OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 24 May 2017

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 24 May 2017

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
16th Meeting 2017, Session 5

CONVENER

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

DEPUTY CONVENER

Elaine Smith (Central Scotland) (Lab)

COMMITTEE MEMBERS

Kenneth Gibson (Cunninghame North) (SNP)
*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
*Graham Simpson (Central Scotland) (Con)
*Alexander Stewart (Mid Scotland and Fife) (Con)
*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jackie Baillie (Dumbarton) (Lab)
David Brown (Fife Council)
Paul Cackette (Scottish Government)
Campbell Dempster (North Ayrshire Council)
Mark Henry (North Ayrshire Council)
Chief Inspector Mandy Paterson (Police Scotland)
Julie Robertson (Scottish Government)
Kevin Stewart (Minister for Local Government and Housing)

CLERK TO THE COMMITTEE

Clare Hawthorne

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government and Communities Committee

Wednesday 24 May 2017

[The Convener opened the meeting at 10:02]

High Hedges (Scotland) Act 2013

The Convener (Bob Doris): Good morning, and welcome to the 16th meeting of the Local Government and Communities Committee in 2017. I remind everyone present to turn off mobile phones. As members' papers are provided in digital format, members may use tablets during the meeting.

Apologies have been received from our deputy convener, Elaine Smith, who unfortunately cannot be with us this morning.

Item 1 is post-legislative scrutiny of the High Hedges (Scotland) Act 2013. The committee will take evidence from the Minister for Local Government and Housing, Kevin Stewart. I welcome the minister and his Scottish Government officials: Paul Cackette, chief reporter, and Julie Robertson, policy officer. I thank them for coming and invite the minister to make some opening remarks.

The Minister for Local Government and Housing (Kevin Stewart): Good morning, convener and committee. Thank you for inviting me to speak to the committee.

Post-legislative scrutiny is a key part of the Parliament's work and I applaud the committee for carrying out scrutiny of the High Hedges (Scotland) Act 2013. The act was intended to recognise the detrimental impact that high hedges may have on people's lives and enjoyment of their homes. The fact that there was no legislative solution in Scotland to resolve disputes between neighbours prior to the introduction of the act means that it is crucial to monitor its effectiveness.

The act gives home owners and occupiers a vehicle through which they can take positive action to resolve disputes about high hedges when all other options have failed. It means that individuals are empowered to take action through their local authority, which can enforce decisions that strike a balance between the competing rights of neighbours to enjoy their homes. For a number of people, the introduction of the legislation brought hope that years—sometimes decades—of stress and negative impact on their mental health and wellbeing would finally be addressed. However, from the evidence submitted to the committee and people writing to the Scottish Government, I am aware that some people feel that their expectations of how the legislation should operate in practice have not been met.

In May 2016, following discussions with Scothedge and local authorities, the Scottish Government published revised guidance to accompany the act. It was hoped that that would address some of the concerns that had been raised during its first two years of operation. However, a number of issues are still being raised, and I therefore welcome the committee's post-legislative scrutiny.

When considering high hedges, it is important to remember that the hedge owner and the hedge neighbour may have completely opposite perceptions of the harm and impact of a hedge. There are two sides to any argument, but years of unresolved dispute lead to a greater and greater inability to compromise, and the possibility of finding a mutually agreed solution that delivers a reasonable and balanced outcome diminishes. That is why hedge owners and hedge neighbours need the act and a formal resolution process to fall back on when all else has failed.

The Scottish Government is keen to listen to the concerns that are being raised and is open to suggestions on how the legislation or the accompanying guidance can be improved to ensure that they are working as they were intended to and that home owners can continue to enjoy their property as they wish to.

The Convener: That is very helpful for setting the context. We will now move to questions.

Graham Simpson (Central Scotland) (Con): Thanks for attending, minister. Could you give us your general impressions of how effective the act has been, in the light of some of the evidence that we have heard and the concerns that you have already mentioned?

Kevin Stewart: It is difficult for me to give a general impression of how the act has worked nationwide. As a constituency MSP, I would say that the act has worked well for a number of my constituents, although there are still some constituents who are quite unhappy with the outcomes that they have experienced. In many circumstances where there have been disputes for a long period, it has been helpful to many people.

Graham Simpson: Do you think that councils have been working within the spirit of the act? As Mark McDonald told us, it is really there as a last resort. Do you think that it is not being used as that in some cases?

Kevin Stewart: Again, it is difficult for me to judge what is happening in all 32 local authorities. Regarding the "spirit of the act", as you describe it,

the policy memorandum that accompanied the High Hedges (Scotland) Bill stated that the principal policy objective of the bill was

"to provide a solution to the problem of high hedges which interfere with the reasonable enjoyment of domestic property."

The act, as it is now, does that by providing

"an effective means of resolving disputes over the effects of a high hedge where the issue has not been able to be resolved amicably between neighbours."

As far as I am concerned, the best potential for resolving disputes lies in the pre-notice stage, before the formal procedures of the act start. That is where I think the maximum scope for resolution lies. Once formal procedures begin, it is not so much the spirit but the letter of the act that comes into play. You heard that in earlier evidence from, I think, Kevin Wright of Aberdeen City Council.

Andy Wightman (Lothian) (Green): That leads neatly on to my question. You have mentioned Aberdeen City Council. Last week, Mark McDonald told us that, as far as he was concerned, the definition of "high hedge" was as contained in section 1 of the act. We have heard evidence from home owners who are unhappy with the act and its inability, as they perceive it, to deal with their issues, and they have raised concerns with us about what a hedge actually is. Aberdeen City Council said:

"If the trees and/or shrubs in question cannot be defined as a hedge in the first instance the trees and/or shrubs are considered to fall out with the scope of the Act."

Do you agree with the council's observation?

Kevin Stewart: There has been some debate about the definition of "hedge", over the piece. In the guidance that was published when the 2013 act commenced, reference was made to the "Oxford English Dictionary" definition, but officials received a number of complaints that several local authorities were using that definition as a reason not to consider applications.

The definition was felt to be adequate when the High Hedges (Scotland) Bill was passed, but if the committee feels that the balance of evidence that you are hearing supports a change to the definition, I am open to considering a change. However, definitions are always difficult. I was a member of the Local Government and Regeneration Committee, which scrutinised the bill, and I think that the dictionary definition, which has been removed from the guidance, was a good one. I will be interested to hear what the committee has to say, and we will consider the issue in light of your findings.

Andy Wightman: Given your experience with the bill as it went through the Parliament, do you take the view that the act is not designed to deal with trees, forests, woodlands and shelter belts?

Kevin Stewart: The 2013 act was not designed to deal with trees, woodlands and forests. When the committee was looking at the issue, you can imagine how many things came into play. We took evidence not just from people in Scotland who had experienced difficulties but from those in other jurisdictions. At the time, it was argued in certain quarters that the bill should cover single trees—other jurisdictions, including the Isle of Man, allow for interventions over single trees. The committee felt that such an approach would be unworkable.

We took evidence from the likes of the Scottish Wildlife Trust on areas such as woodlands. It was because of the evidence that we received from other jurisdictions and other bodies that the 2013 act was passed in the form in which it was passed.

Andy Wightman: That reflects what local authorities told us, which is that the 2013 act was intended to deal just with hedges, and specifically high ones. Do you agree with Aberdeen City Council that, if foliage is not a hedge, it cannot fall within the scope of the act? In other words, do you think that the definition of "hedge" is an important element in the interpretation and operation of the legislation?

Kevin Stewart: The definition is an important element, without a doubt.

Andy Wightman: Thank you.

The Convener: The committee has perhaps been looking at the issue from the wrong angle to an extent. Let me describe a scenario. Someone plants three or four small trees—I am not a horticulturist, and the kind of tree is irrelevant for the purposes of the scenario—which form an artificial barrier that blocks sunlight and interferes with a neighbour's reasonable enjoyment of their property. Does it matter whether the barrier is made up of three or four small trees or a hedge? I know that it was not you who introduced the bill, minister—

Kevin Stewart: No, it was not.

The Convener: What is so special and unique about hedges, as opposed to other forms of plant life, in interfering with someone's reasonable enjoyment of their property?

Kevin Stewart: That was the scope of the bill; it dealt with high hedges and not nuisance vegetation or anything else. The question about the scope of the bill is best asked of Mr McDonald, who introduced a bill to deal with nuisance high hedges and not other forms of plant life and vegetation.

The Convener: The committee has to deliberate on the evidence that we have heard, but

my gut tells me that, if someone creates a horticultural barrier between one property and another that prevents a person's reasonable enjoyment of their property, it does not matter tuppence whether it is a hedge or trees. However, the act seems not to deal with that.

10:15

Kevin Stewart: The definition in the act includes lines of trees that form a hedge. I am not a horticulturist either, but this comes back to the definition of a high hedge. A line of trees can form a hedge, but there can be a line of trees that does not form a hedge. If we look out of the window behind you, convener, and across to the former *Scotsman* building, we see a line of trees with gaps. Some folk would look at that and argue that it is a hedge, while others would argue that it is not a hedge.

The issue is the definition, and that is why I am willing to look at anything that the committee puts forward on that. Originally, the "Oxford English Dictionary" definition was included in the guidance, but it was removed because it was seen as being too prescriptive.

The Convener: Okay. That is helpful. Mr Simpson, do you have a supplementary question on that?

Graham Simpson: Yes. It is on the same issue. When we spoke to Mark McDonald, he confirmed that trees and shrubs are included in the act. However, the key thing is not whether they formed a hedge when they were planted but what they grow up to be and whether they end up forming a barrier that blocks out people's light. When Mark McDonald appeared before the committee, he was certainly of the view that the guidance should be revised. What are your thoughts on that?

Kevin Stewart: As I said, I am happy to look at the guidance and the committee's recommendations. Originally, the guidance included the definition from the "Oxford English Dictionary", but the guidance was changed because some folk were unhappy with that definition. If the committee can come up with a different definition, I will be happy to look at it.

Graham Simpson: Do you have the definition that was removed?

Kevin Stewart: Do you mean the "Oxford English Dictionary" definition?

Graham Simpson: Yes.

Kevin Stewart: I do not have it with me. I am looking at my officials—

Julie Robertson (Scottish Government): We do not have it with us. It is quite a lengthy definition of what a hedge actually is. We can certainly provide it to the committee.

Graham Simpson: Do you feel that it is a better definition than the one that we have ended up with?

Kevin Stewart: The key point is that, as a listening Government, we removed that definition from the guidance because some folk felt that it was too prescriptive. If the committee decides that it should go back in, I will be more than willing to look at that.

Graham Simpson: You mentioned that you issued revised guidance. Was that last year?

Kevin Stewart: It was in May 2016.

Convener, because of the complexities of the guidance and the fact that I do not have full knowledge of every aspect of it, even though it is in my briefing, may I bring in Ms Robertson to talk in more detail about the changes to the guidance?

The Convener: Absolutely.

Julie Robertson: When the act came into force, the Scottish Government received a number of letters from people who raised a number of issues that they had experienced with early applications, and officials worked closely with Scothedge and local authorities to go through the guidance to try to identify whether anything in it was causing problems.

The "Oxford English Dictionary" definition is of a "hedge", not a "high hedge". Obviously, the definition of "high hedge" is in the legislation, but we were trying to define the references in the legislation to hedges. That is what the dictionary definition was for.

We received a lot of correspondence from organisations such as Scothedge, which I know you have had evidence from, that the definition was restricting the applications that local authorities were considering, because they were sticking to the strict definition of a hedge. Those organisations took the same view as some committee members are taking: that it should not matter whether it is a hedge or another type of vegetation. In agreement with the local authorities and Scothedge, the dictionary definition was removed.

Scothedge, local authorities and others looked over the guidance in detail. We also worked to get the Plain English Campaign's crystal mark to ensure that the guidance was easy for members of the public to follow and understand.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): I disagree somewhat with Mr Wightman and Mr Simpson on the definition. The act clearly states the definition of a high hedge, but there is inconsistency in how local authorities are

interpreting the guidance and legislation, and we have heard evidence about that prior to today. Local authorities apply various levels of fees across the country, for example, and there is inconsistency in who takes responsibility at local authority level. In some authorities, the planning department looks into the matter; in other authorities, tree experts—or whoever it might be—are sent out to assess whether a hedge is a high hedge. There is also an issue about timescales and how long the process takes. There is inconsistency across the board at local authority level, which I honestly do not think relates to the interpretation of what constitutes a high hedge.

Would the Government consider setting out more structured guidance to local authorities on how the process should be carried out?

Kevin Stewart: Again, I am willing to look at those issues, but how local authorities go about their business or set fees is a matter for them. If the committee were, for example, to say that there should be full-cost recovery for all the works, we could end up in a situation where fees rise dramatically. My understanding is that Inverclyde Council's fee of £182 is the cheapest and that Glasgow City Council's fee is £500. The highest fee in England is about £600.

The committee has had evidence from local authorities. I think that Glasgow City Council said that the fee should be the same as a planning application fee, because the same amount of processing is needed and given the greater likelihood of costs being higher because of the rights of appeal.

If the committee wanted to try to create fee uniformity, discussions with the Convention of Scottish Local Authorities would have to be undertaken. You would probably find that fee uniformity would mean full-cost recovery. You could end up with a greater level of fees, which might impede some folk's ability to take action.

Jenny Gilruth: We have heard various examples of people who, having been served a high hedge notice, have cut down every second tree in order to circumvent the legislation. The local authority then carries out an assessment and says, "It's not a high hedge, because every second tree has gone." Do you have a view on that type of situation? Does the Government need to look again at tightening up that part of the legislation?

Kevin Stewart: I will bring in Mr Cackette at this point, because he will have a view on the matter, as chief reporter in the directorate for planning and environmental appeals.

Paul Cackette (Scottish Government): As I understand it, the concerns about every second tree or part of the hedge being cut down mainly relate to people who do that before a notice is served—in other words, people who do that in order to avoid that situation arising. Hedges can be cut after notice is served, and I will deal with that in a minute. It is a risk that part of the hedge gets cut down, and I can certainly see why people who are in a process would be frustrated if the legislation is seen to be circumvented or if attempts are being made to circumvent it.

In those circumstances, although the councils would make the point that, technically, it was no longer a high hedge, the suggestion would be that there was still an underlying issue to be addressed. The role of pre-application mediation is therefore vital. The role that councils play in trying to get an amicable resolution before they serve a notice is a good thing, although it opens up the possibility that people will take evasive action.

When a council serves a notice, it is difficult for it to do anything other than serve it on the basis of the hedge as it stands. If the hedge is altered by the time that the notice is served, there is a difficulty. There is a lot of flexibility in what the DPEA does, because we try to achieve a sensible resolution of the issue that is before us. The starting point for us is that the hedge is the hedge at the time that the notice is served. If a hedge is different—because somebody has cut down part of it or because, after the passage of time, it looks different, and the impact is different—the reporter will normally seek to identify what it was like when the notice was served. In some cases, they have sought photographic evidence of the hedge as it was, because it has been suggested that the hedge has changed in the meantime. In most cases, they make a judgment on the basis of what the hedge was like at the time when the notice was served.

The Convener: There are a number of stages in the process. There is pre-application, which could involve mediation that would not cost either party any money. At that stage, the neighbour with the hedge may take remedial action and the problem may go away—that would be a positive thing. At our first evidence session, we heard that the process is working as a deterrent in some parts of the country, which is a good thing.

If that does not work and the application goes ahead but, just before the high hedge notice is served, every second tree or whatever is cut down, is it possible to have the enforcement action carried out as if the neighbour had not altered their hedge in any way? If so, could that enforcement include removing the hedge entirely? Would that idea fly in terms of the law and the regulations? My thinking is that it would be just tough if the hedge owner had ignored the pre-application and mediation and if someone had put in an application. Let us say that it was self-evident that

the hedge owner was going to lose the case and an enforcement notice was going to be served but they tried to circumvent that process by tinkering with the hedge. If the enforcement action would have been to take the whole hedge away or get it all below 2m or what have you, could that action still be enforced in law?

Paul Cackette: I will answer the second question first. In making a determination in such cases, the reporter will look at all the circumstances and will try to achieve a fair balance and an outcome that recognises the rights of both parties. If there has been some suggestion that one party has acted in the way that you describe, the reporter can do two things: they can remedy the immediate problem and they can set out steps in the high hedge notice to avoid the problem recurring. I imagine that, if there is a belief that steps have been taken to circumvent the process but longer-term steps could be taken that would ensure that the hedge owner could not let the hedge grow and start becoming a problem again, the notice could contain such longer-term steps.

Normally, a notice would have two components: the steps that are to be taken to remedy the difficulty and the steps that are required to avoid the problem recurring. Avoiding its recurring might risk someone taking steps to get round the notice. However, if it was a hedge when the appeal was taken, the reporter could take that into account in varying a notice, if that is what they chose to do, to minimise the risk that the person who had behaved in that way would simply ignore the notice by allowing the hedge to grow again and become the nuisance that it was before. There is capacity and scope within the decision-making process to guard against that.

10:30

The Convener: I follow that and I apologise for asking the specific question again, but if the reporter were to serve a notice on the original hedge, could they specify that the hedge should be removed completely or that everything should be removed to below 2m?

Paul Cackette: Yes.

The Convener: So the notice would specify what the remedial action should be, but in the meantime the neighbour could come along and do something less than that and the reporter could say, “Oh, that’s okay then.” Surely that is not acceptable?

Paul Cackette: The reporter could do that, but it would depend on the circumstances—they would have to make a judgment whether they should uphold the notice that required the lower level to be maintained or vary it along the lines that you suggest.

The Convener: Does the guidance say that the reporter should base a high hedge notice on the condition of the hedge at the point of application or the condition of the hedge at the point when the notice is served?

Paul Cackette: Just to be clear, the question was to do with whether a hedge was a high hedge at the time that the notice was served. That is why the point is relevant. The fact that the condition of the hedge might have changed is a factor that the reporter can take into account.

Kevin Stewart: We should perhaps go over what would happen under normal circumstances. If there were no change and the matter went to the reporter on appeal, the possible outcomes of the appeal would be that the reporter could uphold the local authority’s decision or high hedge notice; quash the decision, with or without issuing a high hedge notice; quash the high hedge notice that the local authority issued; or vary the terms of the notice, by changing the work required or the compliance period—that is what Mr Cackette was describing.

The Convener: What is the picture across the country? In your initial statement you spoke about the pre-application process. How does the Government collect data from across the country to ensure that the legislation is having the intended outcome? We have heard some anecdotal evidence that it is working very well and other people have told us that it is not working at all. I am sure that the truth lies somewhere in the middle. Where is the data to back it up?

Kevin Stewart: You are looking for local authority data, rather than the appeals data, so I will bring in Ms Robertson.

Julie Robertson: The Scottish Government does not collect data from local authorities. There is no requirement in the 2013 act for local authorities to provide us with data regularly, as they must under other legislation. We expect that some local authorities will keep a record of the number of applications that they process. However, we know that where an application is dismissed by a local authority, the local authority does not tend to record that information, because it does not see it as an application.

Local authorities will keep records of the applications that they accept, receive and process. The DPEA will keep records of the appeals, but the Scottish Government does not collect any data.

Kevin Stewart: So there is data for the appeals when they reach the DPEA, but there is no onus

on local authorities to give the Scottish Government every piece of data.

To go back to Ms Gilruth's earlier point, additional complexities, such as data collection and compliance with reporting to Government, would add to the cost. You are looking at costs and trying to create uniformity through discussions with COSLA, but if you wanted the Government to collect and analyse data—as I said, I am willing to look at that—it would add to the cost.

The Convener: I am not sure whether the Government should collect data, but I am trying to establish what data currently exist. Any data that is collected will be collected at the local authority level. Do all local authorities collect the data in the same way?

Kevin Stewart: It is a matter for each local authority. I do not know how each local authority would collect that data.

The Convener: Is there a requirement for local authorities to retain such data?

Julie Robertson: There is no requirement in the 2013 act.

The Convener: Local authorities may or may not retain all the data, and if they do retain that data, they may have different procedures and processes, so even if they were to report it to the Government there could be 32 different ways of doing that.

Kevin Stewart: Yes.

The Convener: Are we not stabbing fish in a barrel while blindfolded, without any fish being in the barrel in the first place?

Kevin Stewart: I am willing to look at all such things. However, if you add to the complexity of the notice, the cost will be much higher—and the cost falls on the person who applies for the notice.

I am willing to look at all the matters that are being asked about here, and I will read the committee's findings very carefully. However, you must recognise that there are implications if you choose to go down routes that require changes to legislation and guidance.

The Convener: Okay. Can we put cost to one side for a second, minister? We will eventually deliberate on a report on the matter in the normal way. I am asking for your thoughts not on cost but on the fact that there is no requirement for local authorities to retain any data, that there is no guidance on how the data should be retained even if they did retain it, and that there is no requirement for them to give the data to the Government. Furthermore, no analysis is being done. How on earth can the committee conduct post-legislative scrutiny?

Kevin Stewart: Before you look at anything else, you should ask yourselves, as a committee, what benefit there would be in collecting and keeping that data. What would that add—

The Convener: Minister, can I stop you for a second? We are not asking the committee; we are asking you, as the minister, for your thoughts on whether that data would be of value. We will ask ourselves the question, but will you answer the question that I have asked you?

Kevin Stewart: I have no evidence to suggest that the collection of a massive amount of data would help to deal with the difficulties with high hedges.

The Convener: No one said that there was going to be a massive amount of data. Would you be willing to explore the possibility of the consistent recording of data across the 32 local authorities?

Kevin Stewart: As I have said to you throughout all of this, convener, I am pretty pragmatic and willing to look carefully at the committee's findings. However, I will also have to consider the implications of adding certain things, although I am willing to do that. I would have to be convinced that there was a real benefit in adding to the bureaucracy, which would inevitably add to the cost that falls on the people who apply for the notices.

The Convener: I want to push you further on this, minister. Let us try again, because I detect a slight evasiveness in your citing of the cost. There is no requirement on local authorities to retain data—that is up to them. However, might it make sense to tell local authorities that, if they decided to retain and store data, although it would not be a requirement it would be helpful to the Government if they did it in a certain way, because at some point the Government or the committee might want to conduct a piece of post-legislative scrutiny, and doing that may be of value to such scrutiny. Do you see a value in doing that, minister?

Kevin Stewart: I do not know what the value or lack of value would be in having uniformity in data collection across the country. The uniformity of that collection could cover a myriad of different ways of doing it. I do not see the benefit of collecting large amounts of data and reporting it centrally when all that that is likely to do is give us an indication of how many notices there have been in each local authority area, how many have been upheld and how many have not been upheld.

We get a fair indication of where things are working or not working from the appeals that come to Mr Cackette. Adding to the amount of data per se would definitely add to the cost—there is no doubt that, if you discussed the matter with COSLA, it would tell you that there would be an

additional cost to it—and that additional cost would fall on the folk who apply for the notices. I do not know whether there would be any benefit in that.

I have been pretty open in saying that I am willing to consider any recommendation that the committee makes. I have not been avoiding anything; I am saying that I am willing to consider the evidence that the committee has heard and the recommendations that it makes.

The Convener: Well, minister, I merely say that you spent two minutes answering a question that you have answered already, not the question that I just asked you. I will repeat the question that I asked you, which is pretty straightforward. Local authorities may or may not collect data on the matter. There is no requirement for them to do so. Would it be helpful if they collected it consistently?

I note that the only part of my question to which you alluded in your answer concerned the fact that you did not see a benefit in local authorities collecting data in the same way. That staggers me, actually, because it is a huge benefit and it is something that the Parliament has been seeking for many a year. I cannot believe that we are having a disagreement on that. Do you see a value to local authorities collecting data in a consistent way, whether it is compulsory or otherwise?

Kevin Stewart: I am saying—I thought that I had made it plain—that the likelihood is that, if you or I at some point asked local authorities to collect the data in a consistent manner, they would come back via COSLA and say that there was a cost to that. That cost would end up being borne by the notice payer.

The Convener: Well, COSLA has given evidence to the committee and it gave evidence to the Health and Sport Committee when I was its deputy convener, and I have to say that, whatever we are debating, it tells us that there is a cost. That is its fall-back position on anything that we ask it to do. I still do not think that you have answered my question, minister.

Jenny Gilruth: I am somewhat confused, minister, by your saying that an additional cost would certainly be associated with a standardised approach. We do not know that that will be the case. Surely, if we strip out 32 different layers of bureaucracy and put in place something that is standardised throughout the country, that reduces bureaucracy and costs.

Kevin Stewart: I do not know how each local authority is gathering the data at the moment. It may be an adjunct to other systems that they use. If the committee wants consistency across the board, a new system might well be required. I am not an information technology expert and I would not want to sit here and say how each local authority is gathering the data, because I do not know.

Jenny Gilruth: I appreciate that. Our concern is that we just do not know what the picture is nationally. The Scottish Government has no idea what it is, because as things stand Mr Cackette gets the evidence only at the very end. You find out only once the process has happened, so we have no idea what is being done before we get to that stage.

Kevin Stewart: You have to consider the matter from the post-legislative scrutiny side. I am willing to consider the committee's recommendations in that regard, but I repeat—I am sorry if I am being repetitive—that such standardisation may well come at a cost. In this case, the costs are borne by the folks who apply for notices. The question is whether, if those costs became excessive, fewer folk would apply for notices and get the benefit of the legislation.

Jenny Gilruth: The cost is up to local authorities. You make quite an assumption in saying that the cost will be passed on to the person who applies for a notice. It is up to the individual local authority, not central Government, how much it charges. Therefore, we cannot assume that local authorities would increase costs.

Kevin Stewart: But it may well be that they would.

Jenny Gilruth: It may, but it may not.

Kevin Stewart: It may or it may not. I could go back to the previous line of questioning about whether costs should be uniform throughout the country. If it comes to the stage of local authorities considering full cost recovery for the work, as may be the case in certain parts of the country but not others, there may be a rise in cost if there is a rise in the bureaucracy around the legislation.

Jenny Gilruth: My point was that we would be taking out 32 different layers of bureaucracy to create uniformity, so it is not about increasing bureaucracy but about streamlining it and having a more consistent approach. That would give us the national picture that we need to hold the legislation to account. We do not have that just now.

Kevin Stewart: Or, as I said earlier, it could be that the recording that is being done at the moment might be done as an adjunct to current systems and, if you want the uniformity that is suggested, that may mean putting something else in place, which may come at a cost.

The Convener: We have had a bit of an exchange already, but let us assume that there is no cost to any of this. Let us say that the money tree exists and that we can just press a button and

get all the information. Do you see a value in having the information?

10:45

Kevin Stewart: Ms Robertson deals with this on a day-to-day basis, so it is probably better to ask her whether there would be any advantage to the Government in having a national picture. We have a national picture in some regards, given the information that comes through the appeals process. Would having the picture of each application, each refusal and all the rest of it add to the Government—

The Convener: So, the minister does not have a view on whether there would be value in having that information, but Julie Robertson does.

Kevin Stewart: That is not what I said, convener.

The Convener: Tell me again what you said, minister.

Kevin Stewart: I said that I did not know whether it would add anything for us to have information from each local authority about how many applications are made, how many are refused and so on. I do not know what value that would add, but Ms Robertson might.

The Convener: I am staggered by that, minister.

Julie Robertson: Around the first anniversary of the act we wrote to all local authorities to get an indication of how many applications had been made in the first year. That was a few years ago now. The information that we got back was just the number of applications received. We have not had any need or cause to go back to the local authorities to ask for the relevant information for the past couple of years. The antisocial behaviour legislation contains provisions that require local authorities to collect information on the number of antisocial behaviour orders imposed and to provide that information if ministers request it. However, local authorities do not have to give us the information routinely and there is no set way for them to collect or present it.

The Convener: Okay. Thank you very much.

Graham Simpson: As a former councillor, I would be staggered if councils did not keep such information—I imagine that they all have it. Would it not be an idea simply to ask for it to see what is out there?

Kevin Stewart: The information could be asked for, as Ms Robertson said. Having uniformity in how the information is retained locally might come as a cost, as you well know from your days in local government and as I know from my days in local government. If central Government says that local authorities must do things in a certain way or use a certain system, that comes at a cost. In this case, as I have been keen to point out throughout, the cost is likely to be put on the person applying for the notice, which means that folk would be less likely to do so.

Graham Simpson: I am not suggesting that there should be uniformity. I am saying that there is probably a lot of information out there already. It does not matter to me whether the information is uniform, but there will be information that has already been collected. Surely it is just a matter of asking for it. If you were to ask for it, you could pass it on to the committee.

Kevin Stewart: I am quite happy to ask for that information and to pass it on to the committee. That is not a difficulty at all.

Graham Simpson: Thank you.

Andy Wightman: I refer back to a question that you were asked at the beginning. One of our difficulties with this post-legislative scrutiny is that, although we have spoken to a number of people, including local authorities, from the point of view of hearing from users of the legislation it is clear that we have heard from the people who are unhappy with it. People who are happy with legislation do not, on the whole, tend to write letters to committees about how wonderful it is. To what extent do you think that the legislation is working, has had a beneficial impact and has managed substantially to remedy many of the complaints that were made before it was passed?

Kevin Stewart: I look at the issue from a constituency viewpoint, which is where I have the most evidence of what has happened. Over the years, several of my constituents have had difficulties with high hedges and those folks who have got their cases resolved through the legislation are very happy people. Many of them did not have to resort to the notice, because when the legislation first came in, some problems seemed to resolve themselves.

It would be fair to say that I still have a couple of constituents who face difficulties that have not been resolved, because the trees that are causing them a problem do not fall under the definition of a high hedge.

Andy Wightman: That is fine. In a small number of cases, people have bought properties where there is already a hedge that causes problems. Do you have a view on whether there should be an onus on those who buy a property to be aware of any such problems in advance?

Kevin Stewart: I am not aware of any cases in my patch that relate to that. Such cases might have come across the desks of Julie Robertson or Paul Cackette at some point.

Julie Robertson: I am not aware of any such cases. If someone was looking to buy a property where a high hedge notice had been issued, that would be made known to them when they were buying the property. It would come down to the individual owner. The person who previously had the property might not have had the same issue with a hedge that the person buying it does. If a person buying a house had an issue with a hedge, they would be expected to undertake the pre-application requirements, such as speaking to the neighbour and perhaps going through mediation first.

Paul Cackette: As far as the DPEA is concerned, I am unaware of any appeals in which that issue has arisen. The reporters look at the appeals and try to reach the right answer, while being mindful of the interests of both sides. It would be reasonable and legitimate to take into account the fact that the hedge is pre-existing when deciding the outcome.

Kevin Stewart: If memory serves me well—you may want to check this, convener—when the bill was scrutinised by the Local Government and Regeneration Committee, there were some folks who had issues not necessarily with hedges on neighbouring properties, but with wild woodland, including hedges, in areas where new-build housing was going up, and who were concerned what the impact of that would be. If memory serves me well, there was evidence on that from the Scottish Wildlife Trust. It might be worth the committee having a look at that.

Alexander Stewart (Mid Scotland and Fife) (Con): We have touched on appeals throughout the morning, but I seek more clarity on that. Do we believe that the appeals process is robust enough? That is my first question and I will follow on from that.

Kevin Stewart: Mr Cackette and his reporters deal with appeals, so I will let him answer.

Paul Cackette: From the cases that we have, there is no real evidence to suggest that the way in which we carry out appeals is lacking in robustness. Our record of the number of appeals is broadly consistent with the evidence that was provided to the committee from local authority witnesses about the declining number of cases. We had an initial peak and the numbers have since gone down. In total, 149 cases have come to us, of which 119 are live cases or cases that require to be determined. That number has declined over the piece.

We know that we face certain challenges in the way in which we require our reporters to determine the cases before them. As I said earlier, they seek to achieve a fair balance and reflect the rights and interests of both sides in coming to their decisions. Very often, many of the disputes relate to entrenched positions and the parties are not always keen to see a fair balance but want an outcome that reflects their point of view.

There can be difficulties between neighbours and, unusually, we find that sometimes we have to have more than one site visit, because it is not possible to have a visit where everyone is willing to be in the same garden at the same time.

I will offer one more bit of information. We have had a small number of cases. I am grateful that we have had no appeals beyond the DPEA. There is the capacity to go to judicial review. That has not happened yet and long may that continue.

Alexander Stewart: Should the act allow for an appeal in circumstances where the local authority has decided that something is not a hedge?

Paul Cackette: In one sense, that is not really for me to answer, because I deal with operational aspects. My general observation is that there is no reason why that should not be the case. People regard it as an oddity that they can appeal against certain aspects, such as the finding that there is no adverse impact or the decision to serve a notice, but that they cannot appeal on whether something is a hedge in the first place, which is a question of fact. It is not always an easy question of fact, as we know; nevertheless, it is a question of fact.

My only word of caution is, were a change to the legislation along those lines to be suggested, because that is a matter of fact and not at the discretion of the local authority, if a reporter were to decide that something was a hedge, we would need to know what should be done next. Should they refer the matter back to the local authority to start over again? Should the DPEA take over the function of the local authority in exercising discretion about what to do? Should it take on the dispute resolution process at that stage?

You would need to think through reasonably carefully what the implications of such a change would be, not least because if the DPEA were to take on those functions, the appeal route would be closed off. That route would be excluded because we would be deciding the notice at first instance. Technically, it would be possible to do that, but I suspect that the best way would be for us, if we agree with the appellant that something is a hedge, to refer the matter back to the local authority to redecide. Of course, that would just add time.

Alexander Stewart: The act says that appeals against the decision can go to ministerial level. Have any appeals gone that far?

Paul Cackette: At the end of the day, the right of appeal is to ministers, and the legislation allows

ministers—this happens in the planning process, too—to delegate the decision-making process to a reporter. Universally, that has been the Government's practice since the act was implemented.

Given the subjective element that a reporter would make in an assessment, it is quite hard to see why and how we would work out which cases should go personally to the minister for a decision when that is not the normal role that a minister would play. To draw an analogy with planning, in which the vast majority of cases are delegated to reporters for decisions, the most important national, strategic decisions are often called in by ministers, and it is quite hard to see which—and why—high hedge appeals would fall into that category.

The Convener: Mr Stewart asked about an appeals process for the applicant to follow if something was deemed not to be a hedge. Mr Cackette was helpful in setting out the complexities of that issue, but does the Government have a view more generally?

Kevin Stewart: As I said, I am quite willing to look at the committee's recommendations on that. Mr Cackette has spelled out the great complexities that there would be in adopting that approach. Beyond that, again, we would have to look at the costs. At this time, appeals do not cost us anything. If the DPEA were to be involved in huge amounts of extra work, I imagine that we would have to look into the cost of that, too.

The Convener: The committee appreciates that you will look seriously at any recommendations that we make. You may or may not agree with some of those recommendations. I am looking to be reassured that you will follow the evidence trail and that you will not just respond to our recommendations, but set out the Government's views on the post-legislative scrutiny. That is important, because we are receiving evidence that all is not necessarily well with the High Hedges (Scotland) Act 2013.

There is a growing view that changes might have to be made to the act. Are you and your team looking at the evidence that has been received? You may have your own ideas on how to change the legislation. Today, we have been trying to tease out the Government's views as opposed to being told that you will look at the committee's views once we have made an informed set of recommendations.

11:00

Kevin Stewart: The Government has been pragmatic in dealing with the legislation. I refer you to one of my initial answers about guidance being changed as recently as May last year. I am not sure whether all those changes were necessarily beneficial or whether they provided some of the folk who thought that the guidance should be changed with what they expected.

During the initial scrutiny of the High Hedges (Scotland) Bill by the Local Government and Regeneration Committee, of which I was a member, we recognised that certain aspects of the legislation would have to be ironed out. Indeed, we recommended at that time that there should be post-legislative scrutiny of the act.

The Government is pragmatic, and we have made changes to the guidance that have been suggested to us. I will look at the committee's recommendations and, of course, I will do that based on the evidence. If any other changes were required, we might well have to carry out consultation, because a number of the responses came from different sources and the witnesses you have heard from are not necessarily the same folk as those who previously gave evidence.

Mr Wightman hit upon a point when he mentioned the woodland aspects of the legislation. Again, we would probably have to consult some of the wildlife bodies, as well as some of the folk you have taken evidence from.

In taking an overview of your recommendations, if we were to choose to do anything, our approach would be evidence based.

The Convener: Time is upon us, so I thank the minister, Mr Cackette and Ms Robertson very much for their evidence today.

11:02

Meeting suspended.

11:06

On resuming—

Disabled Persons' Parking Places (Scotland) Act 2009

The Convener: We move to agenda item 2, which is post-legislative scrutiny of the Disabled Persons' Parking Places (Scotland) Act 2009. The committee will take evidence from local authorities and Police Scotland. We welcome David Brown, who is service manager for network management at Fife Council, Campbell Dempster and Mark Henry from the roads service at North Ayrshire Council, and Chief Inspector Mandy Paterson from Police Scotland. I have received apologies from Assistant Chief Constable Wayne Mawson, who has other commitments this morning. We have also been joined by Jackie Baillie MSP, who introduced the original bill. Thank you all for joining us.

It would be a helpful starting point if the local authorities would describe where they are in the process of converting advisory on-street disabled person's bays into enforceable bays.

David Brown (Fife Council): I will kick off. That is a relatively straightforward question for Fife Council to answer. We had a lot of advisory on-street bays when the act first came into force and we have converted all of them to enforceable bays. All the on-street disabled persons' parking and the off-street disabled persons' parking in the public car parks that we manage is enforceable.

The Convener: There is a good story there, then.

Campbell Dempster (North Ayrshire Council): In North Ayrshire, we have converted all our on-street disabled persons' parking spaces to enforceable bays. We have 407 bays; we have promoted four orders since the act came in and we review the situation regularly. The 187 off-street parking bays in our council car parks are also enforceable.

The Convener: Significant progress has been made by the local authorities that are here today, but the picture may be a bit more patchy across the country. Why might there be more reluctance among other local authorities to take the steps that they are required to take? Diplomacy is always welcome.

David—knew that if I left the silence long enough, someone would answer.

David Brown: I am unsure about the answer, although I am aware that some authorities are moving towards decriminalised parking enforcement, which might allow them to take steps forward. We are getting to the stage at which the majority of the 32 councils are using DPE. Everything is entwined—we need enforceable bays to be promoted in a way that is worth while.

The Convener: We will come to enforcement later.

There is an obligation under the act to approach the owners of private car parks every two years and to work in partnership with them to make disabled persons' parking bays enforceable. What has been the experience of the local authorities that are present in relation to that?

Campbell Dempster: North Ayrshire Council put a notice in the local newspapers asking whether there was interest among private car park operators in engaging with us about making disabled persons' parking bays enforceable. No interest has been expressed by them.

The Convener: Okay. Thank you.

David Brown: Fife Council has also not followed the Edinburgh example of writing to several thousand operators. We concentrated on getting our own house in order first, particularly with regard to the on-street and off-street car parks that are managed by the council for general public use, which are mostly in town centres and shopping areas. Beyond that, we have done the housing areas, other council facilities and so on.

Through that process, we have taken on board some of the hospital sites in Fife and we are currently working with a couple of clinics that are going to come on board as well, through DPE. In terms of the wider two-year approach to the private sector, we have a page on Fife Council website that is there 24/7 365 days a year. It suggests that private operators that want to pursue that option with us get in touch. As with my colleague's authority, there has been no uptake.

However, we have discussions with local private car park operators—for example, supermarkets, when there are development discussions. Our development management teams ask whether they wish to come under the wing on that basis and how they will otherwise manage their car parks. We have had no take-up whatsoever through that process. That is our approach at the moment.

The Convener: Okay. We heard in a previous evidence session from National Car Parks representatives, who seem to be quite happy to consider working in partnership with local authorities. I want to double check the name of the gentleman whom we had at committee last week; I want to put his name on the record, so I apologise for not having that in my notes. [*Interruption*.] I am sorry—I have just caught the committee clerk out. Duncan Bowins—I apologise to him for not recalling his name—who is the managing director

of NCP, seemed to be quite keen to talk to local authorities to see whether there is a deal to be done. A lot of car parks are not car parks in the sky but are just open car parks with a barrier for getting in, so it might make sense to do some proactive work on them. I do not want to target that company in particular, because there might be a number of companies that take a similar view. Is there an opportunity for your local authorities to approach the car park operators in your areas?

Campbell Dempster: North Ayrshire does not have any NCP or other private operators of car parks; we have supermarkets and the like, so we would not have the opportunity to take that forward.

David Brown: I think that there is one NCP car park in Fife; I am aware of one surface car park. There are a couple of multistorey car parks at shopping developments that are privately managed. I do not think that there is a great opportunity in Fife to do anything with NCP.

The Convener: Okay, but I hope that other local authorities are following this post-legislative scrutiny and will be proactive.

David Brown: My experience of the privately managed car parks in Fife is that they are run properly by the likes of NCP or the shopping centre developments. They are well run: as far as I am aware, there is enforcement on parking outwith bays, as there is with abuse of disabled persons' parking bays.

The Convener: We heard in evidence last week that whether enforcement switches to the local authority or otherwise, there could be some kind of formal partnership agreement to show that the conversation has taken place, so that there would be effective enforcement, which is the outcome that we are all looking for.

11:15

We also asked supermarkets; I mention Tesco because it believes that there is a good story to tell, despite our probing of the Tesco representatives when they gave evidence. Supermarkets seem to want to protect their own brands and quality of service within their car parks, so there is a slight resistance to working in partnership with local authorities. Have either of you deliberately targeted a supermarket chain—you do not have to name them—to see whether partnership agreement can be reached?

Campbell Dempster: North Ayrshire Council has not actively engaged with the supermarkets in that way. There has only been an advert requesting interest from them.

The Convener: Okay.

David Brown: Any discussions that Fife Council has had with supermarkets have tended to be through the development management process, either when they are making alterations to premises or are looking to establish new ones in Fife. On the whole, the supermarkets do not seem to have an appetite for the council to run their car parks. The brand comes first and they want to keep control of what they see as their premises and car parks.

The Convener: It was a one-off evidence session, but I was left with the impression that, by and large, supermarkets would like to do the right thing and go beyond the minimum standards. The problem is that we do not know what minimum standards would look like in that sector for a blue badge holder who needs a disabled persons' parking space. There are definitely opportunities. Would you go back and approach supermarket chains on that? It might be better to speak not to individual stores—the store managers are quite busy, and are dealing with a thousand things at once—but to corporate affairs individuals to see whether there is an opportunity at the level of the local authority or COSLA.

David Brown: Having read the evidence that the committee heard previously and having seen all the issues that were discussed, I think that that it is something that we need to consider. What you have said about the supermarkets looking to go a bit further than the requirements of the legislation is interesting.

I want to throw in something else to give that a bit of context. When we have discussions around supermarket and retail park developments, we often try to apply council design standards to layouts—for example, the type of layout that you would expect to see in a public car park that is operated by the council, which would have very clear circulation routes, layouts of bays and so on. Retail parks and supermarkets often want to have completely different layouts, which we think are not best suited to the mix of pedestrians and vehicles in car parks. On the whole, they want to stick to their brand, layout and way of doing things. It is all packaged up together.

The supermarkets like to do what they do and it works successfully for them. The customer is first, the brand exists and that is how they like to take everything forward. However, as I said, having read the evidence, I think that there is an opportunity for us to engage further with the supermarkets.

The Convener: I am not sure whether I articulated that accurately—I am not saying that the supermarkets all want to go beyond minimum standards. I am not sure what minimum standards would look like and what consistency there would be across the supermarket sector. The point that

you are making is about the balance between the supermarkets' corporate brand and what they want to do for their customers, and what a local authority expects in the planning and delivery process for an acceptable parking scheme for blue badge holders. There is scope for more clarity on that. I found that exchange to be very helpful. We will move on with questions.

Andy Wightman: Some local authorities have called for regulations to be amended to allow enforceable disabled persons' parking bays to be created without the need for a designation order. Does anyone have any views on whether that would be a good thing?

Campbell Dempster: That would certainly be a good and positive step and would save a lot of time in making the bays enforceable.

David Brown: Fife Council would echo those comments. In our set-up, we have seven area committees to which orders for bays are reported. It is quite an onerous process and it is time consuming. It can be six to nine months after somebody is granted a bay in a residential area before it becomes legally enforceable: there is a period after the bay is marked on the ground when the person can use it but it is not enforceable. Anything that helps to remove that problem will be helpful.

Andy Wightman: One of the potential downsides is that that statutory process is subject to public consultation and the interests of other property owners, road users and so on. Are you concerned that other users of the public road might not have the opportunity to be consulted on such proposals?

David Brown: Virtually everything that we do now on the road network involves quite heavy consultation. Whether or not it is required by statute, we regularly engage with communities, locals and other people who would be affected. We would see promotion of disabled persons' parking bays as an extension of that.

Campbell Dempster: I would echo what Mr Brown said.

Andy Wightman: Okay. Thank you.

Jenny Gilruth: Glasgow City Council has called for repeal of the requirement to engage with private car park owners every two years. Do you have views on that?

David Brown: We have not been doing that in the way that the City of Edinburgh Council and Aberdeen City Council have done because we see it as being extremely onerous, so we would probably say that it would be good to repeal the requirement to do it every two years. We think that there are other ways to do that—through local meetings, for example, at which we have local contact anyway, and through our website. We think that that would be the way to go.

Campbell Dempster: I agree. North Ayrshire Council only put an advert in the local papers inviting interest from private operators, but there has been no take-up. We regularly attend meetings including North Ayrshire access panel meetings, so if particular issues were raised—there has been none to date—in relation to abuse of disabled persons' parking spaces, we could engage with a particular supermarket or whatever. However, we have never had to do that because we have not had those issues raised with us.

Jenny Gilruth: Fife Council has called for the signage requirements for enforceable disabled persons' parking spaces to be reduced. What specific changes would you like to see in terms of signage?

David Brown: We would be happy with bays being marked and designated as a disabled persons' bays by the white paint marking, so that there is no need for a pole or sign. It is relatively easy to mark out a bay on the ground, and the pole follows that. Placing a pole does not involve engineering works as such, but a hole has to be dug and getting that programmed requires checking utilities and all sorts of things, so the process takes longer than marking.

When the bays were first introduced as advisory spaces, we would simply mark them out. It was only when the traffic regulation order on the bays was amended and a bay was added that we would put up a pole with a sign. That gave us a bit of clarity about what were enforceable bays and what were not. However, if all that was needed for it to be instantly enforceable was the bay marking, we would not need poles.

Poles can sometimes cause problems for the people using the bays—for example, the pole might hinder them opening their car door or affect how they can park their car. The poles also add to street clutter, which we are generally trying to reduce. If we could have bays without the signs, that would be ideal.

Campbell Dempster: Absolutely. North Ayrshire Council would agree with that.

Jenny Gilruth: Okay. Thank you.

Mark Henry (North Ayrshire Council): Can I add something?

The Convener: Of course you can, Mr Henry. I sometimes do not spot that people want to speak, so please telegraph to me that you want to say something or I will miss you.

Mark Henry: Okay. The Traffic Signs Regulations and General Directions 2016 are the updated model. They allow us now to have bays

without posts and signs. We are not taking away any of our signs and posts, because there is no requirement to do that. However, if we revoke any bays by taking them off a traffic regulation order, we will remove signs and posts. There is nothing to stop a council continuing with that practice, which allows people to identify which bays are enforceable and which are not, but it is a resource commitment that the council would rather not have to make. Being able to have the markings only, without having to have a traffic regulation order to go with them, would be a definite step forward, but it would leave us needing to consult the locality as a follow-up, because the use of markings alone would make the bay unenforceable.

The Convener: Chief Inspector Paterson, I promise that we will talk about enforcement shortly. However, first, Mr Stewart has a question on another matter.

Alexander Stewart: I want to talk about the length of time that it takes and the processes that you have in place to ensure that a request for a new disabled parking bay is handled quickly. What is the timescale from someone making such a request to a bay being put in place? If a bay was required to be removed, how long would it take for that redundant space to be processed?

Mark Henry: The approval process, from the moment that the application arrives at North Ayrshire Council to the moment that it eventually lands on one of our technicians' desks, is fairly swift. Moving forward to the bay becoming active on the ground can sometimes take a little longer. We suffer from a large amount of rain in Scotland and markings have to go down when the road is dry, so our programme to deal with our backlog of markings can often be restricted to dry days, so there is a lag. The process for the application arriving on our desk is pretty quick, but moving on to the next stage can take anything between one month and two months, depending on the programme.

Alexander Stewart: What about the process to remove a bay?

Mark Henry: Our corporate fraud team deals with the applications that come in, and they inform us when the bays are due to be removed. For example, if somebody is deceased, the team phones us to say that the bay is no longer required. We are keen to keep that moving on quickly, because road space is key for the roads department and removing disabled bays allows other people to park in those places. Taking out the road markings takes probably another one month to two months.

Alexander Stewart: Is the process similar in Fife, Mr Brown?

David Brown: Yes. There are similar timescales. It would be a matter of one week to two weeks from when we get the initial contact from an applicant to an officer visiting them and deciding what to do. We do most of the disabled bay markings for residential areas ourselves—we have an in-house lining operation—so we have a degree of flexibility to react. We would expect any bay to be provided within probably a couple of months. Occasionally, a bay throws up issues and there are other things to be considered—the resident may not want it where we can offer it, and it can take a while longer to work through that and come to an agreement about where we can provide it. Nevertheless, the process is fairly swift.

We do not always remove the bays in a residential area unless there is real pressure on parking in the area, because there is a cost to removing them and the bays are a facility that anybody with a blue badge can use at any time. However, in areas where there is pressure on residential parking and we have been asked to take the bays away, we will do that. Sometimes, a bay is given up by someone who has moved out and the next person who moves in also qualifies for a bay. Although our records show that a bay is provided because a specific person asked for it, they are public bays and it is easy enough to pass them on.

The Convener: That is helpful and saves me asking my supplementary question. Not a lot of people realise that a disabled bay is provided on an assessment of need in a street and is not assigned to a specific blue badge holder. That can occasionally cause a lot of consternation, so it is good to have it on the record.

Jenny Gilruth: I have a supplementary question for you, Mr Brown, because you are here from the kingdom of Fife, which is where my constituency is. I have a constituency case involving a housing association—I will not name it—and a number of my constituents who qualify for a disabled parking bay. To what extent do you work with housing associations and compel them to ensure that there is enough disabled parking? In the case that I am dealing with, there is not enough parking for my constituents in the area.

11:30

David Brown: It is interesting to hear that, because we work with a number of the housing associations and, generally, if they want us to mark a bay for them and add it to the order, we will do that. I am not sure that we are putting pressure on them to provide a fixed number or a percentage of disabled parking bays but, generally, the councils all work to the national guideline that there should be, say, 6 per cent within our car parks—the number varies depending on the size

of the car parks. In residential areas, it is very much about the assessed need. If there is a need for bays, they should be provided and, although the able-bodied people with cars should not be disadvantaged, they should work a bit harder to find parking spaces near their homes.

Jenny Gilruth: That is helpful. Thank you.

The Convener: You are able to tell your constituents that you have raised the matter at committee, Ms Gilruth. Mr Brown might even offer to have further discussions on the specific case offline.

David Brown: Absolutely.

The Convener: That was a definite "Yes", Ms Gilruth. That is quite handy.

Graham Simpson: I promise that we will get round to questions for Chief Inspector Paterson, although this is not one of them.

I would like to explore the different approaches of the two councils that are represented. North Ayrshire Council has chosen not to pursue decriminalised parking enforcement, whereas Fife Council has. I ask the witnesses from those councils to explain why they went down those routes and what impact each decision has had on blue badge holders and the misuse of parking spaces.

David Brown: We took up DPE powers in 2013. Up to that point, we had had strong relationships with Fife Constabulary, which was the police force at the time. The force found it more and more difficult to prioritise parking enforcement alongside all the other duties that it had, and we began moves to take on DPE powers in Fife.

We have a parking warden operation with, I think, 18 wardens who cover Fife seven days a week. They work mostly 12-hour shifts, and a big part of what they do is look after the blue badge enforcement throughout Fife. When we moved to DPE, enforcement was less rigorous than it had been previously, for the reasons that have been stated. There has been a lot more enforcement of the disabled bays since we moved to DPE. Our written submission gives the number of penalty charge notices that we issued for the abuse of disabled bays. Off the top of my head, I think that, in round numbers, it was about 1,000 out of the 21,000 PCNs that are issued annually.

Campbell Dempster: In about 2010-11, we carried out an investigation and prepared a business case for the introduction of DPE. We engaged with the then Strathclyde Police on the proposal and would have had its support had we chosen that route. However, it did not add up for us financially to do that. It was not affordable for us, we chose not to pursue it at the time and we have not done so since.

Graham Simpson: In Fife, enforcement improved when the council took it on.

David Brown: Yes, definitely.

Graham Simpson: We do not know what the situation would have been in North Ayrshire.

Campbell Dempster: We do not know. If we get any reports of abuse, we engage with the police to carry out a check, but we do not get a lot of complaints about parking in disabled spaces.

Graham Simpson: Do people tend to come to you or go to the police?

Campbell Dempster: I imagine that they come to us both. We might get the first call and then raise the issue at our monthly local police liaison meetings. We might also call the police to engage with them if there is a particular problem.

Graham Simpson: Mr Brown, is it your council's view that the police perhaps have better things to do—if I can phrase it in that way—and that parking enforcement is not a priority for them? Is that why you felt that you should take it on?

David Brown: It was not seen as the highest priority, given what the police were being asked to do in other areas, and there was an opportunity for councils to take it on. We had regular roads liaison meetings with Fife Constabulary, so discussions about DPE started early. The issue was always there, and we decided in around 2010-11 to introduce it in 2012, because we were seeking a better level of enforcement. We did not just want to tackle the disabled parking side of things; we wanted to aid town centre vitality by generating turnover of parking spaces and making sure that people paid for their tickets and so on. We can do that only if we have in place a reliable system of enforcement that works all the time.

Graham Simpson: Chief inspector, will you comment on the general view that the committee has heard—not just today but previously—that the police are perhaps not enforcing the legislation?

Chief Inspector Mandy Paterson (Police Scotland): First, I thank you for the invitation. Mr Mawson extends his apologies for not attending.

The police service has varying priorities. The events of recent weeks show the breadth of priorities that we have to address for the public.

In anticipation of the meeting, I tried to get a flavour of the enforcement activity that is taking place around the country, particularly in areas where parking is not yet decriminalised. I spoke to area commanders around the country to get a sense of how things are working. On recording practices, a couple of call types come in: those requesting assistance to the public and those relating to road traffic events. Five hundred calls of each type come in every week, so it was

impossible to break the figures down to see how many reports of parking offences we receive per week. We tend to manage the issue by seeking local views on what is important in various forums, such as community council meetings and scrutiny meetings, and then working out what activity to undertake.

One of the areas that could break down the figures for disabled parking infringements was Falkirk, which is the area command that I used to cover. In response to local concerns, our community sergeant carried out a three-month operation on parking in general. I do not get the sense that we receive lots of complaints about disabled parking infringements per se, but we do get recurring queries about parking in general, which we respond to. As a result of the operation in Falkirk, just over 300 parking tickets were issued, 44 of which related to disabled parking infringements.

The information that the Ayrshire division fed back to me was that tourism plays a big part in the complaints that they get about parking, so they tend to focus their activity around that. They told me that, in the year from April 2016 to March 2017, they enforced more than 500 tickets, but they could not break that figure down to give a specific number of disabled parking infringements.

Parking is not yet decriminalised in Moray and is a standing agenda item for its community safety strategy group, in which the police work in partnership with other agencies.

To get some context from areas in which there has been decriminalisation, we spoke to colleagues in Edinburgh and Greenock, who told us that, when they get feedback, they work in partnership with local enforcement officers and try to carry out prevention as well as enforcement. For example, they deliver education through joint lettering to raise awareness.

The Convener: Mr Wightman wants to continue that line of questioning, and the witnesses have indicated that they are happy with that.

Andy Wightman: Thank you for coming along today. What you have said is very useful, chief inspector. You seem to be saying that you assess, through your community engagement, the extent to which parking is a priority issue for communities.

Chief Inspector Paterson: Yes. That is a commonsense approach to our engagement with the public. I have not mentioned the fact that we link up with disability groups at national level. The feedback that I received from our safer communities event was that, although there are issues, parking did not come to the fore at that level of engagement.

Andy Wightman: People who need to make use of disabled person's parking bays are in the minority, and the evidence that we have heard from them is that they are not satisfied with the level of enforcement. Beyond a general level of engagement with communities, how would you address the concerns of a blue badge holder or a group of people with disabilities in a community?

Chief Inspector Paterson: We have a process that allows people to phone in. If there are infringements or there is misuse of the blue badge, people should phone in, using the 101 number, and report that. The advice that our control rooms have is that, if someone phones in to report a parking infringement in a decriminalised area, they should be referred to the local authority. However, if someone phones in to report the misuse of a blue badge, that should be raised as a call for dispatch.

Andy Wightman: What about the persistent misuse of a particular disabled person's parking bay? Would you escalate that and try to get a speedier response?

Chief Inspector Paterson: Everything is dealt with on a priority basis, and an escalation of an incident would probably be sent to the community team. In an area that I came from, an issue over a disabled person's parking bay led to an escalation of general neighbourhood issues. When something escalates beyond the issue of the disabled persons' parking bay, our community policing teams will look at it.

Andy Wightman: Thank you.

The Convener: On awareness of disabled parking, irrespective of whether the bays are enforceable, there is a cultural acceptance of the use and abuse of disabled parking bays. Should we return to the idea of running a national co-ordinated information campaign? Would we have to wait until all local authorities were in the same position in respect of enforceable bays, or would that not matter? Should we look at doing something meaningful now?

As part of our post-legislative scrutiny, we will make recommendations to the Government, so it would be good to get on record what you think of the idea of having a national strategy to ensure that the public are clear about their responsibilities and the fact that they should not park in disabled bays.

It is a waste of both council officials' time and police time if they have to deal with the abuse of parking spaces, because people should just not park there in the first place. Each time we enforce a bay because we have to it is a loss, because someone is not getting the space that they need to allow them equal access in society. Do you have

any thoughts on the idea of a national driver awareness campaign?

Campbell Dempster: We are not aware of a particular problem in North Ayrshire. However, given the response that you have been getting from disability groups, an awareness campaign might be a good approach in trying to resolve the issues.

The Convener: Okay. You do not need to have a burning view on the issue, but this is an opportunity to get something on the record.

Chief Inspector Paterson: Absolutely. The police put out joint messages all the time, and messages come across powerfully when they are not from a single organisation. We can signpost people to how they can report disabled parking infringements. It does not matter whether the bays are decriminalised; there are ways in which we can manage the issue to make it clear to people how they can get help.

11:45

David Brown: There would be value in a national strategy. My team does not issue blue badges; that is done elsewhere in the council. Every time a blue badge is issued, we give its recipient quite a lot of literature about what they can do with it. We do not give the same information to drivers who do not have a blue badge, so there is a certain amount of ignorance about what people who do not have a blue badge can and cannot do. On the other hand, there are people who think that they can get away with misuse of disabled bays. They think, "I'll stop here for 10 minutes." However, in that time, a blue badge holder might come along. Any campaign that raised awareness of the issues would be useful.

The Convener: Some committee members still have questions. Graham Simpson will explore enforcement further, and I want to leave enough time for Jackie Baillie MSP to answer questions.

I go back to our chat about decriminalised parking enforcement. We are in tight financial times and, as Mr Dempster said, the business case for introducing DPE has to be considered. DPE might be easier in large urban areas and more difficult in remote and rural areas. Are there cleverer ways that we could deal with enforcement? Should wardens deal only with enforcement? I am thinking of parts of my constituency where, although we could do with more enforcement in parking generally, it could not be justified to have someone whose job it was to do only that—a business case could not be made for it.

However, when I look at litter strewn everywhere and supermarket trolleys half a mile away from where they should be, I start to join the dots and wonder whether there is a job there for someone that could save a heck of a lot of money somewhere down the line. When you think about whose job it is to deal with decriminalised parking enforcement, have you considered different models? Could you upskill existing staff to multitask? Are there opportunities there, or would that not really work, and is it just a case of me going off on a tangent again?

Campbell Dempster: We have not looked at that recently. We introduced a litter enforcement team not long ago and we could look at whether it could also be involved in parking enforcement. We would need to look at that as a council and make a decision.

The Convener: At the root of my question is whether there are other models of decriminalised parking enforcement that would make it more affordable for local authorities. Are you aware of any such models? I am interested to know what you think about that, Mr Brown.

David Brown: I am not aware of any model that addresses the multitasking, as you put it. The DPE model is self financing. We are striking a balance—it is about issuing enough tickets to generate an income to pay for the operation. If we start bringing in other activities, we might upset that balance.

Ten or 12 years ago in Fife Council, we discussed whether we could have one warden who did everything, but the practicalities did not stack up. With DPE, parking attendants rely on technology to do their job. They come in and pick up the handsets, which are linked to the in-house computers that generate the penalty charge notices and Driver and Vehicle Licensing Agency checks and all the rest of it. There is quite a hefty piece of technology behind DPE and anybody doing it has to have that. If you want to increase the number of units and the people who use them, there is a cost implication. When you add in other activities, it starts to escalate. We have talked about it quite often but we have not come across a practical way of achieving it.

The Convener: That is helpful—it was just a thought.

Graham Simpson: I have a very quick question for Chief Inspector Paterson. Would it benefit the police for all councils to take on that work, given the extensive demands on your time?

Chief Inspector Paterson: I must be diplomatic. No public service would say no to passing on the responsibility to someone else—that is a given—but the reality is that we work with local authorities. If councils took on that work, that

would be a great win for Police Scotland, but it would have to be agreed by both parties concerned. That would be my approach.

Fife Council's approach has been very partnership oriented; others have different views in terms of finance. It is not an easy question to answer. We would have to feel that it was not going to disadvantage the communities involved. The outcome should be that, whoever provides it, the community should get the best service.

North Ayrshire Council has said that it does not think that it is worthwhile for it to decriminalise parking enforcement, and it is not for me to disagree with that. The council has carried out its inquiries and there is still activity going on for our service. I hope that that is an answer for yourself.

Graham Simpson: That is fair enough.

David Brown: We operate DPE, but there are offences that we cannot deal with and for which we still have to rely on the police. For instance, if somebody is parked not on a yellow line but in a dangerous position, parking attendants cannot deal with that under DPE. That is only one example of a situation in which we still rely on the police. There are several situations that the DPE operation cannot deal with and that we have to refer to the police.

Graham Simpson: Should you be able to deal with those situations?

David Brown: Yes, it would be useful if we could deal with some of them.

Graham Simpson: If you have wardens out there and they see dangerous parking, it seems crazy that they cannot deal with it.

The Convener: Chief Inspector Paterson, without relying on your diplomacy any further, would you like to comment on that suggestion from Mr Brown?

Chief Inspector Paterson: The police would love the councils to do that too. This is going to be a great meeting for me. [*Laughter*.]

The Convener: I should point out that we have no power to agree anything. We might just leave that one hanging.

I thank Jackie Baillie MSP for her patience. It is over to you, Jackie.

Jackie Baillie (Dumbarton) (Lab): I am known for my patience, convener. Thank you very much for inviting me along to the meeting.

I am keen to understand an issue of enforcement. The bill was introduced five years ago, and things have clearly changed since then. At that time, when only five local authorities operated decriminalised parking, we felt that the police's job was to be reactive, not proactive, recognising that it would be a less important issue unless there was abuse of a parking bay. Can you give us an idea of how many local authorities have now decriminalised their parking enforcement?

Chief Inspector Paterson: My understanding is that 16 local authorities have done so and that it is in progress in another two.

Jackie Baillie: The situation has changed and there is, potentially, less of a burden on the police given that parking enforcement is now decriminalised in half of local authorities, covering heavily populated areas such as Glasgow and Edinburgh—is that correct?

Chief Inspector Paterson: Yes. Parking enforcement is decriminalised in Glasgow and Edinburgh.

Jackie Baillie: That is helpful to know.

I do not know whether you have the statistics for this, but my impression is that something like 85 to 90 per cent of the population comply with the rules. Are you getting repeat offenders or is the problem by and large dealt with by your simply issuing one ticket?

Chief Inspector Paterson: I honestly do not feel that I could answer that question with any accuracy. What I can say is that, since we were given access to the blue badge scheme information, which was one of the proposals that was made the last time that we spoke about this, police officers have carried out only seven checks on suspected misusers of the blue badge. In four of those cases, it turned out that the badge was being used according to the terms. In the other three cases, one of the badges had been stolen and the other two were being used fraudulently. Only eight offences of misuse of the blue badge scheme that we are enforcing have been committed, and for me, at national level, that is not enough to suggest repeat offending.

Jackie Baillie: I am not talking about blue badge enforcement. I understand that people conflate the two issues. I am simply trying to understand whether, because someone has been given a ticket for abusing a disabled parking bay, they might not do that again. Is there any data to suggest that that might be the case?

Chief Inspector Paterson: I could not comment on that.

Jackie Baillie: Okay; that is fine.

I will turn to the issue of local authority resources. I remember tortured conversations, including with Fife Council, about whether there were sufficient resources at local government level. I also had conversations with COSLA and Stewart Stevenson, the then minister, about that.

Leaving aside the fact that some authorities were more efficient than others at painting bays, were you given any additional resources for the first phase, which was to go back and designate all your advisory bays as enforceable bays?

David Brown: No. All that work was picked up using existing resources through our traffic management teams. The work became the priority at that time—it was one of the items that had to be picked off.

Jackie Baillie: Oh. My recollection was that the Scottish Government promised money. At issue was the quantum of that money.

David Brown: There may well have been such a promise, but I cannot specifically recall that. All the work was picked up within existing resources, including human resources.

Jackie Baillie: Do you have a rough sum of what the work in Fife cost, excluding the staff that you would have employed anyway?

David Brown: I know that we have spent about £217,000 on the signage for the bays. That information is in the written submission. The cost of the lining was not quantified, so I do not have that information to hand.

Jackie Baillie: Will Mr Dempster or Mr Henry shine a light on the matter from their perspectives?

Campbell Dempster: I am not aware that we were given any additional funding; I cannot confirm whether that was the case.

I do not know what the work costs were. Are you able to comment on that, Mark?

Mark Henry: I do not have an exact figure on that, but the costs were met within the service, by the service. I do not believe that any additional funding was provided.

Jackie Baillie: You all appear to have coped with the work.

Witnesses: Yes.

Jackie Baillie: Excellent. I always like efficient local government—it is a wonder to behold.

I will move on to the subject of off-street private parking, which has been an area of considerable interest. If you can cast your mind back five years, before the bill was introduced, would it be fair to say that although supermarkets and shopping centres had disabled bays, they were not enforced?

Witnesses: Yes

Jackie Baillie: When I introduced the bill, there was a sudden rush of supermarkets competing with each other and, indeed, out-of-town shopping centres, to come forward with wonderful enforcement schemes. Some of them even took the money from the enforcement and distributed it to local charities and got good publicity out of that.

Although supermarkets and shopping centres might not have picked your enforcement scheme, they are enforcing the bays themselves, because it is what their customers demand. Is that typically what happens now?

David Brown: We certainly have some that do that—they definitely enforce the bays and they operate robust appeal systems similar to those of the councils. Generally, they reinvest the income that they make from the fines in improving the parking.

Campbell Dempster: I am sorry, but I cannot answer that question. I do not know what supermarkets or other organisations do in our area.

Jackie Baillie: Their action might have been the consequence of the bill and, any time that you advertise or are in touch with them about enforcement, although they might not choose the local authority to do enforcement, they will choose to do the enforcement themselves, because you have raised the matter with them.

David Brown: Perhaps. They will look at all their sites individually, pretty much as we would look at our town centres and determine from that which ones have the issues, where you need to patrol and where you need to concentrate resources.

A lot of the supermarkets, which are big national companies, look across their whole portfolio and react where they need to.

Mark Henry: I am aware that, within North Ayrshire, some of the private operators, particularly the supermarkets, carry out the enforcement. They seem to do that in a remote, electronic way. There is no man wearing a high-vis vest or jacket and giving out tickets; rather, people get the notification through the post.

My perception, looking from the outside as a local authority that relies on enforcement through the police teams, is that supermarkets can choose between a local authority pursuing the misuse of the bays and carrying out their own enforcement. The revenue that is generated from such enforcement returns to the supermarket but, if the matter was handed over to the local authority to enforce, it would be returned to the local authority. There might be an incentive for supermarkets to retain the responsibility for enforcement.

12:00

Jackie Baillie: Or to do creative things with that income, such as give it to charity, which seems to

be popular with their customers—or at least with those who did not get a ticket.

The original bill followed the existing legislation on enforcement and on traffic regulation orders, and the traffic signs regulations and general directions changed in 2016. I think—I will need to go back and check because it was a long time ago—that the 2009 act does not specify exactly what it is necessary to do, but refers to the legislation of the time that set out the requirements. If the requirements of the regulations and directions change, it would be easy to take away the requirement for signs, for example.

I have just checked the wording of the 2009 act, which talks about bays being "marked or sign-posted"—I emphasise the "or"—so the change would be accommodated by the act as it stands.

David Brown: That would seem to be the case.

Jackie Baillie: Good. That confirms my understanding.

The Convener: If there are no other questions, I thank everyone for coming along this afternoon—it is 1 minute past 12 o'clock. We will continue our post-legislative scrutiny. I am sure that the witnesses will follow it. We will keep them up to date with the progress that we make.

Subordinate Legislation

Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2017 (SSI 2017/120)

Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No 2) Regulations 2017 (SSI 2017/149)

12:02

The Convener: We move to agenda item 3. We still have quite a lot to get through. The committee will consider SSI 2017/120 and SSI 2017/149. The instruments are laid under the negative procedure, which means that the provisions will come into force unless the Parliament votes on a motion to annul them.

It should be noted that the Delegated Powers and Law Reform Committee reported on SSI 2017/120 due to defective drafting and, therefore, the Scottish Government laid SSI 2017/149 to correct the regulations. The DPLR Committee subsequently reported on SSI 2017/149 because it breaches the 28-day rule but found that the breach was acceptable, given that it had timeously corrected the defects in the previous regulations.

The paper from the clerks provides more information on the DPLR Committee's consideration. Due to the breach of the 28-day rule, the Scottish Government also wrote to the Presiding Officer on the breach of the laying requirements. That is also set out in the paper.

There was a lot in that, but no motion to annul has been laid. If there are no comments, does the committee agree to make no recommendations in relation to the instruments?

Members *indicated agreement.*

Draft Annual Report

12:03

The Convener: That takes us to agenda item 4. The committee will consider a draft annual report for the parliamentary year from 12 May 2016 to 11 May 2017. The report fulfils standing order 12.9, which requires a committee to publish a report that highlights its activities during the year. An updated photograph of the committee will be taken at next week's meeting to replace the photo that is currently in the introduction—best bib and tucker for that, members.

I invite members to consider the report. I will invite comments as we go through it. If members bear with me, I will get my copy of it. [*Interruption*.] We can go through it relatively briefly. Rather than discuss each page, which does not make much sense, I will give members a few minutes to look through the report, which they have in front of them.

Do members wish to make any observations? I am sure that they all read it thoroughly before they came to the meeting. We apologise to the wider public, who have to look at photographs of us in the report.

Mr Wightman, do you want to make a comment?

Andy Wightman: No, I am content with the draft.

The Convener: In that case, do members agree to a publication date of Wednesday 31 May 2017 with the updated photo?

Members *indicated agreement.*

The Convener: We now move to agenda item 5, which is consideration of evidence and is in private.

12:05

Meeting continued in private until 12:32.

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