



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 9 December 2015

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
39th Meeting 2015, Session 4

CONVENER

*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

DEPUTY CONVENER

*Graeme Dey (Angus South) (SNP)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)

*Sarah Boyack (Lothian) (Lab)

*Alex Fergusson (Galloway and West Dumfries) (Con)

*Jim Hume (South Scotland) (LD)

*Angus MacDonald (Falkirk East) (SNP)

*Michael Russell (Argyll and Bute) (SNP)

Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Christian Allard (North East Scotland) (SNP) (Committee Substitute)

Richard Lochhead (Cabinet Secretary for Rural Affairs, Food and Environment)

Ian Speirs (Scottish Government)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 9 December 2015

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Rob Gibson): Welcome to the 39th meeting in 2015 of the Rural Affairs, Climate Change and Environment Committee. I remind everyone present to ensure that their mobiles are on silent. We have received apologies from Dave Thompson and have been joined by Christian Allard as his substitute. We are awaiting the arrival of other members, including Angus MacDonald, who has indicated that he is caught in traffic.

Agenda item 1 is a decision on taking business in private. We are asked to consider whether to take in private item 5, which is consideration of draft correspondence to the minister on the Paris 2015 21st conference of parties, or COP21. Do members agree to take the item in private?

Members indicated agreement.

Subordinate Legislation

Snares (Training) (Scotland) Order 2015 (SSI 2015/377)

Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2015 (SSI 2015/392)

10:00

The Convener: Agenda item 2 is several items of subordinate legislation. Members have no comments on SSI 2015/377 or SSI 2015/392. Do members agree to make no recommendations on the instruments?

Members indicated agreement.

Animal By-Products (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/393)

The Convener: Mike Russell wishes to comment on SSI 2015/393.

Michael Russell (Argyll and Bute) (SNP): I am concerned about what it says on page 20 of paper 1, and I require further information from the Government before I can support the regulations. I have a difficulty with the cost of disposal of fish mortalities in Argyll. The note at the bottom of page 20 says:

“The information in the two tables indicates that where companies are landfilling fish farm waste at licensed landfill sites”—

landfill is the only option in Argyll—

“they will be able to secure low cost contracts with more sustainable processes once the landfill prohibition is in place.”

There is a bit of a cart and a horse in that, if I may mix metaphors. As far as I am aware, no alternatives are presently available. If the prohibition is put in place and there is no anaerobic possibility, local businesses will be greatly disadvantaged. I would like to see evidence that that paragraph is justified.

The Convener: The reporting deadline is 11 January, so we could write to the minister. We might be able to consider the regulations again before that.

Lynn Tullis (Clerk): The committee's next meeting is scheduled for 16 December. The one after that is 13 January 2016.

The Convener: We do not have a meeting in the first week back.

Lynn Tullis: No.

The Convener: We could have, if need be.

Michael Russell: Unless information were available today, I would be very reluctant to support the regulations. There is no evidence in the document that that statement is true. It may be true, in which case I would be delighted to support the regulations.

Sarah Boyack (Lothian) (Lab): I suppose that the issue for me goes a step beyond Mike Russell's point. It is about the availability of anaerobic digestion options. For some farms, the cost seems to be relatively low in comparison to more harmful methods of disposal. The issue for the Cabinet Secretary for Rural Affairs, Food and Environment and his team is what options will be available for anaerobic digestion, particularly in the more remote rural areas, where economies of scale will always be difficult to establish. I totally get that.

The Convener: There is an issue in the area that I represent. I am looking at the second table on page 20, "Overview of future disposal routes". In Kishorn in Wester Ross, the future disposal option for freshwater smolts is anaerobic digestion and the distance to the disposal site is 190 miles. In other examples, the distance from Lewis is 200 miles and from Ullapool in north-west Sutherland is 435 miles. The disposal cost for smolts at Kishorn is £470 a tonne, which is by far the greatest amount in the table. Those are huge distances and they are huge expenses for very small firms. As Mike Russell says, we need to know whether what is being said is accurate. Before we agree to the regulations, we should get an answer to that.

Christian Allard (North East Scotland) (SNP): If we are writing to the Government, can we ask whether any alternatives are available anywhere?

The Convener: I think that we have captured the points. Do we agree to discuss the regulations at a meeting before 11 January?

Michael Russell: If there are satisfactory answers, that is fine, but we need to know.

The Convener: We may be able to get a response before next week's meeting. Do we agree to write to the Government about SSI 2015/393?

Members indicated agreement.

Trade in Animals and Related Products (Scotland) Amendment Regulations 2015 (SSI 2015/401)

The Convener: Do members agree that we are happy to make no recommendations on the regulations?

Members indicated agreement.

Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2015 (SSI 2015/376)

The Convener: We move on to consideration of SSI 2015/376. Alex Fergusson has lodged a motion to annul the regulations. As is the usual practice, we will have a brief evidence session with the Cabinet Secretary for Rural Affairs, Food and Environment. Does Alex Fergusson have any questions?

Alex Fergusson (Galloway and West Dumfries) (Con): None that will not come out when I move the motion to annul.

The Convener: In that case, does the cabinet secretary have any opening remarks?

The Cabinet Secretary for Rural Affairs, Food and Environment (Richard Lochhead): The committee will be aware that the regulations designate nitrate vulnerable zones. They are part of the action plan that we have to put in place in Scotland under our obligations under the European Union nitrates directive.

The committee may be familiar with the long history of this issue in Scotland. Every few years, we have to carry out an overall review of the designations. We recently changed the methodology for identifying the areas to be designated, which was broadly welcomed by the industry. As a result of doing so, we have reduced the area covered from 14 per cent of the country to 10 per cent and have been able to take 2,200 farms either wholly or partially out of the designations. However, as we will discuss today, two areas are now designated as a result of the new methodology. One of those is in Angus and one—which I am sure Alex Fergusson will speak to—is in the Stranraer lowlands. The motion to annul relates to the Stranraer designation but not to the Angus designation; we have not had many concerns from the Angus area.

In Scotland, we have taken a very pragmatic approach to NVZ designations over the years, particularly under recent changes in the past two years. The review of the methodology that we were required to carry out has brought some good news and was welcomed as a positive development by representatives. The regulations allow us to fulfil our environmental obligation to tackle diffuse pollution because they relate to the application of nitrates to farmland, which then runs off into water courses. That causes eutrophication, which in turn creates algae. Algae is a toxin, which suffocates other plant life. It is therefore very much in the interests of the environment that we have these designations where appropriate.

Many other countries have whole-territory designations, but I would be loth to jeopardise the pragmatic approach that we have taken in

Scotland. As I said, in terms of the implications for farmers on the ground, that has resulted in steps forward. I would not want to be taken down a road where we would have to have whole-territory designation. I am not saying that that would necessarily happen; I am just saying that other countries do that. Of course, the European Commission, understandably, watches closely how we approach things in Scotland.

That is the background to where we are today and why I have proposed the designations.

Alex Fergusson: I absolutely welcome that the amount of ground under designation is to be reduced and I understand the reasons for doing that. However, I have been unable to discover figures on the milligrams of nitrates per litre of water before and after, for example, the Lower Nithsdale NVZ was put in place. Why is it, as far I can see, impossible to get those figures?

Richard Lochhead: I am happy to look into supplying the figures but, clearly, that will not be in time for today's discussion. I will give Alex Fergusson the figures that I have, and then he could come back in and, at that point, I will ask my officials to come in if they can give any supplementary figures.

Clearly, the situation in the Stranraer lowlands—

Alex Fergusson: Sorry, but I was referring to the areas that are to be taken out of the NVZ designations. I was asking why it is so difficult to get the figures to show what the position was before those areas were designated. Now some of them are to be dedesignated. It seems to be impossible to get comparative figures for before and after the designation took place.

Richard Lochhead: Will you clarify what figures you are speaking about?

Alex Fergusson: Figures for the amount of nitrates in the water. As I understand it, the main purpose of an NVZ, in reducing diffuse pollution, is to reduce the amount of nitrates in the water, but I cannot find, for the existing NVZs, what the figures are before and after designation. Surely monitoring the success of an NVZ and the benefit to the environment would be on the basis of such figures.

Richard Lochhead: Yes, but the new methodology that was put in place has allowed us to reassess designations. The threshold in the nitrates directive is 50mg of nitrate per litre of water. As best we can, with the help of the Environment Agency and others, we identify those areas that are above the threshold.

I am sorry to come back to the Stranraer lowlands, but I want to use that as an example. The nitrate levels in some farms are 102mg or 105mg per litre of water, which is why that area

has a specific issue. In the rest of the country, the threshold determined whether farms or land—the catchment areas—were designated.

Alex Fergusson: I heard what the cabinet secretary said, but I still do not understand the difficulty in finding before and after figures for NVZs pre and post-designation. They cannot be found. I would be more than happy if he was able to write to me on the matter.

Richard Lochhead: I would be happy to do that. I would also have to send you the full analysis of the whole country's designations.

Alex Fergusson: Oh dear.

Richard Lochhead: Does Ian Speirs want to come in?

Ian Speirs (Scottish Government): Do you want to go back to the figures for 2003, Mr Fergusson?

Alex Fergusson: I would like to know the figures for the Nithsdale—

Ian Speirs: That is when the Nithsdale was originally designated.

Alex Fergusson: I know. I was on the committee when the designation was put in place.

Ian Speirs: You are looking to compare the 2003 and 2013 figures.

Alex Fergusson: That would be useful.

Ian Speirs: We will see what we can do. I should clarify that the water framework directive was introduced in that period. The European Commission is keen for all countries to integrate that directive and the nitrates directive into their approach. We have taken that approach. That is where the new methodology, which runs to about 40 pages, comes in. I will gladly send you a copy—it gives every borehole monitoring figure for the NVZ areas in Scotland.

As the cabinet secretary said, we are now looking at individual groundwater bodies, rather than the loadings in a catchment that we used to look at. We are much more precise now—as time moves on, we have a clearer figure of the nitrate problem in a groundwater body. That is what you will be looking at now, rather than being able to make a comparison. Science, as always, moves on.

Alex Fergusson: That is fine, but I would appreciate those figures.

Ian Speirs: I can certainly send them to you.

Alex Fergusson: Thank you.

10:15

Michael Russell: The argument appears to centre on whether a voluntary scheme would work in the Stranraer lowlands area and could be supervised. Allan Bowie states in his letter that there has already been considerable expenditure on a voluntary programme there through the Scottish rural development programme and individual farmers paying for it. He also states that NFU Scotland believes that there should be a pilot for a voluntary scheme and that Scotland's Rural College in Stranraer is willing to supervise that. Cabinet secretary, can you explain why you regard that as unsuitable, unnecessary or unworkable? Why would that proposal be rejected?

Richard Lochhead: You are right to highlight that the crux of the debate and the concern of NFU Scotland and others is that we should allow a voluntary approach. There have been various inspections and studies of the impact of the voluntary approach, which show that it is simply not working in the Stranraer lowlands. The Galloway coastal catchment area includes more than just the Stranraer lowlands, but it provides an example of what the Scottish Environment Protection Agency's inspections have found. SEPA visited 303 units in the area, of which 81.4 per cent, or 247, were already not compliant—this is not even the voluntary approach, but about having to be compliant—with the silage and slurry regulations or the diffuse pollution general—

Michael Russell: Are those farm locations?

Richard Lochhead: Yes. It is a catchment area where 303 farms were visited.

Michael Russell: Right. Just to be clear, I would like to know what was visited.

Ian Speirs: Okay. Under the water framework directive, we introduced a programme of measures that was based on the preventing environmental pollution from agricultural activities—PEPFAA—code. I remember you, Mr Russell, speaking about that at the SRUC/SAC Consulting conference a few years ago. The approach that we introduced was based on that code of practice, which was basically an industry voluntary code, and involved general binding rules. They are fairly simple rules, such as do not spread manure within 10m of a watercourse and so on.

As part of our programme of measures, there were farm visits in what we call priority catchments. SEPA undertook those visits and spoke to farmers to put them right—no regulation, just keeping them right. However, as the cabinet secretary said, 81 per cent of farms in the Galloway coastal catchment area were not compliant with the general binding rules. The

average across Scotland in that regard was about 60 per cent.

Michael Russell: That is a very convincing argument. If a voluntary scheme has not produced the results that are necessary under legislation, we obviously have to have regulations.

Ian Speirs: Yes.

Michael Russell: Just to be absolutely clear, the voluntary scheme might have been considered had the outcomes been as good as or better than what the regulations require, but they were not. Is that, in essence, where we are?

Ian Speirs: Yes.

Richard Lochhead: We very much welcome voluntary schemes. I congratulate the efforts on voluntary schemes in recent years, particularly in the Stranraer lowlands. The example that I gave to the committee was of a survey of the wider Galloway catchment area that found that there was not great compliance, even with existing regulations. I reiterate what I said earlier about the voluntary approach in the Stranraer lowlands, which is that the threshold under the nitrates directive of 50mg of nitrates per litre of water in the water courses is well exceeded and that levels of 102mg and 104mg of nitrates have been recorded. Clearly, the voluntary approach is simply not working.

We have to take a consistent approach across the country in terms of the new methodology. The same methodology that identified areas in the Stranraer lowlands for designation identified that 2,200 farms elsewhere in the country did not have to be designated, so they have been wholly or partly removed from designation. The figures for designation are 2,200 out and 130 in; the 130 farms are those where the voluntary approach has not worked.

Michael Russell: Just to be clear, is funding available for those who have to undertake additional work?

Richard Lochhead: Yes. We help farmers in a couple of ways. First, there is £10 million funding in the new SRDP for slurry storage. The people who qualify for that are those who have not applied previously; that is, if they already have slurry storage, that means that they have had funding for that in the past and cannot apply to the new scheme—that is self-evident. Secondly, we fund the SRUC to provide a free advisory service to the farmers affected.

The Convener: Several members want to ask questions—Jim Hume is first.

Jim Hume (South Scotland) (LD): Thank you, convener, and good morning to the cabinet secretary and his colleagues.

What I have heard is a bit confusing. It is not that 300-odd farms were visited and not one was compliant; we are talking about 130 farms to be added to the NVZ. The paper says “only” 130 farms, but I would say that that shows a bias because 130 is a significant number of businesses.

The paper also says:

“there are only a small number of farmers in the new NVZs who are not yet compliant with regard to slurry storage.”

I think that you said that the 81 per cent that were non-compliant were from a broader area—from farms that are not being put in an NVZ. There is a bit of confusion between what you are telling us and what is in our paper. I would like some clarification on that.

The paper states that a cost benefit analysis will be done on NVZs in 2016 following the Brian Pack review. I wondered why that analysis was not done prior to the recommendation that we have in front of us. Has any business impact assessment or economic impact assessment been done for the farmers in the new NVZ area?

The paper also states that funding will be made available for slurry storage “subject to qualification”. Obviously SRDP funds are limited. You said that £10 million was available. Can you clarify whether that funding is absolutely for this area alone? Also, what happens if it costs £10.5 million? Is it that the farmers applying later may not be able to get any funding? It would be helpful to get some clarification on those points.

Richard Lochhead: There are a number of questions there. The £10 million is within the rural development programme for slurry storage. It applies to the whole country, but clearly a scoring mechanism will be drawn up for it and, as NVZ areas will get a higher score when they apply, farmers in those areas are more likely to get the funding. As regards the 130 farms, those that do not have slurry storage are more likely to get a higher score when they are applying and they are more likely to get the funding to help them.

On the 130 farms figure, I was trying to do two things—first, to give an example of why there is an issue. I was trying to give an example from the SEPA survey that was carried out on compliance with existing regulations in the Galloway coastal catchment. The survey showed that 81.4 per cent of farms in that area were not compliant with the existing regulations.

I then went on to say that within the Stranraer lowlands, which is the subject of the 130 farms and the new designation, there is evidence that we have a problem and that the voluntary approach is not working, which is why we are designating under the directive. At the same time, a lot of

farms in Scotland are coming out of the scheme and we have to be consistent in how we apply it across the country.

Jim Hume also asked about the action plan and the assessments of the business case and costs. It is probably worth saying that we have to do two things: we have to review the designations, and we have to publish and revise the action plan every four years. They are out of sync with each other from Europe and therefore the designations are being revised just now—hence the committee has the order before it for 2016.

In 2016, we have to revise the action plan, which is the overall plan. That will involve a whole range of things to do with NVZs, and it will happen next year.

Jim Hume: I want to follow up on at least one part of that answer before others come in. The paper states:

“Indications are that there are only a small number of farmers in the new NVZs who are not yet compliant with regard to slurry storage.”

Do you have an indication of what that small number is? Is it 10 per cent, for example?

Ian Speirs: It is 12 farms.

Jim Hume: It is 12 farms. So you have an indication of that number.

Ian Speirs: Yes. We know the exact number.

Jim Hume: Is that 12 out of the 130 farms?

Ian Speirs: It is 68 in the Stranraer lowlands and there are 12 farms that do not have adequate slurry storage at the moment.

Jim Hume: Sorry, but you said 12 and then you said 68. Can you explain?

Ian Speirs: There are 68 farms in the Stranraer lowlands in total that are in the NVZ.

Alex Fergusson: It is 44 farms, is it not?

Ian Speirs: It is 68. Some of those will only be partially in the NVZ. There may be 44 farms that are completely in the NVZ, but some farms on the fringes will be partly in and partly out of the NVZ. There are 12 out of those farms at the moment that do not have adequate slurry storage.

On the point about the 303 units in the Galloway coastal area, I need to clarify that the exercise was not just done in the Galloway coastal area. The exercise was done across the whole of Scotland and 4,000 farms were visited. SEPA walked 5,000km of water courses and found 5,000 breaches of the general binding rules under the controlled activities regulations. SEPA did not take any regulatory action; it advised farmers about what they could do to put things right. However, that is the scale of things and shows that the

voluntary approach has not worked through the PEPFAA code.

Claudia Beamish (South Scotland) (Lab): Convener, to clarify, are we just asking questions at this point or can we make comments to be taken into account?

The Convener: At this stage, we are asking the cabinet secretary and his team to answer questions. The debate will take place under the next agenda item, as it says on the order paper.

Claudia Beamish: Right—I just needed to be put right about that.

It would be helpful if the cabinet secretary could say a little more about the support for farmers and the opportunities for them. Two summers ago, I visited the Eyemouth basin and was very impressed with what SEPA was doing not only to the watercourses, which Ian Speirs has mentioned, but to look at opportunities to make improvements. It is disappointing to hear that the voluntary approach has not worked in some cases. I wonder about the degree to which it has worked in other places, as we should look at good practice. If we have to move to a statutory arrangement—I understand the arguments for that—will there ever be an opportunity to go back to a voluntary approach if things are working well?

Richard Lochhead: We are encouraging all farmers in Scotland to adopt nutrient management plans to help them to improve their practices. It is in their interests to do that for good business reasons as well as environmental reasons. Clearly, if we ever get to a stage at which all farms in Scotland have a good nutrient management plan in place that is working well, they will not be overapplying nutrients—nitrate-based fertilisers, in this case—and therefore they will save money and the run-off into local watercourses will not happen to the same degree and with the same environmental consequences.

It is in farmers' interests to have a nutrient management plan, and many farmers in Scotland have one at present. Part of that involves adopting good practice on the farm in relation to issues such as when and how to spread slurry. If that happened to a greater degree than at present, we would, I hope, get under the threshold that has been set in the nitrates directive and then, in the next round of reviewing designations in Scotland, more farms could be de-designated.

The industry has welcomed the new methodology, which tries to take a much more pragmatic approach—although one that is still science based. However, we cannot just support something only when it leads to de-designation, and the methodology that we are applying could lead to new designations as well. In this case, it so happens that many more farms are coming out of

designation than are being subject to new designations, but we have to be consistent if we are to do what is right for the environment. We need to give assurances to the European Commission so that it does not take a heavy-handed approach with us by asking us, for instance, to have a whole-territory designation. That is why we are taking that approach.

We are encouraging nutrient management plans in the industry. Brian Pack's report on the future of agriculture in Scotland said that it is an absolute must that all farmers should have a nutrient management plan. As part of our greening debate in Scotland, we are talking about making it mandatory for farmers to have a very light-touch nutrient management plan, so that they pay attention to how they can save themselves money and avoid damaging our environment through diffuse pollution.

Sarah Boyack: Some of my questions have been answered, but I want to follow up on Claudia Beamish's question.

The cabinet secretary has said that nutrient management plans actually save money and are good for farming businesses. Given that we now have substantial experience across Scotland in implementing NVZ designations over the years, what lessons have you learned about the obstacles to change? We have talked to NFUS representatives about practical problems and the fact that people see the design of the requirements as counterproductive—that is one message that has come back to us. What are the obstacles to change for farmers?

You say that the costs are minimal and that there are benefits, but we know that all change requires people to do things differently and that that requires investment, time and effort. Will you say a bit about the obstacles to change and how experience of previous NVZ designations has helped? You say that there will be a two-year transitional review and that support will be provided for farmers through local workshops. What confidence do you have that that will help farmers to make the change at what is, as we all know, an incredibly uncertain time for them financially?

10:30

Richard Lochhead: Those are big questions. You are of course right that there are financial challenges, particularly for the dairy sector, in many of the areas that will be affected by NVZs, but that is why £10 million of support is available in the rural development programme to help with the costs of new slurry storage.

On the obstacles to changing behaviour, that is a big question. There is often a cultural and

mindset issue in the industry. Over the past few years, we have tried, not always successfully, to get away from the impression that big regulators are about to land at the farm gate and impose really tough and expensive regulations. Understandably, farmers just want to get on and farm. The situation has improved in recent years, as the Scottish Environment Protection Agency has been working more with farmers to talk through the benefits and so that they understand how they can save money if they use less fertiliser, particularly given that fertiliser costs have been rising over the past few years.

There has been a bit of a cultural change, although there is still some way to go. We can see from the statistics that too many farms are still not taking seriously enough the issue of diffuse pollution in local watercourses. As we know, 17 bathing areas in Scotland failed water quality tests, and one reason that was cited for that is diffuse pollution or run-off from agriculture into bathing areas. I am not saying that that is just because of nitrates, but that is one general cause that is cited. Land use and agricultural practice have a big role to play in cleaning up our water environments. More and more farmers understand that and are working with SEPA and advisory services supplied by the SRUC and others to move forward.

The culture is changing, but the mindset and cultural issue has been a big obstacle.

Graeme Dey (Angus South) (SNP): I have a layman's question. Would it be correct to say that the farmers who have already invested in slurry stores and who are doing the right thing will not be disadvantaged by the designation and that the ones who will be affected will be the dozen who have been thumbing their nose at the issue?

Richard Lochhead: That is a good point. I remember going through this issue many years ago in the first round of designations, when there was a lot of difficult debate. Once the designations had actually taken place and many farmers started record keeping and fertiliser management and put in place their new slurry storage, that was actually seen as quite a positive thing to do and therefore the backlash was perhaps not as evident as some people had predicted.

I understand that many farmers would prefer the voluntary approach and would prefer not to be told what to do by legislation, but the farmers who have already taken those steps because they are in the areas that have been designated have generally found them to be something that they can live with and that are perhaps even beneficial.

Graeme Dey: So, in practical terms, what will be the difference for the farmers once the area is

designated? What will they have to do that they are not doing at the moment?

Richard Lochhead: In effect, it is what I have just said. They will have to keep records and manage their application of fertiliser. There will be closed periods when they cannot apply fertiliser and nitrates. Of course, they will also require slurry storage. As I said, there are periods in which they can spread slurry and other regulations around that.

Alex Fergusson: I will just follow on from that. As far as I know, in the Stranraer lowlands area, very few farmers will be disadvantaged because many have already received SRDP funding but, as things stand, some may be required to increase their slurry storage as a result of the NVZ but without access to NVZ funding. As you rightly said, these are extremely difficult economic times for the industry. I am not sure how farmers are expected to do that. Currently, there is a great willingness to comply, but the NVZ might actually produce an unwillingness or an inability to do so.

Richard Lochhead: Ian Speirs wants to comment on that, so I will let him do that.

Ian Speirs: If the farmers in the Stranraer lowlands had increased their slurry storage under the current voluntary approach, which has been in place since 2009, they would have had unlimited access to an SAC adviser and funding for slurry stores, for example. If they had increased their slurry store with their herd size in that time, as the size of the slurry store is related to the herd size, they would not have a problem. If they increased their herd size, they should have increased their slurry storage accordingly. That is a business decision.

Alex Fergusson: I will come back to that later.

Richard Lochhead: It is clear that we can keep those things under review, as it will all depend on supply and demand. There is £10 million available, and it is clear that we have to determine the criteria for who qualifies for that £10 million. Most people would think that it would be reasonable that those who have not already benefited from the previous SRDP should be first in the queue to get the new support, but I give a guarantee that I will keep that under review. If someone who had previously applied had expanded their herd and needed further support, and demand for the funds allowed that to be reviewed, I would review that.

Alex Fergusson: I am grateful to hear that. Mr Speirs is being a little unfair, as the improvements that were made could well have included housing that was put up for cattle that were previously kept outdoors and, by doing that, the person may have found that they had a little bit of extra capacity and increased the size of the herd. They could then have found that what they had perfectly well put in

place with considerable investment could still be improved. It would be a great shame if they were excluded from SRDP assistance at this time. I am therefore very grateful for the cabinet secretary's words on that.

Richard Lochhead: It will depend on how many people apply, too.

Alex Fergusson: Yes, I understand that.

The Convener: What is the cost of a slurry store investment?

Richard Lochhead: That varies. Some people build huge slurry stores that can cost several hundreds of thousands pounds. It is clear that it depends on the size of the herd. Can Ian Speirs think of any examples?

Ian Speirs: There is great variance. There can be a tower slurry store or a lagoon, which is a much cheaper method. A lagoon that is lined to avoid any infiltration into the soil would be the cheapest option. I know that there is a 1 million gallon slurry store in the Stranraer lowlands. That is a rather large container.

Christian Allard: On a point of information, I read that the maps of the designated areas will be available online. When will they be available online?

Ian Speirs: That is covered by my Scottish Government rural payments and inspections division colleagues at Saughton. That is in the process. We are looking to have them online by perhaps the middle of this month.

The Convener: As there are no further questions, we move to agenda item 4, which is consideration of motion S4M-14793, asking the committee to annul the Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2015.

After the motion is moved, there will be an opportunity for a formal debate on the SSI, which, procedurally, can last up to 90 minutes. I hope that most of the issues were covered by the questions in the evidence session, and I remind everyone that the officials cannot speak in the debate.

I invite Alex Fergusson to speak to and move the motion.

Alex Fergusson: Thank you, convener. If the debate takes 90 minutes, I promise that that will not be my fault.

Despite the question-and-answer session that we have just had, I seek to annul the regulations as they are, for reasons that I will clarify, both unnecessary and ill conceived. Members will have to bear with me for a few minutes, because before I clarify those reasons, I need to give a little bit of background information, and I apologise if there is a little repetition.

I recognise that the intention is to create two new NVZs but, as the cabinet secretary has pointed out, my comments relate solely to the Stranraer lowlands proposal in my constituency, which I know in some detail, and an area around Stranraer that contains what I had understood to be 44 farms, but it might be 44 farming businesses, which I am happy to accept might well include more farms. In any case, I understand that there are 44 farming businesses in the proposed catchment area of the Piltanton burn.

As has been alluded to, a meeting was organised back in 2009 by SAC Consulting to raise concern among farmers in the Stranraer area about issues relating to diffuse pollution and how best practice in slurry spreading and storage could considerably reduce the requirement for artificial fertilisers. To cut a very long story short, several follow-up meetings were held and a number of borehole sites were, with SEPA's involvement, identified, tested and monitored. In 2010, a baseline questionnaire was carried out to identify the scale of the problem and how it could best be addressed.

That survey highlighted a serious lack of slurry storage capacity. Less than 5 per cent of the farmers involved had more than six months' storage capacity, and the practical implications of that were that slurry was being spread in large quantities at totally unsuitable times, which benefited neither the farmer nor the environment. Therefore, it was agreed among the farmers involved that everything possible should be done to address the problems, and the Piltanton burn catchment initiative was formed with the aim of reducing the nutrient load, sharing best practice and raising awareness of the rules and regulations pertaining to the spreading of slurry.

In January 2011, soil samples were taken from all 66 farms within the initiative area, and the survey revealed a considerable lack of lime. That is important, because a balanced pH, which is the result of having enough lime in the soil, greatly improves the uptake of nitrogen, while a low pH results in much more nitrogen leaching into the watercourse. That problem has been addressed.

As we have heard, the main thrust of the initiative has been to increase slurry storage capacity, so that slurry can be spread at the most appropriate times, and the result has been, with the help of SRDP, the prioritisation of diffuse pollution. Some 44 applications in the catchment area have been approved and are now in operation. I would contest some of the figures that have been mentioned, because I believe that the results have been nothing less than spectacular. As I think the cabinet secretary mentioned, the first sampling, in 2009, showed that nitrate levels in the water in that area were 47mg per litre, against a

maximum under European designation of 50mg per litre, which is extremely close to the limit. By 2014, that level had reduced to 26mg per litre, a level that has been maintained this year. Some 43 new stores have been built, giving 32 million gallons of extra storage, with 66 per cent of businesses now having more than six months' storage capacity compared with less than 5 per cent in 2009.

Some 43 of the 44 businesses now have waste management plans—the things that the cabinet secretary referred to as being a benefit of an NVZ—and further improvements are envisaged. More than 30 miles of the Piltanton burn have been fenced off, creating 30 hectares of new water margin, and extra housing has been created for almost 2,000 head of cattle. The list of benefits goes on. Understandably, the cabinet secretary spoke of doing what is right for the environment, but I do not think that, even in his wildest dreams, he could ask for much more than what has been achieved in the Piltanton burn catchment.

What is the reward for the people who have been involved in all of this? The reward is what appears to be the imposition of an NVZ, which actually threatens to undo some of the great work that has already been undertaken through the voluntary initiative. The proposed NVZ will cover only two thirds of the businesses that are involved in the initiative, as two other burn catchments are excluded. By the way, I accept that one borehole out of the 13 or 14 that are used in the area shows results that are different from the extraordinary reductions in levels that have been achieved in the other boreholes, and that needs to be investigated and clarified. However, although I entirely accept that, I do not believe that that relates to the entire area.

The NVZ will have four different closed periods in it, because of the different soil types in the area. Farmers will not be allowed to put slurry on arable stubble from August, which is a perfectly sensible time to put slurry on that sort of ground, but they will be able to spread some of that slurry on grassland in January, which is really not a sensible time to be putting slurry on the ground. Huge complexities will arise as a result of the four different closed periods, even within individual farms, which I suggest can only lead to monitoring difficulties. It simply does not make sense to have that level of complexity in such a small area.

The different closed periods also make it entirely possible that farmers will not be able to empty their storage tanks before the onset of winter, which will put even greater pressure on storage capacity and encourage the spreading of slurry at times that are not the most advantageous. January and February spreading simply increases soil compaction, particularly in a wet year, and soil

compaction just increases diffuse pollution because the run-off is so much greater. Although that would be the exact opposite of what the NVZ is intended to achieve, it would be perfectly legal under the rules.

10:45

I contest that those complexities are entirely unnecessary and could be avoided by introducing a single catchment-wide closed period, which, I suggest, should be extended into October for the whole NVZ. However, the singular lack of early engagement between affected farmers and department officials when the NVZ was proposed has not even allowed those options to be discussed properly. That is why I say that the NVZ is being imposed.

The Piltanton burn catchment initiative is a massive success, because it is voluntary, because it is bought into by 100 per cent of the businesses that are involved and because peer pressure ensures that everyone does the right thing by the environment and their businesses. The figures back that up. I argue that the imposed NVZ will not only reduce the number of businesses that are involved by one third but increase the amount of red tape and bureaucracy that is involved at a time when we are supposed to be reducing it, and introduce a reluctance to adhere to the new rules and regulations in place of the enthusiastic involvement that has been the hallmark of the past five or six years of the voluntary initiative's existence.

The proposal is unnecessarily complicated and ill thought out and will not improve on the environmental benefits that are already being achieved. I therefore appeal to the cabinet secretary at least to agree to the NFUS's request that the SSI be, if nothing else, postponed to allow alternative options to be explored.

I move,

That the Rural Affairs, Climate Change and Environment Committee recommends that the Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2015 (SSI 2015/376) be annulled.

Claudia Beamish: I listened carefully to what my committee colleague, Alex Fergusson, said. There appears to be cause for concern, which I had not heard until now. However, when I examined the Eyemouth basin closely with SEPA, I saw that it was difficult to encourage and persuade farmers that the work needed doing. If it does not sound too patronising, that was a shared education process for the farmers who were involved.

I am concerned that, if we do not proceed with the measures, we will weaken the protection that is given. I recognise the targeted nature of what is

happening in Scotland, which the cabinet secretary highlighted. That is important, and we do not want to jeopardise it in any way. I highlight the point that, if aspects of a voluntary arrangement do not work, it has to be enforced in a statutory way, in which there should be an opportunity for review, as the cabinet secretary clarified.

The finance is also important for farmers. I note the earlier comments about farmers' ability to use the SRDP. That is important should they find that, having installed a certain type of lagoon or tower, they have to do things differently through no fault of their own. For farmers, we always look for simplicity where possible, but we must allow for the prevention of diffuse pollution. The matter is complex.

I will not support Alex Fergusson, but I would like those points to be taken into account.

Jim Hume: Not enough of an economic impact assessment has been done to show how negative the impact of the regulations will be on a fragile area of south-west Scotland.

I am also not convinced that the SRDP money would go far enough to cover all the costs that may be incurred in that area. The SRDP grant scheme is competitive, and the £10 million is for the whole of Scotland. Therefore, I will support the motion to annul the regulations.

Sarah Boyack: I listened very carefully to Alex Fergusson when he outlined his reasons for not wanting to support the regulations. We have a hard task, because we must weigh in the balance the fact that the Scottish Government has obligations under the EU directives to make sure that we tackle the issue of diffuse pollution, and I am 110 per cent in support of that. Like the cabinet secretary, I have followed this debate for more than a decade and, like him, I have sat on the other side of the fence.

The job of our committee is to test what is before us to the best of our ability. I would like a detailed response to be given to Alex Fergusson's comments. He has talked to the farmers in the area and many of them have attempted to go down the voluntary route and to do the best that they can. I was struck by a couple of things that he said. One was about soil management, which is an issue that seems incredibly remote to those of us who are not farmers or environmental campaigners, but getting good soil management that works for farming and for our environmental objectives must be at the heart of the approach.

I would be interested in the cabinet secretary's response to the detailed comments that Alex Fergusson made about the impact of the voluntary code. In his initial comments, the cabinet secretary mentioned that 80-odd per cent of the farms in the area that the Government has identified were not

compliant. I want to bridge the gap between what Alex Fergusson said and the core issue of our need to demonstrate that we are compliant with European regulations.

My second point is about exemplars and the benefits that the farmers who have changed their practices and implemented the measures in question have experienced. I want to tease out the issue of the design of the scheme. Farmers regularly tell us that they are trying to do right by the environment, but the way in which the Scottish Government designs its schemes for meeting its obligations cuts across what they are trying to do. I want to tease that out because, for me, that is at the heart of the matter. We also need to know what support farmers will get in making those changes.

The cabinet secretary mentioned a culture shift, but all of us know that, even with something that is beneficial, achieving a culture shift is not just about mindset, because it involves costs and doing things differently. If there is a lack of belief that the culture shift will deliver the objective, or a belief that there is an alternative way of doing things, such a shift is quite hard to achieve.

When the cabinet secretary responds, we need to hear what the benefits of the proposed approach will be and why the Government has adopted it. We need to make sure that the farmers who have already made the change will not be hit by the new regime and that they will continue to get the benefits not just of a culture change, but of changes in farming. That is the key thing to identify. I am very much in favour of using nitrate vulnerable zones to deliver environmental improvements, but we need to take people with us. The feedback that we always get from farmers is that they do not like the design of the rules, and the discussion that we are having today almost epitomises that. A clear benefit will come from action here, but the key test is whether we can bring with us the people who will have to implement that action.

What we need to hear from the cabinet secretary is that what is proposed is a proportionate measure—one that will work and which will not disadvantage farmers who have already started to do the good thing. We also need to hear how the Government plans to bring on board those who have not yet made the right improvements.

Michael Russell: For me, the crucial issue is the one that I asked a question about: could this have been done through a voluntary scheme? The cabinet secretary and his officials have made it clear that the voluntary scheme was not working and was not expected to work, given the circumstances, and that resources are available to help those who are affected. Therefore, I have no

hesitation in voting against the motion to annul the regulations.

However, I accept the point that Sarah Boyack has made forcibly. There needs to be constant improvement in the way in which European regulation is explained to those who are affected and in the way in which it is implemented. I do not think that that will be a surprise to the cabinet secretary; he and I have discussed that on many occasions over many years. Such situations are difficult for people who are faced with what they see as additional expenditure that might not produce any better results than the results that they have already invested in. A much better process requires to be undertaken.

Some of the initiatives that were taken around farm inspections in the early years of this Administration might be borne in mind, so that we constantly simplify the way in which we work with farmers and others to implement necessary regulations. It is, however, quite clear that the Scottish Government has put in a lot of effort to remove a large number of farming businesses from the effect of nitrate vulnerable zones, and that those who remain within those zones do so for good reason. The regulations are therefore required.

The Convener: As no other members wish to comment, the cabinet secretary can respond to the debate.

Richard Lochhead: I have listened closely to all the contributions and I will do my best to respond to as many as I can.

The nitrates directive is designed to protect the water environment from nitrate pollution from agricultural sources. That is why we are discussing the regulations today. The directive contains detailed requirements, and we are all aware that the European Commission is vigorous in ensuring compliance.

We in Scotland have striven to take a pragmatic approach to meet our EU obligations while taking on board our farming sector's views. Under that approach, the area of Scotland that is designated as NVZs has been no greater than 14 per cent over the years, unlike in some European territories—such as Northern Ireland and many others—where the whole territory is designated.

The Commission expects a scientific approach to evidence and requires all member states to demonstrate a robust methodology on which our designations are based. NFU Scotland has previously called for a more scientific approach and we delivered that in our previous review of how we go about the designations in Scotland.

In the four-yearly review of the designated areas that was carried out in 2013, we developed that

new methodology through SEPA. It was developed and agreed with the review panel, which included NFU Scotland, the SRUC, SEPA and Scottish Natural Heritage.

The revised methodology has supported a reduction of the overall NVZ area to just over 10 per cent of Scotland, which is down from the 14 per cent. We favour targeting the NVZ regulations to where there is an identified problem of nitrates affecting groundwater quality.

The application of the new methodology meant that 2,200 farms were fully or partially removed from the designations in February this year, with 130 farms scheduled for designation from 1 January 2016, provided that the committee supports the regulations today. Those announcements were warmly welcomed by a range of stakeholders and the wider industry. The new designation relates to two areas where nitrate levels at several monitoring points have shown maximum levels that are near to or in excess of the standard.

I appreciate that Alex Fergusson, NFU Scotland and others have called for the voluntary approach to continue in the Stranraer lowlands. Since 2009, we have financially supported such actions, but they have not delivered the required improvements against the EU-set standards.

I have listened carefully to Alex Fergusson's concerns and those of others. I am willing to offer something that we have not really done before. Although we have a national action plan for NVZs, we can to a degree have a bespoke action plan for local areas, so I am willing to commit to looking at whether we can introduce a more bespoke action plan for the Stranraer lowlands. I am sure that we can do something there, but we still have to abide by the directive. I am willing to ask officials to see whether a Stranraer lowlands action plan could be developed, as I understand the concerns that some committee members have expressed.

I appreciate that there are a lot of figures in these long documents. If we look at the figures for the places that have been tested in the area that we are discussing, and the nitrate level trends that are projected from the results, we see that five of the areas that were tested in the past three years, whether they be burns or boreholes, showed no change in the trend, five showed an improvement and five showed a deterioration. In the places that were tested for nitrate levels in the area that is being discussed, 50 per cent of those where there has been a change have experienced a deterioration.

11:00

I welcome the voluntary approach, and I know that many farmers have done good things

voluntarily. However, we have to apply the science and the methodology consistently across the country. As I just said, in the area concerned, 50 per cent of the areas that are inspected—be they boreholes or burns—have shown a deteriorating trend over the past few years. I therefore think that we are justified in designating that area.

I turn to Sarah Boyack's comments. We could discuss for hours—although I will not take up the 90 minutes for the debate—the change in the culture and mindset of Scottish agriculture. I have learned a number of lessons over the past few years in my post. Many farmers tell me that they look across the water to agriculture in Ireland, which has an initiative called the origin green programme that the Irish are using in the international marketplace to market Irish produce. Their farming sector is behind that and is leading on that marketing message. I think that the message that they are trying to convey to the rest of the world is that Ireland's agriculture is greener than that of many other places, so people who are looking to buy produce that has been produced sustainably should look for the Irish label. I will leave it to others to determine whether that is justified.

To the farmers in Scotland who tell me that they are looking at what is happening across the water, I say that that shows why we are doing our best to work together to green Scottish agriculture as well and to get the marketplace benefits of being greener. However, we have to walk the walk as well as talk the talk. We have to continue to make the progress that we are making in tackling agricultural diffuse pollution and show that we are walking the walk and not just talking the talk. My response to Sarah Boyack is that that is all part of the greening of agriculture debate. What we do has to be not only credible and consistent but proportionate and pragmatic. I think that the designation achieves all that.

We did not put forward some areas as part of the overall designations because we understood the need for more transparency over the Stranraer lowlands and the area of Angus. That is why the regulations have been discussed today, which has given us the opportunity to focus on issues in those areas.

What we are doing through the regulations is the right thing to do to help tackle diffuse pollution from agriculture in Scotland, fulfil our obligations under the nitrates directive and capture all the other benefits that are available for farming businesses in the affected areas. I hope that we can work together in the months and years ahead to get to a better place. Once we are there, there will be another review of the designations, and I hope that we can take different decisions in the times ahead.

The Convener: I invite Alex Fergusson to wind up the debate and indicate whether he will press or withdraw his motion.

Alex Fergusson: I thank all members and the cabinet secretary for the part that they have played in the debate. I hope that it is clear that I am not arguing against NVZs or the revised methodology that has led to the changes—absolutely not. I was struck by the figures that Mr Speirs and the cabinet secretary gave for the testing that was done round the whole Galloway coastal area. Some of the figures that came out of that were stark, which makes it all the more extraordinary that the proposed NVZ will cover a catchment area that is doing something about the issue, when it is clear that an awful lot of others are not.

I contest Mike Russell's view that the voluntary scheme is not working. I like to think that the figures that I gave, which are on the table, show strongly that the voluntary scheme is working. The overall nitrate load in the water has reduced from 47mg per litre to 26mg per litre, and that figure is stable over the eight sites that the initiative has been constantly monitoring—the monitoring is done by SEPA and is not done privately. The 26mg per litre figure has been stable over the past two years, which has to show that something is being done right.

I fully accept that one borehole site shows an opposite effect. However, there are three so-called waste water treatment plants in that area, although they are not waste water treatment plants—they are actually sewage tanks or settlement tanks. In wet times—I hate to say it, but Galloway has many wet times—Scottish Water has permission to allow the tanks to overflow. I do not think that any of that has been taken into account in the scientific background for the NVZ, but it is bound to have an impact on some of the sites that are monitored.

The cabinet secretary rightly said that any such designation has to be pragmatic and proportionate, but I am a little sad that he did not refer to the four different closed periods that will exist in the NVZ, which are anything but pragmatic and are not, in my view, proportionate. He mentioned what is happening in Northern Ireland. There is a great deal of jealousy from the Piltanton burn area catchment initiative about what is happening in Northern Ireland, which I understand has a single closed period that is extended into October.

If that sort of thing can be looked at when the more bespoke action plan that the cabinet secretary referred to is looked at, then I hugely welcome that commitment—I hope that he will begin that process in the very near future—and that is all well and good. However, I am afraid that I am not convinced. Overall, there is almost

disbelief among the farmers who have taken part so willingly in the voluntary initiative that, basically, the NVZ is being imposed on an area—albeit a small one—that is actively engaged in doing everything that it can to reduce diffuse pollution, when it is clear that others are not doing that. That level of disbelief and the non-recognition of what is being done lead me to press my motion.

The Convener: The question is, that motion S4M-14793, in the name of Alex Fergusson, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against

Allard, Christian (North East Scotland) (SNP)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Dey, Graeme (Angus South) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Motion disagreed to.

The Convener: The committee will indicate to the Government that it disagreed to Alex Fergusson's motion.

The committee's next meeting will be on 16 December, when we will consider various pieces of subordinate legislation, a draft letter to the SRUC, our work programme and our approach to our legacy report. As agreed earlier, the committee will move into private session.

11:07

Meeting continued in private until 11:41.

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