



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 15 November 2016

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 15 November 2016

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ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

11th Meeting 2016, Session 5

CONVENER

*Graeme Dey (Angus South) (SNP)

DEPUTY CONVENER

*Maurice Golden (West Scotland) (Con)

COMMITTEE MEMBERS

Claudia Beamish (South Scotland) (Lab)

Alexander Burnett (Aberdeenshire West) (Con)

Finlay Carson (Galloway and West Dumfries) (Con)

*Kate Forbes (Skye, Lochaber and Badenoch) (SNP)

*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)

*Emma Harper (South Scotland) (SNP)

*Angus MacDonald (Falkirk East) (SNP)

*Mark Ruskell (Mid Scotland and Fife) (Green)

*David Stewart (Highlands and Islands) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Lin Buntin (Scottish Environment Protection Agency)

David Faichney (Scottish Environment Protection Agency)

Jo Green (Scottish Environment Protection Agency)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 15 November 2016

[The Convener opened the meeting at 10:01]

Decision on Taking Business in Private

The Convener (Graeme Dey): Good morning and welcome to the 11th meeting of the Environment, Climate Change and Land Reform Committee. The committee has received apologies from Alexander Burnett, Claudia Beamish and Finlay Carson. I remind everyone present to ensure that their mobile phones are on silent for the duration of the meeting.

Agenda item 1 is to consider whether to take items 3 to 7 in private? Is that agreed?

Members *indicated agreement.*

Draft Budget Scrutiny 2017-18

10:02

The Convener: Item 2 is an evidence-taking session ahead of the committee's scrutiny of the draft budget 2017-18. Last week, we heard from Scottish Natural Heritage and Marine Scotland, and today, we have been joined by representatives of the Scottish Environment Protection Agency. I welcome to the meeting Jo Green, chief officer for performance and innovation; Lin Buntin, head of regulatory services; and David Faichney, flood act business change manager.

We will move straight to questions. Kate Forbes will begin.

Kate Forbes (Skye, Lochaber and Badenoch) (SNP): Good morning and thank you for coming.

My first question is about your 2016-17 budget. You say in your submission that a declining budget has driven innovation, but you have been driving innovation for the past five years. What have been your budgetary constraints over the past five years?

Secondly, your budget rose in 2015-16 but then decreased in 2016-17. What happened there?

Jo Green (Scottish Environment Protection Agency): We say in our submission that our budget in 2016-17 was £35.4 million. I should correct that—it was £35.5 million. We have seen a reduction in grant in aid over the years.

What was your second question again? Was it about the difference in our budget between two years?

Kate Forbes: You have been driving innovation for the past five years, but it appears that the most immediate drop in your budget happened this year. Has your declining budget over the past five years driven innovation, or have there been other factors?

Jo Green: Overall, our grant in aid has decreased by 11 per cent since 2011-12, and we have driven innovation in that period. There have also been some changes to our capital funding over that time.

As for the types of innovation that we have driven, we have highlighted in our written evidence the reform of our science services. David Faichney can probably say a few words about that.

David Faichney (Scottish Environment Protection Agency): Over a period of years, we have been driving down the costs of our science services. For example, back in 1996, SEPA inherited eight laboratories and over the years, we

have been driving that number down by developing better laboratory services and sharing them across the organisation. We now have only two laboratories, one in Aberdeen and the other in our building in North Lanarkshire. Those two laboratories take on work and samples from all Scotland. We have driven efficiencies with our lab services and their staffing.

Kate Forbes: What are your expectations for the next few years?

Jo Green: We cannot predict what the level of Government funding will be, but we recognise that there are constraints on public sector funding. We are trying to think clearly about our priorities and direction, and continuing to drive innovation. Our statutory purpose helps to drive our priorities. A few years back, the equivalent to this committee took evidence on the regulatory format. Our statutory purpose is to protect and improve the environment in ways that, as far as possible, also deliver health and wellbeing benefits and improve sustainable economic growth. We focus heavily on our statutory duties that underlie that purpose.

Kate Forbes: How do you prioritise between those statutory duties? What percentage of your budget is spent on regulation and what is spent on flooding? How are funding decisions made about those things?

Jo Green: We deliver our statutory purpose primarily through our two core services, which are flooding and environmental regulation. It is not a case of picking and choosing between different statutory responsibilities, and it is not really about stopping services. We are not going to stop working on flooding or environmental regulation. It is genuinely about finding different and better ways of doing things.

Most of the changes that we have driven during the past few years are ones that we would have made irrespective of the constraints on public sector budgets. A lot of the work that we have been doing has been strongly supported by the Regulatory Reform (Scotland) Act 2014, which has helped us to drive simplification in our approach to regulation and permissions. It also gave us some new enforcement tools to improve our effectiveness. A lot of direction is supported by that act.

Angus MacDonald (Falkirk East) (SNP): You mentioned the Regulatory Reform (Scotland) Act 2014, which brought SEPA extra enforcement powers and extra income if you use the new powers. How much do you expect to take in from the higher fines for non-compliance through the new powers? Do you have a figure?

Jo Green: We have a range of new enforcement powers under the Regulatory Reform (Scotland) Act 2014, including fixed and variable

monetary penalties. However, SEPA does not receive the income from that. It goes back to the Government.

Angus MacDonald: I was not aware of that. I thought that the money was to be ring fenced for SEPA.

Jo Green: No, the money is not ring fenced. It just goes back into the general Scottish Government pot—otherwise, it might have been an incentive for us to take lots of enforcement action.

Angus MacDonald: Maybe that is something that we should look at.

The Convener: You have talked about SEPA's statutory duties but, as I understand it, you are now branching out into consultancy. How much do you expect those activities to generate? Perhaps more important, I presume that you are aware of the potential for a conflict of interest in acting as a regulator and providing that service.

Jo Green: Very much so. You are correct about the consultancy. It is only in the current year that we have started to look at that. We have set up a small commercial services portfolio with three members of staff. It has only just been established.

There have been a lot of discussions with the board about the strategy of our approach to commercial services, so we are very conscious of the potential for conflicts of interest in our consultancy approach. We are primarily looking at doing that work internationally so that there is no conflict in our approach to it.

The Convener: All the work will be outward facing; none of it will be done in Scotland.

Jo Green: The consultancy will primarily be international, but there are other areas. We hold a lot of data and information and we make a lot of it publicly available. We will continue to do so increasingly. However, people sometimes want bespoke information products that are tailored exactly to their needs so we are interested in exploring that. We are also interested in exploring other sources of grant funding. We are focusing on a small number of areas. We have assets such as a boat, so we can look at using that commercially.

The Convener: To be absolutely clear, will any of the consultancy work take place in Scotland, or will all of it be done outwith our borders?

Jo Green: I would never want to say never but, primarily, it will be done internationally. If we were to do anything in Scotland, we would have to be very careful that it did not conflict in any way with what we do in environmental regulation.

The Convener: Given that you have deployed three members of staff to commercial services,

you will have to generate income. Do you have something in mind to cover those costs?

Jo Green: In the first year, we are looking to recover the costs of setting up that portfolio. After that, we will look to set targets. This area of work is new for us. We know that other public sector organisations have done such work, but it is new for us. We are going to do it and see how it progresses.

David Faichney: We have had approaches from overseas about how we provide our flood forecasting and warning services for Scotland, so there are opportunities to sell our knowledge and our expertise to get other countries up and running with that. We could even expand the services that we provide in Scotland to cover other countries.

The Convener: That is useful.

Maurice Golden (West Scotland) (Con): Ms Green, with regard to the consultancy work, you mentioned cost recovery. Do you mean full cost recovery? In other words, will the cost of anything that the three members of staff use be recovered, or are you simply referring to recovery of the cost of the staff?

Secondly, when it comes to the management of those staff and how they operate, are you working on private sector models? For example, are you using utilisation rates? The number of staff involved represents a tiny percentage of your workforce. Are you thinking about structuring that in such a way that you could expand?

Jo Green: The commercial services portfolio has only just been set up, so we are still discussing the strategy with the board. We are looking at the charging rates, but we also need to have discussions with the Scottish Government about that and about the income that we are allowed to keep. We are still working through that with the Scottish Government.

The Convener: It might be useful if you kept us apprised of progress on that. The committee takes a good deal of interest in your work, and it would be useful to get updates from you in due course.

Jo Green: We would be happy to do that.

David Stewart (Highlands and Islands) (Lab): Good morning. I will continue with the theme of funding—I want to look at other sources of funding outwith your core funding. To what extent do you rely on partnership funding or other sources of funding, such as common agricultural policy pillar 2 funding, structural funds or LIFE+, which has big pockets when it comes to environmental funding?

Jo Green: We have about £5.7 million of other income, which is primarily European Union funding. We also administer the water environment fund for the Scottish Government,

which is worth around £1.8 million. There are two main EU projects that we receive funding for—Scotland's environment web and the LIFE SMART waste project.

David Stewart: Could you identify—in round numbers; you will not necessarily have the exact figure in your head—how much European funding you currently receive?

Jo Green: Do you mind if I quote the figures in euros? The EU investment in Scotland's environment web was about €2.4 million; the figure for the LIFE SMART waste project was about €2.1 million. That gives you an idea of the scale of that investment.

David Stewart: The depressing fact about the exchange rate is that the pound is just about level with the euro, so I can manage to do the conversion.

We are all struggling with Brexit and its implications for what life will be like in the long term. There is not a lot of certainty, but the Governments north and south of the border have said that they would repatriate structural funds. There will be some understandable structural funds until 2019 anyway; after that, who knows what the position will be? What future proofing has your organisation done in an effort to make up the funding that you might no longer have in a few years' time?

Jo Green: We have not stopped entirely engaging with the European funding process, because we are already involved in some European projects. We are not entirely pulling back from them; we are just proceeding cautiously at this point. One of the main drivers for setting up the small commercial services portfolio that I mentioned was to look at alternative funding sources, including other sources of grant funding. It is early days on that, but it is a key focus for us.

David Stewart: I will bring David Faichney in shortly. A point that has been raised in previous evidence sessions—this is an issue that concerns me, as a representative of the Highlands and Islands—is that our ability to claim and utilise structural funds has been depressingly low.

The message that I would send is that we have not left the EU yet, and that budgets are available. The LIFE+ budget is €3.4 billion. There is a lot of funding around. The idea that that will suddenly stop is mistaken. Of course, it is also important that we conduct some future proofing and look ahead, because the money that we are talking about is a sizeable amount of your overall budget.

10:15

Jo Green: It is, and that is what we are doing.

David Faichney: SEPA is examining a number of things to do with Brexit. We are looking at the legislative impacts, the funding impacts and the issue of co-operation with partner bodies across Europe, as well as the issue of the EU nationals who work for SEPA. A number of flood risk management initiatives involve European funding and funding from other stakeholders.

Often, it is difficult for a flood risk management project to go forward on its own, because the funding does not quite stack up in terms of cost benefit ratios. We need to look at opportunities to join those things together. The metropolitan Glasgow strategic drainage partnership, which started in 2002, is a good example of how organisations can come together. Glasgow City Council and SEPA to start with, and then many other organisations, have collaborated well to manage flood risk in Glasgow and to maximise the opportunities that are involved. That strategic management partnership has a 30-year to 50-year vision for Glasgow and is looking for other opportunities to pull in money in order to take forward its objectives, which the individual organisations could not afford to do on their own.

Some of the European funds support examples of natural flood management, such as the Eddlestone Water study on the Tweed, and some of the Scotland rural development programme funding can be used to encourage farmers to do things such as planting and setting back defences from rivers and so on, which can have an impact on flood risk in upland areas. There is a danger that, when those funds disappear, it will be difficult to seek that money from another source. If we do not find an alternative, such initiatives might be impacted.

David Stewart: You will be familiar with concerns that we have raised in the committee before. A lot of worries have been expressed about the situation that we will be in after Brexit, because the World Trade Organization rules say that, in order to continue to trade as part of the WTO, we cannot subsidise agriculture, which will be a shock to many of us. We do not know what the situation will be, but the National Farmers Union, north and south of the border, is extremely worried about the future financing of farming.

David Faichney: From a flood risk management point of view, the key thing is that we have taken a risk-based approach to flood risk management in Scotland, through the Flood Risk Management (Scotland) Act 2009. We are taking a catchment approach and are looking at sustainable solutions for 30 to 50 years ahead. In bringing all that together, we have worked with partner organisations, the responsible authorities—local authorities, Scottish Water and so on—and lots of stakeholders to determine what

Scotland's flood risk management objectives and priorities are. Those objectives are on the table and are there to be done regardless of how or when they are funded. We have an ambition to deliver a certain amount of actions within the first cycle, but, now that we have these things on the table for the first time, we know what our priorities are and can work to achieve them regardless of whether we go down the single flood risk management planning route, use structural funds or use the redevelopment of city areas to ensure that those objectives are incorporated in the overall plan for the area.

David Stewart: Other committee members will ask questions about flooding later, so I will not deal with that issue now. However, some critics have said that, if houses are being built on a flood plain, perhaps more costs should be involved, not least because there is a requirement to ensure that those houses are built to a much higher standard in order to avoid the consequences of future flooding. That said, I will keep my tinder dry and await further questions.

The Convener: Can you put a figure on the number of EU nationals who are working in SEPA?

Jo Green: Our staff numbers are roughly 1,240. According to our records, we have around 40 EU nationals, although not everyone is required to provide information to us about their nationality.

The Convener: How do the environmental regulations that you enforce in Scotland compare to those in the rest of the United Kingdom? Are they at a higher standard or a lower standard, or are they roughly equivalent?

Jo Green: They are similar, but there are differences. One of the differences concerns the implementation of the regulatory format. We regulate under a range of permitting regimes, cutting across water, waste, air and radioactive substances. We are bringing that together into a simpler, joined-up approach. The UK Government has done something similar, but it is our ambition to take things a bit further.

The Convener: That is useful. Thank you.

We will move on to regulation, on which Angus MacDonald will lead.

Angus MacDonald: At the weekend, we saw news reports highlighting increases in non-compliance figures and breaches of pollution limits. That has certainly raised some concerns in my constituency, which includes Grangemouth. How do you propose to meet the objectives that you mention in your report

"to increase ... flexibility to deploy resources ... and to operate at a lower cost while delivering excellent environmental regulation"?

The Convener: Before you answer that, I add that it would be useful to get an explanation of why there have been increases in referrals to the procurator fiscal, in statutory notices and in final warning letters. Is there a growing problem or are you just getting better at catching people?

Jo Green: We will respond to the two questions together. I stress that the overall figures show improvements in compliance rates, although it is clear, within that, that issues remain.

Lin Bunten (Scottish Environment Protection Agency): As was mentioned, we have just published our results. We have seen the total compliance figure rise to 90 per cent, which is an improvement on last year and exceeds the target that we set. We apply a risk-based approach to setting the frequency of inspections, which are how we identify compliance, and that approach embodies the principles of better environmental regulation. We focus more on higher risk and non-compliant sites.

We acknowledge that there are still difficult problems to solve, but we have new enforcement tools—as Jo Green mentioned earlier—and we propose to use our compliance assessment scheme to modify our charges. That approach is designed to deliver behaviour change in the operators with which we deal. We are also identifying sector plans as a mechanism to drive behaviour change through business in order that we can improve compliance. For what I guess are obvious reasons, all that is to target our resource in the most efficient and effective way in order to improve compliance among businesses that we regulate.

The key is proportionate enforcement of conditions using the tools that we have. Between 2013 and 2015, we saw the percentage of businesses that are ranked as “excellent” increase from 72 per cent to 78 per cent. That was a good improvement, but we have also seen an increase in those that have been ranked as “non-compliant” over two years. We have been focusing on that and will continue to focus on it using the new tools that we have available to us.

There is always an element of movement between the figures. The final message is perhaps that a business being non-compliant does not mean that there is immediate or imminent harm to the environment; it might be more to do with a management control that relates to something that could ultimately result in an impact, but which has not done so at the point when the compliance assessment score was identified. In such cases, we work with businesses that hold licences to improve their performance by helping them to identify solutions. Where we have to enforce, we do so using the tools that we have available.

We will shortly release our enforcement report for 2015. I am trying to recall your question, convener. We have an enforcement policy that we apply to all relevant infractions that we identify, and we are always improving our performance in identifying breaches. The benefit of what we have under the Regulatory Reform (Scotland) Act 2014 is that we now have better and more effective tools to bridge the gap between the sanctions that the convener mentioned. Moving forward, we will have variable monetary penalties available to us—we have already run a campaign on fixed penalties—and we have the ability to accept enforcement undertakings, which allows businesses that are non-compliant to take back an element of control.

The Convener: It is just that there has been a marked increase in non-compliance under all three headings. I am trying to get to the root of that in order that there is absolutely clarity, for the record, about what is behind it.

Lin Bunten: We have been targeting our efforts towards businesses that are non-compliant, which is why it is so disappointing that the two-year non-compliance figure rose this year.

Jo Green: We will be able to give the committee more up-to-date enforcement figures when we produce our report on our levels of enforcement action.

As we said in our submission, we published “One Planet Prosperity: Our Regulatory Strategy” in August. In it we make it very clear that we expect compliance as a minimum from everyone in Scotland. Publication of enforcement figures will place a spotlight on that, as is absolutely appropriate. Given the challenges that face the environment in Scotland and the desire for sustainable growth, compliance is the minimum; we need to encourage businesses to go further. A key area for us is to have a lot more senior-level engagement and interaction with companies in order to push behaviour change. We are building our skills in that respect.

The Convener: I remember exploring during the passage of the Regulatory Reform (Scotland) Bill the scenario in which a firm that has a multitude of sites is guilty of minor misdemeanours on all its sites but gets no more than a slapped wrist in each case, with no view being taken on, for example, the culture cumulatively in the organisation. Are you starting to get on top of such issues?

Jo Green: Yes. That goes back to exactly what I was talking about. We want to achieve behaviour change; that is what regulation is all about. An issue for us was that although we could refer a case to the procurator fiscal it had to achieve a certain level of seriousness to be taken by the

courts, which left us with a gap. The new enforcement tools under the Regulatory Reform (Scotland) Act 2014, including fixed monetary penalties, variable monetary penalties and voluntary enforcement undertakings, will help us to take action earlier and to intervene to change behaviour before it becomes entrenched.

Angus MacDonald: We look forward to reading the enforcement report, which you will, I hope, share with the committee.

I want to stick with regulation and efficient and effective deployment of resources. In your submission, you said:

“we have also significantly reduced the number and size of buildings from which we operate”.

I am keen to know how flexible SEPA is in that regard, because in my constituency there are calls for a dedicated SEPA office and officer in Grangemouth, following last year's breaches and pollution and given the continual non-compliance—although I take on board that there is more compliance than non-compliance. Are you willing to review continually the siting of your offices? Will you examine further opportunities to share buildings with other public bodies, as you have done in the past in Grangemouth?

Jo Green: Yes. You will have seen that we have increased the number of our offices that are in shared accommodation without impacting on our footprint, which is important for our work. We are open to such opportunities.

The Convener: Let us move on and consider particular sectors.

Mark Ruskell (Mid Scotland and Fife) (Green): Notwithstanding the overall picture, which looks positive with businesses complying with the law as we hope they would, a number of sectors are problematic. Angus MacDonald mentioned Grangemouth in that context.

In the aquaculture sector, there has been a decline in compliance—far from going up, compliance has gone into reverse. The sector has gone from 86 to 82 per cent compliance in the past year. Is it not problematic that SEPA is becoming increasingly reliant on industry data to inform its work to regulate the sector and enforce compliance? In effect, you are asking the aquaculture sector to police itself.

Jo Green: I will make a couple of general points before I respond to the specific point about aquaculture.

We have had real success in working on a sectoral basis. For example, the whisky sector came together to say that everyone in it could collaborate on some non-competitive issues to do with the environment, which would help the sector

to grow sustainably in Scotland. We worked actively with the sector on that. We want to work with the aquaculture sector in exactly the same way. We recognise that the Government wants the sector to grow; our job is to work with the sector to help it to grow in the right way.

On data and monitoring, we never rely entirely on data that others provide when we take a view on compliance in a sector.

10:30

Mark Ruskell: My understanding is that the modelling tools that you apply—in particular to the aquaculture sector when, for example, you are making a decision about whether to issue a licence—are pretty much populated by data from the industry. You have said that you have cut the number of your laboratories from eight to two, so who is gathering data about problems such as algal blooms in our seas and the problematic individual fish farms off the west coast of Arran, for example? Where are those data coming from and how do you ensure that they are robust if the independent regulator does not have the resources to check them?

David Faichney: That is a very important question on data. All our decisions are driven by data and we need the best available data to drive those decisions, regardless of what we are looking at. Over the past few years, we have been doing joint services with SNH, Marine Scotland and others. On the aquaculture side, we have been doing things with Marine Scotland in terms of sharing surveys and vessels, and on data and modelling. We are therefore using the best available data; they might not always be data that we have gathered, but it follows the risk-based approach to regulation.

We will have sense checks on data that are provided to us. If those checks tell us that there is a problem with the data, we will examine the data and look to provide better data because our decisions are driven by data. If we have poor-quality input, we are not going to be able to make good-quality decisions. The data are therefore absolutely important for us and we need to ensure that we are always driving the best-quality data and putting it into our systems, regardless of where it comes from.

The Convener: To back up Mark Ruskell's point on the figures that have been quoted, if the compliance level has gone down in the aquaculture sector, would that trigger your taking a more proactive approach to aquaculture?

Jo Green: Yes.

The Convener: Is that happening now?

Jo Green: Yes, and it will increase as we adopt a more sectoral approach.

The Convener: Can you outline for us what form that would take?

Jo Green: It is about working with the industry as a whole to look at how it wants to grow, and at what constraints and opportunities there are around that. For instance, if the industry wants to grow, we can help it to think about the areas or locations where it could grow and where there would be fewer environmental problems. It is about working with the sector at that level as well in terms of growth.

The Convener: The drop in compliance suggests that there might be a decline in the culture of compliance in the sector. Do you accept that that is the case? If so, how do you react to it?

Jo Green: Our chief executive has been having some fairly senior-level engagement with the industry, which will continue. Again, it is about the partnership that we can set up with the industry so that we can have shared aims around sustainable growth.

Mark Ruskell: To follow on from that, to what extent do you feel able to steer the research agenda? You said that it is important to have robust data, whether we are dealing with an individual site or operation or with wider pressures on the marine environment to which aquaculture might be contributing. When it comes to research budgets for aquaculture, I understand that 50 per cent is provided by the Scottish Government, which has a clear objective to double the size of the industry, and 50 per cent is provided by the aquaculture industry. Where does SEPA fit in? You are the independent regulator and the organisation that is speaking up for the environment. What about your ability to influence the research agenda to ensure that we are looking at the right things?

Jo Green: We will come back to you on the specific point about how we influence the research agenda in aquaculture.

Mark Ruskell: Do you have your own budget for research on aquaculture and its potential impacts?

David Faichney: We do not have a specific budget, but we try to target research where it can bring the biggest benefits for SEPA. We fund, with SNH, a number of PhDs to study various issues around the country. I do not know the current list of research topics for those PhD students. We have other avenues for influencing research from the various funding streams. If there is an issue for SEPA in that respect, we will take it forward.

We have, for example, over the past few years greatly improved modelling for aquaculture

installations because we have better sea bed, bathymetry and tidal data, and our modelling unit can start to pull all that together. Research is going on within our teams in SEPA to drive our development of the models to support decision making. I am sure that we are engaging more widely, but we can get back to you on that.

Mark Ruskell: You do not, however, have your own independent research budget, so you are increasingly reliant on data from an industry that is not complying.

David Faichney: No, but we can tap into other research budgets that are available in Scotland and the UK—and Europe, if that is appropriate. We have to bid for research funding from existing pots, but if we are successful in our bids for particular research, we can fund it.

The Convener: It would be very useful if you could write to us with as much detail as possible about that.

David Stewart: I will stay on the Brexit theme. I find it encouraging that you fund PhDs, but the Scottish Association for Marine Science, which is based in the University of the Highlands and Islands, has said in a submission to which I have had access that it is very worried about the future of academic funding such as horizon 2020 funding, particularly with the uncertainty around Brexit. As you know, a lot of academic funding comes via Europe, so I presume that that is another source of uncertainty that will affect your future funding of PhDs.

David Faichney: Brexit might have a broader effect but it will not, as far as I understand it, directly affect funding of the PhDs, which have been funded through SEPA and SNH and are targeted on work that is of particular interest to us. As I have said, the majority of our funding for research comes from local—Scottish and UK—funds.

David Stewart: Does none of the European funding that you get fund PhDs?

David Faichney: I do not think that it does, at the moment.

David Stewart: Can you drop us a note on that, just so that we can be totally clear?

David Faichney: Sure.

Emma Harper (South Scotland) (SNP): Is the situation in agriculture research similar to that for aquaculture? Are you applying for research funding from external sources, or is SEPA itself carrying out agriculture research?

David Faichney: SEPA's soils and land team is driving forward its understanding of the impacts of activity on the soils and land environment; that work is similarly linked into research pots beyond

SEPA. Any theme in an agenda that is relevant to SEPA can be taken forward by seeking funding from various research pots, and in the paper that we send back to the convener, we will clarify how different parts of SEPA's business tap into different funding streams.

Emma Harper: We are working with other committees, including the Rural Economy and Connectivity Committee, on the draft budget. Are you proposing an increase or a decrease to the budget as a result of working with the agriculture industry? It is really difficult to get baseline information on agricultural emissions, so I wonder how that will impact on your future spend.

Jo Green: There are two points to make on that. First, as a general point I say that a lot of our regulatory work is funded through a charging scheme. In the new scheme that we implemented earlier this year, we brought together five different charging schemes in order to be more reflective of the costs of regulating different sectors.

Secondly, we have worked closely with the agriculture industry for a number of years, particularly on diffuse pollution, and our collaboration on that has had some success. We seek to work increasingly on a sectoral basis with the agriculture sector in Scotland.

The Convener: There is probably no harder sector to please than the agriculture sector, but over the past year or two, we have started to get more positive vibes from it about its engagement with SEPA. Is that because you have finally cracked this, or are you just being too gentle with the sector?

Jo Green: Regulators can go one way or the other. We often say to the sectors and companies that we regulate that they can choose the type of regulator that they get; the sectors that are willing to work with us to improve compliance will get a particular type of regulator. We have over the past few years established a relationship with the National Farmers Union Scotland in which it has actively supported campaigns on tackling diffuse pollution, which has been hugely welcomed.

The Convener: Is that a good example of partnership working that you might want with other sectors?

Jo Green: Yes.

The Convener: It is good to get that on the record.

Emma Harper: On that note, portfolios such as infrastructure might be pursuing spending priorities—road building, for example—that exacerbate environmental challenges. How do they impact on SEPA's budget?

Jo Green: Our statutory purpose is broad. Protecting and improving the environment helps to improve health and wellbeing and supports sustainable economic growth, so it can cut across a range of portfolios. We do not see portfolios such as economic growth as impacting on the environment; a win-win scenario is always possible.

Increasingly, we work in partnership with a lot of bodies that fall under other Government portfolios. There are several examples, such as the work that we are doing on air quality with Transport Scotland and local authorities. Lin Bunten might want to say a few words on that.

Lin Bunten: We identified some challenges back in 2012. We are now working closely with Transport Scotland and a number of other partners to improve air quality, particularly in urban areas around Scotland.

There are other good examples of partnership working. Recently, we have worked closely with the NFUS on plastics that have been appearing in the materials that go through anaerobic digestion plants. We have worked on recognising the problem and identifying the solution; our tactic is to work upstream to resolve a problem at an earlier point in the chain.

On bigger infrastructure projects, over the years we have been involved with the Beaulieu to Denny power line that was put in, the building of a big hydro power scheme at Glendoe—the likes of which had not happened in a number of decades—and the Waverley line that was constructed down into the Borders. We are very clear about early intervention and have evolved our approach, which includes partnership working up front and identifying a single internal point of contact who brings together the key impacts, to ensure that we obtain multiple benefits from big infrastructure projects.

Under the Regulatory Reform (Scotland) Act 2014, we recently introduced the ability to identify a large-project charge. Some of the major developers actually welcome that. Most of the activities that we undertake are relatively small individually, but when they are aggregated, they become a large piece of engagement. We have identified a mechanism by which we can raise income, with the support of project developers, to cover the costs of the advice and guidance that we provide. That is seen as a positive way forward, and we will continue to use it in future infrastructure projects.

The Convener: Let us move on to look at preventative spend.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): At last week's meeting, we spoke to SNH about redirecting funding from other directorates,

which Jo Green alluded to when she spoke about SEPA's statutory purpose being broad. I know that SEPA contributes to the Government's national outcomes in terms of resilience and working with communities and schools. Has SEPA worked with Education Scotland specifically with regard to curriculum content? You will know that closing the attainment gap is central to a lot of the Government's work at the moment. Have you looked at that previously and are you looking at it as you go forward?

Jo Green: Yes. There are a few examples in the areas of education and attainment. One example is our work on air quality. An air-quality teaching package called "Learning about air quality" was developed with North Lanarkshire Council and Scotland's environment web, in consultation with Education Scotland. It is an innovative tool—it is the first of its kind in the UK—that was designed to support curriculum for excellence. We loan air-quality monitoring equipment to schools to support the use of the package in helping to change how people think about air quality in terms of parking near schools.

We are increasingly conscious of the attainment gap and the inclusive growth agenda. We see a direct link between that agenda and our statutory purpose. The shorthand that we use around our statutory purpose is that we need to help create environmental success that also creates social and economic success, so we are conscious of that aspect.

We recently made a number of social pledges as an organisation. Under one of those, we introduced a programme of targeted mentoring for up to 20 disadvantaged pupils per year from socially deprived areas. We will also develop foundation apprenticeships to help aspiring pupils from schools in areas of high social deprivation. North Lanarkshire is the target area for the first year of that initiative. We are undertaking a number of initiatives in that area, including around how we think about flood risk and where we prioritise. We are looking at the communities that we are working with on that issue.

10:45

David Faichney: For many years, we have been targeting schools to increase awareness among schoolchildren of flood risk, particularly in areas that are most vulnerable to flooding. In the past, such targeting was driven by areas that had been flooded. We therefore visited communities that had been flooded and, as part of the recovery process, went into schools to educate the children on how to stay safe and on what the risks were. We gave them plenty of child-focused material that they could take home and learn from and encouraged their parents to prepare a flood kit and

to be ready for flooding. Now that we know the areas that are at risk across Scotland, we have done that in a more structured manner, working with Education Scotland and others to target areas.

We have been involved with community safety partnerships in work with schools around the country. In 2016, 10,000 primary children came through the doors of initiatives such as safe Highlanders and safe Taysiders, and they all got the flood message.

We have also developed physical and online resources with Education Scotland. You might have seen our floodline kids website, which has resources that can be taken into classrooms and built into the curriculum. As Jo Green said, in relation to citizen science we also have rainfall observers projects for children. Our resources allow them to get involved in gathering the data that we need to inform our future decision making.

Jenny Gilruth: I have a follow-up question. Do you evaluate the effectiveness of those interventions in schools? For example, do you go back and survey the pupils or speak to the teachers following the intervention to see whether it has had an impact? You spoke about your work bringing about behaviour change, so do you go back and consider how—or whether—an intervention has changed people's behaviour in relation to flood risk, for example?

David Faichney: We do that generally with our floodline customers, but I am not aware of whether we do it specifically with schools. However, I am sure that there must be some feedback process as part of the Education Scotland initiative, so I can check and get back to the committee on that.

The Convener: Are you able to monitor whether your work on air quality has any impact on parents and leads to any behavioural change on their part? If you put air-quality monitoring equipment outside schools, that might persuade parents not to drive their children to school, as to do so creates congestion around the schools and is bad for the environment and so on. Do you assess whether there is an impact? How do schools access that equipment? I am sure that quite a few schools would be very interested.

Jo Green: On your first point, we will get back to the committee on how impact is measured, because schools have also been doing wider work on that. Your second point was about the uptake of the tool. Last year, the tool was fully booked out during the school term. There is a lot of demand.

The Convener: Is there enough demand to justify investment in more kit?

Jo Green: Potentially, yes. However, I guess that it comes back to your point about how effective the intervention has been.

The Convener: If you get the statistics to back up the effectiveness of the tool, that would justify further investment. That picks up on Jenny Gilruth's point about your work crossing over portfolios, as the issue relates to the health, environment and education portfolios.

Jo Green: We have our statutory purpose and we have our two core services: flooding and environmental regulation. We like to get involved in a small number of other things, where we can put in a bit of our resource or time and expertise to help to create significant change, particularly if other partners get involved and also put in resource.

We make a number of targeted interventions. One has been our support for the 2050 climate group. That group of young people, working with Young Scot, is getting young people together and giving them leadership skills and an understanding of sustainability and climate change. That is helping to create leaders for the future, which is good for the long term.

The Convener: Let us move on. I have a general question on staffing. You told us how many staff you currently employ. How has the number changed over the years and what changes have there been in staff roles and in the emphasis in deploying staff?

Jo Green: I mentioned that we have around 1,240 staff. The high point for SEPA was back in 2008-09, when we had maybe 70 more than that, so the levels have come down since then. The changing roles have reflected the changing nature of the services that SEPA provides. There have certainly been changes around expertise on flood risk.

We have talked about what we want to do in future, and our regulatory strategy is clear: it is absolutely about targeting non-compliance, but also supporting successful innovation. There are therefore a number of areas where we need to build up our skills as an organisation. That will continue, and it will change the nature of some roles.

The Convener: One of SEPA's strengths has been its local footprint—the local faces and the people who know the area. Are you preserving and protecting that footprint, whatever budget challenges you face?

Jo Green: To us, the footprint is absolutely essential. As I said, our services to the public are on flooding and environmental regulation, and those are locally delivered services, so our footprint is incredibly important. We have talked

about some of the changes that we are making to the estate and the sharing of offices, but that is not impacting on our footprint.

The Convener: That is good to hear.

David Stewart: I want to raise another issue on flooding. I met Jo Green last week and gave her some notice of this question. I am very concerned about development on flood plains where SEPA has said that there should be none but the planning authority has rejected your advice—I presume that you are a statutory consultee for local authorities—or that advice has been rejected on appeal. I do not have the figures in my head, but I think that that has happened around 20-plus times. To be honest, that is a completely mad set of priorities—not for SEPA but for local authorities and the Scottish Government. The developments are built and are then flooded, and householders face chaos and personal tragedy as a result. That could be avoided. Do you know offhand how many times that has happened over the past four or five years?

David Faichney: SEPA is a statutory consultee in the land use planning system, and we see in excess of 2,500 applications a year where flood risk is something that we have to consider. We have the evidence in our flood maps, the information that we gather about flooding when it happens and information from our hydrometric network—our gauging stations—so we know about flooding issues. The Scottish planning policy framework is very clear about what building should be permitted and what building should not be permitted given the risk in a particular part of a flood plain. We should not build hospitals, schools or other critical infrastructure anywhere at all on a flood plain.

David Stewart: So why does it happen?

David Faichney: Those are decisions for planning authorities.

Housing should not be built anywhere that has a 0.5 per cent chance of flooding in any one year, or on a one-in-200-year flood plain. Where there is a greater risk, nothing should be built at all. However, there are pressures around Scotland, especially in the city areas and where brownfield sites need to be brought forward for development. There are also pressures where houses already exist on flood plains. We have identified 108,000 properties that are at flood risk in Scotland. We are reducing that number by putting measures in place. Unless we encourage retreat and take those properties out of the flood plain, the risk will need to be managed. Planning authorities have to look at a number of things before coming to a decision; flood risk is only one of them.

David Stewart: You will probably recall that, when we took evidence from the chair of the

United Kingdom Climate Change Committee, we heard that one of the risks for Scotland was that 90 per cent of houses that are at flood risk do not have a flood prevention strategy from the local authority. That is extremely worrying.

David Faichney: That shows the size of the issue that we face in Scotland. There are 108,000 properties at risk. In the next six years, 42 big flood protection measures will go forward, which should reduce the number of properties at risk by about 10,000. It is a long game, and we have a long way to go to reduce flood risk.

David Stewart: There are 2,500 applications a year. On how many occasions was SEPA's advice overturned, either by the local authority planning committee or after an appeal to the Scottish Government?

David Faichney: In 2015, we objected to 22 applications, which is less than 1 per cent. Nine of those were approved against SEPA's advice. That is nine out of 2,500 or thereabouts.

David Stewart: You probably do not have the figures to hand but, with regard to those nine developments, how many houses are we talking about?

David Faichney: We are talking about a low number of individual households, or, more recently, sites for travelling people. They are caravan parks, or one, two or three properties.

David Stewart: So that is nine a year.

David Faichney: Yes.

David Stewart: Will you drop us a line and identify how many houses are affected?

David Faichney: Yes.

David Stewart: If you are flooded, it does not matter whether you are the only one in Scotland—it is a tragedy. I would rather that the figure was zero. You are the professional advisers. If you say, "There shall not be any building because we think that there will be a long-term problem of flooding", there should not be any building. It does not matter whether the decision is overturned by local councillors or by whoever is in government: it is a mistake, because the problems will come home to roost in the longer term.

David Faichney: Zero is the ideal. It will become more of a challenge, because we have identified another 70,000 or so properties that will be at risk by 2080 under the climate change scenarios that we are running with. We could just be running to stand still.

David Stewart: As the chair of the Climate Change Committee said, climate change is with us now. Presumably, areas that are not currently

flood plains or at risk may well be in future. You mentioned 0.5 per cent—

David Faichney: You make an interesting point. That has yet to be determined. Quite often, flood plains do not change—they are defined naturally by geology and so on. You can imagine the width of the flood plain as equalling that of the river valley. With climate change and the increased flood peaks that we anticipate, although a similar area will probably be flooded—it may be slightly bigger—any flooding will be deeper and faster flowing, so the risk might change.

David Stewart: Thank you for the figures that you have given us. Will you also give us the figures for the number of times that your advice was ignored by planning authorities or the Government in each of the past four years?

David Faichney: Yes.

David Stewart: Also, in each case, can you tell us how many houses were affected? It is crucial that we know the numbers. We have had a hint of the figures before. I suppose that the overall question is whether you have sufficient resources to deal with advising planning authorities on the risk of building on flood plains. Are there staffing issues here?

David Faichney: It is tight for us. We have seen an increase in the number of applications because of the increase in pressure to build on flood plains, especially in urban areas where redevelopment is required. It is very difficult, because determining whether or not to build on a flood plain is the single biggest flood risk management tool in the toolbox. It is best if we avoid putting people at risk of flooding.

David Stewart: I agree.

David Faichney: You are right that, ideally, nothing should be built on a flood plain. That is what we are aiming for, but other things have to be taken into consideration.

David Stewart: That is very helpful. Thank you.

The Convener: I want to follow up on that important line of questioning from David Stewart on an issue that previous committees have tried to explore. Does anyone keep a record of the consequences when your advice has been overruled? Do you keep a record? Are there examples, perhaps going back to 2010 or 2012, of applications that you have objected to but which have gone ahead and issues have then arisen? Do you keep an eye on these things?

David Faichney: That information does not come back to SEPA—it stays with the planning authorities. That information would be very powerful if it was fed back to us.

It is very difficult to get a handle on the situation, because we see things at the planning stage but planning does not always go forward and things are often not built as proposed—there may be slight changes. Therefore, we do not know. We do not have the resources, and it is not in our remit, to go out on the ground and check what was actually put there.

11:00

David Stewart: It seems to me that that links well with your previous comments about PhD work. That would be a good piece of academic research for some eager PhD student to go away and do.

Mark Ruskell: Let us look in more detail at SEPA's role in relation to flooding over the last couple of years. How has it changed? Let us take, for example, an application for a major housing development in an area that is identified as risky in terms of flooding. Where would SEPA's role stop and the role of local authority flood officer teams begin to take on that work? Has that changed over the last two to three years?

David Faichney: Implementation of the Flood Risk Management (Scotland) Act 2009 makes it clear that we need to take a risk-based approach to flood risk management. In part 1, section 1 of the act, it says that all "responsible authorities" have to take flood risk into consideration in all their duties. Therefore, planning authorities must take flood risk into consideration in all their duties. It has been a powerful thing for everyone in Scotland to ensure that, at the earliest possible stage, we are involved in understanding the flood risk for potential developments. Starting at that early doors stage, we can get in and do pre-application discussions and even flood risk assessments.

About 2,500 individual applications come through. SEPA is also involved with local authorities in looking through their development plans to see how they have zoned land and how the zoning of land can be lined up with the flood risk to make sure that the councils, local authorities and other planning authorities are recognising the full risk at that early zoning stage.

Also, for big infrastructure projects, such as the A9 and the A96 rerouting, local authorities have come to SEPA nice and early. We have been engaged with them on flood risk for the whole job, rather than coming through at the planning stage for individual sections. We have been able to work strategically from the outset with other organisations to plan things holistically, to ensure that the flood risk is being met powerfully. The act allows us to do that.

Mark Ruskell: I think that we had a similar answer from SNH last week. There has been a bit of a retreat from analysing individual applications and much more work early on in taking a strategic approach—getting local development plans right and housing zoned in the right places. What happens when an application goes through to public inquiry or appeal and it needs a specialist independent regulator? Who picks up that work now?

David Faichney: If SEPA objects to an application, it would be referred to the Scottish Government and the reporter, who would have a look at it. At that stage we would be asked to give information on it in evidence. After that the decision would be out of our hands.

SEPA is a statutory consultee in the planning process. We need to make sure that we have laid out all the information, advice and guidance—the data—to enable a good decision to be made. That is our role: to make sure that we are feeding that process.

Mark Ruskell: Do you not see that local authorities may be picking up more of that work now through their flood teams?

David Faichney: The local authorities have flood teams and planning teams. How those teams work together—and how closely they work together—is important in ensuring that both teams have visibility within their local authority and that they are coming as one to other organisations such as SEPA, through the process.

Mark Ruskell: I am just trying to be clear. SEPA will take a planning application, in terms of advice, right the way through to decision. You will be involved in appeals and public inquiries. You will be the lead agency. Is that what you are saying?

David Faichney: No. We are the lead agency for providing input and advice on flood risk management. We are not the decision makers and we are not the planning authority. We need to make sure that our advice is presented and that our opinion is listened to.

Maurice Golden: How much does SEPA spend on nature-based solutions for flooding and what more should you be doing in that area?

David Faichney: I do not have that figure with me. We get involved, through partnership working, with initiatives that are happening to try to understand how natural flood management can be incorporated within our flood-risk management actions.

We have identified areas in the flood-risk management strategies where there is potential for that. We are working with other organisations that are taking forward initiatives, such as the Tweed Forum's project on the Eddleston Water, to

which 17 farms have signed up. We try to understand through an improved monitoring process the impact that natural flood management can have on reducing flood peaks for areas at risk downstream.

Earlier this year, we produced a comprehensive natural flood management handbook, which is available to everyone online and can be accessed by landowners, funders or government. The handbook helps to decide the best techniques and processes and perhaps find ways of accessing funding to take forward natural flood management actions.

We have one full-time member of staff on natural flood management and others who spend a bit of time on it, one within the flooding team. We can access expertise from other parts of SEPA through our ecology team and our hydrogeomorphologists.

The Convener: There is a move to develop the land use strategy and localise it across Scotland to deliver regional and local plans. Do you see a role for SEPA in participating in the development of those plans from your areas of interest?

Jo Green: We must have an interest, and will come back to the committee on that point. Clearly, we do a lot of work at local level, but we will come back to the committee specifically on the land use strategy.

Kate Forbes: What processes do you employ to ensure such a small annual underspend?

Jo Green: Clearly, we do not want to have an overspend. It is a process of actively managing our budgets within the one-year cycle. Some of our projects and work spread over several years, but we are on a one-year public sector cycle. If pieces of work are not progressing, we might look at reprioritisation during the year. We work closely with our sponsor team in Government on that.

Maurice Golden: Your small underspend is very impressive, so I am keen to tease out whether there is anything in particular that SEPA is doing that some of the other agencies are not. It could be, for example, that you have high numbers of staff compared to total budget, in comparison with some of the other agencies.

I would be interested to learn from you whether that reflects your functions or a difference in approach compared to other agencies. For example, does SEPA have a tendency to deliver in house rather than contracting out? It would also be interesting to know your fixed costs versus your variable costs. Is that the reason for the low underspend, or are there other aspects such as an internal audit function or your approach to risk management that are different from those of others?

Jo Green: You are right that agencies are different, and, for some, managing underspends is trickier.

For SEPA, roughly 65 per cent of our budget goes on staff costs, which is quite high. About 22 per cent is for supplies and services, such as replacement equipment, our contract with the Met Office and the monitoring of statistics. Some of the contracts are quite long standing.

I would love to say that we are doing everything right and that others could learn from us, but it will be partly about the nature of our business.

David Faichney: In terms of flood-risk management, the figures are about the same, with about 60 per cent spent on staff and 40 per cent on non-staff costs.

SEPA is successful because we are spread across so many different activities. Some of those activities are flexible and others are more fixed; for example, meeting statutory deadlines for producing flood maps. We are locked into certain activities in any one year, but we have to plan within a six-year cycle to deliver them. It is difficult to plan across the year so we use the flexibility within the organisation to move money in order to meet targets. That benefits the whole organisation and sometimes there is a little bit of flexibility that takes us beyond the end of the financial year. We can bring some of our expenses forward and push other expenses into the following financial year, as we have a bit of flexibility with our own deadlines. However, our statutory deadlines are absolutely fixed.

Maurice Golden: With that small underspend, which is great to see, were your staff working in advance on the previous year's financial budget? Do you plan ahead, even though you do not know what the budget will be, in order to give you the flexibility to get so close to the mark on a yearly basis? Is that how you manage to work it so successfully?

David Faichney: For flood risk management, we have to think about six years ahead. Some of the things that we have taken forward in the first cycle are being done for the first time in Scotland so we had no idea—well, we did have an idea, we estimated—what the costs might be and how many staff we would need. That process was as rigorous as possible for a situation in which we were doing something for the first time. We found that we needed some latitude in order to deliver things and to think ahead.

We work very closely with our colleagues in the Scottish Government so, although we only get a one-year settlement for our flood risk management funding, we have never failed to get that. They tell us to plan on what we planned on in the previous year and we work on that basis.

Jo Green: We are just about to launch the next corporate plan, which will set a high-level direction for several years. We produce an annual operating plan as well, and we work closely with Government in developing those annual operating plans.

More recently, we set up two new committees. There is an agency management team that leads the agency and, at agency management team level, we set up a committee on flooding and another on regulation in order to bring additional focus to those two services and to allow decisions to be taken well within the year.

The Convener: I think that we have covered all the areas that we were looking to cover. I thank the witnesses for their attendance this morning—it has been a very useful session.

At its next meeting on 22 November, the committee will consider the draft Crown Estate Scotland (Interim Management) Order 2017. As agreed earlier, we will now move into private session.

11:12

Meeting continued in private until 12:33.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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