COMMUNITIES COMMITTEE

Wednesday 12 November 2003
(*Morning*)

Session 2

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COMMUNITIES COMMITTEE
8th Meeting 2003, Session 2

CONVENER

*Johann Lamont (Glasgow Pollok) (Lab)

DEPUTY CONVENER

*Donald Gorrie (Central Scotland) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Patrick Harvie (Glasgow) (Green)
*Campbell Martin (West of Scotland) (SNP)
*Mary Scanlon (Highlands and Islands) (Con)
*Elaine Smith (Coatbridge and Chryston) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)
Christine May (Central Fife) (Lab)
Shona Robison (Dundee East) (SNP)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
John Scott (Ayr) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Alan Cameron (Scottish Executive Development Department)
Louise Donnelly (Scottish Executive Development Department)
Mrs Mary Mulligan (Deputy Minister for Communities)

CLERK TO THE COMMITTEE

Jim Johnston

SENIOR ASSISTANT CLERK

Gerald McInally

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 4

Scottish Parliament

Communities Committee

Wednesday 12 November 2003

(*Morning*)

[THE CONVENER *opened the meeting at 10:00*]

Planning and Compulsory Purchase Bill

The Convener (Johann Lamont): Our first agenda item is the Planning and Compulsory Purchase Bill. Patrick Harvie has indicated that he has been held up but will arrive later.

I welcome the Deputy Minister for Communities and ask her to make an opening statement on the proposals in the bill.

The Deputy Minister for Communities (Mrs Mary Mulligan): Good morning, everybody. I thank the committee for allowing me to speak to the Sewel motion and memorandum on the removal of Crown immunity from planning control through the Planning and Compulsory Purchase Bill at Westminster.

It might be helpful to the committee if I begin by briefly describing some of the background to the issue. As committee members know, legislation does not presently bind the Crown unless there is express provision to say that it does. A series of court decisions has confirmed that the planning acts do not bind the Crown. In Scotland, the Crown follows the procedures in the Scottish Office Development Department circular 21/84, under which the Crown submits to the planning authority a notice of proposed development instead of a planning application. That notice is treated similarly to a planning application, in that it is advertised and entered in the planning register. If the planning authority is content with the proposed development, the Crown can go ahead, but if the planning authority is not content, the proposal is referred to the Scottish ministers for their determination. Any cases that are referred in that way are treated similarly to appeals against refusal of planning permission. Examples of developments to which those administrative procedures apply include benefit offices, military installations and prisons. They constitute a small proportion of the overall number of developments that are submitted to planning authorities for consideration, although, on occasion, they can be pretty contentious.

The United Kingdom Government consulted on the removal of Crown immunity from planning control in 1992, and the then Scottish Office conducted its own consultation on the matter in 1993. The outcome was that the UK Government announced in 1994 its intention to remove Crown immunity from planning control at the first suitable legislative opportunity. The current Planning and Compulsory Purchase Bill, which was introduced in the Westminster Parliament in December 2002, was felt to be such an opportunity and, although planning is a devolved matter, the Executive decided that, in the absence of a suitable Scottish legislative vehicle, the Westminster bill provided an opportunity to deal with Crown immunity in Scotland. The Executive therefore agreed with the UK Government to pursue amendments to the bill to introduce Scottish provisions.

The planning systems in Scotland, England and Wales are similar, and the policy intentions of the UK Government and the Scottish Executive on Crown immunity and planning are the same. The use of the Planning and Compulsory Purchase Bill means that there is an element of consistency in the timing of, and approach to, the removal of Crown immunity north and south of the border.

In Scotland, the three main planning acts are the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Planning (Hazardous Substances) (Scotland) Act 1997. At first glance, it may appear fairly straightforward to make those acts bind the Crown. However, it is necessary to tailor the arrangements for Crown development.

I will end my comments at that point. I am happy to take questions from the committee on the Sewel motion.

Stewart Stevenson (Banff and Buchan) (SNP): I thank the minister for her opening remarks. She will know that my political colleagues and I are never comfortable with Sewel motions. That subject will be debated on the floor of the chamber, so I will not pursue it at the moment. However, I have a number of questions that are fairly straightforward but which may help to inform the debate when it takes place.

The minister indicated that the situation of prisons will change. She will be particularly aware of the contentious proposal for a prison at Addiewell in West Lothian. I understand that, at the moment, the council is probably a willing seller of the necessary land, but what difference—if any—would the bill make to the compulsory purchase that may be associated with the Addiewell project?

My second question relates to paragraph 9 of the briefing note that we have received, which makes it clear that the change does not make any difference to the Crown's exemption from criminal

sanctions. Will the minister share with us why it was not thought appropriate to make a change that would make the Crown criminally liable where appropriate?

My final question, which is also fairly straightforward, relates to paragraph 10 of the briefing note, which states that forestry commissioners will be exempt from these provisions when there are

"specific plans made by the Commissioners."

What does that mean? What are specific plans? Has that information been published, so that it is in the public domain? The wording before me suggests that decisions may be made at the whim of the Forestry Commission, but logic makes me think otherwise. I suspect that that is not the intention.

Mrs Mulligan: Mr Stevenson will be very aware that I am very aware of the planning application for Addiewell, given its proximity to my constituency. We are using his arguments for the retention of Peterhead prison to reassure people in West Lothian that provision of a prison there will not bring with it some of the problems that concern them.

The change in legislation will ensure that people are given an opportunity—as with other planning applications—to examine proposals in a more open way and to comment on them. Previously, people were told what would happen, instead of being consulted openly on proposals. The change represents progress, as it will permit the kind of consultation and involvement in the planning system that we all want.

Stewart Stevenson asked about criminal sanctions. We intend not to make the Crown subject to such sanctions purely because tradition and practice make it very difficult for the Crown to prosecute itself. In the past, we have avoided doing that in a number of other areas.

Indications are that a decision by the Crown not to allow a local authority access to an area that is under consideration could be challenged in court, and that the court would regard that decision by the Crown as unsatisfactory. Such a court statement should ensure that acceptable action is taken in relation to planning applications. We are following tradition; this is not something new. However, by removing Crown immunity we are pushing back the barrier a little further and seeking sensible and open responses from the agencies involved.

The forestry commissioners' specific plans have gone out to consultation so they should be widely known. We do not seek to duplicate anything. However, I will ask my colleagues to explain to ensure that that is clear.

Louise Donnelly (Scottish Executive Development Department): The provision will be in accordance with the plans of operations, or other working planning, that are approved by the Forestry Commission. The normal arrangements for the preparation of such plans, and for the accountability of the forestry commissioners in respect of those plans, would apply.

Alan Cameron (Scottish Executive Development Department): The provision that we are talking about relates specifically to tree preservation orders; it is not a general exemption.

Stewart Stevenson: I understand.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I welcome the bill, which will bring the Crown into normal planning processes. I am a bit concerned about paragraph 8 of the Executive's memorandum, under the heading:

"Urgent Crown Development and Urgent works to Crown Land".

I seek further information on who makes the decision that something is of national importance and who decides that, as a matter of urgency, they have to bypass the local planning authority. What examples can you give us of when this provision may have to be used?

Mrs Mulligan: It would be for the Crown body to prove that a development was urgent and needed to go ahead without delay. To give an example, I return to the issue of prisons. If there had been a fire in a prison, temporary accommodation might be put in that was not suitable. It would then be possible to concertina the application for rebuild and to shorten the delay in providing permanent accommodation. Be assured, however, that although the time scale could be shortened, we are not saying that there would be no consultation. There would be consultation, and information would still be available on what was being proposed. It is just that the eight weeks in local authorities—and the time scales elsewhere in the consultation process, however long they are—might be shortened. The process would still be open.

Cathie Craigie: Do local authorities not have a mechanism for dealing with such things through the local democratic process? I appreciate the point about the time for planning notification, but, in the example that you gave, why would the local authority not be able to deal with that situation?

Mrs Mulligan: Because it is still possible to appeal against such an application. The example may not have been great, but if there is a requirement for something to be done very quickly, it is still possible to appeal. After the eight weeks, there would then be the period of appeal. The new measures would shorten the overall period

because the first period would be removed. The decision would therefore be quicker.

Scott Barrie (Dunfermline West) (Lab): Other members' reservations over the use of Sewel motions notwithstanding, I feel that the Westminster bill is an appropriate vehicle to remedy a long-standing problem in some parts of Scotland.

A number of large establishments—for example, the former royal dockyard at Rosyth in my constituency—have retained Crown immunity. The changes will be welcomed in Rosyth, as there have been major problems there with proposals for development. The bill offers a better way of regulating the planning process compared with the current two-track process.

In answer to an oral question a few weeks ago, the Deputy Minister for Environment and Rural Development announced that the measures in the bill would be coming forward. That was the first that I had heard of them and I was excited to hear that they were on their way. I am glad that we are progressing them today, because a proposal pertaining to Rosyth is currently causing me and a number of my constituents some concern.

We must look at the merits of the proposed legislation, rather than taking a principled stance on the use or otherwise of Sewel motions. The measures are long overdue, and they should be welcomed.

10:15

Mary Scanlon (Highlands and Islands) (Con): How will the increased regulation affect certain environmental issues? I am thinking in particular of the large tracts of land that are owned by the Ministry of Defence. Will Scottish Natural Heritage get more powers to designate sites of special scientific interest? Will the proposed legislation apply the provisions of European directives? Will additional environmental regulations apply on MOD land?

Mrs Mulligan: The general principle behind the change to the planning system is to ensure that the decision-making process is more open and accountable. As Scott Barrie has just suggested, that has not been the case in the past. People have not always been able to know exactly what proposals have been made, and they have not been able to contribute to the discussions around them. We seek to bring the legislation in this area into line with the rest of the planning system, which allows for an open debate to take place.

Alan Cameron will comment on your point about SSSIs, from the planning perspective.

Alan Cameron: SSSIs are not designated under the planning legislation itself. The bill is about bringing to bear a specific set of statutory requirements on the Crown. That said, planning legislation contains requirements to consult SNH. If a development is proposed in an SSSI, there is a statutory requirement to consult SNH and to take on board its comments. That can trigger further steps in the process.

There is also the environmental impact assessment directive. Although the non-statutory procedures that we currently use cover the submission of an environmental statement, the EIA directive will now be on a statutory footing, so that the letter of the law will be applied to proposals to which environmental impact regulations would normally relate.

Mary Scanlon: Is it the case that SNH has, in the past, been excluded from those areas of land that have been under Crown immunity? Is it right that if the areas involved were of outstanding natural beauty or concern, or if there were some unique species there, SNH would not have been able to exercise any powers over those areas? Will SNH now have the power to go in and designate land?

Alan Cameron: Only in so far as we are talking about planning legislation. As I said, planning legislation is not used to designate land.

Mary Scanlon: I understand that; I am asking whether one thing leads to the other. It is a big issue in the Highlands.

Mrs Mulligan: The intention is to open things up so that they are more transparent. Agencies such as SNH will be consultees, and they will therefore be able to consider such situations in more detail than was possible in the past. Although that opportunity was never closed to them, the legislation will give agencies a footing on which they can ensure that they are consulted.

Mary Scanlon: Yes, that was really my point. If SNH designates an area of land that is currently used by the MOD, the ministry might in effect be excluded from training on that land. Is that a possibility?

Mrs Mulligan: Yes, although such decisions would be based on environmental directives not on planning legislation.

Mary Scanlon: But the proposed legislation will open the door for that to happen.

Mrs Mulligan: It will allow SNH to become one of the consultees through the normal, open consultation process.

Patrick Harvie (Glasgow) (Green): First, I apologise to the committee for arriving late.

Earlier, it was suggested that if a Crown body sought to demonstrate that a development was urgent or related to national security, any planning

meeting about the application could be held in secret. A private planning application allows objectors some time to make their objections. Would there be opportunities for people to object during the period in which a body had to prove that the matter was urgent or relevant to national security?

Mrs Mulligan: I want to be clear that I was in no way saying that those proceedings would be carried out in secret—

Patrick Harvie: But they would not be held in public.

Mrs Mulligan: As far as an urgent Crown development or urgent works on Crown land were concerned, such an approach would enable the process to happen more quickly. However, people would still be notified of any works.

Patrick Harvie: So objectors would be able to argue that a particular development was not urgent.

Mrs Mulligan: Yes, but I am not sure about the process for doing so.

Louise Donnelly: Basically, it would be up to the developing department to make the case whether works were urgent and the statute would also require the department to demonstrate that the works were of national importance. A submission would be made to Scottish ministers, which would trigger the urgent development procedure. Scottish ministers would then deal with the matter in the same way as they would deal with a case that had been appealed to them or which they had called in for a decision. As the minister has explained, the urgent development procedure simply accelerates the process by which a matter arrives with the Scottish ministers. The process and level of scrutiny would be the same and ministers would have regard to objections, which would be made in the same way.

Patrick Harvie: And the same would apply if a Crown body sought to demonstrate that a development was relevant to national security.

Mrs Mulligan: Yes.

Alan Cameron: The arrangement is slightly different. We have devised a system to ensure that it will not be possible to put certain national security issues into the public domain; however, we are putting in place an arrangement that would allow special advocates to act on behalf of objectors to ensure that their views were known and considered in the process. We are trying to facilitate objections in cases involving issues of national security in which information cannot be made freely available to the general public.

Donald Gorrie (Central Scotland) (LD): Under the current law, there is no requirement for planning permission to build a Parliament building or a large Government office block in Leith. Am I correct in saying that when the bill is passed such projects will need planning permission?

Mrs Mulligan: Sorry?

Donald Gorrie: At present, someone who builds a large Government building does not need planning permission. However, they would require such permission under the terms of the bill.

Mrs Mulligan: Yes. At the moment, departments can notify their intention to develop a building. However, that does not give people the opportunity to object or to make representations on the application. We will put the matter on a statutory footing to allow people to have such an opportunity.

Donald Gorrie: Theoretically, if this legislation had been in place, the City of Edinburgh Council could have refused planning permission for Victoria Quay or the Parliament building.

Mrs Mulligan: Yes.

Donald Gorrie: Of course, the Government could then appeal the decision—and would consider its own appeal, which raises other interesting issues.

Mrs Mulligan: Like any other applicant, the department would have the right of appeal.

Donald Gorrie: Following on from Scott Barrie's point, I am not clear about what is still Crown land—if that is still the right description. I wonder whether we could have a general—not specific—list of such land.

From past conversation, I believe that the Crown still owns the foreshore. I am not clear about the status of the Forestry Commission estate, the railway estate and all sorts of things that used to be Government property and have been privatised. Could we be given a list of the main categories of land that the proposal would cover?

Mrs Mulligan: We can provide such a list, although it will not cover every piece of land that would be affected. Basically, the proposal covers Crown lands and those that belong to the Government—land in which Government departments have an interest. We can provide members with that information in a clearer form.

Donald Gorrie: I refer to the point that Scott Barrie made about privatisation, if that is the right word. I am not sure how much that has affected the situation. It would be helpful if we could be given a list.

Mrs Mulligan: We can provide that.

Donald Gorrie: Thank you.

Campbell Martin (West of Scotland) (SNP): First, I want to comment on the use of Sewel motions. I remember that when the Scottish Parliament was established, Donald Dewar said that they were to be used sparingly, but it seems that they are being used increasingly frequently. The minister suggested in her opening remarks that much that is proposed in the memorandum could have been dealt with by the Scottish Parliament. Although the measures will clearly be beneficial to many people, perhaps if something can be done here, it should be done here.

I return to an issue on which Patrick Harvie touched. I refer the minister to paragraph 7 of the Executive memorandum, which concerns the special provision relating to national security. Will the minister clarify the process by which someone may raise an objection with the Lord Advocate? How would that happen? Would the person concerned have to petition the Lord Advocate to set up the panel for which the bill makes provision? If the Lord Advocate decided not to hold such an investigation, what recourse would the person have?

Mrs Mulligan: I will deal first with the issue of the Sewel motion. Unfortunately, Mr Dewar is sometimes misquoted on that matter. He said:

"The usual rule will be that legislation about devolved subjects in Scotland will be enacted by the Scottish Parliament. From time to time, however, it may be appropriate for a Westminster act to include provisions about such matters."—[*Official Report*, 9 June 1999; Vol 1, c 358.]

That provides us with some leeway when deciding whether the Sewel procedure is acceptable. We also benefit from being able to enact UK legislation. I am sure that none of us wants Scotland to be behind the rest of the UK on matters such as this. Campbell Martin accepted that for some time many people have been anxious for us to deal with the matter. I am pleased that we are now able to do that.

As Mr Cameron said, the Lord Advocate will have the ability to appoint an advocate who can be given information that cannot be made public for reasons of national security. That will enable the views of objectors to be expressed, made known and considered in the light of the information that has been provided to the advocate. I ask Louise Donnelly to fill in specific details of the proposals.

Louise Donnelly: In the first instance, the relevant UK secretary of state or the Scottish ministers, after consultation of the secretary of state, must be satisfied that the giving of evidence would be likely to result in disclosure of information relating to national security or to the measures that have been, or will be, taken to ensure the security of any premises. Ministers will receive an application from the developing department stating that it considers that disclosure of information about the layout of a prison or a Ministry of Defence development somewhere in Scotland would be contrary to the national interest. Ministers must be satisfied that that is the case.

When they are considering giving a direction, the Lord Advocate will consider appointing a special advocate. That is to ensure that anyone who might have an interest in having that information can have their interest considered by someone who is independent of the process that ministers and those conducting the inquiry have gone through. That has now been put on a statutory footing in the provisions on national security. Provision is therefore being made for oral evidence to be heard in public and for documentary evidence to be open to public inspection. There is then the exception in respect of national security and/or the provisions that are being made in—

10:30

Campbell Martin: It is more a matter of the direction from which the provisions are coming. If an advocate was appointed, would he or she call for people to come forward? Could an individual ask the Lord Advocate to appoint an advocate to carry out—

Louise Donnelly: As in any other circumstances, representations may be made to the advocate. In a case such as Campbell Martin describes, it would have been appropriate to appoint a special advocate.

Campbell Martin: What recourse would someone have if the Lord Advocate said no to that?

Louise Donnelly: The normal provisions would apply, whereby the Lord Advocate and the ministers would be required, under the general law, to act reasonably. They could be challenged by way of recourse to the court in respect of any decision not to appoint a special advocate. There is provision in the bill for making rules as to the procedures that are to be followed. The detail of how the procedures would be set out would be for the Scottish Parliament to consider by way of subordinate legislation.

Mrs Mulligan: Although we have been putting forward the principle and have been outlining what would happen, a great deal of these matters will be decided through subordinate legislation. There will therefore be another opportunity for members of the Scottish Parliament to examine the details and to reassure themselves that they are happy with them.

Elaine Smith (Coatbridge and Chryston) (Lab): I assume, from what has been said so far,

that the proposed extension at the Dungavel immigration removal centre, for example, would be subject to planning procedures if the bill were passed, unless the case were made that it should not. When the legislation goes through, will everything have to comply from that time? If intent to make a development had been intimated, would there be an exemption? When exactly would the legislation take effect?

Will the proposed legislation in any way affect building control regulations? I am not sure how they work with Crown property, and I am not sure whether local authorities have input through building control. If authorities do not have that input, would the legislation have an effect?

Mrs Mulligan: On your first point, there will be transitional arrangements for developments that exist at the moment and which have not been subject to the measures that we are now proposing. It will be assumed that, in such cases, the appropriate planning permission will have been agreed in the past.

On your second point, building regulations bind Crown developments; that will continue.

Elaine Smith: I wish to clarify that further. If a building were already in place, and an extension was proposed—I used the example of Dungavel—would that extension be exempt during the transitional period?

Mrs Mulligan: The building will be acceptable because it already exists. If a proposal for an extension were made, that would fall under the new regulations.

The Convener: We have been asked to decide whether we have any concerns to report to the Parliament. From the earlier discussion, it is clear that members have views on the use of Sewel motions. However, that is not what we are being asked about at the moment. During the forthcoming debate in the chamber, Stewart Stevenson will, as he indicated, not be bound by what the committee says on the matter. Aside from that, does the committee have any concerns to report to the Parliament about the substance of the measures that are proposed in the bill?

Patrick Harvie: I still think that there is some ambiguity about whether objectors will in Crown planning cases have the same opportunities to object and have their objections heard as they do in private cases.

The Convener: Would that be dealt with in subordinate legislation, which would allow us to examine matters at that stage?

Mrs Mulligan: I am not sure what the ambiguity is. The whole point is to put matters on the same footing as the existing planning system. Representations from objectors will therefore be open and public. Details of how that will happen will probably come through in subordinate legislation. I reassure the committee that the new measures will allow objectors—in the cases of applications that have previously been granted Crown immunity—to have their full say and to have their opinions acted on.

Cathie Craigie: If an objection to a local authority application goes to ministers for a decision, the objectors are free to ask for a public inquiry and free to make their objections known in writing. Will objectors to Crown applications have the same opportunities?

Louise Donnelly: The Crown is being brought into the statutory planning legislation regime, and the right to be heard is given in statute to the developer, the applicant and the planning authority. If a case goes to a planning inquiry, or if an appeal has gone to Scottish ministers, that right exists for the developer, the applicant and the planning authority. The Crown will not be in a different position.

As for opportunities to object, the statutory framework for making representations about developments will be in place for Crown developments as well—just as they are for developments by you or me or a company down the road. The statutory basis for Crown developments will be the same as for Wimpey developing a housing estate, or whatever. We are not changing the fundamentals of the planning system; we are just applying them in the same way to everyone.

Stewart Stevenson: I suggest that the committee draw Parliament's attention to the Crown's exemption from criminal sanctions, and that we observe that that exemption must not be used as a cloak to prevent criminal prosecutions of officials acting in the Crown's name.

The Convener: I will deal with those suggestions in a moment, but are there any other comments?

Mary Scanlon: We have discovered that SNH is likely to have more input than before on Ministry of Defence land. I would like clarification on who has the final say over such land. Historic Scotland and the Ancient Monuments Board for Scotland could also be involved. If the MOD is restricted in its operations, who has the final say over quangos? Quangos are likely to have more powers and there are concerns about the impact that that will have over the vast tracts of land that are currently used by the MOD.

The Convener: We seem to have gone back to asking questions.

Mary Scanlon: I would like that point to be raised.

The Convener: With respect, we were considering whether we wanted to report anything to Parliament. I will ask the minister to clarify the point and then come back to Mary Scanlon to ask whether she wants to report something to Parliament. We will then deal in turn with other points that have been raised.

Mrs Mulligan: I can only repeat what I have said. We take the planning system for granted in other areas but we have not been able to apply it in the past to land that is covered by Crown immunity. The new measures will make the system more open and accessible for those who have an interest in, or an objection to, an application on such land. Bodies such as SNH will be allowed to take part in that process. I hope that the measures will allow a cross-section of views to be heard before a planning decision is taken in the normal way.

Mary Scanlon: But the question is: who has the final say? I know from SNH's operation in the Highlands that it always has the final say. Will it have the final say over MOD and other land that comes within the terms of the proposed legislation?

Mrs Mulligan: As with the current planning system, ministers will have the final say. However, they are also answerable to the Scottish Parliament and so form part of that democratic process.

Mary Scanlon: But the Executive is also SNH's controlling body.

Mrs Mulligan: In a number of areas for which Parliament is responsible, we have procedures to ensure that responsible applicants are not in charge of making certain decisions and that no conflicts of interests result. However, at the end of the day, ministers have responsibility because they are democratically elected members who are answerable to Parliament.

The Convener: Patrick Harvie has suggested that we might wish to report our concern that ambiguity remains over objectors' rights. Do you want us to press that proposal, Patrick, or are you content with the minister's response?

Patrick Harvie: I am not arguing that removing Crown immunity is a bad idea or that it is not a significant improvement. In fact, such a move is very welcome. However, because factors such as relevance to national security, urgency and immunity from criminal prosecution remain, Crown planning applications will still have an advantage over objections that private planning applications do not have.

The Convener: I seek members' views on whether we report Patrick Harvie's suggestion to Parliament.

Donald Gorrie: It is reasonable to give issues such as relevance to national security special consideration in law and in administrative procedures, as long as that is not abused. As a result, the proposals in the bill are not unreasonable.

On the question of exemption from criminal sanctions, which Stewart Stevenson also raised, I would have thought that any civil servant who acted improperly would be prosecuted under some other law. They might not have broken any planning laws, but their conduct might not have been what we expect of civil servants. For example, they might have taken a bribe or whatever. It seems acceptable to retain the Crown's exemption in that respect. We are not saying that the Queen is above the law, but I do not think that the people who act collectively in her name as the Government should be able to prosecute themselves. One prosecutes individuals who have gone seriously out of line, whether they are politicians or civil servants. As a result, I am happier with the proposals than with the objections.

The Convener: I will deal with Patrick Harvie's objection first. Patrick, do you want to push your concerns about objectors' rights to a vote?

Patrick Harvie: Yes. I am keen for the committee to report that.

The Convener: Members will be clear about the proposal that we are voting on. The proposal is, that our report should mention concerns about ambiguity in the bill over objectors' rights. Are members agreed?

Members: No.

The Convener: There will be a division.

FOR

Harvie, Patrick (Glasgow) (Green)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Lamont, Johann (Glasgow Pollok) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

Martin, Campbell (West of Scotland) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 2. The proposal is disagreed to.

We have also discussed Stewart Stevenson's proposal that we express concern that an exemption from criminal sanctions might be used as a cloak—I think that that word was used—to protect officials who acted outwith the law. Donald

Gorrie has made the case against including those concerns in our report, but I am content to give members a few more minutes to discuss the point. I will hear Stewart at the end of that discussion.

Patrick Harvie: It would help if I could ask the deputy minister another question on that point.

The Convener: It would not really help, because we are trying to progress the matter. Otherwise, we will be here for ever. I suppose you could ask a rhetorical question, Patrick. If the minister then felt obliged to interrupt me later, she could do so at her peril.

Patrick Harvie: I wonder how a minister with responsibility for planning would respond to being asked about what the problems would be for a planning authority if such constraints on enforcement existed for private planning applications. How would such difficulties be overcome in respect of Crown planning applications?

10:45

Mrs Mulligan: Even with what is being proposed, we can still enact an enforcement notice, which would ensure that the direction was placed on the planning register. If an individual should then become the owner, they would have to take on board the enforcement notice.

I still have doubts relating to Government departments ignoring an enforcement notice. Ministers who are responsible for such departments would still have to come to Parliament—or to Westminster in the case of the MOD—to justify their actions. There are, therefore, still democratic ways in which we can pursue our concerns.

Stewart Stevenson: I want to respond to Donald Gorrie, who said that it makes no sense for the Government to prosecute the Government. That misses the absolutely fundamental point about how our legal system works. The Executive—the Government—is entirely separate from, and cannot exercise direct control over, the judiciary or the prosecution services. That important principle protects people in our country.

Crown exemption is a rather odd issue. As the minister pointed out, in a formal sense it would seem bizarre for the Crown to prosecute the Crown, but that is a convention. I am not necessarily taking a particular position, but am simply seeking to draw Parliament's attention to the matter. In Parliament's debate on the Sewel motion, members should consider the matter, because it is unclear to me what a Crown exemption is, if it does something other than protect individuals who would be subject to criminal law. Who and what is exempt from criminal sanctions if, as has been suggested, individuals who have acted illegally or improperly can already be prosecuted? We should draw Parliament's attention to that ambiguity and encourage Parliament to consider it when it debates the Sewel motion—that is all we can do.

Whatever the outcome of that debate, I hope that, when Westminster proceeds with its considerations—as I imagine it will—what is said in that debate will be an important part of its consideration of how it wishes to respond to the Scottish Parliament's concerns. On that basis, I wish to press my suggestion in respect of a report to the Parliament.

The Convener: I also hope that Westminster's consideration of the issue would reflect the substance of what the committee has said. Our discussions will be recorded in the *Official Report*. The fact that such issues are being raised in the committee means that they are already part of the discussion. The question is whether we want formally to report the matter to Parliament as a particular matter that we want to highlight. I thank Stewart Stevenson for his comments.

The question is, that Stewart Stevenson's proposal that we report the committee's concern that we do not want Crown exemption from criminal sanctions to be used as a cloak to protect officials, be agreed to. Is that agreed?

Members: No.

The Convener: There will be a division.

FOR

Harvie, Patrick (Glasgow) (Green)
Martin, Campbell (West of Scotland) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Lamont, Johann (Glasgow Pollok) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1. The proposal is disagreed to.

The Convener: On the point that Mary Scanlon made, I ask her whether she wants to formulate something to report or whether she is content that the matter has been taken care of.

Mary Scanlon: If the MOD has any issues to raise, there are elected members down the road in Westminster who can raise them in the appropriate place and at the appropriate time.

The Convener: Do members therefore agree that there is no need for the committee to report to

Parliament on the Planning and Compulsory Purchase Bill?

Members *indicated agreement*.

The Convener: I thank the minister for attending the meeting. The meeting will be suspended for two minutes.

10:49

Meeting suspended.

10:54

On resuming—

Antisocial Behaviour etc (Scotland) Bill

The Convener: Agenda item 2 is on the Antisocial Behaviour etc (Scotland) Bill. Members have a paper on our pre-legislative scrutiny. As I said last week, we thank all those who organised the meetings, including the clerks and the people in local communities who welcomed us. The exercise was useful. My experience was that everyone who attended the meetings did so with a degree of seriousness. Whatever people had to say, it was generally said in tolerant and reasonable tones. The report presents the views of the people whom we met, which we will reflect on further. We are grateful to those people for meeting us and giving us a background to our stage 1 consideration of the bill.

I seek comments from members on themes that they identified in the meetings that they attended. I do not want to start discussing our position in the debate; I want to know whether general themes arose on which we might want to reflect and which might give a steer to the people who will prepare questions. We will then decide whether we want to publish the evidence.

Most people recognised the carrot-and-stick nature of the issue—that there is a need not only to have facilities and more police, but to deal with the underlying problems. The issue of private landlords was a big one at the meetings in which I was involved. I think that the report from Dumfries mentions the effect on people when a community feels demoralised and under siege. That broad issue struck a chord with me. In one of the meetings in Glasgow, people said that their community had changed over time from being a community in which people wanted to live to one that people wanted to move away from. That issue came out strongly.

Mary Scanlon: I want to mention a theme that I am not sure we have captured totally. It is also mentioned on the front page of the edition of the *Third Force News* that I picked up today. I know that the points in the summary, under question 6—which is on page 45 of the document—are not in any particular order, but I think that there was more emphasis on using existing powers and regulations than on introducing stronger laws. I went on three visits only, but I think that the Glasgow visit was the only one in which the three-strikes-and-you're-out stance, as used in the United States, was supported and in which it was claimed that the law is too lenient on criminals.

There was a strong cry for the existing powers to be utilised more fully.

The Convener: People wanted that to happen as well as for new powers to be introduced.

Mary Scanlon: Yes, but I do not think that the report makes the point strongly enough that not enough use is made of existing powers. That point certainly came through in the meetings that I attended.

The Convener: Would it be fair to say that the point relates particularly to antisocial behaviour orders?

Mary Scanlon: Yes. In the *Third Force News*, a representative of Barnardo's Scotland is quoted as saying that

"Rather than introducing new and costly legal processes, the Executive should be developing the existing children's hearing system and concentrating"

on what works. The point is that we should be more proactive and use existing powers, as we heard during the visits. As well as the legislation, there must be greater emphasis on supporting the children's hearings system and ASBOs. That was the strong message that I got.

11:00

Patrick Harvie: I thank the clerks for putting together the report, which was no small task. If we are to publish it, however, I am keen that it should reflect the emphasis that I picked up on and that seems to be present in the reports of the visits that I did not go on.

What came through to me most strongly from the reports were issues about drugs and alcohol, facilities, resources and the use of existing powers, as Mary Scanlon said. The other issue that was important was the need to ensure that existing systems work, either ones that are under-resourced or at which resources are not being targeted properly. I agree that there is a balance between support and control, but the overwhelming message about control is that what happens at the moment does not work because social work and the children's hearings system, for example, are under-resourced. I have also heard that certain systems, such as the regeneration programmes, do not work and that money is being wrongly targeted. The views about new powers were mixed.

The Convener: There was a strong feeling in the Glasgow meetings in particular that the agencies were doing the wrong things—phrases such as "goodies for baddies" were used. I am not agreeing with that, but the feeling was not that social work did not have enough resources; people said that things were not being dealt with appropriately and that the agencies were not giving strong enough messages.

Patrick Harvie: Existing systems are not working.

The Convener: The people at the meeting said that the system was wrong; whether it works is a different matter. They said that they did not think that the approach was the right one. The committee will have to make a judgment on that matter. We have the opportunity to emphasise certain things in the report and that might be the best way of dealing with the matter.

Patrick Harvie: I just feel that if we are to publish the report—

The Convener: You are right to say that one of the big themes is drugs and alcohol and the consequences for local communities. There is no doubt that that theme comes out of the report strongly.

Elaine Smith: From the visits that I made and from reading the evidence, I think that, whatever stand people took on the matter—whether they wanted to bring back corporal punishment or whether they thought that the problem was about a lack of funding and services—they all seemed to identify as a problem the lack of recreational provision for young people. That is important because, even when there are facilities in communities, they tend to be outwith the reach of young people, who often cannot afford to access them. Everybody felt that that was the case, no matter what their point of view.

The Convener: I might have misled members with my enthusiasm—I call it "enthusiasm" rather than "obsession". We must reflect on the evidence further, but we do not want to come to conclusions now. There is certainly an issue about recreational facilities, the abuse of such facilities and the fact that young people cannot use them because of what is happening in local communities.

Although I want us to reflect on the report in committee now, we will have a chance to reflect on it further as we take more evidence. It will inform some of the questioning to the witnesses who will come before us.

Donald Gorrie: The report contains many good points and reflects a wide range of views. However, the committee must clarify what antisocial behaviour is. For example, some people find groups of young people wandering about the streets intimidating, even though those young people are not doing anything wrong. If youth culture involves wandering about the streets in groups, is that antisocial behaviour? What is the perception of normal behaviour? Another example is noise. A lot of students and unemployed people turn night into day and blare out their music at night, but that is their normal way of life. Are we saying that that way of life is wrong?

The Convener: If you live underneath them, yes.

Donald Gorrie: I think that it is probably wrong, but another example that caused a great problem when I was a councillor concerned a law-abiding Chinese family who prepared a meal late at night after returning from their restaurant. Although they did not make an undue amount of noise, they disturbed the nine-to-five type of family who lived next door. What is social behaviour? We need to analyse exactly what it is that we are addressing.

The Convener: I remember living underneath a group of doctors who worked in shifts and thought that it was quite reasonable to hoover in the middle of the night. Some behaviour just makes you grumpy and some is simply intolerable. My experience is that most people are desperate to be tolerant but that everyone has a limit. This would be a useful subject to ask the ministers about.

Stewart Stevenson: The three visits that I went on were fascinating and invaluable. I was particularly glad that I went on the Glasgow visit because, until then, I must confess that I did not really see the problem. The situation that I saw on that trip was different from the situations that I saw in Edinburgh and Lossiemouth and appears to be different from the ones described in the other visits, to judge by the report. There is little doubt that this is the right time for the Antisocial Behaviour etc (Scotland) Bill to be introduced. There are issues in our communities that need to be addressed.

It would be useful to publish the report so that people outwith the committee can read it; it might be as useful to them as it is to us. Like Mary Scanlon, I have a small concern with the list on page 45. I know that the report says that the list is in no particular order, but people will still read it as if the order in which it is written is significant.

The eight reports and the recommendations arising from them did not give a strong steer that new legislation is required—there was a suggestion that it might be necessary, but that was not a strong theme. However, I accept that people might not have said that there ought to be new legislation because they believed that the Antisocial Behaviour etc (Scotland) Bill would result in stronger laws in any case.

With the exception of the Glasgow situation, the use of the legal drug that is alcohol appeared to be much higher up the list of people's concerns than the use of illegal drugs. We must be careful not to change that emphasis.

I was surprised, in a way, that no one focused on the definition of antisocial behaviour in the bill. I recognise that the definition comes from the Criminal Procedure (Scotland) Act 1995 and is therefore not new, but I think that the three occurrences of the definition in the bill are all slightly different. I am not sure whether the provision in the bill to give a sheriff the opportunity to consider whether an action was reasonable in the circumstances is sufficient. We should explore that further. How do sheriffs interpret the definition in the 1995 act?

We must recognise the fact that hardly anybody—probably nobody—whom we visited had read the bill. Indeed, the bill was published at the end of the period in which we were out and about and not even members of the committee had read it. I suspect that, when we read the bill and relate it to what we have experienced, we will come up with further thoughts.

The report is excellent and my comments on it are purely matters of detail and are not suggestions that I would want to have a vote on.

The Convener: There is a distinction between annex A and annex B. Annex A is a report on our visits. Annex B, where the list is, is a report on the questionnaires.

Stewart Stevenson: Thank you for that; I am afraid that I missed that.

The Convener: In my experience, people ask for the police to do more about X. They do not know whether laws or powers exist for that; they just think that the police are not doing enough about it. We have to ask the people who police our communities whether they need extra powers or whether they have sufficient powers but are not using them. The problem is identified by communities, but those communities tend to accept others' judgment about whether new legislation is needed or whether existing legislation needs to be better enforced. I do not think that the distinction between using existing powers and getting new powers came out of the meetings that I attended; people just wanted action on the problem. We will have to explore with witnesses who appear before us the arguments on either side about whether the current powers do what people want them to do or whether further powers are required. That will be interesting.

Elaine Smith: This is just a technical point, convener, because I assume that you are winding up the discussion.

The Convener: I am getting wound up—that is not quite the same.

Elaine Smith: The responses are available on the committee's web page. In the communities that we visited, we heard concerns about our just disappearing back to Edinburgh, with the people there hearing no more about the matter, so could the report be sent to them? Not everyone has access to the net and can trawl through it.

Jim Johnston (Clerk): There is a proposal to send a copy of the report to the organisers of all the visits that we undertook.

Elaine Smith: Sorry, I missed that.

Patrick Harvie: At a couple of points in annex A, it is said that sentencing is too light or too heavy, but there is no explanation of what that means. In at least two instances during the visits, phrases such as "light sentencing" or "get tough" were used, but once we explored what they meant, people thought that reparations and community disposals were the tough sentences and that simply locking people up or tagging them did not address the problem—they did not consider that to be tough. I wonder whether we could introduce—

The Convener: We are not going to go back and amend the report. What you have said will be in the *Official Report*.

Cathie Craigie: The report is about what we heard on the visits. It is not for us to try to change people's mind. We were there to listen. People were saying that we should get tough or that they accept that community reparation is a good way forward. The report does not reflect everything that was said, but it reflects the flavour of the visits and of what people were saying. It is not about our words; it is about the public's words and opinions.

The Convener: Do we agree that the evidence be published along with our stage 1 report on the committee's web page and circulated, as Elaine Smith suggested, to the groups? Do we agree to say for the record that the views came from our visits and from the questionnaires and to give those views no more or less weight than that?

Stewart Stevenson: You are not proposing that we delay publishing the report until we produce the stage 1 report.

The Convener: We would publish it along with the stage 1 report. It would be part of the body of evidence, but that does not mean that we will not put it in the public domain now.

Stewart Stevenson: That is fine.

Cathie Craigie: I wanted to know that, too, because a lot of the people who were glad that we had taken the time to visit them were anxious to see how the visits would be written up. Perhaps we could send out the report as soon as possible.

The Convener: Is that action agreed?

Members *indicated agreement*.

Meeting closed at 11:13.

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