

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 8 October 2008

Session 3

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

25th Meeting 2008, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Alasdair Allan (Western Isles) (SNP)

COMMITTEE MEMBERS

*Bob Doris (Glasgow) (SNP)

Patricia Ferguson (Glasgow Maryhill) (Lab)

*David McLetchie (Edinburgh Pentlands) (Con)

*Mary Mulligan (Linlithgow) (Lab)

*Jim Tolson (Dunfermline West) (LD)

*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)

Paul Martin (Glasgow Springburn) (Lab)

Alison McInnes (North East Scotland) (LD)

Margaret Mitchell (Central Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Jackie Baillie (Dumbarton) (Lab)

David Cullum (Scottish Parliament Clerking and Reporting Directorate)

Robert Marr (Scottish Parliament Legal Services Directorate)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 2

Scottish Parliament

Local Government and Communities Committee

Wednesday 8 October 2008

[THE CONVENER *opened the meeting at 10:00*]

Interests

The Convener (Duncan McNeil): Good morning and welcome to the 25th meeting of the Local Government and Communities Committee in 2008. I remind everyone to switch off their mobile phones and BlackBerrys.

Under agenda item 1, we welcome Mary Mulligan MSP to the committee and invite her to declare any relevant interests.

Mary Mulligan (Linlithgow) (Lab): Thank you, convener. I do not have any relevant interests to declare at this time. However, I am delighted to be a new member of the Local Government and Communities Committee.

The Convener: We welcome you here.

Disabled Persons' Parking Places (Scotland) Bill: Stage 1

10:00

The Convener: Agenda item 2 is oral evidence on the Disabled Persons' Parking Places (Scotland) Bill at stage 1. I welcome our witnesses this morning: Jackie Baillie MSP; David Cullum, clerk team leader at the Parliament's non-Executive bills unit; and Robert Marr, assistant legal adviser in the Scottish Parliament directorate of legal services.

I invite Jackie Baillie to make a brief opening statement, then the committee may ask questions.

Jackie Baillie (Dumbarton) (Lab): I am very grateful to the committee for giving me the opportunity to attend today to speak about my bill. I also thank you for the time that you have already spent scrutinising it.

As you will be aware, the main policy objective and general principle of my bill is to prevent disabled persons' parking places being occupied by those who are not entitled to use them. My bill does that by seeking to ensure that enforcement action can be taken. It is worth putting the proposals in context—there are 1 million people in Scotland who would consider themselves to be disabled. Of that number, about 250,000 people are entitled to a disabled person's parking place, of whom 96,000 are wheelchair users. It is not a marginal issue.

According to a baywatch survey in 2006, no accessible parking places were available for disabled shoppers in more than a third of car parks because of the abuse of such spaces. That was a rise of about 28 per cent from the 2005 figure. Capability Scotland conducted a mystery shopper survey in 2003. The mystery shoppers visited 118 stores in just over two weeks and found that 44 per cent of disabled persons' parking places were occupied by vehicles in which a blue badge was not displayed.

The bill is a simple measure that uses existing road traffic and parking measures. It assists local authorities in their approach to managing disabled parking. It is important to set the proposal in a wider context. We need to improve disabled parking provision by doing three things. The first is to prevent the abuse of disabled parking bays; the second is to reform the blue badge system; the third is to improve the process for local authorities. I have attempted to make a small contribution by delivering on the first of the three, but it is for the Scottish Government and Westminster to deal with the others.

At the moment, the majority of disabled parking places are advisory, particularly in residential areas, and advisory bays are not legally enforceable. As the committee has heard from all witnesses, particularly from the representatives of disability groups, the spaces are frequently used by unauthorised drivers, which prevents disabled people from being able to access them. In turn, it prevents them from being able to access essential services. You have heard about the scale of the abuse of on-street and off-street parking places from the disability groups and from Asda. Recent Government research highlights the problem in relation to off-street parking.

The Government's helpful memorandum states at paragraph 10:

"Despite current legislation being in place to allow parking places for disabled drivers to be enforceable, there is a high level of abuse ... resulting in there being no spaces for genuine users. The main problem appears to be local authorities creating 'advisory' spaces".

In respect of the abuse of the blue badge scheme, you heard from the Equality and Human Rights Commission that

"the draft bill took the right approach in separating the important—related, but separate—issue of abuse of the blue badge scheme from abuse of designated parking bays."

I am sure that you will agree with this:

"we must not end up punishing by default disabled drivers and limiting their parking options as a result of abuses that take place elsewhere in the system."—[*Official Report, Local Government and Communities Committee*, 2 September 2008; c 1068.]

I have made abundantly clear my desire for the blue badge scheme to be reformed, but that is more appropriately undertaken by Government than through a member's bill.

I note from his evidence last week that the Minister for Transport, Infrastructure and Climate Change will take note of any suitable action points that come out of the Department for Transport's review of the blue badge scheme in England and Wales. I also note that it is open to the Scottish ministers to take action themselves.

Like the minister, I suggest that the committee look closely at the costings that have been provided by local authorities and consider why Glasgow City Council believes that the scheme will cost so much more per bay than Fife Council expects it to cost. At no point in the financial memorandum do I state that the cost could or should be found from existing budgets, although I make the point that West Dunbartonshire Council obviously feels that the issue is serious enough to have done so. Under the bill as currently drafted, the costs could be split over three years. Year 1 would see the administrative costs from identifying the bays; year 2 would see further administrative

costs arising from the promotion of the orders; and costs for signage would be covered in years 2 and 3.

Some evidence from local authorities has suggested that contacting owners of car parks to persuade them to make their disabled bays enforceable would be too time consuming. I make it clear that councils would be required to contact only the owners of car parks to which the public have access. All the bill requires them to do is make contact. It would be sufficient for them simply to send a letter to the car park owners, reminding them of the importance of meeting their disabled customers' needs and stating that if they wanted to make their bays enforceable, the local authority could assist. The bill would not require them to do anything more than that. If the owner did not want to take up the offer or preferred to undertake their own enforcement, so be it.

The limited requirement to write a further letter every two years is included in the bill because perceptions alter with time and owners change, as do people's views. The minister has stated that he would be surprised if car park owners did not want to co-operate. Asda and the car parking operators have all said that owners without their own regime would have nothing to gain by not co-operating and that they should really welcome local authorities' involvement and work with them. The Equality and Human Rights Commission has said that the scheme would be like pushing against an open door and that there is an enormous amount of good will towards it in parts of the private sector.

Evidence from local authorities suggests that the bill will be costly to enforce. It has always been the intention that enforcement, particularly in residential areas, will be reactive and targeted at the areas that experience the most abuse. The committee received written evidence that a police officer told a disabled driver that they were unable to ask a driver who was not displaying a blue badge to remove his car from a disabled parking place because the bay was only advisory. The bill will ensure that the police have the necessary power to do that.

Asda has shown, in its evidence, that reactive and random enforcement works well. It commits 12 hours a month per store for that, targeting stores where the number of reports of abuse is high. Asda believes that people's attitudes have been seen to change when they know that they risk a penalty, too.

Asda has stated that its enforcement scheme allows flexibility, on a case-by-case basis, to deal with those who park without displaying a blue badge. Although I see the attraction of such flexibility, the danger may be a lack of consistency in the application of that enforcement. It was suggested last week that it would be useful if

enforcement under the bill could be similarly flexible, but I stress that the bill would not alter current enforcement regimes at all. I am sure that the police, traffic wardens and parking attendants would be able to ask people to move their vehicle rather than issue a ticket in the first instance if they wished to do so or were so instructed by the relevant authority.

The difference is that tried and tested statutory appeal mechanisms are in place to hear appeals via the courts or the parking adjudicator. As the committee heard last week—a point in which David McLetchie was very interested—unregulated civil enforcement has no such statutory mechanism. In fact, judging by the evidence that has been obtained by the committee, legal opinion is still being sought on the basis of the charges that are issued in that way.

I have written to the convener with clarification on other issues that have arisen during the taking of evidence, and my letter has been circulated to members. I hope that that is helpful. I hope that, in coming to a conclusion not just today but after your consideration in the weeks to come, the committee recognises the small but significant difference that the bill could make to the lives of disabled people. I am happy to answer any questions that members may have.

Bob Doris (Glasgow) (SNP): I want to ask about the costings and the possible financial pressures that the bill could place on local authorities. You said that you do not expect the money to come from existing budgets. Given the timescale for implementation of the bill, is it fair to say that we are talking about a future spending review, future single outcome agreements and future financial settlements for local authorities? We are not talking about putting under pressure the £35 billion that the 32 local authorities are currently receiving to provide existing services.

Jackie Baillie: We should acknowledge that some local authorities are already making provision. The one that I quote most often is West Dunbartonshire Council, which has said that because the matter was so serious in its area, it wanted to move ahead, identify all the bays and then start and complete the process of a traffic regulation order using its own budget. It did so not knowing whether the bill would appear and in the full knowledge that it would be responsible for the costs of installation. Some local authorities are doing that within their own budgets.

I will take a little time to explain how we arrived at the figure of £1.7 million that is in the financial memorandum. We spent a lot of time considering the costs. Fife Council identified a comprehensive cost of £119 per bay, which covered everything from the processing of the regulation order right

through to the installation of the bay. Glasgow City Council says that a similar process would cost £466. A real issue exists about the wide disparity throughout Scotland. We therefore used the real-time figures from West Dunbartonshire Council, which has designated 410 bays at a cost of £5,000—so £12.20 per bay—and the costs that Fife Council gave, which it subsequently confirmed were accurate. It is for the committee and, with respect, ministers to understand why that huge disparity exists. The bill may have the unintended consequences of driving down costs and showing a need for local authorities to learn from one another about best practice so that we have much more efficiency in the system.

You ask about phasing. The requirement in the bill is that, by the first year, local authorities will have identified where their advisory bays are and started the order-making process. It is therefore likely that the order-making process would not be only in year 1, but would also fall into year 2. We anticipate that the installation costs would then fall between years 2 and 3. Therefore, local authorities could spread the cost. I understand that authorities want to plan for the capital and revenue costs that will be incurred.

We consider our figures to be robust. The financial memorandum states clearly that there is a margin of uncertainty. I have asked the Scottish Government parliamentary questions about the issue ad nauseam, and have been met with similar responses—that it does not collect the information centrally. As we are not clear about the number of advisory bays and enforceable bays and as we cannot tell the actual costs because there are such huge variations, there is bound to be a margin of uncertainty. We have highlighted that to the Finance Committee.

In August 2006, we wrote to all 32 local authorities in an attempt to ensure that we got accurate information. My view is that the figure of £1.7 million stands. The committee will want to consider the obviously opposite view that has emanated from Glasgow City Council. I simply say that if Dundee City Council thinks that it can convert 1,000 advisory bays into enforceable ones at a cost of £196,000, we must ask why South Lanarkshire Council, which has only 100 more bays than Dundee, thinks it will cost £1 million and why Glasgow City Council, which has 4,500 advisory bays, thinks it will cost £2.1 million. There are huge discrepancies. Local government could learn from best practice.

Bob Doris: I agree that there are unreliable figures that must be tested and put under more scrutiny. I was not making a judgment on the figures that you have provided to the committee; my question was about what happens when we come up with a set of robust figures. You talk

about existing budgets, but if the bill would be heavy on local authorities' capital expenditure in year 2 or 3 rather than year 1—when they would just identify where the advisory bays are—I want to know when year 2 or year 3 would be. Where do you see it in the timeline? We are now scrutinising your bill, but when would year 2 kick in? I am trying to tease out whether we are talking about local authorities' future existing budgets or their current money. Are we talking about three or four years in the future? What is the timescale?

10:15

Jackie Baillie: The timescale would be three years; I do not envisage it going much beyond that. I think that the figure we have provided—£1.7 million—is robust. You need to reassure yourselves why it costs so much more to paint a disabled parking bay in one area of Scotland than in another, given that the cost of labour and paint and the measurement of the bay are fairly standard. There might be lessons to learn across the board.

I am looking for the minister to move a financial resolution in respect of the bill, as is customary. The standing orders of the Parliament provide that if a bill is passed at stage 1, the Government is required—or not, as the case may be—to move a financial resolution. At last week's meeting, I reminded the Minister for Transport, Infrastructure and Climate Change of the commitment that Angus MacKay made in the first session of the Parliament—I suspect that it was in relation to the Abolition of Poindings and Warrant Sales Bill, which was before the Parliament at the time—that if a bill were passed at stage 1, the Scottish Executive would move a financial resolution in respect of the costs of it and that it would not go against the will of Parliament. I hope that the minister will reflect on that. He certainly seemed to acknowledge it in his evidence to the committee last week.

Bob Doris: The minister certainly said that he would reflect on the comments that you made about that.

We are living in a new world in which we are scrutinising the first wave of single outcome agreements. Do you think that single outcome agreements have a role in respect of the Scottish ministers reviewing with local authorities how they are progressing with new statutory obligations, should the bill be successful?

Jackie Baillie: Single outcome agreements present one opportunity for that. As we start to see those agreements emerge throughout Scotland, there might be stark variations in what local authorities think is important in their area and what is contained in their agreements, which might

include specific local projects. The bill would require local authorities to report to ministers annually on progress made, such as the number of advisory bays and all the other issues that we regard as important in enabling us to measure progress.

Alasdair Allan (Western Isles) (SNP): As you can probably tell, there is broad sympathy in the committee for the aims of your bill, but we are keen to find out more about local authority involvement. Bob Doris referred to Glasgow City Council. I appreciate that you are not here to speak for Glasgow City Council, but it is difficult for us to overlook the fact that the figure that that council came up with is greater than what you have allocated to implement the bill nationally. Are you able to shed any light on how the council came up with its figure? Why, in your view, is it wrong?

Jackie Baillie: I can only make assumptions about the figures that Glasgow City Council has provided and make comparisons with other local authorities.

West Dunbartonshire Council took less than a year to identify 410 advisory bays at a cost of £5,000—£12.20 per bay; Glasgow City Council gave the figure of £137,544 to promote orders for 452 bays, which works out at £30.21 per bay. There is a disparity from the start of the process. Perhaps we can learn something from how West Dunbartonshire Council went about identifying its bays, which might make the costs more reasonable for other local authorities. I know that some local authorities, such as West Dunbartonshire Council, batched all the bays in the one order, which is much more cost effective. I think Inverclyde Council does that, too. Perhaps Glasgow City Council dealt with all the bays through separate orders.

I remind you of the example that whereas in Highland it would take two men 12 years to identify their 400 or so bays, in Glasgow it would take two men a year. Perhaps there is something different about men in the Highlands—I do not think that for a minute. That is one cost difference; I will explore others. In Glasgow, for example, it is estimated that the removal of existing road markings will cost £113, but that cost is unnecessary and arises only because Glasgow insists on marking advisory bays in yellow paint. There is nothing to prevent it from following other local authorities and marking bays in white. Indeed, one should query why the paint needs to be removed and cannot simply be painted over. Some local authorities paint over existing markings and use temporary markings to complete bays.

Glasgow has said that the paint for repainting will cost £66, whereas in Perth and Kinross

Council it will cost £35. I hope that members will forgive me—the cost of paint is not my specialist subject and, try as I might, I cannot explain the wide disparity with regard to Glasgow, but these are the issues that such comparisons throw up.

I should point out that we carried out a two-stage consultation with the 32 local authorities. We first contacted them in August 2006 to shape the consultation that we then carried out and to get their response to a number of general questions. My view is that this is a matter for Glasgow; we think that our figures are robust and I am sticking to them.

Alasdair Allan: I am not here to defend Highland Council, but it might have a point in highlighting the complications that might arise from, for example, someone having to drive a van from Inverness to Portree and back again just to paint one parking space.

On the suggestion of doing a batch of 450 in one order to minimise administration costs, I can understand the idea behind bringing applications together in one group at the very outset. How would such an approach work? After all, you might have to wait a considerable time between groups of applications.

Jackie Baillie: You would not have to wait a considerable time. I know that that has happened in some areas where local authorities have carried out batching, but the bill provides for the designation of temporary bays. When an application for a disabled parking bay is received, a local authority will embark on the statutory process of making an order. There are advantages to batching, which is why the bill provides for temporary bays to be placed outside people's homes.

Some people might argue that such a provision is still not enforceable, but it will be. The process of passing the bill and education on this issue should lead people who—unwittingly, perhaps—abuse disabled bays to stop the practice, because they will realise that doing so will prove expensive. I hope that that answers your question.

Alasdair Allan: In your consultation, what information on expected costs did you gather from local authorities? Some councils have given evidence to the committee on this question, but all local authorities are asked to justify costs. How widely did they vary?

Jackie Baillie: We had in our minds an idea about how we wanted to proceed with the bill. Our first port of call was to write to all 32 local authorities. As a result, in August 2006, before I had even put pen to paper on the bill proposal, I informed councils that I was thinking about introducing a bill and asked them to tell me about their various processes and the costs of

enforcement. I was also keen to know how the councils that operated decriminalised parking systems did so and whether they ran at a surplus or at a loss—I did not want to place on them additional duties that they could not meet. I should note that all the local authorities that operate a decriminalised system for parking bays are running at a surplus.

In other council areas, the police ticket those who abuse bays; the local authority administers the ticketing system and retains 10 per cent of the value of the ticket to cover administrative costs. We asked councils a number of questions about their operations but, of course, that was before I had put together the proposal.

At the second stage, when we went out to consult—from November 2006 to February 2007; it seems a long time ago now—on the basis of the 20 responses to the earlier consultation, we asked questions about enforcement. There was also a general question at the end about whether people had any other information to give, based on an outline of the proposal we wanted. We also considered other options.

Some local authorities had information, others did not. Some had information about the number of advisory bays they had, some were very clear that the figure was an estimate and others said that they could not tell us. We were trying to get the best evidence we could, so that we could arrive at the most reasonable estimate.

I should also point out that I had a small steering group to help at various stages along the way. We involved the Convention of Scottish Local Authorities and a councillor from West Dunbartonshire Council in the process. If there were substantive issues, I hope that they would have been flagged up at that juncture.

The Convener: We can debate the cost of paint in the Highlands as against that in Glasgow and ask whether we need to repaint at all, but there is no doubt that the financial burden of the bill's proposals will fall on local authorities.

Glasgow has 32 per cent of Scotland's parking bays. To meet the bill's objective of preventing abuse, will the issue not be much wider than tins of paint? It involves the laying of a new order, the planning process and enforcement.

Although we—I should not say “we” because the committee has not yet come to a decision—might feel that some of the costs that your evidence has highlighted might have exaggerated the lower-level problems, a significant financial burden will still be laid on local authorities as a consequence of the bill being passed.

Jackie Baillie: You are right to say that the burden will fall on local authorities, but I part

company with you slightly when you say that the burden will be significant. In the context of a £35 billion Scottish Government budget, £1.7 million is not a huge amount.

You are quite right: we need to understand better the variations between Fife, Glasgow and Highland. I want to ensure—as I am sure you do, convener—that the bill succeeds. To do so, we need to ensure that people are adequately resourced.

The figures that we have provided are robust. I acknowledge that there is a margin of uncertainty. As the Finance Committee might have said in its report, there is an issue around whether the minister should discuss those margins with COSLA and decide what they are. The Government regularly negotiates budget settlements with COSLA and all 32 local authorities, and I would have thought that, as we get down to the costs and the variations and come to understand them, they would form part of any future budget discussions, but I am clear that the bill's proposals can be implemented for £1.7 million.

The Convener: Do you agree with Fife Council that the proposed cost of implementation should be met by the Scottish Government?

Jackie Baillie: Yes, and the financial memorandum says very clearly that we anticipate that additional cost to be £1.7 million. In his evidence to the committee, the minister initially anticipated that implementation would be within budget, but I got the sense that his later response was more about not wanting to provide a blank cheque, although he recognised that costs are involved.

10:30

John Wilson (Central Scotland) (SNP): I want to separate out two aspects of the Disabled Persons' Parking Places (Scotland) Bill. One is enforcement of disabled parking in town centres, supermarkets and out-of-town shopping centres. We heard evidence from disabled groups that raised real concerns about access to retail and other facilities in town centres.

However, I want to concentrate on the issue of the enforceability of residential disabled parking bays. Can you clarify the situation with regard to requests to designate disabled parking bays in residential areas? I understand that an individual who is a blue badge holder can apply to a local authority to have a disabled parking bay designated just outside their house, flat or residence. However, when the bay is designated, it is not for the sole use of that blue badge

holder—any other blue badge holder who is resident in or visiting the area can use the bay. Could that situation give rise to confusion or animosity? Would it raise issues regarding the identity of the designated user of the bay?

Jackie Baillie: John Wilson's understanding of the position is absolutely correct. If a blue badge holder applies for a disabled parking bay to be designated outside their home, it is not a named bay and does not belong to that person. Some would prefer that it did, but it would place an undue burden on local authorities to require them to deliver bays associated with named individuals. Under the bill, other blue badge holders will continue to be entitled to park in the bay outside a person's home; we are not changing that provision. In reality, that does not happen often. When it does, the house of the person concerned tends to be near a train station, shop, public library or other facility. In such cases, we would like local authorities—as they have done elsewhere—to ensure that there are an ample number of bays at the train station, library or other public setting in question, to prevent the disabled person's parking bay from being used by other blue badge holders. Designating bays for named persons would give individuals control of part of the public highway. I suspect that that would be difficult under the Road Traffic Regulation Act 1984.

It would be unreasonable to have proactive enforcement in residential areas. Enforcement should be reactive and targeted, because the majority of abuse of disabled bays takes place around town centres. In their evidence to both the Finance Committee and this committee, the police argued that enforcement should be proportionate. They said that if called to attend to an obvious incident they would do so, but that they would prioritise their efforts—if something more pressing was happening, that might be a priority for them. In its evidence to the committee, Asda said that the mere existence of a sanction had a huge effect on people's behaviour. Irrespective of whether enforcement is reactive or proactive, a number of people will be educated if the committee supports the bill and penalties can be applied.

John Wilson: The issue of how we monitor the number of residential disabled parking bays that are allocated has been raised. What onus will be placed on local authorities to oversee the appropriate use of such bays when a resident who has applied for a residential disabled parking bay under the blue badge scheme moves elsewhere or leaves the area?

Jackie Baillie: It is good practice for a local authority to monitor that. The bill would require local authorities to report to the Scottish ministers on the number of bays and other matters. I am not clear about whether the number of applications

and how local authorities have monitored and removed bays will be covered, but I will be advised about that.

Under the disability equality duty, local authorities are required to deal with the matter—*[Interruption.]* I have just been passed a note. As I suspect John Wilson knows, local authorities should do such work under the disability equality duty. In its evidence, the Equality and Human Rights Commission said that the bill does not

“place additional administrative burdens on councils, but merely builds on one aspect of the kind of evidence which could be gathered by local authorities as part of their ongoing work under the Disability Equality Duty.”

If a local authority was performing well, it would do such work.

Section 10 would place a duty on local authorities to keep disabled street parking orders under review. The monitoring that John Wilson expects would be caught not just by the bill, but by the disability equality duty.

David McLetchie (Edinburgh Pentlands) (Con): You will recall our discussion last week with the minister and his officials about the Traffic Signs Regulations and General Directions 2002. In the letter that you sent the committee as a follow-up to that and as a preface to your evidence, you say helpfully that you

“have checked the status of the powers and can advise the definitive position as follows.”

Is it fair to say that the definitive position as set out in your letter contradicts the evidence that the minister and his advisers gave the committee last week?

Jackie Baillie: You are trying to entice me on to dangerous territory.

David McLetchie: I am just asking whether your definitive position is definitively correct and whether the minister's evidence was definitively wrong.

Jackie Baillie: We tried to help the committee by setting out the position in an incredibly complex area. I considered whether we could make such changes to simplify the process, only to discover—some way down the line—that the matter was substantially reserved and that we could do nothing. As the matter is reserved, we adopted a different approach to the same problem. We have checked and double-checked the position. Members can imagine that, if an easy route existed, I would have found it. Our ability to amend the Traffic Signs Regulations and General Directions 2002 is severely limited.

Rather than have a non-lawyer such as me explain to a lawyer how the law works, may I invite Robert Marr to speak?

David McLetchie: Yes—by all means.

Robert Marr (Scottish Parliament Legal Services Directorate): I was present last week and heard what the minister said. I do not want to say that he was wrong; that is not my function. However, I have checked the provisions to which several local authorities' submissions referred. In my opinion, the position that I have set out in the letter to the convener is correct. The powers are reserved.

Even if the powers were not reserved, the committee might like to consider another issue. Even if we were competent to apply the powers to the situation that we are discussing, doing so would remove the objection procedure, for example. That is pertinent and issues would flow from that.

The position as set out in Ms Baillie's letter is correct.

David McLetchie: Can we be satisfied that the minister and his officials regard your definitive statement of the law as definitive? Following the evidence last week, have Ms Baillie's advisers and the minister's advisers consulted each other? Can we be satisfied that the definitive and correct position is what is set out on pages 3 and 4 of your letter?

Jackie Baillie: There has been no discussion between my advisers and the minister's advisers on that point. On reflection, I suspect that my attempt at the end of the minister's evidence to make it clear where ministers' powers lay led to a position with which we both agreed. There may have been some confusion. Far be it from me to suggest what the committee should do, but perhaps it could simply obtain written confirmation from the minister that that is the definitive position. I would be happy to do so if the committee is not minded to.

David McLetchie: We want to establish that before we come to our conclusions on the bill, but I wanted to take the opportunity to check whether what you said represented a consensus or whether it was still necessary for us to establish that with the minister and his officials.

I want to go on to ask about the provisions in the bill that relate to private car parking. On the basis of the evidence that we have had, and bearing in mind the costs issue, which looms large over the bill, and what you have said in your letter and in evidence today, in which you have sought to minimise the obligations that the bill would place on local authorities, I put it to you that, at this stage, such provisions have no particular value. One would be better leaving that issue to one side and focusing on parking in public streets, instead of placing on local authorities what would be seen

as an additional and, in administrative terms, quite onerous burden as regards private car parks.

Jackie Baillie: First, it is not a burden; I will explain why. Secondly, if you talk to disabled people, particularly blue badge holders, they will tell you—and the surveys show this—that much of the abuse occurs in private car parks rather than on the public highway. Someone might be prevented from parking outside their local supermarket or their retail centre and have to keep driving round before they can get a suitable parking place.

A positive development is that many private car park owners are realising the value of taking action on enforcement. The committee took evidence from Asda. Like Asda, Braehead shopping centre has gone for voluntary enforcement and what a difference it has made—I confess to being a regular visitor to Braehead shopping centre. Suddenly, car parking spaces that were always full are not being abused and are available for disabled people. We are beginning to understand that the retail sector accepts the need to do something about enforcement. A survey by Leonard Cheshire identified that the spending power of disabled people is £5 billion annually, so as customers, never mind anything else, they matter to many of the companies that have private car parks.

Turning to the burden that local authorities have identified, I hope to reassure members that it is not a burden at all. The first reason for that is that local authorities can identify private car park owners. Let me be clear—I am talking about private car parks to which the public have access. I have no interest, nor does the bill, in office car parks or car parks solely for employees, which are regulated by the Disability Discrimination Act 1995. We do not propose to change that. Many off-street car parks, such as those outside libraries and sports facilities, are managed by local authorities, so they already have records of them. Local authorities have records from their business rates, and when it comes to new developments and planning permission, they have the ability to tackle the issue at the outset of a project. They also have an awareness of what new developments are happening on their patch. Therefore, it should not be onerous for local authorities to identify private car park owners.

Secondly, as I said in my opening statement, the sending out of a letter advising private car park owners that a procedure existed, whereby the local authority could move a traffic regulation order and make their bays enforceable, would satisfy the terms of the bill. However, the bill is not prescriptive—if Asda and other car park operators want to continue to carry out their own enforcement, that is very much a matter for them.

My primary purpose is to ensure that disabled parking spaces are enforceable and are not abused. I do not much care how that aim is approached, provided that we allow people to be flexible. The proposal to go back to people every couple of years with a letter—nothing more than that—which simply reminds them of what can be done reflects the fact that people's perceptions change. People's views of what their competitors are doing can change. If a Morrisons store was next to an Asda store, people in the Morrisons store might want to reflect on what Asda was doing and do likewise. At the least, private car park owners would be encouraged to do the right thing.

10:45

The committee should consider the evidence from the Equality and Human Rights Commission Scotland, which said that we are

“pushing against an open door.”—[*Official Report, Local Government and Communities Committee*, 2 September 2008; c 1073.]

There is incredible good will towards the proposals among private car park owners. The measures are not burdensome or irrelevant; rather, they are essential.

David McLetchie: But Asda and others told us last week that they want to maintain their successful voluntary approach and that they would not welcome a statutory enforcement regime. The EHRC bodies have recognised that Asda and others are making substantial progress, so why do we not simply let the private sector—Morrisons, Sainsbury's and all the others—get on with things and build on the success and achievements that have been demonstrated to the committee? We could then consider the situation in another couple of years without placing a further responsibility on local authorities in the intervening period.

Jackie Baillie: Some private car park owners have shown a very responsible attitude and have recognised and responded to the needs of their disabled customers, but not all private car park owners have done so, unfortunately. I think that the committee has seen the best examples of people who have taken action; it has not seen those who have done nothing. We have been told time and again that voluntary measures do not work. I do not want to place an undue responsibility on businesses—we cannot do that, as the matter is reserved—or an undue burden on local authorities, but if most of the abuse takes place in the private sector, it is not unreasonable to encourage it to do the best that it can for disabled people in our community. The bill is one way of doing so.

I hesitate to say what I am about to say, because I suspect that, as a lawyer, David McLetchie knows far more than I do about the subject that I am about to raise. There are, of course, issues—which he identified at the previous meeting—to do with the legal basis of some enforcement. I am not an expert on contract law, and hesitate to speak about the matter, but with your permission, I invite David Cullum to address it.

David Cullum (Scottish Parliament Clerking and Reporting Directorate): I make it clear at the outset that I am not a lawyer either.

I will not comment on Mr McLetchie's exchanges last week, but it has occurred to me that the fundamental problem that private car park owners have is identifying the driver of a vehicle that is illegally parked—if I may use that phrase—in one of their spaces. Within the statutory regime, there is a power under the Road Traffic Regulation Act 1984 to require the identification of the vehicle's driver. The failure to identify the driver of the vehicle is a separate offence. Private enforcers can identify only the vehicle's owner—its registered keeper—using the Driver and Vehicle Licensing Agency database and can send a letter to them that says that their car was parked in a space of theirs and that they must pay them a fine, please. The database will not say whether the person was the driver of the car and it will have no information about who the offender was, if I may again use a criminal word in a civil context. There is no way in law in which that information can be accessed unless the person writes back and says, "It was me. Sorry." A fundamental problem exists in trying to identify who is at fault, and I am sure that people are aware of that.

David McLetchie: I take your point because, effectively, a deemed person is involved in the statutory regime, whereas there must be an actual breach of the contract in the civil regime.

It was interesting to see in Jackie Baillie's letter that Asda and other owners of car parks who have voluntary schemes agreed that others who do not

"would have nothing to gain by not co-operating".

Does that not strike you as a slightly curious double negative? Those people are saying, "Well, we actually think it's a bad idea for us, but our competitors will undoubtedly think it's a good one."

Jackie Baillie: Far be it from me to paraphrase what Asda or the other car park owners said, but when I asked them at the end of last week's evidence session whether they thought there was value in what the bill proposes, particularly in encouraging other car park owners to go down the same route either by voluntary enforcement or by engaging the local authority to undertake enforcement for them, they all said yes.

The clear signal from that is that, whether the car park owners provide enforcement themselves with the kind of flexibility that they want, or whether they get the local authority to enforce their parking regime—decriminalised or otherwise—the disabled parking bays should not be abused and they should be enforced, which is the net effect that I want to achieve. I do not much care whether the private car park owner or the local authority does the enforcement, as long as it is done.

David McLetchie: You believe that it would be better to have a local authority that would be required to give a nudge doing so, as opposed to the current situation of the law in relation to disability discrimination, access to services and so on, whereby a Government body reminds car park owners that they have responsibilities under the DDA and that they should do something about them.

Jackie Baillie: Part III of the DDA, on the provision of access to goods, facilities and services, would obviously cover it. However, when someone seeks planning permission for a new development, should they, as a matter of good practice, engage in a dialogue about disabled parking and making it enforceable? Of course they should. It is about joined-up government and making things work at a local level. I do not regard the bill's proposals as an additional burden. I believe that they are about encouragement. We must acknowledge that the outcome that we seek is not about putting additional pressures or duties on people; it is about encouraging them to do what should be best practice. Indeed, some in the field already do that.

John Wilson: I have an additional point on that. David McLetchie is trying to make an important distinction about the provision of car parking spaces in supermarkets and other establishments. As Ms Baillie rightly identified, there is a burden under the goods and services provision in part III of the DDA on the owners of car parks to ensure that there is access for disabled users. My understanding is that the supermarkets and other car park owners are accountable in that respect and could be challenged in the courts for not delivering disabled car parking spaces. Therefore, if the bill was enacted as it stands, there would be an additional burden on the owners of those car parks to ensure that there was adequate provision in the car parks for disabled users. There might be an overlap between part III of the DDA and what the bill proposes with regard to supermarkets and other car park owners in city centres.

Jackie Baillie: It is not intended that there should be a legislative overlap. We acknowledge the effect of the provisions in part III of the DDA. John Wilson is right that owners of car parks are accountable for delivery under those provisions.

However, we want to ensure that we do not just leave it to those provisions. We want to encourage, through the local authority, a natural planning process that ensures that disabled car parking spaces are made available. I would argue that there is not a legislative overlap, and that the bill's provisions would offer support and encouragement to help owners of private car parks meet their duty under part III of the DDA.

Jim Tolson (Dunfermline West) (LD): I will return to the issue of costs, Ms Baillie. I am sure that you are absolutely sincere when you suggest that the figure of £1.7 million that is given is robust. That is perfectly fine, but you, I and millions of other Scots know full well that the projected costs for major public projects in Scotland and elsewhere are often quite different from the end costs, and that is a concern. You are also quite right to point out the significant differences between, for example, Glasgow and Fife. I would like to know, I am sure that the committee would like to know, and it is important for the Parliament to know whether like-for-like comparisons are being made. It is important that we have assurances about the costs, so that we better understand the likely outturn costs and know whether £1.7 million will be enough—if indeed the Government agrees to put that money in to cover the costs.

I am sure that you are aware that local authorities are concerned that any burden over and above that will fall on them. You have partly agreed that that will be the case both for the initial costs in relation to existing parking places and particularly for the on-going costs in relation to new parking places that will be designated in the coming years. I ask you to consider carefully whether your costings really are robust, or whether they are flexible.

Mr McLetchie mentioned the large private car parks, but I ask you to consider the small private car parks. Plumbers, bakers and hairdressers might not have the financial ability to take part in some of the larger schemes that large supermarkets can, and they might also feel that the burden of making adequate provision under the local authority could be fairly significant for a small business. How do you think that small businesses will cope if the bill is enacted?

The committee has taken a significant amount of evidence during the past weeks. However, some people believe that, even though it might be significant for a small number of people, the bill will have a minimal impact in the Scottish context, and that the advisory bays are perfectly suitable. Several people have also expressed their concern at the expense—I have relayed that to you today—and at the reels of red tape that could be created, as there seem to be major disparities in

the administrative and cost burdens from one local authority to another. We have to look at that more carefully and make sure that we tie down the facts more closely before the bill moves on in the Parliament.

Jackie Baillie: I will deal with those points in turn.

When we arrived at the figure of £1.7 million in the financial memorandum, we acknowledged—and I still acknowledge—that it contains a margin of uncertainty. I would like to be able to give you the absolute assurances that you are seeking, but I suspect that neither local government nor the minister could do that. There are wide variations in practice and costing in the local authorities across Scotland. The Government talks to COSLA regularly and we have gone one better by trying to speak to each of the 32 local authorities, although the information that has come back is a bit inconsistent. The Government is right not to offer a blank cheque and to want to look at the variations between local authorities, and I encourage it to do so.

However, it is not for me as the member in charge of the bill to prove the accuracy of the figures; it is for me to prove that I have used a reasonable method in arriving at a calculation of a figure that stands up to scrutiny in the light of day. Mr Tolson does not doubt my sincerity; I do not doubt Fife Council's sincerity when it says that the costs are £119 per bay. As someone who is interested in efficiency, whether it be at national or local government level, I am slightly troubled that there are such disparities in the costs. Lessons need to be learned, and there might well be an easier way of doing things. I would welcome it if the Government opened a dialogue with COSLA, as it does on many occasions, to consider the details of the bill.

I hear exactly what Mr Tolson is saying about plumbers, hairdressers and other small businesses. However, thinking about my local town, I would say that very few plumbers and hairdressers have bespoke car parks.

Jim Tolson: I know quite a few who do.

Jackie Baillie: That is interesting. I know that some have car parking spaces for their employees but not for the public. We are trying to encourage them to make provision, but there is no requirement on them to do so. I am also keen that local authorities are able to recover a degree of the costs. It may well be difficult to make provision in some smaller car parks for financial reasons. Of course, part III of the DDA applies, and people need to fulfil their duties under that legislation. My bill does not force them to make provision but encourages them and provides an opportunity and a mechanism through the local authority.

11:00

Finally, you talked about the expense. Although £1.7 million might be a huge amount to the ordinary person in the street, I do not think that it is significant as a percentage of the local authority budget, never mind as a percentage of the Scottish Government's budget. I have explained how I think the costs can be spread over three years, which is important in relation to local government planning. I do not agree that the bill will create a huge administrative burden or is overly bureaucratic. As somebody who used to work in local government, I am always keen to reduce bureaucracy.

I remind the committee that the disability equality duty applies and that local government has to consider how to meet that duty. By happy coincidence, the bill will help it to do that. The process in the bill is no different from the TRO process that local government is required to carry out at present, except in relation to signage and enforcement.

Jim Tolson: That is helpful. I just hope that, if and when the bill proceeds, I am proved wrong and you are proved right. It is important that we understand the impact on small businesses, on individuals and particularly on disabled people themselves. I hope that the detail that we are getting stands the test of time as your bill proceeds. I wish you well.

Jackie Baillie: Thank you.

Mary Mulligan: Good morning. You will appreciate that I am coming late to the bill, but I am learning quickly, particularly from the informed questions that we have heard this morning.

You answered a number of questions on enforcement, but I am happy to give you an opportunity to add anything else that you want to say about that. It seems to me that the bill will raise people's expectations that disabled parking bays will be provided and enforced. One way in which we can ensure that that happens—other than by rigorous enforcement—is to educate people so that they are aware of the bays and what they mean. People will then be able to adhere to the intention of your bill in their own actions. How will the education process be carried forward?

Jackie Baillie: Enforcement strikes at the heart of the matter. We have created a distinction—quite rightly, in my view—between town and city centres, where there is much more proactive enforcement, and residential areas, where traffic wardens and police officers do not patrol each day. In that way, we will target the places where abuse is most likely to happen. Far be it from me to point out the number of traffic wardens in Glasgow or Edinburgh, but I seem to find one on

every street corner. That is right and proper, but given that there is no shortage of them, putting a parking ticket on a car that has overstayed its welcome at a meter is not substantially different from giving a parking ticket to somebody who has parked in a disabled parking bay, so I believe that the proposal can be accommodated within existing resources.

I like the quote from the Glasgow Centre for Inclusive Living the best, because it makes it clear that disabled people are not unrealistic and do not expect immediate enforcement outside their homes. It states:

“Although the Bill will not change the current system of parking enforcement, the fact that all relevant parking places are designated enforceable, with attendant penalties, will lead, hopefully, to a reduction in the misuse of these places once this fact is more widely publicised.”

That brings me neatly to the second matter that you raised. I anticipate that the education or publicity will operate at a number of levels. I have no doubt that the publicity about the bill has already made a positive contribution to changes on the ground and people's expectations. I also believe that local authorities will want to advertise it in their local area, using their own newspapers. They do not have to do anything new such as take out adverts, as they already have channels of communication and it is proper that they use them for issues such as this.

Many of the disability groups that operate in the field will advertise the legislation, to ensure that people know about it. I have made it clear that I would positively welcome the Scottish Government doing something. It has an advertising budget that has promoted a number of social aspects of government and the delivery of services over the years, so I look to it to run an advertising campaign.

I have always maintained that the enforcement effort is needed in the initial years after the legislation comes into effect, as thereafter people will become used to the fact that the bays are enforceable and that there will be a penalty if they park in them inappropriately. The majority of sensible drivers do not have such deep pockets that they would want to continue abusing disabled parking bays.

Mary Mulligan: I appreciate your response on education. I hope that each of those avenues will be taken up, because they can be effective. I am interested in your original point about enforcement. There are four towns in my constituency, one of which I know has one traffic warden for a couple of days a week—although we are never sure which couple of days it will be—so I am aware of the challenges that are faced. It is clear that there is a need to balance enforcement

with education to get the message across, and I hope that that will be successful.

Jackie Baillie: It certainly can be—I am thinking principally of two things. Asda said in its evidence to the committee that it employs Town and City Parking Ltd to patrol its stores for as little as 12 hours per month per store, but that is on a reactive basis. The company targets hot spots and moves from store to store, just as wardens could move from town to town, provided that they are not always in the same place at the same time. That seems to be particularly effective.

I come to the discussion—this is how the bill came about—from the position of seeing a neighbour deliberately abusing a disabled parking space because he happened to have fallen out with another neighbour. To cut a long story short, I contacted the police and the council, but there was nothing that they could do because the space was an advisory bay. I put the neighbour's face on the front page of my local newspaper for two weeks running, but he was prepared to do nothing to change his behaviour. We need enforceable bays—in residential areas in that case—because we need the power to stop that kind of deliberate abuse.

The Convener: Thank you. That concludes our questions. In relation to the exchange with David McLetchie about reserved and devolved matters, the committee will write to the minister to seek clarification.

Subordinate Legislation

Building (Scotland) Amendment Regulations 2008 (SSI 2008/310)

11:08

The Convener: Item 3 is a negative statutory instrument. Members have received a copy of the regulations and have not raised any concerns on them, and there has been no motion to annul. Are members agreed that they have nothing to report to Parliament on the regulations?

Members *indicated agreement.*

Decision on Taking Business in Private

Members *indicated agreement.*

Meeting closed at 11:09.

11:09

The Convener: Item 4 is a decision on taking future business in private. Do members agree to take all consideration of draft reports on the Scottish Government's budget proposals for 2009-10 and on the Disabled Persons' Parking Places (Scotland) Bill at stage 1 in private at future meetings? That is the normal practice for handling draft reports.

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