



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 3 February 2021

Session 5



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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

5th Meeting 2021, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Sarah Boyack (Lothian) (Lab)

COMMITTEE MEMBERS

*Keith Brown (Clackmannanshire and Dunblane) (SNP)

*Gordon MacDonald (Edinburgh Pentlands) (SNP)

*Alexander Stewart (Mid Scotland and Fife) (Con)

Annie Wells (Glasgow) (Con)

*Andy Wightman (Lothian) (Ind)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jeremy Balfour (Lothian) (Con) (Committee Substitute)

Nick Hawthorne (Scottish Parliament)

Richard Lyle (Uddingston and Bellshill) (SNP)

Norman MacLeod (Scottish Government)

Andrew Mott (Scottish Government)

Kevin Stewart (Minister for Local Government, Housing and Planning)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Virtual Meeting

Scottish Parliament

Local Government and Communities Committee

Wednesday 3 February 2021

[The Convener opened the meeting at 09:00]

Decisions on Taking Business in Private

The Convener (James Dornan): Good morning and welcome to the fifth meeting in 2021 of the Local Government and Communities Committee. Please ensure that all mobile phones are in silent mode.

Broadcasting will operate your microphone and camera as usual. After being called to speak, please allow a short pause to allow them to do so.

We have received apologies from Annie Wells, and Jeremy Balfour is here as here as her committee substitute.

Item 1 is consideration of whether to take in private item 7, which is consideration of the evidence that we have heard on the Travelling Funfairs (Licensing) (Scotland) Bill. Members are also asked to agree whether to take in private future consideration of our draft report on that bill. As we are meeting remotely, rather than asking whether everyone agrees to take that business in private, I will instead ask whether anyone objects. If there is silence, I will assume that everyone is content. Does anyone object?

No one has objected, so that is agreed.

Subordinate Legislation

Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 [Draft]

Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 [Draft]

09:01

The Convener: Under agenda item 2, the committee will take evidence on two instruments. I welcome to the meeting Kevin Stewart, Minister for Local Government, Housing and Planning, and his Scottish Government officials: James Hamilton, lawyer in the housing branch of the legal directorate; Norman MacLeod, senior principal legal officer, planning and built environment; Andrew Mott, head of housing markets, strategy and north programmes in the more homes division; and David Reekie, planning regulation manager in the planning and architecture division.

We understand that the two instruments have the same common purpose, so we are taking evidence on them jointly, but they will be formally debated separately. The instruments are laid under the affirmative procedure, which means that the Parliament must approve them before the provisions can come into force. Following the evidence session, the committee will be invited under the next agenda items to consider the motions to approve the instruments.

There is significant public interest in the instruments, so, for information, we have allocated just over an hour for the evidence session. Before we start, I have some brief technical information for you. There is a pre-arranged questioning order and I will call each member in turn to ask their questions for up to nine minutes. I ask the minister to state clearly if an official is being brought in to answer any question. We may have a short amount of time for supplementary questions at the end.

I ask everyone to give broadcasting staff a second to operate the microphones before you speak. I remind everyone that Scottish Government officials can speak under this agenda item, but not in the debate that follows. I invite the minister to make a brief opening statement.

The Minister for Local Government, Housing and Planning (Kevin Stewart): I am grateful for the opportunity to speak to the two motions seeking approval for the instruments. With the committee's permission, I will speak to both instruments together. In our 2018-19 programme for government, we made a commitment to ensure

that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic and tourism benefits of short-term lets. The two instruments deliver on that commitment.

Members may recall that in September 2018, I received a cross-party letter calling for the introduction of a licensing scheme for short-term lets as a response to clear concerns from constituents about the rise in short-term lets and the impact on neighbours and residents. I said then that I would take the time to engage with stakeholders to get the right solution. That was done through extensive engagement through two public consultations.

In 2019, we consulted on the broad principles of a regulatory framework and commissioned research on the impact of short-term lets on communities. That showed broad support for some form of regulation and formed the basis for the proposals that I announced in January 2020, which were to establish a licensing scheme for short-term lets using powers under the Civic Government (Scotland) Act 1982 and to give local authorities the ability to introduce short-term let control areas under powers introduced by the Planning (Scotland) Act 2019.

In September 2020, we launched a second consultation on detailed proposals for these instruments. Despite Covid-19 restrictions, my officials engaged with more than 400 stakeholders at a series of workshops, and we received more than 1,000 written responses. The statutory instruments were drafted following careful consideration of stakeholders' views and input. I am grateful to everyone who took the time and trouble to help us to get them right.

I have appreciated the support throughout the process and for the proposed legislation from MSPs, as well as from members of the public, who have been the main force in wanting to see legislation catch up with the rise in home-sharing platforms, and how we now book our tourism or business stays.

I know that short-term lets bring many benefits to hosts, visitors and the Scottish economy. They are an important source of flexible and responsive accommodation for tourists and workers. However, they have also caused issues for local communities that need to be addressed. The legislation is about ensuring that balance and acting on behalf of the people of Scotland.

At the heart of the licensing scheme is a set of mandatory standards that will help to protect the safety of guests and neighbours across Scotland. Many hosts will already be following those standards as a matter of compliance with existing law or best practice. The licensing order allows

local authorities to tailor the scheme to address particular local issues, and it will help them to know what is happening in their area and handle complaints effectively.

I understand that Covid-19 has had a devastating impact on the tourism sector, and we have listened carefully to concerns raised by the business and tourism representatives who called for a delay to our proposals. That is why we amended our proposals so that existing hosts have until 1 April 2023 to apply for a licence. That gives them more than two years to get ready.

We need to put the legislation in place now so that councils can get their licensing schemes ready. Many local residents and communities are keen to see progress on the issue, and today provides the opportunity for us to make sure that that happens. We are not placing additional requirements on hosts in the midst of the Covid-19 pandemic. I want to see a strong recovery of responsible and sustainable tourism in Scotland, and we are planning for such a recovery.

The control area regulations give effect to powers in the Planning (Scotland) Act 2019 for local authorities to introduce control areas. Control areas will help to manage high concentrations of secondary letting where it affects the availability of residential housing or the character of a neighbourhood. The control areas will help to restrict or prevent short-term lets in places or types of building where they are not considered appropriate. That will help local authorities to ensure that homes in their areas are used to best effect.

Finally, we will continue to work with and listen to stakeholders. We have established a working group, which is made up of local authority and industry representatives, to develop guidance on the licensing scheme and control areas that is clear, comprehensive and easy to understand.

I know that the committee has heard concerns from a range of operators about the impact of the licensing scheme on them; in particular, on the impact of what some have described as "traditional bed and breakfasts". In recognition of those concerns, and the important role played by those businesses in both the local economy and national economy, I have asked that the working group actively explore solutions to those issues, with a view to identifying any changes to the legislation that might be needed.

As always, we will monitor and evaluate the impact of the legislation to ensure that it is effective and targeted. We are prepared to make adjustments in the next parliamentary session if it necessary to do so.

I believe that our proposals take a robust but proportionate approach to the regulation of short-

term lets and are right for Scottish circumstances. Therefore, I ask the committee to support the motions today.

The Convener: Thank you, minister. I will kick off the questions. I appreciate what you said in the latter part of your statement, but you are right that we have been inundated with comments from people from the bed and breakfast and short-term lets sectors, for whom the proposals could be damaging.

The problem is mainly geographical, and will possibly have a wide impact on the tourism economy. How do you see the working group getting past that issue when it starts to consider the problems?

Kevin Stewart: The working group should take cognisance of variations around the country. I think that local authorities will also do that when they establish their licensing schemes. It is in councillors' interests to ensure that the decisions that they make in setting up their licensing regimes take account of circumstances in their area. That is why we have provided for flexibility in the regulations.

The health and safety aspect will apply throughout the country. That is only right, because we all want the industry to consider health and safety. There have been arguments about levelling the playing field, in which health and safety is paramount, so that will apply everywhere. Some local authorities will look to add to the health and safety aspect, because there are different circumstances in different places. We have offered flexibility and autonomy to local government to allow it to build on its needs. Local government will also continue to listen to folk in the industry and to communities about the balance.

It is not, nor has it ever been, my expectation that we will have a uniform situation across the country. We have laid the regulations as they are in order to allow autonomy and flexibility—to enable local politicians to take a balanced view about what is right for the economy and communities in their area.

The Convener: Let me try to get clarification on the point. You are saying that the regulations are the bottom line, and that local authorities will have the opportunity to be bit harder in their areas. It seems to me that the regulations will still put a burden on parts of the tourism industry that one would not expect to be affected.

Kevin Stewart: I will use an example. We know that there have, in certain parts of the country, been difficulties with antisocial behaviour related to short-term lets. That is a fact. Some folk will say that it is a particular problem in Edinburgh, but it is a problem in many other places. It might be that a local authority—the City of Edinburgh Council, for

example—will decide to build into its licensing scheme elements to tackle antisocial behaviour.

However, antisocial behaviour might not be a problem for other local authorities. I do not want to name any local authority off the top of my head, because at the end of the day, I am not privy to everything that goes on in particular places. Some local authorities might well decide to stick with only the health and safety aspect of licensing. That is a matter for the authorities.

With regard to flexibility, larger local authorities might have areas in which there are specific problems, so they might deal separately with some areas. Flexibility is built in to the regulations to allow for that. What we are proposing with regard to the basic licensing regime is about health and safety—it is not heavy handed. I have not come across members who do not think that it is right that we deal with health and safety aspects.

09:15

Meanwhile, I know that folks have various views about what is required in their locale. That is obvious from discussions that I have had. It will be up to local authorities to decide what is best for them and to shape their licensing schemes to suit the needs of the economy and the communities in their area.

The Convener: On the same point, there was talk about licensing fees—or maybe it was a total cost to small businesses—of £2,000 a year at a minimum. Is that correct?

Kevin Stewart: I do not know where the £2,000 figure comes from. We are very interested to find out who has made those calculations and how they came up with that figure.

We published a business and regulatory impact assessment along with the regulations. Let me run through a few points in it. The average indicated fees are estimated to be in the range of £223 to £337 to cover a three-year licence. The actual fee levels are set by local authorities, and are likely to include higher and lower tiers, to reflect businesses' scale.

Local authorities license other things too, as we know. In Scotland, fees for houses in multiple occupation range from £229 to an outlier amount of £1,906. Landlord registration fees are set nationally at £66, plus £15 for each property, which makes the fee for one property £81. We are going to take a look at that in the future. In their responses, local authorities have indicated that they might expect the short-term let fees to lie somewhere between the fees for landlord registration and HMO licences.

In answer to folks who have said that local authorities might try to profiteer from licences, I

note that the scheme has to be cost neutral: it has to cover only the costs of the scheme, so it does not allow the possibility for profiteering. That it does allow it is a misleading idea that has been put around by some people.

I am very interested to see where the £2,000 figure that you mentioned came from and how it has been calculated. Maybe whoever came up with it would send that to us in writing.

The Convener: My colleagues will probably ask more about this, but can you explain now why you included bed and breakfasts in the definition of short-term lets? They do not really have a history of causing problems for neighbours, do they?

Kevin Stewart: There is always a difficulty with definitions in law in such circumstances. Bed and breakfasts have always been included. I am more than happy to continue to work with the industry on some of aspects of definitions. However, despite some folks having said that bed and breakfasts were not included at the beginning, they were always part of the consultation.

Responses from the bed and breakfast sector talked about the need to level the playing field. Maybe our attempts to level the playing field are not exactly what they want, but we need to ensure that we do not have anomalies, as we move forward. For example, a short-term let operator might try to prove that their business is a bed and breakfast business in order to get around the law, perhaps by providing breakfast boxes and saying that the property is a traditional bed and breakfast.

The legal definitions have to be clear. We will continue to look at the issue; we are more than willing to continue to speak to folk about it. However, we have to ensure that whatever we put in place works for all and that there no loopholes or anomalies.

Sarah Boyack (Lothian) (Lab): I draw members' attention to my entry in the register of members' interests. I was formerly employed by the Scottish Federation of Housing Associations.

It has already been said that we have had a huge number of representations on the orders. I want to go back to financial issues. We have received, from local authorities, representations saying that they face a challenge in getting the process up and running. How confident are you about the costs of licensing? Local authorities think that the costs have been underestimated because they will have to set up the system in advance of getting any income, and representatives of the sector are worried because they think that the costs will be £1,000 for a short-term let licence and £1,000 annually, which is more than the estimates that have been provided. I know that you said that you want to see the

details of that, but that is what we have been given in representations.

Kevin Stewart: We consulted local authorities on our business and regulatory impact assessment, which gives a fairly robust estimate of what is likely.

Ms Boyack alluded to the establishment of a new licensing regime. It is not new for local authorities. When I was an elected council member, we brought in HMO licensing, for example. All that is cost neutral. Establishment of the schemes and the costs of running them are paid for by fees. It is not unusual for local authorities to establish licensing then charge fees on a cost-neutral basis to deal with that licensing.

There might be disputes about our BRIA calculations, but we have consulted on them. If anybody thinks that our calculations are not right, I would like to see their calculation of their figures.

Ms Boyack said that more than one person has stated that they would pay £1,000 one year and £1,000 the next year. As I stated in my previous answer to the convener, we are talking about a three-year licensing scheme. It would certainly not be the case that there would be a fee one year and a fee the next year.

Sarah Boyack: Thank you, minister. I was thinking more about the fact that it is clear that authorities will have to do additional work in advance. It is welcome that the scheme has now been kicked back to 2023, but there will be preparatory work to do.

I want to follow up the point that was made about traditional bed and breakfast operators. How many are already licensed under the Licensing (Scotland) Act 2005, and how many more are expected to be covered by the order?

Will you clarify your points about different uses of buildings for letting, and the importance of there being no loopholes?

What timescale have you envisaged beyond the first three-year licence? That is a major concern for operators.

On paragraph 108 of the policy note that you sent us, will it be up to local authorities to decide whether it will be three or four years before a licence must be renewed? That is the longer-term issue.

Kevin Stewart: We have said that it will be three years. We are open to discussion with local authorities about that, but I think that three years is the right length of time. That period came out of consultation responses and conversations, and stakeholder events. We could look at the matter again, but there is already a kind of settled will on it.

I do not have at my disposal the number of guest houses that are already covered by licensing and planning regimes and the number that are not. Andrew Mott might have some of those numbers at his fingertips, although I think that it is unlikely.

Andrew Mott (Scottish Government): I do not have those numbers, but we can take an action to get that information.

On licence periods and renewals, the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 allows the initial licence period to be up to three years. We will work on that with local authorities, hosts and so on through the working group. After that, the renewal period is not constrained, so local authorities might be quite happy to set quite a long renewal period for operators in cases where no issues or problems have arisen.

Sarah Boyack: Thank you—that was the issue that I was hoping to get information on.

A key issue is what work will be done to monitor the regulations. You said that you will review the regulations in the next session of Parliament. I was looking for a more confident and forward-looking approach to ensuring that the system works. Are you saying that you are worried about the detail? To what extent is that an issue with the primary legislation? Is it, rather, an issue about the regulations that sit alongside that legislation and, critically, the guidance, and about consultation with operators and local authorities about the detail?

Kevin Stewart: It is essential that we get the guidance right. One of the reasons for establishing the working group is to ensure that the guidance is the best it can be.

As the committee is aware, in my statement to Parliament in January 2020 I outlined that we would use secondary legislation to move the issue forward, using the Civic Government (Scotland) Act 1982 and the Planning (Scotland) Act 2019. At that point, I said to Parliament that if the secondary legislation did not meet all the requirements, we would consider primary legislation.

I have been pragmatic about how we deal with the matter. Many communities wanted a fast response, which is why we are using secondary legislation. We want to get this absolutely right, so even though I am confident that what we are doing through secondary legislation is the right way to balance the needs of the economy and communities, we will—as every good Government should—continue to monitor the situation to ensure that there are no unintended consequences. We will spend time on the

guidance so that we are doing our level best to get the best possible outcome for all.

09:30

Alexander Stewart (Mid Scotland and Fife) (Con): Minister, in your opening statement, you said that you want to see a strong recovery. You also talked about your approach not being heavy handed. However, the information that the committee has received from respondents makes it clear that many of them believe that what you are proposing is exactly what you did not intend—it is heavy handed. Some have even called the proposed regime a sledgehammer to crack a nut.

We know that you have given an exemption to hotels, boarding houses, guest houses, hostels and so on, which fall under use class 7, but the majority of bed and breakfasts fall under use class 9. As far as I can see, that will have a massive impact on that sector of the industry, and that is what it has told us.

You indicated that you have asked the working group to look at what changes might need to be made to the legislation, and that we might need to adapt things in the next session of Parliament. If you believe that adaptations and changes will be needed in the next session, you must therefore be suggesting that you think that you have got this wrong.

Kevin Stewart: We have spent a lot of time looking at all the various aspects of the issue—more so than with many other matters that we deal with—in order to get our approach right. We have held two consultations on the issue. I conducted independent analysis of the impacts of the short-term letting industry. There will be very few members who have not had complaints about such matters cross their desk. It is essential that we balance the needs of the economy with the rights of communities. That is why we have taken the time to get that right. The industry has rightly said that bringing the proposed measures into play now, during the pandemic, would not be beneficial and that it has enough on its plate at the moment. We have listened to that, which is why a great deal of the proposed regime will not come into play until 1 April 2023.

It would be an unwise minister who said directly that they would not keep an eye on possible unintended consequences of any legislation. The committee knows me well, and I have said to the committee on numerous occasions on numerous issues that we will continue to monitor the impacts. We will do that, and we will continue to listen to people when it comes to the establishment of the guidance, which is key to the delivery of all of what we are proposing.

If I were to say to the committee that we are always 100 per cent right in everything that we do in regulation and legislation, I am sure that members would have something to say. I repeat that we have brought forward the legislation but that we will continue to monitor it in order to get the balance right for businesses and communities.

Alexander Stewart: There is also the issue with local authorities. What assurances can you provide to local authorities and planning and licensing departments that they will have the resources and the staff to manage the system effectively? We are hearing that they would be under immense pressure. They are under immense pressure because of the pandemic, and they are trying to manage many other issues in their areas. The proposed regime would place an additional burden on them. What assurances have you had that local authorities will be able to staff and resource the system?

Kevin Stewart: We have had 23 responses from local authorities—I am quoting that figure off the top of my head, and I might have to change it. Five authorities have talked about the financing of regimes, whereas 18 have not. *[Kevin Stewart has corrected this contribution. See end of report.]*

Like me, Alexander Stewart is a former councillor. He would have been a councillor when the regulations on houses in multiple occupation came in. Local authorities got on with that. They are used to establishing and running cost-neutral licensing regimes; that is what they do.

I repeat that it is possible that the working group will discuss some aspects of the proposed regime. However, my expectation—which would be the same if I were still a councillor—is that a scheme will be established that is cost neutral. Beyond that, I would say that many local authorities—or a few of them, at least—have already been thinking about that, and work has already started on how they would go about dealing with the proposed regulation.

I recognise that some folk do not want anything to happen in this area, and I understand why they do not want change here and will paint the grimmest of pictures on some aspects of what is proposed. However, I do not envisage the establishment and running of the proposed licensing scheme to be overly onerous, because local authorities already operate such schemes in many spheres of business.

Alexander Stewart: My final question is on the control areas. What criteria will the Scottish ministers use in deciding whether to grant or refuse approval for a short-term let control area? Will those criteria be published or subject to consultation?

Kevin Stewart: We will lay out what we will do on those aspects in the guidance, but there has to be a wee bit of faith. Ministers deal with many planning matters. For example, in order for a local authority to establish a conservation area, ministerial approval is required. That is not an unusual set of circumstances. I assiduously consider all such matters that cross my desk, and I hope that my successors would do likewise.

Keith Brown (Clackmannanshire and Dunblane) (SNP): I want to go back to the issue of the responses that the consultation has provoked. It is probably fair to say that some of the concerns relate to the fact that people in places outwith Edinburgh, which I know has been a main driver for the legislation, feel that it might not be relevant, appropriate or what they want to see, and that it will be hanging over their head in future even if local authorities do not immediately move to impose such a regime. Can you give people in those places some reassurance that there will not be a needless move to do that by an overeager local authority when there is no perceived need for it? Can you say anything about where you think that the most pressure is likely to be for such a regime, Edinburgh aside?

Kevin Stewart: I know that some folk have painted the problem as an Edinburgh-only one, and I recognise that there are immense difficulties in this city. However, over the piece, I have had issues raised with me from many areas of the country. You asked about other areas in particular. In our independent study, we looked at places such as Skye and the east neuk of Fife, where there are obvious tensions in relation to getting the balance right between economy and community, and there are other places where that is happening, too.

As I outlined, we have given local authorities the autonomy and independence to put in place what is right for them. What we require everywhere, as is only right, is that health and safety aspects are adhered to and form part of the licensing regime. However, the build-on to that licensing regime is a matter for local authorities to make decisions on.

It is difficult for me to name individual local authorities, because I do not want to be seen as pushing them to one position or another—they have to make decisions that are right for them. However, there are local authorities other than the City of Edinburgh Council that have had problems with antisocial behaviour, for example, and they should be free to add that aspect into the licensing regime if they want to do so. Of course, there will be other local authorities where the short-term lets are dispersed, and there are, therefore, very few problems, so they could stick with the basic health and safety licensing.

I have faith that elected members at a local level—I know that you were one, too—will make decisions about what is right for their own patches and will get right the balance between community needs and the needs of the economy in that area.

Keith Brown: I thank the minister for his reply—*[Inaudible.]* Some of the responses that we have received, especially those from smaller concerns, concentrate on the scope of the proposal. Would the Scottish Government have been able to impose a duty on platform operators such as Airbnb and Booking.com to ensure that they advertised only properties that were properly licensed? If it could have done that, is there a reason why it did not?

Kevin Stewart: The Scottish Government is working with platforms on the expectation that they will be keen to make the scheme work. Visitors should be attracted by a licensing number, because it indicates that the property is properly regulated and compliant. I think that platforms have a reputational interest in offering lawful listings, and I think that properties having a licensing number helps in that regard. However, I do not have the power to insist that the licensing number is posted by the operators.

I hope that that answers Mr Brown's question, convener. I did not really catch the start of it, because his connection is not brilliant.

Keith Brown: I am sure that it is your connection that is not brilliant; I think that mine is absolutely fine, to be honest, minister.

You are right to say that you are trying to put in place a new system and that you will need to review it once you have done that to ensure that you have got the balance of interests right. I seek reassurance that, when you look at the balance of interests, you will take into account at least the three sets of interests that I can think of. The first of those relates to the concern of smaller operators in the industry, in particular, that the regime does not unduly affect their ability to recover from the pandemic. Another one is the interests of those who are badly affected by short-term lets. You mentioned Edinburgh, but that is the case in other areas, too.

The third area of interests is for local government. If the regime, which local authorities are well able to take on—I agree with you on that—becomes more expensive, such that they are not able to recover their funds, will the Government take that into account? Will it consider all those different interests when it reviews the impact?

09:45

Kevin Stewart: I can assure Mr Brown on all three of those issues. It is vital that we do our utmost to ensure economic recovery and sustainable tourism. In light of the concerns, therefore, the regime will not come into play for existing operators until 1 April 2023.

In all that the Government is doing at the moment, we are keeping very close tabs on what is happening with the public health emergency that we are facing and its impacts, so the answer is yes on point 1.

On point 2, we must continue to listen to communities on the impacts that they have experienced. I have met folks during events that we have held whose lives have been severely impacted by short-term lets and irresponsible owners. I know that those irresponsible owners are in the minority, but we would be swerving our duty if we were not to act on all this. We must continue to do our level best for communities.

On the third point, we will continue to engage with local government not only on the licensing regime that we are considering now but on all the other regimes that are in operation at this time—as every good Government would.

My experience in local government is probably not dissimilar to that of Mr Brown regarding some regimes. I cannot remember the dates when Mr Brown was in local government, but it is not unusual for local authorities to establish licensing regimes, and it is not unusual for Governments to continue to engage to ensure that those regimes are acting as was originally envisaged.

Therefore, the answer is yes on all three points.

Andy Wightman (Lothian) (Ind): Good morning, minister. In relation to the planning regulations, you said earlier that you want to allow local government to have autonomy. In response to Keith Brown's question, you said—I paraphrase—that you have faith in local councils' ability to decide what is best for their areas. Why, then, did you decide that ministerial consent should be required before a control area can be designated?

Kevin Stewart: That is not an unusual set of circumstances. As I have said previously, in the establishment of specific areas, it is not unusual for ministers to take an overview and make the decision. I mentioned in an earlier answer that that arrangement is used in the designation of conservation areas, for example. I do not think that that is a real impediment, and it is not unusual.

Andy Wightman: You said in paragraph 5.14 of your 2020 consultation document:

“The conservation area process requires some form of consultation (not specified in legislation) and notification to Ministers for approval.”

Perhaps you can help me. I read section 62 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, which requires planning authorities to give notice to ministers of

“the designation of any part of their district as a conservation area”,

but I cannot see anywhere a requirement that ministers consent before that designation can have effect. Which legislative provision provides that ministers must consent and approve conservation areas?

Kevin Stewart: I do not have the legislation on conservation areas in front of me, but in my day-to-day business, even if there are small changes in conservation areas in relation to street furniture and so on, they will come to me to cast an eye over. I will respond in more depth to Mr Wightman’s question once I have had a look at the legislation that he has in front of him, which I do not have in front of me.

Andy Wightman: Okay. Thanks very much.

I want to move on to the question that has been raised about bed and breakfasts. A letter to the committee from David Weston, who is the chairman of the Scottish Bed and Breakfast Association, came in last night. He refutes the assertion that is made in your letter to the committee that you sent earlier this week. In paragraph 4 of that letter, you said that B and Bs have always been excluded. The 2019 consultation paper proposed excluding

“licensed hotels and B&Bs and self-catering properties on their premises”.

Do you understand that many people understood that bed and breakfasts were never to be incorporated into the regulations?

Kevin Stewart: I do not, but I think that we will have to agree to disagree on some of this. A number of questions have been thrown up by the association about designation. Mr Weston wrote an article for Direct Line. The question

“What is the difference between a B&B, guest house and hotel?”

was put, and he responded:

“One of the biggest questions those in the accommodation hospitality industry ask is how to differentiate between a B&B, guest house and hotel.”

There are difficulties there, but B and Bs were always included in all of this.

I go back to the point that I made to Alexander Stewart about loopholes or getting around legislation. One of the things that could happen is that short-term letters could say that they provide

breakfast boxes and that the property is therefore a traditional bed and breakfast. I am willing to have discussions about some of that, but the definition of a traditional B and B is not one that I have.

Andy Wightman: We will maybe get further into that in the debate on the instruments, because I think that there are ways around that.

I think that I know the answer to my next question from reading the policy documents and so on. If I were the owner of four short-term let businesses, for example, I would require to apply for four licences, because licences are specific to each property. Is that correct?

Kevin Stewart: Yes.

Andy Wightman: Okay. You said in the policy note:

“a person operating 15 yurts in one field at one end of the village and 15 yurts in another field at the other end of the village would require two licences.”

Will you explain what the logic of that is in comparison to simply requiring the operator to have one licence that covers both premises—indeed, one licence that covers all premises—so that it is clear that they are abiding by the licence conditions?

Kevin Stewart: I will bring in Mr Mott, and then I will come in.

Andrew Mott: On who is interested in what is going on in a field or premises, an important consideration is the neighbours who might be affected. If there are 15 yurts in one field, anyone who makes a booking will probably not be allocated a particular yurt until they arrive, but the neighbours around the field will always be the same people. If another premises or field two miles down the road with 15 more yurts in it is operated, the neighbours will be different. The operation in one field may be totally fine, but there might be other considerations in the other field.

The thinking was that it does not make sense to require each yurt in the field to be individually licensed; rather, the whole premises should be considered as one operation. That seems to be the least bureaucratic approach that still protects the interests of the different neighbours at the two sites.

Kevin Stewart: Mr Mott has explained the neighbour aspect of that well. If we want to put communities at the heart of what we do, which is, I think, what Mr Wightman wants, that is the logical way to deal with that.

Andy Wightman: That did not really answer my question. If I am an operator and I have four short-term lets in Inverness, for example, why can there not be one licence for me that designates the four

properties that I manage and confirms that I comply with all the licensing requirements, as opposed my having to make four different licence applications?

Kevin Stewart: There might be a situation in which we would want communities to have their say about the operation of one property but not all four properties. It is about striking the right balance to meet community need. One problem has been that communities have felt that they cannot respond about their individual circumstances and how properties affect them.

Andy Wightman: I have a few more questions, but my time is up, so I will leave it there.

Gordon MacDonald (Edinburgh Pentlands) (SNP): It has been estimated that there are 8,000 short-term let properties in Edinburgh and that fewer than 100 of those have applied for planning permission to operate as a commercial business. What powers will local authorities have to ensure compliance with the new planning and licensing regime?

Kevin Stewart: The City of Edinburgh Council has already used some of the powers that it holds to tackle short-term lets using planning legislation, but the proposals will give it a greater ability to tackle folks who are not compliant. We have spoken to the City of Edinburgh Council and other local authorities about shaping the right regulations, and we will continue to do so in shaping the guidance. It will then be up to the City of Edinburgh Council to shape the regimes that work for it, the businesses in the city, and the communities in Auld Reekie.

Gordon MacDonald: But there will not be any new enforcement powers. Currently, the City of Edinburgh Council has to take owners to court, which is, as you will be aware, an expensive business. Have you considered giving local government more powers to enforce the licensing regime, because—*[Inaudible.]*

Kevin Stewart: It will have powers under both regimes. If I may, I will bring in Norman MacLeod to talk about the current planning situation, and then I will add to that.

10:00

Norman MacLeod (Scottish Government): On enforcement, the current planning position is, in principle, relatively straightforward. Any material change of use requires planning permission and, if a person does not have that planning permission, the local authority can serve enforcement notices against them. If the person disagrees, they can appeal to ministers and, if the person loses on appeal, they need to revert to the previous use or they risk being held liable for criminal offences.

The existing planning regime applies to existing breaches of planning control.

Gordon MacDonald: I accept what Mr MacLeod has just said, but the reality is that there are 8,000 such premises in Edinburgh but fewer than 100 have applied for planning permission, so there seems to be very little enforcement.

Kevin Stewart: I will let Mr MacLeod come back in again on material change, and then I will come in.

Norman MacLeod: I have no knowledge of the factual position, but the law on planning enforcement is simply that there is a 10-year period in which the local authority can take action against an owner for having materially changed the use of a property without planning permission. It is for the local authority to decide what it wants to do.

Kevin Stewart: I will add some comments on the changes that we intend to make, most of which come from the Planning (Scotland) Act 2019. During stage 3 of the Planning (Scotland) Bill, we introduced provisions to allow planning authorities to designate all or part of their areas as short-term let control areas, which would add to their abilities to control such areas. As has been said to Mr Wightman, we will consider any proposals on short-term let control areas on a case-by-case basis, taking into account the evidence that is provided by planning authorities. It is important to stress that what is going on in different areas will be pertinent to those considerations. Of course, local authorities would consult on that. That adds to the mix of powers that local authorities have on the issue, and it bolsters the planning enforcement aspect, if local authorities choose to use that power.

Gordon MacDonald: You have touched on the impact on residents' lives of short-term lets being used as party flats and so on. The mandatory conditions that are attached to a licence focus largely on the safety and security of guests. Should conditions also apply to protecting the interests of neighbours, particularly in flatted developments with common areas that are under shared ownership?

Kevin Stewart: Again, that goes back to the autonomy and independence of local government and the regime that it chooses to establish. As I said earlier, it might want to build on the basic health and safety provisions that should apply to all, and that might, as I said earlier, include antisocial behaviour provisions. It might also look at things such as littering and cleaning regimes in the common areas that Mr MacDonald mentioned.

If we look at the conflicts that there have been in recent times in particular, we see that the cleaning of common areas has certainly caused difficulties.

However, it has been pointed out to me that littering, antisocial behaviour and the general cleaning regime have been problematic for many people since long before the global pandemic.

The local authority needs to look at the requirements around getting that balance right for both business and the community in its area.

I do not want to push Edinburgh into a position. Mr MacDonald talks regularly to elected members of the City of Edinburgh Council, and I think that many of them would like to see a more enhanced regime, which might include some of the elements that Mr MacDonald has mentioned.

Jeremy Balfour (Lothian) (Con): Good morning, minister. I think that most of the issues have already been dealt with by my colleagues. As a former councillor in Edinburgh, I understand that there is an issue with how easy enforcement is for local authorities. However, that is perhaps for another day.

I want to go back to bed and breakfasts, about which questions have been asked. Does the minister agree that the 2019 consultation excluded bed and breakfasts? We may want to have an argument beyond that, but the initial consultation excluded bed and breakfasts.

Kevin Stewart: We are looking at all short-term lets that are not classified as guest houses, hotels and the other things that are outlined. I know that there is a dispute, but I keep pointing out that, if we had excluded all those things in the consultation, there would have been an easy way out for non-traditional short-term letters: they would be able to classify themselves as bed and breakfasts by doing things such as putting in a breakfast box and then saying that they are bed and breakfasts and not short-term letters.

As I have explained, through the discussions of the working group, we will look at whether we can make further refinements. However, there are already differences in legislation between what is classified as a guest house and what is classified as a bed and breakfast. Bed and breakfasts fall into a category that has no classification at the moment, which is why we consulted on short-term lets. We will look at all that, but I do not agree with what Mr Balfour is saying. I also go back to my point about both consultations, in relation to which the Bed and Breakfast Association said that it was all about levelling the playing field.

Jeremy Balfour: You have given local authorities quite a lot of discretion regarding how they add to the basic requirements. What safeguards are there if councils abuse that and go beyond what would be reasonable? Can you review the restrictions placed by local authorities, or do they have carte blanche to do anything that

they want once they have decided to go beyond the basic requirements?

Kevin Stewart: Local authorities will have autonomy as long as they stick to the guidance. That is one reason why it is so important that we get the guidance right; it is also why we brought folks together to take an overview of the guidance. Local authorities do not have complete and utter carte blanche; as always, they will work within the guidance that is laid out.

Mr Balfour is a former councillor. Councillors will look at all of this with the best of intentions in balancing the needs of the businesses in their areas and the communities that they serve. I do not see a need to be afraid of allowing local authorities to put place schemes that follow the guidance and meet the needs of the people and the businesses that they represent.

Jeremy Balfour: I am not convinced that local businesses or Opposition party members would agree with that comment, given how the City of Edinburgh Council is being run at the moment.

The Convener: That was a good finish Jeremy.

We move to item 3, which is the formal debate on motion S5M-23719. The motion calls on the committee to recommend approval of the draft Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021. I invite the minister to speak to and move the motion.

Kevin Stewart: We have covered a lot of ground today. I reiterate that we have consulted twice and have carried out independent research. There is a recognition that we must ensure a balance between the rights of businesses and those of communities.

As I pointed out, we have already listened. We have delayed the implementation of the legislation and will give folk until 1 April 2023 to apply for a licence. That will give them more than two years to get ready.

We must put the legislation in place now so that councils can get their licensing systems ready. We must also take cognisance of the fact that many communities have waited a fair while for action. Communities recognise that the pandemic is causing difficulties, but they want to see movement.

We are not placing additional requirements on hosts in the midst of the pandemic. I want Scotland to have a strong and sustainable tourism industry, as we all do. We will continue to do all that we can to ensure that that is the case.

There has been debate about what have been described as traditional B and Bs. I acknowledge the importance of those businesses to their local

economies and to the country as a whole, which is why the working group will actively explore those issues and we will look at whether any changes to the legislation are required.

There seems to be controversy around my statement that we will continue to keep an eye on the regulations and monitor and evaluate their impact. It is only right for a responsible Government to do that. As always, I am willing to engage with members on the issue. I spoke to Alexander Stewart earlier this week, at his request, and I am more than happy to speak to other members. Beyond that, I will, as always, keep the committee and stakeholders informed of progress.

I move,

That the Local Government and Communities Committee recommends that the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 [draft] be approved.

10:15

The Convener: I invite comments from members. If you would like to contribute to the debate, please let me know by typing R in the chat box or clearly raising your hand.

Andy Wightman: This is agenda item 3, so we are debating the planning regulations; my understanding is that we will debate the licensing order under agenda item 4.

I have been a long-standing advocate of tighter planning regulations for commercial short-term lets—that is, domestic properties that are used exclusively for commercial letting and no longer provide anyone with a home. As the minister noted in his opening remarks, I wrote to him asking for local authorities to be given licensing powers. I remain supportive of the need for tighter planning control.

The minister mentioned problems in Edinburgh, which I think we are familiar with. However, Professor Douglas Robertson, who gave evidence to the committee and co-authored the Scottish Government's research, gave the notable example of Fort William. There, students and staff were unable to secure accommodation; tradespeople on a major affordable housing project were unable to secure accommodation; and the planned expansion of the aluminium smelter was put on hold because there was no accommodation. That was all because of the unregulated expansion of short-term lets. It is therefore vital that we get this right.

The minister said that he is prepared to make adjustments. My fundamental problem with that is that the minister was invited by the committee to share with us a draft of the regulations, but chose

not to. That is his prerogative, and there is no requirement in any of the parent legislation for the use of the super-affirmative procedure and so on. However, unfortunately, that means that there is no opportunity to amend the regulations.

I was pleased to hear the minister say that he was prepared to make adjustments—as the licensing order part of this will not come into force for some time, there is still time for him to do so—but I would rather that we got it right at first go.

On the planning regulations, I believe that it is fundamentally wrong that ministers should be required to give consent. Regulation 3(b) states boldly that

“the proposed designation must be approved by the Scottish Ministers”.

No criteria are given on which that approval must be based.

In the debate on the Planning (Scotland) Bill on 19 June 2019, when we debated the power in the bill that gives rise to the regulations, the minister said:

“It is always frustrating when members speak out in favour of localism but, when it comes to the crunch, are often willing to vote against it. That does not wash with me.”—[*Official Report*, 19 June 2019; c 50.]

That does not wash with me, either.

Local planning authorities should have the power to designate short-term let control areas without the consent of the Scottish ministers being required. I therefore have very little choice but to intimate that I will not support the regulations.

Sarah Boyack: I welcome the fact that we are debating these instruments and the principle of short-term let control areas. We urgently need the powers to ensure effective regulation of the market. It should not just be up to the market to decide how and where short-term lets operate in our communities.

Gordon MacDonald's point was well made. In Edinburgh alone, 10 per cent of our housing stock has been lost to short-term lets. That means that 14,000 homes have been removed from long-term residential use, massively increasing rents, exacerbating the shortage of housing for those who want to live and work in our city, and adding to the distances that people have to commute, which also has a massive impact on neighbourhoods.

Short-term letting started in the city centre, but it is now expanding throughout the city, with impacts on community and neighbourhood and the loss of local shops. It also impacts on our economy, and it has a negative effect on the lives of those who have to deal with antisocial behaviour and noise.

In tenements, absent and hard-to-contact owners are also a problem when repairs are needed.

There are clearly benefits in terms of tourism and income from people who manage their properties properly when renting them out. However, we need to put a proper regime in place because at the moment we do not have control, and we do not have proper, effective and consistent planning. We need a rebalance.

I have read the submissions, which seem to suggest that this is just about Edinburgh. I do not agree. The evidence that was submitted to the committee today and the research that has been carried out show that there is a particular concentration of short-term lets in Edinburgh and the Highlands, but there are also concerns in other council areas, such as Glasgow and East Lothian. There is a real need to get the balance right and make sure that we have an effective regime, which we do not have the moment. This sector of the housing market is not properly regulated, and we need to act because we are losing homes that are not being replaced.

I welcome the new policy principle of short-term let control areas, but they need to be effective. I agree with what Andy Wightman said about the top-down design and the fact that there is a requirement on the Scottish Government, rather than on local authorities, to approve or reject changes to such areas.

We have a choice to approve or reject this legislation. The fact that it is possible to identify whole areas or hot spots is important, because that is a planning requirement and it means that we will have proper consultation on and consideration of whether short-term lets in an area are appropriate.

There will be a particular challenge with tenements and flats, where there are on-going issues of noise and impact on neighbours, and concerns over common repairs and maintenance. In the past year, constituents have also told me of their concerns over safety during the pandemic. There are clearly issues to be addressed.

I go back to the key issue of the loss of residential properties without proper decision making. That has had a massive effect on key parts of the country, and I agree with the representations that we have heard that we need effective monitoring. That is a vital role for the committee. The Scottish Government needs to go back to the operators and work constructively on the legislation. That is critical, because if we have appropriate regulations, we will have accountability and effective regulation.

I might be disappointed that the minister will retain control over how—or whether—control areas are implemented, but it would be a step

back if we were to knock the motion back today. We have to move forward, which is why I will support the motion.

Alexander Stewart: Much has been said by my two committee colleagues. We must acknowledge that there is an issue with short-term lets. The idea behind having control areas under the planning process was to ensure that they were controlled.

Such areas are already controlled in other parts of the world. Major cities across Europe have similar issues but they have brought in regulations to manage the situation. We should do likewise, so that neither the sector nor the community are disadvantaged.

I understand the planning side of things, but I am also concerned that ministers will have more control than planning departments in the future. That needs to be addressed. I acknowledge where we are, but we put some of these restrictions and provisions the Planning (Scotland) Act 2019 to ensure that those in planning have that control.

It is vital that we deal with the regulations today, because they have implications. I will support the regulations.

Jeremy Balfour: —[*Inaudible.*]—already. I think that—[*Inaudible.*]—and I hope that the minister will reflect on the comments that have been made about planning, not only in the submissions but by members in their questioning today. We are where we are, and we need to move forward. The Government has time beyond today to consider the issues, and I hope that we will consult further to see whether anything can be changed.

The Convener: Keith Brown is next. [*Interruption.*] It appears that he cannot hear us. I am sorry, but it looks as though he will miss the opportunity to say his piece.

I invite the minister to respond to the debate.

Kevin Stewart: As I said, this is about balance. As always, I am more than willing to discuss all aspects with colleagues. However, we need to move forward on all this.

We have heard a lot today about folks who object to both instruments, but let me give members a quote from those who are at the forefront of this:

“The Cockburn Association welcomes the introduction of regulations for the short-term letting industry and calls for urgent action to address the problems associated with Short Term Lets (STL) in Edinburgh.”

We must also take cognisance of community groups, many of whom want to see this done quickly.

At the end of the day, it is about striking the right balance and taking cognisance of where we are now with regard to Covid-19. I think that we have

struck the right balance, and I hope that members will support the motion, but, as always, I am willing to talk to folk as we move forward.

The Convener: The question is, that motion S5M-23719, in the name of the Minister for Local Government, Housing and Planning, be agreed to. Are we agreed?

I see that we are not agreed, so there will be a division. I will take the vote by roll call. I will ask each committee member to vote by saying “yes”, “no” or “abstain.” I will call committee members in alphabetical order, and I will vote last.

For

Balfour, Jeremy (Lothian) (Con)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 MacDonald Gordon (Edinburgh Pentlands) (SNP)
 Stewart, Alexander (Mid Scotland and Fife) (Con)

Against

Wightman, Andy (Lothian) (Ind)

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

Motion agreed to,

That the Local Government and Communities Committee recommends that the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 [draft] be approved.

The Convener: I invite the committee to delegate authority to me as convener to approve a draft of the report on the regulations for publication.

Members indicated agreement.

10:30

The Convener: Agenda item 4 is formal consideration of motion S5M-23718, which calls for the committee to recommend approval of the draft Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 on which we have just taken evidence. I invite the minister to move the motion and speak to it if he has anything to add.

Kevin Stewart: We have had a good discussion on the order and I hope that members will support it.

I move,

That the Local Government and Communities Committee recommends that the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 [draft] be approved.

The Convener: I invite contributions from members. I see that Andy Wightman has typed R in the chat box. Does that suggest that you want to contribute?

Andy Wightman: Yes—thank you, convener. We are now talking about the licensing order. As I said in the previous debate, I want local government to have the power to license commercial short-term lets—that is, properties that are used exclusively for commercial letting and domestic properties that are not anyone’s home. I also believe that there should be a light-touch regulation licensing regime for home sharing.

There are a number of ways to approach such licensing, and I do not believe that how the Government has approached it is the most appropriate way. Again, we are faced with a choice. Of course, we are not the final determiners as to whether the regulations that we have just discussed and this order become law—that will be up to Parliament. However, we are here to make a recommendation to Parliament.

My preference would be for both instruments to be withdrawn, our concerns addressed and then the instruments relaid. The instruments, particularly the licensing one, are complex and contain substantial policy detail, but there is no opportunity whatsoever to amend them. Again, I regret that the minister did not take up the committee’s invitation to share the drafts with us. If he had done that, some of the issues might—I stress the word “might”—have been resolved.

Licensing powers are, fundamentally, about giving local authorities the power to license as they see fit. I agree with the mandatory conditions that are set out in the licence and the flexibility that goes beyond them. However, I would much rather have seen greater flexibility given to local authorities to license as they see fit. Indeed, that would perhaps not be to license certain categories of property, but it would certainly be to issue a mandatory licence for commercial short-term lets of the type that have caused so many problems in Edinburgh, and to have a much more flexible approach to licensing home sharing and the traditional bed and breakfast industry.

When we are making law, we need to be very careful to get it right. I am distressed that bed and breakfasts are to be subject to the same licensing regime as other home-sharing platforms. I had never contemplated or intended that. I am also rather distressed about that because bed and breakfast owners themselves appear to have believed that bed and breakfasts would not be included due to the wording in the Planning (Scotland) Act 2019.

I think that there is a duty on Government to withdraw the order, reconsider it and come back with a fresh one. I acknowledge that that would probably happen after the election in May, but it is bad governance and law to introduce quite complex policy legislation and say, “We’re willing, after the next election, to reflect on them and

perhaps change them.” I think that we should get it right first time.

Some consultees have also given us evidence that there is an argument for having, for example, grandfather rights, so that businesses and microbusinesses that have been established for a long time could, at the discretion of a local authority—or it could be mandatory—be waived the right for the need to have a licence, at least for a period.

I am concerned that the licences do not give the flexibility that I think that local authorities need to make the decisions that they want to in their areas. What is wanted will be different from Caithness to Edinburgh. Therefore, I cannot recommend that Parliament agrees with the order as it stands, and my preference is that it is withdrawn. Once it is before Parliament, we will see—we might have a binary choice at that point, but, at the moment, I cannot support the order or recommend it to Parliament.

Alexander Stewart: I also have difficulties with the order. As I said earlier, I am yet to be convinced that it will not be detrimental to certain sectors of the industry, especially to traditional bed and breakfasts. The order does not seem to be fit for purpose, and it has been suggested that it might have to be amended in the next parliamentary session. We are dealing with it in this session, so we should be ensuring that we get it right. If we are not getting it right, the order should be withdrawn. We should not pass a law that has a knock-on effect on many organisations and individuals the length and breadth of the country, who did not believe that they would be curtailed in this way. Like Andy Wightman, I am uncomfortable about the whole process.

The issue could have been resolved if there has been discussion and dialogue with the committee beforehand, but that did not take place, which is the minister’s prerogative, and I acknowledge that. However, there has to be flexibility. There must also be an understanding that the order will have consequences that will be detrimental to the sector and to communities. For those reasons, I will not be agreeing to the order and would prefer that it is withdrawn.

Sarah Boyack: I find this a difficult issue. I have probably spent longer than I can ever remember interrogating the evidence that we received, considering how the consultation process was carried out and tracking the information from the early stages of the consultation. Like some of my committee colleagues, I wish that we had had more time and the capacity to amend the order. That would have been a better way to deal with matters.

It is clear from the submissions that we received that the short-term let industry is expressing major concerns and worries. Ministers need to address those concerns in a number of ways. I am looking for the minister to comment on that when he sums up in support of the order.

The design of the order is critical. There must be clarity. The measures must be proportionate, and the costs and requirements must be clarified. The gap between what the minister and his officials think, as set out in the BRIA, and what the short-term lets industry thinks, is huge. That issue needs to be bottomed out.

Initially, in principle, I was in favour of the proposals. However, when I read the guidance on the proposals in the autumn, I thought that it was incredibly prescriptive and detailed, and I could see why it would be a challenge. Before Christmas, I read the details of the new fire safety regulations, which have to be implemented by 1 February next year, less than a year away. That stood out for me. I think that there is a challenge of compliance, due to the crossover between different types of short-term lets and the traditional bed-and-breakfast model. We need the minister and his officials to show effective leadership and work with the sector now to ensure that there is clarity on those issues. Some things that might stand out as being difficult, such as the fire safety regulations, have to be abided by anyway, so we have to bake that in to the process.

I know that there are concerns about the supply chains that will support the work that needs to be carried out. Even if we are looking at 2023 for implementation of the order, to be compliant, short-term let owners and agents have to start the works earlier. Local authorities must also get going now to make sure that they can establish the regulatory framework that is required to deliver on the order.

The principle of licensing is good, but there are a lot of specific issues that concern the sector. Those issues need to be considered by the minister and his colleagues, and the working group that he is establishing with the industry needs to be a proper one.

On the other hand, I support the principle of establishing safety standards to protect householders and owners of such properties and neighbouring properties. Those who let the properties need to be safeguarded, too.

Nobody has mentioned the concern of many owners about the detail that is required for compliance on energy performance certificates. At last week’s meeting, we discussed that in relation to housing in general. We need clear and proportionate guidance as well as support for the sector. Work must take place alongside all the

sector's representatives to help owners to implement the legislation and take them through that, rather than just telling them to do X, Y and Z. I want clarity from the minister about what he plans to do.

I am conflicted, because I am absolutely not against the principle of short-term letting, which has an important role to play in our tourism sector and offers opportunities to meet a need for those who have short-term employment. We need the sector, which must be effective and supported, but we need a balance that also supports the rights of communities.

I welcome the fact that local authorities will publish a register of licensed short-term lets, which will increase transparency. Jeremy Balfour and Gordon MacDonald made points about what they see in their roles as constituency representatives. The monitoring of the roll-out of the requirements is an issue. Lessons must be learned from the implementation process to achieve improvements.

What support does the minister intend to offer local authorities that are concerned about the cost of rolling out the scheme, so that they can deliver it effectively? It must also be affordable for the sector—affordability for both aspects is crucial.

I am disappointed that we have not had more time to examine the order—for example, by seeing a draft in advance. Andy Wightman's points were well made. Providing a draft would have helped the committee's scrutiny and enabled the minister and his officials to answer all the questions that we have asked. They could have worked more in advance with the sector to give more clarity and respond to the questions and concerns that have been sent to all of us before today's meeting.

The tough issue that we must decide on is whether to support the order and recommend its approval to the Parliament. That is a difficult question. If we delay the order by voting against it, we will delay an important licensing system that needs to be brought into effect.

I want to know more about the detail of the numbers. I will support the motion but, before the Parliament discusses the order, the minister and his team need to do more work and provide more reassurance to ensure that the system is deliverable in the way that we all want, which is in the interests of all our communities across the country.

Keith Brown: I have sympathy for the Government, which has responded to genuine concerns that have been raised—usually, but not exclusively, in Edinburgh. I give the occasional reminder that a lot of Scotland lies outwith Edinburgh and that a lot of Scotland lies between Edinburgh and Caithness.

The Government has not only responded but said that the scheme will not come into effect until 2023. We heard the minister say that he is willing to make additional changes if they are required, but—extraordinarily—that has been attacked. It is good that the Government has said that it is not handing down tablets of stone and that it is willing to listen.

The Government has the difficult job of balancing the interests that are involved—those of people who are concerned about the changes and those of people who have asked for the changes. I know that I am a member of the governing party, although not a member of the Government, but I think that the Government is doing the right things and acting responsibly.

I have no objection to the minister answering Sarah Boyack's questions, if she still has concerns, but I am not sure how members who vote against the motion will explain that to their constituents. I do not represent Edinburgh, but I am from there, and I know about the concerns. The Government is taking action and doing the right thing. It is leaving the door open for further changes if they are required, and it is trying its best to balance the different interests. In those circumstances, I am happy to vote for the measure.

The Convener: I invite the minister to sum up and respond to the debate.

10:45

Kevin Stewart: That was a fairly good debate. We must bear it in mind that many members of all parties have called for change at the behest of the communities that they represent. The Government did not rush to legislate on the issue: there have been two consultations, independent review and analysis, and discussion with the committee, including with my officials, about how we planned to move forward.

Views on the matter are polarised. Many people in the industry do not want any change. That is not an unusual set of circumstances. Many communities, quite frankly, have had enough and want robust action. Our approach represents a balance, because this is all about striking a balance between the interests of business, the need to ensure that we have a sustainable tourism industry and the interests of communities, many of which have faced grim circumstances because of the actions of irresponsible short-term letting businesses.

We have struck that balance. I recognise that some folk want further refinement, and—as always—I am more than happy to consider that. However, I find it hard to understand why people object to elements of what we are doing. We are

talking about a basic health and safety regime, which I am sure that nobody could argue against. It is about allowing the autonomy of local government to come into play. We heard from Gordon MacDonald and Sarah Boyack about the difficulties that their constituents in Edinburgh have had. Action is required, and in our response to consultations and the evidence that we gathered, I think that we struck the right balance between polarised views about what should and should not happen.

I am always willing to go the extra mile to seek unanimity, if that is possible. That is why we said that a working group will look at all the guidance and that the group will be representative of industry members, local authorities and other people who have an interest.

We can certainly discuss people's views on a number of issues that members raised. Sarah Boyack quite legitimately raised comments about EPCs, for example; we can consider views on that, while recognising that we are in a global climate emergency. Let us look at all the issues about which folk are not happy and see what compromises we can reach.

I am pretty pragmatic about some of this, but we must move forward today—that is what I want, and I think that that is what everyone wants—so that we can create that balance between business and communities. From the conversations that I have had and from some of the horror stories that I have heard from folk not only in Edinburgh but in other parts of the country, I know that they believe that there should be a more controlled regime.

Although I recognise that the bulk of operators ensure that their businesses are run well, and that they take cognisance of their neighbours' needs, that is not the case with all.

Many have tried to paint the issue as an Edinburgh problem. It most certainly is not. We have heard from people and communities in other local authority areas where there are difficulties. Local authorities have told us that there are difficulties. We will continue working with communities and local authorities to shape all of this. My officials will be as helpful as possible to local authorities, and we will keep our lines of communication open so that we can be helpful and can listen to any concerns.

I hope that members will vote in favour of the order and will recommend it to Parliament.

The Convener: Thank you very much minister. The question is that motion S5M-23718, in the name of Kevin Stewart, the Minister for Local Government, Housing and Planning, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division, which again will be done by roll call. I will ask each member to state “yes”, “no” or “abstain”. We will do this in alphabetical order, but with me at the end.

For

Boyack, Sarah (Lothian) (Lab)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
MacDonald Gordon (Edinburgh Pentlands) (SNP)

Against

Balfour, Jeremy (Lothian) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Ind)

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

Motion agreed to,

That the Local Government and Communities Committee recommends that the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 [draft] be approved.

The Convener: The committee will report on the instrument in due course. I invite the committee once again to delegate authority to me as convener to approve a draft of the report on the order for publication.

Members indicated agreement.

The Convener: Agenda item 4 is consideration of motion S5M-23718, which calls for this committee to recommend approval of the draft Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021, which we have just taken evidence on.

I am sorry—I have got that wrong. My apologies: I lost my place in my briefing.

I thank the minister and his officials for taking part in the meeting. They can leave by clicking on the red telephone icon on their screen.

There will be a short suspension before the next item.

10:53

Meeting suspended.

10:56

On resuming—

Travelling Funfairs (Licensing) (Scotland) Bill: Stage 1

The Convener: Agenda item 5 is our final evidence session on the Travelling Funfairs (Licensing) (Scotland) Bill at stage 1. I welcome Richard Lyle MSP, who is the member in charge of the bill; Claudia Bennett, who is from the office of the solicitor to the Scottish Parliament; and Nick Hawthorne, who is the senior assistant clerk for the non-Government bills unit.

We have allocated about an hour for this session and we have a number of issues to discuss. There is a pre-arranged questioning order and I will call members in turn to ask their questions for up to nine minutes. I ask Richard Lyle to clearly state if an official is brought in to answer any question.

We might have a short amount of time for supplementaries at the end. I ask that everyone give broadcasting staff a second to operate their microphones before they speak.

I invite Richard Lyle to make a brief opening statement.

Richard Lyle (Uddingston and Bellshill) (SNP): Thank you, convener. I remind members that I am the convener of the cross-party group.

Travelling funfairs, traditionally operated by proud communities of showpeople, have been a valuable part of Scottish culture for centuries. Fairs in Scotland were added to the provisions of the Civic Government (Scotland) Act 1982 but not to the UK legislation. The Scottish legislation allows Scottish local authorities to require travelling funfairs to have a public entertainment licence to operate and, for many years, all of Scotland's local authorities have required fairs to have such a licence. The act allows for temporary licences for events of no more than six weeks.

I believe that the provisions in the 1982 act are not proportionate or appropriate for travelling funfairs. Over time, individual local authorities have developed layers of unnecessary bureaucracy which, when combined with inconsistent and often unacceptable high fees and processing times, threaten the survival of travelling funfairs across Scotland.

We have a situation in which 32 local authorities charge widely varying amounts for licences—from £50 to many thousands of pounds—and the processing of applications takes anywhere between three weeks and three months, because all 32 authorities have their own particular administrative requirements. That situation puts up

many barriers for a business that involves travelling around the country and staying in each place for short periods of time.

The results are that travelling funfairs are going out of business and disappearing from our communities, and showpeople are struggling to survive. My bill addresses those problems through the creation of a simplified, proportionate and well-balanced licensing system, which tips the balance more towards the interests of showpeople than towards those of councils.

The bill improves the 1982 act in five main ways. It would introduce reduced, consistent costs for operators; reduced and consistent timescales for the process of applications; the option to transfer the licence to another site should the original site prove unstable; clear limits on the conditions that can be imposed on licences and on grounds for refusal of the licence application; and an application process that would ensure that operators know the criteria in advance.

11:00

I have read and listened to concerns from councils that the fixed fee of £50 that I have included in the bill will not cover their costs and that the required processing time of 21 days for valid applications is too short. I know that Fife Council charges £50 and has short timescales, which I can discuss later. Why can other councils not do as Fife Council does?

The current regime for showpeople is not fun and it is not fair. Showpeople and the wonderful cultural tradition of travelling funfairs across all parts of Scotland need our help to survive. The current situation cannot be allowed to continue, especially given that many showpeople have not worked since last March. If that continues, Scotland will lose much that it will never get back.

I look forward to answering any questions.

The Convener: I will kick off. Can you clarify whether it is your view that the single biggest reason for the decline of travelling funfairs in Scotland is the current licensing system?

Richard Lyle: Yes, which is why I propose to update it. The cost of licences can be large and the time to get a license can be long. Ask any showman why fairs have declined. If a licence is refused, a showman can lose hundreds of pounds and I know of many occasions when that has happened, so they do not apply for them now.

The Convener: Can you give me some evidence to show that funfairs are in long-term decline in Scotland, because I have been reasonably told that there is no evidence of that?

Richard Lyle: You only need to look at how many fairs are applying and how many are getting rejected. Some councils are charging well above what you were told last week taxi drivers or window cleaners pay. The level of bureaucracy that is involved in the process that councils require a showman to follow is well above what is involved in other applications. At your last meeting—this is the nub of what you are asking—one council stated that it had only three fairs in a year. Its licence cost is £708. I suggest that that cost reduces the number of applications.

Fairs are also declining due to former sites being built on for housing. However, showpeople are family businesses made up of several generations, and they know what is reducing the number of fairs: it is the licence conditions; and the evidence shows that.

The Convener: A key aspect of the bill is setting a flat fee of £50 for applications. Local authorities say that they cannot cover their costs with that. Do you think that it is fair for funfair operators to have their licence costs subsidised by other licence holders, including charities and community groups?

Richard Lyle: I would not say that they are being subsidised. Do you think that it is fair that showpeople are getting charged £708 in West Dunbartonshire, £970 to £6,000 in Edinburgh, £889 in Renfrewshire and £597 in Glasgow when the average cost—

The Convener: That does not answer my question. The fact is that a flat fee of £50 would mean that funfairs would be subsidised by, for example, charities and community groups that have to pay for their licences.

Richard Lyle: Again, I do not accept that. Fife Council charges £50 for a licence, but other councils charge hundreds of pounds. We are prepared to sit down and discuss with councils what a reasonable fee would be, but it is not fair that councils charge £700, £900 or £6,000 for a licence for only a couple of weeks.

The Convener: Councils say that they are allowed only to cover their costs but not to make a profit. Are you suggesting that some are doing that?

Richard Lyle: If Fife Council charges £50 and West Dunbartonshire charges £708, what would you say those councils are doing differently? I know that I have to answer your question, but—

The Convener: Do you have any evidence that suggests that local authorities are profiting from the process?

Richard Lyle: When you look at what one council charges compared with what other councils charge, I would suggest that there is

unfairness. They are doing the same work, so why is there a difference in fees?

The Convener: There could be a number of reasons for that. I am asking whether there is any evidence that councils are profiting.

Richard Lyle: Well, across the board, 32 councils charge 32 different fees for the same licence. That is not fair.

The Convener: Okay, but I still cannot get past the idea that funfairs should be subsidised by charities and local organisations.

Richard Lyle: I am not asking people to subsidise funfairs. Funfair operators want to pay their way—and they do pay their way; they pay taxes and they pay fees. I am looking for a fair licensing system. May I remind you that there is no licensing system in England? Fees down there are well below the levels in Scotland, but councils seem to do well. I want to encourage more funfairs to operate, which would bring councils more money. Some councils get only three funfairs in their areas, whereas others get 50 or 60. If councils promoted funfairs, they would increase their income, not decrease it.

The Convener: Do you not accept that, with this bill, showmen are trying to compensate for missing out on a previous opportunity to get the same regime as exists in England? They missed the boat there and are trying to catch up.

Richard Lyle: Well, 1982 is long since away. Sadly, you are correct. Two bills went through the House of Commons at the same time, and funfairs were added to the bill that covered Scotland in an amendment that was missed by the Showmen's Guild.

Showmen do not want special treatment. They want fairness.

The Convener: They do want special treatment, Richard. There is no argument about that. For example, they are asking for applications to be processed within 28 days.

Richard Lyle: I based my bill on what happens in near enough one of the best councils in Scotland when it comes to supporting funfairs, which is Fife Council. Fife charges a fee of £50 and processes applications in 21 days. I am prepared to look at increasing the period to 28 days, but some councils take three months, and there is a difference between 28 days and three months. I want funfair operators to sit down with councils and agree sites a year ahead. Just because the bill talks about £50 and 28 days, that does not mean that showmen cannot talk to councils well in advance of events.

The Convener: Okay. Thanks for that.

Sarah Boyack: I want to talk about how the process of applying for a licence and getting a decision would work in practice. Richard Lyle talked about a period of 21 days, in principle, but local authorities tell us that that is not enough time to enable council committees to make decisions in contentious cases. Richard, do you think that councillors should be involved in decisions about having travelling funfairs in their areas?

Richard Lyle: I think that, earlier, someone said that they were on a council. I was a councillor for 36 years and as far as I am concerned councillors can have a role. I encourage community councils to get involved, too. We need showmen to be able to sit down with councils and perhaps community councils to agree sites, and dates and times when they can operate. Let us get back to a situation in which funfairs are encouraged.

I think that 21 days from the date of the application, as opposed to six weeks, eight weeks or three months, is a reasonable period. I refer again to the time that Fife Council takes to turn applications around, as well as the cost of a licence in Fife.

Under paragraph 7(3) of schedule 1 to the 1982 act, the only person who should be consulted is the chief constable. Most applications are not contentious, and can be agreed by officials who have delegated powers. If there is a contentious issue and the application goes to a committee, the problem is that some councils work on a cycle rather than having weekly meetings, which is what happened when I first went into the council back in the days of yore. They work on a two or three-month cycle, so the committee meeting may not happen before the time that the funfair is to be held.

Under the 1982 act, there is no such provision, and I based my bill on what is in the 1982 act.

Sarah Boyack: In its evidence, the Society of Local Authority Lawyers and Administrators in Scotland suggested that six to eight weeks is a more reasonable timescale for contentious decisions. Would you consider amending the bill to take its views into account?

If councillors are involved, it gives the communities the capacity to feed back to councillors, and it gives the council the opportunity to advertise the fact that an application has come in. It would make the process more robust when it comes to making a decision that is right and in the interest of both the funfairs and the local communities.

Richard Lyle: If we adopted SOLAR's suggestion of six to eight weeks, what would be the point of the bill? We are presently at three months. Six to eight weeks is not an option—we might as well leave matters as they are. As I have

stated, we need to devise and set up a system that is fair. Too many councils have layered on numerous conditions that are not fair. [*Inaudible.*—that showpeople and councils sit down and agree sites and when people can come. At the end of the day, councils have local byelaws, so local conditions can be applied. However, I suggest that timescale discussions will have to take place long before an application is submitted. The application dates and times have to be set out in the bill, but I am sure that showmen will go to the council weeks before that. Nobody in their right mind would leave it until 21 days beforehand before putting in their application.

As I said to the convener, I am looking for fairness and for councils to start to work with showpeople, because showpeople want to work with councils.

Sarah Boyack: There are potentially two issues. One is about having good long-term relationships between the funfair sector and councils, whereby they discuss opportunities and work together to determine what works for both sides. The other issue is about the detail of provisions in the bill to grant licences by default if a decision is not reached in 21 days. How would the bill ensure that public safety is not compromised in such situations? If something needs to be addressed properly before permission can be given, would such a provision not be a problem?

Richard Lyle: What do you mean by “public safety”? Health and safety is a reserved issue and is not covered by this bill. Health and safety is covered by the health and safety legislation. When they put in their application, showpeople have to show councils their safety certificates and address such matters. I would like to know what safety issues you are referring to.

Sarah Boyack: There is the issue of proximity to residential properties, as funfairs potentially have a big impact on residents. There was a case in my constituency in which the structure was incredibly close to the houses, and the issue needed to be properly considered.

Yes, you would hope that basic health and safety issues would come into play, but the health and wellbeing of local residents is an issue, because the siting of funfairs could compromise public health. Does the issue not need a bit more thought?

11:15

Richard Lyle: Again, councils can make stipulations on where equipment can be sited. Showmen must submit their site plans. Council environmental health officers, or even the police,

can tell people to turn their music down and to turn the equipment another way.

If there is one thing that I have discovered in the past 10 years, it is that showmen want to work with local communities and councils. If they are given the chance, they will do so.

Sarah Boyack: Okay.

Some stakeholders have been looking at what the right approach to take is and whether councils would refuse applications rather than let default provisions operate, which would impact on the industry and travelling funfairs. Is that a risk? If so, are there ways in which that could be addressed?

Richard Lyle: That is a risk every day of the week. There have been situations in which applications have been refused. I am not seeking to remove that risk. I am trying to provide a bill that is fair and proportionate; a fee that is fair and proportionate; and a timescale for processing applications that is fair and proportionate. I am also trying to encourage funfairs and councils to work together.

Sadly, there will still be councils that might not want funfairs in their area. My local council does not exactly go out of its way to encourage funfairs to come. I had to press the council as an MSP to designate sites. Do you know what? It would not even designate a site in my constituency.

Applications by funfairs will be refused—that is an everyday occurrence. However, we want to have a system that is and can be seen to be fair and proportionate.

The Convener: I call Jeremy Balfour.

Jeremy Balfour: I remind members of my membership of the cross-party group on the Scottish Showmen's Guild

I am, in principle, in favour of the bill. I think that funfairs bring a lot of value and entertainment to communities. I suppose that the one issue that I want to ask about—the convener has pushed quite hard on this—is the £50 fee. Are you open to having a maximum fee that a council could charge, rather than having a fixed £50 fee? Rather than specifying a fixed amount, could there be a limit to which councils could work? For example, in Edinburgh, there are quite a lot of issues when funfairs come, particularly with regard to what needs to be done to sites once the funfair is over. As a consequence, there might well be a variation in the costs between Fife and Edinburgh, or between the Borders and the Highlands and Islands, for example. Are you open to an amendment that would replace the fixed fee with a maximum fee?

Richard Lyle: I am prepared to review the figure, within reason. I mentioned that SOLAR had

cited window cleaners' and taxi drivers' licence fees. I have since discovered that a window cleaner in Scotland pays between £60 and £150 a year for their licence, and a taxi driver pays between £150 and £300 a year for their licence, on average. They pay more in Edinburgh—I do not have the figure to hand, but I know that they pay an extra £500 or £600.

The fee of £50 is what is paid to Fife Council. Fife is a shining example to every council in Scotland. It processes applications quickly, for which it charges £50. It says that that fee covers its costs and that it will not lose money.

Showmen might not agree with my saying this, but a limit could be £150. However, a fee of £500, £700, £800, £900 or even £6,000 would be ridiculous. Yes, I think that a fee should be charged, and I am prepared to work with councillors and showpeople in order to get a fair fee, but a fee of £700, £800 or £900 would not be fair.

Jeremy Balfour: That is helpful. Finally, to return to Edinburgh, and the Meadows, which has been used for funfairs, and the other parks in the city that have been used from time to time, there is damage to the grass, and mud and mess are left behind, which must be dealt with. How can local authorities work better with the showmen community so that we can put places such as the Meadows back to the condition that they were in before the funfair arrived?

Richard Lyle: We are conflating two issues. There is a licence fee and there is a lease. When the showmen ask for a licence for the Meadows, they also have to go to the council for a lease for the Meadows, and they are charged for it. It would surprise you how much they pay. In one instance, a couple of years ago, I think that the council went back to them to ask for another £4,000. It should be in the conditions of the lease or the contract—it is in most leases—that they must restore the park to its previous condition and ensure that it is clear of rubbish and glass. Any self-respecting showman will do that, because they know that if they do not, it will be held against them for future applications. Therefore, I do not see that as a problem.

The Convener: Jeremy Balfour mentioned a cross-party group: for the record, could you repeat which group that is?

Jeremy Balfour: I apologise. It is the group on travelling shows and funfairs.

Richard Lyle: It is the Scottish Showmen's Guild cross-party group.

The Convener: Nick Hawthorne wants to come in.

Nick Hawthorne (Scottish Parliament): Thank you, convener. I want to clarify a couple of points. On Jeremy Balfour's question, under the conditions provisions in the bill, which set out conditions that can be added to a licence, only certain kinds of conditions can be added, but one of those, in section 11 of the bill, relates to

"the repair or restoration of ground surfaces or any other things damaged or displaced by, or as a direct consequence of, the operation of the funfair".

That is a specific condition that may be attached to the licence under the bill.

I will also clarify a matter that was raised by Sarah Boyack. Again, conditions can be added to the licence, and there are only two grounds for refusal that can be used by a local authority.

The Convener: Gordon MacDonald is next.

Gordon MacDonald: I am looking at the costs of applying for a licence to operate. You have highlighted that there is a huge range in the cost of licences. In Fife, it is £50, but other councils charge more than £700, and Edinburgh charges substantially more than that. Is there not a need for a national formula for calculating licence fees? It should be cost neutral to local authorities. Instead of having a licence for every site and every application, is there a need for, say, a three-year licence for approved sites that would reduce the time that showpeople spend on applications and the time that councils spend approving them?

Would it not be better to step back, amend the bill and support some kind of national formula, with an explanation of exactly how the formula works, as is the case with other types of licences that councils operate? All councils would work to the same formula, which would reduce the onerous task of applying for showpeople as well as the council's task of processing them. It would be a three-year licensing regime for a particular site that all sides are agreed on, and, unless there were problems, it would be automatically renewed each year until the three years were up, at which point the process would start again. That might eliminate some of the concerns that we hear from councils about costs, time and so on.

Richard Lyle: There are two types of licence: temporary and permanent. M&D's is a funfair theme park in my constituency and it needs a three-year permanent licence. However, travelling funfairs need only a temporary licence.

Through the bill, I can change what I believe is wrong with the 1982 act. SOLAR and some councils have suggested that the 1982 act is no longer fit for purpose and requires to be upgraded. If my bill falls because of time constraints because of Covid and other reasons, I will encourage the next Government party to introduce a bill to

resolve the unfairness to showpeople and make their bills fair throughout the 32 local authorities.

For the past six years, I have had various discussions with Scottish Government ministers about sending out guidance to councils. Yes, that guidance went out and the Government did its job, but I know where the councils put that guidance: not into operation but on a shelf.

I would certainly explore Gordon MacDonald's idea if the bill falls due to time constraints. Again, however, the Government would have to introduce legislation on that to amend all the relevant aspects. If people say that it is unfair for showmen to get preferential treatment, then the situation should be the same for everybody. For example, window cleaners and taxi drivers should get a three-year licence. Everybody should get a three-year licence and the costs should be proportionate. I agree with Gordon MacDonald that that would also reduce the amount of paperwork.

Again, I am saying in my bill that showmen can go to councils in advance of the time that is set, sit down with them and come to an agreement; or that councils can designate sites in conjunction with community councils. I want to get back to a fair system. I find Gordon MacDonald's idea amenable, given what I am suggesting, but I cannot do what the idea requires; the Government would have to do it through a total revision of the 1982 act. If the Government wants to do that, I am sure that everybody would welcome it.

Gordon MacDonald: Many communities welcome the annual visit of the funfair, which gives a bit of colour to the local area. Certainly, when my sons were growing up, they looked forward to the annual visit of the funfair. However, you touched on community councils there, Mr Lyle. Would you be prepared to commit to community councils being mandatory consultees?

Richard Lyle: Basically, community councils get sent planning applications by councils. As I said, I want to set up timescales. I want showpeople to go to councils a couple of months in advance or sit down with a council and make an agreement a year in advance. The council could send that agreement to the community council. Showmen are quite happy to come and talk to MPs, MSPs or councillors and they are the most amenable people I have ever come across. People tend to forget that they run a business.

You said that your kids used to love going to the shows, but when was the last time that you saw the shows in your area? That is what we are losing. We are losing part of our Scottish tradition. The bill will try to bring that back and help showpeople get back to a situation of fairness. However, if my bill falls due to time constraints, I

would love to sit down and discuss your proposal, Gordon, take it on board and put it forward to the Government to change the 1982 act.

11:30

Andy Wightman: Although it is not a registrable interest, I declare that I am one of the deputy conveners of the cross-party group on the Scottish Showmen's Guild.

Richard, you said that Fife sets a shining example. That might be because there are 26 burghs within Fife Council, many of which have royal charters dating back to the 14th or 15th centuries that include the right to a fair in law. Those royal charters are still extant legal documents. They are admissible in court and set out people's legal rights.

Some supplementary evidence from the Showmen's Guild came in late last night. That evidence claims that Scotland is the only country in the European Union to require funfairs to have a public entertainment licence. Can you explain why Scotland has such a restrictive regime compared to England or to other parts of the EU? Is it down to the so-called mistake or oversight in the 1982 act?

Richard Lyle: Yes, it is down to that oversight. Although people may not quote that act, it is a 39-year-old mistake. While I was working on the bill, I posed as a showman and phoned English councils. I was astounded by what they told me. The application process took only a few days and applicants paid only a few pounds or were encouraged to make a donation to charity.

Two bills went through the House of Commons in 1982. Funfairs were not mentioned in either. I found out later that funfairs were added to the Scottish bill by an amendment, but were not added to the English bill.

In England, funfairs do not need a licence. They need a contract or a lease or they have to talk to the council. They are not unregulated. However, councils in England seem to treat showmen far more fairly than councils do in Scotland. That annoys me.

Andy Wightman: That could have something to do with the fact that England has the Markets and Fairs Clauses Act 1847, and that there is also more recent legislation. The statute book has been maintained to facilitate markets and fairs in parishes across England. They seem to have done that far more assiduously than we have.

You have had conversations with English councils. You said in a previous answer that the council that covers your own constituency had refused to allow travelling funfairs to come there. Would it be possible for a local council in England

to do that? If so, on what basis could an English council refuse?

Richard Lyle: I am sorry; I cannot answer that but I will refer the question to Nick Hawthorne. I have not taken evidence or inquired about that. I would not like to comment and Nick might say the same.

Nick Hawthorne: I probably will say the same. I would not want to speak on behalf of all parts of England. When we looked at the background to the provisions in the bill during Richard's consultation, and in liaison with the Scottish Parliament information centre, it seemed clear that there was no fixed system or regime in England. Different councils and authorities took a wide variety of approaches. Some of them used by-laws. I cannot give an unequivocal answer.

Richard Lyle: I had the opportunity to take part in a showmen's dinner in Nottingham. They were aghast at the licensing conditions in Scotland. They said that they did not come across anything like that. I have not taken evidence, however. I phoned councils to find out what they were charging and what their timescales were, and they were much shorter than in Scotland. That was purely because funfairs do not appear in the 1982 act in England.

Andy Wightman: You have made the point, and we have heard in evidence, that the wide variety in fees, particularly the higher fees in certain council areas, is a major contributor to the decline in funfairs. Are there other contributing factors to that in the conditions that councils attempt to put on public entertainment licences? Is that also an issue and, if so, will you give some examples?

Richard Lyle: I have an example of a visit to West Lothian Council—I will give you a laugh. They suggested that a funfair had to have fencing around it and said that the police had insisted upon that. However, I had phoned the police before I walked in the door of West Lothian Council and the police said that they had not said that, and that the council, not them, wanted the fencing. The laugh that I had was that, when I went in, the lady said, "You'll not know councillors, Mr Lyle." I said, "That is funny, because I was a councillor for 36 years." She then admitted that the council wanted to put in fences.

The point that I am trying to make is that they are piling factor after factor on top of condition after condition; they are really suppressing funfairs. For example, there are five funfairs in East Ayrshire, 15 in Glasgow, 20 in Inverclyde, 60 in North Ayrshire—which is the best—and 56 in Fife. There are areas that are depressing funfairs and other areas that are encouraging them.

Andy Wightman: You also mentioned the distinction between obtaining a licence, whether under the existing regime of the 1982 act or the proposed bespoke licensing of your bill, and the obtaining of permission to occupy the land concerned, which is a distinct exercise. In most cases, the land is owned by councils; much of it is common land but some of it will be private sites. Are you saying that a lot of the conditions that should more readily be contained in the lease or occupancy agreement are being crowbarred into the licence, when they should be part of the occupation lease? You mentioned the fences, for example.

The Convener: A short response, please.

Richard Lyle: When you go along for a licence, conditions are added in by the council.

Andy Wightman: To be clear, your bill would restrict the scope of what conditions could be added and, if the council had any other concerns about fencing and so on, they would bring those under their lease or occupancy agreement. Is that correct?

Richard Lyle: My bill is about making the situation equal in every council in Scotland. Councils can still have their lease facility and put whatever they want into it. They cannot change the licence fee, but they can charge what they want for a lease.

Alexander Stewart: Good morning, Mr Lyle. A lot of questions have already been answered. However, it would appear from your investigations and support for the industry that the whole tradition has been eroded over time because of a lack of flexibility in councils and them charging different fees and adding further conditions into the whole process. Is the sector being priced out of the market?

Richard Lyle: Yes. Let us remember that if someone is charged £500 for a licence, they still have to pay for the lease, whatever it costs. I will use the old adage that they have to put bums on seats in order to get their investment back. If they are charged £2,000 before they start their fair and they are charging £2 a pop for entry, they have to get a thousand bums on seats before they can make a profit.

I have met showmen who have been in situations where the weather and other conditions have meant that they have made only £15. They have all the diesel to pay for and every funfair supports perhaps several families; they do not support just one businessman. It is not someone making “loadsamoney”, as somebody used to say. If we can get honesty back into funfair licensing, we will promote funfairs and we may even—dare I say it?—reduce costs.

Alexander Stewart: You say that if the sector is supported and given some assistance, it could thrive and survive in a much bigger way, similar to what seems to be happening south of the border. They are given the opportunity to run their businesses on an on-going basis and they do not seem to have the same barriers as are in place up here.

Another concern was about the lack of involvement of local communities in the licensing decision. It would be good to get your views on that.

Richard Lyle: The original 1982 act does not allow for public consultation—it does not specify that. I will bring in Nick Hawthorne to answer that question.

Nick Hawthorne: As Richard Lyle said, the 1982 act does not require consultation outside that with the police and fire service, and that is replicated in the bill. It does not prohibit it and, as the committee heard in its evidence sessions a couple of weeks ago, many councils are choosing to consult with wider groups—the community and other organisations. That right would still be available to councils under the bill, although consultation would not be required. The point is that decisions have to be made within the 21-day period that is specified in the bill.

Alexander Stewart: The 21-day period for decisions on licence applications has been talked about, but local authorities say that it is not enough time for a council or committee to make that kind of decision. Do you accept that?

Richard Lyle: In England, they take no time to decide on a licence application, but in Scotland they take three months. I am proposing 21 days. SOLAR suggested putting it up to six weeks, but what is the point of having the bill if I am only bringing the time down from three months to two months?

I am quite prepared, in discussion with other people, to look at making it 28 days. Again, I will point to the shining example of Fife. I proposed 21 days to get a reaction, which I got, but three months or two months is too much. Perhaps one month is enough, but in England there are no months—it is only days. I just want fairness.

I will finish by saying that I want showmen and councils to work with each other to promote shows and get fun back into Scotland. For too long, councils and showmen have been at loggerheads. I want to do away with that. I want to work with councils, community councils and local people to bring fairness back to funfairs.

Alexander Stewart: I have no further questions.

The Convener: That completes our questions and concludes the evidence session. I thank

Richard Lyle and his team for taking part. The committee will report to Parliament in due course. I ask the members of the panel who are leaving the meeting to press the red telephone icon and remind committee members that we remain in public for the next item.

Richard Lyle: I thank the convener and committee for their time.

Subordinate Legislation

Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2021 (2021/18)

11:45

The Convener: Item 6 is consideration of a negative instrument as listed on the agenda. I refer members to paper 6, which contains further detail. The instrument is laid under the negative procedure, which means that it will come into force unless the Parliament agrees to a motion to annul. No motion to annul has been laid.

The Delegated Powers and Law Reform Committee considered the regulations at its meeting on 26 January 2021 and determined that it did not need to draw the attention of the Parliament to them on any grounds within its remit. Does anyone have any comments?

As there are no comments, I invite the committee to agree that it does not wish to make any recommendations in relation to the regulations. Does anyone object?

No one objects, so that is agreed.

That concludes the public part of this meeting.

11:45

Meeting continued in private until 12:16.

Correction

Kevin Stewart has identified an error in his contribution and provided the following correction.

The Minister for Local Government, Housing and Planning (Kevin Stewart):

At col 11, paragraph 3—

Original text—

We have had 23 responses from local authorities—I am quoting that figure off the top of my head, and I might have to change it. Five authorities have talked about the financing of regimes, whereas 18 have not.

Corrected text—

We have had 23 responses from local authorities—I am quoting that figure off the top of my head, and I might have to change it. Three authorities have talked about the financing of regimes, whereas 20 have not.

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