

FINANCE COMMITTEE

Tuesday 19 September 2006

Session 2

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FINANCE COMMITTEE

22ND Meeting 2006, Session 2

CONVENER

*Des McNulty (Clydebank and Milngavie) (Lab)

DEPUTY CONVENER

*Mr John Swinney (North Tayside) (SNP)

COMMITTEE MEMBERS

*Ms Wendy Alexander (Paisley North) (Lab)

*Mr Andrew Arbuckle (Mid Scotland and Fife) (LD)

*Mark Ballard (Lothians) (Green)

*Derek Brownlee (South of Scotland) (Con)

*Jim Mather (Highlands and Islands) (SNP)

*Mr Frank McAveety (Glasgow Shettleston) (Lab)

*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)

Janis Hughes (Glasgow Rutherglen) (Lab)

Alex Neil (Central Scotland) (SNP)

John Scott (Ayr) (Con)

Iain Smith (North East Fife) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Professor Arthur Midwinter (Adviser)

THE FOLLOWING GAVE EVIDENCE:

David Ford (Scottish Executive Environment and Rural Affairs Department)

Tom McCabe (Minister for Finance and Public Service Reform)

Dr Pauline Munro (Scottish Executive Environment and Rural Affairs Department)

Dave Wyman (Scottish Executive Environment and Rural Affairs Department)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

Rosalind Wheeler

ASSISTANT CLERK

Kristin Mitchell

LOCATION

Committee Room 2

Scottish Parliament

Finance Committee

Tuesday 19 September 2006

[THE CONVENER *opened the meeting at 10:00*]

End-year flexibility

The Convener (Des McNulty): Good morning. I welcome members, the press and members of the public to the 22nd meeting of the Finance Committee in 2006. I also welcome the Minister for Finance and Public Service Reform, Tom McCabe, who is sitting on the left of the table. That is not a political statement—he is trying to avoid having direct sunlight in his eyes, so we are being considerate to the minister. I remind everyone to turn off their pagers and mobile phones.

Item 1 is evidence from the minister and his officials on end-year flexibility. As members know, the minister made a statement on EYF in June, so we have an opportunity to scrutinise his comments. I am sure that the minister is aware that issues have arisen since we invited him to give evidence. Members might ask about those matters.

The minister is accompanied by officials from the finance expenditure policy division of the Scottish Executive Finance and Central Services Department. They are David Stewart, who is the division's assistant director, and John Nicholson. I welcome the witnesses and, as usual, I invite the minister to make opening remarks before we proceed to questions.

The Minister for Finance and Public Service Reform (Mr Tom McCabe): Good morning. I thank the convener for introducing my officials.

I will not spend too long on the principles behind end-year flexibility, although I will briefly mention them. We believe that the vast majority of members of the Scottish Parliament accept the need for a system that ensures that the money is not all spent in one financial year. As members know from experience in Parliament and elsewhere, the absence of such a system leads to a bulk of spending towards the end of the financial year, which is bad value for money for everyone, with the possible exception of suppliers and contractors.

I will explain three basic points: where our EYF came from; how we allocated it; and how we will draw down from Her Majesty's Treasury the balance of our EYF. Before I do so, it is worth reminding members why we have an EYF process. As you know, the approach originates

from the parliamentary principle whereby Executive budgets are authorised annually. When Parliament approves the Executive's spending plans, it does so only for a financial year. If we have not undertaken all the spending by 31 March, we must return to Parliament to have that expenditure re-authorised in the following financial year. To put that approach in context, it would not be reasonable to expect a local authority, business or family to rush out and empty their bank accounts at the end of March; we would expect them to carry over their resources to the following year. The EYF mechanism allows the Scottish Executive, as custodian of the public purse, to do the same.

The committee will recall that last year we moved away from reporting our outturn against only the budgets in the departmental expenditure limits to reporting our outturn against all the budgets that Parliament authorises. Last year, the Scottish Executive spent £26.131 billion, from a total budget of £26.366 billion. That left just £171 million unspent by the core Scottish Executive and £64 million unspent by our arm's-length bodies, such as health boards and Scottish Water. The total of £235 million represents just 0.9 per cent of our total budget. The departmental expenditure limit element of that figure is carried forward using our EYF mechanism.

As the committee will be aware, end-year flexibility applies only to elements of the budget that fall within the departmental expenditure limit. Although the total headline EYF figure of £235 million is measured against all budgets that appeared in last year's spring budget revision, including the departmental expenditure limit, the annually managed expenditure and other budgets, the headline DEL EYF is a lower figure of £139 million.

We produced an EYF explanatory document on 28 June, which provided a breakdown of the component parts of this year's EYF and set out the resulting EYF allocations that I made to portfolios. This year, we allocated £21 million of the carry-forward to portfolios: £7 million to the Justice Department; £1 million to administration; £2 million to Forestry Commission Scotland; £2 million to the Crown Office and Procurator Fiscal Service; and £9 million to Scottish Water.

I will now address the EYF balance that we hold at HM Treasury. Since my statement in Parliament in late June last year on the financial year 2005-06, HM Treasury has published its 2005-06 public expenditure outturn white paper, which shows the revised EYF figure for all United Kingdom departments. The balance that the Executive now holds at the Treasury is £1.454 billion—a reduction of £78 million on last year's figure.

That movement in the balance compares relatively well with that of other large United Kingdom departments. For example, the EYF levels for the Department of Health, the Department for Education and Skills and the Ministry of Defence have all increased over the past year—such increases range between 63 per cent and 208 per cent. At the same time, the Scottish Executive's balance that is held at HM Treasury has fallen by around 5 per cent.

It is also encouraging that our EYF balance as a percentage of our DEL budget compares well with that of other Whitehall departments. As things stand, our balance equates to around 6 per cent of our total departmental expenditure limit budget, whereas many Whitehall departments have balances ranging up to 20 per cent of their departmental expenditure limit budgets.

As I made clear in my statement in late June, it is my intention to draw down around £800 million of the remaining balance over the next two years. I will draw down those resources only as and when they are required, to ensure that the budgets that we are asking Parliament to approve for us are taut and realistic. We will target the EYF breakdown to where it is needed in accordance with our wider budget management strategy, which recognises emerging underspends and makes full use of virement. Our EYF draw-down will be triggered by an assessment of our overall budgetary needs, rather than being linked specifically to any particular item of expenditure. The balance of funding at HM Treasury will be available to meet known pressures that have been identified by portfolios, and to help during the expected tighter 2007 spending review settlement.

I hope that that quick overview of where we are has given the committee an insight into the EYF system and how we have allocated our EYF from last year, and that it provides some detail of our plans for drawing down further resources from HM Treasury over the next two years. I hope that my statement, combined with the written information with which I provided members back in June, is helpful in allowing the committee to scrutinise the end-year flexibility for 2005-06.

I will do my best to answer the committee's questions.

The Convener: I seek clarification of a couple of points before we get into more detailed questions. You announced an £800 million draw-down of EYF. My understanding is that that £800 million is not in the budget that was published a couple of weeks ago. Will you confirm that it is not in the budget?

Secondly, given that the £800 million is to be drawn down over two financial years, will you shed some light on what proportion of the money you

expect to be drawn down in each of the two years 2007-08 and 2008-09?

Mr McCabe: You are right that that money was not in the draft budget document. As for the second part of your question, the draw-down will be approximately half and half in each of the two years.

The Convener: You said that the £800 million is linked to financial pressures. What pressures might influence how the money will be drawn down? Do you have a profile of the pressures to which you will respond in each of those two years?

Mr McCabe: There are several pressures to consider, including different prisons estate pressures and perhaps pressures on the schools estate. We can give the committee more detail about that, although I think we have already provided some.

The Convener: We have a list of the headings, but no detail about how they break down between the two financial years. It would be useful to have an indication of the details.

Mr McCabe: Okay—no bother.

Mr John Swinney (North Tayside) (SNP): The committee would like to see a comprehensive list of what the spending pressures are likely to be. The information that has been available to date does not tell us much more than that £800 million will be allocated over two years, broadly half and half in each year on things that we are already spending money on. What clarification can you give us of the nature of the spending pressures?

Mr McCabe: I have already given such an indication—we propose to spend about £180 million on capital projects such as IT projects and the broadband pathfinder projects. I also mentioned the prisons estate and the schools estate. We can provide more detail about such projects, but that is a fairly comprehensive indication.

Mr Swinney: You said in your opening comments that the £800 million will be drawn down to meet budgetary pressures and not to finance individual projects. Do I take it from that that there are no new implicit spending commitments that will be paid for out of the £800 million and that that money will, in effect, pay for existing Government commitments?

Mr McCabe: The money will pay for existing commitments and it might pay for commitments that emerge over time but which are unsettled at the moment.

Mr Swinney: What do you mean by “unsettled”?

Mr McCabe: I mean matters that have not yet been decided. I will give you an example. We were faced a while back with a judgment on prisons that

led to considerable additional expenditure. We did not know in advance that that judgment would have to be made and we did not know the outcome, but we had to put a figure on the consequences of that judgment. Sometimes public expenditure is events-driven; it cannot always be planned in advance.

Mr Swinney: I accept that that is a spending pressure—an unforeseen circumstance arises and the Government has to pay for a commitment. However, I am trying to get at whether the £800 million will be spent entirely on spending pressures that will arise from unforeseen circumstances or whether some of it will be spent on new policy announcements that the Government might make.

Mr McCabe: I will give you another example. The Finance Committee decided that local government should have more money. The committee's professional adviser supplied you with a report that suggested that we should give local government an extra £85 million. Mr Swinney's party pressured the Executive to give local government an extra £93 million. We are a listening Executive—we try our best to respond to the pleas that are made to us and we will try our best to respond to that and other pleas, as appropriate.

Mr Swinney: I think that you will find that the £85 million was for spending pressures in the current financial year—2006-07—for which no additional resources have been made available.

I appreciate your clarification, and I understand that you are always listening, but what I am trying to get at—you have not answered the question so far—is whether the Government will announce new spending commitments or whether all of the £800 million will be used to meet additional pressures in the Government's existing policy commitments.

10:15

Mr McCabe: You will find that the figure of £85 million or £93 million—or even, in search of desperate headlines, £100 million—covered two years. Certainly, my recollection is that the parliamentary motion covered two financial years.

Mr Swinney: How about an answer to the question that I asked originally about whether the £800 million will be spent on meeting spending pressures or on new policy commitments that the Government makes? That is the third time I have asked the question.

Mr McCabe: I have answered it twice, Mr Swinney; it just so happens that you do not like the answer.

Mr Swinney: I do not think that any answer is coming out.

Mr McCabe: It is. I have given you examples of pressures that could arise and of how your political party and the Finance Committee have exerted pressure on the Executive to produce new expenditure. Those are the things that happen in political life.

Mr Swinney: I am trying to find out whether the Government will announce new policy commitments that will be funded from the £800 million but, after asking three times, I have not had an answer.

Mr McCabe: If the Government decides to announce new policy initiatives, that will be done after an objective consideration of our financial situation at that time.

Derek Brownlee (South of Scotland) (Con): I hear what you are saying, minister, but how did you reach the decision to draw down £800 million rather than £400 million or £1.4 billion? Why £800 million?

Mr McCabe: We assessed the pressures that we face, some of which I have mentioned, and what was a reasonable amount for the two-year period. I have to say that the amount is not simply for a one-year period, although some members are obsessing about the period between now and next May. As I said earlier, we were also mindful that public expenditure will not, as is generally acknowledged, continue to increase at the fairly substantial rate at which it has increased in the past few years, so we considered it beneficial to hold the remainder to help us to cope with the outcomes of the next spending review.

Derek Brownlee: I presume that £400 million is being drawn down each year to smooth that process. In essence, has the Government overcommitted to public spending if it has to draw down reserves to fund its programme? Can you demonstrate that the £800 million will be used entirely on one-off capital projects rather than on recurring expenditure?

Mr McCabe: The money has been there for some time, but it has become a focus of excitement for some people in the recent past, although if they had paid attention they could have found that out by reading the books that were published in past years. There is no reason for the sudden excitement—well, there might be reasons, but this is probably the wrong place to go into them. We have always known that the money was there and there was always a degree of planning. We made commitments in advance and we have always known that we would need to access some of the money to meet some of those commitments.

Mark Ballard (Lothians) (Green): Why are the figures that you seemed reasonably certain about, such as the £180 million for capital expenditure on the schools and prisons estates and so on, not in the budget? If you can allocate £180 million to the capital programme, why was that figure not in the budget that was given to us a week or two ago?

Mr McCabe: We can draw down the money only in-year. That is how the EYF system works—we draw down the money in-year.

Mark Ballard: In effect, though, when we talk about the £1.4 billion, we are talking about the EYF money and the central unallocated provision.

Mr McCabe: We are indeed.

Mark Ballard: I seek an explanation of why, given that you knew that the money will be spent in the next budget year or the year after that, you did not include in the recent budget document a acknowledgement of where the money comes from or that the money is part of Scottish Executive spend.

Mr McCabe: As the year progresses, we will have budget revisions in the spring and autumn. It is anticipated that that expenditure will take place. If so, as we draw down the money, it will appear in the budget revisions.

Mark Ballard: That means that you can already say that the budget document that we have is out of date because you are already telling us some of the revisions.

Mr McCabe: I do not think that the budget document is out of date, but the budget process is necessarily fluid, which is why Parliament would want budget revisions every bit as much as the Executive does. We do not want the Executive to produce a budget that is a full stop at a single point in the year. Good management of public resources requires that we produce revisions for the budget; it seems to me to be prudent that that is exactly what we do twice per year.

Mark Ballard: We have just received the budget document, but we already know that you have planned changes to the spending. That seems to me to be a problem in the process.

Mr McCabe: The plans are estimates and we try our best to make them realistic. If the things that I mentioned come to pass, we will come back with a budget revision and make it clear at that time.

Mark Ballard: I will go through the statements that you made about what will happen to the balance that is left after the £800 million has been drawn down. It will be approximately £745 million, I think.

Mr McCabe: We are actually drawing down £780 million, so the balance is what will be left after that.

Mark Ballard: You said that that balance will be used for known pressures and to deal with the expected tighter 2007 spending review settlement. Will you give us a projection of what kind of central unallocated provision plus EYF balances you envisage the Treasury holding in the future? The balance that it holds at the moment is a quite substantial £1.4 billion. Are you saying that that amount will be dramatically run down over the next two years?

Mr McCabe: If you read the newspapers, you will see that some people say that the money should be dramatically run down, but perhaps they say it for other reasons. It is difficult to give a precise answer to that question, because I do not have a crystal ball and cannot predict the outcome of the 2007 spending review. It is anticipated that it will be tighter—once we know the outcome of that spending review, we will react accordingly.

Dr Elaine Murray (Dumfries) (Lab): I will ask about Scottish Water, because its finances have concerned the committee from time to time over the years. It is to be welcomed that the underspend in the past financial year is less than 4.5 per cent of the underspend two years previous to that. That is good news.

When Scottish Water was having difficulty in spending the money that was allocated to it, some of the money was reallocated to other departments, such as the Health Department, but there was a commitment that the money would still in future years be made available to Scottish Water. Is that still the case?

Mr McCabe: Yes.

Dr Murray: That underspend took place in the previous quality and standards period. The money would be spent under Q and S III, but would it be spent on Q and S II priorities or Q and S III priorities?

Mr McCabe: You are starting to lose me a wee bit. It would be spent however Scottish Water needed to spend it to fulfil its commitments.

Dr Murray: It became apparent in the consultation on Q and S III that the alleviation of planning constraints is a major issue throughout Scotland. We have all discussed that; it is a concern in most parts of Scotland. If the money is still available, could some additional funding be made available to address planning constraints?

Mr McCabe: The money will be spent to address the obligations that Scottish Water has said it can fulfil over the period of the corporate plan to which it is signed up. There was some debate about that corporate plan and how much money should be attached to it, but it is signed off now and, if and when the money is drawn down, it

will be spent to address the priorities within the corporate plan.

Dr Murray: Are those the current priorities?

Mr McCabe: Yes.

Jim Mather (Highlands and Islands) (SNP): Can you give us a figure for the total sum that is due to Scottish Water?

Mr McCabe: From memory, I think that it is about £220 million. Do not hold me to that—it might be £5 million or £10 million out.

Jim Mather: Scottish Water carried forward £205 million in the latest financial year, so it sounds as though that figure might be a bit limited. In any case, if and when the money is drawn down—whether it is £200 million or £300 million—would it be drawn down from the residual money that is still held at the Treasury?

Mr McCabe: Yes—of course it would. We do not anticipate that it will be drawn down all at once, but that is where it sits.

Jim Mather: So there will be £773 million still at the Treasury and, if Scottish Water called its £200 million or £300 million off, that would further reduce that reserve.

Mr McCabe: Yes.

Jim Mather: How does that square with your aspirations for the reserve? In the long term, what would be the minimum sum that you would consider necessary in that reserve to offer flexibility and to minimise risk?

Mr McCabe: It is impossible to predict the 2007 spending review; judgments will be made about that at the time. In an ideal situation, we would be confident about the predictions, but how confident can we ever be that we will not hit ebbs and flows? Our aim would be to spend as much of that money as possible in the interests of the Scottish economy. That is what we would do in an ideal situation but, as everyone knows, it is often not possible to do that. We need to keep things in perspective and to look at the reserve as a percentage of our overall spending capacity. At the moment, the reserve amounts to 6 per cent of our DEL. As I have said, that compares extremely favourably with the position in some large Whitehall departments. That helps us to keep the issue in perspective.

Jim Mather: Are you taking steps to manage down Scottish Water's carry-forward?

Mr McCabe: What do you mean by that?

Jim Mather: You take great pride in managing down the EYF. Are you encouraging Scottish Water to emulate your performance in its financial management?

Mr McCabe: We would all encourage good financial management, regardless of the organisation involved. We would encourage Scottish Water to spend as much as it can on putting in infrastructure that alleviates development bottlenecks. That is all good and well.

The Convener: I want to move on to specific issues that arise in relation to the tables. The committee has been concerned about the Environment and Rural Affairs Department's budget, in which variances keep cropping up. Those variances go both ways—there has been slippage on capital programmes and underspend on some of the European Union-funded support schemes. Does there need to be a thorough examination of that department's budget, given that problems keep arising with the EYF figures not being right? It seems that there might be fundamental problems with that department's budget allocations under EYF. I notice that the performance of SEERAD was poor on efficiency savings. Is there an issue with its budget allocations and management?

Mr McCabe: I would be happy to take that up in conversation with the relevant portfolio minister, if the committee thought that that would be useful, but it might be more appropriate for the committee to put detailed questions to the Minister for Environment and Rural Development.

The Convener: The other issue that sticks out is in respect of funding for the Enterprise, Transport and Lifelong Learning Department: a particular problem arose in relation to Scottish Enterprise's spending. It appears that it has reserves that it cannot access because of the way in which the controlled spending operates. What steps have been taken to resolve what is obviously a structural problem with the budget allocation?

Mr McCabe: A report was produced, which the board and management of Scottish Enterprise accepted. The fact that they did so means that they will put in place mechanisms that prevent that situation from arising in the future.

The Convener: What are the implications of that for the organisation's spending allocations for next year and the year after? As I understand it, the structural problem has not been dealt with.

Mr McCabe: Scottish Enterprise agrees a budget with the Scottish Executive. It is for Scottish Enterprise to spend within that budget. The organisation is clear about the need to spend within that budget in future years and is aware of the level of unease that existed in the Executive and beyond about the situation that developed last year.

10:30

The Convener: The problem was that the resource accounting and budgeting allocation that it needed to meet its financial commitments had been underestimated. The issue has to be resolved either by changing the RAB allocation or by reprofiling Scottish Enterprise's expenditure over the next two or three years. I suppose that I am seeking clarification of how the Executive will deal with that underlying structural problem in the budget.

Mr McCabe: I think that the issue will be addressed more effectively by reprioritisation. However, if you want to discuss the matter in detail, you should probably do so with the Minister for Enterprise and Lifelong Learning.

Dr Murray: I have a number of questions that should perhaps be raised with the portfolio ministers. First, I am a little surprised to find that, given the problems that it has faced this year, Scottish Enterprise has drawn down £15 million less than its allocated grant in aid.

Mr McCabe: That gives Scottish Enterprise the headroom to use its own money so that it does not have to draw down such grant in aid.

Dr Murray: I do not expect you to know the answer to the question, but a lower than expected level of student loans was issued. Does that indicate that student numbers are falling or does it have something to do with the cohort or numbers of people in a particular age group?

Mr McCabe: I do not think that it has anything to do with student numbers. However, we can supply the committee with a detailed reply from the Enterprise, Transport and Lifelong Learning Department.

Dr Murray: Although, overall, there was zero capital underspend, there was a £33 million underspend in the justice budget, due mainly to slippage in the Scottish prisons estate programme. I am a little concerned about that, given the pressure on future budgets from problems such as the ending of slopping out, which I presume will be addressed by that programme.

Mr McCabe: Indeed, which is why we have identified it as a pressure for the future, because we know that it has to be addressed.

Mr Swinney: You have told the committee that the reduction in business rates will be paid for out of the £800 million that you will draw down from the Treasury. However, media reports at the weekend suggested that ministers were revising proposals to reduce business rates for companies specialising in research and development. Do you have any comments on that?

Mr McCabe: As the old adage has it, you should not believe everything that you read in the papers.

Mr Swinney: That is why I am asking you for an authoritative reply.

Mr McCabe: You are indeed, and I will give it to you.

I do not particularly stand by press reports on this matter. Although the Executive is committed to assisting companies in research and development as much as it possibly can, we can very easily run into difficulties with state aid rules. However, we are still committed to improving the overall environment. If we cannot achieve our objectives because of potential state aid difficulties, we will improve the volume of the current schemes. We are not rolling back from our commitment; instead, we will find some way of assisting smaller companies involved in research and development. As I have said, if the schemes that we hope to put in place fall foul of state aid rules, we will find a way of bolstering existing schemes to ensure that more money is channelled in the direction of R and D.

Mr Swinney: So you confirm that there is a problem with state aid rules with regard to the Government's plans to assist small businesses that are involved in R and D.

Mr McCabe: It has been said before that the road to hell is paved with good intentions. Although we are determined to do what we can to assist companies in that sphere, we do not want to create other problems for them. If it becomes impossible to assist those companies in a certain way because it might contravene state aid rules, we will find a different way of assisting them, perhaps by bolstering existing schemes.

Mr Swinney: Is the fact that you have run into such difficulties in any way compatible with the letter dated 18 November 2005 that you sent to the convener, in which you stated:

"I would like to reassure the Committee that the decision to proceed with this commitment"

on the small business package

"was made on the basis that it had been carefully costed"?

How can the committee have confidence that the proposal was carefully costed when about a year later we find out that there is a structural problem with the initiative?

Mr McCabe: There is no connection between the costing of the project and some of the legal obligations that we have as part of the European Union. There is a difference between the two. The proposal was costed in as much as we knew that the money for the scheme was available. I have made it clear that if we cannot expend the money in one way we will expend it in another. The

outcome will still be improved assistance to small businesses that are involved in research and development.

Mr Swinney: You are asking us to accept that there is no relationship between a project's being carefully costed and whether it can be implemented. That is a rather bizarre analysis of the proposition.

Mr McCabe: You may think it bizarre if you are in search of a headline, but we do not think it bizarre as we are in search of good governance.

Mr Swinney: Anyone in search of good governance who had an idea that they wanted to implement would want Parliament to have confidence in their costings. Do you not think that finding out a year later that the proposal cannot be implemented raises issues of good governance?

Mr McCabe: Not at all. Issues of good governance would be raised if we implemented a scheme that eventually caused small businesses considerable difficulties because it was found to contravene state aid rules. That is where difficulties would arise.

Mr Swinney: So the fact that the Government has introduced an initiative, has told Parliament that it has been carefully costed and has found out a year later that it cannot implement it raises no issues of good governance.

Mr McCabe: No. We do many things with the best of intentions, but the intention remains. I have made it clear that if we cannot proceed as was initially proposed, we will put in additional money to bolster the existing schemes. However, we will not put small businesses at a disadvantage just for the sake of implementing a scheme that will prevent Mr Swinney and others from accusing us of being less than prudent in how we proceed.

Derek Brownlee: You say that if you cannot follow through with the proposals you will amend the existing schemes. Do you mean that you will do something on business rates or that you will seek with the Treasury to amend the research and development tax credits scheme that the Treasury operates?

Mr McCabe: We support business through the Enterprise, Transport and Lifelong Learning Department. We will consider ways of making more resources available for that.

Derek Brownlee: So there is no predetermined way forward if the method that is currently proposed does not work.

Mr McCabe: No.

Jim Mather: When you announced the proposal to reduce business rates for businesses that spend on research and development, what input did you have from the European Commission, HM

Revenue and Customs and legal opinion on the validity of the measure?

Mr McCabe: We had no such inputs at the time. As we develop policy, we need to square matters with certain bodies, including those that you mentioned. We have continued our discussions and have concluded that we may encounter certain difficulties.

Jim Mather: Do you not think that it would have been prudent to carry out that research beforehand?

Mr McCabe: There must be a starting point for everything. We declared an intention to assist businesses and we have maintained it. If you ever find yourself in government—which I am sure will never be foisted on the Scottish people—you will discover that things are not as black and white as you sometimes like to portray.

Jim Mather: Have you considered how your declaration of intent and failure to deliver might appear to someone outwith Scotland who is considering investing in research and development in Scotland if they compare that with the declarations of intent that have been made in Ireland, where ministers have said that they will progressively reduce taxes, have done so and have made those reductions stick? Are you worried about the perception that may be created internationally?

Mr McCabe: No. We are very confident about the improving international perception of Scotland. Scotland's reputation around the world is improving, and we are confident that it will continue to improve if we continue to pursue the Executive's policies. We are equally confident that our reputation will dramatically fall if we spend the next four years contemplating our navels or debating constitutional arrangements.

Jim Mather: I note how you conflated Scotland and the Executive. However, in this case, the Executive has come out with egg on its face.

Mr McCabe: That may be your opinion, but it seems to be your role in life to talk down Scotland.

Jim Mather: No, just the Executive.

The Convener: I want to ask about how the steps that you have identified will be taken, minister. Where will ministerial responsibility rest? I presume that the Enterprise, Transport and Lifelong Learning Department will be responsible for developing some of the existing schemes.

Mr McCabe: It will indeed.

The Convener: Okay. I wanted to be clear about that.

Mark Ballard: I will follow up Jim Mather's point. There does indeed seem to be a black and white

situation. The scheme does not merely have to be modified to comply with European Union state aid rules; it has had to be abandoned. There is a clear distinction between a scheme that must be modified in the light of evidence and a scheme that must be abandoned. In the future, will you ensure that you check that schemes comply with European Union regulations before you bring them to the Finance Committee or announce them to the Parliament?

Mr McCabe: It would be nice if life were as black and white as that. Whatever else state aid is, it is not uncomplicated. It can take considerable examination to find out whether particular issues pertain to it. It is perfectly possible to start off with a firm impression that state aid rules could be contravened and then to find after examination that they would not be. The opposite is also true. Such matters are not black and white. Considerable examination is required and other things can impact on the issue as time passes. That is the reality.

Mark Ballard: Will there be a more robust system in the future to ensure that we do not end up in such a situation again? John Swinney mentioned that we have found out that the scheme could not work about a year after the minister made an announcement about it to the Parliament. Will you put in place procedures to prevent such things happening again?

Mr McCabe: I do not think that it will ever be possible to do that. Given the complexities of the law and of aspects of state aid and the European Union, it will never be absolutely possible to square every single thing away. For example, one might feel that one has completely resolved a matter, but a court judgment might appear from the European Union that completely changes the situation. How can such situations be predicted?

Mark Ballard: With respect, you said to John Swinney that you presented a proposal that had been costed but that you had not made certain at that point that it complied with European Union law. That seems to be a strange process. The costing process was disaggregated from discussions about whether the scheme was workable. I am concerned that, in the future, schemes should be both workable and costed before they are considered by the Parliament or the committee.

Mr McCabe: In saying that the scheme had been costed, we knew that we could afford it. We knew the money that we were prepared to commit to it and that that money was available. However, as I have said many times, it is not always possible to know whether all the requirements of state aid rules or European law can be absolutely complied with. The situation is fluid. One might think that one has taken the best advice and is on

safe ground, but a judgment can completely overturn things. That has happened in other areas. For example, judgments have completely changed the nature of junior doctors' working hours and our understanding of the European working time directive. The process is on-going; we will never stop it.

Mark Ballard: Was there a judgment in this case that changed things in the year between—

Mr McCabe: No. I am giving you examples that show that it is impossible to square things away completely.

The Convener: To be fair, the minister has said that his responsibility is to ensure that there is financial headroom. I presume that the delivery of the scheme is the responsibility of the portfolio minister.

Mr Swinney: Is there not collective responsibility?

Mr McCabe: It is naive to assert that every single angle can be covered before the Government expresses an intention. Only inexperience and naivety allow people to make that suggestion, which is also prompted by the desperate search for a headline.

10:45

Derek Brownlee: You said that you had costed the scheme and that you were convinced that you had the money to deliver it. How much are we talking about and over what timescale?

Mr McCabe: The figures were not announced, but I think that they were about £7 million in the first year and about £15 million thereafter.

Derek Brownlee: Was that £15 million per annum?

Mr McCabe *indicated agreement.*

Mr Swinney: On 7 November 2005, you told us that you expected to publish in spring this year the report from Bill Howat's review of the Scottish Executive's finances, but you have not yet published it. Do you still intend to publish some document from the Howat review?

Mr McCabe: Yes. It is absolutely our intention to publish the entire document.

Mr Swinney: When will that be done?

Mr McCabe: That will be done at the same time as we announce our decisions on the outcomes of the 2007 spending review.

Mr Swinney: What has happened to change your timescale?

Mr McCabe: Ministers receive many pieces of advice as they consider the best outcome of the

spending review for Scotland's economy. The report is one piece of advice. It would be more appropriate to reveal its contents publicly when we publish the other advice that was used to guide our decisions on the 2007 spending review.

Mr Swinney: Given that, why did you tell the committee in November 2005 that you would publish the report in a matter of months, before the spending review? You now tell us that we will have to wait at least another year, and probably more than that, to see the document.

Mr McCabe: I know that you are prone to quoting selectively. I also said that the timescale was "not set in stone."

Mr Swinney: You told the committee:

"I have no doubt that the committee will want to examine the outcome of the review. Following the review, I intend to publish a report in spring next year"—

that means 2006—

"although that timescale is not set in stone."—[*Official Report, Finance Committee*, 7 November 2005; c 3012.]

We were led to believe that you would publish in spring 2006 a report that would inform the committee of some of the Howat review's deliberations about management of the Scottish Executive's finances. In none of the material that I have seen about the Howat review was there any question of its being inextricably linked to the spending review. The Howat review is an analysis of how the Executive spent its money.

Mr McCabe: The Howat review is and always was explicitly linked to the spending review. It is explicitly linked to a range of information that ministers will use to make decisions on the spending review. That is exactly why we undertook the exercise. I am surprised to hear your statement.

Mr Swinney: I am still trying to find out why you told us in November that you would publish the report before the spending review when you are telling us now in September—about a year later—that we will have to wait another year for the report.

Mr McCabe: I said in November that the timetable was "not set in stone." On reflection, and after considering a range of other advice that ministers will use to make decisions, it was decided that it would be best to publish the Howat report at the same time as we publish our decisions on the spending review. Be in no doubt that the report will be put into the public domain, but that will be done at the most appropriate time, when it is most informative about the eventual decisions that we make for the spending review.

Mr Swinney: Are you delaying publication of the Howat review until after the election and the spending review because of its contents?

Mr McCabe: No. You are involved in another desperate search for a headline. When we eventually publish—

Mr Swinney: I am just trying to understand why you have changed your mind.

Mr McCabe: I have explained that, but I will try again. A range of information will inform the decisions that ministers make for the 2007 spending review. The Howat report is part of that information. When we have made those decisions, we will do our best to explain to the Scottish public the information that led us to those decisions. The report is part of that information.

Mr Swinney: The Finance Committee has no role in that process.

Mr McCabe: The Finance Committee will have a role.

Mr Swinney: After the event. The committee is supposed to be involved in a transparent public spending process, but we get involved only after the event, not during the preparations for it.

Mr McCabe: The spending review will cover a three-year period and the Finance Committee can scrutinise the spending proposals over that period. I think that that is fairly open and transparent, Mr Swinney. Do you not agree?

Mr Swinney: I do not—no.

Mr McCabe: You do not know, Mr Swinney?

Mr Swinney: No, I said that I do not agree with you, minister.

Mr McCabe: Sorry.

Mr Swinney: A commitment was given to the committee to publish the report in advance of the spending review. I have not heard a credible reason why it has been delayed until after the spending review and, more important, after the election. The contents of the Howat review would help to inform public deliberations about the preparation of the spending review. I cannot understand why you are keeping it secret.

Mr McCabe: With the greatest respect, if you have not heard a credible reason I fear that you have not been listening.

The Convener: I will take a slightly different tack. Not so much this Finance Committee but the Finance Committee that comes into being in May or June 2007 will have an input into the spending review process. You have decided not to publish the Howat review in total until September 2007, but I have no doubt that issues that are identified within it would assist the committee in at least

framing its own input into the spending review process over the summer of 2007. Is any information or are any themes emerging from the Howat review that would assist the committee and could be made available to it when it is drawing together its input to the spending review?

Mr McCabe: My instinct is to say no at the moment, but we will review the matter. I do not think that such a step would be helpful to the committee.

We must consider the timescales involved. The new Finance Committee will probably have its first meeting some time in June 2007. We do not know exactly when, but some time around early July 2007 the Chancellor of the Exchequer will announce the spending review. By that time, we will already be in recess, so there will not be much time for those who are in the new situation that will exist in Scotland post the 2007 elections to undertake much consideration of the spending review.

Derek Brownlee: I return to John Swinney's point. Last November, I explicitly said that I thought that February was a challenging timescale for the publication of the report. I suggested that the tone of your remarks was that there would not be a major deviation from that timescale, which at the time you did not challenge. You said that one of the factors that would influence you would be if the Howat group said that it needed more time. The biggest determinant for me would be if the group said, "Minister, ideally we would report in month X, but we need a bit more time." That would be reasonable. However, in May, when I asked you in the chamber when the group would publish its report, you stated:

"The group expects to submit its report before the summer recess. I will publish the report in due course thereafter."—[*Official Report*, 11 May 2006; c 25563.]

Why did you not say then that you would publish it in September 2007?

Mr McCabe: I thought at the time, and still think now, that the publication of the report does not necessarily draw the process to a close. I have asked Mr Howat and a few of his colleagues who were part of the group to do a further piece of work by engaging with heads of departments across the Scottish Executive and examining a number of issues with them before they conclude their work. They will do that work over the next few months. The publication of the report is one aspect of the process, but the process is yet to conclude.

Derek Brownlee: Given the terms of reference that you used when you commissioned the report, it has been concluded and submitted and it is in its final state.

Mr McCabe: Yes.

Derek Brownlee: So why not just publish it and let everyone draw their own conclusions? What can be gained by not doing so?

Mr McCabe: Mr Brownlee, that is exactly what I intend to do. I intend to publish it, and people can draw their own conclusions, but I shall publish it alongside the decisions that we make on the 2007 spending review.

Mark Ballard: In your letter to the committee about the budget review, you say:

"However, on reflection September publication of the report will enable us to make best use of the investment we have made in the review, by thoroughly working through the advice and implications of the different options without external pressure."

Will you explain how that fear of external pressure relates to your comments about open and transparent government and the necessary role of the Finance Committee in scrutinising the public finances? It seems to be an odd position, if you are so concerned about external pressure, that you will not release the report between July and November.

Mr McCabe: Equally, it is odd to say that there is a fear of external pressure, when I have said explicitly that we will publish the report after objective consideration of its contents. We shall demonstrate how it, along with other information, has influenced decisions that we make with regard to the 2007 spending review. There is no fear at all of external pressure. The report will be in the public domain; people will be able to express their thoughts on it at that time, and no doubt we will debate it.

Mark Ballard: Will you explain exactly why, in the process of objective consideration, external pressure will be a problem?

Mr McCabe: It is important that ministers can use the report, along with other information, to consider a variety of options, announce those options and then get involved in the process of defending the decisions that they have made. It is not necessarily useful at the moment to have a process that involves advice to ministers being exposed, but it will, in due course, be exposed when the decisions are made. It is important that ministers can consider all the information that is available to them, make what they believe to be the best decisions in the interests of Scotland and then take the time not only to defend the decisions but to explain the information that led them to make those decisions.

Mark Ballard: With respect, this is not about the process. You indicated previously to the committee that the report would be in the public domain in the spring, but now it will not be in the public domain until the autumn, because of external pressure. I still cannot understand why

the external pressure is such a problem, since the report is not information about the process; it is merely information that, if it is helpful to you as the minister, would surely be helpful to us as a committee.

Mr McCabe: Our view is that it would be most beneficial to decision making if the report and other pieces of information that are used by ministers are placed in the public domain at a later date, when the decisions are known. That is the correct sequence of events. You might disagree, but that is our view.

Jim Mather: I am keen to go back to your comment to Derek Brownlee about heads of department. You recently published the efficient government outturns for 2005-06. The document essentially just showed us financial numbers, so I took it upon myself to write to the heads of department to ask them what improved throughput they have been able to achieve as a result of the efficient government initiative. So far, 14 days later, I have had no response. Will you encourage those heads of department to make a proper and fulsome response to me?

Mr McCabe: I shall look at your letter and let you know my views on it once I have seen it. You are referring to a letter that I have not seen, so I will not give an opinion.

Jim Mather: I shall pass the letter to you.

Derek Brownlee: I go back to the issue of what constitutes advice to ministers in relation to the budget review. On 11 May, when I asked you whether you would publish, in addition to the Howat group's report, the backing papers and the work that the group had done behind the scenes, you said:

"We will publish what we think is relevant. Many papers might constitute advice to ministers and therefore will not be subject to normal publication rules."—[*Official Report*, 11 May 2006; c 25563.]

Any plain reading of that would suggest that you thought that the report itself did not constitute advice to ministers. Are you now saying that the report and back-up papers constitute advice to ministers and are therefore subject to different publication rules?

Mr McCabe: Yes.

The Convener: If there are no further questions, that concludes our evidence taking. We will take further evidence on efficiency from the minister when we have received fuller information—we agreed that that would be the most appropriate timescale. I thank the minister and his officials for giving evidence.

I suspend the meeting for a couple of minutes to allow our next panel of witnesses to take their seats.

11:01

Meeting suspended.

11:03

On resuming—

Aquaculture and Fisheries (Scotland) Bill: Financial Memorandum

The Convener: Item 2 is consideration of the financial memorandum to the Aquaculture and Fisheries (Scotland) Bill. We decided to adopt level 2 scrutiny, which involves taking written evidence from bodies on which costs fall and oral evidence from Executive officials. I welcome officials from the Scottish Executive Environment and Rural Affairs Department: David Ford is the bill team leader—he must have done something really good in a past life; Dave Wyman is head of the aquaculture health and welfare branch; and Dr Pauline Munro is group leader in the Fisheries Research Services fish health inspectorate. David Ford will make a short opening statement before we proceed to questions.

David Ford (Scottish Executive Environment and Rural Affairs Department): Thank you for giving us an opportunity to explain the financial aspects of the bill. I am the bill team leader and I might field some questions to Dave Wyman and Pauline Munro.

The bill is a product of the Executive's strategic framework for Scottish aquaculture, which was developed from work undertaken by the ministerial working group on aquaculture. The working group, which was set up by ministers, included stakeholders from aquaculture, freshwater fisheries and environmental non-governmental organisations. The strategy document, which was published in 2003, envisaged an industry code of practice that would be backed up by legislation to deal with non-compliance with the code. The bill is finely balanced to minimise additional cost burdens in the light of the Executive's commitment to support the aquaculture industry. The bill's provisions on freshwater fisheries were drawn up in collaboration with the freshwater fisheries forum, which is an open stakeholders forum that represents the majority of anglers.

Part 1 of the bill regulates for the control of parasites on fish farms and shellfish farms and for the prevention of escapes of fish from fish farms. There will be costs associated with inspection and enforcement, which will fall to the Scottish Executive through the fish health inspectorate. There should be no extra costs to fish farmers and shellfish farmers over and above those that would fall to them anyway in meeting the standards of good practice set out in their respective industries' codes of practice.

Part 2 provides a range of powers to tackle a virulent salmon parasite known by its Latin name—which, for the benefit of members who are not familiar with it, I will pronounce carefully—*Gyrodactylus salaris*. Experience in Norway and other countries has shown that that parasite, which lives in fresh and brackish waters but cannot survive in seawater, can kill between 90 and 95 per cent of affected salmon.

Part 3 amends existing freshwater fisheries legislation in a number of ways and makes one technical amendment to sea fisheries legislation. We do not anticipate any new costs associated with these measures.

Part 4 of the bill contains a number of miscellaneous provisions that carry potential costs for the Scottish Executive—notably, the powers to make payments and the provisions on the movement of fish.

Finally, I will clarify an issue that I gather is not readily understood. People have asked why two sections deal with the Scottish ministers' powers to make payments for fish disease: section 19 in respect of *Gyrodactylus salaris* and section 29 in respect of fish destroyed. Section 29 provides a power for the Scottish ministers to make payments for fish destroyed using their existing powers to control diseases of fish. The bill will extend those powers to cover the disease gyrodactylosis, which is caused by the parasite *Gyrodactylus salaris*. However, unlike other diseases of fish, action on *Gyrodactylus salaris*—

The Convener: We can call it GS from now on.

David Ford: Fair enough.

Action on GS could directly affect stakeholders other than fish farmers who have their fish destroyed, such as owners of non-salmon fishing rights and landowners whose property is affected during the construction of barriers. For that reason, particular provision has been made in respect of GS in section 19. There are no plans to compensate for losses other than direct losses. The reason why fish destroyed are specifically excluded from section 19 is that they are already covered in section 29.

We are happy to answer questions as well as we can.

The Convener: Andrew Arbuckle has assumed responsibility for being our fish expert, so he can start.

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): I am glad that I can just say GS, although I spent all weekend learning the Latin name.

Among the more open-ended aspects of the bill are the provisions on compensation. You said that there are two proposals for compensation. I know

that the boundaries are different, but do you envisage the compensation schemes operating at the same levels?

David Ford: The amounts that would be paid would depend on the view that ministers took of the individual circumstances of each case. The reason for the different powers is not so much the level of compensation but to whom it would be paid. If there was an outbreak of a fish disease such as infectious salmon anaemia, ministers would use the provisions in section 29. If there was an outbreak involving GS, they would probably use the provisions in section 29 and section 19. They would use section 29 to compensate or make payments to fish farmers and section 19 to make payments, if required, to other directly affected stakeholders, such as riparian owners.

Mr Arbuckle: You will have heard the Minister for Finance and Public Service Reform discuss the difficulties with state aid. Are the compensation schemes that you envisage acceptable to the European Union?

David Ford: We are not yet in a position to say that. It is likely that any payment scheme would come under the ambit of state aid and we would have to seek state aid clearance from the Commission. We have read the submission from the British Marine Finfish Association, which suggests that we present a generic scheme to the Commission to get preapproval. That is an interesting idea and we are interested in pursuing it. However, we cannot make any promises. It might be that a generic scheme would not be sufficient because it might be missing some of the required detail.

Mr Arbuckle: I know that fish farming is not a large industry in the European Union. However, are there any member states—or, indeed, states elsewhere in the world—that have such a compensation scheme?

Dave Wyman (Scottish Executive Environment and Rural Affairs Department): I believe that there are one or two in the EU. I cannot speak for elsewhere in the world.

Mr Arbuckle: The financial memorandum gives an example relating to infectious salmon anaemia, stating that the cost to the public of an outbreak on a farm could be £1 million. If there were outbreaks on several farms, the bill could be quite considerable.

David Ford: That is a fair observation. Again, it would fall to ministers at the time to make decisions relating to the scope and scale of an outbreak.

Dave Wyman: To go beyond the costs given in the financial memorandum, I will make a point

about the ISA outbreak in 1998. At that time, the salmon farming industry estimated that its losses were of the order of £30 million, which is quite a frightening figure. However, farming practices then were different to current practices: it was not uncommon for fish to be moved from area to area, which meant that fish that were infected with ISA were moved before the disease became apparent, so a number of areas were infected.

Through the industry's code of good practice, we now have a presumption against movements between areas. That means that, were ISA to strike again, we would hope that it would be contained within the area of the outbreak.

Mr Arbuckle: Although you have minimised risk in that situation, you still have the problem of GS looming over you. Some of the actions that are proposed in the bill—blocking up rivers and so on—have major cost implications. We will not know the exact details until we have the independent report on how it is intended to deal with GS. When do you expect that report to come out?

Dave Wyman: The taskforce report is virtually complete. It should be published in the next month or so. It has yet to be put to the minister. An economic impact assessment is also under way. It goes through various scenarios that we would be faced with were GS to arrive. At the moment, we have some data that clearly indicate that the benefits of tackling an outbreak would far outweigh the costs of tackling an outbreak. However, we do not yet have the final report.

Dr Murray: Mr Ford, you said that, under the bill, people would be compensated for loss of stock and that they would also be compensated for a loss of business because of an outbreak of GS.

David Ford: I do not think that I was saying that.

Dr Murray: You were talking about losses that would be experienced by riparian owners and other people of that sort.

David Ford: That would be a direct loss. We envisaged a situation involving chemicals being added to a river in a way that killed all the fish in that river. If a riparian owner had a business involving fish that were not salmon—trout, for example—which would not be killed by GS, but which would be killed by the treatment, that would be a direct rather than a consequential loss, which, under the European convention on human rights, would be likely to require the option of the payment of compensation.

11:15

Dr Murray: That is quite an important clarification. I was thinking of what happened

following the foot-and-mouth outbreak, when compensation was paid only for loss of stock. No compensation was paid for loss of business, either to farming communities or to those that relied on tourism.

David Ford: That is absolutely right. We would seek to match the terrestrial approach.

Dr Murray: There could be an issue of precedent.

David Ford: It seems that rights in relation to fish that are not salmon and which would otherwise survive are a special case.

Mr Arbuckle: I turn to the inspection provisions in the bill. Do you believe that sufficient resources have been allocated to the risk-based approach to inspecting for sea lice? Only one inspector will be responsible for visiting 300 farms from the top of the Shetland Isles right down to the south-west of Scotland. Have sufficient resources been allocated to that?

Dr Pauline Munro (Scottish Executive Environment and Rural Affairs Department): I believe so, because the scenario to which you refer is the one in which compliance with the code of good practice is high. As David Ford has said, in such circumstances we would adopt a light-touch approach. We would inspect only a percentage of fish farms—as well as using credible intelligence to decide which farms should be inspected, we would select a random sample of farms for inspection.

Mr Arbuckle: In a similar vein, you have allocated £11,000 for travel, subsistence and overtime. Given that we are talking about some of the more remote and inaccessible parts of the country, will that sum be sufficient?

Dr Munro: I believe that it will be. The allocation is based on the present travel and subsistence figures for inspectors who travel to make fish health inspections.

David Ford: Although the figures are expressed as one inspector's time, it is not the case that only one inspector will be dedicated to inspections for sea lice. About 10 per cent of the time of our 10 or 11 inspectors will be spent on inspections for sea lice, so they will not be rushing from Dumfries up to Shetland in one trip.

Mr Arbuckle: I take it that a similar principle applies to the control of farmed fish and measures to prevent them from escaping into the wild. An allocation has been made for only one inspector—albeit that that inspector will be extremely well paid, given that the sum that is allocated is £139,000. Will you explain why the figure is so high? Is it the case that that money will be shared among several inspectors, as with inspections for sea lice?

Dr Munro: We anticipate that we will require a qualified engineer for that post. That is why the salary is higher.

Mr Arbuckle: Is the figure quoted just the salary or does it include additional costs?

Dr Munro: It includes all the additional costs, including Fisheries Research Services overheads.

Mr Arbuckle: My next question goes back to compensation. One of the consultees expressed the concern that because many small-scale operators do not have sufficient financial resources, by the time any compensation was paid out it would be too late. That is a valid point, especially if there is an issue about having to go to Europe to ensure that the compensation scheme is valid. How do you respond to that concern?

Dave Wyman: The point that was made is valid. We will examine ways to get round that. The answer is probably not what you would like to hear: the scheme will be worked up and developed through secondary legislation, so we have some time to devote to that.

David Ford: It should be borne in mind that without the power in the bill, the opportunity for compensation payments to be made is zero, which is presumably a worse scenario for a small fish farmer than one involving a slow or delayed scheme.

Mr Arbuckle: Another of the consultees expressed concern that the bill is a salmon bill rather than an aquaculture bill. The organisation that represents shellfish growers wondered why the bill does not cover some of the parasitic diseases that affect shellfish. Would coverage of such diseases have major financial implications?

Dr Munro: In its submission, the Association of Scottish Shellfish Growers queried movement restrictions on fish and mentioned the current outbreak of bonamia in Scotland. However, I must point out that existing legislation on fish and shellfish health contains powers to impose movement restrictions and that, because of the bonamia outbreak, there are such restrictions on shellfish.

Mr Arbuckle: Yes, but the association highlighted a disease for which no compensation was allowed.

Dr Munro: I am not aware of—

David Ford: At the moment, the bill does not allow for payments to shellfish farms. That is an oversight and we are looking to lodge an Executive amendment at stage 2 to give such farms equal treatment.

The Convener: Is that in relation to GS?

David Ford: No. It will cover shellfish farmers for an outbreak of any parasite that might become relevant.

Mark Ballard: On the mandatory information provision, paragraph 116 of the financial memorandum to the bill says that

“the Scottish Executive collects very little information on the aquaculture industry”.

However, although you say that the bill acknowledges the need for a power to insist on more information, paragraph 122 of memorandum says:

“The Scottish Executive believes that any additional costs to other bodies, individuals and businesses are unlikely to be beyond the costs that are currently incurred by the aquaculture industry under existing arrangements”.

That seems a bit inconsistent. Surely getting meaningful additional data about the aquaculture industry will mean that the industry itself will have to carry out more work. You seem to discount the possibility that that will cost it anything.

David Ford: The intention is very much to make the process of collecting the additional information as simple and as straightforward as possible. The current costs cover what companies produce under the Registration of Fish Farming and Shellfish Farming Business Order 1985 and what they voluntarily provide under the production survey, which is what we want to make mandatory.

The power is designed to put on a statutory footing the ability to develop high-level indicators, which was suggested by the ministerial working group on aquaculture. The group considered three indicators—one social, one environmental and one economic—for which, where possible, publicly available information could be used. Although that would indeed be possible with regard to social and environmental indicators, the information used for the economic indicator would not generally be available publicly. That said, we would seek to gather information that companies already give to other Government bodies such as HM Revenue and Customs in a way that does not require more time and effort to be spent. The idea is not to create burdens but to provide useful data that can improve evidence-based policy making.

The Convener: Given that these are safety-net provisions, what mechanisms are in place to ensure that salmon farmers—about whom we are mainly talking—engage in husbandry practices that as far as possible prevent or, perhaps, do not facilitate the presence of the parasites in question? Have you given any thought to a scenario in which someone who might be up against the wall financially might deliberately introduce a parasite to secure compensation and to solve financial problems that have arisen as a

result of unrelated issues? After all, one must consider almost a worst-case scenario. How do you ensure that by introducing such safety-net provisions you do not encourage behaviour that you do not wish to see?

David Ford: That is a very fair point. We should aim to strike a balance and prevent any safety-net provision from being so generous that it becomes a perverse incentive.

We must also remember that any proposed scheme for making payments would be made by statutory instrument, would have to undergo its own regulatory impact assessment and would be subject to parliamentary scrutiny—as you would expect, it would be an affirmative instrument. Therefore, if it was considered that such a scheme was so generous as to create perverse incentives, I would hope that many commentators would point that out.

The Convener: There does not seem to be any mechanism in the bill to disqualify people from payment on the basis of poor husbandry or deliberate actions on their part. The bill says that the Scottish ministers “may make payments”, but I suspect that you could introduce mechanisms that make it explicit that they would be in a position to disqualify people who, they felt, had contributed to their own problems.

David Ford: The bill is already quite flexible, in that it gives ministers the powers to specify all the criteria to which a company would have to adhere to qualify for compensation. For example, it could become a mandatory qualification to sign up to the code of practice, which could similarly be used to disqualify people who were creators of their own misfortune.

Dave Wyman: I was going to make the same point.

The Convener: Would it not assist the Finance Committee and, presumably, the Environment and Rural Development Committee if the introduction of a code of practice to deal with such matters could be made a condition of the introduction of a scheme? That would provide a protection mechanism to deal with the issues that we have been discussing.

David Ford: I do not know whether that is something for legislation or for better explanation in the accompanying documents, but we take the point.

The Convener: If, God forbid, every salmon farm suddenly got gyrodactylosis—I assume that it is a highly contagious disease—that would leave the Government liable for a very large bill. Is there a mechanism in the bill that considers the issues for the industry? It seems to me that the bill is constructed to help individual fish farms or river

courses in a surviving industry, which makes rational sense. However, in a much more serious situation, I am not sure whether we would have the same argument about the appropriateness or otherwise of a conservation scheme because the disease may not be eradicable. In that context, you might want to adopt a different approach to compensation. Has that dimension been thought through?

David Ford: Yes, it definitely has. The key point is that the bill contains no compulsion on payments that are related to GS. One of the most important points is that ministers would have to take account of all the consequences of action and inaction, because we must consider not only the businesses but the genetic heritage and what would happen if Atlantic salmon were wiped out. Ministers would have to weigh up their decision in the round and take into account the environmental, economic and socioeconomic views, which they must do under the water framework directive and other European directives.

The most important point is that, were there to be an outbreak of gyrodactylosis, an assessment would be made, the result of which might be that it was too late, the disease had spread too far and eradication was no longer an option. The bill allows for that possibility.

The Convener: Section 18 of the bill concerns the Scottish ministers' powers to take other measures

"for the purpose of eradicating or preventing or limiting the spread of the parasite".

Why is there not a similar phrase in section 19 to make it absolutely clear that the objective of making payments is to limit the spread of the parasite? That is the payment scheme's purpose; it is not simply open-ended.

Given the way in which the bill is constructed, we could end up with a large financial bill if we do not put the correct principle in place. We have to keep in mind such contingencies when we consider legislation. Although I accept that compensation payments are perfectly reasonable if they protect a viable industry, it would be a different argument if the public purse was used to make good people's losses.

11:30

David Ford: I am not sure what to say to that except that I am quite certain that ministers would not sign up to open-ended commitments. I can speak to the draftsmen and ask them whether it is an option to include the purpose of the scheme in the bill.

Mr Arbuckle: In the light of yesterday's wanton vandalism when fish stocks were released, is the

team inclined to change the proposed level of inspection, which would have financial consequences? I believe that you have an escapes inspectorate.

David Ford: Wanton vandalism is not a reason to change the level of inspection. The inspections are based on having satisfactory measures in place to contain fish and prevent escapes. Short of having 24-hour guards, I suspect that the farm in question had satisfactory measures in place. There will always be wicked people doing wicked things.

The Convener: That brings us to the end of our questions. I thank the witnesses for coming along and inform both them and members that we intend to consider our draft report on the bill on 3 October, which will be in time for our report to feed into the Environment and Rural Development Committee's deliberations on the bill.

Schools (Health Promotion and Nutrition) (Scotland) Bill

11:32

The Convener: Item 3 is to decide which level of scrutiny to apply to the Schools (Health Promotion and Nutrition) (Scotland) Bill. It is suggested in the clerk's paper that we adopt level 3 scrutiny, which would involve taking written evidence from the Convention of Scottish Local Authorities, the Scottish health promoting schools unit, Her Majesty's Inspectorate of Education, the Scottish Food and Drink Federation, the Local Authorities Caterers Association, and oral evidence from COSLA and the Executive. Is that agreed?

Members *indicated agreement.*

Items in Private

11:32

The Convener: The final item on our agenda is to decide whether to consider in private our draft report on the financial memorandum to the Transport and Works (Scotland) Bill at our next meeting and our draft report on the financial memorandum to the Aquaculture and Fisheries (Scotland) Bill at our meeting on 3 October. Is that agreed?

Members *indicated agreement.*

The Convener: I also propose that we consider in private at our next meeting our commissioned research on the economic impact of the Scottish budget. That would allow us time to consider the research and express our views before it is published. Is that agreed?

Members *indicated agreement.*

Meeting closed at 11:33.

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