



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 20 May 2014

Session 4

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EDUCATION AND CULTURE COMMITTEE

14th Meeting 2014, Session 4

CONVENER

*Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

*Neil Bibby (West Scotland) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Clare Adamson (Central Scotland) (SNP)

*Jayne Baxter (Mid Scotland and Fife) (Lab)

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Gordon MacDonald (Edinburgh Pentlands) (SNP)

*Liam McArthur (Orkney Islands) (LD)

*Mary Scanlon (Highlands and Islands) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Noel Fojut (Scottish Government)

Fiona Hyslop (Cabinet Secretary for Culture and External Affairs)

Joan McAlpine (South Scotland) (SNP) (Committee Substitute)

Liz Smith (Mid Scotland and Fife) (Con)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament
Education and Culture
Committee

Tuesday 20 May 2014

[The Convener *opened the meeting at 10:01*]

Decision on Taking Business in
Private

The Convener (Stewart Maxwell): Good morning and welcome to the 14th meeting in 2014 of the Education and Culture Committee. I remind everyone that electronic devices should be switched off as they interfere with the broadcasting system.

Agenda item 1 is to decide whether to take item 4 in private and whether to consider our work programme, annual report and draft stage 1 report on the Historic Environment Scotland Bill in private at future meetings. Do members agree?

Members *indicated agreement.*

The Convener: Before I move on to agenda item 2, I welcome back Joan McAlpine. She is substituting for Colin Beattie, who is absent today. I also welcome Liz Smith, who is attending as a member of the Scottish Parliament interested in the Historic Environment Scotland Bill.

Historic Environment Scotland
Bill: Stage 1

10:02

The Convener: Agenda item 2 is our final evidence session on the Historic Environment Scotland Bill. I welcome to the meeting the Cabinet Secretary for Culture and External Affairs, Fiona Hyslop, and her officials, and I invite the cabinet secretary to make some opening remarks.

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): Thank you very much, convener. As I know that the committee will have questions based on the written and oral evidence that it has received and its visit to Orkney—where I understand that members were blessed with fair weather and a warm welcome—I will make only a short statement.

In creating “Our Place in Time—The Historic Environment Strategy for Scotland”, we worked with the sector at its request to agree a shared vision for Scotland’s historic environment. That vision is based on three priorities: understanding what we have; caring for our shared heritage; and valuing our shared heritage for itself and for the benefits that it can bring to Scotland. By working together with the many bodies across the sector, we can care better for our heritage and deliver much more for Scotland—not just sustainable economic growth, but benefits that include skills, employment, education, enjoyment, a sense of place and identity.

I am excited that we are charting new ground. In order to move forward, we will need to pool information and effort and break away from the silo mentality for which the sector has been criticised in the past. I welcome the positive reception that the strategy has received in Scotland and beyond, which signals widespread recognition of the need for new ways of working.

The relationship between the strategy, the bill and the new body is important. Each complements the other. The sector asked for a strategic approach, and we were delighted to lead the process of collaborative production. To co-ordinate the strategy, I will have the help of a board that has been invited from key stakeholders, including the chair of historic environment Scotland once they have been selected, and I hope to announce very soon the names of those who have agreed to assist me with that task.

The vision is shared, but participants will remain responsible through their own lines of governance. The ministers and historic environment Scotland will do everything that they can to support the

strategy, but others have to step up to the mark, too.

The bill that the committee is considering will create historic environment Scotland, which is part of the ministers' contribution to achieving the vision that is set out in the strategy. The bill sets out the functions that historic environment Scotland will be expected to deliver and against which its success will be judged. Like all public bodies, it will have its own appointed and regulated board, which will be responsible through ministers to Parliament. We will take forward the search for members as soon as parliamentary progress permits.

We have set out in the bill the functions of a body that will operate in a strategic framework with simpler processes, more transparency and a more collaborative ethos, and which will sustain the range of vital functions that Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland carry out.

I want to record my personal appreciation of the professionalism and enthusiasm of the staff of both bodies. I expect historic environment Scotland to offer leadership, and I am confident that it will earn that role because of the knowledge and commitment of the staff that it will inherit. I recognise the huge part that is played by many others, especially the many thousands of private owners of our heritage, but also our local authorities and independent bodies such as the National Trust for Scotland. That is why our new model is centred on wide, strategic partnerships, with historic environment Scotland positioned as a lead partner. Our intention is to support collective action towards the shared vision set out in "Our Place in Time".

The new body and the changes in the bill will make it easier for everyone concerned to play their full part in tackling the challenges that Scotland's heritage faces. Tackling those challenges will take time. Everyone recognises that understanding, protecting and valuing Scotland's historic environment is a long-term task. That job can be done, but only if we pull together.

I am happy to answer the committee's questions on the bill.

The Convener: Thank you very much, cabinet secretary. We want to ask a number of questions covering a variety of areas, and Clare Adamson will begin.

Clare Adamson (Central Scotland) (SNP): Good morning, cabinet secretary. The policy memorandum and the financial memorandum set out at various points some of the bill's expected benefits, including the opportunity for collaboration in the culture portfolio, the ability to influence other policy areas, such as place making, regeneration

and health and wellbeing and the opportunity to feed into curriculum for excellence. Will you say a few words about those benefits? Why did you choose the merger option as the means of achieving them? Were there other reasons why a merger was considered the best way forward?

Fiona Hyslop: Very far back in the process, in 2011-12, we looked at all the different options, and those appraisals led us to decide that a merger was the correct option. I must emphasise that a key aspect of this work was to maintain and sustain the vital functions of both RCAHMS and Historic Scotland, and we responded to that need.

The idea of bringing the two bodies together is not new; indeed, it has been quite clear for some time now that such a move is needed, and the time was right to progress that proposal. You have heard from both the commissioners and Historic Scotland, and all agree that this is an appropriate way to proceed.

As for the practical benefits that you mentioned, there are a huge number of synergies between what RCAHMS and Historic Scotland do on education. Although both undertake exemplary education activity, it could be better if both worked together.

Place making is a big agenda for the Government, the Parliament and Scotland. As far as town centre regeneration is concerned, there are many historic buildings in town centres, and RCAHMS's record-keeping and surveying work and Historic Scotland's work through repair grants and town centre regeneration, as well as some of the grant funding that is co-ordinated with other parts of Government, form an important part of that agenda.

On strategic decision making, I must point out that the historic environment is not just something that we enjoy as a backdrop to our country; it is the lifeblood of our country, and people feel strongly passionate about it. With regard to our other agendas such as health and wellbeing, getting people outside and ensuring that people feel in control of their own places—which is another big agenda item—we want to ensure that historic environment Scotland can influence those different areas. Instead of historic buildings being dealt with separately and in isolation, our approach will allow the body to have influence across the agendas. We have moved the strategic policy aspects of Historic Scotland into central Government, and we see good synergies and opportunities to influence other Government agendas in a way that Historic Scotland was unable to do. That is part of the prelude to taking forward this matter.

There are many practical examples that I can highlight. I should also say that we have talented

people and that the merger will give them extra platforms to work on as well as career opportunities to pursue.

The committee is scrutinising a bill that is very much about the new body's functions but, in my opening remarks, I set the context that the new body will work within the wider strategy, which means working with everybody else. Having one lead body will help us to do that. We are also taking the opportunity with the new body to ensure that transparency and efficiencies happen.

Clare Adamson: Two weeks ago, we took informative evidence, which included representations from the Convention of Scottish Local Authorities about working with local authorities. Will the single body improve working relationships and that partner relationship?

Fiona Hyslop: Yes. The development of the strategy and the bill has already helped with the relationship with local authorities, because it has all been done in collaboration. We have worked hard on planning and transparency; I have worked in particular with Councillor Hagan, who has a keen interest in and a lead responsibility for the subject. In putting the bill together, we consulted chief planning officers on some provisions.

Another issue is the sense of place. The idea behind the strategy and the new body is to get a better opportunity for the historic environment, which is place based. People visit Orkney or West Lothian, for example, to see what is in the area. Not all of that is managed by Historic Scotland; some of it involves other partners. Local authorities play a key promotion role in their areas, and the new body will help with that.

I know that local authorities are keen to have access to expertise and advice, and the bill makes it clear that we expect HES to work with local authorities and to continue to provide advice. However, we also see an opportunity to share talent, information and expertise. That is not an excuse for local authorities not to do things, but it provides a canvas that we have not had before in this area.

In my experience, the historic environment has never been high on local authorities' agendas, but I am glad that it now is. We are approaching that in a shared way. Indeed, that has been my experience. For example, when we discussed the strategy, I shared platforms with Councillor Hagan, although I know that a different councillor spoke to the committee.

Liam McArthur (Orkney Islands) (LD): On the point about the relationship with local authorities, they will expect to continue to take the lead in a raft of areas. With regard to that collaboration, are you comfortable that the bill makes clear the areas in which HES will take the lead and the areas in

which local authorities will continue to take the lead? I am thinking in particular of issues involving developers, whose first point of contact will inevitably be the local authority, rather than HES. Does the bill make it clear that that relationship will be maintained and that developers should not expect to go through HES en route to getting a decision from a council?

Fiona Hyslop: There are different layers. As far as responsibilities are concerned, everything in the relationships will by and large be maintained, because a lot of that is underpinned by other legislation. That came through in the evidence to the committee on environmental assessments, which exist in other legislation. We will just need to replace the references to Historic Scotland in that legislation, including secondary legislation, and we will use secondary legislation to substitute "Historic Environment Scotland" where "Historic Scotland" used to appear.

The changes that will be made will simply streamline processes for applications from developers to councils. Councils will consult historic environment Scotland—that process will be the same and advice will still be provided. However, we will streamline the process to ensure that, if a listed building is to be affected, there will not necessarily be the 28-day delay that everybody is concerned about.

10:15

It is really important that people understand that decisions are made by local authorities and that Historic Scotland—or the new body—provides advice to them. There will be an opportunity for appeals in relation to listed buildings; that is set out in the bill. The only difference is that there is now an appeals mechanism and an opportunity to come to ministers in such cases.

By streamlining the position, we should provide a bit more clarity. By and large, the planning authorities will still make the decision. The only changes that the bill makes in that respect relate to the management of a listed building's historic aspects or scheduled monument consent.

Would I say that we are making considerable changes to the relationship? No, I would not; if anything, we are making it simpler. Local authorities are very pleased about that, because we are potentially removing what people might see as a 28-day delay in some of the processes. We are simply streamlining the position, just as we are trying to do with other aspects through planning legislation, and what the bill does in that regard is quite limited.

Liam McArthur: That is helpful. The concern is that there is a risk of some interpreting the explanation of the benefits of the merger as

meaning that HES will become a one-stop shop for developers. However, that is quite explicitly not the case.

Fiona Hyslop: No, it is not. The current situation still stands. Planning legislation is dealt with separately. Indeed, there has been a big consultation on taking that forward separately.

The Convener: Liam McArthur has opened up the issue of HES's role, on which a number of organisations and individuals have contacted us seeking clarity. I am interested in exactly where the dividing line is. This is perhaps a difficult question to answer. My understanding is that the 345 properties in care will be delegated to HES, which will have direct responsibility for them. For what other areas or properties will it have direct responsibility, or will it be only those 345?

Fiona Hyslop: It is really important to reinforce the point that ministers will still be responsible and will own the properties that they currently own. Where there is a guardianship agreement, for example, the relationship will be directly between ministers and the individuals who put the properties into care. We will then delegate functions. Section 3 in part 1 of the bill talks about delegation.

In reality, it will be the same people in the same places who will look after properties. Those people include the excellent and skilled Historic Scotland stewards whom, I am sure, you met when you were in Orkney. We will have a relationship with the new body in terms of formally setting out how it will manage the properties for us. Is that what you wanted to know?

The Convener: I am just trying to be clear about the direct responsibility that HES will have in terms of the historic environment. In effect, will its responsibility be for the 345 properties?

Fiona Hyslop: Yes.

The Convener: What will be its responsibilities beyond that?

Fiona Hyslop: Again, it is setting out the opportunities—

The Convener: I am sorry to interrupt, but it might be helpful if I set out some of the evidence that we got. We heard last week, and in some written evidence, the idea that HES will, in effect, be responsible for about 8 per cent, and other bodies will be responsible for the other 92 per cent. I am just trying to clarify exactly what HES's role will be. It will be the lead body; you have made a lot of the fact that it will have the lead role in the historic environment.

Fiona Hyslop: The vast majority of historic buildings are not under public ownership and responsibility; they are under private ownership

and responsibility. That does not mean that HES does not work with the owners. Yesterday, I was at the apprenticeship week launch; there is a great exhibition in St Andrew Square in Edinburgh of apprentices working with traditional skills. In Scotland, 20 per cent of our buildings are what you would call historic buildings from pre-1920. In Edinburgh and some other cities, the percentage is far greater.

The Government is, in different shapes and forms, responsible for the 345 properties that are in our care. Alongside them are properties that are in private ownership. Some of those owners are involved in the Historic Houses Association, from which the committee has heard. There are also pre-1920 properties that are owned by private individuals, and there are a number of charities that care for properties, of which the largest is the NTS. We have to act collaboratively because we work with a huge range of people.

Historic environment Scotland will be responsible for driving forward a lot of the important issues, such as improvements in conservation and tackling climate change. There are many issues around energy loss from old buildings, so I would expect historic environment Scotland to drive forward much of the skills agenda in that regard; for example, yesterday I saw innovations in sash and case windows for ordinary houses. HES will have to take a lead in a range of areas, but it will also have to work with everybody else.

That brings me to the relationship between the bill and the strategy. I want skills to be a key driver, and I have set that out in my letter of guidance, which deals with what I want to see in the organisation's corporate plan. I want it to take a lead on traditional skills, in order to maintain buildings, and to deal with the conservation backlog and so on. However, it will have to work with other people. Ken Calman and I have had a number of meetings about the overall strategy and how we can pool our knowledge and experience so that we can tackle it. Some of that will concern big properties such as Edinburgh castle, Stirling castle and Culzean castle, which are the responsibility of the NTS. In terms of the historic environment, HES will have to help the Edinburgh World Heritage Trust and individual house owners with the historic buildings that they maintain.

The canvas that the body will work on will be broad, even without the tourism aspects, which we have also investigated. It is wrong to think about the historic environment simply in terms of managing the properties in care. Vital and important though that is, it is also important to ensure that historic environment Scotland helps in developing policy in other areas, such as the health check on buildings that we launched with

Construction Skills Scotland. The historic environment involves a huge number of partners.

This committee deals with education; the responsibilities of local government and central Government are quite clear in that area. However, as you know, in the culture and heritage sector, the processes around planning and so on are set out in statute, but a lot of what happens is done by people working together without necessarily having a directive from central Government. It is important to state that the lead responsibility that we are talking about relates not only to management of the buildings that will be in the care of historic environment Scotland, but to how it helps the sector to deliver what it needs to deliver.

The Convener: That is the nub of the issue that we are trying to clarify. How far will the duty of historic environment Scotland to offer and to promote leadership extend to non-public sector bodies? As you said, we heard from the Historic Houses Association; we know that people want clarity, so that they are sure about areas of responsibility.

As the Government has stated, historic environment Scotland's role will be to investigate, and to

"care for and protect the historic environment".

Does that mean all of the historic environment? I appreciate that it is difficult to define that term, but people seek an understanding of exactly the role of historic environment Scotland and how its overarching role will fit into the picture that includes private ownership, and ownership by other bodies and charitable organisations.

Fiona Hyslop: I will start with the strategy. I will be appointing a strategic board that will bring together historic environment interests. I am not in a position to tell you exactly who will be on that board, but it will involve key players from all the sectors, including local government, independent charities, private interests and so on. The idea is that that board will agree common goals that we need in order to deliver the strategy, which has had a warm welcome in terms of activity. Areas that it would not be unreasonable to expect it to cover include skills, energy conservation and other factors that affect all of us, whether we are in Government or local government, or are private homeowners or whatever.

A lot of the things that HES will do will be exactly what RCAHMS and Historic Scotland have been doing. One of the key things that they do is provide grants; the new body will continue to do that. Despite a reduction in my overall spending, I have made sure that we have maintained a level of grant, so HES will continue to give grants to different areas. The system might evolve over time but, by and large, that function will continue.

The statutory responsibilities will also be maintained. Some of them will be covered in other legislation. For example, a predecessor to this committee scrutinised the Historic Environment (Amendment) (Scotland) Act 2011, which I took through Parliament, which allowed for different things that Historic Scotland could do, such as intervening on buildings that are in a dangerous condition, and giving powers to local authorities to maintain such buildings. Those things will still happen, but we are providing a better platform by using one body.

The functions of that body will be set out. RCAHMS is very pleased that, for the first time, areas of responsibility will be set out in the bill. I therefore assure the committee that maintenance of, and the relationship with, the historic environment will continue, but the new body will provide a better platform to help all the different partners to collaborate. The body will be brand new, but a lot of its functions will be inherited and it will be in a better place to collaborate. We are also doing this in the context of a strategy, and this is the first time we have ever had that.

Liz Smith (Mid Scotland and Fife) (Con): Paragraph 88 in the policy memorandum says that the Scottish ministers will be able

"to give directions to Historic Environment Scotland"

on the exercise of its functions, but

"not ... on specific cases, objects or properties."

I presume that that is to ensure operational independence. However, section 12(3) of the bill says that that does not apply when the Scottish ministers have delegated functions in relation to the properties in care, such as the 345 properties that you mentioned earlier.

In a letter to the Delegated Powers and Law Reform Committee, the Scottish Government has confirmed that

"sub-section (3) [i.e. section 12(3)] makes it clear that Ministers may, by contrast give directions in relation to what would be regarded as "curatorial" matters in relation to those properties in care and collections".

Can you make clear the powers that the Scottish Government will have to direct HES?

Fiona Hyslop: I have already referred to section 12(3) being about delegation of the management of functions. The matter is similar to the committee's scrutiny of the National Library of Scotland Bill to ensure that there would be no curatorial interference with exhibitions or in how the National Library of Scotland manages its estate.

However, we have to ensure that we have checks and balances on that side because we still own the properties on behalf of the people of

Scotland. If we had concerns about how Stirling castle was being maintained, we would need a power to ask that those concerns be looked into. Most such matters will be dealt with by the letter of guidance, the corporate plans, and plans that are produced yearly. I do not think that people will accept a situation in which everything is transferred to HES and ministers abdicate their responsibilities for ensuring that the key and main properties are looked after properly.

Liz Smith: On the convener's point about the dividing line, are you confident that it is clear when the Scottish ministers have responsibility?

Fiona Hyslop: Yes. Apart from anything else, if this committee and others thought that we were interfering, they would come down on us like a ton of bricks, as would the sector itself, but we have to balance that with not abdicating responsibility completely. The committee will want to hold me to account for the ownership and responsibility of key sites, but we have to make sure that I do not interfere and say, for example, "Stirling castle, you will hold an exhibition on X when I want you to do that." People might interpret that as political interference. That is not acceptable. It was not acceptable in the National Library of Scotland Bill, and it is not acceptable in this bill.

That said, there has to be a relationship with regard not only to delegation of functions but to the provisions in section 12, which relate to directions and guidance. For example, any direction under that section must be given in writing, and we

"must publish directions given or guidance issued".

We will not be able to do anything quietly; the procedure will be open and up front. The bill will make the actions of both historic environment Scotland and the Scottish Government more transparent.

10:30

Neil Bibby (West Scotland) (Lab): With regard to the Scottish ministers' intention to delegate management of properties to HES, and the powers that ministers will have, will HES manage any properties for which it might not be subject to ministerial direction on curatorial matters?

Fiona Hyslop: My officials will correct me if I am wrong, but I think that that might be the case with some properties in care that are not under the Scottish Government's ownership. Is that right?

Noel Fojut (Scottish Government): For all the properties in care that have been delegated, the power of direction that would, as the cabinet secretary has made clear, be an ultimate resort if things went wrong would apply. In other words, it would apply whether or not the 345 properties in

question were owned by the Scottish ministers or covered by a guardianship agreement, because the ultimate responsibility for that set of properties will still rest with ministers. This brings us back to the point about ministers ensuring that things are done properly in general terms, while not interfering in day-to-day operating decisions.

Fiona Hyslop: It is very unlikely that we would say anything about an individual property. Instead, in each year's letter of guidance we would highlight certain issues in a general category and so on.

Neil Bibby: In your correspondence with the committee, you have said that, after stage 1, you are going to lay an order under section 3(3) of the Public Appointments and Public Bodies etc (Scotland) Act 2003, I think, to add historic environment Scotland to the list of public bodies. Why are you doing that after stage 1 rather than after stage 3, when Parliament will have gone through the whole process?

Fiona Hyslop: That is about being able to move swiftly and efficiently, and it is not dissimilar to what we have done previously. After all, the will of Parliament has to be respected; if, at stage 3, Parliament says, "We don't want this bill", we would have to stop in our tracks.

Having gone through a number of mergers in my six years as minister with responsibility in this area, I know, and I always make it clear that, when bodies change the pensions of staff have to be treated correctly, and other practicalities affecting staff have to be addressed. I am keen to move forward on that basis. References have been made to other legislation; because historic environment Scotland does not yet exist and is therefore not referred to in other legislation, we need to move quickly to insert it into the relevant legislation, whether for strategic environmental purposes or whatever. I am certainly very clear that we need to take this approach to deal with the pensions issue. Laying an order under section 3 of that act will allow us to get all our ducks in a row and ensure that we are ready when the body assumes formal powers and responsibility, which we think will happen in October 2015.

George Adam (Paisley) (SNP): Good morning, cabinet secretary. During the evidence sessions, there has been much talk about how we define the historic environment. The definition itself is set out not in the bill, but in the strategy. Do you think that the strategy is robust enough to ensure that everyone knows what we are talking about?

Fiona Hyslop: The strategy document is important because it brings together what everyone has signed up to and is supporting. The process of bringing everyone together in that collaboration was quite remarkable.

The issue was the subject of quite a lot of debate as we prepared the strategy, and it was also raised in the parliamentary debate on the matter. The key feedback from the sector, which we responded to, was that it wanted the definition to be set out in the strategy and that that definition should be fairly straightforward and simple rather than complex.

There are limitations caused by putting things in legislation. The Historic Environment Scotland Bill is for setting up the body but, as the convener said, there are responsibilities in respect of the wider historic environment, and it is the wider sector that has agreed the strategy and the content and definition in it.

There is a danger that things can change. During the Parliament debate, Rob Gibson raised the question of intangible culture; that is an area where we depart from the rest of the United Kingdom, because the Westminster Government does not want to sign up to the United Nations Educational, Scientific and Cultural Organization's statements on intangible heritage. Intangible heritage is a big part of our heritage; it is not just the physical places but the stories, dance and music that go with them. We will probably see the issue evolve over time, so people expect the flexibility that we have in the strategy.

I was interested in the evidence about what Scottish Natural Heritage has done, but it does not set out the boundaries. All that it does is say what can be included, but loading things in does not help to define the boundaries of where else work is done. I want to reinforce that the bill and the strategy will allow us to work with local authorities and other bodies, and that the boundaries come from that collaboration. Public finances are pressured and there are big challenges from climate change and other things. We cannot tackle those challenges with one body alone; we have to work collectively. It is helpful not to be too prescriptive about that in the bill, because we would end up having to review it, so I am not convinced that we should have a definition that includes everything but does not exclude anything.

George Adam: One of the things that came up during our trip to Orkney was the fact that all the groups there work together, perhaps because of the geography of Orkney. We definitely need more groups in other parts of the country to do that.

On the tangible heritage, if I have got it correct, it seems to be the case that we do not have a definition because the situation is fluid and constantly changing. For example, when I would go on a run to Largs as a youngster, I would drive through Greenock and see hundreds of cranes, but the minute the yards were gone they were not considered to be part of the historic environment. In Glasgow, however, we still have the crane at

Finnieston—the one crane that has been left as part of the environment of our industrial heritage. It was not regarded as part of our historic environment 30 years ago, but now it is. In my constituency, old mill buildings are also considered to be part of our industrial heritage. Is that an example of why you do not have a definition—because the situation is pretty fluid?

Fiona Hyslop: The answer is yes. It is an interesting area—I am keen to support our industrial heritage, but a lot of it is currently managed by museums. I have brought together the industrial museums, which have a federal model. I worked with Henry McLeish on setting that up. They now get funding direct from the Scottish Government.

We have invested hugely in the National Mining Museum Scotland, and if any of you are ever down in Irvine, you will know that the Scottish Maritime Museum now has a roof that does not let in water. Sam Galbraith, who is the chair of that museum, told me that he thought that he would never see the repairs done in the time that we did them in, which has allowed the museum to hold year-round exhibitions and events. If we were to include industrial heritage in the bill, the museums would have understandable concerns, so that is where the boundary lies. It is better to work in co-operation, so that we can look at Irvine, for example, and at all the different historic buildings in that locality, and collaborate with North Ayrshire Council to promote tourism. In that area, there are probably Historic Scotland sites and National Trust for Scotland sites, and other historical sites, as well as industrial heritage sites.

The point about fluidity is well made, but the important thing is that we just get on and do it. I am enthused about that and, as I said in my opening remarks, I am excited about what we can do. There is a real energy in the sector about that.

Liam McArthur: The strategy defines Scotland's historic environment as

"the physical evidence for human activity that connects people with place, linked with the associations we can see, feel and understand."

The definition is fairly broad and would encompass what George Adam talked about and my constituency's wartime history, which is increasingly relevant and important. When SNH was established, there was a definition of natural heritage. It was broad and inclusive—it did not necessarily exclude—but that gave it a position. The evidence we heard gave a mixed picture, but people were of the view that if we do not adopt a similar approach to the historic environment, that will create an imbalance in the legal standing of the definitions of "historic environment" and "natural heritage". I think that was the point that was being made to us.

From the explanation that you have given, I am struggling to see why you could not adopt an approach to defining the historic environment that is similar to that taken for SNH, without running into any problems, legally or whatever.

Fiona Hyslop: I have always taken the view that if one does not need to put something in legislation, one should not. One should not put something in just as window dressing. In the written evidence that the committee received and what the Government received from stakeholders, there was no big demand for the definition to be in the bill. We would have picked that up in our consultation discussions on the bill, but it has not been a burning issue for people. People are more interested in taking forward the strategy.

Indeed, in some of the evidence that I have read and some of the feedback that we have, people think that it is better to have the definition in the strategy, because you can work with that. If we put the definition in the bill, say at stage 2, at stage 3 everybody would say, "Why is my bit not in it?" We would end up with a large and extensive definition that would alienate people, who would be saying, "Hang on—my part of the definition isn't there."

We went through that when we developed the definition. We started off with something that was broader, more encompassing and more inclusive—a bit like the definition for SNH—but the feedback from the sector was that people did not want that.

Liam McArthur: In fairness, although the view was not shared across all those who gave evidence, a number of witnesses did feel quite strongly about it. Whether you put the definition on the face of the bill or find another mechanism for enshrining it, similar to the way in which the definition of natural environment was enshrined when SNH was established, is an open question, but the point is valid: if one compares the position of "natural heritage" and of "historic environment", there seems to be an imbalance in the way that they are treated in law.

Fiona Hyslop: However, that does not stop people doing their jobs, which is the most important thing—getting on and doing the work. Would having the definition in the bill add anything? I am not sure what it would add. The bill is not legislation on the wider historic environment; it is just about setting up a new body and bringing together two organisations to set up historic environment Scotland.

The long title says that the bill's purpose is

"to make minor amendments to the law relating to the historic environment".

The bill is not about defining the historic environment. Most of that is done in other pieces

of legislation. The bill is about setting up an organisation.

I accept the views that we were given in the consultation. People did not want the definition in the bill. If they had wanted it in the bill, it would have been in from the start, but they did not, which is why it is in the strategy.

Liam McArthur: I will leave it there. There is a difference of opinion, which was expressed to us during our visit to Orkney as well. There is not a unanimous view on this—I accept that.

Fiona Hyslop: The balance is overwhelmingly on one side, but I agree that there are different ways of approaching the issue. We looked at what was done when SNH was established, but I do not think that including the definition in the bill would add to the function of the organisation to which the bill relates.

Jayne Baxter (Mid Scotland and Fife) (Lab): Good morning, cabinet secretary. NTS and the Historic Houses Association for Scotland have calculated that their combined repair backlog totals around £103 million. NTS has expressed concern about the Scottish Government's intention to transfer management responsibility for the properties in care to HES and has said that it is not clear who will be responsible for any associated repairs.

Will you comment on that and say who will be responsible for carrying out repairs to the properties in care when HES assumes management responsibility for them? What is the estimated cost of the repair backlog?

10:45

Fiona Hyslop: Again, as referred to in previous answers, the Scottish ministers will be responsible for the properties but we will delegate the functions to historic environment Scotland. As you will realise, I will not personally be responsible for the repair and maintenance of all the properties, but responsibility for ensuring that we have adequate funds for that will remain with us. We will then provide in our letter of grant what will be provided to the bodies.

You make a very good point about the importance of our heritage environment and the conservation and maintenance that are required. A large amount is required, and we are in the process of putting that together. A lot will depend on the baselines and what we are expecting to do. We can do quick maintenance, or we can get into conservation and ensure that things stand for a longer period of time. We are trying to work out the baselines for that.

This is one of the areas that I am keen for the strategic board that I am putting together—which

will bring together NTS and others—to work on. I want the whole sector to look at what is required. We are looking to apply some of the methodology that NTS used in carrying out its audit and look at how we quantify the work. It is a big task and I would hope that the committee would support me in any budget discussions going forward. If we want a strong tourism sector, we need to ensure that our properties are open and can be visited. That means that capital investment in the historic environment is really important. That involves a commitment not just for one spending review; it is a long-term commitment.

So, the backlog is a big problem. I cannot give you a figure for dealing with it just now, and it would be wrong for me to try to do so. However, it will be a substantial amount.

This task was not done by the previous Labour-Liberal Democrat Administration, which never took the opportunity to look at the historic backlog—this task has never been done before. So, give me a period of grace to put it together. It is a big task, but we want to get it right. If we do not know what the issues are, how can we take matters forward?

We know the standing requirements for repair, maintenance, et cetera. What we and NTS are talking about is the long-term aspects. Members have been up to Orkney and I am sure were told about the extent of the expense involved in the sea wall and some of the properties up there, which amounts to millions. Even if we do that work, there will still be a real risk. On mitigation costs, I was at the Wemyss caves in Fife, for which mitigation work could be done. However, we know from what is happening to sea levels that such places are really vulnerable.

Therefore, trying to quantify the cash investment for the work that needs to be done is a real challenge. I am absolutely aware that a significant amount of money will be required, but the task of quantifying it has not been done yet, although I have tasked the strategic board with doing it. That is a good model of collaborative working with other organisations, which is what NTS has done recently.

Jayne Baxter: Is there a timescale for the work on the repair and maintenance backlog to be done? Is it a priority for the new organisation? How long will it take?

Fiona Hyslop: It is a work in progress. I have already seen early indications of the work that has been done, but I would rather that it was done correctly. All that would happen if we came up with a figure is that we would have to readjust it.

It is a significant task, but we have to tackle it. The fact that it is big and difficult is not a reason for not starting it, which is why we are trying to

ensure that we understand what is involved so that we can prioritise investment in the future.

When the new body comes into being, it will need to know where it stands in that regard. Noel Fojut has just indicated that we are aiming for a deadline of 15 April 2015, so that the new body and board know what they are coming into. We will update the committee as we go along, because it is clearly an area of interest.

Jayne Baxter: What steps is the Scottish Government taking to ensure that the properties in care can legally be delegated to HES in the manner proposed? I know that that has been spoken about this morning, but will you take us through the steps and indicate whether you think that they are robust enough and able to withstand any challenge that might be made?

Fiona Hyslop: We have set out in primary legislation what the delegated functions will be. However, bearing in mind our responsibilities, we must remember the terms of the relationship with us as guardians—there will still be that relationship with Scottish ministers. Obviously, the ownership of properties that are the responsibility of Scottish ministers will be retained by Scottish ministers.

Mary Scanlon (Highlands and Islands) (Con): I have a brief question on an issue that came up quite a lot when we were in Orkney. The organisations that we met are concerned that the bill will lead to more central control, which will affect the current decision-making processes and good relationships that they have with the council. Can you understand that concern? Is it a real concern, or can you give those organisations some comfort that it should not be a concern?

Fiona Hyslop: It certainly should not be a concern and it is not a function of the bill to lead to more central control. In fact, many of Historic Scotland's current operations are very much decentralised. It has different regions and there is no reason why that should not continue. Indeed, the bill puts a responsibility on HES to work in partnership, which can be done only by working on a locality basis. As I said in response to Clare Adamson's question, the bill will actually strengthen the relationship with local authorities. I have used the example of Stirling before but it is a good example, because there is the Wallace monument, which is controlled by Stirling Council, Bannockburn, which is controlled by the NTS, and Stirling castle, for which Historic Scotland is responsible. The sensible thing—which is happening—is for those bodies to collaborate to ensure that they promote the place, even though the responsibilities and ownership are in different hands.

We should remember that the place-making and town centre regeneration agenda is important to

the Government and that we can make progress on that only with local decision making about the different areas. I think that the strategy will probably take that further forward, but that is an internal management issue for HES. I would like the issue to surface and be evident in the new body's corporate plan, to give the reassurance that Mary Scanlon is looking for.

Mary Scanlon: It is certainly a matter of concern. I apologise for throwing that one in.

The Convener: Sorry, Mary. I know that you want to move on, but Liam McArthur is interested in that issue. If you do not mind, I will allow him to ask a supplementary question before I come back to you.

Liam McArthur: Thank you, convener.

I listened with interest to the response. Mary Scanlon is absolutely right that concern about that issue came through strongly in Orkney. I understand why it might be difficult to frame the issue in the bill and that the corporate plan might be a more appropriate place to deal with it, but I think that what was suggested, to give effect to the collaborative approach and the importance of place, was that we need to ensure that the new organisation does not simply retrench to Edinburgh and that we get a more regionalised model. Examples have been pointed to in other public bodies, including non-departmental public bodies. Might there be a route to deal with that in the bill, at least by signalling what is expected in the corporate plan?

Fiona Hyslop: I am not sure that it would be appropriate to have that in the bill. HES's internal management will not be any different from that of Historic Scotland, and I do not think that there will be a major difference in its approach to its business in relation to place. We should remember that the 345 properties are dispersed across the country, which means that, if HES is to do its business, it will have to be in the different places. For example, Argyll and Bute has a considerable proportion of the properties compared with the rest of Scotland. RCAHMS and Historic Scotland have central functions in Edinburgh and those will probably remain in Edinburgh. That is to be expected as part of HES carrying out its functions and collaborations. Actually even many of the people who are in Edinburgh spend a considerable amount of time elsewhere visiting the places that they have to work with.

I think that the corporate plan and my ministerial letter of guidance to HES are the right places to deal with the matter. However, having a merged body and a new lead body should not affect the current approach.

Liam McArthur: Historic Scotland, probably more than many other organisations, has a

presence in most parts of the country. That was certainly reflected in the evidence that we heard in Orkney. The fear is that, given the budgetary pressure, in putting together the organisation there might be pressure to retrench positions more centrally. People are looking for a degree of comfort on that. The issue is not so much about having people present in a location; it is about those people needing to have decision-making functions so that they do not always have to pass up the line decisions about what is done in a local area or region.

I appreciate that putting something in the bill could be problematic, but the organisations concerned are seeking a degree of reassurance in the course of the bill consideration process that that will not happen to decision making, and that your expectation, through the letter of guidance and the corporate plan, will be of something very different.

Fiona Hyslop: I very much appreciate the comments of both Mary Scanlon and Liam McArthur in this regard. I am sure that that will be reflected in what the committee says about the bill. I hear what you are saying and we will have to think about the appropriate way to respond. I am sure that we can discuss the issue when we consider your stage 1 report.

Mary Scanlon: You will have read the evidence from the Historic Houses Association for Scotland and the National Trust for Scotland. There was real concern about the potential for tension, with historic environment Scotland being an owner of significant heritage assets, a tourism operator and a regulator, while also being responsible for awarding taxpayer-funded grants for the sector. At the same time, it will be in competition with the sector. Do you understand the concerns of the National Trust and the Historic Houses Association? What can be done about that?

Fiona Hyslop: I do understand those genuine points of concern. I have talked about them in the several discussions that I have had with Ken Calman, the chair of NTS, and we have highlighted areas of transparency in the policy memorandum. There is quite a lot to this important area. Is it okay, convener, if I work my way through it?

On scheduled monument consent, historic environment Scotland will be regulating as well as acting in its own position. The new body will not have Crown immunity, so it will be subject to the same scheduled monument consent process as applies elsewhere. People are probably not aware that there is already a process for scheduled monument consent in Historic Scotland, called scheduled monument clearance. That process is there now, even before the creation of the new

body. Internally, the organisation is regulated in terms of what it has to do in particular areas.

There are some very good recent examples. There was a request from the HS conservation directorate to make plans to put in a new reflection space at the Scottish national war memorial in Edinburgh castle. The request was considered internally by the regulatory arm and the response was, "No, that's not where we want you to put it." Concerns were expressed and the space was relocated. Similarly, the internal process picked up exactly the same sort of issue in relation to the visitor centre at Stirling castle, where the scheduled monument process applied in exactly the same way as it applies to anybody else.

We have specifically addressed concerns that the new body somehow will not treat itself in the same way as it treats everybody else. The current body is doing that already, even though it does not have to—there is a voluntary process. However, in order to ensure that it is absolutely clear that the same regulatory function will apply to applications from another part of the body as will apply to applications from anybody external, we have made it clear that decisions will, for the first time, be made public. There will be transparency, so that people can see whether there is a difference in the decision making.

Grant making is an important area. Currently, we do not provide capital to Historic Scotland—although it might administer it; for example the £5 million that is going to Bannockburn went to the National Trust for Scotland but came via Historic Scotland. The funding that we provide is revenue funding and is provided via what we currently provide to Historic Scotland. That will continue. We have made it clear in the policy memorandum that historic environment Scotland will not be able to provide grants to itself. Its funding will come from the overall funding that we provide.

The corporate plan will make it quite clear where the funding is going and who it is going to. If, at some point in the future, the body decided to become a charity, the required level of transparency about spending would make its expenditure proposals even more transparent.

As regards sustainability, despite the really difficult period that we have gone through—given the situation with the Westminster block grant and the pressures on us—I have maintained the level of grant. I have said explicitly to Historic Scotland that the front level—the grants that go out to small businesses doing work in town centres and to other bodies—must be maintained, and we have managed to maintain that level.

With the new body—historic environment Scotland—I will be able to do that through my letter of guidance and what I expect in the

corporate plan. I could make what I expected quite explicit. To go back to the point about not being able to direct it and say, "You will spend X amount on Urquhart castle," I could not tell it which buildings would be involved, but I could say that I expect the level of grant that goes out to other bodies to be maintained at a certain level. I could do that in the generality.

11:00

Mary Scanlon: I am almost more confused than I was at the start. Last week, we heard that Historic Scotland's budget has gone down, from £51 million to £37 million. If I heard you correctly, you said that historic environment Scotland will not be responsible for allocating what is in its own portfolio. I do not think that I am the only one who is misunderstanding. The Historic Houses Association for Scotland has a repair backlog of £103 million, and that is not even looking at the needs of the National Trust and various others. I am sorry, but I do not quite understand. The budget has already fallen, so where is the money coming from?

Fiona Hyslop: Before Mary Scanlon joined the committee, it spent a lot of time looking at the budgets for Historic Scotland and others. The overall amount of money that Historic Scotland has been able to spend on itself has basically been maintained over the period, but the balance has shifted. As part of our reductions, we reduced the overall funding that went to Historic Scotland, and through a variety of efficiency programmes, it has managed to reduce its expense as an organisation without compulsory redundancies. However, one of the things that I asked it to do was to maintain the grants that went to third parties, and the third-party investment that went to NTS, for example. Last year, NTS received over £1 million from Historic Scotland and other Government bodies. We have managed to maintain the level of grants that go to other organisations, big and small, so that we are front facing.

The new body will do exactly the same as the current body does. Its own estate will be managed by whatever remains from the funding from central Government, but it can supplement that with income that it generates from visitor activities. Historic Scotland has done extremely well and has increased its funding from those sources by 40 per cent over the past period. That meant that, when I came to the committee to give evidence on the budget, although there was concern about the overall Government reduction for Historic Scotland, we knew that it could maintain its activity internally for its own properties and maintain what it gave to third parties, because its overall income was basically in a strong position over the period.

In 2013-14, for example, Historic Scotland's overall expenditure was higher than in the 2009-10 period, despite the fact that the amount that it received from the Government had varied. In 2009-10, its expenditure on grants to third parties—to Historic Houses Association for Scotland members and the NTS—and on town centre conservation area regeneration scheme funding was £15.5 million. In 2013-14, the figure was £15 million. Therefore, we have managed to maintain the level of funding for that.

That is an attempt to explain that I am currently protecting third-party investment to the Historic Houses Association for Scotland and NTS under the current arrangement. Under the new arrangement, I will do that through my letter of guidance on what I expect the overall grants to be spent on.

This is about sustainability. Will it tackle the overall conservation investment that we need? I would need to have significant increases in the funding for my portfolio to do that, but I am sure that, with the committee's support, we can make that case. It is not just about buildings; it is about places, tourism and economic sense. We cannot have that disrepair continuing, but it is a big challenge and addressing it is not easy. I am sure that, when the committee went to Orkney, it realised that some of the challenges are sometimes insurmountable, but we need to do what we can.

I am happy to take more questions from Mary Scanlon, because I know that this is a big concern.

Mary Scanlon: I will move on to my final question. We have talked about the previous budget reductions, and it is likely that historic environment Scotland will seek funding from sources other than the Scottish Government. Does that have potential to squeeze out other bodies? Is it feasible that historic environment Scotland could be offered a donation that might otherwise have gone to another body? Will it be expected to refuse such a donation given the wider interests? The potential conflicts have been raised with us.

Fiona Hyslop: Under the current arrangements, Historic Scotland receives donations from members and people who want to donate—

Mary Scanlon: Yes, but with a reduced budget, is the new body likely to encroach on territory that the National Trust for Scotland, the Historic Houses Association for Scotland and others currently get money from?

Fiona Hyslop: I have said that, over the period, Historic Scotland's income level has been maintained. You said that there have been budget reductions, but that is not the case for its overall income levels. It has just had a fantastic Easter, for example, which will have helped to boost

resources. As part of our stewardship, we have to work within the envelope that we have, and in terms of the income levels that Historic Scotland has, it has managed—for its overall expenditure—to maintain its position.

You are suggesting that, in the future, there will be continuing budget reductions. I am hopeful that the overall economic position will improve and that economically, in the next few years, Scotland will—

Mary Scanlon: I did mention previous reductions. I was talking about the reality.

Fiona Hyslop: Yes. You are assuming that that is going to continue—

Mary Scanlon: No, I did not say that.

Fiona Hyslop: Sorry—I thought that that is what you were saying. In going forward, we are trying as much as possible to maintain the status quo in the body's overall facility to spend resources.

I think that the nub of your question is whether historic environment Scotland is going to be in competition in this territory. To an extent, the current bodies are already in competition for both income and visitors. However, to see the matter simply as an internal competition for limited resource is to look at it in the wrong way. The whole point of the strategy is that we need to grow the sector as a whole in terms of both tourism and income from other areas. Because historic environment Scotland will be charged as a lead body, it should not do anything that will cause anybody else any difficulty, because if it did so it would not be carrying out the function of being a lead body that works in collaboration.

I will give an example. Stirling castle received a significant amount of funding from the Heritage Lottery Fund. That was not a displacement, of course, because lottery funding should always be additional resources for additional projects. Stirling castle is doing very well and is growing its income. I would like to see growth in the income that comes to all properties in the historic environment from growth in visitors, in the economy and in tourism. That is where the income will come from.

On the idea of the new body being predatory, there is no expectation on my part that what we are doing will give it different and new opportunities to displace funding. The idea is to try to grow the funding rather than displace it from any particular source. It has been pointed out—I cannot remember whether it was by the Historic Houses Association for Scotland—that competition already exists for donations from people and for visitors. We want a healthy competitive situation with people working in collaboration to say that, if people are coming to Stirling or to Orkney, they should go and see everything, with cross-ticketing

or cross-promotion. That is the big prize in growing the sector.

To say that, somehow, historic environment Scotland will try to take other people's donations is the wrong way to look at it, and it certainly does not reflect my expectations. Indeed, in my letter of guidance to the body, I will set out the importance of working in collaboration with others.

Gordon MacDonald (Edinburgh Pentlands) (SNP): Before I ask my questions, I would like a bit of clarification. Can you confirm that, over the three years to March 2013, cumulatively, both Historic Scotland and RCAHMS operated at a surplus? Given your comments on the balance between more commercial revenue and Government funding, is it correct to say that they have been able to maintain their activities?

Fiona Hyslop: Yes—the bodies have been able to maintain their activities from the resources that we have provided and the overall income, as you set out.

Gordon MacDonald: I wanted to put it on the record that the bodies generated a surplus over those three years.

Mary Scanlon asked about the concern that funding will be displaced if the new body has charitable status. We have heard a range of views on that. The National Trust for Scotland is concerned about charitable donations, but the Association of Certificated Field Archaeologists says:

“the prospect of unpicking the charitable status that already applies to elements of the proposed organisation appears to us nonsensical”.

I know that it will be for historic environment Scotland to decide whether to apply for charitable status, but do you see any financial benefits for any new organisation in going down the charitable status route that would have no impact on other bodies' income?

Fiona Hyslop: Yes. I think that Mary Scanlon was getting at whether charitable status would have an impact, which is different from asking about the impact of establishing the organisation.

The bill is drafted such that, if the new body wishes to apply for charitable status, it can do so. The archaeology body that you quoted provided important evidence. The opportunity for RCAHMS to have charitable status has been a big issue for it.

The financial memorandum shows and I have made it clear—I will reiterate it—that the new organisation will be able to carry out and sustain its duties and functions with the resources that it has, whether or not it applies for and receives charitable status. A charitable income would

therefore be a bonus. Most of that would come, for example, from rates relief—the new body could apply for that in a way that it cannot currently—and that would have no implications for other organisations. Most such activity would have no impact on other organisations' operations, and again that is set out in the financial memorandum.

The financial memorandum does not contain a large section that says that the new body will be able to operate only if it receives X amount in charitable donations. There are charitable donations under the current arrangements, and if donations come in under the proposed arrangements, it would be helpful to apply them to charitable purposes.

In relation to gift aid donations, the financial memorandum refers to a figure of £300,000, which would be £3 million over 10 years. I hardly think that that would threaten the NTS, given that Historic Scotland already receives charitable donations. That is shown in the financial memorandum.

Gordon MacDonald: Another concern of the NTS is about the number of staff who will be involved in fundraising and commercial activities. Are you in a position to clarify what proportion of the combined body's staff will be involved in commercial activities and tourism? Did the outline business case suggest that the number of such staff would need to increase in the new body?

Fiona Hyslop: Unless my officials can find them now, I do not have to hand the figures on the current distribution of staff in different areas, but I can write to the convener with those figures. The business plan for the operation rolls forward Historic Scotland's current situation. My answer about how Historic Scotland has coped with grant reductions from the Scottish Government is that the number of staff has been reduced, although that has been done while managing to maintain the public sector position of no compulsory redundancies.

Most of the changes had taken place before the bill was set out. The financial memorandum already incorporates the changes that have taken place to date, so there is no modelling that says, “In order to achieve financial stability and security going forward, we will automatically have to increase our income from visitors and events by X per cent.” That is not part of what is in the financial memorandum. If it was, it would be explicit.

Gordon MacDonald: Thank you.

11:15

Liam McArthur: I will follow up on the point that Gordon MacDonald raised. There has obviously been a period of change within both organisations

leading up to the merger. The concern that was raised with us was that income generation—whether in terms of growing the cake overall through collaborative action or allowing HES to fund aspects that to date have been difficult to fund—is likely to be more of a priority even than it has been in the past.

Those who have raised the concern with us have highlighted the implications that that priority may have for the regulatory dimension that HES will continue to be responsible for, and they have questioned whether that is likely to apply pressure on its ability to carry out those functions efficiently.

Fiona Hyslop: As I said, in relation to the scheduled monument consent aspects, there is already a clearance process, but it will become more explicit and transparent and decisions will be published. There will be no compromise in relation to that; in fact, if anything, the decisions that are made will be more open to scrutiny.

Your question makes certain assumptions. You said that income generation will be more of a priority for the new body. That is not happening as a result of the bill. If it is more of a priority, that is because of the same pressures as are on NTS and the Historic Houses Association. We know that there will need to be constant investment in the sector. That is not a result of the bill; it is the realpolitik of what has to be dealt with.

Liam McArthur: I accept that, but the other bodies obviously do not have a regulatory function. If the income generation aspect of what HES is involved in grows and requires additional staffing to help promote it further, there may be a change in the proportion of those involved in that work and those involved in its regulatory functions. However, those proportions will not necessarily tell us whether there is an adequate resource to discharge the regulatory functions in the way that we would expect.

Fiona Hyslop: That brings us back to the point about ministerial responsibility and scrutiny. I would take a very keen and active interest in that area. Again, that will involve looking at the corporate plan, my letter of guidance and my relationship with HES. I am accountable to Parliament in relation to that, so if there was any movement and we were not satisfied with the way that the regulatory function was carried out, I would be very concerned about that as part of my ministerial responsibility. However, I do not anticipate that happening. The impetus for such movement does not come from the bill; it would reflect the same pressures as are on Historic Scotland now.

Even if we were not to go ahead with the bill, what you are asking about would still be a pressure on Historic Scotland. Although what you

refer to is an important argument when it comes to the wider historic environment agenda, it is not affected by the proposals in the bill. The internal tension between the regulatory function and attracting tourists would still exist, even if we did not go ahead with the bill. In fact, I think that the bill will make the regulatory function and the decision-making process more explicit and that there will be more transparency than there is now.

The other area to consider is in relation to designation and regulation, which we have not touched on.

The Convener: We will. [*Laughter.*]

Fiona Hyslop: We are about to touch on it—okay.

The appeal mechanism to ministers is designed precisely to ensure that, if anything happens in that area, not only will we be transparent about it but it will provide an opportunity for us to be clear about what we expect.

Liz Smith: At the evidence session on 18 March, Jayne Baxter asked

“who is ultimately responsible and accountable for successful delivery of the strategy.”

Diana Murray responded:

“It is difficult to say, because we do not have the new body operating, but I imagine that the intention is that there will be a partnership between the new body, which will deliver the strategy and enable the partnerships, all the other people in the sector—there are many—and, of course, Government. We will work in collaboration.”— [*Official Report, Education and Culture Committee, 18 March 2014; c3812.*]

Pages 31-32 of the “Our Place in Time” strategy document say that a three-tiered delivery model will deliver the strategy. Where exactly does accountability lie for delivering the strategy?

Fiona Hyslop: This committee session is about the bill and your question is about the overall strategy. Ultimately, it is Government that will drive forward the strategy. As I have set out, we will establish a strategic board, whose membership will include not just the chair of historic environment Scotland—a body which would be established under the bill that you are scrutinising today—but many key people from the independent sector, including charities. Therefore, delivery will be a collective responsibility across the sector and the board for the strategy will be all-encompassing. Within that structure, the internal governance arrangements of members, such as NTS and other others, will continue to apply because they are independent organisations.

The bill, if agreed by Parliament, would see the establishment of a board for historic environment Scotland. That board will have a chair, and the chair and the board members will be appointed by

Government ministers. The board will drive forward historic environment Scotland. The bill sets out the new body's role and functions. All that will contribute to the first ever Scotland-wide historic environment strategy.

Liz Smith: On the body's functions, if the board were to have a difference of opinion on the strategy's overall direction, given the directions set out in the bill, who would have the ultimate say in what that strategy would be?

Fiona Hyslop: Were there to be a difference of opinion, I am sure that we would have robust discussion with the all-Scotland strategy board. We have managed to achieve consensus on the way forward and the priorities, which has given us the blueprint to proceed. If there were any differences of opinion, I would have discussions with the chair and the board. However, I would expect them to be supportive of the Government strategy in their corporate plan.

If we consider other sectors, such as the natural environment or enterprise, we see that the normal relationships between an NDPB and the Government would pertain in relation to how concerns are resolved. If the concerns were genuine and had a big bearing on the strategy, we would try to influence members on whether they may want to change the strategy. However, given that the strategy has just been delivered on a consensual basis, I expect that, for the foreseeable future, the historic environment Scotland board would deliver our strategy.

Liz Smith: I am sure that, in the vast majority of cases, there probably would be agreement. However, in a circumstance in which there is a difference of opinion about the overall direction of the strategy, does the Scottish Government have the final say on what that direction should be?

Fiona Hyslop: Yes, it does.

Liz Smith: Are you comfortable that the charitable status of any of the bodies represented on the board would be absolutely clear in such a circumstance?

Fiona Hyslop: That takes us back to what we can do in relation to the charitable status and ministerial powers of direction. We are talking about the overall strategy, not the specifics. Ministerial directions cover specific matters, whether on collections or the management of the body's activities, for example. The disapplication of the charities investment legislation will come into play if the new body wishes to apply for charitable status. I do not know whether the board would want to make an application—that would be for it to decide—but, if it did, it would be in a similar situation to other bodies to which the disapplication of the charities legislation applies.

We have had discussions with the Office of the Scottish Charity Regulator. It cannot make a judgment until such an application is submitted, but we are very conscious of the points that you are making in relation to making sure that what we do in the bill will not compromise the new body, should it make such an application. We cannot prejudge what OSCR will say or do, but we can have discussions with it and make sure that it is sighted on what we are doing. That is exactly what we have done; we have drafted the legislation in such a way that it should not be compromised by any decision that OSCR could take in the future. You raise a very good point.

Liz Smith: On the governing board, Kate Mavor of the National Trust for Scotland said:

"If we are to set objectives and outcomes and expect people to be accountable for them, we need to make sure that the funds are available to enable the delivery of those outcomes. It is not yet clear where that money will come from or how it will be distributed."—[*Official Report, Education and Culture Committee*, 6 May 2014; c 4118.]

Will you comment on that?

Fiona Hyslop: We would expect the grant giving to continue rolling forward—and, as I have said, NTS has been a recipient of a significant number of grants over recent years.

On the big picture of skills, we are already investing a lot. I will do my pitch again: please go up to St Andrew Square and see the young apprentices there doing their work. We have already tried to marshal resources into skills with apprenticeships through Historic Scotland and the wider Scottish Government in this area. We are also investing in conservation skills in the Engine Shed in Stirling. Rather than it being something that Historic Scotland is doing itself, we would like to work with other bodies such as NTS to look at how we do this for the whole sector.

Is it clear where the resources will come from? A lot will have to come from what we are doing already. If we set out what we need to deliver the strategy in terms of skills and other elements, that will allow us to quantify what we need to do and then bid for resources to make it happen. I hope that some of the resources will be self-generated as a result of the increased tourist activity that we are seeing across the piece. However, the nation must understand that if it wants to have a built heritage that is accessible, which people can visit and which is there for future generations, there will need to be investment in the sector going forward. I am sure that we will come back to that issue.

NTS is quite right to say that there are big challenges. I absolutely agree with that, but, rather than have people tackle those in isolation, we are trying to bring everyone together. There are strengths across the sector. Everybody has to

work on this. We have managed to provide very good stewardship over the recent period with the limited resources that we have. However, we have to look at the big picture going forward. I want to share that leadership with other bodies, which is why I think NTS has a key role.

Gordon MacDonald: I want to continue the discussion about governance. The Society of Antiquaries of Scotland raised concerns regarding the current members of Historic Scotland. It states in its submission:

“members have previously had the opportunity to contribute to governance, planning and decision-making within Historic Scotland and to the scrutiny of these matters”.

Is there a role for the 131,000 members of Historic Scotland within the governance structure? If so, what is that role?

Fiona Hyslop: How do I say this tactfully? We have just been discussing the NTS. One of the issues that George Reid’s report looked at was the relationship between hundreds of thousands of members and the governance structure. Considerable changes were made to make sure that the new body could be run in a way that is more fit for purpose and more contemporary.

I suppose that it is more a question for Historic Scotland to decide how it relates to its members. It has very serious regard to the regular feedback that it gets about what members are interested in. It has a very active and interested membership. Those of you who receive the magazine regularly will see that. However, it is a public body—an NDPB—so it will have to be run in the way that we expect others to be run.

We will be setting up the new board. I want to put on record my thanks to the commissioners and the existing board of Historic Scotland for their work in taking us to where we are. We have a transitions board that is particularly looking after the interests of staff and other areas going forward.

It is important that we set up the new body with an experienced new board. I have read the evidence from the Society of Antiquaries of Scotland, which was mentioned. We do not want to designate that there will be somebody responsible for archaeology or for antiquities: the board will have to be drawn from people with experience and with interests across the piece, and we want to ensure that the board is balanced and has different perspectives, but we will not be designating reserved places for different people.

I am not sure whether that is what the evidence that was presented to the committee was addressing, but the valued members of Historic Scotland—of which I am one; I think that I was the first culture secretary who was already a member

of Historic Scotland before being appointed to the post—give the organisation its lifeblood in terms of activity, visitors and numbers. What is interesting is that, although the sector has faced challenges, the membership increases of both NTS and Historic Scotland have been really healthy in recent times, and that is a good signal for the future. People value their heritage and want to visit and contribute to heritage sites.

It is a good question to ask the new body, which will set out in its corporate plan the relationship that it will have with its membership. Historic Scotland already does that, but how that continues will be of interest.

The Convener: Thank you for your evidence today, cabinet secretary. There are a number of areas that we could not cover today, so we will follow up in writing on a number of points arising from this morning’s discussion and from questions raised in written evidence—too many to deal with in an oral evidence session.

I invite you and your officials to wait for a moment while we deal with the next item.

Subordinate Legislation

11:32

Meeting continued in private until 12:12.

Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2014 (SSI 2014/103)

Children's Hearings (Scotland) Act 2011 (Modification of Subordinate Legislation) Order 2014 (SSI 2014/112)

Adoption and Children (Scotland) Act 2007 (Compulsory Supervision Order Reports in Applications for Permanence Orders) Regulations 2014 (SSI 2014/113)

11:31

The Convener: The next item is consideration of three negative instruments. Do members have any comments to make on the instruments?

Members: No.

The Convener: Does the committee agree to make no recommendation to the Parliament on the instruments?

Members *indicated agreement.*

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