



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# ECONOMY, ENERGY AND TOURISM COMMITTEE

Wednesday 5 June 2013



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**ECONOMY, ENERGY AND TOURISM COMMITTEE**  
**18<sup>th</sup> Meeting 2013, Session 4**

**CONVENER**

\*Murdo Fraser (Mid Scotland and Fife) (Con)

**DEPUTY CONVENER**

\*Dennis Robertson (Aberdeenshire West) (SNP)

**COMMITTEE MEMBERS**

\*Marco Biagi (Edinburgh Central) (SNP)

\*Chic Brodie (South Scotland) (SNP)

\*Rhoda Grant (Highlands and Islands) (Lab)

\*Alison Johnstone (Lothian) (Green)

\*Mike MacKenzie (Highlands and Islands) (SNP)

\*Margaret McDougall (West Scotland) (Lab)

\*David Torrance (Kirkcaldy) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Councillor Michael Cook (Convention of Scottish Local Authorities)

David Cooper (Aberdeenshire Council)

Andrew Fraser (North Ayrshire Council)

Jim Galloway (City of Edinburgh Council)

**CLERK TO THE COMMITTEE**

Jane Williams

**LOCATION**

Committee Room 4



## Scottish Parliament

### Economy, Energy and Tourism Committee

*Wednesday 5 June 2013*

[The Convener *opened the meeting at 10:00*]

### Regulatory Reform (Scotland) Bill: Stage 1

**The Convener (Murdo Fraser):** Good morning, ladies and gentlemen. I welcome members and our witnesses to the 18th meeting in 2013 of the Economy, Energy and Tourism Committee. I also welcome visitors to the public gallery.

I remind everyone present to turn off—or at least turn to silent—all mobile phones and other electronic devices.

Item 1 on the agenda is continuation of our stage 1 scrutiny of the Regulatory Reform (Scotland) Bill. We have one panel of witnesses: Andrew Fraser, who is the head of democratic and administration services at North Ayrshire Council; Councillor Michael Cook, who is the vice-president of the Convention of Scottish Local Authorities; Jim Galloway, who is service manager for economic development at the City of Edinburgh Council; and David Cooper, who is environmental health manager in infrastructure services at Aberdeenshire Council. I thank them all for coming along.

Before we get into questions, Councillor Cook wants to say something briefly by way of introduction.

**Councillor Michael Cook (Convention of Scottish Local Authorities):** I do not have a prepared statement, but I am the one politician on the panel, so perhaps it falls to me to say something first.

COSLA's view is that it is worth focusing on the three items that we have highlighted in our written submission: national standards, the economic duty and the planning penalty provisions.

It is fair to say that, although at the start the first two issues raised some difficulties for local government by cutting across local democratic accountability and, perhaps, complicating duties that we already have, there has been some movement and we are more comfortable with where we have got to on them.

However, significant difference between us and the Government remains in relation to the utility of the penalty provisions on planning and the wisdom of introducing such measures when we all have

the same objective, which is to ensure that we get quality planning decisions in the quickest possible time.

I know that you will want to ask questions about all of that, and I and my colleagues are happy to answer them.

**The Convener:** Thank you.

The witnesses will be familiar with the bill, which is quite wide ranging, and we have a broad range of issues that we want to cover—Councillor Cook touched on some of them. I know that the application of national standards is of interest to members, as is the new duty to promote sustainable economic growth. We will also address some of the issues on the code of practice. Councillor Cook touched on another issue—planning—and we will also discuss street traders' licences. I also want to pick up on primary authority partnerships. They do not feature in the bill, but there is some pressure for their introduction.

As ever, I ask members to keep their questions short and to the point. Similarly, it would be helpful if the answers could be short and to the point, in so far as that is possible. I also ask members to direct their questions, if they can, to individual witnesses. If all four witnesses try to answer every question, we will quickly find time getting away from us. In many cases, Councillor Cook might find himself first in the firing line, but he should not feel embarrassed by that in any way. That is what he is here for. If others on the panel want to come in and respond to a question that is directed to somebody else, they should just catch my eye, and I will bring them in if I can.

I will ask about the memorandum of understanding that has been signed between the Scottish Government and COSLA on the exercise of regulatory functions and future national standards. I see from the memorandum of understanding that the Scottish Government proposes to fund a policy manager post in COSLA to assist with delivering the new system. I take it that that post is now in place. [*Interruption.*]

**Councillor Cook:** Yes, it is in place.

**The Convener:** It was helpful to hear someone in the gallery volunteer the information that she is that person, although such participation is probably not strictly in accordance with standing orders. It is good to know that the person is in post. Thank you.

I also see from the memorandum of understanding that there is provision for the minister to discuss with the relevant COSLA spokesperson issues to do with local variation, nationally set fees and charging regimes. How will that work in practice, Councillor Cook? The

COSLA spokesperson will be an elected councillor from a particular local authority. How will they ensure that discussions with the minister properly reflect the views of council groups across Scotland, rather than their own particular interest?

**Councillor Cook:** We must start at the beginning. The first iteration of the bill contained fairly significant and sweeping powers that ministers could utilise in relation to as yet undefined legislation and areas of activity. Since then, there has been considerable discussion between the Scottish Government and local government about the approach.

I think that we have reached a compromise. Is it the ideal position? It is much better than the position that we began with, but I would not characterise it as ideal. However, we must proceed on the basis of what seems to me to be a reasonable compromise. The Scottish Government has moved some way and we have moved some way towards finding the areas that are relevant in this context.

If we are talking about national services in relation to which we expect consistent provision across the board, it is right that there should be national standards. I think that we all expect consistent provision. However, there are many areas of local government service provision in which we would expect some local variation. Our council has 600 or so areas of service provision. What we do in Scottish Borders Council is different from what is done in Aberdeenshire Council or the City of Edinburgh Council. That is a reflection of democratic local accountability, and it is appropriate that democratically elected local politicians are involved in the decision making in that regard.

You asked about how the COSLA spokesperson will negotiate and relate to the minister. We have a structure in COSLA: there is a leadership group, and the spokesperson is in the firing line—to use your phrase—in respect of the area of activity that they represent when it comes to negotiating and dealing with Government.

We must make certain assumptions about the Government's intent in committing to the memorandum of understanding, which is pretty clear: there should be a collaborative approach, with a genuine effort to find out what is fit for purpose in particular areas of activity.

For example, on alcohol licensing, it might be desirable to use different yardsticks in different parts of the country. Knife dealer licensing is another example. The approach in Glasgow might be different from the approach in Highland, and that might be entirely right—there are probably fewer shops selling sgian dubhs in Glasgow than there are in Highland. We need an approach that

reflects local circumstances and an understanding of the issues on the ground. That is what local government can bring to discussions with central Government.

**The Convener:** Are you confident that a COSLA spokesperson, even though they might not come from an authority that is seeking a local variation, will be able properly to represent such a view to the Scottish Government?

**Councillor Cook:** I am in no doubt about that. It is an obligation of a COSLA office-holder that they must sink any particular political feeling that they might have, because they have a wider responsibility, which is to represent local government as a whole. I have no anxiety about that.

**The Convener:** That is helpful.

Rhoda Grant will ask about national standards and how things will operate in practice.

**Rhoda Grant (Highlands and Islands) (Lab):** First, we heard from the regulatory review group last week about processes that had been put in place and followed on a voluntary basis. Has that approach been successful? Do we need legislation to make things happen?

**Councillor Cook:** I take it that your question was directed at me.

**Rhoda Grant:** Yes—sorry.

**Councillor Cook:** Yes. As I set out at the beginning, local government's attitude is probably that legislating to reserve powers to ministers to deal with as yet undefined propositions is not the ideal way to proceed. It is clear that Scottish ministers want to achieve levels of consistency of approach in areas that they feel are appropriate, although there has been movement by them on their willingness to discuss much more collaboratively with local government where those areas should be.

In my earlier answer, I suggested that it was a question of horses for courses. There may be some areas in which the introduction of legislation—and the setting of national standards as a consequence—may be appropriate. It may be that other areas of activity should be dealt with by simple protocols and a general form of guidance. It really depends on the issue. That would be an appropriate approach.

Our anxiety about the whole proposition to begin with is that if ministers reserve generalised powers, they imply that one size fits all, which simply is not the reality.

I have already referred to the fact that my council provides more than 600 services. That is true of every council in the land. To imagine that it is possible to set general propositions that will

control all that activity from the centre is misconceived; it also ignores the reality—which we are sometimes too quick to ignore—that councils are local democratic accountable bodies. The politicians on councils have a responsibility to the constituencies that they represent, to which they are accountable. It is important that that has currency in the debate too and, sometimes, the setting of generalised powers ignores that reality.

**Rhoda Grant:** Does the bill deal sufficiently with that aspect of local democracy? Does it take into account local circumstances? Is there enough flexibility in it to allow councillors to exercise local democracy and reflect local circumstances?

**Councillor Cook:** We are heading down the path that I have already hinted at. We would not regard the existence of those generalised powers as the ideal situation. On whether we are satisfied that the efforts to create a memorandum of understanding and certain balances and controls within the system are an appropriate way to proceed in the light of the Government's determination to have generalised powers, we are in a better place—there are no two ways about that.

I am sure that we will move on to questions about the economic duty, which is a good example of the issue. I simply say to you that no one in any council in this land is under any misapprehension about the importance of sustainable economic growth. There is no ambiguity about that at all. However, it is misconceived to create a situation in which things are made subservient to that duty so that equally important balancing considerations, whether they are social or environmental, are potentially subverted.

Again, ministers have shown a willingness to move on that. I have no doubt that Andrew Fraser will comment on some of the legal aspects of the economic duty. We have got to a better place on that proposition as well, which suggests compromise and would allow councils to take into account other responsibilities that they have, such as community empowerment and best value.

The important point is that those responsibilities already exist, and some of them are creatures of statute. Simply to supervene the existing situation with a new legislative responsibility could cause noise in the system and simply confuse the issues. The fundamental reality is that none of us is under any illusions about the importance of economic growth.

**The Convener:** We will come on to address that issue in a moment.

**Rhoda Grant:** You said that legislation is the right way forward, but I also pick up from you a bit of concern about local democracy and local

circumstances. What would you have preferred? What is missing or what should not be in the bill?

**Councillor Cook:** Actually, I did not say that legislation was necessarily the right way to proceed. I am saying that legislation that has generalised powers at its heart is, to be frank, not the right way to proceed.

The implication of that is that the appropriate way to proceed is to take a horses for courses approach. That means that we have a look at the area of activity, then we create appropriate legislative duties or regulatory guidance, depending on the area of concern. That is how we should deal with matters, because it always depends—I am an ex-lawyer—on the evidence. We should look at the evidence and then draw up our legislative propositions in the light of that evidence. Unfortunately, the bill does not quite do that, even though there have been efforts to mitigate some of its more sweeping propositions.

10:15

**Rhoda Grant:** So what you are saying is that the legislation is not required but that further legislation on more focused areas is required. Is that right? I am not entirely clear about what you think should be done instead.

**Councillor Cook:** What you have done is very gently put words in my mouth.

**Rhoda Grant:** I am trying not to.

**Councillor Cook:** That is entirely fair, but you will appreciate that I am trying to give you a compromise response, because that is local government's attitude: a general proposition in legislation is not the ideal way forward. However, we have negotiated a more moderate approach that is okay and with which we are satisfied—that is it in a nutshell.

**The Convener:** I think that Mr Fraser wants to come in.

**Andrew Fraser (North Ayrshire Council):** It is unusual for legislation to require a non-statutory memorandum of understanding to make it acceptable and workable. That emphasises the sweeping powers that ministers would have, under sections 1 to 3, to amend pretty much any regulatory regime. In my view, no real justification has been given as to why that is needed. In effect, the powers would bypass Parliament to an extent.

The other point is that there have been some mixed messages. First, the consultation was about national standards, and I think that we believed that we were talking about high-level stuff, such as the national planning framework. Now, however, we are talking about inconsistencies, which might be low-level stuff. There is no complete

justification of why that is needed. I know that we have some low-level examples, such as the food certificates issue, but that sort of thing comes from bad drafting or lack of consultation on the drafting. I do not think that there is a rationale for ministers to take huge powers over the regulatory regime and, in essence, bypass Parliament.

**Rhoda Grant:** I am still slightly at a loss as to what your overall view of the bill is. What I am getting from you is that you think that the bill is okay and that now that we have had some compromises it is fine. Is there something that you would prefer in its place?

**Councillor Cook:** I am perfectly happy to have another go. Clearly, I have to give a nuanced response that embodies the whole of local government, which I am here to represent. Andrew Fraser hinted that the reality is that, ideally, we would not wish to see the generalised power in relation to national standards. That is the starting-off point. However, we accept that there has been a discussion with the Scottish Government that has got the bill to a better place, though not an ideal place. I would not pretend for a moment that local government is ecstatic about that result, but we have got to a better place in terms of what we think the legislation now says. That is because the more sweeping aspect of the legislation has—to an extent and perhaps unusually, as Andrew Fraser said—been mitigated by a memorandum of understanding. We believe that the spirit of that will be accepted by ministers. Frankly, on that basis of that good will, we are happy to proceed as things are set out.

Is it ideal? The answer to that question is no, it is not, as far as we are concerned.

**Rhoda Grant:** I suppose that we see our job as making it ideal. That is what committee scrutiny is about. What I am trying to get out of you is what needs to change to make it ideal.

**Councillor Cook:** The implication of that is that you would remove the generalised duty. What you would have is an expectation that the Scottish Government would introduce appropriate legislation, guidance, protocols or whatever in relation to discrete areas.

**Mike MacKenzie (Highlands and Islands) (SNP):** My question is for Councillor Cook—

**Councillor Cook:** I am surprised.

**Mike MacKenzie:** I did not expect you to be surprised.

Today's discussion and the arguments in the written submissions seem to be quite theoretical. I think that we all understand the theory behind local democratic accountability, with decisions being taken at the local level. That sounds nice, but I am struggling to come up with practical

illustrations of the theory. Perhaps you can provide the committee with two or three examples of a community, such as the Tìree community, campaigning—[*Interruption.*] I will stop while you have your conversation.

**Councillor Cook:** I am sorry. We were checking examples that we can give you.

**Mike MacKenzie:** Let us imagine that the community of Tìree or North Ronaldsay comes together to lobby the local authority and say, "We don't like how you're applying regulation. It's inappropriate for our area." Can you give an example of a local authority responding to such a campaign by modifying its approach to regulation? I am struggling to come up with concrete examples, although the need to be able to respond in such a way seems to be the gist of the theoretical arguments that have been put, if I understand them correctly. Perhaps you can give us three examples.

**Councillor Cook:** I will give you a general understanding of the reality, after which I will give a couple of examples. I will then ask Andrew Fraser to give you another example.

Let us think about the issues that the communities in Tìree or North Ronaldsay might have in relation to regulation and the propositions in the bill. Let us say that a community is subjected to an application for a significant wind farm. It matters to the community how the council deals with the application. The timescale for consideration of the application matters—

**Mike MacKenzie:** May I stop you there, please? I am sure that we will talk about planning, but nothing in the bill suggests that there could be a modification to the approach to planning other than a modification to the fee regime.

**Councillor Cook:** I am sorry. You are wrong. The economic duty potentially has implications for planning. We need to appreciate that if we create generalised duties, they might have implications later on.

**Mike MacKenzie:** Okay.

**Councillor Cook:** That is one example. It is clearly important for people on the ground that we balance, in a proportionate way, considerations that are important to communities. I say candidly that the people who are best at doing that are those who are closest—I see that you are shaking your head, but that is the principle of subsidiarity: the people at the lowest level, who are most proximate to the decisions to be made, are usually best in that regard.

I gave a couple of examples earlier. Alcohol licensing was one. There might be particular issues—



**Mike MacKenzie:** Please forgive me. That was not a specific example. Can you give a specific example of a community lobbying its local authority for regulation to be applied in a different way, to reflect local circumstances? You talked about licensing in general terms, but that is not a concrete example.

**Councillor Cook:** Let me give you a specific example. Alcohol licensing is highly relevant in the Borders, where I am from. This is a slightly different take on the issue, perhaps, but Scottish Borders Council is the only local authority area that does not have alcohol byelaws in urban settlements, and there is active discussion with communities about whether they want that kind of regulation. The view of the largest community in my area is that it wants such regulation, but that is not necessarily the view throughout the region. I am aware that other towns take a slightly different view. It is entirely appropriate that we ascertain the views of people on the ground and then make judgments, and that is what we will seek to do.

Andrew Fraser has another example.

**Andrew Fraser:** It is about liquor licensing again. The liquor licensing system is driven by policy. A licensing policy statement is prepared every three years, which involves mapping the figures for the impact of alcohol on health, crime, disorder, fires and so on.

The figures for my former authority, West Dunbartonshire Council, showed that 6 per cent of the population was addicted to alcohol, 2 per cent was addicted to drugs, and four to five people were directly impacted by every case of addiction. That meant that 30 to 40 per cent of the population was directly impacted by alcohol and drugs addiction—that excludes loads of other alcohol impacts. Alcohol was clearly having a major impact on West Dunbartonshire, and the position was similar in many other authorities in the west of Scotland. The authority decided on an overprovision policy, and it decided that in 15 out of 18 council areas there would be no more licensed premises.

However, areas such as Morningside have entirely different needs, so we have ended up with a postcode lottery and inconsistent policy across Scotland. If someone wants a licence in West Dunbartonshire, there is a presumption that they will not get one. If they want a licence in East Dunbartonshire they are highly likely to get one. Policy is targeted at local needs and requirements.

This is about the idea of looking at place, which feeds into the community planning agenda. Community partners' resources should be targeted so that together they address the big problems in society. A consistent regulatory regime throughout Scotland does not do that.

**Mike MacKenzie:** Thank you.

**Chic Brodie (South Scotland) (SNP):** We have heard that councils listen to communities, but at the end of the day they apply a general rule. An individual council will arrive at a decision that will apply across the council.

**Councillor Cook:** Not necessarily.

**Chic Brodie:** Are you telling me that there have been situations in the Borders in which a community has been either for or against a wind farm and the council has gone along with the wishes of the community?

**Councillor Cook:** That is a completely different proposition—

**Chic Brodie:** No, it is not a different proposition—

**Councillor Cook:** I am sorry. It is a different proposition—

**Chic Brodie:** With all due respect, it is not.

**Councillor Cook:** Well, it is, because that is a regulatory function and clearly the planning committee needs to make a judgment that is based on the merit or adverse effects of the application—

**Chic Brodie:** Are you saying that national Government should do the same in terms of applicable regulations across all councils?

**Councillor Cook:** I am sorry; you will have to clarify what you mean.

**Chic Brodie:** You are saying that in a local authority it is all right for the regulation or the guidance to be set for communities but it is not okay for national Government to set the applicable—

**Councillor Cook:** I am sorry. I think that you misunderstand. No one is saying that—

**Chic Brodie:** Perhaps I was not clear.

**Councillor Cook:** I think that what you said was clear. No one is saying that national guidance is inappropriate. We are saying very clearly that there are circumstances in which national guidance is appropriate and that that should be a matter of discussion, evidence, forethought and planning. The more general proposition—

**Chic Brodie:** Is that not what we are doing today?

**Councillor Cook:** The question is whether you take the view that either generalised powers in terms of national guidance are prudent, or it is better to look at the evidence in relation to discrete areas and then make a judgment. I tend towards the latter view; I appreciate that others might tend towards the former.

**Chic Brodie:** Communities might say the same thing vis-à-vis local authorities.

**The Convener:** I have one other question on national standards. The financial memorandum says that local authorities will experience

“No net impact on costs”

in relation to part 1 of the bill. Do the witnesses agree?

**Councillor Cook:** It is difficult to be certain at this point, because we do not know how the standards will be applied or to what areas they will apply. The expectation that has been created around the memorandum of understanding is that there will be discussion with the Scottish Government about anticipated cost impacts as a result of something that the Government wants to bring forward.

**The Convener:** Thank you. Let us move on and consider the issue of opting into or out of national standards at a local level.

**Rhoda Grant:** Should councils and other bodies that the bill covers be able to opt into or out of regulations that are put forward under the bill?

10:30

**Councillor Cook:** Again, it is quite difficult to give a straightforward answer to that, as it depends on the circumstances. It goes back to the original proposition that setting national guidance means that, generally, a minister can come along and set a series of propositions. It is far better that we look at the individual area of law and then make judgments about it.

Inevitably, there will be differences between communities. There is now a significant emphasis on place in policy determination and community planning is a fundamental principle of the Government's public sector reform agenda. All of that is right, but the implication is that we have to look at the circumstances on the ground and make judgments on that basis, and the tool for doing that is single outcome agreements. Whether in pursuing economic growth, health outcomes or whatever, using the tool of single outcome agreements, which are agreed with local partners but are also sanctioned by the Government, is how we should proceed in dealing with those issues.

**Rhoda Grant:** This goes back to your answer to the previous question. You feel that there should be no overall duty in the bill and that each thing should be legislated on separately. However, if we have an overall duty, should councils be able to choose whether to opt in to individual pieces of regulation or should there be some criteria to allow them to opt out, taking local circumstances into

account? Would that help to make the bill more workable for you?

**Councillor Cook:** Potentially. I will be candid—I am finding it difficult to think of an example of that. It really depends on the issue. You would need to look at a particular issue and make a judgment about whether we need a national standard with no ability to opt out or whether we could have something that was sufficiently flexible to allow councils or communities to opt out. In certain circumstances, some form of opt-out may be appropriate.

**Rhoda Grant:** You said that outcome agreements may be a basis for opt-outs in looking at the delivery of services. Should there be other criteria? If we are going to legislate, we do not want everyone to opt in or out as they see fit. We want something that stands up to scrutiny of the reasons why people would choose to opt out. What would those reasons be?

**Councillor Cook:** It is a question of evidence. One of the founding propositions behind single outcome agreements is that they say to local communities, “Know thyself,” to use a biblical expression. They should know what the evidence is in their area, whether it relates to health issues, demography or educational attainment. They should have an understanding of those things. In looking at a particular area, any judgment should be based on what the evidence tells us, and an opt-out may flow from that judgment. That would be an appropriate way in which to proceed.

**Rhoda Grant:** Our duty as a committee is to scrutinise the bill and propose amendment as required. What you suggest sounds fine but, frankly, it is a bit woolly as a basis for legislation. How could we write into the bill the criteria for opting out and state what councils must match or have concerns about, which would allow you to go back to the Government and say, “We wish to opt out of this legislation”?

**Councillor Cook:** It is inevitably a bit woolly because you are asking me to speculate on things that—I am sorry—I am just not capable of speculating on. There are things out there that I do not know about, such as circumstances that suggest that different approaches should be taken in different communities. I cannot see what those are.

We would be happy to think further about that and see whether we can provide you with further written evidence that gives you a flavour of when an opt-out might be appropriate. It would be fair for us to do that. You are asking me—quite justifiably—to look into a crystal ball, but that is, unfortunately, not one of my greatest skills. I find it difficult to imagine what those scenarios would be,

but we can have a think about it in the office and try to give you something additional on that.

**Rhoda Grant:** That would be helpful.

**The Convener:** Two thirds of the local authorities that responded to the consultation said that they should have the right to opt out on the ground of exceptional local circumstances. Councillor Cook, you have just said that you can see opt-outs in certain circumstances. Leaving aside the question of examples, who do you think should decide whether a local authority should get an opt-out?

**Councillor Cook:** The implication of the memorandum is that that would be a matter for discussion between local and central Government. That would probably be appropriate.

**The Convener:** But ultimately the Scottish Government would have to make the decision.

**Councillor Cook:** The Scottish Government would inevitably have a decisive say on whether an opt-out was accepted and whether the exceptional circumstances justified such a move, unless—here I return to Rhoda Grant's proposition—the bill contained a definition that was sufficient to make the ground rules clear. In such circumstances, we might be able to have an automatic opt-out on the basis of certain kinds of evidence. However, even in the responses that you mentioned, it is quite difficult to see the exceptional circumstances that local authorities are describing. They refer to them in a fairly general way. I have to say that we are short of examples in that respect.

**The Convener:** Alison Johnstone has some questions on an issue that you have already touched on—the new economic duty that will apply to local authorities.

**Alison Johnstone (Lothian) (Green):** Good morning. I would appreciate hearing the witnesses' views on why the majority of local authorities that responded to the Government's consultation oppose the introduction of the new economic duty. The analysis of consultation responses on what was then called the better regulation bill shows that 12 local authorities are against the proposal and that only Edinburgh supports it. Why is that the case?

**Councillor Cook:** I will begin with a general proposition, if you want, and I am sure that others will be able to fill things in.

First, the duty to promote economic growth cuts across local democratic accountability. The fact is that councils are clearly able to balance interests and make judgments in their localities about the activities that they should pursue.

Beyond that, there is a potential inconsistency with other local authority duties. For example, we consider community empowerment, wellbeing and community benefit, but there is no clear definition of how the legislative requirements will interact. Moreover, how will the new duty relate to, say, our best-value responsibilities?

There has been an effort to mitigate the very generalised proposition that lies behind the economic growth duty. It started simply as a bald economic growth duty, and I have to say that the move to sustainable economic growth has merit. After all, the creation of a situation in which transient economic growth trumped local social or environmental concerns would be a serious issue for us, and I think that further attempts have been made in the bill to mitigate the duty's effects by making it clear that it needs to be measured against other local authority responsibilities. That is certainly a step in the right direction.

That brings me back to the previous question about whether we regard the national duty as ideal, our response to which is simply no. I said earlier that councils are under no illusion about the importance of sustainable economic growth. This might be a risky observation, but members are sometimes more preoccupied with that than they are with other issues. I believe that we need balance in the system and proportionality in decision making.

To create the proposed precept, which is also cropping up in relation to other legislative and guidance propositions such as the national planning framework 3 and Scottish planning policy, would be to go down the wrong path. We need a balanced approach that recognises the full gamut of things that local authority decision makers need to take into account.

**Alison Johnstone:** Thank you. Can I hear the other witnesses' views?

**The Convener:** Mr Galloway, do you want to say something?

**Jim Galloway (City of Edinburgh Council):** I am surprised that my authority is the only one that reported in favour of the duty. From an economic development service point of view, anything that helps to promote economic development has to be a good thing. In Edinburgh, we have a deliberate policy to try to make it easier for people to do business. We have brought together our business support services and co-located them alongside some of our regulatory services, principally the business-facing ones. That has enabled a new dialogue between business support, planning, licensing, environmental services and even finance and non-domestic rates, which collectively seek to support the business customer.

The duty is broadly in line with our strategy and operations in Edinburgh, so we broadly support it. However, the checks and balances need to be in place to ensure that, for example, in the planning application process, the economic benefit argument is in balance with the other arguments, and that the duty does not lead to a presumed consent type of situation. I know that my colleagues in the planning department would be concerned about that. The flavour of the bill is to try to make it easier to do business in Scotland, to make it easier for businesses to understand and comply with regulations and, in turn, to make it easier for councils to apply them. In that respect, the economic focus is broadly to be welcomed.

**Andrew Fraser:** There are concerns about the wording of the duty from a legal point of view. We should bear it in mind that the pre-consultation mentioned introducing the principles of better regulation into legislation. I think that everyone would be happy with that. The consultation paper mentioned a duty whereby local authorities would have to consider and report on the impact of regulatory activities on business, but it has crept into being a duty except where it would be inconsistent with the exercise of those functions.

Regulatory issues are not like policy decisions. Regulatory issues end up in court because they cost money in licensing and planning. I think that the duty will end up as a lawyers' charter and will be argued over. I will give a practical example. Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997 state that a planning decision has to be made in accordance with the development plan unless material considerations indicate otherwise. The new draft Scottish planning policy in April this year proposed that the economic benefit of developments should be a material consideration, but in the light of the bill, will economic benefit have greater weight as a material consideration? Will it be an overriding consideration? I think that that is fertile ground for lawyers.

If a question arose on licensing or another regime, the courts would say, "What is the purpose of the legislation?" They would need to determine that in order to determine whether the economic benefit power is inconsistent with it. In liquor licensing, in the Brightcrew case, the courts made a complete and total hash of trying to determine an underlying principle. In spite of the fact that the legislation had five underlying principles in it, the court said that the purpose was the sale of alcohol. Could we say that the sale of alcohol is inconsistent with economic growth when we have, on the one hand, health arguments against granting premises and, on the other, arguments that new premises bring jobs? It just creates a complete mess and it will take ages for the courts to sort it out.

If you are in any doubt, apply the test to the issue of bank deregulation 10 years ago. The approach would have resulted in huge deregulation. If the duty in the bill had been about introducing the principle of better regulation, there would have been no dispute whatsoever. The proportionate exercise of regulation is well understood.

At the very least, the duty needs to be watered back to the proposal in the consultation paper that it is a balancing consideration and not an overriding one. Regulation is often about protection of the public; it is not necessarily about economic growth. There has to be a balance.

10:45

**David Cooper (Aberdeenshire Council):** Aberdeenshire Council deals with a lot of businesses from an environmental health point of view with regard to the condition of premises, food health and safety, impact on neighbours and so on. We are not here to put obstacles in the way of those businesses and we do not want to harm them. The council's approach is to work with businesses, and I am sure that the same applies in most councils. We also work in partnership with the Food Standards Agency and the Health and Safety Executive to ensure that we apply regulation consistently and fairly. We have good partnerships with local businesses and we try to promote the ones that meet certain standards—for example, with eat safe awards—which can have a financial benefit for them.

As has been said, our main role and purpose is to ensure that there is compliance with regulations that are set through legislation and that there is no adverse impact on the public. I am not sure how our role in environmental health ties in with the things that we are discussing, but I am sure that there are other aspects of council services to which the duty could apply.

On your point about why only one council supports the proposal, it might depend on who contributed to the consultation responses when they were put together. Perhaps we should take them with a pinch of salt, although that is just my point of view.

**Alison Johnstone:** I have two more questions. Mr Fraser, you commented that, if a developer applies for a consent to build houses and is refused, they could object to the decision on the ground that the development could lead to economic growth. If a council refuses permission to develop, there is a chance that the developer could come back and say, "You have a duty to promote economic growth, so I'm going to challenge that."

**Andrew Fraser:** Yes. They could possibly hang their hat on that in court and say that the planning authority did not pay sufficient regard to the duty to ensure economic growth or that that duty should have been given more weight as a material consideration than, for example, the environmental impact and the local plan. It becomes terribly muddy. Given that the duty is in an area of regulation that can end up in court, it will take a few years in court to find out, finally, where we are at.

**Alison Johnstone:** Last week, the committee heard from Scottish Natural Heritage, among other bodies. The convener asked what difference, if any, the new economic duty will make to the current organisation and delivery of SNH's services. Roger Burton of SNH said:

"I do not think that it will make any difference, given that we are already working towards the national performance framework within which it sits."—[*Official Report, Economy, Energy and Tourism Committee*, 29 May 2013; c 2933.]

Do you believe that non-legislative approaches are working and that, with single outcome agreements, for example, that is happening anyway? That seems to be the thrust of what I have heard from some of the witnesses this morning.

**Councillor Cook:** My answer is yes. We have been through an evolutionary process in relation to single outcome agreements and community planning. We are starting a new chapter in relation to those things. In the past, there was a duty on local authorities by consequence of statute in relation to community planning. It looks as though that duty will be extended under the bill to other public sector partners. Local authorities welcome that because it will oblige all stakeholders to bring their resources and talents to the table to deal with issues that are important in localities. As a direction of travel, that seems to us to be entirely appropriate. In some ways, the approach that is hinted at by the imposition of specific duties runs counter to that approach.

The Scottish Government is—rightly, in my view—keen on the place-making agenda, which is a fundamental proposition for community planning and single outcome agreements. That is the right direction of travel as far as we are concerned. The duty in the bill intrudes on that and infringes on what we seek to do there.

**Andrew Fraser:** I think that it is worth while to quote from the March 2013 Audit Scotland report "Improving community planning in Scotland", which contains some quite trenchant comments. For example, it states:

"The Scottish Government is currently involved in a wide-ranging programme of public service reform. This includes reviewing community planning, integrating health and social care services, establishing national police and

fire services, college regionalisation, and community empowerment. Several of these developments, such as health and social care integration and the review of community care planning, share a common focus on partnerships, place and integrating services. Others, such as police and fire reform have a significant national dimension. Others still, such as college regionalisation, have a regional focus. This complex network of reforms may present challenges in establishing local community planning arrangements that are the foundation within which wider reform initiatives will happen in line with the expectations of the Statement of Ambition. Overall, Scottish Government public service reform developments do not appear to be well 'joined up' when viewed from a local perspective."

That criticism applies to sections 1 to 4 of the bill, because what is proposed is not joined up with other public sector reform, particularly from a local perspective.

**The Convener:** Does Marco Biagi want to come in?

**Marco Biagi (Edinburgh Central) (SNP):** No. My question has been answered quite well.

**The Convener:** Before we leave the issue of economic benefit, I have a couple of questions just for clarity. The first is for Councillor Cook. COSLA's written submission addresses the economic duty, but it is unclear exactly what your position is. Perhaps you can make it clear. Does COSLA support the duty being in the bill, or not?

**Councillor Cook:** I am trying to ride two horses, as you found earlier.

**Chic Brodie:** Not very well.

**Councillor Cook:** I did not quite hear that.

The ideal would be that the duty was not in the bill. The evidence that you have heard today is that we would prefer not to have the complication and the potential duplication and confusion that will flow from introducing additional duties in the bill. However, the position that we have resolved upon is that, because there has been an effort on behalf of the Scottish Government to reach a compromise and mitigate some effects, we have moved to a much better position. Is it the ideal position? No, but it is certainly a much better position.

**The Convener:** It is helpful to get that clarity. However, can you or anybody else tell me what sustainable economic growth means?

**Councillor Cook:** That is a very good question. The phrase is undefined, as are one or two other propositions in the bill, which is an issue.

**The Convener:** Does anybody else want to volunteer a definition?

**Andrew Fraser:** That is the point. It would be helpful to have a definition of the phrase before the courts make one.

**The Convener:** Thank you. We need to move on and look at the code of practice on regulatory functions.

**Chic Brodie:** Sections 5 and 6 cover the code of practice and the code of practice procedure. They allow the Scottish ministers to issue a code of practice in relation to the exercise of regulatory functions by specified regulators. Do local authorities and COSLA have any concerns about the code of practice?

**Councillor Cook:** It is broadly okay. The same issue arises in relation to section 6(3)(b), where you will see the economic duty repeated, in effect. The concerns that we have articulated previously arise in relation to that as well.

**Chic Brodie:** We could have a longer debate on the matter and ensure that everyone understands what is meant by sustainable economic growth in terms of employment and productivity. However, we will leave that issue for the moment.

Apart from that, is there anything else that gives you concern, for which you would seek ministerial guidance on the application of the code?

**Councillor Cook:** Subject to the collaborative or partnership approach that is outlined in the memorandum of understanding, the answer would be no.

**Chic Brodie:** That is fine.

**The Convener:** Do you have any concerns about section 7, which gives Scottish ministers the power to modify the list of regulators and regulatory functions?

**Councillor Cook:** The difficulty is that these are all generalised propositions about things that we cannot yet see. There is a lingering anxiety that things that we do not yet have sight of could be modified, particularly if they are not mitigated through the memorandum of understanding.

A key proposition for us is that any effort to change something that is as yet unseen would be a matter for partnership discussion instead of something on which an individual minister would simply come to a view. It would be better to have the ability to have that sort of discussion. The lingering issues about the generalised nature of some of the propositions bring us back to a point that we have made delicately so far about anxiety over the generalised nature of the power and the fact that it would be better if it related to discrete items that are visible and based on evidence.

**Andrew Fraser:** I have two points. First, there is a slight doubt about whether licensing boards are included in the list of bodies that are covered by the bill. They are not listed. It might be worth checking whether the intention was to include them.

Secondly, on generalised powers, I note that the only restriction on the powers in section 1 is that which is contained in section 2(3), which I find difficult to understand. Perhaps the committee will have a closer look at that provision at some point.

**The Convener:** Another area that we have mentioned briefly in passing is planning fees, which I know is an area of concern for COSLA. A couple of members have questions on the issue, and I will begin with Margaret McDougall.

**Margaret McDougall:** First, I should declare that I know Andrew Fraser from my previous life as a North Ayrshire councillor, when he was an officer with the council.

The bill refers to sanctions that would be imposed on local authorities that did not meet certain criteria and timescales on planning. Do you have a view on that?

**Councillor Cook:** There is no question but that we have serious concerns about that, some of which are matters of principle and others matters of practicality. We have already hinted at the issue of principle. The measure smacks of a high-handed and undesirable arbitrariness; it infringes local accountability and is actually inconsistent with the bill's chief objective of consistency.

On issues of practicality, as yet there is no definition of many things that would be important in clarifying the direction of travel on the matter. For example, there is no clarity on what is good or bad performance. There is also no reference to full-cost recovery or to the fact that planning services are heavily subsidised by the taxpayer in other ways, which means that fewer resources are available for other services.

To be frank, planning authorities are not responsible for all the delays in the planning system. Typically, the time taken to resolve a planning issue can be doubled or even tripled by the requirement for section 75 legal agreements, and the committee will have seen evidence suggesting how major a component that is. There is also no indication of the period over which the penalty would apply. Beyond that, even if we were to accept that there should be some kind of penalty, it is not clear what would be penalised.

11:00

There seems to be an implication that timescale and the speed of processing applications would be assessed. I am sorry, but I have to say that such an approach is utterly misconceived; in our view, the important thing is quality decision making. Timescales are certainly important—I do not think that anyone will pretend otherwise—but quality decision making is in many ways much more important.

We must also be mindful of the outputs from planning decisions. The simple fact is that 93 per cent of planning applications are approved, but that is because of the level of industry that goes into making those applications acceptable. How does that happen? Often, it happens through constant conversation and dialogue between the applicant and the planning authority, which gets an application that might have had issues into a shape in which it can be accepted and approved. That might take more time, but does it produce an altogether more satisfactory result? I do not think that there is really any issue but that it does.

As I have said, the overall approach in the section on planning penalties is misconceived. A high-level group populated by the COSLA spokesperson Stephen Hagan and the minister is looking at planning performance issues. It is right that the group examines those matters, but we are still some distance apart on the issue of penalties. We are keen for the position to change and, again, for a much more balanced and proportionate approach to be taken to the matter.

**Margaret McDougall:** So that is a no, then, to sanctions.

**Councillor Cook:** I think that you can safely say that. In fact, that is the most unambiguous that I have been today.

**Margaret McDougall:** You said that a group involving COSLA and the Scottish Government is looking at how performance on planning applications is monitored.

**Councillor Cook:** Yes.

**Margaret McDougall:** Is that the only way in which these things are being monitored? How do local authorities monitor their own performance and deal with a poor-performing planning authority?

**Councillor Cook:** Local authorities collect data on the issues all the time, and I think that you have received evidence on the timelines for that. Indeed, I regularly look up my council's planning performance. I routinely expect to be able to see how we are performing and we then make judgments about the level of investment in the department. All planning departments across the country—without exception, I think—are heavily subsidised. Back in 2004-05, councils recovered 81 per cent of their planning costs from the charging regime, while in 2010-11 the figure had fallen to 56 per cent. In short, the other 44 per cent of the provision is effectively subsidised with other resources, which means that other areas of activity go light.

Who has an interest in ensuring that a planning authority performs well? Actually, in my local authority, I have an interest in that. The people

who are directly accountable for whether Scottish Borders Council performs well as a planning authority are me and my 33 colleagues. The same holds true for the City of Edinburgh Council and every other council across the land. The people who are vested with the responsibility are democratically accountable for it.

**Margaret McDougall:** Of course, Audit Scotland will comment on the performance of the council as a whole.

**Councillor Cook:** Indeed. Planning performance is a regular feature of Audit Scotland's regular audits of the council.

**Margaret McDougall:** In that case, is Heads of Planning Scotland's planning performance framework an appropriate mechanism for assessing planners' performance?

**Councillor Cook:** There is an aspiration across the country to improve performance. I do not think that there is any ambiguity about that. The question is how we do that—we do it by looking at the evidence and by investing in improved performance.

There is an argument that what is sauce for the goose is sauce for the gander. To give an interesting comparison, the energy consents unit, which is an arm of the Scottish Government, said in August 2012 that it was not performing too badly, as it had a nine-month target for processing applications and was averaging 26 months. As you will see from the evidence, the performance of local authorities is far superior to that.

**Margaret McDougall:** To what extent should the type and complexity of planning application be taken into consideration when evaluating whether a planning authority has performed satisfactorily? Does the bill take that into account, and how would it be monitored? You say that you are not in favour of sanctions, but what could planning authorities use instead and how should they measure performance?

**Councillor Cook:** An approach that is favoured by the Scottish Government in certain areas, and which is worth looking at, is the processing agreement model, whereby there is an agreement between developers and the planning authority with regard to the processing of the application. I understand that the Amazon development in Fife was a product of that system. I do not want to put words into Amazon's mouth, but I expect that it would have wanted quality decision making, even if it took slightly longer—seven months in that case—rather than trying to thrash something through in three months and not getting the result to which people aspired, or actually getting the wrong result, which can sometimes be the consequence of trying to set arbitrary timelines.

**Margaret McDougall:** Do other panel members have views on that?

**David Cooper:** I am from Aberdeenshire Council's environmental health department, not from planning, but the council receives a large number of wind turbine applications. We measure performance by considering the number of applications that are processed within two months, and it is the wind turbine applications that are harming the figures. A lot of that is down to the work in which my department is involved in assessing noise. As Councillor Cook mentioned, the fault does not always lie with the service or the council; some of the information from developers and applicants is less than desirable. There is a multitude of reasons for the time taken, but it is far better to get an application properly assessed, taking on board objectors' views, rather than rush it through. A lot of pressure is put on us to process applications within a short timescale, just to make the figures look good, but that is totally wrong. There has to be a framework through which we can properly measure the time taken by a council or a service, rather than just looking at the time taken.

**Councillor Cook:** There is the question of where fault would lie. For example, when a significant planning application is going through the process and we reach a section 75 legal agreement, as a result of which a developer contribution is payable, sometimes, the unwillingness of the developer to make that contribution can completely thwart the process. As the bill stands, it looks as though the local authority would be held accountable for that, which would not be appropriate at all, because that would not be where the fault lay. As David Cooper says, that is not infrequently the position.

**Andrew Fraser:** To come in at a slight tangent, I wonder about the extent to which the increases in fees would result in new money to the local authority. It might be worth the committee's while to check that there would be no reduction in the grant-aided expenditure allocation from Government to local authorities to reflect the increased fees. If that was the case, local government planning would not be getting any more money, Government would be saving and business would be losing. I am sure that that will not be the case, but it might be worth checking.

From a commonsense point of view, it seems counterproductive to take money away from poorly performing planning authorities. If we do that, they can only get worse.

**Mike MacKenzie:** Councillor Cook will be delighted to know that I agree with him that the quality of decision making is paramount. Pretty much everything that was built before the Town and Country Planning (Scotland) Act 1947 is listed

or protected in a conservation area. We all agree that that is terrific. However, I wonder whether the planning system has delivered much quality development that will become the listed buildings and conservation areas of tomorrow.

**The Convener:** I am not sure that that question is desperately relevant to the bill, to be honest.

**Mike MacKenzie:** I agree with Councillor Cook that an important outcome of the planning system is the quality of what it delivers. Does he think that we can be proud of what the planning system has been delivering?

**Councillor Cook:** It is not possible for me to answer that. I am not sure how relevant it is to the committee's deliberations.

**Mike MacKenzie:** Okay. It was you who raised the issue of the quality of decision making, but I will move on. Do you feel—

**Councillor Cook:** I can answer it if you want. Planners can deal only with the applications that come before them, and a dud application is a dud application—that is the simple reality. If planners receive a quality application, they will deal with it appropriately.

**The Convener:** The point is that there is a difference between the quality of the application, the quality of the process and the quality of what is built. I suspect that the bill will not have any impact on what is built.

**Councillor Cook:** That is correct.

**Mike MacKenzie:** Do you agree that the planning system delivers a public good by safeguarding the quality of the environment and perhaps improving it, including safeguarding the quality of the built environment and perhaps improving it?

**Councillor Cook:** Indeed—I agree.

**Mike MacKenzie:** Is it therefore right that an applicant—somebody who is building an extension to his house, for instance—should fully fund the planning system?

**Councillor Cook:** The issue does not relate to applications at that level. You will see in the annex to our written submission that it relates to significant applications, which is where the real deficit is. Our anxiety about full cost recovery is less about the lower end of the scale of application size; it is the big applications that we are talking about. For a conservatory application, most of the cost of the process is likely to be recovered through the fee, but that is not true for a 126m turbine application or something of that nature. There is a big discrepancy there. We are keen for the matter to be taken forward, and it is being discussed through the high-level group. We want to get to the point of full cost recovery and a much



more appropriate funding level. Audit Scotland has said that the present funding of planning departments is unsustainable.

**Mike MacKenzie:** We find ourselves in difficult economic circumstances. There are reports in the news today that house building is at its lowest level since the great depression. I hasten to add that that includes private sector house building, which has experienced the largest falling off. Is it realistic for the house-building sector to fully fund the planning system for larger applications?

**Councillor Cook:** Planning fees for major applications are only a tiny proportion of developers' overall cost envelope. The annex to our written submission gives the example of a wind farm. The difference in fee for that particular example would be an increase of £30,000 for the developer. That is a relatively small-scale increase for the kind of large-scale developments that we are talking about. Also, the problem with the falling off in house building is nothing to do with the planning system; it is to do with the economic climate. We need to recognise that reality.

**Mike MacKenzie:** I might dispute that with you. On the principle, though, given that the planning system delivers a public good, do you still feel that it should be paid for by developers?

**Councillor Cook:** Do you want a properly funded system that produces quality results, or not?

**Andrew Fraser:** The issue is that somebody has to pay. Either the general taxpayer, who is nothing to do with the developer, pays; or the developer does. The decision on who pays is essentially for the Government.

11:15

**Mike MacKenzie:** The COSLA evidence states that there have been improvements in planning performance, such as an increase in the percentage of applications that are determined within the statutory two-month period from 45.4 per cent to 50.4 per cent. That statutory obligation to determine applications within two months has been about for as long as I can remember—it predates this Parliament—yet we are only at that level. COSLA seems to be boasting somewhat about the increase to 50.4 per cent, but I regard that as a very poor result. Do you?

**Councillor Cook:** Clearly, that result represents an improvement. Historical legacy applications, which impact on the figures, are contained within it. The issue goes back to Andrew Fraser's proposition a moment ago: if we want a fully effective system that produces quality results in a desired timeframe, that system needs to be properly funded. That is not the position at

present. If anything, local government has done well to improve performance in a context of even greater pressure on funding. There is also the context of an enormous number of wind farm applications, which puts a distinct pressure on planning departments, yet performance has improved. In that regard, the result is not bad.

**Mike MacKenzie:** Surely that runs counter to the principle, about which we talked earlier, that the choice about how local authorities spend their budget is a local one and should be based on what they believe to be important. Given that somebody has to pay for this public good and that local councils want to retain local decision-making powers, surely local councils should pay for the planning system, which delivers a public good?

**Councillor Cook:** Is that an entirely serious question? Where do you think most of our money comes from? Given that 85 per cent of our funding comes direct from central Government, planning and other departments need to make judgments about all the services that we fund. We try to do that in the most appropriate way, taking into consideration all the local circumstances. We have pressures on social work, burdens on education and so on.

**Mike MacKenzie:** Do you regard 50.4 per cent as a good result?

**Councillor Cook:** You are asking me a closed question.

**Mike MacKenzie:** A one-word answer will do.

**Councillor Cook:** It is a fairly pointless question. It is clearly an improved result in very difficult circumstances.

**Chic Brodie:** I represent the south of Scotland, and Berwick-upon-Tweed is part of that. When you get into discussions about wind farms—

**The Convener:** Not Berwick-upon-Tweed, surely—

**Chic Brodie:** East Berwickshire.

**Councillor Cook:** I might agree with you that Berwick-upon-Tweed would be better off in Scotland, but that is another issue.

**Chic Brodie:** I agree with that.

The point that Mr Fraser made—in fact, COSLA makes the point in its submission—is that if we take money away from planning authorities, that will only make matters worse. In my experience from business, it is not necessarily additional funding that is needed. I have figures for planning performance across each council in the south of Scotland. On wind farms, for example, the biggest problem is that we have seen too many single turbines, as opposed to the development of proper wind farms. What action would you take, other

than on funding, to address the issue of poorly performing planning authorities?

**Councillor Cook:** Clearly, there is management action to take, as well as the framework that was mentioned before. There is an aspiration to improve performance. I described earlier the high-level group where COSLA and the Government meet to discuss improving performance; I expect products from that group that are geared towards how we can significantly improve performance. There is no question but that, at the heart of it, there is a funding deficit that is an issue for the running of the service.

**Andrew Fraser:** A lot of good work has been done, over previous years, by the Government and local authorities in looking at the whole system—for example, in dropping some of the lower-level stuff into the state where it is permitted development, to clear it out of the system, and in many of the appeals being handled in-house by the local authority rather than going up to the Scottish inquiry reporters. You need to look at the system as a whole to see what can come out of planning control and the processing of applications, rather than looking just at the timescales and not tweaking the system.

**Councillor Cook:** In my local authority, we have significantly changed the level of delegated decision making. Applications that might hitherto have gone to members for consideration—with all the delay in the system that that necessarily entails because of meeting cycles and various other things—are now processed by officers. That has led to a significant improvement in performance. Such things can be done to make a difference.

**Chic Brodie:** Do you not agree that changing the process, as a consequence of changing the regulations, and improving the efficiency not only of planning but of bodies that impact on that, would help?

**Councillor Cook:** Yes, but we have made a judgment about how the system operates, and we have had to weigh up different considerations in making that judgment. We have had to weigh up how objectors play into the system, perhaps not having their day in court, as it were, but with items going before the full planning committee. We have created mechanisms in the system that deal with that. However, by and large, most applications can now be processed on the basis that they are dealt with under delegation.

**Chic Brodie:** I appreciate that and think that it is effective. However, do you not agree that looking at the rules and regulations governing bodies such as SEPA and improving the understanding and communication to get some sort of consistency will

improve the efficiency of planning, thereby achieving sustainable economic growth?

**Councillor Cook:** You are obviously trying to push me in the direction of saying that everything in the bill is hunky-dory.

**Chic Brodie:** No, I am not trying to push you in either direction.

**Councillor Cook:** As we have said consistently throughout the discussion, there are circumstances in which discussion with the Scottish Government about things that could be set nationally to give proper impetus and direction would be appropriate. However, we need to look at the discrete area in question to work out the appropriateness of it. That remains as true at the end of this discussion as it was at the start.

**The Convener:** Let us move on from planning, as there are other areas that we need to cover. Section 42 deals with street trader licences.

**Dennis Robertson (Aberdeenshire West) (SNP):** Good morning, gentlemen. I direct my question to Mr Cooper, given his background in environmental health. Perhaps we are moving on to a less complex and controversial issue. The bill proposes a single-licence approach to street traders, especially mobile food operators. What is your view on that?

**David Cooper:** Aberdeenshire Council would support that proposal. At the same time, we have concerns about councils' ability to carry out inspections of those businesses while they are operating. When a van is assessed for the certificate, that usually takes place either at a council premises or at the base, not when it is operating. However, we see how well and how safely a business is operating only when it is operating and open to the public. If something can be built into the legislation that still allows the authority in whose area a business is operating to carry out inspections, we will be happy with that. There is a need for national standards in the area before the proposal is acceptable to local authorities. The principle is accepted, but there are concerns about the ability of councils to carry out inspections.

**Dennis Robertson:** That is the first time this morning that we have heard that there could be a need for national standards.

**David Cooper:** On other aspects of food safety, councils are working closely with the FSA to implement what we call the cross-contamination strategy, which involves the targeting of certain food businesses. That has been shown to work very well.

**Councillor Cook:** I do not think that there is any surprise in that response. It conforms exactly to what we have been saying. When you consider

any particular area, you might see that there is a need for national standards and national guidance. In such a case, it is appropriate to talk to the Scottish Government and create something that is fit for purpose in that particular area. That is entirely consistent with our evidence from top to bottom.

**Dennis Robertson:** When Alison Johnstone and I met an environmental health officer, one of the concerns that were raised was that there could be a dilution of standards. It was suggested that Edinburgh, Aberdeen, Aberdeenshire and Glasgow had higher standards than other authorities. What level would you be thinking of for the national standard?

**David Cooper:** It would build on the guidance that we have in the cross-contamination strategy in terms of the standards that are expected from businesses. I know that the consultation paper referred to inconsistencies between local authorities and the requirement for particular facilities to be provided in advance. The national standard must be clear in terms of food safety, health and safety, gas safety and so on. Even then, there must be scope for some flexibility, as not every business operates in the same way or is structured in the same way. However, we believe that the main issue should be covered by national standards.

**Dennis Robertson:** Is there any specific guidance that you would like to see?

**David Cooper:** Not personally. If you seek specific comments, I will ensure that our food specialist gets back to you.

**Dennis Robertson:** It would be helpful to get some guidance about areas of concern and what you would like to see as the final outcome.

**Councillor Cook:** I have to say that this is not one of my areas of expertise. Andrew Fraser might have something to add.

**Andrew Fraser:** My only comment would be a generic one that the problem in this particular area arose because of deficiencies and inconsistencies in the drafting of the legislation. Different local authorities thought that they were bound to do different things. In my opinion, giving ministers the power to make broad, sweeping regulations without parliamentary scrutiny is more likely to produce further bad legislation than good legislation.

**Dennis Robertson:** I think that you would agree that, at the moment, there is some degree of inconsistency. Am I right in thinking that you welcome the approach that involves having one particular licence issued by a local authority so that people can be more mobile and do not have

to apply for additional licences when they move into other local authority areas?

**David Cooper:** My understanding is that the certificate of compliance is the only aspect that that touches on. The operator would still have to apply for a licence to operate in each council area.

**Councillor Cook:** That would be appropriate because the circumstances in which they chose to operate would be a matter of local consideration.

**David Cooper:** Certainly, the national standards that I mentioned can be brought in without this particular piece of legislation. Local authorities are being praised by the FSA for the way in which they work in partnership with each other and with the agency. That is an avenue through which we can establish the national standards.

**The Convener:** You will be pleased to hear that we are coming to the end of our time. However, I would like to bring in one more area of questioning before we close. It relates to two matters that are not in the bill but which, it has been indicated, might be introduced to the bill through amendments at stage 2.

The first is the concept of primary authority partnerships which, as I am sure you are aware, have existed in England and Wales since 2009 but have not yet been established in Scotland. Fergus Ewing has indicated his intention to introduce a stage 2 amendment to adopt primary authority partnerships here. Would COSLA support that?

**Councillor Cook:** That is something that could be a matter of discussion. Clearly, the object of all local authorities is to improve performance, and following the best practice of a leader in a particular area of activity is something that could be considered in that regard.

**The Convener:** You are being non-committal.

**Councillor Cook:** I am, and I am going to continue to be. It is certainly something that we can look at.

**The Convener:** But you do not have a firm view on it at the moment.

**Councillor Cook:** That is correct.

11:30

**Andrew Fraser:** It would have been better if that proposal had been in the consultation paper and the bill to start with, which would have allowed us to see what is intended. In principle, it could be a good idea, depending on the regulatory system that is involved. It is used in building standards, for example. It can be a good idea, but it needs work.

**The Convener:** In a letter to the Rural Affairs, Climate Change and Environment Committee, Paul Wheelhouse indicated that the Government

might introduce a stage 2 amendment that would extend the powers of public bodies other than local authorities to issue fixed-penalty notices for litter. Does COSLA have a view on that?

**Councillor Cook:** That is not something that forms part of my brief. I can give you a personal view on it, but I do not imagine that that is what you are looking for.

**The Convener:** Not really.

**Councillor Cook:** I do not have a COSLA position to give you on that.

**The Convener:** It would be helpful to the committee, in anticipation of those amendments being introduced at stage 2, if you were able to come back to us at some point on those issues.

**Councillor Cook:** I am happy to do that.

**Andrew Fraser:** There is a general point to be made, which is that some of the efficiencies in regulatory regimes are about having one inspector carrying out a number of inspections on behalf of planning, building standards, environmental health and so on, using mobile technology. The idea of having different agencies and officers being able to serve litter notices feeds into that. In principle, therefore, for them to have that power is no bad thing.

**Councillor Cook:** Interestingly, in our authority, officers of all descriptions can issue notices at present. That is an adjustment that we have made.

**The Convener:** As we have no further questions, we will draw this session to a close. I thank our witnesses for their time and for offering to get back to us with one or two pieces of information.

11:32

*Meeting continued in private until 11:48.*

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