



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 6 May 2014

Session 4

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EDUCATION AND CULTURE COMMITTEE

13th 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:

Dr Simon Gilmour (Built Environment Forum Scotland)

Alexander Hay (Historic Houses Association Scotland)

Kate Mavor (National Trust for Scotland)

Councillor Harry McGuigan (Convention of Scottish Local Authorities)

Liz Smith (Mid Scotland and Fife) (Con)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Education and Culture Committee

Tuesday 6 May 2014

[The Convener *opened the meeting at 10:06*]

Historic Environment Scotland Bill: Stage 1

The Convener (Stewart Maxwell): Good morning, and welcome to the 13th meeting in 2014 of the Education and Culture Committee. I remind all those present that electronic devices should be switched off at all times because they interfere with the broadcasting system.

Our first item today is to continue taking oral evidence on the Historic Environment Scotland Bill. In March, we heard from Historic Scotland, the Royal Commission on the Ancient and Historical Monuments of Scotland and the Scottish Government bill team. Next week we will be in Orkney for a fact-finding visit and will meet a range of people involved in the management of the historic environment there.

Today, we will take evidence from a panel of four witnesses. I welcome Councillor Harry McGuigan, from the Convention of Scottish Local Authorities; Kate Mavor, from the National Trust for Scotland; Dr Simon Gilmour, from the Built Environment Forum Scotland; and Alexander Hay, from the Historic Houses Association Scotland. I thank all of you for your written submissions, which are very interesting.

We will go straight to questions from members. I ask members to indicate when they wish to come in.

I will start by asking the panel about the clarity of the role of the proposed historic environment Scotland body. In the written evidence that we have received, a number of witnesses suggest that there seems to be a bit of confusion about exactly what the practical role of the proposed body would be. Do you share that sense of confusion? Do you believe that there is a shared understanding of what the term “lead body” means in practical terms?

We will start with Harry McGuigan.

Councillor Harry McGuigan (Convention of Scottish Local Authorities): I do not know about shared understanding—to be honest, I think that that is very much a subjective consideration—but I certainly feel that we are moving in the right

direction and that there is a collaborative spirit behind the bill, which is a big step forward.

The devil is, and will be, in the detail. At the moment, very broad and general terms are being used, but good work is being done. We are certainly comfortable with it, but we are guarded to some extent. We will be vigilant in order to ensure that the collaborative working becomes a reality and that we start to see some mainstreaming, as opposed to us all sitting in our own wee trenches doing our own little bit.

I hope that that helps, convener.

The Convener: Thank you. I ask Kate Mavor to respond next.

Kate Mavor (National Trust for Scotland): Thank you, convener. The problem with clarity is to do with conflicts of interest between different roles in the proposed new organisation. I think that we are all clear that we want to give more emphasis to the importance of the historic environment. As Harry McGuigan said, we want to collaborate as a sector and we therefore welcome the advent of the strategy. However, unresolved conflicts of interest will be inherent in the structure of the new organisation, and we have been quite open about the reasons why we are worried about them.

The particular conflict of interest will be the role of the regulator. There are bodies throughout the sector—private, public and charitable—that can cover most of the activities that we would expect in the area. The one organisation that can certainly make the biggest difference is the current Historic Scotland, which can do so as a regulator.

If the body that is the regulator is also responsible for operating heritage visitor attractions and giving grants, and it is supposed to be responsible for maintaining properties, there is an inherent conflict of interest. If the body has a lot of properties to maintain and must bring in visitors and keep the business going to fundraise for itself, there is a danger that the regulator role will not get the attention that it needs, because it is a smaller part of the body’s responsibilities.

The Convener: Members have questions about conflict of interest, so we will go into that in detail later.

Kate Mavor: Okay. You asked about clarity, and there is a bit of a muddled perception about how all the functions will come together.

Dr Simon Gilmour (Built Environment Forum Scotland): There is a need for clarity, and BEFS highlighted the issue in its submission.

Of necessity, the bill lays out the new organisation’s functions in very general terms. There are many other organisations in the historic

environment world that do some of those things. For example, local authorities have a clear and important role in

“protecting and managing the historic environment”.

We would like clarity about the role of the new organisation relative to local authorities in that respect. Another of the functions that are set out in the bill is:

“learning about, and educating others about, the historic environment”.

Third-sector bodies such as Archaeology Scotland undertake such a role. We would not want the new body somehow to take over doing what other organisations are doing—and doing very well.

Before we came into the room, we were talking among ourselves about projects that encourage community involvement. One such project is adopt a monument, which Archaeology Scotland—a BEFS member—runs. We are keen for clarity in that regard, or at least for reassurance that the new body would not trespass into such areas. It should be very much an enabling body that allows things to happen and encourages others to take things forward, rather than one that tries to wrap them up in its own functions.

That is our issue with regard to clarity on functions. We accept that the bill must be worded in general terms, to enable the new organisation to go forward and do its best for the historic environment, but we would like reassurance—in the policy memorandum or elsewhere—that it will not trespass into other areas and stand on people’s toes.

Alexander Hay (Historic Houses Association Scotland): The HHA is reasonably happy about the purpose of the merged body. I very much back up what Kate Mavor said about how it will work in practice. That is all that I have to say on that.

The Convener: In written submissions to the committee, the question has come up of what the term “lead body” will mean in practice. None of you mentioned that. What are the practical implications of historic environment Scotland being the lead body, in relation to the body’s operation on the ground? Do you have a clear view of what that means? Dr Gilmour talked about the role of local authorities, and in written evidence we heard about the proportion of properties and the environment that Historic Scotland controls. Is there a practical purpose of historic environment Scotland being the lead body?

Dr Gilmour: BEFS accepts that there is a requirement for a champion or lead body that allows us all to come in and work through the strategy. A new organisation is being created to help to lead the strategy—and we need an organisation to take that forward. If we were not

merging the Royal Commission on the Ancient and Historical Monuments of Scotland and Historic Scotland, we would expect one of those bodies—if not both of them, jointly—to help to take the work forward. There is no doubt that other major organisations that are out there, such as the National Trust, would also have lead roles in certain areas—Kate Mavor can speak about the National Trust much better than I can.

10:15

A lead body, which has general functions and can ensure that everyone can take forward the betterment of the historic environment, is a positive thing. However, confusion exists—even in the eyes of professionals—about the respective roles of RCAHMS and Historic Scotland. The merger of those two organisations would, I hope, remove that confusion and help us to focus on progressing the very good aspects in the strategy that are for the betterment of the historic environment.

I do know whether that answers your question.

The Convener: It helps.

Councillor Harry McGuigan: Leadership requires an understanding of those who you are leading. Therefore, it is important that we do not end up identifying a lead body that is authoritative and which directs and makes requirements of its followers or its members. We need to be careful about that because sometimes people interpret that leading role in almost a Stalinist way. That should not happen.

The Convener: I would hope that Stalinism would not be part of the principles underlining the new body.

Councillor Harry McGuigan: I was not directing that comment at you, convener.

The Convener: I appreciate that clarification, Councillor McGuigan. [*Laughter.*]

Kate Mavor: An important role of a lead body would be to invest in the research that allows us to understand better the historic environment, and it must have the resources to do that. It would also need to keep, as RCAHMS does, a central archive of what matters to the Scottish historic environment and to promote that, so that people could go to the body for information to help them understand their environment.

On its regulatory role, the body would need to keep a check on people putting things before the preservation of the historic environment and to ensure that a right of appeal exists if local people feel that matters are going against them with regard to the protection of what they care about in their historic environment. A lead body should be

where people turn when they need advice, information, perspective and a champion. Those are the valuable roles that a lead body would bring.

Alexander Hay: Both Simon Gilmour and Kate Mavor have used the very important word “champion”, which is what we would want the new body to be. On the whole, we have found that Historic Scotland has been very supportive of the private sector, and we would very much like that support to continue under the new body.

Liam McArthur (Orkney Islands) (LD): We have had evidence from a wide range of stakeholders, including the Association of Local Government Archaeological Officers. It picked up the point about the clarity of the lead role, particularly with regard to the advisory capacity that Historic Scotland and RCAHMS have had to date, and the question whether there is a risk that, in referring to a lead body, the advisory nature of the relationship may be misunderstood and local authorities may find themselves under more pressure simply to take the advice as beyond question and as a priority as regards the scheme of things. Is that something that should be clarified in more detail in the bill, or is there a level of understanding about how the approach operates currently that would give confidence that it is not a concern that should trouble us unduly?

Councillor McGuigan: Local authorities are working very hard to ensure that we get a sensible understanding across the working arrangements from the viewpoint of not only local authorities and historic environment Scotland but the voluntary, third and private sectors and so on. We must make sure that a coherent approach is adopted by the individual agencies involved. We are anxious to see such co-production becoming a reality. It has sometimes not been the case in the past when we have found ourselves pulling in opposite directions, which is unhelpful and unlikely to secure the protection and promotion of the historic environment that we all want to see.

Liam McArthur: That answer is helpful. It probably illustrates the point that, when there is agreement about the approach that should be taken, the advisory role that the new body will play will simply reinforce that approach, which is extremely helpful. However, what will happen when the expertise of archaeological officers within a local authority is at variance with the advice from the new body? Is there a risk that, by setting up one body as the lead body under the legislation while giving local authorities lead authority in that area, we will have a conflict that will be more difficult to manage than it is at the moment?

Councillor McGuigan: I do not think that such a conflict should necessarily arise. Indeed, I would

be very concerned if it did, because that is what we are trying to avoid.

It is certainly important, from the local government point of view, that we understand how best to use the local resources and the local expertise of people who understand the locality, what the strengths and weaknesses are and what resources are there to do things. That does not mean that people with local expertise have a prerogative on wisdom, but they will have a significant input to make. We can speculate about the possibility of an adversarial approach, but I do not think that it will happen—I hope that it will not.

Liam McArthur: I am not suggesting that there will be an adversarial approach, but I imagine that there will be areas where there are differences of opinion—perhaps on the means of achieving a shared objective.

I am trying to establish whether the bill as it is set up may make managing that relationship more problematic. On the one hand, we have the local authority, which has responsibility and may have a more nuanced understanding of how a particular site or monument fits within the local environment. On the other hand, we will have historic environment Scotland, which may be giving the local authority advice on management issues that is slightly at variance with the approach of the local authority. How will such differences be settled when one body is a lead body under the legislation and the other body has the lead in managing a particular site or monument?

Dr Gilmour: I feel—I will alienate all my Historic Scotland friends now—that, right now, the situation is worse than the situation that we will have with the set-up of the new body.

Local authorities view advice from Historic Scotland, for example, as coming directly from the Scottish Government—from ministers—because Historic Scotland is a Government agency. The bill is setting up an independent non-departmental public body, so the advice, experience and knowledge will be coming from an independent source rather than from the Scottish Government itself. In my mind, it is likely that local authorities will not view the advice of the new body as having the same level of importance as advice from Historic Scotland, simply because of how the advice-giving body will be set up.

Having said that, we in BEFS certainly think that there is potential for the bill to be more explicit with regard to the relationship between the new body and local authorities. The bill should perhaps say that there is an advisory capacity for the new body to give advice and support local authorities in the crucial jobs that they do—be they archaeological or conservation officer jobs. There is potential to

explore that area a bit further in the wording of the bill.

As regards whether local authorities will take the advice to heart to a greater or lesser extent than they do currently, my own particular feeling is that local authorities will probably take the advice from the new body to heart to a lesser extent than the current advice from bodies such as Historic Scotland.

The Convener: That is interesting. We move to questions from Clare Adamson.

Clare Adamson (Central Scotland) (SNP): Thank you, convener.

Some local authorities still have direct control over the historic environment in terms of their responsibilities, but some local authorities have set up cultural trusts to look after the historic environment. Might that complicate things, or is there an opportunity for better communication? I want to gauge your opinion on that.

Councillor McGuigan: That is a good observation. I share the concern about ensuring that we understand clearly what arm's-length organisations are doing and ensuring that they dovetail with the local government position in relation to the new body. I am determined not to allow a situation to develop in which a negative effect comes about because organisations are at arm's length. That does not worry me at the moment, but we must be alert to the possibility.

Dr Gilmour: Various models for delivering expertise are out there already. Trusts are only one model; in some circumstances, commercial companies provide advice—particularly archaeological advice—to local authorities. However we describe the relationship between the new body and local authorities, we must find a wording that covers the way in which local authorities get advice. I know that that will be difficult, but I do not have to write the provisions, so that is fine.

Liz Smith (Mid Scotland and Fife) (Con): Good morning. I will ask about lines of accountability for the strategy. When we took evidence from Historic Scotland and RCAHMS, there was a little confusion about who exactly will be accountable for the new body's strategy. Will you comment on that?

Dr Gilmour: I will throw in my tuppenceworth. The strategy is a co-production that was put together not just by the Government but by lots of organisations and individuals who collaborated to bring out the ideas. I do not know whether I see the ultimate responsibility in exactly the same way as everybody else does, but I think that we will have a three-tier system of governance that will bring everyone together to pull in the same

direction. In doing so, each part of the governance board and the wider sector will, I hope, be trying desperately to deliver on the strategy. Each organisation will be responsible for its own part.

The Government will have its role to play through HES and the historic environment policy unit, which I presume will be monitored and taken to task through the corporate plan and so on for delivering on the strategy. The NTS will look to deliver the best benefits and will have a responsibility to do that through its trustees. The Society of Antiquaries of Scotland, for which I work, will also try to deliver aspects of the strategy. We will monitor our progress on that.

Liz Smith: That is helpful information about the individual responsibilities, but I am driving at the overall responsibility for the strategy. As you say, the Government and the new body's trustees will have a role to play. How will all that come together? If a problem with the strategy arose, how would that be worked through? Whose final responsibility would it be to decide on the overall strategy?

Dr Gilmour: The governing board that will be pulled together, which the Cabinet Secretary for Culture and External Affairs will chair, will have ultimate responsibility. The board will incorporate other members of the sector and it will be given the task of ensuring that we deliver on the strategy.

I see nothing in the strategy so far that I could disagree with. It is not a disagreeable strategy, so all that we could end up with is disagreement about how to deliver aspects of the strategy. We deal with issues every day in the sector and, through the strategy process and a lot more collaboration in recent years, we have managed to help each other to work through those issues and get to a positive end point instead of getting stuck on the negative ones.

10:30

Liz Smith: Councillor McGuigan said that everybody is relatively comfortable and that a lot of things in the strategy look extremely good. In the past, when we have had to oversee the mergers of other bodies, the overall strategic direction has not been clear, which has caused difficulties. I would be more comforted if there was absolute clarity about who has the overall responsibility and decision-making power, particularly because the Government is involved on an arm's-length basis. If that means that the Government sets the overall direction for culture policy, we need to be comfortable that the trustees and the groups that have been participating in putting the strategy together are singing from the same hymn sheet. Would you accept that?

Dr Gilmour: Absolutely. For the first time in a long time, we are all singing from the same hymn sheet and pulling together.

I find it difficult to think of how we can make co-production—if that is the new buzzword—a reality in the historic environment without the Government relinquishing some control. Either everyone contributes and takes things forward in an almost ground-up approach or we have a diktat coming down from the top that says what the Scottish Government wants and so on. It is difficult to strike a balance, but we are approaching it.

Liz Smith: That is correct when we are talking about the production of the strategy, in which a first-class job has been done by pulling the sets together. However, I am interested in the delivery of the strategy and how, if we encounter any difficulties, as we have when things have not worked out with other bodies, we will determine where the line of responsibility lies. That is a concern.

Councillor McGuigan: Single outcome agreements are an excellent example of how we ensure that a clearly understood agenda or strategy is being followed by the partners involved. That is the community planning partnership locally.

If that process starts to go awry, we should all be concerned, including local authorities and CPP members. One of the good things about some of the legislation that is coming out is that there will be a mandatory expectation on some of the CPP partners—it will not be just the local authority that is tied to it. That will provide the opportunity to review and challenge any failure on the part of any of the agencies that are involved in the working group that drew up the strategy and that will be responsible for monitoring progress and having oversight of that strategy.

We must have confidence in that process. Governance is about the Scottish Government, local government and the United Kingdom Government working in a concerted and sensible way. Sometimes, the process does not work as it should, but it should follow the spirit of the single outcome agreements and make sure that things happen. There will be situations in which difficulties arise and we get stubbornness on the part of certain agencies, but if the arguments are strong, persuasive and intelligent enough, that is the way to move forward.

Kate Mavor: It is difficult to say at this point who will be accountable because we do not have any outcomes under the strategy. As Simon Gilmour said, it is all motherhood and apple pie just now because we are all proud of the strategy and it says good things, but who is going to be on the board that will oversee deliverables, outcomes and

timescales? That is who will be accountable—the board, whose members are yet to be determined.

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. As has been said, we would all love to say that the strategy shows the world that we would like to deliver, but everything that needs to be delivered must be financed, and the money must be clearly available for particular things because our individual organisations all have their own priorities to deliver.

As the chief executive of the National Trust for Scotland, I am accountable to the trustees. We have our own strategy and plan, and I am to deliver that for the trustees and members. If the strategy aligns with that and I can deliver both, I will. However, if we get to a point at which the new board says, “We want the National Trust for Scotland to do this,” and that is not what our trustees have declared as their intent, there will be a potential conflict. It is not a conflict that I foresee, as our charitable objective is to conserve and promote heritage, so it is unlikely that the strategy will not be aligned. Nevertheless, Liz Smith asks a good question. If you are going to hold people accountable, you must give them the resources that they need to deliver.

Jayne Baxter (Mid Scotland and Fife) (Lab): Mr Hay, do you think that the strategy gives sufficient cognisance to the role of the private sector, given the number of properties in Scotland that are owned privately?

Alexander Hay: Our concern with the original document was that not enough stress was laid on the importance of the private owner in the historic environment. The majority of houses are still in private hands, and I stress the contribution that they make to their local economies.

I also stress the good value that the country gets from private ownership, because we maintain the houses at our own expense. Some of the houses are owned by charitable trusts and have access to outside funds, but otherwise very little money is available to the private owner. The Historic Scotland budget does not extend very far, and the provisos that are placed on owners who wish to apply for its funds are really quite severe.

I have said at various previous meetings that I do not believe that Historic Scotland is geared to the private owner any longer. I have a little trouble with HS, which disagrees with me in that regard, but it is very hard for a private owner to undertake to do the things that an application usually requires.

I am wandering a little from the point, but I stress what a great contribution the private houses make to their local areas. Conditions are tough all round, and most of the houses are now used for business, but the general public access is difficult to deliver in the current environment in Scotland. Certain centres attract visitors, but in my part of the world, the Scottish Borders, the season is very short and it is hard to attract sufficient general day visitors to justify the costs of opening.

Jayne Baxter: Are you hopeful that the situation might improve?

Alexander Hay: We accept that the situation is as it is, and I do not see that the bill will, in itself, make any difference to that. We feel that the way forward is for the houses to remain in private hands.

It is important to retain control of the settings of the houses. We are quite concerned about the moves on land reform—I know that that is nothing to do with this committee—and the way that it is heading. There is a lot of militating against private ownership of land, which extends to questioning whether private ownership is a good thing or not, but that is for another committee.

Jayne Baxter: That is for another meeting, convener.

The Convener: I would rather that we did not get into land reform in this committee.

Mr Hay, you said at the start of your first answer to Jayne Baxter that you had concerns about whether the original document recognised the important role of private owners. Have your concerns been in any way addressed?

Alexander Hay: The bill does not specifically mention private owners as much as we would like. As Simon Gilmour said, there is nothing in the document that we can object to—it says all the right things—but I wonder whether it can deliver in the face of conflicting political pressures.

The Convener: We should always have high ambitions, though, Mr Hay.

Alexander Hay: Yes.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I declare an interest as a member of both the National Trust for Scotland and Historic Scotland.

We have received a number of submissions from bodies that feel that the term “historic environment” should be defined in the bill. One is from the Institute of Conservation, which refers to the historic environment of Scotland as

“the tangible and intangible culture”.

Another is from Scottish Environment LINK, which considers that

“the natural and historic environment is, in large measure, one and the same thing”.

That seems to open up a huge remit. Do we have a problem, and do we need to define the terminology?

Councillor McGuigan: I hate definitions that run the risk of restricting rather than enhancing what we are able to do.

Dr Gilmour: We said in our consultation response that there should be a definition of “historic environment” in the bill and that it should be the definition that is in the strategy, which states:

“Scotland’s historic environment is the physical evidence for human activity that connects people with place, linked with the associations we can see, feel and understand.”

That includes the intangible as well as the tangible, but it puts the emphasis clearly on

“the physical evidence for human activity”,

which helps us to start to draw boundaries that may not previously have existed. The overlap with the so-called natural environment and the cultural environment is certainly one of those aspects.

Kate Mavor: Scottish Natural Heritage also has a definition of the natural environment, which was produced when the body was set up. That situation is analogous to the current one in that, when a new body that was responsible for natural heritage was set up, the definition of natural heritage was written into the founding documents in the same way that we think, for clarity, it should be for HES.

Colin Beattie: I always think of Historic Scotland as being responsible more for the built environment, such as historic houses and so forth. I do not think about broadening its remit to cover more intangible culture. How can we draw a boundary around that? How can we provide a definition, whether in the bill or in the strategic document, that will ensure that there is no encroachment on other areas?

Kate Mavor: Historic Scotland already has inventories for battlefields, designed landscapes, historic gardens and so on, so there are already definitions and descriptions of things that are not buildings. In designed landscapes, for example, there is the physical evidence of the human hand. Battlefields are in some cases not really anything other than a field, but the stories around them and the significance for local people of knowing what happened there are enough to make a battlefield a historic environment with not a building to be seen.

Colin Beattie: Are there any negative implications of not having a definition in the bill but putting one in the strategy document instead?

Dr Gilmour: I would argue that the definition should be in the bill as well as in the strategy document, for various reasons. One reason is simply to explain the name of the bill: it is the Historic Environment Scotland Bill, so what does “historic environment” actually mean? It would be useful to have the definition in the bill to explain that. It would also help us in our advocacy role if we could point to something that said what the historic environment is and that it is very important.

We should not get too hung up on whether the definition encroaches on other areas. Real life is messy and so is the historic environment, which includes vast swathes of the so-called natural environment because the natural environment in Scotland is created by human hand. There are very few areas that are truly natural and have never been touched by human hand. We have to expect that there will be some messiness in that respect.

We would not want the new organisation to become a silo for dealing simply with one thing and to have blinkers on instead of looking around and seeing where it linked up with all the other areas—not just the natural environment, but health, education and so on.

10:45

Colin Beattie: Do you think that there is the potential for confusion about who is responsible for what?

Dr Gilmour: I think that there will be less confusion than there is currently about which of the two existing bodies is responsible for what. Going forward, how various organisations will be funded from the public purse to deal with certain areas and where the buck will stop will be defined by activity and collaboration, which is what we all want. We do not want all the different organisations to do different things in their own silos; we want them to collaborate much more and to move forward in that way. The emphasis on the physical evidence of human activity will help to pinpoint what the new organisation will try to do.

Colin Beattie: I am just trying to think of the logic here. You made the point that we live in a messy environment and that change is happening all the time. Would it be better if the definition of “historic environment” was in the strategy document, which can be updated and changed as time goes on, rather than embedded in the bill, which would mean that primary legislation would be required for every tweak and change?

Councillor McGuigan: If we attempt to define everything, that will get extremely messy and confusing. You refer to something that I discussed earlier with my colleagues here. We tend to think

of the historic environment as buildings, but the historic environment is being managed sensibly by landowners and local authorities, which do a tremendous amount of work to maintain the scenic in our localities. For example, I went for a walk yesterday morning that I thoroughly enjoyed because I was looking at areas that I visited as a child, including a waterfall. Such scenic environments are very important for enriching our communities. As you said, attention needs to be paid in that regard, which is why we must be careful not to define the strategy too much. We could write chapter after chapter about what we expect the strategy to do, but it must be more broadly based than that. There must be co-production and collaborative working that is not too regimented in terms of the buildings aspect.

Kate Mavor: Strategic environmental planning systems are really important. There is no mention at the moment of how the historic environment strategy would mesh with the local planning and the strategic environmental planning. It would be helpful if, as part of the normal planning cycle, we had to take into account historic environmental features to give a more holistic view instead of looking through a narrow lens. We want to see joined-up planning in that respect rather than separate planning.

Colin Beattie: I realise that you are not lawyers—at least, I do not think that you are—but do you know whether there is any legal disadvantage in having the term “historic environment” defined in the strategy as opposed to its being in the bill?

Dr Gilmour: You are quite right that I am not a lawyer, so knowing whether there would be a legal disadvantage in that regard is outwith my purview. However, we think that there would be an advantage to the definition’s being in the bill as opposed to its being only in the strategy. The current definition came about through many hours of blood, sweat and tears in a collaborative venture and is sufficiently broad to stand the test of time. I cannot think that it would not do that. In addition, having the term in the bill would make it, in a legal sense, a useful and powerful tool for ensuring the legitimacy of the historic environment in other discussions. In discussions about cross-cutting policy, the management of the natural environment, education, health and wellbeing, and so on, it would be a much more powerful tool if we could point to it in legal documents to show that the definition existed and that we needed to deal with it.

Kate Mavor: It is a question of equality. If SNH has a definition of the natural environment and historic environment Scotland has no definition, there will be an unevenness in cross-cutting areas such as landscape policy. It is also a question of

consistency. In drawing up landscape policy, you would want to look at the SNH definition and give equal weight to the two definitions, for clarity and demarcation.

The Convener: I will press you a little on that important area. Dr Gilmour talked about how broad and all-encompassing the definition that is in the strategy document is and said that he hoped that we could avoid any future changes that might be necessary if there were a tighter definition, but is that not the fundamental difficulty? In effect, a broad definition loses any legal authority. The ability to be legally binding requires a tight definition, and the fact is that the strategy has a broad definition. The definition is wide and woolly, for good reason, but putting it into primary legislation would not work.

Dr Gilmour: I have no legal expertise, so I cannot tell you whether the definition could legitimately be put into legalese. I wish that I could remember what the definition is in the SNH strategy document—Kate Mavor might know—because I am sure that it must also be broad and all-encompassing if it is to cover the entire natural environment of Scotland in legislation, so I see no particular difficulty with that.

The Convener: I do not have a copy of that in front of me either, but we can look it up to see whether such a definition is in the Natural Heritage (Scotland) Act 1991 or in some other place.

You said that we must ensure that the definition covers other functions such as education, but sections 2(1) to 2(5) of the bill list all the general and specific functions, which include conserving, educating, interpreting, understanding, identifying and recording. Are all the things that you mentioned not already listed in the bill?

Dr Gilmour: The general functions that the organisation will undertake are comprehensively listed in the bill, but how the organisation interacts with other publicly funded bodies such as SNH is not in the bill, except in the general terms that refer to

“working with other persons (whether in partnership or otherwise)”.

The concept that we are working towards is that putting the definition in the bill will allow the body to say what areas it is interested in and to ask other bodies what they are doing with regard to the natural environment, for example. The body will need to ask how it can work with the National Trust, which has cultural heritage properties, archaeological sites and the natural environment to look after.

Putting the definition in the bill would give a much clearer definition of what each organisation is interested in and where it overlaps with what

other bodies are doing; organisations could then move forward and collaborate on some of that work. Although

“learning about, and educating others about, the historic environment”

is listed as a function, the bill does not say what the historic environment is—it just is.

The Convener: We know where the definition is. It is in the strategy.

Dr Gilmour: It is in the strategy, but it is not in the legal document that people would cite in any legal case. Those involved in a legal case would have to look at a strategy, which is not a legal document at all. As Liz Smith pointed out, there are potential difficulties with delivery and attribution of where the buck stops, but there are no such complications in the bill, which makes clear where the buck stops.

The Convener: Any legally binding definition would have to be pretty tight, but what would happen if we changed our view of the historic environment? For example, our modern industrial heritage, such as mines, mills and factories, was not considered part of the historic environment—that used to be much more about landscapes, ancient monuments, castles, private houses and lots of other things—but we have since changed our view. If, instead of setting out a definition in the strategy and keeping the bill separate, we put a tight, legally binding definition in the bill, and if at some point down the line we changed our view of the historic environment, would we not—as Mr Beattie tried to suggest—have to come back and change the primary legislation to account for that?

Dr Gilmour: The simple answer is yes—Parliament might have to come back and look at the primary legislation again in due course, but when would that have to happen? It might be 50 or 100 years hence, when it might be time to look again at the legislation in any case, as other aspects of it would certainly be out of date.

What will the historic environment look like in the future? It might well include moon bases or the material remains of human activity on other planets or under the sea, which we already have provision to deal with. Those things were not considered when the Ancient Monuments and Archaeological Areas Act 1979 was initially proposed. I can assume only that Scotland’s historic environment will be, as the strategy sets out, the

“physical evidence of human activity”,

which sounds fairly broad to me. I can think of no reason why we would have to come back and rethink that.

Councillor McGuigan: As I said at the beginning, we have to be careful with definitions. They can be very exact things—for example, everyone agrees with the definition of velocity or mass—but, once we move into the social or community domain, things are not as easy to define, and aspects can end up being excluded rather than included. I would therefore be guarded in how we approach such matters. I know that Clare Adamson knows about definitions, because I taught her about velocity and mass at school.

As I said, we need to be careful about definitions, because some of them—especially those in the social domain—tie our hands and limit what we can get.

The Convener: Councillor McGuigan, it is not essential to declare that you used to teach members of the committee. I am not sure that that is particularly relevant—or, indeed, helpful to some members. [*Laughter.*]

Mary Scanlon (Highlands and Islands) (Con): Noting that the terms “Stalinism” and “diktat” have been used this morning, I should say that my questions are about historic environment Scotland’s charitable status, its impact on other bodies and the hope that we are moving to a more democratic, fairer and more inclusive system.

The submission from the Historic Houses Association Scotland says that

“The bulk of Scotland’s built heritage is in independent ownership”

and that there is therefore

“little or no ... expense”

to the people of Scotland. However, it expresses concern about the

“potential for tension as Historic Environment Scotland will be an owner of significant heritage assets, a tourist operator, and a regulator”

and it suggests that

“close links with Scottish Government may create a perception of lack of equity”

and

“The independent sector could feel squeezed by a taxpayer backed charitable body.”

Moreover, the NTS has expressed concern that,

“As a state body, with both secure tax-payer funding as well as privileged access to government ministers and other government departments, there is a risk that the state charity does not operate on a level playing-field and squeezes out the voluntary sector.”

I felt that I had to read that out, because they are your words, not mine. Will the NTS and the Historic Houses Association Scotland elaborate on those concerns?

Alexander Hay: I will let Kate Mavor respond first, because the NTS is more worried about the issue than we are.

11:00

Kate Mavor: All of us who work in the voluntary sector compete for funds; that is nothing new to us and we are comfortable with the concept. However, one striking point is that the cuts in Government funding to Historic Scotland and RCAHMS in the recent past amount to £15 million. We estimate that the overall pot for the charities working in the historic environment sector is about £26 million and, if another £15 million has to be found out of that for Historic Scotland and RCAHMS, that does not leave an awful lot for us. You will understand that those are back-of-an-envelope calculations, but the point is that there is a limited amount of money.

We accept that there is a squeeze on public finances and that more money has to be found, but what is challenging for us is the notion that we would be competing for funds with a body that was advantaged by being closely related to the Government and which would, as has been pointed out, have access to Government ministers and departments.

As for the notion of properties in care being owned by ministers, I simply point out that we all have a huge conservation backlog—for example, gutters that need to be cleared, roofs that need to be fixed and everything else in our care that needs constant maintenance—and that we have assessed that we need to spend £46 million on our own backlog over the next 10 years. We are working on that and we have 10 years to find an extra £46 million over and above what we already spend. Because we take seriously the need to look after the assets in our care, we will work hard to find that money and we will find it. However, we do not want to be up against an organisation that does not have to worry about such a backlog and which has only to keep the visitors coming in and to earn money to maintain what it has, while we have to catch up on a backlog of maintenance that stretches back years and years.

The equivalent amount of money that Historic Scotland has to find has not been quantified and, if the upkeep and maintenance of its buildings are to stay with the taxpayer, that must be made explicit and visible and must be addressed. How will that money be raised? Who will meet those obligations, particularly given that many of the properties in the care of the Scottish ministers belong not to them but to other people who have not been consulted on what we see as a change of contract? If those properties are to be managed by a new body, the people who own them ought to be consulted and made aware of who will maintain

and conserve them, as is set out in the original contract for properties in guardianship.

Although we have been raising those issues for the past 18 months, we are still unclear about accountability for maintaining properties in the care of the Scottish ministers to the level that was committed to when they were passed into guardianship. It is just not clear who will pay that money. If the new body is not to pay any of it, that will create a very unlevel playing field and, as an organisation that has to raise most of its money on its own, we are not happy about that.

Alexander Hay: I support everything that Kate Mavor just said. Although the Westminster Government has done exactly the same with English Heritage, it has quantified the money for covering the backlog of repairs and has said that there will be no more money after that. The HHA in London does not believe that the sum is anywhere near enough to cover the backlog.

According to a recent HHA survey of its members, which we have publicised before, the backlog of urgent repairs—in other words, the things that need to be dealt with quickly—amounts to £57 million and growing for our members in Scotland. A lot of that has to be funded from private funds or from income that properties generate. We are concerned that, if Historic Scotland in its new guise is expected to break even and make money out of its properties—I believe that only four HS properties have a surplus, which means that the rest have a deficit—it will have to increase the footfall in those properties and, as a result, advertising and promotion will concentrate on them.

We have had discussions with Historic Scotland in the past and it has undertaken to try to grow the sector. We are involved in the heritage tourism group with Historic Scotland and the National Trust for Scotland, with a view to promoting such tourism. However, we are concerned that, if we cannot grow the sector, Historic Scotland will try to increase the footfall in its own properties. Many of our houses carry out weddings and a lot of Historic Scotland properties are going down that route; in fact, virtually every property now has the ability to carry out weddings. When we started doing that more than 20 years ago, hardly a soul was doing it and we almost had the market to ourselves, but it is now very competitive, even among our members, to get that business. A concern for the future is about where all our visitors will come from.

Mary Scanlon: It is a considerable concern that, between the HHAS and the NTS, there is a £103 million backlog of urgent and other repairs. I say to Kate Mavor that her back-of-an-envelope calculations are the same as the figures that I have in front of me, which indicate that

Government support for Historic Scotland in the past five years has gone down from £51.7 million to £37.8 million and for RCAHMS has gone down from £5.8 million in 2006-07 to £4.5 million. Support for both has reduced.

The Convener: I clarify that those are the NTS's figures. They do not come from anywhere else; they are reproduced from the NTS.

Mary Scanlon: So we are all looking at the same back-of-an-envelope figures.

Kate Mavor: The figures for the reductions in funds are ours, but we got them from public records, so they are not made up. The £26 million pot is more of a back-of-an-envelope calculation, but the other two figures are firm.

Mary Scanlon: So the reduction from £51 million to £37 million is an accurate figure.

Kate Mavor: I believe so.

Mary Scanlon: The backlog for the NTS is £46 million, while it is £57 million and growing for the HHAS, which is a total of £103 million.

We are at stage 1 of the bill. What reassurances do you seek from the Scottish Government to show that you will not be squeezed out of charitable funding? What reassurances do you seek that some assistance might come your way to deal with the backlog and ensure that Scotland has the historic heritage that it needs? Where do changes need to be made in the bill to ensure that the backlog and the historic environment that the NTS and the HHAS have mentioned are not squeezed out in the future?

Kate Mavor: We are looking for an explicit commitment in the bill to working collaboratively. One organisation could go hell for leather to soak up all the visitor attraction money that is available, or everybody could be committed to working collaboratively so that anything that is obviously predatory is not permitted under the legislation. Protections could be built into the legislation to ensure that there is a level playing field and that any tax advantages, for example, that might come from formerly being a Government body were taken away so that everyone competed on an even keel.

There is an HM Revenue and Customs rule whereby an NTS member is not allowed to get a discount in our cafes because they have already had a discount as a member under the Office of the Scottish Charity Regulator's rules. However, the HMRC rule does not apply if someone is a member of Historic Scotland, so they can go to Historic Scotland and get an extra advantage. Once the body floats off, we would like to see that, if it applies for charitable status, no special dispensation is given to it.

That is only one example. We want a level playing field and we want protections to be written into the bill to ensure that a taxpayer-funded body has to work collaboratively. We want the protection of grant funding to be explicit so that, if the new body is a grant-giving body, a certain amount of its grant—or even all of its grant, in its grant-funding capacity—goes outwith historic environment Scotland, because it gets its own grant and therefore should not be fishing in the grant pool.

Those are the sorts of protection that should be built in: ring fencing for grant funding and ring fencing for things such as consents. If historic environment Scotland is a fundraising body, there is a risk that funders might try to influence things unduly when it comes to consenting.

I do not know whether the committee wants to discuss conflicts of interest and other areas apart from fundraising.

The Convener: We will come to that.

Kate Mavor: I have described things that we think can be written into the bill to protect against predatory behaviour by an organisation that—let us face it—will be strapped for cash, as all of us are. It will have a lot of liabilities, and it will have its own separate board, which will pressure the management to look after things and to raise money—to up the organisation's income. Its management will be under a lot of pressure, and it will be difficult for the organisation not to want to compete. We are all fighting over a small pot.

I personally believe that competition can be a good thing, in the sense that it makes people up their game, it makes them efficient and it forces their hand on sharing back-office resources to keep costs down. It makes people express more articulately and clearly what they want the money for.

The Heritage Lottery Fund has required so much of all of us who are competing for funds. We must carefully think through what we are trying to achieve and what community benefits we are delivering. That sharpens up our focus on what we are doing, rather than just having some kind of wishy-washy protection of the historic environment. We have to consider what funds are for and who they are for.

Competition can be a good thing but, for us, having a level playing field is critical. Otherwise, an organisation such as ours, which is a community of interest for the benefit of everyone who lives in Scotland, becomes disadvantaged. That just seems plain wrong.

Mary Scanlon: I would be surprised if a commitment to work collaboratively was written into a bill. In my view, that is more of an

assumption. I would also be surprised if a commitment to a level playing field was written into a bill. However, I hope that that, too, would be an assumption.

You seem to have considerable concerns around the two points that you raise. Let us say that, five or 10 years down the line, you felt that you were being squeezed out and that your £103 million of backlog maintenance—urgent or otherwise—was not being addressed. Do you see any provision in the bill whereby you could lodge an appeal against the new organisation in order to get a level playing field and fair, inclusive and democratic funding?

Kate Mavor: One of the things that people must have if they are to appeal against a decision is data. As I said earlier, it is difficult to proceed without understanding how historic environment Scotland will account for its repair and maintenance bill, what it will prioritise and how it will go about its business. We ask for transparency in all the organisation's dealings, so that we can compare like with like.

Alex Hay mentioned that four Historic Scotland properties make money but the rest of them do not. That is still emerging information. The way in which those properties are accounted for is different from how we account for things. If historic environment Scotland turns into an NDPB, and certainly if it is a charity, such information will be clearer, because that is what charities have to declare.

On the right of appeal, we are hosting a conference next week about the very subject of how to prioritise the allocation of resources if there is not enough money to go round. We all operate as different organisations, but we all care about Scotland. What is the mechanism whereby we decide that it is more important to bolster Edinburgh castle than it is to assist with some small, ruinous abbey in the middle of nowhere? There needs to be some context for that. That is what we in the National Trust are working towards—getting definitions for what is significant and determining how to prioritise things in a small country such as Scotland, instead of different people deciding, in their respective silos, what is most important. We are trying to have that debate.

In answer to your question about how to put the provisions that have been described into the bill, I say that I have not seen a right of appeal written into the bill. That would be helpful.

We come back to the question of accountability for the historic environment strategy. If the strategy is explicit—as strategies should be—about the prioritisation of resources, the accountable body should be where people bring an appeal. They might point out that the strategy

specifies that something has to be prioritised that is not being prioritised. The right of appeal would be to the board overseeing the strategy.

11:15

Dr Gilmour: Section 8 covers corporate planning, which is how the organisation lays out how it will achieve its goals and aims. That is overseen by the Scottish ministers and, if Kate Mavor had an issue, she could say to her elected representatives in Parliament, “The corporate plan needs to include X, Y or Z.” That is a potential mechanism. I have written down next to section 8, “How do Scottish ministers deal with a rogue HES?” Exactly that sort of issue could be laid out more transparently and clearly in the corporate planning section of the bill.

Gordon MacDonald (Edinburgh Pentlands) (SNP): For the record, I declare that I am a member of the National Trust for Scotland.

I want to continue the discussion that we have had about the impact of HES on other bodies. In the opening remarks, there was a suggestion that there might be a conflict of interest between HES’s role as the regulator that provides grant aid and its role as an operator that competes with other organisations. According to Historic Scotland’s annual accounts for 2012-13, roughly £12 million of its total grant expenditure of £15 million goes to historic building repair grants. Is there any evidence of a conflict of interest between its current roles as an operator and as a provider of grant assistance?

The Convener: Kate Mavor might want to answer that question.

Mary Scanlon: Everyone is looking around for a buck to pass.

Kate Mavor: I am trying to think whether anecdotal evidence from some of the big building projects counts, but it probably does not.

I am probably not the right person to ask, as I have not been in the industry long and do not have a long track record. However, I can say that there are constantly challenges for us all in trying to develop a visitor experience and a visitor attraction. We want to have coaches arrive, and Alexander Hay told me before the meeting that the arch of one of his houses does not accommodate the new type of coach. If we want tens of thousands of people to visit a property, we must start thinking about amending and adapting things, and that gives rise to conflicts.

I do not know whether any consents have been allowed at any of Historic Scotland’s properties that the rest of us would not have been allowed, but that is the pressure that people will be under, and that is why it is important to have total

transparency. If any consent is awarded to any property in the care of historic environment Scotland by historic environment Scotland, that must be transparent, so that if people feel that there has been some bending of the rules, we can challenge it. I do not know whether that has been a danger in the past, but it will certainly be a risk in the future.

We face such pressures the whole time as we try to develop our organisation to make it more self-sustaining. There are always judgment calls to be made and we have debates with Historic Scotland about our particular challenges. It would be difficult for an organisation to debate such things with itself.

Gordon MacDonald: Mr Hay, in your opening remarks you said that Historic Scotland is very supportive of the private sector—I hope that I have not taken your comment out of context. Does that not suggest that there has not been any conflict in the handing out of grants?

Alexander Hay: No one has told me that they have had problems with Historic Scotland. When I have meetings with Historic Scotland, it is very keen to incorporate the private sector’s views. However, I am reliant on individual members to tell me of their experiences.

Historic Scotland used to have a reputation for being obstructive, shall we say, in not giving listed building planning consents. However, the previous chief executive said that she was keen for the organisation to become more enabling in helping people to do things. I have stood up at various meetings and said that if anyone has had any experience of things not having changed in their dealings with Historic Scotland, they should let me know. No one has done so, so I assume that Historic Scotland is being more helpful.

One area in which I know that we have had some difficulty—I mentioned it earlier—is the setting of historic houses, particularly when the land is not in the ownership of the house. When what the owners consider to be inappropriate development has been applied for in close proximity to a house, Historic Scotland has, on a number of occasions, been quite supportive of trying to get the decision overturned. Its role has been only advisory, however, and the local authority has not had to take account of it. Nevertheless, Historic Scotland has been supportive in that context.

Gordon MacDonald: It has been suggested that there has been £15 million-worth of cuts in the sector across RCAHMS and Historic Scotland. Is it not the case that both RCAHMS and Historic Scotland generated a surplus in two of the three years up to March 2015? In the year to March 2013, when they had a deficit, it was a deficit of

only £225,000. If RCAHMS and Historic Scotland are working within the financial envelope that they have to work in, why would they need to claw back £15 million?

Kate Mavor: As I said before, accounts work differently in the public sector. When I have a surplus, it is because I have covered all my repairs and maintenance and all the on-going stuff before I even start talking about what is left over. I do not know whether RCAHMS and Historic Scotland are accounting for that in the same way.

I do not know where those figures arose from; I am not familiar with them. Of the 129 properties in our care, only 12 of them wash their face. All the rest have a deficit every year, which we have to try to find the funding to cover—and that is before we start talking about the backlog. I would be very surprised if there is a healthy surplus in Historic Scotland's estate if it is accounted for in the same way as we account for our estate.

Were historic environment Scotland to have charitable status, one of the advantages would be that one would be comparing apples with apples instead of pears.

Gordon MacDonald: I understand that it would be up to historic environment Scotland to decide whether or not to apply for charitable status, but are there financial benefits for an organisation in going down the charitable status route that would not impact on other bodies' income?

Kate Mavor: There would be some. It would have more favourable business rates, which would not affect the rest of us, and it would be able to do certain things.

It would affect the rest of us if HES started to apply to charitable trusts, foundations and other sources of money that are not the public purse. A small amount of that goes on at the moment, but it is not a very important part of Historic Scotland's funding. For us, that sort of funding is vital; for most of us in the sector, it is our main source of income. If someone else came to fish in the same pond, obviously we would feel nervous.

We would love the pond to be made bigger, so that everybody got their fair share—everybody would have that wish—but in the current climate that seems unlikely, because trusts, foundations and charitable sources of money are still contracting.

Gordon MacDonald: The financial memorandum suggests that between the gift aid scheme and charitable rates relief, over a period there could be a £20 million benefit to historic environment Scotland, which would not impact on any other organisation.

I understand that RCAHMS is a charity and gets most of its money from its charitable activities. If

the new organisation did not become a charity, would the sector lose the income that RCAHMS currently gets from charitable income, or would it be picked up elsewhere?

Kate Mavor: Are you saying that if RCAHMS were not a charity anymore, things that were given to it—

Gordon MacDonald: It would not be able to get income generated from charitable activities, would it?

Kate Mavor: No, it would not.

Gordon MacDonald: In effect, that would represent a substantial loss to the sector. I understand that RCAHMS currently gets in the region of £5 million a year from charitable activities. If it did not have charitable status, it would lose £5 million, which would probably need to be made up from the public purse, which would mean that there would be less money for other organisations.

Kate Mavor: Possibly. That sounds feasible.

Dr Gilmour: Some of that comes through the Scran Trust, but it is a key issue with regard to whether the organisation becomes a charity and carries out its own charitable activities. The Scran Trust has its own board of trustees and it could choose to host ventures elsewhere, so I do not think that the sector would lose the money. The trust could go and work with the National Library of Scotland, for example. Therefore, the sector would retain the income that comes in through that charitable organisation; it just would not come through HES.

The Convener: Liam McArthur, do you have a brief supplementary?

Liam McArthur: Kate Mavor talked about the way in which decisions are made about funding in one area as opposed to another. Concerns have been raised about the likely implications for staffing with the creation of the new organisation, and a possible loss of expertise. A comparison was made with what has happened south of the border. I am not sure that there is anything we can do about that in the bill, but do you recognise that concern? What might be the implications of that?

Kate Mavor: My understanding is that, south of the border, that was recognised as being an unintended consequence, but the situation has been mitigated, so people will not have to worry about it. What the commission does and its valuable role have been written into the new organisation, so they will not be lost, and we are very pleased about that.

It is worth saying that there has been widespread and deep consultation on the bill, and it is the better for it because it means that we are

not going to make the same mistakes. However, comparisons can sometimes be a bit invidious because English Heritage, which is the equivalent organisation in the south, is so much smaller in relation to the whole historic environment sector in England and Wales compared with Historic Scotland, whose presence here in Scotland is huge. The organisations are not quite analogous. However, the supposed mistakes that were made with the royal commission in England have been mitigated in what is proposed in the bill. That is not something that concerns us.

The Convener: I have a small question to ask Kate Mavor before we move on to the final section. You mentioned concern about the possible conflicts of interest if an organisation receives money as well as giving grants and being involved in regulation and so on. What is your specific concern? Historic Scotland pretty much does those things already, so what will the difference be?

Kate Mavor: The main difference will be the pressure that the organisation is under to raise its own funds and make its own money. That skews things differently. If we consider the staffing of the new body and how many staff will be involved in managing tourism outlets and heritage tourism properties, we can see a disproportionate emphasis on that part of the business. That leaves only a small number to cover the regulatory function, even though, as I said at the beginning, the regulatory function is really the unique and most important thing that the body does, because no one else does it. So many people will be tied up in running the estate as a leading tourism operation—as the draft documentation for the bill originally described it—and there will be pressure to find the money to pay for staffing and for all the other things for which money was previously just given. That will be the big difference from the current situation.

That pressure might mean that there is a temptation to put less resource into proper scrutiny and regulation or to bend the rules a bit when it comes to the new organisation regulating itself. One example would be having to decide on consents when there are funders in the background deciding whether or not to give their money.

All those things can be mitigated comfortably, as long as everything is transparent and as long as money for regulation is ring fenced, so that people are not tempted to use the money that they have to invest in their own estate rather than for regulation.

The Convener: That is quite a serious allegation to say that the body would in effect be tempted—I will not put it any stronger than that—to bend regulation, or break the law.

Kate Mavor: I would not describe it as an allegation. If you think it through, you see that the organisation will be under a lot of pressure. Therefore, it is important, in establishing it, to have a commitment to transparency to avoid that happening. There is no allegation intended. I am just trying to anticipate how difficult it will be to put time and effort into regulation when the organisation is under pressure to fix the roof, open the doors and cover health and safety and all the other compliance requirements that are necessary in opening to the public. There is a lot of pressure in that, and that is why transparency must be safeguarded.

11:30

The Convener: I do not think that anyone would have a different opinion on the need to ensure that everything is open and transparent and to safeguard everything that is legal and proper in the process. I am just slightly concerned that there is an over-emphasis on an imagined difference between what the bodies currently do and what they will do under the new set-up. Clearly, the Government has published policy aims. For example, on regulation, the policy memorandum says:

“The policy aim is for Historic Environment Scotland to undertake the functions previously delivered through Historic Scotland and RCAHMS in relation to the historic environment designation and regulation and the wider planning system.”

Therefore, in effect, we are talking about a transfer of existing powers to a new body.

We are not really talking about new powers or different powers. I genuinely do not see why there is a concern that the new body would be under such pressure that it would be tempted to play fast and loose with the rules.

Kate Mavor: I would just point out that England and Wales, which faced similar choices, both decided not to put the regulatory role in with the management of the properties. The reasons that were given for that concerned potential conflict down the line.

Neil Bibby (West Scotland) (Lab): Is your concern not that the new body would play fast and loose with the rules, but that it could?

Kate Mavor: Absolutely. Of course it would not do so. I do not know anyone who would think to do that deliberately. I am just saying that it could do that and that, therefore, some protection against that has to be included. Who knows what people will do when they are under pressure? Who knows who will be the chairman of its board, and who will be on the board, and what emphasis the board will put on what elements? An element of public protection needs to be written into the legislation.

Neil Bibby: I would like you to clarify what you said in your written submission about the issue of liability. As we know, the bill will transfer responsibility for 344 historic properties. In your submission, you say that

“the liability for the maintenance of these properties, both those owned and in guardianship, will remain with ministers.”

However, later, you talk about

“the liability remaining with the owner and ministers”.

Who will have the ultimate liability? I note that the Scottish Government owns only 74 of the 344 properties.

Kate Mavor: Our understanding is that the liability remains with the ministers. We have verified that with the policy unit. Our point is that the various owners who have given their properties into the guardianship of the Scottish ministers have, in so doing, entered into some kind of contractual arrangement with the Scottish ministers. Our contention is that if the Scottish ministers then outsource the management of those properties to someone else—the new body—the owners should be consulted, at the very least.

We are concerned about the fact that if Scottish ministers are not transferring at the same time the responsibility to maintain those properties to an acceptable level, in terms of conservation, and are, instead, keeping that responsibility to themselves, the original owners cannot be sure that someone will manage and conserve the properties as was originally intended, because there will no longer be a bill that is met by the taxpayer. As I said earlier, it is not clear who will meet that bill. Although we know that the new body will take over management of the properties, we do not know whether the standard to which they must be maintained has been written down anywhere or whether the consent of the original owner to the transfer has been sought. There is a disagreement between us and the policy unit about whether consent needs to be given.

The point that we are trying to make is that all the owners of the properties that are in the guardianship of the Scottish ministers should be consulted and it should be made clear who is responsible for the management to a certain level, and how that will be paid for. As I said, the cost of it all has not been quantified.

Neil Bibby: Will the liability for maintenance of the properties remain with ministers?

Kate Mavor: As I understand it, yes, because the ownership is not transferring.

Neil Bibby: Is the Scottish Government aware of your concerns about the maintenance backlog? Have you contacted it about that and has it given

any commitments on it or are there any plans to undertake audits to ascertain the backlog of repairs?

Kate Mavor: Yes, the Government is aware. We have had good, open and regular conversations about the bill and we are grateful for that consultation. As I understand it, Historic Scotland has an exercise under way to quantify what the cost will be.

The Convener: I thank all the witnesses for coming along. It was an interesting evidence-taking session and helpful for our stage 1 deliberations on the bill.

I suspend the meeting briefly to allow the witnesses to leave.

11:35

Meeting suspended.

11:38

On resuming—

Public Petitions

Schools (Religious Observance) (PE1487)

The Convener: Our next item is consideration of two petitions. We will deal with them one at a time.

The first petition, PE1487, was lodged by Mark Gordon and the Scottish Secular Society. It calls on the Scottish Parliament to urge the Scottish Government to amend the Education (Scotland) Act 1980 by making religious observance in public schools an opt-in rather than opt-out activity.

Committee members will note the Scottish Government's view on the petition, which it submitted to the Public Petitions Committee. The Government believes that the current legislation and guidance on religious observance are relevant and up to date, and it is not persuaded that a move to an opt-in system would be helpful to young learners. In addition, we have received a number of submissions for committee members' consideration.

I throw it open to members to express views, make comments or suggest actions that they wish to take in relation to the petition.

Mary Scanlon: I would like to make a public announcement: I support the Government. [*Laughter.*] You will not hear that very often, but there you are. I have read the papers through; the Government's approach to the petition is reasonable.

I am not entirely sure that every parent is fully aware of the guidance. According to the briefing that we have received, the guidance states:

"This right should always be made known to parents and their wishes respected. Parents should be provided with sufficient information on which to base a decision."

I am not sure that every parent is given that advice on the right to opt out when their child starts school. The Scottish Government may wish to remind local authorities that that should be included in the guidance that is given to every parent who has a child at a school.

Liam McArthur: I agree with Mary Scanlon's suggestion and her comments about the availability of information. However, even if they are armed with that information, parents in different parts of the country can have experiences that vary significantly. The steps that the Public Petitions Committee has taken are the steps that we would, under normal circumstances, have recommended. I am not sure how we can take the matter further.

The Convener: I agree with both members. The Public Petitions Committee has taken oral and written evidence and it has written to the Government, which has written back, laying out its position. Those are measures that we would have undertaken, had they not already been undertaken.

For me, it comes down to parents' knowledge about their rights. As has been said, parents and young people may not be aware of their rights on the issue. Mary Scanlon has suggested that we write to the Government, asking it to encourage local authorities to ensure that parents are made aware of their rights.

Mary Scanlon: Yes—local authorities should give parents the information and make sure that they are armed with it.

The Convener: At the moment, there is a legal requirement to include information about the right to withdraw from religious observance in the school handbook, and I am sure that local authorities do that. The issue that we are discussing is whether parents are aware of that right or whether there should be more proactive provision of the information, which may be a little bit hidden from parents and young people.

Liam McArthur: I referred earlier to the implications if a parent elects to withdraw their child—or if a child elects to withdraw—from that aspect of school activity. The implications may be clear in some instances but not in others. I am not sure whether that is covered in the code that schools are required to observe, but it would be helpful to know the implications. Knowing one's right is one thing, but knowing the implications of exercising that right is equally important.

The Convener: Are you talking about the meaningful activity that the individual pupil would undertake?

Liam McArthur: I am talking about how a school might be expected to respect the right. For example, rather than exclude an individual child, certain schools that I have had direct personal involvement with will find a different way of delivering a particular activity. I suspect that it would be more illustrative than didactic, but it would be useful information for parents or children on how they might go about exercising their right.

The Convener: A couple of points have been made. I will try to break this down a bit. Are members content that—in the first instance, at least—we write to the Government, asking it to encourage local authorities to make sure that parents are aware of the right? That is Mary Scanlon's suggestion.

Members indicated agreement.

The Convener: Should we include in that letter Liam McArthur's suggestion that local authorities go beyond that and provide information on the implications of withdrawing and on the meaningful activity that individual pupils would undertake?

Members indicated agreement.

The Convener: It now comes down to what we do with the petition. We have a number of options. We could take further evidence, we could write out, we could consult, we could ask the Government for a further response or we could close the petition. What are members' views?

11:45

Mary Scanlon: As Liam McArthur said, a considerable amount of work has been done on the petition. The weakness—if there is a weakness—is in the guidance and ensuring that people are fully informed. I do not see any benefit in taking further evidence, which would only duplicate the excellent work that the Public Petitions Committee has done. I suppose that I am therefore suggesting that the petition be closed.

Colin Beattie: I agree with Mary Scanlon.

Gordon MacDonald: I also agree with Mary Scanlon.

Mary Scanlon: And I agree with the Government.

The Convener: That is twice that Mary Scanlon has agreed with the Government.

Jayne Baxter: I do not see what we could add to the work that has already been done, so I think that it is reasonable to close the petition.

The Convener: The only other thing that I will say, from a personal point of view, is that most parents are probably unaware that they have the right to opt out. I am sure that young people are also unaware of the right. For me, it is a matter of free choice that the individual can decide whether or not to attend. I therefore emphasise that it is important that individual families be aware of their legal right. I am less concerned about the law, as long as it is available to families and individuals to choose whether or not to attend. Their being made aware of that right would be my priority.

I agree that the Public Petitions Committee has taken all the steps that we would have taken, so I am not sure what else we could add. I therefore agree with Mary Scanlon and others that we write to the petitioners saying that we are closing the petition. I suppose that, in addition to the committee writing to the Government to urge it to ensure that parents are aware of the right, the petitioners could urge COSLA and individual local authorities to ensure that parents are aware of it. Are members content with that proposal?

Members indicated agreement.

The Convener: Thank you. We will close the petition and write to the Government on that basis.

Local Authority Education Committees (Religious Representation) (PE1498)

The Convener: The second petition is PE1498, which was lodged by Colin Emerson on behalf of Edinburgh Secular Society. It calls on the Scottish Parliament to urge the Scottish Government to bring forward legislative proposals to repeal section 124 of the Local Government (Scotland) Act 1973, as amended by section 31 of the Local Government etc (Scotland) Act 1994.

Members will note the Scottish Government's view, which is that it supports the involvement of religious representatives in councils' decision-making process on education and does not have any plans to change the existing provisions.

I am sure that members are aware of this, but I highlight for the record that a member's bill proposal on the subject of the petition has been lodged by John Finnie MSP. Do members have views on what, if any, further action we wish to take on PE1498?

Liam McArthur: You have pointed in your introduction to the issue that I will raise. John Finnie has a member's bill proposal under consultation and consideration. That seems to be the logical vehicle through which members across the parties can contribute to the debate and, ultimately, take a view on the matter. I am not sure what the committee could add, given that the petition urges the Scottish Government to bring forward a legislative proposal and there is a mechanism for doing that through John Finnie's proposed member's bill.

Mary Scanlon: I feel that the information that I have in the committee papers is probably insufficient to make a decision. I have not had the opportunity to discuss the issue with my party group. I think that there would be a wide range of views within my party group; to be fair, in all parties there will be a wide range of views on the issue. The situation is historical—the provision is more than 100 years old.

I would welcome the wider consultation that would be carried out for John Finnie's proposed member's bill and I would be very interested to hear a wider range of views. Rather than the committee jumping to a decision today on the back of what is, in my view, a lack of consultation and information, I would prefer to examine more thoroughly the evidence that comes from John Finnie. Should the proposals come forward in a member's bill, there could be a free vote in my party, although I do not know whether that would

be the case. These are the important issues that we have not had an opportunity to discuss.

Colin Beattie: For the second time, I agree with Mary Scanlon.

The Convener: It is a strange day.

Mary Scanlon: I am very grateful.

The Convener: From my point of view, the proposal in the petition is an interesting one. Clearly, religious groups have a—I hesitate to use the word “privileged”—position on education committees in local government that is different from that of other groups. There are historical reasons why that is the case and we all understand that process.

I tend to agree that if the member’s bill proposal by John Finnie progresses, it will provide a wide platform for detailed discussion and debate on the evidence for and against such a proposal. I think that that would be the best place to have the debate, rather than have the committee repeat what the Public Petitions Committee has already done. To urge the Scottish Government would achieve nothing, given that it has already expressed its view on the matter.

I think that I have a feeling for members’ views. Are members content that we close the petition on the basis that we have just discussed, and that we write to the petitioners? I am sure that they are already aware of John Finnie’s member’s bill proposal. We can write to them and state that our belief is that that is the best place to have the debate and discussion on the proposal, and that that is why we have taken this decision. Are members agreed?

Members *indicated agreement.*

The Convener: Thank you. That concludes our business today.

Meeting closed at 11:51.

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