

# **COMMUNITIES COMMITTEE**

Wednesday 6 September 2006

Session 2

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## COMMUNITIES COMMITTEE

22<sup>nd</sup> Meeting 2006, Session 2

### CONVENER

\*Karen Whitefield (Airdrie and Shotts) (Lab)

### DEPUTY CONVENER

\*Euan Robson (Roxburgh and Berwickshire) (LD)

### COMMITTEE MEMBERS

\*Scott Barrie (Dunfermline West) (Lab)  
\*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)  
\*Christine Grahame (South of Scotland) (SNP)  
\*Patrick Harvie (Glasgow) (Green)  
\*John Home Robertson (East Lothian) (Lab)  
\*Tricia Marwick (Mid Scotland and Fife) (SNP)  
\*Dave Petrie (Highlands and Islands) (Con)

### COMMITTEE SUBSTITUTES

Chris Ballance (South of Scotland) (Green)  
Alex Johnstone (North East Scotland) (Con)  
Christine May (Central Fife) (Lab)  
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)  
Ms Sandra White (Glasgow) (SNP)

\*attended

### THE FOLLOWING GAVE EVIDENCE:

Rhona Brankin (Deputy Minister for Environment and Rural Development)  
Johann Lamont (Deputy Minister for Communities)  
Judith Morrison (Scottish Executive Legal and Parliamentary Services)  
Sally Thomas (Scottish Executive Environment and Rural Affairs Department)  
Ken Young (Registers of Scotland)

### CLERK TO THE COMMITTEE

Steve Farrell

### SENIOR ASSISTANT CLERK

Katy Orr

### ASSISTANT CLERK

Catherine Fergusson

### LOCATION

Committee Room 4



## Scottish Parliament

### Communities Committee

*Wednesday 6 September 2006*

[THE CONVENER *opened the meeting at 09:30*]

### Planning etc (Scotland) Bill

**The Convener (Karen Whitefield):** I open the 22<sup>nd</sup> meeting of the Communities Committee in 2006 and remind everyone that mobile phones should be turned off. The first item on this morning's agenda is the Planning etc (Scotland) Bill. The committee will take evidence on national scenic areas from Rhona Brankin, the Deputy Minister for Environment and Rural Development. I welcome the deputy minister to the committee. She is accompanied by Scottish Executive officials Sally Thomas, Bob McNeill and Judith Morrison.

I am sure that the committee has missed considering the Planning etc (Scotland) Bill in depth over the summer recess and that we are delighted to be back this morning. Minister, would you like to make a brief opening statement or are you happy for us to go straight to questions?

**The Deputy Minister for Environment and Rural Development (Rhona Brankin):** I will make a brief statement.

I am grateful to the committee for inviting us today because I am keen to explain our proposals for national scenic areas. The draft amendment that the committee is considering will introduce proposals that were set out earlier this year in the consultation document, "Enhancing Our Care of Scotland's Landscapes".

The amendment will provide Scottish ministers with powers to designate an NSA for its outstanding scenic value in a national context, and to vary or revoke an NSA. Before designating an NSA, Scottish ministers will consult Scottish Natural Heritage and such other bodies as may be prescribed. The amendment will also require planning authorities to pay special attention to the desirability of safeguarding or enhancing any area that is so designated when they exercise any of their functions under the Town and Country Planning (Scotland) Act 1997.

The consultation paper also included proposals for encouraging the development of management strategies for NSAs, which would include programmes of targeted and costed measures that are appropriate for the management of each area. The proposal is for SNH to work with local authorities on the preparation of management strategies; grant will be available from SNH to go

towards the cost of preparation. The management measures will be voluntary and non-statutory and do not form part of the amendment.

National scenic areas represent the very best of Scotland's landscapes. We must continue to safeguard those areas to ensure that their special qualities endure to be enjoyed by present and future generations. Such areas are very sensitive to development or intrusive human activity.

I know that the committee has listened to a wide range of views on the proposals and I hope that in answering your questions I will be able to explain further why we intend to lodge the amendment.

**The Convener:** I am sure that you have reviewed the evidence that the committee has heard to date on national scenic areas. You will therefore know about the concern that the proposals in the amendment were not included in the bill. Why not?

**Rhona Brankin:** As you know, the NSA proposals address a gap in the legal provisions for NSAs, through the regularisation of an anomaly in the powers that are available to Scottish ministers. Because the proposals were to regularise an anomaly, they were not regarded as being essential for inclusion in the white paper in the first place. The paper deals with major proposals for the planning system.

**Sally Thomas (Scottish Executive Environment and Rural Affairs Department):** When the white paper was prepared, the proposals were not regarded as being a major issue for the Planning etc (Scotland) Bill. We felt that including them in an amendment, rather than putting them in the bill without any form of consultation, gave us the opportunity to consult on them a little more widely. That is another reason why the proposals were not included at the outset.

**The Convener:** Do you accept that if the proposal had been included in the white paper, there would have been considerable consultation on it, as there has been on much of what has been included in the bill? I think that I am right in saying that the committee has serious concerns that, at such a late stage in a bill that has been thoroughly consulted on and which has taken stakeholders from all communities effectively through the process, something is being added that has not been thoroughly consulted on. It does not make obvious sense why the proposal has been included.

**Rhona Brankin:** There was not a large number of people saying that they were unhappy with the consultation, although I can understand your view about the proposal not being included in consultation on the planning process. That predates my time as a minister, but the important point is that consultation has now taken place—

are satisfied that there was adequate consultation through the process that took place at the start of the year. I accept that it might have been preferable to do it during consultation on the bill, but the important point is that consultation has taken place.

**The Convener:** I accept that people might not have expressed concern about whether the Executive has consulted thoroughly on the proposal, but concerns have been expressed to the committee about whether the legislation is the appropriate vehicle for the proposal on NSAs. Can you explain to the committee why you believe that the Planning etc (Scotland) Bill is the most appropriate vehicle for the proposal?

**Rhona Brankin:** One reason why the legislation was not introduced sooner was that, when the Labour-Liberal Democrat Executive partnership was established, a major commitment was to the establishment of national parks. That involved a large piece of legislation, which inevitably took up a lot of time for officials and ministers; in fact, the work on approving national park plans continues. A huge amount of time and energy has been taken up with the National Parks (Scotland) Act 2000, which is the key reason for not introducing the proposal sooner. Following the work on that legislation, the Planning etc (Scotland) Bill was considered to be the most appropriate vehicle for the proposal.

**The Convener:** My final question is about the financial implications of the proposals. As the proposal was not included in the bill, there is obviously no mention of its financial implications in the financial memorandum. What financial implications might arise as a result of including the proposal in the bill?

**Rhona Brankin:** Local authorities already have to factor into their work costs that are associated with NSAs. There will be financial support from SNH in developing management strategies.

**Sally Thomas:** I should just say that no direct financial implications will arise from the amendment.

**The Convener:** Is the Convention of Scottish Local Authorities satisfied that there will be no financial implications for its members, which will have to implement the legislation?

**Sally Thomas:** There was no response from COSLA to the consultation.

**The Convener:** Have you had any discussions with COSLA?

**Sally Thomas:** No, we have not had any direct discussions with COSLA following the consultation.

**The Convener:** Do not you think that it might be helpful for the Executive to be sure that local

authorities in Scotland are satisfied that there will not be additional financial burdens as a result of the amendment? They are extremely exercised about the financial burdens that will be placed on them as a result of the new planning legislation.

**Rhona Brankin:** I can only assume that if COSLA were "extremely exercised" about the financial burdens that will be associated with the amendment it would have responded to the consultation. I am always more than happy to have discussions with COSLA. My door is open.

**Christine Grahame (South of Scotland) (SNP):** I have a supplementary question about whether the Planning etc (Scotland) Bill is the appropriate vehicle for the proposal. I note that for the most part the bill stops at the low-water mark, but the amendment covers marine areas as well as land. The list of national scenic areas includes many lochs. How can the bill be the appropriate place for the measure? It does not really deal with lochs.

**Judith Morrison (Scottish Executive Legal and Parliamentary Services):** Planning control is one of the main proposed protection measures for NSAs, so it is appropriate that the bill contains the platform for designation of NSAs. Previously, it was contained in the Town and Country Planning (Scotland) Act 1972, but those provisions were repealed in respect of designating or varying existing NSAs. One of the purposes of the amendment is to reinstate the provision for ministers to vary NSAs and to redesignate.

**Patrick Harvie (Glasgow) (Green):** I want to pursue the point that Christine Grahame made about the appropriateness of including the measure in the Planning etc (Scotland) Bill. I accept entirely that the Executive was busy with other things and that that prevented it from introducing the provision earlier, but does the minister agree with comments that were made to us at a previous meeting to the effect that inclusion of the measure in the bill is one reason why it is of limited scope and why a statutory basis for management strategies, for example, cannot be included? If so, perhaps the minister can answer a question that was not answered previously about the Executive's intention to legislate to provide a statutory basis for management strategies in the future, if the non-statutory approach does not work.

**Rhona Brankin:** The key point was to regularise the anomalies that surround NSAs. The flagship legislation related to national parks, but we were keen to get to NSAs when we could. The Planning etc (Scotland) Bill was thought to be the appropriate vehicle for that. We did not use it specifically so that we were not in a position to take a statutory approach to management strategies. The decision on management

strategies was that we wanted to use a light touch and to ensure that such strategies were in place. Work is already under way on pilot management strategies in Dumfries and Galloway and in the Highland Council area. It is not the case that no work is being done; there are lessons to be learned from that work. We considered the bill to be the most appropriate vehicle because it allows us to regularise the position of NSAs.

**Patrick Harvie:** I would like clarification on one point. Are you saying that, when deciding whether to take a statutory or a non-statutory approach to management strategies, the scope of the bill was not one of the factors that you considered? I was told:

“An additional factor that we must consider is the nature and scope of the vehicle that we seek to use”.—[*Official Report, Communities Committee, 7 June 2006; c 3652.*]

Is the scope of the bill a limiting factor that was considered in the decision about which approach to take?

**Sally Thomas:** The scope of the bill must be a consideration when lodging an amendment. At the stage that we have reached in developing the amendment, we must be mindful of the fact that we cannot make proposals that are outwith the scope of the bill. We received advice that to include a statutory basis for management strategies in the amendment could take the amendment outwith the scope of the bill.

**Rhona Brankin:** In essence, we must seek a range of advice on what measures we can introduce. At this stage, we are comfortable with moving forward with management strategies on a non-statutory basis. Like the committee, we will monitor closely the development of those strategies. If we feel that management strategies are not being developed or implemented at an appropriate speed, ministers will be in a position to take legislative action in the future.

09:45

**Patrick Harvie:** I am sure that the committee will consider that closely if the Executive stops fiddling with our remit so that it can give us more bills.

**Scott Barrie (Dunfermline West) (Lab):** I will ask only a brief question. In retrospect, would it be fair to say that, irrespective of when the decision was taken to include the proposals on NSAs in the Planning etc (Scotland) Bill, and irrespective of whether that bill is the most appropriate legislative vehicle, it would have been at least helpful if Parliament had been informed of that during the stage 1 debate? Irrespective of whether the provisions could have been included in the bill as introduced, should not Parliament and the committee have been told that the Executive had

chosen to legislate in this way, given that the consultation had already been launched and there must, presumably, have been some notion that things would be done in this way?

**Rhona Brankin:** The decision was taken by the Cabinet last winter. It seems to me that it is rather unfortunate that the committee was not kept better informed about that, so I accept that point. The matter came as a surprise to some—indeed, to many—members of the committee. Things should not have happened in that way.

**Scott Barrie:** It came as a surprise to all committee members.

**Rhona Brankin:** Yes—I corrected myself.

**Tricia Marwick (Mid Scotland and Fife) (SNP):** Am I right in thinking that I heard the minister's official say—I am sure that she will correct me if I am wrong—that the Executive had approached the parliamentary authorities, or whoever, to find out whether management strategies would be within the scope of the bill, and the Executive cannot legislate on management strategies because they are outwith the bill's scope? If my interpretation of what the minister's official said is correct, does that mean that the Executive believes that it would have been better to legislate for management strategies? Is not it the case that, in order to fit in with the bill, the amendment will provide only a partial tool? In effect, the Executive is shoehorning in an amendment that will do only half the job.

**Rhona Brankin:** The stakeholders who responded to the consultation accepted that it is important to put in place legislation on NSAs, which have been in a legally anomalous situation for a number of years. We think that it is important to regularise the position so that we can start reviewing NSA boundaries and get management strategies in place. Our view is that it is not necessary to put management strategies on a statutory basis because we want to use a light touch. However, if once the bill is implemented we discover that management strategies are not coming forward, further action could be taken. Given that the pilot work on management strategies—especially in Dumfries and Galloway, where some very interesting work has been done—includes models of good practice, we are optimistic that local authorities will develop management strategies, but we will monitor the situation very closely.

**Tricia Marwick:** Is it true to say that, if management strategies could have been included within the scope of the bill, they would have been included in the amendment?

**Rhona Brankin:** The Executive would have taken a decision on that, but our policy position is to use a light touch on management strategies. If

that approach is seen to be inadequate, the Executive will reconsider the matter. We are keen to get the position of NSAs regularised as quickly as possible so that local authorities can get on with the business of ensuring that we have the correct boundaries for NSAs. Our approach will also allow local authorities to take advantage of the financial support that will be available to put in place management strategies. In the consultation responses, we did not have huge numbers of people saying that the matter was a disaster—frankly, most respondents said, “We need to get on with it and sort out the situation. The whole thing has been hanging for far too long. Please get on with it.”

**Tricia Marwick:** I fully accept that the problem has been hanging around for a long time, but the Executive has not taken action until now. The powers were repealed in 1991 and the power to designate was repealed in 2004.

However, although the organisations are probably right in saying that we need to get on as quickly as possible, the Executive must share at least some of the blame for not introducing proper legislation to deal with the anomaly—as I have it heard it described three times. You have been in Government since 1997, after all.

Secondly, although there is a desire to progress matters as quickly as possible, would not it have been better to do it properly and to ensure that the bill as introduced best met the needs of the organisations that have been screaming out for action?

**Rhona Brankin:** First, we think that we are doing it properly. I accept that there have been concerns about whether the committee should have been informed about the matter earlier, but I make no apologies for using the bill as a vehicle. In policy terms, it is an appropriate vehicle to use. There are issues about whether it would have been simpler to have included the provisions in the bill when it was introduced, but I make no apologies for the creation of national parks in Scotland in the National Parks (Scotland) Act 2000, which was hugely important new legislation. We did not have national parks in Scotland and there was a crying need to create national parks in areas such as Loch Lomond and the Trossachs and the Cairngorms. That is what we did. A huge amount of work was involved in that, and there is a huge amount of on-going work involved in that.

If I had had hundreds more civil servants, I could have done things faster, but many political parties—including the Scottish National Party—want to reduce the number of civil servants. However, we are where we are. We have created national parks and there is still a lot of on-going work related to that, and we are regularising the anomalies surrounding NSAs. We are keen to get

on with it, and work has been going on to develop pilot management strategies. We must ensure that we get the boundaries regularised. In effect, the first stage will be to decide whether the existing boundaries are appropriate—it will probably be possible to develop management strategies at about the same time as we are looking at that.

We need to be able to get on with that work and to get the appropriate consultations under way. The bill was the best vehicle for doing that.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I will continue on the theme of consultations. You have heard from the convener about the way in which the committee would normally deal with the consultation process. Responses have been received to the consultation on the bill and the provisions that are proposed. A great many comments have been made, and people see the proposals as a welcome move. How will the responses that we have received to the limited consultation feed into the regulations and the guidance?

**Rhona Brankin:** There will have to be discussion on the regulations and guidance, which will come back to the committee.

**Judith Morrison:** The amendment will provide flexible powers for ministers to specify who should be consulted in the process of designation and on matters as to form and procedure. It is considered that flexible measures are most appropriate, because ministers will be able to adapt them from time to time should other bodies be created that require to be consulted or should different requirements for form as to designation be appropriate to different cases.

**Rhona Brankin:** In essence, the consultation took the usual form of an Executive consultation. An analysis has been carried out—indeed, it has been published—and reports have been prepared. The responses broadly confirm the approach that has been proposed by the Executive; however, we must consider how we will make the detailed regulations. We decided deliberately to keep flexibility in the bill because we may not use the same process for each NSA.

I am sorry, Cathie. I am not sure whether that has answered your question.

**Cathie Craigie:** When the regulations and the guidance are being developed, will stakeholders and interested organisations be involved with Scottish Executive officials and the minister in developing the guidance?

**Rhona Brankin:** Yes. In developing the guidance, it will be key to be able to consult further, and we would expect to do so.



**Cathie Craigie:** Are organisations keen to be involved in that? Are relationships good in that regard?

**Rhona Brankin:** The Scottish landscape forum has been set up. It is considering a range of issues around NSAs. The forum represents key stakeholders and will be an important vehicle.

**The Convener:** Before we move on, I have a point of information for the committee. The regulations might come back to this committee, but they might well not. We are considering the proposal only because it comes under the Planning etc (Scotland) Bill. It is more likely that any regulations that are made by the Executive in this area will go to the Environment and Rural Development Committee—unless the Executive intends to change our remit to take those areas into account, too.

**Cathie Craigie:** A number of respondents to the consultation felt that the proposals should be strengthened to ensure the long-term conservation of areas and their qualities. Have those views been taken into account? How will the Executive respond to those concerns?

**Rhona Brankin:** I have of course read the evidence that has been presented to the committee. Some of the concerns seem to be about whether or not there should be a statutory duty to prepare management strategies. All that I would say to allay fears—without wishing to repeat myself—is that we believe that through the examples of good practice that have been developed in Dumfries and Galloway and, to an extent, in the Highlands, coupled with the support that is available from SNH, which comes to up to 75 per cent of the cost of developing a management strategy, local authorities will work expeditiously on management strategies.

**Sally Thomas:** I can add a little bit about the pilot management strategies that have been developed in Dumfries and Galloway. The committee heard evidence from Dumfries and Galloway Council at the last evidence session that we attended. That local authority, with considerable involvement from SNH as part of a wider partnership, has developed a suite of management strategies. Dumfries and Galloway has three separate NSAs along its coastal area and the council has used the management strategies to take a forward look at development of the areas—I use the word “development” in a qualified sense—and at how it can work together with a range of organisations on safeguarding or enhancing the NSAs and on establishing what potential there is to encourage more economic and social development. The strategies have been a positive exercise in Dumfries and Galloway.

**Rhona Brankin:** For the longer term, what happens with NSAs and with the process of developing management strategies will not happen in isolation. At the same time, we are developing land management contracts. A number of policies and levers will be used together in rural development.

One of the benefits to local authorities of having NSAs in their areas is the ability it gives them to lever in funding. Dumfries and Galloway Council has been able to put in a bid for Heritage Lottery Fund funding. The work that has been done in Dumfries and Galloway has been supported by areas’ designations as NSAs. There are potentially significant benefits to local authorities in progressing work on NSAs.

10:00

**Dave Petrie (Highlands and Islands) (Con):** What consultation has taken place with the Crofters Commission, bearing in mind that consideration of the Crofting Reform etc Bill has revealed serious problems with some of the crofting records? I am thinking of a place such as Taynuilt, where development was allowed, but it was subsequently discovered that the land was croft land. I am not saying that that happened in a national scenic area. Have you carried out appropriate consultation with the Crofters Commission on national scenic areas?

**Rhona Brankin:** I cannot tell you off the top of my head whether the Crofters Commission has been consulted. The process of drawing up a management strategy will involve local consultation and if a national scenic area is to be located in one of the crofting counties, it is clear that the Crofters Commission will be a key stakeholder. I can get the information that you seek, but we do not think that the Crofters Commission responded to the consultation.

**Dave Petrie:** My point was that there has been a problem with the accuracy of the Crofters Commission’s records. I was concerned that there might be a conflict with your proposals if its records proved to be inaccurate.

**Rhona Brankin:** The problem with crofting records has been that an accurate register has not been kept of crofting land, which has proved to be a challenge for the commission. That is why we intend, through the Crofting Reform etc Bill, to ensure that we have an accurate register.

Are you suggesting that there might be a problem when we review boundaries?

**Dave Petrie:** No. I am saying that it might be premature to press ahead with the NSA proposals when we are not sure whether the inaccuracy of crofting records might result in conflict.

**Rhona Brankin:** I have no information that there has been a problem resulting from a conflict between the boundaries of the existing NSAs and croft boundaries. Did we get any evidence on that from the consultation?

**Sally Thomas:** No one has told us that there is a particular issue with crofting. I hope that Mr Petrie will be reassured to learn that we have been working with the Crofting Reform etc Bill team to examine a range of natural heritage issues that might be thrown up by that bill. That work has not identified any conflict between national scenic areas and crofting, as it is dealt with in the bill.

**Cathie Craigie:** The Scottish Executive is reviewing permitted development rights and the natural heritage planning guidance will be reviewed shortly. Respondents to the consultation such as the Forestry Commission expressed concern about the implications for NSAs of the review of the general permitted development order. As has been discussed, there is a fear that now might not be the right time to consider NSAs. How have you dealt with those concerns?

**Rhona Brankin:** Those issues will be examined by the Scottish landscape forum because, as I have made clear, there is a relationship between them. Sally Thomas might want to say something about that.

**Sally Thomas:** There are two separate issues. Our planning colleagues have welcomed the fact that one of the tasks that the new Scottish landscape forum has set itself in consultation with SNH and the Executive is to feed into the review of national planning policy guideline 14, which is the planning guidance on natural heritage. The forum has just begun its work on that.

As the minister said, the forum encompasses the broadest range of professional and environmental landscape interests in the non-governmental organisation sector. The results of its work on the types of issues that should be considered in the planning guidance will be included—probably towards the end of this year or early next year—in an issues paper or a statement to be submitted initially for planning colleagues to consider when they start to prepare revised planning guidance.

Work on issues relating to the review of the general permitted development order has been under way for some time. There are issues to do with national scenic areas. I am sure that members are aware that permitted development rights are slightly different for some aspects of development in national scenic areas, the most notable of which is hill track development. We have worked closely with the steering group that is considering the GPDO on identifying potential issues.

The consultation response does not indicate support for a large extension of the removal of permitted development rights in NSAs—that sounds like a double negative. I think that there is consensus that the current permitted development rights restrictions should be maintained in NSAs. Extension of the removal of permitted development rights has not been a controversial issue.

**Cathie Craigie:** Is it intended that the regulations will be subject to the affirmative procedure?

**Judith Morrison:** No. They will be subject to the negative procedure.

**Cathie Craigie:** When do you expect the regulations to be introduced?

**Rhona Brankin:** We are keen to develop regulations as soon as the bill is enacted.

**Cathie Craigie:** How will you engage with members of whichever parliamentary committee is involved in the process?

**Judith Morrison:** Under the negative procedure, the regulations would be made and would be subject to the Parliament's power to annul them.

**Cathie Craigie:** Do the ministers intend to publish draft regulations?

**Rhona Brankin:** That would not normally be done as a matter of course, but we would be prepared to consider doing so if the committee thought that that would be helpful.

**Tricia Marwick:** Given what the convener and Cathie Craigie have said, it is likely that the Communities Committee will not consider the regulations. The Environment and Rural Development Committee will be the most likely recipient of them, but that committee will come to the subject even colder than the Communities Committee would. Do you therefore agree that it would be right and proper for the regulations to be subject to the affirmative procedure to allow the Environment and Rural Development Committee as much time as possible to consider them? Will you reconsider your intended approach?

**Rhona Brankin:** We could do so, but our current view is that the negative procedure will be used.

**The Convener:** I am sure that the committee will reflect on what has been said.

**Euan Robson (Roxburgh and Berwickshire) (LD):** We have spent a little time on management strategies, on which I will wrap up a couple of points. A target date of 2010 has been talked about; I presume that the minister will, with a light touch, encourage people to meet that target rather

than making it mandatory. Highland Council suggested that a management strategy might cover more than one NSA, particularly if NSAs were near one another. Does the Executive have an open mind on or oppose that idea? Does the Executive see sense in the proposal?

**Rhona Brankin:** The proposal is a possibility. As you know, national parks will have particular issues in thinking about how NSAs will fit in with them. It will be important for local authorities to work together to develop management strategies.

The target date by which we would like local authorities to develop management strategies is 2010, but that will depend on the extent to which boundary changes are proposed. We hope to take in as quickly as possible the existing NSAs under the new legislative framework. That will probably happen on the basis of a limited consultation with SNH. After that, if boundary changes were suggested, a full consultation would have to be held, which would involve communities, local authorities, key stakeholders and a range of executive agencies. We are looking to 2010, but we need to keep a close eye on how that progresses.

**Patrick Harvie:** Notwithstanding Highland Council's concern about the practicality of the target of 2010, the Association for the Protection of Rural Scotland suggested that it would be more realistic to expect councils to meet the target if the Executive were to create a sustainable development fund along the lines of what has been done south of the border. Has that been considered?

**Rhona Brankin:** We are aware of what happens south of the border and we could consider such measures, but we have made no final decisions.

**Patrick Harvie:** When do you expect to make a decision?

**Rhona Brankin:** I cannot comment on that. Suffice to say that we need to have the most appropriate way of funding the work.

**Patrick Harvie:** So you intend to consider such a measure.

**Rhona Brankin:** We will consider it.

**Scott Barrie:** I will be totally honest: I have much sympathy with the evidence that we heard about the fact that the name "national scenic area" is a bit of a nothing name that does not conjure up what it symbolises. What consideration was given to changing the name "national scenic area", which some witnesses have suggested does not encapsulate the concept?

**Rhona Brankin:** I am slightly bemused by that; the name was not a great issue in our consultation, but it popped out in the committee's

evidence. When you told me in conversation that people had concerns about the name, I was a bit surprised.

Key differences exist between areas of outstanding natural beauty and national scenic areas. The term "national scenic area" describes what is in the tin, because scenery is key. The powers that relate to each designation are different. Areas of outstanding natural beauty in England and Wales tend to be lower-lying areas that have distinct pressures on them—many contain areas with large populations and share key management issues. Areas of outstanding natural beauty would encompass places such as the Isle of Wight, the South Downs and the Hampshire coast, where there are big population pressures. Clearly, we have national park designations in places such as Loch Lomond and the Trossachs where there are big pressures on numbers. However, some of the issues that are covered are different. Our view has been that the term "national scenic area" effectively describes areas that are hugely important for Scotland because of their scenery.

10:15

**Scott Barrie:** I think that you accept that the term "national scenic area" was an issue for some of the witnesses. It is interesting that the issue did not crop up in the consultation. The committee may wish to return to the matter. The term does not necessarily convey what the area is, so we could perhaps come up with another form of words.

How have you sought to strike a balance between protecting the landscapes and the socioeconomic needs of communities in the areas?

**Rhona Brankin:** We are clear that we must strike an appropriate balance. Our view is that the national scenic area will not, of necessity, put an absolute brake on development. The issue of wind farms is obviously contentious at the moment. It is about striking the right balance and ensuring that national scenic areas are taken into consideration appropriately when local authorities make a decision.

**Sally Thomas:** When an area of land is designated as a national scenic area, a requirement will be placed upon the planning authority to pay special attention to the designation. Special attention must be paid to safeguarding or enhancing the character or appearance of the NSA. The fact that an area has been designated as an NSA becomes a material consideration in any development or in proposals that the local authority may receive or may promote, which means that NSA designation

becomes part of the balancing mechanism. The designation does not put an overriding requirement on the local authority or the planning authority to veto any development as such, but it becomes a consideration that they must take into account and to which they must give due weight, along with all other considerations, when they make decisions.

**Rhona Brankin:** That would include planning guidance and a range of other considerations.

**Scott Barrie:** To some extent, this gets to the nub of what the designations do. When you say that the authority must “give due weight” to the designation, the question is: what weight? I take the point that there is not an overriding veto, but can the designation be considered and ignored, must it be considered and acknowledged, or must it be considered and acted upon? There is a hierarchy of weights that could be given to the designation; the issue is how we find out what the levels are, so that communities know what the due weight is that is given to the designation. We must get some detail on that balance.

**Rhona Brankin:** Obviously, I am not a planning minister. Work on the issue and discussion between planning officials and officials in the Environment and Rural Affairs Department has been going on for some time. Sally Thomas may wish to comment on material consideration.

**Sally Thomas:** Guidance on that particular balancing act would be included in guidance that ministers would subsequently issue to planning authorities.

**Scott Barrie:** That seems to be fundamental. There is no point in having the designations—whether we stick with the proposed name or call them something else—if they do not make any difference. Going through all this palaver to designate an area would be pointless if the designation could be ignored. It is important that there is some meat in the guidance and that we get sight of what will be in the guidance.

**Rhona Brankin:** That is right. The guidance will be key.

**Dave Petrie:** Could I give an example? There is a lot of controversy not just with wind farms, but over the Beaully to Denny line and high pylons. Would you see that as a conflict?

**Rhona Brankin:** In that situation, the local authority would have to examine a range of material considerations, including the NSA designation and other planning guidelines.

**Sally Thomas:** I would not want to comment on a specific case, but for Beaully to Denny there may be other material considerations, such as national considerations, that have to be included in the balancing act. There is a range of different

considerations, of which an NSA designation would be one. That is why the guidance will be important. It will clarify for planning authorities how to approach the situation and what due weight to give an NSA designation in relation to other designations and policies. The scales must always be balanced by consideration of what the development is. It is difficult to talk in specifics.

**John Home Robertson (East Lothian) (Lab):** Scott Barrie referred to the socioeconomic needs of rural communities. I think that the minister will recognise that there is a perception in much of rural Scotland that Scottish Natural Heritage can be a rather tiresome bureaucracy run by fairly well-paid graduates—based previously in the city of Edinburgh and now in the city of Inverness—who may have limited sympathy for those who make their living in remote areas, whether they are farm workers or crofters for example. Can she give any reassurance that NSAs will not be just another bureaucratic burden on people who live and work in the Highlands, the Borders and other such places?

**Rhona Brankin:** John Home Robertson will be familiar with the basis on which we set up national parks. There was a huge amount of discussion to ensure that, in introducing national parks, we do not create areas of Scotland that are in effect pickled in aspic and in which the employment opportunity needs of the local community cannot be met. We legislated specifically to ensure that sustainable economic development would be part of the consideration of national parks. It is vital that we can maintain and develop populations in rural Scotland and that sustainable development is not held back.

The key idea is sustainable development, and I can give the example of fish farming. We have been working hard with environmental NGOs and fish farmers to ensure that we have a sustainable fish farming industry in the Highlands and Islands. There is no intention for NSAs to inhibit sustainable development in rural Scotland.

**John Home Robertson:** That is helpful, and I hope that that message can be conveyed throughout the ranks of Scottish Natural Heritage.

I have three specific questions. You have already referred to wind turbines. The Executive is rightly seeking to protect special landscape areas—that is what NSA designations are about—but it is also promoting the use of renewable energy in Scotland. Those two objectives will, on occasion, come into conflict. The question is whether the NSA designation will be robust enough to protect relevant landscapes while ensuring that the Executive meets its renewable energy targets. How will you make that happen?

**Rhona Brankin:** That is up to the planning process, and guidance should enable local authorities to take their decisions while taking a range of issues into consideration.

**John Home Robertson:** And the buck will stop with Johann Lamont?

**Rhona Brankin:** I could not possibly comment. However, as you know, there is specific guidance on renewable energy.

**Sally Thomas:** Our evidence is that the majority of developers are avoiding submitting wind farm or renewables proposals within NSAs because they know that landscape is given more consideration in those designated areas. The evidence is that the majority of proposals are for areas outwith NSAs.

**John Home Robertson:** Will the duty on planning authorities extend below the low water mark or will that remain with the Crown Estate commissioners?

**Rhona Brankin:** Proposals are being considered to transfer fish farms, for example, to local planning authorities.

**John Home Robertson:** So the intention in the bill is that NSAs will be related to their adjacent sea areas—estuaries and suchlike.

**Judith Morrison:** The proposed amendment will not extend the role of planning authorities below the low water mark as such. Where functions under the Planning etc (Scotland) Bill will be exercisable below the low water mark, the provisions will apply to areas designated as NSAs that contain water below the low water mark.

**John Home Robertson:** Might there be a case for considering an amendment to ensure that the legislation explicitly covers estuaries, sea lochs and suchlike?

**Judith Morrison:** Do you mean an amendment to the designation provisions?

**John Home Robertson:** Yes.

**Judith Morrison:** We believe that our amendment is already capable of doing that and nothing further is required.

**John Home Robertson:** We might need to explore that further, but it is helpful as far as it goes.

**Rhona Brankin:** We are happy to do that.

**John Home Robertson:** Forestry and agriculture are not covered by planning law, so agricultural and forestry land use is not subject to planning controls of any kind. How will land management contracts and the Scottish forestry grant scheme protect and promote landscape interests in NSAs?

**Rhona Brankin:** The designation of NSAs will be taken into consideration when regional policy on land management is developed and in the development of land management contracts.

**John Home Robertson:** Forestry management is probably the most graphic example. It is particularly important in a national scenic area that the planning of forestry planting—tree species, the layout and the margins—should be managed sensitively. Up to a point, that can be controlled by the Forestry Commission through planting grants, but if a private landowner decides to do without the planting grant, there is nothing to stop him or her planting what they like where they like. What more can be done to ensure the sensitive management of forestry planting in national scenic areas?

**Rhona Brankin:** The majority of planting would take place with reference to land management contracts. As you know, forestry will come into the new Scottish rural development plan so that when people apply for forestry grants, they will come from the rural development plan pot. There will have to be clarity in land management contracts about appropriate forestry activities.

You asked what would happen if a land manager were to go ahead with a proposal to develop forestry in a national scenic area without accessing grants. I do not know whether you are referring to a specific issue, but although a land manager could plant forestry within an NSA without making use of the available grants, I would not expect that to be very common.

10:30

**John Home Robertson:** That is a slight worry and it may be something that we need to look at. I remember a case in my constituency, a long time ago, in which a whole hill farm in the Lammermuirs was planted with Sitka spruce. The Forestry Commission would not pay a planting grant for it, because they thought that it was inappropriate, but the landowner still thought that it was worth his while to do so because of the tax breaks that were available at the time. That is ancient history, but I wonder what would prevent somebody who really wanted to do so from ignoring the whole policy and planting a great square block of Sitka spruce, Douglas fir or whatever it may be, in an inappropriate bit of a national scenic area. Would not that make a mockery of the whole business?

**Rhona Brankin:** That kind of blanket planting took place, as you rightly said, in response to the tax situation.

**John Home Robertson:** That was the Tories.

**Rhona Brankin:** That tax situation clearly does not pertain now. I know from my previous

experience as minister with responsibility for forestry that Mr Home Robertson is well aware of our current forestry strategy, which clearly emphasises the importance of having the right trees in the right place.

**Sally Thomas:** We may be straying into a rather more complex area to do with bringing forestry and agricultural activities under planning control. Even were the amendment to come into force, the situation would not change in any way with regard to the requirement or non-requirement for any type of planning consent for forestry activities.

With regard to land management contracts, there will be an assessment process for all applications that come in under tier 3. If an area is within a designated NSA, or indeed within a national park or any other designation, that factor will be considered as part of the assessment process, and it might be considered positively or negatively depending on the proposal that is being made. The proposal may have either a negative or positive impact on the NSA, but that will be factored into the assessment process for the applications that come in from land managers.

**Rhona Brankin:** In essence, we are taking a big step forward in land management by developing land management contracts. We are beginning to be able to plan land management in a much more integrated way than we have done in the past.

**John Home Robertson:** I suspect that we will have to return to that point. The system that you have described works only where there is a land management contract—where the farmer or forester has entered into a contract with the Scottish Executive—and in the absence of such a contract there will be a problem. What seems to have emerged from the questions is that while you might be able to prevent the development of inappropriate wind turbines in an NSA, if there is a bloody-minded landowner who is hellbent on blanket forestry or some other type of land use in an NSA, there is not an awful lot that you can do about it.

**Rhona Brankin:** As has been said, the situation is no different. There has been no proposal to bring those forms of land management within the planning framework. I do not know whether evidence has been led that that should happen.

**Christine Grahame:** I refer you to the Government's consultation paper, "Enhancing Our Care of Scotland's Landscapes", which states:

"We propose that SNH and local authorities should have the power to consider and bring forward proposals for new NSAs."

As it stands, the proposed amendment, which seeks to insert new section 263A into the Town and Country Planning (Scotland) Act 1997, appears to indicate that the role of SNH, local

authorities and any other prescribed persons—I shall come to that later—will be much less proactive. Proposed new section 263A(6) states:

"Before issuing a direction under subsection (1) or (5), the Scottish Ministers are to consult"

those bodies. Consulting them is very different from bringing forward proposals. Will the minister comment on that?

**Judith Morrison:** The reason why there is nothing in the amendment that empowers SNH or local authorities to make proposals is that it is not considered necessary to specify that provision. With their existing powers, they are capable of making proposals to ministers, who retain control of the designation process and are required to consult other parties as part of that process. One of my colleagues might want to say more about what is intended for making proposals.

**Sally Thomas:** Clearly, SNH is the ministers' natural heritage adviser and it has the national overview, which is relevant to national scenic areas. We would expect the impetus for proposals for new NSAs to come from SNH in consultation—and, I hope, partnership—with the relevant local authorities. If a local authority wished to make proposals independently, obviously ministers would consider those and consult SNH. There is nothing in the proposed amendment that would prevent SNH or local authorities from making proposals for designation.

**Christine Grahame:** With respect, would it not be helpful if there was more clarity in the proposed amendment? I hear what is now on the record, but would it not be better if the bill stated not just that ministers may

"by direction designate the area",

but specified that other interested parties, such as Scottish Natural Heritage, may propose NSAs for consideration?

**Sally Thomas:** We would certainly include that in guidance to encourage it. However, as Judith Morrison said, this is a drafting issue. Others are not specifically included in the amendment because powers already exist elsewhere in that regard. That is not to say that the relevant powers do not exist; they are just not specified in the bill.

**Christine Grahame:** So what you say should allay the concerns that various authorities and agencies have raised that the bill is not specific enough. The powers will be in the regulations—that is now on record in the *Official Report*.

**Rhona Brankin:** It will be important that we make a point of providing clarity in the guidance. There is certainly no intention of restricting people's ability to make proposals. In essence, we want the bill to become enabling legislation.

**Christine Grahame:** You can see where there might be a conflict, though. For instance, to go back to the issue of wind turbines, there might be a conflict with ministers about an area that has not been designated but which a local authority wants to designate. I can foresee issues arising in such situations.

**Rhona Brankin:** Clearly, we would have to take advice on that. The proposal to designate would be made on the basis of consultation having taken place.

**Christine Grahame:** I do not want this to trail on, but what would be the timescale for consulting and taking decisions on making a designation? Let us say that a local authority wanted an area to be designated as an NSA and somebody was breathing down its neck, wanting to build wind turbines or something that the local authority considered would not be good for the environment. How long would the consultation and so on take?

**Rhona Brankin:** The normal period that a local authority would take for a consultation is in the region of 12 weeks. I would not dictate to local authorities, but clearly they would be expected to undertake appropriate consultation and we would hope that it would not be a long, drawn-out process.

**Christine Grahame:** And I presume that, in the meantime, any plans for development that might be impeded if an area were an NSA would not proceed. Is that what you are saying?

**Rhona Brankin:** If an area was not designated, the existing planning guidance on designation would be the material consideration.

**Christine Grahame:** Right. A local authority might try to take out an interdict.

The proposed amendment states that the others to be consulted are

“Scottish Natural Heritage, and ... such other persons as are prescribed.”

Which persons do you have in mind?

**Rhona Brankin:** Local authorities will be hugely important and, of course, local communities. We are keen to set out how local people can get access to information and to ensure that they do. It will be important to set up a consultation as quickly as possible. A range of other bodies will also be involved, such as Government agencies—for example, Historic Scotland—local enterprise companies perhaps and local environmental NGOs. We want to make the consultations as full and inclusive as possible.

**Christine Grahame:** Local authorities and the National Trust for Scotland are major players. Would it not be useful to list them on the face of

the bill? You have named only Scottish Natural Heritage but it is important to put other main players in the bill as well.

**Rhona Brankin:** We think it will be adequate to put them in guidance, but I assure you that we are absolutely committed to full and inclusive consultation. John Home Robertson expressed the concern that sometimes, in some areas, a designation is perceived as a potential limitation. We need to ensure that communities are fully aware of the proposals and their implications so that they can make their views known. The process is important.

**Christine Grahame:** In such situations, there is often—although not always—a degree of conflict. If the minister makes a decision that various agencies, or perhaps all of them, do not particularly like, how will that be resolved? There are no procedures for appeal, mediation or review, so there will be no resolution. Subsection (6) of the proposed amendment just says that ministers have to consult before a direction is made.

**Rhona Brankin:** Yes, well, that is one of the tough things about being a minister; sometimes we just have to make decisions and live with the consequences. That is why we are committed to ensuring that there is full consultation on national scenic areas. Communities will benefit from such a designation and there will be huge benefits to Scotland's landscape by regularising this legal area. Thorough consultation will be important but, at some stage, ministers will have to make a decision based on that.

**Christine Grahame:** I am thinking about when an NSA is varied or cancelled. People might think that the situation is settled, but then the NSA might be extended or shrunk, or the area no longer designated as an NSA. That would have huge implications for the value of people's properties, their businesses and so on. I presume that people would have redress to the courts if such a decision had commercial ramifications.

**Judith Morrison:** The matter being one within the discretion of ministers, there might be resort to the court if ministers had not exercised their discretion properly.

**Christine Grahame:** How will you make that clear to people? There is a bit of confusion about access to the countryside and freedom to roam. We get the adverts about it and so on, and they are all right, but many people still do not understand. How will you ensure that people understand about NSAs and their benefit to tourism and local interests?

**Rhona Brankin:** On access to the countryside, we have to continue to get the message over. We are beginning to get it over but there is still a way to go.

If there is to be a change to NSA boundaries, there will be consultation throughout the community, which will raise awareness. The creation of NSAs will be of economic benefit to an area and local authorities are keen to be able to link them with their tourism industry, as has already happened in Dumfries and Galloway. Local authorities will be keen to maximise the benefits that might be afforded to them by NSAs in their areas.

**Christine Grahame:** I asked how you would ensure that. How will you publicise it?

**Rhona Brankin:** It would be up to local authorities to do that.

**Christine Grahame:** So it is a local authority job.

**Sally Thomas:** Part of that will come through the consultation process itself. An NSA designation does not impact in any way on an individual's right to access the outdoors under the Land Reform (Scotland) Act 2003.

**Christine Grahame:** No, that is a red herring. I am thinking about how it would impact on what someone is able to do to their property and land. National park designation has quite an impact on the people living in the national parks and they are not always happy about it. I just wondered how you would get that understood by local people. I would think that there would be stringent planning restrictions in an NSA.

10:45

**Sally Thomas:** In Dumfries and Galloway, the local communities have seen the management strategies and the refreshed interest in the NSAs in their area as very much a positive thing. At an individual level, it has been beneficial in assisting farmers to attract visitors to their area to access the countryside to undertake the quieter recreational countryside pursuits—walking, bird-watching and so forth. VisitScotland and the tourism industry have latched on to it as an important factor in marketing the area as somewhere to visit.

**Dave Petrie:** On general landscape issues, what constitutes an NSA is a matter of judgment. In fact, it can be an ever-changing picture. Does the current suite of NSAs represent the best of the scenery in Scotland? Do the public see being designated as an NSA as an accolade?

**Rhona Brankin:** Because there has not been much traffic and activity around the 40 NSAs, there are probably issues locally about the extent to which communities actively benefit from NSA designation. That is why management strategies will be so important. It is one thing to have an NSA, but many things can be done and put in place to maximise the benefit of that designation.

As I understand it—I will get my officials to give you more details—there was a fair degree of consensus about the 40 NSAs that are in place, which have existed for a number of years. I am open-minded about any new applications that may be made.

**Sally Thomas:** The areas in the existing suite of NSAs were identified for their outstanding scenic qualities in a national context; however, there may be issues about whether the boundaries are correct or whether additional areas should be accorded NSA status. For that reason, one of the earliest jobs that we want local authorities to do is to review the boundaries of the 40 existing NSAs to ensure that the current boundaries—which have been in existence for a long time—best achieve their purpose. We hope that, once that review is complete, any opportunities to create new NSAs will be taken.

The designation is for the best of Scotland's landscapes; it is not intended to be representative of all of Scotland's landscapes. That distinction was made back in the 1970s, when the initial work was done. The NSAs were not set up to represent every different type of landscape in Scotland, but certain types of landscape may be underrepresented. As the policy develops, SNH and the local authorities may feel that other types of landscape equally merit the protection that can be afforded by NSA designation.

**Dave Petrie:** Will you elaborate on how you will carry out consultation on the boundaries? What sort of work will be put in to come up with a view of what is appropriate as an NSA?

**Sally Thomas:** We will include the detail of the consultation in the guidance, but we expect local authorities to work closely with SNH and other national bodies to assess the environmental and landscape interest. We also expect them to consult fully their local communities and local stakeholders to establish how they value the landscape, how they use it and what benefits they feel that it has for them. We expect it to be a dual process. There will be a national consultation to consider the landscape in the national context, but we will also have to consider those who live and work in that landscape. Therefore, the consultation will need to have a strong local focus.

**Dave Petrie:** Do you envisage a timescale for reviewing the boundaries? Would you set a boundary, then, in a few years' time, decide that it was not appropriate? Will there be an on-going review process?

**Sally Thomas:** We could put in place a cyclical review process and say that the boundaries should be reviewed every so many years. However, the development pressures in the areas are such that it is unlikely that the boundaries



would have to be reviewed at frequent intervals. It is unlikely that there will be a constant nibbling away at the boundaries that would make a review necessary every two or three years. We are looking at a longer timescale than that.

**Dave Petrie:** SNH said that NSA status should be a positive enabling tool, rather than a restrictive designation, and could be a lever to bring in funds. How might that work in practice?

**Rhona Brankin:** Consultation is hugely important in engaging communities in considering the importance of the area and landscape in which they live. Given what John Home Robertson said, you will be aware that in some areas NSA designation may be seen as negative. Consultation will be hugely important in pointing out the potential benefits for communities. The pilot work that has been done in Dumfries and Galloway will be helpful in that regard.

It is all very well for Scottish ministers and the Parliament to recognise the importance of Scotland's landscape, but there has to be local buy-in. I have already talked about some of the benefits that have accrued in Dumfries and Galloway, where NSA status has enabled the area to lever in funding from the Heritage Lottery Fund. Work has been done with VisitScotland to maximise the benefits of NSA designation for the local tourism industry. I would expect such work to be taken forward.

**Sally Thomas:** There will obviously be a limited pot of funds for land management contracts. In NSA-designated areas, works that contribute to landscape could be a positive factor in the assessment of applications.

**Dave Petrie:** I return to the point that Sally Thomas made about perhaps discouraging wind farms in NSAs. How would you overcome the problem of conveying electricity to the grid where an NSA might have to be crossed?

**Rhona Brankin:** We did not say that we would discourage wind farms in NSAs. That would be a decision for the planning authority, which would have to take into consideration a range of factors and guidance. We said that, currently, it appears that NSA status is being taken into consideration in the application process. However, NSA status in itself does not mean that there can be no such development.

**Dave Petrie:** I take your point.

There is an issue not just with wind farms but with conveying electricity.

**Rhona Brankin:** Sure. A balance has to be struck.

**Dave Petrie:** How will NSAs be linked to other rural development policies in Scotland?

**Rhona Brankin:** One of the key areas that must be considered is natural heritage designation. A review is taking place and the Scottish landscape forum is considering how that relates to the NSAs. We have talked about the development of land management contracts, which will have an important relationship with NSAs, given that land managers will increasingly be able to access support for undertaking environmental improvement. Therefore, NSAs will link into the land management contract process. Clearly, NSA designation is potentially important in developing local tourism strategies. We have seen that clearly in what has happened within the national parks and in Dumfries and Galloway.

NSA designation will fit in with a range of national developments, such as land management contracts, and local policies, such as tourism and enterprise policies. Discussion will have to take place on how the designation links in with the current natural heritage designation review.

**Dave Petrie:** Have you had any consultation with VisitScotland, which is always considering the possibility of reviewing its boundaries? Is there any relationship?

**Rhona Brankin:** I do not have information on the views that VisitScotland has given us, but I can provide that for the committee, if it would be helpful.

**Tricia Marwick:** All the national scenic areas that are on the list are fairly large in terms of hectares. I have no problem with that, but some areas of outstanding beauty, such as waterfalls, are a lot smaller. Some waterfalls may be included in the areas that are on the list, but many beautiful waterfalls, which to my mind would make it on to any list of outstanding natural beauty, may not be included. I wonder whether the designation is predisposed to large areas and the management of large areas or whether future lists may designate much smaller places, such as waterfalls.

**Rhona Brankin:** It is difficult for me to predict what might be included in the future, but I suspect that we will have suggestions about designation for areas where particular pressures and issues arise and where the consultation has thrown up problems that may be helped by designation.

**Sally Thomas:** I do not think that the size of an area is an impediment. Whether ministers determine to confirm a designation will depend on the scenic qualities of the area, the case that is made and the support or otherwise that is shown through consultation. If an area is small, that will not of itself necessarily preclude designation. We do not propose to set any upper or lower thresholds for designation that relate to the number of hectares.

**Rhona Brankin:** One issue is whether a specific planning matter arises for the area.

**Judith Morrison:** In addition to considering scenic value, ministers would, in designating areas as NSAs, consider whether special protection under the bill is appropriate.

**Tricia Marwick:** I am grateful for the assurance that smaller areas could well be on the list in future.

**Rhona Brankin:** I am trying to think of the waterfall in your neck of the woods.

**Tricia Marwick:** We have none in Fife, I am afraid, but I visited a few waterfalls during the summer, so I can give you my list.

**Rhona Brankin:** Now that you have said in public that there are none in Fife, somebody will definitely write to you—there must be one somewhere.

**Scott Barrie:** I return to the point about boundaries that has been raised. When we took evidence before the summer, the representatives of the Cairngorms National Park Authority suggested that a meeting should be held between the Executive, the national park authorities and Scottish Natural Heritage to consider the reservations that have been expressed about the NSAs—or whatever we may call them later—that overlap with national park boundaries and whether those designations are to be removed. Have there been any further discussions on that issue?

**Rhona Brankin:** Yes, discussion has been on-going. We will continue to liaise closely with the national park authorities because we realise that issues arise about the differences between what is permitted in an NSA and in a national park.

Sally Thomas can give more details about the discussions.

**Sally Thomas:** We met the two national park authorities and SNH to discuss that specific issue. To start at the end, the conclusion of the meeting was that the best way in which to deal with the issue about national parks and national scenic areas is through boundary reviews, which will be done on a case-by-case basis. As proposals are made following consultation, it will be decided whether overlapping designations should remain in place.

We still have to consider one or two issues with the national parks, not least of which relates to permitted development rights, which for certain activities are removed within NSAs, but not within national parks. Therefore, the removal of the NSA designation would permit categories of development within the area that have not been permitted for 25 years or so. How we handle the permitted development rights is an issue on which

we need further discussions. That was the nub of the meetings. We are in correspondence with both the national park authorities and SNH on the matter.

**The Convener:** That concludes the committee's questions. I thank the minister and her officials for attending. I am sure that the committee will reflect on all that they have said today and give due consideration to their points as we consider the issue further at stage 2.

I suspend the meeting for five minutes to allow the Deputy Minister for Environment and Rural Development to leave and the Deputy Minister for Communities to join us.

11:01

*Meeting suspended.*

11:06

*On resuming—*

**The Convener:** The committee will now take evidence on local authority interest cases from Johann Lamont, the Deputy Minister for Communities, whom I welcome to the committee. The minister is accompanied by Andy Kinnaird and Tim Barraclough of the Scottish Executive. Minister, do you have an opening statement or are you content for us to start asking you questions?

**The Deputy Minister for Communities (Johann Lamont):** I will say something briefly, because there are technical issues on this subject. Members will know that in the Executive's discussion on the bill thus far we have—with the agreement of the committee—placed a lot of emphasis on culture change and the importance of partnership working. We recognise the significant roles that we all have in relation to that. There is no doubt that local authorities are a key partner in that culture change. I will make a small plug and mention that I had the privilege of visiting the planning department at the City of Edinburgh Council last week, to see its e-planning process, which was wonderful. We have secured £12 million of funding in partnership to roll e-planning out throughout the country. That is a good example of culture change and engagement with the planning process, which will facilitate people to be more involved.

I wish to say something about the statistics on local authority interest cases. Members will be aware that around 50,000 planning applications are lodged annually in Scotland, of which local authorities resolve to grant about 330 in which they have some form of interest. About 5 per cent of those applications are currently notified to ministers. On top of that, though, where a planning authority wants to carry out development, it does

not make a formal application for planning permission; instead it follows the notice of intention to develop procedure and advertises the proposal in the local press. Councils pass about 450 developments each year through the NID process. Of those, around 31 per cent are notified to ministers.

Planning authorities must carry out a range of developments in the exercise of their duties. They own significant amounts of land within their areas and often it is appropriate or necessary to release some of that land for much-needed development. Councils must respect the formal process and inherent fairness of the planning system and treat any planning application in which they have an interest in exactly the same way as they would any other private development. I acknowledge that planning authorities do so in the vast majority of cases. However, we know from evidence and from our dialogue in the committee that there can be a perception that if a local authority is involved in a contentious development, it is a challenge to the local authority to be completely impartial.

On our reform commitments, in our white paper last year we gave our commitment to a fairer, more balanced planning system—a system that will deliver the sustainable development that Scotland needs and will ensure that local people are properly included and listened to in the decision-making process. We promised to bring key improvements to the way in which developments are proposed and managed through the planning system. In the white paper, we said that the Scottish Executive will focus particular attention on any proposals in which the local authority will gain a capital receipt as a result of development. In future, formal planning permission will be required for all development proposals in which the local authority for the area is the developer, is the landowner or has some other financial interest. That means that all local authority developments will be subject to the wider reforms of our planning modernisation package, such as the requirement—in some cases—for pre-application consultations and mandatory public hearings.

Where a local authority wants to grant planning permission on a local authority interest case but the proposal either constitutes a departure from the development plan or is the subject of a substantial body of objections, the authority must first notify Scottish ministers, who will consider whether to call it in for their own determination. We also propose a new enhanced level of local scrutiny prior to notification: the authority must inform objectors of its decision to grant planning permission and its reasons for reaching that decision; the objectors will be invited to comment on those reasons and make further representations to ministers if they consider that

their views have not been properly dealt with by the council; and thereafter, if the authority is still minded to grant consent, it should notify ministers. We will publish guidance to local authorities setting out ministers' expectations about the quality of councils' assessments of those planning applications and clarifying the circumstances in which the proposals must be notified to ministers. The guidance will also set out the circumstances in which ministerial call-in of planning applications will be possible, or even likely, subject to consideration of all relevant issues.

Following royal assent, we intend to take early action on all of that by revoking the regulations that set out the NID process, which is unique to local authority developments, and by issuing a notification direction to ensure those developments are subject to the new enhanced scrutiny. As ever, I am happy to discuss any aspects of the proposals with the committee.

**The Convener:** Thank you. Members have a number of questions for you. One of the successes of the proposed changes to the planning process has been that the Executive has tried hard to consult people and be up front at an early opportunity about the changes that are being made. Is there a reason why the bill as introduced did not cover developments in which local authorities have an interest?

**Johann Lamont:** I have indicated what the white paper says and what the bill proposes. We must consult and we must listen, but we must also reflect on what is being said and where possible respond. We often respond at stage 2 to what has been said at stage 1 and through the committee process. In this process, we are keen to give the kind of assurance that people are seeking about local authority involvement and engagement. I have said previously that there are two ways in which local authorities can be perceived in the process of a planning proposal. Sometimes, when a local authority takes a decision on behalf of a community and resists a development, it represents protection for a local community. There is frustration when the developer can then come to the centre. Sometimes, though, there can be a degree of cynicism about the role of a local authority when it has an interest in a development going ahead. Our experiences of local authorities' involvement in planning can differ, which is perhaps reflected in the emphasis that people put on the role of local authorities. We have sought through the white paper to highlight those issues and through the bill to make concrete suggestions in response to them.

**The Convener:** Did the Executive have any alternative proposals to the ones that have been brought forward? If so, what were they and what were the reasons for rejecting them?

**Johann Lamont:** This will test my memory. It would be fair to say that we would be content for our proposals to be tested through the committee and through debate. It is our judgment that these proposals meet the demands that are being made to address concerns about local authority interest cases. I am always open to hearing about other ways in which that might be done.

**Dave Petrie:** You mentioned potential conflicts of interest. Will you explain how the proposals will allay the concern that has been expressed to the committee that there is an inherent conflict of interest in planning authorities deciding on applications in which they have an interest? You mentioned the statistics, but how would you allay fears or suspicion?

11:15

**Johann Lamont:** We have to accept that local authorities are planning authorities and are therefore responsible for planning. If we say that that leads to an inherent conflict of interests, we have to consider whether it is appropriate for local authorities to be planning authorities. I think that most people here share my view that local decision making should encompass local planning decisions. We charge the local authority with the general responsibility of doing good work on behalf of its community, and that is the context in which the local authority is challenged to meet the standards that are set and is monitored by us. I do not accept that there is an inherent conflict of interests. Local authorities have a critical role, and the challenge is to ensure that the tension between local decision making and the overview of that local decision making is resolved.

Through enhanced scrutiny and the notification process, we are keen to ensure that an open and thorough planning assessment is carried out. Decisions have to be interrogated and the process must be seen to be open. The notification process also offers protection to local authorities, which are often charged with acting through self-interest even when they have made judgments that they felt to be balanced and in the best interests of their communities. The notification process means that people can be informed of decisions. We seek to make that process open and transparent. In addition, of course, local authorities have to explain their decisions on planning applications. That, too, will enhance the process.

**Patrick Harvie:** I do not think that any of us would suggest that the existing situation is adequate, and I am pleased that the Executive has introduced amendments to address the concerns. However, in trying to build trust and confidence in the system, perception is everything. Having a local authority apply to itself for planning permission looks bad, does it not?

**Johann Lamont:** No.

**Patrick Harvie:** Has any consideration been given to bringing in some form of external view during the decision-making process, so that the planning authority gets the benefit of hearing from somebody who is responsible for planning but is not part of the planning authority and therefore does not have a vested interest?

**Johann Lamont:** Any professionals in any walk of life are accountable for how they conduct themselves so, as professionals, local authority officials are accountable for how they conduct themselves. However, I think that we are getting to the nub of an important point. Local authorities have democratic accountability; they are elected by local people. Local authorities' position in the system should be respected because it brings its own scrutiny with it. To bring in an independent external person would challenge the notion of local democracy.

I can understand that local authorities, in certain circumstances, will have an interest, but if they are charged with responsibility for the well-being of the people in their area, they will not be putting the money in their hip pocket. When making decisions on planning proposals, local authorities have to show that those decisions are in the interests of people in their area. A balance will always have to be struck and local authorities will be held accountable.

If the view on conflicts of interests were taken to its extreme, we would be saying that local authorities that have an interest in their own area could not make decisions on the very things that are most critical to people in their local area. Are we really saying that this should be about centralisation and allowing me to make basic decisions on what individual local areas should be like? Transparency and accountability have to be built in, but we also have to acknowledge the role of democratically elected local government.

**Patrick Harvie:** In no way am I attacking local democracy and I certainly would not want to centralise and have ministers making all the decisions. However, we should accept that although a local authority has a legitimate planning function, it has other functions that could be in conflict with the planning function. If a planning authority is trying to carry out its planning function in a way that people can trust and have confidence in but it also has another interest in the case, surely it would be right to ensure that some kind of external view is brought into its consideration.

**Johann Lamont:** You would have to define for me what that external view would be and what its authority would be. We want to invest in planning departments that understand their responsibilities

and discharge them appropriately and we want local elected representatives to reflect on the advice that they are given. I am not suggesting that that process should not be rigorous. I would go so far as to say that the critical role of planning within a local authority ought not to be compromised by a corporate view of a planning proposal. It is clear that people in the planning system have to be accountable on planning grounds for what they do.

You have said that perception is everything, but I do not agree with you. We have to challenge perception. The best way to do that is through accountability, showing how the system works and getting people to engage in it.

In certain circumstances, people say that the local authority has agreed something only because it is in its interest to do so. That points to the existence of a certain degree of frustration with the system. However, if the local authority has been persuaded that it is not in its interests to allow a development to happen in its area, the planning system allows a decision to be made in the centre. I am aware of as many circumstances in which people have been supportive of the reporter's decision to overturn a local authority's decision as circumstances in which people have been disappointed by that.

We know that the issue is complex and is overlaid by a lot of issues. However, of central importance is the need to recognise the particular role of local authorities, given that they are planning authorities, and the importance of constantly striving to seek a balance between the need to show that the process was carried out in a particular way—bearing in mind the backstop in that process, which is that notification will occur under certain conditions, thereby allowing a further opportunity for scrutiny—and the capacity of a local authority to carry out the live work of planning, which is to do with shaping communities in a way that people want them to be shaped. That has to be a local thing.

**The Convener:** Mr Petrie, can you finish your line of questioning on conflicts?

**Dave Petrie:** I suspect that I know the answer to this, but I will ask it anyway. Is it likely that the planning authority would ever refuse permission for an application that it has submitted to itself?

**Johann Lamont:** The fact that we are getting rid of NIDs and are enhancing scrutiny shows that we are saying that all planning applications should be taken seriously, regardless of their source. As I said already, the planning authority has a particular responsibility to scrutinise an application, which means that the situation that you mention would, in theory, be possible. It should not be possible for an individual

department to have a corporate view that it imposes on the planning department. For example, the Scottish Executive Development Department might come up with proposals relating to affordable housing or enterprise and the Scottish Executive could say, "Theoretically, that could be supported but we don't have the infrastructure to deliver it, so we think that you ought not to be doing that." As I said, that would not be an unusual thing to happen in a body that has differing areas of responsibility.

The key point for me is that, as part of the planning application process, the application has to be scrutinised appropriately. People should not be saying, "For goodness' sake, this comes from my colleagues in the education department, so I have to support it."

**Dave Petrie:** In the event of a wealth of objections coming in as a result of neighbour notification, what route would be followed? Obviously, the matter would go back to the local authority. Would the elected members reconsider the application in the light of the number of objections?

**Johann Lamont:** There are two aspects to be considered. First, we must consider the way in which people think about planning and the role of communities in helping to shape planning. Rather than seeing objections as a threat, they should be regarded as things that add value. Objections of the sort that you mention could be a way of telling people that the route that is being taken might not be the best way to go.

We have to prevent the kind of institutional closedown in which people simply say, "The matter's already been decided," and no one gets to hear about any objections, no matter how rational they might be. As I have said, we need to acknowledge the possibility that a certain proposal might not be the best approach to take. After all, such matters can arouse a lot of controversy. So the answer to your question is yes, people will expect local authorities to reconsider such applications.

We have also said that, in certain circumstances, local authorities will have to notify ministers if there is a substantial body of objections or a departure from the development plan. I realise that people get very frustrated if their concerns are not taken into account—and, indeed, I do not seek to understate the frustration that Patrick Harvie suggested has been felt at certain local authority decisions.

As a result, we expect local authorities to be open to change and we expect, through the notification procedure, to scrutinise what is happening.

**Cathie Craigie:** What is the purpose of asking objectors to submit further comments to the planning authority after the authority has decided to grant planning permission for a development in which it has an interest?

**Johann Lamont:** If a planning application is to be notified, such comments would provide further information for ministers in their deliberations on whether to call in an application. Moreover, such an approach shapes the next stage. If a substantial body of objectors remains unhappy about, for example, planning conditions, the comments that ministers receive from those objectors will inform the judgment on whether to call in the application.

**Christine Grahame:** How will the proposals apply to public-private partnerships and private finance initiative developments?

**Johann Lamont:** If a local authority is a partner in a PPP project, we must conclude that it has a financial—and, indeed, a land ownership—interest in it. In such cases, the enhanced notification procedure would apply.

**Christine Grahame:** Will the approach also apply to listed building and conservation area consents?

**Johann Lamont:** No, such matters fall under the regime of the minister for culture, heritage and all nice things.

**Christine Grahame:** An application for listed building consent was submitted recently for a building in Galashiels. It failed to get that consent, but let us, for the sake of argument, presume that it had and Tesco, for example—I must point out that I am not making it the baddy—wanted to knock it down to build a store. From what you have said, it seems that if the townsfolk were split over the proposal, but there was still a substantial body of objections to it, the application would not be called in under this procedure.

**Johann Lamont:** It would be a matter for Historic Scotland, which takes such responsibilities very seriously.

**Christine Grahame:** So Historic Scotland would step in to defend the building.

**Johann Lamont** *indicated agreement.*

**Euan Robson:** In evidence to the committee, respondents suggested that there had been some confusion over cases that under the current system should be notified to ministers and cases in which local objectors had been disappointed because applications were not notified to ministers. How will guidance assist the interpretation of notification directions and prevent the type of situation that we heard in evidence from arising again?

**Johann Lamont:** We have indicated that we wish to produce guidance under new planning advice note 55. It will replace the old PAN 55 on PFI and the planning process, which I am sure members know from cover to cover, and should provide the kind of information and clarity that you seek. We want to cover matters such as the appropriate levels of effective public consultation, which, as local authorities begin to introduce community planning, will prove to be an on-going and, I hope, interesting challenge; a clear statement on expectations of process; thorough assessment and probity; the relationship between and separation of council staff involved in the proposal and the planning staff dealing with the application, which refers back to my earlier point about not simply driving through a corporate view; assessing the need for notification to ministers, including advice on and interpretation of the notification requirement; and the issues that ministers will take into account when considering whether to call in an application.

11:30

**Euan Robson:** Thanks. That is helpful. We look forward to a revised PAN 55.

**John Home Robertson:** Set in tablets of stone.

**Euan Robson:** My next question is about definitions. How does the Executive envisage defining terms such as

“a substantial body of objections”

and

“departure from a development plan”?

In particular, how do we know what is meant by “substantial”?

**Johann Lamont:** If we were on the side of the objectors, it would be more substantial than if we were not, I guess.

There is a serious issue about definition. Sometimes, we can just tell and we would all agree on what something means, but it might be difficult to pin down a hard definition. A bit of me quite likes clear definitions, but it would not always be in the interests of objectors for there not to be a bit of flexibility and a recognition that judgment is needed. Judgment is used throughout the planning process, as one thing is constantly balanced against another. The fact that we have neighbour notification is a recognition that the impact of planning matters on some folk is different from and more direct than the impact on other folk who live further away.

We recognise that the definition of “substantial” is influenced by the individual circumstances and characteristics of a case. An obvious example—with which you will be more familiar in your

constituency than I am in mine—is that although 20 objections may not seem a substantial number in a city centre, it might be a substantial number in a small rural settlement. That is the kind of judgment that we must leave enough space to recognise.

If we have a plan-led system, if the development plans are more thorough than they have been in the past, and if there is more clarity, it will be easier to identify a “departure” from a plan. Also, some departures are more obvious than others because a development plan is not sufficiently clear on some issues. I would argue that there is a need for flexibility around that. As I have said, local authorities are in a good position to make a judgment on whether a proposal is a

“departure from a development plan”

or on whether the body of objections has been substantial.

I understand from my officials that local authorities are ultra-cautious and will notify, rather than disregard the fact that they have an obligation to notify and hide behind a definition of, say, 17 objections being “a substantial body”. Among local authorities, there is already a clear wish to get it right, and we must just work on that further. I do not think that we need to nail down the exact number that constitutes “a substantial body”.

As you have identified, it would be unwise to have definitions that were so absolutely clear that they ruled out the opportunity for flexibility even if, in theory, we might want to create exact definitions.

**Euan Robson:** I welcome the fact that you recognise the sense in having flexibility. I particularly appreciate your point about numbers of objections in different contexts. It is welcome to have had that clarification. Thank you.

**Patrick Harvie:** I agree largely with what you say about flexibility. Do you think that that flexibility should include not just the number but the content, meaning and substance of objections? You will be aware that, in some communities, objections will come from neighbourhoods that are full of lawyers, planners and the like—

**Johann Lamont:** You make those communities sound very desirable.

**Patrick Harvie:** Other communities, however, may not be able to put their case so articulately.

My second question is whether there are some triggers or minimum thresholds. For example, if a community council objects, could that be taken as, in itself, a substantial body of objections?

**Johann Lamont:** I would not be keen to have such triggers. I will seek clarification of the current role of community councils, as they are not uniform throughout the country.

**Patrick Harvie:** Indeed.

**Johann Lamont:** They are also not uniform in their capacity to engage with the communities that they represent.

You make a point about different kinds of objection. Sometimes, people might secure signatures for petitions by going round the neighbourhood, scaring the wits out of people with what is being proposed. That can often happen even when it comes to affordable housing and other things that we would all regard as desirable—as opposed to things that we would all regard as undesirable. It is legitimate to balance that against a case where somebody living locally has taken the time to express their own views. The whole argument around environmental justice is that listening to communities is not just about recognising the volume at which they speak. Your point about planners and lawyers is well made.

We have to do something around how people object, how we support people in making objections and what judgments we make about objections when they come in. Some people might just want to sign a petition, while still feeling strongly about the matter in question. We have to think about how we judge the extent to which different things count. If people write letters or make phone calls, does that not count in the same way as if a community meeting has taken place, for example? We can work out that sort of thing through the community engagement process. Some well-orchestrated and well-funded campaigns will succeed and some will not. The very fact of campaigns being well orchestrated or well funded should not in itself give them a higher priority than something that has come out of a local community that has been far more poorly resourced. That is the issue with environmental justice and proper community engagement.

**Christine Grahame:** Patrick Harvie has dealt with the issue pretty well. I was thinking about the substantive quality of objections, rather than their number or their comprising a “substantial body”. As we know, some people will sign a petition because it is the done thing in their area; others do it for more informed reasons. I hear what you have been saying. There is an issue of balance in small communities. However, I would like clarification on the phrase “substantial body of objections”—rather than “substantive objections”. It should not just be about names on a piece of paper. I would like clarification on that issue.

**Johann Lamont:** I understand that point and I can see the logic of it. We will all have been in situations where it is said that someone has just photocopied a letter and stuck it out, and that people did not really care about the issue and did not know what they were signing. We have to be careful about this. There is an argument about

how much support was given to, or opposition voiced against, some of the proposals in the bill through postcard campaigns and so on—although that is a legitimate form of campaigning. There is a balance to be struck there. One person's "substantive" is not necessarily another person's. If someone is fundamentally in support of something, they might dismiss a lot of the opposition to it as frivolous, as the opponents will not have accepted that person's core argument for the need for it. There can be difficulties there.

Notification should be triggered when the planning authority considers the strength of opposition as a significant material consideration. That would be clarified in our guidance, taking account of the number of representations against the proposal in the context of the locality, the relevance of the representations and, in cases where objections are made by a group or organisation, the extent to which that group is considered to be representative of the community. Those are all hard issues. In a sense, that is what makes the planning system so interesting.

We cannot say that folk who have an interest in a particular area, wherever they are, cannot make an objection. However, consideration of the objection will be weighted by, or be subject to an awareness of, the views of the people who live in the local area, who have been engaged in the matter and who have been discussing it for a long time. The role of a hugely active community council could be relevant, although I would not say that that should be an automatic trigger. There will, however, be circumstances where, if a community council that was usually very measured, did not normally respond in such a way and was usually proactive regarding development in its area took a certain stance, that would carry a certain authority. That is the sort of thing that we would consider under the guidance.

**Patrick Harvie:** When are we expecting to see the amendment? How long will we have to amend the amendment, if necessary?

**Johann Lamont:** We will ensure that the committee knows the timescale on which we plan to lodge the amendment. I am keen for folk to see the amendment as soon as possible, so that they can respond to it. We would never wilfully lodge an amendment late to deny members such an opportunity. I will seek clarification of the timescale and I am keen for the committee to see the amendment as soon as it can, to help its deliberations.

**The Convener:** I am sure that the committee looks forward to receiving that information. That concludes the evidence on local authority interest cases. I thank the minister and her officials for attending.

I suspend the meeting to allow the officials to change over, although the minister will remain.

11:40

*Meeting suspended.*



11:42

*On resuming—*

## Subordinate Legislation

### Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (Draft)

**The Convener:** The third agenda item is subordinate legislation, for which the Deputy Minister for Communities, Johann Lamont, is accompanied by Mark Richards from the office of the solicitor to the Scottish Executive and Ken Young from the Registers of Scotland.

As members are aware, the draft order is an affirmative instrument, so the minister is required under rule 10.6.2 of standing orders to propose by motion that it be approved. Committee members have received copies of the draft order and its accompanying documentation. I invite the minister to speak briefly to the instrument, but she should not move the motion yet.

**Johann Lamont:** The draft order will be made under powers that were conferred by the Electronic Communications Act 2000, section 8 of which permits ministers by order to modify the provisions of any enactment for the purpose of authorising or facilitating the use of electronic communications. Section 9(7) of that act provides that, in respect of matters that are not reserved, the power is exercisable by the Scottish ministers with the secretary of state's consent.

The instrument proposes technical modifications to the Requirements of Writing (Scotland) Act 1995 and the Land Registration (Scotland) Act 1979. The changes will enable the introduction of automated registration of title to land, which the Keeper of the Registers of Scotland is developing with the support of stakeholders, which include the Law Society of Scotland, the Council of Mortgage Lenders and the Scottish Consumer Council. The draft order introduces an optional process under which deeds that affect property may be created and transmitted as electronic communications that will automatically update the land register of Scotland.

The new process will permit faster, cheaper and more accurate registration and I hope that the committee will feel able to support the order that proposes it.

11:45

**The Convener:** Do any members have questions?

**Christine Grahame:** The order is to be welcomed although, as a former solicitor, I am always printing off documents to ensure that I have them in paper form and I suspect that other people may do the same.

I want to press you on the consultation. The Executive's note says:

"Those who responded to the consultation were largely content with the proposed order."

Will you put on record what criticisms were made?

**Johann Lamont:** We got 10 responses, which were generally supportive of proposals that will enhance and improve the system and help people to make the process efficient. A number of practical points were made, which I will ask the officials to clarify.

**Ken Young (Registers of Scotland):** As Johann Lamont said, in general the responses were supportive and positive. A number of Scottish academic lawyers, including Professor Ken Reid of the Scottish Law Commission and a group of four university professors, made specific technical points on different aspects of the order, which we incorporated into the order's present form when that was possible. They did not say anything particularly negative.

**Christine Grahame:** I have always found Professor Reid scary, so I would not like to tangle with him.

**Ken Young:** We are talking about a system that is voluntary—there is no proposal to make it mandatory.

**Christine Grahame:** That is interesting; I had not realised that. Do you have any information on what the take-up will be?

**Ken Young:** Yes. We have take-up predictions that indicate that, if we are lucky, about 500 firms of solicitors will be using automated registration of title to land by late summer next year. The roll-out begins in November this year with some live testing and it will begin properly in late January next year—we wanted to miss the Christmas and new year season.

**Christine Grahame:** What proportion of the total number of firms of solicitors is 500?

**Ken Young:** I am not sure, but I think that there are about 1,200 firms of solicitors in Scotland, not all of which will do conveyancing, of course.

**Christine Grahame:** So about half the firms will use the new system.

**The Convener:** As there are no further questions from committee members, I ask the minister to move motion S2M-4583.

*Motion moved,*

That the Communities Committee recommends that the draft Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 be approved.—  
[*Johann Lamont*.]

*Motion agreed to.*

**The Convener:** Do members agree to report our decision on the order to Parliament?

**Members indicated agreement.**

**The Convener:** I thank the minister for attending and suspend the meeting to allow her and her officials to leave.

11:47

*Meeting suspended.*

11:48

*On resuming—*

**Town and Country Planning (Application of Subordinate Legislation to the Crown) (Inquiries Procedure) (Scotland) Order 2006 (SSI 2006/339)**

**The Convener:** Item 4 on the agenda is also subordinate legislation. SSI 2006/339 is the last of a set of instruments laid under the Planning and Compulsory Purchase Act 2004 that concern the removal of Crown immunity from planning control. Members will recall dealing with related instruments.

The order applies the Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997 and the Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997 to the Crown. It also modifies various rules relating to the procedure to be followed at planning inquiries to take account of the new provisions that deal with the appointment of persons to represent the interests of anyone who is prevented from hearing or inspecting evidence at a planning inquiry that is subject to a national security direction. The order also makes provision in relation to applications for development that are certified by the Crown body as being of national importance and required urgently.

The Subordinate Legislation Committee did not have any comments to make on the order. Do members have any comments to make on it?

**Christine Grahame:** I am interested in it. It seems to me from the Executive's note that the order will be more liberating. I do not know about the historic position, but members may know that the approach to Crown immunity has been more rigorous. The order tries to introduce a more democratic approach, subject to certain reservations—which I understand—but I would be

interested in examples of restrictions. I do not know whether the committee has previously discussed such examples.

The Executive's note refers to "Security Sensitive Information". Information about Faslane is an obvious example in that context, but given that we are now in a different world in which there are potential terrorist targets that the order might encompass, I wonder about other kinds of security-sensitive information. I also wonder how things will operate between Westminster and the Scottish Parliament, as we are talking about a reserved matter that affects buildings and places on our soil.

The section of the Executive's note entitled "Urgent Applications" says that

"reductions in time periods ... are of significance where a nationally important development is required urgently".

I would like to know what such developments would be. That there would be clampdowns under the two categories that have been mentioned for reasons that may be appropriate is important.

Finally, although I understand the terms "closed evidence" and "open statement of case", I do not know about the term "appointed representative". I think that there would be an appointed representative when people who would normally be able to be part of a planning inquiry are debarred from it for reasons of security or whatever, although I do not know whether the process would involve an advocate. We now operate in a different Scotland in which terrorist attacks are possible, and I would like clarity. More things might be involved than used to be involved.

**The Convener:** Would you be content to agree to the order today if we agreed to write to the minister to ask for clarification of the circumstances in which the Executive envisaged the order being used?

**Christine Grahame:** Yes. I have raised issues to be recorded in the *Official Report* because the explanatory note does not provide a sufficient explanation of the changed circumstances.

**The Convener:** I am sure that the minister will be able to supply us with the information that we want.

Is the committee content with the order?

**Members indicated agreement.**

**The Convener:** The committee will therefore not make any recommendation on the order in its report to the Parliament. Do members agree that we report to the Parliament on our decision on the order?

**Members indicated agreement.**

**The Convener:** We will write to the minister to seek the clarification that Christine Grahame has requested.

*Meeting closed at 11:53.*



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