

PUBLIC PETITIONS COMMITTEE

Tuesday 5 February 2002
(Morning)

Session 1

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PUBLIC PETITIONS COMMITTEE

2nd Meeting 2002, Session 1

CONVENER

*Mr John McAllion (Dundee East) (Lab)

DEPUTY CONVENER

Helen Eadie (Dunfermline East) (Lab)

COMMITTEE MEMBERS

*Dorothy-Grace Elder (Glasgow) (SNP)

*Dr Winnie Ewing (Highlands and Islands) (SNP)

*Phil Gallie (South of Scotland) (Con)

*Rhoda Grant (Highlands and Islands) (Lab)

*John Farquhar Munro (Ross, Skye and Inverness West) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Julia Clarke (Consumers Association)

Wendy Johnston

Irene McGugan (North-East Scotland) (SNP)

Fiona McLeod (West of Scotland) (SNP)

Paul Martin (Glasgow Springburn) (Lab)

Crawford Morgan (North Lanarkshire Council)

Robbie the Pict (Scottish Peoples Mission)

CLERK TO THE COMMITTEE

Steve Farrell

ASSISTANT CLERK

Ruth Cooper

LOCATION

Committee Room 2

Scottish Parliament

Public Petitions Committee

Tuesday 5 February 2002

(Morning)

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

The Convener (Mr John McAllion): I welcome everyone to the 2nd meeting in 2002 of the Public Petitions Committee. We have received apologies from Helen Eadie, the committee's deputy convener, who is in hospital. She is off long-term sick. I apologise for the failure of the committee to meet last week; I could not attend and Helen Eadie was off long-term ill. The Parliament's standing orders require the convener or the deputy convener to be present at all meetings of the committee. I apologise to petitioners and committee members, for whom the cancellation of last week's meeting was a great inconvenience.

Phil Gallie (South of Scotland) (Con): The Public Petitions Committee relates closely to the public. Given the inconvenience that you mentioned, it seems nonsense that another member cannot be nominated to deputise if the convener and the deputy convener are missing. Someone from the same party as the missing member should be able to deputise if that is the party's wish. I suggest that we approach the Procedures Committee to ask what can be done to change the existing rules on convenership.

The Convener: That is a fair point. The quorum for the committee is three members out of seven. If five members could attend but the convener and deputy convener could not, the committee would not be able to meet. That anomaly should be addressed. Are members agreed that we should write to the Procedures Committee about that?

Members indicated agreement.

Phil Gallie: Further to that point, convener, we recognise that Helen Eadie is likely to be off for a while. I am sure that we all send her our good wishes. Perhaps something urgent could be done about appointing a nominee to take over as deputy convener in the short term.

The Convener: We can certainly ask about that.

New Petitions

Tolls (Trunk Roads) (PE445)

The Convener: The principal petitioner for the first petition, which relates to charge tolls on the Skye road bridge, is Stella Anderson. Another of the petitioners, Robbie the Pict, will put the petition to the committee. The usual rules apply. You will have three minutes to make an opening statement, after which committee members will ask questions. At two and a half minutes, I will indicate that you have 30 seconds left.

Robbie the Pict (Scottish Peoples Mission): The bridge to Skye is publicly owned. Contracts allow any official inquiry. Charging a toll without authority is a criminal offence. A toll order, along with the special road scheme to which it relates, must be laid before Parliament and must be accompanied by an assignation statement by the Secretary of State for Scotland. Those statutory requirements have not been fulfilled.

The assignation statement must identify the empowered concessionaire and his shareholders. It summarises the deal that has been done by announcing the total public debt. It is required to be printed for sale and the public have a right to expect it to be true when tolling begins.

The relevant pages of type are undated, unsigned, unpublished and were untrue three years before tolling began. Although the pages cannot be lawful without a date hereof, the courts recognise no flaws and the Blair-sponsored high heid yin is trying to block any appeals.

If the statement is in order, the public are entitled to think that the debt total—£23.64 million—is also correct. Highland Council's director of roads announced a final total of £23.65 million. The 1997 National Audit Office report revealed that the public contributed £14.6 million to the total, leaving £9 million to pay.

However, the tolls are subject to a secret discounting formula. The handing over of £100 at the tollbooth represents a credit of only £37.64. The Bank of America keeps more than £62 per £100. This year the bank lifted about £2.3 million in bank charges. The NAO estimates the cost of servicing such a structure to be about £128 million.

The local and private toll order that was issued by James Innes of the national roads directorate evaded parliamentary scrutiny of the details of the multiple index-linking formula.

The Scottish public must be able to look to the Scottish Parliament for protection from paying £100 million in excess profits, £22 million in VAT and £27 million in bribes to Caledonian MacBrayne to stop it running competition. That

represents a total of £177 million for a £7 million span.

The Skye private finance initiative was an experiment by the UK Treasury 10 years before 1999. The Secretary of State for Scotland has declared that all restitution would have to come from the Scottish budget. The Scottish Parliament must reject imperialistic disdain and recognise its duty to protect itself and the Scottish public from an excise of about £34 per head—£170 for every family of five—for people throughout Scotland, which is being levied by a United States Senate-named money launderer.

The Convener: Thank you very much. That was very clear. Irene McGugan will speak to the petition.

Irene McGugan (North-East Scotland) (SNP): I will not speak to the petition in a formal sense; I will simply support it. As most members know, I have been involved in the legal challenges to the competence of the toll order and its accompanying paperwork. I have felt frustrated by some of the courts' decisions, particularly on the validity of the documents, which I am convinced are fatally flawed. I am keen for the Scottish Parliament to take a careful look at the operation of the Skye bridge tolls. It would be appropriate if we could persuade one or more of our committees to examine in particular the financial arrangements of the Skye bridge PFI.

Dr Winnie Ewing (Highlands and Islands) (SNP): I am aware that the petition relates to the tolls. I wonder whether the petitioners share my view that the whole bridge project was not in order, because, when the public inquiry was held initially, a contract with Miller had already been signed.

Robbie the Pict: That is correct.

Dr Ewing: I raised that issue many years ago and I still have the correspondence about it. The fact that a contract was awarded before a public inquiry had been held on whether there should be a bridge is not disputed. In legal terms, the bridge is invalid. Although I am a lawyer and therefore should not murmur judges, I find it extraordinary that judges should recognise an assignation that is unsigned and undated. A House of Lords appeal might have to be considered.

Robbie the Pict: We do not need to leave the country to try to obtain basic justice at the level of Scots common law. We are dealing with a document that is not in probative form. A probative document has four fundamental aspects. The assignation statement meets two of the necessary requirements. It is a document—something that can be written on—and it has a topic. However, a probative document must be signed and it must be dated. There is no sign of Ian Lang's name in the

signature block of the relevant document—there is no signature at all. Although the document begins

“As at the date hereof the following bodies are held to”,

there is no date. That is legally impossible. The document does not evidence anything; it is not probative at common law. Are we rewriting the rules? For example, the final printed words on voter registration forms—on the back of the reply envelope—are: “Have you dated and signed this document?”

We are dealing with a new low in standards. Are we to stoop to that level? Is it not necessary to sign cheques or driving licences any more? That interpretation should not be imposed on the courts. The Executive claims that the assignation statement is still valid. In what sense is it valid?

The Convener: Before Rhoda Grant and Dorothy-Grace Elder ask questions, I want to clarify something. We are told that the court of appeal found against your case—it said that the document was legal. I understand that the Statutory Instruments Reference Committee—a very obscure committee in the Houses of Parliament at Westminster—was convened and that it, too, found against your case, saying that the document was legal. How do you respond to that?

Robbie the Pict: Let us clarify that. Two courts of appeal have supposedly considered the matter. The first ruling, which was by Lord Sutherland, makes no reference to the four appeal challenges. He has not exhausted the references. I have tried to take that matter to the nobile officium as a petition, simply to say, “You haven't answered my appeal points.”

The same has happened with regard to the attempt to interdict, which went to the civil court of appeal. Lord Johnston simply refused to address the question, on the basis that there was an ouster clause, which prohibits any consideration of the matter. That is all very well, but such clauses apply only to statutory instruments.

Although the issue is about making a political statement, there is still a statutory requirement. On the basis of an imagined ouster clause, which would apply only were the toll order and the special road scheme in proper order in the first place, Lord Johnston refuses to discuss the assignation statement. The courts have run a mile from the matter. It is sad but, in effect, they have been political prostitutes and are turning a blind eye.

The Statutory Instruments Reference Committee seemed to offer a hopeful avenue, but it has restricted its remit to classification, and that is it. It will not speak beyond that. I have sent it an appeal, pointing out that statute demands that the

documents should be laid before Parliament. It responded that that was beyond its remit. That is a wee bit precious. No wonder the committee meets only once every 25 years; it is not up to speed, to be honest.

The Convener: I was 15 years in the House of Commons and I had never heard of it until recently.

Robbie the Pict: Exactly. It hardly meets every week, whereas we have been pursuing this matter every day for six years. We would not come to the Public Petitions Committee and make fools of ourselves. We have read the statute inside out, chapter and verse, and have checked it with the top academics in this country. There is no doubt—statute is quite clear—that the toll order must follow the path of the special road scheme. In Scotland, the special road scheme must have an alternative route and the paperwork must go before Parliament.

Rhoda Grant (Highlands and Islands) (Lab): That relates to the question that I was going to ask: why has the matter not been dealt with through the courts if it is so clear that there is a case to answer? Was the type of clause that you mentioned called an “ousting clause”?

Robbie the Pict: An ouster clause was cited.

Rhoda Grant: What is that about?

Robbie the Pict: An ouster clause is a protective measure in statute. Its intention is to avoid revisiting a statutory instrument once that instrument has been made, which means that whether it has been properly made and laid before Parliament in the first place is a key question. The clause is designed to ensure that the instrument cannot be questioned and that its details cannot be challenged in any subsequent court proceedings.

Judgments by Lord Cameron of Lochbroom question how democratically responsible an ouster clause is. If there is any indication of bad faith, that matter might want to be reconsidered. I think that what we are discussing amounts to £100 million of bad faith. The relevant documents were not made in the first place and do not deserve the protection of an ouster clause. That clause is therefore an artificial and wrongful device for not discussing the subject matter.

Rhoda Grant: So you are saying that that clause protects all statutory instruments from a legal challenge.

Robbie the Pict: Yes—if they are made in the first place. As far as the courts are concerned, the real answer is probably the Lord Advocate. He sits in Cabinet and orchestrates prosecutions. This issue means a big red face for the Crown Office, which has adopted the Scottish Executive's

paperwork and is attempting to prosecute the public on that basis. It has embarked on 496 public prosecutions, 124 of which have resulted in convictions. It seems that it would rather land the protesting public with criminal convictions for life than admit that its paperwork is not in order. The paperwork is not competent; it is a joke.

Dorothy-Grace Elder (Glasgow) (SNP): Thank you very much for an excellent presentation and for the months of research that you must have put in.

Dr Ewing: Years.

Dorothy-Grace Elder: Indeed—years.

The matter of the unsigned piece of paper is absolutely extraordinary. How could anyone prove the validity of an unsigned will or a marriage certificate? People are required not only to sign but to have witnesses to all important documents. Has the former Scottish Office minister concerned ever been asked why he did not sign the document? Was it Lord James Douglas-Hamilton?

10:15

Robbie the Pict: Ian Lang was responsible for signing the assignation statement; Lord James Douglas-Hamilton should have signed the toll orders, but those documents were passed through as local and private non-prints, despite the fact that they were issued by the Secretary of State for Scotland. A local and private non-print is not required to be sent to Westminster for scrutiny.

If the document had gone to Westminster and the local MP had been alerted to the fact that a Skye matter was involved, the MP would quickly have been able to assess the details of the toll orders against the assignation statement details and would have found that one said £23.64 million whereas the other gave a formula that equated to more than £128 million. If, on one project, two of the four documents contradict each other to that extent, there is a problem. The people of Skye should not be given criminal convictions on the basis of this shambles.

Dorothy-Grace Elder: It is astonishing.

Robbie the Pict: It is a blind debt.

Dorothy-Grace Elder: I must repeat my question: has Lord James Douglas-Hamilton—now a member of this Parliament—ever been asked why on earth he or another minister did not sign documents of such importance?

Robbie the Pict: Interestingly, the National Audit Office approached neither Lord James nor Ian Lang. There are no ministerial signatures anywhere in the Skye bridge documentation. Nowhere does any ministerial signature, or even name, appear.

Dorothy-Grace Elder: That is quite astounding.

Robbie the Pict: A deputy roads engineer, a man called James Innes, signs everything. He has been dealing—apparently directly—with the Bank of America. The contract was signed with the Bank of America; it was not even signed with Miller, which was the company that—

Dorothy-Grace Elder: So who signed with the bank?

Robbie the Pict: With the bank?

Dorothy-Grace Elder: The Bank of America no doubt demanded a proper, legal signature.

Robbie the Pict: Interestingly, the civil contracts bear the seal of the secretary of state, as properly witnessed by David Nash, the chief solicitor for the Scottish Office. The deal with the Bank of America, where the money is involved, received proper treatment. However, in the case of the one statutory requirement, whereby the people need to be told what deal has been done on their behalf and who has been given state powers to appear on the A87 to demand money—powers that the police do not have—the relevant document is in the form of the papers that I have with me here. This is a John Bull mock-up. A better job could have been made with a John Bull outfit—

Dorothy-Grace Elder: With a John Bull printing kit, yes.

Robbie the Pict: Definitely.

Dorothy-Grace Elder: The Bank of America was shown enough respect for the seal of the Secretary of State for Scotland to be used, whereas documentation involving the people of Skye could go through without a proper signature.

Robbie the Pict: That is a tragic truth. US Senate-named money launderers were given full respect, whereas the people of Scotland were given no respect and are being criminally convicted for objecting.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): Good morning, Robbie. I suppose that I should declare an interest, as I have been campaigning over many years to get the Skye bridge tolls abolished. That is the position from which I approach this issue.

I accept your evidence on the assignation document. The issues around that have been well rehearsed and researched, despite the best efforts of the legal profession to discredit the argument. Was the contract for the bridge the first PFI contract of which we are aware?

Robbie the Pict: Yes.

John Farquhar Munro: Are you aware of any other similar contracts for which the

documentation has been properly signed?

Robbie the Pict: The only other project that has been set up under the same legislation—the New Roads and Street Works Act 1991—is the Birmingham northern relief road, commonly known as the Birmingham bypass. In contrast to what the Statutory Instruments Reference Committee said, the paperwork for that project was published. There is a procedural discrepancy within the United Kingdom, for a start. The Birmingham road is the only available comparator. The documents were published for the English; the Scots were not properly told, we might say.

John Farquhar Munro: Was the documentation for the Birmingham bypass accepted to be proper and correct, in considerable contrast to the documentation for the Skye bridge PFI?

Robbie the Pict: Yes. I would want to ask further questions about the Birmingham bypass, although that is not a matter of concern to us. Perhaps we could get the Skye bridge matter out of the way first and then have a wee look at the situation in Birmingham. If they fly me down there and pay my expenses, I will sort it out.

John Farquhar Munro: You are probably aware that there was a little local difficulty with the tolls on the Erskine bridge, which were suspended because the documentation was not properly signed at the time. Does that have any relevance to the Skye bridge case?

Robbie the Pict: The only relevance is that an illegal act was carried out to preserve the tolls on the Erskine bridge. What the Scottish Parliament did was wrong in law. The toll period had expired and an artificial extension was granted. History will revisit that Erskine bridge smother-up. The question was not that a civil servant failed to renew the toll period; the toll period had expired. An extension was permitted for up to 20 years. That was the end of it.

Tolling was mysteriously and unlawfully resurrected in the Erskine bridge case. The one significant point about that case is that it demonstrates that a toll order must be ratified by Parliament. That was done to repair the situation; a parliamentary initiative was taken. The one point that we can draw from the Erskine bridge case is that, as toll orders regulate the use of a road, they must, by statutory definition, be approved by Parliament. That is in section 1(2), I think, of the Road Traffic Regulations Act 1984.

Phil Gallie: If persistence were a measure of injustice, would you have won the case a long time ago?

Robbie the Pict: That is what must happen. The north British were called Picts because they negotiate the arrogance of imperialism. They know

patience and determination and that the question is more the power of law than the law of power.

Phil Gallie: That was slightly off the mark. I ask you to think back to 1997. What was the stance of each political party on the issue at the time?

Robbie the Pict: In 1997, the Tories were in denial. I put a file to the then Lord Advocate, Lord Hardie, with a tactful note that said, "Before you pronounce on this, it might be worth checking how vulnerable it is constitutionally." That was ignored completely. He continued to prosecute protesters, although he abandoned prosecutions against large numbers.

Phil Gallie: I am sorry: we are going slightly off the mark. What was the stance of the political parties immediately before the 1997 election? The Tories must stand up and say that we imposed the tolls, so we were arguing for them. What were the other political parties arguing for at the time? Can you remember?

Robbie the Pict: We are entering into the politics of politics, which is not really my speciality. However, I remember a Labour candidate in the neighbourhood saying that the tolls would be removed as soon as was practically possible. The Labour party denied that. The SNP and Liberal Democrats wanted the tolls removed. Those two parties agreed that the argument was particularly strong because of the state of the paperwork. They accepted that the paperwork was flawed. The Labour party never really acknowledged that. Its candidate reneged on the impression that he gave in Skye, I would say. He paid the price.

Phil Gallie: I asked that question because, since then, the issues have been addressed by the courts of law, which have not found in your favour. That is why I feel that the issue now becomes one of political will. Do you agree?

Robbie the Pict: Had there been a finding by the court, I could agree, but the court has not found. That is dereliction of its responsibility and duty. Can we have a finding, please? Will Lord Sutherland, Lord Cullen or Lord Coulsfield please say something about the documents? If they do not, they will be credited with saying that an unsigned, undated document is now perfectly acceptable in Scotland. They have simply not dealt with the points of appeal; they have not exhausted the references.

Phil Gallie: I might have the wrong impression on that. My understanding is that those three law lords determined that, even although the ministers had not signed the documents, they had signalled their intent and the document was legal on that basis.

Robbie the Pict: Indicating intent would not get someone off who had not signed their driving

licence. They could not say, "Oh, I intended to sign it." The law deals with facts. The documents are not signed; they are not in probative form.

You are repeating the spin that the Scottish Executive has tried to put on findings in courts of law. I do not think that Lord Sutherland would be comfortable with such words being put in his mouth or with having established a new standard of criminal proof in which a document can be unsigned, undated, unpublished and untrue.

The document is fundamentally untrue. It names people and companies, such as Miller Construction, that had nothing to do with the consortium. The three shareholders who are named in the document had shares of £1 each. A £3 front company won the multimillion-pound Skye bridge contract. It is a scandal. We are dealing with a major scandal.

I ask the committee to protect the Parliament and the Scottish people from having to pick up the financial fallout, because the compensation will be more than £100 million. This is not Scottish parliamentary business; it is a United Kingdom Treasury experiment. However, John Reid, when he was Secretary of State for Scotland, said that the compensation would have to come out of the Scottish budget. Helen Liddell says no different. We must reject that totally. The matter is a UK Treasury experiment and the Treasury must pay its dues for not putting it in proper order.

Phil Gallie: I accept that. I was not extending the Executive spin; I was asking you a question about it. I emphasise that point.

The Convener: I certainly do not think that benefits claimants would be allowed to indicate their intention to sign on. They would be required actually to sign on.

Dr Ewing: You mentioned the nobile officium of the Court of Session, which is meant to be a reserve power to correct injustices and is not often resorted to. Is there any hope in that?

Robbie the Pict: I have petitioned the court on the case using the device of nobile officium, which, as you say, is a last resort to correct a miscarriage of justice. I have been told by the Lord Justice General that the case is not sufficiently extraordinary to merit consideration under the nobile officium.

Dr Ewing: What?

Robbie the Pict: I understood nobile officium to translate as "the noble office". If a problem has slipped through the net and an injustice remains, it provides an avenue to address the injustice. I combined the petition with a human rights objection to the nobile officium and was refused right of signature—I was not allowed to sign the petition. It was not allowed off the ground for

consideration at all.

The Convener: Will you explain that a bit further? What does it mean?

Robbie the Pict: Right of signature simply means that I put my name and the date at the bottom of the petition. I have been refused that right.

The Convener: So your application was not even considered.

Robbie the Pict: It was not. It was blocked by a technical hurdle. The petition is a challenge to the court's competency, but the court will not admit it. Where does the statutory right to refuse a person right of signature come from? The petition at nobile officium is a right at common law. If there has been a miscarriage of justice, the complainer has a right at common law. That is especially the case since the introduction of the Human Rights Act 1998, which gives the right to a fair hearing. We are not even being allowed to sign a petition. That is obstructionism. That is why I use the term "political prostitution" and I mean it.

Rhoda Grant: I put on record a point about Phil Gallie's comments: I am disappointed that he has tried to change the issue into a party-political one, which it is not. The Labour party did not give a manifesto commitment to withdraw the tolls on the Skye bridge. If the Conservatives had delayed building the bridge until it could obtain objective 1 funding, we would not be discussing the matter today.

The Convener: We can leave that for the debate afterwards.

Dr Ewing: I have one question on nobile officium that I must clarify in my mind. You mentioned the Human Rights Act 1998. Did you perhaps muddle your appeal to the nobile officium by bringing in the European convention on human rights? Did you give the court an excuse for a technical block?

10:30

Robbie the Pict: No. I was very clear about my presentation. As a preamble, I said that it was, incidentally, also a human rights consideration, as of 2 October 2000. I asked the court whether it was in any way compromised by section 37 of the Scotland Act 1998, which allows for the terms of the Act of Union 1707 to remain in force, but subject to the terms of the Scotland Act 1998. I said that the court did not need to be obliged by that, because its independence and integrity were guaranteed by article 19 of the Act of Union 1707. I pointed out that the Scotland Act 1998 was not called "the Scotland (Scotland) Act", and was therefore a UK statute and fair game. The court said that it was not affected by section 37 at all,

that that was not part of the considerations and that there was no UK obligation.

In general, the terms of the Human Rights Act 1998 have not really sunk in in the courts. I think that they do not understand that section 6 of that act obliges them to deliver a fair hearing. If one is not even allowed to sign a petition and put it into process, how on earth can one get a fair hearing for it? The test is an extraordinary miscarriage of justice. How extraordinary do you want it? With 124 innocent people convicted of a crime, 496 people on Skye put their head in the criminal noose to try and draw attention to the affair. It is a sordid affair, and it is about time that people started having an honest look at the situation and giving the matter a fair hearing, rather than just shutting the door. The situation will not be covered up; it is a scandal.

John Farquhar Munro: You said that, today, £100 handed over in tolls represents a credit of only £37.64 towards reducing the debt.

Robbie the Pict: That is correct.

John Farquhar Munro: If the contract on the bridge were to run to its ultimate conclusion, what would be the value of £100 at the end of that term?

Robbie the Pict: That is an excellent question and I thank you for asking it. You will be astonished to learn that it would be 7p. The bank charges are so viciously geometrically progressive that they would be regarded as loan-sharking in any other circle. In the final year of tolling, £1 handed over would be worth 7p, and £100 would be worth 70p.

John Farquhar Munro: That is frightening. It is an alarming amount. Does that include VAT?

Robbie the Pict: The public are paying the VAT at the moment, although they do not realise it. The Government—as a public relations exercise, I suppose—has withheld application of VAT at point of sale, but the VAT will still have to be paid, because Europe wants its percentage. The VAT is being quietly paid for at Edinburgh, but it is still coming out of the public purse.

The Convener: We have asked lots of questions and other petitioners are waiting, but I would like to be absolutely clear about something. Are you contending that the toll order and assignation document in respect of the charges went through in local non-print form in order to avoid parliamentary scrutiny?

Robbie the Pict: One begins to suspect that. After a while, one gets a picture of why on earth it was not done properly. It is interesting that all the paraphernalia took place, such as the six-week public notices for objection and the publication of notices in the *Edinburgh Gazette*. All the things

that would normally happen with a statutory instrument that was going before Parliament did take place. The illusion was given that everything was in proper order, but the document itself is a John Bull job. It would be better applied to tarring a school playground in Portree. Private and personal local non-prints are usually in plastic bags tied to lamp posts. All the paraphernalia was gone through, but the orders and schemes themselves were not in proper form and were not laid before Parliament.

When one sees a discrepancy in two of the documents relating to the same scheme, questions have to be asked. The Audit Committee might want to have a look at the matter, rather than being lumbered with the restitution and the cost of compensation. The justice committees might want to read the statute; other people are refusing to do that. We are not really protesting; we are just reading statute out loud. We did not know exactly what had to happen but, just as Genesis, chapter 1, is there for everyone to read, section 1(1) of the Statutory Instruments Act 1946 is there for everyone to read. "Exercisable by statutory instrument" means that an order is laid before Parliament and published as a general print. That is as clear as a bell, if one is not looking at the emperor's new clothes.

The Convener: Are you also contending that neither the court of appeal nor the Statutory Instruments Reference Committee at Westminster addressed that central problem?

Robbie the Pict: The Statutory Instruments Reference Committee stopped short at classification and would not step beyond that remit. I have now referred the matter to the Joint Committee on Statutory Instruments, which is considering whether it should be laid before Parliament. Consideration is still taking place at Westminster. The courts in Edinburgh have not addressed the subject and are refusing to permit petitions about a miscarriage of justice to be signed. That door looks closed. There are one or two avenues or devices that we will pursue, but things are definitely slowing down. We have to consider the Lord Advocate and a conflict of interests.

The Convener: I am advised that, if the petition is still subject to court proceedings, or is likely to be subject to court proceedings of any kind, it may be inadmissible.

Robbie the Pict: Which petition?

The Convener: The one that we are considering today. Is it likely to be subject to court proceedings at any time in the future?

Robbie the Pict: I do not see why it would be. Today's petition is a political petition.

The Convener: Thank you for your evidence. That was fascinating.

Robbie the Pict: I am obliged. Thank you for your time.

The Convener: Two courses of action are available. We could take the position that the courts and a parliamentary committee have dealt with the matter and agree that no further action is required, or we could take the view that serious questions, which need further inquiry, have been asked at this meeting.

Dr Ewing: What is the committee's position on the right to murmur judges?

The Convener: I beg your pardon?

Dr Ewing: When one attacks a judge publicly, one is said to be murmuring a judge. I would very much like to murmur Lord Cullen, Lord Coldstream and Lord Sutherland for what seems to me to be improper decision making in this case. They appear to have ignored the law of the land and the law of probative documents and to have imputed the Secretary of State for Scotland's consent. I have never heard that the Secretary of State would dream of allowing his or her consent to be imputed. I wonder what the committee can do. Perhaps we should declare that we think that those three judges did not do their job properly.

The Convener: The wisest move might be to ask the Executive and the Lord Advocate for their views before we reach a decision.

Dr Ewing: If we did that, could we also ask why it appears that the nobile officium, which is supposed to exist for such situations, was simply tossed out?

The Convener: Or, in this case, blocked.

Dr Ewing: Quite.

The Convener: We can certainly ask that.

Phil Gallie: I would like to pick up on Winnie Ewing's point about murmuring the judges. Robbie the Pict made the point that perhaps words were being put into the mouths of those judges, so I would not want to go as far as Winnie suggests. However, I would like a specific answer to the point that has been made. We heard that there has not really been an answer and that nobody has concentrated on the validity of the documents that have been referred to. It would be fair for us to ask the Scottish Executive to investigate that question and give us a full and proper answer.

I have seen the figures that were presented to us before, but I have never seen an answer from the Government about them. I tell Rhoda Grant that I recognise that this could well be a criticism of my own party, but I do not want to score political points. I would like an open and frank assessment

of the figures. That would be in the public interest in the longer term. I would like the committee to ask for such an assessment and for a proper answer to the legal point that has been made.

Dorothy-Grace Elder: This is a classic example of the establishment dropping a cage over honest and highly intelligent protesters. It is obvious that multiple injustices are going on. It is like babushka dolls—one is opened up and another one is inside.

We should write to the individual judges, not just to the Lord Advocate. No one should be able to hide behind their decisions. Judges are paid public servants and their decisions should be challenged. The issue of the noble office should be referred to one of the justice committees, as should the matter of unsigned documents. The Skye bridge is not just a financial scandal; the appalling way in which honest protesters have been treated hits at the basics of democracy in this country. They have been given brush-off after brush-off, right down the line. People on Skye and elsewhere have put many years of their lives into the campaign, and it has caused so much stress that they deserve direct answers from the judges and everyone else. We will show the judges respect only if they merit it.

The Convener: I am advised that a committee of the Parliament may approach only the Lord Advocate, who is accountable to us on behalf of the judges.

Dorothy-Grace Elder: We can approach him too. Why cannot we contact the judges individually?

The Convener: I am advised that clerks of the Parliament are not allowed to do that. They have to approach the judges through the Lord Advocate, who is answerable to the Parliament for the behaviour of the judges and the legal system. That is the proper procedure.

Dorothy-Grace Elder: The Lord Advocate is a political appointee, whereas, allegedly, the judges are not political appointees.

The Convener: The judges in the court of appeal must be challenged over their failure to find on the petitioners' basic complaint and over their blocking of the nobile officium to allow people the right to protest against their decision. In the first instance, the Lord Advocate should respond to those allegations.

Somebody has to answer for the failure to treat the orders properly and to subject them to parliamentary scrutiny. Had the orders been subjected to parliamentary scrutiny, it is highly doubtful that the bridge and the package would have gone ahead in the form that they took. This morning, serious allegations have been made, which need to be investigated thoroughly. We

must get the Executive's response and the Lord Advocate's response to this meeting before we can decide on further action. We must give the Executive and the Lord Advocate the chance to respond before we do anything else.

Dr Ewing: I mentioned the original illegality when the contract to build the bridge was awarded and signed by Mr Lang before the public inquiry was finished.

The Convener: That is on the record. We can ask the Executive and the Lord Advocate to respond to that and all the issues that the committee has raised.

Rhoda Grant: Quite a lot of statutory instruments that come before the Parliament have a commencement date that is prior to their presentation to the Parliament. If that was the case with the Skye bridge order, it would have been difficult for the Westminster Parliament to do anything about it.

The Convener: As I understand it, the order never got to the Westminster Parliament in that form.

Rhoda Grant: Even if it had—

The Convener: It would have been too late.

Dorothy-Grace Elder: It would still have had to go through the Parliament, just as it would here.

The Convener: Are we agreed to approach the Lord Advocate and the Executive and to reconsider the petition when we receive their responses?

Members indicated agreement.

Dorothy-Grace Elder: What about the justice committees?

The Convener: We will have to wait for the responses before we decide what to do with the petition. We can send it to one of the justice committees for information at this stage.

Dorothy-Grace Elder: This is a big issue, which concerns real democracy.

The Convener: We will wait for the responses and then decide which committees we should try to involve.

Dorothy-Grace Elder: That might take long enough.

The Convener: It has been a long battle. At least the issue is on the parliamentary agenda, which it never was at Westminster.

Robbie the Pict: The Scottish Executive, the Lord Advocate and the Crown Office are in corporate denial over the matter. They will simply reiterate that there is no requirement in statute for the instruments to be placed before Parliament,

which is a lie. Keith Main, who is a spin doctor, wrote to me recently:

"I refer to your letters ... to the Minister for Enterprise, Transport and Lifelong Learning and the Solicitor General for Scotland about the tolling regime at the Skye Bridge. I have been asked to reply".

A spin doctor is replying on behalf of the newly appointed Solicitor General. "Wait a minute," we should be saying, "you're the new broom. Will you please have a look at this?" The same old spin doctors are blocking everything. We just get porkies—they just tell lies.

10:45

The Convener: We are a committee of the Scottish Parliament. Unlike the chairman of Enron, the highest offices of this land have to answer to the Parliament in Scotland. We will make sure that they do.

Robbie the Pict: Good luck.

Irene McGugan: I have a suggestion that might be helpful. I and, to some extent, John Farquhar Munro have asked an enormous number of parliamentary questions on this matter and have tried to tease out some of the issues that have been discussed today. It might be useful for the clerks to retrieve the answers to those questions. That would produce a body of evidence to show the responses that the Executive and the Lord Advocate have given on some of those issues.

The Convener: That would be useful. We can arrange for the questions and answers to be circulated to members so that they have them by the time that we get the responses from the Executive and the Lord Advocate.

Robbie the Pict: That is a good suggestion. I would appreciate that.

The Convener: Thanks for your evidence.

Robbie the Pict: I am obliged to the committee for its time. Wendy Alexander needs to be told that there should be two lanes on the A9 between Perth and Inverness. I came down that road last night and it was torture.

The Convener: I sense a second petition coming on.

Food Premises (Licensing) (PE446)

The Convener: PE446, on behalf of the Consumers Association, is about extending food licensing to all food premises. We welcome Julia Clarke, from the Consumers Association, to address the committee in support of the petition. She is accompanied by Mr Crawford Morgan, the head of protective services at North Lanarkshire Council. Ms Clarke, you have the usual three minutes to make an initial address, after which

committee members will ask questions.

Julia Clarke (Consumers Association): Thank you. I am here to ask the committee for its support for the introduction of food licensing. Many types of business are licensed nowadays, from window cleaners to scrap metal merchants. Amazingly, with the exception of butchers' shops, food premises are not licensed, although most members of the public think that they are and believe that they should be. A recent Consumers Association survey found that two thirds of consumers believe that all food premises should be licensed.

Currently, food premises are not usually inspected before they open. There is a danger that we will not know that there is a problem until it is too late and public health has been endangered. There is a registration scheme, which we think is completely ineffective. Registration does not require compliance with food safety legislation, it is always out of date, there is no power to refuse registration and there is not enough protection for consumers. That completely undermines public confidence in food production.

Licensing is important because Scotland has high levels of food poisoning. There are twice as many E coli cases in Scotland as in the rest of the UK. Nobody knows the real extent of food poisoning because so much goes unreported but, in 2000, 96,000 cases were officially reported. That is just the tip of the iceberg. The Food Standards Agency estimates that, in England alone, there may be as many as 4.5 million cases of food poisoning every year.

Butchers' shops in Scotland were licensed in October 2000, following an outbreak of E coli 0157 in 1996, which claimed 21 lives in Lanarkshire. As far as I know, that is still the world's worst outbreak of food poisoning. At the time, Professor Pennington of the Scottish food advisory committee said that other food premises, such as carry-out premises, bakers' and other catering establishments such as delicatessens, could pose equally high risks to the public. There is evidence from the University of Birmingham to suggest that the licensing of butchers' shops has been a great success and has resulted in a marked increase in food hygiene standards. The Consumers Association believes that the system should be extended and rolled out across all food premises.

Many major food manufacturers and retailers agree with us that they should be licensed. For example, companies such as Sainsbury and the National Federation of Meat and Food Traders agree. The Chartered Institute of Environmental Health, the Scottish Food Co-ordinating Committee, the Local Authorities Co-ordinating Body on Food and Trading Standards and councils such as North Lanarkshire Council—

which is represented here by my good friend, Crawford Morgan—and East Renfrewshire Council support the change.

Food safety is a devolved matter, and the Food Standards Agency Scotland is investigating the issue, as are a variety of other agencies and interested organisations, including the Royal Environmental Health Institute of Scotland. The Food Standards Agency Scotland will report in the next three or four months, and we feel that this is the right time to consider the issue of food licensing. We appreciate your time and consideration.

The Convener: Thanks. Members of the committee will now ask questions.

Rhoda Grant: Is it not true that legislation requires food premises to reach certain standards? Would licensing run side by side with that or would it simply add another layer of bureaucracy?

Julia Clarke: It is commonly accepted that the registration scheme merely involves the owner of the premises telling the local authority what their plan is. As far as I am aware, there is no prior inspection and staff do not need to be properly trained in hygiene. The public believe that they have a right to be protected in matters of food safety, but none of the things that would deliver that are in place. When we go into a premises, we do not know what the kitchens are like or whether the staff are trained. Until we hit a problem, we have no way of knowing what is going on behind the scenes. Sadly, as we have seen, that can be too late.

Rhoda Grant: Are not regular inspections of food premises carried out?

Julia Clarke: Yes, they are, but we think that that should happen before the premises opens. We should ensure in advance that the staff are properly trained. We should not leave it to chance.

Rhoda Grant: Could that be done as part of the planning procedure when someone asks for a change of use or permission to set up a food-related business? Should the council be able to say that one of the conditions attached to the planning consent is that there should always be trained staff?

Julia Clarke: I am not entirely sure, but perhaps Crawford Morgan might be.

Crawford Morgan (North Lanarkshire Council): As has been said, there is a registration scheme, but there are several problems with it. It is simply a paper exercise for local authorities. Speaking from practical experience, I can say that the scheme does not require compliance with food safety legislation and that, by its nature, it is always out of date, since people often do not

register—local authority environmental health officers have to put forms in people's hands, which defeats the purpose of having the registration scheme in the first place.

The registration scheme is confusing for the public, who assume that there is already a licensing scheme and that certain standards have to be complied with before registration can be granted. In fact, local authorities have no power to refuse registration.

The scheme provides inadequate protection for consumers and does not deserve public confidence. No procurator fiscal would look favourably on a request from a local authority that someone be prosecuted for failing to register, since that is unlikely to be regarded as being in the public interest.

There are practical difficulties with the registration scheme. On the other hand, the licensing scheme would help to improve public confidence since the scheme that most members of the public already think is in place would be put in place. It would also help to reduce food-borne illness. As the committee has heard, tens of thousands of cases of food-borne illness are recorded in Scotland but there are probably hundreds of thousands each year. If that number were reduced, as it could be under the licensing scheme, there would be considerable social and economic benefits.

It would be a major safeguard if local authorities could insist on compliance with food safety regulations before a business started operating. The scheme would ensure that, before a business opened, it had in place a programme of food safety training, which is fundamental to efforts to reduce the number of cases of food-borne illness, and had identified critical points for food safety. As a spin-off, the scheme could help to provide revenue to cover the administrative costs.

Professor Pennington said, in his report on the central Scotland E coli outbreak, that the risks are the same wherever raw meat is handled in the same place as ready-to-eat foods, but his remit did not allow him to recommend the extension of food licensing beyond butchers' premises. That is what we are asking the committee to consider today.

Dr Ewing: How onerous do butchers find the requirement to pay for the licence?

I have just come from the isle of Whalsay in Shetland, where I ate in a brand new eating establishment called Oot Ower. The food was delicious and the premises seemed as clean as a whistle.

Is registration ever refused? Do many people fail to register? If they register, do they put up a certificate that the public can read? What would it

cost a small enterprise such as Oot Ower to register? I take it that you believe that the licensing scheme should be extended to restaurants and cafes where food is prepared, but would counters in supermarkets that sell cut meat have to be licensed as butchers? If there is to be training, who would pay for it? Where would people be trained?

Crawford Morgan: The cost of licensing will be subject to an in-depth study by the Food Standards Agency Scotland. As recently as a few weeks ago, it issued a contract to Verner Wheelock Associates to carry out a study that is due to report around June this year. Among other things, the study will examine the perceptions of the local authorities, the butchers and the public of the licensing scheme and will deal with the implementation costs.

The University of Wales conducted a study into the resource implications of implementing the hazard analysis and critical control point system—HACCP—which is a fundamental part of the butchers licensing scheme. The average cost arising from the implementation of HACCP was estimated to be £890 per business. Obviously, there was a wide range of costs, but for 75 per cent of businesses those costs represented less than 25 per cent of one week's turnover. That cost compares well with the cost of picking up the tab after things go wrong.

I confess that this is an extreme example, but the costs of the 1994 milk-borne outbreak of E coli 157 in West Lothian were estimated to be around £12 million over 30 years, which is an average of £168,000 per case. After that outbreak, the conclusion was that every effort should be made to contain and prevent the disease. I have spoken about only the economic costs, but there are the social costs of having people on dialysis for the rest of their lives and having to give their kidneys to their children to help them overcome the effects of this crippling disease. That is why we need extra food safety controls.

People are legally required to register, but many people fail to register and local authorities have to chase them up. However, the registration certificate is not worth the paper that it is written on. The register is an administrative burden that we would be glad to see the back of. People are not required to display a registration certificate, but I think that they should be required to display the licences, if a licensing scheme were introduced.

Local authorities have taken different approaches to training, which is to be covered by the Verner Wheelock Associates' study. Most local authorities have contributed towards the training, often in collaboration with local colleges. In some cases, the training costs were shared between the local authorities and the companies.

On the issue of counters in supermarkets, any business other than a catering premises that sells raw meat in association with ready-to-eat food needs a butchers licence. In the middle of 2001, there were 1,334 licensed butcher premises in Scotland. The most recent figures from the Food Standards Agency Scotland, which are for 2000, suggest that, if the scheme were extended to all the relevant premises in Scotland, it would cover 54,121 premises, of which 32,710 would be in the food and catering sector.

11:00

Phil Gallie: You referred to the fact that much money can be saved by eliminating risk. If the licensing scheme were brought in, would you guarantee that that risk would be eliminated totally and that all the costs to which you referred would be saved?

Crawford Morgan: I think that the member knows the answer to that question. Obviously, the answer is no. There are no guarantees—we are talking about risk reduction. There is no guarantee and no one could give you such a guarantee.

Phil Gallie: The cost equations that you made are therefore not accurate.

Crawford Morgan: No—the matter is all about risk analysis. There could be an analysis of the likely savings, but that is all it would be. As with anything else in life, we must try to evaluate what the costs would be of implementing the scheme and balance that against the lives that are saved, and we must try to evaluate the savings in costs because people did not require to attend for treatment.

Phil Gallie: Do you accept that for many small catering businesses—many of which are not VAT registered—£870 from their turnover would be a major sum?

Crawford Morgan: It would be a significant sum for some businesses. Again, the matter comes down to making evaluations or judgments about the costs of implementing the scheme, and the costs for business versus the health benefits that could result from implementing the scheme.

Phil Gallie: What powers currently exist? My impression is that many small businesses have a great respect for environmental health and would certainly not turn their backs on advice. As far as we are aware, environmental health officers have free access to such businesses. Is that correct?

Crawford Morgan: Environmental health officers have powers to access all food premises throughout the United Kingdom. One of the major advantages of a licensing scheme is that new businesses would need to produce plans for training and HACCP plans. Those plans would

need to be agreed and implemented prior to businesses' being set up. Control would therefore be tighter.

We should consider a scheme that is like the butchers licensing scheme. That scheme might not be the exact model that we should use, but it could be considered and adapted. That scheme has suspension powers that would not be available if there was no licensing scheme

Phil Gallie: Finally, you referred to new buildings as being of particular interest. If someone was to set up a food catering facility, they would almost certainly have to apply for change of use, go through the planning process and bring in building controls. Do current building controls or change-of-use conditions involve environmental health advice?

Crawford Morgan: They do, but that only helps to get the structure correct. The difficulty is that most of the problems that we see daily are not caused by the structure of premises, but by the method of operation of the premises; they are caused because management or the people who work in the premises do not carry out basic food hygiene controls.

Phil Gallie: You said that it is difficult for new operations to establish and evaluate their longer-term operational regimes. I do not know whether licensing the operation right at the beginning of the process would solve the problem that you are trying to address.

Crawford Morgan: In my view, it would. That is a fundamental issue. Let us take butchers licensing regulations as an example. Three things need to happen before butchers can be licensed: they need to comply with the existing general food hygiene and temperature control regulations; they need to comply with management and staff training requirements; and they need to comply with HACCP plans. The local authority must see and approve those plans and would have to be satisfied that the staff were trained adequately in food hygiene before the business could start. The introduction of that to all food premises would be a fundamental change and a big benefit, which is one of the main reasons why I believe that licensing should come on stream.

Dorothy-Grace Elder: I thank Julia Clarke and Crawford Morgan. I point out to the committee and to the public that both Julia Clarke and Crawford Morgan have long-held and distinguished reputations in consumers' rights. They are absolutely genuine and are not from the extreme wing of the hygiene police, who we sometimes get a bit tired of. That is why they are trying to home in on some reasonable and sensible proposals.

However, I wonder whether the evidence about environmental health should be clarified. Should

environmental health officers come in at the fire-fighting stage when somebody rings them up and says "There are cockroaches in this kitchen"?

Julia Clarke: Unfortunately, that is the situation at the moment. We might not know the situation in a particular kitchen until it is too late. As we saw in Lanarkshire, we cannot afford to wait until that point. For most of us, food poisoning might merely be having a gippy tummy for a couple of days—we all get that from time to time. However, it is sometimes a matter of life and death for the elderly, the very young and for other vulnerable people. People deserve a basic right to environmental health and the only onus that we would put on businesses is that they observe proper methods of hygiene and training.

Dorothy-Grace Elder: Is training the most important element? Should shops such as small corner shops or small restaurants be the businesses that most fear having to alter their premises, which might be very expensive and could put them out of business? Would it be better to concentrate on training staff? Once that is right, even if the premises are awkward or old, they will be clean premises that employ good practice. Would it cost less than £870 to train staff, rather than change the layout of premises?

Julia Clarke: The process is a parcel, but training is extremely important. In many cases, it might come down to common sense. As I know from Crawford Morgan and his colleagues, they work hard to help business owners to meet standards.

Crawford Morgan: Although the structure is less important than management and hygiene, there are basic elements within premises' structures that need to be considered, particularly in relation to avoiding cross-contamination. Provided that the basics are correct, I accept the point about training.

Dorothy-Grace Elder: I am thinking back to the time when the European Union ordered bakers to install chill counters, despite the fact that bakers in Scotland had not poisoned anyone for decades. Bakers were innocent, but had to install £30,000 chill counters. That put some small bakeries out of business. I return to the question whether, overall, we should be going for training. Could that cost of £870 be reduced?

Crawford Morgan: The biggest single aspect of the matter is that managers of businesses are required to provide an HACCP plan—to which I keep referring—in addition to training. The two go hand in hand. I would not like to put a figure on the costs, but I remind the committee that a study is under way that will report by June. If the committee was minded to proceed with the matter, it might be worth its while to consider the outcome

of the Food Standards Agency Scotland's study. That study will give the committee valuable information about what the public, butchers and local authorities think about licensing of butchers.

There is also debate going on within the profession through the Royal Environmental Health Institute of Scotland and the Food Standards Agency about the merits of the scheme and how it might work in practice. I do not advocate use of the butchers licensing scheme as it stands, because annual licensing might be overly onerous. Costs might be reduced if the scheme were extended to a three-year licensing scheme. My preference is a prior-approval scheme.

However, the mechanics of the scheme can be worked out. We are asking the committee to consider the principle of the extension of licensing to other food premises.

Dorothy-Grace Elder: The major idea behind that appears to be that although the public believe that they are protected by regulations in food shops and restaurants, they are not—except in a fire-fighting sense.

Julia Clarke: Exactly. When we buy a sandwich or eat out at the weekend, we believe that we are in a safe environment and that we are properly protected. The bottom line is that we are not protected. That is not good enough.

Crawford Morgan: I will clarify North Lanarkshire Council's position, because I do not agree entirely with that. We are looking for controls to supplement those that are already in place. Local authorities are obliged to inspect premises in accordance with the FSA Scotland's code of practice. The frequency of inspections is laid down in an appendix to that code of practice, but frequency of inspection can vary; it can be six, 12, 18, 24 and 36 months or five years, depending on the risk rating of the premises. As I said, local authority environmental health officers already inspect premises and some controls exist, but we are asking for those controls to be strengthened in order to reduce and minimise the risk of food-borne illness.

Dr Ewing: The angriest meeting that I ever attended—I have attended many angry meetings—was on travelling shops in the Western Isles. Are you suggesting that a travelling shop should have to pay £870? Those shops provide a social service; they allow old people to remain in their homes because they can run dozens of messages for them. However, travelling shops could not afford such fees.

Crawford Morgan: Travelling shops that are also butchers' vans already require licences. They are premises that, under the regulations—

Dr Ewing: Not all of them are butchers.

Crawford Morgan: The present cost of a license to an individual is £100. I would not like to put a figure on the cost of administering the scheme, but it is in excess of £100 per individual. If risk exists, we should seek to minimise it.

However, I accept Dr Ewing's point. We could examine the mechanics of implementing our proposals, because it might be possible to establish a scale of fees—perhaps we could associate the level of fee with the type of premises. The mechanics are important, but we can work through them. We hope to establish the principle.

Phil Gallie: I will make a final attempt at quantifying the problem. How many cafes, restaurants, carry-out premises and fish-and-chip shops are there in North Lanarkshire and how many cases of food poisoning involving those premises were there last year?

Crawford Morgan: I can give you a broad idea. In 2000, there were 2,500 such premises in North Lanarkshire, of which 63 were manufacturers, 56 were distributors, 880 were retailers and 1,462 were restaurants and caterers. Off the top of my head, the figure for reported cases of food-borne illness might be about 500 to 600 cases a year. However, the actual figure is likely to be well in excess of 500 to 600 cases, because the reported cases are the tip of the iceberg—I do not want to speculate about whether the ratio is 1:10 or 1:100. Research evidence is available and can be provided if the committee is interested in seeing it.

The Convener: We know that North Lanarkshire Council and East Renfrewshire Council strongly support the petition. What is the position of the Convention of Scottish Local Authorities?

Crawford Morgan: When North Lanarkshire Council's planning and environment (environmental health) sub-committee met on 4 December, it agreed to write to COSLA, to the FSA Scotland, to the Minister for Health and Community Care, to Sir John Krebs—the chair of the FSA Scotland board—and to Sir John Arbuthnott, who is the chairman of the Scottish food advisory committee, to ask them to support the principle. We are awaiting responses from some of the people to whom we wrote, but I hope that COSLA will support it. On 31 May last year, I spoke on the subject of food licensing to my colleagues at the annual congress of the Royal Environmental Health Institute of Scotland. On a show of hands, all but one local authority agreed that the principle of licensing should be established.

The Convener: Were the council representatives who attended the congress officers or councillors?

Crawford Morgan: They were a mixture of officers and councillors. Next month, I will debate the subject again. The environmental health institute and the FSA Scotland hold an annual three-day event in Dunblane—this year, it will be held from 14 to 16 March. If members want to attend, we will be happy for them to get involved in the debate. I will argue the case for licensing and one of my colleagues will argue the case against licensing. Thereafter, there will be a discussion about the mechanics. Our colleagues in England and Wales have supported the principle for many years and the profession in Scotland is gearing up for licensing. We are now having a full debate in Scotland and I believe that most of my colleagues support the principle. Next month's debate will help to galvanise opinion. I would be surprised if my colleagues—and COSLA—did not support the principle.

11:15

The Convener: I thank you for your interesting evidence. You may remain while we discuss what to do with your petition.

The recommendation is that the committee write to the Scottish Executive to seek its views on the petition, and that we seek specifically comments on the practicalities and costs involved in the implementation of a licensing scheme of the sort that is proposed. It strikes me that we should write directly to the FSA Scotland. We would get a quicker response because, no doubt, the Executive would simply pass our letter on to the FSA Scotland and ask it to respond to us.

Dr Ewing: Could the letter mention the problems that are faced by remote and fragile communities? The potential costs could put travelling shops out of business and prevent them from performing what is in many cases a social service.

The Convener: We will ask the FSA Scotland to address in particular the implications for remote and fragile communities of a licensing system.

As members have no further comments, I confirm that we will write in those terms to the FSA Scotland. Once we have received a response, we will decide what to do with the petition.

Dorothy-Grace Elder: Could you send a copy of the letter to the Scottish Executive, in case it wishes to comment?

The Convener: Sure. I should also have said that we will pass—for information only at this stage—a copy of the petition to the Health and Community Care Committee.

Dorothy-Grace Elder: The convener and members of the Health and Community Care Committee will be interested in the petition.

The Convener: Do members agree with the suggested course of action?

Members indicated agreement.

The Convener: I thank the witnesses again for their evidence.

Greater Glasgow Health Board (Consultation) (PE453)

The Convener: We move on to PE453, which is on the secure unit in the Greater Glasgow NHS Board area. Father Stephen Dunn is the principal petitioner and would have been available to speak to the petition last week. However, our meeting last week was postponed and he is unable to attend today. He is replaced by Wendy Johnston, who will speak on behalf of the petitioners. Paul Martin, the local MSP, and Fiona McLeod MSP are also here to address the petition.

Our usual rules apply. Wendy—you may speak for three minutes and then I will invite questions from members.

Wendy Johnston: Good morning, ladies and gentlemen. I thank you for giving me the opportunity to come along this morning. My name is Wendy Johnston and I am a member of Glasgow North Action Group, which is against the proposed location for the secure unit. I stress that although I am opposed to the proposed location for the unit, both the action group and I have always supported the need for a secure unit in the Greater Glasgow NHS Board area. However, there are good reasons for not siting the unit at the proposed location in Stobhill.

I will focus on the way in which the health board has managed the revisit events. In January and July 2001, events were held in partnership with the local community to revisit the issue of where the secure unit should be sited. Those events were carefully planned and designed by a planning group that met regularly with the local community. In July, it was concluded that Stobhill was no longer the favoured option—of the four options, Stobhill was fourth.

However, the health board decided to stage yet another three-day event in November and December last year. It did not plan that event with the local community; instead, the event was carefully designed to ensure that the result was fixed. Key decisions, such as the relocation of Parkhead hospital, were made prior to the event in order to ensure that the cards were stacked in favour of Stobhill, despite the fact that completion of a transport study was required. The event was a propaganda exercise. We were dictated to and ignored, even when we knew better than the health board. A video, which was full of misinformation, was produced at a cost of

£53,000. The health board's event was not independently chaired, unlike the July event, which was facilitated independently by Professor Alexander. The chairman of the State Hospitals Board for Scotland, Mr Gordon Craig, chaired the re-visit event.

On the final day of the health board's event, all sites were to be scored by the scoring groups. We were herded into single-issue scoring groups—for example, there was a community council group and an MSP group. That plan was carefully designed to ensure that the scoring groups were fixed and that there would be conflict among the group representatives—that is, MSP versus MSP or community representative versus community representative. All the elected politicians, including councillors, MSPs and Glasgow north community representatives objected to that approach and boycotted the event.

I would like the committee to consider referring the matter to the Health and Community Care Committee, which should investigate why local MSPs felt that they had to boycott the event in November and December. That committee should also investigate whether the then Greater Glasgow Health Board manipulated or brought forward the decision on Parkhead hospital—when the board was required to await the outcome of a transport study—to ensure that Stobhill was chosen as the site. The Health and Community Care Committee should also investigate why there was no consultation with local MSPs.

I would like the Minister for Health and Community Care, Malcolm Chisholm, to investigate the matter and for the Health and Community Care Committee to investigate the handling of the process from start to finish.

Paul Martin (Glasgow Springburn) (Lab): Wendy Johnston set out the main points in the petition. As a result of previous petitions, events took place in January and July 2001. As Wendy said, they took place in partnership with MSPs and the local community. A reconstructed process was planned to consider whether Stobhill hospital was the appropriate site. The local community successfully completed the process, the result of which was that Stobhill hospital was rated fourth in a list of possible options for the preferred site.

The health board was unhappy with that result and, as Wendy Johnston said, decided to revisit the matter again in November and December 2001. We believe that the board carefully designed the process to ensure that Stobhill would be the preferred site. The local community accepts the need for a secure unit and appreciates the responsibilities of GGHB, but the main point is that the selection of the site should be open and fair.

Dates for decisions should not be brought forward. Wendy Johnston referred to Parkhead

hospital; the decision to relocate that hospital was brought forward to add weight to the Stobhill option. One of the main arguments has been that the secure unit should be placed alongside mental health provision such as the resited Parkhead hospital. However, the decision about Parkhead was not taken for health reasons.

The local community is concerned that the board brought forward decisions and did not complete the transport study. There is a legal requirement for transport studies to be carried out when reprovision of a health facility is considered but, on this occasion, a transport study was not completed. The local community's main concern is that a form of corruption is involved. The health board corrupted other decisions to add weight to the decision to site the secure unit at Stobhill.

The process in November and December involved scoring groups, which were set up to select the site of the secure unit. MSPs and community representatives from north Glasgow boycotted the event because we were to be placed in singular scoring groups. For example, a group of MSPs was to score different options for the site of the secure unit. We felt that that was an unfair method of selecting a site because the scoring groups should have been made up of representatives of various professions and local interests. Because the method was unfair, the MSPs—many of whom are present—councillors and local community representatives boycotted the event, which I think was on 20 December.

Wendy Johnston set out the action that she would like the committee to take.

Fiona McLeod (West of Scotland) (SNP): I want to lend weight to the proposal that the committee should refer the matter to the Health and Community Care Committee, as was done with previous petitions on the subject. If members remember, on the previous occasion on which the committee referred such a petition to the Health and Community Care Committee, Richard Simpson was asked to act as a reporter. That petition was on the consultation process that the health board was conducting. Given the concerns about the subsequent consultation process that the health board went through, it would be appropriate for the Health and Community Care Committee to consider whether the process met the recommendations of the reporter and whether it was a robust consultation or merely a window-dressing exercise that followed the slap on the wrist by the Parliament.

The Convener: I say for the record—and to put in context the questions from the committee—that Paul Martin wrote to me, as the convener of the committee, to ask me to ask the health board to postpone its final decision on the location of the secure unit until the petition could be heard. My

response made it clear that the committee takes a consistent line on petitions that call for the Parliament to intervene in the executive decisions of public bodies in Scotland. Although the Parliament can investigate the framework within which such decisions are usually made, it cannot interfere with the decision-making process in individual cases. Therefore, my letter stated that it was not appropriate for me to accede to Paul Martin's request.

The decision to site the secure unit at Stobhill was made on 29 January. Subsequent press reports included a number of quotations to the effect that the Public Petitions Committee was a big disappointment because it did not take action to prevent the siting of the unit at Stobhill. It is important for everybody in Scotland to understand that the committee cannot interfere with decisions that are made by other statutory bodies. The committee must also protect other petitioners, including those who complained about the unnecessary incarceration of inmates at the state hospital in Carstairs, which is a result of the lack of secure units such as the one that is proposed for Stobhill. It is important to understand that the committee cannot intervene in each case.

Wendy Johnston made the point that the petition is about whether proper process was followed. The committee can legitimately become involved with that, but we cannot question the decision; we can ensure only that the process, as recommended by the Health and Community Care Committee and the Parliament, is properly applied.

Dorothy-Grace Elder: During the meeting, we have heard about a number of examples of abuse of democratic standards. Perhaps we need a sub-committee on the abuse of democratic standards. I declare an interest in the matter: as a Glasgow MSP who works in the north and the east end of Glasgow, I have been on the petitioners' side all along. That stance was not the result of knee-jerk bias. It is obvious that the proposal began with a phoney consultation exercise. After the report of the Health and Community Care Committee, matters appeared to be straightened up, but they slumped in December. The end result is that the health board decided on Stobhill in complete defiance of the public's wish. I have yet to meet one person in Glasgow who thinks that Stobhill is the correct site for the controversial and expensive unit.

As Paul Martin pointed out, no one is against such a unit per se, but Stobhill is the wrong site and it is being used to bail out GGHB's plans for Glasgow, which the public has also made clear they do not want.

The Convener: What is the question?

Dorothy-Grace Elder: I want Wendy Johnston to tell me whether she realises that if the matter is passed to the Health and Community Care Committee or another committee, it might not be able to do a full job. Since Dr Richard Simpson reported on the matter, the number of members in the Health and Community Care Committee has been cut from nine to seven, which means that the committee does not have much leeway to appoint reporters. The issue is urgent and important, but there are far too many such issues. Committees desperately wish to pursue important matters, but they are overburdened and often cannot do that. Does Wendy Johnston realise that that is the situation?

Wendy Johnston: I am sorry. I am not clear what the question is.

Dorothy-Grace Elder: If the matter is passed to the Health and Community Care Committee, there is no guarantee that it will consider thoroughly what has happened because it is short of members. John McAllion and I are members of that committee. I advise you that it will be difficult to find the time to deal with the matter. How will your campaign proceed from now?

Wendy Johnston: The facts speak for themselves. So much mismanagement and misinformation—I will not use the word "lies"—have amassed that we need an inquiry into the matter.

The Convener: I should point out that it is a bit unfair to ask the petitioner to respond to the Health and Community Care Committee's problems. That is a matter for the committee to sort out.

11:30

Rhoda Grant: I want to play devil's advocate for a moment. We receive many petitions about the siting of various things. It could be said that you are saying "Not in my back yard" to the siting of the unit. What do people in Glasgow feel about the issue and where would they prefer the unit to be sited? How does the community as a whole feel?

Wendy Johnston: Feelings are running high in the community that the secure unit will be a threat to Stobhill hospital. Over the years, the hospital has been the subject of various closures—the maternity unit for example. I point out that I did not come to the issue with the view "Not in my back yard"; rather, I have spoken to various patients and families and represent their point of view. They feel as strongly as I do. I know that people will say that there is an urgent need for this type of unit and that they would rather it was there, but the location is wrong. Most of the families and patients—never mind people in the area—to whom I have spoken agree. I even have letters that state that fact.

Rhoda Grant: Does the greater community in Glasgow have a preferred location?

Wendy Johnston: It is not really fair for us to choose a location. When we took part in the first revisit, the health board made it clear that it would only confirm or refute the decision that Stobhill was the correct location; we could not choose another location. Like me, most of the people who signed the petition have no background in dealing with such matters; they have had to carry out all their own research and work. Information has kept amassing that the decision is definitely wrong. The feeling in the local area is strong on that point.

Rhoda Grant: Does that feeling extend to the whole of Glasgow or is it confined to the local area?

Wendy Johnston: I cannot really speak for other areas, as I have not been involved with any. I know that people from Parkhead attended the revisit event that the health board held in relation to the Belvidere site. However, the health board has made it clear from day one that it has firmly decided that Stobhill will be the site; it is not interested in listening to the persuasive and reasonable arguments about why Stobhill should not be the site. I firmly believe that the health board's mind is totally closed on the issue. It has made the decision and does not like being questioned about it.

Rhoda Grant: So no other sites have been put forward in a way that allows people—

Wendy Johnston: The health board suggested other sites, but many of them are laughable. I do not know whether committee members are familiar with Glasgow dental hospital; such a suggestion is just a waste of time. The health board suggested Lenzie hospital, Drumchapel hospital and others that I cannot remember—I have a list of them somewhere. The health board suggested them simply to make the picture look an awful lot bigger. As far as I am concerned, the suggestions were not viable at all. I say that from my perspective; the health board is supposed to have all the expertise, but that does not come across at all.

Paul Martin: I have mentioned the fiercely technical exercise in which the community took part in January and August 2001. That exercise considered a wide range of sites throughout Glasgow—

The Convener: There were eight options, were there not?

Paul Martin: Yes.

The Convener: Were there still eight options in November?

Paul Martin: There were about 32 options, but we came down to two—

Wendy Johnston: Three.

Paul Martin: Sorry, we came down to three options: Belvidere, Lennox Castle and Stobhill.

The Convener: I want to be clear about this. Our information was that there were eight options at the early stage. You said that Stobhill came fourth out of eight options.

Paul Martin: Yes. The event that the community and elected members were involved in planning took place in January and August 2001. The exercise considered eight options throughout the city; there was also a status quo option to do nothing. As I said, the community became involved in a fiercely technical weighting exercise. I will not bore the committee with the details, but essentially the community had to score a number of factors about the Stobhill site. Not only that, but the community, elected members—including myself—and other community representatives queried the process. For example, we would ask why a certain factor had been given a score of 95. Following that event, the Stobhill site was ranked fourth.

The Convener: Was there consensus about that position?

Paul Martin: Yes, but the health board was concerned that the event had not been designed properly. On the other hand, the community believes that the health board felt that way because it did not get the outcome that it wanted. The concern is that the event in November and December was orchestrated to ensure the result that the health board favoured.

The Convener: Will you explain how dividing people by profession—into groups of politicians and community activists, for example—would fix the result?

Paul Martin: The issue relates to my sitting with Frank McAveety, for example, who is the MSP for the Belvidere side.

The Convener: Conflict arises.

Paul Martin: Territorial disputes could occur. A normal option appraisal exercise would involve a mixture of MSPs, health professionals, community councillors and others. The acute services review used such a mixture.

The Convener: Did the acute services review follow normal practice?

Paul Martin: Yes. For example, Dorothy-Grace Elder and I—and others—were involved in discussions about the acute services review. We would have welcomed mixed groups to discuss the unit. We made that proposal several times, but it was dismissed, because it was felt that if community groups and MSPs were mixed, they would not reach consensus.

The Convener: So the boycott related to how the groups were constituted.

Paul Martin: Yes. The concern was that having a group of MSPs would put one MSP against another and would not allow people to benefit from the expertise of health professionals, for example, and community representatives. An option appraisal exercise is intended to facilitate sharing of expertise among the groups that are involved. That arrangement was dismissed, because the concern was that if I sat in the same room as a general practitioner or a health professional from the primary care trust, for example, we would not reach consensus, so it was thought best to place me in a group with my fellow MSPs.

The Convener: The information that we have received from the health board is that no MSPs or MPs expressed an interest in the scoring exercise.

Paul Martin: Wendy Johnston is interested in that matter. We said that we would participate in the event if the scoring groups were established in a way that would allow fair interrogation through the option appraisal exercise. We showed an interest and were anxious to participate if we would have a genuine opportunity to share our views with health professionals. We did not say that we were not interested in participating. I am sure that Fiona McLeod and Dorothy-Grace Elder will confirm that.

Fiona McLeod: It is important to put it on the record that the health board's saying that MSPs and others did not show an interest is an inappropriate use of language. I told the health board that it was inappropriate for me to join a scoring group of MSPs only, for the reasons that Paul Martin has given.

The Convener: So MSPs were not uninterested in scoring per se; they did not support the way of scoring that the board proposed.

Fiona McLeod: The proposal was inappropriate.

Wendy Johnston: In the first revisit, which involved events in January and July 2001, the mix worked well. The health board could be made to listen to reasonable arguments, because there was a wealth of experience from representatives of the health board such as psychiatric doctors, local community representatives such as MSPs, members of families with an involvement in mental health and people who live in the area and who knew about the local transport. If I were left in a room with only representatives of other action groups or of community councils, there would not be the same wealth of experience, so people would not end up saying, "Wait a minute—I never thought of that."

A few scores were changed, but the health

board said that it was unhappy and had a number of issues. The health board helped to establish the agenda at 10 planning group meetings. If it had problems with the arrangements, that was the time to bring them up and say, "I'm sorry—the health board thinks that the operation should be run differently." We had an independent facilitator, Mr Alan Alexander, and the system worked well. If the health board had obtained the outcome that it wanted, it would have been a different story—the health board would have said that the system had worked well. The issue is that the health board did not obtain the outcome that it desired.

The Convener: Do you have any final comments?

Wendy Johnston: An inquiry should be started before more funds are mismanaged.

The Convener: You are free to stay and listen to the discussion of what we will do with the petition. Thank you for your evidence. *[Interruption.]* I am sorry; Winnie Ewing has a question.

Dr Ewing: Was siting the unit outside greater Glasgow ever considered?

Wendy Johnston: I do not think that that was on the agenda.

Paul Martin: It has long been accepted that a secure unit requires to be built. Health board professionals repeatedly mention Glasgow, but we are talking about greater Glasgow, which has an area that is wider than Glasgow's boundary. Glasgow has a population of about 450,000 to 500,000, but the health board covers a population of about 850,000. A larger population and area must be considered in relation to the territorial issues.

Wendy Johnston: There are other secure units and prisons in the area, so the "Not in my back yard" attitude does not apply.

The Convener: Thanks again.

The recommendation is that the committee should initially write to the health board to ask it to comment formally on the issues that the petitioners have raised. That is important, because the serious suggestion has been made that the health board tried to manipulate the consultation process to obtain the result that it desired. It is only fair to the health board that we obtain its response before we decide whether to refer the petition formally to the Health and Community Care Committee. We will send the petition to the committee for information while we await the health board's reply. Is that agreed?

Members indicated agreement.

The Convener: When we receive the health board's response, it will be open to us to refer the

petition to the Health and Community Care Committee formally and to ask it to consider further the more general issues that the petition highlights, in the context of the initial recommendations that it made in response to the Stobhill petition—PE48—on which Dr Simpson reported.

I thank the witnesses for their evidence. We will keep them informed of the petition's progress.

Film Industry (PE442)

The Convener: We have heard from all the petitioners who will speak to the committee today. The next petitioner is Mr Howard Campbell, who is a citizen of Canada. He is petitioning the Parliament to facilitate the establishment of a film industry in Scotland. It may be worth noting that the second signatory on the petition is Sir Sean Connery, although it is not known whether that is the genuine Sir Sean Connery.

Dorothy-Grace Elder: It may be one of the many fakes.

The Convener: The Scottish Executive's national cultural strategy acknowledged that Scotland has been successful in recent years in attracting film and television programme makers. That has direct economic and cultural benefits for the country and helps to promote Scotland as a tourism location. The Executive is trying to make Scotland film-friendly. To achieve that, it has given a commitment to support the development by Scottish Screen of a film charter for Scotland and initiatives to establish a Scottish film studio.

An extract from the national cultural strategy is attached to members' papers. The first report on it was published in 2001 and was the subject of a debate in the Parliament. A key priority of the strategy was to enhance Scotland's creative industries. Action in support of that includes Scottish Screen's development of a film charter. It is suggested that we write to the Scottish Executive to request its comments on the issues that the petition raises and to seek an update on the initiatives that it has undertaken. When we receive a response, we will send it to the petitioner for his information.

Dr Ewing: It is regrettable that the petitioner does not mention the enormous sums that accrue to Ireland because it has managed to have many films made there. Some of them had Scottish themes but were filmed in Ireland because film makers receive help from the Irish Government.

The Convener: Tax breaks and other incentives are provided; I agree with you.

Dr Ewing: I am in favour of a strongly worded letter, because we have wonderful subjects for films.

The Convener: Absolutely. We will make that point and ask the Executive to respond to it.

Dorothy-Grace Elder: The matter is also for the Westminster Government.

The Convener: It is reserved.

Dorothy-Grace Elder: We lost three quarters of "Braveheart" because we could not give the tax breaks that the Irish gave. They hammer out deals quickly. That is the major barrier. We have everything else going for us, including Scottish Screen, some immensely talented administrators and our actors, singers and scriptwriters.

The Convener: When we write to the Scottish Executive, we will ask it whether it is addressing the problem of the significant tax breaks that the Irish Republic offers.

Dorothy-Grace Elder: We should ask whether the Executive is in touch with Her Majesty's Government on the issue.

The Convener: We will ask whether the Executive is working with Westminster to address the problem.

Dr Ewing: The benefits that Ireland has derived should be considered.

The Convener: Is the proposal agreed?

Members indicated agreement.

11:45

Phil Gallie: I do not disagree with anything that has been said, but I want to pick up on a particular point that the convener made. You cast doubt on the authenticity of the second signatory to the petition. It is a serious issue if people's names are fraudulently imposed on a petition. I appreciate that we cannot check every name on every petition but the merits of a petition are undermined if names are not authentic.

The Convener: We received the petition by e-mail so we have no way of confirming whether the second really is Sir Sean Connery.

Dr Ewing: We could ask Sean.

The Convener: Anyone who knows him personally could certainly ask him and inform the committee. The name may be perfectly genuine but we have no way of checking.

Dorothy-Grace Elder: A Glasgow telephone number is given for Sean Connery. The petition says that he is an actor/businessman and then gives a Glasgow contact number with an American dialling code. The prefix 44 is for when you are calling Britain from America, and 141 is for Glasgow. I did not know that he lived in our fair city of Glasgow.

The Convener: I do not think that he knows either.

We will write to the Executive along the lines suggested.

Radioactive Contamination (PE444)

The Convener: Petition PE444 is from Mr Allan Berry. Previously, Mr Berry submitted PE96 on salmon farming. Members will remember that that petition went to the Rural Development Committee and that the Parliament took the issue very seriously.

In PE444, Mr Berry is concerned with the quantity of radioactive substances in Scottish coastal waters and marine life. He calls on the Scottish Parliament to investigate and report on the amount of such substances in the food chain and in the seafood that is harvested in different sectors of Scottish waters and on the increase in such contamination over the past decade. The petition has been prompted by Mr Berry's concerns that seawater passing north up the west coast of Scotland contains radioactive substances that have been discharged from the Sellafield nuclear facility. He has got hold of a report from Norway, which indicates that the amounts of radioactive substances there are up to 10 times higher than they were in 1994. He believes that consumers of seafood have a right to be informed of the level of such substances in the marine food chain so that they can decide for themselves.

We should write to the Executive and ask it to comment on the issues that the petition raises. At this stage, we should copy the petition to the clerk to the Transport and the Environment Committee for information only.

Dr Ewing: Recently, about 50 Irish politicians of all parties placed a huge advertisement on the issue in the major London newspapers. They blame Sellafield for the pollution of the waters adjacent to Ireland. I do not know about the evidence, but it must be considerable for 50 politicians of all parties—including ministers—to put their names to the advert.

The Convener: The clerk informs me that an interactive flowchart was provided with the petition, showing the flow of waters past Sellafield, up the west coast of Scotland and up to Norway. There is no doubt that there is substance to the petition.

Phil Gallie: I remember a survey, carried out some years ago, which found heavy contamination in the River Forth. The contamination was thought to be caused by the use of coal at Longannet power station. We could widen our consideration of the petition to include other issues. Norway is on the North sea and there could well be a flow of

water from coal sources at Longannet as well.

The Convener: The petitioner has not expressed concern about Longannet or coal. We should stick to the subject of the petition.

John Farquhar Munro: A lot of interest has been shown in the marine environment around our coast—not least through the investigation by the Transport and the Environment Committee—so it would be appropriate to pass the petition to the Executive. We should follow the action suggested in the paper prepared by the clerks.

The Convener: I must correct something that I said earlier. The earlier petition on salmon farming went to the Transport and the Environment Committee and not to the Rural Development Committee. That was my mistake.

Dorothy-Grace Elder: The petition is from the Scottish Society for the Protection of Salmon and Sea Trout. As members know, there is also a problem with shellfish on the west coast. Orders have passed through the Parliament, almost from its beginning, on amnesic shellfish poisoning, which mainly affects queen scallops. I do not think that the Executive has yet come up with a cause for the poisoning, which was rumoured to be seaweed or pollution—we do not know. Some very curious things have been happening—off the west coast in particular. Does anyone know whether the Executive has come up with any answers about why queen scallops were in trouble off the west coast and up towards Orkney?

The Convener: The clerk advises me that the petition refers to seafood in general—in all waters—so it covers the issue that you raise.

Dorothy-Grace Elder: Excellent.

The Convener: We will ask the Executive to address that problem too.

Dorothy-Grace Elder: Thank you.

Dr Ewing: On a recent visit to Shetland, I visited—as I always do—the North Atlantic Fisheries College, which must be one of the most advanced fisheries colleges in Europe. It carries out research—for which, of course, it charges. Such a college, in our own backyard, could properly investigate the issues. It is in Scalloway.

The Convener: Should we ask the college to comment on the petition?

Members indicated agreement.

Community Volunteers (PE447)

The Convener: The next petition is PE447, which has 95 signatures and is from Mr Gregor McIntyre. It calls on the Scottish Parliament to take steps to put in place the necessary structures and regulations to ensure that local community

volunteers are able to develop or pursue local health and social inclusion projects in parallel with, or independently of, the strategic objectives of statutory agencies.

There seems to be concern that local activists in community health associations are finding themselves either taken over or used for wider strategic purposes by local authorities. Not only the petitioners are concerned: Des McNulty MSP has sent a letter that sets out his concerns in support of the petition. The petition relates to West Dunbartonshire and Des McNulty's constituency is Clydebank and Milngavie, but the problem may well be general.

I think that the committee should ask the Scottish Executive to comment on the issues raised in the petition and in Des McNulty's letter. Is that agreed?

Members indicated agreement.

Protection of Wild Mammals (Scotland) Bill (PE448)

The Convener: Petition PE448 is from Ms Sue Dodds on behalf of Borders countryside businesses and traders. It calls on the Scottish Parliament to debate, in advance of stage 3 of the Protection of Wild Mammals (Scotland) Bill, the implications of the Parliament passing flawed legislation that will cause job losses.

The issues of potential job losses and compensation have been raised throughout the passage of the Protection of Wild Mammals (Scotland) Bill and have been considered extensively by the Rural Development Committee. It is also more than likely that an amendment has already been lodged on the issues and will be debated during stage 3 of the bill, which will take place on Wednesday 13 February.

It is suggested that the committee should not accede to the request for a debate on

"the Parliament's responsibility for passing bad law which will cause job losses."

First, it is extremely unlikely that a request for such a debate would be granted; secondly, the Parliament's role is to consider legislative proposals thoroughly and to ensure that bills are passed that are not flawed. All members of the Parliament have the opportunity to amend any aspect of a bill by lodging amendments and having them considered and voted on by lead committees or by the Parliament. It is recommended that the committee should agree to note the request made in the petition and take no further action.

Phil Gallie: When the Rural Development Committee investigated the issue, it was very much in sympathy with the findings of the people who have presented the petition. Sadly, the

Parliament did not agree with the committee's view.

It is considered that job losses will accompany the bill. I know that Scottish Enterprise Borders has shown interest in the matter, so it may be worth while passing the petition on to it. That would show that we take an interest in the people who take the trouble to petition the Parliament.

The Convener: Members may wish to note that we have received a further four petitions from groups in the Borders that are concerned about the implications of the bill. Two of them are mainly concerned about the loss of jobs, especially those associated with hunt girl grooms and rural skills such as farriery. The other two are concerned about the future of foxhound packs and animal welfare issues.

It is worth mentioning that three of the four petitions are almost identical to petitions that we have previously considered; indeed, they are from the same petitioners. The main difference is that the petitioners are asking for the petitions to be debated during the stage 3 debate of the bill, which, as I said, is scheduled to take place on 13 February, the day after our next meeting.

The committee will consider the petitions formally at its meeting on Tuesday 12 February. It is only fair that members be informed of the submission of those petitions in advance of the meeting, to allow members who share the petitioners' concerns time to lodge amendments at the stage 3 debate on the bill. I do not wish to pre-empt the committee's consideration of the petitions next week, but the lodging of amendments by members appears to be the only realistic way forward in response to those petitions.

The issues raised in the petitions have been discussed at length by the Rural Development Committee. I suggest that any request for a debate over and above the stage 3 debate on the Protection of Wild Mammals (Scotland) Bill would fall on deaf ears. Any member who wishes to lodge an amendment to ensure that the issues raised in the petitions are debated at stage 3 is free to do so.

Phil Gallie: Are we in a position to copy PE448 to Scottish Enterprise Borders?

The Convener: We will copy it to Scottish Enterprise Borders for information.

John Farquhar Munro: The petition states:

"If hunting is banned, other country sports will inevitably follow."

That is not correct.

Dr Ewing: It is not a true statement.

The Convener: It is an opinion rather than a statement of fact.

Dr Ewing: It is often stated that, if hunting is banned, bans on other country sports will follow, but that is not true.

Dorothy-Grace Elder: It is not true, but we are in a difficult position because of what has happened in the Rural Development Committee. As far as I know, the committee voted against compensation by six votes to five. I have never before known compensation to be completely denied—just flung out of the window—through legislation. I am an urban leftie MSP, one of the people whom the Scottish Countryside Alliance most dislikes.

Phil Gallie: Boo!

The Convener: The *Official Report* will note that Phil Gallie booed at that point.

Dorothy-Grace Elder: I am opposed to hunting, but I am willing to vote against the bill if it goes so far as to deny human beings compensation.

The Convener: All those issues will be debated thoroughly on Wednesday 13 February. We have six hours to debate them, which should be ample.

Dorothy-Grace Elder: Let us hope that they let the urban lefties in.

The Convener: Earlier today, Robbie the Pict named a Scottish Executive official and accused that official of lying in a letter to him. Members will be aware that the Presiding Officer has ruled that civil servants should not be named in the chamber, except in circumstances where that is justified. That is a matter of courtesy, and I believe that the Presiding Officer's ruling should apply equally in this committee. Civil servants work on behalf of ministers. Those ministers, rather than civil servants, are accountable to the Parliament. It is important that I make that statement on the record.

Current Petitions

Planning System (Appeals) (PE414)

The Convener: The first current petition for consideration is PE414, from Mr S Philips, on planning decisions. The petitioner calls on the Scottish Parliament to review the current planning system.

Members will recall that the petitioner's interest in this matter arises from a decision by Angus Council to refuse planning permission, owing to road safety concerns. Subsequently, that decision was overturned by the Scottish Executive. The only recourse available to the council and to individuals living in the area is to take the case to the Court of Session. In the petitioner's judgment, that is discriminatory because of the high costs that such a course of action would involve.

We agreed to request details of the Executive's position in relation to third-party planning appeals and to pass a copy of the petition to the Transport and the Environment Committee, for information only. We have now received a response from the Executive, and it is absolutely clear that it

"has no plans to introduce a third party right of appeal."

It says that it has considered the matter periodically, but believes that such appeals would undermine the efficient and effective operation of the planning system, would create delays and

"could discourage economic and industrial investment".

In any case,

"Third party appellants might not be representative of the wider community".

The Executive acknowledges the importance of the participation of third parties in the planning process,

"both through involvement during the preparation of development plans and through commenting on planning applications."

Recently it issued a consultation document entitled "Getting Involved in Planning", which aims further to improve public involvement in the system. A summary of that document's main proposals is attached to the papers that have been circulated to members.

In response to our question about ECHR compliance, the Executive says that existing planning legislation

"is compatible with the Convention without further amendment."

However, a case relating to the ECHR and such appeals has come before the courts in Northern Ireland and is awaiting judgment. If that judgment has implications for Scotland, the Executive will take those into account. A judgment by the Court

of Session noted that the right of appeal to the Court of Session against planning decisions made by Scottish ministers

"is sufficient to meet the terms of the ECHR."

We have also been given information on the number of planning appeals that have been upheld by the Scottish Executive inquiry reporters unit. Over the past three years, the unit upheld less than one third of appeals.

12:00

It is suggested that, in the light of the consultation exercise on public involvement in the planning system, we should agree that that consultation would be the most appropriate place for concerns about the issue raised by the petitioner to be voiced and taken into account by the Executive. We could suggest to the petitioner that he submit a response to that consultation. It is further suggested that we agree to take no further action, other than to copy the Executive's response to the petitioner and to the clerk of the Transport and the Environment Committee for information.

Given the large number of petitions that we receive about planning matters, we may wish to ask the Executive to inform us in due course of the outcome of the consultation exercise and of any proposals for amending the planning system that may result from it.

Rhoda Grant: This may involve a huge amount of work for the clerks, but I suggest that we forward to the Executive the petitions that we have received about planning matters, so that they can be considered as part of its consultation exercise. A very large proportion of the committee's work relates to petitions about planning. It would be a good idea for us to feed those petitions into the Executive's consultation exercise, to make the Executive aware of the problems that can arise.

The Convener: I am told that that would be no problem. We can suggest to the Executive that it invite the petitioners to make a submission to its consultation exercise. Is that agreed?

Members indicated agreement.

Local Plan Public Inquiries (PE418)

The Convener: PE418, from Mr Gordon Clyde Ford, calls for a public consultation to be held in relation to the choice of the reporter in a local public planning inquiry. Members will recall that the petitioner was concerned that the local authority has the right to nominate the reporter in any local public planning inquiry. He believes that that is wrong, because it means that the system is heavily biased towards the developer concerned and towards the council that approved the local plan.

We asked the Executive to comment on the petition. It has responded by providing us with details of the current arrangements for the choice of reporters in local plan inquiries. The Executive believes that those procedures can be improved. Indeed, in the consultation paper "Getting Involved in Planning", to which I referred when discussing the previous petition, it

"seeks views on a proposal that Reporters for Local Plan inquiries should be appointed independently by SEIRU."

The paper also

"suggests that local plans should be automatically adopted in line with the Reporter's report ... unless the planning authority advises all parties that it intends not to follow the recommendations, giving an opportunity to respond. Where, following receipt of responses, the planning authority still wish to depart from the Reporter's recommendation, we propose that it should be required to seek permission from the Scottish Ministers to do so."

The consultation exercise on public involvement in the planning system is specifically addressing the concerns raised by the petitioner. Indeed, it proposes a change in the current arrangements for the appointment of reporters and the handling of inquiry reports that mirrors almost exactly the change suggested in the petition. It is therefore recommended that we agree to suggest to the petitioners that they submit a response to the consultation paper in support of the Executive's proposals. It is further recommended that we agree to pass a copy of the Executive response to the clerk to the Transport and the Environment Committee, for information only, and to take no further action.

Dr Ewing: Hear, hear.

The Convener: Is that agreed?

Members indicated agreement.

Road Equivalent Tariff (PE421)

The Convener: The final petition, PE421, from Mr Alasdair Nicholson, calls on the Parliament to promote and trial a road equivalent tariff between the Western Isles and the mainland and to pursue measures to implement a fair road equivalent tariff system to the Scottish islands at the earliest opportunity.

Members will recall that the committee considered this petition at its meeting on 4 December 2001 and agreed to write to the Scottish Executive to obtain its views on the petition. A response has now been received from the Executive, a copy of which is attached to members' papers.

The Executive's response indicates that the issue of road equivalent tariffs was the subject of an oral parliamentary question from Duncan Hamilton MSP, who spoke in support of the

petition at our meeting on 4 December 2001. In reply to Duncan Hamilton's question, the Deputy Minister for Enterprise, Transport and Lifelong Learning said that the Executive would set out its preferred option for future fares policy on the Clyde and Western Isles ferry services when it consults on the draft specification for those routes early this year. The minister also noted that a move to a road equivalent tariff would require substantial alteration to the fares structure for those services at a time when stability and security of service should be the key priorities.

The Executive's response also indicates that consultants commissioned by Caledonian MacBrayne have concluded that the

"introduction of RET would have a major downward impact on the Company's revenue, necessitating a significant increase in Scottish Executive deficit funding. It could also generate a demand for travel that could only be satisfied by increasing the fleet size (which again would require substantial additional government support)."

It is suggested that it would be appropriate for the issue of road equivalent tariff to be raised in the context of the consultation on the draft service specification for the Clyde and Western Isles ferry services. It is therefore recommended that we agree to suggest that approach to the petitioner and take no further action. Alternatively, we could agree to refer the petition and the Executive's response to the Transport and the Environment Committee for its consideration.

Dr Ewing: No study has ever been conducted into the feasibility of the petitioner's proposal. It is known that Norway has road equivalent tariff. The extra cost is picked up by the Norwegian Government. It is also known that some of the Greek islands are introducing RET. I do not have other examples, but RET makes a difference to remote areas. If they have it, they can survive on equal terms. Cost almost rules out family visits to people who live on islands, including Shetland or the Western Isles. The cost of transport means that people who live on islands become isolated.

I do not want to make a political point, but there have been times when RET was Tory and Labour party policy. RET was in their manifestos, but when it came to the bit, it never happened. I have looked at the Norwegian example with great envy. We are dependent on CalMac in many ways and it is bound to make the remarks that it has made. In the words of Mandy Rice-Davies, "He would say that, wouldn't he?" We are talking about 90 inhabited islands, yet a real study has not been conducted. Surely someone should conduct a proper study?

Phil Gallie: Through the convener, I ask Winifred a question. I accept her point about the study, but many people who live on the islands, or who go to live on the islands, do so because they

want a degree of solitude.

Dr Ewing *indicated disagreement.*

Phil Gallie: I am asking a question, Winifred. If we were to go down the line that is being suggested, it would open up the islands to mass invasion. An awful lot of people might start to take advantage of the islands. Is that point worthy of note?

Dr Ewing: Why is the Sgitheanach not laughing heartily?

Phil Gallie: I am asking a question.

Dr Ewing: The odd person might go for solitude, but most people on the islands are island born. They love their island and their community and want to stay in it. Why should they be cut off from contact? In the end, that is what drives away young people. Most island communities want to retain their young people, but not against their will. They want them to have the option to stay in Skye or wherever. The cost of transport means that that option is not open to people.

Dorothy-Grace Elder: It is a tragedy. Depopulation is massively aggravated by the cost of transport. Even in countries that do not have RET, some arrangement is in place to help remote areas. In Ireland, arrangements are made for certain categories of people, including pensioners, the disabled and prisoners' wives, to have rail fares paid and, in the case of people with disabilities who have to travel to remote islands, air fares paid. Phil Gallie will enjoy this. One of the islands off the west coast of Ireland to which free air fares are provided is called Tory island.

Dr Ewing: It has not got an airport.

Dorothy-Grace Elder: It has an airstrip, possibly on a beach.

Rhoda Grant: I suggest that we pass PE421 to the Transport and the Environment Committee. That committee is examining consultation with CalMac and would want to see the petition. As Winnie said, the Transport and the Environment Committee might want to examine the feasibility of RET. I am always concerned that places such as Shetland, which are long road miles away from the rest of the country, might not benefit from such a scheme. However, we need to examine the proposals contained in PE421.

The Convener: I wish to be clear. Is the Transport and the Environment Committee examining the draft service specification for the Clyde and Western Isles service?

Rhoda Grant: Yes. I could be wrong, but I think that that is the case.

John Farquhar Munro: Yes, it is. As members have heard, the issue of road equivalent tariff has

been on the discussion table for many years. Back in the time of Hamish Gray, RET was to be implemented in the lifetime of the next Parliament of the day, but it never happened. As everybody knows, the subject was debated recently in the Scottish Parliament. At that time, I suggested that, although RET has not been implemented, an experiment could be set up on a couple of routes to test the pros and cons of RET and whether it is effective and beneficial. Phil was trying to twist our tail a little. I am sure that he was not serious.

Phil Gallie: Are the islanders worried by a lot of visitors coming to the islands?

John Farquhar Munro: No, it would not worry islanders at all.

The Convener: That clarifies the question. If the Transport and the Environment Committee is examining the draft service specification, we can refer PE421 to that committee and ask it to consider the petition in the context of its consideration.

John Farquhar Munro: Consider road equivalent tariff?

The Convener: Yes. Is that agreed?

Members *indicated agreement.*

Multiple Sclerosis (PE431)

The Convener: PE431 is not on the agenda, but members will remember that the subject of the petition was beta interferon. Members will also know that, under a new deal agreed between the Government and the drug companies, beta interferon is to be made available to all Scots patients who need it. We can claim PE431 as another success.

Dr Ewing: Can we claim it as our success?

Dorothy-Grace Elder: Yes.

The Convener: We can and we will.

Dorothy-Grace Elder: All patients who are found to be suitable for treatment with beta interferon will get it. Are we certain that there is not a catch?

The Convener: I have not seen the detail of the deal. There may well be a catch, but at least it is a step in the right direction. The move was welcomed warmly by the petitioners.

Dr Ewing: Who says which patient is suitable?

Dorothy-Grace Elder: Some have deteriorated—

Rhoda Grant: The Multiple Sclerosis Society in Scotland will agree with the medics on the patients who are suitable for treatment. I have not been made aware that that was an issue.

Dorothy-Grace Elder: If this news is right, it is wonderful.

Inadmissible Petitions

Rowallan Castle (IP16)

State Hospital (IP17)

Housing Application (IP18)

The Convener: We have three petitions on the agenda relating to a planning application, incarceration at the state hospital at Carstairs and a housing application. Is it agreed that, in all three cases, because we are being asked to involve ourselves in Executive decisions, the petitions are inadmissible?

Members *indicated agreement.*

Rhoda Grant: When we write to the petitioners, will we explain why their petitions are inadmissible?

The Convener: In all cases petitioners are given a full explanation.

Convener's Report

The Convener: The only matter under item 4 is to remind members that the next committee meeting is next Tuesday.

Dr Ewing: I thank the clerks for the committee papers, which were beautifully presented.

Dorothy-Grace Elder: Indeed.

Meeting closed at 12:12.

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