

COMMUNITIES COMMITTEE

Wednesday 21 March 2007

Session 2

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COMMUNITIES COMMITTEE

8th Meeting 2007, Session 2

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

Mr Jamie Stone (Caithness, Sutherland and Easter Ross)
(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

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 6

Scottish Parliament

Communities Committee

Wednesday 21 March 2007

[THE CONVENER *opened the meeting at 11:03*]

Subordinate Legislation

The Convener (Karen Whitefield): I welcome everyone to the eighth meeting of the Communities Committee in 2007. I remind all those present that mobile phones and BlackBerrys should be turned off. I have received apologies from Patrick Harvie, and I understand that Jamie Stone will be late.

The only item on the agenda is subordinate legislation. The committee will consider 15 negative instruments. No motions to annul have been lodged in relation to any of the instruments. I will go through the instruments one by one to give members the opportunity to comment on them. If no significant points are raised, I will then ask a final question at the end on all 15 instruments in relation to any points to be included in our reports to Parliament.

Town and Country Planning (General Permitted Development) (Avian Influenza) (Scotland) Amendment Order 2007 (SSI 2007/135)

The Convener: The order will extend permitted development rights to enable temporary buildings to be erected on existing buildings to be extended to protect poultry or other captive birds from avian influenza.

Tricia Marwick (Mid Scotland and Fife) (SNP): I want to make a minor comment. I am sure that somebody will point out where I am wrong.

It seems to me that no date is given for when temporary buildings should come down. What is understood by the word "temporary"? Are we talking about buildings being up until the outbreak is over or buildings that will always be temporary? I do not know whether I am missing something.

The Convener: The explanatory note says that the buildings will be erected on a temporary basis until there is no more need for them.

Tricia Marwick: The order does not say that, which concerns me.

John Home Robertson (East Lothian) (Lab): The order is the only interesting instrument in the batch that we are to discuss. It provides for the

construction of buildings that will not exceed 465m² and a height of not more than 12m. Potentially colossal structures could be provided for under the exemption.

Tricia Marwick has made an important point. Knowing farmers as I do, I find it a little implausible that if a farmer constructed any structure on such a scale, anybody would ever take it down again. I am not sure whether things are clear. We are talking about very big structures.

Scott Barrie (Dunfermline West) (Lab): I do not pretend to know much about the matter, but I would have thought that new class 72A(3)(a), as set out in article 2(2) of the order, covers that matter. It states:

"the development shall not be used for any purpose other than to house poultry or other captive birds to protect them from avian influenza".

I presume that the structures could not be used when the avian influenza goes away.

Christine Grahame (South of Scotland) (SNP): For information, paragraph 8 of the Executive note states:

"Any development permitted by the Order is temporary—and must be removed before 23rd March 2008",

if not before. I think that that answers John Home Robertson's thrown farmer query.

John Home Robertson: Yes. I hope so.

The Convener: In the light of the helpful point that Ms Grahame has made, are members happy?

John Home Robertson: I just hope that we do not get avian flu.

The Convener: Absolutely. We all hope that we do not get it.

Charities Accounts (Scotland) Amendment Regulations 2007 (SSI 2007/136)

The Convener: The regulations will amend the Charities Accounts (Scotland) Regulations 2006 (SSI 2006/218). They will insert a definition of the Accounts Commission for Scotland into the 2006 regulations, amend those regulations to allow auditors who are appointed by the Accounts Commission for Scotland to audit a charity's statement of account and allow an individual who is appointed by the Accounts Commission for Scotland to independently examine a charity's statement of account.

Christine Grahame: I want to make a general comment. The regulations will amend regulations that were laid in 2006. That calls into question the speed at which regulations are considered. We must get them right the first time around. We are talking about amending regulations that went through only a year previously. The proposals are

fairly technical, but we have come across such things before with Scottish statutory instruments. I wanted to put that on the record.

The Convener: Christine Grahame has made a valid point, but it is possible that the regulations were proposed because a technical point had to be addressed. However, I cannot say anything about the matter with any authority.

John Home Robertson: Christine Grahame's general point could apply to these amendment regulations and to a number of the other instruments before us today. That worries me. I find it depressing, at this stage of my career, to be considering what looks to me like regulatory confetti. I had hoped that the Scottish Executive under a Scottish Parliament would be a bit tidier with its regulations. As Christine said, here we are bringing in fresh regulations to replace regulations that were implemented only a year ago or less. That makes life difficult for citizens, businesses, local authorities and everybody else. Our successor committee—which, mercifully, I will not be on—will have to consider this issue carefully, to ensure that ministers can ensure that officials get out of the habit of imposing regulations in this way.

The Convener: Those comments will be in the *Official Report* for people to reflect on.

Registered Social Landlords Accounting Requirements (Scotland) Order 2007 (SSI 2007/165)

The Convener: This order sets out accounting requirements for all registered social landlords, whether they are industrial and provident societies or companies. The order also updates previous accounting and information disclosure requirements that will be effective for accounting periods commencing on or after 1 April 2007.

As members have no comments, we will move on.

Building (Scotland) Amendment Regulations 2007 (SSI 2007/166)

The Convener: The amendment regulations insert a new schedule 2 and insert text in schedule 5, both of which were erroneously omitted from the Building (Scotland) Amendment Regulations 2006 (SSI 2006/534), which were considered by the committee on 29 November 2006.

Christine Grahame: I repeat my previous point. The original amendment regulations were laid only in November 2006, yet here we are in March 2007, because they contain a mistake. Our successor committee in the next session of Parliament may well want to urge the Executive—whomever it is—to deal with the confetti of regulations, as John Home Robertson described them.

What is happening at present makes for confusion. People sometimes do not know which set of regulations they are operating under. I know that we do not often defend lawyers, but it is no wonder that they complain about some of the legislation that comes through the Parliament. It is untidy.

The Convener: You make a valid point about SSIs, Christine; a point that the committee has raised on a number of occasions. Another valid point relates to defective drafting. We could perhaps write a general letter to Margaret Curran, the Minister for Parliamentary Business, to ask her to reflect on our comments on SSIs and defective drafting. The issues have come up often and we have written about them before.

John Home Robertson: I have another point about regulatory confetti. Four of the SSIs before us relate to building regulations, and it seems like an awful lot of paper. I hope that the Executive can do better in future.

Building (Procedure) (Scotland) Amendment Regulations 2007 (SSI 2007/167)

The Convener: The amendment regulations make provision in relation to requirements to provide energy performance certificates as part of the implementation of directive 2002/91/EC on the energy performance of buildings, enabling a single completion certificate to be accepted in certain cases and allowing certain parties access to part II of the building standards register.

Do members have any comments?

Members: No.

Building (Forms) (Scotland) Amendment Regulations 2007 (SSI 2007/168)

The Convener: The amendment regulations amend two of the forms prescribed in the Building (Forms) (Scotland) Regulations 2005 (SSI 2005/172) to take account of directive 2002/91/EC on the energy performance of buildings. The amendment regulations will require a copy of an energy performance certificate to be produced for certain buildings.

As members have no comments, we will move on.

Building (Fees) (Scotland) Amendment Regulations 2007 (SSI 2007/169)

11:15

The Convener: The regulations amend the Building (Fees) (Scotland) Regulations 2004 (SSI 2004/508) to remove an anomaly relating to refunds. Do members have any comments?

Members: No.

**Private Rented Housing Panel
(Applications and Determinations)
(Scotland) Regulations 2007 (SSI 2007/173)**

The Convener: The regulations set out the requirements on applications to the private rented housing panel, which has the role of enforcing the repairing standard that is applicable to most housing tenancies. They include provisions on the procedure to be followed by the panel when it processes an application; referral by the president of the panel to a private rented housing committee; the provision of information about the availability of mediation as an alternative means of dispute resolution; details of the procedures to be followed in relation to the inspection of a property and the hearing of an appeal; and the way in which a private rented housing committee will deal with an application.

Do members have any comments?

Christine Grahame: Page 6 of the Executive note, which refers to the legal aid impact test, is interesting. The fact that tenants and, indeed, landlords will be able to go to the private rented housing panel instead of the court will save on legal aid. It is important that our successor committee assesses how many people use the panel and how effective it is in resolving disputes. That is a key area.

The Convener: The clerks will take a note of that suggestion and will include it as part of any monitoring and review work.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I remember that the committee had a keen interest in such matters during the passage of the Housing (Scotland) Act 2006, so I am glad that the relevant provisions have been introduced at last.

**Town and Country Planning (Marine Fish Farming) (Scotland) Regulations 2007
(SSI 2007/175)**

The Convener: The regulations specify cases in which an application for planning permission must be made before the Scottish ministers may grant planning permission for marine fish farms. They also set out the information to be provided by an applicant and the bodies that must be consulted on an application. I invite members' comments.

Tricia Marwick: I understand why the committee has been asked to consider the regulations, but they are specifically about marine fish farms. On page 1, the Executive note says:

"The Scottish Executive is to introduce statutory planning controls for marine fish farming",

which are to cover

"marine waters out to the 12-nautical mile limit."

Given the subject matter of the regulations, perhaps they should also have been sent to the Environment and Rural Development Committee, which might have had a more informed view than we do about the detail of the operation of marine fish farming.

The Convener: The regulations have come to us because they relate to a planning matter. I know how much Tricia Marwick enjoyed the progress of the Planning etc (Scotland) Bill, so I am sure that she will recall that it contained specific provisions on the planning consequences for marine fish farming. That is why the regulations have come to us. I appreciate what she is saying and do not necessarily dissent from her view, in that it is probably true that the Environment and Rural Development Committee has more expertise on fish farming, but the regulations deal with a planning matter, so they have come to us.

**Planning etc (Scotland) Act 2006
(Consequential Provisions) Order 2007
(SSI 2007/176)**

The Convener: This order revokes the regulations that set out the notice of intention to develop procedure that has been followed by planning authorities when acting as both developer and applicant. From 1 April 2007, planning authorities will be required to lodge planning applications for their own developments in line with the Planning etc (Scotland) Act 2006.

Do members have any comments?

Tricia Marwick: Perhaps someone could jog my memory. If we are revoking the notice of intention to develop in situations in which the local authority is both the applicant and the planning authority, what new arrangements will be put in place to deal with such a situation?

The Convener: My recollection is that the local authority will have to apply for planning permission, which it did not have to do in the past. Local authorities now have to make an application in the same way as any other developer.

**Town and Country Planning (General Development Procedure) (Scotland)
Amendment Order 2007 (SSI 2007/177)**

The Convener: This order amends the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 (SI 1992/224) to change the arrangements for handling planning applications that must be notified to the Scottish ministers by planning authorities. The order enables the Scottish ministers to require a planning authority to provide them and others with information relating to any planning application. The Scottish ministers will also be able to give a

direction to a planning authority to consider attaching a condition when granting planning permission.

The order also updates the definition of “historic garden or designed landscape”

and removes Scottish Natural Heritage from its role as a statutory consultee on planning applications that might affect a historic garden or designed landscape.

Do members have any comments on the order?

Christine Grahame: As a gardener, I am delighted with the order. For many years, we have not valued historic gardens or designed landscapes. I once said to someone whose house I was visiting, “That loch’s in a lovely place,” and she replied, “Darling, we put it there.” Some people with big houses design the whole landscape that can be seen from their house, not just their back garden and their herbaceous border.

I take it that the reason why SNH is no longer a statutory consultee is that the list of protected sites has now been developed. It might be interesting to find out how people can apply to have sites included on that list.

The Convener: Does that mean that we are going to see your garden on the list at some point?

Christine Grahame: I have not planted a loch, but I do have the odd magnolia.

John Home Robertson: I am a little worried that I might be developing a greater interest in gardening matters in the not-so-distant future. However, I would like to know whether, if Christine Grahame’s garden were on this list, she would require planning consent if she wanted to put a gnome in her garden. Is that the effect of this order? It might be quite a good thing, of course, if SNH could have a say on Christine’s gnome.

The Convener: I do not think that that is the intention of the legislation.

Dave Petrie (Highlands and Islands) (Con): Why was SNH removed as a statutory consultee? I am not saying that I am against the move, but I would be interested to know why.

The Convener: I do not know. However, we surmise that it is as a result of a request that SNH made in relation to its internal strategic review.

Charities References in Documents (Scotland) Regulations 2007 (SSI 2007/203)

The Convener: The regulations make provision for charities to indicate their name, registered number and other names on a number of types of document. The purpose of the regulations is to

make it clearer to the public that a body is a legally registered charity. The provisions will apply to documents issued after 31 March 2008.

The Subordinate Legislation Committee raised a point with the Scottish Executive in relation to the vires of regulation 3. It was content with the explanation that it received on this point and agreed to draw it to the attention of this committee.

Do members have any comments on the regulations?

Members: No.

Charities Reorganisation (Scotland) Regulations 2007 (SSI 2007/204)

The Convener: The regulations set out the application procedure that charities are to follow when making an application to the Office of the Scottish Charity Regulator for approval to reorganise. The regulations cover the information that charities must include with their application; the procedure for OSCR to follow on receipt of an application; the requirement for a newspaper notice in certain cases; the procedure for a notice of objection to a reorganisation scheme; and the procedure for OSCR’s decisions on proposed reorganisations. The Subordinate Legislation Committee has drawn our attention to regulation 6(3), on the ground that its meaning could be clearer.

Do members have any comments?

Christine Grahame: In relation to all the regulations that relate to the Charities and Trustee Investment (Scotland) Act 2005, our successor committee may want to carry out post-legislative scrutiny to find out how smaller charities are dealing with the regulations and forms. We always knew that the real issues would arise with the regulations and not the body of the act. I just want to put that on the record.

The Convener: We reflected on those points in our legacy paper. It will be for the successor committee to consider that suggestion, along with all the helpful suggestions that we have made.

Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2007 (SSI 2007/209)

The Convener: The order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (SI 1992/223) to revise the provisions that control the number, size and siting of antennas that can be installed on a property without obtaining planning permission. The aim of the order is to facilitate access to digital and broadband services while safeguarding visual amenity. The Subordinate

Legislation Committee has not raised any points on the order.

Do members have any comments?

Dave Petrie: If someone wants to install a microrenewable, such as a mini wind turbine, would that fall under the legislation?

The Convener: No; the order is specific and relates only to antennas.

Town and Country Planning (Application of Subordinate Legislation to the Crown) (Scotland) Amendment Order 2007 (SSI 2007/221)

The Convener: The order amends the Town and Country Planning (Application of Subordinate Legislation to the Crown) (Scotland) Order 2006 (SSI 2006/270) to make minor corrective amendments in response to a number of drafting errors that the Subordinate Legislation Committee identified. The Subordinate Legislation Committee has not raised any points on the amendment order.

Do members have any comments?

Christine Grahame: As before, we are amending something from 2006 because it was wrongly drafted.

The Convener: Yes. The point stands and there is no need to repeat it.

Are we agreed that the committee does not wish to make any recommendations to the Parliament on any of the instruments that we have discussed?

Members indicated agreement.

The Convener: We shall report to the Parliament that we have no recommendations to make on the instruments.

As this is likely to be the final meeting of the Communities Committee in this session of Parliament, I will take the opportunity to extend my and the committee's thanks to several people who have been responsible for ensuring that we have been able to do our job in the past few years. I thank all those who have given oral and written evidence to the committee to allow us to do our job of scrutinising legislation. I thank all those groups and individuals who participated in and helped to organise the committee's external and internal events, teleconferences and visits. I thank the official report, security, broadcasting and Scottish Parliament information centre staff, who have all helped to service the committee well.

I also want to place on record my thanks to the committee's clerks for their hard and diligent work. They have often had to work to tight timetables and deadlines, but they have never let us down. They have always ensured that we have been well

briefed and prepared in advance of our meetings and they have always been willing to go out of their way to be of assistance to us. Therefore, I say a special word of thanks to our clerks. We have been well served by our clerking team.

11:30

Christine Grahame: On behalf of the Scottish National Party team on the committee—before we go into the foray—I add my thanks to those that the convener has expressed and I also thank committee members. We have dealt with some dreary stuff at times but we have also tackled some exciting stuff. We have worked quite hard.

The Convener: Yes, I thank all committee members for their co-operation and hard work. It has been an enjoyable four years. I wish all the best to those members of the committee who are retiring or moving on to new challenges and I hope that our paths will cross in the future. I also wish good luck to everyone who is fighting the election.

John Home Robertson: We have missed out someone who has served us very well indeed. As a departing member, I want to express my thanks to the convener for the excellent way in which she has conducted our affairs since I joined the committee. I think that we have done some good work.

The Convener: Thank you for that.

Dave Petrie: From a personal point of view, as someone who joined the committee somewhat late, I thank everyone for all the support that they have given me during what has been an extremely steep learning curve.

John Home Robertson: He was a slow learner.

Christine Grahame: But he had me to help him.

The Convener: Thank you everyone. That concludes this meeting of the Communities Committee.

Meeting closed at 11:31.

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