COMMUNITIES COMMITTEE

Wednesday 4 October 2006

Session 2

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COMMUNITIES COMMITTEE
26th Meeting 2006, Session 2

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Euan Robson (Roxburgh and Berwickshire) (LD)

COMMITTEE MEMBERS

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

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING ALSO ATTENDED:

Johann Lamont (Deputy Minister for Communities)
Christine May (Central Fife) (Lab)
David McLetchie (Edinburgh Pentlands) (Con)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 4

Scottish Parliament

Communities Committee

Wednesday 4 October 2006

[THE CONVENER *opened the meeting at 09:31*]

Item in Private

The Convener (Karen Whitefield): I open the 26th meeting of the Communities Committee in 2006. I remind all members and visitors to the committee that mobile phones and BlackBerry devices should be switched off. I have received apologies from Tricia Marwick, who I understand is ill. I welcome David McLetchie, who has an interest in the Planning etc (Scotland) Bill.

Agenda item 4 is on the committee's approach to the budget process for 2007-08. Members are asked to consider whether to discuss item 4 in private. Does anyone wish to comment on that proposal?

Members: No.

The Convener: Item 4 will be taken in private.

Planning etc (Scotland) Bill: Stage 2

09:32

The Convener: The committee will consider amendments to the Planning etc (Scotland) Bill at stage 2 on this, our sixth day of consideration. Members should have in front of them copies of the bill, the marshalled list and the groupings.

I welcome to the committee Johann Lamont, the Deputy Minister for Communities. She is accompanied by a number of Scottish Executive officials: Tim Barraclough, Nikola Plunkett, Norman MacLeod, Gregor Clark, Colin Gilchrist and Sally Thomas. Depending on the part of the bill that we are considering, the officials may need to change seats at certain points.

Before we commence our consideration of the bill, it might be helpful to point out a few things. First, in order to speed things along, if a member does not wish to move an amendment, he or she should simply say, "Not moved." Any other member may move the amendment at that point, but I will not specifically invite other members to do so. If no other member moves the amendment, I will simply go on to the next amendment on the marshalled list.

Secondly, if a member wishes to withdraw an amendment, I will put the question, "Does any member object to the amendment being withdrawn?" If any member objects, I will immediately put the question on the amendment.

Finally, if I am required to use my casting vote, I intend to vote for the status quo, which—on this occasion—is the bill as it stands.

Section 36—BID proposals

The Convener: Amendment 222, in the name of the minister, is grouped with amendments 226 to 231 and 235 to 240.

The Deputy Minister for Communities (Johann Lamont): I intend to speak to amendments 226, 222 and 229, which are the main amendments in the group. Amendments 227, 228, 230, 231 and 235 to 240 are largely consequential.

Following the initial consultation process in 2003 and the recommendations of the first business improvement districts working group, we received clear representations from business representatives, individual businesses and local authorities that BIDs should involve property owners and businesses with long-term commitments to areas. Property owners or people with longer leases are likely to be substantial

beneficiaries of any successful BID project as a result of improved rental values and reductions in vacancy rates, for example.

Amendment 226 will allow BID proposers the option of engaging eligible tenants or owners in the local BID ballot, in addition to ratepayers who are included in the bill. It will allow the local BID proposer to restrict the ballot to ratepayers for the relevant properties only, but will require the BID proposer to state in the proposal who will participate in the ballot—ratepayers only or ratepayers and eligible tenants and owners. We recognise that identifying owners or people with longer leases is not always straightforward, but we think that we have found a workable solution to allow their involvement in BIDs, which the business community requested. Where the BID proposal provides for it, the tenants of the relevant properties in the BID area who have leases that have at least five years to run, or the true owners of properties where there are no such tenants, will be eligible to vote in the ballot with ratepayers.

Section 36(1) of the bill states that BID arrangements are not to come into force unless the proposals are approved by a ballot of the ratepayers who are entitled to vote. Amendment 222 is required as a result of amendment 226 because proposals may be approved by other eligible tenants and owners as well as by ratepayers. There will still be a ballot only of ratepayers where the proposal provides for that.

Amendment 229 is the last of the main amendments in the group. Throughout the policy formulation process, stakeholders have made it clear to us that property owners and tenants that have sufficient interest in properties should be involved in BIDs where appropriate. Consultation on that has taken place, so the amendments provide for that involvement. The need to involve that group in a proposed BID area means that the group must also be able to participate in the voting procedures. Amendment 229 therefore provides for a required change to the voting mechanism where a BID proposal involves ratepayers and other eligible tenants or owners.

Details of the voting procedures will be included in regulations, but the bill sets out two main voting mechanisms. First, those who are eligible to vote will participate in a simple head-count vote to ensure that a majority is in favour of the BID project. That process will not change if tenants or owners of properties are also involved—a majority of persons will still need to vote in favour of the project. The second mechanism involves a vote according to the different rateable values of the properties in the BID area. Again, a majority of the total rateable value vote must be in favour of the proposals.

Where both ratepayers and other owners or tenants are involved in the BID, it is appropriate that the rateable value of the property accounted in the vote be distributed between the two interests. It is intended that the allocation of rateable value between them will be clearly outlined in the BID proposal and will be an estimate of the likely beneficial impact of the BID project. Amendment 229 will allow flexibility in so far as the regulations under the bill can provide for that allocation of the rateable value vote in the BID proposal. Alternatively, ministers can make the allocation in the regulations. Of course, scope will remain for the BID proposer to restrict the BID project to ratepayers only.

As I said, amendments 227, 228, 230, 231 and 235 to 240 are consequential amendments that result from the situation that I have just explained.

I move amendment 222.

The Convener: No member wishes to speak to the amendments. Do you wish to add anything?

Johann Lamont: No. I have nothing to add—I have said it all.

Amendment 222 agreed to.

The Convener: Amendment 248, in the name of David McLetchie, is grouped with amendments 249 and 250.

David McLetchie (Edinburgh Pentlands) (Con): I thank you for welcoming me to the meeting, convener. I am at this morning's meeting to speak to amendments in my name that we were unable to deal with last week, as time ran out.

Amendments 248 and 250 are the substantive amendments in the group. Amendment 249 is consequential on agreement to amendment 248. Amendments 248 and 250 address a key issue relating to business improvement district proposals—the issue of additionality. The purpose of amendment 248 is to make it explicit in the bill that those who are required to pay a BID levy will receive additional services over and above the services that are already provided by the local authority and which are financed out of general taxation, including business rates. Amendment 248 seeks to do that by requiring the establishment of a baseline to make explicit that additionality. Amendment 248 should be welcomed by the Scottish Executive, and I offer it in the spirit of helpfulness; we are constantly told that the purpose of a business improvement district is to provide enhanced services, and not simply to extract money from businesses for services that they have a right to expect from the taxes that they already pay. Amendment 248 should also be supported by all supporters of business improvement districts, on the basis that it will be more likely to ensure that there is a positive

result in any ballot, by giving businesses confidence that, if they pay extra, they will indeed receive more by way of services from local authorities.

Amendment 250 is the corollary of amendment 248. If a business improvement district arrangement is in place and businesses in that area are paying extra for services in their area on top of their business rates, it would be galling, to say the least, if businesses in other parts of that local authority were provided with the same services out of general taxation and without having to pay any BID levy. That would, I submit, go against the whole principle of equity and even-handedness in dealing with businesses operating in a given local authority area. Accordingly, amendment 250 would enforce and underline the principle of additionality, which we are told is at the heart of the BID proposals. Like amendment 248, amendment 250 should therefore be welcomed by the Executive and by all those who support the concept of business improvement districts.

I move amendment 248.

Christine Grahame (South of Scotland) (SNP): I am sympathetic to David McLetchie's amendments. There is great concern in lots of small towns that I am acquainted with—Penicuik, Galashiels, Selkirk and others—where people already struggle to maintain their small businesses. We had a debate last week on small businesses being at the core of communities, the closure of shops and so on. David McLetchie's amendments are a positive contribution in that respect. One would not want to see the BID levy as a substitute for, or an add-on to, rates that businesses already pay. Some authorities might take advantage of that, so I think that amendment 250 would be helpful.

Amendment 248 would appropriately ensure the contractual nature of the BID levy. If small shops and businesses are to be charged additionally for improvement in their district, they will need to know what the other side of the bargain is, what kind of services they will get for that additional charge, and how the charge will be distributed if those services do not come into their area. I agree with David McLetchie that amendment 248 would give confidence to many small businesses that are already struggling that, if they are involved in the BID levy, something will happen that will increase their profitability and stability. For those reasons, I shall support the amendments in the group.

Dave Petrie (Highlands and Islands) (Con): I agree with Christine Grahame that the amendments make a lot of sense. Local authorities have a responsibility to provide services, and we are paying heavily enough for them. It is important that planning authorities make absolutely clear exactly what they are going to provide when a BID is about to be placed, and that must be consistent throughout the whole authority.

I know of a similar, although not identical, situation in the Highlands and Islands, where there are two adjacent developments, one of which is paying factoring charges and the other of which is not. I know that that is not a local authority issue, but it is an example of the sort of situation that could arise if a measure such as that which is proposed by David McLetchie is not included in the bill. I will support the amendments.

Scott Barrie (Dunfermline West) (Lab): It seems to me that paragraph (a) of amendment 248 is somewhat superfluous. People will vote in the ballot for a business improvement district only if they think that they will get something in return. By its very nature, voting in that ballot will involve a comparison between what is available at the moment and what might be available should the business improvement district be created.

Amendment 248 would create an artificial hurdle in the process, because nobody will dip into their pocket and pay for something if they think that they will get nothing in return. The point of the business improvement district is that it will bring direct benefit to all the businesses in the district. The bill does not need to make provision for people to be able to compare levels of service, because human nature is such that they will consider such matters when they decide whether to vote yes or no in a ballot. I will not support amendment 248.

09:45

Patrick Harvie (Glasgow) (Green): The intention behind amendment 248 seems to be to provide useful information for people to take account of when they decide whether to support a BID. A local authority would be able to provide information only about its expectations of current levels of service elsewhere in its area, given that after an election there might be a change in priorities and a different approach to the local authority's budget, and given that services might change over time. However, it seems reasonable that an authority should provide information about its current levels of service and intentions.

Perhaps David McLetchie will say whether we can support amendment 248 without supporting amendment 250, which would bind the hands of local authorities. For example, the approach in amendment 250 might prevent an authority from providing in a residential area an environmental service that it would not normally provide in a business area. The fact that the additional environmental service could be paid for through the BID arrangement should not prevent a local authority from introducing the service in a

residential area, to improve the quality of life of the community.

John Home Robertson (East Lothian) (Lab): I am grateful to David McLetchie for bringing us his proposals. Perhaps his approach tells us something about businesspeople in Edinburgh Pentlands. I cannot answer for people on that side of the city, but I have yet to meet a businessman or businesswoman in East Lothian who would vote to incur a cost without being satisfied that it would represent value for money. As Scott Barrie said, that is the safeguard.

Amendment 248 is superficially attractive, but what would it cost? It would introduce a requirement to produce from the outset a statement about additionality, which would explain which costs were attributable to which service, how services were funded and so on. I presume that that work would have to be on-going. Amendment 248 would create a job for a bureaucrat, who would prepare statements and circulate papers. That is a surprising proposal from the Scottish Conservatives, but I suppose that nothing should surprise us about the Conservatives nowadays. David McLetchie seems to be proposing that we create jobs for bureaucrats and generate more paper, to second-guess the judgment that businessmen in our constituencies will make when they vote to set up BID arrangements. I am a little sceptical about the proposals, but I will wait to hear what the minister says about them.

Johann Lamont: I am concerned that John Home Robertson might provoke my officials into giving me different advice, on the basis that the amendments would encourage bureaucracy and the involvement of officials.

I should restate that BIDs are regarded as being helpful to communities and local businesses; they are not a means of getting something out of the business community while offering nothing in return, as they have been characterised. People have bought into the idea of BIDs and acknowledge that BID arrangements will bring added value to areas in which businesses operate.

We acknowledge the concerns that prompted David McLetchie to lodge amendment 248, but whether those concerns would ever manifest themselves is a moot point. Experience with BIDs in England, where the same concerns were initially raised, shows that some councils have increased service provision, not reduced it. Nevertheless, given the concerns, we accept that a safeguard is appropriate in this context and we propose to give effect to such a safeguard in regulations under section 36(2). That approach was adopted in England and is working—I commend it to the committee. Parliament will have an opportunity to consider the regulations in due course. In those circumstances, I ask David McLetchie to seek to withdraw amendment 248.

On amendment 249, which is consequential on amendment 248, I have already explained that we will regulate to address the concerns that amendment 248 seeks to address. As a result, amendment 249 is unnecessary, so I ask Mr McLetchie not to move it.

Although I agree that councils should work together with businesses across their areas and that councils should not do anything to undermine or cut across existing BID projects, I cannot see the rationale behind amendment 250. I will illustrate that view with three examples. First, a BID pilot is currently taking place for Inverness city centre. If amendment 250 were passed, Highland Council would be prevented from encouraging a BID in any other part of the Highland Council area—for example, in Wick or Thurso, which are more than 100 miles away. I do not find that logical.

Secondly, the proposed legislation leaves it open for a business sector to establish a BID in a council area. For example, hotels and bed-and-breakfast establishments in the west of the Highland Council area could also, if they so wished, propose a tourism BID for their area to allow them to work together to boost tourism and visitor business. Again, if agreed to, the measure in amendment 250 would prevent that from happening.

Thirdly, at the moment, there is a pilot in Clackmannanshire that involves a number of industrial estates. If amendment 250 were agreed to, the local authority could not encourage a BID for Alloa town centre. Given that the nature of town centre businesses differs from that of businesses based in industrial estates, the logic of such a prohibition is difficult to understand.

I am open to any amendment that would strengthen the legislation—amendment 250 would not. Indeed, the examples that I have highlighted show that it could actually undermine businesses. I therefore ask Mr McLetchie not to move 250.

David McLetchie: I thank Christine Grahame and Dave Petrie for their supportive comments on amendments 248 and 249. In response to Patrick Harvie, I confirm that amendment 248 is about providing information. Moreover, it stands on its own and members can support it without having to support amendment 250. However, as far as amendment 250 is concerned, I do not think that Mr Harvie's comparison between the services that are provided to business and those that are provided to residential areas is valid. My argument is that if someone in a business area has to pay extra for additional services or other enhancements it does not seem reasonable for a

business in an adjoining area to get the same services or enhancements for free—or at least by paying only general taxes and business rates.

In response to Scott Barrie, I do not think that amendment 248 will create an artificial hurdle. We constantly pass legislation that requires people to provide statements. In that respect, I very much welcome the minister's constructive comment that the matter will be dealt with in subordinate legislation, which I think vindicates my point.

As far as Mr Home Robertson's comments are concerned, businessmen in Edinburgh Pentlands are labouring—at least for the next seven months—under the burden of a Labour council. Being very sensible people, they would never trust the council with anything unless the exact terms of what they were getting were nailed down in writing. That shows how canny the people in my constituency are, and I commend to Mr Home Robertson's constituents their sound and sensible approach.

On costs, it costs a council next to nothing to state its policy and—in any case—a massive amount of documentation will be produced in connection with a BID ballot. It would take only another five minutes and would add nothing to the burdens on public expenditure for the council to pull out of its website an additional sheet of paper containing a simple statement of the extra services that it proposes to provide compared with its current level of service.

Given the minister's very helpful comments and her acknowledgement of the validity of the concerns that I have raised in amendments 248 and 249, I will seek leave to withdraw amendment 248 and not move amendment 249, and look forward to perusing the subordinate legislation that the Scottish Executive will introduce. However, I still believe that amendment 250 has some value and will invite the committee to vote on it.

Amendment 248, by agreement, withdrawn.

The Convener: Amendment 223, in the name of the minister, is grouped with amendments 224 and 225.

Johann Lamont: The BIDs working group and the consultation process that we have undertaken have identified the need for a prospective BID board to consult widely to gain buy-in to any BID proposal.

Amendment 223 will enable ministers to be prescriptive about ensuring that all relevant bodies have the opportunity to participate in the consultation process leading to any proposal. Amendment 224 is a minor consequential amendment.

Amendment 225 will enable regulations to make provision for the procedures and timing required for councils to be satisfied that there is support from at least 5 per cent of those who are entitled to vote to enable a ballot to proceed.

I invite members to support the three amendments, which will improve the arrangements for ballots already set out in the bill.

I move amendment 223.

Amendment 223 agreed to.

Amendment 224 moved—[Johann Lamont]—and agreed to.

Amendment 249 not moved.

Amendment 225 moved—[Johann Lamont]—and agreed to.

Section 36, as amended, agreed to.

After section 36

Amendment 226 moved—[Johann Lamont]—and agreed to.

Section 37—Approval in ballot

Amendments 227 to 229 moved—[Johann Lamont]—and agreed to.

Section 37, as amended, agreed to.

The Convener: We are fairly whizzing through this. It has taken us until day 6 of stage 2 to get to this stage.

Section 38—Approval in ballot – alternative conditions

Amendments 230 and 231 moved—[Johann Lamont]—and agreed to.

Section 38, as amended, agreed to.

Section 39—Power of veto

The Convener: Amendment 232, in the name of the minister, is grouped with amendments 233 and 234.

Johann Lamont: It is important that those who participate in a proposed BID project or ballot be kept up to date on the detail of the proposals, and that the proposals are suitable and in accordance with council plans and policies and will not place an unfair financial burden on any person or group of persons in the BID area.

Amendment 232 will enhance the right of veto of the local authority so that the authority must notify the BID proposers and the Executive before a ballot is held, regardless of whether it will use the right of veto. The authority will also be required to give reasons for the decision, regardless of whether it uses the right of veto. By working closely with the local authority, the BID proposer should be able to make proposals that would not

trigger consideration of any veto. Amendment 232 makes plain the circumstances in which the veto might be invoked. Those are: where there is any conflict with existing structural, local or strategic plans for the local authority; where there is a material deviation from a published policy of a local authority; and where there is a significantly disproportionate financial burden on any persons who have participated in the ballot.

Amendments 233 and 234 are consequential amendments that set out procedures for vetos.

I move amendment 232.

10:00

Euan Robson (Roxburgh and Berwickshire) (LD): I would like clarification on amendment 232. The phrase

"a significantly disproportionate burden"

appears in the amendment. Does that mean that a disproportionate financial burden is acceptable? Why is the adverb in there?

The Convener: I invite the minister to respond to the point.

Johann Lamont: It has been a long time since I discussed the significance of an individual adverb. I will do my best. I understand that it signifies the mark of a test that would be applied to the proposal. The phrase is in line with the proposals that are coming from England. It is seen to be an appropriate way in which to describe the test that would need to be applied.

Amendment 232 agreed to

Amendments 233 and 234 moved—[Johann Lamont]—and agreed to.

Section 39, as amended, agreed to.

Sections 40 and 41 agreed to.

Section 42—Duration of BID arrangements etc

Amendment 235 moved—[Johann Lamont]—and agreed to.

Section 42, as amended, agreed to.

After section 42

Amendment 250 moved—[David McLetchie].

The Convener: The question is, that amendment 250 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grahame, Christine (South of Scotland) (SNP)
Petrie, Dave (Highlands and Islands) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Harvie, Patrick (Glasgow) (Green)
Home Robertson, John (East Lothian) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 250 disagreed to.

The Convener: I thank David McLetchie for his attendance at the committee today.

Section 43—Regulations about ballots

Amendments 236 to 238 moved—[Johann Lamont]—and agreed to.

Section 43, as amended, agreed to.

Sections 44 and 45 agreed to.

Section 46—Interpretation of Part 9

Amendments 239 and 240 moved—[Johann Lamont]—and agreed to.

Section 46, as amended, agreed to.

Before section 47

The Convener: Amendment 157, in the name of the minister, is in a group on its own.

Johann Lamont: Amendment 157 introduces a duty on ministers and planning authorities to carry out their planning functions in such a way as to promote equal opportunities and ensure compliance with equal opportunities requirements. We agree with the Communities Committee that the inclusion of a general equal opportunities duty will help to ensure that equality is mainstreamed into the planning system and will provide a context for discussing how particular groups are treated under the system. The amendment is similar to the provisions that are contained in section 185 of the Housing (Scotland) Act 2006.

The terms are widely defined. "Equal opportunities" means

"the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions."

"Equal opportunity requirements" means

"the requirements of the law for the time being relating to equal opportunities."

Amendment 157 has been lodged in recognition of views that the committee expressed. I therefore urge the committee to support it.

I move amendment 157.

Amendment 157 agreed to.

The Convener: Amendment 241, in the name of the minister, is grouped with amendments 241A to 241E. I will put the question on amendments 241A to 241E, which are amendments to amendment 241, before putting the question on amendment 241 itself.

Johann Lamont: Amendment 241 provides the Scottish ministers with powers to designate a national scenic area for its outstanding scenic value in a national context or to vary or revoke an NSA. Before designating such an area, Scottish ministers will consult Scottish Natural Heritage and such other bodies as may be prescribed.

The amendment also provides a requirement for a planning authority to pay special attention to the desirability of safeguarding or enhancing any such area so designated when it is exercising any of its functions under the Town and Country Planning (Scotland) Act 1997. To assist planning authorities, provision is included for the Scottish ministers to issue statutory guidance to which authorities must have regard.

National scenic areas represent the very best of Scotland's landscapes, in terms of both their outstanding natural beauty and their amenity, and we must continue to safeguard those areas to ensure that their special qualities endure, to be enjoyed by both present and future generations. Amendment 241 provides for a Scottish approach to the protection of our nationally important landscapes, which reflects our separate legislative and policy approach to the management of those key assets. Although similar—but nevertheless different—designations exist in England, Wales and Northern Ireland, we should be aware that they reflect different circumstances and approaches to the care of landscape, which are not necessarily appropriate here. I therefore hope that the committee will support amendment 241.

Amendments 241A to 241E delete "National Scenic Area" from amendment 241 and insert in its place "Area of Outstanding Natural Beauty". We believe that "national scenic area" captures better than any alternative label what those areas are about—resources of national importance and value for their scenic qualities. There should be no doubt that, in terms of scenic quality, they at least stand comparison with Scotland's national parks. The use of that title avoids the danger of repeating in Scotland the perception that has long been prevalent in England and Wales that areas of outstanding natural beauty are second-class citizens.

The NSA designation has been in existence for almost 30 years and it is well understood by practitioners. It is true that NSAs have not always received the wider public recognition that has attached to some policies, such as the national parks policy. I am sure that that has been reflected in the committee's discussion on the issue. The bill offers an opportunity to raise the profile of national scenic areas generally and to increase understanding among the wider public.

The NSA designation is supported both in secondary legislation and in policy terms. Furthermore, awareness has been raised throughout Scotland—perhaps not universally but among practitioners and those with an interest in the matter—as a result of the NSA review process that has been undertaken by SNH and the pilot management strategies that have been prepared.

The loss of the word "national" from the NSA designation would be particularly disadvantageous, as many of the various labels that are attached by local authorities to their local landscape designations—for example, "area of great landscape value"—are not so readily distinguished from "area of outstanding natural beauty".

Probably more important, adoption of the "area of outstanding natural beauty" label would be bound to suggest to many that the intention was to adopt the policy approach that goes with that designation in England and Wales. The only criterion for selection of an AONB is its outstanding natural beauty, whereas national scenic areas—both in the past and in the proposed refreshed designation—recognise the role and influence of people in shaping the landscape that we see today. NSAs also recognise the clear cultural and historical associations that landscapes have in national terms for the people of Scotland. Confusion would inevitably arise, particularly among bodies that work both north and south of the border, which might easily overlook the difference in the legislative and policy regimes that are in place.

The Executive takes the view that Scotland faces distinctive issues in dealing with its nationally important landscapes. Issues of rurality and remoteness are recognised by the Executive as being distinctive to Scotland, whereas protected landscapes in England and Wales tend to experience far greater pressures for development and recreational use. It should also be borne in mind that Scotland's landscapes have been influenced by a different set of cultural and historical factors and have been subject to a distinctly different system of land tenure.

Our landscape policy approach recognises and values the part that the people have played in shaping the landscape of Scotland. We also recognise the importance of those communities that live and work in our protected landscapes and the need to take account of their social and

economic needs. Those factors, together with the separate planning legislation, policies and practice, require that a different approach is taken to the management of these key assets. As I mentioned earlier, the refreshed designation will require planning authorities to pay special attention to the desirability of safeguarding or enhancing the character and appearance of national scenic areas within their areas.

We have not detected any support for the idea of changing the name. A number of organisations, including Scottish Environment LINK, Scottish Natural Heritage, the Scottish landscape forum and the Royal Town Planning Institute, have written to ministers to support the retention of the name for much the same reasons that I have outlined. I understand that some of that correspondence has come before the committee

Finally, a change of name without a change of substance might lead to confusion among those who apply and interpret the legislation. We need to be clear about what was consulted on. I therefore recommend that you reject the amendments in Scott Barrie's name.

I move amendment 241.

Scott Barrie: I am sorry to return to the issue and take up the committee's time, but I think that we need to go back to how the designation has come to be included in the bill. The rest of the committee shares my view that the matter has been handled particularly badly by the Executive, through the introduction at stage 2 of a very late amendment with no prior warning. If nothing else, in lodging these amendments I have begun, at long last, to get some answers to the questions that the committee asked in its two evidence sessions on the matter in May and September.

The minister talked for a long time about the reason for reintroducing national scenic areas into our legislation and said that it would cause great confusion among the stakeholders to change the name from "national scenic areas" to "areas of outstanding natural beauty" or, I presume, any other name. The stakeholders are the only ones who really know anything about national scenic areas. One of the things that has troubled the committee—it has certainly troubled me—is the fact that nobody in Scotland, outwith the small coterie of people who seem to deal with these things, knows anything about national scenic areas.

The minister said that national scenic areas have been around for 30 years. I am not an expert in going around Scotland, but in the bits of Scotland that I have visited that are, apparently, national scenic areas—about which we were informed in the briefing that we received—I have never seen any signage to indicate that they are national scenic areas. There has been a problem with the designation of such areas in the past, and I think that it is extremely doubtful whether that designation has any great value to the wider public. The name itself is problematic. Apart from saying that something is "national", it does not conjure up the imagery to which the minister referred. If my proposal is rejected, we might want to suggest another name at stage 3, as I do not think that the name encapsulates what the Executive wants it to. Judging by what the minister said, if I had proposed the phrase "area of outstanding national beauty", that might have been more acceptable to the minister, given that the lack of the word "national" in the name that I have suggested seems to be one of the objections to it.

10:15

I am indebted to Bill Wright from the Association for the Protection of Rural Scotland, who spent 15 to 20 minutes with me last week. In that time, I learned an awful lot more than I learned in the committee's two evidence sessions about why it is important that we reinsert the designation into the bill. He shares my concern that these designated sites have not been publicised in the past. If the amendments in my name are agreed to today, we must ensure that an awful lot more is done to publicise them in the future.

In a letter to the convener of which I received a copy—I do not know whether other committee members did—Lady Isabel Glasgow, the chair of the Scottish landscape forum, stated that we could not change the name to what I have suggested because it

"does not clearly indicate the national status of this designation"

and because it

"also runs the risk of creating confusion".

The word "confusion" seems to be cropping up all the time, but I am not sure who would be confused. The stakeholders know exactly what we are talking about, and the issue of confusing the wider public just does not come into it because nobody knows that the areas exist.

Whoever is responsible—the Executive, SNH or the Scottish landscape forum—needs to get its act together to ensure that the areas are properly publicised, that people know what the areas are and that we get some value out of having the designation. It seems to me that we have not had that in the past.

I move amendment 241A.

Dave Petrie: I echo a lot of Scott Barrie's concerns about the issue. This is rushed legislation. I have been a member of the committee for only a short time, but I am a fan of

these areas, whatever they are called. For the benefit of John Home Robertson, I say that I am also a fan of trees.

John Home Robertson: As long as they are not too tall.

Dave Petrie: As a novice in the Parliament, I suspect that this provision has not gone through the due parliamentary process. Only the minister can say why the matter was not raised earlier. Who judges what constitutes a national scenic area? Is there going to be public participation in that process? How often is the designation going to be reviewed? What about seascapes, sunsets and things like that? How are they going to be covered? In general, I am less than satisfied with the designation process as it stands at the moment. I am not saying that I will not support amendment 241 today, but I remain to be convinced and suspect that quite a few further amendments might be required at stage 3.

John Home Robertson: I am not sure why Mr Petrie is complaining about this, as the matter is being handled exactly as Scottish legislation always used to be handled at Westminster. The Conservative party used to think that it was a wonderful way of doing things—and that is my concern. This reminds me of some of the worst practices that I used to see in the handling of Scottish legislation in pre-devolution days. I had hoped that we had put all that behind us.

I share Scott Barrie's disquiet about the way in which this substantial provision is being parachuted into the bill. It obviously has nothing at all to do with planning but is just being inserted. Aficionados of legislation might have wondered why that little word "etc" was included in the title of the bill. I presume that it is a weaselly little word that is put in when an Executive or a Government intends to insert something in a bill at a later date, and that is exactly what has happened here. Something that has nothing whatever to do with the rest of the bill and nothing to do with the planners is being dropped into the bill very late on in pretty untidy circumstances. I had thought that those days were past now—to quote the song. When we voted for devolution and a new, open system of government, there was supposed to be a very different way of preparing legislation, consulting and all the rest of it. That has not happened in this case.

I will go along with Scott Barrie in saying reluctantly that, having looked at what we have ended up with, it is probably right that we agree to the Executive's proposal. However, the process bears all the hallmarks of the bad old days, and that must not be allowed to happen again.

I am grateful to Scott Barrie for lodging the amendments in his name, which have enabled us to have this debate, but I am not sure that he is right on the idea of areas of outstanding natural beauty. That title would risk confusion with the different designations of sites south of the border, which are not quite the same as what we are discussing. That could give rise to difficulties.

Like some colleagues, I am uncomfortable about the term "national scenic area". I am not quite sure what it conjures up. It just sounds like something else that has come out of Scottish Natural Heritage that does not mean very much.

Not much credit comes out of how this matter has been handled, but the Deputy Minister for Communities comes out of it with considerable credit. Perhaps these areas should be called "Lamont sites". I will resist the temptation of giving any credit to Lady Glasgow. I had not heard of her before. "Glasgow sites"? Perhaps not. I do not know whether it would be possible to find a suitable site to designate early in the process in the minister's constituency. Perhaps not, but it could be done in Tiree. If the areas could pass into the language as "Lamont sites", some credit would come out of this business.

Otherwise, I hope that various wrists in various departments of the Scottish Executive will be severely slapped over the way in which this matter has been handled. I do not ever want to see anything like this again in a committee of the Parliament. I thought that I had left all that rubbish behind me at Westminster.

Patrick Harvie: How can I follow that?

I agree with much of what John Home Robertson and Scott Barrie have said about the process according to which the contents of amendment 241 are coming into the bill and about the lack of promotion of NSAs in the past and the opportunity to do something more proactive in the future. However, I do not agree with Dave Petrie that the issue has not gone through the proper parliamentary process. It is the Executive's part of the process that has been lacking, rather than the parliamentary side. The committee has in fact spent more time thinking about this issue than it has about some other aspects of the bill, and I think that the work that we have done has been up to scratch. I do not agree with Scott Barrie that we need to change the name at this point. There seems to be nobody outside the room making any great call for that to happen.

I echo much of what Scott Barrie and John Home Robertson have said about the Executive's process, but I think that we should pass amendment 241 without amendments 241A to 241E.

Christine Grahame: I endorse everything that John Home Robertson has said. Having been in practice as a lawyer, I know that the worst

legislation is the sort that has tagged-on parts and sections that do not really belong where they have been placed—whereas the idea might be right, it is in the wrong place. I had hoped that when the Scottish Parliament came along we would not have miscellaneous and random sections buried in bills, which make the operation of the law more complicated, not so much for practitioners as for ordinary people. I had thought that we would be seeking clarity here. We could perhaps even have had a standalone bill on the issue, which would have been a short, simple bill. Otherwise, the provisions could have been placed somewhere else. I endorse everything that John Home Robertson has said on the matter. I am sure that, with a change of Government, we might develop other legislative practices.

Johann Lamont: That is an unlikely event.

I know that there have been a number of attempts during the passage of the bill to give ever more power to ministers and to appeal to my own megalomania in particular. We have resisted those attempts, so I will resist the offer that John Home Robertson makes to have "Lamont scenic areas" all over the place—no matter how appealing that might be to me and my family.

I will address two separate issues. The first is the policy and the second is the process. It has been helpful of Scott Barrie to lodge amendments 241A to 241E, as that has allowed views to be expressed and given us an opportunity to tease out some of the policy issues. I apologise to the committee for the fact that it has not been fully engaged in the development of the policy in this case and that it has not been afforded the capacity at an early enough stage to develop its critique of it. That is a separate matter from whether I think that the suggested provisions are important to implement. However, the process has not been helpful to the committee. I am a great fan of the committee process, and there are a good number of places in the passage of the bill where the committee has shaped and influenced the way in which it has developed. That is a very important part of the legislative process.

However, the difficulties in the process did not arise because nothing was done until an amendment just emerged from someone's hip pocket and was presented to the committee; they arose because two processes were going on in parallel universes. That has been a challenge. We engaged with the committee on the issue at the wrong stage, but there was a consultation process—the fact that the committee did not know about the consultation is serious and I am sure that throughout the Executive we will learn lessons from that. However, that does not mean that amendment 241 is ill thought out.

Amendment 241 should be supported and the amendments in the name of Scott Barrie should be resisted. It is a simple amendment, which is necessary if we are to ensure that we can develop national scenic areas—I will talk about the name in a minute—change the boundaries of existing NSAs and create new ones. If the committee does not agree to amendment 241, we will continue to have the NSAs that are already designated but will be unable to take the policy forward.

Professionals and practitioners should not simply create designations for the sake of it and draw lines on maps without engaging with the communities in Scotland that are affected by the designations. The approach to national scenic areas that we envisage and support acknowledges the importance of landscape and the significant interaction between people and the landscape, as I said. We are striving to meet the challenge of securing coherence between what the designation means to the people who make it and what communities experience and feel about the designation. Amendment 241 will allow us to meet that challenge.

I made the case for retaining the name "national scenic area". The fact that practitioners have been signed up to that term for more than 30 years might not be a sufficient reason to support it, but it should be sufficient reason to make us pause before we change it. The term sufficiently captures our intentions, but we can make a difference only if those intentions are translated into work in communities. The amount of work required will be different in different areas, because there will be complex needs in some NSAs and straightforward needs in others. We must get past the name and consider what the living designation will mean. Scott Barrie might come up with another proposed name at stage 3, but the name is not crucial. What matters is how we secure acceptance and understanding—beyond the Executive and the Parliament—of what the designation means, so that people regard it as significant, rather than as something that means that they are not allowed to do anything in the area. The designation must mean something about how local authorities work in the area and people must be able to become enthused about the designation.

We intend to review the existing NSA boundaries as soon as possible after the bill receives royal assent—subject to how the bill looks after it has completed its passage through the Parliament. When the new system for NSAs is in place, there will be a full consultation on any review of an existing designation or proposal for a new designation. I ask members not to support the amendments in the name of Scott Barrie and to accept the importance of the policy, regardless of the name. The term "national scenic area" captures what we are trying to do.

I assure the committee that the importance of engaging actively with parliamentary committees when developing work weighs heavily with me and throughout the Executive. We must ensure that the wisdom that committees can bring to proposals is brought into play at the earliest stage. As I said, I regret that members feel that the process has cast doubt on the new politics of the Scottish Parliament. That was not the intention. I hope that members will support amendment 241 and reject the other amendments and, in so doing, acknowledge the challenge of turning lines on a map into something real that will make a difference in communities.

10:30

Scott Barrie: I thank the minister for her comments and I welcome the fact that she has taken on board the committee's concerns about the process that led to the lodging of amendment 241.

I take the minister's point on the lack of support for a change of name. Neither I nor other committee members like the name, but no body of opinion in the wider stakeholder community appears to support a change of name. My concern remains that the reason for wanting to retain the name can be summed up in the phrase, "That's the way it's aye been," which is not a particularly good reason for sticking with a name. However, given that there appears to be no support in the wider community for the name that I came up with, I seek leave to withdraw amendment 241A.

Amendment 241A, by agreement, withdrawn.

Amendments 241B, 241C, 241D and 241E not moved.

The Convener: Minister, do you have anything further to say on amendment 241?

Johann Lamont: No. It is sufficient to say that I am happy to engage in discussion with any committee member about the policy that is reflected in the amendment.

Amendment 241 agreed to.

The Convener: Amendment 254, in the name of Christine May, is grouped with amendment 255. I welcome Christine May to the committee.

Christine May (Central Fife) (Lab): Thank you, convener. I draw attention to an entry in my register of interests: I am a trustee of the Fife Historic Buildings Trust.

I hope not to take up too much of the committee's time. I thank the Council for Scottish Archaeology for its briefing paper; I understand that committee members, the clerks and the bill team also received a copy of the briefing.

The amendments in the group are probing amendments. I seek an appropriate legislative home for provisions that do not have one thus far. The natural environment is protected, as is the built environment. It is ironic that a building of significant architectural interest that was built in the 1950s has considerably more protection through the listings process than an archaeological site that is 3,000 years old. I hope that the committee agrees that the Planning etc (Scotland) Bill is the appropriate legislative home for the provisions in my amendments.

Amendments 254 and 255 are a reflection of one of the first speeches that I made in the Parliament, when I called for a statutory register of historic monuments. Ten years have passed since the introduction of the voluntary code that local authorities were asked to sign up to. It is interesting to note that, although most authorities signed up, two authorities still do not keep a voluntary register of archaeological sites.

Current planning legislation requires that archaeological sites are taken account of in any planning development. In the journal that records sites of interest that have been found over the past year, two local authority areas have fewer sites of archaeological interest than anywhere else in the country. Surely that cannot be the case. Offers of financial assistance have been made to help all local authorities to set up a register, but the two authorities to which I referred have not taken up that offer as yet.

If the committee is not minded to support amendment 254, I ask it, at the very least, to agree to discuss with me and the Council for Scottish Archaeology how the situation might be remedied.

I realise that amendment 255, on the duty of care, does not necessarily introduce new functions for local authorities but seeks to enshrine in legislation protection for the local authorities that already do their very best to take account of and protect their archaeological sites. In a report that was recently presented to the Minister for Tourism, Culture and Sport and which is being considered by the minister and the various agencies, the Historic Environment Advisory Council for Scotland says that it believes that protection of the historic environment should not be decoupled from the Executive's planning policy. We believe that, if the bill included archaeological sites, that would help to promote respect for the integrity of our cultural heritage.

For example, I hope that, when this site is excavated for development in 3,000 years' time, the broken glass from last night's obviously very good party that we have heard being discarded all morning will give some idea of what went on in this place. [*Laughter.*] However, to be serious for a

moment, I ask that, if the committee and the minister are not minded to support amendments 254 and 255, they at the very least agree to meet me and the Council for Scottish Archaeology to consider the very serious matters that I have highlighted this morning.

I move amendment 254.

Christine Grahame: I have a very ignorant question, which I will try to ask without blushing. What exactly does the phrase "historic environment" in amendment 255 cover? I understand what is meant by "archaeological heritage" in amendment 254, but does "historic environment" cover mills and other old industrial sites such as those in the Borders? Where would the line be drawn? For example, would the definition include buildings constructed in the 1950s and 1960s? I am thinking, in particular, of the impact on listed buildings. I have had brought to my attention cases in which buildings have not been listed before planning permission for a development has been granted and there is simply no way to list a building retrospectively in order to protect it. I do not know whether such matters are encompassed in amendment 255.

Christine May: A building—

The Convener: I am sorry, Mrs May, but you do not get a chance to respond at this point. You will be allowed to do so later.

John Home Robertson: An off-the-cuff and probably ill-informed response to Christine Grahame's question is that Christine May is talking not about buildings, which are already covered by the listing process, but about stuff that is either underground or incorporated into the landscape. As a result, it is rather less visible and, therefore, rather more vulnerable when people start digging holes.

I am grateful to Christine May for bringing the matter to our attention and I hope that the minister will be able to help us out. I should perhaps declare an interest at this point, because I want to offer the committee a personal anecdote that relates to the matter. Some years ago, I discovered that I owned what might be called a piece of archaeology. In a corner of one of my fields, there are the remains of a henge from either the Neolithic or Mesolithic period—I am not sure which. I had not known about it; no one had ever told us that there was a piece of precious property—indeed, a designated ancient monument—on the site. The field had previously been ploughed but certainly has not been ploughed since we found out about the henge. It is not visible above the surface but, in certain weather conditions, can be seen from the air because of crop markings.

Such fragile stuff, which is dotted about the country—not only in the towns and cities where the settlements have been, but out in the countryside and in the Highlands and hills—is an important part of our national heritage. If people undertake inappropriate land management, build buildings or erect walls and fences, they can do terrible damage, so it is important for us to be more proactively aware of the issue and more proactively involved in protecting that part of our heritage.

The only thing that Christine May did not do was to name the two authorities that have failed to maintain a proper list of such sites. When she winds up, perhaps she can tell us a bit more about that. I hope that the minister will be able to help us with this important issue.

Dave Petrie: I fully see where Christine May is coming from. It is a serious concern. However, I know from my past experience as a civil engineer that many a project is delayed because of that aspect of the planning system. I echo what she said about existing legislation perhaps not being adequate, but I do not see the need for amendment 254 at this stage. However, if an issue is identified that is not covered by existing legislation, there might be a case for some subordinate legislation.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I, too, have sympathy with amendments 254 and 255, and Christine May made a strong case for them. She has advised us that 30 out of the 32 local authorities already maintain a register of sites, and if it is appropriate to slot in scenic areas to the bill, it might be an appropriate piece of legislation to ensure that we have a suitable register of sites. I am not sure whether I understood the sense of Dave Petrie's comments, but if he was saying that, in his previous working life, he knew of delays to projects caused by developers coming across previously unknown sites or monuments, I can only say that that is all the more reason to have a register. If there were a register, developers and the local planning authority would know about those sites.

I have great sympathy for this group of amendments, and I will be interested to hear what the minister says in response to them. I hope that today's discussion will not be the end of the matter, and that we can move forward on a register of sites before the bill completes its passage.

Euan Robson: Amendment 254 is particularly interesting. If I have understood it correctly, its aim is to put on a statutory basis something that already exists. There might be some validity in that, but the amendment has less force if it is simply intended to bring two local authorities to heel. Nevertheless, a bill on planning is an

appropriate place to put an amendment of this nature. It is also appropriate to give greater prominence to the importance of greater archaeological heritage, for the very reasons that John Home Robertson mentioned. We lose too much of that heritage, and if there is a statutory basis for a register, that demonstrates the importance that the Parliament attaches to local archaeological heritage. That may be something on which we need to build protection measures in future so, on balance, I would be minded to support something along the lines of amendment 254.

Amendment 255, on the other hand, is interesting because, although it seeks to build upon 254, it draws the duty very widely, and includes every public body and office holder, and I ask the minister to offer her advice on whether that is entirely appropriate. I suspect that, at this stage, the provision is drawn just a little bit too widely, because there may be office holders and public bodies for whom it is not relevant, and I am not entirely clear whether the amendment might impose something unnecessarily burdensome on them.

Having said that, I think that it would be helpful if we could make progress in this area, and I certainly do not think that the bill is the wrong place for such an amendment. In fact, it seems quite an appropriate place for it, and the amendment certainly deserves serious consideration.

10:45

Johann Lamont: The conservation and protection of the historic environment are important matters both for the Scottish Executive and for local authorities. That is why we have initiated a debate about a range of issues, including those raised in amendments 254 and 255, in the context of the wider historic environment, significant parts of which are not protected through the planning system. I note what Euan Robson has said about having to think through the wider issues of capturing bits of the system that we did not intend to capture. I am mindful of the irony of what I am about to say, but we are not convinced that the Planning etc (Scotland) Bill is the best vehicle for such amendments. [*Laughter.*] I did not think that I would be able to say that with a straight face.

As Christine May has said, the Historic Environment Advisory Council for Scotland has been asked by the Minister for Tourism, Culture and Sport to review a number of issues relating to the protection of our historic environment. As part of that work, it has recently reported to the minister on the role of local authorities in the conservation of the historic environment and on the need for a review of heritage legislation. The HEACS reports raise issues similar to the ones raised in amendments 254 and 255. The report on local authorities also recommends the development of minimum standards for a quality local authority historic environment service, including a sites and monuments record. The development of those standards requires careful consideration, and the absence of a definition of a sites and monuments record in amendment 254 is problematic, as we would not know what we were letting local authorities in for or what we were asking them to be responsible for.

A response to the HEACS reports will be issued by Scottish ministers in due course, and it would not be appropriate to pre-empt the careful consideration of HEACS's recommendations and their resource implications by legislating now. Therefore, I invite Christine May not to press her amendment 254 and not to move amendment 255, in view of the fact that ministers need time to give proper consideration to the practical and resource implications of the HEACS recommendations. However, I have listened to what committee members have said and I note their instinctive support for the amendments. I would be happy to reflect further on today's debate and am more than happy to meet Christine May and other members to discuss precisely why the bill is not an appropriate vehicle for establishing a register of sites. There is a separation between the policy and the vehicle, and past experience tells me that we should not jump too quickly on to any available vehicle that might be passing. Nevertheless, I recognise that there is a shared commitment to protecting the historic environment and a shared interest in the issues that have been raised, in particular by John Home Robertson. I am happy to play a part in that, at this stage and beyond the bill.

Christine May: I am grateful to committee members and to the minister for their helpful comments. Archaeology includes recent things, such as buildings, but buildings are already covered. Those that are not currently listed could be covered by the register that I am proposing, but it is intended more for sites that are not immediately visible, which is the definition currently used by HEACS.

I was asked to name names, but I will not do so at this stage. It is easy for people to find out which local authorities do not maintain a register of sites so I will not take up the committee's time by talking about that.

David Petrie spoke about delays to projects. In the 30 local authorities that currently keep a voluntary register, the identification of archaeological sites is not, in the main, what leads to delays in projects. It is other bodies, such as the

Historic Buildings Council for Scotland and the Ancient Monuments Board for Scotland that can cause delays.

The fact that 30 out of the 32 local authorities already keep a voluntary register indicates that it is important to do so. The minister said that we would not know what we were letting local authorities in for, but they already know what they are in for. We are simply asking for the protection of statute, which already exists for buildings, to be applied to these monuments.

I take Euan Robson's point that amendment 255 is perhaps a little widely drawn, and I could consider the wording more closely. However, I draw attention to the fact that in England it is proposed that not just public bodies but private owners should have a duty of care, which seems to draw the boundaries much more widely.

The bill is the right place for my proposals, because changes to planning legislation will be needed even if archaeological sites are to be covered in other legislation as a result of HEACS's recommendations. It might be possible to address the issue through subordinate legislation or planning advice notes.

I welcome the committee's interest and the minister's helpful offer of further dialogue, so I will not press amendment 254 or move amendment 255.

Amendment 254, by agreement, withdrawn.

Amendment 255 not moved.

Section 47 agreed to.

Section 48—Further amendment of the principal Act

The Convener: Amendment 158, in the name of the minister, is grouped with amendments 159, 242, 160, 243, 161, 244 and 245.

Johann Lamont: Amendment 158 is consequential to amendment 149, which the committee agreed to and introduces fixed-penalty notices. Amendment 158 will ensure that any reference to "compliance period" in respect of enforcement notices in new section 136(A) of the 1997 act has the same meaning as references to "compliance period" in other sections of that act.

Failure to comply with an enforcement notice constitutes a breach of the notice, which is an offence for which the planning authority may seek prosecution under section 136 or issue a fixed-penalty notice under new section 136A. It is important to ensure that definitions are used consistently throughout the sections of the act that relate to enforcement notices and, in particular, to potential action if a notice is not complied with. I strongly urge the committee to support amendment 158.

Amendment 159 will ensure that planning authority representatives can be authorised to enter land to ascertain whether there has been a breach of planning control that should be addressed by the issue of a temporary stop notice. It will also allow planning authorities to authorise a person to enter land to ensure that the requirements of a temporary stop notice have been complied with. Temporary stop notices are intended to provide planning authorities with an immediate power to stop an activity that breaches planning control. We intend the provision to be used if, for example, there is a danger that an activity could cause serious damage to the environment or local amenities. If planning officials are to be able to use the power effectively, it is essential that they can gain access to the land to ascertain the extent of the perceived breach. In lodging amendment 159, we simply seek to provide the same rights of entry that exist in respect of other enforcement powers, such as those in relation to enforcement notices. I ask the committee to support amendment 159.

Amendment 242 will extend the existing legislation and bring appeals against tree preservation order enforcement in line with general appeals against enforcement, by allowing for a statutory appeal to the Court of Session on the decision of the Scottish ministers in a TPO enforcement appeal. I ask the committee to accept amendment 242.

Amendment 160 takes account of the repeal of subsections (5) and (6) of section 46 of the 1997 act on processing called-in planning applications. Section 242A of the 1997 act applied those subsections to urgent applications made to the Scottish ministers under the urgent procedures for Crown development. Amendment 160 will simply drop the reference to the two repealed subsections. I ask the committee to accept amendment 160.

Amendment 243 confirms that regulation and order-making powers conferred on ministers by the 1997 act include powers to make

"such incidental, supplemental, consequential, transitory, transitional or saving provision as the Scottish Ministers consider necessary or expedient."

Given the range of regulations and orders associated with planning reform, the provision will make it easier to incorporate transitional arrangements in secondary legislation. It is a standard provision.

The bill will repeal section 130(1)(a) of the 1997 act and amendment 161 will remove further references to that paragraph from that act. I ask the committee to support amendments 243 and 261.

Amendments 244 and 245 reflect our commitment to discontinue the notice of intention to develop—NID—procedure that is currently in place for developments that are carried out by planning authorities. The new approach will ensure that all developments in which local authorities have an interest will be subject to planning applications, the wider reforms of our planning system and enhanced scrutiny by ministers, if appropriate. We advised the committee that the Executive would lodge amendments on the matter. We will revoke the regulations that govern the NID procedure as soon as possible after royal assent. To back up that revocation, amendment 244 will repeal the enabling power as set out in section 263 of the 1997 act. Doing that will support our long-term commitment that local authority developments should receive no special treatment through the wider planning system.

As a direct consequence of the repeal of section 263 of the 1997 act, amendments 244 and 245 will also repeal part II of schedule 18 to that act, which lists provisions to which section 263 refers, and section 277(9) of that act, which interprets references to provisions that are listed in part II of schedule 18.

The amendments are an essential element of our reforms to how developments are considered through the planning system, with enhanced scrutiny when appropriate. I ask members to support amendments 244 and 245.

I move amendment 158.

Amendment 158 agreed to.

Amendments 159, 242, 160, 243 and 38 moved—[Johann Lamont]—and agreed to.

Section 48, as amended, agreed to.

Section 49 agreed to.

Before section 50

The Convener: Amendment 220, in the name of Euan Robson, is in a group on its own.

Euan Robson: Amendment 220 is simply a probing amendment. There is merit in having a formal process for updating Parliament on progress to implement the bill, which one hopes will become an act in due course. The bill is complicated, and secondary legislation, such as regulations, will be required. The implementation process will need to be conducted in the spirit in which the act was promulgated.

There is merit in the Parliament in the next session having the opportunity to debate a formal report on progress. Some things must happen to the legislation. It must be implemented in a way that inspires the confidence of the communities that use it, and we must ensure that local authorities play their part in turning the bill's provisions into reality.

I need not say much more, because the amendment is straightforward. I am interested in hearing what the minister and members have to say.

I move amendment 220.

Christine Grahame: I see the reasoning behind the amendment and I understand that it is a probing amendment, which means that I take a different approach to it.

People who are returned in the coming parliamentary sessions should look into post-legislative scrutiny much more. We should slow the sausage machine and assess the impact of legislation. The Health Committee has done that important task. Such scrutiny is appropriate. I may be wrong, but I know of no statute in which a provision such as that in amendment 220 is embedded.

I have a technical point. The amendment refers to a time

"after the end of two years after this Act receives Royal Assent".

An act can be amended within two years, so what ministers are asked to report on might change.

I am well behind the policy, principle and thrust of the amendment that we should start to consider the impact of our legislation. The chickens are coming home to roost and the outcomes of some legislation, such as that on free personal care, have not been what parliamentarians thought would happen. We need to go back and reconsider legislation.

11:00

Cathie Craigie: It is important that the committees of the Parliament try to ensure that the legislation that they play a hand in enacting delivers on the original intention. However, my experience of a previous piece of legislation leads me to caution the committee and Euan Robson about setting a timetable for reporting on implementation. In the case to which I refer, the committee agreed the importance of having in the Housing (Scotland) Act 2001 a provision that the right to buy would be examined after five years. The Scottish Executive Development Department published the information last week, which will be useful, but it would have been much more useful in examining how the legislation has affected the right to buy if we had said seven years.

I hope that the committee with responsibility for planning—whatever our successor committee is called; we seem to change the name each time we

return after an election—will chart the progress of the bill and measure its success. I am sure that non-committee members will also do that. It is not necessary to insert into the bill a provision to report on implementation, as Euan Robson seeks to do. I am sure that the minister will want to tell the committee about the Executive's intention in terms of charting the progress of the bill and how the provisions are working on the ground.

The Convener: Although I understand the attraction of including in the bill a measure on a report on implementation, I share Cathie Craigie's concerns about whether the time limit for reporting on the right to buy that we inserted into the Housing (Scotland) Act 2001 was the correct one. The bill allows for regular audits of planning departments. How will those audits be used to assess implementation? We need to know about problems and whether planning authorities throughout Scotland successfully implement the legislation. Could the audits be used to do something similar to the proposal in Mr Robson's amendment 220?

Johann Lamont: Euan Robson's proposal is for ministers to be required to report to Parliament on the implementation of the legislation, particularly in respect of the actions that ministers and planning authorities take. I thank him for lodging amendment 220 because, in so doing, he has afforded us the opportunity to reflect on the processes that will be put in place once the bill is passed. I like to think of this part of the process as the end of the beginning and not the beginning of the end—at the moment, the two things feel pretty close to one another.

I recognise the important point that Euan Robson makes in amendment 220. It is important to examine the impact of legislation and whether a gap has opened up between what was claimed and what is delivered. That imperative is no more evident than in the case of planning legislation. In introducing the bill, it is obvious that the Executive has sought to do more than simply pass legislation; clearly, we want to see a huge culture change.

Of course, it is essential that ministers maintain an open and constructive dialogue with the Parliament and its committees on the implementation of policy and legislation. Given our earlier discussion, Parliament has a role in creating policy and legislation, as well as in scrutinising the implementation of policy and legislation. We recognise the powerful role of the committees in investigating particular topic areas and their independence in investigating issues regardless of whether they were initiated by the Executive. As part of those investigations, committees seek detailed reports from Scottish ministers on how policies and legislation have been implemented.

In the case of planning, we fully intend to keep the committee, the Parliament and all interested parties up to date with progress on the many aspects of planning modernisation. It is important to recognise that the modernisation programme reaches far more widely than just the primary legislation. There will be an extensive programme of secondary legislation, guidance and circulars, as well as the development of the national planning framework. As the committee will appreciate, the implementation of that programme will take a number of years. We will give the committee an indication of the timetable for implementing the act, if passed.

In the light of the existing means that are available to the Parliament for calling ministers to account, I am not convinced that it would help or add much to the parliamentary scrutiny of the work if a one-off report were to be required no more than midway through the implementation process. The report on the right to buy is a good example of an interesting report that does not reflect the changes that were provided for in the legislation. It could be argued that the proposed approach would impose an arbitrary deadline on a complex and wide-ranging programme of work.

We have a good record of engaging the widest possible range of stakeholders in discussions on planning modernisation. I would rather build on that approach by encouraging and developing on-going dialogue in which we continue to monitor and debate the process of transformation through to the end with all interested parties and, critically, with the committee and the wider Parliament. That approach should commend itself across the board.

I do not see the commitment and the issues that Euan Robson raises as marginal or separate. The commitment to engage with all stakeholders will be a central part of the legislation—we will not just tick a box. It is important that we engage with stakeholders, particularly around community engagement, and drill down into the capacity of planning to liberate local communities and enable the development that they need.

The convener spoke about audits. They will be published and will play an important part in giving information to those who wish to scrutinise the work. Underpinning that is a commitment from the Development Department to ensure that people are fully informed of the stages and timetabling of progress.

On that basis, although I understand what prompted amendment 220, I urge members not to support it.

Euan Robson: I am grateful for the minister's remarks and, indeed, for the comments of fellow

committee members. Although amendment 220 seemed like a good idea at the time, it no longer seems so. I agree that it is too prescriptive. However, it is useful to debate the bill, because it attempts to change a culture, as the minister said, so post-legislative scrutiny will be remarkably important. That will be the duty of the successors to the Communities Committee, or indeed those of us who might return to the committee at a later date.

I seek leave to withdraw amendment 220.

Amendment 220, by agreement, withdrawn.

Section 50 agreed to.

Schedule

REPEALS

Amendment 199 moved—[Johann Lamont]—and agreed to.

Amendment 217 not moved.

Amendments 161, 244 and 245 moved—[Johann Lamont]—and agreed to.

Schedule, as amended, agreed to.

Sections 51 to 54 agreed to.

Long title agreed to.

The Convener: That concludes our sixth and final day of stage 2 consideration of the Planning etc (Scotland) Bill. I thank the minister and her officials for their attendance today and throughout our deliberations.

11:10

Meeting suspended.

11:21

On resuming—

Subordinate Legislation

Race Relations Act 1976 (Statutory Duties) (Scotland) Amendment Order 2006 (SSI 2006/467)

The Convener: The third item on our agenda is consideration of subordinate legislation. The purpose of the Race Relations Act 1976 (Statutory Duties) (Scotland) Amendment Order 2006 (SSI 2006/467) is to make various amendments to the Race Relations Act 1976 (Statutory Duties) (Scotland) Order 2002. The 2006 order is a consequence of a Westminster order that extends the general duty to promote race equality and not to discriminate unlawfully on racial grounds to certain reserved and devolved bodies.

The Subordinate Legislation Committee sought and received confirmation from the Scottish Executive that the bodies that are listed in the order have been added to the list of bodies in schedule 1A to the Race Relations Act 1976. It had no other comments on the order.

As members have no comments to make, is the committee content with the order?

Members *indicated agreement*.

The Convener: As the committee is content with the order, we will not make any recommendation on it in our report to Parliament. Do members agree to report to Parliament on our decision?

Members *indicated agreement*.

The Convener: We will report to Parliament accordingly.

11:23

Meeting continued in private until 11:40.

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