

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 25 November 2009

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2009.

Applications for reproduction should be made in writing to the Information Policy Team, Office of the Queen's Printer for Scotland, Admail ADM4058, Edinburgh, EH1 1NG, or by email to:
licensing@oqps.gov.uk.

OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
RR Donnelley.

CONTENTS

Wednesday 25 November 2009

Col.

DECISIONS ON TAKING BUSINESS IN PRIVATE	2709
CONTROL OF DOGS (SCOTLAND) BILL: STAGE 1	2710
SUBORDINATE LEGISLATION.....	2748
Planning (Control of Major-Accident Hazards) (Scotland) Regulations 2009 (SSI 2009/378)	2748
Home Energy Assistance Scheme (Scotland) Amendment Regulations 2009 (SSI 2009/392)	2748

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

31st Meeting 2009, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Alasdair Allan (Western Isles) (SNP)

COMMITTEE MEMBERS

*Bob Doris (Glasgow) (SNP)

*Patricia Ferguson (Glasgow Maryhill) (Lab)

*David McLetchie (Edinburgh Pentlands) (Con)

*Mary Mulligan (Linlithgow) (Lab)

*Jim Tolson (Dunfermline West) (LD)

*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)

Margaret Curran (Glasgow Baillieston) (Lab)

Alison McInnes (North East Scotland) (LD)

Margaret Mitchell (Central Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Christine Grahame (South of Scotland) (SNP)

Philip Lamont (Scottish Government Criminal Justice Directorate)

Kenny MacAskill (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 4

Scottish Parliament

Local Government and Communities Committee

Wednesday 25 November 2009

[THE CONVENER *opened the meeting at 10:04*]

Decisions on Taking Business in Private

The Convener (Duncan McNeil): Good morning, and welcome to the 31st meeting of the Local Government and Communities Committee in 2009. As I usually do at this time, I remind members and the public to turn off all mobile phones and BlackBerrys. I welcome Christine Grahame MSP, who joins the committee for this evidence session.

Agenda item 1 is to decide whether to take in private item 5 and future consideration of our draft report on local government finance. Is that agreed?

Members indicated agreement.

The Convener: Item 2 is to decide whether consideration of our draft report on the Home Owner and Debtor Protection (Scotland) Bill and consideration of our work programme should be taken in private at future meetings. Is that agreed?

Members indicated agreement.

Control of Dogs (Scotland) Bill: Stage 1

10:05

The Convener: Item 3 is to take oral evidence on the Control of Dogs (Scotland) Bill. I welcome our first panel of witnesses, who are Kenny MacAskill MSP, Cabinet Secretary for Justice; and, from the criminal law and licensing division of the Scottish Government, Philip Lamont, head of branch, and Jim Wilson, policy officer. I invite the cabinet secretary to make brief opening remarks.

The Cabinet Secretary for Justice (Kenny MacAskill): We are generally supportive of the principles of the bill, which was first proposed by Alex Neil and has been taken on by Christine Grahame. It seems to us that it will be beneficial and will target some lacunae in the law, and that it is a proportionate response to a problem that is faced in many communities, including in my constituency.

The Convener: Thank you for those brief remarks. The committee always welcomes such brevity, which allows us to get on to questions. I will open up by following on from oral evidence at last week's meeting. The National Dog Warden Association gave evidence about its role from 9 to 5 and the police's role out of hours and about the cost implications of budget transfer. What discussions are you aware of between the Association of Chief Police Officers in Scotland, the Convention of Scottish Local Authorities and the Scottish Government on costs and the transfer of budgets?

Kenny MacAskill: I have asked officials to set up a meeting in response to communications that we have had, particularly from Strathclyde Police and ACPOS. We seek to engage in meetings with ACPOS and COSLA on this tripartite matter to work out what is best for our communities and who is best placed to deal with matters. Meetings are being set up to ensure that discussions commence.

The Convener: Are any meetings happening at this time?

Kenny MacAskill: I am not aware that they have started—my officials may have other information—but I am aware that the meetings are being set up, although that may come through a separate department. I have been lobbied by Strathclyde Police on the issue, which is a legitimate one to raise. We are making arrangements to engage with all parties and get round the table to work out what is best for our communities. It is a matter of bringing COSLA and ACPOS to the table.

The Convener: Can the officials give us an update? I am pressing you on this because the police were unable to come to the meeting and we have not had any evidence from COSLA. We know that police time and costs are an issue.

Philip Lamont (Scottish Government Criminal Justice Directorate): Strathclyde Police wrote to the cabinet secretary a few weeks ago raising the issue. A meeting is due to be set up and will take place, I hope, before the end of the year. It is just an initial meeting to find out more about where the police are coming from. Obviously, it is critical that both ACPOS and COSLA agree with what is decided, especially for the financing. The meeting, which will be between officials, will discuss that as an initial stage.

Alasdair Allan (Western Isles) (SNP): An issue that has been raised by people who largely support the bill's aims is the definition of "out of control". Does the Government have a view on that issue?

Kenny MacAskill: We agree with the bill's definition. Section 1(3) has a two-part test for whether a dog is deemed to be out of control. It states:

"a dog is out of control if ... it is not being kept under control effectively and consistently (by whatever means) by the proper person, and ... its behaviour ... or ... its size"

is a problem. Both elements of the test must be met for an authorised officer to consider that a dog is out of control. We are genuinely content with the bill's definition. We are aware of concerns about it, though, and we will be interested to hear the views of both Christine Grahame and the committee. In principle, we think that the test is satisfactory, but if it can be improved by additions or amendments, we will be perfectly supportive and relaxed about that.

Alasdair Allan: The Government's reading is that the test has two parts, which must both be met.

Kenny MacAskill: It is a two-part test both parts of which must be met.

Mary Mulligan (Linlithgow) (Lab): Good morning, cabinet secretary. Do you have concerns or views about how dog control notices will be enforced?

Kenny MacAskill: The cost implications will depend largely on the use that local authorities choose to make of the system. The financial memorandum acknowledges a margin of uncertainty, given that we do not know what the precise numbers will be. The memorandum says that the number of notices will probably be 1,100. If the number went beyond that, discussions about funding would have to be held under the concordat between local and national Government. However,

the costs should not be significant. You have taken evidence on that.

Mary Mulligan: We will pursue the costs issue, but my question was more about the practical measures that are being requested. I understand that only one person will be needed to investigate the situation and issue a dog control notice, but I am a little more concerned about how to ensure that that is enforced. We all want the dog that is out of control to be put under control, so that it does not cause problems. How will notices be enforced?

Philip Lamont: I agree with the witnesses last week who said that notices will be an effective tool in their overall armoury to deal with dogs. We hope that even just the power for dog wardens to issue such notices should act as a deterrent and that not too many notices will need to be issued. As a result, the problems that might be associated with enforcement or the burden of enforcement might not be too great.

When notices are issued, it will be up to local authorities to determine how to adhere to the bill, which will require them to monitor and enforce notices. I do not know whether that will be achieved through spot checks. A witness last week said that wardens do such work anyway. If they have received a report, they return to see whether the behaviour has improved anyway. The burden might not be new in all areas—that will depend on current practice, but the bill will formalise such measures in a statutory framework.

Mary Mulligan: I agree with the hope that the power will act as a deterrent and that, if a DCN needs to be issued, it will provide a direction of travel for how to behave in the future. Unfortunately, some of the people who have dogs that have caused problems are not the most responsive to such measures. If they did not respond to notices—if they just ignored them and carried on as before—what action would be taken?

Kenny MacAskill: The bill will not establish, and we would not support, an appeal or court mechanism. We will give powers to local authorities, which will have to consider the impact of a notice on somebody's tenancy if they are a local authority tenant and on how their behaviour is viewed—the situation could provide grounds and meet criteria for pursuing an antisocial behaviour order. The bill does not specify a sanction, but those who are being given powers will have other tools in their armoury when considering breaches. That will be for local authorities to deal with.

Mary Mulligan: Do you accept that certainty about the process is needed? As the ultimate

sanction is destroying the dog, the measures before that point is reached must be sufficient.

10:15

Philip Lamont: Section 5 sets out the formal breach procedure. We hope that the bill will act as a good deterrent and that the procedures in it will not have to be used. That will take us so far. However, as you said, in some cases that will not work, so section 5 covers failure to comply with a dog control notice.

The issuing of a dog control notice would be a civil matter. I think that there was some confusion last week about the need for corroboration. There would be no need for any sort of corroboration before a dog control notice could be issued. However, the breach of a notice could be a criminal matter—that is where corroboration would come in, to prove the offence. Under section 5, a dog owner could be found guilty of an offence if they did not adhere to the terms of the dog control notice—in other words, if they did not bring their dog under control or if they breached any of the terms of the notice. On summary conviction the person would be liable to a fine of up to level 3 on the standard scale, which is currently £1,000.

Imprisonment would not be an option under the bill. Given the gravity of the offences that we are considering, such an approach seems to be about right. We do not envisage too many proceedings being taken forward—we hope that there will not be many—but section 5 offers a useful backstop, which could be used if necessary. If a dog warden who was monitoring a situation saw that a dog control notice was being breached, they would have to involve the police at that stage, to make a report.

Jim Tolson (Dunfermline West) (LD): The bill would require authorities to appoint authorised officers. The committee heard in evidence last week that some local authorities in Scotland do not have dog wardens, but it is suggested that the bill would have no impact on authorities' resources. Does the cabinet secretary think that there would be an impact on local authorities' resources, and if so, would the Scottish Government be prepared to allocate funding so that the approach could be taken forward?

Kenny MacAskill: I understand that the committee has heard from local authorities. We will listen with interest to what authorities say about how they would pursue the issue. Rural and urban authorities might operate in different ways, and we are interested in hearing about what authorities propose to do.

No funding has been allocated in the Scottish Government budget, so if new responsibilities were to give rise to the need for extra central

Government funding, discussions would have to take place, in accordance with the procedures in the concordat. It would be for local authorities to work out how to proceed, but we would be happy to discuss the matter.

There is precedent, in that in some areas licensing standards officers and trading standards officers share responsibilities, whereas in jurisdictions that have more licensed premises there are dedicated specialist LSOs. That is a matter for local authorities. In general, we are supportive of the principles of the bill and, if the committee and, ultimately, the Parliament decide that the bill should proceed, we will seek to work with local authorities.

Jim Tolson: I appreciate that you might have to enter into negotiations with local authorities. Do you accept that it is clear that, if additional resources are required, there will be financial implications, whether for local authorities or for the Scottish Government?

Kenny MacAskill: That is clearly the case. I know from experience in my constituency that the antisocial behaviour unit in the east Edinburgh area office has to deal with dogs. It would be for the City of Edinburgh Council to decide how to deal with the matter. We would have to discuss with COSLA any difficulties to do with increased cost or resource implications, and we would be happy to do so.

Jim Tolson: The bill provides for the creation of a national database of dog control notices, which would also have financial implications. I understand that although there is a preference for having such a database, there is no requirement in the bill to create one.

Local authorities should collect statistics so that they can understand what is happening in their areas. Do you agree that a national database is a good idea, which would ensure, first, that a consistent approach to the collection of data was taken, and, secondly, that the Parliament and other interested parties could get a clearer picture of the bill's impact on communities?

Kenny MacAskill: We do not see the need for a national database, which would have a cost. Local authorities will be required to keep records, and the benefits of a national database that would be built up from data that were kept locally are not clear. The bill would not require a national database to be created and we remain to be convinced that one should be established. Much of the information would be collected by local authorities. Equally, I am aware that the police keep their own records of dogs, just as they possess records of where they believe weapons may be stored. I do not understand what benefit a national database would have when the

information is collected locally but, if you can tell us why we need one, who would access it and for what purpose they would do so, we are open to persuasion.

Jim Tolson: There are many instances in which bodies such as local authorities and health boards collect information on the Scottish Government's behalf. My concern is that different local authorities may collect the information in different ways. Is there any way round that, because it would be hard to get a good comparative picture in Scotland if the information was collected in different ways?

Kenny MacAskill: To some extent, it does not matter what information is collected because there is only so much information that we can collect regarding a dangerous dog. I am not sure what other criteria would be specified in such a database.

These are matters of balance. I am frequently lobbied by Liberal Democrats about Big Brother government collecting too much information on too many people. If it is felt that there should be a national database, the Scottish Government could have one. However, we find it difficult to understand why we need one and what purpose it would serve if the local authority collects the information. There are instances in which such information must be collected nationally, but I am not aware of how a national database would benefit the common good. However, we are open to persuasion.

Jim Tolson: At this stage of discussions, we are here to question the points in the bill and put them to the cabinet secretary, regardless of our politics. I appreciate the answers that he has given us this morning.

The Convener: There has been some discussion about the benefits of a database of people who are not suitable to have dogs or who use them almost as offensive weapons. It was suggested last week that a database could keep a check on people who should not have dogs owning them for that purpose.

I thought that you would support the sharing of information to some degree, cabinet secretary. If the police have identified people who are involved in crime and who use dogs to guard their premises or to intimidate people for the purposes of dealing in drugs or illegal contraband, that information could be shared with housing associations that have similar problems. I would have thought that, if part of the purpose of the bill is to deal with the antisocial behaviour that arises from such activity, you would welcome the sharing of that information rather than dismiss the idea outright.

Kenny MacAskill: I did not dismiss outright the idea of sharing information.

The Convener: I must have misunderstood you.

Kenny MacAskill: I said that I was not convinced of the benefit of a national database. The sharing of information seems to me to be a commonsense no-brainer. After all, not only organisations such as housing associations but professionals such as health visitors face dogs. I know from 20 years' legal experience that there is concern about the safety of sheriff officers who have to go to the door to serve interim interdicts in domestic violence cases, for example. Mr McLetchie might also be aware of such instances. In my experience, a sheriff officer would usually be given support by the police if they were going to a house where they knew that there would be some difficulty, some danger or perhaps even a ferocious dog.

You may be conflating two separate matters. One is a national database. If we are going to go down that route, we must consider who holds the database, who has access to it and on what criteria they access it. We are open to persuasion on the merits of such a database, but we are not persuaded of the need for it at present.

The second point that you mentioned—the sharing of information—seems to us to be appropriate within the constraints of data protection legislation and confidentiality. If it is appropriate that a police officer should have knowledge relevant to his safety when he goes to premises, it is equally appropriate that a sheriff officer acting on behalf of the court, a health visitor going to examine a child or any other legitimate person—down to a postie going to the door—should have such knowledge.

The sharing of information is a separate matter from a national database.

The Convener: Is such information shared now and, if so, how?

Kenny MacAskill: That is a matter for the various organisations to comment on. I am not aware of any difficulties, in that no organisation has lobbied me to say that it is not aware of such information. I assume that that is largely down to good custom and practice—which I have experienced myself in the east Edinburgh area office, where the City of Edinburgh Council brings together relevant departments. You would require to ask others about that point; I do not think that it is in the Government's domain.

The Convener: In response to Mr Tolson's questions, you have told us that you support the principle of sharing information, even if you do not support having a database. Let me go to the next stage: what sort of guidance should there be and what discussions could and should take place to ensure that information is shared among the police, housing associations, posties and others?

How would information be collected in a given area? What discussions should be taking place to enable that commonsense sharing of information to take place for the protection of people in communities? How could we bring that about?

Philip Lamont: Section 4(4) provides a power for the Scottish ministers to make an order permitting the local authority

“to share, for the purposes of this Act, that information with other local authorities, Scottish Ministers and the police”.

You have mentioned other organisations—I do not know whether those provisions need to go slightly wider. It would be our intention to use that order-making power as part of the implementation of the bill.

As the cabinet secretary said, it is not that we are necessarily against the database; it is just that we are not entirely convinced of the need for it. I imagine that a guidance group or implementation group would be set up, involving all the interested parties, including local authorities. I question whether a database needs to be specified in the bill. It is not that there should not be one, but does it need to be specified in the bill? If it is, what purpose does it serve? Some clarity about that would be helpful.

The Convener: Christine Grahame may come in on this point—but on this point only.

Christine Grahame (South of Scotland) (SNP): The officials have already addressed some points about section 4. Section 4(3) contains a duty on local authorities

“to co-operate with the police and with other local authorities”.

The power in subsection (4), which Mr Lamont has mentioned, is discretionary, allowing the Government to give more formal guidance on what information is to be shared and with whom. I have taken note of the other agencies that have been mentioned, such as housing associations, which I had not considered.

David McLetchie (Edinburgh Pentlands) (Con): Let me explore the issue of corroboration in relation to the issuing of dog control notices and prosecution for their breach. If someone is prosecuted for breach of a dog control notice, would it be a defence to that action to challenge the validity of the original notice?

Philip Lamont: That is a good question. There is a power in section 3 for someone to appeal against the issuing of a dog control notice in the first place. It could be argued that, if that person does not use that power, and then breaches the dog control notice and is prosecuted, they have in effect admitted that the dog control notice has been issued, as they have not appealed against it. That is a slightly tortuous argument, I accept, and

it perhaps needs to be examined for the sake of clarity.

David McLetchie: It is a fundamental point in relation to the evidence that we got previously from the dog wardens. They say that we need full corroboration of the background giving rise to the issue of a dog control notice, as that might get tested in a subsequent criminal prosecution for breach of that notice. All that has a bearing on cost. The member in charge is in effect saying that the issuing of the notice is simply an administrative act, that it would therefore be sufficient for there to be only one authorised officer to issue the notice, and that corroboration is relevant only in the context of a breach of a dog control notice and subsequent prosecution. Given what you have just described, would it be a good idea for the bill to state expressly that, when a dog control notice has not been appealed within the requisite appeal period, it is in effect final and its validity cannot be challenged in a subsequent criminal prosecution? That would remove the doubt that you mentioned, would it not?

10:30

Philip Lamont: On the face of it, that seems like a good idea.

David McLetchie: What is the period within which a dog control notice, once issued, can be the subject of an appeal? I am afraid that I cannot find the relevant reference in the bill.

Philip Lamont: Sections 3 and 7 deal with someone who wants to appeal against a dog control notice or have it discharged. When I first read section 3, it was not entirely clear to me, but it became clearer after further investigation. The section relates to someone who wants to appeal against the issuing of a dog control notice in the first instance. It talks about a person P appealing

“by summary application appeal to the sheriff against ... a dog control notice”

or the term of a notice. Because it refers to summary application, the normal rules of that procedure will apply. The relevant piece of secondary legislation states that, when a piece of primary legislation talks about summary application without a time period, the period is automatically 21 days. Therefore, the person will have the opportunity to appeal to the court against a dog control notice within 21 days of its being issued.

Once the 21-day period expires, the person will still have an opportunity to ask for the notice to be discharged, but they will have to justify that by showing that circumstances have changed in some way. There is an initial period within which a person can say that a notice is unfair and that the court should withdraw it. After that, the person can

appeal to the local authority for the notice to be discharged, but on the basis of a certain set of circumstances, which are outlined in section 7.

David McLetchie: What happens if a notice is served by a single authorised officer and then a further serious incident that might found a criminal prosecution occurs within the appeal period? Would we not have a kind of interval period in which a prosecution would be based on the breach of a dog control notice that might be the subject of an appeal and thereby nullified? Is that right?

Philip Lamont: You might have a point. Given how the provisions work together, there might be ambiguity about the time periods. That might have to be considered, with the aim of making clear the exact process that is to be followed.

David McLetchie: On the other side of the coin, suppose that someone is being prosecuted for the breach of a dog control notice and the 21-day period has expired—so the notice is final—but the person is arguing for a discharge because they maintain that the notice probably should never have been issued in the first place and they have a very well-behaved dog and so on. Would the fact that someone has applied for a discharge undermine the prospects of a successful prosecution?

Philip Lamont: Less so, because the person has not used the 21 days to appeal against the issuing of the dog control notice in the first place. If an appeal is successful, it is as if the notice was never in place. However, if someone asks for a dog control notice to be discharged, they are asking for it no longer to be in place from a set date, although it would have been in place between dates X and Y. I argue that, if the alleged offence took place between those dates, that would be sufficient for prosecution, because the person did not use the opportunity to appeal against the notice in the first place and, in effect, accepted it, even though they might have been unhappy with it, as you say.

David McLetchie: I think that I can see the logic of that. To return to the first scenario, on the face of it, the issue of the validity of notices in periods when they are under appeal and whether the validity of the notice can be a defence in a criminal prosecution lends credence to the suggestion by the dog wardens who gave evidence to us that a higher level of corroboration of the original incident and circumstances that gave rise to the issuing of the notice is required than might at first be assumed. Is that fair?

Philip Lamont: That is a fair comment.

I am aware that in Scots law some criminal offences are drafted in such a way as to not require corroboration; the evidence of just one

type of person—I will not use the phrase “authorised officer”—is sufficient. If it were felt appropriate, it might be a way round the issue to include in the bill a provision whereby, for the offence in question, corroboration is not required.

David McLetchie: We can explore that with the member in charge of the bill. Thank you very much for that.

Patricia Ferguson (Glasgow Maryhill) (Lab): I think I understood the cabinet secretary to indicate that the authorised person could be a variety of individuals doing a variety of jobs. Would it not be sensible for local authorities across Scotland to take a consistent approach to who the authorised person might be, or to the category of person who would qualify as an authorised person under the bill?

Kenny MacAskill: Section 1(7) states:

“In appointing any person to be such an officer a local authority are to satisfy themselves that the person is skilled in the control of dogs and has the capacity to instruct and advise others in matters relating to the control of dogs.”

That is a judgment call for the local authority, which must be based on geography, population and the significance of the problem. I referred to licensing standards officers. Under section 1(7), the relevant person must have the requisite level of skill to qualify. Who the authorised officers are and whether a uniform approach is taken across Scotland are matters that are more for local authorities.

Patricia Ferguson: In relation to Mr McLetchie’s questions, if matters were to escalate to the issuing of a dog control notice or if, ultimately, a case went to court, would a consistent approach not be expected? Is there not, therefore, a need for local authorities to have trained dog wardens to carry out the job of authorised officer? My concern is that I would have thought that, at the moment, very few people would fit the definition in the bill. Is that an element that the Scottish Government has considered, not only in light of the possible prosecution of individuals, but from the point of view of the cost of implementing the bill?

Kenny MacAskill: No. The points that Mr McLetchie made are, fundamentally, matters for the Crown. I would be extremely surprised if the Crown would mark a complaint if it did not feel that it had verification that the requisite time period for someone to make a challenge had elapsed. It is clear that there are matters that must be considered to ensure that if there are to be prosecutions, they can be sustained. It is legitimate for the committee to check such matters. Doubtless, it will ask the member in charge of the bill and perhaps it should seek further information from the Crown about what would satisfy it. As Philip Lamont said, methods

for dealing with such matters already exist—they are used, for example, to deal with a variety of road traffic offences.

As far as the unification of standards is concerned, the issue must be taken in the round. That is really a matter for the Convention of Scottish Local Authorities and local authorities. We recognise that Scotland is a varied country, that authorities vary in size and in the localities that they serve, and that what is needed in some areas is not necessarily appropriate in others. Is it beneficial to have a certain level of standards? Absolutely. Section 1(7) refers to that, but how it is implemented in practice is more a matter for local authorities.

Patricia Ferguson: Perhaps it is a matter for local authorities, but the fact that section 1 of the bill specifies that the authorised officer must be someone who has the necessary knowledge and expertise suggests to me that, regardless of geography—which might dictate the numbers of such persons—or any other factor, every local authority in Scotland will have to have persons who conform to that designation. Surely that implies that there is a cost associated with that element of the bill.

Kenny MacAskill: Section 1(6) says:

“each local authority must appoint at least one such officer”.

Many, if not all, local authorities probably already have someone who is doing much of this work. We are not reinventing the wheel—local authorities already face such problems day and daily. As the convener said, discussions are on-going about whether the primary lead will be COSLA or ACPOS and the issue will be considered by them.

We are considering the bill because these matters already arise and there is a perception that there is a gap in the law. It is, however, about getting an appropriate balance. We should not create databases or bureaucracies at huge cost unless they are necessary. We must have standards and each local authority will have to have at least one officer. It is not beyond the wit and competence of Scottish local authorities to ensure that they employ appropriate individuals, work together, and share information so that they can keep their communities safe.

Bob Doris (Glasgow) (SNP): I will be brief because I wanted to talk about the national database and a lot of that has been covered already. Before we talk about that, do you support the idea of a register of disqualified persons?

Kenny MacAskill: That can only be of assistance. We live in a world where there is dog fighting—criminal proceedings are pending in a

case in my constituency—and there are people who keep animals almost as weapons and implements. I see merit in the idea of a register. We are aware that the police already do some informal tracking, but it might be beneficial to ensure wider access to such information.

Bob Doris: Such a register could be an extra tool to help various agencies to deal with people who might be predisposed to criminal or antisocial behaviour. We would want such information to be shared among the relevant agencies. Perhaps that is particularly true in urban settings in which local authorities are close to each other and there is a large population. For example, people move from North Lanarkshire to South Lanarkshire to Glasgow to Renfrewshire and the population in some places is transient, so we would want the relevant information to be shared.

Whether the database is national or otherwise, is the Government minded to make regulations to ensure that a register of disqualified persons is maintained not as a top-down national database, but one through which local authorities can share information, for example via COSLA using a digital portal?

Kenny MacAskill: Section 4(4) confers powers to share information, and we are genuinely open to that because we can see merit in it. I know that dog fighting is not a pastime that people just bump into; a lot of it seems to relate to organised criminal gangs and is almost a commercial enterprise with gambling attached to it. So there is merit in the information being made available and the bill contains order-making powers to enable that.

We would welcome the views of the police and local authorities about whether they want us to exercise those powers. If they feel that such information sharing is necessary, we are here to assist. It is a matter for them. We have the powers and would be happy to use them if it can be shown that doing so is necessary and proportionate and will not create a needless and expensive bureaucracy.

Bob Doris: I am concerned not just about dog fighting, but the petty criminal who is a nuisance within the housing scheme, or the known drug dealer who is up a close with a powerful dog so that he can intimidate those around him. I would like to see such people on a register of disqualified persons once the system has been put in place.

I am thinking about a bottom-up approach to a database. There is nothing stopping the 32 local authorities from sharing information at the moment, and the bill would enable that. I am open-minded about the idea of a national database, but is it outwith the realms of possibility that COSLA could set up an online portal? The local authorities

are all talking about shared procurement of services and back-room efficiencies. The cost would be relatively little and authorities could log the information in a structured and uniform way, creating a de facto database. It would not involve a Big Brother top-down approach, which setting up a national database might, and it could be inexpensive. Must a database scheme be Government led, or could it be led by COSLA?

10:45

Kenny MacAskill: It does not have to be Government led. We have order-making powers and we are happy to use them where that would be proportionate, supportive and beneficial. There is sound merit in achieving things simply by sharing existing information, rather than by creating an additional database that might cause fear and alarm to some people.

Bob Doris: If an individual was keeping a dog despite being on a register of disqualified persons, and their tenancy with a registered social landlord was in doubt, would you let that fact be part of the criteria for moving towards eviction in certain cases? I know that that extends the issue in a different direction, but there could be overlap.

Kenny MacAskill: That is a matter for my colleagues in the housing department to comment on. Factors such as behaviour would be involved. Christine Grahame mentioned in passing that information should be available to health visitors and RSLs. Such matters must be taken into account, and the fact that an individual is prepared to keep a dog that can be viewed as dangerous can be a relevant factor for those who are in charge of maintaining some semblance of order in the community to consider.

John Wilson (Central Scotland) (SNP): Concerns were raised in written evidence to the committee and by witnesses at last week's meeting that imposing measures such as microchipping, dog training and so on may have a disproportionate effect on those on low incomes. How can we deal with that issue? Will the bill mean, in effect, that unless someone can prove that they have an adequate income, they will not be able to keep a dog in case it becomes out of control?

Kenny MacAskill: That is for others to comment on. Our general view is that it is a matter of balance. Dogs are not necessarily cheap to run. We do not wish to be disproportionate, but certain types of dogs can cause significant danger, damage and even death in our communities, and we must remember the rights of others. That takes us back to the central issue that the committee is considering: how we deal with the issue in a proportionate way.

John Wilson: I agree, cabinet secretary—we must consider how such matters can be dealt with proportionately. In some cases, as members have mentioned, dogs are kept solely for the purpose of raising alarm and concern among other residents in a community. However, a witness at our meeting last week referred to a situation in which a person became alarmed and fearful because a German shepherd dog approached her in a park, and we heard about another situation in which west Highland terriers were causing alarm to some residents and children in a particular area. How would you deal with the fear and alarm that is caused by small dogs? I understand that the concern of the bill and of many members of the committee is to try to do away with situations in which people keep potentially dangerous dogs for the purpose of fear and intimidation, not to create a situation in which small family pets nip at the heels of children or adults and are then registered as dangerous dogs.

Kenny MacAskill: That is why it is correct that we have included a two-part test in the bill. It is not simply about the dog

“being kept under control effectively and consistently ... by the proper person”

but about

“its behaviour (or, irrespective of its behaviour, its size and power)”,

especially given the nature of some of the beasts that are walked down the roads by some individuals. That gives protection. Anecdotally, in my own constituency I tend to find that there is a greater problem with such dogs in the areas of significant deprivation, rather than in the leafier suburbs. As I said before, it is a matter of proportionality.

The Convener: I have a couple of questions about costs and resources.

As John Wilson outlined, we heard last week about the costs of controlling dogs—£40 an hour for dog training, for example—and we have heard about the cost of neutering and so on. According to the Scottish Society for Prevention of Cruelty to Animals, the consequence of placing the proposed burdens on people who cannot afford to comply with them might not be more dogs being put down, but more stray dogs.

We have also had evidence that around 5,000 stray dogs are being dealt with by the police every year. As I recollect, that costs Strathclyde Police about £50,000 a year, although I do not know whether that cost is for kennelling the dogs or for the police time that is involved in dealing with them. Does the suggestion that we might end up with more stray dogs concern you? The sponsor of the bill has said:

"My Bill does not disturb the present legislative position with regard to stray or abandoned dogs. Where a dog is unaccompanied in a public place the dog would continue to be treated as a stray under section 3 of the Dogs Act 1906 or sections 149 or 150 of the Environmental Protection Act 1990."

That means that those dogs would continue to be dealt with by the police, which means that any increase in the number of strays will raise resourcing issues for the police.

The other resourcing issue concerns the financial memorandum. The Scottish Government states:

"We would like to draw the attention of the Finance Committee to our concerns (based on contacts with COSLA) that the financial estimates as outlined in the Financial Memorandum may be on the low side."

I presume that that concerns the number of dog wardens that might be needed and so on.

At the end of the day, who will look after all this? Will it be the police or COSLA? Will additional finances need to be made available or additional burdens be placed on the police?

Kenny MacAskill: At the moment, COSLA is responsible. Negotiations are on-going on the broader matters that you raise, and the chief constable of Strathclyde has raised the issue of the current responsibilities of the police for dealing with strays. The consequences of the bill, however, are a matter for COSLA.

You mentioned people who have a limited income. Section 2(6) of the bill says that the person who is responsible for the dog may be required by a dog control notice to take "any or all" of the steps that it outlines, which include muzzling the dog, keeping it on a lead, neutering it, keeping it away from a certain place and attending a course of training in the control of the dog. That is a matter that the dog control warden would consider, taking into account the ability of the individual to deal with the demands.

The Convener: But if someone did not comply with the notice, that would become a police matter.

Kenny MacAskill: A breach would be referred to the Crown.

The Convener: To what extent would that increase police work? I am trying to get an idea of the extent of the cost impact, which the Scottish Government has already said has caused some concern in its discussions with COSLA. We have not had any evidence from the police, but the expectation is that we could end up with an increased number of stray dogs on the streets, which would become the responsibility of the police, and an increase in prosecutions, as a result of people who are unable to comply with the notices.

Kenny MacAskill: I will ask Philip Lamont to comment on that. Based on my experience, however, I would say that any breach would go directly to the procurator fiscal's office.

Philip Lamont: There might be some small involvement of the police, as the report from the dog warden might go to the police, who would then report it to the procurator fiscal. However, it might be more of an administrative issue. It depends on whether the authorised officers are able to report matters directly to the Crown—they would have to have certain powers to enable them to do so.

The financial memorandum suggests the possibility of 1,144 dog control notices being issued across Scotland each year, but it is very difficult to tell how many of those will be breached. Our view is that the bill acts largely as a deterrent, which means that even where an owner has been issued with a dog control notice and the dog warden subsequently learns that the dog is still out of control the warden might not go straight to a breach, but use a bit of discretion, use the incident as leverage and say to the owner, "Look, this is your final chance." Not every breach will go straight to court.

As I say, it is difficult to know, but 10 to 15 per cent might still go to court, which would amount to 100 cases a year. Although that burden is not massive, it is nevertheless an additional burden. After all, these are new offences that at the moment are not dealt with in court.

The Convener: As members have no other questions, I thank the cabinet secretary and his officials for attending.

I welcome to the meeting our second panel of witnesses: Christine Grahame MSP; Claire Menzies Smith, senior assistant clerk at the non-executive bills unit; and Claire Tosh, solicitor at the Scottish Parliament solicitor's office. I invite Christine Grahame to make a brief opening statement if she wishes.

Christine Grahame: I do and I shall, convener. Knowing what it is like to be in your place, I will be as brief as possible.

First, I must commend Alex Neil, who did a lot of the groundwork on this bill. As members are aware, there has been a marked increase in the number of out-of-control dogs in Scotland. Indeed, the problem's scale is illustrated in the number of dog attacks that have been reported to police in Scotland: in 1999 to 2000, 239 such attacks were reported but by 2006-07 the number had increased 160 per cent to 623.

As existing legislation has clearly proved inadequate, we need to change our approach. That is why the focus in the bill moves from the

breed to the deed—in other words, the bill makes owners responsible for their dogs. As the dog wardens pointed out last week, it is not the dogs but the owners that are at fault.

Although the bill has a simple aim, its technical nature has led to some misunderstandings about its provisions. No doubt members will ask me about that and, indeed, my letter to the convener, which deals with what I feel are inaccuracies about corroboration in particular. To control dogs, the bill would provide existing local authority staff who have dog-related skills—including dog wardens, community wardens and environmental health wardens—with powers to secure a significant reduction in dog attacks through preventive action. That is the key to the bill: it seeks to reduce problems through preventive and corrective measures with regard to owners. I am pleased that at last week's meeting the witnesses agreed that the bill could be an additional tool and would, as a dog warden made clear, ensure that action would be taken at a much lower level. I am confident that the bill will reduce significantly the number of attacks on individuals and animals through the use of its powers and without the need for additional staff.

As so often with legislation, the problem is that existing legislation is piecemeal; in this case, it is focused primarily on particular breeds. The Dangerous Dogs Act 1991 outlaws specific dog breeds but, according to evidence received from the police and other key stakeholders, it does not adequately address the behaviour of irresponsible dog owners which, in most cases, is a huge contributory factor to dogs eventually behaving in a dangerous way.

11:00

Furthermore, the 1991 act does not cover dog attacks that occur on private property where the dog is permitted to be, such as a private dwelling. We usually read in the newspapers that a dog has been put down with the consent of its owner, but there is no statutory right for the dog to be put down. The bill will remove that loophole by extending the provisions in the 1991 act to make it an offence to allow a dog to be dangerously out of control anywhere—public, private with permission or private without permission. That will make the 1991 act consistent with this bill, which applies to all places.

The bill repeals the Dogs Act 1871 and the Dangerous Dogs Act 1989 in so far as they apply to Scotland. Under the 1871 act, a court can make an order that a dog be kept under control or destroyed, following a complaint that it is dangerous and not kept under proper control. The 1989 act supplemented that. It extended the powers of the courts by creating the criminal

offence of failing to comply with an order and enabling the disqualification of a person from owning or keeping a dog. My bill replaces the provisions in those acts with similar provisions in a single bill with significant additions that address irresponsible dog ownership.

I repeat that the aim of the bill is to intervene before a dog becomes dangerous. In evidence from the National Dog Warden Association, the words “out of control” and “dangerous” were used interchangeably, but a DCN would apply only when a dog is out of control. Dangerous dogs remain dangerous dogs; a different route is taken in dealing with them. By our estimate, just over 1,000 dog control notices will be served in Scotland in the first year, giving an average figure for each local authority of 36 a year or three a month. I appreciate that the figures are broad estimates, but they are the best figures available from research.

Last week's evidence made it clear that there is agreement about the worthiness of the bill, albeit that there is some disagreement over cost. Given the low numbers, those concerns are not substantive. The information on current roles and training needs was based on information that the City of Edinburgh Council supplied. I understand that the council is already in discussion with the SSPCA on training for its dog wardens, should the bill become law. Both Dundee City Council and Aberdeenshire Council confirm that the costs can be absorbed. Any downstream costs in pursuing a small number of breaches will be offset by a reduction in the number of dogs that are out of control that authorised officers have to deal with.

The police will benefit from a reduction in antisocial behaviour, including between neighbours—the cabinet secretary referred to that—and from having to deal with fewer dogs that have become dangerous. The national health service will benefit from dealing with fewer patients who have been attacked by dogs. More sensible dog ownership will reduce costs across the piece. In addition, the Scottish Government agrees that significant financial savings should result from a reduction in criminal injuries compensation payments.

I present this package of measures with the sole focus of ensuring that dogs in Scotland that are out of control are brought and kept under control. The powers that the bill gives to local authorities will make that possible. Scotland is at the forefront of dealing with the issue. The Northern Ireland Assembly is looking to introduce dog control legislation and is watching closely the progress of the bill.

The Convener: Thank you.

Alasdair Allan: You will know what has been said in our previous evidence taking about the idea of a national database. What is the purpose of such a database?

Christine Grahame: I am content with the powers under section 8 to establish a Scottish dog control database by way of statutory instrument to provide for the

“establishment, maintenance, operation, management and control of dog control notices”.

The database is neither mandatory nor critical to the operation of the bill. That said, I was interested in what Bob Doris said about a register of disqualified owners. The Government might want to explore that.

The database is included in the bill to allow ministers to decide in due course whether centralisation of information would be helpful and what sort of information should be collected. The Government is in discussion with the Convention of Scottish Local Authorities and the police, and the idea is to suck it and see whether it is necessary. The database may not be necessary, but the bill should include the power for one to be established. The point is an important one.

I put it on record that ministers may want to take account of the difficulties that I encountered, and which the committee is no doubt encountering, in gathering statistical information on dogs when information is not held centrally. I built in the flexible power in section 8 to establish a national database to deal with those difficulties. I note that, as part of its evidence gathering, the committee has considered housing associations and so on, which I had not considered. If the bill becomes law and those that operate its provisions—the local authorities and the police—feel in due course that there is merit in pursuing a national database, it will be a matter for the Government to consider.

Alasdair Allan: So you are satisfied that the bill's provisions for local authorities to collect information do not contradict or complicate the argument that you just made about the potential for a national database.

Christine Grahame: I used the expression “suck it and see” because there is a duty on local authorities to co-operate with one another to exchange information. Somebody may move with a dog, for example, so there are opportunities for local authorities to co-operate in that regard. Local authorities will have to co-operate on a range of issues relating to the control of dogs and to the Dogs Act 1906 and the Dangerous Dogs Act 1991.

I want the bill to give the Government the power, once the bill becomes law and is operational, to consider the merits of a national database, even if it is initially restricted to those who are disqualified.

There is no point in having information just for the sake of it. If somebody is just told to muzzle a dog or keep it on a lead, would we want that information on a national database? I do not know—I think that such questions are for COSLA and the police to discuss—but it may be worth while to record on a database the penalties at the upper end.

Alasdair Allan: You gave us a written response on issues that have been raised, but have you considered in detail the Subordinate Legislation Committee's views on section 8?

Christine Grahame: Yes, I have. I do not call the views misguided—although that comment may just suggest that I think that they are—but I think that the Subordinate Legislation Committee raises an issue where one does not exist. In response to the committee's concerns about the power in section 8, I said:

“The provisions in subsection (3) relate to the power given in subsection (1). That power can only be exercised to make provision for the setting up and administrative operation of the database (subsection (1)(a) and the appointment of a database operator (subsection (1)(b))). I do not consider that the provision could be used to make provision as to the effect of the database and of being included in it. Any such provision would be beyond the vires of the power, particularly when the context of the provision is considered.”

The context is to add other requirements to the DCN, not to reduce them. However, I am content to reconsider the issue and take further advice on whether section 8 has to be tightened up so that the Subordinate Legislation Committee's concerns are—how can I put it?—assuaged or met.

Jim Tolson: I was interested in the reference in your opening remarks to the statistic that dog attacks, or at least reported dog attacks, have gone up by 160 per cent over the past eight years. I do not know that for sure, but I am happy to take the figure as given. However, I suggest that it could be looked at in two ways: either there are more dog attacks, or more people are prepared to report dog attacks. It is possibly a combination of both.

In the statistics that you use to support the bill, you talk about the need for 1,144 dog control notices per annum in Scotland, which would be an average of 36 per local authority. I am sure that you would accept that, if the bill goes ahead, given the potentially wide variance in incidents being reported and given the figures in your written and oral evidence, there would be a significant increase in the number of reported incidents—for example, people being put in a state of alarm or fear by a dog's behaviour in a public place—which would have a significant impact on the work of local authorities and dog control wardens.

Christine Grahame: On your point about people who are in a state of fear and alarm, when we read subsections (3) and (4) of section 1 we must also look at subsection (5), which refers to circumstances that

“are such that it would not be reasonable to serve a dog control notice”.

In evidence, the committee heard about a person who had an unwarranted fear of a perfectly well-behaved German shepherd dog. I suggest that, if a dog warden were called out to an incident such as the one that the committee heard about, it would not be reasonable to serve a notice on the owner in such circumstances. The test of reasonableness must be met.

On your point about the statistics, my assumption that there would be no need for additional staff is based on the estimated number of out-of-control dogs, which in turn is based on the number of dog attacks—623 dog attacks were reported to the police in 2006-07. You suggested that more attacks are being reported, but perhaps more people have dogs. It is estimated that there are nearly a million dogs in Scotland, if we divide up the figure for the United Kingdom—Claire Menzies Smith is looking quizzically at me; she will check that statistic, which I might have to scrap. For the bill, I used the best figures that I could come up with.

In these stringent times, you are right to test the bill on its costs to local authorities. The bill is regarded as a preventive measure. The last thing on the planet that I want to see is lots of dog control notices being served all over Scotland. If the bill becomes law, we will send a message to people about the responsibilities of dog ownership. That is particularly pertinent in the run-up to Christmas, when people are looking at the little doggy in the shop window—the puppy with the big paws, who looks as fluffy and lovely as the Andrex puppy but will turn into a great big mutt who knocks over the television when it wags its tail. The bill says to people, “You’ve got a dog; there are responsibilities. It’s not like buying a CD player or a TV. A dog is a being that needs control and a relationship with its owner, and if you dedicate time to that you will have a good relationship and society will be better off.”

The purpose of the bill is not to have dog control notices flying around all over the shop. There will be some dog control notices, but the bill’s purpose is to get people to focus again on what it means to take ownership of a dog.

Jim Tolson: That is a laudable aim, and I hope that people would do so. However, my concern is that many members of the public would not realise—as you and I and members of the committee realise—that two elements would have

to be in place before a dog control notice could be served. People might think that if a dog put them in a state of fear and alarm while they were walking in the park or other public place they could begin a reporting procedure to local authorities. That in itself would significantly increase the burden on local authorities, over and above what you suggest would happen.

Christine Grahame: The bill is receiving quite a lot of publicity and will continue to attract attention from the public, so in a way its purpose will feed in through newspaper reports and so on.

Dog owners themselves often feel threatened by the dog in the park that is out of control and has an irresponsible owner. People will be happy to know that they are secure when they are out with their own dog or their children. There might be an uplift in interest initially when the bill is implemented, but that is all to the good, because it will focus the public’s attention on the new legal responsibility to control one’s dog.

If the bill becomes law, we can focus on corrective measures for owners; the bill is not intended to be punitive. Various conditions could be attached to a dog control notice. For example, there might be a requirement to keep the dog on a leash or to muzzle it. There would be flexibility around what conditions are imposed—apart from the mandatory implanting of an electronic transponder—to ensure that the requirements are appropriate to the circumstances. We must focus not just on extreme cases, when a dog is used as a weapon, but on simple things, because some people perhaps do not realise that they are not handling their dogs properly. There is a big range of requirements that could be imposed.

Jim Tolson: I accept that there is a range, but let me put to you another concern that has been highlighted. You clearly stated that the bill was preventive. I assume that, by that, you mean such measures as training dogs to ensure that their behaviour in a public place is more reasonable. However, there is a great deal of concern that certain less-well-off members of society, who often have dogs as their only company, would not have the wherewithal to afford such training. How do you suggest that we get round that problem?

11:15

Christine Grahame: First of all, it is up to the dog warden. I do not expect that the dog warden, community warden or environmental warden would serve a notice for every minor event, because the aim is to divert from that. They might just have a wee word in the owner’s ear.

On the question of having money to pay for training, I have to say that animals are expensive. I do not have a dog because of my lifestyle, but I

have two cats and they cost me an arm and a leg in veterinary bills. People have to realise when they take on a pet that the bills are quite high, not only those for pet food and vaccinations but those that they incur when the pet is injured. The People's Dispensary for Sick Animals helps out when people do not have the money to do such things, and there may be help from various other societies for people who do not have the money for training—I cannot say because I do not know.

A lesson has to be learned that it is not a cheap option to have an animal. I would not want to deprive people of the company of their pets, but they must consider the cost. If somebody was in difficulty, it might be at the dog warden's discretion to say that if they did not take certain action they might end up with a dog control notice and have to take the animal to training. Perhaps they could suggest that the owner could go to this or that place. Many local authorities already have dog training sessions that are run by volunteers—I think that there is dog training in Penicuik. People turn up; it is not expensive and it is social.

I return to the burden on local authority dog wardens. Every local authority carries out dog-related duties under the Dog Fouling (Scotland) Act 2003, the Civic Government (Scotland) Act 1982, the Control of Dogs Order 1992 and animal health and welfare legislation—that is not a complete list—so they must be staffed to deliver those duties. I am clear that, rather than burden existing dog wardens and environmental wardens with additional work, the bill will provide them with a more effective set of legislative tools to enable them to do their work, as was said in evidence. The National Dog Warden Association welcomed the bill because it would allow wardens to get in much earlier.

Jim Tolson: I am grateful for that response.

The Convener: Some serious concerns have been expressed and representations made about the provisions on the behaviour of dogs on private properties. I am sure that you are aware of that, Ms Grahame; I think that you and Alex Neil have received representations about it. Is it fair that people can complain about being put in a state of fear and alarm by a dog in someone's garden, irrespective of the dog's behaviour? Many people get dogs for companionship, but many also get them because they live on their own and having a dog makes them feel more secure in and around their home. What is your response to that criticism of the bill?

Christine Grahame: I will not defend politicians taking leaflets up a path and putting their fingers through letterboxes, as I think was mentioned in previous evidence. However, postmen, delivery men and neighbours who are visiting are entitled to know that they can approach even if a dog is

loose in somebody's garden. They are bona fide people at the front door, and they are entitled to know that they will not be put in a state of alarm and distress by a dog that is out of control.

It is a matter of what is reasonable in the circumstances. If somebody came into your garden and behaved in an offensive or threatening way, it would be for the dog warden to decide whether it was reasonable to serve a notice on you, depending on what the dog did. If it went for the person's throat, that would be in extremis and you would have problems.

The Convener: That would be covered by dangerous dogs legislation.

Christine Grahame: Indeed—a warden would go straight to dangerous dogs legislation or use the bill, which provides that if a sheriff decides that a dog is dangerous it might have to be put down. If somebody who came up a garden path uninvited was aggressive and threatening, and the dog barked, jumped and snarled at them and then ran away around the corner, I do not think that a dog control notice would be appropriate. It would be for the warden to decide, but I doubt whether it would be reasonable to serve a notice in such circumstances.

The Convener: But wardens would have the power to serve a notice in that situation. I presume that they would take guidance from the bill and not just say, "Oh well—mebbes aye, mebbes naw."

Christine Grahame: Of course the bill provides discretion. Section 1(5)(b)(ii) gives a warden discretion not to serve a notice if

"it appears to the authorised officer that the circumstances are such that it would not be reasonable to serve a dog control notice".

A dog warden could say that it was not reasonable to serve a notice if somebody had come up a garden path to threaten the dog's owner and all that the dog had done was bark, snarl and go away. However, if a child just walked up the path and the dog was loose, barking and snarling, the circumstances would be different.

The Convener: Would the dog not react to somebody's presence on the property, irrespective of their size or whatever? The dog would not think, "Oh, there's a nice wee cuddly girl—I won't attack and I know not to bark," but that it could bark at an adult.

Christine Grahame: I did not say that; I referred to threatening and aggressive behaviour from somebody who approaches a house. That is different from an adult such as a postman walking up to a house with his bag or a child walking up a path. If somebody behaved threateningly and aggressively to the dog's owner, what was

reasonable in the circumstances would be considered.

I return to the test of being out of control, which is whether the dog

“is not being kept under control effectively and consistently ... by the proper person, and ... its behaviour”

gives

“rise to reasonable ... alarm, or ... apprehensiveness ... on the part of any individual.”

The Convener: To comply with that, we would expect all dogs to be tethered—

Christine Grahame: No.

The Convener: That would be a satisfactory fail-safe measure. If all dogs were tethered, everyone would escape criticism or any visit from the dog warden. If a dog was not tethered, its owner would run the risk of somebody knocking at their door because the dog barked at the gate when the kids went by on their way to school and made a lot of noise.

Christine Grahame: I am enjoying this little confrontation with you, convener, but I must say that every responsible dog owner knows their dog. If their dog cannot be let out for fear that it will bite or snap at the postman's leg, that dog should not—

The Convener: Is that not a matter for the dangerous dogs legislation?

Christine Grahame: No.

The Convener: You talk about biting and attacks. The bill talks about placing someone in a state of fear or alarm. When I deliver leaflets or whatever, I am sometimes made fearful or alarmed when a big dog breenges at me over a gate. That is frightening, even though I have not been bitten.

Christine Grahame: I will put the situation another way. If an owner knows that their dog looks aggressive when somebody comes up the path—even if it does not harm anybody and just snarls, barks and jumps—the owner should be careful that the dog does not do that if the postman or a child comes up the path, because that might well alarm them. Owners should know their dogs. We are talking about owners keeping their dogs under control and knowing what they should do.

On the other hand, somebody might have a great big soft dog that wags its tail to everybody who comes up the garden path, as mine did—I could have let her wander the world and she would have only rolled over and let her tummy be tickled. Owners know their dogs, so they must judge what being kept under control means for

their dog, given its temperament and how it has been looked after.

The Convener: We have received evidence that big dogs place people in a state of fear just because of their size or loud bark, for example. However, the most vicious case that we heard about last week was of a wee terrier that would lock on—people could not shake the blooming thing off. You do not seem to be taking on board people's concern about the terminology in the bill.

Christine Grahame: On size?

The Convener: On size, on dogs on private property or whatever.

Christine Grahame: I am happy to deal with that point.

The Convener: The people concerned have not just made representations to the committee; as I understand it, they have written to you and to Alex Neil on the matter.

Alasdair Allan: I return to some of the scenarios that you have described, Ms Grahame, with people being chased up a garden path and so on. I declare an interest as someone who stuck his hand through a letterbox in Aberdeen during an election campaign and got his hand bitten. The first thing that the man said when he came to the door was, “Oh, he wouldnae touch you”—as the blood was running down my sleeve. How is a dog warden supposed to deal with a situation in which the account of the person who was put in a state of fear and alarm in the front garden totally contradicts the account of the person who came to the door?

Christine Grahame: It would be a matter of investigating all the circumstances. For example, the dog might have acted in the same way with other people. It would not necessarily be an on-the-spot judgment. There might be circumstances in which an on-the-spot judgment is appropriate, taking into account reasonableness, fear and alarm and the out-of-control nature of the dog, but it might not be appropriate if there was a dispute.

In cases of a dispute, the dog control warden might wish to make further investigations about the circumstances. There might have been a history of such incidents—it might not be the first time that a dog warden has been called to premises. They might have told the owner that the dog was scaring people and was not really under control, and that they should do something about it, such as keeping it round the back of the house or using a leash when taking it out for a walk. A dog control notice might have been served. The next time a complaint is received, it might relate to the same issues.

Sometimes, an on-the-spot judgment might be possible. Other times, there might need to be

some investigation—that is only reasonable when someone is served a notice. People would also have the right to appeal if they thought that the notice was unfair or unjust, depending on the circumstances and on whether or not there was a proper investigation. That right would be shown on the dog control notice, and there is a whole list of things that an owner would be entitled to be told about their rights.

John Wilson: Let us take the example of a dog on private property. If an owner is aware that their dog might be out of control and they display a “Dangerous dog” or “Beware of the dog” sign at the entrance to the property—we often see them on people’s doors—how would such situations be dealt with? Would the owner have absolved themselves of responsibility because they had said, “Beware of the dog” at the garden gate? What action could be taken in that situation to serve a notice on the owner? The owner would say that they had forewarned anybody entering the garden that they should be aware of their dog.

Christine Grahame: First, it would not be an absolute disclaimer simply to have a notice up. A child could walk up to a gate, or someone with sight difficulties could walk up the path and not see or understand the notice. It is not an absolute disclaimer to have a notice that warns, “My dog bites.”

Secondly, it is not sufficient to have a “Warning—dog here” notice in other circumstances, for example if a postman cannot go up the path and deliver the mail because a dog is loose. The dog has to be under some kind of control.

Guard dogs are not allowed to patrol willy-nilly. Guard dogs on commercial premises must be tethered, or someone there must be in control of them. In your example, you would be giving a privilege to a private home owner that commercial premises do not have. Taking that point about what is required on commercial premises and other premises guarded by dogs, putting up notices is certainly not sufficient to give the property owner protection. In fact, the effect might be the opposite: again this would be up to the warden, but they might think that, if an owner has put up such a notice, a dog really needs to be kept under control. A notice might be counterproductive.

11:30

The Convener: So if there was a notice and the dog was tethered and under control, the owner would be absolved but, with anything less than that, a complaint would instigate an investigation or a knock at the door.

Christine Grahame: Are you talking about all dogs or just guard dogs?

The Convener: I am talking about dogs that place in a state of fear or alarm someone who passes or approaches a gate or house. That would be the basis for a complaint to the dog warden, who would investigate. Anything short of tethering—

Christine Grahame: No, you are jumping to an enormous conclusion.

The Convener: I am making a comparison based on the evidence that you have given.

Christine Grahame: The officer will have to apply the tests. The first test is whether the dog is kept under control effectively and consistently. Whether the dog is small or big, its behaviour is the key, and the second test is whether that behaviour gives rise to reasonable alarm and apprehensiveness in an individual. That is the test of reasonableness—the alarm has to be reasonable on the part of the individual. The dog must threaten their safety, the safety of some other person or that of another animal or dog, which might be out in the park.

If a person telephones the warden to say that a dog is out of control, the warden will first have to decide whether it is apparent who the dog’s owner is. Identification of who is responsible for the dog is the first thing. Secondly, they will have to decide whether the complaint is reasonable in the circumstances. As I have said, there might be circumstances in which further investigation has to take place.

There are quite a lot of tests along the way, and reasonableness rings loud in the process. It has to be reasonable and proportionate. We are not going to tether all dogs.

The Convener: That is just one scenario. Does that not bring us back to the local authorities’ worry about resources? In some places there are no dog wardens, in others there is one warden, and other areas have environmental health officers. The bill will increase people’s expectation that they can complain about a dog. You describe a series of tests, which will be a burden on the individual dog warden and the local authority, and we have to multiply that 32 times. Do the local authorities have a reasonable claim that, under the bill, it will cost a lot more than it currently costs to deal with the issue? Will councils have to employ many more dog wardens and other staff than they currently do?

Christine Grahame: My contention is that they will not. As I have already said, a range of people deal with dog-related issues—if I can put it as broadly as that. In the Borders, community wardens and environmental health officers have

such duties. I have conceded that there might be an initial upsurge in interest—although I do not know—but the bill is a preventive measure and the aim is to reduce problems for wardens.

I take heart from the fact that, in principle, the dog wardens are very much in favour of having a tool to allow much earlier intervention, before matters escalate to the stage at which they have to deal with a dangerous dog. I am sure that, in members' experience of life, they will have come across animals that started out a bit naughty and frisky but, because of the owner's failure to control them, the poor beasts became so difficult that they had to be put down.

The Convener: I am sure that you read the evidence to the committee last week. Although the National Dog Warden Association welcomes the bill as a tool in the box, it is concerned that the formal procedures will be additional burdens. The association is also concerned that wardens will have to pick up a lot more police work, and that the contracts will not cover weekend and out-of-hours work, which will become increasingly necessary. As we have received no evidence from COSLA on increased costs, I can only presume that it has changed its mind about the concerns that it raised with the Scottish Government, although we might hear from COSLA before the stage 1 process is finished. Do you agree that there is at least uncertainty about the costs and the resources that might be required as a result of the bill?

Christine Grahame: I can only repeat what I said in my introduction: the authorities in Aberdeen and Edinburgh made it plain that they do not see additional costs being incurred.

I want to deal with the idea that it will be possible for mischievous or spurious complaints to be made. The dog warden, the environmental warden or whoever will have to state why they concluded that the dog was out of control. There will quickly be an audit of the circumstances and whether it was appropriate to say that the dog was out of control. A neighbour would not be able to complain just because a Pekingese barked and they wanted it to stop barking, because it would be extremely difficult for a dog warden to sustain the argument that the dog was out of control and that a dog control notice should be served. There might be an antisocial behaviour issue to do with noise, but it could certainly not be argued that that dog was out of control. The warden will have to put down why they consider that the dog was out of control, and that will establish limits.

The interventions range from fairly minor measures, such as requiring the dog to be kept on a leash, to muzzling and substantial stipulations about training. It can be decided that a range of measures are appropriate. Wardens already

receive training. As I said, the City of Edinburgh Council is in discussions with the SSPCA about improving training for people who deal with dogs. One of the things that struck me about the dog wardens who gave evidence to the committee was how skilled they are. They are all dog lovers who know how to read dogs—they made that point as part of their case. When a dog warden is determining whether a dog is causing fear or alarm or is out of control, it is extremely important that they understand the dog as well as the people involved.

The Convener: We must look at the evidence in total. As a committee, we were all impressed by those who gave evidence last week. It would give us confidence and reassure us if such people implemented the bill across Scotland, but their point that the situation will become more formal than it is at the moment needs to be recognised. Some of the interventions that you believe would be helpful are being used now—having a quiet word with someone, for example—but under the bill the process will need to become more formal. The wardens' evidence showed that, so I hope that you will reconsider the point.

Mary Mulligan: I want to follow up on a good point that John Wilson made about someone who issued a disclaimer. Your answer that that would not absolve them of any responsibility was satisfactory, but should the bill refer to that, because there is nothing to tell people that the use of a disclaimer would not get them out of such situations?

Christine Grahame: I do not think so. All the circumstances must be looked at. Would it be appropriate to allow a person to say that there was no need to worry about their dog because, although it bared its teeth and snarled at someone, it would never bite them? I do not think that the use of a disclaimer would be satisfactory.

With primary legislation, one works on principle. The principle here is whether a dog is under control. I have given the example of guard dogs. One would think that there would be more legislative protection for their use on commercial premises, where they are used almost as a barbed wire fence, but in fact the regulations on the use of guard dogs are extremely strict. If there is tight legislation on the use of guard dogs on commercial premises, the legislation covering dogs on private premises, where people can go up a path, should be even tighter. People do not have signs on their gates saying that the postman, the newsagent or the chap who wants to clean the windows cannot come up the path. We would not want to put such a provision in the bill.

Mary Mulligan: I am just concerned about the clarity of the bill.

I move on to the issuing of dog control notices. You helpfully sent us a note on last week's evidence, in which you refer to corroboration, of which there has been some discussion today. It seems to me that corroboration is not required in civil circumstances, but it may be needed if there is a breach of a notice. That suggests the imposition of an additional requirement. How would that be met?

Christine Grahame: The bill follows established principles of Scots law on civil matters; I am thinking of the example of interim interdicts. It is good to have corroboration, but it is not mandatory in civil matters.

Obviously, when we move into the criminal sphere, the evidential tests are much higher. Civil law works on the balance of probabilities, but the evidential test in criminal law is "beyond reasonable doubt". A substantial test has therefore to be applied before it can be decided that someone has committed a breach, and corroboration is required.

Again, I revert to the point that there will be a very small number of cases. The bill is a preventive measure for cases that are low down the out-of-control order. Dog owners who use their animals as status symbols or weapons to make threats or to obtain money are a different element entirely, and there is room in the bill for the sheriff to consider such cases under the dangerous dogs legislation. The Dangerous Dogs Act 1991 will still apply, so such cases can go straight to police procedures. We would not need to bother with the measures in the bill if an incident was so violent and the dog was so dangerous as to make the matter a criminal one. Criminal standards would apply, there would have to be a police investigation and corroboration would be required.

However, there is nothing strange about the movement between civil law and criminal law in the bill.

Mary Mulligan: Perhaps it was the way in which I worded my question, but I am not so concerned about the legal points, to which you are more than able to respond. I am more concerned about the financial aspects of providing the necessary resources—people, basically—to corroborate and support complaints of a breach. I am not sure that that has been addressed.

Christine Grahame: In order to assess the level of breaches and appeals, I sought information on the experience of the Dog Fouling (Scotland) Act 2003. However, no such information is held, so I sought to estimate the number of likely breaches and appeals based on the experience of antisocial behaviour orders and community service orders. Based on that experience, the estimated number of appeals and breaches is not expected to be

high, and the work will easily be subsumed into the existing workload of the Scottish Court Service.

On costs, I sought information from the Scottish Government as well as the Scottish Court Service. The cost of an appeal through the sheriff court was confirmed by the Scottish Court Service, while the Scottish Government confirmed the level of cost recovery that the Scottish Court Service would seek to achieve. Given that information, I am confident that the figures that I have provided on the Scottish Court Service are accurate. They are given on page 19 of the explanatory notes to the bill.

Mary Mulligan: I am interested in your point that the legislation will be preventive. You said earlier that once the bill is passed, we will see fewer incidents. I suspect that that will not happen until people have actually been served with notices, in which case they might think that we are taking the issue seriously. In what sense is the bill preventive?

Christine Grahame: The bill will give community wardens, environmental wardens or whoever and the public a statutory right to intervene in the behaviour of a dog at a much lower level of concern, which will, I hope, be way before the dog can be deemed to be dangerous.

The odd dog might be dangerous because it is unwell or for various other reasons, but that will not apply to most dogs. Some dogs that are not inherently dangerous become dangerous because of determined treatment by their owners, who set about deliberately making them dangerous for dog fighting. Some are made dangerous through ignorance, because their owners are living the wrong lifestyle for the dog. A big dog that lives in a flat five flights up can become dangerous because it is not getting exercise and is bored.

We are trying to allow people to intervene at a much lower level. At that level, we hope to educate them about how to deal with their dog properly so that it does not get out of control. Even if someone is just thinking about getting a dog, we want them to think hard about what their responsibilities will be when they get it. That will lead to happy dogs and happy dog owners. I have had dogs and they were always happy, because they were well trained.

The bill will mean a good arrangement for society. Quite often, it might just be that the owner is ignorant of what they ought to do to have a well-trained dog. It is also intended to be supportive rather than punitive. The bill provides for the serving of dog control notices but, as the dog wardens said last week, a warden might just say to Mr or Mrs McGlenty or whoever, "I've had a complaint but I don't think it's appropriate to give

you a control notice. However, if the situation continues, I'll have no option but to do so." Of course, if someone is simply not controlling their dog, that is a different matter. The issue is whether, given all the circumstances, it is reasonable to issue a notice.

11:45

Mary Mulligan: I really hope that you are right about that. There is room for an additional measure in the process, but I am concerned about the time that it will take to provide information to people and to educate them on looking after their dog, and whether the resources are available for that. After all, it takes time to educate a co-operative person; the situation is even more difficult if someone does not co-operate. I am not sure that the right balance has been struck in that respect.

Christine Grahame: Every citizen has to operate within Scotland's legal framework. If that framework includes the measures in the Control of Dogs (Scotland) Bill, everyone who purchases or is given a dog will know that they have a duty to bring it up responsibly and to ensure that they are responsible owners and that the dog responds and behaves appropriately.

I understand your concern. I do not think that change will happen immediately, but we must remember that many similar changes in behaviour have happened in society. I never thought, for example, that the ban on smoking in public places would have been put in place with so few ructions, but that is what happened. When the Dog Fouling (Scotland) Act 2003 came into force, it seemed to have very little impact. However, many owners who used to be embarrassed to clean up after their dogs are now more responsible. Legislation can achieve changes in behaviour towards animals.

The Convener: I want to finish the evidence taking by about 12 o'clock, so I am looking for sharp questions and short answers.

Christine Grahame: I beg your pardon, convener.

David McLetchie: I want to follow up the issue of corroboration in relation to the civil and criminal aspects of issuing a notice that we discussed with the cabinet secretary and Mr Lamont. You have drawn a comparison between gathering evidence for antisocial behaviour orders on out-of-control people and gathering evidence for dog control notices on out-of-control dogs. As a constituency member who has had to deal with complaints of antisocial behaviour and has experience of the various processes involved, I have found that neighbours are quick to complain to the council but that the provision of evidence usually comes

down to a council official, because the neighbour is reluctant to come forward and testify in public about the conduct of the person in question. As a result, responsibility for pursuing the matter usually ends up with officials in the housing department and so on. Similarly, dog wardens were concerned that even with a dog control notice, which might be subject to an appeal, two wardens might be required to do the attesting, because there would be no attestation from others. In other words, if the job is to be done properly, it will fall on the shoulders of local government officials to get the evidence and make the case fireproof.

Christine Grahame: First of all, you will accept that, as this is a civil matter, corroboration is not mandatory. It is nice if you can get it, but you do not need it.

I take your point about the process, but a notice can be subject to appeal. If the sheriff finds the various facts and circumstances set out by the dog warden unsatisfactory, they will sustain the appeal and revoke the dog control notice.

David McLetchie: But my point is that if an appeal came down to a tit-for-tat thing with one person saying, "He said this, he did that," and the other saying, "No, I said this, I did the other," even though, as you rightly point out, the burden of proof would be lower, the balance would still be in favour of the serving of the notice. That is what is giving rise to concerns.

Christine Grahame: I understand that. At the end of the day, it would come down to the credibility of the witnesses in the eyes of the sheriff. It would not be in all circumstances that there would be no corroboration whatsoever, although I am not conceding that there must be corroboration. I gave the example that somebody might be given several warnings, which would be noted, and words might be said in their ear, but if finally the dog warden was called again, he would say, "No, this time it is reasonable that I give you a dog control notice."

We must consider all the details that must be noted by the warden on issuing that notice. The bill states:

"A dog control notice must include—

- (a) the date on which it is served and a statement that the order comes into effect on that date,
- (b) the name and address of P,
- (c) a description of, and information regarding, the dog,
- (d) the reason for the authorised officer concluding that the dog has been out of control (including a description of the circumstances on the basis of which the officer has come to that conclusion)",

followed by all the rights of appeal.

That is appropriate. Corroboration is often not available in civil matters. The onus will be on the warden to sustain the accusation, as they will have brought it forward, but if there is no corroboration, the sheriff will decide the case on its merits, the credibility of the witnesses and the evidence that is before him. That is what happens in civil actions, such as small claims actions, throughout Scotland.

The Convener: Are you in possession of the letter that we have received from the National Dog Warden Association? If not, we will get that letter to you; otherwise it is not fair to ask you about it. The dog wardens, whom we all praised earlier, raise an issue with regard to your written statement to the committee on the matter of corroboration. The letter states:

"As we are accountable to our employers and the public Dog Control Officers would not wish to be put in a position where we would be asked to issue a notice which may lead to the eventual destruction of an animal"

and a criminal prosecution. You may want to take that into account. We will ensure that you receive a copy of the letter, and you can send a response to the committee if you wish, or you can simply take on board some of the issues that the dog wardens have raised.

Patricia Ferguson: I will follow up Mr McLetchie's question. I am sorry if I am labouring the point, but I want to be absolutely clear on the issue. My understanding from reading the bill and from what you have said today is that the dog is deemed to be out of control if

"it is not being kept under control effectively and consistently".

In other words, one incident of the dog being out of control would not qualify to be dealt with under the bill as it stands.

Christine Grahame: Do you want me to deal with the issue of consistency?

Patricia Ferguson: Yes.

Christine Grahame: It would depend on the circumstances. For instance, a dog would not be regarded as being consistently out of control if, when it was in the park for half an hour, it harassed someone and failed to come back despite the owner calling it. That would be one event, rather than a series of events. It would also depend on the period of time. If the event took place over two minutes, but the dog did the same thing on another occasion, a different definition of "consistently" would apply, because there would be separate events. However, it could also apply to one long event.

Patricia Ferguson: That is helpful. I read "consistently" as suggesting that there might have to be a sustained period of misconduct by the dog

and/or its owner. Are you saying that it could involve a one-off event?

Christine Grahame: It could be a one-off event. The owner might endeavour several times to get the dog under control but fail, and the situation might get worse, with the person becoming more alarmed because of the failure of the owner to be able to control the dog. Such a situation would show that the dog was not being kept under control "effectively and consistently". The dog might return to the owner and then dash back to the person again to worry them—that type of thing might be involved.

John Wilson: I want to follow up on the issue of the bill being a preventive measure. You referred to dog fouling legislation and the smoking ban, which have been heavily supported by on-going publicity. Every public premises has had to display a no-smoking sign, and local authorities have had to put up signs on lamp posts or park gates where there has been dog fouling and to provide bins for dogs' mess. I do not see anywhere the costs of on-going publicity relating to the bill. We are talking about a preventive measure. You gave the examples of people who are given a dog and people who buy a dog, and they should all be aware of the impact that the bill may have on them.

Will you clarify exactly where funding for publicity about the bill will come from? How can there be on-going publicity, as opposed to publicity that says, "Here's a bill on the control of dogs, which will apply for ever more"? How will we get the message over? There is publicity about dog fouling and the smoking ban all the time, and the messages, particularly about the smoking ban, are constantly reinforced.

Christine Grahame: People do not even need to be told about the smoking ban in public places now, as that ban has, like the measures on dog fouling, come into public knowledge.

John Wilson: Public premises must display signs that say that smoking cannot take place in them. That is the result of legislation that is in force. You compared the smoking ban and your bill. How will we provide on-going funding and publicity to ensure that the bill becomes well known to potential dog owners?

Christine Grahame: I accept that the display of certain notices is mandatory, but people are now aware that they cannot sit in a pub or restaurant and light up a cigarette. Similarly, dog fouling notices do not need to be displayed, because dog fouling is an offence anyway. However, having such notices is handy.

I do not have a budget for publicity, unfortunately, but the Scottish Government does. I expect that the SSPCA, the Scottish Government

and others might wish to make things plain to people, as they will all benefit from savings if the bill becomes law and preventive measures are taken. Of course, vets often display in their surgeries notices about animal welfare issues and owners' responsibilities. That is another avenue.

I do my own little bit. These days, I am perpetually busy trying to promote the bill, sometimes with a dog, although I do not intend to spend the rest of my life doing that. People are already becoming aware of the bill. I get lots of e-mails from people asking when the proposals will be implemented. Obviously, the committee is making the bill well known through its proceedings, and I hope that the Government will publicise it if it becomes law.

The Convener: I have a final wee question for the sake of clarity. Earlier, we spoke about private property. I think that you said that you would not want the legislation that covers private property to be weaker than that which covers commercial property and guard dogs. Will you make it clear that you do not expect people with dogs on private property to deal with the same tethering and other ownership requirements all the time?

Christine Grahame: Of course I do not.

The Convener: It is just that you made a comparison at least twice—you said that the legislation that covers private property should not be weaker than that which covers commercial property and guard dogs.

Christine Grahame: In the specific circumstances in which somebody endeavours to use their dog like a guard dog on their private property—if they say, “I’ve got my dog running about my garden. Beware of the dog”—a lighter touch should be applied than is applied to commercial premises. Ordinary pets that are not being used for that purpose would not be tethered. My own dog was pretty useless at even barking at anyone coming up the path.

12:00

The Convener: When you go to some people's houses, you see signs all over the place that say “dangerous dog”, “dog bites” and so on. They are almost saying that the dog is a guard dog, which would mean not only that a dog notice would be required but that that dog would need to be tethered or that someone would need to be there.

Christine Grahame: It should be under control. If it was not under control, the person would be in breach of one of the tests in the bill.

The Convener: Thank you very much for your attendance this morning and for the evidence that you have provided. We look forward to working with you as the bill progresses.

Subordinate Legislation

Planning (Control of Major-Accident Hazards) (Scotland) Regulations 2009 (SSI 2009/378)

12:01

The Convener: Under agenda item 4, we must consider two negative instruments.

The Subordinate Legislation Committee has drawn the attention of the committee to SSI 2009/378, as detailed in our papers. Do members agree that they do not wish to make any recommendations on the regulations?

Members indicated agreement.

Home Energy Assistance Scheme (Scotland) Amendment Regulations 2009 (SSI 2009/392)

The Convener: We come to SSI 2009/392.

Mary Mulligan: I confess that I did not read the regulations until last night, which means that I have not had the chance to ask anyone about something that occurred to me. I am not disagreeing with what is set out in the regulations, but I wonder why the standard assessment procedure ratings of 55 and 39 were chosen. Could we inquire about the logic behind that?

The Convener: Of course we can; I think that that would be okay.

Do members agree that they do not wish to make any recommendations in relation to the regulations?

Members indicated agreement.

The Convener: As previously agreed, we will deal with agenda item 5 in private.

12:03

Meeting continued in private until 13:22.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

Members who wish to suggest corrections for the archive edition should mark them clearly in the report and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP.

The deadline for corrections to this edition is:

Monday 7 December 2009

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Published in Edinburgh by RR Donnelley and available from:

Blackwell's Bookshop

**53 South Bridge
Edinburgh EH1 1YS
0131 622 8222**

Blackwell's Bookshops:

243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

And through other good booksellers

Blackwell's Scottish Parliament Documentation

Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries

**0131 622 8283 or
0131 622 8258**

Fax orders

0131 557 8149

E-mail orders, Subscriptions and standing orders

business.edinburgh@blackwell.co.uk

Scottish Parliament

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.co.uk

For more information on the Parliament, or if you have an inquiry about information in languages other than English or in alternative formats (for example, Braille; large print or audio), please contact:

Public Information Service

The Scottish Parliament
Edinburgh EH99 1SP

Telephone: 0131 348 5000

Fòn: 0131 348 5395 (Gàidhlig)

Textphone users may contact us on
0800 092 7100

We also welcome calls using the RNID
Typetalk service.

Fax: 0131 348 5601

E-mail: sp.info@scottish.parliament.uk

We welcome written correspondence in any language.