



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 11 June 2014

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
18th Meeting 2014, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (SNP)

COMMITTEE MEMBERS

*Cameron Buchanan (Lothian) (Con)
*Mark McDonald (Aberdeen Donside) (SNP)
*Stuart McMillan (West Scotland) (SNP)
*Anne McTaggart (Glasgow) (Lab)
*Alex Rowley (Cowdenbeath) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Keith Brown (Minister for Transport and Veterans)
Derek Mackay (Minister for Local Government and Planning)
Dennis Robertson (Aberdeenshire West) (SNP)
Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 11 June 2014

[The Convener *opened the meeting at 11:30*]

Flexibility and Autonomy of Local Government

The Convener (Kevin Stewart): Good morning and welcome to the 18th meeting in 2014 of the Local Government and Regeneration Committee. I ask everyone present to switch off their mobile phones and other electronic devices, as they affect the broadcasting system. Some committee members will refer to tablets during the meeting, because we provide meeting papers in digital format.

Agenda item 1 is evidence for our inquiry into the flexibility and autonomy of local government. One panel will give evidence. I welcome Derek Mackay, the Minister for Local Government and Planning, and Robin Haynes, from the Scottish Government's local government division. Minister, would you like to make opening remarks?

The Minister for Local Government and Planning (Derek Mackay): Yes. I thank the committee for inviting me to give evidence on the Scottish Government's behalf, further to my letter of 28 March, which set out the Government's thinking and policy direction in relation to the inquiry's remit and aims.

The forthcoming referendum and the prospect of democratic renewal that it brings are demonstrating that the people of Scotland are interested in local decision making and the determination of public service provision. The committee's inquiry has an important part to play as we consider which powers and responsibilities might sit best at local level and which might more naturally reside with the Scottish Government and the Parliament.

The Scottish Government's default position was described in the First Minister's Lerwick declaration, in which he confirmed our commitment to subsidiarity and local decision making. However, we must recognise that we are not starting with a blank sheet of paper. Established structures are in place and the public services that they deliver are very much the bedrock of our society.

There is certainly a constitutional opportunity at this time. The three island councils, which joined forces to establish the our islands, our future

campaign, have been the first to engage with that. As the committee knows, we have been working closely with the leaders and senior officials from Orkney Islands Council, Shetland Islands Council and Western Isles Council. The final meeting of the island areas ministerial working group took place in Kirkwall last week.

The island councils came with a clear aspiration for the additional powers that they want. Together, we have carefully considered the level of government that might be more suitable for particular responsibilities, given the potential risks and benefits.

The Scottish Government considered whether any such measure would empower local communities rather than simply be a transfer of responsibility between public bodies; whether it would command a high level of public support in the community; whether it would lead to improvements in the quality of services; whether it would represent value for money and not impose costs on other communities; and whether it would enable the Scottish ministers and councillors to fulfil their duties of accountability. The First Minister will announce the conclusion of that work when the prospectus for empowering our island communities is launched.

Working with the our islands, our future campaign to formulate a package of increased autonomy for island communities that ensures that Scotland's islands can address the challenges that they face and seize the opportunities for economic growth has been important. That package will relate wholly to Orkney, Shetland and the Western Isles, but my discussions with Highland Council, Argyll and Bute Council and North Ayrshire Council show that nearly all the measures will apply to the other island areas.

The first piece of work to fulfil our commitment to subsidiarity relates to Scotland's 93 inhabited islands, but the Lerwick declaration applies equally to all other parts of Scotland. For example, cities and their regions play a central role in driving economic growth. The Scottish Government is committed to working individually and collectively with Scotland's cities to optimise that growth for the whole of Scotland's benefit. I could go on to talk about the approach that we are taking in town centres, too.

The approach that we have taken in the island areas working group is right. As the Government's evidence to the inquiry noted, the optimal balance between central and local responsibilities must take account of not just what is required in an area but what taxpayers, voters and public service users expect to receive.

The ability of communities to determine the services that they want depends on having the

capacity and the finances to deliver those services. That is why we have protected local government budgets as best we can from the recent overall reductions in public spending and why we have almost eliminated ring fencing of budgets, so that local authorities have more autonomy over how they spend their budgets.

One aspect of the committee's present inquiry, which also relates to your report from the 2012 local government elections, connects directly with the Government's present consultation on Scotland's electoral future, which primarily seeks views on how we can improve the quality of democracy in Scotland by encouraging wider engagement and participation in elections.

I am looking forward to the imminent introduction to Parliament of the community empowerment bill, which, upon enactment, will help to shift the balance of power towards communities. It will give them new rights to have their voices heard in relation to the design and delivery of public services and in relation to the community planning process. It will ensure that communities' proposals to take over public sector assets at their own initiative, for instance, are properly considered.

The bill will reinforce the Scottish Government's message that we expect all local authorities and other public bodies to continue to support communities to become more empowered and to participate in the decisions that are made by those bodies. Those authorities that are already doing well should not find the new bill onerous, but it will make other authorities catch up to that best practice.

We are entering an exciting time for local democracy in Scotland. The opportunity that we have created at this constitutional moment, with the potential transfer of all reserved powers to this Parliament, is a once-in-a-lifetime opportunity to empower our communities, too. Democracy is, first and foremost, about people and communities—not Parliaments, councils or Governments—and a modernised democracy must have the delivery of improved local services, meeting local needs, at its core.

The Convener: Some members of the committee have embarked on a wee tour of Europe to consider some of the set-ups in Germany, Denmark and Sweden. Local government there has constitutional and legislative protection, and independence. How do you envisage local government's constitutional place? What can be done to ensure the legislative protection that so many municipalities and local authorities have in other places?

Derek Mackay: That is an absolutely key point. Of course, the United Kingdom does not have a

written constitution, so the rights of local government cannot be enshrined in a UK constitution that does not exist. With the prospect of an independent Scotland, we could protect local government in a written constitution. That is very much the position of the Scottish Government.

Some would argue that a bill in Parliament would suffice. No, it would not. One bill supersedes another bill as far as this Parliament is concerned. With the opportunity that we have, however, we would propose to protect local government under a written constitution in an independent Scotland. We have set out how we will arrive at that final constitution, and we would propose that local government should have its place within that.

Over and above that, compliance with the European Charter of Local Self-Government is important. The UK is a signatory to the charter, so Scotland is, *de facto*, also a signatory. We are content with the report that was received with respect to the monitoring of the European committee concerned, which showed that the partnership approach that we take in Scotland is received positively. We would continue to apply the principles of the European charter as it relates to local government.

The Convener: The committee has been taking evidence from elected members, and we have heard from most folks that they would like to ensure that local communities are more empowered than they currently are. We have heard from people that there are impediments to transferring resources and power to local bodies, whether they be community councils or others. Yet, when we have questioned them about what those impediments are, it has been very difficult to get an answer.

Are there any legal impediments to further transfer down to community councils or to whatever level it may be? Would the Government be flexible in considering removing any legislative barriers so as to allow local authorities to pursue that?

Derek Mackay: We can use a range of methods to empower communities. I have highlighted how the community empowerment bill will further assist with that.

Individual actions include support for the community ownership support service and the work that we are doing with the Convention of Scottish Local Authorities and the Improvement Service on supporting community councils. We do not propose to legislate for participatory budgeting, but we would absolutely encourage local people having an active say in how resources are spent.

There is a national model on good practice in engagement, but your question is about more than

just engagement and consultation; it is about participatory democracy. We want to improve engagement and turnout in elections, and not just from one election to the next—it is about how public sector bodies engage with communities day to day, week to week and month to month. We are absolutely supportive of that.

Of course good accountancy, legislative and governance arrangements are needed; there have to be checks and balances and safeguards in place. There is also the power of wellbeing and the principle of subsidiarity, which is about trying to take decision making as close to the people as possible. Community councils are important, but so are a number of other community anchor organisations—it might be the housing association, the development trust or the local mums and toddlers action group that wants to deliver projects and to be empowered to get on and do things. That is why we have to be quite creative and not too rigid about how certain services and projects are delivered.

There is more work to come on participation in public services through the community empowerment bill. The answer to your question is therefore yes. We are more than happy to receive identification of what you describe as impediments to progress in this area. We sometimes hear that there are barriers to progress, which, when we push things, we find do not exist—they exist only in people's minds. That said, there are good reasons to have governance, accountability and finance structures to ensure that there is transparency in how public resources are used.

Another example of good practice is having local area committees, which can engage people in the day-to-day decisions, rather than taking the traditional top-down approach. I hope that that answers your question, convener.

The Convener: I think it does, minister. Cameron Buchanan will ask the next question.

Cameron Buchanan (Lothian) (Con): When we were travelling around, we decided that a different degree of flexibility would be welcome. We thought that community councils up in the north, for example, might be different. Would you give groups different powers? How would you determine the different degrees of flexibility? It is not just about community councils. We focused on community councils at one point, but in fact there are all sorts of other groups. In the Western Isles they had different approaches. As you said, there are mother and toddler groups and planning committees and so on. How would you empower them?

Derek Mackay: There are two key points that I would identify. First, on community councils, I repeat my comment that we are trying to create

the right conditions for success for any local group to take forward their outcomes-focused agenda. What are the projects that deliver on the pillars of public service reform of prevention, integration, better use of people and workforce, and improved performance? In that sense, whatever the structure of the organisation, we want to create the right conditions for success.

I do not propose a whole review of the powers of community councils. That said, we do propose to give them greater involvement in areas such as common good funds and transparency in decision making around assets. The answer is therefore yes—we want to support that empowerment agenda for a range of our community organisations.

The second point is on what I suppose is being described as differential devolution. Different local authorities or areas having different powers might actually make sense, because they seek different things. The cities are seeking a slightly different agenda to the towns, which are seeking a slightly different agenda to the islands. Even though they have things in common, they also have differences.

The Government is embarking on that journey very positively. The islands work has been a trailblazer. The COSLA commission will help inform the next stages with regard to how local authorities and partnerships organise themselves in this very exciting democratic journey. The Government is very open-minded about approaches to what could be described as differential devolution—not power and structural change for its own sake but work that is very much focused on outcomes and what will make the biggest difference in local people's lives.

Cameron Buchanan: So you would not be legislating in general, as different communities need different legislation. That is the way I understand it.

Derek Mackay: Absolutely. In some places it is about capacity, resources, better alignment of priorities and an understanding of what considerations are made. Some structural reform—if it is required at some point in the future—may well require legislation, but no such legislation is proposed at the moment.

I am sure that Mr Buchanan would be the first to identify the opportunity that would come from Scotland being an independent nation with all the reserved powers coming to this Parliament.

11:45

Cameron Buchanan: Careful.

Derek Mackay: He might at least entertain the concept that, with all those powers coming to this

Parliament, the debate would be further reinvigorated. Of course, we would debate what would be passed on to local authorities and other local partners. Things would not stay the same with regard to what this Parliament and local authorities and other public sector partners currently do. There is a further opportunity to put the subsidiarity principle into practice.

John Wilson (Central Scotland) (SNP): Can the minister clarify to which COSLA commission he is referring? My understanding is that the commission on strengthening local democracy is not a COSLA commission, although it is chaired by the president of COSLA. Perhaps he can clarify that point in answering this follow-up question.

The thread running through the commission on strengthening local democracy is the issue of centralisation, and the claims that have been made not only by commission members but by the other witnesses this committee has heard evidence from. What is your reaction to the accusation that the Scottish Government has put in place a centralisation agenda?

Derek Mackay: I think that Mr Wilson wants me to clarify the position of the commission on strengthening local democracy, which is chaired by the COSLA president. I will leave it to the committee to determine who leads the commission, but I think that it has a pretty healthy membership, and it is not for me to comment on other aspects.

I have given evidence before the commission; it has, along with this committee, enjoyed my presentation of the Government's point of view. We look forward to the publication of the commission's findings and its proposals for the next stages, which I think will complement the work that we are currently discussing.

On the wider charge of centralisation, the argument often comes down to one issue: the council tax freeze. I find that thoroughly depressing. We are thinking about the constitutional opportunity that we have, and the potential sense of empowerment for our communities, but the debate in that respect seems to come down to a single issue. As the committee would expect me to say, the council tax freeze is fully funded and provided for, and local authorities can turn it down if they choose—there is no legislative requirement to make them deliver it. The power on the council tax freeze still rests with the local authorities. We have compensated councils to deliver the freeze, and I believe that the policy is robust.

Here is the issue. If this Parliament elects a Government with a manifesto, as it has done, the Government has a right to deliver on that manifesto. It may include national commitments

such as a council tax freeze and a range of other policies. We have a democratic mandate to deliver national policies, just as local authorities have a democratic mandate to deliver local policies.

Sometimes that is a matter for negotiation between COSLA and Government, but the proof of the pudding is in the eating, given the financial freedom that local authorities have. Ring fencing is down massively—from memory, I think it has gone down from £2.7 billion to about £200 million. That has freed up a whole host of resources, amounting to something like a quarter of a local authority's budget, and given authorities much greater financial autonomy.

In addition, there are other powers around wellbeing and the flexibility to deliver services. I refute and reject the centralisation charge, because we have a mandate to do certain things and we have done them. That is democratically approved and provided for, and the flexibility that local authorities have gives them the room to deliver their priorities.

There is a dichotomy, or a paradox, with regard to what some describe as a postcode lottery. People who live in different parts of the country want the same standards of service—they want the same as a person living in the next council area or the next street. There is an issue around the provision of national services and the national standards and requirements that can be delivered while still understanding the need for flexibility for local authorities. The Government has tried to support the provision of national standards and commitments while empowering local authorities to get on with it.

On the centralisation charge, the argument invariably returns to the council tax freeze. I hope that I have outlined to the committee the reason that I believe it is not a valid criticism of the Government.

John Wilson: Setting aside the council tax freeze, which seems to be the bane of some local authorities, and the allegation that is made about the centralisation that results from that freeze—although it is of course annually welcomed by many authorities—what additional revenue raising powers can you foresee local authorities having in a future Scotland to deliver services in their communities?

Derek Mackay: I am sure that Mr Wilson does not expect me to set out any further thinking on what we may do in that situation, although he has given me the opportunity to do so.

Right now, the Parliament has powers over a degree of income tax, although that is constrained, as well as non-domestic rates—on which we work in partnership with local authorities—and the council tax. Of course, local authorities can

choose to deploy a whole host of charges for services and other matters, and many of them do so.

If the Parliament and therefore the Government had more levers of power right across the board, as we would have with independence, there would be a further opportunity to consider what financial powers local authorities could have in that scenario. We would be fully responsible and accountable for the resources that we raise and spend in Scotland, and that empowerment agenda could work for local authorities as well.

I do not have a list of what we would do for local government in that scenario, but that debate would be an empowering and exciting one. With a further transfer of powers from London to Edinburgh, we could consider what could go from Edinburgh to local councils. That said, we might still have a proposition on the unitary setting of business rates. We might not choose to make everything local—some elements might be national—but the prospects for enhancing local authorities' economic levers would be far better with independence than with the status quo or with the limited transfer of powers that I have seen proposed to date.

John Wilson: I thank the minister for his responses.

Alex Rowley (Cowdenbeath) (Lab): Minister, you mentioned the islands. In evidence to the committee, Professor James Mitchell said that it is notable that the island councils have consistently had among the highest electoral turnouts. It is also notable that, in the island councils, there is less political party organisation than in the mainland councils. That is certainly the case in Shetland, which is the council area that I know best. Is it not the case that the general public are sick to the back teeth of party politicians and party politicking and that people end up thinking, "This lot are all the same and we never get any place with them"?

Our sitting here considering how local government can increase voter turnout is a bit like the pot calling the kettle black because, as Professor Mitchell also pointed out, across the UK there has been a steady decline in turnout at elections to all levels of government. Is that something to do with party politics? I know that you have a debate about that this afternoon.

Derek Mackay: Mr Rowley raises a helpful point that is a reflection on us all. There is a wider debate to be had about connecting and reconnecting with our electorate—although the phenomenon of decreasing turnout is Europe-wide. In the recent European elections, a bit of an anti-establishment point of view came across.

The reference to island areas is interesting, but it does not necessarily follow that the best way to

increase turnout in local authority elections is to scrap party politics and remove all parties from local government. It would be radical for Mr Rowley to suggest that even within the Labour Party, never mind more widely in Parliament.

However, there is something about politics on the islands and the way in which people engage with local authorities. There is a difference in turnout in elections and in the nature of the candidates. Because the islands have de-party politicised their approach, that has helped them to reach a consensual position from which they can negotiate with Government on what further powers could be taken. That said, the Western Isles are different from Orkney and Shetland in that there is party politics on the council there. What is more, independent candidates stand in other parts of Scotland, but that does not necessarily affect turnout.

There was a downward trajectory in turnout for local authority elections until those elections were combined with the Scottish Parliament elections. At the last local authority elections before they were combined with the Scottish Parliament elections, the turnout was 44.9 per cent, but the figure went up to 58 per cent for the first of the combined elections. In 2012, when the council elections were again standalone, the turnout went down to 39.7 per cent, which was slightly higher than what some people had estimated. However, the turnout is not as healthy as we would want.

We will have more time to debate the issue in the chamber this afternoon. I will work on a consensual, cross-party basis to take forward ideas for democratic participation and turnout. Some of that will be about how we vote. For example, should we consider telephone voting, electronic voting and online voting? With reference to a debate in the House of Commons, is there the potential for mobile phone voting as well? As technology moves on, we must think about new ways of voting while reconnecting with our electorate and understanding the reasons for lower turnout. The area is very complex, but we will certainly learn from best practice, where we find it, while recognising that low turnout is a phenomenon in developed countries, particularly in Europe.

Alex Rowley: Interestingly, turnouts in Europe tend to be higher, particularly for local elections, although I accept that turnout in those has been coming down. Generally, local authorities in Scotland raise just over 10 per cent of their revenue, whereas the comparable figure in Europe averages just over 40 per cent. Is there a correlation between turnout and the level of government having powers to raise income and being much more democratically accountable for that income?

Just briefly, I thought that your answer on centralisation was spot on and honest. The difficulty is having different levels of government and each having a mandate. Once we get past the referendum, regardless of the result, we must look on a cross-party basis at how local government is financed—I would certainly argue that in the committee. Just now, it is a party political issue, which probably turns people off even more. Are you in favour of having a cross-party look at how local government is financed? Is there a role for this committee post the referendum, regardless of the outcome, in looking at that issue?

Derek Mackay: In the spirit of Mr Rowley's suggestion, I think that there is absolutely something in having an on-going discussion about the powers and financial freedoms of local authorities going forward. I outlined the six principles that we have used in engaging with island areas, and we would use the same principles to engage with cities and other groupings of local authorities that might want to discuss the empowerment agenda. Post the referendum, Parliament will be different and there will be space to have a discussion about what that means for local government financial powers. If we conduct that discussion on the basis that Mr Rowley suggests and have a consensual, cross-party discussion on what actually works, that would be a very strong footing.

Mark McDonald (Aberdeen Donside) (SNP): We have spoken a little bit about turnout and participation. During the inquiry, one of the concerns that has been raised with the committee is that often when local authorities or Governments consult, they go to a very restricted group of individuals who tend to be the ones most involved in the consultations and discussions that take place. A large number of people out there feel disenfranchised by that. What steps can the Scottish Government and, perhaps, local authorities take to reach out more to people who are not actively engaged to try to encourage them to be more engaged in what goes on at local level?

12:00

Derek Mackay: That is a great question and there is a lot in it. The Government has to be careful that we do not deliver a new commandment or end up saying, "This is how you must engage or deliver participation," but I hope that the community empowerment bill will help to deliver that culture of expectation around how we engage with our communities. It should do so not by saying, "Adjust what you do in order to do it better," because there are national standards, but by empowering communities to have their say at the point at which they want to be involved, not—

as Mr McDonald rightly identifies—at the end of a process, with a predetermined outcome and a tick-box mentality. We need to ensure that there are new rights that ensure that communities are genuinely empowered and can have their say at the point at which it might matter most.

By way of best practice, we are going to commission work from the what works Scotland centre around community planning partnerships, so that we can take an evidence-based approach to finding out what is making the biggest difference. Community-led projects and engagement and involvement with communities are critical to that.

Some good practice would involve going beyond the people whom I hope I might be forgiven for describing as the usual suspects, by which I mean those people and organisations who always attend committee meetings. As brilliant as their work is, sometimes we have to go further than that to get a wider opinion. For example, a community planning partnership that I knew well—the one in Renfrewshire, which I chaired—went into children's homes to ask them what they thought about provision and so on, as well as having meetings with the usual panels, thematic groups and so on.

We need to think about new ways of working and of engaging with people. That is good practice that we want to encourage, but we will not take a top-down approach to that. We would encourage people to create the conditions in which people can get involved.

Mark McDonald: During our trip to Sweden, we heard about the citizens panel that has been set up in Malmö, onto which people are invited by a process that, while it is not random, manages to circumvent some of the groups that are, as you suggest, most likely to be at the front of the queue to offer their opinions. Is the Scottish Government keen to see that happening?

Derek Mackay: Yes, we would encourage such good practice. Again, some authorities already do that. It should be replicated across the country. You could choose people randomly through the electoral register or another address list, or you could instead select taxpayers, residents, voters or various other groups and engage with them in different ways.

So, the customer panel idea that you mention has happened in Scotland, and we would encourage it to happen in more places. It has been deployed effectively and, as you suggest, it brings different people into the fold. It is actually a two-way process. Not only do the public services learn from the members of the public but, also, members of the public who might not have known about the full array of public services or, indeed,

what the challenges are can learn about those issues, too. Further, as people engage with each other, there is the intergenerational benefit of younger people finding out about older people's issues and vice versa. That is all very healthy and should be encouraged.

Mark McDonald: Other issues that have come up are size and the remoteness of some communities from where they perceive decision making to take place. It has been mentioned that, for people in Barra, Stornoway is as remote a centre of decision making as Edinburgh is. Similarly, in Aberdeenshire, would people in Laurencekirk feel that they had a commonality with people in Fraserburgh, even though they are served by the same authority?

When we went to various countries in Europe, we saw that, although the size of municipalities varies and, in some cases, differences are allowed—for city authorities, for example—the unit size tends to be much smaller. Has the Scottish Government taken a view on how local government operates in Scotland and on the size and number of local authorities that we currently have? I know that, at the moment, the position is that no change is foreseen, but could that be considered as part of a transfer-of-powers agenda in the future?

Derek Mackay: That is a good question. I am sure that people in all of the locations that you identified would agree that any location in Scotland feels closer than London does in terms of a transfer of powers and where decisions are made.

The principle of subsidiarity concerns making decisions as close to the people as possible, while addressing the issue of national delivery that I referenced earlier.

On the specific point about the structure of councils, the number of councils and the boundaries of councils, our position has not changed. I have seen European evidence that suggests that more local authority elected members is the norm in Europe. That might be of assistance, but I do not detect that the Scottish public believes that having more local authority councillors will, in itself, deliver greater participation or improve services.

At this point, there is no requirement for more councillors in Scotland, and I have directed the Boundary Commission to work within the present parameters. The commission can explain the work that it is currently undertaking and what that means for differing numbers throughout Scotland.

There will be the same number of councillors—or marginally fewer, as the commission is currently proposing. However, the reason that we do not support a change to local authority boundaries is

not just because there was agreement on that in the 2007 concordat, but because we believe that such a structural change would be a misuse of energy at present because of the work that it would involve. Of course, as a final resort, boundary changes may well end up in court where there is no agreement. At this stage, therefore, we continue to hold to the instructions that we have.

We have given local authorities and community planning partnerships the challenge of integrating, working together, working across boundaries organisationally and geographically and focusing on outcomes. That is still the Government's chosen approach, and for that reason we will maintain the number of councillors and the structures and boundaries as they stand.

I hope that I have answered the question.

Stuart McMillan (West Scotland) (SNP): Following on from Mark McDonald's question on the number and size of local authorities, are you aware of any particular evidence—either positive or negative—of coterminosity in service provision happening across boundaries between local government, health boards or any other bodies? I am thinking in particular of Fife and the Western Isles, which each have similar boundaries for the health service and the local authority area.

Derek Mackay: Mr McMillan quite rightly almost answers his own question. Fife is a good example, as are all the island authorities. There are other areas in which coterminosity, through aligning resources and taking a partnership approach, can help. For example, a chief executive from one organisation can talk to the chief executive of another organisation, and the same goes for the chair and the leader.

Having said that, coterminosity would not be universally beneficial if it was transplanted to every part of Scotland. We would not have a health board for Clackmannanshire, for example—we know that the current boundaries and local authorities have been inherited from previous Conservative Governments, and that is not how we would design local authorities if we were to start with a blank page. However, we are where we are, and I have explained why structural and boundary changes would not be helpful, certainly at this time.

Coterminosity helps, but even where we do not have it, the structures work if there is the right partnership approach and if people are engaged. In parts of the country where there is no coterminosity but there is engagement and partnership working, we have been able to make progress.

I will give you an example. Yesterday, the national community planning group heard from NHS Greater Glasgow and Clyde and Glasgow

City Council on the approach that has been taken on community planning, and the evidence is increasingly reassuring. In that example, six local authorities in the health board area—it is a large health board—are making partnerships work across different organisations, but without having absolute coterminosity.

The answer to the question is yes. Where we have coterminosity, it helps, but we would not make the structures fit just to meet that objective.

Stuart McMillan: You mentioned earlier the term “differential devolution”, which is an interesting concept to put forward. I was struck by your comments in that respect, and by the letter dated 28 March that you provided to the committee. At the bottom of page 2, you make a suggestion with regard to service delivery and how the

“paradox of local democracy can be met.”

We heard evidence on that from Argyll and Bute Council with regard to how it and other authorities that are so widespread and disparate can deliver services at local level.

Irrespective of what happens in the referendum, how can you square that circle and ensure not only that service delivery at a local level is the best it can be but that a tremendous amount of local decision making takes place?

Derek Mackay: Frankly, I was hoping that the committee was going to give me the answer to that question. [*Laughter.*]

Stuart McMillan: You are the minister.

Derek Mackay: And you are the committee.

The work will be informed by the commission’s examination of this particular paradox; it will have its own point of view, but it will also take evidence from a range of experts. The committee—and, of course, the Government, which is also very mindful of the matter—will look into it, too.

Constant conflicts might well remain in certain areas. As you will accept, there are national rights and service standards that we want to deliver and deploy, but they might be applied in different ways at a local level. Just as each authority will differ, so will each community in the local authority area, as Mr McMillan has just pointed out in relation to Argyll and Bute. That debate will go on.

It might also be a matter of political parties setting out in their manifestos the policy commitments that they want to meet. Sometimes those commitments will be addressed at a national level; sometimes, they will be left to local decision making.

The charge of a postcode lottery is sometimes unfairly made. You cannot generalise about the

public, but there will have to be some acceptance on the question of whether some things should be delivered nationally or whether there should be absolute local freedom. If people want the latter, it means that some things will be different in different areas. Will the public accept that? They will in some areas, but not in all. The debate and dialogue about those issues, those policies and the various financial levers are to come, but the Government is very open-minded on the matter.

What I am trying to indicate is that some will simply want to argue that localism is always best, but that is not the case if you also want, for example, national standards on waiting times for medical treatment or certain rights for carers. People might also want national rights. As a result, some issues will be determined nationally, although there can be some flexibility in how they are applied locally.

There is a fair and honest debate to be had, and we will certainly engage in it, but we do not have the overall answer. Having looked at all the international comparisons that the committee, too, has examined, I do not think that it is fair to say that there is one structure or system that is absolutely right for Scotland and which we are not delivering. There are a range of options, and a range of evidence and comparators, and the aim is to make things as local as possible while ensuring delivery at a national level.

I hope that that partly answers the member’s question. As I have said, the debate is on-going.

Stuart McMillan: My final question follows on from that. Throughout our inquiry and again this morning, there has been a focus on cities and rural communities, but there is another part of Scotland that has not really been discussed a tremendous amount: the urban areas both between cities and elsewhere. They are an important part of Scotland, and the issues that they raise need to be pursued; indeed, I raised them with the Deputy First Minister at a previous meeting when we discussed the cities strategy. In the work that you are carrying out, how do you think we can give those non-city urban areas the powers and ability to develop themselves fully instead of their being compared with other parts of Scotland such as the cities and rural areas?

Derek Mackay: You are right to suggest that towns should not be forgotten in the debate on and in the mix with regard to devolution, empowerment and subsidiarity. It might be more of a reassurance if I point out that towns are very much central to our thinking. Almost a year ago, the island areas launched their own campaign and we have been engaging with them over that period, and the cities alliance is working well in pulling together Scotland’s cities to collaborate in the areas where they are strong. The fact is that

the towns are doing the same, but you just do not hear about that. On the issue of town centres in particular, towns have been organising themselves into a range of forums to take forward their agenda.

I suppose that this is a reflection on local authorities themselves. Most local authorities are a mixture of cities, towns and rural areas—or islands, where that is appropriate—so, if local authorities want to approach us in collaboration, we will certainly engage with them. However, the policy and resource environment that we have created is just as supportive of towns.

12:15

In the forthcoming community empowerment bill, which I have spoken about a lot this morning, I have covered different elements. One of the key elements will be extending the community right to buy from rural areas to urban areas for the first time.

Great work is going on in relation to our towns, but it sometimes does not get the focus that it deserves. As minister with lead responsibility for delivering the Government's town centre action plan, I do what I can to promote that work. We need to raise the profile of the agenda. However, more crucially, it is a reflection of the fact that, because of the way that they are made up, local authorities may represent cities, towns and local areas.

I assure you that the Government is on top of all those agendas to ensure that no part of Scotland is left out of our actions and our considerations as this exciting constitutional journey progresses.

Alex Rowley: You mentioned the cities, but I suggest that the city regions are crucial. Do you agree? The role of economic development in local government is crucial for regenerating Scotland. That needs to be done on a city-region basis as well as a smaller basis.

Derek Mackay: I thank Mr Rowley for answering the question even better than I answered it for Mr McMillan. He is right. A city region may be based around a city, but the towns and other communities that make up that district or conurbation are the city region. I agree that those alliances make a difference and have great power to be the dynamos of economic growth. We should continue to innovate with them on what measures can further enhance the prospects not only for delivering economic growth but for tackling geographic and individual inequality in those areas.

Anne McTaggart (Glasgow) (Lab): The committee heard from local government minority leaders on the types of financial autonomy that

they would like. The City of Edinburgh Council in particular mentioned a hotel bed tax. What is the minister's view on that?

Derek Mackay: The matter has come to the attention of the Minister for Energy, Enterprise and Tourism, Fergus Ewing. The Scottish Government is not particularly supportive of that proposed new tax. We do not see what value it would add to tourism. We think that it might be counterproductive.

My last recollection of the issue is that the council discussed it in 2012, which is fairly recently, and opted not to progress the hotel bed or hotel room tax—whatever was proposed at the time—which is not to be confused with the bedroom tax. It decided to consider other options, which included engaging with the Government. We are happy to continue to engage with it.

That takes us back to the principles that I discussed, one of which is that the proposal can command or show public support. I am not entirely sure that the City of Edinburgh Council could evidence great support for that hotel bed tax proposal but, as I said, the council opted not to progress it. I do not think that Fergus Ewing, as the responsible minister, was particularly keen either.

That said, local authorities have a range of powers and financial mechanisms to deploy to continue to raise income.

Anne McTaggart: How well does the current funding distribution formula operate? What is your view on the current difficulties and issues with it?

Derek Mackay: I have the privileged position of having been part of the last very intense distribution formula task force when I was in COSLA as a group leader and council leader. The prospect of getting 32 out of 32 council leaders to agree on a formula that pleases them all is zero, so we have to arrive at the best formula that we can.

In essence, we have inherited a formula and tried to augment and improve it in partnership with local authorities through COSLA. We recently listened to COSLA's view on some of the issues about whether to follow the needs-based approach. It has arrived at a decision, which the Scottish Government accepts, understands and is delivering. We have tried to work in partnership throughout the process, but local government finance is a tough issue in that each local authority will always argue for the best deal that it can get and for a formula that suits its needs. We will continue to take a partnership approach, but we think that the formula recognises need and is therefore fit for purpose, although we will happily consider any suggestions for improvement.

My final point on local government finance is that how the cake is shared is an issue, but it is important to remember that the Government has protected local government budgets as best we have been able to. Not every local authority leader might think that, but the comparisons with our counterparts show that, in addition to protecting health first and foremost, we have tried to protect local authorities as our overall budget has reduced. The committee should not just take my word for that; Sir Merrick Cockell, a Conservative councillor who is chairman of the Local Government Association in England, said:

“Every year I meet my opposite numbers in Scotland, Wales and Northern Ireland and they listen to us in wide-eyed disbelief at the budget cuts we are enduring and they are not.”

That shows that we have done our best to protect Scottish local authority budgets in very difficult circumstances.

Anne McTaggart: When will the community empowerment bill be laid?

Derek Mackay: I think that I will have civil servants kicking me under the table to indicate that I cannot share that information, but I can, of course, share anything with a committee of the Parliament. The bill will be launched imminently.

Cameron Buchanan: I have a small supplementary question. Abroad, in places such as Sweden and Paris, instead of a bed tax there is what is called a city tax, which works quite well. It applies in cities, not in rural areas or places that are deprived. Rather than have a bed tax, could we have a city tax? Edinburgh and Glasgow could probably support such a tax, but I do not know about the other cities in Scotland. What is your opinion of that?

Derek Mackay: I am sure that Mr Buchanan will forgive me, but if I go back to the ministerial tower and tell Mr Swinney that I have just committed the Government to a city tax, I might not last much longer in the ministerial tower. I will be more than happy to receive correspondence on that proposal and to ensure that the Government gives it full consideration.

John Wilson: My question is about the COSLA budget negotiations. Discussions are taking place on the fact that a number of authorities are proposing to split from COSLA. How will that impact on future budget settlement negotiations?

Derek Mackay: It is entirely a matter for COSLA how it conducts its business and how its members choose to participate. I am aware of the issues that have brought COSLA to the present situation, one of which is distribution. The fact that COSLA has now determined its position on that is helpful.

On the hypothetical possibility of other local authorities leaving COSLA, the Government's position is as I outlined it at this year's COSLA conference. On major financial or policy matters, we would—as you would expect—engage with COSLA first and foremost, but we would also have dialogue with other local authorities. As COSLA is the umbrella group for Scotland's local authorities, we would engage with it first and foremost. Although we would not block out any other local authority, it would be best to have substantive discussions with the umbrella organisation, particularly on policy and financial matters of national significance.

The Convener: I have a final question. You will be pleased to hear that it is not about the distribution formula, on which we have had debates in our previous lives.

Community councils are the only part of local government that has not changed since 1974. What is the Government's thinking on the future of community councils? Do they get the respect that they should from local authorities?

Derek Mackay: I started out as a community councillor at the age of 18; I suspect that I was the exception rather than the norm when it comes to community council membership.

The Government supports community councils. We have taken a range of actions, including the setting up of the short-life working group, to support them, including some recent pilot work and work with the Improvement Service.

As I said, I do not propose to carry out a wholesale review of community councils' functions, because that would take us back to structural issues, when community councils, like a range of community anchor organisations, can deliver projects and will be able to take advantage of the community empowerment bill and a variety of Government funding streams to make things happen locally. I think that they should get more respect and that there should be more engagement with them, to ensure that their statutory place is recognised. It should be remembered that they have a role in the planning process, for example.

I want to send out the message to all Scotland's community anchor organisations that they will all have a significant role to play in the delivery of the empowerment agenda. We want to empower our communities, just as we want to empower our nation through independence.

The Convener: Thank you very much, minister.

I suspend the meeting for a few minutes, to allow for a change of witnesses.

12:25

Meeting suspended.

12:29

On resuming—

Disabled Persons' Parking Badges (Scotland) Bill: Stage 2

The Convener: Our next item of business is stage 2 consideration of the Disabled Persons' Parking Badges (Scotland) Bill. I welcome Dennis Robertson, the member in charge of the bill; Stewart Stevenson, who has been designated as member in charge of the bill for the purposes of stage 2; and Keith Brown, Minister for Transport and Veterans, who has portfolio responsibility for the bill's subject matter.

Everyone should have with them a copy of the bill as introduced, the marshalled list of amendments and the groupings of amendments. I remind members of our stage 1 report on the bill as it relates to the subject matter of the amendments that are before us.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in each group to speak to and move their amendment and to speak to the other amendments in the group. Members who have not lodged amendments in the group and who want to speak should indicate that to me. If Mr Robertson wants to contribute to the debate on a group of amendments, he should indicate that to me. If they have not already spoken on the group, I will invite the minister and then Mr Stevenson, as the designated member in charge, to contribute to the debate.

I will conclude the debate on each group by inviting the member who moved the first amendment in the group to wind up. I will then ask whether the member wants to press their amendment to a vote or withdraw it. If they want to press the amendment, I will put the question. If a member wants to withdraw their amendment after it has been moved, they must seek the committee's agreement to do so. If any committee member objects, the committee must immediately move to a vote on the amendment.

If a member does not want to move their amendment when I call it, they should say, "Not moved." Please remember that any other member of the Scottish Parliament may move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only MSPs are allowed to participate in debates on amendments, and only committee members are allowed to vote at stage 2. Voting is by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded

the vote. I will put a question on each section at the appropriate point.

Before I move on to the amendments, does any member of the panel want to make general remarks?

Dennis Robertson (Aberdeenshire West) (SNP): I thank the committee for its consideration of the bill at stage 1 and I thank members who took part in the stage 1 debate, after which the Parliament agreed to the general principles of the bill. I also thank the minister for supporting the bill and for answering many of the questions that were asked during the debate on 20 May.

This is a small bill. It looks at enforcement of the blue badge scheme with a view to tackling misuse. I think that the approach that it takes is proportionate and appropriate, so I hope that members will accept the bill as it is.

The Convener: Thank you.

Sections 1 and 2 agreed to.

Section 3—Power to confiscate badge

The Convener: Amendment 1, in the name of John Wilson, is in a group on its own.

John Wilson: I make clear to the committee that the amendments that I have lodged were suggested by Inclusion Scotland, from which the committee took evidence during stage 1. Inclusion Scotland thought it necessary that amendments be lodged to highlight some of its concerns.

There is no issue with or objection to the confiscation of blue badges that have been cancelled or made invalid. However, there is concern that the confiscation of a valid badge might have serious consequences for a disabled person, with an impact on their right to live independently.

We would like section 3 to be amended to restrict the power to confiscate badges and cancel invalid or fraudulent badges. The confiscation of a valid badge in effect imposes a penalty without there being a right of appeal. The appropriate penalty is a fixed-penalty notice for the parking offence, which can be appealed, or, in the case of systematic or repeated abuse, prosecution through the courts.

The purpose of amendment 1 is therefore to limit the power to confiscate so that it applies only to blue badges that are not valid, for example because they have been cancelled, should have been returned to the issuing authority, have been tampered with or are fake. It should be possible for enforcement officers quickly to establish whether a badge is invalid, by checking the serial number against the national database. If a valid badge has been misused, it should not be assumed that the

misuse will continue or that the badge will not be returned to the badge holder by the person who allegedly misused it.

Guidance can be established for a process for informing the badge holder of the alleged misuse, requiring the badge holder to confirm that the badge has been returned to them and warning that its future misuse may lead to the badge being withdrawn.

I move amendment 1.

The Minister for Transport and Veterans (Keith Brown): Third-party misuse of blue badges is a problem on which I have received correspondence from constituents and from the wider public during the course of scrutiny of the bill. The provisions in the bill as currently constituted would allow confiscation of a badge from third parties who have no entitlement to use that badge. That is an important point, as it sends out the message that blue badge misuse is socially unacceptable.

The provision to confiscate badges that are being misused is intended to discourage and prevent abuse of the system. Removing that provision would, in my view, weaken the enforcement of the blue badge scheme. To be clear, the end result of confiscating badges from third parties is that valuable parking spaces will be freed up for use by blue badge holders, who need those spaces the most. For those reasons, I support the provisions in Dennis Robertson's bill.

The Convener: We will hear first from Mr Stevenson, as the designated member in charge of the bill. I will take Mr Robertson after that.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Amendment 1 seeks to remove the power of a constable or enforcement officer in Scotland to confiscate a badge that has been issued under section 21 of the Chronically Sick and Disabled Persons Act 1970 but which is not being displayed on the vehicle as prescribed by the regulations of the scheme.

I am concerned that the amendment would weaken the powers of local authorities to confiscate badges. It would mean that confiscation would be limited to badges that have been cancelled, for example because they had been reported lost or stolen or because they should have been returned to the local authority under the requirements of the regulations, for instance if the badge holder was deceased.

Significantly, amendment 1 would remove the power for constables or local authorities to confiscate a valid badge from a third party who had no right to use that badge. The third party might be a friend or relative of a badge holder, who is using the badge for their own benefit to

gain free parking. It might also be an individual who has stolen the blue badge.

To remove the power to confiscate in those circumstances would mean that that abuse by the third party could continue unhindered. That disadvantages not only the person to whom the badge was issued but the many other disabled people—there are 263,045 blue badge holders as of 31 March 2012—who would be deprived of parking in disabled bays and of the independence that that provides.

Concerns have been raised during the passage of the bill that confiscation would deprive badge holders of their freedom. I wish to reassure members that blue badges will be confiscated only when there is justification to do so. It has been made clear that, when a valid badge is confiscated from a third party, it will be returned to the badge holder. It will be accompanied by a letter reminding the badge holder of their rights and responsibilities under the blue badge scheme. That protects badge holders, whether it is from inadvertent or unscrupulous misuse.

Regulations will require local authorities to return the badge as soon as is practical, and in any event no later than 14 days after confiscation. Local authorities have told us that they have no reason to hold on to badges and, as happens currently, every effort will be made to return the badge to the holder quickly.

The power to confiscate is intended to protect badge holders, to raise awareness of the value of the blue badge and to reduce the propensity for future misuse. We need to get to the stage where blue badge misuse is seen by everybody as socially unacceptable.

I therefore invite John Wilson to seek the committee's agreement to withdraw amendment 1.

Dennis Robertson: The point has been well verbalised by Stewart Stevenson. We are trying to get the badges that are being misused off the streets. That misuse disadvantages people who are blue badge holders.

Someone who has a badge in a case of third-party misuse is denying someone else a parking space. In relation to amendment 1, the serious consequences for the disabled person involve the misuse of the badge by others. It is not about the confiscation. The confiscation will be done only when there are justifiable reasons for removing the badge. It is the justifiable reasons that we need to focus on. Badges will not be removed if it is felt that there is some degree of ambiguity. However, a badge will be removed and confiscated if the officer removing the badge is absolutely certain that it is being misused. The badge will be returned to the badge holder with an explanatory letter.

John Wilson: I welcome the statement by Mr Stevenson that a blue badge will be returned to the rightful owner if it is a legitimate blue badge. Based on his assurances, I withdraw amendment 1.

Amendment 1, by agreement, withdrawn.

Section 3 agreed to.

Section 4—Offence of using cancelled badge

The Convener: Amendment 2, in the name of John Wilson, is grouped with amendments 3 and 4.

John Wilson: Inclusion Scotland and other organisations representing disabled people have expressed concern that a disabled person or a carer may be criminalised if they inadvertently use a blue badge that has been cancelled—for example, if it has been reported lost but is found before a replacement is received.

It is appreciated that section 4 amends United Kingdom legislation to bring Scotland into line with amendments that were made in England and Wales in 2013, but we would like the bill to be amended to delete section 4, as the Law Society of Scotland has indicated that it is not necessary. If the committee is not minded to delete the entire section, we would like section 4 to be amended to prevent people from being criminalised for inadvertently using a badge that is not valid—for example, if a carer uses a badge not knowing that it has been reported lost or stolen.

Amendment 3 deletes subsection (2) of the bill, which amends section 117 of the Road Traffic Regulation Act 1984, as the 1984 act already refers to section 21 of the Chronically Sick and Disabled Persons Act 1970. Subsection (2) appears to add an unnecessary additional reference.

I move amendment 2.

The Convener: Thank you. Maybe in your summing up, Mr Wilson, you could tell us what other organisations backed Inclusion Scotland, as you said that Inclusion Scotland and other organisations had expressed concerns.

Keith Brown: I do not support the amendments. In my view, there has to be adequate redress for those who use cancelled badges or who use badges that should have been returned under the regulations. That is part of the teeth of the bill. That does not mean to say, of course, that the circumstances of each case will not be considered closely.

Dennis Robertson has taken steps to ensure that the guidance highlights that care needs to be taken by enforcement officers in identifying the circumstances under which badges are used. That

includes the use of cancelled badges or those which should have been returned. As with the previous amendment, removing powers to take action against those who deliberately misuse the badges will not, in my view, reduce or encourage the reduction of deliberate misuse.

Stewart Stevenson: Amendment 2 provides that a person would only be guilty of an offence under section 21(4BZA) of the Chronically Sick and Disabled Persons Act 1970 if that person had cause to know that they were using a cancelled badge or a badge that should have been returned to the issuing authority under the regulations. That would mean that an element of knowledge would need to be proved by the prosecutor.

I oppose the amendment as it introduces an unnecessary complication and would make it very difficult to obtain convictions against those abusing the scheme. This is an area where it would be exceedingly difficult to frame an offence so as to leave reasonable prospect of convicting those who should be convicted while ruling out completely the possibility of action against an innocent party who uses a cancelled badge inadvertently.

As the law stands, each case has to be treated on its own merits. Not all cases will be considered appropriate for report to the procurator fiscal. When cases are reported by the police or a local authority, the procurator fiscal will decide what action to take and whether prosecuting someone would be in the public interest.

We would not expect action to be taken if a person who had reported their badge lost found it and inadvertently used it instead of their replacement badge. The same situation would apply to a carer who transported a badge holder and was unlikely to be aware that the badge holder was using a cancelled badge.

12:45

Those examples are identified in the guidance to support the bill that the multi-agency working group, which I understand includes Inclusion Scotland, is developing. That guidance also highlights the need for a pragmatic approach.

Amendment 3 would remove section 4(2), which amends section 117 of the Road Traffic Regulation Act 1984 to make it an offence to display on a parked vehicle a badge that has been cancelled or which should have been returned to the issuing authority under regulations. I oppose the amendment for exactly the same reasons as I opposed amendment 2.

Amendment 4 would remove section 4, which would mean that neither section 21 of the 1970 act nor section 117 of the 1984 act would provide for it to be an offence to use a badge that has been

cancelled or which should have been returned under regulations. Section 2 of the bill gives local authorities the statutory power to cancel badges that are reported as lost or stolen or which should have been returned under regulations. If such a badge is subsequently found to be in use—particularly by a person to whom the badge was not issued—it is logical that that misuse should constitute an offence.

I ask John Wilson to seek the committee's agreement to withdraw amendment 2 and I ask him not to move amendments 3 and 4.

Dennis Robertson: I have little to add. If a badge is lost and then found but another badge has been issued, that could involve a mix-up, which will be taken into account. Everything will be proportionate; I believe that the guidance will illustrate that.

We need to ensure that any badge that is reported as lost does not find its way out into the wider public for use. If an officer finds such a badge in use, it should be confiscated and the person involved should be prosecuted.

John Wilson: I will respond to the convener's question. As he knows, Inclusion Scotland is a national network of disabled people's organisations and individual disabled people. I do not have to hand the names of the organisations to answer the convener's question.

In response to what the minister and Mr Stevenson said about the amendments, I am minded to accept Mr Stevenson's comments that not every case will be the subject of a prosecution, that the system will provide discretion on whether to report cases to the procurator fiscal and that the public interest test will apply, which will ensure that there are no unnecessary prosecutions of individuals who have inadvertently fallen foul of the legislation. I ask to withdraw amendment 2.

Amendment 2, by agreement, withdrawn.

Amendments 3 and 4 not moved.

Section 4 agreed to.

Section 5—Enforcement officers

The Convener: Amendment 5, in the name of John Wilson, is grouped with amendment 6.

John Wilson: Concern remains about the use of non-uniformed enforcement officers for inspection and confiscation of badges. There is no objection to non-uniformed officers undertaking surveillance and checking that badges are displayed on parked vehicles, but for reasons that I have set out we think that only uniformed officers should have the powers to require that a badge be produced, and to confiscate a badge.

The key point is that enforcement officers must be unambiguously identifiable in order to prevent fraud and abuse of vulnerable people. Amendment 6 would remove the provision that will allow deployment of non-uniformed enforcement officers, but would not prevent local authorities from continuing to employ non-uniformed officers to carry out investigatory activity including surveillance and checking the validity of displayed badges against the national database. Amendment 5 is consequential on agreement to amendment 6.

I move amendment 5.

Cameron Buchanan: It does not matter whether officers are non-uniformed; as long as they have the right identification, it should be okay. It will waste officers' time if a non-uniformed officer who sees a badge has to call for a uniformed officer. By the time that officer arrives, the person will have moved away.

I do not see a particular problem with using non-uniformed officers. It was mooted that disabled people, in particular, will be upset if someone who is not in uniform enforces the scheme, but surely they will not be upset if the enforcement officer shows valid ID. We should give non-uniformed officers the power to confiscate badges. Misuse must be seen as a criminal offence.

Keith Brown: I agree with Cameron Buchanan. Cases of suspected fraud or persistent misuse of a blue badge often require longer-term surveillance and investigation than can be carried out by a parking attendant in the course of their daily duties. Authorities that choose to employ enforcement officers—who may or may not be in uniform—will be able to take a more proactive approach to tackling blue badge misuse through investigations and targeted surveillance, which could result in confiscation of a badge. That is a pragmatic response to blue badge misuse, which I think is Dennis Robertson's intention. Blue badge holders who comply with the scheme will have absolutely nothing to fear.

It would not be good use of a local authority's scarce resources if officers were to approach blue badge holders indiscriminately on the street, as has been suggested they might.

When they carry out their duties, enforcement officers need not be in uniform, but they will be required to carry appropriate ID and authorisation, as Cameron Buchanan said.

For those reasons, I support the provision whereby local authorities will have the power to appoint non-uniformed staff to investigate abuse of the blue badge scheme and to inspect and confiscate badges, where that is appropriate.

Stewart Stevenson: Amendment 6 would delete the provision that will enable local authorities to appoint a new class of officer, who might or might not operate in uniform, to enforce the blue badge scheme. Amendment 5 is consequential on amendment 6, because if the new class of enforcement officer cannot be used by a local authority there will be no need for the provision in section 5(3) whereby it will not be an offence to refuse to allow a badge to be examined if

“the officer does not produce appropriate evidence of the officer's authority to exercise the power”.

I oppose amendments 5 and 6, because they would restrict local authorities' power to take a proactive approach to blue badge misuse. Cases of systematic fraud and misuse cannot always be dealt with at the time by parking attendants, who have wider duties to carry out. Such cases might need longer-term surveillance and investigation.

In addition, when members of the public report cases of suspected fraud or persistent misuse of a blue badge to their local authority, they quite rightly expect that their concerns will be taken seriously and fully investigated.

Local authorities that choose to employ enforcement officers will be able to take a more proactive approach to blue badge misuse. As the minister said, parking attendants, who have wider responsibilities, will not always be able to follow up cases with the longer-term surveillance that might be required to establish a pattern of misuse over time, and to gather supporting evidence.

Of course, all areas of the country might not experience the same level of blue badge abuse, particularly where parking is free.

Misuse and, more seriously, abuse of blue badges could lead to the more than a quarter of a million people who have a genuine need being deprived of access to their parking places, so it should be understood that gathering information and evidence will be a necessary part of tackling the issue. Having the option to deploy plain-clothes staff to undertake enforcement duties is necessary, as it is with plain-clothes police, to support surveillance activities and to protect staff in what may be challenging circumstances. Where local authorities face particular challenges, that option could increase effectiveness and improve outcomes for badge holders.

Like all enforcement staff, those who carry out their duties in plain clothes have a requirement to carry appropriate identification and authorisation—particularly when they approach members of the public. In that respect, they are like any other public official. There is no more potential for fraudulent impersonation of such staff than is the case for other authority holders. I therefore

request that John Wilson seek the committee's approval to withdraw amendment 5, and ask him not to move amendment 6.

Dennis Robertson: I concur with Cameron Buchanan's statement. A valid badge holder has nothing to fear at any time when producing that badge, whether the official is in uniform or not.

The Convener: I invite John Wilson to wind up and to indicate whether he intends to press or withdraw amendment 5.

John Wilson: I welcome the assurances that I have received from the minister and from Stewart Stevenson, particularly in relation to the ID that would be issued to any officer who was appointed by the council to carry out enforcement on its behalf. Although I do not intend to press amendment 5, I hope that the minister and the member in charge of the bill will consider holding discussions with local authorities to ensure that a standardised ID card is issued, so that disabled blue badge holders who use parking spaces in different local authorities are familiar with the style of identification that will be used, which would avoid confusion when they travel from one local authority area to another.

Amendment 5, by agreement, withdrawn.

Amendment 6 not moved.

Section 5 agreed to.

Section 6 agreed to.

After section 6

The Convener: Amendment 7, in the name of John Wilson, is in a group on its own.

John Wilson: As Stewart Stevenson has already said, Inclusion Scotland is a member of the blue badge enforcement working group. I welcome the progress that the group is making on developing a code of practice and guidance that take account of many of the concerns that have been raised. The guidance will cover, for example, circumstances in which a badge can be confiscated, the procedure for returning a confiscated badge, and identification of enforcement officers. It would be helpful if the bill were amended to give statutory backing to that guidance, so amendment 7 seeks to give powers to Scottish ministers to issue guidance and would require authorities to "have regard to" that guidance.

I move amendment 7.

Keith Brown: Amendment 7, as we have heard, seeks to ensure that

"The Scottish ministers may issue guidance on implementation"

of the provisions in the bill, and that

"Local authorities must have regard to"

that guidance. In other words, it seeks to provide statutory underpinning for any guidance that is issued. The committee will be aware from previous discussions that two multi-agency working groups are developing good practice guidance on the bill, which will, in turn, be issued to local authorities and the police. However, I do not think that statutory underpinning of the guidance is required, and I want to assure members that, in respect of parts of the bill that will require that specific detailed provisions be complied with, those provisions will be set down in the regulations. For example, the timescales for return of valid badges to badge holders will be in regulations, as will the requirement on an individual to specify grounds for requesting a review of a local authority decision to refuse a badge.

The policy memorandum and the delegated powers memorandum set out the basis on which certain matters were to be covered by regulations. The Delegated Powers and Law Reform Committee has not raised any concerns about the general approach on delegated powers.

Guidance is just that; it should provide good practice advice on administering and enforcing the blue badge scheme, which local authorities can adapt to suit local circumstances. It has been, and will continue to be, the practice of the Scottish Government to update the guidance on operation of the scheme. Any significant changes are to be made through consultation with the working group; it is important that the guidance can be used flexibly by local authorities in order to fit it in with local arrangements. For those reasons, I do not see the need to provide statutory underpinning for any guidance that is issued in relation to the bill, and I ask John Wilson to seek to withdraw amendment 7.

13:00

Stewart Stevenson: Amendment 7 seeks to provide statutory underpinning for any guidance that is issued in respect of the provisions of the bill. I entirely agree with the views of Keith Brown, the Minister for Transport and Veterans, on that issue. Guidance is under development, and the important thing is that the areas where there is a need to comply with specific regulations will be prescribed in the regulations that will support the bill.

Subsection (2) of amendment 7 states:

"Local authorities must have regard to any guidance issued".

John Wilson said, helpfully, that authorities are required to "have regard to" any guidance. The phrasing carries with it the danger of converting a power that any local authority "may" use into one

that it “must” use. For that reason, and for all the other reasons that have been expressed, I ask John Wilson to seek the committee’s permission to withdraw the amendment.

Dennis Robertson: The minister referred to the two multi-agency working groups. I attend those groups, as does Inclusion Scotland. During the meetings we have worked closely with Inclusion Scotland and other members, and Inclusion Scotland has welcomed the tone of the guidance that is being developed at those meetings. We took on board the comments from the committee at stage 1, and we will ensure that the guidance is appropriate and that it covers the top 10 aspects of the scheme for blue badge holders at any given time.

At stage 1, Cameron Buchanan made reference to the guidance leaflets being very large and far too complex in their layout, so we are working hard with the multi-agency groups to ensure that the guidance is in a format that is appropriate for the badge holder. I believe that the guidance is being developed with the groups, including Inclusion Scotland.

The Convener: I invite John Wilson to wind up and to indicate whether he wishes to press or withdraw amendment 7.

John Wilson: I take cognisance of the comments that have been made by the minister, and by Stewart Stevenson and Dennis Robertson, about the on-going work that is being carried out by the blue badge enforcement working group and by the other working group to ensure that workable guidance can be developed with the consent of the individuals involved and of the organisations that rely on the blue badge scheme for their members. I therefore seek leave to withdraw amendment 7.

Amendment 7, by agreement, withdrawn.

Sections 7 and 8 agreed to.

Long title agreed to.

The Convener: That concludes stage 2. Parliament has not yet determined the date on which stage 3 will take place, but members can lodge stage 3 amendments at any time, with the legislation team. I thank Dennis Robertson, Stewart Stevenson and the Minister for Transport and Veterans for attending this morning, and I thank members for their participation.

Flexibility and Autonomy of Local Government

The Convener: Do members agree to defer item 3, on the flexibility and autonomy of local government, until next week?

Members indicated agreement.

Meeting closed at 13:04.

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