Stage 3 proceedings on the High Hedges (Scotland) Bill are scheduled to take place on 28 March 2013.

This briefing considers key issues raised at stage 1; recommendations made by the Local Government and Regeneration Committee in its stage 1 report, the Scottish Government’s response to those recommendations; and amendments lodged at stage 2.
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INTRODUCTION

The High Hedges (Scotland) Bill is a Members’ Bill and was introduced in the Scottish Parliament on 2 October 2012 by Mark McDonald MSP. With regard to the Bill, the Scottish Government stated that it would support Mr McDonald and government officials have been working with Mr McDonald on all aspects of the Bill as it has progressed through the Parliament.

The Bill seeks to provide a solution to the problem of high hedges which interfere with the reasonable enjoyment of domestic property. The Bill provides that where a hedge has been defined as a high hedge, an owner or occupier of a domestic property may apply to the relevant local authority for a high hedge notice. It provides local authorities with new powers to address these problems by issuing high hedge notices to owners of hedges specifying the work, if any, to be carried out to remedy problems and prevent their re-occurrence; and also to carry out any work where owners fail to do so. The Bill also enables local authorities to recover the costs of carrying out the work specified in a high hedge notice thereby minimising the costs to the public purse.

PARLIAMENTARY CONSIDERATION

The Parliament’s Local Government and Regeneration Committee was designated as lead committee for parliamentary consideration of the Bill. Its stage 1 report was published on 28 January 2013. The Scottish Government produced a written response to the stage 1 report on 31 January 2013. The Bill completed stage 1 (consideration of general principles) with the stage 1 debate on 5 February 2013.

Stage 2 consideration of the Bill was carried out by the Local Government and Regeneration Committee at its meeting on 6 March 2013 and was followed by the publication of the Bill (as amended at stage 2). Stage 3 proceedings are scheduled to take place on 28 March 2013.

KEY ISSUES AT STAGE 1

The definition of a high hedge as provided in the Bill as introduced was, undoubtedly, the key issue raised by witnesses who gave evidence to the Local Government and Regeneration Committee (“the Committee”) at stage 1. The Bill as introduced defined a high hedge as one which:

- is formed wholly or mainly by a row of 2 or more evergreen or semi-evergreen trees or shrubs;
- rises to a height of more than 2 metres above ground level; and
- forms a barrier to light
The definition is similar to those used in England and Wales and in Northern Ireland and is intended to capture the commonly perceived problem of fast-growing conifers in suburban areas. Under the Bill as introduced, a single tree is not considered to be a high hedge.

Most of the written and oral evidence received by the Committee commented on this aspect of the Bill. Opinion varied between those witnesses who believed that the definition should be expanded to include other forms of vegetation, such as single and deciduous trees, while others favoured retaining the definition as set out in the Bill as introduced. Other witnesses believed that the definition should be narrowed even further to provide protection to various types of evergreen or semi-evergreen species (e.g. yew or juniper).

The campaign group Scothedge, while being strongly supportive of the introduction of the Bill, argued that the definition should be expanded to include single evergreen or deciduous trees. While acknowledging that the definition in the Bill broadly replicates those in England, Wales and Northern Ireland, they stated that:

“Our preferred definition is the one that is used in the Isle of Man, because it is a wide definition. The wording is about something that stops people having reasonable enjoyment of a property….We prefer the Isle of Man definition\(^1\) because it allows all the cases to be made. People can make a complaint and their case can be considered. If we do not do that, the danger is that people will just switch species. Believe me; our experience is that some pretty unscrupulous people are growing these hedges.” (Scottish Parliament Local Government and Regeneration Committee 2012a).

Other witnesses giving oral evidence were unanimously opposed to the expansion of the Bill to include single trees. For example, Dr Maggie Keegan of the Scottish Wildlife Trust argued that the principle intention of the Bill should be to:

“….capture leylandii and other trees such as western red cedar that have little biodiversity value”. (Scottish Parliament Local Government and Regeneration Committee 2012a).

Dr Keegan suggested that the definition in section 1 of the Bill could be amended to specifically identify non-native evergreen and semi-evergreen species.

Aedán Smith of the RSPB highlighted what he saw as the advantages of retaining the definition of a high hedge as set out in the Bill as introduced:

“The current definition has the merit of simplicity, which has obvious benefits in terms of administration and management if the implementation of the bill is progressed. As Dr Keegan said, the current definition is likely to mean that hedges and trees that, broadly speaking, are of higher biodiversity value—those tend to be native species—will not be captured by the bill. Our primary concern is that there should not be an adverse impact on wildlife or biodiversity, and the current simple definition means that adverse implications for wildlife are less likely.” (Scottish Parliament Local Government and Regeneration Committee 2012a).

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\(^1\) The relevant legislation in the Isle of Man is the Trees and High Hedges Act 2005 (“the 2005 Act”) which uses a similar definition to that used in both England and Wales and Northern Ireland but defines a high hedge as a row of “two or more trees or shrubs” and does not require that they are wholly or mainly evergreen or semi-evergreen. It follows that deciduous species may constitute a high hedge within that definition. The 2005 Act also covers single trees but does not define a tree or provide a test that a tree would have to meet to be covered by the Act, other than it is affecting a person’s reasonable enjoyment of property.
The Scottish Tree Officers Group ("STOG") represents local authority tree officers who will have primary responsibility for implementing and managing the high hedge notice system under the Bill. In their evidence to the Committee they expressed some concerns in relation to the definition of a high hedge in section 1 of the Bill. STOG felt that this definition may be drawn too widely and could lead to the removal of trees and hedges of historic and biodiversity value.

In its written evidence STOG provided an example where the Bill may give rise to a problem where two evergreen trees could be planted 5 metres apart. Eventually, the lower branches come together and form a barrier to light, however the original intention was the establishment of two individual trees, not to form a hedge.

In oral evidence to the Committee, Robert Paterson of STOG expanded these concerns when he stated—

“My understanding of section 1 is clear, which is that it applies to a hedge or two or more trees growing closely together. We would seek to have the latter part of the provision removed because it could relate to a couple of mature yew trees that are 3,000 years old. If, as you suggest, those trees are reduced to 2m high, we will no longer have yew trees that look individual.” (Scottish Parliament Local Government and Regeneration Committee 2012b).

Angus Yarwood of the Woodland Trust Scotland expressed a concern that widening the definition of the Bill to include single trees would require a more considered examination of the implications, telling the Committee:

“If there is to be a broader definition, we would want to go back and look at the other sections in the bill, particularly with regard to tree preservation orders and the importance of heritage trees and the proper assessment of biodiversity value.” (Scottish Parliament Local Government and Regeneration Committee 2012a).

The Member in charge of the Bill, Mark McDonald MSP in addressing the questions raised about whether the definition of a high hedge should be amended, stated that “we should go forward on the current basis and see how the definition works in a Scottish context”. On single trees he added:

“…deciduous trees will be covered by the bill if they are part of a high hedge that is mainly formed of evergreen or semi-evergreen plants. Deciduous trees are not, by definition, completely off the agenda. However, in our view, the real problem in the context of barriers to light is the semi-evergreen or evergreen hedge.” (Scottish Parliament Local Government and Regeneration Committee 2012c).

Mr McDonald also stated that he did not support protection for native Scottish species of evergreen and semi-evergreen plants fearing it would create a “significant loophole” whereby anyone who wished to pursue a neighbourhood dispute could simply shift from a non-native to a native species.

The Minister for Local Government and Planning Derek Mackay MSP (“the Minister”) stated that the Government supported both the Bill, and the definition of a high hedge as set out in the Bill as introduced, stating that it “broadly strikes the right balance and required neither narrowing nor expanding”. (Scottish Parliament Local Government and Regeneration Committee 2012c).

The Committee (by a majority2) concluded in its stage 1 report that it was content with the definition of a high hedge as established by section 1 of the Bill stating that it did not believe, at

2 Stuart McMillan MSP dissenting.
this stage, that the definition needed to be amended to include single or deciduous trees, or other forms of vegetation.

COMMITTEE RECOMMENDATIONS

In its stage 1 report, the Committee made a number of recommendations including two which specifically called for action by the Scottish Government. The stage 1 recommendations are summarised below:

- the Committee supports the general purpose of the Bill
- the Committee is content with the definition of a high hedge as established in section 1 of the Bill
- the Committee would welcome clarity regarding the instances where a local authority is considering an application where one or more of the properties concerned in the application for a high hedge notice are owned by the local authority
- the Committee recommends that the Government examine the feasibility of establishing a central tree officer to provide a core of expertise to local authorities, as is the case in Wales
- the Committee recommends that the Scottish Government take the opportunity of the on-going review of Scottish Planning Policy to examine the issues raised such as residential development in proximity to woodlands
- the Committee recommends that the Bill be amended to include reference to National Park Authorities as statutory consultees for any high hedge notice applications made within their park area
- the Committee recommends that the Bill include a mechanism for a review. Such a review should take place within a reasonable timeframe, no later than five years, after the commencement of the system. Such a review should examine the operation of the Bill in general and not be confined to any specific issues

In response, the Minister stated that in relation to the recommendation that the Government examine the feasibility of establishing a central tree officer to provide a core of expertise to local authorities, Government officials would discuss this with local authorities as part of their preparations for the legislation coming into force.

In relation to the recommendation on the on-going review of Scottish Planning Policy and issues such as residential development in proximity to woodlands, he stated that officials would ensure that these were considered as part of the Review.

KEY AMENDMENTS AT STAGE 2

Definition and meaning of a high hedge

A number of amendments were lodged at stage 2 with regard to the definition and meaning of a high hedge as outlined in the Bill as introduced.
Anne McTaggart MSP stated that she was concerned that the exclusion of the word ‘deciduous’ from the definition of a high hedge would potentially leave many long-standing disputes over high hedges without a resolution and reiterated the argument put forward by Scothedge that many disputes involved deciduous species. She also stated that the argument that deciduous species should not be included in the definition was unsatisfactory:

“In the months that we have light, the leaves are on, so views from neighbouring properties are blocked during summer. It was argued in evidence to the committee that cloud cover can be so dense in the west of Scotland that dry days can be dark even in March. What happens to the plant depends on the temperature and the wind, so we cannot be certain that deciduous trees will not be a problem in winter.

Evergreens can also lose their leaves in certain conditions. The difference between evergreen and deciduous species is minimal in practice, and it is not logical to offer remedies for evergreen but not deciduous species. To do so is merely a technicality, which will frustrate many innocent home owners who are suffering in neighbour disputes.” (Scottish Parliament 2013, col 1806)

Ms McTaggart also put forward the argument that where vindictive intent or bullying is involved, a deciduous species could simply replace one which came within the scope of the definition in the Bill and lodged an amendment (Amendment 1) to include the word ‘deciduous’ in the definition of a high hedge.

Christine Grahame MSP put forward a probing amendment (Amendment 2) in relation to the definition of a high hedge which sought to include the word ‘plants’ within the definition. She argued that limiting the definition to trees or shrubs would exclude many plants which could potentially lead to the kind of disputes which have arisen over high hedges:

“Members will note that the word “shrubs” does not deal with, for example, Russian vine, which is a very fast-growing plant that is, if I may say so, ugly; ivy, which has its moments; or clematis montana rubens. Those are all vigorous growers, and I have experience of the latter two. The ivy was not my fault, but it is now meandering through my garden and at least two or three gardens nearby; it can grow to some height, gets everywhere and is difficult to remove. It is dark, green and evergreen, but it is not covered by the bill.

Those are just three examples. My point is that if someone had a neighbour—we know that there are neighbours like this, unfortunately—who was determined to defeat the provisions of the eventual act, they could plant ivy or any of the aforesaid plants. As I understand it, the key aspects of the legislation are the height of the plant—to an extent, it is also the purpose, although that is more inferred than stated—and deprivation of light. If that can be achieved by plants rather than just shrubs, evergreens or deciduous, I think that the issue should be considered, because the effect might be the same as that from the ubiquitous laurel, privet or leylandii.” (Scottish Parliament 2013, cols 1807-1808)

The final amendment in relation to the meaning of a high hedge (Amendment 19) was put forward by Margaret Mitchell MSP and concerned the provisions in the Bill which would allow Scottish Ministers to modify, by way of regulations, the meaning of a high hedge. Concerns raised by both the Local Government and Regeneration Committee and the Subordinate Legislation Committee at stage 1 were drawn on in support of the amendment:

“Amendment 19 would restrict ministers’ ability to exercise the power under section 34 to alter the definition of a high hedge. The amendment would specifically confine the power
to allow regulations under section 34 to change only the content of the regulations under section 1(1) and not rewrite them completely.

The Subordinate Legislation Committee and the Local Government and Regeneration Committee both noted that the power that section 34 would confer on ministers is very wide ranging in its ambit—I would venture to say unusually so. In its report on the bill, the Subordinate Legislation Committee noted that the section 34 power could be used to amend the definition of a high hedge to such an extent that it would fall outside the clear purpose of the bill. It could also allow amendment by ministers that would contravene the powers granted to the Government by the Parliament to make reasonable adjustment to the law without the need to return to the Parliament. (Scottish Parliament 2013, cols 1808-1809)"

Responding to the amendments, the Minister stated:

“At stage 1, I said about the definition: “The Government has taken quite a relaxed view on that. We have given evidence and given our position but have said that we will listen to what Parliament thinks is the appropriate way forward.”

I went on to say:

“If we were to propose changing the definition substantially at this point, I would want to return to local government to consult it.”

Given the fact that amendments 1 and 2 propose such a change, I have written to local authorities to seek their views on the potential impact of widening the definition of a high hedge in the ways proposed. Although it is not possible to obtain local authorities’ views in time to inform our discussions today, I have asked them for a response in good time for stage 3, when we can revisit the issue, so that it can be properly considered then." (Scottish Parliament 2013, cols 1813-1814)

To that end, The Minister asked Anne McTaggart MSP to withdraw amendment 1 and Christine Grahame MSP not to move amendment 2.

On amendment 19, the Minister stated that while the Government’s view was that section 34 of the Bill did not require to be amended in the way that Margaret Mitchell MSP had proposed, the Government did accept that the amendment may help to address concerns raised at stage 1 and were prepared to support it.

In response to amendment 1, the member in charge of the Bill, Mark McDonald MSP, stated that he had, given the scrutiny that had been undertaken during the stage 1 process, been convinced that evergreen and semi-evergreen trees and shrubs were the main problem in relation to high hedge disputes and would, as the Minister had, urge Anne McTaggart to withdraw her amendment. He argued that amendment 2 would result in a significant broadening of the bill and would cause problems with how the bill might be understood and interpreted, with the potential for loopholes and inconsistencies to emerge. To that end, he urged Christine Grahame not to move amendment 2.

On amendment 19, he remained of the view that section 34 as drafted was clear and an amendment was not necessary. However, he did not intend to oppose the amendment put forward by Margaret Mitchell.

Following further debate, Anne McTaggart agreed to withdraw amendment 1 on the understanding that consultation with the Minister and the member in charge of the bill would be
possible prior to stage 3. Christine Grahame also agreed not to move amendment 2 given the Minister’s intention to consult with local authorities on the matters which had been under discussion. Amendment 19 was agreed to without division.

Refund of application fees

Amendments 13 and 16 were put forward by Margaret Mitchell MSP.

Amendment 13 sought to require local authorities to publish guidance on the circumstances in which they would normally consider it appropriate to make a refund of fees incurred for a high hedge application. In the bill as introduced at section 4, an application fee paid to an authority may be refunded by the authority in such circumstances and to any extent that the authority determines. In support of her amendment, Margaret Mitchell argued:

At present, local authorities will have absolute discretion over whether to issue a refund to an applicant under section 4. In the interests of certainty and to ensure that refunds are awarded or not awarded consistently, it is highly desirable for councils to publish guidance to state the circumstances in which they would normally consider it appropriate to issue refunds. That will still leave councils with discretion, but it will ensure that applicants know when they can or should receive a refund for their application fee. (Scottish Parliament 2013, cols 1816-1817)

Amendment 13 also sought to require local authorities to consider any guidance issued by ministers on when it might be appropriate to issue refunds.

Amendment 16 sought to provide that hedge owners could be charged by the local authority for the amount of an application fee for a high hedge notice that the local authority had refunded to an applicant for a high hedge notice. Margaret Mitchell argued that:

As a matter of principle if a hedge owner has been obstinate or persistently stubborn in complying with a high hedge notice, causing unnecessary additional distress and frustration to neighbours and requiring the council to enter the land and do the work, it is reasonable and appropriate that the applicant should be refunded their application fee and the hedge owner charged. Furthermore, the threat of an additional cost if a high hedge order is not implemented is a valuable additional tool to encourage swift compliance with decisions. (Scottish Parliament 2013, col 1817)

In response the Minister acknowledged that amendment 13 was a helpful addition to the bill’s provisions and that the Government was happy to support it. With regard to amendment 16, he stated:

During the stage 1 debate, I said that we were interested to hear the committee’s views but that we were content with the current position. I also noted that there might be issues about fairness in that, having taken appropriate action, someone might still be charged. It is clear from the experience in England and Wales that the system in which the applicant pays the fee works well and serves as a deterrent. For those reasons, I urge the committee to oppose amendment 16. (Scottish Parliament 2013, col 1818-1819)

The member in charge of the bill stated that he was happy to support amendment 13 as transparency in relation to fees was important. However, he agreed with the Minister’s position on amendment 16 stating:

It remains my view that when a hedge owner has complied with a high hedge notice at their own expense, it is neither fair nor cost effective for the local authority to send them a bill for an amount that the applicant paid originally. It is important to remember that the
Margaret Mitchell welcomed the comments on amendment 13 but argued that amendment 16 was not too punitive and rather, that it may aid compliance when high hedge notices are issued to owners of such hedges. However, she intimated that she would be happy to reflect on the discussion around amendment 16 with a view to perhaps bringing the issue back at stage 3. Subsequently, amendment 13 was agreed to without division and amendment 16 was not moved.

**Dismissal of application**

Under section 5 of the bill as introduced, an application for a high hedge notice must be dismissed by a local authority if it considers that an applicant has not complied with pre-application requirements i.e. taken all reasonable steps to resolve the matters in relation to a high hedge dispute; or where an application is considered to be frivolous or vexatious.

Amendment 14 put forward by Margaret Mitchell sought to add another category of applications to those which may be considered frivolous or vexatious by adding applications which were “without merit”. She argued that some applications which were without merit may not fall into the frivolous or vexatious categories already provided in the bill. Although she could not provide a particular example of what may constitute an application that was “without merit” rather than frivolous or vexatious, she cited provisions in the Legal Profession and Legal Aid (Scotland) Act 2007 which provide for the dismissal of complaints that are “without merit” and argued that the inclusion of such a category may improve the bill.

Both the Minister and the member in charge of the bill put forward arguments with a view to the amendment being withdrawn.

The Minister stated that the bill at section 5 already contained appropriate provision for the dismissal of applications at a preliminary stage without the need for the local authority to investigate further.

The member in charge of the bill stated:

> I have had the opportunity to consider the proposal, and my view is that such amendment is not necessary. “Frivolous” covers cases that are totally without merit. Section 5 is drafted in a way that is similar to the drafting of provisions in many Scottish acts and will give local authorities the opportunity, at a preliminary stage, to sift out applications that do not deserve full consideration.

> The word “frivolous” gives a low threshold for applicants to overcome, as would the words “totally without merit”. However, amendment 14 would allow summary dismissal of an application that was “without merit”, rather than “totally without merit”. I am concerned that such a provision would give applicants a much higher hurdle to get over before their case could be considered on its merits under section 6. (Scottish Parliament 2013, col 1821)

In response, Margaret Mitchell stated that following the comments from the Minister and the member in charge of the bill she would withdraw amendment 14 at this stage, and would consider whether there was merit in lodging a similar amendment at stage 3.
Procedure on applications and notices where hedges are situated in National Parks

Amendments 3 – 7 were brought forward by the member in charge of the bill in response to the Committee’s recommendation that the Bill be amended to include reference to National Park Authorities as statutory consultees for any high hedge notice applications made within their park area. In its written submission to the committee, the Loch Lomond and the Trossachs National Park Authority proposed that national park authorities should be statutory consultees in relation to proposed high hedge notices that relate to hedges in their areas. The Scottish tree officers group supported the proposal.

Speaking to the amendments Mark McDonald stated:

I am grateful to the Loch Lomond and the Trossachs National Park Authority for raising the issue. As I said during the stage 1 debate, I am happy to agree with the Local Government and Regeneration Committee’s recommendation that

“the Bill be amended to include reference to National Park Authorities as statutory consultees”

when a local authority is considering issuing a high hedge notice that relates to a hedge in a national park. Amendment 3 will ensure that national park authorities are consulted in that regard and that local authorities take account of their representations in considering whether action should be taken to address the adverse effect of a high hedge. (Scottish Parliament 2013, col 1822)

He confirmed that amendment 3 would ensure that national park authorities are consulted in such situations and that local authorities take account of their representations in considering whether action should be taken to address the adverse effect of a high hedge. Amendments 4-6 would ensure that national park authorities are informed of local authorities’ decisions on hedges in their area and provided with copies of newly issued or varied high hedge notices, as well as being informed when a notice is withdrawn. Amendment 7 was a consequential amendment on amendment 6 and would ensure that the new consultation requirement applies to any withdrawal or variation of a revised high hedge notice. Amendments 3-7 were agreed to without division.

Persons appointed to determine appeals

Section 15 of the bill as introduced provides that appeals under the bill may be determined by a person appointed by the Scottish Ministers. Amendment 15 put forward by Margaret Mitchell sought to require that such a person should have specific knowledge of Scots law, including, amongst other things, the law relating to land, planning and environmental matters.

The Minister responded by saying that the Government intended that the directorate for planning and environmental appeals would deal with appeals under the bill:

Of course, it has considerable experience of dealing with planning and other appeals, but I know that there are, under planning law, no statutory requirements that set out required knowledge or experience for dealing with planning appeals. The amendment is therefore unnecessary. It would be disproportionate to impose such requirements in relation to high-hedge appeals, which is something that we should seek to avoid. All necessary guidance should be in place, and professionalism should be exercised.

Amendment 15 is unnecessary and is not proportionate, so I urge the committee to resist it. (Scottish Parliament 2013, col 1825)
The member in charge of the bill stated that while he agreed with Margaret Mitchell that persons who are appointed to deal with appeals should have appropriate experience, the fact that appeals would be dealt with on behalf of ministers by the directorate for planning and environmental appeals would ensure that that experience would be in place for appeals in relation to high hedges:

The directorate’s reporters already deal with planning appeals, which can, of course, be massively complex, and the impact of developments under such appeals are often enormous—certainly much further-reaching than a dispute between neighbours over a high hedge. All of the directorate’s reporters are experienced in dealing with many types of analogous cases. They have the relevant knowledge and experience. There is no need to impose a statutory requirement. Indeed, there is no statutory requirement relating to the knowledge and experience of reporters who are considering planning appeals. I therefore suggest to the committee that it would be disproportionate to impose such requirements in respect of people who will deal with high-hedge appeals. (Scottish Parliament 2013, col 1825)

In response Margaret Mitchell stated that she would reflect on the comments made and see whether the amendment could be improved as the issue was an important one, but was content to withdraw amendment 15 at this stage.

Report on operation of the Act

Amendment 12 put forward by Stuart McMillan, which responded to a recommendation made the Committee in its stage 1 report, sought to add a new section to the bill which would require the Scottish Parliament to make arrangements for one of its committees or a sub-committee to report to the Parliament on the operation of the Act during a review period. The amendment required that a review of the operation of the Act be undertaken no later than five years after the commencement of the substantive provisions in the legislation. Mr McMillan stated:

The purpose of the review is simply to determine whether the eventual act is operating as it should. I imagine that the review would provide an opportunity for outside interests to have their say as to whether or not they thought that the act was fully operational and was doing what it should in helping our constituents and our communities.

There is another reason for lodging amendment 12 and inserting an additional section. An issue that has been raised in Parliament time and again is the lack of post-legislative scrutiny; such a review being written into the bill would allow that to happen. There is no criticism here against parliamentarians, the Government or the Parliament regarding the lack of post-legislative scrutiny, which is due to time constraints, as we fully appreciate, but inclusion in the bill of the provision in the amendment would ensure that the eventual act will not drop off the political agenda and that it will return to Parliament in the future. (Scottish Parliament 2013, col 1829)

In response, the Minister stated:

Amendment 12 provides a device to reflect on the views of committee members and others and to ensure that we get the definition and other matters right and return to them if they are not right. Timescales are entirely a matter for the committee—we just have to be pragmatic. I imagine that the committee would not want to be bound by a timescale that provided no flexibility.

Amendment 12 is unprecedented. Despite what I said, post-legislative scrutiny is not necessary for every piece of legislation that we produce. If it was, that would suggest that we did not have confidence in the legislation that we considered and enacted. However,
it is important to get legislation right. We have discussed returning to the definition and other issues at stage 3. Stuart McMillan’s amendment 12 responds to the committee’s recommendation that a review provision be included in the bill. I do not believe that a mandatory review provision is a necessary feature of legislation, but I note the committee’s recommendation and I am aware that Mark McDonald has said that he will support the amendment. In the circumstances, the Government is prepared to support it, too. (Scottish Parliament 2013, col 1830)

Stewart Stevenson pointed out that the amendment made no provision for a minimum period to have elapsed before a review could be undertaken and stated that a minimum period may be appropriate so that there was sufficient evidence of the operation of the legislation for a review to be meaningful. Responding to that point, the member in charge of the bill stated:

A degree of pragmatism needs to be applied. How long after the act comes into force would it be reasonable to expect to have lessons that could be learned and applied? Rather than stipulate a minimum period, it would be far better to take a pragmatic approach.

Amendment 12 will ensure that we actively learn from local authorities’ experience of implementing the act, and the provision will be vital in order to inform Parliament’s consideration of how the act should operate in the future. It will also provide the opportunity to draw on examples from elsewhere. (Scottish Parliament 2013, col 1830 - 1831)

Margaret Mitchell sought clarification on whether the amendment would mean that it could be six and a half years after the act’s implementation before a report was forthcoming following the review period.

Summing up, Stuart McMillan stated:

Stewart Stevenson raised the issue of specifying a minimum period. Although his point might well be valid, I do not think that it is necessary to specify a minimum period. I do not think that parliamentarians on the future committee or sub-committee that reviews the operation of the bill will want to do so in—for argument’s sake—two years’ time rather than in three or four years’ time. We must allow the bill to pass, to be implemented and then to bed in. At that point, we can start to gather information. A minimum period might not allow a full and thorough review to take place at some point in the future, so I do not think that there is a requirement for that.

In relation to Margaret Mitchell’s point, there is the potential for it to take up to six and a half years for a report to be produced, but the review would have to take place no later than five years after the day on which section 2 comes into force. Depending on its workload, the committee concerned might want to start the review period a wee bit later, but I do not envisage that being the case. We all fully appreciate that the issue is one that affects many people across Scotland and on which there is no legislation at the moment. Given the bill’s importance, I do not envisage what Margaret Mitchell suggests being the case.

Following a division, amendment 12 was agreed to⁴.

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⁴ Margaret Mitchell MSP abstaining.
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