The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 11 March 2015

Session 4

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CONTENTS

LOCAL GOVERNMENT AND REGENERATION COMMITTEE
9th 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)
Margaret McCulloch (Central Scotland) (Lab) (Committee Substitute)
Michael Russell (Argyll and Bute) (SNP)
Tavish Scott (Shetland Islands) (LD)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 11 March 2015

[The Convener opened the meeting at 09:30]

Community Empowerment (Scotland) Bill: Stage 2

The Convener (Kevin Stewart): Good morning and welcome to the ninth meeting in 2015 of the Local Government and Regeneration Committee. If anyone wishes to use tablets or mobile phones during the meeting, please switch them to flight mode, as they may affect the broadcasting system. Some committee members may consult tablets during the meeting; this is because we provide meeting papers in digital format.

We have received apologies from Cara Hilton. I welcome to the meeting Margaret McCulloch, who is substituting for Cara this morning.

Our first item of business is day 2 of our consideration of the Community Empowerment (Scotland) Bill at stage 2.

I welcome back Marco Biagi, the Minister for Local Government and Community Empowerment. I also welcome Tavish Scott. Later in the proceedings, we will be joined by Michael Russell, who is currently debating amendments to the bill with our colleagues in the Rural Affairs, Climate Change and Environment Committee.

Members should have with them a copy of the bill as introduced, the latest marshalled list of amendments and the latest groupings of amendments, which sets 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 my inviting the member who moved the first amendment in the group to wind up.

Following the 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 ahead, 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 or their official substitutes are allowed to vote at stage 2. Voting in any division is by a 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 and so I will put a question on each section at the appropriate point.

We are now ready for the off.

After section 13

The Convener: Amendment 1091, in the name of Tavish Scott, is grouped with amendments 1092 to 1098, 1162 and 1163. I call Tavish Scott.

Tavish Scott (Shetland Islands) (LD): Thank you, convener. Having done this a number of times over the course of parliamentary sessions, I am always very envious of conveners who have to read out that great list of instructions that we all must follow.

The reason behind my amendments is to introduce a power of general competence for local authorities, putting it beyond doubt that they may do anything that is not expressly prohibited by law. Some of us who have been in the Parliament for some time might have reflected on the introduction in previous legislation of a power of wellbeing, and I recollect both the parliamentary processes that that provision went through and the thinking behind it.

Although the power of wellbeing has undoubtedly been of some assistance to local government across Scotland—I am sure that colleagues will be aware of examples of its use—there is no question but that it has some downsides. I admit that some of those downsides were pointed out by the official Opposition when I was part of the Administration that introduced the provision. I accept that some of the arguments made at the time by colleagues on the Scottish National Party benches were entirely fair and reasonable.

One of those arguments was that the term "wellbeing", as currently set out in the legislation, is ambiguous. In practical terms, its restrictions, or the understandable concerns about them, mean that local authorities might not be doing all that they might wish to in serving people and communities to the best of their ability.

Before the introduction of a power of general competence in England and Wales, 10 councils in London were legally blocked from forming a mutual insurance firm—a service that I am sure most colleagues would consider to be beneficial to people in that part of the country. To my mind, that was a setback that deterred others from an innovative use of the power of wellbeing.

Today, I seek to introduce a power of general competence into what I think is a good bill. The minister should take credit for a lot of progressive, sensible ideas, but we can strengthen a particular aspect of the bill for local government.

In framing the amendments, I have sought to ensure that they give councils the capacity to do anything that an individual can do. Thus, they would not enable a local authority to introduce a new tax—I am sure that that will be of some relief to the Cabinet Secretary for Finance, Constitution and Economy and to the Government's spending departments—as individuals are not able to do that either. Further, as the United Kingdom Department for Communities and Local Government put it in their impact assessment of similar proposals south of the border, the amendments would not

"enable local councillors to wage thermonuclear war due to existing preventative legislation".

I was a bit taken aback by that, but, unbelievably, that was apparently what the DCLG argued. I would never have a sensible minister such as Mr Biagi use such extraordinary measures to knock down amendments, but there we have it—in another place, that is what happened.

In the past few months, there have been significant advances towards more powers for this Parliament. Indeed, another committee that I sit on is dealing with that matter tomorrow. I argue that devolution should not stop in this building; rather, we should ensure that local government and those who serve communities, representing all political parties and none, have the ability to use the power of general competence in the most sensible and constructive way for the people whom they serve.

In that spirit, I move amendment 1091.

The Minister for Local Government and Community Empowerment (Marco Biagi): The amendments in this group essentially seek to import into Scotland the English Localism Act 2011—the provisions are pretty much a copy of those that were introduced by the UK Government to the UK Parliament, and which were debated and scrutinised there.

The aim behind the amendments is to use those provisions to replace part of the Local Government in Scotland Act 2003, the bill for which, as has been alluded to, went through an extensive process of consultation, deliberation and scrutiny in the Scottish Parliament.

Our concern is that the power to advance wellbeing, as set out in the 2003 act, already gives Scottish councils a very similar wide-ranging power of first resort, enabling them to do anything that they consider is likely to promote or improve the wellbeing of their area and the people in it. That power was intended to do what the power of general competence—which was not introduced in England until 2011—was intended to do. The intention was also to signal our trust in local accountability.

I will quote from the debate in the chamber in October 2002:

"the power encapsulates the principle of subsidiarity, as it allows local government to take responsibilities that it should have and allows the Parliament to extend the devolution process beyond this chamber and ensure that that process continues down or up—depending on one's perspective—to local government. The Parliament should applaud that important principle."—[*Official Report*, 2 October 2002; c 11292.]

Those wise words were from Tavish Scott.

It is fair to say that there were criticisms from the other side of the chamber—we are not in a complete political changeroo situation here. However, many of those criticisms about exemplification and understanding have been dealt with subsequently through statutory guidance and dialogue.

There is a purposeful intent to leaving wellbeing undefined, as in the 2003 act, so as not to constrain local government, and to ensure that local government can take a broad interpretation of actions that could improve wellbeing. In that respect, the provisions in the 2003 act are much broader than the provisions that the English Localism Act 2011 replaced. The previous wellbeing power south of the border was restricted to

"economic, social and environmental well-being",

which was defined. That may have led to some restrictions such as the London example that has been set out. Our power is already far beyond the power that was in place in England.

Alex Rowley (Cowdenbeath) (Lab): How has the wellbeing power operated in local government? Do local government lawyers often advise councillors to be tame, in terms of what

they want to do, because there is not a clear definition?

Marco Biagi: Far be it from me to alienate the officials to my left and right, but there is always a debate to be had between elected members and officers of any body as to how far interpretations of statute can be stretched. The provisions that are set out in the amendments do not exemplify what could be done; they merely create a general competence.

The issue is not just that, as the previous wellbeing power south of the border was less extensive than the Scottish power, the Localism Act 2011, which went through the UK Parliament, was trying to come from behind, if you like. It is also the case that the Westminster Parliament, in conferring any powers on local government, will automatically be able to confer a broader range of powers than this Parliament can, because we can confer broader powers only in areas that are within the competence of the Scottish Parliament under the Scotland Act 1998.

I am aware that a tension has recently been expressed about the power to advance wellbeing with regard to social security and the bedroom tax. However, this Parliament cannot confer through a general power of competence a clear position on what local authorities can do to ameliorate a social security issue any more than it could do that through a power to advance wellbeing. We cannot give local authorities powers over things over which we do not have powers. The same is true for Westminster, but ultimately Westminster has power over pretty much everything, under parliamentary sovereignty.

The Convener: Is this something that the Government may look at again, as more powers, or whatever we end up getting, come through via Smith?

Marco Biagi: It would be very reasonable to look at the matter again once we know what powers we may be able to confer on local government and what powers would be captured in the term "general competence". The question whether the power to advance wellbeing in the 2003 act applies only to the powers that could be applied in 2003 or whether it would apply to powers existing at any given moment is one for lawyers; I am not sure that I know the answer to that. We will need to come back to the matter when we have clarity on the exact powers that we can confer and what the term "general competence" might cover.

Tavish Scott's amendments would introduce provisions that would prevent or restrict local authorities from exercising the general power. I recognise that that might be an attempt to prevent excesses. However, under the Local Government in Scotland Act 2003, Scottish ministers have powers to modify enactments to remove barriers to community planning, the power to advance wellbeing or the achievement of best value.

We are very open to having a debate about allowing councils to do something under secondary powers if they tell us that they want to do it but are not sure whether they can, or even if they tell us that they do not think that they can do it but think that they should be able to. However, we have not seen evidence that the power to advance wellbeing is limited. We have not been given examples of things that councils are unable to do under the existing power—and we have asked. It is not clear what additional powers, if any, the proposed new part would bring.

John Wilson (Central Scotland) (Ind): You mentioned that you have not been approached about the current power. Are you saying that neither the Convention of Scottish Local Authorities nor any local authority has approached you?

Marco Biagi: We have not been given examples of things that local authorities cannot do under the power. There have been question marks over the bedroom tax, for example, but that is a separate issue because we do not have the power to give local authorities power over social security.

In conversations, we have tried to explore the issue through things such as the city deal and so on, but we can give no concrete examples that we have not already given. If there is an understanding gap, there are other ways to address that gap.

The committee considered the legislative issues relating to local authorities in its inquiry into the flexibility and autonomy of local government, but it did not say in its report that there were substantial legislative barriers.

09:45

Finally, the amendments have not been consulted on. The proposal that they contain has been consulted on, scrutinised and debated in another Parliament—it has basically been copied into amendments that Tavish Scott aims to introduce at stage 2 into a bill that is largely about other things. We need to hear, through formal processes, from those who would use the powers. Fundamentally, I think that doing such direct importing sets a dangerous precedent.

In a briefing, the Convention of Scottish Local Authorities said that it thought that the proposal was a good thing. In the first sentence, it says that it "welcomes this amendment". However, the following two paragraphs provide caveats, and the briefing ends up saying that, ultimately,

"COSLA is of the view that it would be simpler and preferable to further the power of local government through the Bill by using this opportunity to embed the European Charter on Local Self-Governance in the Act."

That is an alternative route that has been discussed, debated and considered, so it may well be the appropriate focus for debate and amendment in this area.

Tavish Scott has made his points. Given what I have just said and the fact that I believe that there is quite a degree of commonality between us with regard to what we want local authorities to be able to do, I ask him to withdraw amendment 1091 and to not move the other amendments in the group. If he presses amendment 1091, I hope that the committee will respect its own position and its right to scrutinise extensively any changes to local government and that it will reject the amendment, so that we can have a full process of examination in the Scottish Parliament rather than simply importing an act of the United Kingdom Government.

Tavish Scott: A lot of the minister's remarks are fair but some of his observations are less so. I will deal with some of his points in reverse.

The minister is quite right about COSLA's assessment of the proposal. If the Government's view is that the bill could embed the European charter on local self government, it could do that itself. If the Government's objection to the proposal is an in-principle one, I can understand that. If it is to do with the detail, I point out that stage 2 is when the principle of issues is dealt with and that the detail can be tidied up at stage 3. His Government does that regularly, as did the Government of which I was part. It is a pretty accepted part of the Scottish Parliament's conventions. Whether it is right is neither here nor there; we do not have a revising chamber, so that is the way in which we have to do our business.

I was not sure whether the minister was objecting to the proposition in principle or was objecting to the practicalities. If the problem involves the practicalities, I completely accept that some of the measures need to be tidied up, but that could be done by the Government at stage 3—he will have more advice than I could possibly have in that regard.

Marco Biagi: For clarity, let me say that I think that the amendments require more than a tidying-up exercise. The proposal would need a stage 1 call for evidence on the question whether a power of general competence is an appropriate replacement for a power to advance wellbeing. The full parliamentary process would need to be followed, because the proposal could end up bringing about a major change. It might not, of course, but we would need to consult on that, via the full process. We simply would not have time between now and stage 3 to consult everybody as we would want to.

Tavish Scott: That might or might not be a reasonable point. Of course, this Government has a bit of a track record of introducing pretty far-reaching changes to legislation at late stages in the bill process, without consultation. I think that the minister would have to accept that one of the measures that the Rural Affairs, Climate Change and Environment Committee is dealing with today has not had a heck of a lot of scrutiny in that context. If I may say so, the argument can cut both ways.

I was not terribly worried about the perspective on what happens south of the border. The minister is quite right with regard to the issue of finding wording to give effect to my desire to bring about a power of general competence.

However, if the minister wants to play a game about what is happening south of the border, I point out that the truth is that what is being considered to a significant extent south of the border—for instance, in Greater Manchester—is an extremely far-reaching transfer of powers to local government, which is not happening in Scotland. I welcome those developments. Very exciting things are happening for local government in particular parts of England. I wish that we were as brave north of the border, as I would like to see much of that happening here too. I counsel against running down what may be happening south of the border when there are, for those of us who strongly believe in local government, some genuinely positive developments under consideration for different parts of England.

My purpose is not to say what local government should do; that is not where I come from, philosophically, in politics. I do not believe in top-down government; the minister was quite right to read out my words from some years back, because I believe in the principle of giving local government the space and freedom, within the confines of the law and the exercise of power and law, to look at how best to serve its people in different ways.

Alex Rowley: I cannot resist commenting. Is it not the case that, in opposition, politicians want to give loads of powers to local government, but in power, as has been demonstrated, things are different?

Tavish Scott: Mr Rowley makes an eminently fair point, and I would be the first to accept it. I do not suppose that I was—indeed, I would go so far as to say that I am sure that I was not—the perfect minister when I had some of the responsibilities that Mr Biagi now has. I accept that point, but it does not alter my fundamental argument, which is that I do not seek to prescribe what local

government should do and would rather allow things to develop and evolve in our 32 local authorities across Scotland.

If the minister seeks arguments with regard to local government looking for areas that it would wish to develop, I advise him to look no further than the our islands, our future campaign. Areas of Scotland are seeking to enhance their powers: they would, for example, take much of what Marine Scotland currently does as part of central Government and deal with it far more efficiently and effectively—in my view—at a local level.

Marco Biagi: That is why we have the island areas ministerial working group, which met just a few weeks ago. Along with Derek Mackay, the Minister for Transport and Islands, Fergus Ewing, the Minister for Business, Energy and Tourism, and the leaders of the three island areas councils, I discussed that issue and, together, we agreed a programme of work to take forward.

We are open to any specific approach in that respect, and we have certainly been involved in the city deals that are in place in Scotland. I would characterise our position as being interested in and positive towards facilitating local government to take on more responsibilities.

Tavish Scott: I agree with and welcome that, as it is very positive. I also think that it is entirely consistent with authorities having the power of general competence. I press amendment 1091.

The Convener: The question is, that amendment 1091 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)

Against

Adamson, Clare (Central Scotland) (SNP)
Buchanan, Cameron (Lothian) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (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 1091 disagreed to.

Amendments 1092 to 1098 not moved.

Section 14—Meaning of "community-controlled body"

The Convener: Amendment 1099, in the name of John Wilson, is grouped with amendments 1100, 1102 to 1109, 1113, 1117 to 1126, 1128, 1131 to 1133, 1135, 1136, 1073A, 1138 and 1140. I draw members' attention to the information on pre-emption that is shown on the groupings paper.

John Wilson: The reason for lodging the amendments is that I feel that the bill, as presented by the Government, is too restrictive with regard to participation requests. I understand, and I fully agree, that some conditions have to apply, and I think that the Government made a brave attempt to define the types of groups that would be able to make participation requests.

However, I am aware of a number of issues that have arisen recently when local authorities have made decisions and put them out to consultation. Examples that spring to mind include when an incinerator is proposed or fracking is proposed in an area where there is not an existing community body. Under the bill, people may be kept from making participation requests because they are not a formally constituted body or are not organised in the way that is described in section 14. A very ad hoc participation request might come forward.

Under the bill, the question is whether, in those circumstances, local authorities would treat such participation requests in the same way as they would treat a request from a community organisation that is constituted and has its membership within the community. Some of the groups that are being established may be established in reaction to decisions that are being made. Going back to Mr Scott's earlier assessment and the committee's discussion, the difficulty is that local authorities are risk averse. If a council is risk averse, it may just say, "We are just going to go as per the bill." Therefore, any new group that is established and makes a participation request regarding, for example, an incinerator or fracking, would be denied the opportunity to participate because the group did not exist prior to the council making the decision on the issue at hand.

Amendment 1099 is trying to widen the bill's scope to ensure that any community group, whether it is constituted or not, and any individual has the right to make a participation request.

There are a number of consequential amendments in the group. In terms of other sections, I have included a provision to make sure that the vexatious nature of any participation request can be dealt with by a local authority.

At present I feel that, in society, community groups are very fluid. The decisions that are being made can be made within a matter of months, and the inability of a group of people to become constituted and recognised as a representative body within that time by a local authority or other body may debar them from making participation requests to local authorities.

I move amendment 1099.

Clare Adamson (Central Scotland) (SNP): I thank John Wilson for explaining the rationale behind his amendments. I have sympathy for his position. However, by its nature, the bill should be about communities coming together to work together.

I have some concerns about the reference to "frivolous or vexatious" requests, because it would give local authorities additional powers to deem a request to be frivolous or vexatious. If an authority was minded to block a development, that provision would make it more difficult for communities to use the bill as intended.

10:00

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I will ask John Wilson to clarify one point. Is it your intention that individuals or groups could use the process?

John Wilson: My intention is to allow individuals to use the process, because they may form the backbone of any future community organisation that is established. The references in the bill to "constituted" community groups present a difficulty. If someone identifies an issue and wishes to make an initial request and form a group after that, the initial request would, under the bill, be refused by the local authority because the person was not part of a constituted group.

Willie Coffey: So, amendment 1099 would allow individual people to use the process to pursue their personal agendas.

The Convener: I think that that is what John Wilson is saying.

Alex Rowley: I understand completely what John Wilson is saying. I have seen situations in communities in which groups of people come together and want to organise because a specific issue has arisen in their community. The minister might want to touch on the question of how such a situation can be addressed. For local authorities simply to rule that only groups should use the process, and that people with an interest must come together, would be wrong, and I can see what would happen.

However, I would raise one concern with John Wilson. A number of organisations have suggested to me that there is a danger in what he proposes. If a commercial organisation or an individual came along, and they were not part of a constituted group, that would raise a legitimate concern. Although I support the principle behind the amendments, I wonder what Mr Wilson thinks about that concern.

The Convener: If John Wilson could deal with that point in summing up, that would be grand.

Marco Biagi: I meant to say earlier that in going through the amendments for today's meeting I have been challenged in a lot of ways. There are in amendments that have been lodged by various members suggestions that I wish to support, and I want to put that on record.

I understand the intention behind the amendments in the group, given what John Wilson has said. The difficulty is that, on reflection, and having thought in particular about our discussions at last week's meeting about sewing bees and pensioners' lunches, and the ability of such groups to contribute to decision making and outcome improvement plans, I believe that the amendments would open up that process to individuals.

The bill was designed to allow participation requests for groups that come together with a common interest and a common purpose; I think that we completely agree on that. The issue here is the "constituted" nature of such groups. I do not think that a constitution is a massively onerous burden, but I recognise that for many groups that would have the scope to participate and would be able to do so positively, the requirement may prove to be quite legalistic. That might be the case only in people's understanding rather than in reality, but it could pose a barrier to the kind of community participation that we want.

I am willing to come back at stage 3 with amendments that would be focused on groups that are not formally constituted and which would introduce some kind of test that would have to be applied so that a group that was not formally constituted would be much the same as one that was, in terms of the requirement for a constitution in the bill. That would mean that the process would be open to everyone in a community. You know such a group when you see it; I would leave it to the lawyers to define that, but it would be a group that could be recognised as an informal unconstituted group that has come together with a common interest and a common purpose and which has something to contribute.

I do, however, have serious issues with the amendments in the group as they are, because they would open the process up to individuals. We know from constituency experience that a lot of individuals would say, with regard to the test that was suggested, "I'm about to organise a group but I haven't done it yet. Can I have a seat at the table?" If they got that seat at the table, they might then take a little while to form the group.

There is also the commercial aspect that was raised. Ultimately, the bill is about giving particular input routes to decision making for open, broad community action involving groups that are open,

inclusive, representative and controlled by the community that they want to represent. There would be a risk to the reputation of participation requests if they were available to individuals to further their own agendas. The Scottish Community Development Centre and the Community Development Alliance Scotland express serious reservations about the changes in an email that has been sent round the committee.

The structure of part 3 will also require an outcome improvement process that would be quite disproportionate for individuals, so if we were to open up participation requests to individuals there could be serious resource implications because of the volume of such requests. In addition, there are issues with the power in respect of frivolous or vexatious requests, as it leaves a fair bit of discretion to a public service authority, which may—I do not intend to impugn the willingness of any public service authority—use the power to ensure it has an easy life. In drafting legislation, we should always think about what would happen if somebody wanted to go in the opposite direction.

The bill's aim is to empower communities, and I am happy to take away the point that has been raised about informally organised communities that are still recognisable communities. I will lodge amendments at stage 3 that will capture such communities while excluding individuals who would fundamentally change the nature of participation requests and make an unhelpful contribution.

I thank John Wilson for lodging the amendments and, having given that undertaking, I hope that he is content to seek to withdraw amendment 1099 and not to move his other amendments.

John Wilson: On Alex Rowley's point, there is always a danger that commercial interests will intervene in communities in a number of ways to try to influence community organisations. I have seen commercial organisations do that. We must all recognise that commercial interests can influence existing organisations—never mind the setting up of new organisations—in a number of ways.

I understand the SCDC's arguments about protection of constituted groups. It has the right to do that; it also assists groups in becoming constituted. It can take time for a group to become constituted, depending on how the local authority deals with it. It can take up to 28 days to hold a public annual general meeting to elect office bearers and get a committee established, and within that timescale the shift can be made.

On requests from individuals who say that they want to represent the community and will work to set up a community organisation, local authorities can build in safeguards whereby they could say, "Fine. You can have a seat at the table", but give the individual X days to prove that they are genuinely committed to establishing a community organisation to represent the issues that they have raised.

I fully understand the concerns in relation to frivolous and vexatious requests; the difficulty is in how we define such requests and how local authorities deal with them. I hope that the bill, when it becomes legislation, will give local authorities an assurance that the Scottish Government and others are keen to see the widest possible consultation and engagement with communities.

Marco Biagi: I have not been able to give details about this in the past, because we were still finalising it, but today we are lodging an amendment to introduce at the end of the bill a new part that will give very wide powers to promote, encourage and, indeed, require participation. That may well be the best route for individuals to participate in the decision-making processes. Those powers will be very broad and will apply widely across public service authorities, which may deal with the problem of individuals who wish to make requests, which I think are the key danger with the amendments in the group.

John Wilson: Based on the minister's comments and the assurances that the committee has received today, I seek to withdraw amendment 1099 and will not move the other amendments in the group. However, I reserve the right to lodge amendments at stage 3 if the amendments that the Government lodges do not satisfy the intention of the amendments in the group.

Amendment 1099, by agreement, withdrawn.

Section 14 agreed to.

Section 15—Meaning of "community participation body"

Amendment 1100 not moved.

Section 15 agreed to.

Section 16—Meaning of "public service authority"

The Convener: Amendment 1101, in the name of Cameron Buchanan, is grouped with amendment 1141.

Cameron Buchanan (Lothian) (Con): Amendment 1101 is a probing amendment to find out not about the desirability of the bill's aims, but its definitions. All I really want to know is whether the bill should be about empowering communities to set their own priorities and aims.

I move amendment 1101.

Marco Biagi: I am a little bit confused. Amendments 1101 and 1141 would remove Scottish ministers' ability to remove or amend entries in the schedules that list public service authorities, in respect of participation requests, and relevant authorities, in respect of asset transfer requests. I assume that we are on the correct amendments here.

We must retain ministers' flexibility to remove, amend and add to entries in the lists of authorities that will be covered by the bill. The committee will be aware that I have lodged amendments to ensure that any changes of that nature are made under affirmative procedure, in line with the recommendation by the Delegated Powers and Law Reform Committee. There will be parliamentary scrutiny of any changes to the schedules and the lists of organisations therein. A public body may be abolished, or its name or functions may be changed, so we need to be able to accommodate changes of that nature in the public sector landscape. It seems that the amendments would challenge that.

Cameron Buchanan: That is a very satisfactory explanation, so I wish to withdraw amendment 1101.

Amendment 1101, by agreement, withdrawn.

Section 16 agreed to.

Schedule 2 agreed to.

Section 17—Participation requests

Amendments 1102 to 1109 not moved.

The Convener: Amendment 1110, in the name of Tavish Scott is grouped with amendment 1111.

Tavish Scott: I am very tempted to take the Cameron Buchanan approach and say that my amendment is a probing amendment, and then leave it to the minister to do all the speaking. That is a commendable approach, which I must remember for future bills. However, let me try to help the minister by explaining what I am trying to achieve here, then he might be able to help me as to whether I have got it right.

10:15

The bill contains a provision that a community participation body—or, indeed, two or more bodies jointly—may make

"a participation request ... to a public service authority."

It has been suggested that that will lead to a slightly strange position in which two community groups can make a request to participate in a process to improve a service in relation only to one public authority. There will obviously be examples involving more than one public authority. I am sure that the minister and committee colleagues can think of such examples.

Therefore, amendment 1110 seeks to give effect to the ability of such a community group or groups to engage with more than one public authority where that is evidently necessary in a particular set of circumstances. I hope that, in that sense, it is a constructive measure that will make it easier to achieve what I am sure the minister and the Government are trying to deliver through the bill.

I move amendment 1110.

Marco Biagi: I thank Tavish Scott for his amendments. He has made a very reasonable case about a policy aim that I am happy to support, so I am happy to accept amendments 1110 and 1111.

We will probably look at the wording in advance of stage 3 to ensure that amendments 1110 and 1111 will add the flexibility that we want, and that they are covered and will fit with the rest of the bill. On that basis, I am very happy to ask members to support the amendments.

Tavish Scott: I am grateful to the minister for that. I am sure that the amendments could technically be better—indeed, I have been told that by the clerks—so I might leave it to the minister and his powers of persuasion to get that right. I am happy to see the amendments move forward.

Amendment 1110 agreed to.

Section 17, as amended, agreed to.

Section 18—Regulations

Amendment 1111 moved—[Tavish Scott]—and agreed to.

The Convener: Amendment 1112, in the name of Alex Rowley, is grouped with amendments 1073, 1073B, 1073C, 1074, 1081, 1081A, 1081B and 1082.

Alex Rowley: My amendments are designed to strengthen the provision in part 3 on the rights of communities and other bodies when making a participation request. I welcome the current provision, but there are gaps that, if they are not addressed, will leave community bodies and others at a significant disadvantage. That would be likely to affect communities that are vulnerable and already disadvantaged because of socioeconomic factors and other circumstances.

Amendment 1112, in my name, is designed to avoid that happening and to make sure that all communities that wish to make a request to participate can do so. The amendment would

allow the regulations by the Scottish ministers to include provisions that require public service authorities to publish the fact that communities can make participation requests, to set out what support those authorities must make available to communities in relation to making and completing a request and to set out the types of communities that might require additional support.

I strongly believe that my amendments would redress the current imbalance in the bill whereby communities with the resources and the capacity will be most likely to make the most of the opportunity that participation requests offer. A significant gap in the bill is that, once a request has been made, whether to accept it will be up to the public service authority. I believe that amendment 1112 and the other amendments in my name would improve the bill and I hope that the minister and the committee will support the amendments.

I move amendment 1112.

Marco Biagi: I am happy to support Alex Rowley's amendment 1112. As with all regulations under the bill, the regulations under section 18 will be developed in partnership, so that community bodies and public authorities can help to shape the detail and determine what is appropriate for legislation and what should be in guidance. As examples of what should be included in the regulations, the promotion of participation requests and support for communities seem important enough to be included in the bill.

Amendments 1073 and 1081, in my name, respond to recommendations made in the committee's stage 1 report to provide for monitoring of the use of the bill's provisions. They require each public service authority and each relevant authority to produce an annual report setting out how many requests they have received, how many have been agreed to or rejected and how many have resulted in change or the transfer of an asset. That is in addition to the report that must be produced on the outcome of each participation request.

For asset transfer requests, the report must include the number of requests for which a review or appeal has been requested and the outcomes. That will make clear whether authorities are making the right decisions first time.

As with Alex Rowley's amendment 1112, we recognise the importance of authorities making communities aware of the potential to make requests and helping them to do so. Reports must therefore include information on the action that an authority has taken to promote the use of participation and asset transfer requests and to support communities directly in making such requests. I hope that the committee will support Alex Rowley's amendment 1112 and my amendments 1073 and 1081.

John Wilson's amendments would require a report to be published no later than the last working day of May, with a definition of what a working day means. That might throw up practical issues, but I am happy to return with a firm deadline for reports. If he wishes to press for those provisions at stage 2 and have them amended thereafter, following consultation with everybody to ascertain what would be practical, expected and reasonable, I encourage him to pursue that. However, he might wish not to move his amendments, to allow us to come back or offer him information about what has emerged from consultation, as appropriate, and he might then wish to lodge amendments at stage 3. I am neutral on the proposal, but I am content with the point about having such a timescale in the bill.

Amendments 1074 and 1082 will fill a gap by requiring public service authorities and relevant authorities to have regard to guidance issued by the Scottish ministers on participation requests and asset transfer requests. The bill provides a framework for those requests, and there are powers for ministers to make regulations in a number of areas to provide for procedures, deadlines and so on. However, regulations can get only to a certain level of detail; they cannot easily provide examples of best practice or a range of options to be used as appropriate.

We have every intention of issuing detailed guidance on those provisions, which, as the committee has discussed and as was emphasised in the stage 1 debate, will include the national standards for community engagement. For asset transfer, the guidance will cover issues relating to valuation and disposal at less than market value. The two amendments will ensure that authorities cannot ignore that guidance.

Amendments 1074 and 1082 will also require the Scottish ministers to consult before issuing guidance. We expect to develop the procedures and guidance relating to the bill through an inclusive process—it is, after all, a bill on community empowerment—with the participation of community organisations as well as the authorities to which the guidance is directed. I therefore ask the committee to support amendments 1074 and 1082, in my name.

John Wilson: I lodged amendments 1073B and 1073C to allow proper parliamentary scrutiny of participation requests because, although we are keen to engage with communities, as we have made clear during the committee's scrutiny of the bill and in the engagement that we have had throughout Scotland, we feel that it is only right that a parliamentary committee has the

opportunity to scrutinise what is happening with participation requests.

The reason for putting in a specific timetable is to allow us the opportunity to deal with the issues prior to the summer recess. That would allow the committee to timetable in the matter for June each year, which would provide us with an understanding of what is happening and would allow for consideration of any recommendations for change. We could advise the Government of any such issues when they were identified.

I am keen to ensure that the bill delivers on what it sets out to do. If we say that there should be more opportunity for participation requests, we must scrutinise that, and the only way in which we can do so—apart from the Government carrying out a due diligence process—is to allow a committee to undertake such scrutiny.

Alex Rowley: I press amendment 1112.

Amendment 1112 agreed to.

Section 18, as amended, agreed to.

Section 19—Participation requests: decisions

Amendment 1113 not moved.

The Convener: Amendment 1114, in the name of Cameron Buchanan, is grouped with amendments 1072, 1115, 1116, 1139, 1146, 1076, 1147, 1149 and 1161.

Cameron Buchanan: My amendments are about not the desirability of local aims but the purpose and limitations of the bill and what we are setting out to do. The bill should not set out what the local aims should be—it should empower communities to set their own priorities and aims. That is the reason for my amendments, which would remove specific criteria for refusing or agreeing to participation requests.

I move amendment 1114.

Marco Biagi: Group 6 relates to the sections that set out the issues that public service authorities and relevant authorities must consider in reaching their decisions on participation requests and asset transfer requests. Under the bill, the authority must consider whether agreeing to the request

"would be likely to promote or improve—

(i) economic development,

(ii) regeneration,

(iii) public health,

(iv) social wellbeing, or

(v) environmental wellbeing"

and consider

"(d) any other benefits that might arise ... and

(e) any other matter (whether or not included in or arising out of the request) that the authority considers relevant."

That is not a prescriptive but an illustrative list of benefits, and the bill does not require every request to hit all those targets. The list simply indicates the benefits that we might expect to arise from community proposals.

One can argue for including in the bill a simple requirement to consider any benefits, but it is helpful to have a list—albeit not a prescriptive list—to which community bodies and authorities can refer. Indeed, rather than remove the list of issues to be considered, I want to add to it.

It is a priority of the Government to reduce inequalities and create a fairer Scotland. The bill is a part of that process, as we believe that empowering communities to take control of the decisions that affect them will help to reduce inequality and ensure a more participative economy and society.

I realise that many people have—at stage 1 in particular—expressed concern that the bill could empower communities that are already empowered, while other communities will continue to be left behind. However, we intend to empower all communities, and the provisions are there for everyone to use. I recognise that communities will need varying degrees of support to be able to take advantage of the bill's provisions and, to that end, we are investing £19.4 million in the empowering communities fund, in addition to the support that we give the third sector. We also expect all public bodies and local authorities to engage communities in the design and delivery of services, and to support them to participate in those processes. As I have said, the national standards for community engagement will feature heavily in guidance on the bill, and the Government will introduce a further part to the bill that will—should the committee consent to it—promote greater participative democracy.

Amendments 1072 and 1076 will further ensure that the bill works to reduce inequalities. They add the need to reduce socioeconomic inequalities to the matters that are to be considered when a decision is made on a participation request or an asset transfer request. They make explicit the idea that reducing inequalities is something to be supported. If there are competing requests, the degree to which those requests would reduce inequalities could be the deciding factor.

It is essential that people who are experiencing socioeconomic disadvantage are involved in shaping the services that they use, because they know best what will work to tackle inequality. Therefore, amendment 1072, on participation requests, also requires authorities to consider

whether agreeing to a request would not just improve the outcomes for disadvantaged people but increase their participation in the request process and, as a result of the request, more widely in the design and delivery of the service.

Cameron Buchanan's amendments would not allow us to place the additional focus on inequalities, and they would remove the requirement for authorities to reach their decisions in a manner that encourages equal opportunities. I appreciate that all authorities will be subject to the equal opportunity requirement under other statutes, but I think that it is important to be explicit. We all want the bill to have an impact on addressing socioeconomic inequalities and encouraging equal opportunities, and we should state clearly that proposals that help that should be supported.

I ask Cameron Buchanan to withdraw amendment 1114 and not to move his other amendments in the group, and I hope that the committee will support amendments 1072 and 1076.

10:30

Clare Adamson: I appreciate why the minister wants to open out this area to cover equal opportunities. I am concerned that Cameron Buchanan's amendment 1114 could narrow the criteria and that wellbeing and other community requirements could take second place if the criteria were defined in the way that he proposes.

Cameron Buchanan: I do not think that amendment 1114 would narrow the criteria at all. I think that section 19 is too prescriptive, which is why I wanted an explanation. I want the provisions to be as wide as possible. We should empower communities to set their own priorities, which is why we do not think that section 19(3)(c) is worth while. I press amendment 1114.

The Convener: The question is, that amendment 1114 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
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 1114 disagreed to.

Amendment 1072 moved—[Marco Biagi]—and agreed to.

Amendments 1115 to 1118 not moved.

Section 20—Decision notice: information about outcome improvement process

Amendments 1119 to 1121 not moved.

Section 20 agreed to.

Section 21—Proposed outcome improvement process

Amendments 1122 to 1124 not moved.

Section 21 agreed to.

Section 22—Power to decline certain participation requests

Amendments 1125 and 1126 not moved.

The Convener: Amendment 1127, in the name of Cameron Buchanan, is grouped with amendments 1129, 1130 and 1158 to 1160. I draw members' attention to the information on pre-emption, which is shown in the groupings paper.

Cameron Buchanan: Amendment 1127 would remove the power to decline similar participation requests from a different body. I think that bodies should not be prevented from participating solely because another party wants to participate. I felt that that power was too prescriptive, and that it would not enhance the bill in any way.

I move amendment 1127.

Marco Biagi: Sections 22 and 61 deal with circumstances in which a public service authority or relevant authority may decline to consider a participation request or asset transfer request. The circumstances are that the request relates to

"the same, or substantially the same"

matters as a previous request made within the previous two years. The bill currently provides that repeat requests may be declined, whether they are made by the same body or by a different body from that which made the previous request. Cameron Buchanan's amendments in this group would not permit a request to be declined if it was made by a different body from that which made the previous request.

Sections 22 and 61 allow for discretion to decline to consider repeat requests that are made about substantially the same matters. The authority is not required to decline the request if it considers that it has merit. The community body may have gone away and come back with a significantly improved proposal, and that type of repeat request should be considered, although there needs to be some defence against repeated

requests that are just the same but are hoping for a different answer.

Cameron Buchanan's amendments would remove the ability of authorities to decline repeat requests where they are made by a different body. That is quite a significant change, as people may belong to more than one group, and those who wish to bring the same request again might well move between groups or reconstitute their group under a different name in order to get round that provision. As I have already said, the authority is not required to decline repeat requests; the provisions just give them discretion to do so, and I think that we should allow them the discretion to judge whether a group is truly different or not.

The extensive reporting requirements that have now been placed on participation requests will help to ensure that there is transparency and adequate scope for scrutiny. I am sure that an organised group that is inappropriately declined from using the measures would be able to find extensive evidence showing that, and could illustrate it quite heavily in the local community discourse through the normal channels.

Amendments 1129 and 1159 seek to make it clear that a new request is to be treated as being

"the same, or substantially the same"

as a previous request where there are no significant differences between the two requests. I do not consider that it is necessary to add those words, as they have the ordinary meaning of the words that are already included in sections 22 and 61.

I ask Cameron Buchanan to withdraw amendment 1127 and not to move the other amendments in the group.

Cameron Buchanan: I do not think that bodies should be prevented from participating solely because another body also wants to participate. That is the whole point of my amendments. They would remove a statement that is irrelevant, whether a body is making a new request or whether the matter concerns a different body from the one that made the previous request. I therefore wish to press amendment 1127.

The Convener: Before I put the question on amendment 1127, I advise the committee that we have managed to skip the question on section 19, and I am scared that I might get a visit from the lawyers. I therefore now put the question, that section 19 be agreed to.

Section 19, as amended, agreed to.

The Convener: Thank you—apologies for that.

The question is, that amendment 1127 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
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 1127 disagreed to.

Amendments 1128 to 1131 not moved.

Section 22 agreed to.

Section 23 agreed to.

Section 24—Modification of outcome improvement process

Amendments 1132 and 1133 not moved.

Section 24 agreed to.

After section 24

The Convener: Amendment 1134, in the name of Alex Rowley, is in a group on its own.

Alex Rowley: Amendment 1134 is important because it will allow communities to appeal to Scottish ministers when a public service authority refuses a participation request and when a participation request is agreed to but the community body objects to certain provisions in the decision notice.

The amendment would allow a community to appeal when it has significant concerns about how an outcome improvement process is being undertaken and how it will work. The amendment would leave it to Scottish ministers to design the appeals process and set out such things as the way in which appeals are made, how they are concluded and the timescales for making them.

Amendment 1134 would give considerable comfort to communities, which can often feel that although their views are listened to they are then dismissed, for reasons that are unclear. It is important that we give such assurances to communities. If it was possible for participation requests to be dismissed without a right to appeal, that would send out the wrong message. By agreeing to the amendment we would strengthen the bill, so I ask the committee and the minister to support it.

I move amendment 1134.

Marco Biagi: I thank the member for lodging the amendment. The issue has been a subject of discussion and debate in the past, and I know that at stage 1 the committee heard calls for appeal procedures for decisions on participation requests. The committee decided not to recommend such procedures in its stage 1 report. I was not privy to the discussions on that report, so I do not know why the committee reached that decision, but there are good reasons for that approach.

Participation requests are a new mechanism that is intended to support community groups to come forward proactively with ideas. We are putting that in statute, and public authorities will have a duty to set up a process to listen to those ideas. At section 19(5), public authorities must agree to a request to participate

"unless there are reasonable grounds for refusing it."

John Wilson: The definition of the phrase "reasonable grounds" can be used by lawyers to make lots of money. If a local authority said that it had reasonable grounds not to grant a participation request, who would be the arbiter who would decide whether that decision was reasonable?

10:45

Marco Biagi: The amendment has been useful in proactively throwing up the issue that that sits in the bill without broad guidance. As a result of amendments that have already been agreed to, we now have a power to make guidance in relation to participation requests and I envisage doing that to exemplify what reasonable requests are. We envisage fairly limited grounds for not granting a request—for example, if the body making the request is not an eligible body, or if the request would not lead to a service provided on behalf of the public service authority. Guidance underpinned by statute would help to clarify the situation and would mean that the matter would not go to judicial review, which is the current backstop and the ultimate course of appeal in the event of such a law being broken.

The problem that I have with any appeal mechanism—the difficulty that it poses—is that what we are talking about is different from asset transfer, in that asset transfer requires the movement of something physical whereas this is about something that is intangible; it is about dialogue, communicating and getting a place at the table. Any community group that went to an appeal to get to sit down and have a discussion with a public authority could not expect that to happen in a positive way, and I do not think that that would be a route to creating the kind of dialogue that we want.

Participation requests exist to make it absolutely clear to all public service authorities that they should be involving community groups that can express an interest and ideas about how to improve local outcomes. If we can do that only at the point of a ministerial appeal, the hope of fostering that relationship, changing the mindset and effecting a culture change is gone. You can imagine the situation as two groups walk tensely into a room, do not engage in any conversation, sit down, go through the motions and leave. I think that an appeal process would cause those community groups that were unhappy about having to use the process to have unnecessarily sour relationships. We cannot legislate to make people talk to each other—the bill is the closest thing that we have to that.

In addition, if we do not have a provision in local authorities for local authority review, which other amendments set out, any issue would go straight to ministers. That would not just annoy the local authority; it would cause wider issues for relationships and internal decision making.

John Wilson: Minister, we already do that in the planning process. We have a process for appeals against planning decisions that are made by local authorities, and the local authorities have the right to take matters to the Scottish ministers. I understand what you are saying about the need to get this right, but we must ensure that public bodies fully understand the intention of the Government, and the Parliament, to widen public participation as much as possible.

You mentioned judicial review. No community group would go to judicial review unless it had the financial resources to do that. To be honest, a ministerial appeal is cheaper than pursuing a judicial appeal or going to the Court of Session. Many community groups would tell you that the cost of taking planning decisions to judicial review is beyond their means. We want to ensure that groups are not penalised for not being financially able to go to judicial appeal.

Marco Biagi: In planning, there is a concrete—pardon the pun—physical result: a building either gets built or does not get built. In asset transfers, something changes hands. However, this is about dialogue, and dialogue that is introduced at the point of an appeal will not be positive and constructive. The bill is an attempt to create a culture change as broadly as we can. We want to ensure that any community group can point to a section in an act that says that it has the right to sit down at the table with a decision-making body, put its suggestions forward and be listened to. It is about a right to be listened to.

If an appeals process were to be introduced, that would simply result in the possibility that such listening would be perfunctory and not in keeping

with the spirit of the bill. I would love it if there were a way to legislate to make public service bodies change the mindset with which they engage, so that we need only sign a bill into law and everybody would enter discussions in complete good faith. I do not believe that that can be done through legislation, but the bill makes absolutely clear the right that is there, without—I hope—facilitating the bad feeling, tension and resentment that getting there only by an appeal might provoke.

I understand that there will be community groups that will be disappointed and may want to appeal, but I do not see the material benefit to them of continuing a discussion that has been soured. As I said, the Government intends to introduce a new part to the bill that will be strong on participative powers. That will come at the end, and will perhaps offer an avenue for us to make even clearer to public service authorities that they should be as positive, whole-hearted and enthusiastic as possible about the process.

The Scottish Government is extending that agenda through our dialogue with those bodies; through the ministerial powers of the bully pulpit with those that report to us; and, more positively, through powers of dialogue in partnership with local authorities that have been verbally supportive of the principles behind the provisions in the bill.

I would hope that an appeals process would not be necessary. It would, if it were introduced, be counter-productive, and I ask Alex Rowley to withdraw amendment 1134.

Alex Rowley: Amendment 1134 is important if the bill is to have any teeth. The bill has come about in many senses because there is a view that legislation is needed to empower communities. The minister argues that this element of the bill is about a culture change and about talking, but a participation request is about more than dialogue. Local authorities and community groups may go to the trouble of working up participation requests, which in many cases will involve a significant piece of work if they wish the request to succeed, only to hear at the end the response, "Well, that was great—we had a dialogue with you. Thanks, but no thanks."

John Wilson: Does Alex Rowley agree or disagree—it is up to him—that the amendment may actually encourage local authorities to be more open to dialogue, because they would know full well that if they were not, the communities could use the appeals process to pursue any grievances regarding the decision that is made by the local authority or public body?

Alex Rowley: Mr Wilson is absolutely correct on that. I have talked to people in various public organisations about the bill in general and about participation requests in particular, which are a significant element of the bill. The general response from those people has been, "Yeah, but we don't have to agree to the request." They are right when they say that they do not have to agree to a request, but if that is their view, I am not sure that, without some kind of appeals process in place, community organisations and groups would have the confidence that they are getting from the bill what it says on the tin. I strongly believe that.

Marco Biagi: I can easily visualise situations in which people would say, "Well, we do not have to agree to it." What they are agreeing to do is permit a body to participate in an outcome improvement process. If a body were forced to agree to a request, the community body in question would be sitting down with people who were completely uninterested in them being there. That would waste a considerable amount of time and generate greater ill feeling. It is a legitimate problem to identify, but I do not believe that the amendment is the solution to it.

Alex Rowley: I would respond using Mr Wilson's point. If we have a local outcome improvement process that is robust and fair from the beginning to the end, the likelihood of major appeals would be lessened by the very fact that an appeals process exists. That is why I have been careful to say that the amendment would leave it to Scottish ministers to design the appeals process. I assume that they would do so in consultation with public bodies and organisations.

I press amendment 1134, because I think that it is important in giving people confidence that we are serious about the participation request process in the first place. I am happy to work with the minister to strengthen the amendment as we proceed to stage 3, but I think that it is crucial that we get it on the face of the bill.

The Convener: The question is, that amendment 1134 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Wilson, John (Central Scotland) (Ind)

Against

Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

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

Amendment 1134 agreed to.

Section 25—Reporting

Amendments 1135 and 1136 not moved.

The Convener: Amendment 1137, in the name of Alex Rowley, is in a group on its own.

Alex Rowley: Section 25 requires that a public service authority must publish a report summarising the outcomes of the improvement process,

"describing how and to what extent ... the community participation body ... influenced the process and the outcomes,"

and that the authority must

"keep the community participation body ... informed about ... changes in the ... process".

Amendment 1137 would require the public service authority, in preparing a report on the outcome improvement process, to seek the views of those bodies that made a participation request on how the process was conducted—and, more important, on whether it led to local improvements.

The amendment would be the final piece in ensuring that the process is as open and transparent as possible and that the views of communities are reflected in the final report. That is particularly important, because public service authorities need to be able to take communities with them in improving local outcomes. That is the Government's stated view. Failure to do that would mean that progress would stall and improvements, in my view, would not be made. Amendment 1137 is about improving the bill and I hope that the committee and the minister will consider supporting it.

I move amendment 1137.

Marco Biagi: It seems quite reasonable that, when preparing a report on the outcome improvement process, the public service authority should seek the views of the community participation bodies that were involved in that process. I urge committee members to support the amendment.

Alex Rowley: I am grateful to the minister for that support. I press amendment 1137.

Amendment 1137 agreed to.

Section 25, as amended, agreed to.

After section 25

Amendment 1073 moved—[Marco Biagi].

Amendments 1073A, 1073B and 1073C not moved.

Amendment 1073 agreed to.

Amendment 1074 moved—[Marco Biagi]—and agreed to.

Section 26—Interpretation of Part 3

Amendment 1138 not moved.

11:00

The Convener: Amendment 1139, in the name of Cameron Buchanan, was debated with amendment 1114.

Cameron Buchanan: Like amendment 1116, it is to remove the words "equal opportunities", which I wish to do because I think that that is too descriptive.

Amendment 1139 moved—[Cameron Buchanan].

The Convener: The question is, that amendment 1139 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
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 1139 disagreed to.

Amendment 1140 not moved.

Section 26 agreed to.

Section 50 agreed to.

Section 51—Meaning of "relevant authority"

Amendment 1141 not moved.

Section 51 agreed to.

Schedule 3 agreed to.

Section 52—Asset transfer requests

The Convener: Amendment 1142, in the name of Tavish Scott, is grouped with amendments 1143, 1144, 1148, 1150, 1153, 1155 and 1156.

Tavish Scott: I want to make a very simple case. Amendment 1142 is based on ensuring that an asset transfer request can be made in a case in which a community group wants to run a local service but there is no land involved, which asset transfer requests currently have to relate to. The other amendments are, as I understand it, consequential and give effect to that policy request.

It is important to note that the amendment enables an organisation to request the transfer of

a specific service but not to require it. It empowers local community organisations by creating the circumstances in which it would be possible for them to take control of a service affecting their area.

I can give a practical example. There used to be a very good laundry on the island I live on, which was predominantly used by old folk but—as run by a great lady, the late Sheila Henderson—was so successful that working folk and lots of other people ended up using it. It was run under the auspices of the local council, and at a certain point the council decided to close it, for reasons that were understandable in many ways. However, had this kind of provision existed—although the minister may have better ideas as to how to do this—I do not think that there is any doubt that the local community would have said, "Look, this is a service that we value, and it serves a wider purpose than the original intention, so let us see if there is a way in which we can maintain and, indeed, enhance it."

What the amendment seeks to do is simply to create the potential for a community group—in that case, it would have had to have been some grouping of folk who came together on the island—to take over a service. I appreciate that the minister might have a point about assets, because I suppose that they could have taken over the washing machines, which might have been another way to achieve the same effect. However, it seems to me that that is a legitimate objective, which I hope will be consistent with the measures that he is seeking to introduce to Parliament today.

I move amendment 1142.

Marco Biagi: That example is hauntingly familiar. I have a constituency case regarding the future of a laundry that a group of my constituents wish to continue, so I can relate to Tavish Scott's experience.

We are slightly in danger of confusing the asset transfer and participation request provisions. The case that Tavish Scott described would be open to an asset transfer of the physical facility to a community group. The bill, unamended, already provides for that.

We also have the participation request mechanism, which would allow a community body to propose to take on the delivery of a service that is more abstract. When we consulted on the proposals for the bill, we looked at the English example of the right to challenge, which allows a community to request that a service is put out to tender and allows a community body to bid for it. However, we found that the important thing—the thing of value—is for communities to be able to influence how services are designed. That has been backed up by a recent report on the right to challenge.

Some community groups feel that they could take on delivery of a service themselves, but not every community wants to do that or has the capacity to do that straight away. Participation requests allow each community body to bring forward what they want, and to discuss with the service provider how they feel the outcomes of the service—which in the case of the laundry would be dealing with economic disadvantage and providing a facility that could not be provided elsewhere—can be improved and how the community can best contribute to those improvements.

John Wilson: I understand the intention behind Tavish Scott's amendment. He used the example of the laundry, and we can see the laundry's tangible assets: the building and the machines in it. However, a community group might make a request regarding childcare, which a public body might provide in a community facility. The community group may not want an asset transfer of that facility. Another example would be elderly care in the community. Minister, what is your view of community group requests to deliver services that do not involve tangible assets?

Marco Biagi: In such a situation, a participation request would be the appropriate means. We are not talking about the transfer of an asset; we are talking about how a community group can participate in—this is the jargon and gobbledegook that the committee pointed to before—the outcome improvement process.

I forget the exact line in the national outcomes, but the improvement is about young people living fulfilling lives and having the best start. The proposal that John Wilson talks about would be made under all the mechanisms that are set out for participation requests. The ability of the community to contribute to the service would be considered and there would be ample opportunity. I want to see that happen, and we would share that objective.

Community-controlled childcare bodies have a lot to give. I have met a community centre that has a childcare aspect, and I am scheduling visits to community-controlled childcare organisations in the coming months. It is a really exciting area in which there can be a real—I hate to use this word—synergy of the aims of community empowerment and better childcare. Everybody can win.

In the consultation we did not hear any dissatisfaction with the mechanism of participation requests for such situations. If there was dissatisfaction and issues were raised, we would look at them again.

Let us look at the division: there are participation requests, through which communities can participate in on-going processes, and there are asset transfer requests for material things—principally land. We should not confuse those two things. If there were to be some kind of change, it might be better to make it to participation requests, but I think that participation requests already have ample scope.

There has not been any consideration of this specific proposal in consultation with stakeholders, so we do not know stakeholders' views or the wrinkles that might be found if we were to blur the distinction between asset transfer and participation requests.

I ask that Tavish Scott, having made the point, withdraws the amendment. I suggest that we perhaps meet to explore working examples of how participation requests could be used to achieve the aim that he has set out. If further amendments are needed, I would be happy to lodge them following that dialogue.

The Convener: I invite Tavish Scott to wind up and to press or withdraw his amendment.

Tavish Scott: The minister makes an eminently fair point. Mr Wilson's example of childcare seemed to be quite relevant. My children used to go to the local public hall in Bressay for childcare, so I can think of exactly the scenario that he painted. I take the minister's assurance in how he responded to the issue, and I will take him up on his offer of a meeting.

I mention in passing Alex Rowley's earlier amendment on the right of appeal. Although the minister was not hugely in favour, it strikes me that it would strengthen exactly what we have just been discussing and that, in the context of the bill overall, it may absolutely provide for the objective that I suspect we all share.

On that basis, I would be very happy to withdraw the amendment.

Amendment 1142, by agreement, withdrawn.

Amendments 1143 and 1144 not moved.

Section 52 agreed to.

Section 53—Community transfer bodies that may request transfer of ownership of land

The Convener: Amendment 1075, in the name of the minister, is grouped with amendment 1083.

Marco Biagi: Amendments 1075 and 1083 together add community benefit societies to the types of community body that can make an asset transfer request for ownership under the bill.

Stakeholders called for that addition throughout the lead-up to the bill, and it has always been our intention to include community benefit societies. Members will note that amendment 1083 refers to the Co-operative and Community Benefit Societies Act 2014. The act had not passed when this bill was introduced and there was no point in referring to old legislation when the reference would need to be amended immediately. We can now add community benefit societies to the bill with an up-to-date reference to an act that is now in force.

I hope that the committee will support the amendments. I move amendment 1075.

Amendment 1075 agreed to.

Section 53, as amended, agreed to.

Section 54—Asset transfer requests: regulations

The Convener: Amendment 1145, in the name of Alex Rowley, is in a group on its own.

Alex Rowley: Amendment 1145 is taken from the committee report recommendation:

"relevant authorities will be required to provide to community groups"

relevant information

"before they decide to request the transfer of an asset."

Examples of maintenance costs and energy efficiency have been provided in that regard.

The committee received a number of suggestions of what respondents considered vital to inform a community's assessment of whether to obtain an asset. The amendment seeks to ensure that the following information is provided to community groups: the value of the asset, where appropriate; the rental value, where appropriate; the yearly running costs; the details of impending repairs or maintenance costs; and the energy efficiency of the building.

I would hope that the minister can take on board the principle that I am trying to establish, because that is important for community groups. Only yesterday, I met local groups. I tried to encourage them to go after a building in Kelty that will become surplus to requirement to Fife Council. The council has disposed of a number of buildings to the community. What the amendment calls for seems to me to be common sense, because it would be difficult for communities to make such decisions without that level of information.

I seek the minister's advice on whether my amendment is the best way to achieve that. However, as I said, in lodging the amendment, I am trying to achieve the principle.

I move amendment 1145.

11:15

John Wilson: I support the intention of amendment 1145. I am the chair of a local community organisation that has taken on the lease of a community centre. We attempted to get information from the local authority on the building's state of repair, only to find out six months after we had taken on the building that there were three major leaks in the main hall, which has meant that we have had to shut down services that we deliver.

It is important that when community asset transfers take place—especially when they relate to land or buildings—communities are given full details of any information that is held by the local authority to ensure that they are fully versed in the issues that relate to the building or land that they might acquire. That is why I intend to support amendment 1145.

Marco Biagi: I thank Alex Rowley for highlighting the issue. I give a cast-iron guarantee that it is our intention to use the power in the bill to make regulations on all such issues and more. We want to do that in partnership with the organisations that are involved in asset transfers so that we capture everything and not just the pieces of information that are set out in amendment 1145.

I have two issues with putting specific requirements on the information that would have to be provided in primary legislation. One is that we would have to get them right not quite for all time but with a very high threshold of specificity between now and the passage of the bill, because it would be very hard to change them after that.

Amendment 1145 specifies that information would have to be provided on running costs, which might be very different if a community group took over a facility, because the public authority might have had access to different tariffs. Similarly, sale price or market value can be split in many different ways by accountants.

I would not be averse in principle to putting something on the issue in primary legislation, but the question is whether by the end of the bill's consideration we could get to a point at which we could be absolutely certain that whatever requirements we put into the bill would be robust and would resist any feet dragging by organisations or creative pathways around the provisions. It would be better to deal with the issue by statutory instrument, which could be updated relatively quickly to address any such circumstances.

I give a cast-iron guarantee that all the issues that Mr Rowley has included in amendment 1145—and probably more, in the light of what stakeholders say—will be dealt with in the statutory instrument that we bring forward. We would be able to keep that up to date on an on-going basis to take account of any experiences that we had with its implementation along the way.

The Convener: I ask Mr Rowley to wind up and to press or withdraw amendment 1145.

Alex Rowley: I am grateful to John Wilson for the example that he gave, which highlights what the issues are. I am also grateful to the minister for his assurance that the matter will be looked at and that a statutory instrument will be brought forward under the bill. Therefore, I am happy to seek to withdraw amendment 1145.

Amendment 1145, by agreement, withdrawn.

Section 54 agreed to.

Section 55—Asset transfer requests: decisions

Amendment 1146 moved—[Cameron Buchanan].

The Convener: The question is, that amendment 1146 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
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 1146 disagreed to.

Amendment 1076 moved—[Marco Biagi]—and agreed to.

Amendments 1147 to 1149 not moved.

Section 55, as amended, agreed to.

Section 56—Agreement to asset transfer request

Amendment 1150 not moved.

The Convener: At this point, we will have a suspension.

11:20

Meeting suspended.

11:32

On resuming—

The Convener: Amendment 1151, in the name of Cameron Buchanan, is grouped with amendment 1152.

Cameron Buchanan: Amendment 1151 would make a wording change and remove the provision that failure to conclude negotiations does not count as a refusal for the purposes of an appeal—in other words, it would enable a failure to conclude contracts to be brought to appeal. A failure to conclude contracts should not negate the initial agreement entirely. Powers to extend negotiation should be used in addition to that scenario, but it should not be excluded from appeals. If a body cannot agree to a deal because the terms are unacceptable, it should be able to appeal the decision and restart contractual negotiations.

I move amendment 1151.

Marco Biagi: The effect of amendments 1151 and 1152 would be that a community transfer body could make an appeal under section 58 on the basis that no contract had been concluded within the required period after an offer was made in the event of an asset transfer. We did not originally propose an appeal in that area, because negotiations for transfer of a property can fail for many reasons, and there is not necessarily any fault. For example, a community transfer body may be unable to secure funding, or there may be other changes of circumstances.

There are already some safeguards for a community after an asset transfer request has been agreed. First, an appeal can look at the terms and conditions of the contract and, secondly, a community body can apply to the Scottish ministers to extend the period of time for concluding a contract if an extension cannot be agreed with the relevant authority. During that process, the asset cannot be disposed of.

However, I recognise the concerns of communities that relevant authorities could—it might be envisaged—use the negotiation process as a way of backing out of a transfer that has been agreed to. They could also deliberately—I take care to highlight that I am not making an accusation but simply setting out a possibility in law—delay matters until the community is exhausted or its funding has lapsed. I cannot imagine that an appeal on those grounds would be used often, but it may be productive to fill that space with a useful backstop.

We will need to look at the detail, and we may want to tweak the provisions at stage 3. However, I am happy to endorse the principle of ensuring that the failure to conclude a contract could be subject to appeal, and I urge the committee to accept the amendments.

Amendment 1151 agreed to.

Amendment 1152 moved—[Cameron Buchanan]—and agreed to.

Amendment 1153 not moved.

Section 56, as amended, agreed to.

Section 57 agreed to.

Section 58—Appeals

The Convener: Amendment 1077, in the name of the minister, is grouped with amendments 1154, 1088, 1089, 1078, 1090 and 1079.

Marco Biagi: Group 14 is substantial, and I will start with the amendments in my name. The purpose of amendment 1077 is to enable ministers to specify whether asset transfer decisions that are made by a particular relevant authority should be subject to appeal to ministers or to review by a local authority. The default position in the bill is that a community transfer body can appeal to the Scottish ministers over an asset transfer decision unless the request was made to a local authority, in which case they can request a review by the local authority. There are other amendments that will adjust that, which we will come to later.

Section 51(3) allows ministers to designate additional bodies as relevant authorities. One class of bodies that we are considering adding comprises arm's-length external organisations, where those are wholly owned by one or more relevant authorities, and by local authorities in particular. It seems appropriate that their decisions should come under the umbrella of the local authority appeals process rather than the ministerial appeals process that is set out for public services in the bill as drafted.

The amendment to section 58 will give ministers a power to specify relevant authorities whose decisions are not subject to ministerial appeal. Amendment 1079 will add a new section after section 59, and will apply the local authority review provisions of section 59 to any relevant authority that is specified under amendment 1077. As I said, the local authority review provisions themselves may change as a result of other amendments. Amendment 1079 will also enable ministers to make provision for them to apply with modifications as necessary.

Finally, ministers may specify to which local authority an application for review should be made, either individually or by setting out factors

determining how that should be decided. For example, it might be determined by the location of the land to which the request relates.

Amendment 1078 will introduce a mechanism for review of decisions on asset transfer requests that are made to the Scottish ministers. The bill already includes provision for review or appeal of decisions where requests are made to local authorities or other public bodies, and that mechanism will fill in the last part of that jigsaw.

The procedure that is set out is similar to those for other organisations. A community transfer body can request a review if its request is refused; if the decision specifies terms and conditions for the transfer that are significantly different from those that the community body proposed; or if no decision is made within the required period. The review can result in the decision being confirmed, overturned or amended, which would include amendments to the terms and conditions, and the Scottish ministers can make regulations about the procedure to be followed and so on.

The key difference with regard to the reviewing of ministerial decisions is that ministers will be able to appoint persons in connection with the review and must have regard to any report that those persons make in deciding the review's outcome. That approach will allow us to establish a panel of independent advisers to consider these reviews so that we do not just have ministers reviewing their own decisions and that there is a degree of external scrutiny.

Cameron Buchanan: Does this amendment not give too much power to ministers?

Marco Biagi: It relates to reviews of decisions that, under the bill, will already have been taken by ministers. Where a matter goes to ministers, the appeals mechanism will also include a review by an independent advisory body instead of an appeal against a ministerial decision being a case of simply asking the minister to look at the matter again. This amendment creates an additional safeguard with regard to the ministerial appeal mechanism that is already in the bill.

I can see that, in lodging amendment 1154, Cameron Buchanan perhaps intends to make the appeal process more predictable by ensuring that only the parts of the decision to which the appeal relates can be reversed or varied. However, I think that that could have unintended consequences. For a start, it would restrict Scottish ministers' ability to alter other parts of the decision in consequence of their decision on the issue to which the appeal directly relates. If we were unable to adapt to consequential decisions, there might be restrictions on what an appeal could find.

The approach that is taken in amendment 1154 would also limit ministers' ability to look at the decision in the round. The current wording follows a standard approach to enable the appeal to be dealt with in a suitable manner and to allow ministers dealing with an appeal to consider matters that had been raised during the course of the appeal as well as matters that had been raised at the start of the process. I therefore ask the member not to move amendment 1154 when the time comes.

I will leave it to Michael Russell to describe the intention behind amendments 1088 to 1090, but essentially they provide for a right of appeal to Scottish ministers in relation to decisions on local authority asset transfers. This is an interesting set of amendments. I have some sympathy with Mr Russell's aims and experiences, and I look forward to hearing the case that he makes and the views of other committee members.

I move amendment 1077.

Cameron Buchanan: I think that the approach outlined by the minister is going to give too much power to ministers. They should not be able to assess any part of the decision, whether or not it is part of the appeal. If that were to be the case, they would be able to decide the whole outcome, and I think that ministers should be able to review only those parts of the decision that are included in the appeal. As I have said—and in spite of the minister's comments—I am concerned that the power for ministers is too wide.

Michael Russell (Argyll and Bute) (SNP): I have two reasons for lodging amendments 1088 to 1090, the first of which is particular to my constituency. It is not the launderette experience that Mr Scott related, but a wider experience that concerns Castle Toward. My second reason relates to the Rural Affairs, Climate Change and Environment Committee's survey of local authorities' attitude to the disposal of assets.

On the case of Castle Toward, which as I have said is in my constituency, it is fair to say that those who wished to take over that asset, who had a very clear business plan for it, who had a key core tenant for it and who would have created between 90 and 100 jobs, were for a long time frustrated by a local authority that had no intention of selling it. Indeed, were the review process to have been in place, there would have been no faith in it in these circumstances, because the relationship of trust between the community and the local authority had completely broken down. The sense of frustration that was felt and which still exists in the south Cowal area and across the community at the failure of the sale of Castle Toward persuades me that, for exceptional circumstances in which the process has been extraordinarily difficult and as a result of which there is no trust in the local authority review process, the community should have a further

opportunity to have its case considered. Such an approach parallels to some extent the appeals process for rural school closures.

The wider issue of the Rural Affairs, Climate Change and Environment Committee's survey should concern the entire committee—and to members who have not accessed that material, I should say that I think that they might find it useful. It appears that most local authorities, while expressing good will towards the asset transfer process, are still somewhat confused about what it means. They are still influenced by a view of best consideration or best value that, of course, does not apply in all circumstances to the transfer of community assets and which can be set aside.

There also appears to be a very corporate view of what local authorities regard as their estate. If we are to see a real process of asset transfer in Scotland, it is extremely important that that corporate view of assets belonging to local authorities as opposed to being held in trust for communities and citizens by local authorities is changed. The appeal process, where it exists—it will not exist in every local authority—will undoubtedly give the opportunity for that to be overturned.

11:45

Finally, I note that COSLA has views on the amendments. It has written to me and other members to give those views. Indeed, it regards one of the amendments as offensive to local government. I invite COSLA to speak to the leader of Argyll and Bute Council, whose actions through his local authority have been offensive to the community of south Cowal, and to consider that the amendments will at least put rest to that and will also enable real community empowerment in the transfer of assets.

John Wilson: Mike Russell has given a good account of why we need to consider his amendments.

I have seen on many occasions how local authorities have effectively stopped communities pursuing the takeover of community assets not necessarily by deciding not to allow the transfer to take place but by placing cost and other burdens on the communities.

We need to get the message over to public bodies that a community asset transfer does not involve just a monetary value and that economic and social values must be included in the decisions that are being made. As Mr Russell indicated, the plan for Castle Toward and the jobs that there would be clearly showed that there would be real economic gain for the community in that area. I know some of the history of Castle Toward and about some of the jobs that were lost during 2005-06 through redundancies and the plans that were made.

What I have said applies to many communities throughout Scotland that have a vision to take forward issues and deliver jobs, security and other services in their communities. That has to be taken into account, because best value is still confusing many officials in local authorities throughout Scotland. They are confused about what best value is. We have to send the clear message out to those local authority officials and public bodies that best value should include the long-term return that can be made within communities when they take on resources and facilities. Best value is not about a monetary figure; it is about what can and could be delivered by communities for their benefit.

I am minded to support Mike Russell's amendments.

Willie Coffey: I hoped to return to the issue in relation to ALEOs that the minister introduced. Are ALEOs currently outwith the reach and scope of community requests for asset transfer?

Marco Biagi: ALEOs are not prescribed on the face of the bill. There is a power to allow the Scottish ministers to designate additional bodies that will come within the scope of the bill, and it is my firm intention to ensure that ALEOs are included.

It is appropriate that, where something is wholly owned by and reports back to a local authority, it should be subject to the same strictures that the authority is. It may already be the case that, where there is a service level agreement, ALEOs are covered because of the connection that that makes with the local authority, but we intend to return to the area in regulations to designate ALEOs appropriately. That may have to be done on a one-by-one basis, as a category or as a definition, but we are working on that, because we want to make it very clear that, whether an asset is held directly by a public body or local authority or is held through an ALEO, it should be subject to the same provisions as the rest of that organisation's estate. The section in question will ensure that there is consideration of that for appeals, so that if it is a local authority ALEO, it will qualify for the local authority appeals route. It is important to future proof it so that, once we get ALEOs in, which I assure the member will not take a long time in parliamentary terms, their processes will be properly thought through. My intervention is over.

Willie Coffey: Thank you for that intervention.

Alex Rowley: I have some sympathy with Mike Russell's arguments, particularly in relation to achieving best value. I also note what COSLA says, although it seems a bit defensive. There are

local authorities out there that recognise the wider benefits of community transfer. I had an example in Fife a few years ago. I was supportive of a former fire station being transferred and turned into an arts centre, but without the political drive behind that, the officials would not have gone for it. There had to be a political drive to say that there was a wider benefit to the community. I have experienced that from the point of view of having to drive it politically, so I have some sympathy with what is proposed.

I do not know whether the minister will pick up on the points that Mike Russell made about best value and the ability to look more broadly than simply at the financial gain or what the local authority thinks it might lose.

The Convener: I ask the minister to wind up and press or withdraw amendment 1077.

Marco Biagi: It has been a useful discussion. It is never easy to set up appeals mechanisms or to deal with areas where there are interactions between local and national Government. Against what I asked the committee to do, there is now an appeal to ministers on participation requests, which was introduced by Mr Rowley. I can see a parallel with appeals to ministers on asset transfers. It is appropriate that the focus of any review of local authority decisions is the local authority itself. We have structures in the bill that will create the two-stage process, and Mr Russell's amendments will ensure that those are political decisions rather than delegated ones, but there is no doubt that, in a very few exceptional cases, giving community bodies a route of appeal to Scottish ministers could be beneficial because it would strengthen part of the bill's focus on openness, transparency and consistency. It may well be a proportionate measure.

Cameron Buchanan: I also have sympathy with Mr Russell. In Edinburgh, we too have had places where nobody really wants to transfer assets. The local authority does not want to do it for various reasons, which are rather spurious. Basically, it wants to hold on to them.

However, our concern is that there are not too many appeals. Appeals can go on and on. I am not sure how we would do it, but there should be a limit on the number of appeals. However, there must be an appeal.

Marco Biagi: A finite number of appeals is set out and I suppose that, for particularly enthusiastic community groups, there is always judicial review on top of that. I know of one example in my constituency where that happened, all the appeal mechanisms having been used, but I probably cannot say anything more about that. There is a finite set or a finite route, and my amendments add one more at a national level. As I said, it is a proportionate response.

I press amendment 1077.

Amendment 1077 agreed to.

Amendment 1154 moved—[Cameron Buchanan.]

The Convener: The question is, that amendment 1154 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
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 1154 disagreed to.

The Convener: Amendments 1155 and 1156 are in the name of Tavish Scott, who is no longer here. Does anyone else want to move them?

Members: No.

Amendments 1155 and 1156 not moved.

Section 58, as amended, agreed to.

Section 59—Review by local authority

Amendments 1088 and 1089 moved—[Michael Russell]—and agreed to.

Section 59, as amended, agreed to.

After section 59

Amendment 1078 moved—[Marco Biagi]—and agreed to.

Amendment 1090 moved—[Michael Russell]—and agreed to.

Amendment 1079 moved—[Marco Biagi]—and agreed to.

Section 60—Disapplication of restrictions in lease of land to relevant authority

The Convener: Amendment 1157, in the name of Cameron Buchanan, is in a group on its own.

Cameron Buchanan: Amendment 1157 would remove section 60, which allows conditions in leases between multiple relevant authorities that restrict the subletting to be overridden if an asset transfer is made. That could become a threat to

contracts. It is not for the bill to nullify contracts. It would be much fairer and more practical to remove that bar and allow contracts to take account of the bill's provisions—if the bill comes into effect.

I move amendment 1157.

Marco Biagi: Section 60 is a helpful provision for community bodies that seek to lease or otherwise use land or premises. It applies where both the owner and lessee of the land are relevant authorities under the bill. It disapplies any restrictions in the lease that would prevent the lessee from subletting or sharing occupation of the land. That means that the community transfer body can negotiate directly with the authority that they see occupying the premises and does not have to worry about any constraints on that authority as a result of its lease.

We do not want a community body's aspirations to be thwarted simply because of a head lease that prevents subletting or sharing occupancy of land. There is protection in place for the person leasing the land to the authority in section 60(4). The authority remains liable for all matters under the lease and cannot assign it. I do not see a value for community bodies in removing the flexibility that section 60 provides to them. I ask Mr Buchanan to withdraw amendment 1157.

Cameron Buchanan: In spite of what the minister said, I will press amendment 1157.

The Convener: The question is, that amendment 1157 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
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 1157 disagreed to.

Section 60 agreed to.

Section 61—Power to decline certain asset transfer requests

Amendment 1158 moved—[Cameron Buchanan].

The Convener: The question is, that amendment 1158 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
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 1158 disagreed to.

Amendment 1159 moved—[Cameron Buchanan].

The Convener: The question is, that amendment 1159 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
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 1159 disagreed to.

12:00

Amendment 1160 moved—[Cameron Buchanan].

The Convener: The question is, that amendment 1160 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
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 1160 disagreed to.

Section 61 agreed to.

After section 61

The Convener: Amendment 1080, in the name of the minister, is in a group on its own.

Marco Biagi: I am pleased to introduce amendment 1080, which will require all relevant authorities to publish registers of the land that they own or lease. That will help community bodies to know what properties might be available for asset transfer so that they can identify those that are most suitable for their needs.

Publishing the register should not be an onerous task for relevant authorities. They should have property management systems that tell them what they own—I will not refer to any current issues in Edinburgh.

John Wilson: It is not only Edinburgh that has a problem with what land a local authority owns, leases or holds in trust.

There are issues with what ownership rights the community might have if it applied for a transfer of land that was held in trust. I hope that, when the minister considers the matter, he will take on board all the land issues that might apply to a community asset transfer.

Marco Biagi: Indeed. In some ways, the amendment is parallel to the common good register provisions in the bill, in that it provides authority to list. We know that there are gaps in some places. The requirement is for local authorities to list what they own or lease

"to the best of"

their

"knowledge and belief".

The Government has made a commitment that all public bodies will complete registration of their titles within five years. That will improve our knowledge.

Ministers will be able to specify types of land that do not need to be included in the register. The legal definition of land is very wide, as it includes rights and interests in land as well as the land and buildings.

Local authorities' property registers might, for example, include ground rents for traffic lights and responsibility for retaining walls. Those might not necessarily be at the top of communities' asset transfer lists, although I would be interested to see an asset transfer request for a community group to operate a traffic light because it would be such a legal curiosity.

The power to exclude types of land will allow us to focus the register on the kinds of property that communities will want. We will consider all the complexities of land law in that context because this is about providing information for communities; information about access rights and underground cables can be provided when an inquiry is made. That is, perhaps, more suitable.

Loads of—I am getting away from ministerial language; it has been quite a morning. Many community groups have requested asset registers and I am happy to amend the bill to ensure that it makes provision for them.

I move amendment 1080.

The Convener: You have tempted fate, minister, because I know folks who are very interested in Belisha beacons.

Marco Biagi: I have had correspondence about a community takeover of a public toilet, so the sky is the limit.

Amendment 1080 agreed to.

Amendment 1081 moved—[Marco Biagi].

Amendments 1081A and 1081B not moved.

Amendment 1081 agreed to.

Amendment 1082 moved—[Marco Biagi]—and agreed to.

Section 62—Interpretation of Part 5

Amendment 1083 moved—[Marco Biagi]—and agreed to.

Amendment 1161 not moved.

Section 62, as amended, agreed to.

The Convener: That ends stage 2 consideration of the bill for today. All remaining amendments should be lodged with the clerks to the legislation team by 12 noon this Friday.

I thank everybody for their participation. We now move into private.

12:06

Meeting continued in private until 12:28.

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