



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Petitions Committee

Thursday 19 March 2020

Session 5



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Pàrlamaid na h-Alba

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PUBLIC PETITIONS COMMITTEE

5th Meeting 2020, Session 5

CONVENER

*Johann Lamont (Glasgow) (Lab)

DEPUTY CONVENER

Gail Ross (Caithness, Sutherland and Ross) (SNP)

COMMITTEE MEMBERS

*Maurice Corry (West Scotland) (Con)
Tom Mason (North East Scotland) (Con)
*David Torrance (Kirkcaldy) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jackie Baillie (Dumbarton) (Lab)

CLERK TO THE COMMITTEE

Lynn Russell

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Public Petitions Committee

Thursday 19 March 2020

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Johann Lamont): I welcome everyone to the fifth meeting in 2020 of the Public Petitions Committee. We have received apologies from Gail Ross and Tom Mason, and we welcome Jackie Baillie for a number of the petitions.

It had been our intention to have a round-table discussion on petition PE1707, on public access defibrillators. Given the circumstances that we are in, the committee will defer that and come back to it. We will obviously want to take that forward at a later date.

The first item on our agenda is a decision on taking agenda item 4 in private. Is that agreed?

Members indicated agreement.

Continued Petitions

People with Lifelong Learning Disabilities (Needs and Rights) (PE1741)

10:01

The Convener: The first continued petition for consideration is PE1741, on human rights, citizenship and legal protection for people with lifelong learning disabilities, lodged by Keith Lynch on behalf of People First Scotland, calling on the Scottish Parliament to urge the Scottish Government to introduce a new law addressing the needs and rights of people with lifelong learning disabilities in Scotland.

The subject of the petition relates to a range of existing legislation and covers a number of policy areas. Submissions have now been received from the Mental Welfare Commission for Scotland, the Scottish Commission for Learning Disability, the Scottish learning disabilities observatory, the Scottish Human Rights Commission, the Scottish Government and the petitioner. The note by the clerk summarises them.

I was impressed by the number of submissions and the seriousness with which people addressed the petition—we are grateful to them. One organisation was worried that it did not have enough time to give a substantial response, but its submission was very substantial and gave us a lot to think about.

Do members have any comments or suggestions for action?

David Torrance (Kirkcaldy) (SNP): I am very sympathetic to the petition, but the Government is carrying out a review just now and all the stakeholders have a chance to feed into that. Therefore, I am happy for the petition to be closed, as long as the petitioner can bring it back to the committee if they are not happy with what the Scottish Government comes out with.

The Convener: That is one option. The petitioner suggests that the Government's reviews are not getting to the heart of their concern, which is that there should be an understanding of what learning disability is. If we were to close the petition, is there some way that we could highlight that concern to the Government?

Maurice Corry (West Scotland) (Con): I would be happy with that, because there is more to the issue than what we read. The petitioner is right. I sat on the cross-party group on dyslexia, where exactly those points came out. Therefore, I would support that approach.

The Convener: However, the petitioner's submission makes the point strongly that dyslexia

is different from a lifelong condition that causes learning disability.

Jackie Baillie (Dumbarton) (Lab): I declare an interest as the convener of the cross-party group on learning disability. The petition has been prompted by the fact that we need to do more to protect the human rights of people with learning disabilities. The committee will be aware that a number of reviews are on-going.

Over time, people with learning disabilities have faced significant barriers and inequalities, whether in access to education, health, employment or housing. They experience bullying and hate crimes to a greater degree than the rest of the population. For a long time, they have argued that they should not come under the Mental Health (Care and Treatment) (Scotland) Act 2003 but should have a separate piece of legislation that gives them a right to services and care throughout their lives.

It has been a long-term campaign. We welcome the publication of the Rome review, which made a raft of recommendations and found that there was a need for separate legislation on learning disability. That has been rolled into a wider review, and the Government is now undertaking several different reviews. I do not want to lose sight of the topic and I hope that the committee shares that view. It is very frustrating. All those reviews have much wider focuses, and I do not want the issue to get lost.

Will the committee agree to keep the petition open and ask to be informed of developments until the Scottish Government confirms that it will proceed with separate legislation on learning disability, which is what the petition calls for?

The Convener: I hear what Jackie Baillie is saying, and it comes over very strongly that those reviews are so broad that they might miss the particular issues raised in the petition. David Torrance suggested that we close the petition but, in doing so, recognise that people can bring the petition back if they are not content—that is the same as it sitting on the books. I am concerned that, if we hold on to the petition, we might be misleading the petitioner about what is happening. We can write to the Scottish Government, even in relation to a closed petition, to say that there is a distinct area of work that needs to be done and that we seek reassurance that that will be looked at in the reviews that are being carried out. The option for the petitioner and the people he represents, if they are not happy with what is going on, would be to come back in a year's time, perhaps with exactly the same petition.

We can make a decision either way. I suspect that neither decision would feel sufficient. As a committee, we have been trying not to hold on to

petitions if they are not progressing. The question is how we make the Scottish Government aware of the issue and not just say that everything is being sorted—we do not want to create the impression that something is being done when it is not. There is a bit of a dilemma for us. I hear what Jackie Baillie is saying and there are big issues involved. My concern is that the reviews are being carried out but are on such a broad scale that they may miss the fundamental point.

One option might be to close the petition on the basis of what the Scottish Government has said but to write to the Government, highlighting the particular focus that we are looking for, and to say to the petitioner that, if that progress has not been made within a year, we would welcome a return of the petition, which would be dealt with in good order. In other words, the petition would not come back in a year and then not be dealt with for another six months. Do you think that that would be acceptable, Jackie?

Jackie Baillie: That would be very helpful, convener.

The Convener: If we are agreed, recognising the comments that I have made and that have been emphasised by the committee, we will close the petition on the basis that the Scottish Government is currently carrying out various reviews of relevant legislation. However, we will write to the Scottish Government to highlight the specific interests represented in the petition. We will emphasise to the petitioner that we absolutely recognise the significance of what they are asking for and the importance of the points being made and to let them know that they will have an opportunity in a year's time to bring the petition back if they consider that progress has not been made. Is that agreed?

Members indicated agreement.

Maurice Corry: The clerks can keep a watching brief on the progress of that. Even if the petition is closed, we could keep a special eye on the matter.

The Convener: I am sure that the petitioner and Jackie Baillie and her group will keep more than a watching brief. The matter could be brought back to the committee for our attention.

Antisocial Behaviour Legislation (Household Odours) (PE1742)

The Convener: The second continued petition for consideration is PE1742, on amending antisocial behaviour legislation to tackle neighbouring household odours. It was lodged by Michael Pringle and calls on the Scottish Government to create a new antisocial behaviour order designed to tackle situations where a neighbour repeatedly refuses to deal with odours

or pollution leaking into neighbouring properties. The clerk's note summarises the submission received from the Scottish Government and the petitioner's response. Do members have any comments or suggestions for action?

Maurice Corry: I had an incident of this nature in my area, and it was adequately dealt with by standards at local authority level. I do not see why that could not be the case in this matter. There are specific requirements for extractor chimneys or fans to be a certain height. I have had an identical case, and we resolved the matter through the local authority.

David Torrance: We should close the petition under standing orders rule 15.7, on the basis that the Scottish Government does not consider the matter appropriate for the Antisocial Behaviour etc (Scotland) Act 2004 and it has highlighted a range of other means by which the petitioner could try to rectify the problem.

The Convener: You only have to read the submission from the petitioner to get a sense of his frustration. However, it is the Public Petitions Committee's job not to resolve individual circumstances but to look at whether the solution that has been suggested by the petitioner makes sense. We know that the Scottish Government is not going to review the 2004 act; there has to be a resolution at a local level.

Although we may be sympathetic to the individual petitioner's direct experience, the suggested solution has not been supported by the Scottish Government. The committee has highlighted the general solution to a particular problem, so there is a conclusion for our role.

Do members agree to close the petition, as suggested by David Torrance, under standing orders rule 15.7?

Members indicated agreement.

Pre-1989 Scottish Secure Tenants (Rights) (PE1743)

The Convener: The next continued petition for consideration is PE1743, on amending the law to protect the rights of pre-1989 Scottish secure tenants. It was lodged by John Foster on behalf of Govan community council and others and calls on the Scottish Government to amend the Rent (Scotland) Act 1984 to prevent disproportionate rent increases being set for Scottish secure tenants.

The clerk's note summarises the submissions received from the Scottish Government, the Convention of Scottish Local Authorities, the First-tier Tribunal for Scotland housing and property chamber and the petitioner since our previous consideration of the petition, in October 2019. It

also highlights that the Local Government and Communities Committee has undertaken an inquiry into how the tribunal is working. It took evidence at its meeting on 11 March and agreed to discuss the issue further as part of its work programme.

Do members have any comments or suggestions for action?

David Torrance: As the Local Government and Communities Committee is already doing work in the area, it would be right for us to pass the petition over to that committee.

Maurice Corry: I agree.

The Convener: I find the matter interesting and I was very struck by it. I should declare an interest, as I previously represented the area as an MSP and I am now an MSP for the Glasgow region. The issue has been left over and it does not affect huge numbers of tenants.

The argument is really about comparators. If a tenant lives in an area of Glasgow that is not very far from the city centre, their rent could be determined to be comparable with what is paid in the city centre, which could be completely different from what they would expect to pay. It is an important issue that the local community council is taking very seriously. Our evidence suggests that, for the individuals concerned, there has been a 50 per cent rent increase, which is substantial.

10:15

My sense is that we should refer the petition to the Local Government and Communities Committee. We should highlight that the tenants face a particular issue, for which they have found a solution, but there is a broader question about how rents in cities are determined, because there can be massive variation in rents for properties that are in close proximity, and some rents might not be reasonable. We emphasise that comparisons should not be made with commercial properties and that people expect there to be local comparisons. It would be an interesting area for the Local Government and Communities Committee, which is carrying out an inquiry, to scrutinise.

Do we agree to refer the petition to the Local Government and Communities Committee, under rule 15.6 of the standing orders, and to highlight the issues that we have discussed? I hope that that will contribute to its work on the First-tier Tribunal.

Members indicated agreement.

Psychiatric Service Dogs (PE1744)

The Convener: The next continued petition for consideration is PE1744, which was lodged by Karen Mercedes Greer. The petition calls on the Scottish Parliament to urge the Scottish Government to recognise the valuable role that psychiatric service dogs can play in helping people to recover from trauma and mental ill health, and to fund a pilot programme of accredited psychiatric service dogs in Scotland.

Do members have any comments or suggestions for action?

Maurice Corry: As I said the last time we considered the petition, several organisations, including the Psychiatric Assistance Dogs Foundation and Bravehound, carry out that work and are available for everybody to go to, particularly in relation to the conditions that the petitioner has highlighted, such as post-traumatic stress disorder and other mental health issues. I do not see what more we can do other than point to those organisations, which are very willing to provide help. There is a separate question about where those organisations get their funding from.

Do not get me wrong: the petitioner has a very good point. Such dogs are vital. I know of examples of them saving people—particularly veterans—from suicide. The work could be carried out by those organisations, so I propose that we close the petition, bearing in mind that other services are available. The cross-party group is looking at the issue very deeply.

The Convener: I think that everybody recognises the potential for people to find pets or other animals therapeutic. There is quite a lot of evidence that people who are stressed have used such interventions. However, one of the submissions talked about the limits to that and made the point, which I had not thought about, that dogs and other pets ought not to be put into situations that will put them under stress and that other interventions might be more appropriate. It was a thought-provoking point that people need to be mindful of the limits of what a dog or another pet can do to support someone who is under stress and that there are other useful ways of supporting people when they are in those circumstances.

As Maurice Corry said, a number of organisations are looking at the issue. There is also a recognition that the option is not a fix for everybody; there are limits. Several small organisations are doing the work, which is, in effect, a pilot. We note the correspondence that we have received from Dogs for Good and the Scottish Government, which suggests that other actions to address mental health are likely to be more effective, less complex and less expensive

than the petitioner's proposal for funding psychiatric assistance dogs.

In closing the petition, we thank the petitioner for engaging with the Public Petitions Committee and highlighting the varied ways in which we can support people who have mental health issues. Work is going on but, if the petitioner feels that it is necessary, she is, of course, able to lodge a similar petition in a year's time.

Do we agree to close the petition, under rule 15.7 of the standing orders?

Members indicated agreement.

Fatal Accident Inquiries (Statutory Right) (PE1745)

The Convener: The next continued petition for consideration is PE1745, which was lodged by James Jones and which calls on the Scottish Parliament to urge the Scottish Government to ensure that families have a statutory right to request a fatal accident inquiry.

Since the petition was last considered, in October 2019, the committee has received submissions from the Scottish Government, the Law Society of Scotland, the Crown Office and Procurator Fiscal Service and the petitioner. The submissions are summarised in the clerk's note.

Do members have any comments or suggestions for action?

David Torrance: None of the written submissions that the committee has received supports the petitioner's call. For that reason, I do not think that we have any other option but to close the petition.

Maurice Corry: I agree. On that basis, I cannot see any reason to keep the petition open.

The Convener: I think that there is something in the issue. I have had direct experience of constituents who believe that there is a public interest in a fatal accident inquiry being held, but the definition of "public interest" does not include what they deem to be the public interest. I can think of the example of a family who argued for a fatal accident inquiry into the death of someone who had passed away in hospital, and the response was that that was not in the public interest. However, I think that it would have been in the public interest to check whether the hospital had responded in the appropriate way in certain circumstances.

I can see what the petitioner is getting at. The petitioner draws a comparison with the English system, in which there is separation in that the equivalent of the Lord Advocate does not have such a significant role. The question that I am wrestling with is whether, as a public petitions

committee, we can take the matter forward, given that it is clear that all the folk who responded do not believe that the petitioner's proposal is the way forward. It may need political pressure of a different kind to make that change, which is not one that a public petition is going to make. There does not seem to be any way in which the petitioner's proposal would be an option.

If we close the petition, we should think about how many families are affected by the issue. In my experience, not only do those families not get a fatal accident inquiry, but it takes a year to tell them that that is the case. There is a feeling that the system already knows that it is not going to grant an FAI, but it all drags on, and that is very difficult for the family.

Maurice Corry: You have a point, convener. Sadly, a very close friend of mine lost their baby during birth, and there were some issues in the hospital. The inquiry into that is taking an age to come to a conclusion, and I have been on the ball on the issue in that respect. Can we keep the petition open in order to compare the situation in Scotland with that in England and Wales?

The Convener: To be fair, in the evidence that we have got, there is a clear indication that the model that is used in England will not be adopted in Scotland. Everyone has said that they will not do that. In order to effect that level of change, we would need to see people in the political process making that a manifesto commitment and winning the political case for change. That does not seem to be the case. In what we have established, there seems to be no sense that people would want to move to that model.

My feeling is that the fundamental questions are about the definition of "the public interest" and the fact that the decision is made elsewhere, which means that the families do not feel that they are fully engaged with that decision.

We probably need to close the petition, but we should recognise that those are huge issues for families and that people need to think about how families are supported. On the other hand, as the evidence shows, if families have the wrong notion or misunderstand their rights—I would not go so far as to say that they are misled—that can be very difficult. They might think that they should be able to get an FAI, but in fact there are strict rules around that.

It is one of those petitions in respect of which we would not be fair to the petitioner if we suggested that there was something else that we could do, and we would be misrepresenting our position if we held on to the petition, given that there is really nothing within our powers that could change the position.

Do we agree to close the petition, but with all the caveats that I have mentioned, on the basis that the submissions that we have received clearly show that there is no support for the action that the petitioner has requested?

Members indicated agreement.

The Convener: Again, we thank the petitioner for the petition and the way in which he has engaged with the committee. We regret that there has perhaps not been the solution that he would want, but he has an opportunity in a year's time to return to the issue if he chooses to do so.

Listed Buildings (Financial Viability) (PE1749)

10:25

The Convener: The final continued petition for consideration is PE1749, which was lodged by Ronald Morrison. The petition calls on the Scottish Government to ensure that financial viability studies are conducted on listed buildings requiring restoration and/or maintenance, that responsibility of ownership is established for the work and that financial assistance is provided where listed buildings are at risk of falling into disrepair. Submissions have been received from Historic Environment Scotland, the Royal Town Planning Institute, the Built Environment Forum Scotland, the Scottish Government and the petitioner, and those are summarised in the clerk's notes.

Do members have any comments or suggestions? Jackie Baillie has an interest that may illuminate our consideration of the petition.

Jackie Baillie: I am not sure whether it will illuminate, convener, but I have an interest. Mr Morrison is a constituent of mine, and he approached me when he first lodged the petition, which is born out of his experience in the local area. The responses from all those contacted, including the petitioner, are helpful in advancing the argument. I suggest that the Scottish Government's "our place in time" working group seems to offer a home for the petition. Although the group's remit is fairly expansive, the committee could invite it to look at the petition in discharging its remit. That would bring some much-needed clarity to the situation.

David Torrance: I agree with Jackie Baillie that the "our place in time" working group should take forward the petition. We should close the petition, because all the other written submissions disagree with the petitioner. The working group is the only place for the petition to go.

The Convener: Before we close the petition, we have the option to write to the Scottish Government to flag up those questions and to ask

whether the “our place in time” working group would be the most appropriate avenue. That would give us the opportunity to reflect on whether that is a credible option.

Maurice Corry: I am aware of the issue and I see where the petitioner is coming from. There is no mention of the National Trust for Scotland and other keepers of the wonderful listed buildings that we have in Scotland. Maybe we should get some information from them, because, at the end of the day, it is about how those organisations can look after and maintain buildings. Jackie Baillie and I have a building in our area that has suffered from that problem, whereas if there had been some form of superior authority to direct the National Trust for Scotland to do something about it, we would not be in the position that we are in now. I wonder whether we should keep the petition open.

The Convener: I suspect that the role of the National Trust is an even more complex issue.

Maurice Corry: I understand that.

The Convener: I am not sure that we can direct what is probably a charity to do anything.

Maurice Corry: It is a sort of custodian, is it not?

The Convener: I understand that.

We have had a significant number of responses, and we recognise that there are issues. I suggest that we write to the Scottish Government to ask what contact it has had with the United Kingdom Government on the issue of reducing VAT on repairs and alterations, and to ask whether the issues could be highlighted to the OPIT working group. We can then make a decision when we next consider the petition. Do members agree to that approach?

Members indicated agreement.

New Petitions

Mental Health (Care and Treatment) (Scotland) Act 2003 (Prosecutions) (PE1786)

10:29

The Convener: Agenda item 3 is new petitions. The first new petition for consideration is PE1786, which was lodged by Andrew Muir. The petition calls on the Scottish Government to investigate why there have been no prosecutions under either section 315 or section 318 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

Although the petition states that there have been no prosecutions under sections 315 or 318 of the 2003 act, recent information provided by Scottish Government officials indicates that, during the 10-year period from 2008-09 to 2017-18, there were 40 prosecutions under section 315 of the 2003 act, with 25 resulting in conviction. There were, however, no cases under section 318.

Do members have any comments or suggestions for action? I ask Jackie Baillie to contribute again.

Jackie Baillie: My constituents have been busy in submitting petitions to the committee. I know the petitioner, and that the petition is born out of personal experience of the mental health system. I recognise that the petition calls for an investigation into why no prosecutions have occurred under sections 315 and 318 of the 2003 act but, as the convener helpfully pointed out, there appear to have been some prosecutions under section 315.

I will therefore focus my comments on section 318, which relates to the making of false statements in a written document relating to the 2003 act. Detentions need consent from a specialist worker, which is usually a specialist social worker who is designated as a mental health officer. However, we know that compliance with that requirement varies dramatically across the country. For example, in Dumfries and Galloway, the figure is 83 per cent, but in my patch, in the NHS Greater Glasgow and Clyde area—which is where the petitioner comes from—the figure is as low as 33 per cent. That suggests that there is a failure to observe the law. If that is happening routinely, the question is why there are not more prosecutions under section 318.

I would be grateful if the committee would consider taking the petition further to find out whether the law is being upheld, why there have been no prosecutions under section 318 and whether there is a more serious underlying problem of people not observing the law, which exists for a good reason.

Maurice Corry: I am fully aware of the case and entirely agree with what Jackie Baillie says. It is incredible that there is not the same level of compliance everywhere. That could clearly lead to some of the issues that the petitioner has highlighted. Therefore, I support that suggestion.

David Torrance: I fully agree. We should write to the Scottish Government to ask for its views on the petition, and to any other relevant stakeholders.

The Convener: We can ask the clerks to look into that. One of the most obvious is probably the Mental Welfare Commission for Scotland. We could write to ask for its views on the petition. Given what Jackie Baillie has said about what might underlie the issue, we would want to get more information about it.

Does the committee agree that we should write to the Scottish Government and the Mental Welfare Commission to seek their views, and to any other relevant stakeholders that the clerks may identify?

Members indicated agreement.

Cytomegalovirus Screening in Pregnancy (PE1788)

The Convener: The second new petition for consideration today is PE1788, which was lodged by Alexander Tiffin. The petition calls on the Scottish Parliament to urge the Scottish Government to introduce screening for cytomegalovirus for all pregnant women. CMV is a virus similar to the herpes virus that causes cold sores and chickenpox. It can infect people of all ages, and most adults and children with the virus will have no signs or symptoms. CMV can cause problems in unborn babies if the mother catches it when pregnant, which is known as congenital CMV. It is estimated that around 2,000 children are born with CMV in the UK each year.

In 2012, the UK National Screening Committee recommended against screening for CMV. That decision was reviewed in 2017 and the recommendation was still considered to be valid. Screening is not recommended in pregnancy, because there is still no reliable screening test to detect CMV infection during pregnancy and no treatment has been identified that could prevent the developing baby in the womb from getting the CMV infection from their mother.

Do members have any comments or suggestions for action?

David Torrance: The evidence that we have in front of us—that the National Institute for Health and Care Excellence and the NSC do not recommend screening at all—leaves us with

nowhere to go. The committee has no option but to close the petition.

Maurice Corry: I do not know about that. This is an important issue for women, so I do not feel comfortable about closing the petition. We should write to the Scottish Government. I understand what David Torrance has said about NICE and so on, but my hunch is that we should progress the matter a bit further and find out what the Scottish Government says. In the light of that, we can consider where we go with the petition. The petitioner is looking for confidence.

The Convener: We have to decide whether there is a benefit in writing to the Scottish Government. It may just reflect back what we already know, which is that screening is not recommended, because there is no reliable test. Even if there were such a test, no treatment has been identified. We have been informed that, although the NSC's recommendation is against screening, that will be reviewed in 2020-21. If we close the petition, we could provide the petitioner with information about that review, and they might be able to engage directly with it. The NSC might take the same view after that review, but perhaps it could at least consider the petitioner's views when it looks at the issue.

Maurice Corry: Will the review results be published in 2021?

The Convener: We are told that the matter will be reviewed in 2020-21, so I assume that its conclusions will be published in 2021. If the petitioner could engage with that review, that might be the most positive way for them to try to shape the thinking. I sense that the matter is kept under review all the time, but there will be a formal review between 2020 and 2021.

Maurice Corry: So the NSC keeps a close watch on the issue.

The Convener: Do members agree to close the petition, on the basis of what we know about the most recent review, with the recognition that the issue will be reviewed again and that the petitioner can engage with that review?

Members indicated agreement.

The Convener: We thank the petitioner for engaging with the committee. They have the opportunity to engage with the review and could bring back the petition in a year's time if they felt that that would be worth while.

I now close the public part of the meeting and move us into private session.

10:37

Meeting continued in private until 10:59.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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