LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 21 November 2007

Session 3

£5.00

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
10th Meeting 2007, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

COMMITTEE MEMBERS

*Alasdair Allan (Western Isles) (SNP)
*Bob Doris (Glasgow) (SNP)
*Patricia Ferguson (Glasgow Maryhill) (Lab)
*Johann Lamont (Glasgow Pollok) (Lab)
*David McLetchie (Edinburgh Pentlands) (Con)
*Jim Tolson (Dunfermline West) (LD)

COMMITTEE SUBSTITUTES

Robert Brown (Glasgow) (LD)
Rhoda Grant (Highlands and Islands) (Lab)
Tricia Marwick (Central Fife) (SNP)
Margaret Mitchell (Central Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Ian Campbell (Scottish Government Public Health and Wellbeing Directorate)
◊Ron Gould
John McNairney (Scottish Government Planning Directorate)
David Thompson (Scottish Government Public Health and Wellbeing Directorate)
Helen Wood (Scottish Government Planning Directorate)

◊by video link

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Jane-Claire Judson

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 1

Scottish Parliament

Local Government and Communities Committee

Wednesday 21 November 2007

[THE CONVENER *opened the meeting at 10:02*]

Subordinate Legislation

Environmental Impact Assessment (Scotland) Amendment Regulations 2007 (SSI 2007/484)

The Convener (Duncan McNeil): Good morning. Agenda item 1 is to consider a negative statutory instrument. No motion to annul has been laid in the Parliament. Do members agree to make no recommendation on the regulations?

Members *indicated agreement*.

Glasgow Commonwealth Games Bill: Stage 1

10:03

The Convener: Item 2 is the Glasgow Commonwealth Games Bill. Our witnesses are Nick Brown, the bill team leader; Ian Campbell, from the Glasgow 2014 and London 2012 team; and David Thompson, policy adviser. We welcome you this morning. Do you want to make an opening statement before I call for questions?

Ian Campbell (Scottish Government Public Health and Wellbeing Directorate): We welcome the opportunity to come before the committee to discuss the Glasgow Commonwealth Games Bill so soon after its introduction. I will first introduce the team. Nick Brown is the recently appointed bill team leader. David Thompson has been working on the bill over the past few months. They sit in the team that we have established to deal with the Glasgow 2014 games.

As the committee is aware, we published a draft bill for consultation in June. That allowed us to demonstrate to the voting members of the Commonwealth Games Federation that the Scottish Government and other bid partners were serious about Scotland's bid and, if successful, would be in a position to begin delivery of the games as soon as the decision was announced. Following our successful bid to host the games, we must now begin to deliver the commitments that were given during the bidding process. The bill is the first stage in doing so.

The Commonwealth Games Federation places a number of requirements on host cities, including a requirement to introduce the legislation that is necessary to prohibit ambush marketing, eliminate street vending and control advertising space during the games. The federation also requires that measures are put in place to prohibit ticket touting. The bill delivers on our obligations and meets other commitments that were given in our candidate city file. It creates the powers to secure ownership of land that is needed for the games and to ensure that our games transport plan is developed and implemented. It also gives the Scottish ministers the power to provide support to the organising committee, including the Government's share of financing for the games.

We consulted on the draft bill over the summer. The consultation document was sent to more than 300 organisations, and we received 39 written responses. We also held a number of meetings with Glasgow City Council and the Commonwealth Games Council for Scotland. Those responses were taken into consideration and the bill was amended to reflect issues that were raised during the process.

The bill was introduced to the Scottish Parliament shortly after the decision was announced in Sri Lanka. That ensures that there is no delay in putting in place the provisions in the bill as soon as possible.

As noted in the consultation document, we also intend to work with the United Kingdom Government to put in place intellectual property protection for the 2014 games. There have already been examples of organisations attempting to associate themselves with the brand without the permission of the organising committee or contributing in any way to the delivery of the games. However, we cannot put that protection in place until the legislation has been agreed by the Scottish Parliament.

We are grateful to the committee for agreeing to consider the bill so quickly and for giving us the opportunity to discuss it with you. We will be happy to take any questions.

The Convener: Will you give us some more details about the consultation on the bill? Who did you consult? You mentioned Glasgow City Council as an example—are there any others who are worthy of a mention? You said that the bill was altered as a result of the consultation. Will you give us some examples of that? Will you also describe significant issues that were raised during the consultation but which were rejected and have not been reflected in the bill?

Ian Campbell: We met a number of organisations that responded to the consultation. Strathclyde partnership for transport made representations on who would be consulted on the transport plan. The meeting was positive, and we were able to assure it that it was expected that there would be wide consultation when the transport plan was developed. A slight adjustment was made to the draft bill to make it clearer that consultation was expected to take place.

We were mainly in correspondence rather than having formal meetings with others during the consultation process. For example, advertising agencies made representations that were dealt with mainly by correspondence.

The principal change that we made after the consultation was on enforcement mechanisms and powers to satisfy police authorities' concerns on how they would be taken forward. The changes are in the bill and set out in the policy memorandum. That is one of the key points that were altered as a result of the consultation.

David Thompson (Scottish Government Public Health and Wellbeing Directorate): We also received representations from Glasgow City Council on the levels of fine that will be associated with breaches of games traffic regulation orders. We felt that the level of fine in the traffic regulation

orders was a sufficient deterrent to prevent someone from driving into a games lane. It is also not within the power of the Scottish Parliament to amend the level of fine—that is reserved under the Scotland Act 1998.

Kenneth Gibson (Cunninghame North) (SNP): I understand that the cost of the games is forecast to be £372.977 million, which is a precise figure. For the 2002 Manchester Commonwealth games, the final price tag was four times the original bid estimate, and we have already seen severe cost overruns for the London Olympics in 2012. What safeguards exist to ensure that we do not see the same cost overruns for the 2014 games in Glasgow?

Ian Campbell: One of the main advantages that Glasgow has over both Manchester and London is that more than 70 per cent of the facilities and venues are already in place. Another 20 per cent are already planned, so the same capital infrastructure projects as in Manchester and London do not have to be carried out. Only about 20 per cent of our overall budget is for capital works, which should reduce the risk of the major overruns that were experienced in Manchester and London.

Kenneth Gibson: Associated infrastructure works—roads, rail and so on—are estimated at £2.5 billion. I take it that they are not in your budget.

Ian Campbell: No. Those projects are not in the games budget. They will go forward irrespective of the games.

Kenneth Gibson: So there is external support for them.

Halifax pulled out of hosting the games. One reason that has been given for its doing so was that, although

"the legitimate benefits of these events are the legacy of the Games facilities and urban infrastructure built for them … In most cities, the infrastructure is expensive to build, costly to maintain, and inappropriate to local needs."

What steps will be taken to ensure that there will be a strong and sustainable legacy for Glasgow and that everything that is built will benefit the city in the long term?

Ian Campbell: That question again takes us back to the fact that most of the facilities already exist and are already being used. We are not going to build an athletics stadium for 50,000 to 60,000 people that will no longer be used after the games. The decision to use Hampden Park in an innovative way by putting an athletics track into it was right. Halifax does not really have any facilities, so it would have had to do things from scratch, but we do not have the same problem. The facilities are already being used, and those

that will come along—such as the velodrome and the indoor sports arena—are part of the national and regional sports facilities strategy. Plans were already in place to progress those, and we expect those plans to be followed through.

David McLetchie (Edinburgh Pentlands) (Con): The bill includes street trading and advertising restrictions. It deals with street trading that is described as

"in the vicinity of Games events",

but the advertising restrictions are to apply within the "immediate precincts" of the games. What is the difference between a vicinity and an immediate precinct?

Ian Campbell: The meaning of "vicinity" will be defined in the regulations that are brought forward closer to the games. I understood that there would be restrictions on both advertising and street trading in the vicinity of the games—I was not aware that a major difference was involved. Which part of the bill are you looking at?

David McLetchie: I am reading what the Scottish Parliament information centre briefing says about sections 10 to 16 of the bill. In fairness, it quotes from a Commonwealth Games Federation manual, which talks about

"the venues and their immediate precincts".

Ian Campbell: A vicinity and an immediate precinct are one and the same thing. The vicinity will be determined by the nature of the venue and the event that is taking place.

David McLetchie: Okay.

Enforcement officers who will be given powers under the bill to enforce the regulations or new rules are to be recruited. How many enforcement officers is it envisaged will be recruited?

Ian Campbell: The number will be determined closer to the games. Most enforcement officers will be in and around Glasgow, as that is where most of the events will take place. It will be the organising committee that will determine how many are required to police the vicinities in which events are taking place. Resources have been set aside in the workforce planning process to cover the matter. However, it is difficult to say at this point exactly how many officers will be recruited.

David McLetchie: Is it correct that the current street trading restrictions are largely enforced by police officers? Is checking whether people have licences or are illegal street traders a matter for police officers?

Ian Campbell: I think that the offences will go a bit beyond street trading offences. Essentially, trading standards officers, supported by the police as required when enforcement powers under the bill are being used, will deal with that. It will be a case of using the resources in Glasgow and working with the organising committee and the local authorities to ensure that there are sufficient people to deal with such matters during the games.

David McLetchie: So there will be extra enforcement officers rather than equivalent enforcement officers.

Ian Campbell: If extra officers are required, they will have to be put in place.

10:15

David McLetchie: Obviously, licensed street traders operate in Glasgow at the moment. They have licences from Glasgow City Council for the sale of paraphernalia associated with sporting events and other activities. Is it intended that applications from those existing licensed street traders will be given preference under the arrangements to license the sale of games merchandise? Indeed, will they be able to apply for such licences or is it intended to recruit a separate army of traders and trading stalls, distinct from the people who currently do that job week in, week out?

Ian Campbell: It will be for the organising committee to decide how it wants to take that forward and how it wants to market and merchandise the games.

I was out in Melbourne. In the run-up to the games there, the precincts around the games venues were clearly branded for Melbourne 2006, so it was not possible for traders to do one or t'other. I am not entirely sure whether the same people as usual were doing the trading at that point. It will be for the organising committee to decide how it wants to use the precinct areas to sell its merchandise. As the games get closer, it will want to consider whether to use existing traders.

David McLetchie: The projected revenues do not include any broadcast fees—sponsorship and the sale of television rights. Is that undertaken by the local organising committee, or is it a responsibility of the Commonwealth Games Federation?

Ian Campbell: It is my understanding that that is a responsibility of the Commonwealth Games Federation and that the federation will negotiate broadcasting rights.

David McLetchie: Right. The budget breakdown says that the CGF contribution will be £31.4 million. Is that figure conditional on the revenues that the CGF derives from the sale of broadcast rights and other overarching sponsorship arrangements? Is it capped at £31.4

million so that, if the CGF sells the rights for more than that, the profit goes to it, not into the Glasgow pot?

Ian Campbell: My understanding is that that includes the broadcasting element. I am not aware of there being any cap from the CGF, but it and the organising committee will discuss that as they progress.

David McLetchie: Is that £31.4 million a fixed and guaranteed figure from the CGF or is it variable dependent on the income that is generated?

Ian Campbell: I am not entirely sure about that point. We can clarify it and come back to you.

David McLetchie: Right. It is an important element, because it is a significant part of the total budget and, as we know from analysis, the proceeds that were derived from the sale of TV rights for the Manchester games were significantly lower than projected. That is the case, is it not?

Ian Campbell: I am not entirely sure about that either, but it is a point that the organising committee will want to discuss with the CGF. The figure was increased following the evaluation commission's report, which suggested that the figure for broadcasting rights should be included in the income. I am happy to go back and clarify those points for you.

David McLetchie: According to our briefing, Wildsmith and Bradfield's report for the Halifax Commonwealth games bid states:

"Manchester's Games committee over-estimated private revenue streams from TV rights, sponsorships, ticketing, licensing, concessions and accommodations."

We have some budget headings for those revenue streams in the budget breakdown under "Local Sponsorship", "Ticket Sales" and "Merchandising", but the TV element seems to be in "CGF Contribution".

Ian Campbell: That is absolutely correct. I need to find out for you exactly what the CGF contribution covers and how the estimate has been arrived at. We will come back to you on that point.

David McLetchie: Okay.

Jim Tolson (Dunfermline West) (LD): I have two key points about transport issues and the transport plan that is to be created. First, what guarantees will we have in the plan on emergency access in and around Glasgow? Secondly, you mentioned Strathclyde partnership for transport, which is fine for transport within Glasgow, but in the build-up to and during the games, people will be coming from outside Glasgow. What plans are there for new projects? I am thinking about the M74 extension or any other projects that you might bring to our attention.

Ian Campbell: Emergency access will be dealt with as part of the transport plan. I expect the organising committee to work on that issue when it considers the plan and to carry out consultation to ensure that the emergency services are happy with the proposals. I guess that during the games we will have an operation centre. All the issues will have to be fitted together when the plan is being created.

You are right that access from elsewhere in Scotland will be required. Again, the transport plan needs to take that into account. It will be for the organising committee to work with public transport operators to ensure as far as possible that the games are accessible to people from throughout the country, not just to those in Glasgow. Projects such as the M74 extension are being carried out as non-organising committee work and through the non-organising committee budget. Those projects will proceed as expected.

Patricia Ferguson (Glasgow Maryhill) (Lab): I will follow up on a couple of questions that colleagues have asked, but I begin by congratulating everyone who was associated with the bid on their success in Sri Lanka.

To pick up on Jim Tolson's question, am I right in thinking that it is part of the bid document that the M74 connection will be in place to help to facilitate transport between games venues in Glasgow?

Ian Campbell: The extension of the M74 is in the candidate city file as one of a number of projects to link parts of the city together that are being funded from outside the organising committee budget. The project was not an integral part of the bid, but it was referenced in the candidate city file.

Patricia Ferguson: So the understanding of the Commonwealth Games Federation in granting Glasgow the games was that the M74 extension would be delivered before the games.

Ian Campbell: Yes.

Patricia Ferguson: To return to the trading issues, some local authorities that might wish to host training camps are concerned that the ambush marketing and trading aspects of the bill will extend to them. Will those measures extend to such training camps?

Ian Campbell: The measures will extend only to sites that we regard or set out as venues. It would be difficult to designate every single sporting ground or facility in Scotland in that way. Again, it will be for the organising committee to determine which sites it wants to cover in the regulations. It would be impractical to expect every single training camp to be covered, because some will be used at different times and that might place an

onerous requirement on venues that would prevent them from engaging with teams.

Patricia Ferguson: But venues that are used for the games and that are outwith Glasgow will be covered by the measures.

Ian Campbell: Absolutely—the venues will be covered. For example, the site at Barry Buddon where the shooting will be held will be classed as a games venue.

Patricia Ferguson: On the announcement of the successful bid for the games, Glasgow, the Government and the Commonwealth Games Council for Scotland had to sign a contract with the Commonwealth Games Federation. I presume that the federation was at that point aware that the bill was about to come into existence and that it was broadly happy with what was to be included in the bill.

Ian Campbell: The Commonwealth Games Federation was involved in the consultation, although it did not submit any formal response to it. We intend to continue discussions with the federation as we go through the process, so that any issues are brought to our attention at the earliest opportunity.

Bob Doris (Glasgow) (SNP): I have questions on the concerns about ticket touting. There are two aspects to that. Fines of up to £5,000 will be put in place for the resale of tickets, but that is in some ways a rearguard action. What safeguards are there to ensure that, in the initial sale of tickets, tickets go from the centre down to communities and overseas visitors who have come over for the games, rather than into the hands of people who advance structurally the cause of ticket touting on a wide scale? What checks and balance have you put in place for the initial sale of tickets? Are you happy with the financial penalties for the resale of tickets? Will clamping down on the resale of tickets in the vicinity of the venues be the job of enforcement officers? Will they issue on-the-spot fines? Will the police be involved? I would appreciate a bit more detail on that.

Ian Campbell: I expect that the organising committee will set out its own ticketing policy, which will address some of the concerns that you are raising. We want to ensure that the games are open and accessible to as many people in the country and from around the Commonwealth as possible. The organising committee will set out its policy, which will make clear how best to achieve that.

Enforcement officers will work with the police to clamp down on the resale of tickets. We are not expecting on-the-spot fines; they are not set out in the bill. Enforcement officers will be able to carry out test purchases to identify whether people are

trying to ticket tout. The level of fine is intended to act as a deterrent to ticket touting. I hope that the ticketing policy that the organising committee sets out will discourage anybody from trying to ticket tout and will make the tickets so readily available that there is no need to do so.

Bob Doris: Let us imagine the hypothetical situation that the face value of a ticket spiralled because a home nation athlete or swimmer got to the final of an event. Suddenly, a £15 ticket might be worth five, six or seven times that. If someone was found trying to resell such tickets before an event, what powers would the enforcement officer have to act against that individual?

Ian Campbell: The enforcement officers would work with the police, who could arrest that individual.

Bob Doris: So, the enforcement officer would alert the police to the matter and the police would come along and make the arrest.

Ian Campbell: The enforcement officer would gather the evidence and work with the police, who would have the power of arrest.

Kenneth Gibson: Will you be able to do anything about touts selling tickets on the internet, for example on eBay?

Ian Campbell: There is a power in the bill to deal with that. The detail will be set out in regulations, because it will develop over time.

Kenneth Gibson: What steps have been taken to ensure that tickets are affordable for people in Glasgow and the surrounding communities?

Ian Campbell: Again, the ticketing policy will set all that out. The numbers attending each event have been worked out. The candidate city file sets out that the tickets should be affordable. Tickets for different events will be tiered. The ticket pricing is based on the price of tickets for events that are currently held in Glasgow and Scotland.

Kenneth Gibson: Sporting events?

Ian Campbell: Sporting and other events.

Kenneth Gibson: I want to return to street trading. The games will focus on sporting excellence, so health promotion will be important. Will any steps be taken in conjunction with Glasgow City Council and others to ensure that there are no burger vans selling greasy burgers outside the stadiums? Glasgow City Council is trying to promote health messages to school children, but it is also giving street trading licences to people to park vans outside schools to sell burgers to the kids who nip out at lunch time. What steps are being taken to ensure that there is joined-up thinking in that regard?

Ian Campbell: The organising committee will control who can sell what outside each venue. You

are right that health promotion will be part of the legacy. One would expect that the policy that is being developed in partnership by the Government, the city council, the Commonwealth Games Council for Scotland and the organising committee will ensure that those messages come through from the games.

Johann Lamont (Glasgow Pollok) (Lab): We were delighted when we learned that the Glasgow Commonwealth Games Bill was going to remain on the agenda; if the result in Sri Lanka had been wrong, the bill would have been scrubbed. It made everybody's day when the announcement came through. I was struck by some of the discussion about the success of the bid and its importance for Scotland. There was a successful games in Manchester recently. How closely have you worked with Manchester on these issues, given the similarity in population and nature of the two cities? Is there close, on-going work with Manchester on the lessons learned from its experience?

10:30

Ian Campbell: Absolutely. There has already been a lot of engagement with Manchester. I went down there with representatives of Glasgow City Council to talk with the people who were involved with the Manchester games from an early stage. We have had regular discussions with them, as well as with people from Melbourne. Lessons will be learned as we go through to 2014, especially from London as it goes through the experience on a larger scale, and from Delhi's experience in 2010.

We have the advantage that Manchester is very close and there are still people around who were involved in the running and organisation of the games there, whose brains we will be able to pick as we progress. I expect that to happen; in fact, it has already happened. When the Glasgow City Council officials were preparing to bid for the games, they worked closely with and learned a lot from the Manchester experience.

Johann Lamont: Is Manchester tracking the legacy claims? Obviously, Manchester can provide a lot of useful information about how to prepare for the games, but has it been tracking the consequences of the games? Can we learn from that so that we get things right during our preparation?

Ian Campbell: Certainly, work has been done on the lessons learned and the benefits that have come from the Manchester games, particularly on the regeneration side of things. Reports have been published on that. I am not entirely sure what work is still being done, but I imagine that figures will be coming out indicating the number of visitors and businesses that have come to the city and how much of that is as a result of the games. It is five years since the Manchester games, and it is reckoned that the biggest impact on a host city comes three years later—that was the case with Barcelona. What is important is how we work during that period to maximise the impact.

Alasdair Allan (Western Isles) (SNP): On internet ticket touting, I appreciate that you might not want to give away your tactics, but I would be interested to hear more about any co-operation that you have had with authorities or police in other jurisdictions. What is your attitude to tackling what is in effect an international problem?

Ian Campbell: We can prosecute for offences that take place outwith Scotland, as long as we can get the people back into Scotland to be prosecuted. We are working with the UK Government to ensure that measures are in place throughout the UK. We have had and are continuing to have discussions to ensure that we can control internet ticket touting as much as we can.

The Convener: We have now concluded our questions to the witnesses. We thank you for your attendance and look forward to working with you to make a success of the Commonwealth games. We expect responses to some of the questions that we raised, particularly about how robust the budget figures are and about the TV rights. I presume that we will get that in writing.

Ian Campbell: We will get that information back to you as soon as possible.

The Convener: Thank you for your attendance.

Scottish Planning Policy 11 (Physical Activity and Open Space)

10:34

The Convener: For agenda item 3, which is Scottish planning policy 11, we have with us from the Scottish Government Helen Wood, who is a principal planner, and John McNairney, who is an assistant chief planner. Would you like to give an introduction before we ask questions?

John McNairney (Scottish Government Planning Directorate): Yes—I will take a moment to set out key points about the policy. Thank you for the opportunity to speak to the committee about SPP 11, of which I understand members all have copies following its publication last week.

I will highlight a couple of points that are central to the policy and say a little about the process. The SPP sets out a national policy on planning for open space and for sport and recreation facilities. It highlights the importance of open space and the positive contribution that it can make to our lives. It aims to protect and enhance open space and the opportunities for sport and recreation. It provides guidance on a range of issues, such as quality, accessibility and maintenance.

Crucially, the SPP requires planning authorities to take a more strategic approach to provision by requiring them to audit open space and to prepare an open space strategy. The open space strategy is crucial to promoting a more strategic approach. It was highlighted as best practice in our planning advice note 65 and the previous guidance in national planning policy guideline 11 suggested that auditing open space and developing a strategy were good things, but doing that has not been a requirement and practice has been mixed. The key change is that SPP 11 introduces a requirement to follow that approach.

The strategy should safeguard valued spaces and is intended to guide resources. The process of auditing, involving the community and developing a strategy is also intended to have input into the development plan, which is the main vehicle that leads the planning system.

Protection is achieved largely through the development plan, but the SPP strengthens protection by containing a presumption against the development of valued and functional space. It protects against the loss of playing fields, requires ministers to be notified of a proposal to allocate for development land that is protected in a development plan and includes additional consultation on land that was last used for smaller sporting facilities.

As the committee knows, we consulted on a draft SPP last August. The draft was informed by a steering group that included a range of stakeholders. We received about 138 responses to the consultation, the large majority of which supported the SPP's objectives. The published SPP differs from the draft in several respects. The key difference is that we have dropped the reference to national minimum standards, which were previously a commitment. We have done that largely because of concerns about the practical implementation of those standards, the perceived lack of flexibility and the focus on quantity rather than quality. The approach of focusing on developing a strategy and using that to inform a development plan is intended to provide better local outcomes.

I am happy to answer questions on any of those points.

Patricia Ferguson: The SPP is particularly important and I had great hopes for it, but I am beginning to be slightly worried about several aspects of it. At present, the responsibility for giving at least a view, which is usually taken seriously by any local authority that is considering the planning aspects of disposing of a playing field, for example, rests with sportscotland. If the Government's internal review of sportscotland results in its abolition, who will be responsible for giving that view? Did you answer that question in your introduction when you said that such requests would go direct to the Scottish ministers?

John McNairney: The process of notifying the Scottish ministers is intended to protect the status of the development plan. We want to ensure that valued open space is protected in the development plan—that it is allocated as open space rather than something else. When a proposal to develop that land has been made, the local authority should not grant planning permission without notifying the Scottish ministers. That is what notification of ministers is about; ministers might or might not call in a decision to be taken by them.

We cannot address the issue of sportscotland. Our approach is that consultation has an important function, and whether it is undertaken with sportscotland or another body in the future we would expect the function of getting clear advice from some expert authority on particular proposals to remain.

Patricia Ferguson: In the internal review, what consideration is being given to the role of sportscotland?

John McNairney: There is no such consideration in SPP 11. No matter when that document was published, it would always seek to maintain consultation arrangements in relation to

existing organisations. Those organisations might change in the future, but we cannot future-proof every policy. If there was any future change to sportscotland's remit, there would still be a responsibility for authorities to consult the equivalent organisation. We cannot provide the committee with any steer on what will happen to sportscotland in the future, because it is not really a planning policy or a planning responsibility.

Helen Wood (Scottish Government Planning Directorate): We are concerned that the policy, as it is set out, requires sportscotland—or another body in its place—to undertake certain roles. Those concerns regarding the importance of sportscotland's role in relation to planning policy will be fed into the review.

Patricia Ferguson: Have planners taken into account only the possibility—as both of you have mentioned—that something else would replace sportscotland? My understanding is that the Government would like to abolish it entirely. Where would that role lie then? I realise that that is not directly a question for you, but I wonder how much consideration has been given to that possibility.

John McNairney: We cannot answer that. All that we can say is that it is essential that a planning authority has access to specialist advice, whether that is on sport or on other issues. The organisations that provide such advice might change, but the key point is that the function—the importance of getting access to expert advice when it is needed—should remain, and should not be diluted by any future arrangements.

The Convener: It is something that we need to ask the minister, rather than the witnesses.

Jim Tolson: I would like clarification of the

"valued and functional open space"

that SPP 11 refers to.

I understand that the policy seeks to protect many bits of open space so that there is no major development on them. That is right and proper, but I am not sure whether the definition includes small pockets of grass and shrubs on the corners of estates—which are often smaller than the table in this committee room. They have only an aesthetic function—they are not the kind of place where kids have room to kick a football or take part in any other activities. Will you clarify whether very small pockets of grass or shrubs are included in the definition?

I and a number of other members recently took part in a debate about providing long-term maintenance—we are concerned about the maintenance of many open public areas, particularly by certain factoring companies. How will SPP 11 ensure that the long-term

maintenance of open spaces, where factoring companies are involved, would be guaranteed?

John McNairney: I will answer the first point and perhaps Helen Wood can add something. The intention is that the audit will consider all open space in the local authority area and analyse the uses that are made of the key open space resources, how well they are used by the community and the different types of open space. Conclusions would be reached on which areas are considered valued and worthwhile to keep. The audit would identify where there is a deficit in particular kinds of open space and where there is a need for more investment. Planning advice note 65, which has been out for a few years, sets out how a planning authority should work through that process.

The bottom line is that the process should give the planning authority a clear steer on the areas that are valued and used by the community and where more investment is needed. The process will eventually lead to protection under the development plan.

10:45

Your second point was about maintenance, which is a key aspect of ensuring that open space is used and valued by the community. The policy sets out to highlight the importance of ensuring that open space is properly maintained. There are various ways in which the planning system has done that. Historically, the practice was for local authorities to take over and maintain spaces when developments were approved, but that is increasingly unlikely to be the case.

Whether there are planning agreements, maintenance arrangements put in place by residents, or arrangements for third parties or companies to look after the spaces, the key ingredient in the policy is that planning authorities should not overlook the need for proper maintenance. Options were highlighted in PAN 65, which contained some of the best practice at the time for maintaining open space.

Helen Wood: The subject was given a great deal of thought during the preparation of the policy. The detail is dealt with further in the planning advice note. In the SPP, we re-emphasise the importance of ensuring that robust arrangements are in place at the point at which the planning system has greatest influence over any new open space. That means conditions or a planning agreement to ensure that proper arrangements are in place for the open space's long-term maintenance.

David McLetchie: I have a couple of questions on paragraphs 40 and 41 of the planning policy document. Paragraph 41 says:

"Only where there is strong justification should open space protected by the development plan be developed either partly or fully for a purpose unrelated to use as open space. Justification must include evidence from the open space audit that the development will not result in a deficit of open space provision of that type within the locality".

Does that statement that a development will not result in a deficit imply that, before a development proposal is accepted, there must be a surplus of open space? My point is that if there is a level of open space that is only adequate, and a development goes ahead, that will produce a deficit. If a development is not to produce a deficit, there must be a surplus from which a developer may subtract. Is that correct?

John McNairney: It implies that people need to know what position they are in. They can know that in a meaningful way only if there has been an audit and a strategy, and if that has been an ingredient in the preparation of the development plan. Essentially, we aspire to a plan-led system. If we do not have that, we increasingly get ad hoc decisions that are not informed around the question that you highlight: what is the situation in the locality, and is there a surplus or deficit of open space? That is the key point.

David McLetchie: Yes—that is exactly my point. The question is whether it is envisaged that local development plans will identify areas in which there is an alleged surplus of open space, to comply with the planning policy.

John McNairney: As I was going to say, the open space strategy should do that. The resources in an area are audited, the community is consulted on the use of the open spaces, and a strategy—a vision for the area—is developed. That strategy will highlight the areas in which there is a deficit in open space.

There might be surplus open space, which would mean that the solution would be to use new developments to provide more investment in the existing space, which might not be well maintained, rather than provide new space. However, you cannot take robust decisions unless you know what resource you have in the area. That is why the audit strategy development plan approach is crucial.

David McLetchie: I understand that, but I am interested to know—since there are many such spaces in my constituency—whether the question whether an area is in surplus, in deficit or at the right level is subject to objective or subjective determination.

John McNairney: It should be a matter of objective determination. That determination should come through the strategy.

David McLetchie: So, effectively, it is up to the planning authority to determine whether there is an existing surplus in any given area?

John McNairney: Yes.

David McLetchie: Do you expect every development plan that emerges through this new local plan process to consider an area and say either that there is a surplus of local space in an area, with an implication that it can, therefore, be developed, or that there is a deficit and that, therefore, what is there needs to be protected?

John McNairney: That is not quite correct. The development plan should set out what is expected of developers in any particular area. Where, in one neighbourhood, there is a requirement for additional open space, we would like the development plan to make that clear. The reasoned justification behind that policy would sit in the strategy.

David McLetchie: So when these local plans are being consulted on, people should be aware that the issue of surplus or deficit and what land is and is not valued is a key element in devising the overall plan?

John McNairney: I would say so, yes—but that should not be the first opportunity people have to become engaged in the issue. Our intention is that planning authorities should involve stakeholders, including local communities, when they are preparing their audits and strategies.

David McLetchie: Paragraph 40 of SPP 11 envisages that larger open spaces will be identified in a local development plan and will be, in a sense, protected. However, it goes on to say:

"Where there is other open space which is not identified in the strategy but which is valued and functional or which contributes to local amenity … this should also be protected in the development plan."

How can a piece of land that is not identified be protected, other than by a general statement of the type that is in paragraph 40?

John McNairney: In that case, it would be a policy in the development plan. It may well be that strategies that are prepared locally consider slightly different levels of open space. That will be for the local authority to determine.

David McLetchie: So it is up to the local authority to determine the levels of identification and the areas that will be covered. For instance, some authorities might want to identify areas down to the small areas of ground that Mr Tolson was talking about, but others might identify large parkland areas and leave other areas of ground to be covered by a general statement of the type that is in paragraph 40. Is that correct?

John McNairney: The intention is that the identification would be around spaces that have a real function and provide some value to the community. The process should flesh those out.

David McLetchie: But functionality and value are subjective things. I might like a little park area because I walk my dog there, but there might be only four other dog walkers. One of the key issues is whether such matters are capable of objective rather than subjective determination. Who is to say what is or is not valued?

John McNairney: It is important to acknowledge that the SPP is the overriding national policy: it does not contain all the guidance on open space. It sets out what we expect authorities to do, but there are other documents. Planning advice note 65 is also key as it provides more detailed guidance on how to go about audits and what ingredients there are in quality open spaces. The SPP does not sit in isolation.

Helen Wood would like to comment.

Helen Wood: You asked whether sites that have been identified as having a role through the strategy are the only ones that would be protected by the development plan. The policy's message is that unless there is evidence from the audit and strategy that certain open spaces are surplus to requirements, there is no question of releasing them for other uses. The message is not that, because they are surplus, they must be used for another form of land use.

Another check and balance is that, even if authorities have a surplus of a particular type of open space and feel that there is scope for releasing some of it, we are urging them to consider as the first possibility its use as another form of open space. There would not be an automatic assumption that because there are, for example, too many playing fields or more playing fields than necessary, the land is available for other uses that are not open space at all.

David McLetchie: I understand that, but primarily the council judges whether there is a surplus or a deficit. It is not judged against an objective, external standard. It is ultimately, if you like, a political decision: "we think that there is a surplus" or, "we think that there is a deficit."

Helen Wood: We require local authorities to take a strategic view of open space. As John McNairney said, we do not go down to the most detailed guidance in the SPP—supporting documents provide more detail. The requirement is that local authorities gather the information to make decisions about the future provision of open space in their areas.

Kenneth Gibson: Do you believe that the planning policy provides adequate protection for areas for informal play by children? The situation at a number of developments that have sprung up is that if no formal play area has been designated, once the houses are built there is strong resistance from local communities to the establishment of a play area because everyone wants a quiet life. Even people with children want them to play somewhere else—they do not want children being attracted to play in front of their house.

There is an issue about formal play, but I am more concerned about informal play, when kids run around and enjoy themselves without any structure. What level of protection does the policy provide for that?

Helen Wood: The policy links in closely with PAN 65, which sets out a typology of open spaces. There is not one generic need for open space. In the audit and strategy process, the local authority has to assess current and future need for all the different types of open space within a community, including play space. Once the information has been prepared and the strategy has been established, that must feed into the development plan, which in turn provides protection for existing open space and sets out what needs are to be provided for in future developments.

Kenneth Gibson: That sounds great from a theoretical point of view, but in practice how likely is it that it will be implemented if folk go along to councils and say, "We are unhappy about all these kids playing in that patch of ground. What are you going to do about it?" As one of my colleagues said, we end up having "No ball games" signs. We live in a child unfriendly society. There are a lot of pressures on young people not to go out and enjoy themselves informally.

There is plenty of emphasis on people joining clubs and societies, but when I was young I did not want to do that—I wanted to go out and play with my pals. Now, children are more likely to get chased than they were when some of us were young. It is one thing to look at the issue in planning advice note 65, but how likely is it that local authorities will take the guidance seriously enough to act on it and protect the rights of children in this regard?

11:00

John McNairney: One key change is that the preparation of the development plan will become a statutory requirement. At the moment, most development plans are more than five years old, but there will be a legal requirement for planning authorities to keep their development plans up to date. If the national policy is that, in preparing development plans, authorities must go through an audit and strategy process, open space will not be regarded as an afterthought and will have to be mainstreamed. It will not be considered as an issue that only planning authorities need to think about. Councils as a whole need to contribute to strategies and development plans.

We are trying hard to promote design and to move it further up the agenda. It is likely that, where good master plans are provided for new communities or new residential developments, those will embed good open space provision—not just of the right quantity, but of the right quality, in the right location and linked to proper networks. When we have residential developments in which the quality of open space is of a much higher standard, there may be fewer complaints from people who become irritated partly because open space is not in the right location or is not properly supervised. I do not underestimate the role that good design can play. We want to promote a much more careful, planned approach to new development, including open space.

Kenneth Gibson: I am glad to hear that, because housing developments are springing up all over Scotland—there are some huge developments in Johann Lamont's constituency, for example. I do not think that developers give any consideration to open space—they are trying to get as many buildings as possible on to the smallest bit of land, to make as much money as possible. One can understand that from their perspective. I hope that planning policy will have more teeth and will enable open space to be protected, because there is a concern that in some parts of our cities, in particular, we may end up with a concrete jungle. It is bad enough that many of the houses that are being built do not take into account the possibility that family accommodation may be needed, but if there is nowhere for children to play, people will complain that the kids are getting up to all sorts of mischief.

SPP 11 states:

"Wherever possible local authorities and developers should aim to include imaginative planting which can contribute to biodiversity objectives and enhance the survival and awareness of plant species native to Scotland."

What will be the onus on local authorities to do that? Will they just pay lip service to the provision?

John McNairney: It is a requirement. We expect local authorities to adhere to the guidance in the SPP. They must do that not just in development plans but when they consider applications that come before them. It remains to be seen what will happen, but our intention is that the guidance should not be ignored—it needs to be acted on. It will be a material consideration in every planning application with which councils will deal.

Kenneth Gibson: How much room for manoeuvre will they have? Will the guidance be fundamental? Will it have equal weight with other considerations, or will it be almost an appendage to applications? If local authorities ignore the guidance, what will happen?

John McNairney: Local authorities should not ignore the guidance. It is a material consideration, and the expectation is that they will need to act on it. In the first instance, the planning system is for local authorities to operate. They need to take good-quality, robust decisions. We certainly look for better outcomes on the ground, but the Scottish Government cannot intervene in every planning application that comes before the system. We can provide guidance and support through advice notes, but ultimately it is for planning authorities to take the advice into account and to use it in deciding on applications.

Johann Lamont: I would not want anyone to think that my constituency is a concrete jungle, as Kenny Gibson described it—

Kenneth Gibson: I did not say that at all.

Johann Lamont: However, there are challenges with some private developments. One of the big lessons is that if open space is not provided when a development is created, it is difficult to jemmy it in afterwards. That is why I want to consider some of the issues around minimum standards.

I want to ask a couple of processy questions first. I am very much aware that you simply describe the policy and that it is not your job to explain it: that will be for a future evidence session with the minister, when we can talk about why some of the changes have been agreed. First, on the issue that my colleague Patricia Ferguson flagged up, was the planning directorate formally consulted—or is it in the process of being consulted—on the role of sportscotland? We are having an internal review of sportscotland and, according to the First Minister, we are also having a full consultation. Has the planning directorate been formally consulted on the future of sportscotland?

John McNairney: I cannot answer that, as I have not been involved. Unless Helen Wood can add to that, we cannot help.

Helen Wood: We understand that there will be a wider consultation as part of the review. Neither I nor John McNairney is directly involved in the review, but we expect that planning will be given the opportunity to make an input.

Johann Lamont: I have been advised that the consultation is on-going and that we will have a decision before the turn of the year. However, that obviously is not a matter for you.

The sportscotland issue relates to the point that has been made about the need for a body of expertise. In the policy, a decision has been made not to go down the road of extending consultation to other bodies. That option was argued for on the basis that open space is about more than sporting

space—for example, it might be space for recreational facilities—so we need to consult other bodies, but the Government did not take that view. We are now in a position where sportscotland might be abolished, but you have said that there needs to be a body of expertise. Given the argument that open space is about more than sport, is it not the case that we should retain the proposal to require consultation with other bodies that have expertise on recreation?

John McNairney: In part, the decision was a result of the consultation responses, which expressed mixed views on the proposal to extend consultation arrangements. It is also linked to the fact that, if we can deliver the audit process, strategy and development plan, there will be consultation on all the significant issues that apply to open space rather than just in response to individual planning applications. We hang quite a lot on that cycle of audit, strategy and development plan.

Johann Lamont: I do not know whether this is the general process that was followed, but the consultation report flags up the fact that the decision not to include minimum standards was made

"Following public responses, additional consultation with the stakeholder group and further consideration by Ministers".

Was that model of going out to public consultation, analysing the responses and then engaging in further consultation with the stakeholder group— perhaps you can tell me what form that consultation with the stakeholder group took— followed for all aspects of the policy?

John McNairney: No.

Johann Lamont: But that is the process that was followed for the issue of minimum standards.

John McNairney: Yes.

Johann Lamont: Was any documentation attached to that or was the stakeholder group just pulled together? Were organisations other than those in the stakeholder group given a second bite at the cherry? You made quite a significant shift as a consequence of that step.

John McNairney: We did. Helen Wood might want to add to this. There were internal changes in responsibility during the process. Essentially, we had a previous partnership commitment to introduce minimum standards. Our immediate response was to commission research on what those minimum standards should be. Some time later, the conclusions of that research were built into the consultation paper.

We had a mixed response on minimum standards. About a quarter of the people—mostly the developers—opposed the standards. About a quarter thought that they were a good thing and they did not make any additional comments. The remaining people, while supporting the principle of minimum standards, raised all sorts of issues that gave us cause for concern. For example, people thought that minimum standards were a good thing but said that they had to be flexible. That would be difficult in the case of a centrally imposed minimum standard. People said that minimum standards might be a good thing but that rural and urban areas would need different standards. Some authorities said that standards would be a good thing but that we would need two of them. It was made clear, certainly by developers, that if minimum standards were introduced, developments in certain intensively developed urban areas might not be viable. There were also concerns that the focus on quantity meant that we had ignored quality and accessibility.

We were trying to deliver on the partnership commitment, but responses to the consultation did not support that line. That happened before the election, of course. We redrafted the SPP, circulated it to the stakeholder group and asked whether its concerns were resolved by the redraft. They were not. In the final version, we had to make a decision on minimum standards. We were not comfortable with them because we recognised that there were too many practical difficulties.

You asked whether we followed the same approach with every other policy on which people commented. The answer is no. The commitment on minimum standards was a partnership commitment and we were trying to deliver on it.

Johann Lamont: So you did not follow that model with any other bits of policy.

John McNairney: No.

Johann Lamont: Your report states:

"Just over half of respondents gave the proposed standards qualified support".

As a consequence, however, the proposed minimum standards were thrown out. I think that Kenny Gibson flagged up the point that was to be addressed by minimum standards, namely that our approach should depend on the nature of the space, and that minimum standards are needed to ensure that open space is bedded in at the time of development, so that developers cannot just tick a box to say that there is a play area when there is no real space for that within the development.

Clearly, there is tension between the view of developers and possibly local authorities—people who want to build to meet housing demand—and the view of people who want communities to contain adequate open space. That political thread

runs through the policy. The challenge is to get the right balance.

The responses to a proposal that had the qualified support of more than half of the respondents resulted in ministers deciding to remove the proposal. Is it not reasonable to say that ministers are not seeking to strike the right balance between the clear tensions that have to be managed in the policy?

John McNairney: There are tensions, but when we talk about qualified support we are talking about individuals and bodies who said, "Minimum standards sound like a good thing, but of course we couldn't use them", "Minimum standards are a good thing, but they have to be flexible", or, "We need different kinds of minimum standards." Essentially, what those people are talking about is not a minimum standard that we could impose centrally and expect to operate successfully throughout the country. Their concerns are fundamental.

It is not as if we have dismissed what the majority of people said. We have to try to put in place a policy that will have practical effect and that can be used locally. It was increasingly clear that minimum standards were simplistic and did not take account of quality, accessibility, adaptability or whether there was a surplus of open space in the vicinity. Where there is a surplus, which might not be well maintained, it is not necessarily right to require, through minimum standards, the provision of extra space. The right thing to do is to have planning authorities take responsibility for going through the process that we have described. That needs to be determined locally.

11:15

Johann Lamont: So, as your colleague has described, the situation is that developments are going up with inadequate open space inside them, and because you cannot lever something in later the challenges will remain. The policy will not address that problem at all—it cannot, because it is too difficult. It has been too difficult to establish how you would work a national minimum standard. No work has been done to establish whether there could be flexibility. The ultimate decision by ministers is that it is too difficult to address the problem and that that will therefore not be done through the policy.

John McNairney: The vast majority of authorities have their own local standards, and the fact that there is not a national minimum standard does not mean that open space will not be provided. There should be provision of open space that is appropriate to the area, not to the schedule that we have produced.

I read press reports about a shift in our policy resulting in there being no children's play provision, for example, but that is unfair, because that is not what we are promoting. We are saying that the issue is for planning authorities to deal with. Open space is important and should be provided, but it should be provided in a local context. I am not suggesting that it is all too difficult and that we will therefore not bother about it.

Johann Lamont: You hang a lot, quite rightly, on the need for audits and strategies. You said that you have considered the issue of an initial timeframe for when local authorities should start to audit. Have you said when they should finish? Is there an end point? You said that a number of local authorities have already embarked on preparing audits and strategies, and that they were able to do so within their existing resources. If a local authority comes to you and says that it does not have the resources to do an audit, will it be resourced? Critically, has there been identification not only of an opening point but of an end point by which authorities must have completed an audit?

John McNairney: No, there has not, and there is no penalty for not doing one—short of embarrassment, I suppose. The key consideration is that, when development plans come to ministers in the future, it is important that we scrutinise those development plans to ensure that they take account of national policy on open space and on everything else as well. The development plan is the end point. As I said earlier, the Planning etc (Scotland) Act 2006 is introducing provisions to ensure that development plans are prepared to a legal timescale. There is a statutory duty to prepare development plans, and strategies should inform those development plans.

Johann Lamont: It has been put to me that SPP 11 is weaker than old national planning policy in relation to standards for open space. Do you agree with that?

John McNairney: That it is weaker than what?

Johann Lamont: Than the national planning policy that it is replacing on the issue of minimum size and minimum standards.

John McNairney: I would not say that; it is actually stronger. That is the issue about standards. We are asking for a standard that is about quality and for it to be determined locally.

I do not think that the new policy is weaker. NPPG 11 was reasonably tough on playing fields, but the new policy is tough on all open space, and there is a presumption, as we have discussed, against the development of any valued open space, not just playing fields. In that respect, it is tougher. It is certainly our aspiration that planning

authorities will deliver better developments on the ground if they do what we are requiring them to do through the policy.

Alasdair Allan: What support do you believe should be provided to local authorities when planning requirements, or even planning principles, appear to clash completely, where there is a clash of ideas? I am thinking of an example from my constituency, which obviously I will not ask you to go into, but it illustrates the point. A community has a school that, for structural reasons, has to be vacated imminently, and it has to find a new school. The requirement that new schools must have playing fields is welcome, but if a community urgently needs a new school but cannot find land that is exactly the right size for the playing field that is required for the school, an impasse or stand-off is reached, as has happened in my constituency. What support is provided to enable local authorities to solve that apparently insoluble problem?

John McNairney: Do you mean support in terms of policy?

Alasdair Allan: In terms of policy or contact from the Government. How do you solve that problem?

John McNairney: The Planning etc (Scotland) Act 2006 includes a provision that when a determination is made under the planning acts, it should be in accordance with the development plan unless material considerations indicate otherwise. In the scenario that you are talking about, our policy position would be that, if there were to be changes in the school estate, we would rather that be looked on as a corporate shift that was embodied in the development plan. That has not happened consistently in the past. If an urgent situation arose, such as you describe, that would be a material consideration and the planning authority would have to balance it against what its development plan said, assuming that the development plan did not give a steer on the issue. It is not that the development could not go ahead; it would go ahead contrary to the terms of the development plan and there might be a notification to ministers on the back of that.

David McLetchie: I have a couple of questions on the open space that is protected. I wish to clarify whether my understanding of the position is correct.

SPP 11 talks about open spaces that are "valued and functional". Does that mean that the space has to be in use, as opposed to contributing to the amenity of adjacent land? I will give you an illustration. In my constituency, a lengthy river walkway is much used by walkers, joggers, cyclists, riders and others. It clearly provides a recreational function. Immediately adjacent to the walkway there are many fields, which contribute to the amenity and enjoyment of that recreational area, although the people who use the walkway do not, by and large, ride or walk across the fields. Is that open space protected by the policy or is the limited area of the walkway the only open space that is protected by the policy?

John McNairney: The space that you say contributes to the amenity of the area is probably agricultural land and will be shown as such in the development plan, therefore it will not be allocated as open space. I presume that it will not, therefore, be included in the open space audit, strategy or development plan. There will be other barriers to the development of that land, but it will not be protected as open space.

David McLetchie: Suppose that, contrary to the situation that I have described, people wanted to exercise their new-found rights of responsible access over the fields—I am talking about the walkers, joggers, mountain bikers, riders and all the rest. Would the land become a "valued and functional" open space because people were exercising their rights, or would the fact that it is predominantly agricultural land preclude its definition as open space?

Helen Wood: Local authorities have access responsibilities and must prepare a core paths plan. That is one way of looking at such opportunities. SPP 11 sets out that there must be synergy between the core paths plan and what the development plan says about access to areas such as you describe, ensuring that there are routes that people can use. The policy encourages authorities to consider establishing green networks and to seek opportunities to enable people not just to visit one area of open space but to walk, cycle or jog from one open space to another. One of the key planks of the policy is to encourage local authorities to think strategically and to consider how open space provides opportunities for people to be physically active.

Another element of open space is semi-natural open space, therefore not only the path would be protected as open space. I am talking not about agricultural land but about land that forms part of a route or walkway. The surrounding area has an open-space benefit in terms of biodiversity and the creation of a green route that people can use.

David McLetchie: So land is either open space of the type that is protected or it is agricultural. Even if it has a mixed use as a result of people exercising their access rights, that does not make it open space for the purposes of the policy. The land remains covered by other designations and may be protected by other policies, but it is not protected under SPP 11. Is that correct?

Helen Wood: Yes.

Patricia Ferguson: I am just trying to find something that I read in the documents, but I cannot remember exactly what it was. Has the size of sports pitches that require consultation with sportscotland changed with the switch from the existing policy to the new policy?

John McNairney: I think that it is still 0.4 hectares.

Helen Wood: The threshold was lowered prior to the drafting of SPP 11, and there has been no change except in part of the definition. There has been no change in scale from what was in the consultation draft.

Patricia Ferguson: So it is about 0.2 hectares—is that correct?

Helen Wood: Yes.

The Convener: I thank the witnesses for their attendance this morning and for answering all our questions. I suspend the meeting until 12:45. Members must be back by then to ensure that things are hunky dory.

11:26

Meeting suspended.

13:00

On resuming—

"Scottish elections 2007"

The Convener: I reopen the meeting. The fourth agenda item concerns the Electoral Commission report "Scottish elections 2007: The independent review of the Scottish Parliamentary and local government elections 3 May 2007".

We have with us Ron Gould, who conducted, on the Electoral Commission's behalf, the independent review of the electoral process for May's Scottish Parliament and local government elections and the problems that arose from that. We give him a warm and genuine welcome. He got up very early this morning, as he is in Ottawa, five hours behind us. He told us earlier about the first of the winter snows in Canada, so we are lucky to have him.

Mr Gould, would you like to make a short statement before we move to questions?

Ron Gould: Yes, thank you very much. I thank you for giving me the opportunity to discuss my report of the review of the 3 May elections and my comments on options and recommendations on the local government elections.

As you may be aware, my terms of reference included the impact of the new single transferable vote system for the local government elections, as well as related matters such as the new ballot marking system and electronic counting. I had great flexibility in putting the report together, but from the outset I made two exceptions: I made it clear that the review would not explore the outcome of the election—including the validity of the results, which were already complete and had been accepted by stakeholders—nor take any actions that might threaten the secrecy of the vote.

I stress that my objectives throughout the review were to examine the background of each of the issues that were identified, describe the key related problems and suggest options and make recommendations that would minimise or avoid similar problems and would strengthen the Scottish election process for the future. In other words, I was looking ahead as opposed to looking back.

I would welcome any comments or questions that you may have and will do my best to answer them as comprehensively as possible.

The Convener: Thank you for that short statement. You said in your report:

"Almost without exception, the voter was treated as an afterthought by virtually all the other stakeholders."

That is a clear criticism of political parties for putting their own interests before those of the

voters. There was a great focus on that by the media and politicians. Do you regret that focus? Did it prevent the wider recommendations of your report being presented properly?

Ron Gould: Following the release of my report, I was somewhat disturbed by the fact that, in my view, some of the media and some of the debates that occurred were looking back and trying to apportion blame and assess who was responsible for what, rather than taking the problems that arose as the starting point for resolution and avoiding them in future. I was concerned that the report would be used as a vehicle for debate about who did what to whom rather than a vehicle for positive progress. That was one of the reasons for the explanatory letter that I felt was necessary. In reality, it is impossible to assess blame because, although many people were responsible for many things, no one had ultimate responsibility, so the buck stopped nowhere.

Kenneth Gibson: Good morning, Mr Gould. In your report, you comment that

"as long as the responsibilities for the decisions which have an impact on the Scottish parliamentary and local government elections are divided between the Scotland Office and the Scottish Government, it cannot be guaranteed that these electoral processes will be conducted effectively, due to the fragmentation of the legislation and decision-making in this context".

In view of that, would it be more appropriate for the Scottish Parliament to have powers transferred to it so that it can take greater control of the electoral process in Scotland?

Ron Gould: I have been trying to avoid getting into discussions about who would be responsible for the legislation. It would certainly be useful to have one focus for all legislation. However, it is worth while to consider the election process as having two major components, the first being the legislative component and the second being the operational component. In my view, and when talking about the chief returning officer, the operational component has to be in one place and run by one body or one individual. If the legislation—or the responsibility for legislation—is split between two Parliaments, it needs to be worked into and co-ordinated with the operational side. Whether elections are devolved or combined, the legislation could still be split, and the responsibility for the application of that legislation united in one location.

Kenneth Gibson: Would it be beneficial, in order to focus on specific elections, if those were decoupled, as was recommended by the Kerley report at the beginning of devolution?

Ron Gould: If it is felt that local issues and local candidates are important objectives, combining elections would defeat those objectives. If you really want the public to recognise what is needed at the local level in the local elections, then the elections need to be separated by years, months or days. As soon as you combine them, the parliamentary elections take over the spotlight.

Kenneth Gibson: Obviously, as the Local Government and Communities Committee, local government is our central focus. It seems to have been forgotten that the number of spoiled ballot papers in the local authority elections was three times higher this year than in the previous election. According to a report from Unlock Democracy, about 26 per cent of people it recruited as volunteers to monitor elections were unsure about how the single transferable vote worked. Are you convinced that voters knew how STV worked? I understand that you have looked at some of the ballot papers. It would appear that a lot of people went into the voting booth and put only one X, not realising that they could put their first, second and third preferences. Indeed, if two or three candidates from one political party were standing, some people may have put two or three Xs, which unfortunately invalidated their votes. Will you comment on those issues?

Ron Gould: In the new system, the parliamentary ballot seemed, for various reasons, to be better understood. Ironically, however, the percentage of rejected ballot papers for the local elections was much lower than for the parliamentary election—both regional and constituency. Obviously, people understood how to mark the ballot. There were errors, and the error rate was higher than it had been in the past. However, the Cragg Ross Dawson report "Ballot Paper Designs for Scottish Parliament Elections 2007", from the Scottish Executive, raises the question whether voters understood that they could mark 1, 2, 3, 4, 5 and so on for all candidates, whether they felt restricted or whether they had other concerns. As it was the first election of its type, it is quite possible that people did not take full advantage of the system for marking the ballots that was available to them. A lot more voter education and information could be provided in advance of future elections, so that people are more comfortable with the process.

Kenneth Gibson: At the count, I noticed that in cases in which there was more than one candidate from the same political party, there was a high correlation between the surname of a candidate— and hence their position on the ballot paper—and how well they did in the election. In my constituency, I noticed that, regardless of a candidate's political persuasion, the higher up the alphabet they were, the more likely they were to be elected. Even when candidates from the same party were grouped together because they had similar surnames, the person whose name was higher up the ballot paper got more votes. The greater the distance between candidates'

surnames, the greater the difference in the number of votes that they got. For example, a candidate for the Scottish National Party who was called Alasdair Allan was more likely to get votes than a candidate for the SNP who was called William Wallace. How concerned are you about that? Will you expand on your recommendation to have a lottery to determine the position of candidates' names on the ballot paper?

Ron Gould: Yes. It is recognised internationally that the higher up the ballot paper someone's name is, the greater their chance of getting more votes. In other words, the top of the ballot paper is the most preferential position. There is also a possibility that, through advertising, a candidate can obtain a preferential position at the bottom of the ballot paper. The alphabetical listing of candidates or parties tends always to ensure that there is a preference for those candidates or parties that are higher up the alphabet and therefore higher up the paper.

A number of approaches to resolving the problem can be considered. Probably the fairest approach is to hold a public lottery once a decision has been made about whether to list candidates' names or parties' names first on the ballot paper. At present, if the party name appears first on the ballot paper, it is advantageous for the party name to be higher up the alphabet. If the candidate name appears first, those candidates whose names are in the early part of the alphabet have the advantage. In the case of the most recent council election, the candidate name appeared first. If a lottery had been held to determine the position of candidates' names, every candidate would have had an equal chance to obtain a preferential position on the ballot. The same would apply to a lottery to determine the position of party names.

There are several other possibilities. The parties showed an interest in grouping their candidates together on the STV ballot. If it was agreed to group the candidates by party, each group of candidates would appear in whatever position on the ballot that team won in the lottery. In effect, the position of party names on the ballot would be drawn by lottery.

Another approach that can be followed is to randomise the printing of the ballots so that different ballots will have the candidates and/or the parties in different positions on the ballot. In my view, that is difficult politically for the parties, because it means that they cannot use advertising that tells people to vote for the second or the bottom or the top option on the ballot, for example. Both the alphabetical listing of candidates or party names and the use of a lottery mean that the parties know exactly where individual candidates or groups of candidates will appear on the ballot.

13:15

Johann Lamont: Welcome. You said that the buck stopped nowhere. If we agreed that the two elections ought not to take place on the same day, the matter would be resolved. If responsibility for the Scottish Parliament elections remained with Westminster and responsibility for local government elections remained with us, but the elections took place at separate times, we would no longer be faced with the complexities of bringing together the two elections. The issue is not that Westminster and the Scottish Parliament have different areas of responsibility, but that they have to work together to deliver their responsibilities.

Ron Gould: Separating the two elections would minimise complexity, and many of the problems that arose this time would be avoided. On the other hand, the management of both elections involves the same responsibilities, mechanics, knowledge, skills, background and training. That is why it would be in everyone's interest to have one chief returning officer handle both elections. That officer would answer to whichever jurisdiction was responsible for the election concerned. Returning officers, too, should be more professionalised and should be responsible for all elections and all aspects of those elections, if possible. That is preferable to having as returning officers individuals whose main jobs are as executive officers and who serve incidentally as returning officers because an election has been called.

Johann Lamont: So where jurisdiction over the election lies is not the issue. It is possible to have the clarity and accountability that you seek and the structure that you have described regardless of whether Westminster remains responsible for the Scottish Parliament elections. Such a structure is not predicated on changing where responsibility for the elections lies, as has been suggested. We do not need to bring responsibility for all elections to the Scottish Parliament in order to get clarity.

Ron Gould: Yes. There would be no question as to who had the authority, was responsible and was accountable at each level. That would be very clear, right up to legislative level. As things stand, decisions about local government elections lie with the Scottish Government and decisions about legislation and policy for Scottish Parliament elections lie with the UK Government.

Johann Lamont: I was interested in your solution for making the ballot paper more accessible—having a public lottery to determine the position in which candidates and parties appear. Have you done any work on literacy issues and on people's ability to understand the ballot paper? People with basic literacy learn alphabetical order as it helps them to locate information. Did you do any work on the

disadvantage that could be created for people who have problems understanding the ballot paper? Would grouping candidates by political party clarify the situation for people, especially where parties have put up more than one candidate? Anecdotal evidence suggested to me that a large number of spoiled ballots could have been related to parties having more than one candidate; people put down three crosses rather than one, only one of which was counted. Did you do any work on how the ballot paper should have looked with those who understand the particular needs of people with literacy problems?

Ron Gould: That is an interesting question. You raise a fundamental issue. Every proposed change to any stage or aspect of an election process must be tested in order to determine what confusion it may cause, as the approach may not be traditional, and to determine the easiest way in which voters can understand the story. Once proposed changes have been examined, the approach that is determined must be backed up by a lot of voter information and education.

An alphabetical listing is not confusing if used in one way, but becomes confusing when it is used to vary the approach. I give as an example the use of party descriptions on the regional ballot papers. There was so much flexibility that different approaches could be taken, including the use of the party name. That caused confusion for voters. Such an approach may be useful for positioning on the ballot paper, but it certainly does not take into account the voters' interests. If candidates are grouped by party—in local government elections, for example—the determination should be that the voters' focus should be on the parties. In other words, the campaigning should be by party, and people will focus on party interests being most important as opposed to individual candidates. In that case, the parties would probably appear in alphabetical order and candidates would be grouped by party. There can be variations on the theme, but it is important to determine well in advance what the voter's focus will be, the most logical approach from the voter's point of view, and what the voter will easily recognise when they vote in the polling booth.

Johann Lamont: Is it fair to say that those who promote STV systems do so on the basis of fairness to political parties? Therefore, given that the test of the system is the extent to which it results in fairer shares of votes for the political parties, it could reasonably be expected that the ballot paper should give parties a place, as opposed to pretending that a party election was not taking place.

Ron Gould: I am not sure of your question. In a single transferable vote system, votes are, obviously, transferred from candidate to candidate as opposed to from party to party. One issue that was raised with us during our consultations was that there was a pattern whereby, when a party had more than one candidate on the ballot paper, the candidate at the top of the list would always have the favourable result and the second candidate would pay the price. It appears that if the party focus is important in local government elections, party candidates should be grouped by party name.

Bob Doris: Good morning, Mr Gould.

Will you say more about the Cragg Ross Dawson research or the test driving of potential ballot papers? I understand that that research was commissioned by the previous Executive in September last year and involved four trials of 25 ballot papers. That seems to me to be wholly inadequate. Perhaps the poor quality of the research was one reason why the number of spoiled papers tripled under the single transferable vote system in the new elections. Indeed, the Local Government and Transport Committee acknowledged the problem in December last year.

You said earlier that the buck stopped nowhere. On a more positive note, rather than talking about the failures of the previous Executive, we need to make sure that any future governments get it right. If we had a chief returning officer, would the buck stop with them? Would they be independent of the Scottish ministers but accountable to the Scottish Parliament?

Ron Gould: I will deal with the Cragg Ross Dawson report first. As you are well aware, there were two reports, one of which was conducted by the Electoral Commission, and the second of which was done for the Local Government and Transport Committee and the Scottish Executive.

The Cragg Ross Dawson report was on the STV ballot and, interestingly, it suggested that the clear overall preference was for alphabetical listing by party name rather than by candidate, and for the party name to be in an additional column to the left of the candidate's name. Although the listing resulted in the party name being to the left of the candidate's name, the listing on the ballot was by candidate name.

I am not sure how that evolved after the Cragg Ross Dawson report but, given the lateness of the decisions and the technical difficulties, I assume that the contractor might not have been able to do what was asked. I am aware that, because of the late decision, the contractor was unable to group candidates across from the party names as was recommended in the report.

I have some concerns. Despite the fact that, statistically, 100 people is adequate, given a brand new system and combined ballots and so on, the work that was done did not consult enough

individuals, and the results were not followed up or tested sufficiently.

On the question of accountability, if you give a manager the responsibility and authority to carry out all aspects of the operational side of the election and apply the legislation, you can focus on them and the buck will stop with them. That individual—I am talking about a chief returning officer—will have authority over the 32 returning officers who, at the moment and on paper, have responsibility for all aspects of the operation in their jurisdiction, but have no control or authority. On many issues, responsibility and power is out of their control, so it is difficult or impossible to hold them responsible. With a chief returning officer, the responsibilities of the 32 returning officers would be more clearly defined, they could be held accountable, and they would be much more comfortable in such a situation.

David McLetchie: In your experience, do STV systems of voting, such as the one that we had for the first time in our local government elections, tend to produce habitually a higher level of spoiled or wasted ballot papers than a traditional first-past-the-post system does? Is the fact that we had three times as many spoiled papers simply a function of the novelty of the system, or is it the result of design failings or lack of voter information?

13:30

Ron Gould: I do not have statistics on that at my fingertips, but my impression and understanding is that STV systems do not necessarily have higher rates of spoiled or rejected ballots. One area in which that matter could be determined or checked quickly is Northern Ireland, which has had STV for at least two elections—I have attended two such elections there. Again, we return to the point that the problem with STV in the elections in Scotland was a multiple problem, arising from the combination of a traditional system with which people were familiar, a new system that arrived late and a ballot that was defined very late in the process, which meant that the hard-nosed training and voter information was not as comprehensive as it should have been. My expectation is that, at the next election, whether it is combined or decoupled, the rate of rejected ballots will drop significantly.

David McLetchie: Is there a standard that we should aim for? For example, if the rejection rate is 0.6 per cent, with whatever system, does that mean that by and large voters understood the system and there were no problems with design or information? Is that the sort of level that you aim for? If the figure was 1 per cent, would that be a problem? The rate was 1.8 per cent for the local government elections and 4 per cent for the

Scottish Parliament elections. What standard should we set for the results that the system should achieve, to allow us to judge the quality of the system?

Ron Gould: There is an existing standard in Scottish elections. Looking back to 2003, the rate of rejected ballots for the local government election was about 0.64 or 0.66 per cent. In the parliamentary election, the rejection rate for the regional and constituency ballots was about 0.64, 0.65 or 0.66 per cent. Less than 1 per cent is a normal acceptable level.

David McLetchie: I want to follow up on the questions about the Cragg Ross Dawson research findings. The findings on design aspects of the local government ballot paper—in particular, that of listing by alphabetical order or by party group— were discussed in a parliamentary committee. As a member of that committee at the time, I am not aware that spoilage was a pertinent issue in those discussions. Similarly, I am not aware that the discussions on the research on the Scottish Parliament elections focused on spoilage. However, as your report states, the research suggested that a 4 per cent spoilage rate would occur, which is in fact what happened in the Scottish Parliament elections. However, the spoilage rate did not seem to be an issue that came out of that research. Is that a fair comment?

Ron Gould: Yes. Interestingly, the Cragg Ross Dawson study for the Scottish Parliament election, which involved 100 people, found a 4 per cent spoilage rate, which equated to the reality of the election rejection rate. However, a 4 per cent spoilage rate out of 100 people is four people. The Cragg Ross Dawson study for the local government elections commented that "only a handful" of people spoiled their ballots. In my view, a handful is four or five, which again is 4 or 5 per cent. In both cases, Cragg Ross Dawson underrated the importance of that level of spoilage, because it used such a small sample in the first place. That was not pursued by either the Scottish Executive or the Electoral Commission, because Cragg Ross Dawson did not express a high level of concern about it.

David McLetchie: But, presumably, Cragg Ross Dawson used that size of sample because that is what it was resourced for and commissioned to do. In fairness to Cragg Ross Dawson, it might not have appreciated that the result was statistically significant, as opposed to statistically insignificant, because it did not have enough numbers to work with. Is that fair?

Ron Gould: I would not presume to try to figure out Cragg Ross Dawson's rationale, or whether it was contracted to take a sample of only 100 people or whether that was its decision. My understanding is that, from a statistical point of

view, 100 people is a reasonable sample. If that is the case, the rejection rate should be a reasonable area for concern. I cannot out-guess Cragg Ross Dawson's thoughts.

David McLetchie: So, you think that the rejection rate, even based on the sample that was used, should have been given more prominence in the findings of the research reports and that those who received the reports should have paid more attention to it.

Ron Gould: Certainly, in considering the papers for the Scottish Parliament elections—I know that the rejection figure was 4 per cent—the Electoral Commission, which is supposedly a professional organisation, should have said immediately, "There is something wrong here. We'd better take a closer look." From that point of view, the Electoral Commission was remiss. As I said, I do not have the exact figures for the local elections. However, it is a matter of concern in either case.

Alasdair Allan: Thank you for joining us, Mr Gould. Will you comment further on the potential benefits for the local elections of decoupling local and national elections? It has been suggested in some quarters that if the two elections were decoupled, the argument for having both elections administered by the same Government would lose strength. Do you think that the other side to the argument is that, depending on what electoral cycle is chosen, the potential for one election to catch up with the other, or for extraordinary general elections—not that we plan to have any imminently—to intervene means that the two elections could clash? Does that add strength to the argument for the simplicity of having two elections administered by one Parliament or Government?

Ron Gould: Let me give an answer in two segments. First, the main reason that I recommended decoupling the elections was to give deserved recognition to the importance of local government elections. Technically and operationally, decoupling is not necessary; with some modifications to approach and management, the two elections could be run smoothly and without the major problems that were encountered this time. There are options for that. However, holding an election is not just about getting the vote out of the way; it is about getting the message across. I do not believe that the local government message can get across when the local government elections are competing with the parliamentary elections.

Secondly, the running and management of an election has to be done locally. A Scottish election cannot be run from Northern Ireland, Wales and London; it has to be managed and run in Scotland. Whether the elections are to Parliament or to local government, the election process must be managed in Scotland.

Who manages that process and how is that done? The returning officer has always been responsible. Sometimes that role has different titles but, often, those titles are held by the same person. We need people who know how to run an election. Why should two different groups of people—two bodies—manage an election process? That makes no sense and is costly and unwieldy. If we are talking only about running an election, which means applying the law of whichever jurisdiction is responsible, it does not matter whether the same person or group is responsible. What is important is that those people are professionals and can manage the process.

Even with decoupling, the management of elections should rest with and in Scotland. The direction of the groups that are involved and the financing of an election would rest with the body that was responsible for the legislation for that election and which had the legislative authority. In a nutshell, that is how I see the situation.

Alasdair Allan: You say that Scottish elections cannot be run from London. Does that apply to legislation as much as to administration? In principle, would it help if returning officers did not attempt to serve two masters?

Ron Gould: I do not want to get into the political aspects. What is important in electoral management and operations is communication and consultation, as was the case for the 2007 elections, on which close consultation and co-operation took place between the two Governments that were involved. That is essential for the future. Devolution—the transfer of legislative authority—is for negotiators on both sides to work out in deciding what is in Scotland's best interests.

The Convener: I seek further clarification of points that have been made. Decoupling could have unintended consequences. When you made the recommendation on decoupling, was its impact on voter turnout considered? I understand that we do not know exactly what would happen, but we know that local government elections had a lower turnout historically and that they have benefited from being combined with an election that attracts a higher turnout.

Was any consideration given to voter fatigue as a result of the Scottish Parliament, local government, European Parliament and UK Parliament elections? How would we arrange the cycle of elections? I have a couple more questions, but I will ask them after your response to those questions.

13:45

Ron Gould: The voter turnout question dogs almost every jurisdiction—voter turnout has dropped pretty well worldwide. My feeling about voter turnout concerns quality versus quantity. If people do not want to vote, and if they do not feel that the issues, the candidates or the parties are important, how important is it that the number of voters keeps going up?

There is an easy solution in the Australian approach. It is mandatory for Australians to turn up at the polls. They do not have to vote, but they have to turn up on polling day or exercise their votes in other ways, otherwise they get fined. If high turnout is important, that is a simple solution. However, I think that it is more important to stimulate and encourage voters to understand the importance of the issues, the candidates and the election, and to get them to turn out as much as possible.

There is another interesting element. When we think of voter turnout, we think of the turnout at the polls. However, as I mentioned, there has been a decline in the turnout at the polls as well as in total voter turnout. If you look carefully at the turnout figures in Scotland, you will see that the turnout for the postal vote increased to 11 per cent of the total number of voters. If the total number of voters has declined, that means that the turnout at the polls is declining whereas advance polling is increasing. In my view, if turnout is a concern, the focus should be on advance polling. We made a couple of recommendations on that in our report. The first was to have advance voting at the office of the returning officer; the second was to have voting in advance polls in shopping centres, and so on. In those ways, voter turnout will be increased.

I considered the question of voter fatigue and suggested that, if the elections were decoupled, there should be a two-year gap between the local government election and the parliamentary election. The issue of voter fatigue also applies to the interest of the voters in the issues at any particular election and in the candidates, who may be popular or controversial. Some of the onus is on the parties to encourage the voters to turn out. It is not unrelated to the question of voter turnout and the initiatives that can be pursued, such as advance polling and voting at the office of the returning officer, while continuing with postal voting. Any such initiative that facilitates voting for the voter will increase turnout, or at least maintain the present voter turnout.

The Convener: Thank you—we will have an interesting debate on compulsory voting and how a two-year gap between elections could be ensured. Currently, that would allow local government a six-year term, which would be unprecedented. Is there any way in which we could manage that?

Ron Gould: I suggested the two-year gap to avoid voter fatigue, but the gap could be one year, three years, a month or two days. The present situation of local government needs to be taken into account. Will it have a two-year term or a six-year term, or a seven-year term or a three-year term? There are all sorts of permutations and combinations regarding the transition. As I understand it, the parliamentary elections are pretty well fixed at the moment. In the report, I have thrown out a number of considerations and options recognising that the reality must be dealt with locally, not in a review report.

The Convener: There is a concern that, in terms of the STV vote for local government, the threefold increase in failed ballot papers could be the tip of the iceberg. Some of us are concerned that the system might have masked the level of failure in that ballot. You and your inquiry team had access to those ballot papers. Has any work been done to establish patterns that would reveal underlying problems to do with an unidentified failure arising from people not understanding what to do? Papers with one X went through the system, but that would not be publicly indicated as a failure.

On the service that is provided by the chief returning officer and 32 returning officers across Scotland—the service is carried out at the moment by the chief executives of local authorities—do you think that running elections should be a full-time job? How far would you go down the road of professionalisation of that service?

Ron Gould: On the STV ballot, the review examined only the face of the rejected ballot images. We have no statistics or information concerning any valid ballot. Of course, any voter who placed one X on an STV ballot had a valid ballot paper, so that would not appear in our analysis.

I think that it can be expected that a number of the valid ballots were marked with an X or, perhaps, only one number. As I mentioned earlier, the system and approach were brand new. Voters were unfamiliar with what to do and might not have taken full advantage of the system. That might have been one of the factors that affected the results of the STV ballot, and I suggest that a lot more voter education and information should have been provided for that count. Serious consideration should be given to making much more active use of the information officer for the next round of STV elections, to reinforce the approach to marking the STV ballot and ensure that full advantage can be taken of that system.

On the question of full-time returning officers, I do not want to jump to conclusions. However, if there were a review and the responsibilities of the returning officer were to be expanded to include all

electoral functions, including the work of the registration officer, responsibility for polling stations, polling divisions and so on, there would probably be a strong argument for having at least one individual in each council who was a full-time returning officer, who would be responsible only for that role.

Kenneth Gibson: I think that the actual level of confusion in both elections was masked by the fact that there were officers from each local authority in the polling places to advise people. I am concerned that, if those officials had not been there, the level of confusion among voters would have been significantly higher. My understanding is that the percentage of spoiled ballot papers in STV elections in Northern Ireland, which has had the system for a number of years, is routinely in the order of 3 per cent.

You talked about turnout, Mr Gould. I am interested in what you say about that. Australia has more elections than we do and compulsory elections ensure that people there take more of an interest in politics.

I want to talk about the confusion that occurred before voters got to the polling stations. We have all seen the ballot papers with umpteen names on them—up to 23 in some areas. In Scotland, three people can register as a political party, they get a free leaflet delivery from the Post Office and they do not have to pay a deposit. That means that voters get perhaps 15, 20 or 25 leaflets through their letterboxes. Does that encourage voter fatigue and confusion and perhaps stop people going to the polling station in the first place?

Ron Gould: I believe that the involvement of council staff was highly important and that they played a key role in supporting the returning officers in virtually every case. I continue to argue that council involvement with and support of the returning officer, whether he or she be full time or otherwise, is essential.

The problem is that, in some cases, the returning officer is the chief executive of the council, who has a full-time job and must either delegate that job to someone and abandon it for a period of time, or delegate the returning officer functions to somebody else. It is much more important to respect the process by having the chief executive of the council do the job for which he or she was hired and having a professionalised returning officer, preferably full time, as part of the support to that executive officer and the council.

You mentioned the number of candidates. That brings the criteria for being officially registered as a political party or a candidate into the discussion. On the one hand, we must give credible new parties the opportunity to emerge; on the other hand, opportunities for the system to be taken advantage of for personal gain or interest, as

opposed to valid political development, should be restricted. Most countries face that dilemma.

It would be advantageous to take a hard look at the current legislation on being officially registered and on the ballot for local government elections. It would also be advantageous to explore some of the alternatives, such as refundable deposits, a certain level of verified signatures and other ways of presenting the party's mandate and platform. It is not easy to make a determination on the matter, but all sorts of options can be explored and there are ways of tightening things up without prejudicing the emergence of new and valid parties or candidates.

14:00

Jim Tolson: Several months before May's ballot, several other members and I took part in a trial for electronic counting. As the system was new to Scotland, we queried certain issues, but the trial, on the whole, seemed to be successful. However, despite assurances that it had worked well elsewhere, the system in most areas ground to a halt on the night and did not cope at all well with the volume of votes that it had to deal with. In your view, what were the main problems with the e-counting process, how should they be addressed, and should votes in future be carried out electronically?

Ron Gould: On your last question, under STV, applying the formulas for allotting seats is a very complex business and you would not want to have the kind of manual counting system that they have in Northern Ireland, where the form of STV that is used is much less complex than the one that is used in Scotland. As far as STV is concerned, electronic counting is important as it can allow results to be arrived at much more smoothly and quickly than any manual count can manage.

However, most of the problems with the electronic counting system in the Scottish Parliament elections can be attributed to the lateness of getting it into place, which resulted in last-minute decisions and alterations to the count—for example, in the parliamentary ballot in Glasgow and the Lothians—that affected the system. Moreover, the link between the ballots cast at polling stations and the postal ballots was out of sync. The postal ballot packs also slowed down the whole process because the papers had to be folded. The scanners could not accommodate the fold and, in some cases, the papers jammed the system.

The count went down in some—though not all—locations but, overall, the electronic count had enough successful aspects to warrant its continuation at the next election. However, that does not mean that the same contractor would be ideal for the job or that the same approach or type

of scanner would be appropriate. The system needs to be examined very closely and tested much more.

Other electronic counting systems have had the same difficulties and caused the same headaches the first time they were used, but those issues have been resolved. I know, for example, that some time ago London Elects experienced many of the problems that were experienced in the Scottish elections. However, many of those have now been resolved. As I said, I believe that the electronic count is important and valuable and can work smoothly. Now that there is enough time, the systems can be tested thoroughly based on known ballots and known structures, including the postal ballot.

Another element that I want to inject into the discussion—this was not in your question—is that I have a serious problem with an electronic count that requires the secrecy of the vote to be violated. An electronic count that requires voters to carry their ballot open from the place where they mark it to the ballot box raises a serious problem. Even though people were perhaps encouraged to turn the ballot paper upside down, I gather that they had to turn it right side up to put it in the box for the scanner. It should be possible to bring the ballot paper to the ballot box without its being visible, regardless of what the individual does. In my view, there are solutions to that problem even without requiring people to fold the ballot paper. That whole aspect needs to be examined without abandoning the electronic count.

Johann Lamont: In our examination of the process, we have not so far acknowledged the obvious disadvantage that arose from the fact that one X on the local election ballot paper did not constitute a spoiled ballot whereas three Xs did. It seems to me straightforward that that resulted in a disadvantage to those parties that put up more than one candidate in any ward. Will further work be done on that issue? Do you accept that more problems arose than have been revealed by the number of spoiled ballot papers because candidates were at a disadvantage if their party put up more than one candidate? I would welcome your comments on that.

A second disadvantage concerns the information officers and the education programme. From my recollection, there was a correlation between the level of spoiled ballots and the level of deprivation in communities. There were higher levels of spoiled ballot papers in places such as Glasgow than in other parts of Scotland. If that is the case, what recommendations would you make about the nature of voter information, given that it is not possible to assume the same level of education across the board or to assume that everyone can absorb information in the same

way? Do you accept that such a disadvantage arose? Did you do any work with information officers? Anecdotally, I heard from my constituents both that the information officers were helpful and that they were singularly unhelpful. I do not know what the definition of the information officer's role was, but it certainly did not seem to be about providing information to voters. Did you do any kind of sampling on that issue and speak to those who carried out that function?

Ron Gould: I said that voters were an afterthought, but so were the information officers. They were a last-minute desperate attempt to try to resolve the problem of lack of voter information and education, especially on how the ballots should be marked. As a result, voter information officers were not appointed according to standard criteria. That is one of the recommendations in the report. As a result of their wide variety in age and competence, the role that information officers played varied from invaluable to non-existent, according to the reports that we received. The information officer can definitely play an extremely important role in remedying the problems that arose this time round.

The University of Strathclyde analysis indicated that, in disadvantaged areas of Glasgow, the rejection rate for ballots was much higher. Our findings were similar. That higher rejection rate was perhaps partially due to disadvantage and obviously partially due to the fact that, in Glasgow and the Lothians, the arrows had been removed from the parliamentary ballots. The challenges in those areas can now be recognised, certainly with regard to training. The standard voter information programmes and the roles of the information officer could be enhanced.

One rather interesting thing that a few people said in interviews was that the Scottish voter is not accustomed to having people tell them how to mark their ballots and vote. A number of people did not take advantage of the information officer and perhaps made errors on their ballots that they would not have made if they had done so. There could perhaps be a focus on support for voters and on encouraging them to seek that support and clarification, to ensure that what they do does not result in their losing their vote.

Bob Doris: You have spoken about challenges that we have to deliver on. You spoke earlier about having a chief returning officer for Scotland and the professionalisation of the 32 returning officers. You have said that the system cannot be run from Northern Ireland, Wales or London; you said that it should be run from Scotland. You were careful not to delve into politics, and I want to ask you your opinion as an independent, non-partisan academic.

On page 111 of your report, in section 9, "Conclusions and recommendations", you state:

"it cannot be guaranteed that these electoral processes will be conducted effectively, due to the fragmentation of the legislation and decision-making in this context. As a result, we would recommend that exploratory discussions take place with a view toward assigning responsibility for both elections to one jurisdictional entity. In our view, the Scottish Government would be the logical institution."

Could you clarify for us that that is the view that you reached as an independent academic?

Ron Gould: Yes. Let me move back for a moment. Earlier, I separated out the management of the election from the legislative responsibility for it. On the management of the election, I would argue strongly, for operational, academic, political or whatever other reasons, that one management team should be located in Scotland and should manage the election from there.

Issues around responsibility for the legislation then arise. When I mentioned the "fragmentation of the legislation" in my conclusions, I was referring to the fact that the Westminster legislation—although I say this without regard to where the legislation is—is so fragmented, as is described in the legislative section of the report, that it needs to be consolidated. The fragmentation that I was referring to was not necessarily fragmentation between the Scottish Government's responsibility for certain legislation and Westminster's responsibility for other legislation. That is not what I was focusing on or referring to; the fragmentation that I was referring to was in the context of all the Westminster and Scottish Government legislation that now exists. It needs to be pulled together and rationalised for the purposes of running an election. The micromanagement that tends to occur, and which occurred at the last election, ought to be minimised.

Kenneth Gibson: You said at the beginning that you did not want blame to be attached. I think that that is appropriate. What do you believe the balance of responsibility between ministers and political parties should be for future elections? Do you accept the analogy that my colleagues have drawn that it is about as sensible to run a Scottish parliamentary election from London as it is to run a Canadian election from Washington?

14:15

Ron Gould: For many years, while I was deputy head of elections for Elections Canada, I also chaired a political parties committee. Election managers are often accused of a lack of political sensitivity, and I agree with that. It is critical that there is a continuing input and a flow of communication between the parties' representatives, wherever they may be located,

and the chief returning officer or whoever else is managing the elections. When I talked about not micromanaging, I was referring more to the legislation. With regard to the decisions by election managers that have an impact on political parties, the parties need to bring the political reality to the administrators and say, "If you make that decision, this is what the impact is going to be—it is not a realistic decision." The parties are critical in every step of the process—I will leave it at that.

The Convener: As the convener, I have the privilege of asking the last question—I think that I have just established that precedent. It is 16 minutes past 2 now, and we assured you that we would be finishing around that time. I opened the session by reading out your words, and it is important that I also close on that. There is a big challenge for politicians in Scotland. You reminded us of that by stating:

"Almost without exception, the voter was treated as an afterthought by virtually all the other stakeholders".

I believe both that it will be difficult for politicians and that our future electoral systems and processes are too important to leave to our politicians. In taking forward your recommendations, how do we ensure that the needs of voters are met? How should we consult beyond the normal channels of communication? How do we achieve the objectives that you have given us through your recommendations concerning the voters?

Ron Gould: I hope that there will be some sort of a mechanism—a committee or round-table—to examine each of the aspects of the election. For example, there was a huge debate over the design of both the local election and the parliamentary ballots. It is important that the parties play a role in that, but the various options for party preferences need to be clearly defined, as does the rationale for why the party feels that candidates should be grouped this way or that. That needs to be linked to whether it is technically possible—if we assume that there is an electronic count—to do that on a ballot. If it is, the impact on the electorate must also be considered—does the voter find it easy to understand, or do they find it more logical to approach the paper by candidates and not groupings? That is where the intensive work needs to be done.

There should be three stages for the consideration of the various positions and approaches of the parties, or other interests—such as an election manager—concerning, for example, the design of postal ballot packs. The first is party preferences, the second is the technical and managerial realities of carrying out each of those preferences and the third is finding out what the voter thinks—how it impacts on the voter and how easy it is for the voter to understand. That

research needs to be very comprehensive and not just cover 100 people.

The Convener: Thank you for all the time that you have given us today. We ask you to pass our thanks to the University of Ottawa, which has helped us to facilitate the sessions. We found the session worth while, and we hope that you have a safe journey home.

Ron Gould: Thank you—it has been a pleasure for me. If there is anything that I can do to assist the committee or to support its work, please do not hesitate to let me know.

The Convener: We welcome that offer.

Meeting closed at 14:20.

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