



OFFICIAL REPORT
AITHISG OIFIGEIL

Citizen Participation and Public Petitions Committee

Wednesday 1 May 2024

Session 6



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Wednesday 1 May 2024

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CITIZEN PARTICIPATION AND PUBLIC PETITIONS COMMITTEE
7th Meeting 2024, Session 6

CONVENER

*Jackson Carlaw (Eastwood) (Con)

DEPUTY CONVENER

*David Torrance (Kirkcaldy) (SNP)

COMMITTEE MEMBERS

*Foyso Choudhury (Lothian) (Lab)

*Fergus Ewing (Inverness and Nairn) (SNP)

*Maurice Golden (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jackie Baillie (Dumbarton) (Lab)

Siobhian Brown (Minister for Victims and Community Safety)

Rhoda Grant (Highlands and Islands) (Lab)

Michael Paparakis (Scottish Government)

CLERK TO THE COMMITTEE

Jyoti Chandola

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Citizen Participation and Public Petitions Committee

Wednesday 1 May 2024

[The Convener opened the meeting at 09:34]

Decision on Taking Business in Private

The Convener (Jackson Carlaw): Good morning, and welcome to the seventh meeting in 2024 of the Citizen Participation and Public Petitions Committee—excuse my slightly hoarse voice. The first item on our agenda is a decision on taking items 4 and 5 in private. Item 4 relates to PE1975 and item 5 relates to the consideration of content for our annual report. Are members content to take those items in private?

Members indicated agreement.

Continued Petitions

Strategic Lawsuits against Public Participation (PE1975)

09:34

The Convener: Agenda item 2 is consideration of continued petitions. The first of those is PE1975, which is on reforming the law relating to strategic lawsuits against public participation—commonly referred to as SLAPPs. The petition was lodged by Roger Mullin and it calls on the Scottish Parliament to urge the Scottish Government to review and amend the law to prevent the use of strategic lawsuits against public participation.

We last considered the petition at our meeting on 17 April 2024. At that point, we heard evidence from Professor Justin Borg-Barthet, Graeme Johnston, Roger Mullin and Ahsan Mustafa. I again thank our witnesses from that session for their evidence.

This morning, after our various considerations, I am pleased to welcome Siobhian Brown MSP, who is the Minister for Victims and Community Safety; Martin Brown, who is a solicitor with the Scottish Government's legal directorate; and Michael Paparakis, who is the policy and bill programme manager at the Scottish Government's private law unit.

I understand that, before we move to questions, the minister wants to make a short statement.

The Minister for Victims and Community Safety (Siobhian Brown): Good morning. Thank you, convener, for the opportunity to talk about strategic lawsuits against public participation—often referred to as SLAPPs. I would like to thank the petitioner, Roger Mullin, for his tireless campaigning work on this matter.

The petition raises important issues and it is helpful to have them discussed in such a forum. The committee will be aware that the Scottish Government recently introduced reforms to our law of defamation, which took steps towards further protecting freedom of expression.

Although SLAPPs are typically framed as defamation cases brought by wealthy individuals or corporations to evade scrutiny in the public interest, they can occur across a broad spectrum of issues, including data protection, privacy and environmental law.

Since Parliament considered the law of defamation, significant steps have been taken elsewhere in the United Kingdom and in the European Union. In England and Wales, the UK Government has given its support to a private

member's bill that will widen the scope of the limited anti-SLAPP legislation that is already in place. At EU level there is a recent directive, and the Council of Europe has recently adopted a recommendation on countering SLAPPs.

For those reasons, it is important that we make progress on the issue. I am pleased to say that we will consult on SLAPPs later this year. It seems to me to be both timely and sensible to consult on the issue of SLAPPs specifically in the context of Scots law. My officials have already had helpful engagement with stakeholders, and I will ensure that that continues throughout the consultation process.

I welcome any questions that you or other committee members might have.

The Convener: Thank you, minister. That is encouraging. If I look over your shoulder, I can see the petitioner, who is in the public gallery this morning and will, no doubt, be pleased to hear that, too.

I was trying to understand the pathway. At our last meeting, having read the previous submissions that we had received, I noted an understanding that, given that Scots law is rooted in different traditions and precedents to law elsewhere in the UK, the assumption underpinning the petition—that there would be tourist destination travel to Scotland for such litigation—was perhaps more of a theory than a determined outcome. The Scottish Government's thought process at that point was that it would prefer to be in a slightly reactive position if that happened rather than in a proactive position simply because it might happen, given everything else that the Government has to consider. Was that part of the thinking? Has the fact that action has now been taken in other jurisdictions compounded the potential risk—which might otherwise have been theoretically less likely but is now potentially more likely—that such litigation could occur, meaning that the Government perhaps feels that it needs to take more decisive and direct action on the matter, proactively rather than reactively?

Siobhian Brown: Yes, absolutely. When my predecessor in post originally wrote to the committee, and when the petition was first lodged, the legislation was under review. However, as I said in my opening statement, there has been quite a significant development in the past couple of months, which is why we think that it is quite timely that we move forward with consultation.

The Convener: Thank you. Given that that is the case, our questions might be quite focused and to the point. I do not think that we are pushing a stone up a hill, in the sense that the Government appears to have accepted the argument. However,

it would be interesting to explore some of the issues underpinning the need for all of this.

David Torrance (Kirkcaldy) (SNP): Good morning to the minister and her colleagues. Will the minister outline what discussions have been had at meetings of the UK-wide SLAPPs task force on co-ordinating non-legislative action against SLAPPs?

Siobhian Brown: The task force includes representatives from the UK Government and the EU, and I know that Scottish officials are part of it, too. By itself, legislation would not address all the potential issues that SLAPPs raise. There needs to be more of a holistic approach, which is why we are working with the task force.

David Torrance: What wider monitoring has been carried out of the impact of the use of SLAPPs in Scotland?

Siobhian Brown: I will bring in Michael Paparakis to answer that question.

Michael Paparakis (Scottish Government): As, I think, the committee heard a couple of weeks ago, SLAPPs are difficult things to measure. I understand that academics at the University of Aberdeen are undertaking survey work to understand the wider picture, but most evidence tends to be anecdotal rather than quantitative data.

We are aware of the issues that stakeholders have raised both here, at the committee, and generally. Some cases were presented at an anti-SLAPP conference in Scotland in the middle of February, so we are certainly aware of instances that stakeholders would suggest are SLAPPs. That is another reason why the Scottish Government has decided to consult on the issue. There is a perception that such action is currently happening in Scotland and that we should move things forward.

David Torrance: Thank you. I have no further questions.

Fergus Ewing (Inverness and Nairn) (SNP): If I might pursue the theme of that last question, convener, is it not the case that there is no doubt whatsoever that SLAPPs are a huge problem and that the number of SLAPPs raised or threatened is enormous? We have heard that time and time again in evidence from lawyers who practise in that area. Earlier this morning, I was reading Graeme Henderson's submission to the Scottish Law Commission from some years ago. It referred to the huge number of interdict cases that never come anywhere near court because the pursuer—or, more often, the petitioner, because such cases are usually heard in the Court of Session—is financially so much less strong than the defender

that they have not a cat's chance in hell of affording the litigation. That is the whole point.

The Government must surely accept that that is a serious problem, which it cannot measure simply by counting the number of cases that go to court. You must know that, like an iceberg, most of the picture is submerged. You cannot measure it exactly, because there is no record of cases such as those of an oligarch who owns a Russian oil company or a mine owner from Kazakhstan—to pick two of the litigations that are quite prominent in the history of SLAPPs. I just want to establish, minister, that you accept that this is a very serious problem.

Will you answer a further question? It is good news that you have agreed to consult. We all recognise that. However, this is an ancient petition—it is becoming the pensioner of petitions. I am a pensioner myself, so I should not be rude about them, but it is not acceptable that these matters just go on and on. My questions to you are these. Can you say that the Government is supportive of taking action and not just that you will conduct a consultation? Can you say when the consultation paper will be issued? What is your target date? Is it July? Alternatively, is the answer a vague one—"sometime never"—in which case, we might be back here in a year, perhaps with another minister?

Siobhian Brown: Yes, we do take it seriously. Globally and historically, there has been evidence that SLAPPs have been an issue. As I said, we have seen action being taken in Europe and the rest of the UK, so it is time for the Scottish Government to act on the matter. I take your point that this is an old petition, but we are moving forward. Consultation will happen this autumn, but I cannot give a specific date at this time. It will run for 12 weeks, and then we will look at the responses and take it from there. I cannot predict what the Cabinet might suggest regarding legislation.

Fergus Ewing: Convener, that reply is as much as I could reasonably ask of any minister, so I am grateful for it. Minister, if you want a useful form of words to ensure that you are never really on any particular hook as to the timescale within which you do something, the legal terminology is, "We will do it on or around between X."

Siobhian Brown: Thank you.

Fergus Ewing: That is just some free advice. *[Laughter.]*

09:45

The Convener: All of which is noted.

I point out that the petition was launched in September 2022, which makes it something of a

teenager in our schedule of petitions. If that is a pensioner petition then, by that definition, some of our petitions are out of the Jurassic period.

Fergus Ewing: You are endowed with greater quantities of patience than me.

The Convener: That remains to be seen. Thank you, Mr Ewing.

Do any other colleagues wish to come in?

Maurice Golden (North East Scotland) (Con): I am interested in the motivation behind the consultation. Is that a result of this petition or of the Scottish Government's policy of ensuring continuity with EU law? Can you explain that?

Siobhian Brown: The petitioner was there when my predecessor wrote to the committee to say that the petition was under consideration. We have seen definite progress being made in the EU and in the UK in recent months, and in the private member's bill going through. That is why we decided to take action. We will go out to consultation in the autumn.

Maurice Golden: Is the minister concerned about the potential time lag between developments elsewhere and those in Scotland and about how that could expose Scotland to SLAPPs?

Siobhian Brown: Not at the moment. I will keep the committee updated on that. I know that that is still in the early stages of going through the EU and through the UK Parliament. It has not passed yet or gone to the House of Lords, so I have no concerns at this stage.

Maurice Golden: Do you have ideas about the scope and form of the consultation? Do you know what you intend to bring forward or how will mirror what has been done by other jurisdictions that have introduced such legislation?

Siobhian Brown: We will engage with all the jurisdictions that have introduced legislation and will work with stakeholders.

Michael Papparakis may want to add something.

Michael Papparakis: At this stage, there is no set information about what the consultation will contain.

As the minister said, there is UK legislation, an EU directive and other items that might suggest possible questions for the consultation.

Maurice Golden: Is it likely that the issue of public education about SLAPPs will be included in the consultation? Can you tell the committee about that?

Siobhian Brown: It is worthy of consideration.

Fergus Ewing: I am pretty sure that the minister has studied the previous evidence session. Mr Mullen and others made the point that, in its response to the petitioner's arguments, the Scottish Government has mostly referred to the Defamation and Malicious Publication (Scotland) Act 2021. However, as Mr Mullen pointed out, that is not the only type of SLAPP. SLAPPs can cover other types of action, and it would therefore be wrong to assume that only the law of defamation is in play. That is probably the main topic, but it is not the only one. Can the minister confirm that the consultation will fully cover that?

Siobhian Brown: Yes, we will cover every aspect.

Fergus Ewing: I have one last question. One of your predecessors made a reference that I thought was really not apt, which was that it does not really matter because the cost of pursuing an action in the sheriff court is only £25,000. Argument A is that that is £25,000 more than most people have got to pay for a court action and that most people therefore cannot afford that amount, so the idea that people would be able to afford such a sum is ludicrous. Argument B is that almost all of those actions will be raised by way of an interdict in the Court of Session anyway, so it is completely irrelevant to look at the cost of the sheriff court.

I do not raise that to be smart or to criticise anyone, but does the Government accept that that argument should be pushed to one side? The cost of action in the Court of Session is colossal. We are talking about hundreds of thousands of pounds, and no individual, unless they are a millionaire or a multi-millionaire, will go to court. Having practised law for 20 years, I know that. People will not go to court even if they think that they have a cast-iron defence. That is the whole point. It does not really matter whether brilliant defences are set out, as was the case in the Defamation and Malicious Publication (Scotland) Act 2021. That was a good piece of legislation in that regard, as it created a range of defences and protections, but they are not good enough to protect against the real mischief here, which Mr Mullin and his colleagues have clearly pointed out.

I just put that thesis to the minister to get some reassurance for the petitioner that the consultation paper will not duck those questions and that it certainly will not repeat that particular argument.

Siobhian Brown: Absolutely. I saw the correspondence that mentioned the figure of £25,000. I think that, when I spoke to my officials about that, it was in the context of UK-wide litigation.

I have looked at legal aid and, as you know, it can be considered on a case-to-case basis if anyone wants to pursue in that way. However, I

totally accept your point and your comments on that issue.

Fergus Ewing: I think that I agree with the first part of that. On the second part, there is no legal aid for defamation.

Siobhian Brown: I have been told that the board can consider it on a case-by-case basis.

Fergus Ewing: Can they can consider it? If so, I stand corrected.

Siobhian Brown: I can double-check that.

Fergus Ewing: I thought that the chap from the Law Society in our last meeting said there was no legal aid.

Michael Papparakis: Legal aid is available on a case-by-case basis and according to circumstances.

Fergus Ewing: Well, it is still pretty dubious. Most people will not get legal aid if they have even a relatively small amount of capital tied up.

In any event, I think that your answer is satisfactory—thank you, minister. I have not said that for a while.

The Convener: We can agree on that point.

Minister, thank you very much. We do not need detain you any longer. I think that the petitioner's aims are potentially in hand and can be resolved. I am grateful to you for that and for joining us with your colleagues this morning.

Siobhian Brown: Thank you. I am happy to keep the committee updated as we progress.

The Convener: I would be very grateful for that.

09:51

Meeting suspended.

09:53

On resuming—

Cohabiting Couples (Division of Assets on Separation) (PE1973)

The Convener: Welcome back. We continue our consideration of existing petitions. PE1973, on ending the use of sheriffs' discretion when ruling on civil cases and providing clear legal guidance on the division of assets, was lodged by Sandy Izatt. The petition calls on the Scottish Parliament to urge the Scottish Government to review the Family Law (Scotland) Act 2006 and to provide greater clarity on the division of assets in cases of cohabiting couples who are separating by removing the use of sheriffs' discretion rulings in civil cases; providing clear legal guidance to the Law Society of Scotland on the division of assets

for cohabiting couples; allowing appeals to be heard when it is determined that a sheriff has the rule of law wrong but has used their discretion to prevent an appeal, at no cost to the appellant; and publishing information on what resources have been allocated to provide clear legal guidance.

We last considered the petition on 6 September 2023, when we agreed to write to the Scottish Government. We have received a response from the Minister for Victims and Community Safety—who was just with us—in which she wrote that she was “unable to provide” an anticipated timescale for introducing a bill on cohabitation. The minister confirmed that Scottish Government officials were beginning “detailed work” on the Scottish Law Commission report on cohabitation, including an assessment of whether it would be helpful for the Government to consult on the commission’s recommendations.

We have also received a submission from the petitioner, who expressed his concern about the vagueness of the information that we have received on the issue and highlighted his continued concern about the use of sheriffs’ discretion in preventing appeals.

In the light of what we have heard about the petition’s progress—the Government will move forward but does not know when it will do so, and the petitioner feels that matters remain a little vague—what are committee members’ views?

David Torrance: In the light of the Scottish Government’s response, I wonder whether the committee would consider closing the petition under rule 15.7 of standing orders on the basis that Scottish Government officials have begun detailed work on the Scottish Law Commission’s report on cohabitation, which will include an assessment of whether it would be helpful for the Scottish Government to consult on the commission’s recommendations in that area. The petitioner could always bring the petition back if he was not happy with the findings.

Fergus Ewing: I agree with Mr Torrance’s recommendation. I reassure the petitioner that the point that he has raised is an extremely valid one. Given that we will be closing the petition today, I repeat for his benefit what I might have said in a previous meeting. I played a part in proceedings on the bill that became the Family Law (Scotland) Act 2006. The act is extremely vague about the division of property between unmarried couples who live together, in effect, as man and wife, because it does not incorporate the very detailed provisions in the Family Law (Scotland) Act 1985 that apply for divorce. Those very detailed rules contrast markedly with the complete vacuum of rules in the 2006 act. To be fair to me, I made a speech to that effect at stage 3 in which I said that

we did not really know what we were doing, and we did not provide sufficient clarity.

Any petitioner whose petition is closed will always feel a bit disappointed, but the petitioner has done a good job in raising an important topic. I feel slightly uneasy that the Government has not given a clearer commitment, and I hope that it will bear that in mind. Perhaps we could write to the Government to say that we feel that that is the case. There needs to be clarity, with the Government being more specific about when the corrective work will be done, whether that is through one of the devices that Mr Izatt mentioned or through primary legislation, which I suspect will probably be necessary.

The Convener: Thank you very much for that, Mr Ewing. I think that that is correct.

It is open to us to write to the Government to say that we are closing the petition on the basis of good faith, given that the Government has said that it will progress the issue. It would be helpful to try to tie it down to a more specific timeline.

I thank Mr Izatt very much for bringing an important petition before the committee. In the event that no progress is made, it would be open to him to lodge a fresh petition. As matters stand, the committee has taken the issue as far forward as we can, given the Government’s response and assurance. Are members content to proceed on that basis?

Members indicated agreement.

A890 (Adoption as Trunk Road) (PE1974)

A832 (Adoption as Trunk Road) (PE1980)

The Convener: Our next petitions, which were lodged by Derek Noble, are coupled. PE1974 calls on the Scottish Parliament to urge the Scottish Government to adopt the A890 as a trunk road and to resolve the safety problems associated with the Stromeferry bypass, and PE1980 calls on the Scottish Parliament to urge the Scottish Government to adopt the A832 between Achnasheen and Gorstan as a trunk road, thereby connecting that route to the existing trunk road network.

We last considered the petitions at our meeting on 6 September 2023, when we agreed to write to the Minister for Transport, who is now the Cabinet Secretary for Transport. The cabinet secretary has responded to our request for clarity by stating that the strategic transport projects review 2

“considered local roads to be ‘out of scope’ unless they provided direct access to a major port or airport; linked to a nationally significant National Planning Framework 4 (NPF4) development site; or where a local road intersected a trunk road where bus priority or active travel measures were proposed.”

The cabinet secretary has said that it was considered that

“neither the A890 or A832 met these criteria for consideration as part of the strategic transport network and were duly not included as part of the appraisal or STPR2 final recommendations.”

We have been joined by Rhoda Grant. The committee is wrestling with a fairly direct response to the aims of the petitions from the cabinet secretary, but we would be happy to hear anything that you might like to say.

10:00

Rhoda Grant (Highlands and Islands) (Lab): I am grateful to the committee for giving me the opportunity to speak, and I am grateful to Derek Noble for pursuing PE1974.

I share the committee’s disappointment at the cabinet secretary’s response, because it repeats what has been said before. It takes no notice of the fact that residents on the other side of the Strome ferry bypass need to cross the bypass for hospital care and secondary education and to support the economy of the area. That is a major issue on the road. The alternative route takes six hours, and that cuts off the area’s economy. It means that someone would get to Glasgow and Edinburgh sooner than they would get to their local hospital. It is a 130-mile detour. You have to go all the way back to the east coast to come back west again. The Scottish Government’s response is so disappointing, because it just seems to be saying no, despite the evidence, and there is no right of appeal.

In a way, the response adds insult to injury by talking about priority bus routes and cycle lanes, because there are no buses other than the school buses, and a cycle lane would take up the total width of the road. There is no option to put those things in place. Money is available for that, but there is no money available for the very basics.

I have some figures from 2017. The costs varied from £37 million to £129 million. Using the Scottish Parliament information centre’s inflator, I note that those costs would now be £46 million to £159 million, but we know that the costs of roads and inflation are much greater than that. Even if we took the figure of £159 million, Highland Council received £33.6 million of capital funding this year. How many years using its full capital budget allocation would it take for it to fix the road? It is absolutely not feasible.

The Scottish Government’s response has basically said to those communities that it is tough, that Highland Council cannot afford to do the work because the Government does not fund it adequately and that it is washing its hands of the whole situation. That is not a sustainable position.

I ask the committee not to close the petition but to look at another option to appeal to the Scottish Government to work with Highland Council to try to find a funding option that would allow the road to be improved. It will take the Scottish Government to provide Highland Council with that funding or ways of accessing it.

The Government might also want to involve Network Rail. We are talking about the road, but the rail line is just beside the road. The road saved the rail line, to an extent, after the most recent major rockfalls. In fact, the rail line was used as a temporary road to avoid the long detour. However, if the Government is washing its hands of this, it is only a matter of time. When there is a big rockfall, the road will close and there will be nothing to protect the rail line. We could lose both the road and the rail connection. I do not know whether the committee has spoken to Network Rail to see whether it has similar concerns. Could that help with some of the capital funding?

Highland Council provides some capital funding. I know that it is struggling at the moment, but all three bodies could look at the problem. If we are looking to Highland Council to sort it out, it would take its capital funding for the best part of a decade. That is just not going to happen.

The Convener: Thank you. You make a very powerful case in respect of the petitioner and the aims of his petitions. The issue that the committee must wrestle with is the—as you have said, profoundly disappointing—closed door that was presented to us by the Scottish Government.

Mr Ewing, are you indicating that you have thoughts on the matter?

Fergus Ewing: I do not think that there is anything further that we can do. I have much sympathy with the points that Rhoda Grant made about the practical difficulties that Highland people face in general. There has been no suggestion of a solution. I am not sure that Network Rail is likely to provide an answer, although I am sure that Rhoda Grant can take that up. Our experience in writing to Network Rail is that you do so more in hope than expectation, simply because its budget is committed for a long period in advance in respect of existing programmes, as is the roads budget.

I do not see that there is much more that the committee can do, other than to close the petitions under rule 15.7 of standing orders, on the basis that the Scottish Government has said that there are no current plans to undertake a formal review of the trunk road network. The Scottish Government does not consider that the A890 and the A832

“meet the criteria to be incorporated into the strategic motorway and trunk road network”.

The Scottish Government has said that local roads are considered to be out of scope

“unless they provided direct access to a major ... airport; linked to a nationally significant National Planning Framework 4 (NPF4) development site; or where a local road intersected a trunk road where bus priority or active travel measures were proposed.”

It is the Government’s view that the

“Principal A Class roads are best managed locally rather than centrally”

and that the A890 and A832 belong in that category

“as main roads which distribute traffic to and from the strategic trunk road network.”

I am merely stating the Scottish Government’s position. My view is that we need to do far more, as Rhoda Grant has rightly said, and that other methods of funding should be considered. I agree with that.

My last comment, perhaps in the light of the departure of two ministers from office last week, is that, with regard to overall priorities, we could spend more of the £60 billion of expenditure that we have in Scotland on upgrading roads. After all, unless you are a Tour de France cyclist, active travel on a bike is not really much use for the situations that Rhoda Grant described. However, that is perhaps a topic for another day.

Foysoyl Choudhury (Lothian) (Lab): That was a powerful presentation from Rhoda Grant. Can we ask the Scottish Government whether it will work with local authorities, because so many hours are involved? Could we suggest a visit to the area by the committee?

The Convener: I was going to suggest that, if we take forward Mr Ewing’s proposal to close the petitions, we couple that with writing to the Scottish Government to, as well as confirm our decision, summarise the practical consequences that Rhoda Grant detailed quite accurately and encourage the Government to consider the option of bringing together parties to advance a bespoke solution, rather than simply, as it has done, refusing to entertain further consideration of the idea.

I do not think that there is any dramatic action that we can take, but we could embrace Rhoda Grant’s suggestion by writing to the Government at the same time. Does that meet the committee’s approval?

Foysoyl Choudhury: If we close the petitions, we will be saying to the Government that the matter is closed. We will not be giving the Government the option to look at the possibility of working with the council or to come up with other solutions.

The Convener: The Government has given a clear direction on its position. As a committee, we have to be satisfied that we have a realistic opportunity to advance matters. I am not persuaded that we have, but Rhoda Grant’s testimony on the consequences will be on the official record of the Parliament. The committee is prepared to summarise that view unanimously and express it to the Government, with the hope that it might take further action. That is not our normal way of doing things, but we would be putting in place, by exception, a consequential action.

I do not find that easy but, given the volume of petitions that we have to consider, we have to be satisfied that there is a real prospect of advancing matters. We have other petitions that Rhoda Grant is concerned with and for which there might be greater prospects.

The circumstances are appalling, but I thank Derek Noble for bringing the petitions before us. Obviously, we will see whether anything at all comes from our action, but, regrettably, I feel that that is the position that we are in.

Do members agree to take that approach?

Members indicated agreement.

Holiday Let Accommodation (Rates Relief) (PE2019)

The Convener: PE2019, which was lodged by Alan McLeod, calls on the Parliament to urge the Scottish Government to prevent all owners of self-catering holiday accommodation from obtaining rates relief under the small business bonus scheme. We last considered the petition on 28 June last year, when we agreed to write to the Scottish Assessors Association, the Holiday Home Association, the Association of Scotland’s Self-Caterers and the Scottish Government.

We asked the Scottish Government whether it would consider adding self-catering holiday accommodation to the list of properties that are unable to qualify for the small business bonus scheme. Its response outlines the current arrangements for self-catering holiday accommodation but does not provide any indication of its position on the petition. Its submission notes that a consultation on council tax for second and empty homes invited views on the thresholds that apply for self-catering accommodation to be liable for non-domestic rates, and that the responses were being analysed at the time of the submission.

I am very disappointed in the Government’s response. What is the point of sending us a response that is almost like a public information leaflet but does not address in any way, either positively or negatively, the ask of the petition and

the question that we put? I would therefore like to go back to the Government in a direct way and say that the committee does not at all appreciate receiving a statement that we could reasonably have downloaded from the internet; we are asking about an instrument of future policy relating to the ask of the petition; and we would appreciate the Government's views on the petition as put.

David Torrance: I endorse everything that you have said. There is nothing in that submission to say whether the Government is for or against the petition. We are left in limbo. We should definitely go back to the Government and ask it whether it supports the petition and, if not, why not.

The Convener: We would much prefer that to a cut and paste from the internet.

Fertility Treatment (Single Women) (PE2020)

The Convener: PE2020, which was lodged by Anne-Marie Morrison, calls on the Scottish Parliament to urge the Scottish Government to provide the same fertility treatment to single women as is offered to couples on the national health service for the chance to have a family. We last considered the petition at our meeting on 28 June 2023—several petitions have come back from that date—when we agreed to write to the Fertility Network Scotland, the British Fertility Society, Fertility Scotland and the national fertility group.

The national fertility group responded to the committee in October, informing us that, at its most recent meeting, which took place in late August 2023, it received an update from Public Health Scotland on the modelling work that it is carrying out to help the group better understand the capacity implications of any future expansion of NHS in vitro fertilisation treatment for single people. At the time of the group's submission, specific timetables could not be given for the completion of that modelling work or subsequent consideration.

The petitioner has provided a written submission, in which she highlights the support for petitions like hers across the UK. She describes the inability of a single person to access fertility treatment on the NHS in Scotland as biased and discriminatory.

Do members have any comments or suggestions for action?

David Torrance: In light of the evidence that we have received, I wonder whether the committee would consider writing to the national fertility group to seek a further update on its consideration of the capacity implications of any future expansion of access to NHS IVF for single women, and to ask

how it might consider expanding the criteria for in vitro insemination to single people.

The Convener: I agree. We could also write to Public Health Scotland to seek an update on its modelling work on the timescales that it anticipates for completion.

We should keep the petition open and seek further explanation of what progress is being made in that regard. It all looks a bit piecemeal and of secondary consideration, but women in Scotland should not feel that they are subjected to bias or discriminated against compared with those elsewhere in the United Kingdom. Are colleagues content to proceed on that basis?

Members indicated agreement.

St Kilda Sheep (PE2021)

10:15

The Convener: My voice has been a little shaky today and I now have a lot to say about sheep. Please bear with me.

Our next continued petition, PE2021, on ensuring that the definition of protected animals in the Animal Health and Welfare (Scotland) Act 2006 applies to the sheep on St Kilda, was lodged by David Peter Buckland and Graham Charlesworth. The petition calls on the Scottish Parliament to urge the Scottish Government to clarify the definition of protected animals, as contained in the Animal Health and Welfare (Scotland) Act 2006 and the associated guidance, to ensure that the feral sheep on St Kilda are covered by that legislation, enabling interventions to reduce the risk of winter starvation and the consequential suffering of the sheep.

We last considered the petition at our meeting on 28 June 2023, when we agreed to write to the National Trust for Scotland, the St Kilda Soay sheep research project, NatureScot and OneKind. I am pleased to say that we have received responses from all those organisations, copies of which are included in our papers for today's meeting.

The animal welfare charity OneKind expressed concern about the welfare of the sheep on St Kilda and suggested that it is necessary to clarify the status of the sheep in order to establish what level of protection they should be afforded, and by whom. OneKind's response also suggests that, given that there is no option for the sheep population to disperse, there is a moral obligation to address the high levels of winter starvation but cautions that any proposals to reduce levels of winter starvation should be subject to animal welfare impact assessments.

Researchers from the Soay sheep research project state that there is no clear biological evidence that the sheep are meaningfully different from other wild mammal populations and go on to note that wild animals often die in large numbers as a result of natural processes, including starvation and exposure to harsh weather, but that, in most cases, those deaths are unseen. The researchers also suggest that measures to manage winter mortality, for example through a large-scale regular cull, could have welfare implications for the remaining sheep.

The response from the National Trust for Scotland highlights the fact that the retention of wild traits in the Soay sheep population has allowed for their survival in the often harsh conditions of the archipelago. The trust follows Scottish Government advice that the sheep should be regarded in the same way as unowned and unmanaged animal populations such as wild deer. Although there is a presumption against intervention, the trust notes that it might consider intervention in exceptional circumstances in response to animal welfare needs.

Although NatureScot's remit does not specifically cover animal welfare, its response notes that any change to the guidance on the Animal Health and Welfare (Scotland) Act 2006 would be likely also to apply to feral goats and feral cats, potentially leading to unintended consequences if landowners decided to remove populations of feral livestock from their land rather than taking on the burden of their welfare.

Those are the responses from the organisations to which we wrote.

We have also received two submissions from the petitioners, the first of which addresses the responses that we have received—and to which I have just referred—and notes the importance of clarifying whether the Soay sheep are to be considered wild or feral. The petitioners also make a comparison with the winter starvation of cattle and horses in Oostvaardersplassen in the Netherlands, where, similar to the situation on St Kilda, the feral animals have no predators and cannot disperse or migrate. In that case, images of starving animals led to public outrage and welfare interventions were rapidly introduced.

The petitioners' most recent submission disputes the validity of the information that has been provided by the National Trust for Scotland and invites us to request sight of the correspondence between the trust and the Scottish Government in relation to the status of the Soay sheep.

We have also received a submission from Dr Mary Harman, offering further information on the history of the sheep on St Kilda, noting accounts

by the archipelago's inhabitants of the sheep being used for food and suggesting that a number of ram lambs would have been castrated to reduce fighting and to limit the population.

We have a fairly comprehensive set of responses, including two challenging additional responses from the petitioners, on an issue of major concern about wildlife conservation on St Kilda. In the light of all that, do members have any comments or suggestions for action?

David Torrance: I wonder whether the committee would consider keeping the petition open and writing to the Scottish Government to highlight the evidence that the committee has received and to ask whether it will review the existing legislation and guidance and consider using the provisions in the Animal Health and Welfare (Scotland) Act 2006 to introduce regulations and updated guidance to ensure the welfare of the unique sheep population on St Kilda. We could also request that the Scottish Government provides the full text of its June 2009 communication with the National Trust for Scotland or that it clearly sets out the reasons for not releasing that correspondence in full.

The Convener: That seems very sensible and consistent with the suggestions that have been made by the petitioners. Are committee members content to keep the petition open and proceed with it on that basis?

Members indicated agreement.

The Convener: I am not sure whether one of the petitioners is with us today—I wondered whether I recognised him. Yes, he is in the gallery. Forgive my eyesight—you are as far away from me as it is possible to be, but I thought that you might be here. I hope that you are pleased that we have decided to keep the petition open. In the light of your responses, we will pursue the actions that you have suggested.

New Petitions

10:21

The Convener: That brings us to the consideration of new petitions. I realise that there might be people who have tuned in to watch our proceedings for the first time to hear how their petition might proceed or who are with us in the gallery for the first time. Therefore, as always, I will say that, in advance of considering a petition, we take two immediate actions. One is to seek from the Scottish Government an indicative initial response to the petition. The second is to seek a briefing on the issues that were raised by the petition from the Parliament's independent research body, SPICe.

As a veteran of the committee in previous parliamentary sessions, I can tell you that, before we opted to take those actions, we would meet to consider a new petition and those actions would be the first two things that we recommended we then did. All that that did was delay our consideration.

Care Homes (Local Government Funding) (PE2074)

The Convener: PE2074, which was lodged by Iona Stoddart, calls on the Scottish Parliament to urge the Scottish Government to increase the funding that it provides to local councils, enabling them to deliver the best possible health and social care, and help to protect the vulnerable, frail and elderly population from the closure of residential and nursing care homes.

Ms Stoddart draws our attention to research that suggests that as many as one care home a week is closing, in part due to cuts to health and social care budgets. The petition has also been prompted by proposals to close two local authority-run care homes in South Lanarkshire.

It is perhaps worth noting that, since the petition was lodged, South Lanarkshire integration joint board has passed plans to close both care homes. However, it has also written to the Scottish Government in an attempt to secure funding that would enable the closures to be reconsidered.

The SPICe briefing notes that it is the responsibility of individual local authorities to allocate funding provided by the Scottish Government based on local needs and priorities. The briefing also notes the Accounts Commission publication, "Local government in Scotland: Overview 2023", which includes reference to a UK-wide survey by the Society of Local Authority Chief Executives and Senior Managers that found that 44 per cent of respondents identified adult social care as a service at risk of cuts. I think that

any MSP would be aware of the pressures on all health and social care partnerships in their constituencies and the particular cuts that are being imposed unless care is defined as critical or essential.

The Minister for Local Government Empowerment and Planning has responded to the petition, stating that this is

"not a matter that the Scottish Government can intervene in",

and that it is up to each democratically elected council how it manages the spending of discretionary budget allocations. In doing so, the minister notes

"record funding of over £13.9 billion"

being delivered as part of the latest local government settlement.

Do members have any comments or suggestions for action?

I am minded to say that I am inclined to write to the Minister for Local Government, Empowerment and Planning to seek his reflections on the UK-wide survey by the Society of Local Authority Chief Executives and Senior Managers, which found that 44 per cent of council chief executives and senior managers had identified adult social care as a service that was at risk of cuts due to very large gaps in local government budgets. I am not prepared to sweep the issues that are raised by this new petition under the carpet on the back of what we have heard from the Government so far. I suspect that the position has deteriorated even since the petition was lodged. Do colleagues have any views?

David Torrance: I agree with your suggestion, convener.

The Convener: Are members content with that course of action?

Members indicated agreement.

The Convener: In that case, we thank the petitioner, and we will pursue the aims of the petition accordingly.

Local Participation in Planning Decisions (PE2075)

The Convener: Our next petition is PE2075, which was lodged by Stewart Noble, on behalf of Helensburgh community council. Stewart joins us in the gallery—welcome. The petition calls on the Scottish Parliament to urge the Scottish Government to prioritise local participation in planning decisions that affect the local area by providing a clear and unambiguous definition of the word "local", in so far as it applies to planning legislation; giving community councils decision-

making powers for planning applications in their local areas; and ensuring that the way in which decisions and planning applications are taken is compatible with the provisions and ethos of the Community Empowerment (Scotland) Act 2015.

In the background information on the petition, Helensburgh community council highlights the example of planning applications that affected Helensburgh being approved despite opposition from the community council and a majority of local ward councillors on the planning committee. The SPICe briefing, to which I referred a moment ago, sets out the process for determining planning applications, which includes the requirement for planning authorities to provide community councils with a weekly list of applications for developments in their areas. A planning authority must also consult community councils on proposed developments that are likely to affect the amenity of their area.

In its response to the petition, the Scottish Government notes the consultation that has taken place on “Effective Community Engagement in Local Development Planning Guidance”, as well as the recent amendments that were made by the Planning (Scotland) Act 2019 to increase the opportunities for individuals and community bodies to engage in the planning process, including by preparing local place plans for their own areas.

In addition, the Scottish Government has suggested that extending powers to determine planning applications to community councils would require comprehensive revisions to existing legislation, and that the Government is not minded to consider such a fundamental change to the planning system at this time.

We have received a submission from the petitioner in response to the Scottish Government’s response, in which the community council expresses concern that the “engagement” and “participation” that are referred to are simply part of a box-ticking exercise. The petitioner has also clarified that his proposal for providing community councils with decision-making powers on planning decisions would involve a number of community councillors becoming members of local authority planning committees, with full voting powers, to assist in determining planning applications in their area.

We are joined by Jackie Baillie, as we are again considering a petition that is of interest to her community and constituents. I am happy to invite her to address the committee.

Jackie Baillie (Dumbarton) (Lab): Thank you for giving me the opportunity to speak on the petition.

I share many of the petitioner’s frustrations. I think that the petition is born out of frustration,

given that the community council has attempted to engage meaningfully with the planning system in Argyll and Bute, sometimes to little notable effect. A useful piece of context that is noted in the petition is the fact that Helensburgh is closer to Edinburgh than it is to many other parts of Argyll and Bute. As members will know, Argyll and Bute is a very rural area that includes 20-odd islands, so it is not without its challenges.

The petitioner’s experience has been that the very reasonable suggestions that the community council has made have been considered by committees of councillors who simply do not have any relationship with or understanding of the community of Helensburgh. Often, those councillors are representatives of rural and island areas, whereas Helensburgh is predominantly an urban population whose travel-to-work area is in greater Glasgow, so there is a different context there.

Let me give you some of the examples where the community council has engaged and that engagement has resulted in absolutely nothing happening. In all the examples that I will give you, the community council did not oppose the application but suggested a different way of doing it or some conditions that should be applied based on its local knowledge.

10:30

In the first case, the community council was clear that housing could go ahead on the former Ardencaple garden centre site but that the number of houses was well in excess of the number specified in the local development plan. That was a case of the community council saying “Yes, by all means, put houses there, but not in the quantity that is being squeezed into a very tight site.”

The second example is a care home in the former works depot of Hermitage park, for which one of the community council’s concerns was the scale of the development, which might have impacted on a war memorial that was right next door to it.

The third example is the leisure centre, which is beautiful but is on the pier at Helensburgh on infilled land, which is prone to flooding. The community council therefore had an eminently sensible suggestion of moving the centre away from that area, but it was completely dismissed.

The petitioner is proposing not that community councils take all these decisions over but that their local knowledge is somehow inserted into the planning system, so that we get better decisions that are not about stopping development but about ensuring that it is right for the right place in their community.

I am sure that the committee will have ideas. Writing to the Royal Town Planning Institute or Planning Aid, which will have experience of these types of applications, might be an option.

The Convener: Thank you, Ms Baillie. We have a suggestion to write to the Royal Town Planning Institute. Do colleagues have any other suggestions to make?

David Torrance: It is good to see Jackie Baillie back at the committee.

I suggest that the committee writes to the Royal Town Planning Institute, Heads of Planning Scotland, Planning Democracy, Built Environment Forum Scotland, and the Scottish Forum of Community Councils to seek their views on the actions that are called for in the petition. Would the committee also consider writing to the Scottish Government to seek an update on the progress to finalise the guidance on effective community engagement in the local development planning process?

The Convener: We have suggestions there. Are committee members agreed?

Members indicated agreement.

The Convener: We will thank the petitioner and keep the petition open. We will now embark on our quest to receive further comment and evidence. Thank you very much to Jackie Baillie, as well.

Wills (Safe Custody) (PE2076)

The Convener: PE2076, which has been lodged by Maurice Frank, calls on the Scottish Parliament to urge the Scottish Government to require original wills made outside of Scotland to be accepted into safe custody by Registers of Scotland, or other safe custody providers, without prior mailing around, removing their power first to require an opinion on the validity of the will from a lawyer in the jurisdiction of origin.

The SPICe briefing explains that

“prior to a person’s death, there is no requirement in Scotland to register a will with a public body. However, a person might choose to register their will for safekeeping in the Register of Deeds ... A document whose formal validity is governed by a law other than Scots law can be registered if the Keeper is satisfied that the document is formally valid according to the law governing such validity”,

and the Requirements of Writing (Scotland) Act 1995 makes that provision.

The Scottish Government’s response to the petition states that due to the resources involved in obtaining such confirmation, the responsibility for providing the necessary evidence test rests with the applicant. The response further states:

“This provision is consistent with the principle that as the Register of Deeds is a Scottish public register, members of

the public in Scotland (who are not familiar with the laws governing documents in other jurisdictions) should be able to view the register with confidence that the documents registered therein are formally valid.”

Where an individual chooses to lodge a will in the register, it might be possible for evidence to be obtained electronically rather than by mailing the document to the relevant jurisdiction, depending on the requirements of that jurisdiction.

It is quite a technical request and quite a technical response. Do members have any suggestions or comments?

Fergus Ewing: I suggest that, in view of the detailed and helpful response of 22 January 2024 from the Scottish Government civil law and legal system division—aided and abetted, I suspect, by the keeper of the Registers of Scotland—we should close the petition under rule 15.7 of standing orders, on three bases: first, the requirement to validate documents is because the register of deeds is a Scottish public register, so members of the public in Scotland, who might not be familiar with the laws that govern documents in other jurisdictions, should be able to view the register with confidence that the documents that are registered therein are valid; secondly, where an individual chooses to lodge a will in the register of deeds, the requirement to confirm the document’s validity lies with the applicant; and, thirdly and finally, it might be possible for confirmation of validity to be obtained electronically rather than by posting the physical documents to the relevant jurisdiction, which deals with the question that the petitioner reasonably raised initially about what happens if original documents get lost in the post.

The Convener: Given the technical nature of the issue, the responses that we have received and, as has been said, the quite helpful summary of procedure from the Government—which partly addresses the aims of the petition and the question of the petitioner—Mr Ewing has proposed that we close the petition on that basis. Are members content to do so?

Members indicated agreement.

The Convener: We thank the petitioner for raising the issue, and I hope that they have drawn some comfort from the response from the Government.

Personal and Social Education (PE2077)

The Convener: PE2077, which was lodged by Thomas Ross, calls on the Parliament to urge the Scottish Government to remove personal and social education—often referred to as PSE—PSE from the curriculum for excellence and for it to stop being taught in secondary schools. The petitioner notes that, in their view, PSE is “a useless subject”

that takes up secondary school pupils' learning time.

The SPICe briefing notes that health and wellbeing is a key area of curriculum for excellence and that PSE is one of the ways in which schools support the health and wellbeing curriculum. The briefing also notes that PSE lessons can cover aspects of planning for choices and changes, substance misuse, relationships, sexual health and parenthood and financial literacy, as well as aspects of physical activity, sport and health.

In her response to the petition, the Cabinet Secretary for Education and Skills notes that

"PSE offers us an opportunity to ensure children and young people are prepared for the issues and challenges that life may bring",

and makes the key point that

"The Scottish Government has no plans to remove PSE from the national curriculum."

The cabinet secretary also highlights the Education and Skills Committee 2017 report, which noted

"how valuable good PSE is to young people",

and says that the Scottish Government continues to take forward the recommendations of that report.

Do members have any comments or suggestions for action?

David Torrance: In light of the Government's response, I recommend we close the petition under rule 15.7 of standing orders, on the basis that the Scottish Government has no plans to remove PSE from the curriculum, continues to take forward the recommendations of the Education and Skills Committee's 2017 review of personal and social education, and views PSE as an opportunity to ensure that children and young people are prepared for the issues and challenges that lie in front of them.

The Convener: Thank you, Mr Torrance. I will make an additional suggestion. The cabinet secretary notes that the Education and Skills Committee's 2017 report noted how valuable good PSE is to young people. Therein rests an issue of how contemporary the content of PSE is at any given point in time. From my constituents, I know that there is, at times, a feeling that the content has not been updated regularly enough to reflect current circumstances, and that the range of cultural and social issues affecting young people move apace, so what might have been relevant two or three years ago needs to be looked at again. Therefore, although the value of good PSE is there to be seen, students should not be questioning the value of the item in the curriculum,

because they should feel that its content is relevant to their concerns and considerations. The content should not be speaking to something that is aged in relation to their personal experience.

Are members content that we proceed on that basis?

Members indicated agreement.

The Convener: I say to Mr Ross that we are going to close the petition on the basis that the Government has no plans to do away with the subject. However, there is an issue at the heart of what he has said about the contemporary relevance of the subject at any given point, and we will draw that to the Government's attention.

Private Ambulance Service Providers (Licensing and Inspection) (PE2078)

The Convener: PE2078 is the last of our new petitions today. It was lodged by Ryan McNaughton and calls on the Scottish Parliament to urge the Scottish Government to create a new body to be responsible for the mandatory inspection, assessment and licensing of private ambulance service providers, or to encompass the clinical governance management of private companies in Scotland into Healthcare Improvement Scotland.

The SPICe briefing that we have received explains that the Public Services Reform (Scotland) Act 2010 includes independent ambulance services in the definition of an "independent healthcare service". The act sets out that Scottish ministers must

"prepare and publish standards and outcomes applicable"

to independent health care services and that Healthcare Improvement Scotland may inspect

"any independent health care service."

However, HIS has confirmed that regulation of those services has not yet been commenced and that it is unable to undertake any regulatory activity in respect of that type of service.

The Scottish Government's response to the petition states that the next step is for officials to continue engagement with stakeholders to explore whether the definition of "independent ambulance services" should be amended before the provision is commenced, in order to ensure that any regulation adequately reflects services today and in the future. The response also states that the commencement of HIS's functions in relation to the regulation of independent ambulance service provision will be considered and prioritised as part of a suite of proposals regarding the regulation of independent healthcare.

The act was passed in 2010, but it seems that we have not yet commenced its provisions, which is certainly some lead time by any standard.

Do members have any comments or suggestions for action?

David Torrance: The committee could write to the Cabinet Secretary for NHS Recovery, Health and Social Care to ask: how, in the absence of regulation, he can be assured that independent ambulances are operating safely; how long he expects it will take to explore—and, if necessary, update—the definition of an independent ambulance service; how the regulation of independent ambulance services will be prioritised to suit other proposals for the regulation of healthcare; and for details, including a timeline, of the commencement of Healthcare Improvement Scotland's functions in relation to the regulation of independent ambulance service provision. Lastly, the committee should ask the cabinet secretary why, after making provision for the regulation of independent ambulance services in the Public Services Reform (Scotland) Act 2010, the Scottish Government decided not to commence the relevant provisions to ensure at least some regulation while additional exploratory work is undertaken.

The Convener: Are members content with that suggested action?

Members *indicated agreement.*

The Convener: We will keep the petition open and proceed on that basis.

That concludes the public part of today's meeting. We will, unusually, meet next Wednesday, when we will hear evidence from the former First Minister, Alex Salmond, about the A9 dualling project.

Fergus Ewing: I know that we are due to take evidence from Nicola Sturgeon a bit later—I think, towards the end of May. Do we have any information about whether she has indicated that she still plans to attend on that date?

The Convener: We have had no suggestion that that session will not take place.

Fergus Ewing: I asked because she cancelled an engagement to give evidence elsewhere.

The Convener: That was in London. At this point, we have had no suggestion to that effect.

We now move into private session.

10:43

Meeting continued in private until 10:48.

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