



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 13 January 2016

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
2nd Meeting 2016, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (Ind)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

Jayne Baxter (Mid Scotland and Fife) (Lab)

*Cameron Buchanan (Lothian) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Cara Hilton (Dunfermline) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Simon Cuthbert-Kerr (Scottish Government)

Douglas Forrester (Scottish Government)

Graham McGlashan (Scottish Government)

Maureen Watt (Minister for Public Health)

Paul Wheelhouse (Minister for Community Safety and Legal Affairs)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 13 January 2016

[The Convener opened the meeting at 10:00]

Subordinate Legislation

Dog Fouling (Fixed Penalty) (Scotland) Order 2016 [Draft]

The Convener (Kevin Stewart): Good morning, and welcome to the second meeting in 2016 of the Local Government and Regeneration Committee. Everyone present is asked to switch off mobile phones and other electronic equipment, as they affect the broadcasting system. Some committee members will consult tablets during the meeting, as we provide meeting papers in digital format. We have received apologies from Jayne Baxter.

Our first agenda item is to take evidence on the draft Dog Fouling (Fixed Penalty) (Scotland) Order 2016. I welcome Paul Wheelhouse, Minister for Community Safety and Legal Affairs, and Douglas Forrester from the Scottish Government.

After we have taken evidence on the instrument, under agenda item 2, we will debate the motion in the name of the minister. The committee has up to 90 minutes to debate the motion, and officials are not permitted to contribute at that point.

I invite the minister to make any opening remarks that he may have.

The Minister for Community Safety and Legal Affairs (Paul Wheelhouse): Thank you, convener. The order under consideration increases the fixed penalty that is set out in section 9 of the Dog Fouling (Scotland) Act 2003. It will double the fixed penalty for dog fouling from £40 to £80, bringing it into line with the fixed penalty for littering. The change follows an analysis of the responses to our 2014 consultation on promoting responsible dog ownership. The consultation asked respondents to make suggestions on measures to tackle the persistent problem of dog fouling in our communities, and an overwhelming number of correspondents said that they wanted the fixed-penalty amount to be raised.

Following on from the consultation, my officials carried out a further limited consultation among relevant stakeholders, including all local authorities and Keep Scotland Beautiful, about doubling the fixed-penalty amount. All respondents to that consultation were in overwhelming

agreement that the amount should be raised and that £80 was an appropriate level at which to set it.

That is all that I have to open with, convener, but I am happy to take questions.

The Convener: Thank you, minister. John Wilson has a question.

John Wilson (Central Scotland) (Ind): Good morning, minister. In case any come out, I point out that no puns are intended.

The Convener: I will stop you if they do.

John Wilson: The reality is that dog fouling is a serious issue; indeed, it is one of the most common complaints that local authorities receive. How many of the 32 local authorities that were consulted indicated that they had enforcement officers or dog wardens operating to carry out enforcement? What level of enforcement has taken place since the legislation came into force? There is no point in increasing fines if there is no one there to enforce the legislation.

Paul Wheelhouse: I agree with Mr Wilson that there is little threat of prosecution or charge if there are no means to catch those who are guilty of such offences. We have been doing an exercise in which all local authorities have been invited to tell us one by one what approaches they take to enforcement. The approach to catching individuals varies hugely across the country. Some local authorities have dog wardens and some do not but use other officers, such as neighbourhood officers, who have other functions, to cover issues such as dog fouling.

My colleague, Douglas Forrester, has been involved in that exercise. With your permission, convener, I will ask him to comment on any evidence that we have received to date. I have not yet seen a comprehensive analysis of the feedback, but he may be able to contribute.

Douglas Forrester (Scottish Government): We have consulted local authorities. The Dog Fouling (Scotland) Act 2003 allows local authorities to use appointed officers to collect fixed penalties. As the minister said, those officers might not always be specialised dog wardens; sometimes, they are community wardens or neighbourhood officers, but they are authorised by the local authority under the provisions of the act to collect the fixed penalties.

I attend meetings of the antisocial behaviour officers forum, which involves local authority antisocial behaviour co-ordinators. At those meetings, all local authorities have said that they have authorised officers in place to deal with dog fouling. Through those meetings, I have heard of the desire to increase the dog fouling fixed penalty. Also, councillors from various local authorities, especially in Edinburgh and the

Scottish Borders, have written to ask the minister specifically whether the Scottish Government will consider increasing the fixed penalty. We have taken the views of those people on board, and that is why we are here today to discuss the issue.

John Wilson: Could you remind me who receives the penalty fees when a fixed penalty is applied?

Douglas Forrester: The fee is accruable to the local authority that issues the fixed penalty.

John Wilson: Will increasing the fine be seen as helping to alleviate some of the costs? The Government's assessment of the proposed amendment says that it will be cost neutral and that there will be no additional cost to local authorities. If there is no additional cost, and if the additional fees then go to the local authorities, is that in the hope of getting more money into the system to allow more enforcement officers to carry out such duties?

Douglas Forrester: That is the aim—it is to allow local authorities to collect more money to invest in tackling dog fouling.

Paul Wheelhouse: The other thing to bear in mind is the importance of the signal. There has been inconsistency in the approach that has been taken to date. It is a slightly absurd position, in my view, that if someone were to pick up their dog mess, put it in a bag and leave that bag hanging, a littering fine is applicable, but that if they leave the dog mess on the ground and do nothing with it, they would have to pay a smaller penalty, although both are equally unacceptable. We are removing that inconsistency.

Increasing the fine sends the important signal that dog fouling is an issue that society and local government take seriously. It will make things easier, because there are significant costs involved in recovering unpaid charges, so increasing the fine improves the return for pursuing unpaid penalties and makes it more affordable to do so from the local authorities' point of view, so they can be sure of covering their costs in recovering the charges. That area is not addressed in the measure that we are now proposing, and it would require primary legislation to do anything to improve that process and ensure that unpaid fines are paid, but it could be looked at after dissolution by the current Scottish Government or another Administration.

John Wilson: I welcome the minister's comments regarding the pursuance of unpaid fines, because there is no point in bringing in legislation on fines if people do not pay them. I also welcome the acknowledgement of the issue of dog fouling in the countryside, which has been raised with me by the National Farmers Union of Scotland. There is one infamous tree that is

littered with plastic bags containing the remains of dog fouling in the countryside. I hope that we can use the measure to move forward and get more enforcement, and to make people understand that they have responsibilities and duties, not only as dog owners but to others in the countryside.

Paul Wheelhouse: I whole-heartedly agree. I know that NFU Scotland and Keep Scotland Beautiful have been working closely together to try to tackle dog fouling in agricultural areas. The legislation as it stands does not cover dog fouling on agricultural land, for practical reasons to do with shepherds and working dogs that are used in the countryside and are not covered by the legislation. However, we are conscious that NFUS, Keep Scotland Beautiful and other campaigners are keen for the issue to be tackled, because it can have an impact on wildlife as well, as Mr Wilson and other members will know.

I was formerly responsible for looking after the Loch Lomond and the Trossachs national park on behalf of the Government, and I know that there were significant issues about how dog fouling had impacted on wildlife in the Loch Lomond area, particularly capercaillie—the impact on nesting areas can be devastating. There are a number of reasons why the issue needs to be tackled, not least of which is the public health concerns for children who are vulnerable to diseases that can be caused by contact with dog mess. I hope that the proposed measure will be a small but important step in improving the level of response to what is widely perceived as a significant problem.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I see that, if the order is passed, it will come into force on 1 April, which is only about 10 weeks away. How will you make sure that the public are aware that the change is coming? Are local councils getting geared up for it with awareness-raising campaigns? Is there any evidence that councils are beginning to provide more dog-fouling bins, which the public always seem to be asking for more of?

Paul Wheelhouse: We certainly recognise that the provision of dog-fouling bins is very important. It is obviously a matter for local authorities to decide how best to deploy those resources. We are confident. Local authorities have been in touch with officials to advise that they are in the process of organising the new fixed-penalty books that we required. They are aware that this is happening and, as has been indicated, they are supportive of what we are doing.

If the measure is passed, the Government will use all media channels to try to communicate the message. We will consider whether we can remind people nearer the date when the measure will come into force—1 April—that the legislation has

changed and that they are liable for a larger fine. I agree that behavioural change cannot happen unless people are aware that the measure has been taken and that the fine will be higher than it was previously. We need to educate individuals about the fact that there is a larger risk for them if they continue to ignore the warnings.

We are confident that local authorities are aware of the measure and are supportive of it and that they will do what is necessary to make sure that it is successfully implemented.

Douglas Forrester: Some local authorities have already been in touch with me to ask whether the fixed penalty will be coming into force on 1 April, because they are in the process of organising new fixed-penalty books. I can therefore confirm that some local authorities are already making arrangements in anticipation of the order going through.

Willie Coffey: Thank you.

The Convener: I have noticed that there is some publicity on the go on the issue in the papers in my neck of the woods. A city warden in Aberdeen was interviewed the other day and reported that a member of the public removed their sock to dispose of the offending article rather than pay the fine.

Cameron Buchanan (Lothian) (Con): Good morning, minister. In France, they have bags for dog fouling in public parks, which people pay for. Is that a good idea? Should there be notices in public parks to say that the fine has been increased? Enforcement is very difficult. If you see someone letting their dog foul and you tell them not to, they will basically tell you to go and see a taxidermist—there is nothing you can do about it. How will enforcement work? Can we put notices in public parks to say that the fine is now £60?

Paul Wheelhouse: It is £80. I should pick up an earlier point and make it clear that if the fine is not paid on time it goes up to £100—it reaches 50 per cent of the maximum that it could be, which is £200. It goes from the current 20 per cent up to 40 per cent, but rises to 50 per cent if it is not paid on time.

I agree that publicity is important and I would certainly be supportive of any measures that local authorities take to advertise the change. We will do what we can through media and other outlets, but the delivery of signage is a matter for local authorities. I hope that, if there is increased revenue from dog-fouling penalties, that will to an extent help pay for any additional publicity, although I appreciate that that is a simplistic analysis of how the financial mechanics might work—they might not work that way in practice.

Cameron Buchanan is right to hit on the example of public parks, where I hope that children would have a reasonable expectation of playing in safety without finding themselves covered in dog mess and so putting their health at risk. That is important. It is probably not practical to have signage in every place where the public and dogs mix, but certainly public parks, play areas and football pitches are areas where we should make it very clear that it is unacceptable to leave dog mess.

Cameron Buchanan: Would you suggest that notices should be put up? That is really what I was trying to ask about enforcement.

10:15

Paul Wheelhouse: As I said earlier, we are trying to gauge the approaches that are taken across the country. If we gather evidence that signage works and that it adds value in local authorities, and we take local authorities' views on whether it has been effective, we will communicate that to other local authorities and tell them that it has an impact.

We have to listen to local authorities about what works at a local level. Douglas Forrester referred to some innovative practices in local authorities. I know that the City of Edinburgh Council is among the most proactive of the local authorities that I am aware of in tackling dog fouling. It has done quite a lot of work to map where dog fouling takes place so that it can target resources at where the offences are being committed. That could identify where signage would be most appropriate rather than having it somewhere where there have been few, if any, offences and not getting a good return for the investment. The right way to go is probably to target signage resource at areas where there is a known problem.

The Convener: My understanding is that, when the original legislation was passed, the charge levied by the fixed-penalty notice was going to be based on a percentage of a level 1 fine. Am I correct?

Paul Wheelhouse: That is correct. The level 1 fine goes up to £200 and the current charge is 20 per cent of that, but we are increasing it to 40 per cent. With the late penalty, which will stay the same at £20, the fine will go up to 50 per cent if somebody does not pay on time.

The Convener: Are you doing it that way because level 1 fines have not increased since the legislation was enacted? Is that right?

Paul Wheelhouse: I cannot answer that. Perhaps Douglas Forrester knows whether the figure has changed since 2003.

Douglas Forrester: I checked before putting the order through and, according to the Scottish Government website, the level 1 fine is still set at £200. That is correct.

The Convener: So we are increasing the percentage.

Paul Wheelhouse: Yes. We are increasing it to 40 per cent as standard, but 50 per cent if payment is late.

The Convener: It seems to be a long time since the level 1 fine has gone up, but that is probably a matter for another committee.

As there are no more questions, I move to the next agenda item, which is the formal debate. I invite the minister to move the motion.

Motion moved,

That the Local Government and Regeneration Committee recommends that the Dog Fouling (Fixed Penalty) (Scotland) Order 2016 [draft] be approved.—[*Paul Wheelhouse.*]

Motion agreed to.

The Convener: Thank you for your attendance, minister.

10:17

Meeting suspended.

10:19

On resuming—

Burial and Cremation (Scotland) Bill: Stage 1

The Convener: Our next item of business is to take evidence from the Scottish Government on the bill. I welcome Maureen Watt, the Minister for Public Health, and from the Scottish Government Dr Simon Cuthbert-Kerr, the bill team leader, and Graham McGlashan, principal legal officer. Minister, would you like to make an opening statement?

The Minister for Public Health (Maureen Watt): Thank you for the opportunity to speak to the committee about the bill, which represents a much-needed modernisation of the processes that are involved in burial and cremation. It contains wide-ranging provisions that will standardise and improve practice across Scotland.

The committee will be well aware of the issues that were identified by Lord Bonomy's infant cremation commission. Lord Bonomy made a number of recommendations to improve the processes that are involved in the cremation of infants, and many of them will be implemented by the bill.

Many non-legislative improvements have already been introduced, and the bill will create the legislative framework that will mean that previous mistakes cannot be repeated. In particular, the bill defines ashes and sets out what may be done with them. It provides a power for ministers to prescribe forms for applying for a cremation. People who complete the forms will need to specify what they want to happen with the ashes, and cremations will not be able to take place without that information.

The bill establishes a process for deciding what should be done with the remains of a pregnancy loss. That places the woman who experiences the loss at the centre of the process and requires her options to be explained to her clearly and each decision that is made to be recorded. That will bring consistency and transparency to the process.

The bill implements recommendations that the burial and cremation review group made. Some of the group's recommendations have already been implemented in the Certification of Death (Scotland) Act 2011. The remaining recommendations that are being implemented in the bill will modernise the processes that are involved in burial and cremation. Provisions include giving burial authorities clear powers over the management of burial grounds, including

requirements to ensure their safety. The bill will ensure that burial continues to be an option for future generations by allowing certain lairs to be reused in tightly controlled circumstances. That will ease pressure on burial space and help to bring closed burial grounds back into use.

The bill allows ministers to introduce inspectors for various parts of the funeral industry. I have already appointed an inspector of crematoria, and the bill allows for further inspectors to be appointed to scrutinise burial processes and funeral directors. In addition, the bill allows ministers to introduce a licensing scheme for funeral directors. If introduced, that would address concerns about the conduct of some funeral directors and ensure consistent best practice across the industry.

Overall, the bill will provide a robust framework for burial and cremation that will meet the needs of 21st century Scotland. I am happy to answer any questions that the committee might have.

The Convener: You talked about modernising the system, which we will probably tease out a bit more. You also touched on the possible licensing of funeral directors. One thing that has come out during our evidence-taking sessions is the high cost of a funeral, which includes not only the charges from local authorities, which are extremely diverse, but the fees that funeral directors charge.

Modernisation of burial and cremation is the bill's aim, but the funeral industry does not seem to be particularly modern—in fact, it seems to be stuck in the past, which is perhaps one of the reasons why there are such high costs. How will the bill help to reduce funeral costs from the point of view of the public and private sectors?

Maureen Watt: The bill's main aim does not concern funeral costs; in fact, we do not believe that the bill is the right place to deal with funeral costs. Undoubtedly, as you say, funeral costs are increasing. However, they are made up of a wide variety of elements, including local authority fees and funeral director fees. We do not think that using legislation to control those costs will necessarily address the underlying problems.

As you know, the Scottish Government is doing other work to address funeral costs. It is reviewing the operation of the social fund, which is to be devolved to Scotland, and the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights has instigated a comprehensive review of funeral costs, with a view to identifying ways to tackle those costs across a range of relevant sectors. He is publishing new information to help people to plan for funerals, including advice on the likely costs, to ensure that the various options for burial and funerals are explained to people.

However, as I said, we do not believe that the bill is the vehicle for dealing with funeral costs.

The Convener: How do we ensure that the bill does not lead to further rises in the costs? In evidence—particularly from local authorities last week—we have heard that implementing some parts of the bill might bring an added cost.

Maureen Watt: We do not believe that the bill will necessarily lead to added costs in relation to funerals. As your witness from East Dunbartonshire Council demonstrated last week, there is a huge variety of costs across local authorities in relation to lairs, cremations and funerals in general.

As I said, the bill does not involve efforts to reduce funeral costs. However, it could result in the creation of ways whereby we could help to increase the number of lairs, which might reduce their cost.

The Convener: You mentioned East Dunbartonshire, which has the highest funeral costs in the country—if memory serves, I think that the figure is around £2,700. Is there any way that the Government could offer guidance on maximum costs? There seems to be a huge difference in costs, not only for burial but for cremation. It was suggested last week that some local authorities no longer want to allow for burials and are trying to price themselves out of the market.

We have a scenario in which the bill is trying to increase the amount of lairs and burial space and to bring more lairs back into use, but people will be put off using burial grounds if they cannot afford to use them. How do we get the balance right?

Maureen Watt: I think that the balance in funerals is 60 per cent cremations and 40 per cent burials. As I said, we believe that the bill could have a positive effect on the overall costs of funerals. For example, we intend to introduce an amendment at stage 2 to require local authorities to publish all costs that relate to burials and cremations. We will not do the same for funeral directors, because that involves matters of consumer protection, which is still a reserved issue. However, we are working with funeral directors and the National Association of Funeral Directors to encourage them to be more transparent about their costs and to be much more forthcoming when advising customers of the wide variety of funerals. We believe that the appointment of inspectors of funeral directors as well as the introduction of a licensing scheme might help to drive up the overall standards in the sector and deliver the transparency that we seek.

10:30

The Convener: You talked about consumer protection, and the committee understands that that remains reserved. However, is there no way of circumventing consumer protection legislation and bringing something else into force that the Scottish Government could set out, such as a requirement for funeral directors to give a cost for a very simple funeral? That could be part of what we will require under devolution of the funeral grant, for example. I am sure that there are ways and means of coming to an arrangement that does not involve consumer protection legislation. Has that been looked at?

Maureen Watt: As I said, addressing the cost of funerals is not the bill's main purpose. Because we have been working with the funeral industry and local authorities, we believe that we have recognised a need for funeral directors to be more open and transparent and, as I said, to publish information on the wide range of funerals that are available rather than just direct people towards the most expensive ones. However, we can look at the issue as part of licensing requirements, guidance and subordinate legislation.

The Convener: I realise that addressing cost is not one of the bill's main purposes, but cost has come up hugely during our evidence gathering, and we might well come back to some of that. Will Mr McGlashan tell us whether there is a way in which we could deal with such matters in Scotland without bringing consumer protection legislation and reserved matters into play?

Graham McGlashan (Scottish Government): As the minister indicated, consumer protection is generally reserved under schedule 5 to the Scotland Act 1998. I think that the convener suggested that the Government could place some kind of requirement on funeral directors to publish the costs of funerals. The reservation on consumer protection also covers price indications, so we think that requiring funeral directors to publish those costs would fall foul of that reservation.

The Convener: Is regulation of funeral directors devolved or reserved?

Graham McGlashan: Regulation of funeral directors by licensing—if it is a licensing scheme that we propose—is within the powers that we have.

The Convener: Could you say in those licensing requirements that funeral directors have to show a tariff?

Graham McGlashan: We can certainly go away and think about that. You will appreciate that this is a complex area and that I cannot give the

committee legal advice. I would need to go and think about that.

The Convener: It would be most interesting for the committee to know whether a licensing regime could include an acknowledgement that funeral directors have to show a tariff in order to be licensed. If you could get back to us soon on that, we would be grateful.

Cameron Buchanan: Good morning, minister. I turn to the proximity of new crematoria—the 200-yard rule. Why did you decide not to put that in the bill?

Maureen Watt: That is a difficult issue that has received a lot of interest. The bill does not replicate the existing minimum distance for crematoria because we believe that the current minimum distance does not work and that providing a minimum distance in the bill would not be the right approach. Even if the bill contained a minimum distance, that would not necessarily prevent a crematorium from being granted planning permission.

It is preferable for decisions about the location of crematoria and buildings that are close to them to be made by the planning system. The perceived wisdom is that a crematorium cannot be built within 200 yards of houses but, actually, that can be done, although the crematorium might not get a licence to operate, because residents close by could object to it. Housing can currently be built right up to the boundary of a crematorium, so the question is: what is the boundary? Rather than replicate an inefficient current provision, it is best to leave such decisions to the planning system.

Cameron Buchanan: Would you consider reducing the distance from 200 yards to 100 yards or 50 yards? The matter has created a lot of controversy and correspondence. People want to be protected.

Maureen Watt: We believe that the matter is best left to the planning system and that we should not put distances into the bill because, currently, they do not work. If we were to do that, would we be protecting the peaceful setting of the crematorium or protecting housing and residents? When the minimum distances were first put in place, there were not the same protections against emissions from crematoria as there are now, when there are virtually no emissions. Why was the legislation put in place? I do not know whether Simon Cuthbert-Kerr knows, with all the research that he has done.

Dr Simon Cuthbert-Kerr (Scottish Government): We have conducted quite a lot of research into the original purpose of the provision, and the purpose is not clear. However, as the minister indicated, the fact that houses can be built right up to the perimeter of a crematorium

suggests that the original intention of the minimum distance was to protect residents from emissions rather than to protect the sanctity of the crematorium.

The Convener: If the 200-yard rule is not to be restated, does the Scottish Government intend to provide additional statutory guidance on planning issues that relate to crematoria?

Maureen Watt: We can certainly consider that in relation to guidance. Do we have any plans at the moment, Simon?

Dr Cuthbert-Kerr: Not at the moment. We have had a long-running discussion with Scottish Government planning colleagues about the matter. They tell us—this is my understanding, at least—that planning authorities could take any minimum distance in legislation into account as a material consideration, but that would not necessarily prevent planning permission from being granted for a crematorium proposal that technically breached that distance. The reason is that planning authorities consider the specific location for the development so, if they believed that there was no particular reason—other than a minimum distance in the bill—why a crematorium could not be built within 100 yards, say, of housing, they would be able to grant planning permission.

The Convener: The planning review panel is considering a number of aspects of the planning system. Is it aware of the proposed change and might it consider that?

Dr Cuthbert-Kerr: We have spoken to planning colleagues about the matter. I believe that they do not intend to consider it but, as the minister indicated, we could raise it with them again.

The Convener: It seems to be causing controversy.

Cameron Buchanan: Would you consider introducing guidelines on the minimum distance, minister?

Maureen Watt: We can consider that, but we have not had proposals to do it until now.

Cameron Buchanan: That might allay some of the fears of the people who are near crematoria. I understand what you say about housing, but people are concerned that houses will be built right up to the limit. A guideline would be helpful and would allay some of the fears.

Cara Hilton (Dunfermline) (Lab): My question builds on Cameron Buchanan's point. I am quite concerned about the Government's position on the issue. Most of the witnesses who came to the committee supported keeping the 200-yard restriction, and a number of people who have contacted me are concerned that local authorities could have a vested interest in developments

going ahead, perhaps because they own the building or have the land to sell. Is it not only right for residents to have some legal protection to prevent such invasions of privacy near their homes?

I understand that, in anticipation of the bill being passed, East Lothian Council has agreed planning permission for a crematorium in Haddington and there is a property just 40 yards away. Surely that is not in the interests of the residents or the mourners who would attend the crematorium. What reassurance can the Government give residents who face the prospect of having a crematorium in their back garden? Is that not an example of how the planning system is not working properly and the existing protection needs to be strengthened rather than removed, as is being planned?

Maureen Watt: In the planning system currently—and this will not change—people can object. We have seen an example in Eyemouth of a crematorium being built within the specified distance and an objection being raised so that it could not operate but, as I understand it, the owners of the crematorium and the objector came to an agreement and it has now gone ahead. One can, of course, raise an objection through the planning system.

Cara Hilton: I still think that the law needs to be strengthened. We heard evidence last week—I cannot remember who it was from—suggesting that we should review the 200-yard criteria so that it works both ways and applies both to existing developments and to future housing developments. Perhaps the Government should consider that.

The minister has said that there are now no emissions from crematoria. I would be interested to hear more about what assessment has been made of the risk to residents living in close proximity to a crematorium. Can you give a concrete guarantee that no emissions or harmful particulate matter such as ash are falling into people's gardens? That is a concern for local residents, so it would be good to have a concrete guarantee on the record that there are no health implications.

Dr Cuthbert-Kerr: I cannot speak to the detail of the Scottish Environment Protection Agency's restrictions, but there is a requirement for annual inspections of crematoria by SEPA, and emissions over particular levels will result in a crematorium's operation being suspended, if necessary, or at least in the number of cremations that it can carry out being reduced, so we believe that the existing SEPA controls are appropriate and sufficient.

Maureen Watt: It is certainly not something that has been raised during the consultation, as far as I am aware.

Dr Cuthbert-Kerr: We recently had one letter, which we received last week, on that subject, specifically with regard to the development in Haddington.

John Wilson: There has been mention of the 200-yard limit going back to legislation from the early 1900s. Can you clarify whether that was in legislation or guidance? If there is legislation stating that no residence should be built within 200 yards of a crematorium, does that mean that there have been breaches of that legislation since it was introduced and that local authorities have basically ignored the original legislation relating to crematoria?

Maureen Watt: My understanding is that it was in the Cremation Act 1902, but Simon Cuthbert-Kerr has done an awful lot of research into the matter, so I hand over to him.

Dr Cuthbert-Kerr: The way in which the Cremation Act 1902 operates is that it requires somebody to object to the operation of a crematorium that is built within and breaches the 200-yard limit, so it is not the case that a crematorium that was built 150 yards from housing would automatically be prevented from operating. A person who lives in a house within that distance would need to object. I think that that is what happened in the recent case in the Scottish Borders. I cannot say whether other crematoria have been built in breach of the legislation, but that is how the statute operates.

10:45

John Wilson: Current planning legislation says that only those who live within 20m of a proposed development are to be consulted about a planning application. If people are not aware that, under current legislation, they can object to a crematorium being built within 200 yards, there will have been a number of breaches of the 1902 act, mainly because residents were unaware of their right to object. Is that not the case?

The Convener: Before we move on, I think it would be useful to get a brief summary of the difference between the planning legislation that is involved here and the operation of crematoria as per the 1902 act. Dr Cuthbert-Kerr, can you give us a wee summary?

Dr Cuthbert-Kerr: Absolutely. The Cremation Act 1902 says that a crematorium cannot operate within 200 yards of an existing house unless it is with the consent of the owner of the house. I am not a planning official so I cannot speak to that, but I understand from our dialogue with planning

colleagues that the planning system looks at developments in the context of a particular location and makes a decision on whether the proposal can be granted planning permission.

As I understand it, despite the 200-yard limit in the 1902 act, a planning authority may choose to grant planning permission to a crematorium that is, for example, 50 yards from a house if the authority sees no planning reason not to grant permission. In other locations, however, it may choose to refuse planning permission because factors related to the location require a greater distance or the planning authority believes that a particular distance is not appropriate. As I understand it, however, that decision is made in the planning system rather than specifically in relation to other pieces of legislation.

The Convener: That is useful, because I think that some folks may have been conflating the two pieces of legislation.

John Wilson: The reason for the conflation in information that has been provided to us is that the 1902 act says that crematoria should not be built within 200 yards of existing residences yet, over time, as Dr Cuthbert-Kerr said, planning authorities have ignored the 1902 act and made decisions—

The Convener: I think that we are putting words into Dr Cuthbert-Kerr's mouth. If I understood him, the 1902 act states that a crematorium cannot be built within 200 yards of somebody's abode unless they have agreed that it can be built there.

Graham McGlashan: I have the text, and it might be useful if I quote from section 5:

"No crematorium shall be constructed nearer to any dwelling house than two hundred yards, except with the consent, in writing, of the owner, lessee, and occupier of such house".

John Wilson: Yet we heard from Dr Cuthbert-Kerr that planning authorities have ignored that and, despite the fact that objections have been raised by residents—

The Convener: I want to stop you. We are getting confused to a huge degree between the legislation that governs crematoria and the legislation on planning. A planning authority can give the go-ahead for a bookmaker's shop or a pub, for example, but that does not mean that it will end up being licensed. We are in the same situation with crematoria, are we not, folks?

Dr Cuthbert-Kerr: Yes.

Maureen Watt: Yes.

Graham McGlashan: I think that that is right.

The Convener: We are conflating the planning system and the operation of crematoria. Mr McGlashan, do you have any more to say on that?

Graham McGlashan: No, convener.

Maureen Watt: I think that Mr Wilson got it wrong. If it is a crematorium, there has to be wider consultation.

The Convener: If it is sometimes difficult for the committee to deal with these things, it will certainly be difficult for members of the public to understand where each piece of legislation fits in. If the two things could be joined at the hip and dealt with in tandem, that might simplify the situation so that the public could understand it. There is confusion in the committee, so there will definitely be confusion out there. The bill team might need to reflect on that. I have to be honest here—instead of just discussing things with planning colleagues, you need to come up with solutions so that there is not such a huge amount of confusion.

John, do you want to come back in?

John Wilson: Not on that issue. You have set out your interpretation of the 1902 act compared with what local authorities currently do.

Let us move on to the reuse of lairs in cemeteries. Last week, the committee heard from a local authority that had carried out a survey of cemeteries and found that up to 25 per cent of lairs had not been used. Has the Scottish Government worked with local authorities to find out whether that situation is universal? Is there an indication of the number of lairs that have not been used for 25 or 50 years?

Dr Cuthbert-Kerr: Yes. We have worked with burial authorities—private authorities and local authorities—to try to ascertain how many lairs fall into that category. Across all burial authorities, there is consistently a high number of unused burial lairs. I do not have the figures in front of me so I cannot tell you whether 25 per cent is a common rate throughout the country, but there is certainly a high number of unused lairs in all burial authorities.

Maureen Watt: The bill provides that lairs will no longer be sold in perpetuity. Instead, they will be sold for 25 years in the first instance, after which the owner will be given the opportunity to renew his or her ownership of the lair for 10 years. That will give local authorities more control over lairs that have been unused.

John Wilson: You said that someone who purchases a lair will have title to it for 25 years. Would it be more appropriate for local authorities to sell a lair when it is required, instead of selling what is, in effect, a 25-year lease on a plot in a cemetery? There might be confusion when someone purchases a lair—I am not sure whether they would be purchasing it if they have only a 25-year lease, albeit that it can be extended. For

clarification, are we talking about leasing rather than purchasing?

Also, how many 10-year extensions could be granted? You said that you want to end the current rule whereby someone owns their lair in perpetuity. How can we monitor the extension of leases to ensure that the provision is used appropriately?

Maureen Watt: My understanding is that it is ownership with the right to bury, rather than a lease.

We might get some kickback from the public if people were told that they could not prepare for their eventual death by buying a lair whenever they want to. Putting in the renewal opportunities will ensure that local authorities have more control over their burial and lair situations. For example, when someone moves to another area and does not want to renew their ownership of the lair, it will be possible for it to be sold to someone else.

John Wilson: The legislation and the guidance will need to be clear that ownership will apply initially only to the 25-year period. If we talk about ownership of a lair, it could be confused with continuous ownership. We need to make sure that we get the language right so that the person who purchases or, as I described it, leases a lair is clear that, in 25 years' time, they might be approached by the local authority or the cemetery operator and asked whether they want to renew the ownership. It is important to get the definitions of ownership or leasing quite clear given that, elsewhere, the bill says that certain lairs will be able to be reused after 100 years.

Graham McGlashan: "Right of burial" is defined in section 12(3) of the bill as

"a right to be buried in the lair"

and

"a right to determine whose remains may be buried in the lair."

Section 13(1) states that that right

"is extinguished at the end of the period of 25 years",

so we feel that there is clarity already, but we can certainly think about it.

Maureen Watt: Some burial authorities have already stopped selling lairs in perpetuity to allow them to better manage their burial capacity and have more control over the situation in their area.

John Wilson: As I said, I am just looking for clarification for anyone who is considering purchasing a lair so that they know that ownership will not be conferred in perpetuity.

Willie Coffey: I want to go back to costs. We moved over that subject quite quickly when we went on to the 200-yard issue.

A number of people have been in touch with the committee to say that some local authorities, and one in particular that was mentioned last week, are charging huge fees for lair purchase and interment. The figure was almost £3,000. I appreciate what you said about the cabinet secretary's review of the social fund arrangements and so on, but I am not certain that that review will lead to local authorities reducing their charges for lairs.

In the example that you gave, you said that the balance in Scotland is 60:40 in favour of cremations as opposed to burials, but in East Dunbartonshire the split is 75:25, according to the person who gave us evidence last week. That tells me that people in that authority area are struggling and are choosing not to use the burial option because of the huge cost.

You said that the bill could help to increase the number of lairs in Scotland and that that might lead to a reduction in costs. Is there any more of a direct tie-in that the Scottish Government could deploy by way of guidelines or an expectation on authorities to do something about their lair charges? The charges are getting out of hand in some authorities.

Maureen Watt: My first answer is that, as the Scottish Government, we do not want to interfere in a local authority responsibility. However, by providing for the reuse of lairs that have not been used for 100 years, we can give local authorities the option of bringing back into use old lairs in existing cemeteries. That could provide more lairs.

In areas such as Ayrshire and Lanarkshire, local authorities would be competing with house builders for the land around towns. We do not want burial grounds or cemeteries to be far away from towns because we want people to be able to visit the graves of their loved ones. The further out that the cemetery is, the less likely it is that relatives will be able to visit. Providing the opportunity for local authorities to reuse lairs in older cemeteries will mean not only that we can increase the number of lairs, but that we can bring such cemeteries back into use and make them vibrant places again.

11:00

Willie Coffey: We heard from Citizens Advice Scotland that last year there was a 35 per cent increase in the number of people who experienced difficulty in paying funeral costs. You mentioned the social fund review, but can you give us any more information on how that might assist people or is it too early to comment?

Maureen Watt: As I said, that work is not directly related to the bill and the Cabinet Secretary for Social Justice, Communities and

Pensioners' Rights is taking that forward. I have read the Citizens Advice Scotland report, "The Cost of Saying Goodbye".

We know that the current social fund is insufficient in a number of ways. Once that fund is devolved, I hope that there will be an opportunity for the cabinet secretary to change it to improve funeral grants and make it better able to help people who are finding it difficult to meet the cost of burials.

Cameron Buchanan: I want to go back to the Commonwealth War Graves Commission. Do you think that it should have explicit treatment?

Maureen Watt: I am sorry, but what do you mean?

Cameron Buchanan: The Commonwealth War Graves Commission asked whether it could have a special dispensation for its areas.

Maureen Watt: That is an interesting part of the bill and something that I was not previously aware of. It is important that we take into account what the Commonwealth War Graves Commission has said. Simon Cuthbert-Kerr had a telephone call with the commission on Monday to go through parts of the bill that are of interest to the commission. We are considering whether to lodge amendments at stage 2 to provide absolute clarity about how Commonwealth graves should be managed.

I had not realised—although perhaps Mr Buchanan has realised, if he has an interest in the matter—that if the Commonwealth War Graves Commission identifies a grave that is occupied by someone who has fought in the wars, it has an interest and can raise a plaque to say that someone died in war or as a result of war.

Cameron Buchanan: We should bear in mind that a lot of those graves are overseas.

Maureen Watt: The bill does not affect those overseas graves. However, it may be that where remains are discovered overseas and are repatriated it would be a matter for the Commonwealth War Graves Commission.

Cameron Buchanan: That is what I meant.

Maureen Watt: We are on the case.

Cameron Buchanan: Thank you.

John Wilson: Given that the Commonwealth War Graves Commission raised concerns last week, that we have just had the 100th anniversary of the first world war and that there are many remains lying in local cemeteries around Scotland, can we get some assurances that where the remains of people who have died fighting for their country are identified, those remains will lie untouched? If the legislation is enacted, the 100-

year rule would mean that we are crossing that line and local authorities may decide to start opening up other lairs in cemeteries, whether or not individuals who fought in those wars have been interred there.

Maureen Watt: We have been quite clear in the bill that if the commission were to raise an objection to a local authority or burial owner considering reusing lairs, that would stop the process right away.

The Convener: What is your view on the role of record keeping and whether it could have wider uses such as in genealogy tourism and recording the depth of interment to improve the potential for reuse of lairs?

Maureen Watt: Our late colleague Brian Adam was very active in genealogy and family tourism. We are aware of how important record keeping is both for death certificates and in relation to interment, not only for the potential reuse of lairs but for genealogical research. Requiring burial and cremation authorities to maintain consistent and accurate registers will ensure that anyone who wishes to check the records for any reason will be able to do so with confidence. I hope that we can get consistency across local authorities.

In the future it may be possible to link those records with other records. We will consider that as a requirement for what information is recorded and what is developed in future.

The Convener: That probably leads us well to Willie Coffey, if he is going to ask the same question that he has asked previously.

Willie Coffey: Yes—it is about linkage between one set of records and another. I have raised the issue before.

As you probably know, minister, there is no direct connection between a person who is buried in a cemetery and the entry in the National Records of Scotland. Someone has to make an educated guess that it is one and the same person. Is that something that we will see in linking the records in future to help with issues such as genealogy? There is currently no connection and, when a person is buried, someone would pretty much be guessing who they are in the national records.

Dr Cuthbert-Kerr: That is absolutely something that we could consider. The data requirements for the registers under the bill have yet to be decided, so we could certainly look at a requirement for the death certification number to be included in that to make a clear and unambiguous link back to the death register.

Willie Coffey: That would be very welcome.

The Convener: I want to ask one more thing about records and modernisation. The bill does not require electronic records to be retained. Why would we not require electronic records? Over the weeks we have heard that most folk now have records in electronic format. Why would we not include that requirement in the bill?

Maureen Watt: We would like to get to an end point at which all our records are electronic. Some local authorities are better than others at digitising old records. We did not put such a requirement in the bill because the funeral industry is very diverse and although larger companies may be fully computerised, a smaller family funeral director in a small town may not be. Therefore, we did not want to make it a requirement, but obviously it is an end point that we would like to get to in the future.

The Convener: Could anything be put in the bill to spell it out that we should be fully digitised by X date so that we do not have to revisit the matter in a number of years only to find that not everything is digitised?

Maureen Watt: As I said, I have already appointed an inspector of crematoria and the bill allows me or my successors to appoint further inspectors. The inspector could have a role in encouraging funeral directors to digitise and in spreading best practice. A sub-group of the national committee on infant cremation is considering the forms and records. If we have the same forms, it should be easier for everybody to use them and to do them electronically.

The Convener: The Delegated Powers and Law Reform Committee drew your attention to a number of points, such as why the licensing scheme at section 66 is provided for in subordinate legislation and not in the bill and the implications that that might have for the industry. Do you have any comment on that point?

Maureen Watt: We have examined the Delegated Powers and Law Reform Committee's report and I will respond to it shortly. On the licensing scheme that is in section 66, our intention is that any licensing scheme that is introduced will be influenced by the inspectors' recommendations. The approach that is taken in the bill means that we will not be committed to a particular model and will provide sufficient flexibility to ensure that any scheme does what is required, based on the inspectors' view.

The Convener: Given that the codes of practice must be complied with by burial authorities, cremation authorities and funeral directors, why are they not to be scrutinised by the Parliament?

Maureen Watt: We have accepted the DPLR Committee's point on that and intend to lodge an amendment at stage 2 to require any codes of

practice to be approved by the Parliament before they come into force.

The Convener: The DPLR Committee's other point concerned section 70, which permits the creation of unspecified penalties and sanctions in regulation. Why have such matters not been included in the bill?

Maureen Watt: Again, in light of the DPLR Committee's recommendations, we are reconsidering that section and may lodge an amendment at stage 2 on the matter.

The Convener: Minister, I thank you, Dr Cuthbert-Kerr and Mr McGlashan for your evidence. We move into private.

11:13

Meeting continued in private until 11:41.

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