. I know of companies that are registered charities. A recent example is the company that the islanders of Gigha established

for their buyout, which is a company registered under the Companies Acts that is also registered as a charity. It is possible to be both a company and a charity, with all the benefits that accrue. What are the benefits to the social enterprise sector of having this additional instrument? If a body has a community interest, is operating as a charity and can get the protection of limited liability by registering as a company, why on earth would it wish to become a CIC?

Given that a Sewel motion is not required in this case, because we are not conceding anything to Westminster, why is the motion that we will debate called a Sewel motion?

Mrs Mulligan: I will start by dealing with the member's first question. We must examine every individual case. It will be for each organisation to decide whether there are benefits in its becoming a CIC. So far we have not been able to give the committee many examples, partly because we recognise that there is a balance to be struck. There are advantages to organisations in their being charities and there will be advantages in their being CICs. It will be for each organisation to consider its specific circumstances and the benefits that may be available to it. If this legislation is to progress, we feel strongly that it is important that we recognise the interface between the UK bill and our charities bill. That is why we have brought the bill before the committee for debate today.

Stewart Stevenson asked why the motion that we will debate is called a Sewel motion. It is called a Sewel motion because we are giving legislators at Westminster the power to give us back the right for OSCR to take decisions.

Stewart Stevenson: Can they not do that anyway? They are not exercising a devolved power, are they?

Mrs Mulligan: But the devolved power would be for the charitable institution to become a community interest company. If we do not accept the Sewel motion, such institutions would be unable to make that conversion.

Stewart Stevenson: So, the devolved power—on which we are allowing Westminster to legislate if we accept the Sewel motion, as I presume that we will—is the power to allow a charity to become a CIC.

Mrs Mulligan: Yes. Well, no. It is the power for OSCR to allow that to happen.

Stewart Stevenson: And OSCR is a creature of the Scottish Parliament.

Mrs Mulligan: Yes.

Stewart Stevenson: So, it is because we are allowing Westminster to increase the powers and

responsibilities of OSCR that there will be a Sewel motion.

Mrs Mulligan: Yes.

Stewart Stevenson: Right. Thank you. I am sorry to be so picky, but I really could not get my mind round this.

Mrs Mulligan: We all accept that what we are doing is not the usual way of doing things, but I hope that you will understand.

Stewart Stevenson: The business bulletin contains another motion that relates to Northern Ireland legislation. It is even more obscure than this one, but, when it arises, I will deal with it elsewhere.

The Convener: Preferably not in our committee.

Stewart Stevenson: Definitely not in our committee.

Mary Scanlon (Highlands and Islands) (Con): I am sure that the minister will understand that it is quite difficult for us to consider this matter ahead of the charities bill; if she talks to us in six months' time, I think that we will be more expert than we are now. I find it difficult to discuss the issue, because we do not know what impact it will have on that bill.

I want to pick up on a point that Stewart Stevenson made, because I am getting a wee bit confused. We have OSCR in Dundee, with a chief executive. Are we to have two regulatory bodies in Scotland—the regulator in clause 24 of the Companies (Audit, Investigations and Community Enterprise) Bill regulating the CICs, and OSCR regulating charities?

Mrs Mulligan: Yes. The regulator for CICs will be established under United Kingdom legislation and will operate UK-wide. OSCR will regulate charities, which is the devolved part of the issue.

Mary Scanlon: So, if a charity becomes a CIC, it will be regulated from England but, if a charity remains a charity, it will be regulated in Scotland. Yes?

Mrs Mulligan: Yes.

Mary Scanlon: That is quite interesting.

The Convener: Tricia, do you want to come in on that point?

Tricia Marwick (Mid Scotland and Fife) (SNP): As I understand it, the Sewel motion will allow the Scottish charity regulator—OSCR—to authorise conversions of Scottish charities to CICs, and that reserved power is being devolved to us. The office of the regulator of the CICs will be established under the UK legislation, but the power will be given to the Scottish charities regulator to authorise conversions to CICs.

Mrs Mulligan: Yes—but only the very small part that says that OSCR can say to a charity, “You are no longer a charity.” Once a charity decided to become a CIC, it would then be regulated by the CIC regulator.

Mary Scanlon: So, OSCR does only the conversion.

Mrs Mulligan: Yes.

Mary Scanlon: Once a charity has converted, the CIC will be regulated under the UK legislation.

Mrs Mulligan: Yes—because it then becomes a company.

Stewart Stevenson: I am sorry, but would you clarify something for me? Am I correct in saying that, in certain circumstances, OSCR would be able to object to, and to seek to annul, any conversion?

Mrs Mulligan: Yes.

Mary Scanlon: The minister said in her opening statement that CICs should be well run and dedicated to social objectives, and that they would be able to apply for public sector contracts. Is there anything in the proposals that would prevent existing charities from applying for public sector contracts? Will CICs have any special advantage?

Mrs Mulligan: Not that I am aware of.

Mary Scanlon: I was thinking of organisations such as Crossroads. What you said about applying for public sector contracts was interesting, but the proposals do not impact on existing charities doing that.

Mrs Mulligan: No.

Mary Scanlon: It seemed that you were talking about a special advantage for CICs.

Mrs Mulligan: No. We were trying to describe what CICs could do.

As I said, it would be for individual organisations to examine their own situations and to decide which system was preferable for delivering the outcomes that they were trying to achieve.

Mary Scanlon: Given that CICs will be debarred from charity status—and you have accepted that, because of the loss of tax incentives, it is likely that few existing social enterprises that have a company in Scotland will convert—can you tell us why there will be no tax incentives, despite the benefits to the community and the community interest test?

Richard Arnott: The answer to that is that, in their proposals for charities, both the Home Office and the Executive have concluded that, in order to get the tax benefits that charities get, an organisation must provide a wide public benefit.

The benefit that a CIC will provide is not expected to be as wide as that, so the CIC will not necessarily deserve the same tax advantages.

Mrs Mulligan: We should stress that that is part of the CIC legislation that will be introduced, so it is not within our competence to comment on or change it at this stage.

Mary Scanlon: I appreciate that, but I am struggling to see where a company—whether it is an RSL, a community hall or a leisure and recreation centre—will find any advantage from those arrangements. All that I can see are disadvantages and disincentives. I am looking for an incentive that would explain why anyone would want to change from being a charity to being a CIC, but I admit that I am struggling. Are you concerned that the overall take-up of the initiative could be low and that it might therefore not deliver the benefits that you hope it will?

Mrs Mulligan: I would not say that I was concerned that the take-up could be low, because I think that it will be appropriate for each organisation to decide its own way forward. As long as we are confident in the legislation that we will introduce in relation to devolved charity matters, we will see the benefits of both. I am sorry if I am not being helpful by providing examples for the committee to show the benefits that might arise, but I have to say that we have had the same difficulties that you have had.

The Convener: It will not be compulsory for anyone to transfer, so presumably they would not do it unless they saw that it was to their advantage.

Mrs Mulligan: That is right.

The Convener: There must be lots of structures that exist and that nobody thinks are much use to anybody, but if somebody finds this one useful it may be right for them.

Stewart Stevenson: Would it be fair to say that the majority of existing bodies for whom becoming a CIC might be attractive are companies that wish to move from being an ordinary company and to acquire certain advantages?

Mrs Mulligan: Yes. What is proposed will be more straightforward for such companies and will also, I hope, raise their profile with regard to the work that they are trying to do that is of community or local benefit.

Mary Scanlon: I mentioned tax incentives. I should probably also have mentioned rates incentives. Credit unions have a specific area in their common bond and they seem to fit the criteria that you describe. However, credit unions do not currently pay water rates; I do not think that they pay business rates either. Those arrangements are devolved to Scotland, whereas

tax incentives are not. Will the Scottish Executive offer any rates reliefs to CICs in the same way as it does to charities?

Mrs Mulligan: That is not what we envisage at the moment. If it is the case that credit unions presently gain those benefits, I cannot see why they would want to become CICs. We come back to the point of each organisation having to consider its own circumstances, and I cannot see why credit unions would see any benefit in becoming CICs in those circumstances.

Mary Scanlon: The CIC proposals state that CICs have to report annually to the regulator on the extent to which they involve stakeholders. It has been argued that a key characteristic of social enterprises in Scotland has been the involvement of stakeholders and there are concerns that the proposals do not go far enough to ensure that such involvement takes place. It has also been argued that enterprises that have not been formed with such democratic structures could take on the guise of social enterprises by becoming CICs although they might not be committed to stakeholder involvement. Do you share those concerns?

Mrs Mulligan: We are keen that stakeholders should continue to be involved in social enterprise organisations. It will be for the proposed CIC regulator to ensure that that continues to be the case with CICs and to consider how far such involvement should progress.

10:30

Mary Scanlon: Are you concerned that there would be CICs in Scotland over which I understand the Scottish Executive would have no control?

Mrs Mulligan: I understand that CICs would be regulated by the proposed community interest company regulator and that we would know what was being asked of those companies. However, the social enterprise companies with which we have been working so far have been asked to ensure that there is stakeholder involvement and a transparent benefit to the community—I do not envisage that that would not continue.

Mary Scanlon: Under devolution, there is undoubtedly more scrutiny in Scotland of Scottish companies. We have had some bad experiences with charities in the recent past. Are you concerned that CICs would be scrutinised from a greater distance than charities would be?

Mrs Mulligan: I do not want the matter to be confused with what we will bring forward in future in the proposed charities legislation, which I am sure the committee will fully scrutinise to ensure that we continue to recognise the community benefit that must be gained.

Mary Scanlon: Would we be able to lodge amendments to the proposed legislation on charity regulation so that CICs could be included in its remit?

Mrs Mulligan: I understand that CICs would be set up under reserved legislation, so such an overlap would not be possible. However, I am sure that, given the purpose for which CICs would be identified, the CIC regulator would want to ensure that they offered community benefit.

Campbell Martin (West of Scotland) (SNP): It is not immediately obvious which charities might want to become community interest companies or what the benefits of such a transfer might be. I am looking for an assurance from the minister that there is nothing in the bill that might allow the Government's charities regulator to review Scottish charities in the future and say to a particular group—such as a leisure trust set up by a local authority, which you mentioned earlier—“We do not think that you meet the remit of a charity because you do not provide a charitable service to the community. However, you do provide a service that seems to meet the remit of a community interest company, so it would be more appropriate for you to become a CIC.” Is there anything in the bill that could be used to persuade—or shove—such organisations in that direction?

Mrs Mulligan: No. I am saying clearly that it will be for organisations themselves to decide where they fit within that structure. However, I brought the matter forward this morning because I want to ensure that OSCR will be able to allow charities to stop being charities and become CICs in one easy step, just as English and Welsh charities will be able to do. Without the Sewel motion, Scottish charities would not be able to do that and would need to go through a number of steps to become CICs. We are raising what I suppose is a narrow point this morning, but we thought that it was important that the matter should not be left out of the bill as it progressed—the proposal was not brought forward for any of the reasons that you suggested.

Campbell Martin: For absolute clarity, would it be for the charity—and no one else—to decide?

Mrs Mulligan: Absolutely.

The Convener: Would the situation be affected if we were to change the law on charities? If we reconsider the definition of a charity and redefine public benefit, might a situation arise in which organisations that are currently charities would be advised, “You no longer meet the criteria for a charity, but here is a wee safety net: the community interest company”?

Mrs Mulligan: Absolutely, convener. It will be the Parliament's responsibility to decide whether

to change the current definition of a charity when the proposed legislation is introduced. In a hypothetical situation in which organisations that are currently charities find that they fall outwith the new definition, they might have an option to become CICs, but—again—it would be for those charities to decide their future.

The Convener: It would not be if the legislation had changed.

Mrs Mulligan: There is no question of our saying that an organisation can no longer be a charity but must become a CIC. That was the question that Mr Martin asked.

Campbell Martin: But what happens if charitable status is changed? You say that, currently, as the organisation is a charity, it would be for it to make the decision. However, if the legislation changes what is meant by charitable status, the organisation might find that it is no longer a charity but that there is an option that it can take.

Mrs Mulligan: We are not considering that matter this morning. That discussion will take place when we reveal the charities legislation, which I hope the committee will consider towards the end of the year.

Campbell Martin: But what I have outlined perhaps explains why we are considering the bill.

Mrs Mulligan: What I hope the committee agrees today would not bring about a situation in which we could say, "You can no longer be a charity; you must become a CIC." However, should we make changes to the legislation in the future, becoming a CIC may be an option for some charities. I have to say that I cannot currently envisage that, but we are not yet at that stage of the process.

Tricia Marwick: Am I right in thinking that CICs cannot be set up until section 14 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 is amended?

Mrs Mulligan: Yes.

Tricia Marwick: Am I also right in thinking that it is not the intention to amend that act until the Executive introduces its own charities legislation?

Mrs Mulligan: Yes.

Tricia Marwick: If you intend to amend section 14 of the 1990 act through the charities legislation, will the new provision apply only to charities that want to become CICs or will it allow a change of purpose?

Mrs Mulligan: We are not yet at that stage; that issue will be discussed when the charities legislation is brought forward.

Tricia Marwick: So at the moment the provision would not be specifically to convert charities to CICs, but there could be an amendment that would allow a change of status full stop.

Mrs Mulligan: If we bring forward provisions in the legislation to allow OSCR to wind up a charity, the option would exist for a charity to be wound up and to become a CIC if it fulfils the criteria for that. Currently, however, we do not think that that would be the only reason for winding up a charity.

Tricia Marwick: Section 14 of the 1990 act does not allow such charities to change status. You seem to be suggesting that, without an amendment to section 14 of the 1990 act, OSCR will not be able to decide that a charity is to be wound up. Currently, the Scottish charities regulator can go to the Court of Session to say that a charity should be wound up. Current legislation allows for a charity to be wound up without an amendment to section 14 of the 1990 act.

Mrs Mulligan: Currently a charity can be wound up through the courts. We are now in discussion about whether OSCR should be given those powers to wind up a charity—indeed, the feeling is that it will be given those powers. However, the option to proceed to the courts might still exist. I am not trying to avoid your question, but I am not able to give a definitive answer because the matter is still subject to consultation.

Tricia Marwick: You will see that committee members are also grappling with the matter for that very reason—we do not have the proposals for the Scottish charities legislation in front of us. That is why there is some confusion and concern about the Sewel motion.

My next question is about the CIC regulator that is being set up under the UK legislation. I understand that the situation in England and Wales is that the Charity Commission for England and Wales is underpinned by statute. Currently in Scotland, we have a regulator of Scottish charities—OSCR—which has been put in place by the Scottish Executive in advance of any potential legislation. The UK bill envisages that responsibility for authorising a CIC will not be with the Charity Commission for England and Wales but with a new regulatory office. However, am I right in thinking that the Charity Commission for England and Wales has to approve that, or will the matter go straight to the regulator in England?

Mrs Mulligan: I would need to ask about that, but charities and CICs are separate entities, so they would have different regulatory bodies. Richard Arnott may wish to comment on the commission's role.

Richard Arnott: The DTI bill for England and Wales proposes that an existing English charity

will have to have confirmation from the Charity Commission for England and Wales that the commission is happy that the charity can cease to be a charity and become a CIC. However, the charity would then have to get the approval of the CIC regulator to ensure that it satisfies the CIC requirements.

Tricia Marwick: But in Scotland you envisage that OSCR will give that approval, so OSCR's role is unlike the role of the Charity Commission for England and Wales.

Mrs Mulligan: No, they will be the same.

Richard Arnott: They effectively will have the same role.

Tricia Marwick: Am I right in thinking that any appeal against a decision of OSCR will be made under the UK legislation, so that if a charity disagrees with OSCR's decision not to approve it as a CIC, it could appeal, but that appeal would be under an appeals mechanism set up by the DTI?

Mrs Mulligan: As things stand, we propose that there will be an appeals process for any of OSCR's decisions. That is still to be finalised, but it will be a Scottish appeals system.

Tricia Marwick: But the bill that we are considering—on which we will be asked to agree to the Sewel motion—does not provide for an appeals procedure for Scotland. We are looking at OSCR approving CICs, but the appeals mechanism will be put in place by the DTI. I see no provision in the bill that states that the appeals procedure will be retained in Scotland. If you intend that there will be an appeals procedure in Scotland, why are we not considering that today, along with the proposal to set up the regulator in Scotland?

Mrs Mulligan: I recognise that the timing is not the most satisfactory, given that we will not be dealing with the charities legislation until later in the year. However, we do not have control over when Westminster decides to put through its legislation, so we have to take this opportunity to safeguard the position of any Scottish charity that wishes to become a CIC. That is why we are talking about the Sewel motion today.

We are not putting the appeals procedure to the committee today because it is part of the proposed charities legislation. However, as you have ascertained from officials, that procedure will not be required until amendments are made to allow OSCR to wind up a charity, which will not happen until we deal with the charities legislation. A decision will not be taken until that process is gone through.

10:45

Tricia Marwick: I will try to pin you down on that. You are right to say that none of this will happen until our charities legislation goes through but, equally, we are considering today a UK legislative proposal that will allow OSCR to authorise a CIC. Given that, why are we not also considering the appeals mechanism today, notwithstanding the fact that the charities legislation has not yet been introduced to this Parliament? Given that we are considering one of those issues, why has the Executive not asked that there be inserted into the UK legislation a Scottish appeals mechanism—which will otherwise not be available until we have passed our legislation—so that the charity regulators in Scotland and England are in exactly the same position?

Mrs Mulligan: Today we are asking the committee to consider part of a UK bill. In the future, there will be an opportunity to deal with devolved matters through the charities legislation that will come before this Parliament and this committee. It is not possible to bring the two things into sync, although that might have seemed tidier. However, nothing will change until the Scottish Parliament has decided how it will progress with OSCR and what appeals mechanism will be established to deal with OSCR's decisions.

Tricia Marwick: The problem is that there will be no appeals provision until the proposed charities legislation is taken through the Scottish Parliament. If the UK legislation goes through first and does not make provision for Scottish appeals, OSCR will have powers in relation to authorising charities, but there will be no mechanism by which such decisions could be appealed in Scotland.

Mrs Mulligan: Because the Scottish charity regulator will not make such decisions, there will be no need for appeals. The power will not be taken forward until the charities legislation goes through the Scottish Parliament.

The Convener: I want us to make progress now. There will be a mopping-up session at the end.

Scott Barrie (Dunfermline West) (Lab): The minister has stressed that CICs will be committed to meeting the needs of local communities. The CIC model will clearly assist social enterprises to promote themselves, but there is a concern that private sector interests that exist on the fringes of the social enterprise sector might use the CIC model to move into territory that was previously the mainstay of the core social enterprises. Is that a valid concern? Could social enterprises lose out in that way?

Mrs Mulligan: We do not share that concern at this stage. Clearly, as the CICs will be

organisations that have operated within the social enterprise sphere so far, what they provide will offer benefit to the local or wider community.

Scott Barrie: Will the community interest test provide a sort of bulwark against what I have described?

Mrs Mulligan: Yes.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): The UK Government has stated that its aim in providing for CICs is to give more options to social enterprises that wish to use the legal form of a company. However, there is confusion among members today about where the provision is going and whether there is a need for it. From what I understand of what has been said this morning, we are really talking about CIC the brand. An organisation that does not want to be a charity or a private company will be able to be registered as a CIC to prove that it works not to make profits for itself but to plough its profits back into the community. To my mind, there still seems to be confusion about that. Is it possible that, far from making life easier for people who work in the social enterprise sector, the proposals might just confuse the situation even more?

Mrs Mulligan: I do not think so, because the legislation will be clear. You are right that the provision will mean that companies that operate not to provide profits for shareholders but to provide community benefit will be recognised as such. At the moment, such companies are covered by a hotchpotch of legislation that may make it difficult for them to know exactly how to fulfil their role. The provision will help with identifying such companies.

The issue that we are debating today relates to the option for charities to become CICs. The difficulty for us is that, although that option is unlikely to be used, we cannot say that it will never be used and therefore leave a gap in the legislation. We are asking for the Parliament to agree to the Sewel motion to ensure that, should those circumstances ever arise, we have the right procedures in place and that the decisions will be taken by OSCR. We do not want the matter to be left in limbo because no one can make the appropriate decision.

Cathie Craigie: Earlier, Tricia Marwick asked about the Sewel motion. Am I right in thinking that organisations will not be able to apply to become CICs until we introduce the necessary charities legislation and an appeal mechanism?

Mrs Mulligan: Organisations that were established as companies could become CICs but those that are presently charities cannot do so until further legislation has been passed.

Cathie Craigie: If, a few months down the line, an organisation wanted to become a CIC, could it

apply to the charities regulator?

Mrs Mulligan: A company would apply to the CIC regulator. A charity would have to wait until we have passed the necessary charities legislation.

Cathie Craigie: I think that Tricia Marwick's point was that a charity could apply to the CIC regulator but would have no right of appeal if it were turned down because, eventually, it will be the charities regulator who will monitor such appeals. Is that right?

Mrs Mulligan: It is important to keep the two elements separate. A company that thinks that it will fulfil the requirements of a CIC can apply to the CIC regulator and become a CIC. A charity that wants to become a CIC cannot, at this stage, apply to do so because OSCR does not yet have those powers. However, it is envisaged that it will have those powers when the necessary legislation is passed. There might be a time lapse, in a sense, which is where the point that Tricia Marwick was making comes into play as the appeals process will also kick in when OSCR takes on that responsibility.

Patrick Harvie: On the difference between the characteristics of companies, charities and CICs, I note that organisations that are involved in political campaigning—not necessarily just political parties—are excluded from becoming CICs. On Monday, at the Scottish Council for Voluntary Organisations event, Margaret Curran indicated that she was open to the idea that, under the new charities legislation, charities would be able to take part in political campaigning. Why is there a distinction in relation to CICs? If a CIC is operating for public benefit or in the community interest—I am thinking of, for example, a food co-operative that might want to campaign against genetically modified food or in favour of local produce—it should be treated in the same way as a charity would be treated.

Richard Arnott: I think that the minister said on Monday that she was open to having a debate about whether political campaigning organisations should be able to become charities but that she did not think that party-political organisations should be able to become charities.

Patrick Harvie: I am not questioning that view. My question relates to CICs or charities lobbying for changes to legislation that might affect their areas of work. Should not a CIC have the same right to do that as a charity has?

Mrs Mulligan: That will be part of the framework that is to be established through the Westminster legislation.

The Convener: Presumably such an organisation would be able to campaign in the way

that Patrick Harvie has suggested. The Co-op brand is well known for campaigning on issues such as ethical banking, fair trade and so on. I would not have thought that there would be anything to stop any company from arguing for or against anything that it wants to.

Mrs Mulligan: You are right to say that such measures will not be limited. However, they fall within the remit of the rules for establishing CICs, so I cannot comment on them at this stage.

Stewart Stevenson: Political parties have some of the benefits of charitable status in relation to inheritance—that is just an observation. There are inconsistencies all over the place.

Outwith the bill, the UK Government has introduced the charitable incorporated organisation as another vehicle for a charity's structure. To what extent is the Executive considering introducing something similar?

We have talked about community interest companies, of which the bill provides for two forms. If a CIC registers under section 43 of the Companies Act 1985, it can be a community interest public limited company. If it registers under section 53 of the 1985 act, it is a private company. It would be useful to understand whether we should be aware of any practical issues that are associated with having two forms of CICs.

My main point is about charitable incorporated organisations, which are outside but complementary to the bill.

Mrs Mulligan: I will answer the first question and somebody else will answer the second.

We are considering introducing charitable incorporated organisations, which may be included in charities legislation. When such provisions are introduced, people will be able to give their views on them.

Your second question was about CICs and whether there is a difference between a public company limited by guarantee and a private company limited by guarantee.

Richard Arnott: Are we allowed to confer before answering?

Stewart Stevenson: Of course.

Mary Scanlon: This is like "University Challenge".

Stewart Stevenson: Yes.

Mrs Mulligan: I will play my role as captain and say that we have decided that the answer is no.

Stewart Stevenson: I suspected that, but that raises the question why both forms of CICs are permitted. However, we need not trouble the committee with that issue today.

Mrs Mulligan: I am sure that you can pursue that with your Westminster colleagues.

Stewart Stevenson: As my party has no members in the House of Lords, where the bill is being considered, I might have to find another way of dealing with the matter.

Mary Scanlon: The minister said that CIC uptake is likely to be low. For clarity, what is the benefit to a company of being a CIC?

Mrs Mulligan: As I said, it will be up to each organisation to consider the benefits of that classification. However, being a CIC would make it clear that a company was established not to provide profits for its shareholders but to provide benefit for the community. The purpose of that entity as a CIC would be clear, which is a benefit.

Mary Scanlon: A clear entity exists for charities, so I look for one advantage of being a CIC. A reason for introducing the provisions must exist, but I am struggling to find out what it is. Being a CIC must have a benefit, but I see only disadvantage in comparison with being a charity.

Mrs Mulligan: I take it that that was a comment.

11:00

The Convener: I thank the minister and her officials for attending the meeting.

We must reflect on our discussion. My understanding of the process is that we must decide whether we have any concerns that we wish to report to the Parliament. It is evident that issues have arisen that people are exploring. I suspect that the Parliament will debate both the fact that the bill is the subject of a Sewel motion and the issues that the bill raises. We must decide whether we want to provide information over and above that in the *Official Report* of our discussion. Although it is not compulsory for us to produce a report, if we are going to do so, we will have to decide how to manage it.

Stewart Stevenson: You are quite correct that there is likely to be a debate on the subject in Parliament.

I am substantially better informed after this morning's session and I thank the minister for that. However, I am still unclear about my attitude to the Sewel motion. Members know that I am no great supporter of Sewel motions, although this one looks relatively harmless. At this stage, I do not wish us to go to the bother of reporting to Parliament because I am not sure what we would say that will not be in the *Official Report*. However, until I have read the *Official Report*, I might not know fully what my attitude to the matter is. It is a complicated issue and I want to do it justice by reviewing it. My suggestion that we do not report

to Parliament does not mean that I might not raise issues of substance in a debate on the matter in Parliament.

The Convener: We want to make two points. First, there is a distinction between our making specific comment with the weight of the committee behind us and any views on particular issues that we as individuals might want to highlight in a parliamentary debate.

Secondly, there is comfort for committee members in the knowledge that we will be considering the charities legislation and that our anxieties about CICs and the way in which the issues fit together might be dealt with in committee. That gives us confidence that some of the issues that have been explored today will be revisited in committee as well as through the debate on the Sewel motion.

I wonder whether Stewart Stevenson's suggestion—that we satisfy ourselves that the *Official Report* gives information to the Parliament on the issues that have been raised—would be sufficient, rather than the committee taking time to put together a report that would reflect a committee view on those issues. Are there any contrary views?

Elaine Smith: I do not have a contrary view. However, is it possible to have clarification on a couple of points at this stage?

The Convener: It depends whether you are asking me to clarify them.

Elaine Smith: I would like clarification on why we are considering the matter now, rather than waiting until after the UK legislation has been passed. I presume that it is because companies that do not have charitable status would not be able to convert immediately once the Westminster legislation has been passed.

Mrs Mulligan: We are aiming to ensure that, following the passage of the legislation through Westminster, we will not be precluded from taking on that responsibility when we discuss charities legislation in the future.

Elaine Smith: In the meantime, would companies that do not have charitable status be able to apply?

Mrs Mulligan: Yes.

Elaine Smith: I want to get my head round this small point: if, for example, a community-based social club in my constituency were to apply for CIC status now, would it be regulated from Westminster, whereas a larger charity would be regulated in Scotland? Would there be an office of the Westminster regulator in Scotland? That has not been explored.

Mrs Mulligan: I cannot comment on that at this

stage. I do not yet know what will be proposed for the regulator.

The Convener: It is not unusual for Scottish organisations to be regulated at a UK level and for the process to be managed in that way.

Stewart Stevenson: I invite the minister to clarify that CICs could be established from a standing start under the bill, not just through the conversion of existing organisations.

Mrs Mulligan: Yes.

Patrick Harvie: I want to clarify something that Elaine Smith said. Is it the case that the Westminster Parliament does not need a Sewel motion in order to legislate to allow companies to become CICs? So we do not need the Sewel motion—

Mrs Mulligan: No. The Sewel motion is specifically concerned with charities that cease to be charities and convert to CICs.

The Convener: None of that can happen before the happy day dawns when all the issues have been explored.

Mrs Mulligan: Oh happy day!

The Convener: It will be an intriguing day when we find out which organisations want to take part. We will sit with bated breath and pass the legislation to smoke them out.

Tricia Marwick: The *Official Report* will have great importance in our deliberations. If a debate takes place in the Parliament, it will happen on 4 March. That does not allow much time for the *Official Report* to appear or for us to read it. Can you point out to the official report the importance of ensuring that the report is available to members as soon as possible?

The Convener: We appreciate that often the staff of the official report are the invisible heroes in this process.

Stewart Stevenson: Hear, hear.

The Convener: The clerks will do all that they can to liaise with the official report to ensure that the report of our meeting is provided. The purpose of this discussion is to facilitate the debate that will take place in the chamber.

I note the caveats that have been expressed by Stewart Stevenson and others. However, do we agree that we do not wish formally to report to the Parliament?

Members indicated agreement.

The Convener: I thank the minister for her attendance.

11:06

Meeting continued in private until 12:30.

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