

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 5 September 2007

Session 3

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

3rd Meeting 2007, Session 3

CONVENER

*Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)
*Sarah Boyack (Edinburgh Central) (Lab)
*Jamie Hepburn (Central Scotland) (SNP)
*Peter Peacock (Highlands and Islands) (Lab)
*Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
*Bill Wilson (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Bill Kidd (Glasgow) (SNP)
Nanette Milne (North East Scotland) (Con)
John Farquhar Munro (Ross, Skye and Inverness West) (LD)
David Stewart (Highlands and Islands) (Lab)

*attended

THE FOLLOWING GAVE EVIDENCE:

Andrew Crawley (Scottish Government Legal Directorate)
Charlie Greenslade (Scottish Government Rural Directorate)
John Maxwell (Scottish Government Rural Payments and Inspections Directorate)
Michael Russell (Minister for Environment)
Michael Taylor (Scottish Agricultural Science Agency)
Derek Wilson (Scottish Government Rural Directorate)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Katherine Wright

LOCATION

Committee Room 2

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 5 September 2007

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

Subordinate Legislation

The Convener (Roseanna Cunningham):

Welcome to the first meeting after the recess. I have received no apologies so far and I have not been advised that other members are coming to this meeting. Before we proceed, I remind all members to switch off their mobile phones.

I welcome the Minister for Environment, Michael Russell, and his officials Michael Taylor, Charlie Greenslade, Derek Wilson, and John Maxwell—sorry, I missed Andrew Crawley, because the light was shining on his name-plate. The officials are from various bits of the Executive and no doubt they will know when to chip in.

We continue the discussion that started at our most recent meeting, at which we decided to seek further information on two Scottish statutory instruments: SSI 2007/306 and SSI 2007/312. The next agenda item is a formal debate on a motion to annul SSI 2007/312, which was lodged and will be moved by Mike Rumbles. During this part of the meeting, however, we will seek further information from the minister, who is here to answer questions on both sets of regulations.

Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Amendment (No 2) Regulations 2007 (SSI 2007/306)

The Convener: I invite the minister to introduce his officials and to make opening remarks on SSI 2007/306.

The Minister for Environment (Michael Russell): I will make opening remarks on both sets of regulations, but I will deal first with SSI 2007/306.

Thank you for giving me the opportunity to attend the meeting. My appearance today proves that in life one can experience everything from both sides, although I am not sure that I am looking forward to this part of my role. Mr Taylor and Mr Greenslade will be able to answer questions on the regulations that I cannot.

I carefully considered the discussion that took place in the committee at its most recent meeting

and I want to make a couple of opening points. We use pesticides because we have all become used to being able to buy food that we want all year round at a reasonable price. Pesticides allow us to do that. They also make fruit and vegetables less unsightly and increase yield. All pesticides must be shown to carry no unacceptable risk to humans, animals or the environment. Tiny amounts of pesticide can remain in and on our food, which is why a maximum residue level is set for each pesticide. MRLs are not food safety limits; their purpose is only to check that good agricultural practice is being followed. They represent the maximum amount of pesticide that is expected in or on a product, if a pesticide has been applied. Most MRLs are set by European Union directives and require transposing, which is what the amendment regulations that we are considering do. The regulations are the latest in a long line of such instruments.

The committee's principal concern seemed to be that the average cost of the MRL was thought to be £11,629, as is stated in the regulatory impact assessment. The RIA attempts to assess the cost of the whole programme for MRLs and presents that in terms of an average cost. However, that cost is not exclusive to the establishment of each MRL; indeed, it is incurred whether or not an MRL is set. The costs are met by the multinational companies that develop and manufacture pesticides, such as DuPont, BASF and Bayer. To put the figure of £11,629 into context, the agrochemical manufacturers estimate that the overall cost of bringing a new pesticide to the market is £130 million.

We have received no complaints at all that the cost of supporting MRLs for any active substance is too high. The cost is not met by individual farmers, except in so far as it is rolled up in the total cost of producing new pesticides, which is vastly higher than the MRL sum that is borne. I hope that that explains the issue about which the committee was concerned.

The Convener: Thank you. Members may have specific questions on this SSI, but I have a question on something that you said. You talked about the rolled-up costs that are involved in bringing new pesticides to the market. Do you mean that the result of that would be that, rather than the alarming figures to which you referred, there would be a cost of just 1p or 2p extra on a bag of whatever it was that a farmer wanted to buy?

Michael Russell: That is indeed what we mean. The rolled-up cost is the total cost involved in developing a new product or in bringing an existing product to a new market.

The Convener: Which is, of course, ultimately passed on to the consumer.

Michael Russell: Absolutely, but that cost is a tiny part of the total cost of developing such products.

The Convener: Sarah, did I see your hand going up?

Sarah Boyack (Edinburgh Central) (Lab): I was waiting for John Scott to come in first because I think he originally raised the issue. I was going to move us on to another angle.

John Scott (Ayr) (Con): I seek further clarification on the £11,000 figure. I am sorry for not being more aware and for not understanding fully your explanation of that figure, but to what does it refer?

Michael Russell: With your permission, Mr Greenslade will explain that even more adequately than I did.

Charlie Greenslade (Scottish Government Rural Directorate): The £11,000 is an indicative figure that is based on the average cost of constructing an MRL. The amount of money that is involved in doing that work is expended by the companies concerned prior to bringing the product to the stage at which it is approved and can be marketed. The £11,000 is an indicative figure only; it is not an isolated figure for setting an MRL.

We recognise that the regulatory impact assessment could be better in some respects. When we update it, we will make it a little bit clearer.

Sarah Boyack: My question is more of a strategic one on an issue that I tend to raise whenever a pesticides SSI comes before us. It concerns the overall monitoring of pesticides legislation, which is done incrementally as things come out of Europe. Do you plan to look more strategically at pesticides use and, in particular, the links with human health? Do you plan to monitor the impact of pesticides? WWF has raised that issue in the past and I wondered whether there had been any progress on it.

Michael Russell: A considerable number of activities have been undertaken to monitor the use of pesticides. Sarah Boyack is right that monitoring cannot be done individually but must be done incrementally. Mr Taylor will say a word or two about how that is done and about the current situation.

Michael Taylor (Scottish Agricultural Science Agency): There is an annual United Kingdom surveillance programme for pesticides residues in foodstuffs, which is conducted by five laboratories around the UK. The Scottish Agricultural Science Agency is the participating Scottish laboratory. The programme costs about £2 million a year to deliver and we recover some of that cost from industry via a levy. In the programme, foodstuffs

are bought from retail outlets across the UK and tested for residues of pesticides.

Sarah Boyack: That is interesting. I would be interested to see a summary of the programme's annual report. However, I was thinking not only about residues in foodstuffs but about residues in humans. There have been calls for longitudinal studies on the cumulative impact of pesticides. Has any progress been made on that issue?

Michael Taylor: That refers to toxicological investigations, which SASA and the other labs concerned with pesticides residues in foods do not undertake.

Sarah Boyack: So there are no current plans to do such investigations.

The Convener: Your request about the annual report has been noted, Sarah.

Michael Russell: We will be happy to find out from other people—particularly the health ministers—more information for Sarah Boyack on the matter that she has raised. We will come back to the committee about that.

The Convener: I want to pick up on Charlie Greenslade's comments on the drafting of the information that we receive. All committees have commented on that and I think that they will continue to do so. Some of the information that we receive from the Executive is drafted in such an opaque fashion that it is almost useless. Today, we have seen an example of the confusion that can arise when information is not given to us in an immediately understandable way. I hope that that point gets taken on board.

Michael Russell: It certainly will be.

The Convener: As there are no further questions about SSI 2007/306, do members agree to make no recommendation to Parliament on the regulations?

Members indicated agreement.

Cattle Identification (Scotland) Amendment Regulations 2007 (SSI 2007/312)

The Convener: SSI 2007/312 is the more contentious of the instruments that we have to discuss. While the officials are at the table, members have an opportunity to have a question-and-answer session to clarify any technical issues or to seek explanations of details. I remind members that when the regulations are formally debated under agenda item 2, the officials will not be able to participate in the debate.

I invite the minister to introduce the officials who are attending to discuss these regulations and to say whether he wishes to make an opening statement.

Michael Russell: I would like to say a word or two.

Mr Wilson is from the livestock identification and traceability branch, Mr Maxwell is from the rural inspectorate and Mr Crawley is the senior principal legal officer for the Scottish Government, as we should call it.

I have been advised about, and have carefully considered, the committee's previous discussion on the amendment regulations, and I am happy to address some issues that were raised then. The amendment regulations are complex, but the germane point has been made that they have been produced by and large because two offences were unintentionally omitted from the principal regulations that went through in the previous session, the Cattle Identification (Scotland) Regulations 2007. It should be strongly noted that that is why we are here. However, there is also a third offence, which is a new provision in the regulations and which enforces a requirement of European Community legislation.

The first of the reinstated provisions will make it an offence to fail to comply with regulation 4 of the principal regulations, which requires keepers to notify ministers when they begin to keep cattle, when they take over the keepership of animals, where the animals are to be kept and whether there is any change to that information. Notification must take place within one month of the change.

The second provision is to reinstate an offence of failing to comply with a notice under regulation 11 of the principal regulations, which requires inspecting officers to

"serve a notice in writing on any keeper of animals on a holding prohibiting or restricting the movement of any animal to or from the holding except under the authority of a licence."

That is extremely important—as are all the regulations—for animal health, disease control and public health.

The third provision that the amending legislation will introduce will create an offence of failing to comply with a notice to destroy animals without identification. The provision is necessary to ensure full compliance with European law and to provide the competent authority with sufficient power to do so. The principal regulations allowed for the issuing of notices that require animals without identification to be destroyed, but they did not make it an offence to fail to comply with a notice. The amending legislation will rectify that omission.

The committee expressed concern about the three-day reporting timescale. That is not a time period that will be introduced by the amending legislation, which only clarifies the types of movement. That said, the industry sees three

working days as a reasonable period. The timescale applies throughout the UK and it balances the practicality of reporting moves against the strong need, which there has been this summer, for the central database to be kept as up to date as possible.

There are various ways in which notifications can be made to the central database that is operated by the British Cattle Movement Service. Moves can be electronically notified via the web, e-mail or fax, or there can be postal notification via pre-paid movement cards.

It is important to note that in Scotland market and slaughterhouse operators report all movements through their businesses directly to the relevant database, thus removing the need for keepers to do so. Because there are various options available to keepers, it is reasonable for them to have to notify moves within three days. That is essential for animal health and public health.

The committee talked about the difference between fraud and unintentional error. The issue has been clouded by the debate about the difference between fraud and error in the context of subsidies and common agricultural policy payments. I stress that farmers are not penalised when a discrepancy is found and they are not at fault. However, when breaches are intentional, there can be severe penalties. Everything will continue to be done to differentiate between unintentional error and fraud.

The amendment regulations make offences of failing to comply with existing provisions and provide necessary clarification of other matters, but they place no new obligations on any keeper of cattle, so I hope that the committee will agree that they should stand.

10:15

The Convener: I remind committee members that at this stage we are involved in a question-and-answer session. The more polemic part of our consideration will take place under item 2.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I have some short, sharp questions. How many new criminal offences do the regulations create? Do they replace or add to existing regulations?

Michael Russell: I ask Mr Wilson to reply.

Derek Wilson (Scottish Government Rural Directorate): As the minister said, the first two offences are just reinstatements of existing offences, which have been in force since 1995 and 2002 respectively. Unfortunately, when our consolidation exercise was conducted in April 2007, the obligations to fulfil the relevant

requirements were included in the consolidated regulations, but no offence provisions were created for failing to comply with those obligations.

Mike Rumbles: I am sorry; I did not catch the last bit of what you said.

Derek Wilson: The obligations to fulfil the requirements were included in the regulations that came into force in April but, unfortunately, the offence provisions on failure to comply with those obligations were missed out of the consolidated regulations. The amendment regulations reinstate those offence provisions. The third offence provision is in European Union regulations but was not previously in domestic regulations. In other words, the amending regulations create one new criminal offence.

Mike Rumbles: Is it not the case that the approach that these regulations take is not the only approach to the problem? Under the new land management contracts, the Scottish Executive has contractual arrangements with farmers. Can you confirm that, instead of creating a new criminal offence, it would have been possible for a contractual route to have been taken?

John Maxwell (Scottish Government Rural Payments and Inspections Directorate): The new land management contracts will certainly require cross-compliance from farmers, as is the case with the other CAP subsidy schemes. If farmers do not comply with the regulations, there is a system of payment reductions.

Mike Rumbles: So the answer is that there is an alternative way of doing things.

Michael Russell: I am not certain that that is what Mr Maxwell is saying. There may be a possibility that enforcement could be carried out through land management contracts, but it is my understanding that the EU legislation places an obligation on us to take the proposed route. If we were not to do so, we would be subject to infraction proceedings. It is possible that land management contracts could be used, but in this case a belt-and-braces approach is required.

Mike Rumbles: I have one more question. Farmers make mistakes and are penalised for the mistakes that they make through a loss of subsidy. No one is questioning that. With the creation of a criminal offence, what penalty will they face for making a mistake?

Andrew Crawley (Scottish Government Legal Directorate): Just a second—I will check the principal regulations.

Mike Rumbles: I would have thought that you would be able to provide an answer pretty sharply.

Andrew Crawley: In the principal regulations, which will be amended by the regulations under

discussion, on summary conviction the penalty is a fine not exceeding the statutory maximum or imprisonment of three months. In cases of conviction on indictment, the penalties are more severe.

However, there is another angle to the question. A matter such as this would be prosecuted rarely—I believe that I am correct in saying that there have been no prosecutions. As the minister said, we are making this a criminal offence because we have an obligation to transpose European Community legislation and, in this context, we are required to have a stop-gap criminal offence provision. However rarely it might be used, that is not the same issue as whether we require to have the legislation in place; it can be used in those rare cases where it is appropriate.

Mike Rumbles: As we all know, it is very important to get legal advice about implementing European Union legislation. You are trying to tell me that there is no other approach than the one that you have adopted, but other legal advice suggests that that is not the case. Are you saying to the committee that what you have recommended to the minister is the only way of enforcing EU legislation in this regard? It is a yes-or-no answer.

Andrew Crawley: The answer would be no, but such a simple answer covers a lot of complex issues.

Mike Rumbles: I am happy with no, thank you.

Michael Russell: I would be very happy to see any other advice that Mr Rumbles might bring to the table. Were he to do that, of course it would be sensible for us to look at it. As he has not submitted that advice to us, I am afraid that I cannot comment on it.

Peter Peacock (Highlands and Islands) (Lab): I am not opposed to the intent behind the legislation, as these are very serious matters. My concerns relate to new paragraph 13 of schedule 3 to the Cattle Identification (Scotland) Regulations 2007, headed “Misuse”, the sixth word of which is “use”, and how that word is interpreted. In the circumstances that you are describing, do you accept that it is possible for someone inadvertently to use identification or movement documents for an animal other than the animal for which they were issued? If so, I seek reassurance that discretion can be exercised so that someone who genuinely makes a mistake does not find themselves subject to a prison sentence.

Michael Russell: I would like Mr Wilson to say a word about that crucial issue.

Derek Wilson: The simple answer is yes. We appreciate that the cattle movement system is

complex, it involves high numbers, every animal is individually identified with a 12 digit code, and they all have their own documents. Mistakes can happen. Documents can be incorrectly submitted with animals and procedures are in place to rectify those situations. If a farmer inadvertently reports a movement, the system will flag up that he did not have that particular animal, for example, and it would be checked. Such errors will be corrected. The amendment regulations are intended to cover those who intentionally use documentation for animals when they are not meant to be used.

Michael Russell: I would like to reinforce that. I pay tribute to the previous Administration, Mr Finnie and Sarah Boyack—

Peter Peacock: Ooh!

Michael Russell: I always give credit where credit is due, Mr Peacock. Previous Administrations were equally concerned about this issue. In 2005 and 2006, penalties were surveyed and there was agreement that they were disproportionate at the lower level. A tolerance level was introduced at that time, and it has been built on since then. A low level of discrepancy found at an inspection is not regarded as negligent in any sense and the farm is not deemed to be in breach of cross-compliance. We are continuing with that and, although I do not want to anticipate an announcement from Mr Lochhead later this week, that tolerance also applies to the CAP single farm payments. We are very sensitive to that. It is only when that tolerance level is clearly exceeded that we move on to the next stage, although it is still comparatively minor.

With errors that may be negligent but which are rectifiable and minor, we keep any penalty—the percentage reclaimed—to the absolutely lowest level. I understand that we and the previous Administration have been criticised by the European Union for keeping the penalty too low. Only in cases in which there is gross negligence or other obviously criminal activities have occurred is a fuller penalty imposed. We are sensitive to the issue.

Peter Peacock: Who exercises the discretion to refer a case to the procurator fiscal? Is that done administratively by department officials? I am sure that farmers want to protect their industry and its reputation, so they therefore will want tough penalties when appropriate but, equally, I am sure that they do not want there to be innocent victims of the system. How do you ensure that discretion is applied similarly throughout the country and that the spirit of the intent that you have set out, which I accept completely, is followed fully?

Michael Russell: Mr Maxwell from the rural inspectorate knows about that.

John Maxwell: The inspections throughout Scotland are carried out by one body: the rural

payments and inspections directorate. Every year, the inspectors are given refresh training on the system and what they have to look for when they are on a farm. The inspectors have comprehensive guidance, which mirrors the guidance for farmers about how to operate the cattle tracing system. The inspecting officers gather the facts on the farm and those are then put into a computer system, which determines the level of penalty if a payment reduction is to be applied. Equally, the inspector must take note of signs that the errors were made intentionally. Obviously, factual evidence would exist to back that up and would be used. Very few cases arise every year, but when they occur, the inspector reports the facts to the line management in the system and then we may commence a prosecution, which will also involve local authority animal health officers.

The Convener: I want to make a lawyer's point. I hear what has been said about the offence, but that is not reflected in the regulations, which create an absolute offence. From a lawyer's perspective, from what you say, I would have expected the regulations to say something along the lines of, "Failure to take reasonable steps to comply is an offence." Such language has been used in relation to the offences for a considerable number of years. Given the nature of the drafting of the regulations, it surprises me that we are told that there is such a degree of potential latitude. The regulations state that failure to comply is an offence, not that deliberate failure to comply is an offence. No qualifying phraseology is used to allow for what the minister says. I agree that nobody will challenge the regulations, because the system is being exercised generously, but it seems to me that the regulations would be open to challenge, if somebody decided to be bloody minded, although they will not, of course.

Peter Peacock: I want to pursue that, convener, because that is the point that I was trying to get to. I am curious about the issue, so perhaps the lawyers can advise us on it. I have no doubt at all about the intention, but why did we not qualify the word "use" to try to make it clearer that the regulations apply to people who purposefully misuse documents to achieve some gain or benefit and not to those who misuse documents accidentally? That might satisfy everybody.

Michael Russell: I will have to ask Mr Crawley for an explanation of that.

Andrew Crawley: I agree with the point that has been made about the effect of the offence provisions, but it is important to put the issue in context. The regulations engage at the point when a case is before a court and the question is whether a farmer is to be convicted. A policy decision has been made that this provision is

appropriate at that point in the process. It is not for me to speak on the policy, but there are good reasons why we require an effective sanction for breach of the identification and traceability regulations—more might be said about that later.

The point at which a decision to prosecute is made and a case goes to court is the end of a long process involving administrative and fiscal discretion. A report can be made to the fiscal, but the fiscal can decide that it is not in the public interest to prosecute. Generally, decisions to prosecute are taken where there is fraud against a financial scheme. At that point, it is appropriate for there to be a strict liability conclusion to the investigation. That is the legal effect. The policy behind the regulations is a slightly different issue. I would not like the committee to get the impression that it is a question of our saying, “Wham, bang. That’s it. You’re done.” There is a context in which the regulations have effect.

10:30

The Convener: I apologise to the non-lawyers here for asking this, but is this about actus reus and mens rea in the creation of a criminal offence? Are you saying that if you cannot establish the intent, the simple act itself does not constitute a crime?

Andrew Crawley: When the matter is before the sheriff, that is correct; it is strict liability.

The Convener: I apologise for that question, but the answer has slightly clarified the matter for me.

I will let Mike Russell come in at this point, because he indicated a little while ago that he wanted to do so. However, I also have a list of other members who want to ask questions.

Michael Russell: I just wanted to provide figures in response to Mr Peacock’s question. There were 1,860 inspections in 2006, which resulted in 91 farmers receiving a warning letter, 101 penalties at 1 per cent and 35 penalties at 3 per cent. In other words, there were some negligent errors, according to the system. There were also some people who were simply warned, but for the vast majority of people, things were absolutely fine, even if there were comments to make. That is the context of the matter that we are discussing.

Richard Baker (North East Scotland) (Lab): Are you confident that the process that you outlined is subject only to the regulations that the Executive has laid, and not to EU regulations? The original concern was that the EU regulations do not allow a differentiation between error and fraud.

Andrew Crawley: I would not like to comment on the CAP requirements.

Richard Baker: I am referring only to the Cattle Identification (Scotland) Amendment Regulations 2007.

Andrew Crawley: I do not think that the issue is relevant. Paragraph 13 relates purely to domestic enforcement and how far we are required to go in creating a criminal offence.

Richard Baker: It is part of enforcing EU regulations. We are involved in that. That is what I am concerned about.

Andrew Crawley: Yes, but we are talking about different EU obligations.

Michael Russell: I do not think that it is entirely fair to say that, even in the worst case, the EU regulations do not distinguish between error and fraud. That is not an absolute by any manner of means. We are absolutely convinced that there is a strong difference between error and fraud. Everything that we do is based on that.

Richard Baker: That is not the perception among the farming community.

Michael Russell: We are trying to make it the perception. That is where we stand.

Richard Baker: I take that on board. You generously acknowledged that we have all been concerned about the matter. I had several meetings with Ross Finnie about it.

I also understand your point that there are only a small number of instances. However, the problem is that many of us have met farmers who have been taken to the brink of bankruptcy because they have made an error under the CAP regulations. Such people could be left in an extremely difficult situation.

Michael Russell: We are determined to do something about that.

Richard Baker: I appreciate that. The convener made a point about the clarity and detail of the regulations. You have given us assurances that it will be possible to differentiate between fraud and error, but that is not clear in the regulations as they have come to the committee. Will you consider making the regulations clearer and bringing them back to the committee? It seems to me that there is scope to do that. It would at least address a lot of fears among the farming community about the way the regulations might work.

Michael Russell: We have to be clear about the difference between the CAP regulations and these regulations.

Richard Baker: I—

Michael Russell: Allow me to finish, please. There is a strong difference between the two. Like

my colleagues, I am absolutely clear that not only is there discretion but that that discretion is operated as positively as possible. The committee has had a clear explanation from Mr Crawley—as a non-lawyer, even I understood it—of the situation that exists and the reason why the regulations are framed as they are. I have also given a strong indication of the numbers involved.

What I can and will do is keep closely under review any issues that arise and the possibility of further discretion being exercised. We know that if even one farmer has difficulty with the system, it is one too many. My colleague Mr Lochhead is vigorous in the matter, and I take my lead from him. We will continue to be vigorous, and I assure the committee that we will keep the matter under review.

Richard Baker: I appreciate that assurance. Let me say finally that I understand the difference between our legislation and the EU legislation, but my problem is that the potential for discretion is not clear in the regulations. My concern on that point remains.

The Convener: I call Bill Wilson, to be followed by John Scott.

Bill Wilson (West of Scotland) (SNP): I was going to ask about the numbers, which Mike Russell has now given us.

John Scott: The questions have largely been answered, but the regulations have to be seen against the backdrop of what is regarded as a need to review the appeals system. It was hinted that the minister might be about to say something about that, and I can say only that it would fulfil a lot of parties' manifesto commitments if the appeals system were reviewed. If the minister is about to make an announcement on that, I will look forward to it.

The minister has already given an assurance, but I want to be reassured finally about the burden of proof in relation to the intention to defraud. The possibility of trying to deliver a more effective appeals system has been mentioned, and the EC has recommended the removal of disproportionate penalties for minor non-compliance. Against that backdrop of adopting a more reasonable attitude than hitherto, will the minister give me one more reassurance about the burden of proof?

Michael Russell: I wish that I could give you a more obvious hint, but I am afraid that I cannot. However, like many people around the table, we both know that the appeals procedure requires movement. I think that we will see movement, to which there has been a strong commitment.

Let me see whether I can give an even stronger reassurance than before. First, certain types of obvious error, such as transposed numbers and

misread information, are already excluded. People are perhaps worrying unnecessarily—sometimes their worries are being stoked—and they should be certain that they will face no difficulty or penalty for those errors. Indeed, we assist people to get that information right.

Secondly, the negligence test that has been introduced is clear. In cattle inspections, a points system is used to rule out minor irregularities that have been found involving perhaps relatively few animals and relatively few errors. That is another safeguard. Furthermore, cross-compliance penalties, which we have talked about in terms of percentages, are applied only when there has been, and can be proved to have been, clear negligence or an intentional breach. I am giving you reassurance on three tiers.

I must also say that we do not want people to be prosecuted. Mr Peacock made a good point. The farming community in Scotland wants to weed out those people who are trying to abuse the system. Equally, nobody wants to see people who make mistakes put in any difficulty, and we will continue to be rigorous about that. I repeat my assurance to Mr Baker: we will keep the system under review. The inspections branch will continue to examine it, and we will ensure that, as ministers, we have a knowledge of how it is working so that we can ensure that it is working to the advantage—not the disadvantage—of the farming community.

John Scott: I should have declared an interest at the beginning—I beg the committee's pardon for not having done so.

The Convener: We have now taken all the questions.

Jamie Hepburn (Central Scotland) (SNP): Sorry, I still have one.

The Convener: You need to put your hand up more clearly.

Jamie Hepburn: Right. I will raise it high to the sky next time.

I want to return to something that you said, minister, about the three-day timescale, which you mentioned was viewed by the industry as reasonable. Could you give us more detail about the feedback that you have received and about who has been involved?

Michael Russell: Given his role in the rural directorate, I ask Derek Wilson to deal with that.

Derek Wilson: The three-day period was introduced early in 2002, following the previous foot-and-mouth outbreak in 2001. It was realised that it was necessary to get the database up to speed as quickly as possible. In setting up the systems, there was liaison with the industry bodies, which were fully involved. The cattle

system is a Great Britain system, and the industry bodies were also involved in the sheep system, which is an independent, Scottish system. The period of three days was considered to be reasonable. We appreciated that we had to make it as easy as possible for farmers to comply. It was therefore agreed that the markets and abattoirs that the majority of animals go through should report movements electronically on farmers' behalf.

In addition, the Scottish Government funds the cattle tracing system website, CTS online, which enables farmers to do their reporting on the internet. Prepaid movements can be arranged using movement cards. We take every step necessary to give farmers as many options as possible, and they are with us all the way on that. They agree with us about that approach, there is no issue with it and we have had no problems since the system was introduced in 2002.

The Convener: We have exhausted the question-and-answer session under agenda item 1. I move to item 2, the debate on the motion lodged by Mike Rumbles to annul the regulations. Standing orders allow up to 90 minutes for the debate, although I do not anticipate that it will take 90 minutes—I hope not.

I invite Mike Rumbles to speak to and move motion S3M-393. Once he has done so, I will invite contributions from other members. I ask members to indicate as early as possible if they wish to contribute to this part of our proceedings.

Mike Rumbles: I start with a quote. We recognise

"the concern expressed by farmers and other sectors in response to the constant stream of regulations ... In government we are determined to deliver lighter and effective regulation. This commitment will include a policy of 'one in, one out' so new regulations replace rather than add to old regulations."

I thought that that was pretty good. The minister will recognise the quote, which comes straight from his party's election manifesto. I commend him for it—to repeat, I thought that it was pretty good. I am therefore somewhat dismayed to be here at the first meeting of the Rural Affairs and Environment Committee after the summer recess debating yet more regulations for our farmers to deal with.

The regulations before us do not bring the lighter touch that we were promised. The minister says that it is his intention not to hit honest mistakes. I respect him for saying that. I do not question his integrity—I believe that that is exactly his intention. However, the legislation that he is presenting to us today does not achieve that aim. We have just heard that the regulations create a new criminal offence for farmers. It is not an offence to use the

documentation fraudulently; the regulations, which the minister is asking us to approve, say that it is simply "an offence to use" that documentation. Honest mistakes are made, and farmers who make those mistakes will be criminalised. That is the law that the minister is asking us to approve.

No one would disagree with the minister's view that it is important that strict rules are in place to ensure that animals can be easily and correctly identified. Perhaps this is down to the minister's officials and not to him, but his approach seems to concern administrative convenience, rather than being a proportionate measure to help the farming industry.

10:45

I cannot be the only MSP representing a rural constituency to whom farmers have said, over the past eight years, that they have made mistakes in their paperwork and have lost a good deal of their income. I am not challenging the fact that they have been penalised for their mistakes by the withdrawal of subsidies; I am objecting to the fact that we now have a regulation that says:

"It is an offence to use an identification document, movement card or movement document in relation to an animal other than the animal for which it was issued."

We are debating this issue because the Executive has lost its ability to remove subsidies: we all know that the payments are not now related to the animals on the farm, as we have the single farm payments instead. That is why I asked whether the proposed route is the only available one, because it is not.

The Executive has chosen to go down the route of tackling the issue by making a new criminal offence because that is easier for the Executive than taking the more proportionate, administrative route that would be better for our farming community.

Earlier, Andrew Crawley confirmed that the proposed route is not the only way to implement EU regulations. I would have been surprised to learn that it was, so I was expecting that answer. If the committee allows the regulations to proceed as they stand, there can be no doubt that farmers who make mistakes in their documentation will face criminal sanctions and will be worried about that possibility. I see the minister shaking his head, but there is no doubt that that is what the law says. Whether they will be prosecuted remains to be seen, but they will come to our surgeries with their concerns. The situation that I am talking about must not be allowed to happen. We must not criminalise honest mistakes.

I have an e-mail from the NFUS, which says:

"It is critical this new legislation is not a sledgehammer to crack a nut. The Scottish Executive has a pretty woeful

record in distinguishing between the vast majority of mistakes which are the result of an innocent error and the small minority of cases that are intentional fraud.

It is easy to accidentally put the wrong cattle passports in your pocket and therefore arrive at an abattoir with the wrong documents—clearly, that shouldn't be a criminal offence."

Of course that should not be a criminal offence but, under the proposals, it would be.

I am shocked to find that the penalties that face our farmers include not only fines but the possibility of imprisonment. We had a little pause when that was pulled out of the bag. I would have thought that that penalty would have been put up front quite clearly. If a new criminal offence is to be created, people need to know what the penalties are.

Today, we have to decide whether to approve the new criminal offences and the attached penalties. I believe that they are not necessary and that the proposals are not the way in which we should proceed.

On Monday night, I met local farmers in Kemnay in my constituency. They had not heard of the new criminal offences, even though they are in place at the moment. They were horrified that we were even contemplating them. My view, as an individual MSP, is that this is not the right approach. I urge colleagues on the committee to support the motion, which states that we should do nothing further with the regulations at the moment. We cannot amend the regulations, which is something that I called for in the previous session. Nobody is trying to be disruptive; I am merely asking the Executive to come back to the committee with amended regulations that make clear the fact that the offence relates to fraudulent misuse of the documentation, not honest mistakes in the use of the documentation. That would ensure that honest mistakes were not criminalised.

I move,

That the Rural Affairs and Environment Committee recommends that nothing further be done under the Cattle Identification (Scotland) Amendment Regulations 2007 (SSI 2007/312).

Jamie Hepburn: What would be the effect of the motion, convener? I am not clear about what it would do.

The Convener: If the motion is agreed to, the SSI will not be approved—we will not approve it here. It will then go to the full Parliament. The minister will no doubt explain at some point the implications of the SSI not going through.

Bill Wilson: Could the minister choose to resubmit the regulations? Could the Government say that it would bring them back in a week? I just want to be clear about how the system works.

The Convener: I do not know whether the minister could resubmit the regulations within a week; no doubt he and his officials will consider the speed with which they could bring them back to Parliament, if that was required.

Bill Wilson: I was asking about the theory—whether there is anything to disbar the Government from resubmitting the regulations.

The Convener: No, there is not.

Bill Wilson: I appreciate that there may be practical issues, but I was asking about the theory.

The Convener: The practicalities are important.

Peter Peacock: This has been a very useful discussion, and Mike Rumbles has done us a service by raising these difficulties. We now have many reassurances from the minister on record: we have it clearly on the record that there will be a series of stages at which discretion may be exercised before a decision to prosecute is reached. We did not get this on the record—or perhaps we did—but I believe that the procurator fiscal will also have to exercise discretion about what is in the public interest. It is useful to have such things on the record so that farmers who have expressed concerns to any of us can see what reassurances have been offered. I am glad that the minister has given reassurances.

However, it is still possible that discretion will not be exercised correctly and that case law will subsequently show that the matter has not been dealt with as we all—the minister included—intended. Will the minister give me an absolute assurance that, if case law demonstrates that interpretation of paragraph 13 of schedule 3 is causing difficulty, he will come back to Parliament with some qualification to the paragraph, so that it does not stay in statute in its present form?

We are talking about a serious matter. Anybody who deliberately misuses such documents is committing a very serious offence—it is not yet an offence, but it will be. Our industry depends on its reputation for being well monitored and well regulated. For those reasons, I will support the regulations today, as long as the minister can give the reassurance that I have asked for. That said, I would not object at all if the minister said that he would take the regulations away and come back with a qualification. I will not oppose the regulations if the minister declines to make a qualification, but I urge him to think about it in the intended spirit. I hope that we all intend to support the Executive in making progress on this issue. The minister might comment on that when he sums up.

John Scott: I agree that Mike Rumbles has raised a valid point. His argument was persuasive. The issue here is, in essence, about preventing

animals born before July 1996 from going into the food chain; that is the big concern that we all share. I accept that the purpose of the amendment regulations is to tidy up an oversight in the original regulations. Peter Peacock, Richard Baker and I have all sought reassurance from the minister, and I am inclined to believe what he has said. I know some of his officials from the past and I am also inclined to accept their assurances.

There may be some issues over which we would die in a ditch, but this is not one of them. I have discussed it with people from NFUS and they tell me that they are not concerned about it because of the reassurances that have been given. I accept that Mike Rumbles is genuine in raising his points, but we do not need to vote against the regulations.

Richard Baker: As John Scott has said, the minister has provided welcome reassurance. I certainly have no intention of dying in a ditch over the regulations.

However, after reflecting on Peter Peacock's comments, I think that Mike Rumbles has done the committee a service by lodging the motion. After all, real concerns remain. As I have said, I am not going to take a stand on the issue, but I would feel even more reassured if the minister would seriously consider taking the regulations away and bringing them back again. Even the insertion of the word "fraudulent" would help.

The Convener: As committee members' comments seem to be exhausted, I ask the minister to respond to the debate.

Michael Russell: I have found the exchange very useful, and I am happy that the assurances that I have given—and which have been given by officials, who have much more experience of this matter than I have—have been important to members.

I am happy to go further. Peter Peacock made a good point: it would be in no one's interest to bring forward legislation, amending or otherwise, that penalised individuals for making mistakes. Discretion is absolutely essential in these matters. Ministers are committed to that principle, and I am happy to give Mr Peacock the absolute assurance that if, at any stage, the problems that he has identified and which other members are worried about in relation to the regulations arise, we will come back to the committee very promptly. I hope that that assurance will be taken in the spirit in which it has been given.

There is a very strong reason, which I will come to in a moment, why I will not say that we will take the regulations away and bring them back to the committee. First, I want to comment on two points that Mike Rumbles raised. I am delighted to hear that he supports lighter regulation, and I look forward to his consistent expression of that view throughout the parliamentary session.

However, before we can clear out regulation, we have to clear up the regulations made by the previous Government. That is precisely what we are doing: these regulations amend regulations that were laid by Mr Finnie and his team. As a result, although I take absolute responsibility for this matter, I should point out to Mr Rumbles that the "woeful record" that he has quite rightly mentioned is not ours, but someone else's.

To be serious about why we need the regulations, I ask members to think back to the potentially serious problem with foot-and-mouth disease that we faced last month. I am sure that, with their expertise in rural affairs, all members will be familiar with the situation. The amendment regulations are about cattle identification and movement. Along with the Administrations in other parts of these islands, we were able to act speedily, because our system of identifying movement was fit for purpose and allowed us to be confident that we knew the location of cattle in real time. Essentially, that is what the three-day period set out in the original regulations allows us to do. If those regulations had not existed, the possibility of dreadful events happening this summer would have been all the greater.

The amendment regulations have not been introduced on a whim. Cattle identification is not something to keep officials busy during their working hours; it is central to public health as well as animal health. We need the amendment regulations, and we need the committee to agree to them.

I ask members to remember that very important issues are at stake. Neither I nor my colleague Mr Lochhead wishes to see anyone penalised, but we are not introducing the amendment regulations for casual reasons. They correct errors made under the previous Government and undertake a task that is vital for the farming industry.

I ask the committee to support the regulations.

The Convener: I am sure that the errors that you mentioned were not made deliberately.

Michael Russell: I am sure that they were not.

The Convener: I invite Mike Rumbles briefly to wind up and to indicate whether he wishes to press or withdraw his motion.

11:00

Mike Rumbles: We were having a good debate until Mike Russell could not resist making a partisan comment. I suppose that that is the nature of the thing.

I have no issue with the regulations that are being amended. The minister knows very well that my whole focus is on the new criminal offence that

he is creating for farmers who make mistakes. Bad law is bad law. As I said earlier, I criticise the minister not for his intention or for a lack of good will, but for a poorly drafted regulation. If only one word had been added to regulation 7, we would not be facing this debate. The correct way to implement what the minister is trying to do would be for the regulation to say, "It is an offence to use fraudulently an identification document, movement card or movement document." That is what I am concentrating on; it is the only point that I have highlighted. Regulation 7 is not the correct way of implementing what the minister is trying to do, because it states:

"It is an offence to use an identification document",
full stop.

I accept the minister's reassurance, but it is not worth a great deal to the individual farmers who will be prosecuted, because it is not the Government—rather than the Executive—but the prosecution service that will prosecute them. Although the minister announced to the committee that such prosecutions would not happen, he has no authority over the matter, because we have an independent prosecution service in Scotland—at least, we did the last time I looked—and the Government does not interfere with it.

Although the minister's reassurance is no good to individual farmers, it is useful that he has given his word to the committee that, when the first prosecution of a farmer under regulation 7 because of a genuine mistake takes place—it will happen—he will bring back to the committee a regulation that will ensure that other farmers do not suffer similar prosecution. I hope that we will hold him to his word on that, because I guarantee that, if we vote the regulations through as they stand, at some stage in the future we will have farmers at our doors who have received letters saying that they face criminal prosecution because of mistakes that they made.

It would be simple to put that right. My Labour colleagues on the committee have suggested that it would be easy for the minister to make a one-word change to the regulations before the 40 days are up, and I agree with them. The minister has until the end of the month, which is ample time to withdraw the regulations and make a one-word change that would solve all the problems that we have identified.

My concern is for the individual farmers who will face prosecution. It is all very well for the minister to say that he will sort it out in future, but he could sort it out now.

The Convener: I take it that you are pressing your motion.

Mike Rumbles: Yes, I am.

The Convener: The question is, that motion S3M-393, in the name of Mike Rumbles, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division. I point out that, if members support the motion, they will, in effect, be telling the minister to take the regulations away and the regulations will not go through the committee process.

FOR

Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Scott, John (Ayr) (Con)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Motion disagreed to.

The Convener: We are required to provide a short report to the Parliament, which will make clear the outcome of our debate. Do members want to include particular points in the report? I take it as read that we want to reiterate the assurances that the minister gave us.

Peter Peacock: Mike Russell said that he would come back to the point about why it is impossible to take the regulations away, but he did not do so. I do not want to reopen the debate, but it would be helpful if, at some stage, he wrote to the committee on that point.

The Convener: Are you asking for an explanation of the practicalities?

Michael Russell: Mr Crawley will address the issue to do with the legal drafting and we will write to the convener on that. The other point that I made—I am sorry that I did not link it in clearly—was that cattle movement is extremely important and we must have a robust regime.

The Convener: The committee must decide the text of its report. I can sign off the report for publication at the end of this week, but I will not be able to do so if we are waiting for a letter from the minister that can be included. We could circulate the text to members and invite their contributions, or consider it at our next meeting. Are members content to allow me to proceed and to sign off on the report when we have received the minister's letter?

Members: Yes.

The Convener: Thank you. I thank the minister and officials for their attendance.

Animals and Animal Products (Import and Export) (Scotland) Amendment Regulations 2007 (SSI 2007/375)

Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) Regulations 2007 (SSI 2007/376)

Import and Export Restrictions (Foot-and-Mouth Disease) (Scotland) (No 2) Regulations 2007 (SSI 2007/377)

Foot-and-Mouth Disease (Export Restrictions) (Scotland) Regulations 2007 (SSI 2007/386)

The Convener: We must consider four instruments that are subject to the negative resolution procedure. No member has approached the clerks with concerns about any of the instruments and no motions to annul have been lodged. If members have no comments, do we agree to make no recommendations on the instruments?

Members *indicated agreement.*

Work Programme

11:08

The Convener: The purpose of this agenda item is to follow up the discussion that took place at our away day on 14 August and formally to agree the committee's work programme for the next year or so. Members have a note of the issues that were discussed at the away day. The paper contains other points about our future workload, which are up for discussion.

Sarah Boyack was unable to attend the away day, so she has had no opportunity to express a view. With the committee's indulgence, I will allow her to comment first, so that her contribution can be recorded.

Sarah Boyack: Thank you. It is obvious from the paper that the committee had a good discussion at its away day. It is interesting how different strands have emerged.

I strongly support the committee's agreement to give priority to flooding and flood management, which is important. The one issue that I would add to the scoping discussion that members had at the away day is coastal flood management. I am aware of the issue because sea level rises came up in the climate change study that was conducted by the committee in the previous session. I know from past experience as a town planner about the impact of sea level rises, particularly in the Clyde and Forth estuaries. We are not geared up for them in respect of legislation, financial support or policy, which is why we need to do work on flooding. The problem goes back to the 1960s, and it would be good to take a fresh look at it. I would add that issue to the committee's agenda.

I was disappointed that two issues that I raised previously and which were mentioned in submissions from organisations and members of the public are not on our agenda. First, eight others suggested that we should pick up the issue of local food. I noticed that two local authorities, the Scottish Agricultural Organisation Society, the Scottish Rural Property and Business Association and WWF Scotland raised the issue, so there is a degree of support for work to be done on it. Secondly, I noticed that one authority, the British Horse Society, the Loch Tay Association and Ramblers Scotland raised concerns about the implementation of the access code. I log those as issues that I would like the committee to consider at some point in the year, but I take the committee's point that it cannot do everything. That is a reasonable conclusion, which I cannot dispute. I would have raised those three issues had I been at the away day.

At the committee's first meeting, the use of reporters was discussed. Is that a way to pick up

additional issues throughout the year? I would lobby for us to consider land reform and local food. There is some support outside the committee for them to be considered, and initially there was interest on the committee in doing so. I strongly support the work that the committee has done and I agree with the outline work programme that the convener has produced as a suggested way forward. I have outlined my minor suggested amendments.

The Convener: Thank you.

Of course, at the away day we discussed both food policy and land reform. If I am not misrepresenting the discussion on food policy, it was decided that because there was relatively broad agreement across the board on taking the issue forward, and given that a number of groups were pursuing parallel courses of interest, it would probably be surplus to requirements for us to conduct a major inquiry at this stage, although that is not ruled out for specific aspects of food policy at a future date. John Scott, who is one of the members interested in food policy, may wish to contribute at some point, but not just yet.

There was also a brief discussion on land reform. It was felt that it could be premature to launch major post-legislative scrutiny, but we did not rule it out and we said that we would want to come back to it. We are thinking of it being a fairly major piece of work.

We made a strong distinction between major pieces of work and smaller pieces of work. We discussed the possibility of having much smaller-scale investigations, perhaps over one or two meetings. Three specific issues that may be handled in such a way were raised and are noted in the work programme paper: the role of the Crown Estate, the applicability of the Scottish index of multiple deprivation to rural areas, and ticks and tick-borne diseases. We did not make a decision about priorities or timing, but noted that those three issues are amenable to shorter-scale consideration by the committee.

I anticipate that members will wish to raise similar issues that could be addressed in the same way—I have one myself and I know that at least one other member also wishes to contribute one. I will not ask for additions to that list at the moment, but I advise that the best thing to do is immediately to notify the clerks of such issues, because we intend to have regular update discussions on the work programme in the months ahead. We will return to this topic, because we will want to adjust our work programme. Emergency issues might also arise, for which we will want to find time.

11:15

I think that I speak for the committee when I say that we take on board the suggestion about

coastal flooding. I also have a point about the flooding inquiry. I am sorry that I am speaking for such a long time, but we need to address a process issue: members might be aware that the Executive has called a major flooding summit for next Monday, 10 September. As the Executive is moving quickly on the matter, the committee could issue a call for evidence today. However, as we are not fully aware of where the Executive is going with flooding, that might be a little premature. It might be wise for us to defer that call until our next meeting. What the Executive says or does not say might allow us to clarify more usefully how we want to focus our inquiry or, indeed, whether we wish to invert the order of the inquiries and start with rural housing as opposed to flooding. I throw out those issues to the committee.

I am aware that I have spoken for longer than a convener should in such circumstances, but background issues needed to be on the record. John Scott wishes to speak, followed by Peter Peacock. I invite other members to indicate whether they wish to speak.

John Scott: I will endeavour to be as brief as I can. I agree absolutely with Sarah Boyack's point on coastal flooding management and, indeed, I believed that it would be part of our remit. However, I am apprehensive that there will be so much duplication between us and the Executive. I do not know what the answer is, but I am slightly apprehensive that we will ask the same witnesses and experts to do the same thing and that our inquiries will probably run in parallel. At least, that is my concern.

Sarah Boyack spoke about the promotion of local food. My view—which I believe others support—is that the development of local food is not a problem and it is already happening. Multistranded approaches are being developed by people with different ideas, which is incredibly positive. I am content with the current situation. I regard the development of local food production as a baton for people to take up and run with positively. The committee should use its time to prioritise problem areas for the wider population of rural Scotland.

My final point is about the Scottish Agricultural Wages Board. Although we did not put it in the paper from our away day because it did not find favour with many members during our discussions, the board's lack of support for the industry is a genuine problem. The industry is not trying to do down its agricultural workforce. I have been a long-term supporter of the board, until recently. Now that there is a minimum wage, however, I no longer see a need for the board. I mention that as a matter to which we might return in due course.

The Convener: I assumed that that matter would be subsumed into the agricultural regulation

inquiry. I might be wrong, but it was my assumption that we would examine it.

John Scott: In that case, I am happy—I had not thought of that.

Peter Peacock: We had a useful discussion at our away day in Dunkeld. There was not much disagreement about the proposed work programme, which is always beneficial.

Flooding is such a big issue for Scotland that we must give it some attention, notwithstanding what the Executive is doing. I hope to pop in to the flooding summit meeting next week; I think that you hope to do that, too, convener. The summit is the start of an Executive process, but Parliament has a role in exposing and airing the issues in public in a way that the Executive would find it difficult to do. The summit could not compare with an inquiry by this committee over several months.

We need to expose to public scrutiny people's experiences of flooding throughout Scotland and what is happening to our climate by way of rainfall changes, so that people understand the issue better. At another level, we also need to expose how well regulation and current legislation is working, and how our local authorities and others perform on flood management. We must consider a range of issues. For example, is the current budget for flood protection measures adequate?

Flooding affects all parts of Scotland. I reflected yesterday on a report on my own area in the Highlands and Islands. There have been major flooding incidents on the east coast in the past couple of years—and before—in Inverness, Elgin, Rothes and Forres. East Sutherland has also been badly affected by flooding incidents, as has Easter Ross and the Black Isle. There was also a major flooding incident in Dingwall about a year ago. On the west coast, the community of Coull, next to Fort William, has been affected by coastal and other forms of flooding. In the north, Thurso has been affected by flooding, as has Kirkwall in the Orkney Islands.

Many communities out there have a lot of experience of flooding and they are anxious and fearful about what might happen in the future. Because of the weather that we have had this summer, the water table in Scotland is extremely high, as everybody knows, which means that the potential for flooding this winter will probably be even greater than normal, because the land cannot cope with much more water, given how much is already in it.

For all those reasons, we should give attention to the issue of flooding. I have no problem with your suggestion, convener, about deciding on the fine detail of our call for evidence once we see what the Executive is focusing on. However, we should not be put off doing our job as a Parliament

in scrutinising and exposing to public glare the important issues.

I will pick up quickly on some other points. On the Crown Estate, I wonder whether it would be worth while taking evidence in the near future, from one or two people at the most. I alluded previously to the report that was commissioned by the local authorities in the Highlands and Islands and by Highlands and Islands Enterprise, which are serious organisations. The issue of the Crown Estate will rattle around out there and it will come to ministers. We should inform ourselves about the issues involved.

Pages 5 and 6 of our work programme paper legitimately list agencies that are of relevance to our potential work. However, the Crown Estate is not listed, although it is relevant to our work. We should find out a bit more about it, but that would not require a big inquiry at this stage. We should just inform ourselves, then decide what we want to do.

Paragraph 12 of our work programme paper is about fishing, and the clerks have recorded that we could hear evidence from the Cabinet Secretary for Rural Affairs and the Environment—I agree with that—and perhaps from others. However, I would definitely like to hear evidence from others. Prior to hearing from the minister, we need to hear evidence about fishing stocks and the science involved. I hope that we can firm up slightly the proposal in paragraph 12.

Following on from what Sarah Boyack said about coastal management, in paragraph 18 we should add to the list of bullet points the need to examine water catchment management. We must consider how changes that take place upstream in the water, hills and uplands can affect flooding and flood management. Finally, I hope that we can add to the bullet points in paragraph 20 a specific point about planning guidance and its impact on rural housing.

Subject to what I have said, I think that we have a good work programme. I hope that, for the reasons that I have set out, we can proceed with flooding as a major theme.

I have a final thought, which is on green spaces in an urban context. We have a rural focus in this committee, but we are also an environment committee in the wider sense. We need to keep sight of and at some point address issues around green spaces in urban Scotland.

The Convener: Are you suggesting that as a subject for one of the smaller-scale investigations?

Peter Peacock: Perhaps we can inform ourselves at some point about the issues involved. I am not making a specific proposal for an inquiry.

The Convener: I can advise you that we are aware of the report on the Crown Estate and have

formally asked for copies of it for the committee. Once we receive it, we can decide whether we want to examine the issue more closely.

Paragraph 12 in our paper relates to the fisheries council. I think that I am right in saying that we have pencilled in two meetings on that, so it would be possible to do what you suggest.

I was not suggesting that we should not do a flooding inquiry; I was merely saying that, given that it looks as if the Executive will take a fair bit of action on flooding, we could start the rural housing inquiry now and begin the flooding inquiry in November/December—in other words, we could invert the proposed order of those inquiries. That is as far as I was going; I was not saying that we should not do the flooding inquiry. It would be equally valid to wait until the next committee meeting to make a final, more focused decision.

Peter Peacock: Just for the record, I support doing the inquiry into flooding, ahead of the inquiry into rural housing.

Mike Rumbles: I support what Peter Peacock said about the Crown Estate, which is often missed off lists and has been missed off our list of inquiry topics. We must ensure that we examine the issue.

Bill Wilson: Examining green spaces in urban areas is a good idea, and we should do it.

The Convener: None of us is short of good ideas. I have one of my own. Now that the waste electrical and electronic equipment directive is in force, I have become aware of issues to do with its practical implementation that have arisen in my constituency. Our difficulty is not coming up with good ideas; it is prioritising them and working out the best way to proceed with them. I remind committee members that this year we have a big opportunity in that we have the space and time in our work programme to examine a variety of topics. Not all the work that we do has to take the form of a nine-month or a 12-month inquiry. We have had a useful discussion of subject matter.

I want to pick up on Sarah Boyack's comment on the use of reporters. We discussed a variety of working methods at the away day and we anticipate using all the potential methods, including the use of reporters, as and when appropriate. That will be for the committee to decide as we discuss specific issues.

Sarah Boyack: Our predecessor committee did not use reporters at all over the past four years. In the Parliament's first four-year session, the Transport and the Environment Committee used reporters to investigate subjects such as Caledonian MacBrayne. Given that it looks as if, in the short term, we will not have an Executive bill to deal with, it would be a good idea to consider a

different hierarchy for approaching issues. As well as holding major inquiries, we can use reporters and hold evidence sessions. We should think about the use of reporters when we finally approve our work programme in a few weeks' time.

Mike Rumbles: I do not know whether now is the appropriate time to raise the matter, but it would be helpful if we could get on with appointing a budget adviser for when we conduct our scrutiny of the budget.

The Convener: We will discuss that, but at the moment we are just talking about the subject options.

I should flag up that rural housing involves overlapping remits. The Conveners Group away day was on Monday but, unfortunately, the convener of the other committee concerned was not there, so I was not able to have a conversation about our intentions. We will need to have such a conversation, although it will not preclude our doing an inquiry on rural housing. Such conversations will be necessary because a number of the issues that we want to tackle might form part of the remits of other committees.

Do members agree to the work priorities for the remainder of the current parliamentary year as laid out in our paper, which include three major inquiries?

Members indicated agreement.

The Convener: We must agree a remit and programme for the conduct of our first inquiry, which we have agreed will be on flooding. I suggest that we should have a scoping paper prepared for the next meeting, which should take on board current Executive initiatives. That will give us a much clearer idea of how the Executive is approaching the arguments and how it intends to handle matters, which will help us to ensure that, although some of our discussions may take place in parallel, we do not end up simply doing the same work side by side.

11:30

Bill Wilson: If you were thinking that the flooding and rural housing inquiries might be switched round, should we not get scoping papers prepared on both topics? Otherwise—if we do decide to switch them—we would need to delay by another meeting.

The Convener: No—we have just agreed that we are sticking with that order: flooding, then housing.

Bill Wilson: Sorry—I misunderstood.

The Convener: We have agreed that we will go ahead with a flooding inquiry first. We will have to get a scoping paper for our meeting on 19 September.

Having said that, with the committee's agreement, we will begin preparatory work on the rural housing inquiry so that, when we come to make the formal call for evidence at the end of the year, we can take an informed view. We will return to general work programme and review issues on a regular basis.

The scrutiny of relevant annual reports is covered in paragraphs 24 to 29 of the work programme paper. I invite members to consider whether they wish to make that a specific agenda item when annual reports by relevant non-departmental public bodies and Executive agencies are published. Do we want that to be an item on our agenda, or do committee members wish simply to be alerted when annual reports are published? I am in the hands of the committee. Members might feel that the annual reports of some bodies ought to be placed on our agenda automatically, whereas others do not require to be. It is not an all-or-nothing approach. Some organisations might fall into one category; others might fall into the other.

Bill Wilson: Might it be possible to leave it for now but, if a member wishes to raise an issue regarding a report, they can ask to have it put on the agenda?

The Convener: Are we content with that approach? We should clear our approaches to such matters now, so that we do not get ourselves into difficulties as we go along.

Petitions are not mentioned in the work programme paper, but I invite members' views on how we should consider them; should we include petitions on our agendas periodically—for example, quarterly—rather than whenever they are referred? I have experience of the former way of doing it, which works extremely well. Some committees have moved to that system. I strongly recommend that approach, but I am in the committee's hands.

Members indicated agreement.

The Convener: We will deal with petitions on a grouped basis and the relevant meetings will have a long petitions item on the agenda.

Mike Rumbles asked about a budget adviser. I seek views on whether the committee should appoint a budget adviser. The Finance Committee assumes that subject committees that scrutinise big-spending departments will appoint advisers. It does not expect every subject committee to have a budget adviser, but it strongly encourages such an approach as it wishes to achieve greater co-ordination in committees' work on the budget.

I can also advise members that the Finance Committee hopes and recommends that committees will mainstream financial scrutiny in

their round-the-year inquiries. That would be a new thing for committees, which have generally concentrated their inquiries on policy issues. There are therefore questions about the budget advice that we might require throughout the year. We will perhaps need to come back to that.

It is for us to decide whether to appoint a budget adviser for this year. I understand that five committees have already agreed to appoint budget advisers. The only other committee that has not yet done so is the Local Government and Communities Committee, although it might have done so by now.

Members: Yes.

The Convener: We do not know for certain—that committee has not yet made a formal decision on the matter.

I seek an indication rather than a vote, but are members generally in favour of appointing a budget adviser?

Members indicated agreement.

The Convener: In that case, we need clarity on what we envisage the role would be and what expertise is considered to be most important. For example, would we prefer someone with a public finance or accountancy background or somebody with a working familiarity with the relevant sector, in the way that there are health economists? Such a person would perhaps be better than those who are more generally financially qualified.

Mike Rumbles: I was on the Rural Development Committee in the first session of Parliament and I am now on the equivalent committee in the third session. In those days, we had a real problem with the cross-cutting nature of the department, because the figures were all over the place. We need an adviser who has expertise in pulling together the different strands of the budget. I do not have anybody in mind, but it would be good if the clerks could find somebody with that ability who knows something about rural affairs. We do not simply need a person who is good at finance; we need someone who knows the subject.

John Scott: They should also know about the support systems that are involved in the rural affairs budget.

The Convener: I am advised by the clerk that the Finance Committee's adviser, Professor David Bell from the University of Stirling, can provide general economic expertise, so we might be better to focus on a subject expert. Do members agree that we should go for someone who has subject familiarity rather than simply financial knowledge?

John Scott: Absolutely.

Peter Peacock: In my experience, few people can marry policy awareness with financial skill, but

that is what we really need. The budget exercise is technical, so we need somebody who can strip out the figures.

The Convener: I know that it is a tall order.

Peter Peacock: It is difficult, but there must be people who fit. I presume that the Finance Committee has a list of advisers who might be available.

The Convener: There is an adviser database to which we can refer, although I am not sure whether it will throw up enough names to allow us to make an informed choice.

Peter Peacock: I agree that we need to have somebody who understands rural affairs and the rural economy, but with the qualification that they must also be able to count.

The Convener: There are health economists, which is the kind of person we need. We need a rural economist, if we can find such a person.

We need to have a discussion about structuring our budget scrutiny. Two specific ideas were proposed at the committee's away day: Mike Rumbles raised issues about the scrutiny of the budget that was announced towards the end of May 2007—he believes that he has identified a missing £400-and-something million—and, secondly, that we examine the new entrants scheme. However, we should do a bit more than that, as that would be an extremely narrow approach, so we need to have a brief discussion about a further focus for the budget scrutiny, as that will help us when it comes to finding a budget adviser. Do members have any comments on that? If not, those two issues will be taken on board and we will end up making up something behind the scenes.

John Scott: I have a point about the difficulty of complying with the desire that we mainstream budgetary considerations into our work. If we are expected to do that, we may need an adviser more regularly. From my experience, committees tend to develop familiarity with and, one hopes, respect for one person, or perhaps two people. If we are to mainstream budgetary considerations into our work, perhaps we should incorporate that into the job specification in case we need to call on an adviser.

The Convener: The first I heard of the mainstreaming notion was at the Conveners Group away day on Monday. I think that conveners will have to discuss the matter further, for the reason that you give, which was immediately identified as an issue on Monday. If we are to mainstream budgetary considerations, we must have budget advice all year round, which has implications for committee budgets. We must proceed on the basis of this year's budget scrutiny, but mainstreaming must be addressed.

Peter Peacock: Mike Rumbles was right when he talked about what we should consider as part of our budget scrutiny. If we stick to the two issues that have been identified, our focus will be quite narrow. We should consider the issue from the outside, given that organisations comment on the budget and how departments work. There are two key areas. First, what discretion is there in the system for ministers—as opposed to what ministers must do? Also, given this committee's business, what discretion exists around European funding and how does that relate to domestic funding? That is a crucial area that we need to understand.

Secondly, we need to understand more about the nature of the total spend. How much is underspent each year, and how much is potentially available for a variety of uses? We should consider the overall pattern of spending, whether the department targets spending effectively, and what discretion ministers have.

The Convener: That is useful. The approach would give the committee a clearer basis for approaching financial scrutiny all year round.

Bill Wilson: I have never been involved in budget scrutiny, so my points might be way off the ball. I suggest two areas of interest. If we are to examine flooding, we should consider current commitments and expenditure on flooding—I do not know whether there are current budgetary commitments in that regard.

The Convener: That issue will be subsumed into our inquiry into flooding rather than included in separate budget scrutiny, although we could flag it up in our budget scrutiny. You have given us a prime example of how we can mainstream financial scrutiny into a year-round inquiry.

Bill Wilson: That is fine, then. The other issue that I wanted to raise is equality in rural housing, which could be included in our inquiry into rural housing, on the same basis.

The Convener: Yes. I am not sure whether we have identified two extra strands for our budget scrutiny. We are talking about quite broad consideration of the budget, so we will not necessarily seek an adviser who has expertise in agriculture. We need someone who can stand back and consider the budget headings in several areas—in effect, a rural affairs economist. We need flexibility across the board.

Our discussion has been helpful in enabling us to arrive at such decisions. We have agreed to try to find a budget adviser who will assist us on the basis that we have discussed.

Mike Rumbles: What is the process for appointing a budget adviser? Will the clerks draw up a shortlist and check people's availability? Will we choose our adviser?

Andrew Mylne (Clerk): There is a process. We will work with the Scottish Parliament information centre, which has a role in the process. There is a database of people who put their names forward as prospective advisers, but we can look more broadly and base our search on the indications that the committee has given. We will try to identify suitable names as quickly as possible. The committee must then endorse an appointment.

The Convener: We will try to expedite the process.

I thank everyone who contributed to the away day. Members who attended will remember that we received presentations from a number of people, who took time to speak to us and help to inform our work during the coming year. We are extremely grateful.

On the scrutiny of annual reports from NDPBs, I reiterate that we can exclude some reports, which will fall into the remit of other committees. For example, we do not expect to scrutinise reports from Audit Scotland—the Audit Committee will do that—or to carry out overall scrutiny of European Union matters, although we will do work on individual EU issues. EU scrutiny is undergoing changes because of recent changes to how committees operate. We will have access to a European officer and regular Euro-bulletins will be provided—as of this month, I think—which will flag up various matters. A process is proposed, which is similar to the petitions process, whereby the clerks will prepare relevant updates quarterly. The aim is to raise issues at an early stage so that we do not find that we know nothing about a matter until it appears in the form of a directive—which has, unfortunately, happened in the past.

We have agreed a forward work programme. If members are happy, we will proceed on that basis. I remind members that the work programme will reappear on the agenda fairly regularly, so we will come back to it and adjust it as needs must.

The committee's next meeting will take place on Wednesday 19 September at 10 am.

Meeting closed at 11:46.

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