



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 30 November 2016

Session 5



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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

13th Meeting 2016, Session 5

CONVENER

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

DEPUTY CONVENER

Elaine Smith (Central Scotland) (Lab)

COMMITTEE MEMBERS

*Kenneth Gibson (Cunninghame North) (SNP)

*Ruth Maguire (Cunninghame South) (SNP)

*Graham Simpson (Central Scotland) (Con)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Malcolm Burr (Society of Local Authority Chief Executives Scotland)

Andy Hunter (Association of Electoral Administrators)

Ailsa Irvine (Electoral Commission, Scotland)

Annemarie O'Donnell (Glasgow City Council)

Mary Pitcaithly (Electoral Management Board for Scotland)

Kevin Stewart (Minister for Local Government and Housing)

Jean Waddie (Scottish Government)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government and Communities Committee

Wednesday 30 November 2016

[The Convener opened the meeting at 09:45]

Decision on Taking Business in Private

The Convener (Bob Doris): Good morning, everyone, and welcome to the 13th meeting in session 5 of the Local Government and Communities Committee. I remind everyone present to turn off mobile phones. As meeting papers are provided in digital format, members may use tablets during the meeting—that is what we are doing if we are on our iPads or whatever. We have received an apology from our deputy convener, Elaine Smith, who unfortunately is not able to be with us.

Agenda item 1 is a decision on taking business in private. Does the committee agree to take in private item 8, which is consideration of its draft letter to the Scottish Government on local government elections and voting?

Members *indicated agreement.*

Community Empowerment (Scotland) Act 2015 (Parts 2, 3 and 5)

09:46

The Convener: Agenda item 2 is evidence on parts 2, 3 and 5 of the Community Empowerment (Scotland) Act 2015. I welcome Kevin Stewart, the Minister for Local Government and Housing. Good morning, minister, and thank you for coming. I also welcome the Scottish Government officials David Milne, Ian Turner and Jean Waddie, who are from the community planning and empowerment unit. Thank you very much for coming along this morning—it is appreciated.

One of the instruments that we will consider, the draft Asset Transfer Request (Designation of Relevant Authority) (Scotland) Order 2017, is laid under the affirmative procedure, which means that the Parliament must approve it before the provisions come into force. At such sessions, the minister would ordinarily attend to provide evidence in relation to the affirmative instrument. However, given that the committee agreed to consider the suite of community empowerment regulations as a package—there are several of them—we will also ask questions on the negative instruments that will be considered later on the agenda. Following the evidence session, the committee will be invited under the next agenda item to consider a motion to recommend approval of the affirmative instrument. That will be followed by an item asking members to confirm whether they wish to take any further action in relation to the negative instruments. Are we all following that? I hope so.

I know that the minister would like to make some opening remarks.

The Minister for Local Government and Housing (Kevin Stewart): I am delighted to be here to talk about community empowerment and I am very pleased to be bringing parts 2, 3 and 5 of the Community Empowerment (Scotland) Act 2015 into effect. I have been working with and for communities for some time, from my days working in the community on Aberdeen City Council to my time as convener of this committee's predecessor and now as minister. This is a very important issue for me. I want our communities to be in control and to have opportunities to shape the decisions that affect them.

The 2015 act marks an important step in that process, and the parts that we are focusing on now are perhaps some of the most significant aspects of it. We want our public services to work more effectively together and with communities, drawing on everyone's knowledge and abilities to

achieve the best possible outcomes in the areas that will make the greatest difference to people's lives.

Community planning is where all that comes together. The 2015 act sets out a process in which communities and public service providers will come together to decide on their top priorities for their areas and how to address them. That includes planning at a locality level for communities that experience particularly poor outcomes, while of course taking into account the distinctive needs of different communities.

I believe that more local focus is the key to encouraging communities to get involved. Once they are involved with community planning, and once authorities see the benefits of working with community bodies in that context, I am sure that that will help to promote greater participation across all areas of council work.

If communities feel that they are not getting a chance to be involved in decisions about services, they will be able to make a participation request. That is another part of giving communities the confidence that they have the right to be heard and to be taken seriously, and making sure that public authorities also get that message loud and clear.

Asset transfer is a powerful way to support communities to become more sustainable, to improve outcomes and to reduce inequalities. The Scottish Government has supported community ownership for many years; there are many examples around the country of projects that have made a huge difference in their area. Members heard from community stakeholders at an earlier session about the benefits.

However, there are still too many community bodies that are thwarted in trying to take over land or premises that could be providing real benefits to local people. I hope that the legislation in part 5 of the 2015 act will unlock some of those cases. It will make sure that authorities make a decision within a reasonable time and provide a proper explanation for any refusal, which is open to appeal to Scottish ministers.

It is a statutory procedure and inevitably a degree of process is involved. These are public assets and it is right that community bodies have to show that they are ready to take them on and have a realistic, sustainable plan with broad support from the community. Where they can do that, they should be given the opportunity and the support to make a go of it.

Of course, we cannot legislate for behaviour and attitudes. We cannot force people to get on. A culture change is needed to embed community empowerment in all corners of the public sector—it is happening, but it will take time. Legislation is a

start; it sends a clear message to public authorities about how we expect them to act and it will give communities the confidence that they have the right to have their proposals taken seriously.

The Convener: Thank you, minister. We move to questions from members.

Graham Simpson (Central Scotland) (Con): Thank you for coming again, minister.

The committee has taken evidence from various people expressing the fear that local authorities could take different approaches to asset transfer and could if so minded—this is my phrase—wriggle out of it under your legislation. How can you ensure a consistency of approach?

Kevin Stewart: One thing that I always do in such cases—and I am sure, convener, that this committee will scrutinise what happens as the 2015 act is rolled out—is to look closely at what is happening across the country. We have fairly good examples of local authorities that already embrace aspects of the 2015 act without its being enforced.

There may be a reticence in some places to go along with all of this. I talked about people and we cannot legislate for people; there may be some folk out there who think that this is not the right thing to do. What we will do is scrutinise closely what is going on across the country. I have talked about the rights of appeal to Scottish ministers if that is required and we will look closely at how many folk have to resort to an appeal process to get what they want. I hope that, like me, the committee will keep a very close eye on scrutiny to see whether any areas need to be tightened up.

I want to look the positive aspects of this. As we see the roll-out, people across the country will be enthused by the provisions. I hope that politicians locally will also be enthused by them. I am sure that we will very quickly see the benefits of people taking control of assets and being involved in shaping services.

Graham Simpson: I asked a question about this issue last week. We can all see the benefits of community empowerment, but where a community body takes over an asset, there is obviously a risk that it might fail. What do you think would happen if it failed? What would happen to the asset?

Kevin Stewart: We are embarking on a new journey here, but one of the things that has concerned folk in the past is how we treat failure. Without a doubt, there will be cases where things do not succeed. I asked the Accounts Commission in a recent meeting that it and Audit Scotland take cognisance of the fact that this involves new work where people will be taking control of things for the first time, and to take account of that if there is failure.

We have to look at instances where that happens—I hope that there will not be a lot—and see how local authorities and others react to the situation. I hope that we would see a level of co-operation to ensure that folk are supported to the utmost. In that regard, this committee has heard me talking previously about community capacity building—the committee knows that I hate that term, but I cannot think of anything else. I hope that rather than just see failure, we can put in the help that is required to get folks through.

However, where there are failures, we will have to see through the contracts that are drawn up what can be done for the asset if there is a failure. I would expect local authorities and other public bodies to ensure that there is accountability in that regard. I will bring in one of the civil servants here: Jean Waddie.

Jean Waddie (Scottish Government): There is provision in the guidance on how the relevant authorities can protect their investment if things go wrong. There is advice about making provision for whether the asset should come back to the authority that previously owned it and how it might get money back if it has given a discount on the asset.

Graham Simpson: Can you expand on that? What is that guidance?

Jean Waddie: The guidance states that it is up to the relevant authority to decide what is appropriate in the circumstances. Obviously, if a community body pays the market value for an asset and the authority does not give the body a discount on the asset, the body is just the same as any other buyer. That means that the asset becomes theirs, but if they fail, the asset gets sold.

Because of the forms of organisation that community bodies have to take on to be eligible to do asset transfer, they have to have provision in their constitution that says what happens to any remaining assets if they fail, after all liabilities are cleared. They might end up having to sell the property to fulfil debts, but something can be put in the contract to say that the property comes back to the organisation that it was bought from if the community body folds. Something could also be put in the contract that says that if the body does not deliver the benefits that were expected and there was a discount, they have to pay back the discount to the relevant authority. A range of measures can be used in different circumstances, as appropriate.

Kevin Stewart: I also point out that the guidance highlights that any arrangements about payback should be proportionate and not restrict the community body's ability to develop its activities. There is a range of things in the guidance in that regard.

The Convener: Thank you. Do you want to follow up on any of that, Graham?

Graham Simpson: No, that will do for now. Thank you.

The Convener: A number of members have indicated that they want to speak; I want to stick with asset transfer.

Andy Wightman (Lothian) (Green): Welcome, minister, and thanks for coming along this morning. I have a question about what are inelegantly called ALEOs: arm's-length external organisations. You have helpfully provided the committee with a letter about them. I understand why those bodies are not included in the act but can be added by ministerial order. I have constituents who are extremely keen to go, on 23 January next year, on assets that are owned by EDI Group, which is wholly owned by CEC Holdings Ltd, which is wholly owned by the City of Edinburgh Council. What would be the procedure to invite you to add a body such as EDI Group to the list of relevant authorities?

10:00

Kevin Stewart: In my letters to the committee I mention the development of a robust legal definition of ALEO, which Audit Scotland is going to consider. It is important that we get the definition right. Your predecessor committee also wrestled with the issue.

Many assets such as those that we are talking about might be administered by an ALEO but be wholly in the ownership of the local authority. An ALEO's name being over the door of a building does not mean that the building is not owned by the public body. It is a matter of negotiation between the public body—in the case that Andy Wightman is talking about, the council—and the community organisation, to ascertain whether the asset can be transferred.

The difficulty is that ALEOs come in many legal forms, so developing and securing agreement on a robust and precise legal definition would be a major undertaking. As I said, Audit Scotland will do more work on ALEOs in 2017-18, which we hope will inform developments. I will bring in Jean Waddie to add to what I have said, if you do not mind.

Andy Wightman: May I clarify something? My question was not about the definition of ALEO—

The Convener: Hand on a second, Mr Wightman. Does Jean Waddie want to say something?

Jean Waddie: No.

The Convener: Okay.

Andy Wightman: My question was not about a definition of ALEO, but about relevant authorities that meet the criteria in section 78, as EDI Group does. EDI Group is a company that is

“wholly owned by one or more relevant authorities”.

In fact, it is owned by other companies that are wholly owned by the relevant authority, so there is no doubt in my mind that EDI Group meets the statutory criteria in section 78. There is no need for complex definitions.

My question is what would be the process whereby someone—a member of the public, a member of the Scottish Parliament, the City of Edinburgh Council or anyone else—would persuade you to include EDI Group, or any other group that meets the requirements of section 78, in the schedule of the 2015 act.

Kevin Stewart: At the moment, designating individual ALEOs as relevant authorities might not be effective—there would be nothing to stop the local authority creating a new body, for example. Existing definitions of ALEOs include private or community organisations that are mainly funded by a local authority or by companies that are owned by public bodies, including the Scottish ministers.

There is work to be done on the definition of ALEOs—we can come back and look at all that. However, I go back to my original point: in some cases, an ALEO’s name might be over the door of a building, but the building might be wholly owned by the council, and the possibility of asset transfer should not necessarily be limited, as far as I am concerned.

Andy Wightman: I am aware of that, but I am talking about property in relation to which the title deeds are in the name of a company that meets the definition of “relevant authority”. I do not want to focus on one case, but in the case in my constituency the property is owned by EDI Group, which meets the definition of a relevant authority that ministers could include in the schedule. I am asking what the process is whereby someone who wants a relevant authority to be put in the schedule can invite you to consider doing that and make that case to you. What is the process to which you would respond?

The Convener: Minister, before you answer that, I have a point on which I think we all want clarity. I thought that the additional powers in secondary legislation that you would have for adding relevant authorities to the schedule would be used in the round. I did not think that only one potential ALEO could be petitioned on; I thought that you would look at ALEOs more generally. Could it be done for one individual ALEO?

Kevin Stewart: We would have to look at ALEOs in the round. I will bring in Jean Waddie to speak on the matter, then I will comment.

Jean Waddie: The legislation allows for individual bodies to be named. That has to be done through a statutory instrument, as we are doing with Historic Environment Scotland. However, in general, we do not name non-statutory bodies in legislation, because they can just change their names. If we were concerned that a local authority was trying to use an ALEO as a way of avoiding an asset transfer, naming the ALEO in legislation would not prevent the authority from doing that.

Kevin Stewart: That is what I was trying to get across in my previous answer to Mr Wightman. We should allow Audit Scotland to deal with definition and we should consider adding other bodies later.

The Convener: Okay. Andy—do you want to follow up on that?

Andy Wightman: Okay. I was referring to relevant bodies that meet the requirements under section 78. I just want to know how the process would be undertaken. Anyway, I will move on with another question.

The Convener: Is it on asset transfer?

Andy Wightman: It is not, so I will come back to it.

The Convener: Right. Does any other member have a question on asset transfer?

Alexander Stewart (Mid Scotland and Fife) (Con): We have seen in many local authorities a real appetite and enthusiasm for making asset transfer work. My council—Perth and Kinross Council—has had capacity workers trying to engage people on asset transfer. I have also seen in my council area an ALEO being re-evolved into a different organisation in order to be part of what the Government is trying to achieve.

However, my concern is one that others have touched on, which is that we need to ensure that there is no avoidance of asset transfer. It has already been touched on this morning that there might be attempts by councils to move a body into a new role, to give it a new name or to create a new body, which might provide the council with an avoidance process. What scrutiny and governance will be in place to ensure we could capture any such process that we thought was taking place?

Kevin Stewart: Avoidance of asset transfer would not be particularly beneficial to a local authority. Alexander Stewart will know that there is a right of appeal to Scottish ministers in that regard. We should look at the matter in a positive light rather than concentrating always on the

negative. Thus far, and without having all the provisions of the 2015 act commenced, we have already seen some very good work going on across the country. It would be particularly daft if local authority politicians tried to put in place major blockages to prevent people who are capable of doing so from taking over an asset, because folk can see what is happening in other parts of the country.

However, we sometimes get situations whereby illogicality takes place. That is why it is incumbent on all of us to ensure that the 2015 act is working appropriately in every part of the country. I reiterate that one of the provisions that is in place is the ability to appeal to Scottish ministers. That is obviously something of which folk who want to block asset transfer should be somewhat wary. I will bring in Jean Waddie at this point.

Jean Waddie: I do not have anything to add.

Kevin Stewart: It was just in case I had missed anything.

The Convener: You seem to have covered it all, because Ms Waddie does not have anything to add. Do you want to come back in on that, Alexander?

Alexander Stewart: I acknowledge what the minister has said, and I believe that there is a real opportunity.

However, I have previously talked about the different experiences of two organisations with regard to asset transfer. One had found it to be very successful and a great opportunity because everything had gone right and it had managed to transfer the asset, so it was a win-win situation for everybody. However, in a very similar situation in another area, the process had gone all wrong. What the groups were trying to achieve was not too different, but one group felt that, miraculously, it had achieved transfer and everything had gone well, whereas the other group was left with a bad taste in the mouth because although it had gone through many hoops, the transfer did not work for it in the end and people were left disappointed. Massive enthusiasm had been created, but people were then disappointed and disillusioned by the whole process because it did not work.

Kevin Stewart: Those things have happened without the provisions being in place. I, too, could give examples of good and bad. Without naming the organisation, in one place a transfer of a piece of land that had been derelict for a long while took more than four years to get legal agreement. That was because there was a little bit of risk aversion and the local authority obviously felt that it had to protect the asset—although I do not know what for, in the circumstances.

The 2015 act gives local authorities the ability and the back-up to proceed with greater speed and it gets rid of the risk aversion that exists in some, but not all, places. We can pick good and bad examples from what has gone on thus far. Some local authorities have made major movement in asset transfer without the legislation being in place, but others have not. The legislation will, I hope, allow local authorities to get on with the job so that people have positive experiences rather than the negative experiences that have happened because of risk aversion.

The Convener: We have heard that, when there is a request for transfer of an asset that a public body has sat on and done nothing with for a long time, the body might suddenly move to dispose of it. It has been suggested that at a certain point in the process assets should be frozen to prevent public bodies from doing that. What is your response to the call for that to be brought into the legislation?

Kevin Stewart: If I remember the *Official Report* of that meeting correctly, the suggestion was raised with the committee by Ian Cooke from the Development Trusts Association Scotland, who said that the guidance should be more robust in that regard, because community bodies must put in a lot of effort to prepare business cases for properties that could be sold, in the meantime. That is not really a matter for guidance or the regulations; it is set out in section 92 of the act: submission of a formal request is the only clear starting point that is available in terms of the legislation. The approach that has been suggested is similar to that in the community right to buy, under which when a community body registers an interest in land, the owner cannot sell it to anyone else until a decision has been made on the community's proposals.

The Convener: You are content that the balance is right in the act, in that respect.

Kevin Stewart: I think that the balance is right.

The Convener: We heard from Bruce Kiloh of Strathclyde partnership for transport that SPT and other public bodies might have a land bank or assets that form part of their future strategic interests, which might be a reason to turn down or refuse an otherwise reasonable request for an asset transfer. Is there anything in the legislation or guidance to say how long something can sit in a local development plan while nothing happens with it? Land could be designated for an airport rail link, a tram or housing but sit fallow for 10, 15, 20 or 30 years. If a community wishes to access it, at what point would it be reasonable to say to the body, "That might be your aspiration, but it's been your aspiration for the past 20 years and the community now wishes to access the land"? Should there be such a limit on that strategic

approach? Perhaps such examples are bad, but we could imagine a public body citing a strategic reason for not giving land, rather than just blocking a community. I am not saying that SPT was suggesting that, but that could be a downside to that approach.

10:15

Kevin Stewart: On assets being set aside for strategic reasons, we all know that some major developments take a fair while to come to fruition, so that would be a good reason for saying that we cannot allow a transfer. Common sense has to be applied in such cases: a rail line might take 10 or 20 years. Some major projects that have taken place, or are taking place now, have taken a fair while—decades, perhaps—to proceed. It is incumbent on local authorities and other public bodies to consider the need to deliver the project and whether, when an asset transfer is requested, it would be fair and justifiable to refuse it.

Jean Waddie: Some assets will be needed for the long term. There is excellent guidance on what is known as “meanwhile use”. An authority can say that it knows that it needs to keep the land, but will not do anything with it in the next five years, so it can allow temporary use—for community gardening, for example. Things can be done so that land does not just lie there looking ugly for all that time. I have forgotten the organisation that produces the guidance, but it is excellent guidance.

The Convener: Thank you. We will move on from asset transfer.

Ruth Maguire (Cunninghame South) (SNP): I would like to hear your thoughts on participation requests. The evidence that we have taken from organisations has all been pretty positive. You mentioned that good work is already being done. One of the concerns about the participation request aspect was the impact that it might have on already good relationships that public bodies have with their communities if they are formalised. I would like to hear your thoughts on that.

Kevin Stewart: If there are already good relationships between bodies and public authorities, there is probably very little need for those community organisations to use participation requests. We can already see across the country local authorities that are taking cognisance of communities’ views when it comes to the shaping of services. In places that are already carrying out all that work, it would be rare for participation requests to be used. The likelihood is that participation requests would be made where the relationships are not so good and communities and community groups think that they are being

ignored by the public body when it comes to the shaping of services.

Sometimes our hopes become reality and sometimes they do not, but my hope is that there is not great use of participation requests. I hope that the legislation will change the attitude of public bodies to ensure that the level of consultation and engagement with communities and community groups at the beginning of shaping a service gets rid of the requirement for use of participation requests. We already see some very good engagement and I hope that it continues. I hope that we do not see a huge number of participation requests. I do not foresee tensions being created because of the new legislation when there are already good relationships and communities are already fully involved in shaping services.

Ruth Maguire: How do we educate everyone about that? What can the Scottish Government do to ensure that people know that participation requests are a sort of fallback position and that they are not the standard way that we want communities to engage?

Just as a wee follow-up question, do you think that the participation request process might be helpful where there is conflict in communities about how a service should be delivered? It could perhaps be used to resolve a situation in which there are two different communities of interest or when an issue stretches across localities.

Kevin Stewart: I will probably bore the committee by saying something that I say regularly. I am extremely keen to ensure that best practice is exported right across Scotland. There are many bodies involved in this sphere—DTAS for example—that can help us to get the message across about where good practice is taking place and can try to persuade and cajole others to follow suit.

Where there are conflicting views in communities about the way forward or how a service should be delivered, rather than relying on participation requests—which in such circumstances may cause some difficulty—my first objective, if I represented those communities, would be to get people representing different opinions around the table to see whether there is any common ground. Where there is common ground, I would first look at what could be done to move forward on that. I would then try to work through the individual bits and pieces of conflict.

Ruth Maguire: Thank you. That is helpful.

The Convener: Before the end of this evidence session, we will come back and mop up some final questions on asset transfer. However, let us now look at some other themes.

Andy Wightman: I have a brief question in relation to the act rather than the statutory instrument. Do you have any plans to bring part 8, on common good registers, into force soon? Do you have a timetable for that?

Kevin Stewart: I ask Jean Waddie to take that.

Jean Waddie: Work is going on to develop the guidance that is needed to bring that into force. I do not know of a date at the moment.

Kevin Stewart: I say to Mr Wightman that I will look closely at that issue and write back to the committee. The committee is probably well aware that, during the scrutiny of the bill, I took a keen interest in the common good aspects of the bill because of difficulties that I faced in my past in determining whether land was held in the common good fund in Aberdeen. We are moving forward in that regard, and I will write to the committee with more detail on timescales.

Kenneth Gibson (Cunninghame North) (SNP): I apologise for arriving late. I am suffering from a bit of flu this morning, I am afraid. I ask my colleagues not to get too close.

The Convener: I can see that they are being supportive of you, Mr Gibson.

Kenneth Gibson: Indeed—I like the way that they all leaped away.

Asset transfer is very desirable when a community is in favour of it, and I think that we would all like to remove as many of the barriers as possible that prevent that from happening. However, I want to ask about the converse situation. In North Ayrshire a few years ago communities were told, in effect, that they would have to take over community assets or the assets would simply be closed due to the removal of local authority funding. There was a bit of an outcry about that and, in the end, the asset transfer did not take place. There was a lot of anxiety in communities, though. Not every community wants to run an asset. A lot of people are quite happy to volunteer in a local community facility but they do not necessarily want to have to go through all the hassle of insuring and maintaining it and so on.

How do we ensure that while the act allows communities who want to take over assets to do so, it is not used as an excuse by public bodies to, in effect, dump—for want of a better word—unwanted assets onto community organisations that might not have the capacity or the desire to take over and run those assets?

Kevin Stewart: I would be very unhappy if anyone was to use the act to try to foist assets onto communities—very unhappy indeed. The act is designed to allow those folks who want to take on those assets to do so.

It may well be that in the future, many communities that, at the moment, do not feel that they can take on assets will gain the necessary capacity and will move to do so, but I would be extremely annoyed if the act was used by any public body to try to foist assets onto communities that did not want to take control of those assets.

Kenneth Gibson: Thank you very much for that. Would there be any redress from the Scottish Government for communities in such a situation? A public body might just say, “This asset is costing us £X a year, so we will just tell the community that we are closing it and it will take it over,” which would basically be putting a shotgun to the heads of local community organisations. That is my worry.

Kevin Stewart: Local authorities will always have the ability to consider issues around their estates and the assets that they have. It may well be that a local authority will choose to close an asset. We know that that happens fairly regularly, sometimes with the approval of the community and sometimes without it. However, I would not want a situation such as the one that Mr Gibson describes, with a local authority putting a gun to somebody’s head and saying, “Take it over or it will close”.

If a local authority chooses to close or dispose of an asset, there should be consultation with the community about that. There should be engagement about closure. Alternatives should be suggested to communities about where services that may be delivered in those buildings could be moved to. The act is about empowering communities, not about foisting assets onto people.

The Convener: Mr Gibson has started a really good line of questioning. In my constituency, a local community centre in Cadder that was run by Glasgow Life, which is an ALEO, was closed. However, through work with the local authority, the land was transferred to a local housing association and there is now a new community centre there, which has been very successful. The housing association got £1.2 million of Scottish Government money to help to fund that.

That asset was a rundown liability for the ALEO. It cost a significant amount of cash to staff it and to repair it, and a cash saving was made by closing it. To follow on from Mr Gibson’s line of questioning, is there any guidance within the act or the statutory instruments on whether, when community groups—in this case, a housing association, to be fair—take on such an asset, the asset should come with a dowry, because there will be a significant financial saving to a public body or a local authority, as well as a cash receipt?

Jean Waddie: There is nothing specific in the guidance about that. There is not a great deal of specific advice on what should be done in relation to funding because the authority might be looking to use the money that it saves to invest in services somewhere else. Certainly, if the authority is getting a benefit from giving the asset to the community, it is always a good thing for it to support the community in some way if it can—with cash or by making a contract for services—to make a success of that asset.

10:30

Kevin Stewart: Beyond that, it is up to each public body to look at what takes place as part of the transfer. Further, as is the case in the example that you gave, convener, the transfer of the asset can open up the opportunity for the community to tap into other pots of funding. We have seen that a fair bit already, even prior to the 2015 act being in place. In the situation that you described, it sounds like the community managed to access funding from the Scottish Government. I am not aware of that example, but we all know of examples of situations in which funding that would not necessarily have been available to the local authority, such as funding from the lottery or other organisations or trusts, has come into play when a transfer has taken place.

The Convener: That is helpful. I was merely pointing out a success story that featured all the partners getting together, because I wondered whether there was any guidance around that.

Members have no additional questions, so I thank the minister for his evidence.

Subordinate Legislation

10:31

Asset Transfer Request (Designation of Relevant Authority) (Scotland) Order 2017 [draft]

The Convener: Under item 3, the committee will formally consider motion S5M-02700.

Motion moved,

That the Local Government and Communities Committee recommends that the Asset Transfer Request (Designation of Relevant Authority) (Scotland) Order 2017 [draft] be approved.—[*Kevin Stewart.*]

We will now have a debate in which only members and the minister may speak.

Andy Wightman: This is a very short draft order designating a new relevant authority. I hope that future orders can be as expeditiously drafted and approved.

The Convener: Thank you, Mr Wightman. No other members want to comment, which is excellent, as we like brevity from time to time.

Minister, it has been the shortest of debates, but do you wish to sum up?

Kevin Stewart: I am quite happy to leave it as is. As you well know, I have a great interest in community empowerment. I hope that the committee will continue to scrutinise all this to the same degree as its predecessor committee did, and I am happy to come here at any point to talk about community empowerment further.

The Convener: I am sure that we will have you back. Thank you for those words.

Motion agreed to,

That the Local Government and Communities Committee recommends that the Asset Transfer Request (Designation of Relevant Authority) (Scotland) Order 2017 [draft] be approved.

The Convener: The committee will report on the instrument in due course.

**Asset Transfer Request (Procedure)
(Scotland) Regulations 2016 (SSI 2016/357)**

**Asset Transfer Request (Review
Procedure) (Scotland) Regulations 2016
(SSI 2016/358)**

**Asset Transfer Request (Appeals)
(Scotland) Regulations 2016 (SSI 2016/359)**

**Asset Transfer Request (Appeal Where No
Contract Concluded) (Scotland)
Regulations 2016 (SSI 2016/360)**

**Asset Transfer Request (Designation of
Community Transfer Bodies) (Scotland)
Order 2016 (SSI 2016/361)**

**Community Empowerment (Registers of
Land) (Scotland) Regulations 2016 (SSI
2016/362)**

**Community Planning (Locality Planning)
(Scotland) Regulations 2016 (SSI 2016/364)**

The Convener: Agenda item 4 is consideration of SSI 2016/357, SSI 2016/358, SSI 2016/359, SSI 2016/360, SSI 2016/361, SSI 2016/362 and—if anyone who is listening is still following me—SSI 2016/364.

The Delegated Powers and Law Reform Committee reported on a number of those negative instruments due to technical errors or a lack of clarity. The Scottish Government has agreed to bring forward some amending instruments where required. The errors do not affect the policy that the instruments are implementing—I want that on the public record.

The instruments are laid under the negative procedure, which means that their provisions will come into force unless the Parliament agrees to a motion to annul them. No motion to annul has been lodged.

As members have no comments on the instruments, I ask the committee to agree that it does not wish to make any recommendation in relation to them.

Members indicated agreement.

The Convener: That ends that part of the meeting. I thank the minister and his officials.

Kevin Stewart: Thank you.

10:34

Meeting suspended.

10:38

On resuming—

Returning Officers (Payments)

The Convener: We are slightly ahead of schedule, which is rare for this committee. Item 5 is evidence from witnesses in our short, focused inquiry to explore the purpose and appropriateness of providing payments or fees to returning officers for conducting elections in Scotland.

I welcome Malcolm Burr, who is chair of the Society of Local Authority Chief Executives and Senior Managers—SOLACE—Scotland; Mary Pitcaithly, who is convener of the Electoral Management Board for Scotland; Annemarie O'Donnell, who is chief executive of Glasgow City Council; Andy Hunter, who is chair of the Scotland and Northern Ireland branch of the Association of Electoral Administrators; and Ailsa Irvine, who is director of electoral administration and guidance at the Electoral Commission in Scotland. Thank you all for attending this morning—and for indicating that you do not want to make opening statements.

There has been a degree of public concern about the level of payments to returning officers. A number of you submitted helpful evidence covering the purpose of payment and the separation of powers and legal responsibilities between the role of local authority chief executive and the role of returning officer, all of which is clear. I note that, in his submission, Mr Hunter said:

“Any remuneration for any position should be regularly reviewed and evaluated and that of the Returning Officer should also be the case.”

Do the witnesses appreciate why there is public concern about the level of payments? Do you agree with Mr Hunter that now might be a good time to review payments?

Malcolm Burr (Society of Local Authority Chief Executives Scotland): Perhaps I can start, convener—and thank you for your welcome.

Public concern is an interesting concept in relation to elections, because 92 per cent of the public, I think, believe that elections are well run. It has certainly not crossed the desk of the organisation that I represent that there is significant public concern about the amounts that returning officers receive.

Of course, the amounts vary considerably, from £2,500 for a smaller rural constituency to higher figures. Without getting into the complexity of the role and all the material that we might come on to discuss, I think that I can say that the system has been in place for some time and has not been a matter of public concern for many years.

Any system benefits from review. Certain aspects of the system we are discussing come to mind. For example, the expectation that depute returning officers, who play a key role in the delivery of elections, are remunerated from the returning officer's fee—of their charity, as it were—reflects a strange and antediluvian way of remunerating public servants.

Any system benefits from periodic review, and this system has not been reviewed for some time. SOLACE would certainly be happy to contribute to a review.

Ailsa Irvine (Electoral Commission, Scotland): The Electoral Commission is concerned to ensure that there is public confidence in our democratic process. As Malcolm Burr said, such confidence comes through strongly; there are high levels of satisfaction with the service that is delivered, and we should not take that for granted or be complacent about it—it is down to a considerable amount of hard work.

However, it is not unreasonable to want to review the fees that have been set, to ensure that public confidence can be maintained. The commission would be more than happy to be involved in and to support that work.

The Convener: Mr Burr does not think that there is concern about the issue. Do you think that there is concern? I suppose that people have to know that payments are made before they can be concerned about them, but my postbag suggests that people know about the payments and are concerned. To say that there is public concern is not to undermine exceptional performance in the running of elections in Scotland. It is good that you think that this is a good time to review the system, but do you understand that there is public concern?

Ailsa Irvine: Such concern has not been raised with the Electoral Commission. In the inquiries that we receive, we do not see evidence of a widespread issue. However, it is not unreasonable to look at the system, to ensure that public confidence can be maintained. We have high levels of public confidence, but we do not know exactly what sits behind those. If there are concerns, now is the time to look at the issue.

Mary Pitcaithly (Electoral Management Board for Scotland): As members know, I frequently say that the basis of the work of the Electoral Management Board for Scotland is to try to do everything that will build electors' confidence in the integrity of our system. I cannot say that anyone has raised the issue of fees with me. I think that the issue is quite well known—it has received quite a lot of media coverage—but it is not something that people raise with me. People have

concerns about lots of issues to do with elections but not the specific issue that we are talking about.

However, if members are receiving expressions of concern about the issue, you are quite right to instigate some discussion about it, as you are doing. We would be quite happy to participate in the process.

Annemarie O'Donnell (Glasgow City Council): The last thing that returning officers want is for the integrity of the election process to be undermined. All local authorities have job evaluation schemes, which we use to assess the worth of the work that staff undertake. Given the issue that we are discussing, I think that all returning officers, through SOLACE and the EMB, would be happy to participate in an evaluation of the role of returning officers.

The Convener: Mr Hunter, I probably should have come to you first, because I plucked out one sentence from your evidence. Do you want to add anything?

10:45

Andy Hunter (Association of Electoral Administrators): Not particularly. I concur with everything that has been said. As ever, when we are spending public money, we should ensure that that is done appropriately. That is partly why the sentence that you quoted is in the submission.

The issue is partly to do with public understanding of the role. It is not widely known about, and that is why some of the inquiries around the payments are made. That concerns the transparency of the system and people's confidence in it.

The Convener: That is helpful. Other members will follow up on the appropriateness of the payments.

At our previous evidence session on the issue, we discussed that fact that the job of a local authority chief executive is a pretty demanding one—I know that MSPs, myself included, correspond with local authority chief executives, and we are aware that it is a challenging job. We also discussed the fact that there are only so many hours in a day and that there are elections pretty much every year—sometimes twice a year.

My next question is for Mary Pitcaithly. In your submission, you set out a list of the tasks that make up what you call the returning officer's

"Complex and Extensive Work Programme"

and say that the role is separate from chief executive duties. For brevity, I will read out only a few of the tasks on the list. The first bullet point concerns the co-ordination of a communications programme, followed by

"The publication of all relevant statutory notices ... The nomination process ... The production, dispatch and verification of postal votes ... The identification, booking and equipping of polling places ... The recruitment, appointment, training and remuneration of Presiding Officers, Poll Clerks and other polling staff"

and

"Securing a suitable count venue and its operational set up including cabling and media".

I will stop there, but there are five other bullet points.

The next section of your submission concerns returning officers' management responsibilities, which include:

"Commanding the required staff and resources to deliver a well-run election ... Drawing in the necessary support, skills and expertise from across the local council ... Overseeing the planning, project management and risk management of the election and incorporating lessons learnt from previous polls"

and

"Identifying any actions necessary to mitigate any issues arising".

Again, I will stop there, but there are four other items on the list.

Given the demands that are placed on a local authority chief executive, and given the independence of the role of returning officer, surely something has to give from the day job. How do local authority chief executives do their day jobs, which they are pretty well paid for in the first place, as well as doing everything on those lists, for which they receive additional payments?

Mary Pitcaithly: The day job is complex and demanding. However, when the requirements that are placed on us by the returning officer duty come into play—that is by no means just in the few weeks immediately prior to an election; we have responsibilities year round—we deal with them. In my case—I can speak only for me—that normally means working longer hours. Normally, I try to manage my work in a 60 or 70-hour week, so I would just work longer for the required period of time—I would give up my Saturday or Sunday or whatever time I normally try to protect in order to get some work-life balance.

I emphasise that I am not looking for sympathy. Our jobs are demanding and there is no doubt that the responsibilities and the accountabilities that come with the returning officer job add to the demands that are on us. However, we have people who work with us. We are not suggesting for a minute that we carry out, with no support, each of the tasks that you highlighted—that is absolutely not the case. I am very well supported in my authority by people who are doing the work either because it is their day job or because, as is the case with me, they have taken on

responsibilities that are additional to their day job. In the latter case, we expect them to be remunerated for that. Normally, that remuneration comes from the maximum recoverable allowance, which is what Parliament allocates to each of us for the purposes of running elections. That can be done on the basis of additional responsibility payments, overtime or a particular fee that comes from the returning officer. There are all sorts of ways in which we ensure that the staff who do some of those day-to-day tasks are properly remunerated.

In your previous evidence session, minister, there was some suggestion that we were looking after ourselves and not taking care of the people who work for us. I suggest that that is not the case. I am anxious to ensure that the people who are involved in the elections at every level of the process—from those who work 15-hour days in the polling stations to those who work overnight in the counts—are properly remunerated.

The Convener: I do not want to correct witnesses but, although I love the idea of being called "minister", I am merely a humble back bencher.

Mary Pitcaithly: I apologise, convener.

The Convener: I assure you that "convener" or "Bob" will suffice, but thank you for that.

I have one more point to make before we hear from other witnesses. There are only so many hours in a day and the last time I checked there were only seven days in a week. Lots of people sitting round the table know what it is like to work long hours and to work on Saturdays and Sundays. You could say that that is the gig that we signed up for, but there are no additional moneys for doing that, and nor should there be. Frankly, we are well paid. I believe that local authority chief executives are very well paid for their job. I get the point that there are additional responsibilities; I am merely pointing out that surely something has to give. There must be some part of the local authority day job that is delegated to other officials.

Mary Pitcaithly: That is not my experience at all. We carry on with our day job and we add to that the additional responsibilities and tasks that have to be done. I cannot recall a situation where a significant part of the day job had to be delegated to somebody else.

The Convener: But delegation happens more often during election time.

Mary Pitcaithly: That is genuinely not my experience. I do not have a whole team of people working for me to whom I can delegate tasks. I certainly do not delegate any more than I normally do in the reasonable process of delegating

responsibilities in the day job. I do not have to do that more often in the run-up to an election. I do not know whether my colleagues want to add anything to that.

The Convener: I am curious to hear from the other witnesses. I absolutely take at face value what you are saying, Ms Pitcaithly, but I find it hard to come to terms with the fact that you have all those additional duties that I read out, yet nothing gives in the day job, for which you are well paid. I commend you on that being the case. What is the experience of others round the table?

Annemarie O'Donnell: I agree with Mary Pitcaithly. I am a committed chief executive, and I am also a committed returning officer. I have one officer in Glasgow City Council who has the word "election" in his title—he is my election co-ordinator. You might be familiar with him, convener. I have a number of colleagues who step in to election roles during preparations to assist me in the running of elections, as Mary Pitcaithly has highlighted. However, I do not delegate any of my chief executive role to anyone. That is my role and my role alone in my organisation.

I am not looking for any sympathy, but you have to make personal sacrifices in the run-up to and preparation for elections, particularly when there is more than one poll, as we had this year. Maybe MSPs round the table have similar experiences. Those are the sacrifices of a returning officer. Personally, I make those sacrifices to ensure that the elections for which I am responsible are run with transparency, robustness and full integrity.

The Convener: The ultimate legal responsibility always sits with you as returning officers, but is some of the work delegated to officials? I think that you were referring to Mr Miller.

Annemarie O'Donnell: Yes. Mr Miller is my election co-ordinator. For the Scottish parliamentary elections, we have a significant electorate in Glasgow across eight constituencies. I have to plan the training for my poll staff, who number around 1,100. I have a number of staff who carry out training on my behalf. I prepare that training and I attend, but I cannot be in seven training rooms at the same time every night over six nights, so I have staff who conduct the training on my behalf.

I have a number of constituency managers who help David Miller and me to identify appropriate polling stations. I have 501 polling stations across 202 polling places. That is a significant exercise that I could not undertake on my own. You start to build your election team in your planning for elections, ensuring that you are using the right resources in the right areas to identify what needs to be put in place to ensure that you deliver the election on the day with precision accuracy.

The Convener: I will bring in Alexander Stewart in a moment, but I want to check something first.

There were reports in the media that some returning officers had given fee moneys to charity or passed down some of the moneys to other staff. I am not seeking to compel you to say whether that is appropriate, to say what you do, or to say that you prefer not to share that information. However, are there any comments on those media reports?

Mary Pitcaithly: I think that I would be like most people, in that I would not want to say anything about my charity giving in public; it is not something that we do to get public kudos. However, I normally share my fee with the deputy returning officers who work for me.

The Convener: Okay. Are there any other comments on that?

Malcolm Burr: That would be my position, too, in that I have on occasion shared the fee with deputy returning officers.

Annemarie O'Donnell: I think that people around the table will appreciate that I receive the highest fee in Scotland as a returning officer. Like Mary Pitcaithly and Malcolm Burr, I have been asked that question on a number of occasions and I have always responded on the basis that I do not want to disclose what I do with my fee. However, I advise the committee that a number of people and organisations benefit from the returning officer fee.

Andy Hunter: Obviously, I am not a returning officer, so I cannot answer the question directly. However, any fees that are delegated down to the deputy returning officer are clearly marked. The accounts have to be returned by returning officers and therefore that part of the way in which they use the fee is, or can be, made public.

Alexander Stewart: I will carry on with some of the conversations that we have started, including those started by the convener's questions. Some local authorities have a chief executive, and some, but not all, have deputy chief executives. In some cases, the returning officer is the chief executive. The deputy or assistant chief executives, or whatever those who are the deputy to the chief executive call themselves, sometimes have the role of being the deputy to the returning officer. Some local authorities have a director of democratic services and an election team that is employed, Monday to Friday, to manage elections. I know that that all happens in my relatively small council of Perth and Kinross. I seek some clarity on whether there are similar structures in other local authorities, with officers who are all on similar salaries and who deputise for the chief executive, including in the chief executive's role as returning officer. That is my first query.

Mary Pitcaithly: I have certainly never had a depute chief executive to whom I could delegate responsibility. I have three directors—that is an awful lot less than I used to have, and they have their own responsibilities for running their services.

I do not think that the role of depute chief executive is ubiquitous. It is horses for courses, and each local authority sets its own structures. I do not have a head of democratic services. Democratic services are rolled up in the responsibilities of a third-tier officer. We therefore do not all have the structure to which Mr Stewart referred.

However, there are good people with lots of experience in running elections who work with all of us as part of our teams to deliver elections. The team effort is what counts. There are concerns that, as we move forward, some of that expertise and experience will be lost in local authorities as we have to face up to very challenging financial circumstances. Speaking for myself, I have a very committed and experienced team. As we get closer to elections, I really look forward to working with them and to benefiting from their experience, expertise and teamwork. That is what gets us through what are very demanding times for us.

Annemarie O'Donnell: Like Mary Pitcaithly, I do not have a depute chief executive. As I said, I have one officer—our election co-ordinator. I do not have an election team. The resources that I call on in managing elections are hand-picked and are not necessarily grade related, because it is about ability. That has been the case in Glasgow for many years.

Malcolm Burr: I just want to emphasise that the structures, such as they are, of directors, heads of service and so on in relation to chief executive duties are not generally replicated for election duties. Often, the depute returning officer is at service management level, but they will have experience of elections.

11:00

Alexander Stewart: I have been involved in elections at every level for the past 17 years. I have seen how the yearly event has grown in capacity. During that time, there has been a reduction in staff numbers across local authorities but the election team is still expected to do a similar job to the one that it was doing 17 years ago to ensure that all the policies and procedures are complied with. During that time, we have also seen a massive increase in the number of postal votes.

I have seen an army of individuals coming together to manage an election and ensure that it is run effectively and efficiently, and they have performed that role. The returning officer is an

overseer and has a co-ordinating role. Returning officers manage from the top and give direction about where things should go. I acknowledge that the returning officers receive the money and some might choose to distribute it in other ways, but I suspect that not many of the army of people who take part in an election would see remuneration getting to that level.

Mary Pitcaithly: I can only speak for myself, but I try to ensure that everybody who played a specific role over and above the day job got some form of remuneration for that. People do not work at elections for the money. We are not in it for the money. As local authority officers of whatever level, we are committed to running elections that we can all be proud of at the end of the day. We take pride in the fact that everybody who is entitled to vote can vote, people are not kept waiting in queues, and so on. We do all that not because there might be some money at the end of it, but because we are committed public servants who want to deliver a good job in a core element of our civic life and the democracy of the country.

The returning officer role is one of the most interesting and demanding roles that we play. I can honestly say that the work that people deliver on our behalf and alongside us as part of the team, and the way in which we tackle the responsibilities, is often the best example of the public service ethos.

On the night before the election—and I am talking about midnight—I have to push people out the door and tell them to go home and get some sleep. I know that they will be back again at 5 in the morning manning the election office, waiting for the first call to say that the janitor has not turned up or whatever. People do not do this for money.

Malcolm Burr: It is certainly my practice, and I am sure that it is the practice of all returning officers, to ensure that council employees who perform duties for the returning officer receive remuneration of some kind. It emphasises the separateness of the role.

Annemarie O'Donnell: What Mary Pitcaithly and Malcolm Burr have said is accurate. The staff who work with me in the running of elections are all remunerated and we have a scheme for doing that that shows the rate that we pay associated with the responsibilities that the staff undertake. There are tasks that have to be done throughout the year to do with new legislation and planning for next year's elections with the new counting system. We all need to be familiar with how that operates so that it runs smoothly on the night.

The Convener: Does Alexander Stewart want to follow up on any of that?

Alexander Stewart: I am content.

Kenneth Gibson: Andy Hunter says in his submission that the returning officer duties

“are the personal responsibility of the RO and as such are answerable directly to the courts for any question or failure in these duties. The RO is not responsible to the Local Authority”.

Mary Pitcaithly says:

“Where the administration of elections is totally removed from local authorities it can be a challenge to access the resources and staff that are necessary to deliver the polls and the count.”

Is it not the fact that, despite the supposed separation that your submissions talk about, it is part of the chief executive's role to be the returning officer? For example, can a chief executive say, “Do you know something? I'm working 70 hours a week already”? We have heard chief executives talk about continuing to do their day jobs throughout the process. Can a chief executive say, “Frankly, given the amount of work I'm doing and the fact that I've got a life outside the local authority, I'm not going to be the returning officer”?

The Convener: We will take some reflections on that. I promise Ms Pitcaithly that I will let her respond, but as Mr Hunter was name checked this time, I will allow him in first. After that, it would be interesting to know whether Ms Irvine has a reflection on that before we hear from those who have been returning officers over a number of years.

Andy Hunter: Unless I am mistaken, the chief executive does not have to accept the post. The returning officer is appointed by the elected members of the council, and they could pick someone else for whom it would not impact on their day job, if you like. There are other ways; I do not think that there is an automatic expectation that it will be the chief executive. It does not have to be like that, although people in some areas do feel that. If that is not appropriate for a council, it has options to work it in a different way, if need be.

On resources, I will give an example from my council. We bring in an external person to support the election team because the resources that are available to the council are now extremely tight and we find that that is a more suitable approach than trying to take a member of staff out of their day job to support the returning officer in their duties.

The Convener: Okay. Ms Irvine, do not feel that you need to answer, but do you have any reflections on that issue before I bring in our other witnesses?

Ailsa Irvine: Andy Hunter made a lot of the points that I would have made. Across Scotland, as I understand it, two returning officers have been appointed by their local authority who do not also hold the job of chief executive.

It is important to note that, within the legal framework, there is a requirement for councils to put resources at the disposal of the returning officer to help them to discharge their function. The chief executive or another senior officer of the local authority, even when they are not acting in their usual role, will have good local knowledge and the ability to command resources, which will enable them to deliver the role on the ground. The scale of the local knowledge and experience is really important. There are about 5,000 polling stations in Scotland, and it is important to have people in each local authority who understand their area and can command the buildings and premises for that use.

Mary Pitcaithly: There are other models that can be used, but if the returning officer is the chief executive or another senior officer in the authority, they can ensure that the resources are made available for the proper running of the election, and that is helpful.

Our staff resources are diminishing all the time, and I have heard of a situation where a service in one local authority decided very late on that it could not release the staff to work at the election as it needed them at their desks. The returning officer, who happened to be the chief executive, was able to say that that simply could not happen and that the people had been appointed and would turn up. I cannot remember whether it was for polling day duties or the count, but the chief executive said that they would be freed up for the purpose.

That is really important, because otherwise it would be difficult to replace people at very short notice to carry out those responsibilities. Other people would not have had the training that is required and they would not necessarily have the tools to do the job. It is important that we are able to say that premises and staff can be used and that we can carry on using those resources.

Under other models, such as in places where there is centralised elections administration and a national office, some of those issues have bedevilled organisations. They have had difficulties in trying to find thousands of staff to work on the day, the premises that are required, the enumerators and so on, and some of those places are looking to go back to something closer to the Scottish model, where local knowledge and local resources are really important.

Annemarie O'Donnell: I can speak only from a Glasgow perspective, but I add that, in running an election, there is no plan B. Polling stations need to be open at 7 o'clock on poll day. I suppose that there are two aspects to that. A significant number of our polling stations—in fact, the overwhelming majority—are schools. The schools work with the education authority on those planned elections

and are closed on poll days—as in-service days—so that the school year and teaching are not disrupted.

The second aspect is staffing levels. To give a picture of the scale of the resource, on poll day in May this year I had 2,800 people working for me in polling stations, on the count and on the election team. My constituency managers were out and about throughout the city ensuring that polling stations were open and not obstructed, that we had a count, and that all the boxes were in post-10 o'clock. Having those resources at my fingertips means that I can call on them when necessary. If elections were run outwith the organisation of a local authority, it would be significantly more challenging to call on those resources.

The Convener: Does Mr Burr want to add anything?

Malcolm Burr: I have nothing to add to that.

Kenneth Gibson: We went off the topic a wee bit. My question was simply whether chief executives have to do that job. I understand that, out of 32 councils, two chief executives do not do that job.

I want to follow up on a couple of things. I do not know whether anyone else feels uncomfortable about the fact that it is up to the returning officer to decide whether he or she allocates some of the fee to another member of staff, a charity or whatever. I was not aware of that. I thought that the fee went to the individual. Do you feel that the fee, regardless of what it is, should be specific to an individual and that who gets what should not be up to the largesse of the returning officer? The system seems bizarre.

Malcolm Burr: I agree. It is an odd situation. As a matter of principle, for every duty, task or responsibility that is given in public life, it is customary to make a payment that reflects those duties and responsibilities. That should be the same for returning officers, deputies and anyone else who is involved in the election process. That is why I support the idea of a review of the system. If clearly defined and accountable public duties are given—and clearly they are given in this case—anyone who is involved in performing them should be appropriately remunerated.

Mary Pitcaithly: I would add only that the fee is not the only sum that is made available by Parliament for us to run elections. Each of us also has a maximum recoverable amount, from which we make normal payments to polling staff, enumerators and members of our election team.

Kenneth Gibson: Yes. I was aware of that. Just one final point—

The Convener: Does Ms O'Donnell want to comment on that?

Annemarie O'Donnell: No.

Kenneth Gibson: I did not think that anyone else wanted to come in.

As far as I am aware, everyone in this room believes that elections in Scotland are run very well and efficiently. I have never heard any complaints in the 15 elections that I have contested in my many years in politics. I am not a whippersnapper like Alexander Stewart.

Andy Hunter says in his submission:

"any fee applicable to the role can also be withheld for 'poor performance', as determined by the Secretary of State following the advice of the independent Electoral Commission."

Has that ever happened in Scotland?

Andy Hunter: I am not aware of it happening in Scotland. I am also not aware of any circumstance in which I would expect it to have happened.

Ailsa Irvine: The commission has had the power to withhold the fee in certain elections since 2014. Since then, there have been no instances in Scotland of a recommendation to withhold a fee.

Kenneth Gibson: What about before 2014?

Ailsa Irvine: We did not have the power before then. I am not aware of any issues, in the immediate period preceding that, that would have led to such a recommendation. We have a clear published procedure that we go through to ensure that we give due regard to all the different aspects and the reasons for the issue that has arisen and how it was dealt with, but there has been no need even to invoke that procedure in the period since 2014.

Graham Simpson: My question is for Mary Pitcaithly. You said that councils have to appoint a returning officer, who must be a senior officer of the council. There is no choice in that. You also said that you are committed to ensuring that elections are run smoothly and properly, and we are all agreed that they are.

You are committed to public service. You are also very well paid. Chief executives are extremely well paid. Is it not reasonable to expect that chief executives, or indeed senior officers, should just see the returning officer role as part of their job—as part of the public service that they are employed to deliver?

11:15

Mary Pitcaithly: The reality is that it is not part of the day job. The day job continues and that is what we get paid for. We are not saying that we are not well paid, but there are many people in public service who receive significantly higher salaries than we do.

The issue is around whether these responsibilities could just be rolled up with those of the chief executive. We have set out in our submission—as did the AEA, the Electoral Commission and a number of your witnesses last week—why that would not be appropriate. I do not propose to rehearse all that again; it is all in our submission.

As to whether there is any option for a council to appoint a senior officer as a returning officer, again, we are working with the law that we have. There is a legal separation of duties; there is an accountability that comes with the role of returning officer that is different from the accountabilities of a chief executive or a director of law and administration or whatever the day job role is; and there is a level of responsibility, and indeed a required level of work, that is remunerated differently from the day job.

Those are the rules that have been set out by Parliament over many, many years. They are not rules that we have devised. They are what they are. It is helpful that you are looking at this, but the legislation is quite clear and the separation of duties is quite clear. I think that all your witnesses have expressed why they think that should be a very important consideration for you before you start reviewing the wider system.

Graham Simpson: I understand that very well—we all do. The legislation is what it is. However, we are here to look at whether the system that we have is the right system. You all seem to have accepted that there is public concern over these extra payments—certainly we are all aware of that. The question for us is whether that system should continue. What do you guys think?

Malcolm Burr: I believe that the system delivers very good value to the Scottish public purse for the delivery of elections. As I have said, it has aye been, to a certain extent, and therefore it may benefit from a review. However, the principles are very important—those who manage, declare and return at whatever level should not be accountable to those whom they declare elected. There must be independence for these processes. The 1983 act put that very baldly, almost as if to say that there should be no doubt that the person who discharges these functions holds office quite separately from whatever other role he or she holds—usually, chief executive of a council.

If that point is accepted, the committee might want to look at the most cost-effective way of making sure that the processes are properly observed, that elections are delivered efficiently and so on. The current system, whatever is thought of it, certainly provides a very cost-effective way of delivering elections effectively.

Graham Simpson: You do not need what are sometimes very hefty extra fees to carry out that role independently and properly, do you?

Malcolm Burr: Personally, I do not think that the fees can be described as hefty in all cases; they vary considerably.

Graham Simpson: I said “sometimes” and did not mean all the time.

Malcolm Burr: Indeed. As I have said, any remuneration system should be processed separately from those who benefit from it. If the committee is minded to recommend a review of how the payments are calculated and made, there are various models for how that could be done. As my colleague from Glasgow said, there are systems of evaluation that could be adopted. Certainly, SOLACE would be happy to participate in a review.

The Convener: Do you have anything to add, Mr Simpson?

Graham Simpson: I guess that the question for everyone is, if we were to get rid of fees for returning officers and move to a different system—either of having no fees, or spreading the fees across the team that delivers the election—would that affect the performance of the election team?

The Convener: Does anyone want to respond? No? Perhaps the witnesses want more clarity on what is being asked. Are you suggesting—

Graham Simpson: I am merely asking whether money makes any difference.

The Convener: I think that Mr Simpson is asking whether you would sign up to the role if you did not get additional money for it.

Mary Pitcaithly: I have already said that none of my colleagues takes their responsibilities for elections lightly and none of them does that work purely because there is money involved. I have nothing to add, other than that we are not in it for the money; we do election work because we have a personal commitment, as do committee members, to upholding and enabling democracy.

Annemarie O'Donnell: I am very proud of my record in assisting the running of elections for nearly 20 years and being the returning officer for the past two years. The role comes with significant pressure and responsibility. As my colleague Mary Pitcaithly has just reminded me, no one goes into running elections to make a career, but it can end a career. That is an important point. We have to deliver elections with precision and accuracy. If we fail to do that, our reputations and careers are jeopardised as a consequence.

As Mary Pitcaithly indicated, where there is work, there is usually worth and recognition of the role that we have. As Malcolm Burr said, we are

happy to participate in a review of remuneration, but what would such a review look at? Would it be the whole election process or simply the remuneration for returning officers? It is important that we do not throw the baby out with the bathwater, and that we look at what works very well and the great integrity that we have in the system for managing elections. As Mary Pitcaithly indicated, our system is viewed as a gold standard. That does not happen without significant effort. However, we are more than happy to contribute to a review of how the system is managed.

The Convener: I am tempted to respond, but this is Mr Simpson's line of questioning. Do you want to follow up on that, Mr Simpson?

Graham Simpson: No, that is fine.

The Convener: Andy Wightman has a question.

Andy Wightman: I thank the witnesses for coming today. Our inquiry is on the appropriateness of payments, although it is a short inquiry. As the witnesses will be aware, the law commissions of England, Wales and Scotland have called for a review of the law in relation to elections in general. Recommendation 10-9 in their report states:

"The lead returning officer and"

their

"functions should be governed by secondary legislation",

and so on. Recommendation 3-2 states:

"Electoral law should set out the powers and duties of returning officers for all elections within the legislative competence of the parliaments and governments within the United Kingdom."

I think that it is broadly agreed that reform is coming.

As has been said, councils have to appoint an officer of the authority for elections. Section 27 of the 1983 act makes it clear that

"the office of returning officer is ... distinct".

Malcolm Burr said that remuneration emphasises the separateness of the role, but surely it is section 27 of the 1983 act that does that. Remuneration is governed by section 29 of the 1983 act, which gives a returning officer the authority to make a claim for fees up to the maximum allowed. My question for Mr Burr relates to Annemarie O'Donnell's last point, which is that a career can be jeopardised by a failure to deliver an election properly. If the role of returning officer is distinct, would it not just be the person's career as returning officer that would be over, which would not impact on their career as a chief executive?

The Convener: Before you answer that, Mr Burr, I should point out that we do not want anyone's career to be over.

Malcolm Burr: The experience of some chief executives in other jurisdictions who happen to be returning officers might give rise to questions as to whether it is their career as returning officer rather than as chief executive that is jeopardised.

On the point of principle, where there is a distinct set of responsibilities of a statutory nature giving personal legal responsibility for any act, a contract has been entered into, as it were, for the discharge of those duties. It is both appropriate and customary that, where duties of that nature and that level of importance are required, that is reflected by some means of remuneration.

Andy Wightman: Do you accept that it is not the remuneration that emphasises the separateness of the role but the statutory provision in section 27? In theory, in future, the statutory provision in section 27 that emphasises the distinctiveness of the role could remain if the returning officer role was wrapped into the chief executive role. The provision could emphasise that, when undertaking the returning officer role, a person is no longer accountable to the council, as they are in their chief executive role. They would almost step out of that role. The statutory provision can continue to insist that the role is separate, but the remuneration itself has no role to play in emphasising that distinction.

Malcolm Burr: Yes, you are correct that the statute gives the responsibility. That would obviously require a discussion between individual returning officers and the councils that appoint them. The act could simply declare who holds the role, provided that the independence of the role was safeguarded in law.

Andy Wightman: Section 29 of the 1983 act allows for the fee to include pension payments. Do the fees routinely include pension payments, or is it up to the returning officer to make a claim for that?

Malcolm Burr: Certainly, mine do not, but I cannot speak for all of Scotland.

Mary Pitcaithly: I think that the situation differs depending on the legislation that is passed. More recently, the provision for payments to be superannuable has not applied. That was more common previously. Those are matters for Parliament when it looks at the fees and charges order.

The Convener: Does anyone want to add to that?

Mary Pitcaithly: I want to pick up on Mr Wightman's important point about the law commissions' review. The law commissions

across the UK are working together closely on that. We have been very supportive of that holistic process of looking at how the whole system, including the legislation on these sorts of issues, can be updated, modernised and kept fresh and as clear as possible for the benefit of voters. There are issues around picking out individual aspects of that in one jurisdiction in the UK that are not mirrored elsewhere. You might want to consider that.

Andy Hunter: The superannuation provision does not apply every time. Generally with referendums, returning officers decide whether or not to do that. As I think Mr Burr said, any review of the payments would also need to consider that element and whether it is the right thing to do as part of the remuneration.

Andy Wightman: We heard evidence last week—I apologise, but I do not recall which witness said this—that the remuneration is made not because of the labour but because of the significant responsibility that goes with the role. We have heard this morning from Mary Pitcaithly that in fact it is at least in part for labour—you work weekends and extra hours to deliver this. Can you give us a flavour of the extent to which you feel that remuneration is a reward for the responsibility and/or the labour?

11:30

Malcolm Burr: I will illustrate that by way of example, convener, if I may. Members might recall that my colleague Alistair Buchan, the returning officer for Orkney, found himself incurring legal fees and being a party to an action in the election court, following the disputed election of the member of Parliament for Orkney and Shetland, despite the fact that no party to the action questioned the conduct of the election. That is an example of the personal responsibility that returning officers bear—it has nothing to do with the employer, and the fees become the responsibility of the returning officer, even when the conduct of the election is not in question. The payment reflects—notionally, in that case, I have to say—responsibility as well as hard work.

Mary Pitcaithly: I do not think that the responsibility and the labour are mutually exclusive. The payment is for carrying out the entire duties, as laid out in various bits of legislation, and reflects not just the level of accountability and responsibility that was exemplified in the case that Malcolm Burr mentioned but the tasks that have to be carried out, many of which are time critical and require a huge amount of co-ordination.

Andy Wightman: The example that Malcolm Burr gave from Orkney was helpful. Are you aware

whether the returning officer incurred personal costs that related to his involvement in the legal action?

Malcolm Burr: I am not aware of that.

Andy Wightman: If a returning officer finds themselves involved in a legal action, either as a party at some distance or directly, are they personally liable for their legal costs? Is that the case?

Malcolm Burr: That has to be the case, unless the costs are covered by insurance.

Andy Wightman: I think that in one of the submissions it was suggested that insurance is routinely bought in by returning officers. I presume that it is up to the returning officer to do that. Do you know how many returning officers insure themselves against legal costs?

Malcolm Burr: I imagine that all returning officers do so. However, as we all know, insurance policies do not always cover every eventuality.

Andy Hunter: Insurance does not cover what is technically considered a fine. There is a requirement for the returning officer to comply with the Data Protection Act 1998, and if someone who was operating within the scope of a returning officer breached the act and the commissioner felt the need to issue a fine, the fine would be the personal liability of the returning officer. As I understand it, the insurance policy would not cover that. There is only so much that can be done, and there are personal liabilities and dangers out there for returning officers that insurance will not sort out.

Mary Pitcaithly: As my colleague from Glasgow pointed out, there are issues to do with reputation. We saw what happened in Barnet earlier this year, when the returning officer and chief executive of Barnet Council resigned very quickly after a difficulty occurred in relation to the registers that were available in polling stations—that had such an impact.

The Convener: If members have further questions, please indicate. I have a final question.

From the sum of the evidence that we have received, we know that the level of payment depends on the size of the local authority and on whether it is a European, UK or Scottish election. In a UK election, the level is determined at UK level, in a Scottish election it is determined, I think, in the Scottish Parliament, and in a local authority election it is determined at local authority level. There is a variety of practice in how returning officers dispose of the income that they get, irrespective of how much it is. Sometimes that is disclosed and sometimes it is not.

We have discussed the additional workload burdens that are placed on a local authority chief executive in their capacity as returning officer and whether there is a displacement effect, with other people picking up work—that is where I started my line of questioning, which was about the interaction between the substantial salary of a chief executive and the additional moneys that go to a returning officer.

My question might be more for Mr Hunter and Ms Irvine. Leaving aside the level of payment to returning officers, is there a need for more clarity and consistency, given that muddled or inconsistent approach to everything? Must there be changes? This is a bit like leading the witness, I know, but, bearing in mind that we will eventually make some recommendations, if you agree that there should be changes, what do you think should be a good direction of travel?

Andy Hunter: Earlier, we outlined the fact that reviews are always necessary and that it is always worth being open and transparent. If there is public concern relating to the amounts or the idea of the payments, we should make the process of any review as clear and transparent as possible, whether or not there are changes.

It would be beneficial if there were a more consistent approach. Ms O'Donnell referred to job evaluation schemes as being one way to approach the issue, and I would be happy to be involved in that.

Ailsa Irvine: As I said earlier, the Electoral Commission is happy to be involved in any review. The important thing is safeguarding the principles of independence and accountability and ensuring that anything that we go into is fully evidence based and considers all the risks of any change to the system.

On transparency, the Electoral Commission is responsible in relation to the fees and charges that were set by the UK Parliament for the European Union referendum in June this year. Once we have received all the accounts and claims for fees and charges for the election, we will publish a comprehensive report in order to bring transparency to the issue of how money was spent in that referendum.

We have been calling on the Scottish Parliament and the UK Parliament to do the same thing for European, UK and Scottish parliamentary elections in 2014, 2015 and 2016. We look forward to that information being published and bringing greater transparency to the question of what elections cost.

The Convener: That is helpful. I will follow up on that but, before I do, I want to indicate to witnesses that we are about to close the evidence

session and I will give everyone an opportunity to make final comments before we do.

On the call for the data about the 2014, 2015 and 2016 elections to be published, I will be interested to see what the Electoral Commission publishes. Is there a need for consistency in relation to that information? Should the information be presented in the same way, using the same criteria and so on, so that there can be a read-across and it is possible to see which payments go where and why they are made? Is it possible for there to be some joint working in that regard?

Ailsa Irvine: Presenting the information in the same way would be helpful, as it would allow there to be a comparison of costs and would enable the data to be analysed in a way that means that we can understand what we are getting for our money. I think that what you suggest could be done, particularly given that the legal frameworks in terms of how the maximum recoverable amounts are set are similar. I do not think that that would be particularly difficult to achieve if there was joint working. Given our role in the EU referendum, we would be happy to be involved in that.

The Convener: I see that Mr Wightman is gesticulating at me. Do you want to ask a brief supplementary question?

Andy Wightman: Yes, I have a final question. Mr Hunter, are returning officers members of the Association of Electoral Administrators?

Andy Hunter: Not all of them; membership is not automatic. A large number of them are, though.

Andy Wightman: I see that you have an annual conference in February next year. Will they attend that using their own holiday time and at their own expense, or do they use their returning officer payments?

Andy Hunter: I could not answer for each individual returning officer.

The Convener: We will leave that hanging there.

The local authority chief executives who are present today have acted as returning officers on a number of occasions, and we should acknowledge that elections have been run successfully in Scotland, despite the fact that we are looking at the appropriateness of the payments and will report on that and make recommendations. It would be appropriate not only to thank them for coming today but also to give them the opportunity to make any final comments that they might wish to make.

Malcolm Burr: We are in the happy position of discussing a system that is working well. That

system places personal legal responsibility for a complex range of tasks on returning officers. It is a system that has grown incrementally—there is no doubt about that—and, like any system, it would benefit from a review from time to time. SOLACE will certainly be happy to participate in any such review.

The Convener: Does Mary Pitcaithly have anything to add to that?

Mary Pitcaithly: No, I have nothing to add.

The Convener: I thank all our witnesses for attending. We now move into private session.

11:40

Meeting continued in private until 12:22.

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