



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 12 January 2011

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CONTENTS

	Col.
INTERESTS.....	3929
SUBORDINATE LEGISLATION.....	3930
Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 (SSI 2010/434)	3930
Registration Services (Fees) Amendment (Scotland) Regulations 2010 (SSI 2010/427).....	3946
Registration of Births, Deaths and Marriages (Fees) (Scotland) Order (SSI 2010/428)	3946
Planning etc (Scotland) Act 2006 (Saving and Transitional Provisions) Order 2010 (SSI 2010/431) ...	3946
Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 (SSI 2010/432)	3946
Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010 (SSI 2010/433)	3946

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

1st Meeting 2011, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Patricia Ferguson (Glasgow Maryhill) (Lab)

*Alex Johnstone (North East Scotland) (Con)

*Alasdair Morgan (South of Scotland) (SNP)

*Mary Mulligan (Linlithgow) (Lab)

*Jim Tolson (Dunfermline West) (LD)

*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)

Malcolm Chisholm (Edinburgh North and Leith) (Lab)

Alison McInnes (North East Scotland) (LD)

David McLetchie (Edinburgh Pentlands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Ken Macintosh (Eastwood) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Ian Black (Scottish Government Directorate for the Built Environment)

Keith Brown (Minister for Transport and Infrastructure)

Norman Macleod (Scottish Government Legal Directorate)

Graeme Purves (Scottish Government Directorate for the Built Environment)

CLERK TO THE COMMITTEE

Susan Duffy

LOCATION

Committee Room 5

Scottish Parliament

Local Government and Communities Committee

Wednesday 12 January 2011

[The Convener *opened the meeting at 10:01*]

Interests

The Convener (Duncan McNeil): Good morning and welcome to the first meeting of the Local Government and Communities Committee in 2011. As I usually do at this time, I remind members of the public and committee members to turn off all mobile phones and BlackBerrys.

Item 1 on the agenda is to welcome Alex Johnstone MSP to his first attendance at the committee. I invite him to declare any relevant interests.

Alex Johnstone (North East Scotland) (Con): It is always a challenge to find an interest to declare, but in this case I do have something of which I wish to make the committee aware. The most senior and longest-serving member of my parliamentary staff is a Mr James Millar, who is currently a councillor on Angus Council, where he serves as convener of the neighbourhood services committee, chairman of the licensing board and chairman of the Arbroath harbour joint consultative committee. I believe that it is appropriate that you are made aware of that interest in my close office.

The Convener: Thank you.

Subordinate Legislation

Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 (SSI 2010/434)

10:02

The Convener: Agenda item 2 is subordinate legislation. Ken Macintosh has lodged a motion to annul the regulations, and we welcome him to the meeting.

We will have a brief evidence session with the minister and his officials to allow committee members to ask questions and seek clarification. We will then proceed to the motion to annul the regulations.

I welcome today's panel of witnesses. It is another first, this time for the minister. I welcome Keith Brown MSP, the Minister for Transport and Infrastructure; Graham Purves, assistant chief planner; Ian Black, senior planner; and Norman Macleod, senior principal legal officer, all of the Scottish Government.

I invite the minister to make some opening remarks.

The Minister for Transport and Infrastructure (Keith Brown): Thank you convener and, if it is not too late, happy new year to everyone.

The Government is committed to modernising the planning system to ensure that it is efficient, inclusive and fit for purpose and that it promotes sustainability. It is worth noting that legislation relating to tree preservation orders has changed very little since 1975.

The regulations aim to improve the effectiveness of TPOs and to simplify a sometimes complicated system. Subject to the views of this committee and the Parliament, the regulations will come into force on 1 February 2011.

The regulations introduce a requirement to send decision notices to those who have made representations. They clarify the regulations on varying or revoking orders to assist in the duty that was introduced by the Planning etc (Scotland) Act 2006 to review existing TPOs. They introduce clarity and consistency when a TPO is not confirmed by introducing new procedures, and they introduce provisions on the form and manner in which an application for consent under an order is to be made in accordance with the 2006 act.

The proposals are well supported by stakeholders. The model order—the order that is served on a landowner when designating a TPO—is being removed from the existing regulations and

placed in guidance instead. There are two principal reasons for that change. First, on policy grounds, the Government wants to maintain and encourage local initiative and innovation. Removing the model order from the regulations will allow planning authorities to apply a model order that best suits local circumstances. For example, it may have fewer prohibitions than normally apply in a model order.

The second reason concerns the legal position. Section 160 of the Town and Country Planning (Scotland) Act 1997 confers on planning authorities the power to make a tree preservation order and to determine its content. The proposals are consistent with that act. Ministers have the power to make regulations to prescribe the form of tree preservation orders and the procedure to be followed. However, in the legislative context it is not considered that it is appropriate to use that power to override the discretion that the 1997 act gives to planning authorities.

A model order that makes the language and the content of TPOs clear and easier to understand and use has been consulted on. It will be included in the circular that accompanies the regulations as guidance. Seventy-six per cent of the respondents to the consultation paper considered that the model order was easier to understand.

I acknowledge that concerns have been raised about the proposals and point out that a model order will be issued. Local authorities will be able to decide whether to go with the model order or vary it according to local circumstances. We consider that having the model order in guidance is the best way forward in terms of both the legal and policy positions.

In addition, I want to make it clear that it would be premature to annul the regulations on the basis of any proposed amendments to the Wildlife and Natural Environment (Scotland) Bill.

I welcome the opportunity to answer any questions from the committee.

Jim Tolson (Dunfermline West) (LD): You said that the response to the consultation was good. Can you give us more information on who was consulted and the feedback that was received?

Keith Brown: We had a range of internal consultees in the Scottish Government as well as in the United Kingdom Government and local government. I think that the description that was used was "those having an interest in trees", but I can ask the officials to expand on that somewhat. The consultation process was of the sort that you would expect, and contacted all the relevant bodies.

Ian Black (Scottish Government Directorate for the Built Environment): The main respondents were planning authorities. Two businesses responded, as did about five professional bodies, two non-governmental organisations and perhaps five community groups and individuals.

Keith Brown: There were 61 respondents.

Patricia Ferguson (Glasgow Maryhill) (Lab): Excluding internal consultees, how many responses were there?

Keith Brown: I think that the majority of the responses were from planning authorities.

Ian Black: Twenty-nine planning authorities responded.

Keith Brown: Who were the other 32?

Ian Black: I am sorry; I do not understand the question.

Keith Brown: Who were the other 32 responses from?

Patricia Ferguson: How many were internal consultees?

Ian Black: We did not include the internal consultees in that list.

Graeme Purves (Scottish Government Directorate for the Built Environment): Internal consultees are not normally included in such lists, so they are all external consultees.

Patricia Ferguson: The point has been made to us that the analysis of the consultation has not been published. Is there a reason for that?

Ian Black: The analysis has been published.

Patricia Ferguson: Recently?

Ian Black: I think that it was published in September.

Patricia Ferguson: So people have had a chance to see it.

Ian Black: Yes.

Patricia Ferguson: Has the Government formally responded to the consultation?

Ian Black: When we were considering the regulations for presentation to Parliament, we analysed the representations and considered whether any changes were necessary. No major changes were considered necessary, but there was some minor tweaking of the wording.

Keith Brown: The Government's response to the analysis was published on the Scottish Government website at the time.

Graeme Purves: The material should all be available on the website.

Ian Black: The individual consultation responses are all available on the website as well.

Alasdair Morgan (South of Scotland) (SNP): The concern has been circulated to us that some people see disadvantages in different local authorities being able to apply different forms of orders as a result of the model order not being in regulations, but you have made a virtue of that, because it will enable local authorities to adapt orders to different circumstances. What differences do you think might arise between different authorities that it would be useful for them to take into account in making orders?

Keith Brown: Your first point is crucial. We think that there is scope for local innovation to reflect local priorities. Before answering your specific question, I point out that, as I have said, there is a legal reason for taking this approach in terms of the 1997 act, which gives power to local authorities. We think that our approach is consistent with that act.

I imagine that the flexibility would mostly be about not seeking to apply all the prohibitions. For example, a local authority might make an order less restrictive by not applying a prohibition on lopping a tree but applying a prohibition on cutting it down, or it could make an order more restrictive if it felt that local circumstances made that necessary. As I understand it, there is currently a standard order, which has to apply everywhere, whereas this approach allows local authorities to have either stronger orders or less prescriptive orders, if that is desired as a result of local circumstances.

Alasdair Morgan: Tree preservation orders are not my forte. What exactly can a tree preservation order do apart from preventing you from chopping down a tree?

Norman Macleod (Scottish Government Legal Directorate): Under section 160 of the 1997 act, as the minister said, tree preservation orders can include provisions—it is a matter for the planning authority to decide what they are—to prohibit

“the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of trees except with the consent of the planning authority”.

Their primary function is to prevent such damage to trees.

As the minister said, it would be possible, under the regime that is envisaged, for a planning authority to limit such activities, for example to prevent a tree being cut down but not prevent it being lopped. Provision could be made for exemptions in tree preservation orders, such as exemptions for certain sizes of trees or trees in certain situations, where the cutting down or lopping is needed for a particular activity. There is

currently a standard set of exemptions, but in future they could be amended to fit individual circumstances.

That said, as Mr Black said, the intention is to issue a circular containing a model order, and I expect that many local authorities will continue to follow the model.

Graeme Purves: For example, lopping can be a feature of some management regimes, such as coppicing, so you might not want to prevent it, but you might want to prevent the uprooting or felling of trees.

Mary Mulligan (Linlithgow) (Lab): I am not sure why local authorities could not interpret the model order anyway. Mr Macleod and Mr Purves have said that different responses might be required, but would that not be the case if the model order were included in regulations?

Keith Brown: Currently, we have the standard model order, and any council that wants to continue with it will just take the model order that we will issue with guidance and use it. However, the model order is quite restrictive. As I understand it, it can currently run to around 25 pages. The regulations allow for it to be reduced, potentially to something like five pages, but with the same protections. The new approach will make the process more straightforward. Is your point that, under the current circumstances, the order could be varied?

Mary Mulligan: Yes.

Keith Brown: Perhaps that point has already been answered.

Norman Macleod: The existing regulations, which have been in place since 1975, set out a form of model order. I think that planning authorities feel obliged to follow it and not depart from it. The model order is very specific and detailed and does not really allow freedom to change it.

Mary Mulligan: Minister, a number of the questions that you have been asked have been prompted partly by the Woodland Trust Scotland briefing that committee members have received. You said that a number of planning authorities responded to the consultation. The list that we have indicates that the City of Edinburgh Council; Glasgow City Council; my own local authority, West Lothian Council, which is between those two councils; the Highland Council; and Loch Lomond and the Trossachs National Park Authority all object to the proposal. I suppose that that is why committee members are a little more exercised than they would usually be about tree preservation orders. Why do those authorities object if it is not such a big deal?

10:15

Keith Brown: Who knows, beyond the consultation responses that have been received? Perhaps they feel that others should be held to the higher standard of protection that they want to have themselves. The national park authority in particular will be acutely aware of the need to protect trees.

However, we believe that the regulations are consistent with our view that local authorities should be respected for the democratic accountability and the powers that they have, and that the regulations are consistent with the 1997 act. Given that that act states that councils are responsible, it strikes us as odd to say that we should prescribe exactly what orders should say. It is certainly worth while to provide guidance, and if the authorities that you mentioned feel that they want that comfort, they will be able to use the model order that we will issue with the guidance, but many councils do not feel the same way and they should have the discretion to go about things differently. We believe that that is legally consistent and consistent with the thrust of localism, if you like.

Graeme Purves: Local authorities were fairly evenly divided on the question. It is fair to say that the majority had reservations about it, but a sizeable proportion were in favour.

John Wilson (Central Scotland) (SNP): Good morning. Minister, I seek clarification. You said that you want to give democratic power back to local authorities in relation to tree preservation orders. Where there are local objections to a council removing tree preservation orders or taking action to remove trees, particularly mature trees, from conservation areas or other areas, what will be the status of local objectors, particularly where the local authority is the planning authority that has decided to take that action?

Keith Brown: I do not think that the position will change for such objectors, except in one regard. As I mentioned in my opening remarks, there will be an obligation on the local authority to send decision notices to those who have made representations. There is no such obligation at present.

Perhaps underlying the member's question is the question of protecting local interests. In the past, some people might have found their local authority to be reluctant to introduce a tree preservation order when they thought that it should do so. I imagine that, all other things being equal, local authorities will be less disinclined to take up tree preservation orders if it is made easier for them to do so, and also if they do not have to go for the full panoply of prohibition. Both

of those points are relevant—the fact that there will be an obligation on councils to notify those who have made representations, and the fact that there will be less of an inhibition on local authorities to pursue orders.

Typically, it costs a local authority about £10,000 to process a tree preservation order. Anything that makes the process more straightforward and easily understandable by the public and which safeguards objectors by ensuring that they get a copy of the decision notice afterwards will be a step forward.

John Wilson: To pursue that, in the case of a normal planning application, the local authority has to give notice of the application by publicising it in the local press and on notice boards. In the case of the removal of a tree preservation order, will the council be obliged to do exactly what it would do with a normal planning application and give public notice that it intends to remove the order? Will that be the situation under the proposals that we are discussing?

Norman Macleod: When it makes a tree preservation order—and this includes making an order to take one away—the planning authority has to put a public advertisement in the local press, to notify the interested parties, who are the owners, basically, and to make the order available publicly and in their office. The answer to your question is simply yes—the public are informed.

John Wilson: I am sorry to pursue this, convener, but not all tree preservation orders relate to trees in residents' gardens; some of them relate to trees in public thoroughfares, most of which are, in essence, owned by local authorities.

Norman Macleod: The planning authority still has to publish a newspaper advertisement.

John Wilson: So that still has to happen, as would happen with a normal planning application.

Norman Macleod: Well, not all normal planning applications are the subject of newspaper advertisements, but that has to happen in the circumstances that we are discussing.

The Convener: We will hear quickly from Patricia Ferguson before we move on to Ken Macintosh.

Patricia Ferguson: I will be quick.

I think that I am right in saying that Mr Black indicated that 29 planning authorities responded to the consultation, but I was slightly confused by what Mr Purves said in response to Mrs Mulligan, because in the same sentence he appeared to say that the planning authorities had been evenly split on the proposal, but that it was fair to say that the majority were against it. Could you give us a breakdown of the number of planning authorities

that were for and the number that were against the proposal?

Ian Black: Sure. Of the 29 planning authorities, 13 were against the proposal and 12 were for it. The rest of them were in the middle—they did not really have a view.

Patricia Ferguson: That is helpful.

Ken Macintosh (Eastwood) (Lab): I was just going to seek clarification on that point. The minister said that the model order that the Government published was overwhelmingly accepted as a good example, but there was resistance to the proposal in the Government's consultation, and not just among the planning authorities. I just want the minister to confirm that the majority of those who commented were against the model order being removed from regulations.

Keith Brown: As I mentioned, 76 per cent of those who responded believed that the model order that we produced would be easier to understand, so there was widespread support for it. On whether it should be put into guidance, there was a fairly even split, with 13 planning authorities on one side and 12 on the other. I reiterate that those authorities that are concerned about the issue will still be able to use the model order that we produced. Other authorities will have the discretion to vary it locally, should they wish to. We agreed that putting the model order in guidance was the right approach, given the representations that we received and the legal and policy grounds for the proposal. I mentioned our commitment to local discretion.

The significance of the legal position should not be underplayed. Given that we said that we would give councils the responsibility for issuing tree preservation orders, it strikes us that it would be odd to say that we will prescribe the exact form of every model order across the country. That jars. Our proposal will help to resolve that.

Ken Macintosh: I have one further question on the legal position. I understand the policy choice, on which there is not a huge gulf. You have published a model order that you expect to be used, but you are not using regulations to ensure that that happens. You have made a choice.

When it comes to the legal argument, you are not saying that prescribing the form of orders would be illegal or unlawful; you are saying that you think that it would be inappropriate. Is that right? You are suggesting that there is no law that allows you to do that, but in fact the Town and Country Planning (Scotland) Act 1997 provides ministers with the power to do that by regulation. Ministers have been able to do that for decades.

Keith Brown: What I am saying is that given that the 1997 act gave local authorities the right to issue tree preservation orders, it would be odd to revert to saying that central Government will prescribe the exact terms of those orders. It would be perfectly legal to do that—that has been set down in legislation—but it would be more consistent if the local authorities that have the responsibility to issue those orders could decide on their exact terms.

Ken Macintosh: The 1997 act gave local authorities the power to issue orders, but it also gave ministers the power to make regulations, so it provided both options.

Keith Brown: Yes, it gave local authorities the power to issue orders and it gave ministers the power to specify the exact terms of orders. I am saying that I do not think that that is consistent. I think that the body that issues orders should be the body that decides on their exact terms.

Ken Macintosh: For the record, I point out that section 161(3) in chapter 1 of part VII of the Town and Country Planning (Scotland) Act 1997 says:

"Provision may be made by regulations with respect to—

(a) the form of tree preservation orders, and

(b) the procedure".

Keith Brown: I think that I have conceded the point a number of times, but that is essentially the situation.

The Convener: If the witnesses have no other comments and members no other questions, we move to agenda item 3, which is the debate on a motion to annul SSI 2010/434. I remind everyone that only MSPs can take part in this debate, and invite Ken Macintosh to speak to and move motion S3M-7659.

Ken Macintosh: Perhaps I should first of all say that I realise that we are moving into a period of political uncertainty and appreciate that lodging a motion to annul an instrument seems to be a rather dramatic—perhaps alarming—move, particularly for the Government. However, I emphasise to the Government and committee members that it is not designed to raise alarm or uncertainty and that I am very much suggesting a practical, rather than political, step that the committee and Government can take to improve tree preservation orders. Again, I thank the committee for its time.

I am simply asking that the Government withdraw the Scottish Statutory Instrument, delete the regulation on model tree preservation orders and then resubmit the SSI with every other measure intact. The Woodland Trust Scotland, Scottish Natural Heritage and many—if not most—of our local authorities, all of whom will have to

work with the legislation, believe that such a move will make the SSI more effective. If it is not amended, tree preservation orders will not be improved and we will run the risk of weakening the country's tree protection system.

I believe that members have been circulated with a Woodland Trust Scotland briefing that explains the background in more detail, but I thought that it might be helpful to put some more information on the record.

My understanding is that the original driver for the change that we are discussing was a Scottish Executive report on the effectiveness of tree preservation orders that was published almost a decade ago in 2002, and which set out a series of recommendations. That report was followed by the Planning etc (Scotland) Act 2006 and, now, by the publication of SSI 2010/434.

The secondary legislation would make a fundamental change to the making of tree preservation orders that did not feature in the original 2002 report—namely, the removal, from the current legislation, of model orders to local guidance. The worry is that such a change will lead to a lack of consistency in tree protection across Scotland. Moving the model order into guidance will mean that the parameters for making a tree preservation order will vary from local authority to local authority and, potentially, from year to year, depending on council policy on such issues. That will create inconsistencies in the level of protection that is given to trees and uncertainty among those who are responsible for their maintenance.

It is clear from our earlier discussion that there is strong opposition to this change from some of Scotland's most populous local authorities, including Edinburgh, Glasgow, West Lothian and my own authority, East Renfrewshire, which will face the greatest pressure from planning developments involving individual trees. I stress that the Woodland Trust Scotland, SNH and all those councils are seeking to make only this change to the SSI. According to the Government's consultation, a majority of respondents—43 per cent—opposed the change, while 37 per cent supported it. I had been informed that eight of the 15 authorities that responded opposed the change, but I am happy to accept the Government's claim that it was opposed by 13 and supported by 12; in any case, the fact is that a majority of local authorities, as well as key bodies such as SNH and Woodland Trust Scotland, are opposed to the change.

I want to put on record two quotations to give members an idea of the strength of feeling about this. The City of Edinburgh Council has said that it

"does not support this proposal and does not see the rationale for it. The power of the Scottish Government to regulate over the form of TPOs is clearly laid out in S161 ... of the 1997"

planning act.

10:30

My local authority, East Renfrewshire Council, said:

"This is not welcomed. There appears no benefit to omitting them from regulation. The Council is of the opinion that for consistency and uniformity the Model Order should be incorporated within the regulations. Otherwise the system runs the risk of being piecemeal and fragmented."

Those who oppose the regulations are strongly of the opinion that if the change to the model order goes ahead, then tree protection will be weaker and more complicated, at a time when local authorities are already experiencing a loss of dedicated tree officers because of financial constraints. The change would be an unwelcome stress.

I emphasise again that there is a practical step that we can take. We have been waiting for the legislation for nine years, so there is no rush. As far as I can tell, there is no lack of commitment from any of the parties. I ask the committee and, therefore, the Government to think again.

I move,

That the Local Government and Communities Committee recommends that nothing further be done under the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 (SSI 2010/434).

The Convener: I invite members to debate the motion.

Alasdair Morgan: To some extent, this is a debate about how many angels can dance on the head of a pin. I do not know what we are meant to draw from the evidence. The City of Edinburgh Council is against the change; I presume that Aberdeen City Council is in favour of it. The Cairngorms National Park Authority is in favour of the change, while Loch Lomond and the Trossachs National Park Authority is against it. I do not know what to make of that.

However, some of the arguments that are being put forward are not particularly strong. I have read the briefing from the Woodland Trust Scotland, which, I presume, has taken the strongest arguments that are available in the various submissions. However, it strikes me that it has not made its case. The trust says:

"This is a change that weakens tree protection and will cause practical difficulties",

but it does not go on to prove that statement or to illustrate it in any way.

The best that Scottish Natural Heritage can come up with is that

“Placing the model order in the Regulations will give a stronger framework for planning authorities to use.”

I do not understand that. It just means that it will give all authorities the same order to use—it will not give them “a stronger framework”; the order is available to all of them anyway, if they care to use it. What is proposed would give them the facility to alter an order to fit their circumstances. I would have thought that that would strengthen the position.

The argument against having a standard order seems to be that a lack of uniformity between different authorities—which could have different tree preservation orders—would be confusing or would weaken the system. However, it is not spelled out how that would be the case.

Let us consider the different types of people who might be affected by tree preservation orders. There could not be confusion for individual house owners, because a house is usually in one local authority area. Any tree preservation order to which a house owner is subject will be imposed by their own local authority. The fact that another householder in another local authority area many miles away is subject to a different tree preservation order is not confusing for them—they have their tree and their tree preservation order.

The argument that local authorities will be affected by the regulations and that the most populous local authorities will object to them is a bit spurious. Under the proposed new system, local authorities will be in control of their tree preservation orders, so the local authorities that are complaining will be perfectly able to continue to use the same form of tree preservation order that they have always used—no one is making them change it. I do not see what problem they have. Do they have a problem with other local authorities using different tree preservation orders? Why will it be a problem for Glasgow, if that happens?

The only people who may have to deal with different types of tree preservation orders are some big landowners. A landowner in the Highlands may have some preserved trees in the Cairngorms national park that are subject to one kind of order and some trees in another part of the Highlands, outwith the park, that are subject to a slightly different kind of order. However, that is logical. All trees are different and probably the majority of trees are not affected by tree preservation orders anyway, so there is already a distinction to be made. If the orders are made according to the circumstances in which the trees find themselves, one can understand why different approaches might be needed. The approach is

perfectly logical, so I am not inclined to vote against the regulations.

Alex Johnstone: I am inclined to agree with the analysis of the situation that we just heard from Alasdair Morgan. Although I am sure that none of us would have proposed the change, it is before us and I find it difficult not to support the minister's position.

The regulations will, in effect, devolve to local authorities a power that is currently exercised centrally, following the approach of the parent act. That follows a trend that we should be willing to support—that is, to empower local authorities to make decisions about how they deal with such issues.

The main argument against the change is consistency and uniformity. I argue in the opposite direction. Scotland is not a consistent or uniform place and we would not normally choose to apply a one-size-fits-all approach to such an issue. The opportunity for local authorities to consider alternatives to the model order may be applied constructively in some areas.

I agree that it is perhaps peculiar that some of our biggest urban local authorities have objected to the regulations on the ground that, although they might do the right thing, somebody else might not.

It is questionable whether we should treat the issue as being of enormous significance. However, given the regulations that are in front of us, I would find it difficult to vote for the motion to annul.

Mary Mulligan: Alasdair Morgan is correct to say that the issue could easily go either way. We have not received lots of representations seeking to change one way or the other, so it is difficult to make a decision.

Often, SSIs on far more taxing issues than this one come before committees and are nodded through. However, as the argument has not gone one way or the other, I will go with the status quo, reject the minister's proposal and support Ken Macintosh in his quest.

There is clearly a difference of opinions among local authorities: there is a difference between the big authorities and the small authorities and between the rural ones and the urban ones. There does not seem to be a consistent pattern. That is one of our difficulties.

There is a need to give clear guidance to local authorities. The Government does not issue such guidance thinking that local authorities will ignore it. However, the model order was in legislation before and we did not receive lots of representations that it should be taken out. For

that reason, I will support the status quo and, therefore, the motion to annul.

Bob Doris (Glasgow) (SNP): I thank Ken Macintosh for bringing the regulations to the committee's attention. Often, statutory instruments go unnoticed at the committee, and it is worth while for the committee to scrutinise an SSI in more detail than it perhaps usually does.

I have listened carefully to the discussions. The fact that planning authorities are split on the matter may point towards the need for flexibility in the system. They are split down the middle on whether they should be under a statutory requirement to follow the model order, or have flexibility. Why should they agree with one another? If they do not need to agree with one another, we must build flexibility into the system. I would probably never have thought about that had I not heard today's debate, questions and answers.

There is nothing to prevent any planning authority from picking up, using and running with the model order that will be in the guidance, but any authority would be able to do something else if it wanted to. Therefore, I am inclined to resist the motion to annul.

I will add a final point. If any planning authority, such as in Glasgow or Edinburgh, decided for some reason somewhere down the line that it wanted to change a model order that was in statutory regulations, which it would have to use, it would have to mount a national campaign to get another statutory instrument before the Parliament. That seems to be quite a sizeable task for any individual local authority. Locking the order into statutory regulations makes it incredibly difficult to change.

For those reasons, and having listened to the debate, I am minded to resist the motion to annul. However, I genuinely thank Ken Macintosh for bringing the matter to the committee's attention, as such things often go unnoticed and unchallenged.

The Convener: As no other member wishes to take part in the debate, I invite the minister to respond.

Keith Brown: I will do so briefly.

There is a point that Ken Macintosh made with which I take issue. It is not the case that a majority of local authorities opposed the change. Compared with those that were in favour of it, one more authority said that it was against it, but an absolute majority of local authorities were either in favour of the change or did not feel sufficiently strongly about it to register any objections. There is therefore a substantial basis of support for it.

Annulment of the motion would mean that all the other things that seem to be the subject of almost

general agreement would go by the board. If we were to come back with a different proposition—new regulations that took out the measure that will give local authorities a choice, which several committee members have mentioned—that would jar with the other parts of the regulations.

There is general support for the consistency that the measures will bring. As I mentioned, 76 per cent of respondents supported our trying to make things easier. The exercise is not going on only in this country; it is going on elsewhere in the UK. It is a general measure. Previous Administrations tried to simplify the planning process to make it easier for people to make the volumes of regulations that we produce easier to understand. I mentioned reducing 25 sides of paper to, potentially, five.

As several members have said, the issue has not raised a huge amount of concern or interest, notwithstanding the fact that some local authorities wanted the standard to be applied to everybody. However, a majority of local authorities are either in favour of the change or are not concerned about it. Given that, obviously I want members to support the regulations and not to support the motion to annul, which would set things back.

Ken Macintosh: I thank all members and the minister for their helpful comments.

I stress again that there is no point in pretending that we are talking about the most contentious or divisive of issues; it clearly is not that. I think that we would all agree that the whole point of the SSI is to improve tree preservation in Scotland. I am not sure whether I would go as far as to agree with Alasdair Morgan's comment about angels dancing on the head of a pin. The issue is simply whether there will be a standard order that everyone will use, or flexibility for some local authorities.

Alasdair Morgan suggested that some of the arguments are not very strong, but there are two very good arguments in favour of having a uniform form for everybody in Scotland. One key issue is the uncertainty to which I have referred. If there is any uncertainty among planners, people who interpret the orders, campaigners or local authorities, then that will undoubtedly weaken tree preservation. People like to know where they stand, and certainty makes for clearer and better decision making generally.

More important, an order in statutory regulations sends out a stronger signal: it sends out a clear signal that the issue matters at national level to all of us and to the Scottish Government.

The SSI came from a discussion as far back as 2002. It has been recognised for some time that our current system of tree preservation orders is not working as effectively as it should. There are weaknesses in it. A lot of work was done to try to

improve the system, and it has taken a long time for that to take effect.

10:45

After all that work went into examining the system and how it could be improved, the recommendations did not include weakening the system by removing the form—the model order—from regulations and putting it in local guidance. It is difficult to know where that suggestion came from. It was not made in the original discussion document or agreed in 2002. I do not want to return to the argument on the Government's consultation, but the majority of the local authorities that expressed a view were clearly against the proposal.

We should not be overly divided on the issue. There is no rush—we have waited nine years to reach the current point. I hope that the Government will take time to have a wee think about the matter and to discuss it further with those who are involved. It is clear that the national bodies—Scottish Natural Heritage, the Woodland Trust Scotland and many others—have concerns and would like a stronger signal from the Government.

The issue is not earth shattering, and taking more time would not be seen as showing political weakness—far from it. It is a straightforward issue that we can get right. It would be better to stop the regulations now and have a rethink if we want to improve tree preservation in Scotland.

The Convener: You are pressing the motion.

Ken Macintosh: Yes.

The Convener: The question is, that motion S3M-7659, in the name of Ken Macintosh, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Tolson, Jim (Dunfermline West) (LD)

Against

Doris, Bob (Glasgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

I will take into account my committee hat. As a committee member, I voted to support Ken Macintosh for raising the subject and allowing the debate to take place, which was useful, as members have said. I take into account that the

committee has received no formal representations from any objectors, although MSP correspondence took place with the Woodland Trust and other organisations that have raised issues. I will therefore not use my casting vote to recommend annulment.

Motion disagreed to.

Registration Services (Fees) Amendment (Scotland) Regulations 2010 (SSI 2010/427)

Registration of Births, Deaths and Marriages (Fees) (Scotland) Order (SSI 2010/428)

Planning etc (Scotland) Act 2006 (Saving and Transitional Provisions) Order 2010 (SSI 2010/431)

Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 (SSI 2010/432)

Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010 (SSI 2010/433)

The Convener: Before we move to item 4, I will let the room clear.

Item 4 is consideration of five SSIs that are all subject to negative procedure. Members have received electronic copies of the instruments. No concerns have been raised and no motions to annul have been lodged. Do members agree that they wish to make no recommendations to Parliament on the instruments?

Members indicated agreement.

The Convener: We move to item 5, which we previously agreed to take in private.

10:49

Meeting continued in private until 11:15.

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