



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 4 March 2015



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**Wednesday 4 March 2015**

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**LOCAL GOVERNMENT AND REGENERATION COMMITTEE**  
**8<sup>th</sup> Meeting 2015, Session 4**

**CONVENER**

\*Kevin Stewart (Aberdeen Central) (SNP)

**DEPUTY CONVENER**

\*John Wilson (Central Scotland) (Ind)

**COMMITTEE MEMBERS**

Clare Adamson (Central Scotland) (SNP)

\*Cameron Buchanan (Lothian) (Con)

\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

\*Cara Hilton (Dunfermline) (Lab)

\*Alex Rowley (Cowdenbeath) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Marco Biagi (Minister for Local Government and Community Empowerment)

Drew Smith (Glasgow) (Lab)

Stewart Stevenson (Banffshire and Buchan Coast) (SNP) (Committee Substitute)

**CLERK TO THE COMMITTEE**

David Cullum

**LOCATION**

The Robert Burns Room (CR1)



## Scottish Parliament

### Local Government and Regeneration Committee

*Wednesday 4 March 2015*

*[The Convener opened the meeting at 09:30]*

### Decision on Taking Business in Private

**The Convener (Kevin Stewart):** Good morning and welcome to the eighth meeting in 2015 of the Local Government and Regeneration Committee.

Everyone present is asked to switch off mobile phones and other electronic equipment, as they affect the broadcasting system. Some committee members may consult tablets during the meeting; that is because we provide meeting papers in digital format.

Apologies have been received from Clare Adamson; I welcome Stewart Stevenson, who is here as her substitute.

Agenda item 1 is a decision on whether to take in private item 4, which is on integrated health and social care complaints procedures. Do members agree to take item 4 in private?

**Members** *indicated agreement.*

## Subordinate Legislation

**Local Governance (Scotland) Act 2004  
(Remuneration and Severance Payments)  
Amendment Regulations 2015 (SSI 2015/7)**

**Disabled Persons (Badges for Motor  
Vehicles) (Scotland) Amendment  
Regulations 2015 (SSI 2015/9)**

**Non-Domestic Rates (Levying) (Scotland)  
Amendment Regulations 2015 (SSI  
2015/49)**

**Non-Domestic Rating (Valuation of  
Utilities) (Scotland) Amendment Order  
2015 (SSI 2015/50)**

**Valuation Timetable (Scotland)  
Amendment Order 2015 (SSI 2015/51)**

**Local Government Pension Scheme  
(Governance) (Scotland) Regulations 2015  
(SSI 2015/60)**

09:31

**The Convener:** Agenda item 2 is consideration of six negative Scottish statutory instruments. Members have a cover note from the clerk and will note that the Delegated Powers and Law Reform Committee did not have any comments to make on the instruments. If members have no comments, do we agree not to make any recommendation to the Parliament on the instruments?

**Members** *indicated agreement.*

## Community Empowerment (Scotland) Bill: Stage 2

09:32

**The Convener:** Agenda item 3 is consideration of the Community Empowerment (Scotland) Bill at stage 2. This is day 1 of the process.

I welcome to the meeting Marco Biagi, Minister for Local Government and Community Empowerment, his officials and Drew Smith MSP.

Before we move to consideration of the amendments, it will be helpful if I set out the procedure for stage 2 consideration. Everyone should have with them a copy of the bill as introduced, the marshalled list of amendments, which was published on Monday, and the groupings of amendments, which set out the amendments in the order in which they will be debated.

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 all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my attention in the usual way.

If the minister has not already spoken on the group, I will invite him to contribute to the debate just before I move to the winding-up speech. The debate on each group will be concluded by me inviting the member who moved the first amendment in the group to wind up.

Following debate on each group, I will check whether the member who moved the first amendment in the group wishes to press their amendment to a vote or to withdraw it. If they wish to press it, I will put the question on that amendment. If a member wishes 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 the vote on the amendment.

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

Only committee members are allowed to vote at stage 2. Voting in any division is by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote.

The committee is required to indicate formally that it has considered and agreed to each section of the bill, so I will put a question on each section at the appropriate point.

### Section 1—National outcomes

**The Convener:** We come to the first group of amendments. Amendment 1043, in the name of Alex Rowley, is grouped with amendments 1044, 1003 to 1005, 1045, 1049, 1008 to 1012, 1050, 1014, 1051 to 1053 and 1071. If amendment 1044 is agreed to, I cannot call amendment 1003, and if amendment 1012 is agreed to, I cannot call amendment 1050.

**Alex Rowley (Cowdenbeath) (Lab):** The purposes of my amendments 1043, 1044, 1049, 1051 to 1053 and 1071 are to ensure that the national outcomes for Scotland are created through a participative process that involves the people of Scotland and that all people have the opportunity to have a say in the outputs, and to require the Scottish ministers to lay a report before the Scottish Parliament every two years outlining the progress that has been made towards achieving the national outcomes. That will be an important part of democratic focus in Scotland and will improve the involvement of local people in setting national outcomes. The amendments are needed to ensure that the national outcomes for Scotland are created through a participative process that involves the people of Scotland. That is important because of the known benefits of focusing delivery on the achievement of outcomes.

For the bill to be sufficiently strengthened, it must involve all communities across Scotland and encourage their participation in setting the national outcomes. That is particularly true for communities that are the most disadvantaged, which are often described as the hardest to reach. To ensure that ministers have involved all people who live and work in Scotland in the determination of the national outcomes, it is suggested that there should be a parliamentary mechanism for scrutiny.

The bill states that reports must be prepared and published

"at such times as the Scottish Ministers consider appropriate."

I argue that there needs to be a greater duty on ministers to report on progress towards achieving the national outcomes.

Under my suggestion, the Scottish ministers would have to present,

"as soon as practicable after the end of each 2 year period",

a report to Parliament on the extent to which the national outcomes have been achieved. The preparation of the report must be a participative

exercise, with ministers consulting a full range of communities. That would ensure that progress towards achieving the national outcomes is transparent, and it would involve the Parliament much more in the national outcomes process. It would create far greater transparency and accountability and far greater involvement of local people and communities across Scotland.

I move amendment 1043.

**The Convener:** I call the minister to speak to amendment 1003 and the other amendments in the group.

**The Minister for Local Government and Community Empowerment (Marco Biagi):** Thank you—it is a pleasure to be in front of the committee again. I hope that this goes as well as the last stage 2 that I attended at the committee.

Alex Rowley has set out his view on how Parliament should be involved, and we have the Delegated Powers and Law Reform Committee's recommendation that the Scottish Parliament should have a more active scrutiny role in relation to national outcomes. I agree with both that the scrutiny role of the Scottish Parliament in the process should be strengthened. I believe that the way to do that is through consultation under rule 17.5 of the Scottish Parliament's standing orders. That process best reflects the separation of powers between an Executive that is responsible for setting the strategic direction of Government and a Parliament that is responsible for holding the Government to account for its progress. Therefore, I do not think that the procedure that Alex Rowley proposes is the best one.

I will go through my amendments in detail but, in summary, they would require Scottish ministers to consult the Parliament when determining, and when reviewing, national outcomes.

The effect of amendment 1003 is that, having consulted

“such persons as they consider appropriate”

in order to determine the draft national outcomes, Scottish ministers must then consult the Scottish Parliament.

Amendment 1004 is in consequence of amendment 1003 and provides that the national outcomes cannot be published until the Scottish Parliament has been consulted. Amendment 1005 sets the period for parliamentary consultation at 40 days, beginning with the day the consultation document is laid before the Parliament or otherwise provided to the clerk.

The process set out at rule 17.5 of the Scottish Parliament's standing orders will apply to the consultation. I do not propose to go into further

detail on that, unless members would find that helpful.

Amendment 1008 provides that, in any review of the national outcomes,

“the Scottish Ministers must consult such persons as they consider appropriate.”

Amendment 1012 removes the previous, more restricted, provision on that point, which had limited the consultation to where revisions were to be made.

Amendment 1009 provides that the Scottish Parliament is to be consulted in any review of the national outcomes. If, after a review has taken place, revisions to the national outcomes are proposed, that amendment provides that the Scottish Parliament will also be consulted on those revisions. If, after a review has taken place, no revisions are proposed, the Scottish Parliament will still be consulted on the existing national outcomes.

Amendment 1014 specifies that the period for the parliamentary consultation is 40 days. The process set out at rule 17.5 of the Scottish Parliament's standing orders would apply to the consultation. Amendments 1010 and 1011 provide that national outcomes may not be republished until after the 40-day period of consultation with the Scottish Parliament.

There are some concerns about Alex Rowley's proposal for a list of consultees. By identifying certain individuals and groups, the scope of the consultation is unavoidably narrowed, with some persons given greater significance in statute than others. For example, the list gives prominence to some organisations, such as those that work for children and young people, but not organisations that work in other sectors, such as those that work for homeless people or equality organisations.

The current wording allows flexibility for the consultation process to be appropriate to different situations. For example, where a review focuses on a specialist issue, it may be more appropriate to limit the scope of consultation to those who have expertise, experience and interest in that area. On the other hand, we anticipate that all Governments would want to consult widely and inclusively on the national outcomes as a whole. The duty needs to be carried out reasonably and, as such, entails that anyone who could reasonably expect to be consulted will be consulted. We also propose amendments that extend the requirement for consultation when the national outcomes are reviewed. The amendments ensure that, in the course of any review of the national outcomes, Scottish ministers are required to consult.

Both Alex Rowley and Drew Smith propose legislating for the provision of a report on the

consultation process. I agree with the principle behind that proposal, but I do not agree that it requires legislation. When the national outcomes are provided to the Parliament, we would, as a matter of good practice—as I believe any Government would—provide a note on the process and findings of the consultation. That would give the Parliament an opportunity to comment on the consultation process.

Finally, I turn to Alex Rowley's proposals for reporting on the national outcomes. I do not think that it is appropriate to legislate for how and when future Governments will report on the national outcomes, because the format and timing of the reporting should be for the Government of the day to decide. The way in which we communicate and receive information is moving at such a pace that we would rather allow for future innovative approaches to reporting.

There have been recent discussions in Parliament about the appropriateness of certain timescales for the reporting of data, and such a timescale should be something that can be adapted in the light of experience. For example, a case could be made for reporting on progress at any time of the year, at the beginning or end of the parliamentary session, before or alongside the draft budget, and so on. As such, I believe that it is best to leave the timescales flexible and subject to parliamentary scrutiny.

The Government reports through the Scotland performs website, which provides an up-to-the-minute picture of progress towards the national outcomes. Updates are continually made available as soon as the latest data is published, so Scotland performs always shows the most up-to-date information. We also provide a Scotland performs update to support the draft budget scrutiny process, including performance score cards and narrative to show performance against national outcomes. That is how we currently undertake our annual reporting.

09:45

We would rather not limit future Governments to an inflexible model by prescribing the format and timing of reporting. I do not think it is appropriate to ask that the Scottish ministers consult those listed in preparing any report on progress towards national outcomes. Any report on progress would be a factual statement based on evidence. Consultation on that does not seem appropriate in this context.

I therefore invite Alex Rowley to withdraw amendment 1043 and ask him and Drew Smith not to move their other amendments in the group. I ask the committee to support amendments 1003 to 1005, 1008 to 1012 and 1014.

**The Convener:** Thank you, minister. I call Drew Smith to speak to amendment 1045.

**Drew Smith (Glasgow) (Lab):** Thank you very much, convener, for the opportunity to take part in these stage 2 proceedings.

I note what the minister said and thank him for his agreement on the sentiment that we are exploring in my amendment 1045. The purpose of the amendment is to add greater consistency. The bill imposes a duty on community planning partnerships. The committee itself has previously concluded that the same standards of transparency and accountability should apply to others in the process. My argument is simply that the Scottish Government should lead by example in that respect.

Alex Rowley's amendments refer to reporting on progress towards achieving the national outcomes. The two additional points that my amendment would add are that the Government would set out how

"the national outcomes have been improved following consultation",

and would demonstrate how

"the results of the consultation have influenced those improvements."

The committee referred to that in paragraph 107 of its stage 1 report, where it suggested that we would want to see the Scottish Government "leading by example" in relation to consultation and engagement.

I note that the minister said that he does not feel that legislating is the most appropriate way to ensure that such consultation happens, but the bill requires community planning partnerships to report in that way, so it does not seem to me to be too onerous to expect the Government to do the same.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I want to address the content of Alex Rowley's amendment 1049, which I think raises some really quite serious practical issues that are not adequately addressed in its drafting.

In particular, proposed subsection (3)(a) of the new section that the amendment would insert provides that the Scottish ministers must

"lay a copy of the proposed draft regulations before the Parliament."

That is fine, except that the amendment does not provide for the handcuffs that the Government has provided in its amendments, whereby the regulations cannot be withdrawn during the consultation period. Governments could find themselves in a position where they would wish to withdraw the regulations during the consultation, which would of course create considerable



difficulties for the consultees. In that respect, the Government's approach is much to be preferred, because it would provide stability during the consultation period. The way in which amendment 1049 is drafted means that it does not provide such stability.

I also want to talk about the reporting issue. It is deceptively attractive to prescribe when reporting may be done, but the construct of the amendment means that, in essence, reporting cannot be done at other times. This is a wide-ranging bill that covers a wide range of policy areas and subjects. The minister's reference to Scotland performs was appropriate, because of course a Government may wish to provide updates at the timely point. I can see members getting intensely frustrated as they rise to their feet to question ministers at oral questions if the minister says, "I'm not allowed to report under the amendment to the Community Empowerment (Scotland) Bill that was agreed to on 4 March 2015, which does not allow me to report to Parliament until the particular date that was set out." It is far better that the Government has the ability to make such reports, updates and disclosures as are possible in a timely and appropriate way across a wide range of policy areas, and that we do not pass a bill that prevents and inhibits members from questioning and demanding answers from ministers, which the amendment carries the very real danger of doing.

**Alex Rowley:** I thank the minister, as Drew Smith did, for his comments on the sentiment that we are discussing in relation to the bill. I should add that my name is pronounced "Alec" with a C.

With regard to reporting on national outcomes every two years, and Stewart Stevenson's point in that respect, it is right that there should be a requirement to report. At that point, we will, as a Parliament, be able to see what progress is being made on the national outcomes and to hold the Government to account. It should not be left to the Government to decide when is an appropriate time to measure how much progress has been made. The provision in my amendment brings greater accountability to the process.

Likewise, the minister said that he wants to see a greater role for the Parliament than that which is currently outlined in the bill. The amendments that have been lodged create a greater role for Parliament, but communities should also have a far greater role and input in setting national outcomes and holding the Government of the day to account for them.

I repeat that I believe that the amendments will bring about greater transparency, involvement and accountability in the whole process. I press my amendment 1043.

**The Convener:** The question is, that amendment 1043 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Buchanan, Cameron (Lothian) (Con)  
Hilton, Cara (Dunfermline) (Lab)  
Rowley, Alex (Cowdenbeath) (Lab)  
Wilson, John (Central Scotland) (Ind)

**Against**

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)

**The Convener:** The result of the division is: For 4, Against 3, Abstentions 0.

*Amendment 1043 agreed to.*

**The Convener:** Group 2 is on functions to which national outcomes relate and duty of bodies exercising those functions. Amendment 1001, in the name of the minister, is grouped with amendments 1006, 1006A, 1046 to 1048, 1007 and 1013.

I point out that, if amendment 1006 is agreed to, I cannot call amendments 1046 to 1048.

**Marco Biagi:** Group 2 covers a number of amendments to improve the structure and to clarify points in section 1. Amendment 1001 has been lodged in response to a question from parliamentary authorities as to whether the bill places a duty on the Scottish Parliament and the Scottish Parliamentary Corporate Body to have regard to the national outcomes in carrying out their functions.

That was not the intention, as the primary role of the Scottish Parliament is to hold the Scottish Government to account. Amendment 1001 is therefore lodged for the avoidance of doubt.

Amendments 1006 and 1013 are consequential to amendment 1001. Amendment 1007 is a minor technical amendment to avoid repetition. It provides that, when the Scotland Act 1998 is subsequently referred to in the subsection, it is referred to as "that Act".

I recognise the concerns that the committee has raised around complex legal language. I can only assume that Cameron Buchanan intends his amendments to simplify the language of the bill. However, we have used the term "have regard to" in the bill because it is a term that is generally used in referring to external documents. It is well understood by the bodies to which it applies and by the courts, and there is substantial case law that sets out how it is to be interpreted. It does not require a person to follow guidance to the letter or to match their activities exactly to the national outcomes or guidance, but it requires them to be

aware of that material and to have reasons for any departure from it.

I therefore invite Cameron Buchanan not to move his amendments 1006A and 1046 to 1048, and I ask the committee to support my amendments 1001, 1006, 1007 and 1013.

I move amendment 1001.

**Cameron Buchanan (Lothian) (Con):** I have lodged amendment 1006A because I wanted to weaken the provision. I think that “have regard to” is too strong and that “consider” is a less draconian term.

**Stewart Stevenson:** I wanted to invite the minister in his concluding remarks to expand on proposed new subsection (1C), in which he excludes functions where the Scottish Parliament or the Scottish Parliamentary Corporate Body are contributing to an outcome. Is that more restrictive than he intends? I can envisage circumstances in which it would be perfectly proper for the responsibility to lie with the minister, but for a contribution to be made by the Scottish Parliament or the SPCB. I would be interested to hear the minister’s views on that. He might want to think about adjusting the provision at stage 3 in light of my comments.

**Marco Biagi:** We have a difference of opinion as to how much consideration should be given to the national outcomes. I am clear that we should be quite strong on those but should allow public bodies and organisations to depart where they have good reason. As I said, I think that “have regard to” fits the precedent on that and strikes the right balance.

On the issue raised by Stewart Stevenson, there have been discussions about concerns raised by the chief executive. Negotiation in the drafting process has tried to cover all the concerns raised by the Scottish Parliament. I do not believe that it will lead to unintended consequences; I am happy to re-examine the section to check that. I am confident that the amendment captures the separation of Parliament and Government that we are trying to ensure is clear in the bill.

*Amendment 1001 agreed to.*

**The Convener:** Group 3 is on national outcomes: inequalities resulting from socioeconomic disadvantage. Amendment 1002, in the name of Marco Biagi, is the only amendment in the group.

**Marco Biagi:** We are committed to building a fairer Scotland and reducing inequalities and we wish to make that aim more explicit throughout the bill. Amendment 1002 requires that when determining the national outcomes,

“Scottish Ministers must have regard to the reduction of inequalities of outcome which result from socio-economic disadvantage”.

I hope that the committee will support that.

I move amendment 1002.

*Amendment 1002 agreed to.*

**The Convener:** Amendment 1044, in the name of Alex Rowley, has already been debated with amendment 1043. I remind members that if amendment 1044 is agreed to, I cannot call amendment 1003.

*Amendment 1044 moved—[Alex Rowley].*

**The Convener:** The question is, that amendment 1044 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Hilton, Cara (Dunfermline) (Lab)  
Rowley, Alex (Cowdenbeath) (Lab)

**Against**

Buchanan, Cameron (Lothian) (Con)  
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)  
Wilson, John (Central Scotland) (Ind)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 1044 disagreed to.*

*Amendments 1003 to 1005 moved—[Marco Biagi]—and agreed to.*

10:00

*Amendment 1045 moved—[Drew Smith].*

**The Convener:** The question is, that amendment 1045 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Buchanan, Cameron (Lothian) (Con)  
Hilton, Cara (Dunfermline) (Lab)  
Rowley, Alex (Cowdenbeath) (Lab)

**Against**

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)  
Wilson, John (Central Scotland) (Ind)

**The Convener:** The result of the division is: For 3, Against 4, Abstentions 0.

*Amendment 1045 disagreed to.*

*Amendment 1006 moved—[Marco Biagi].*

*Amendment 1006A moved—[Cameron Buchanan].*

**The Convener:** The question is, that amendment 1006A be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Buchanan, Cameron (Lothian) (Con)  
Hilton, Cara (Dunfermline) (Lab)  
Rowley, Alex (Cowdenbeath) (Lab)

#### Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)  
Wilson, John (Central Scotland) (Ind)

**The Convener:** The result of the division is: For 3, Against 4, Abstentions 0.

*Amendment 1006A disagreed to.*

*Amendment 1006 agreed to.*

*Amendment 1007 moved—[Marco Biagi]—and agreed to.*

**The Convener:** The question is, that section 1 be agreed to. Are we agreed?

**Stewart Stevenson:** I was wondering about the pre-emption, but it is all right.

**The Convener:** Okay. Are you questioning me?

**Stewart Stevenson:** No, I am seeking to be of assistance.

**The Convener:** Mr Stevenson, I think we are all right here.

*Section 1, as amended, agreed to.*

#### After section 1

*Amendment 1049 moved—[Alex Rowley].*

**The Convener:** The question is, that amendment 1049 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Buchanan, Cameron (Lothian) (Con)  
Hilton, Cara (Dunfermline) (Lab)  
Rowley, Alex (Cowdenbeath) (Lab)  
Wilson, John (Central Scotland) (Ind)

#### Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)

**The Convener:** The result of the division is: For 4, Against 3, Abstentions 0.

*Amendment 1049 agreed to.*

#### Section 2—Review of national outcomes

*Amendments 1008 to 1011 moved—[Marco Biagi]—and agreed to.*

**The Convener:** Amendment 1012, in the name of the minister, has already been debated with amendment 1043. I remind members that, if amendment 1012 is agreed to, I cannot call amendment 1050.

*Amendments 1012 to 1014 moved—[Marco Biagi]—and agreed to.*

*Section 2, as amended, agreed to.*

#### Section 3—Reports

*Amendment 1051 moved—[Alex Rowley].*

**The Convener:** The question is, that amendment 1051 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Buchanan, Cameron (Lothian) (Con)  
Hilton, Cara (Dunfermline) (Lab)  
Rowley, Alex (Cowdenbeath) (Lab)  
Wilson, John (Central Scotland) (Ind)

#### Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)

**The Convener:** The result of the division is: For 4, Against 3, Abstentions 0.

*Amendment 1051 agreed to.*

*Amendment 1052 moved—[Alex Rowley].*

**The Convener:** The question is, that amendment 1052 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Buchanan, Cameron (Lothian) (Con)  
Hilton, Cara (Dunfermline) (Lab)  
Rowley, Alex (Cowdenbeath) (Lab)  
Wilson, John (Central Scotland) (Ind)

#### Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)

**The Convener:** The result of the division is: For 4, Against 3, Abstentions 0.

*Amendment 1052 agreed to.*

*Section 3, as amended, agreed to.*

#### After section 3

*Amendment 1053 moved—[Alex Rowley].*

**The Convener:** The question is, that amendment 1053 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Buchanan, Cameron (Lothian) (Con)  
Hilton, Cara (Dunfermline) (Lab)  
Rowley, Alex (Cowdenbeath) (Lab)  
Wilson, John (Central Scotland) (Ind)

**Against**

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)

**The Convener:** The result of the division is: For 4, Against 3, Abstentions 0.

*Amendment 1053 agreed to.*

### Section 4—Community planning

**The Convener:** Group 4 is on the duty to carry out community planning: general. Amendment 1015, in the name of the minister, is grouped with amendments 1016 to 1020, 1026 to 1028, 1032 and 1037 to 1042.

**Marco Biagi:** I point out that officials will be moving around the table at this point, because we are moving from part 1 of the bill to part 2. I do not intend any disruption or disrespect.

**The Convener:** That is fine, minister.

**Marco Biagi:** Group 4 contains amendments that will mainly adjust the wording of the bill to bring it closer to our policy intentions and to provide consistency in the language in different sections.

The essence of community planning under the bill is that public sector bodies should work together and with communities in order to improve outcomes for those communities. The bill should place duties on community planning partnerships and on community planning partners, but not on community bodies themselves.

Section 4(1) places a duty on community planning partners and community bodies to

“participate with each other in community planning”,

and “community planning” is defined in section 4(2). Amendments 1015 to 1018 will adjust the wording to avoid placing duties on community bodies. Amendment 1015 will replace section 4(1) with a provision that imposes a duty on community planning partners to carry out community planning

“for the purpose mentioned in subsection (2)”.

Amendment 1016 will amend section 4(2) to provide that the purpose of community planning

“is improvement in the achievement of outcomes ... resulting from, or contributed to by, the provision of services delivered by or on behalf of the”

community planning partners.

Amendment 1017 is consequential to amendments 1015 and 1016.

Amendment 1018 will place a duty on community planning partners, when

“carrying out community planning,”

to

“participate with each other, and ... participate with any community body”

that wishes

“to participate in community planning”

in a way that enables those bodies to participate to the extent that they wish to do so. Unlike section 4 of the bill as introduced, amendment 1018 will impose no duty on community bodies to participate in community planning.

Amendments 1019 and 1020 will make minor drafting changes to the definitions of “community planning partnership” and “community planning partner” in section 4(4). They will have no substantive effect.

I turn to amendment 1026. Under the Historic Environment Scotland Act 2014, historic environment Scotland is established and

“has the general function of investigating, caring for and promoting Scotland’s historic environment.”

Historic environment Scotland will become fully operational on 1 October 2015. It will be a valuable community planning partner; indeed, the 2014 act places a specific duty on historic environment Scotland, in exercising its functions, to

“have regard ... as may be appropriate in the circumstances, to the interests of local communities.”

Having the role of a community planning partner will be one important way in which that duty can be delivered. We therefore consider it appropriate to include historic environment Scotland in the list of community planning partners in schedule 1.

Amendment 1027 will replace section 5(2)(a) with a reworded provision. It is a minor amendment, and will have no substantive effect.

Amendment 1028 is consequential to amendment 1027.

Section 5(1) provides that

“Each community planning partnership must prepare and publish a local outcomes improvement plan.”

Section 5(2)(a) provides that this plan must set out

“each local outcome to which the community planning partnership is to give priority with a view to improving the achievement of the outcome”.

Amendment 1032 is another amendment that seeks to simplify the language in the bill by adding consistency, so that we refer to “person” in both the first two subsections of section 8, which imposes governance duties in relation to the facilitation of community planning and the carrying out of community planning functions by community planning partnerships.

Section 8(1) refers to “each community planning partner”, whereas subsection (2) identifies “The persons” referred to as community planning partners in subsection (1).

Amendment 1037 is consequential to amendments 1015 and 1016, and reflects the fact that community planning will now be defined in section 4(1) rather than in section 4(2).

Amendment 1038 relates to section 4(6), which gives the Scottish ministers powers to make regulations modifying the list of persons in schedule 1 who are community planning partners to

“add a person or a description of person,”

or to remove or amend an entry.

That also relates to section 8(3), which gives the Scottish ministers powers to make regulations to

“add a person or a description of person”

to the list of community planning partners with governance duties, or to remove or amend an entry on the list. The bill currently proposes that the regulations on exercise of those powers will be subject to negative procedure. In my response, dated 19 December 2014, to the Delegated Powers and Law Reform Committee report, I indicated my agreement with its recommendation to change that to affirmative procedure. Amendment 1038 provides that regulations that modify the list of community planning partners or the list of governance partners will be subject to affirmative procedure and therefore to a higher level of scrutiny by the Scottish Parliament.

10:15

Amendments 1039, 1040 and 1041 will add to the list of consequential amendments to other legislation arising from schedule 4. To help the committee, I will briefly summarise what the amendments will do. Amendment 1039 will ensure that references to community planning duties in the Local Government (Scotland) Act 1973 relate to duties under this bill, and not under the Local Government in Scotland Act 2003. Section 99 of the 1973 act places a set of general duties on local government auditors, one of which is for

auditors to satisfy themselves that the local authority is complying with its community planning duties. Section 102 of the 1973 act provides for the controller of audit to make reports to the Accounts Commission on how a local authority has discharged its community planning duties—it is important to bring that up to date.

Amendment 1040 will alter section 57(2)(a) of the Local Government in Scotland Act 2003, which allows ministers to

“by order, amend, repeal, revoke or disapply any enactment”

in certain situations. One of those situations is where ministers consider that the enactment prevents local authorities from discharging their community planning functions under section 15(1) of the 2003 act. As the bill will repeal part 2 of the 2003 act, amendment 1040 will remove the redundant reference.

Amendment 1041 will update references to community planning in the Fire (Scotland) Act 2005 and the Police and Fire Reform (Scotland) Act 2012. In both acts, those references to community planning apply to two issues, the first of which is in relation to local plans where proposed new section 41E of the 2005 act will require the Scottish Fire and Rescue Service to produce a local fire and rescue plan for each local authority area. Similarly, the 2012 act will require the relevant local police commander to produce a local police plan for each local authority area. In both those cases, the plans must, among other things, set out how fire and rescue and policing priorities and objectives will contribute to delivery of any relevant local outcomes that have been identified by community planning. Amendment 1041 will update statutory references to community planning for those purposes.

Another issue arises in relation to delegation of functions. The 2005 act requires the Scottish Fire and Rescue Service to delegate certain functions, including community planning functions, to a local senior officer. Likewise, the 2012 act requires the chief constable of Police Scotland to delegate his or her community planning functions to the local commander for an area. Amendment 1041 will update statutory references to community planning for those purposes.

Amendment 1042 will repeal section 57(2)(b) of the Local Government in Scotland Act 2003, which, under section 57(1), allows ministers to

“by order, amend, repeal, revoke or disapply any enactment”

in situations where ministers consider that the enactment prevents community planning partners from discharging their community planning functions under sections 15 and 16 of the 2003 act. The community planning provisions in the bill

will replace those in the 2003 act; schedule 5 will repeal part 2 of the 2003 act, and as a result section 57(2)(b) of the 2003 act will become redundant. We consider that there is no need to replicate that provision for community planning duties in the bill; section 97 will provide ministers with the means to cover that situation through a general power to

“by order make ... incidental, supplementary, consequential, transitional or transitory provision”.

Having gone through all that, I ask the committee to agree to the amendments.

I move amendment 1015.

*Amendment 1015 agreed to.*

*Amendments 1016 to 1018 moved—[Marco Biagi]—and agreed to.*

**The Convener:** Amendment 1054, in the name of Drew Smith, is on the relationship between national outcomes and local outcomes, and is in a group on its own.

**Drew Smith:** Amendment 1054 returns us to section 4(3), on community planning. In the bill, the requirement is that local outcomes

“must be consistent with the national outcomes”.

The purpose and effect of my amendment would be to change the requirement so that community planning partnerships, in setting the outcomes, “must have regard to” national outcomes as opposed to having to “be consistent with” national outcomes.

We had an debate earlier about consistent use of language. Mr Buchanan’s view is that “have regard to” is perhaps a stronger position than “consider”. I contend that “must be consistent with” is stronger still and could run the risk of creating a situation in which national outcomes and local outcomes are in conflict. Perhaps as a result of a participation request, a local outcome might be set, but if the bill as drafted was passed, there could be a danger that the national outcome might be seen to override the local outcome.

I believe that there is certainly a case to be made that local partners should “have regard to” the national outcomes. However, I think that it is going too far to expect all local outcomes to be completely “consistent with” national outcomes.

I move amendment 1054.

**Stewart Stevenson:** Amendment 1054 would introduce the term “community planning partnership” into the replacement section 4(3). I feel slightly uneasy that by specifying that, and that alone, the scope that is covered by the amendment is more limited than the scope of what it would delete, which makes no such specific reference to community planning partnerships.

I am genuinely unclear in regard to that, so I invite Drew Smith to help me to understand whether my fears are correct or whether that is a matter that he has considered, and, in particular, to say why he chose to introduce the very specific term “community planning partnership” in amendment 1054. It is a term that does not occur in the words that he is proposing to delete at page 3, line 16.

**The Convener:** As no other member wishes to enter the debate, I ask the minister to comment.

**Marco Biagi:** Amendment 1054 would impose a duty on community planning partnerships to “have regard to” national outcomes in setting outcomes, rather than—as proposed in section 4—the achievement of local outcomes, as improved by “community planning”, having to

“be consistent with ... national outcomes”.

Those are two changes, as the member pointed out.

Amendment 1054 also assumes a duty on community planning partnerships to set outcomes. A statutory provision requiring a CPP to “have regard to” national outcomes will not ensure that local outcomes reflect national outcomes in the way that a duty to “be consistent” will. A duty to “have regard to” national outcomes requires that they should be considered, not that they should be followed.

A local outcome could have a recognisable impact in a variety of ways on many national outcomes. For example, local objectives to improve mental health might impact on what we currently have as national outcome 6, which is that

“We live longer, healthier lives”,

and national outcome 7, which is that

“We have tackled the significant inequalities in Scottish society”.

If the national outcomes are created by a participative process—we have set that out already—they will be all-encompassing and can be effectively aligned with local priorities, as well. The terminology needs to be consistent with that aim. We feel that we need that stronger link in order to link local plans with national plans and local outcomes with national outcomes. Keeping the original wording will enable us to ensure that local outcomes, which are objectives for local areas, are aligned with the national outcomes.

There is no duty on CPPs to set outcomes; there is a duty only to identify those that are to be prioritised under section 5(2). The requirement for local outcomes to be consistent with national outcomes arises from the description of community planning in section 4(2) in combination with section 4(3). Amendment 1054 could

therefore create difficulties and confusion around the purpose of CPPs in that regard, so I ask Drew Smith to seek to withdraw it.

**Drew Smith:** I listened carefully to the comments from Stewart Stevenson and the minister, and I understand the concerns that have been raised. However, I will press amendment 1054 because it is drafted to restrict its effect to community planning partnerships, which I believe have their own processes. Where it would be legitimate for CPPs to set their own local objectives, which should certainly have regard to national outcomes, I do not believe that those would be required to be completely consistent at all times. To require that they should be would go against the spirit of the bill. I therefore press amendment 1054.

**The Convener:** The question is, that amendment 1054 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Buchanan, Cameron (Lothian) (Con)  
Hilton, Cara (Dunfermline) (Lab)  
Rowley, Alex (Cowdenbeath) (Lab)

**Against**

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)  
Wilson, John (Central Scotland) (Ind)

**The Convener:** The result of the division is: For 3, Against 4, Abstentions 0.

*Amendment 1054 disagreed to.*

*Amendments 1019 and 1020 moved—[Marco Biagi]—and agreed to.*

**The Convener:** Group 6 is on effectiveness of community planning in involving communities, tackling inequality et cetera. Amendment 1021, in the name of the minister, is grouped with amendments 1022 to 1024, 1055, 1025, 1056 to 1061, 1029 to 1031 and 1062.

**Marco Biagi:** Amendment 1021 is a minor drafting amendment that has no substantive effect. It provides that duties for CPPs in section 4(5) apply to “Each” instead of “A” community planning partnership. Amendments 1023 and 1024 are likewise minor drafting amendments that have no substantive effect and simply replace “such” with “those”. Amendment 1030 is a minor technical amendment that provides spacing

I turn to the substantive amendments in the group. Amendment 1022 relates to the focus on addressing inequalities. That theme was a feature of written submissions, and a recurrent subject of debate at stage 1 in committee evidence sessions.

We know that some communities are better placed than others to have their views considered and acted on. The Local Government and Regeneration Committee’s stage 1 report referred to the risk of empowering only the already empowered. Many organisations, including Barnardo’s Scotland, Oxfam and the Poverty Alliance, emphasised in their evidence that community planning partnerships need to ensure that they take account of those who are experiencing the disadvantages that are associated with socioeconomic inequalities.

Community planning partnerships are already addressing inequalities in their work, but we want them to do more. Amendment 1022 will make it explicit that community planning partnerships, in considering which community bodies are likely to contribute to community planning, must do so by

“having regard in particular to which of those bodies represent the interests of persons who experience inequalities of outcome which result from socio-economic disadvantage.”

That will then trigger the requirement in the bill to make

“all reasonable efforts to secure”

their participation.

Amendment 1025 relates to the committee’s recommendation that

“there should be a specific duty on CPP partners to reduce inequality and focus on ... prevention.”

10:30

The Scottish Government and our partners on the national community planning group agree that taking action to reduce inequalities should be at the heart of what community planning partnerships do. In fact, as we have shown from the outcomes, it should be at the heart of what the whole of government does. Amendment 1025 will introduce a general duty on community planning partnerships to

“act with a view to reducing inequalities of outcome which result from socio-economic disadvantage”.

The duty will apply to the way in which community planning partnerships undertake all of their functions under part 2 of the bill, from securing participation by community bodies to the local outcomes that the CPPs prioritise in their local outcomes improvement plan. It also includes how community planning partnerships review progress on the continued suitability of their plans and how they report on progress each year to local communities.

The amendment includes a qualification that will allow a community planning partnership not to act with a view to reducing inequalities of outcome that result from socioeconomic disadvantage if it

“considers that it would be inappropriate to do so.”

The qualification recognises that, although a community planning partnership may undertake its general duties with a view to reducing inequalities, it may have certain important actions that do not in isolation contribute to that. For instance, a community planning partnership should be able to support the development of high-skilled, high-earning employment opportunities, even though that might not in the first step contribute to a reduction in inequalities.

Alex Rowley's amendment 1055 would require local authorities to maintain a list of community bodies that might participate in community planning. Although I am interested in the proposal, community planning partnerships already have access to a Scotland-wide directory of third sector organisations via the get involved website. That is a database that provides identification of local community bodies by postal code and activity. The information is maintained by the local third sector interfaces, which, among other things, are funded to build in the third sector to community planning in their local areas.

The database includes details of community body location, website, main contact, charitable and legal status, the number of paid staff, committee members, geographical reach, aims and objectives, main areas of work and financial data. The fields are fairly extensive. It is therefore not clear what additional benefit there would be in requiring each local authority to maintain a list of community bodies in its area, nor what potential implications there could be for a body that, for whatever reason, did not end up on the list. We do not intend to require any form of registration for community bodies to be allowed to participate in community planning.

Amendment 1056 would require community planning partnerships to produce an assessment of the wellbeing of communities in their areas, and amendment 1059 would place a duty on CPPs to take account of “the most recently published” assessment of the wellbeing of communities in their area before publishing their local outcomes improvement plan. The bill already requires community planning partnerships to understand the needs and circumstances of persons who reside in their area. Section 5(4) requires community planning partnerships to take account of those needs and circumstances as well as any representations that are received in their consultation with community bodies and others before publishing their local outcomes improvement plan.

Another issue is that there is no requirement to update the provisions. Amendment 1059 refers to “the most recently published” assessment, but there is no duty to regularly publish such

assessments. A Welsh provision in a parallel bill has such a requirement.

Furthermore, wellbeing has been purposefully left undefined in local government legislation, and particularly in the 2003 act, which sets out the general power for local authorities to advance wellbeing. The introduction of the definition of the term in the bill could potentially cause confusion.

I do not believe that there is any need for Mr Rowley's amendments 1055, 1056 and 1059. All that they would do would be to impose a new burden on community planning partnerships.

Amendment 1058 would require CPPs to

“make all reasonable efforts to secure representations”

from persons who are identified in the assessment of wellbeing as particularly vulnerable or otherwise disadvantaged. However, our amendment 1022 goes further than that, as it will require community planning partnerships, when considering which community bodies are likely to be able to contribute to community planning, to have particular regard to community bodies that represent disadvantaged communities. As I said, the community planning partnerships must make all reasonable efforts to secure the participation of those bodies and take reasonable steps to enable community bodies that wish to participate to do so. Furthermore, under amendment 1018, community planning partnerships will also be under a duty to participate with community bodies that wish to participate.

Unlike amendment 1058, our amendment 1022 will apply those duties of participation with community bodies to all aspects of community planning—not just the finalisation of the local outcomes improvement plan but the review of progress against the plan, the review of the plan's continued suitability and progress reporting. Those are much broader in their scope.

Amendment 1057 seeks to impose a more explicit duty on CPPs to consult on the local outcome improvement plan. The bill secures the participation of community bodies throughout the community planning process. That goes beyond preparing a plan to include the review of progress against the plan, the review of the plan's continued suitability and progress reporting on it. That focus on continuing participation with community bodies, including third sector bodies, distinguishes community planning from the development of other plans for which consultation provides the main formal means of engagement with service users and stakeholders. It is about partnership.

In that context, the existing provision seeks not to be overly prescriptive. It is purposefully broad so that a local CPP can determine from its knowledge of local needs, circumstances and



resources which community bodies and other persons it would be appropriate to consult. That broad provision is more effective than the narrow specification of bodies that Alex Rowley suggests. I also note that his amendment 1057 would have community planning partnerships consult their own partners, which seems a little unusual.

Amendments 1060 to 1062 represent an attempt to bring locality planning into the bill as part of community planning. I have very considerable sympathy for the intention behind the amendments. I am not sure that there are not other ways to achieve their aim, but I believe strongly in the value of neighbourhood planning. That level is where we really get the link between community planning, which can be quite strategic in its view, and the clearest example of people's wellbeing in local places. It is also where we can often make the biggest difference in influencing priorities for public services and their delivery and contributing directly to the improvement of the community's general wellbeing.

However, the community action plans that are described in amendments 1060 to 1062 would have a slightly more limited purpose. They would link the local outcomes in a community planning partnership's local outcomes improvement plan with each community council area in the community planning area. The plans would set out the extent, if any, of improvement expected in that community council area for each of the local outcomes that are set out in the local outcomes improvement plan. I want the purpose of locality planning to be more ambitious, broader and high achieving. I want community planning partnerships to develop and apply neighbourhood-based approaches wherever they can offer the most value.

Amendments 1060 to 1062 have issues in that regard. To take the example of Fife, which Mr Rowley knows very well, they would require community planning partners to work with community councils and other community bodies to produce no fewer than 105 community action plans. That is the number of active and inactive community councils in Fife. That would be quite an immense bureaucracy to prescribe and would distract community planning partners and community bodies from efforts to improve outcomes where improvements were most needed, such as targeting additional work on more disadvantaged areas, or taking a more flexible approach to the definition of a neighbourhood than using the community council area.

We need to ensure that community planning can concentrate on where it can provide the most benefit—that is, improving the local outcomes and reducing inequalities on a set of priorities that is identified from the partnership's planning and local

understanding. That is the key principle of the CPP provisions in the bill. It reflects the recommendation in the Accounts Commission's and Auditor General's recent national audit report "Community planning: Turning ambition into action" that community planning partnerships should

"set clearer improvement priorities focused on how they will add most value as a partnership, when updating their"

single outcome agreements.

I wish to return to this in guidance, but I also think that there is potential to work with Mr Rowley to develop this to present more technically robust and perhaps more flexibly applied amendments that he could lodge at stage 3.

Amendment 1029 addresses the committee's request in its stage 1 report for confirmation that the community planning partnership is required to publicly publish reports on progress. The amendment provides that community planning partnerships must publish their progress report for each reporting year. One of the principles for part 2 that has attracted universal support is the importance of community participation at the heart of community planning.

Amendment 1031 imposes a new duty on community planning partnerships to account for the participation by community bodies in community planning for the area. It requires that a community planning partnership's annual report must report on the extent to which the partners have

"participated with community bodies ... during the reporting year"

and the extent to which

"that participation has been effective in enabling community bodies to participate in community planning".

I commend the Government amendments in the group to the committee and I ask Alex Rowley not to move his amendments, although, as I have said, I am sympathetic to amendment 1058 in principle.

I move amendment 1021.

**Alex Rowley:** I am grateful to the minister because what he has said allows me to address some of the points that he picked up.

The Audit Scotland 2013 report, "Improving community planning in Scotland" states:

"Community planning takes account of a wide range of consultation activity, but there is a long way to go before services are truly designed around communities and the potential of local people to participate in, shape and improve local services is realised."

That sums up where I am trying to go with my amendments. I am prepared to accept the minister's point that he is committed to looking at

the idea of local community plans within the framework of the high-level plan. He says that the way to do that is through guidance, but putting it on the face of the bill at stage 2 would give us the opportunity to work together before stage 3 to address any technical or other difficulties that he envisages. I certainly do not envisage the difficulties that he envisages.

On establishing a register at local level, which local authorities would maintain, I accept that, as the minister said, there is a register held by a third sector organisation at national level. However, I suspect that many of the community organisations and groups that we are trying to reach are not on any register. That is why I propose having a register at local authority level of all local community groups, which can range from community councils to tenants and residents groups to sport and leisure groups; it can cover a range of local groups that have an input into the community planning process and its outcomes.

Take for example a high-level outcome in relation to health and wellbeing. A lot of the community planning partnerships tick the boxes year in, year out in achieving outcomes, but having sat on a community planning partnership for seven or eight years and having chaired the Fife community planning partnership for more than two years, I know that sometimes it is difficult to see the impact that that has in communities. It is certainly very difficult to see how or whether communities have been engaged or involved. Indeed, if you asked the majority of community groups and organisations what the community plan is, or how the community plan is impacting on their area and whether they are involved in it, the answer would be no. I am sure that that is the case all over Scotland.

On health and wellbeing, I would argue that the local bowling club, running club, football club and the local kids activity club should all have an input into setting priorities at local level. The minister talked about there being 105 community action plans in Fife. I am not in any way put off by that. Indeed, I would argue that if we continue to use Fife as an example, we can see that it has seven local area committees, some of which are better than others at trying to get down to community level.

10:45

In my constituency, coming from the topside, Benarty community council area has the second highest level of deprivation in Fife. It is part of the Lochs ward, along with my home village of Kelty; both of them have distinct issues and would have similar, but different, priorities set locally. Coming down to the bottom side of the constituency, to Dalgety Bay, Inverkeithing and Aberdour, we find

that Dalgety Bay and Hillend community council also has priorities, but those priorities would be different, given the levels of deprivation in terms of health and wellbeing, support and so on, in comparison with the topside of the constituency.

Why would you not be able to go to that level and take a bottom-up approach to setting local priorities for local people? For me, that is in line with exactly what Audit Scotland talks about. The role of community planning in creating joint working between public bodies should not be confused with the purpose of involving communities in planning their future and planning public services for their area.

Over a number of years, the Government's aim in establishing community planning partners was to try to get public organisations to work together. You may ask how difficult that is, but as the minister—and former ministers—and his civil servants will know, it is often quite difficult to get organisations to work together. Even within a local authority, the departments and different parts of the authority can work in silos. We see that happening in Government and in the Parliament. It is difficult to pull those together.

To take the next step and achieve what the bill says on the tin—community empowerment—we should create those registers, so that all local groups can sign up and know that they will not be missed out because they have been registered and so will be involved and participate in decisions. We should allow communities, at that level, to start to shape their priorities and the services that they need, because those will differ between communities and, as many groups have pointed out, in the spirit of the Christie commission, this fundamental shift in priorities has to take place. If we are serious about prevention, following the Christie commission, the best way to achieve that is from a local level and by a bottom-up approach. That is what the amendments set out to do.

In terms of wellbeing in local communities, it is important that we see what the issues are. As I said, I can take you through the different communities in my constituency, all of which are covered by geographical community council areas, some of which have a plethora of local organisations that are working away and should be empowered, and some of which do not and will need additional support to grow such organisations. Producing information on the wellbeing of communities would be part of that.

I am happy to work with the minister and the Government to firm up on any of the proposals. I would not want any of them to be a threat to community engagement. I do not believe that the amendments are a threat—quite the reverse, I believe that they would enhance the bill. If there

are specific issues, I am willing to work with the minister and the Government on them. I think that we should amend the bill and then work together to iron out any difficulties as we move towards stage 3.

**Stewart Stevenson:** I have several substantial difficulties with the proposals made by the amendments in Mr Rowley's name. The wording of amendment 1055 reads:

"Each local authority must"—

not can—

"for the purposes of subsection (5), maintain a list of all community bodies within its area".

In his remarks on his amendments, Mr Rowley said that local groups "can" sign up. If local groups can sign up, I am unclear how each local authority "must" maintain a list, because they can maintain a list only if local groups sign up, or they can go on a search-and-destroy mission to try and find groups that did not even realise that they are groups.

I illustrate that by the committee's visit to the Seaton backies project in Aberdeen, where a couple of members of the community decided that the grass between the buildings in their area was untidy and needed to be cut and tidied up and debris removed, so they started to do that. At some point, from that initial thought from those first two individuals to the position that we are in today, they acquired some funding—a small amount, if I recall, of around £500—and they may have opened a bank account. They started to consider who should be on the group, which grew and acquired a degree of formality. At what point did they become a group that each local authority must, for the purposes set out in the amendment, maintain a list of? I do not know, and I suspect that the group would not know. It is a successful example of a grass-roots—no pun intended—organisation that started with a little idea and developed into something that is delivering a lot. Incidentally, the group did not know what regeneration was, even though it was probably the best example of regeneration that the committee found as it went round the country.

I am unclear how a local community can, in effect, deliver on the "must" in amendment 1055. Alex Rowley specifically mentioned sport and leisure, so that could include local golf clubs or a skateboarding group that might be quite informal and fluid in its structure as it uses the local park. Is that caught by the proposal? It is a community body, but it does not have any formality. It may not be a group with an annual general meeting and it may not have clear office bearers. Sewing bees could be included; I just do not know where the line is. By requiring groups to be on the list, which is the implication of the amendment, we carry the

risk of genuinely disempowering people who do not feel that they want to engage with the kind of formality of the amendment that says that a list of all community bodies in an area "must" be maintained, so I have serious difficulties with that.

Amendment 1056 would insert the following:

"A community planning partnership must prepare and publish an assessment of the state of wellbeing"

of local communities. It goes on to talk about an assessment that must

"include an analysis of the state of wellbeing of any category of persons in the area whom the community planning partnership considers to be vulnerable or otherwise disadvantaged".

That is a laudable aim, but it has a practical difficulty. There are certain kinds of disadvantage that affect relatively small numbers of individuals or groups, perhaps a number below which we normally suppress statistical data, which is five. There may be a single person with a health condition that creates a serious disadvantage for them, and the drafting of the amendment would mean that that person's disadvantage would have to be reported, so that person could be identified by means of that report. There is a genuine difficulty in how that is drafted.

I have a minor point on amendment 1057, which refers to people who are "normally resident" in an area. It is perfectly possible, in legal terms, for people to be resident in more than one place. Those of us who are MSPs and have accommodation in Edinburgh as well as in our constituency are examples of people who are resident in more than one place.

Amendment 1060 is, in many ways, even more substantial. It places obligations on

"Each local authority ... in relation to each community council area within its area".

The point is, of course, that although there are defined community council areas—my constituency has more than 30 of them—they do not all have community councils.

In many of the areas there is no community council, and no prospect of a community council. Paragraph (a) of subsection (2) of the proposed new section in amendment 1060 refers to

"the community council for the community council area".

Proposed subsection (5) makes clear that a community council area may be excluded only if the council considers that a community council is "unnecessary". In a defined community council area that has no community council, the non-existent community council must nonetheless be consulted, given the way in which amendment 1060 is drafted.

We would be unwise to draw Alex Rowley's amendments into the bill at this stage, however much sympathy we may have for the policy objectives that underlie them. Alex Rowley would be well advised to take full advantage of, and exploit, the offer of help from the minister and his officials in developing some of those ideas. I do not think that now is the time to incorporate these amendments, which appear to present—at least in my reading of them—substantial difficulties in certain respects.

**Cameron Buchanan:** I have considerable sympathy with that view, because I find that the definition of wellbeing in amendment 1056 is too restrictive. I am mindful of what the minister said about placing an administrative burden in this area, and I feel that the amendment would result in such a burden. For that reason, I am reluctant to support the amendment.

In addition, I am not keen on amendment 1025, as it places particular emphasis on the inequality of disadvantaged communities. I am all for addressing that issue, but the amendment puts too much emphasis on it.

Stewart Stevenson referred to the provisions on residency in amendment 1057. It would be very difficult to define what would constitute being

“normally resident in the area”.

I am pleased to hear that the minister will consult on the issue again before lodging an amendment at stage 3, so I am reluctant to support amendment 1057.

**John Wilson (Central Scotland) (Ind):** On amendment 1055, which states that local authorities must maintain a list of groups in their areas, the minister made great play of the national register that is kept by third sector organisations. However, such organisations continually complain about not having enough funding, and the register can be maintained only if the third sector organisations in a local area have the resources to carry out the work to maintain it.

I take on board Stewart Stevenson's comments regarding some of the groups that are not covered by the third sector register; he referred to the example of a sewing bee. Although such groups are not on the national register, they may, at a local level, provide a valuable service for elderly people and others who take advantage of the social interaction and activity that is generated by participating in the group.

In my village, there is a group of pensioners—only about a dozen—who come together once a week to play bingo. Their group may not be registered but, in my view, it plays a vital part in delivering elderly care services. The communication and interaction that take place in

the group may be meaningful for them, but it would not be flagged up in a national register. Amendment 1055 calls on local authorities to maintain a register that would include that type of group, rather than a register that lists third sector or voluntary organisations that may get national or local funding and can be easily identified by third sector interfaces to ensure that they are on it.

With regard to the other issues around community council schemes, Stewart Stevenson is right once again, and I seek guidance from the minister. I understand that every local authority has a community council scheme in operation. Local authorities know and set the boundaries for those community councils. Unfortunately, some community council boundaries do not mirror the natural boundaries of communities; in that regard, Mr Rowley and Mr Stevenson gave examples of how communities view their local areas. Credence is given to community council boundaries because they are already set out by local authorities, but we may have to look at that to find out whether community councils naturally cover areas that are much larger than areas of multiple deprivation, to ensure that we are targeting resources through community planning partnerships at those areas.

11:00

I think that this is a work in progress and I welcome the minister's statement that, for stage 3, he could work with Alex Rowley to ensure that we get something in legislation that encompasses what we are trying to achieve here. The bottom line for everybody around this table and in the Parliament is that we achieve the goal of ensuring that the policies, the practice and the delivery of community planning partnerships are best suited to the communities that need most help. Community planning partnerships have been around for over 30 years but, unfortunately, in many cases they are still struggling to get the necessary resources for the communities that are most in need. I hope that we can get a piece of legislation in place that can achieve the best outcomes for those communities and for the nation as a whole.

**The Convener:** Thank you. I recognise that this is the first stage 2 process that many members have undertaken, so I should say that you are able to intervene on other members during the course of their speeches at stage 2. It would not be the norm for me to bring back in members who have already spoken, but under the circumstances I will allow Cameron Buchanan and Mr Rowley to come back in briefly.

**Cameron Buchanan:** Thank you very much, convener. My point about amendment 1055 is on the use of “must” in

"Each local authority must ... maintain a list of all community bodies within its area."

I think that saying "must" rather than "should" would impose quite a burden. Mr Wilson and others made a point about bowling clubs and bingo groups. I think that it would be too restrictive.

**Alex Rowley:** I am grateful to you for allowing me to come back in, convener.

Stating that the local authority "must" maintain a register does not mean that the local sewing group or the local skateboarding group, for example, must sign up to the register. The point is that every local authority would maintain the register and organisations and groups would sign up to it so that they would be registered and then guaranteed to be involved in the consultations that take place. If Mr Stevenson is right, the amendment would force local groups to sign up. I do not think that it does, but there could be a technical drafting issue that—

**Stewart Stevenson:** Will the member take an intervention?

**Alex Rowley:** Yes.

**Stewart Stevenson:** I am just trying to make the point that groups might feel that they should be registered. However, groups very often consist of free spirits who want nothing to do with the formal structures of government at any level. I wonder whether the member agrees that the phrasing that he has adopted in amendment 1055 appears to suggest that local authorities must list all groups regardless of whether they wish to be listed, because the amendment would put words to that effect in the bill.

**Alex Rowley:** If we establish the principle, any technical issue with the drafting can be picked up later. The principle is that local authorities hold the register. I would hope that local groups would be encouraged to register because more of them would want to be involved in setting the priorities in the local plans. The crucial point is that, in the next phase, local groups would be more involved in setting the local plans.

On Cameron Buchanan's point about the administrative burden that would be placed on local authorities, I stress that all the information on wellbeing is available in every local authority in Scotland. The question is whether we make that information available for each local area and do it in such a way that it is transparent. That will influence the discussion and engage more people at a community level in setting out their priorities. I do not think that it would be an administrative burden, because the information is already there. Indeed, it could be argued that, if community planning partners were going about their business

and setting their priorities for local communities in the correct way, they would be taking account of all that information in doing so. The amendment informs and empowers communities with the same level of information, so that they can start to make the case at a local level for what the priorities are for each community. That is its purpose.

**John Wilson:** I am sorry, convener—I was trying to intervene on Mr Rowley. Maybe the minister can help out with this.

I know what amendment 1055 says. I heard what Mr Rowley said about the fact that community organisations, if they so wished, could refuse to be on the register that is held by local authorities. I am slightly confused, because I would like local authorities to be aware of the existence of those community organisations—the bingo group, the sewing bee—so that they can consult them. I am concerned about community organisations being able to deregister from the council's list. I am trying to get to a point where we—the Parliament, the Government, local authorities and communities—fully understand what organisations exist in an area and what services they deliver within that area, which may not be statutory services. What I am frightened of is the duplication that may take place when a health board or a local authority decides that it is going to provide social care services for the elderly that are already being delivered at a local level by a local community group. That is where I would agree with amendment 1055, but I am rather concerned now with Mr Rowley's insistence that groups could deregister and not be on the list. I have a fear that we end up failing to understand what is happening at the local level and what is being delivered by communities at a local level, if groups are not on any list.

**The Convener:** I call the minister to wind up.

**Marco Biagi:** I have been patiently waiting rather than intervening because I knew that I would have this chance. I will go through the four issues that have broadly been the subject of debate.

The subject that was of least debate was Cameron Buchanan's challenging of amendment 1025, but that amendment comes from the committee's recommendation that there should be a specific duty on CPP partners to reduce inequality and focus on prevention. I know that in the past Cameron Buchanan has been skewered on what he has signed up to in committee, only to oppose it at a later date. I simply want to move on by saying that I believe that the committee will recognise the value of the amendment and endorse it.

The other issues are related to the amendments by Mr Rowley. On the register proposed in

amendment 1055, there are technical issues but there is also an issue of principle. As for the technical issues, the amendment states that each local authority must maintain a list of all community bodies within its area. As well as placing a burden on local authorities, that suggests to me that it would not be possible to deregister. If a group fitted the definition of a community body, it would have to be on the list, and the local authority would be under a duty to try to make it register.

In practice, I also think that there would be a danger that, as the register was in statute, it would become an authoritative list, and anybody who for any reason was not on it could be excluded for not having participated in the list process.

It is also important to remember that we had amendments earlier that removed inadvertent duties that the bill had placed on community bodies, because the purpose of the bill is to place duties on statutory bodies and local authorities, rather than on the voluntary sector and, in particular, the informal voluntary sector that makes up so much of what happens at the grass-roots level and which we have been referring to as “sewing bees” and so on.

The difficulty of principle with amendment 1055 is that the list would be a duplication of something that already happens. The term “national register” has been used, but what we actually have is a network of local registers that covers the entire nation. That work is done through the third sector interfaces, and there is funding from the Scottish Government for it. The total number of organisations on the registers, collectively, is 35,000, and we know that 12,500 of them are not registered charities. I have not looked at that in great detail, but it strikes me that they will be the mother-and-toddler groups and so on—the small, informal groups.

**John Wilson:** Minister, you said that there are 35,000 organisations on the national register. I seek clarification. I stand to be corrected if I am wrong, but my understanding is that the SCVO claims to have a membership of 55,000. If that is the case and there are 35,000 organisations on the register, where are the other 20,000? I know that the register omits certain very active community organisations. How can we gather information on all the other community organisations that are working away day and daily to deliver services in their local communities but are not on the national register?

**Marco Biagi:** I cannot speak for the membership of the SCVO. We will look at that, but the real question is whether if there are such organisations out there—12,500 groups on the list are not formally registered charities, and they must be in the informal sector—the register will be more

comprehensive if it is run by local authorities rather than by the third sector interfaces. I am not convinced that that is the case.

I also wonder what the justification is for moving the responsibility from the third sector interfaces—in Edinburgh, that involves the Edinburgh Voluntary Organisations Council and the Edinburgh Social Enterprise Network, which are grass-roots, bottom-up organisations that are supposed to be constituted for the whole range of organisations—to the local authority. I am not clear about the justification for moving what is being done by the third sector to local authorities rather than to CPPs, for example. They could be given the responsibility in statute rather than local authorities, and that would create a list that would flow through to all the partners.

**Alex Rowley:** Does the minister accept that the principle is to try to establish a much more localised list that encourages local organisations to get involved in the process of community planning, and particularly in setting priorities and outcomes at a very local level? Does he accept that that is not happening under the current community planning regime?

**Marco Biagi:** The third sector interfaces exist to be interfaces between the community planning partnership and the third sector in their areas, reaching all the way down to informal pensioners’ lunches and so on. I agree with the objective that we want all those organisations to be able to participate in community planning. I went along to a pensioners’ lunch and I found out new things about parking in the local area that I then took up with the council. That sort of daily action at the grass-roots level, with ordinary people with ordinary lives being consulted and therefore informing action, is the kind of thing that we want to encourage.

If there is an issue with the TSIs in reaching all those people, is the solution to move the responsibility to local authority control and create a duty there? I do not see that that is the answer to the question that is being asked. I also expect that, in the event of duplication, with TSIs being funded to deliver a network of local databases for their local authority area and councils gaining a statutory responsibility, the funding that we give to the third sector interfaces would come under pressure from local authorities, which would say, “Given that we now have the statutory responsibility, it’s appropriate that you fund us.”

These are big questions. We might have sympathy with the principle of involving the third sector, but putting what is proposed into the bill, even for subsequent amendment, is something that I would strongly resist.

**Stewart Stevenson:** Does the minister also recognise that community groups are quite indifferent to council boundaries and can straddle two or even three of them?

11:15

**Marco Biagi:** That is another good point and another reason why putting the responsibility on local authorities would not be appropriate in principle.

The next of the other two points of contention is the wellbeing assessment. Section 5(4)(b) already requires that

“the community planning partnership must take account of ... the needs and circumstances of persons residing in the area of the local authority to which the plan relates.”

It is pretty explicit that that provision requires community planning partnerships to assess and be aware of needs and circumstances. More importantly, it applies to everything that a CPP would do rather than being narrow.

I point out that the representations that will have to be secured from community bodies will also assist in that assessment. If community bodies have to be supported to make representations and the CPP has to understand the needs and circumstances, that means that an assessment is included in the bill—and it is much broader than what Alex Rowley proposes and it covers all the functions of CPPs.

I remain of the view that it is potentially difficult to introduce a definition of wellbeing into the bill when we have not introduced it into other legislation.

On localities, whenever I have gone around Scotland visiting local authorities, I have been impressed by what happens when we replicate a CPP at a lower level—when all the statutory bodies, voluntary groups and the council meet and plan at a more localised level—but I also notice that everybody does it slightly differently. Everybody has slightly different people around the table, has slightly different lines of accountability and deals with slightly different amounts of money at that level.

In Dundee, there are eight local ward-level decision-making bodies. Six of them have a budget of £125,000—two of them do not—because they are community regeneration forums in areas that need regeneration and a bit of extra effort.

I worry that the details of Alex Rowley's proposals are prescriptive in that they focus on community council boundaries rather than other boundaries. If we require all community council areas to have local plans rather than provide the flexibility to have a ward-level plan and some

additional top-up actions at local level, we might empower the already empowered, which is an issue that the committee has raised. As I said, however, I will speak only warmly about locality planning, which should be taken forward.

**Alex Rowley:** I am pleased that you seem to support the principle of locality planning, minister. Do you accept that I am not trying to create a large bureaucracy of Government officials or health officials sitting round tables in every locality coming up with their views? The problem with Government and community planning has been and is that the professionals tell the communities what is good for them. I am trying to change to the opposite of that—exactly what the bill says on the tin: community empowerment and community planning—so that communities set their priorities, set the agenda to which the public bodies and others have to work, and hold those public bodies to account to deliver on the outcomes and priorities that are set locally.

We must reverse the professionalism whereby the public services tell communities what is good for them. That is the principle that I was trying to establish with my amendments. I welcome the fact that you support it and I am sure that we can work together on it.

**Marco Biagi:** I did not disagree with a single word that Mr Rowley just said. That agreement in principle is a good foundation from which to proceed on the matter.

**The Convener:** That was a long debate on those amendments, but it was worth while.

*Amendment 1021 agreed to.*

*Amendments 1022 to 1024 moved—[Marco Biagi]—and agreed to.*

**The Convener:** I invite Alex Rowley to move or not move amendment 1055.

**Alex Rowley:** In light of the discussion and of the commitment from the minister, I do not intend to move any of my amendments in this group—I intend to work with the minister to try and take their provisions forward at stage 3.

**The Convener:** Okay—although I will deal with them one by one.

*Amendment 1055 not moved.*

*Section 4, as amended, agreed to.*

### **Schedule 1—Community planning partners**

*Amendment 1026 moved—[Marco Biagi]—and agreed to.*

*Schedule 1, as amended, agreed to.*

#### After section 4

*Amendment 1025 moved—[Marco Biagi].*

**The Convener:** The question is, that amendment 1025 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Hilton, Cara (Dunfermline) (Lab)  
Rowley, Alex (Cowdenbeath) (Lab)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)  
Wilson, John (Central Scotland) (Ind)

#### Against

Buchanan, Cameron (Lothian) (Con)

**The Convener:** The result of the division is: For 6, Against 1, Abstentions 0.

*Amendment 1025 agreed to.*

*Amendment 1056 not moved.*

#### Section 5—Local outcomes improvement plan

*Amendments 1027 and 1028 moved—[Marco Biagi]—and agreed to.*

*Amendments 1057 to 1059 not moved.*

*Section 5, as amended, agreed to.*

#### After section 5

*Amendment 1060 not moved.*

#### Section 6—Local outcomes improvement plan: review

*Amendment 1061 not moved.*

*Section 6 agreed to.*

#### Section 7—Local outcomes improvement plan: progress report

*Amendments 1029 to 1031 moved—[Marco Biagi]—and agreed to.*

*Amendment 1062 not moved.*

*Section 7, as amended, agreed to.*

#### Section 8—Governance

*Amendment 1032 moved—[Marco Biagi]—and agreed to.*

*Section 8, as amended, agreed to.*

**The Convener:** I think that at this point it might be wise to have a wee comfort break.

11:25

*Meeting suspended.*

11:31

*On resuming—*

#### Section 9—Community planning partners: duties

**The Convener:** Group 7 is on the extent of the duty on community planning partners to contribute resources. Amendment 1063, in the name of Cameron Buchanan, is the only amendment in the group.

**Cameron Buchanan:** I would like to leave out the word “securing” and replace it with “inviting”, because that would be less restrictive and prescriptive.

I move amendment 1063.

**Marco Biagi:** That was a relatively sketchy endorsement of the amendment and the reasons behind it. The reason for the provision in the bill is that we are keen to ensure that community bodies that a CPP considers are likely to be able to contribute to community planning are supported to participate to the extent that they wish to.

Although section 9(3)(b) uses the word “securing”, it refers to an earlier section, which is clear that community planning partnerships must

“consider which community bodies are likely to be able to contribute”

and

“make all reasonable efforts to secure the participation of such community bodies”.

I note that no attempt has been made to amend that earlier instance of the word “secure”. Further,

“to the extent ... that such community bodies wish to participate in community planning,”

CPPs will have to

“take such steps as are reasonable to enable the community bodies to participate in community planning”.

That is the spirit of section 9(3)(b). Each community planning partner will have to contribute funds, staff and other resources that the CPP considers appropriate to assist in securing the participation of bodies that wish to participate in community planning. A duty simply to invite bodies to participate would not ensure that invited bodies were supported to participate. That is why we think that it is important to have a duty to contribute resources to secure participation.

I ask Cameron Buchanan to seek to withdraw amendment 1063.



**Cameron Buchanan:** In view of what the minister says, I seek to withdraw the amendment.

*Amendment 1063, by agreement, withdrawn.*

*Section 9 agreed to.*

### Section 10—Guidance

**The Convener:** Group 8 is on the status of guidance on community planning. Amendment 1033, in the name of the minister, is grouped with amendments 1064, 1065, 1034, 1066 and 1067. Amendments 1033 and 1064 are direct alternatives, as are amendments 1034 and 1066.

**Marco Biagi:** Sections 10(1) and 10(2) provide that community planning partnerships and partners

“must comply with any guidance issued by the Scottish Ministers”.

All the amendments in the group seek to adjust that wording slightly.

The Government amendments in my name address the Delegated Powers and Law Reform Committee’s concerns about the term “comply”. The committee queried why guidance should be binding in the absence of provision for parliamentary scrutiny. The Government responded to the committee’s report by noting that concern and undertaking to lodge amendments.

Amendments 1033 and 1034 provide that community planning partnerships and partners are under a duty to have regard to guidance rather than to comply with guidance. That reflects the usual wording that is used in legislation in relation to guidance, is consistent with references elsewhere in the bill and will keep the DPLR Committee happy.

More broadly, I recognise the concerns that committees have raised over complex legal language. I will have to prejudge what Cameron Buchanan intends to say but, if he is attempting to simplify the language of the bill, I will explain that we have used the phrase “have regard to” for the reasons that I set out before—because it is the term that is generally used, it is well understood by the courts and there is substantial case law setting out how it is to be interpreted. It requires a person not necessarily to follow guidance to the letter but to be aware of it and to have justifiable reasons for any departure from it. If we were to use the phrase “consider”, there would be uncertainty about its meaning and the duty that it imposed.

Drew Smith’s amendments 1065 and 1067 would change the wording to refer to statutory guidance. I have not heard from the member, but it is not usual practice to refer to guidance that is issued in pursuance of legislative provision as statutory guidance—certainly not in an act.

Officials have run an initial electronic search of legislation and have found no references to “statutory guidance” as a term in primary legislation. Statutory guidance might well be what we call guidance that is mentioned in statute, but the term is not commonplace in primary legislation.

I therefore ask Cameron Buchanan and Drew Smith not to move their amendments and I ask members to back the Government amendments, which do much the same thing and will keep the DPLR Committee happy.

I move amendment 1033.

**Cameron Buchanan:** I refer to amendment 1066A, which had the same sort of wording as amendments 1064 and 1066. I really want less restrictive provisions, which is why I feel that “consider” is better than “comply”, so I will be moving amendment 1064.

**Drew Smith:** I think that there is a difference between statutory guidance and advisory guidance. I understand what the minister says about using the term “statutory” in the bill. I will just reflect that it is interesting that the Government uses precedent as an argument both for and against things from time to time.

**Stewart Stevenson:** Will the member take an intervention?

**Drew Smith:** I am speaking only briefly, Mr Stevenson. I will conclude by saying that there is a difference when it comes to allowing local partners to attach the appropriate weight to different kinds of guidance that are available. The minister’s attempt to deal with that by inserting the words “have regard to” addresses the issue and, given that I argued that “have regard to” was a better alternative earlier at stage 2, I am happy to indicate when appropriate that I will not move my amendments.

**Stewart Stevenson:** I invite the minister—if he can—to identify what instruments would be excluded by qualifying the word “guidance” with the insertion of the word “statutory” before it, which Drew Smith was seeking to introduce. Clearly, if a particular category that is statutory is described, that by definition excludes other categories. Is the minister in a position to describe what instruments would be excluded by using the word “statutory”?

**The Convener:** Minister, it is your turn to wind up. I wish you well in answering Mr Stevenson’s question.

**Marco Biagi:** It has to be said that amendments 1065 and 1067 led to a considerable collective scratching of heads, because the Scottish ministers have—by statute—a general guidance-making power, so we could argue that any guidance that we issue under the statute that

gives us that general power is statutory guidance. I am not clear that there is a distinction that would have much effect, but I welcome Drew Smith's position that he will not move the amendments.

**Stewart Stevenson:** Will the minister take an intervention?

**Marco Biagi:** Yes, of course—always.

**Stewart Stevenson:** Nonetheless, adding an adjective before the noun would—if it has any effect—restrict what is described to only those things to which the adjective can apply and therefore exclude those to which that adjective cannot apply.

**Marco Biagi:** Yes, although one could say that the term “all” would not be in any way restrictive, even though that would be added as an adjective before the noun. In this case, that might be an appropriate parallel.

We agree that what matters is the importance that must be attached to the guidance. We have three options: what is in the bill unamended, which is “comply with”; the Government's amendment, which is “have regard to”; and Cameron Buchanan's suggestion of “consider”. I think that “have regard to” strikes the best balance and is in accord with the general expectations of the treatment of guidance in law.

*Amendment 1033 agreed to.*

*Amendment 1064 moved—[Cameron Buchanan].*

**The Convener:** The question is, that amendment 1064 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Buchanan, Cameron (Lothian) (Con)

**Against**

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)

Hilton, Cara (Dunfermline) (Lab)

Rowley, Alex (Cowdenbeath) (Lab)

Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

Stewart, Kevin (Aberdeen Central) (SNP)

Wilson, John (Central Scotland) (Ind)

**The Convener:** The result of the division is: For 1, Against 6, Abstentions 0.

*Amendment 1064 disagreed to.*

*Amendment 1065 not moved.*

*Amendment 1034 moved—[Marco Biagi]—and agreed to.*

*Amendment 1066 not moved.*

**Drew Smith:** I seek the committee's agreement not to move amendment 1067. Thank you for your

welcome and I wish you well with the rest of stage 2 proceedings.

**The Convener:** Thank you.

*Amendment 1067 not moved.*

*Section 10, as amended, agreed to.*

*Section 11 agreed to.*

## **Section 12—Establishment of corporate bodies**

**The Convener:** Amendment 1035, in the name of the minister, is grouped with amendments 1036 and 1068.

**Marco Biagi:** The amendments relate to the establishment of a corporate body for community planning purposes. Under section 19 of the Local Government in Scotland Act 2003, the Scottish ministers may

“on the application of the local authority together with one or more of the bodies, office-holders and other persons participating in community planning ... by order establish a body corporate”

for community planning purposes.

Section 12 also provides for the establishment of a body corporate for community planning purposes and has the same application requirements—an application must be made by the local authority for the area and at least one other community planning partner.

That application process, which reflects our responsibility for community planning, has applied until now, with the relevant local authority being under a statutory duty to initiate, facilitate and maintain community planning. That will no longer be the case under the bill. Section 8(1) places duties of governance to

“facilitate community planning”

and

“take reasonable steps to ensure that the community planning partnership carries out its functions ... efficiently and effectively”

on a number of community planning partners—not just local authorities—including the local health board, Scottish Enterprise, Highlands and Islands Enterprise, the chief constable of Police Scotland and the Scottish Fire and Rescue Service, as well as the local authority.

11:45

Amendment 1035 will provide that an application to establish a corporate body for community planning purposes is valid only if it is made jointly by all the governance partners that are listed in section 8(2). That reflects the fact that

all those partners are collectively responsible for the effective governance of the CPP.

The original purpose of allowing corporate bodies to be formed was to enable them to co-ordinate or further community planning, not to substantially deliver services themselves. However, since the bill was introduced, we have noted representations, including the evidence from the chair of the Accounts Commission to the Public Audit Committee on 3 December 2014, that have suggested possible value in establishing a community planning partnership as a corporate body that delivers services directly.

We do not know of any CPP that wishes to establish itself as a corporate body, but amendment 1035 makes it clear that such incorporation could proceed for the purposes of delivering services. It is clear that, in any such scenario, a CPP that wished to establish itself as a corporate body would have to demonstrate the merits of the conversion before the Scottish ministers would lay draft regulations before Parliament and before the Parliament would approve the draft regulations to give effect to any such change.

Amendment 1036 will remove the words

“including in particular its conduct and co-ordination”

from section 12(1), with a view to clarifying that the community planning functions of a corporate body could be wider than that. Although there has been continued background interest in the possibility of establishing CPPs as incorporated bodies, there has to date never been a firm proposal, and we are not aware of any proposed applications for incorporation down the line.

Cameron Buchanan’s amendment 1068 would mean that another enactment or rule of law could prevent a body that was established by regulation from carrying out a function that is set out in the regulations. The bill acts as a safeguard to support the carrying out of functions by any new corporate body so that a new and yet-to-be-established corporate body could carry out community planning functions. If such an application were received, it would be subject to ministerial approval and parliamentary scrutiny, which would include consideration of all matters referred to in section 12, including which functions such a body would have.

It would not be helpful to restrict the operation of section 12 by removing subsection (4)(b). I therefore invite Cameron Buchanan not to move amendment 1068, and I ask the committee to support amendments 1035 and 1036.

I move amendment 1035.

**The Convener:** I ask Cameron Buchanan to speak to amendment 1068 and the other amendments in the group.

**Cameron Buchanan:** I will withdraw my amendment.

**The Convener:** We will come to that at the appropriate time. Do you want to speak at the moment?

**Cameron Buchanan:** No.

**The Convener:** Do any other members wish to speak?

**John Wilson:** I seek clarification from the minister.

Minister, you indicated that there has been no approach by a community planning partnership to establish a corporate body. Why do you feel that it is appropriate to put the provision in legislation at this time? If there were an approach by a CPP, or by two partners within a CPP, to set up a corporate body, further legislation would need to be laid before Parliament to allow that to happen. Would it not be more appropriate to leave out the provisions in section 12 until we are confident that corporate body status is the best way to take forward community planning partnerships?

**The Convener:** I do not know whether I am correct, but my understanding is that only one community planning partnership has ever considered incorporation, and it decided not to proceed. However, that is currently provided for in legislation, so why is it necessary to leave the provision in the bill—even though, as Mr Wilson said, no CPP has made such an application?

**Marco Biagi:** Given that the power exists at present under the 2003 act, there is a choice as to whether we get rid of that power from primary legislation or update it so that it remains an option that can be considered. The issue has been debated in the past, and we see no reason to move away from having the option in place.

As I pointed out, the chair of the Accounts Commission said that there might be value in the approach, and it seems to us that keeping the option open in primary legislation and updating it for the new governance landscape while requiring secondary legislation for implementation represents a balanced approach.

**John Wilson:** I understand where the Accounts Commission might be coming from with regard to the setting up of corporate bodies, but I am concerned that the community planning partnership itself might not be the corporate body, and that two or more partners might decide to become a corporate body to deliver services that other community planning partners already deliver. Where would the division be between a corporate

body that might contain two or more partners and the community planning partnership? Does the minister envisage a potential conflict between the status of the corporate body and the status of the community planning partnership?

**Marco Biagi:** I should clarify that the existing power in the 2003 act refers to a local authority in partnership with another, so, in that respect, there would be two participants.

**John Wilson:** I am not disagreeing with you, but that does not make the 2003 act right.

**Marco Biagi:** I was going to point out that that was the power in the 2003 act, whereas the particular provision that we are discussing would require all to participate and jointly apply. It is not like the power in the 2003 act, which applies to two organisations, one of which is the local authority; this is a joint application by all community planning partnership governance partners. All would have to be content and collectively agree to such a move, which would remove the prospect of two partners creating something that would cause difficulties for others. With this approach, the option is left open for a CPP, collectively, to come together and make a case for corporate body status, subject to parliamentary scrutiny.

*Amendment 1035 agreed to.*

*Amendment 1036 moved—[Marco Biagi]—and agreed to.*

*Amendment 1068 not moved.*

*Section 12, as amended, agreed to.*

### **Section 13—Interpretation of Part 2**

*Amendment 1037 moved—[Marco Biagi]—and agreed to.*

*Section 13, as amended, agreed to.*

### **After section 13**

**The Convener:** Amendment 1069, in the name of Alex Rowley, is grouped with amendment 1070.

**Alex Rowley:** Amendment 1069 seeks to ensure consistency in the application of community engagement standards across Scotland to take account of local circumstances, without compromising the development of standards. Although there is much good practice in the public sector with regard to consulting communities, the fact is that practice is not of a consistently high standard. If communities are to be genuinely involved in the design of public services, ensuring that they have high-quality involvement in local decision making must become second nature to public services and part of their everyday core purpose.

By seeking to put national standards for community engagement on a statutory basis, my amendments will ensure that, in the development of the national outcomes in part 1 of the bill and the local outcomes improvement plans in part 2, best practice in community engagement is adhered to.

Concern has been expressed that placing the national standards for community engagement in statute will limit the development of standards at the local level and that public bodies will be hampered in developing participative techniques to fit local structures. As they stand, the amendments would not have that effect.

It should be possible for public bodies to use a range of participative techniques, but, in certain circumstances, to be required to apply the national standards for community engagement. In particular, community planning partners should have to follow the standards for community engagement when engaging with communities in drawing up local outcomes improvement plans.

I ask the committee to support the amendments.

I move amendment 1069.

**Stewart Stevenson:** Right at the end of his remarks, Alex Rowley used the phrase “local outcomes improvement plans”. That goes to the very heart of the matter. We are focusing on processes that carry the real danger of removing—or, from the perspective of community bodies, appearing to remove—flexibility in how community bodies undertake their tasks, and of inhibiting the development of new and innovative ways of engaging with communities. At the end of the day, to communities, this is all just noises off; what actually matters are the outcomes and the sense of empowerment that communities gain from the passage of the bill and everything that flows from it.

I am uncomfortable with making this statutory and requiring everyone to step up to the mark; I would prefer to see local communities working out for themselves, and therefore having ownership of and commitment to, what they want to do. A standard that relates to outcomes is by all means welcome, but a standard that relates to processes gives me cause for doubt, even if the Government is in favour of it.

**Marco Biagi:** I agree with the intention behind amendment 1069 and I recognise that we all want to make the public sector engage efficiently and effectively with communities across Scotland. We know that local government and other public bodies are increasingly using an impressive range of community engagement activities to consult people and offer them opportunities to participate in activities, plans and service delivery. However, we also know that the range and degree of

participation can vary considerably and that although the national standards for community engagement provide a good practice model for both formal and informal community engagement, its use over time has been patchy.

There are better ways to secure the objective that we share. A great deal of impact can be realised through the use of guidance, which is much more adaptable and flexible. For example, in the stage 1 debate, I highlighted the fact that the national standards for community engagement pre-date the mass use of social media in Scotland, which is very important for any kind of community outreach and engagement.

We know from our discussion on section 10, which we have just amended, that local authorities, community planning partners and public service authorities will be required to have regard to guidance in exercising their functions. I repeat the commitments made by my predecessor, Derek Mackay, that we will specify the national standards for community engagement as part of the guidance, and update and refresh them to reflect the new context.

If we were to lay regulations, as amendment 1069 suggests, we would have to provide further supplementary guidance to exemplify what good practice would look like and how it should be applied. To borrow a phrase from the Local Government and Regeneration Committee's earlier statements, we would have to take the gobbledegook out of the act and translate it into something that people working at the coalface would use. There would need to be guidance either way.

I would be concerned about embedding the term "community engagement" in the bill. Over the past few months, some stakeholders have suggested that "community participation" or "community empowerment" might be better terms for the refreshed standards. If we put "community engagement" into the statute, we will maintain one model.

12:00

The new context that we are trying to develop with stakeholder organisations and the public sector should not be underestimated. The bill will change in its entirety the landscape of participation and engagement. It will make clear—if clarity was needed—that community bodies have a right to participate in the decisions that affect them and that public authorities have a duty to respond to that. I expect public authorities to look for guidance to help them to do that and that, as good practice continues to evolve, the guidance that accompanies the bill will need to change and keep

up. Secondary legislation is not the best way to do that.

I accept that there may well be space in the bill to improve it further to ensure greater participation by the public and by communities across Scotland in the activities of public bodies and local authorities. There could be a much broader power than the one that is specified to promote and facilitate participation across the board in all the activities of a very wide range of bodies. In order to have that broad impact, I expect—indeed, I intend—any such amendments to come later in the bill, rather than focusing on CPPs.

I note that amendment 1069 refers only to the CPP partners that are engaged in governance under section 8, and not to all partners, as listed in schedule 1. I expect the national standards to be considered by local authorities, for example, in their consultations on the common good.

As I said, I agree with the intention behind amendment 1069, but I think that there is a better way to achieve its aims. I ask Mr Rowley to withdraw it and not to move amendment 1070. If, after the conclusion of stage 2, he is still unsatisfied with where the bill is, I would be happy to speak to him to see whether he believes that still more needs to be done, and we can do that together. However, as I said, I expect further developments later in the bill that will cover the entirety of the bill, rather than focusing narrowly on CPPs.

**Alex Rowley:** I will come to Stewart Stevenson's point first. He simply misunderstands what is intended. It is not about trying to tell communities how to consult; it is about putting the national guidelines into statute so that community planning partners in their consultations will abide by nationally recognised standards for community engagement.

I welcome the minister's statement that the national standards have to be updated and refreshed. That needs to happen. I really cannot understand why, when that is being done, we would not set minimum standards for consultation by public bodies. That is a key point.

At this stage, I certainly do not have the same enthusiasm for the bill that the minister has in terms of how it will transform the engagement of communities, get a lot of public bodies to engage to the extent that they need to engage, and get communities to set their own agenda. I do not think that the bill as it stands will do that, but I want to work with the minister to try to improve it.

With the commitment that the minister has given, I am happy to withdraw amendment 1069 so that we can discuss the matter further. If we both want to achieve the same thing—to have communities setting their agenda—let us work for

that. Therefore, given the minister's commitment, I am happy to withdraw amendment 1069 at this stage.

*Amendment 1069, by agreement, withdrawn.*

**The Convener:** We will deal with amendment 1070 and a number of other amendments that we have discussed today at future meetings. That ends consideration of amendments for today.

I remind members that amendments to parts 3 and 5 of the bill should be lodged with the clerks to the legislation team by 12 noon this Friday.

I thank members for their participation and their patience with me. We move into private session.

12:04

*Meeting continued in private until 12:09.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

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