



OFFICIAL REPORT
AITHISG OIFIGEIL

Citizen Participation and Public Petitions Committee

Wednesday 1 September 2021

Session 6



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Pàrlamaid na h-Alba

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CITIZEN PARTICIPATION AND PUBLIC PETITIONS COMMITTEE
2nd Meeting 2021, Session 6

CONVENER

*Jackson Carlaw (Eastwood) (Con)

DEPUTY CONVENER

*David Torrance (Kirkcaldy) (SNP)

COMMITTEE MEMBERS

*Bill Kidd (Glasgow Anniesland) (SNP)

*Paul Sweeney (Glasgow) (Lab)

*Tess White (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Oliver Mundell (Dumfriesshire) (Con)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Citizen Participation and Public Petitions Committee

Wednesday 1 September 2021

[The Convener opened the meeting at 10:01]

New Petitions

The Convener (Jackson Carlaw): Welcome to the second meeting in session 6 of the Citizen Participation and Public Petitions Committee. We are in Holyrood for the first committee meeting since the start of lockdown at which we will consider new petitions. I am joined by my colleagues David Torrance, Tess White and Bill Kidd. We are joined remotely by our colleague Paul Sweeney.

The only item on our agenda this morning is the consideration of new petitions. Obviously, there is something of a backlog of those, as many were received towards the end of the previous session and during the election. We therefore have a considerable number of new petitions to consider.

Natural Flood Prevention on Grouse Moors (PE1850)

The Convener: The first new petition is PE1850, which was lodged by Les Wallace. The petition calls on the Scottish Government to make the use of natural flood prevention methods a condition of obtaining a grouse moor licence. The Scottish Government submission highlights that it commissioned an independent group to look at the environmental impact of grouse moor management, which was prompted by a NatureScot report in May 2017 and was part of a package of measures that were aimed at tackling the on-going issue of wildlife crime.

The Scottish Environment Protection Agency's role in examining and mapping areas where natural flood management could be put to best use, in conjunction with responsible authorities, is highlighted as an area of importance in relation to the issues that are raised in the petition. The submission highlights that, following that analysis, plans include a total of 104 actions with a natural flood management element. The submission concludes that the Scottish Government does not believe that it would be appropriate to make the inclusion of natural flood management methods a condition of obtaining a grouse moor licence.

The Scottish Parliament information centre briefing refers to research that was commissioned by the Government and published in 2018 that

sets out that it is difficult to demonstrate the role or potential role of grouse moors in flood risk mitigation due to a lack of studies assessing those areas.

The petitioner's submission emphasises the importance of flood management from an economic, environmental and human perspective. The issues highlighted include loss of life, damage to homes and businesses, soil washing, chemical pollution and solid waste contamination in rivers.

In the light of all the information that we have received, do colleagues have any comments or suggestions for action?

David Torrance (Kirkcaldy) (SNP): In the light of the Scottish Government's response, SEPA's responsibilities for natural flood management and the lack of evidence, I would be happy to close the petition under rule 15.7 of the standing orders.

The Convener: Do colleagues agree with that proposal from David Torrance?

Members indicated agreement.

The Convener: Okay—that is what we will do.

Justice for the Public in the Legal System (PE1851)

The Convener: PE1851, which was lodged by Melanie Collins and William Tait, calls on the Scottish Government to urgently review and reform the Scottish legal system, including through an update of systems and practices to ensure that bodies, authorities and institutions are fit for purpose.

In its written submission, the Scottish Government outlines its on-going work on the reform of legal services regulation, the judicial register of interests, law reform, legal aid reform and mediation. In relation to legal services regulation, it highlights the independent review that it commissioned, which was chaired by Esther Robertson.

Although the review concluded that the current complaints system was not fit for purpose, the Scottish Government explains that it is seeking to build consensus, where possible, on the way forward prior to deciding on a course of action. Although progress has been disrupted by the impact of Brexit and the Covid-19 pandemic, the Scottish Government anticipates that it will be able to publish a consultation seeking views on a way forward during this session of Parliament.

The submission also highlights work to progress interim improvements to the complaints system ahead of wider reform. The consultation on those changes ended in February this year, and the Scottish Government is currently analysing the responses.

In their submission, the petitioners state that the issues in their petition are important and

“impact on all living in Scotland.”

Does anyone have any thoughts on the course of action that we might take?

David Torrance: Considering that the Scottish Government plans to lodge secondary legislation and given the work that the Criminal Justice Committee is already doing on a previous petition, we should close the petition under rule 15.7 of the standing orders. If the petitioners are not happy with the outcome, they could bring the petition back in a year’s time.

The Convener: Do members have any other thoughts? I am minded to close the petition, but is there any merit in writing again to the Scottish Government to get some further guidance on when in the session it might bring something forward? The session is quite a wide canvas at this stage; it has only just begun, so it could be at any time in the next five years. It would be interesting to know when the Government is thinking of lodging any secondary legislation. However, we could close the petition in any event, seek that information and advise the petitioners of it. Is that agreed?

Members indicated agreement.

Planning Protection for Battlefields (PE1852)

The Convener: The next petition is PE1852—I am tempted to pronounce that as the year 1852, as the petition relates to increased planning protection for Scottish battlefields, although I am not sure whether we had a battle in 1852. The petition was lodged by George Kempik on behalf of the group to stop development at Culloden. The petition calls on the Scottish Government to designate historic battlefields with a heritage status and to implement a stricter planning framework to protect them.

The submission from the Scottish Government states that current legislation, planning regulations, national policy and related guidance already set out the recognition and protection principles for battlefields. It explains that Historic Environment Scotland is responsible for designating nationally important battlefields and adding them to the register. Those battlefields are then given additional consideration in the planning system in terms of local development plans and individual planning applications.

The submission states that safeguards were strengthened in March 2019, when the Scottish Government

“issued a notification direction requiring authorities to alert us to new planning cases for non-householder

development that may affect any of our designated historic battlefields.”

Although the petitioner appreciates that there are already substantial measures in place, he is concerned about the persistent nature of developers. He doubts that the measures that are in place are sufficient to provide protection to such historic areas as the Scottish battlefields in the face of such persistence.

I am happy to hear comments from colleagues.

Bill Kidd (Glasgow Anniesland) (SNP): I very much understand the petitioner’s argument. I visited Culloden a few weeks ago, and I am aware that a lot of people in the area are talking about the persistent calls for development from developers. However, we cannot prevent people from lodging development applications. I do not think that we can take the petition any further, given that the Scottish Government has already said where it stands in relation to not allowing such developments.

Tess White (North East Scotland) (Con): The only point that I want to make is that there are repeated planning applications. We have the legislation, so it might be worth looking into why people keep coming back with repeated applications?

Paul Sweeney (Glasgow) (Lab): In the same way as a listed building is protected, there are sufficient provisions in a discretionary planning system for local authorities to say that development on designated battlefields would be suitable grounds for rejection of a planning application.

The Convener: I am inclined to agree. Most of us, particularly those with constituencies with fringe boundaries to the green belt, will have had experience of developers making persistent applications, which are routinely declined, in the hope that, eventually, one of them will be successful. That can be quite onerous on local communities, which continually have to mount a fresh campaign. I am aware of certain developers who have a reputation for being persistent because they have found that to be a successful course of action, not only in different parts of Scotland but around the United Kingdom. I can, though, see the particular argument in relation to historical battlefields. There should not have to be a sustained effort to frustrate such applications.

I am minded to close the petition. However, I wonder whether, in closing it, we should write to the Scottish Government, seeking a response to the point about repeated and persistent applications that undermine the campaigns that have been run. I can see that it could become an exhausting commitment for people and that some applications might then make progress when that

was not anybody's desire or intention. I would be interested in seeing what the Scottish Government said about that. That seems to be the petitioner's essential point. The Government has made it clear that it has no plans to review the processes, but a comment about that aspect would be useful. Does that course of action sound reasonable?

Members indicated agreement.

Lifeline Ferry Service (Campbeltown to Ardrossan) (PE1853)

The Convener: I have quite a complicated note for the next petition. PE1853, which was lodged by Councillor Donald Kelly and Councillor Douglas Philand, calls on the Scottish Government to provide an all-year-round freight and passenger lifeline ferry service from Campbeltown to Ardrossan.

The Scottish Government's submission advises that the request to extend the ferry service

"was discussed with elected members from the Argyll & Bute Council and other stakeholders",

including, I presume, the petitioners. The Scottish Government states that

"it is not ... operationally possible to extend the current operating period of the Ardrossan-Campbeltown service as there are no available vessels."

The submission highlights that the Scottish Government remains

"committed to securing the two new ferries currently under construction, with the delivery of MV Glen Sannox expected in April-June 2022."

The Government suggests that, once the Glen Sannox is delivered, the potential for a year-round Ardrossan to Campbeltown service could be explored, subject to a robust business case being made and the availability of funding.

The petitioners have discussed the possibility of potential vessels with well-known ferry consultants, who have advised that vessels that are currently available outwith the CalMac fleet could be procured to meet the requirements of providing a lifeline service.

We have received a late submission from Donald Cameron MSP, who was hoping to be able to attend the meeting for consideration of the petition. Members have been provided with a copy of that submission. The submission states that the petitioners have identified the need for alternative forms of transport from the Kintyre peninsula to the central belt. Donald Cameron addresses the suggestions in the Scottish Government's submission regarding options such as flying from Campbeltown to Glasgow and using ferry services at Dunoon and Hunters Quay. He offers that those

alternatives are not suitable on the basis of above average cost or notable travel time.

10:15

The submission continues by raising concerns about possible links with

"the anticipated depopulation of the Kintyre area"

and suggesting that

"the creation of a permanent ferry service"

could contribute to

"encouraging people to remain in the area".

Donald Cameron states that he supports further exploration of potential vessels that meet the requirements of a year-round service by Transport Scotland and the Scottish Government. He concludes by stating that the inability of Transport Scotland and CalMac to offer an all-year-round ferry service for one of the major towns of Argyll and Bute is simply not good enough.

This is obviously an important petition. Would members like to offer any observations?

David Torrance: I think that we should write to the Scottish Government, asking whether it is possible for a non-CalMac fleet vessel to provide an all-year-round service from Campbeltown to Ardrossan.

The Convener: That seems reasonable. We might also ask the Government to be more expansive on the process for evaluating a subsequent business case for the route in the event that, as the submission says, it becomes possible at a later stage. It would be useful if people knew how that was going to proceed.

Do members agree to keep the petition open while we pursue those two lines of inquiry?

Members indicated agreement.

Witchcraft Act 1563 (Pardon and Memorial) (PE1855)

The Convener: PE1855 was lodged by Claire Mitchell QC and it calls on the Scottish Government to pardon, apologise to and create a national monument to memorialise those people in Scotland who were accused of being, and convicted as, witches under the Witchcraft Act 1563.

In its submission, the Scottish Government explains the process that is involved in granting a free pardon. If such a pardon is granted,

"the conviction is disregarded to the extent that, as far as possible, the person is relieved of all penalties and other consequences of the conviction."

However, the conviction is not quashed, because only the courts have that power. The responsibility to review and refer alleged miscarriages of justice to the High Court lies with the Scottish Criminal Cases Review Commission, which

“has the power to consider a case even after the death of the person or persons convicted.”

The Humanist Society Scotland has provided a submission in support of the petition. The organisation urges the committee, when considering those who were historically convicted of witchcraft,

“to also consider how the Scottish Government’s current work in international development—particularly through the Scotland Malawi Partnership—can better challenge witchcraft based violence.”

All colleagues will have received a number of emails that make additional representations in respect of the petition. Again, I ask colleagues to consider how we should proceed in the light of the detailed response from the Scottish Government and the other submissions that we have received.

David Torrance: I think that we should act on the recommendation of the Scottish Government and write to the petitioner, asking whether she can bring a specific case forward.

Bill Kidd: I think that that is a reasonable approach, because it is a matter of long-standing concern that still resonates today in some parts of the world, and it resonates with people in Scotland on the basis that injustice was done to a large number of people. However, as has been suggested, if we are to take the proposal successfully to the Scottish Government, a specific case or set of cases would provide a focal point that we could work from, rather than trying to take on all the cases of the large number of people who were affected over a long time.

The Convener: It is astonishing. The petitioner has suggested that 4,000 people were prosecuted under the 1563 act, 85 per cent of whom were women.

Paul Sweeney: The proposal to refer the petition to the Scottish Criminal Cases Review Commission seems inappropriate, given the historical nature of the issue and the fact that its effect would not pertain to any meaningfully live criminal case. Although unusual in modern times, the royal prerogative of mercy seems like a more effective discretionary activity here. I think that it would involve a political decision by the Scottish Government—indeed, the First Minister—and it would seem a fairly straightforward exercise to write to the Queen, requesting that that be done.

This is probably one of the few grounds on which it would be viable to consider the royal prerogative of mercy instead of the more onerous

process of a Scottish criminal cases review. After all, this is a historical situation, and those affected by it are long dead. It is therefore purely a political consideration. Indeed, the wider international development implications, as far as contemporary issues are concerned, suggest that this is more a broader political exercise than something that should engage criminal law.

Tess White: What happened might be historical, but it is horrific that there were 4,000 cases and that 2,500 people, mainly women, were killed. I support my colleague’s view that looking at an actual case would be a good way forward. Nevertheless, we should recognise that this was horrific.

The Convener: We have had two suggestions, the first of which is that we invite the petitioner to consider the Scottish Government’s response, outlining the process of granting a pardon. Normally, that would happen by exception and individually in response to the case that was prosecuted. Secondly, Paul Sweeney is advocating that we ask the Scottish Government the broader question of whether there is a process by which it could make a political decision on the matter.

Paul, do you want to clarify your suggestion?

Paul Sweeney: In its submission, the Scottish Government is basically saying that it would need a submission from the petitioner on why the grounds would justify the use of RPM, which is seen as quite an unusual and anachronistic process in current times. Generally, the matter would be referred to the Scottish Criminal Cases Review Commission. However, given the historical nature of this absolutely horrific activity, the RPM would seem to be the more appropriate process, given that it involves the First Minister alone making a discretionary decision to refer the matter to the Queen for a pardon. That means that it does not need to go through a particularly onerous legalistic exercise to determine harms, the merits and demerits of cases, and so on. The historical facts of the horrific nature of this past superstitious activity would simply be accepted, and a political decision would be made at the First Minister’s discretion once the Government was equipped with a briefing of the historical incidents and their nature. I think that such an exercise would be more straightforward in realising the aims of the petitioner’s request.

The Convener: If colleagues agree, I am quite happy that we write to the Scottish Government to ask whether, given the historical nature of the matter and the fact that so many people were affected by the 1563 legislation, it would be possible for Paul Sweeney’s proposal to be progressed. At the same time, we could write to the petitioner, in the absence of that response,

asking them whether it would be possible to identify the circumstances of an individual case that could lead to a precedent being set on the issue.

If the committee is happy to pursue both options, I am happy, too. Are we agreed?

Members *indicated agreement.*

The Convener: We will see what we get back.

Taxi Trade (PE1856)

The Convener: PE1856, on support for the taxi trade, was lodged by Pat Rafferty on behalf of Unite the union. It calls on the Scottish Government to protect the future of the taxi trade by providing financial support to taxi drivers; to set up a national stakeholder group with trade union driver representatives; and to review low-emission standards and implementation dates.

In its submission, the Scottish Government acknowledges how acutely difficult the Covid-19 pandemic has been for taxi and private hire drivers. It confirms that, at the time of its submission—do we have the date of the submission, just out of interest? I cannot see one. It confirms that £29,000—is that right? Sorry—£29,125,500 had been paid out to 19,417 drivers. I thought that £29,000 was not right—that would not go far.

The submission confirms that

“Transport Scotland will explore with trade unions and other stakeholders the best forum for engagement with the taxi trade.”

It also explains that it is for local authorities to design their low-emission zones and make decisions about timelines.

In their submission, the petitioner welcomes the national funding from the Scottish Government but expresses the view that it is not sufficient. The submission continues by explaining that many drivers still report takings of less than £20 for a 12-hour shift. The petitioner believes that the taxi trade will be one of the last sectors to recover, given its reliance on tourism, hospitality and business travel, and asks that pre-Covid plans are adjusted to take into account just how severe the taxi trade has been impacted by the pandemic.

Since the publication of the meeting papers, the committee has received a further submission from the petitioner, which has been circulated ahead of today’s meeting.

In the submission, the petitioner notes that Unite members

“report business presently at 50% of pre-pandemic levels”,

and reiterates that the impact has been felt from, as previously suggested, sectors such as travel, tourism and hospitality.

The submission calls for

“greater clarity on exemptions to the LEZ”

and for taxi cabs to be considered exempt from LEZ charges, in line with other functions of the public transport network. It also raises concerns about council proposals to introduce an age cap for vehicles on the road, noting that some taxi drivers finance vehicles over a longer period and that that could result in their investment becoming non-compliant, meaning that they are required to finance another new vehicle.

The submission welcomes the informal engagement that has taken place with the Government but emphasises that formal consultation arrangements are required to protect the future of the taxi trade.

I am interested to hear colleagues’ views.

David Torrance: I am very sympathetic towards the petition and the taxi trade but, given that Transport Scotland will be engaging with stakeholders on how all the recommendations can be progressed, I would be quite happy to close the petition under rule 15.7 of standing orders. If the petitioner does not get satisfaction from the outcome of that engagement, they could bring the petition back to the committee.

Paul Sweeney: First, I declare an interest as a member of Unite; also, my dad is a taxi driver. I certainly know from personal experience how significantly detrimental the pandemic and the lockdowns have been to the taxi trade. Anyone who has tried to get a taxi in Glasgow in recent weeks will know how limited the current capacity is. That is because so many people have exited the trade altogether.

Assistance during the pandemic has been a severe problem for people. In effect, many taxi drivers were recommended to go on universal credit throughout the pandemic. There has been a severe detriment to taxi drivers’ livelihoods, compared to those of bus drivers, who were furloughed during the pandemic. Bus companies were given significantly higher levels of financial support.

10:30

I therefore have sympathy with the petition, and I think that the demands are reasonable. I am inclined to request a further response from the Scottish Government and to ask what it will do about inadequate levels of funding. I think that the response from the Scottish Government is not sufficient. Although the financial support for

improvements to vehicles is significant and is to be commended, the on-going issue of lost income during the pandemic is still very much an open wound that has not been sufficiently addressed.

Bill Kidd: I understand what Paul Sweeney says. However, in relation to the request from Mr Rafferty and Unite the union to set up a national stakeholder group with trade union driver representatives, I see that the Scottish Government confirmed in its submission that

“Transport Scotland will explore with trade unions and other stakeholders the best forum for engagement with the taxi trade.”

That sounds good to me although, as far as we know, it could take a considerable period. Perhaps we could find out whether there is a timescale attached to that so that we can give comfort to the taxi drivers and the taxi trade.

The Convener: In my Eastwood constituency in East Renfrewshire, many taxi drivers have withdrawn from the industry, and I am sure that that pattern has been repeated in many other places. The same representations have been made to me about the fact that the tourism, business travel and hospitality sectors, which have been the bedrock of many taxi drivers’ packages of income, have been severely affected and are taking time to recover.

I am minded to keep the petition open, if the committee agrees. We should write to the Scottish Government in the light of the petitioner’s concerns regarding the current funding being inadequate and we should ask the Government to consider the suggestions that have been made in the petitioner’s additional submissions. As Bill Kidd suggested, it would be helpful if the Scottish Government could give us a little more detail on, and a timescale for, the stakeholder group that it proposes to establish, so that it does not become something that always seems to be on the horizon but never materialises.

If we take forward those points, would you be content with that, Mr Sweeney?

Paul Sweeney: Absolutely. That sounds like a reasonable course of action.

The Convener: Mr Torrance, having previously advocated that we close the petition, are you happy with that approach?

David Torrance: For the sake of consensus, I will say yes.

The Convener: We are very grateful.

Curators Ad Litem (Regulation) (PE1857)

The Convener: PE1857, which was lodged by Stephen Leighton, calls on the Scottish Government to regulate the role of curator ad

litem—I am sorry, but I am not sure how to pronounce that. I did O level Latin, but I am afraid that it deserted me there—no doubt, I will be suitably reprimanded. The petition calls on the Scottish Government to regulate the role of curator ad litem and ensure that historical claims of malpractice by curators ad litem in Scotland are investigated.

The Scottish Government notes that the curator ad litem’s first responsibility is to ascertain whether in fact a person has capacity to give legal instruction, which is similar to the situation in which a client has to have capacity to instruct a solicitor, because otherwise the solicitor cannot legally act. That decision is evidence based. In order to properly fulfil the role, the curator must be able to undertake full and relevant inquiries and to commission or prepare reports where necessary.

The Scottish Government notes that it does not regulate curators ad litem. Instead, there is general regulation of the legal profession and of social workers. Given that the number of curators ad litem is very small and that most of them are either solicitors or social workers, they will be regulated under their professional regulatory body if concerns or complaints are raised about their conduct. The submission advises that the Office of the Public Guardian in Scotland can investigate property or financial matters and the local authority or the Mental Welfare Commission for Scotland can investigate welfare matters.

The petitioner advises that changes to the rules of court were made in 2017 as a result of someone complaining about a curator ad litem, but he believes that the law change has increased the risk of potential malpractice in the curator ad litem role, as its regulation is now overseen by curators ad litem themselves. There is no oversight by regulation of the role, yet there are claims of malpractice by curators.

The petition raises quite a complicated issue in respect of a position that I had not heard of. I note from the information that we have obtained that there are only a few curators ad litem in place—maybe as few as a dozen.

Do colleagues have any comments, having reflected on the issue?

Tess White: I would like us to examine the matter further. There is a need for us to look at petitions, address them and perhaps close a few, but I would like to keep this one open and write to various stakeholders to seek their views, including the Scottish Legal Complaints Commission, the Scottish Social Services Council, the Mental Welfare Commission for Scotland and the Law Society of Scotland. We should look into the subject and dig a bit deeper—maintaining the

confidentiality of the case, obviously—because there is something here that needs looking at.

The Convener: Mr Sweeney, did you want to add anything?

Paul Sweeney: I have nothing to add at this stage, convener.

The Convener: Tess White has suggested that we write to the Scottish Legal Complaints Commission, the Scottish Social Services Council, the Mental Welfare Commission for Scotland and the Law Society of Scotland to seek their views. We could also write to the Office of the Public Guardian in Scotland. I think that there is potentially an issue with the lack of regulation and it would be interesting to have responses from those bodies. We will keep the petition open and seek further information.

Free Face Masks (PE1858)

The Convener: PE1858, which was lodged by Alex Wallace, calls on the Scottish Government to provide free face masks for everyone in Scotland during the Covid-19 pandemic.

The Scottish Government's submission highlights that it advocates the use of reusable face coverings and has provided guidance on how to make them using widely available household products. In respect of affordability, it notes that the Scottish Government has committed over £1 billion of additional investment to help local communities and build resilience in public services, some of which has been used by local partners, including in the third sector, to provide face coverings free of charge to people on low incomes and, in particular, vulnerable groups such as homeless people.

The Scottish Government notes that, although it is not providing face coverings centrally to the general public, local authorities and schools consider how to address any equity concerns arising from the use of face coverings. It also advises that many homelessness outreach teams provide disposable face coverings and that, as I think most of us will be aware, a number of supermarkets and other retailers provide free disposable face coverings.

Do colleagues have any comments?

Bill Kidd: I read the Scottish Government's submission, which is comprehensive and looks to respond in a reasoned manner to the issues that the petitioner has raised, including the point about people at the very bottom of the economic pillar in society—those who are homeless. It is important that we look to make sure that that has been done. From what I can see, the Scottish Government's replies have been reasoned.

The Convener: What do you advocate?

Bill Kidd: On the basis that the response has been delivered, I advocate that we close the petition.

The Convener: Does anyone else wish to comment?

David Torrance: I agree with my colleague Bill Kidd. Given the work that the Scottish Government and the third sector have done and the accessibility of face masks when people go to train stations, shops or any public buildings, I think that the aims of the petitioner have been met. I would be happy to close the petition under rule 15.7 of standing orders.

The Convener: Does anyone else wish to comment? Mr Sweeney?

Paul Sweeney: The only thing that I noted in the Scottish Parliament information centre briefing was to do with benchmarking against other Governments in Europe. For example, Germany has targeted the distribution of FFP2 masks to people with underlying health conditions and people over the age of 60, because they provide additional protection. That seems to be quite an interesting proposal. It might be worth writing to the Scottish Government to request that it continue benchmarking itself against the activities of other Governments, so that we can see what benefits can be realised. For example, there are general public health benefits from people wearing face masks, particularly during winter months—it reduces not only Covid transmission but the transmission of other infectious diseases that can disproportionately impact the elderly and vulnerable populations. Investment in this area might be a good prophylactic health measure, particularly if it is targeted towards vulnerable populations.

The Convener: I wonder whether we could combine both recommendations that we have heard. We could still use rule 15.7 to close the petition but, at the same time, write to the Scottish Government to point out the experience elsewhere on the continent and to seek some clarification about whether there might be some areas in which it could extend the practice of the delivery of face coverings. Would that be acceptable?

Tess White: I would just like to say that there is a point about the prevalence of disposable masks, which could have an unintended consequence elsewhere. We should make sure that we have reusable face masks, in order to protect the environment. That is just an angle that we should look at.

I support closing the position and also suggest that we pursue the issue that was raised about benchmarking, so that we can learn from the best

practice in other countries, such as Germany, particularly with regard to reasonable face masks.

The Convener: I think that we can seek that information in any event, without keeping the petition open.

Tess White: Of course.

The Convener: The proposal is that we close the petition and bring the information in the SPICe briefing to the attention of the Scottish Government, so that we can see whether it has given any thought to any of that. Is that agreed?

Members indicated agreement.

Upland Falconry (PE1859)

The Convener: PE1859, which has been lodged by Barry Blyther, on retaining falconers' rights to practise upland falconry in Scotland. It calls on the Scottish Government to amend the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 to allow mountain hares to be hunted for the purposes of falconry.

In its submission, the Scottish Government explains that, during the passage of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020, an amendment was made to schedule 5 to the Wildlife and Countryside Act 1981 to include mountain hares as a protected species. The submission confirms that, when considering the amendment to include mountain hares as a protected species, it took into account the recommendations from the grouse moor management group report, which stated that

“the shooting of mountain hares should be subject to increased legal regulation”

and that

“should the conservation status of mountain hares prove to be ‘unfavourable’ then a licensing system for the shooting of mountain hares should be introduced.”

The submission highlights that, in certain circumstances, birds of prey can still be used to take mountain hares for purposes including to protect timber or agriculture.

In his submission, the petitioner explains that mountain hares need to be conserved at a high density to attract falconers, which in turn creates significant commercial value and supports isolated rural economies through visits by falconers.

The petition references UK animal welfare standards and guidance from the Scottish Society for Prevention of Cruelty to Animals and the Royal Society for the Prevention of Cruelty to Animals that states that there is a

“legal obligation to allow ... trained captive-bred birds of prey ... freedoms”,

including

“the freedom to express the natural behaviours for the species”.

Therein, I feel, lies a bit of a conundrum with regard to consideration of the petition.

The petitioner has sent us a response to the Scottish Government's submission. In it, he takes issue with what has been said about the ability of the species to exist by eating other species that are unsuitable.

Do members have any comments? I have to say that I found the issue to be quite complicated and technical as I tried to understand the relative merits of the legislation that is in place and the rights of birds of prey to express the natural traits of their species.

10:45

Tess White: I have two questions. As you say, the issue is complicated. The first question is about the size of the problem. I accept that we need to protect mountain hares, but how many falconers are there in Scotland?

I empathise with the petitioner because, if you have a falcon, how do you know what it will kill? The falconer cannot make it differentiate between a stoat and a rabbit, or whatever. One day, the falcon might kill a rabbit, the next a stoat and on the third day it might kill a hare. Are we to prosecute the falconer at that point? That is why the issue is complicated.

Bill Kidd: I understand the point that Tess White has made. If a bird of prey is wild, and therefore lives according to its development and nature—as mountain hares do—it will certainly kill mountain hares. However, we are talking specifically about falcons being used to hunt mountain hares. Personally, having experience over many months of the campaign to save mountain hares, and having had correspondence on the subject sent to me, as an MSP, I do not think that the mountain hare is a species that can support that form of hunting.

It is perfectly reasonable for a bird of prey to kill in order to live, but I do not think that it is reasonable for that to happen specifically for the purposes of hunting. I think that that is the view that the Scottish Government put forward in its response, too.

The Convener: I am struck by the observation that there is a legal obligation to allow trained captive-bred birds of prey—which I presume are the ones to which you are referring, Bill—the freedom to express the natural behaviours of the species. That was the conundrum that I noted. I am not quite sure how that could be done within the law, as it stands. I was left confused by that position, so I am minded to write to the Scottish

Government to ask it how it reconciles that right with the legislation. Do colleagues agree with that suggestion?

Bill Kidd: Yes.

Paul Sweeney: I think that you are right, convener. This might be an instance of the law of unintended consequences. Clearly, the legislation was written with the intention of regulating mass culling of hare populations and shooting of hares. Falconry is such an incidental and marginal activity that it has a negligible effect at any discernible level. I think that there has been an unintentional chilling effect, which we need to address with the Government. It is clear that the submission of the Scottish Government was inadequate with regard to the specifics of falconry.

The Convener: On Tess White's point, I wonder whether there is anyone who can tell us how many falconers are operating in Scotland. It would be nice to quantify the number of people who are affected.

I am quite happy to pursue those two aspects, and to keep the petition open on that basis. Are we agreed?

Members indicated agreement.

Prescription and Limitation) (PE1860)

The Convener: PE1860, which has been lodged by Jennifer Morrison Holdham, calls on the Scottish Government to amend the Prescription and Limitation (Scotland) Act 1973 to allow retrospective claims to be made. The Scottish Government states that prescription and limitation incentivise people to enforce their legal rights through the courts promptly, without delay, and also provide legal certainty. However, the submission states that, should the court be persuaded that it is equitable to do so, it can already override the principal limitation time limits to allow a legal action. In her response, the petitioner states that she has "been treated ... unfairly" in her own case, due to a lack of timely action on the part of her solicitor, and therefore

"that there should be an opportunity for people in such situations to be able to make retrospective claims, at any time."

Do members have any comments? I think that all of us, certainly those of us who have been around for a bit, have been written to by constituents who have fallen foul of such time limits, which is what the Scottish Government has sought to address in its response.

Bill Kidd: I note that it is already possible for a court to override the principal limitation time limits where it is persuaded that it is equitable to the claimant and the defendant to do so. On that basis, the petitioner—or someone in her position—

could engage legal representation to approach a court and ask for the principal limitation time limit to be overridden in their case.

David Torrance: Bill Kidd has raised a relevant point. If a legal framework and process for overriding the measures already exist, we have no option but to close the petition under rule 15.7 of standing orders. I have to say, though, that I am very sympathetic to the petition.

The Convener: I was, at first pass, inclined to agree, but is there any way of quantifying how often the courts have overridden such principles? We are told that in the case of limitation it is already possible for a court to override the principal limitation time limits where it is persuaded that it is equitable to do so, but part of me worries that, despite that sentiment, this is actually a hurdle that is nearly impossible to overcome and, in fact, is overcome only very rarely. Instead of our taking this as some general provision that just sits there and allows us to say, "This is what people can do", can we identify whether such an opportunity has been successfully pursued? I am mindful of constituents who have written to me and who I know felt as though they were banging their head against a wall when they tried to pursue matters. I just wonder how widely known the provision is.

Are members happy to find out a bit more about the process and whether our constituents have been able to exercise it, how many of them have done so and whether they have been successful in doing so? If we find that nobody knows that the process exists or that nobody is using it, it is not really serving its function.

Bill Kidd: The petitioner has suffered a serious loss, in a family sense and financial sense, and I am very much in favour of trying to help out as much as possible. However, we do not know whether the failure of her legal representation has been raised with the Law Society of Scotland, or whatever. However, as I have said, I do not think that it would do any harm to try to help her out as much as possible.

The Convener: The point is that we do not pursue individual cases—that is outwith our remit. The issue is the general provision. It would be useful to find out whether the safety net is assisting anybody or whether it is not known about and is not being used, in which case there is a deficiency.

Are members happy to do that?

Members indicated agreement.

National Qualifications 2021 (PE1861)

The Convener: PE1861 is on using teacher-assessed grades to award national qualifications

in 2021. I flag up that the petitioner has requested that the petition be removed from the petitions process, given that results have now been awarded for 2021 and work is under way to reform the Scottish Qualifications Authority and Education Scotland. Given that, I am inclined to close the petition under rule 15.7. Do members agree to that?

Members indicated agreement.

Island Community Representation on Boards (PE1862)

The Convener: PE1862, which was lodged by Rona MacKay, Angus Campbell and Naomi Bremner on behalf of Uist economic task force, calls on the Scottish Government to introduce community representation on boards of public organisations delivering lifeline services to island communities, in keeping with the Islands (Scotland) Act 2018.

In its submission, the Scottish Government explains that the requirements for the appointments to a public body board will be set out in the public body's founding legislation. In the case of more than 70 boards, the recruitment process is also regulated by the Commissioner for Ethical Standards in Public Life in Scotland. The Scottish Governments states:

"This means that, as far as possible, the recruitment process is fair, transparent and based on merit."

In their response, the petitioners argue that a lack of local knowledge results in decisions being made that do not fully consider the practical impact on those living on the islands. They believe that introducing community representation on boards would lead to better decision making.

I note that some of our parliamentary colleagues have asked written and oral questions on this matter. Do members have any comments?

David Torrance: The Islands (Scotland) Act 2018 places duties on ministers to ensure that public bodies exercise their functions with regard to communities. Is there enough protection in that? It is a difficult one. The ethical standards commissioner can come in if communities do not agree that they have been consulted or invited on to boards. I think that protections are in place for anybody who disagrees.

The Convener: There is nothing in the Scottish Government's submission to suggest that it has any plans to amend founding legislation for public bodies on the basis that lifeline services to island communities require community representation on their boards. Shall we write to it to check whether that is the case?

Members indicated agreement.

Cancer Blood Tests (PE1863)

11:00

The Convener: PE1863, which was lodged by Mr Michael Campbell, calls on the Scottish Government to provide mandatory annual blood tests from the age of 55 to detect cancer.

The Scottish Government submission highlights that it recognises the importance of an early cancer diagnosis and its impact on cancer patient outcomes. It advises that it has already taken a number of actions to continue enabling an early cancer diagnosis. It notes that Scotland's first early cancer diagnostic centres are being established in NHS Fife, NHS Dumfries and Galloway and NHS Ayrshire and Arran. It highlights that, although there is currently no single blood test that screens for different cancer types, there is some on-going research, which the UK National Screening Committee will review to make a recommendation for population screening.

We could write to one or two bodies to seek their views on the petition.

David Torrance: We should write to relevant stakeholders, such as Cancer Research UK and Macmillan Cancer Support, to ask for their views on the petition. However, in light of the fact that there is no blood test that can detect all cancers, we will have to wait for the recommendations from the UK body.

I would like to keep the petition open just to receive those views.

The Convener: I wonder whether we might also write to the UK NSC just so that we can understand where it thinks it is in the process of the research that it is undertaking. It would be useful to know whether it anticipates that research coming to fruition or whether the situation is still very open ended at this point. It would be helpful to know that. It would also be useful to write to the bodies that David Torrance has suggested.

Onshore Wind Farms (Planning Decisions) (PE1864)

11:01

The Convener: The final new petition today is PE1864, which was lodged by Aileen Jackson on behalf of Scotland Against Spin. We have our first special guest of the new live proceedings from Parliament in our colleague Oliver Mundell MSP, who has attended for the petition.

The petition calls on the Scottish Government to increase the ability of communities to influence planning decisions for onshore wind farms by adopting English planning legislation for the

determination of onshore wind farm developments; empowering local authorities to ensure that local communities are given sufficient professional help to engage in the planning process; and appointing an independent advocate to ensure that local participants are not bullied and intimidated during the public process.

In its written submission, the Scottish Government highlights that it is reviewing Scotland's national planning policies and expects to publish a draft national planning framework 4 in the autumn of this year. It states that it consulted on the NPF4 position statement, and it will carry out extensive public consultation following its publication. The Government's submission also notes that, in preparing NPF4, the Scottish Government is considering priority policy changes to support a spatial strategy for net zero, which includes strengthening its support for repowering and expanding existing wind farms.

The petitioners have provided two submissions. The issues raised in those submissions include the costs that are involved in challenging planning applications, including the financial costs and the time and expertise required, and the disparity between planning application fees in Scotland and England. The fee to apply for a 50MW to 100MW onshore wind farm in Scotland is less than half of the fee for the equivalent in England.

The committee has also received more than 100 additional submissions, most of which are from people living in rural communities. Many of the issues that they raise echo the points that the petitioners made in their petition and submissions. Issues raised consistently across the submissions include people and communities feeling overwhelmed by the volume of information and the planning process; the fact that the advice that is available from organisations such as Planning Aid Scotland is general and there is a lack of capacity to deliver it to all who need it; and the cumulative impact of wind farms not only on the environment but on the ability of individuals and organisations such as community councils to repeatedly respond to applications. Across the majority of submissions, there is a consensus on the need to act to avert a climate emergency. However, the submissions highlight that, in the main, it is Scotland's rural communities that are burdened with the adverse effects of producing wind energy.

Since the publication of our meeting papers, we have received a submission from Dr Rachel Connor in support of the petition. In her submission, Dr Connor raises several of the concerns that are highlighted by the petitioner and throughout additional submissions that the committee has received.

Finlay Carson was hoping to join us today, but he has a prior commitment, as he is convener of

the Rural Affairs, Islands and Natural Environment Committee, which is meeting now. He has therefore sent a message asking that the petition be continued with further information sought. He suggests that it could be referred to the Rural Affairs, Islands and Natural Environment Committee, but I note that, as the petition relates to the planning system, the relevant subject committee in the first instance would be the Local Government, Housing and Planning Committee.

I am minded to bring in our colleague Oliver Mundell, unless anyone wishes to speak ahead of him. As nobody does, I will bring in Oliver Mundell.

Oliver Mundell (Dumfriesshire) (Con): Thank you, convener. I thank the committee for making time for me to speak. I am not generally in the habit of attending this committee, and I recognise that considering petitions is primarily your work, but I was keen to come today to express my support for PE1864.

From my work as a constituency MSP over the past five years, I know that the petition speaks to a real problem and captures the concerns of many people who live in rural Scotland. The present planning system for onshore wind leaves the people who are most directly affected by what are often industrial-scale projects feeling ignored and irrelevant. They come up against developers who spend what seem like endless resources promoting applications and gaming the planning system. They see the views of community councils and local authorities discounted and they are slowly worn down by repeat applications and long-drawn-out, multistage processes. That is not fair and it does not reflect well on a modern democratic country.

I strongly believe that we need to tackle the climate crisis and that, in doing so, there is room for all energy sources. However, that cannot be at the expense of small rural communities. The way in which the process operates needs to be looked at urgently again. It is time that the Parliament gave our communities a voice.

I therefore ask the committee to keep the petition open, at the very least, and to continue to follow the development of the planning framework. I also ask you to consider taking further oral evidence from the petitioner and to see whether there is a way in which the Parliament can give individuals and communities a voice and ensure that the issues are properly explored.

David Torrance: I agree that we should keep the petition open. The issue affects rural communities more than any other. Before we do anything else on the petition, we will need to wait and see what is in the national planning framework when it is published. In the meantime, I would like us to write to all the relevant stakeholders to find

their views on the petition. There is a whole list of stakeholders here: Heads of Planning Scotland, the Royal Town Planning Institute, Scottish Renewables, Planning Democracy and Planning Aid for Scotland.

Oliver Mundell: I would like you to add local authorities to that list. My local authority, Dumfries and Galloway Council, might have a view, given the volume of wind-related planning applications that it receives.

The Convener: We would be happy to do that.

Tess White: I agree that we need to explore further and gain input from rural communities, but we must balance the need for onshore wind farms. The two aspects need to be looked at and addressed. We should definitely keep the petition open.

The Convener: We are minded to keep the petition open. It would be premature to consider referring it to another committee at the moment. We will write to the various stakeholders that have been identified by David Torrance and Oliver Mundell, and we will consider the responses ahead of potentially seeking further oral evidence from the petitioner. We will keep the petition open and consider it afresh when we have those responses.

I thank Oliver Mundell for participating.

That brings us to the end of our consideration of petitions. There being no other business, I thank committee members. We will resume next week to continue our consideration of petitions that stand ready to be reviewed and discussed.

Meeting closed at 11:10.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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