

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 16 April 2008

Session 3

£5.00

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

7th Meeting 2008, Session 3

CONVENER

*Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

*Karen Gillon (Clydesdale) (Lab)
*Jamie Hepburn (Central Scotland) (SNP)
*Des McNulty (Clydebank and Milngavie) (Lab)
*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:

Stuart Ashworth (Quality Meat Scotland)
David Cullum (Scottish Parliament Directorate of Clerking and Reporting)
Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment)
Gordon McKen (Scottish Pig Producers Ltd)
Mike Pringle (Edinburgh South) (LD)
Robin Traquair (NFU Scotland)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Mark Roberts

LOCATION

Committee Room 6

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 16 April 2008

[THE DEPUTY CONVENER *opened the meeting at
10:05*]

Decision on Taking Business in Private

The Deputy Convener (John Scott): Good morning, everyone, and welcome back after the recess. I remind everyone to switch off their mobile phones. I apologise on behalf of the convener, who will be slightly late because of transport difficulties—transporting difficulties might be a more accurate description. We have not heard whether Bill Wilson is unable to attend.

Agenda item 1 concerns the committee's draft report on flooding and flood management. Does the committee agree to take item 6 in private?

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I know that it is our custom to discuss draft reports in private, but item 6 is not our draft report—it is simply a discussion to inform the clerks to enable them to have a first stab at drafting the report—so I think that it should be taken in public. As a matter of course, we should keep what business we can in the public domain and keep to a minimum what we discuss in private. I feel strongly that we should take item 6 in public.

The Deputy Convener: You will be aware that we have conducted in private all our previous discussions on the evidence that we have heard. What you suggest would be a departure from what has hitherto been the committee's practice.

Mike Rumbles: But the standing orders say that the normal practice should be to conduct business in public session. We must decide whether to depart from normal practice, which is why the matter is on the agenda. I do not think that we should depart from normal practice in this instance.

The Deputy Convener: What are the views of other committee members?

Peter Peacock (Highlands and Islands) (Lab): I am relaxed about Mike Rumbles's suggestion.

The Deputy Convener: Having such discussions in private allows us to be absolutely frank and off the record with each other in discussing our views. Nevertheless, is the view of the committee that we should not take item 6 in private?

Members indicated agreement.

Proposed Environmental Levy on Plastic Bags (Scotland) Bill

10:08

The Deputy Convener: For agenda item 2, I welcome Mike Pringle MSP and David Cullum, the head of the non-Executive bills unit. Mike Pringle has lodged a draft proposal for an environmental levy on plastic bags (Scotland) bill, which would place an environmental levy on specified plastic bags that would be payable by the consumer. It would also require local authorities to collect the levy, with the net proceeds being ring fenced for use on environmental projects in local authority areas. Accompanying the proposal is a statement of reasons why Mike Pringle believes that there is no need for any consultation on his proposal.

I draw members' attention to the submissions that have been received in connection with the draft proposal. Essentially, the business in hand is to decide whether the committee is satisfied that the reasons that Mike Pringle gives for not consulting on his draft proposal are adequate. I invite Mike Pringle to make an introductory statement.

Mike Pringle (Edinburgh South) (LD): Given that the committee has the statement of reasons, I do not propose to make a long opening statement, but I will make some brief comments.

I draw the committee's attention to paragraph 16 on page 5 of RAE/S3/08/7/2, where I said:

"I believe that to undertake a further consultation exercise on the same proposal would duplicate effort".

All the papers that are in front of us, which are unnecessary for today's procedure, demonstrate that ample consultation has previously taken place. Further consultation would incur more cost. I have been accused of costing the public purse a huge amount of money. I do not know where the figures come from—they certainly do not come from me or the Executive, as far as I am aware.

I think that further consultation would create an impression of overconsultation. Rule 9.14.3(a) of the standing orders outlines the basis for consultation and refers to

"a consultation document prepared as the basis for a public consultation on the policy objectives of the draft proposal".

It is clear what the policy objectives are: the committee examined them previously. I suggest that public consultation outlining the policy objectives has already been achieved and that there is no need to go through a further long consultation. I am happy to answer questions.

The Deputy Convener: A number of members have indicated that they would like to pose questions to you.

Karen Gillon (Clydesdale) (Lab): Mr Pringle, how will your new bill differ from your previous one? What changes do you intend to make in light of the conclusions of the previous Environment and Rural Development Committee's stage 1 report?

Mike Pringle: The bill will be exactly the same. It has not been altered at this stage, because I did not think that that was appropriate. The appropriate time to alter the bill is at stage 2, if the bill passes stage 1. I previously had an indication that the Executive intended to lodge a number of amendments. I expect that the committee would have a number of amendments. Stage 2 is the time to examine changes to the bill. David, do you wish to say anything?

David Cullum (Scottish Parliament Directorate of Clerking and Reporting): In regard to the proposed Executive amendments, if the bill proceeds today we will enter discussions with Executive officials in the hope that we will be able to incorporate many if not all of the amendments in the revised bill that is introduced.

Karen Gillon: Surely the point of any further consultation would be to take into account the issues raised in the previous report and to learn from it, and to allow consultation on those issues to inform committee members. The committee would be in a difficult position to carry out its work if we were asked to sign up to the detail of the principles without further consultation, given the difficulties experienced by the previous committee.

The Deputy Convener: That is a perfectly reasonable point of view, but it is not up to me to decide.

Des McNulty (Clydebank and Milngavie) (Lab): My questions relate more to procedures and might be better addressed to David Cullum than to Mike Pringle.

I understand that the bill proposal went through an extensive consultation process, which was followed by a large number of evidence-taking sessions. At the end of the process, the Environment and Rural Development Committee decided, pretty much unanimously, that the bill should not proceed. That was based on probably one of the most extensive evidence-based analyses undertaken in the Parliament. On what basis is the non-Executive bills unit prioritising supporting this bill, as opposed to other bills? I have been a member of the Scottish Parliamentary Corporate Body and I heard complaints from NEBU and members about there being a difficulty regarding support for non-Executive bills.

I know that a number of bills are in the process. I proposed a member's bill in the previous session and I was told that no resource was available in NEBU to support it. Eventually, the bill was taken up by the Executive and it got through.

To be blunt, why on earth are we recycling bills, unchanged, that have already been defeated in the parliamentary process, based on evidence? Why are we using resources in that way? Presumably, other members have a valid case for saying, "We've got ideas that the Parliament hasn't already decided on. We want those to be discussed." Perhaps David Cullum could advise.

10:15

The Deputy Convener: Please be brief, David.

David Cullum: I will restrict my answer to the procedure and will not comment on Mike Pringle's proposed bill—I do not need to do that to answer the question.

The non-Executive bills unit helps all members with all proposals. We do not prioritise or seek to prioritise up to the point when we start to draft a bill. At any stage up to and including consultation and analysis of consultation, we will always provide support to members. That does not mean that we will always provide instant support. There is a degree of prioritisation in relation to how quickly we provide support. However, the position has always been that we will assist members up to the conclusion and analysis of a consultation exercise.

Our current position is that we are not overstretched with the drafting of bills. We have resources available and there is no pressure. Only when pressure emerges on drafting resources and time will we go to the corporate body for direction as to where our priorities lie.

The Deputy Convener: Thank you. I hope that you are happy with that answer, Des. I do not think that the committee should be discussing the procedure.

Des McNulty: No, but there is an issue. As a committee, we find ourselves in a difficult position. It has occurred once before; I think that it occurred with the bill that Mr Sheridan put forward twice. The Parliament's procedures are being used to recycle bills that have already been dealt with.

The Deputy Convener: But I do not think that this is the correct committee to make that point.

Des McNulty: I suppose that I am asking whether there is an issue that we should raise with the Standards, Procedures and Public Appointments Committee.

The Deputy Convener: Perhaps. We will certainly look into that.

Jamie Hepburn (Central Scotland) (SNP): Mr Pringle, you will be aware that a lot of representations have been made to the committee, most of which deal with the merits of the proposed bill, but we are not considering those today. One submission states that your consultation is four years old and that, since it was conducted, issues have developed and the landscape has changed. Indeed, you mention a couple of developments in your statement of reasons. You state that the market has responded to demands about plastic bags, including Marks & Spencer and IKEA, and you mention the Selkirk example. What is your response to the suggestion that, because your consultation is four years old, there should be a further consultation?

Mike Pringle: Frankly, the issues are exactly the same. The process that we went through was extensive, as Des McNulty said, or was it Karen Gillon? I got 126 responses. The committee then asked for further comments and it got 96 responses. The general principles have not changed at all, as is reflected in the representations that you have received. I refer again to what standing orders require:

"a consultation document prepared as the basis for a public consultation on the policy objectives of the draft proposal".

No one is in any doubt about the policy objectives. It is clear from the submissions that the committee received—without asking for them—that everybody is more than well aware of the policy objectives of the proposal. I suggest that, under standing orders, there is no need for a further consultation.

Mike Rumbles: It is clear to me that the only decision that the committee has to make today is whether the proposal needs to be put out for further consultation. Contrary to what has just been said, I know that the original consultation started in 2004—four years ago. In your evidence to the committee, you say that you received 117 responses, and you have indicated that there were even more. The Environment and Rural Development Committee carried out its own consultation as well—it took evidence from 30 witnesses in 11 committee sessions, and the stage 1 report was published just 18 months ago. There has been a huge public consultation over the past four years, and it ended just 18 months ago. The Scottish Executive also produced an extended impact assessment report.

As Des McNulty said, there has been the most extensive analysis that there has ever been on a bill that has been brought before us. Can you think of any other consultation in which you could possibly engage, other than what has already taken place?

Mike Pringle: If we consult again, we will just get responses from exactly the same people who responded the last time, with the same organisations in favour and against—it will just require everyone to go through the same process all over again. One of the reasons why I withdrew the bill at stage 1 was that there was a clear indication from the committee that it was not willing to support the bill at the time. The committee did not say that it was not willing to support it at all.

I withdrew the bill partly because the Scottish Executive produced a report that examined the issue of plastic bags, and said that supermarkets had to address the issue towards the end of 2008. Frankly, I do not think that the supermarkets have addressed the problem. The end of 2008 is close, and the committee will be right up against it, even with this short process of consideration. Supermarkets have not responded to the Scottish Executive's process, so I thought that this was an appropriate time to bring the bill back.

Peter Peacock: You twice referred to the policy objectives of your bill being clear from the previous consultation. I accept that they are reasonably clear, but do you accept that, as Jamie Hepburn said, since you originally conceived of the bill and had it drafted more than four years ago, the policy world that you are trying to shape has changed quite a lot around you? Consumers, retailers and whole communities have changed—or are beginning in significant ways to change—their behaviour in relation to plastic bags. Is it not reasonable to re-examine the bill and consult on it again, because the policy objectives have to change to address the world as it is today, not the world as it was four years ago?

Mike Pringle: I do not accept that view, Peter. I accept that the landscape may have changed a bit, but if it has changed it has changed in favour of legislation. The fact is that more and more people are moving towards that view.

It is interesting that in the budget process, the Chancellor of the Exchequer said that he wanted to address the issue of plastic bags, but it was not clear whether that would apply to Scotland, so I suggest that the issue needs close examination. I am not a legal expert, but I believe that any measures might apply only to England, and not to Scotland, in which case we would be left behind.

I return to my point about the standing orders regarding members' bills—a public consultation is about the policy objectives. The policy objectives—as you almost said, Peter—are absolutely clear. I do not believe that we need to change the policy objectives as they are in the bill, and therefore we do not need to consult again.

Karen Gillon: Your arrogance astounds me, Mike. A unanimous committee report came up with 10 conclusions on issues that the committee had problems with, which came out of the evidence that it took during what you accept was an extensive consultation, yet nothing is going to change. You see no reason to change anything. You have learned no lessons from everything that has gone before. For that reason, convener, we need to ask the member to put his proposal out to consultation again, to find out what is going to change, what has been learned from the previous committee's report and how that will adapt and shape the bill that will come before the Parliament at stage 1.

Des McNulty: I agree with Karen Gillon, except on one point. Mike Pringle would be well advised to rethink his proposal in the light of the evidence that was received. It must be extraordinarily irritating to people who might be affected by the proposed legislation to find the Parliament reconsulting on something that it has already made a decision about, with nothing having changed or advanced.

This is not about the rights and wrongs of legislation on packaging. There is a perfectly valid argument to be had about the best legislative way to deal with packaging. However, the Parliament risks disrepute and the member exposes himself to ridicule by persisting with something that has been decided on. Substantial evidence was taken on the matter and yet, as Karen Gillon says, he appears to have learned nothing from the extensive process.

Although we probably have no alternative to saying that the draft proposal should go out to consultation, we should ask the relevant parliamentary committee to reconsider the process whereby bills are recycled without the processes of Parliament having affected them, especially given the resource issue for the non-Executive bills unit, which I raised at the start of the discussion. It is a complete nonsense that Parliament's time and the time of people outside is being taken up with something on which extensive evidence was taken and on which a verdict was reached. Karen Gillon talked about arrogance. We could use a variety of terms to describe what is happening. The same bill is simply being put before the committee again.

Mike Pringle: Can I comment on that?

The Deputy Convener: Yes.

Mike Pringle: Des McNulty says that people will be irritated by the fact that they have to write in again. The committee did not ask for further evidence, but it has received evidence from lots of people. Almost 50 per cent of the people who have written in have said that it is ridiculous that

the bill was not passed the first time. There are two sides to the argument. I understand that some people do not want the bill to go ahead, as they are against it. On the other hand, as we saw previously, a large number of people are in favour of a levy in Scotland. The argument is balanced on both sides.

Karen Gillon says that I am arrogant. I apologise if I appear to be arrogant, but I feel that the process that we went through previously and what standing orders say—I considered all that before I put the draft proposal to the committee—mean that there is no need for me to put the draft proposal out to further consultation.

Mike Rumbles: I am concerned. Listening to fellow members of the committee, I feel that we are in danger of examining the merits or demerits of the bill. Des McNulty said that it would irritate people to have the bill put before them again, yet he then advocated further consultation. The only decision that we have to make is whether there has been enough consultation on the policy objectives of the bill. My colleagues' comments suggest that everybody considers that there has been a huge amount of consultation. Our decision must not be about the merits or demerits of the bill; it must be about whether we send the proposal out for consultation in the public domain again—at the taxpayers' expense—and start the process all over again.

Karen Gillon: The key issue for me is that the bill went through a parliamentary process, which concluded with a parliamentary report that presented a set of conclusions and issues based on the evidence. We are being asked by the member to forget that that ever took place and to consider a bill that has not changed one iota in relation to the conclusions of a previous committee. That is what is holding the Parliament in contempt. When there is a committee report on a bill, surely anyone who lodges that bill again should change it in view of the report, or at least consult on the issues that were raised in the report. Even the Executive—now the Government—has to change bills on the basis of evidence. We should expect nothing less from a member.

10:30

Jamie Hepburn: I do not know about the urgency of making a decision at today's meeting, but would it be useful to invite further evidence at a future meeting from a selection of the people who have written in?

The Deputy Convener: I think that we want to make our position clear today.

I have been told that we could take evidence on the proposal on 30 April, but that would create

difficulties for the committee. The committee's view seems clear. Am I correct in summing it up by saying that Mr Pringle needs to reconsult on the bill and to take account of the fact that it was rejected previously?

Mike Rumbles: That is not the view of the whole committee.

The Deputy Convener: Do you want to press for a vote?

Mike Rumbles: Yes. Consulting again on the bill would be a complete waste of effort, and I do not want to waste taxpayers' money.

Des McNulty: With respect, the person who would be wasting taxpayers' money is the member who is not responding to the circumstances.

The Deputy Convener: The question is, do we require the member to consult further on his proposed bill?

Des McNulty: And on the conclusions of the previous report.

The Deputy Convener: No, just on the bill. Does the committee agree that Mike Pringle should undertake further consultation on the bill?

FOR

Cunningham, Roseanna (Perth) (SNP)
Gillon, Karen (Clydesdale) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Scott, John (Ayr) (Con)

AGAINST

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

ABSTENTIONS

Hepburn, Jamie (Central Scotland) (SNP)

The Deputy Convener: The result of the division is: For 5, Against 1, Abstentions 1.

I thank Mike Pringle.

Des McNulty: I suggested earlier that the procedural circumstances in which we find ourselves with recycled bills should be raised with the relevant committee.

The Deputy Convener: I hand over to the convener, who arrived some time ago.

The Convener (Roseanna Cunningham): I was running late this morning. I thank John Scott for getting the meeting started in my absence.

I heard Des McNulty's comments—they are important ones to take on board. We would probably want to have a separate discussion rather than discuss them in the context of one bill. We can schedule that discussion for another meeting.

Pig Industry

10:34

The Convener: Agenda item 3 is an evidence session on the pig industry. At our meeting on 6 February, we agreed to hold a one-off session, as suggested by Mike Rumbles, on the state of the Scottish pig industry. We have two panels of witnesses, starting with representatives of the pig industry. The Cabinet Secretary for Rural Affairs and the Environment will be here after 11:15, because he is speaking at a separate event.

I welcome Gordon McKen, the managing director of Scottish Pig Producers Ltd; Robin Traquair, the chairman of NFU Scotland's pig working group; and Stewart Ashworth, a senior business analyst with Quality Meat Scotland. Mike Rumbles will kick off the questioning, as the session was his suggestion.

Mike Rumbles: There are two major issues, the first of which is the overall state of the pig industry. The second and more important issue is what the Government can do to assist the pig industry in its present travails. NFU Scotland has mentioned losses to the pig industry of £5.177 million resulting, directly and indirectly, from last year's foot-and-mouth disease outbreak. I am acutely conscious that the Government stepped in to help the sheep industry with about £19 million and that it provided £1 million for Quality Meat Scotland, although I understand from the latest figures that only a third of that has been spent. How could the Government help the pig industry directly?

Robin Traquair (NFU Scotland): People in the pig industry felt let down when we did not get help from the Scottish Government. We asked for a separate amount of money. When we found that the money that had been given to the sheep sector was not being used, we thought that there would be some spare budget left over—we did not even call for new money. Although the foot-and-mouth outbreak did not occur up here, it caused a lot of upheaval to our marketplace. Movements were stopped immediately. I sell pigs and I have a farm not that far from here, about 6 miles away. We run the place flat out, at 100 per cent capacity. We do not have spare room because empty buildings cost money. When the market stopped and we were left with no sales, pigs started backing up immediately.

When we have pigs that we cannot sell, they stop other pigs moving through—there is a dynamic system. Every week, 100 pigs are born and 100 are sold and they keep on coming through. The pigs that should be sold take up the room for their peers that are coming up behind. Those pigs also put on extra weight. When we sell

to supermarkets, they want pieces of meat of a certain size. When the pig becomes bigger, the meat is bigger than the packets, so the supermarkets do not want it and they penalise us by taking 20 per cent off the market price. That is for the prime market, for bacon and pork.

Each year, we sell 10 per cent of our breeding herd abroad. About 99 per cent of the cull sow stock is exported, but that stopped overnight, so that backed-up product that we could not export came on to the British market. The bits and pieces of the pig such as ears, legs and offal that are exported to countries that appreciate them also backed up. Before we knew it, we had about 20 per cent extra meat on the market.

To complement that, the supermarkets became worried that they would run out of product quickly, so they got on the telephone to suppliers in other parts of Europe and ordered so many thousand tonnes of legs, bellies and shoulders. The people who were selling them are clever and said, "Ah, you must be a bit hard up, so we will give you a three-month contract only." That is what they did. Therefore, when the foot-and-mouth outbreak was cleared, we were left with an excess of meat in the country. The supermarkets were not ready to buy the excess, because they were tied into contracts with producers from elsewhere. Before we knew it, there was a market collapse at a time of year when we would expect it to rise. We suffered two losses as a result. It might be said that we were not affected directly because no foot-and-mouth outbreak occurred in our area, but the indirect cost has been a heck of a lot. Those are the ins and outs of it.

Because of somebody's cock-up in Pirbright, we were completely let down. Throughout the United Kingdom, the British pig industry has been let down because, for whatever reason, wranglings between various bodies meant that we received no compensation. That has cost us dearly. On top of that, we now face other price pressures. A lack of cash flow, belief and support from other sectors means that many people are going out of business before the banks close on them or that people have let their business go when the bank has said that it is time to give up.

That is a brief picture of what has happened.

Mike Rumbles: I know that bigger issues exist, but I do not want to concentrate on the bigger market picture, because the Government can do nothing much practically or immediately to affect that. I am trying to get out of you what you think the Scottish Government can and should do. We will also ask the minister that directly.

The Government was able to produce £18.8 million for the ewe scheme and £3.7 million for the light lamb scheme, but nothing for pigs, although

we have all read the evidence that the industry has suffered £5 million of losses. Something should be done at least to compensate for that. I understand that the argument is that Europe will not allow compensation to be paid. However, I also understand—from a letter by the minister, which we will pursue with him—that the Government did not propose a scheme to Europe. What do you want to hear the minister say and commit to when he appears?

Gordon McKen (Scottish Pig Producers Ltd): Although the Scottish industry has had difficulties in the past 10 or 12 years and although sow numbers have reduced in the breeding herd, we have increased slaughterings by 65 per cent. The industry has been successful at consolidation with self-help—no subsidy was given. Until July, the industry was going well.

I would like the committee to consider the on-goers scheme that we had in 1991 and 1992, which was allowed to give assistance of 5 percentage points of interest payment for two years—it should have been for three years—for restructuring business. The implementation of the nitrate vulnerable zone proposals on farms, which will require investment, provides the ideal opportunity to reconsider that on-goers scheme. If that could be introduced, it would greatly help producers. We should definitely pursue that.

I suggest assistance in complying with the NVZ and broader thought on how we should handle slurry and so on, not only in storage facilities, but in other facilities that would make the product more valuable, especially in the light of the cost of fertiliser and the need to reduce carbon emissions because of the climate change situation. If slurry is treated differently, it can be used as a more valuable fertiliser, which reduces the use of granulated fertiliser, which causes a huge emissions problem.

Another imminent issue is an audit of imported product and of what it claims to be. In January 1999, we changed the welfare systems in the UK. We had no problem with that and we were for that—that was not an issue. However, retailers immediately invented a new purchasing category of European Union welfare, in addition to UK welfare, so that they could purchase at the cheapest price in Europe. An audit of imported product would be most helpful and the industry would wish to become involved in that. The industry might part fund such an audit, but it would need the clout of Government to ensure that it was done properly.

We fully appreciate the Government's stance on genetically modified organisms, but being allowed to take into the European Community some such product for animal feed would help at the moment.

10:45

Stuart Ashworth (Quality Meat Scotland): It would be nice to sit here and say that the pig industry should receive a headage payment to cover its losses, but we probably need to recognise that the time for that has passed. Looking at the issue in a slightly different way, we can say that the consequences of foot-and-mouth disease have had an impact on the ability of the entire industry to move forward to address the challenges that it was facing. As Gordon McKen mentioned, those challenges include nitrate vulnerable zones, slurry control and feed prices. Undoubtedly, our guys will also now face higher overdraft rates.

To help the industry to move forward, the Government could consider establishing another on-goers scheme, as Gordon McKen described. Such a scheme would recognise that the industry faces challenges, which it would have faced up to were it not for the cash-flow problems and financial losses that were incurred as a result of foot-and-mouth disease. I support what Gordon McKen said about nitrate vulnerable zones and pollution control. In addition, people in the industry who want to restock face issues of capital.

The Government could do a couple of other things. Reference has been made to the importance of exports, particularly of breeding pigs but also of offals. We are still excluded from some markets because of the various arrangements that are in place. The Government could work on the industry's behalf at the political level to try to make progress on some of those trade certificates. Although we can trade within Europe, we cannot yet trade in some east European and Asian markets. Removing those hurdles would increase the market opportunities for our guys.

Karen Gillon: There has been a lot of discussion about foot-and-mouth disease. The cabinet secretary said in his letter that he was unable to construct a scheme that Europe would approve. How did France manage to construct such a scheme whereas we have been unable to do so?

Where would the pig industry have been today if we had not had a foot-and-mouth disease outbreak in 2007? That might require a bit of speculation.

Robin Traquair: France does things in the way that it does because, where there is a will, there is a way. It is as simple as that. France backs its agricultural community more than Scotland does. That is it in a nutshell, really. We have had various schemes, such as the on-goers scheme to which Gordon McKen referred. If money was made available, we have various proposals on how it

could be directed. Where there is a will, there is a way and we can make it work.

What was the second part of your question?

Karen Gillon: Where would the industry be if we had not had foot-and-mouth? Obviously, cereal prices would still have increased.

Robin Traquair: We would have been four or five months further down the line. We would have had better cash flow, as we would have been left with more cash in the bank. Aside from foot-and-mouth, we are haemorrhaging cash at the moment.

For example, when I tried recently to buy soya to feed my pigs—GM was mentioned earlier—I could not buy it in Leith, Edinburgh. I had to buy it in from Glasgow. My previous contract, which I bought two years ago at £150 a tonne, ended last week when I had the last load delivered. To buy more soya, I had to pay £320 a tonne to have it delivered. That equates to an increase of £5,000 per month to my business. My business costs are perhaps £10,000, £15,000 or £20,000—I have given up counting the figures because, if I spent all the time looking after my bank balance, I would never get any work done.

Without foot-and-mouth, we would have been a few months ahead in cash flow. Instead of being backwards, we would have been further forward. That would have helped us an awful lot. There would probably have been more confidence in the industry. People might have invested in the industry instead of just battenning down the hatches and stagnating. We would have been further ahead.

Gordon McKen: I will respond on Karen Gillon's second point. I agree with Robin Traquair on the first point regarding France. It was clear that in July we had an industry in balance in the UK in terms of supply and demand. In fact, demand was just outstripping supply and prices were increasing. The most damaging part of FMD was that it gave retailers and processors in this country the opportunity to create a backlog, which continued until Easter this year.

It may be argued that European prices fell come October and November and that our prices would have fallen too. History will show quite clearly that, as the euro strengthened in October and November, we got no benefit. However, as Stuart Ashworth can show, we operate anything from 8p to 20p-odd above European prices at any time. Our prices would not necessarily have fallen, had it not been for FMD. Yes, prices would have come back a bit, but they would have been nothing like what they have been driven back to and held to by the creation of a surplus. Hence my earlier point on an audit. An audit that was set up quickly would

do more for us and apply more pressure to the retail trade than anything else.

Robin Traquair: I am extremely wary of supermarkets. I read in the newspapers this morning that profits are going up. We must remember that the supermarkets' primary objective is not to sell food; they do not worry what they sell as long as they make a profit at anybody's expense. If they are making a huge profit, someone else is making less. At the moment, we are making less. Retail prices have gone up in the supermarkets, but we have not seen all the benefit of that coming through.

Karen Gillon: What reasons did the cabinet secretary give you in July and August for there not being a scheme for pigs?

Gordon McKen: It was stated clearly that there was not a welfare issue. That was the main reason.

Karen Gillon: Do you accept that reason?

Gordon McKen: There was a welfare issue in terms of cull sows, particularly in Scotland. There is no market in Scotland for cull sows. We ship them all to England. Our market closed completely for weeks. In England, the figures will show that there was a cull sow market, albeit with an extremely poor price. The farmers there did not have to feed the animals, but we did, so there was a double whammy for us.

Peter Peacock: I had the opportunity to visit a pig unit at the back end of last year. I was given astronomical figures for the losses that were being incurred. I have not got a sense of the industry as a whole in Scotland from you. Do you have any estimate of the scale of the losses?

I suspect that any Government would be considering whether we could ride out the situation and whether we would recover quickly enough for it not to have to intervene. How parlous is the state of the industry? Are people leaving it? Are they on the verge of leaving? That is a consideration for the Government in choosing what options to pursue to support the industry.

Stuart Ashworth: A number of companies record profitability for the industry on an on-going basis. The information that we have is that in late 2006 the industry was probably making a net margin—after paying labour, as a return on investment—of £3 or £4 per pig. Since then, although the market price has moved on slightly, the cost squeeze that has come on and the hiccups in deliveries to market that FMD caused will have turned round that figure by about £25 per pig.

Peter Peacock: It has turned the figure into a negative.

Stuart Ashworth: Yes. It has turned it into a negative of at least £20, on the 650,000 pigs that are produced in Scotland. You can work out the figures for yourself quickly.

John Scott (Ayr) (Con): Is that directly attributable to FMD or is it partly the result of the price of grain, wheat and soya?

Stuart Ashworth: It is partly attributable to the price of grain, wheat and soya. However, we know that through autumn 2007 feed compounders increased the volume of pig feed that they were producing. As Gordon McKen and Robin Traquair have made clear, that had a double impact: at a time when the feed price was increasing, pigs were having to be held on farm and fed for up to a month or six weeks longer. The situation was further compounded by the fact that some of the industry that had forward-contracted feed supplies in 2007 at what might be described as a reasonable price drew them down more quickly than they would otherwise have done and, as Robin Traquair pointed out, had to go back into the spot market, where they got hit for the higher price.

Peter Peacock: Can you ride this out? Is the industry in a parlous state?

Robin Traquair: People have been phoning up the bank managers to change their bank accounts, overdraft limits, borrowing rates or whatever. Those who used to have 800 breeding sows now have 500; those who used to have 500 now have 200; and others are riding it out by, for example, supporting activity through the other parts of their business.

Of course we can ride it out. It is not only about having confidence and providing support, but about who is helping whom and where that help is going. The buildings might be empty now, but the industry can be turned round immediately. For pigs, the period from the point of conception to sale is only eight months. Things take much longer for cattle and sheep.

If we have the confidence, we can keep things going. The banks will support us; after all, the industry is very resilient. We have gone through periods of loss many times before. However, you would normally expect to have a period of profit so that you can put money away, and we do not know whether we will be allowed that. Will the supermarkets tinker too much to try to keep down prices? Will they keep bringing in inferior product—under UK law, our meat must be of a certain standard—that costs less than we can afford to produce it at? We want to be able to address all those issues. Our expectation is that if we lose a certain amount, we will get it back again on the roundabout. If we can get the right lead and have confidence in our ability to turn things round

quite quickly, many people will push their businesses forward.

Gordon McKen: Between 4,000 and 4,500 sows have already gone or are committed to go, which means that the industry has contracted by about 10 to 15 per cent. That is a fact. We need some movement in price and a commitment from retailers in the short term to ensure that things do not get worse.

Peter Peacock: The audit that Mr McKen proposed, the on-goers scheme, the attempts to secure soya at a better price and so on are all part of the effort to build the industry's confidence. However, I am sure that the cabinet secretary will have been relieved to hear Mr Ashworth's comment that the time for getting compensation had perhaps passed. I would not write that off myself.

Mr Traquair said that where there was a will, there was a way. Do you accept that the Government has the discretion to offer a package if the will exists?

11:00

Robin Traquair: Yes. There are numerous examples of such packages. For example, south of the border, the British Pig Executive, which has probably found it difficult to decide where money should go, is paying for—or paying for a large percentage of—a nationwide trial of a vaccine for circovirus type 2. It has at least found a way of putting money into the farm.

We are not worried where the money comes from or what system it goes into, as long as it helps cash flow on the farms. That is the most important issue at the moment. For example, now that FMD has gone, an on-goers scheme could be introduced to help out farmers.

You get a good bang for your buck, as we keep many industries going. Like the majority of producers in Scotland, we supply Halls of Broxburn, which is the UK's biggest processor, employing 1,500 people. Last week it lost £100,000 because it was not killing to capacity. If the man running the plant wants to have it improved, he will be asked if he is due to get a delivery of pigs the next day, because that is the only way that Halls can justify spending money on doing up the plant. We keep hauliers going for 52 weeks of the year. If those hauliers disappear, they will not be there for sheep men and cattle men at their busy times of the year. We are a part of the agriculture industry that keeps everyone else going. There are only 100 or so pig farmers in Scotland, which may suggest that we are not a big audience to play to, but we branch out to cover a broad spectrum. We keep vets, hauliers, slaughterhouses and so on going all year round.

Money comes through in a very flat triangle, so you get a big bang for your buck from us.

Peter Peacock: You referred to the industry as haemorrhaging money, for all the reasons that you have set out, but you are about to get an extra bill because of the legislation on NVZs and slurry storage, which will impose a capital cost. Forty per cent of that cost will be met through the rural development programme, but you will have to find the remaining 60 per cent. You have spoken about other aspects of NVZs, but is there more that Government could do on the cost side of the equation?

Gordon McKen: Certainly. If we engage properly with this opportunity, Scotland can lead on the NVZ issue and on handling and treating slurry, so that it is used as a valuable product. The industry in Scotland is different, because we grow the bulk of our grain, but unfortunately we do not grow our proteins, all of which are imported from abroad. That is a real cost at the moment. Most of our farmers are mixed farmers, so we have a far better base. That is why we have come through many difficult times in the past. However, through separation and better treatment of slurry, we can make far more use of it and lead on the issue.

Peter Peacock: What about capital costs?

Gordon McKen: It would be helpful if consideration could be given to assistance with capital costs.

Jamie Hepburn: We have talked a great deal about foot-and-mouth disease. I want to focus more on the market pressures that the industry faces. As Peter Peacock and Mr Traquair have said, the industry is haemorrhaging money. Last year's outbreak of foot-and-mouth represented a crisis point for you, but I am more concerned by the rising food prices and difficulties with food availability that you face, which seem to be a more sustained problem for the industry. How can the Scottish Government assist the industry in that regard? The submission by Scottish Pig Producers Ltd suggests that the problem is that retailers are not giving producers what they deem to be a fair price. I cannot see how the Scottish Government can intervene to ensure a fair price. Are you aware of what steps other Governments—the UK Government, the Welsh Government and other Governments in the European Union—have taken?

Robin Traquair: I doubt that we can stem the tide of high cereal prices. However, I repeat that the supermarkets should be audited to ensure that what they say is produced to Great Britain welfare standards is produced to those standards. Much produce that comes into this country is not produced to GB welfare standards, and the supermarkets are lying blatantly when they say

that it is. An audit of the type that I suggest would go a long way towards narrowing the difference in price between those products and ours.

Stuart Ashworth: The Government can consider a number of measures that would assist producers of all red meat species. Clear identification on packages would enable the consumer to know whether they were buying a Scottish product, an English product, a Danish product or a Dutch product. The Government could also provide us with an increased opportunity to sell to the public sector—schools, hospitals and so on. Initiatives are taking place, but they need to be pushed through. There are also auditing issues, to which Robin Traquair referred, but they could be addressed by clear labelling.

We cannot force the retailers' hand, but there should be regular communication with them and recognition that they have a role to play. Repeated messages to retailers can have the effect of a dripping tap. We must be realistic and accept that foot-and-mouth has reduced profitability levels. If we do not get an improvement in returns to set against the higher grain and energy prices that we have talked about, the industry will not have the confidence to which Robin Traquair referred and it will turn off supply, which will mean that the market dynamics will change again. Those are two elements of the marketplace that would allow the Government to do something for us.

The Convener: Another part to the question concerned other Governments and what support they have given. Jamie Hepburn specifically mentioned the United Kingdom Government and the Welsh Government.

Gordon McKen: There is no such support that we know of.

The Convener: There has been discussion about France in that regard, but what about other European Governments? Is France the only country in which there has been state intervention?

Gordon McKen: Yes.

The Convener: That helps us, because we now know that we must think about the French example.

Jamie Hepburn: Many of the matters that have been mentioned seem to me to be regulatory. Have you discussed them with the UK Government? If so, what was its response?

Robin Traquair: The NFU Scotland president, Jim McLaren, has made several trips to Downing Street to put across points on FMD and suchlike, but to no avail. You might be aware that there has been a bit of to-ing and fro-ing between the Scottish Government and the UK Government on

the issue. I am not sure whether that has included the issue of costs. An attempt has also been made to sue the Department for Environment, Food and Rural Affairs for costs. NFU Scotland is—

Jamie Hepburn: I was talking not so much about foot-and-mouth, but about what you said regarding branding and packaging, and ensuring that every product that said that it was from Great Britain was from here.

Robin Traquair: Again, we have pushed for that for a long time, but it gets chewed up. The retailers might be slowing things down; I am not sure.

Gordon McKen: Stuart Ashworth is right to say that clear labelling would provide a far quicker hit to assist our producers. However, I know that labelling is a political issue that will take time to resolve—it will not be done quickly. If an overall audit of the products that come into the country showed clearly that the retailers' claims could not be held up, the retailers would get their house in order quickly, which would give us assistance quickly. We should by all means have clear labelling, but that step is a bit further on.

John Scott: In essence, this discussion was about compensation for FMD—that was why Mike Rumbles instigated the inquiry. I would like you guys to put your case on the record once and for all. It seems to me that it boils down to the fact that there was a welfare issue around sows. Notwithstanding whether you wanted to kill sows or not, there was no way that you could kill them last summer because you could not get access to the abattoirs south of the border. That seems to me like a cast-iron case for compensation. The other point is the increase in the weight of the pigs. However, I would like you to say those things because much of the discussion—

The Convener: You may feel that John Scott has already given your evidence for you.

John Scott: Has not much of today's discussion been about where we are going with a national food policy? I want a different focus.

Robin Traquair: The facts are clear: we could not get sows off the farms, they took up extra space and feeding, and that created a problem. There were too many animals on the farms, and that overcrowding resulted in a downward trend in performance. We carried too many prime pork pigs and could not sell them off to the market because there was a backlog. That created an increase in pigs' weight and a consequent increase of penalisation. There was a downward spiral in performance because having too many animals on farms resulted in poorer feed conversion and suchlike. Overcrowding on farms created major problems and was a direct factor in costs increasing; it caused cash-flow problems and losses for every farm that was involved.

The Convener: Can I clarify something? There was a period of four to six weeks in which you took a direct hit.

Robin Traquair: Yes.

The Convener: Subsequently, there was an indirect hit because everything had ground to a halt for four to six weeks.

Robin Traquair: Yes.

The Convener: So the first impact is a direct hit and the second is an indirect, knock-on effect.

Robin Traquair: There was a market imbalance.

The Convener: That helps to clarify the situation. For the initial hit, you are talking about a period of four to six weeks.

Robin Traquair: Yes.

John Scott: Looking at the future of the pig sector, is it about Government giving you confidence to go ahead, given that the pig sector and the poultry sector are probably the most vulnerable to the increased world grain prices? I would have thought that you, as businessmen, would have to examine the issue and that perhaps the Government would have to do so, too, in a responsible way.

Robin Traquair: We have been hit by many unilateral decisions that have been forced upon us, by Westminster or by Holyrood. It started in 1997 with the stalls and tethers ban. We were made to operate along those lines by a law, unique to Britain, which meant that we had to produce sows in that way. From that point onwards, the graph of British pig production has gone down steeply.

The Scottish Environment Protection Agency then enforced regulations on integrated pollution prevention and control, which were introduced to cover companies such as ICI at Grangemouth rather than me producing a small amount of pig meat on a farm not far from here. We have also had to deal with NVZs. If legislation is forced upon us—and much of it has been introduced unilaterally—it is up to the Government either to stop sub-standard product coming into the country or to help us out with the costs that have been forced upon us.

It is all very well saying that consumers will buy a more welfare-friendly product, but they will not. When people are asked on the way to the checkout they say that they will buy fair-trade products, but when they decide what to buy they choose the cheapest product that they can find because the cost of their mortgage is going up. Their conscience goes out the window when they have a family of three to feed. If regulations and costs are imposed on us by Government, we

expect the Government to give us a quid pro quo. If that does not happen, there will be no business left because it will have been burdened by costs and regulation.

Karen Gillon: I am not a farmer or an expert on the matter, but the welfare issues that you outlined in relation to pigs and foot-and-mouth seem similar to the reasons that we were given for why there needed to be a scheme for sheep. Is that right? Do the same issues arise?

Gordon McKen: There is a difference. The argument for sheep was that they needed to be moved from the hills to lower ground to feed because the feed was disappearing, the weather was getting colder and there was no grass for them. The argument could be made that we, as farmers, could purchase grain, albeit at twice the previous price, which meant that we could probably not afford to do so. The argument was that there was not a welfare issue: we could either feed them or shoot them. That is what we were told. That is where we were with the cull sows.

Des McNulty: Could—

The Convener: No—we must bring questioning to a close.

You have made the argument for the direct subsidy in respect of FMD, and you have also talked about indirect subsidies that could possibly be put in place. You gave one example, which was the vaccine. The cabinet secretary is coming to give evidence after you. Are there any other examples of indirect subsidy that you would like us to put to him?

Robin Traquair: The on-goers scheme would be good. It has been used once before, it has been proven to work and the same mechanism could be used. It worked before, and doing it again would be a matter of putting in place a copycat system.

Gordon McKen: Last time, the scheme was put in place for the UK. In Scotland, with the help of Ian Strachan and others in the Government, we produced a document that is only five pages long. It is clear and simple and it focuses producers on looking forward.

John Scott: Forgive me for saying so, but you have already mentioned the on-goers scheme, NVZs, better labelling, slurry control, audit, and GM issues such as importing GM-modified soya. The convener asked whether there was anything else.

The Convener: You talked about the vaccine in England and Wales. Can you think of any other examples?

Robin Traquair: Zero tolerance of GM is a huge issue. Shipping costs have risen from £20 a tonne

to £90 a tonne over the past few years, and no shipper will send a load of soya across the Atlantic when if even 1 per cent or less of GM product is found on the boat it will be sent back. As I said, I could not buy soya in Edinburgh to feed the pigs. Paying for it was not the problem—I could not get it. That is a huge issue. That is not to say that we want GM soya to be imported, but the minute tolerance of GM soya in soya that is shipped across here will be a major issue in the future.

The Convener: Is it not fair to say that, in the context of what the pig industry needs right now in Scotland, opening up the GM issue is probably not something that, in respect of what you are asking for today, would make a difference now?

Robin Traquair: I would say that it would.

The Convener: Fine. If we want to we can raise that issue with the cabinet secretary.

I thank the three of you for coming. You are welcome to stay and listen to our questioning of the cabinet secretary. I suspend the meeting briefly to allow the changeover of witnesses.

11:15

Meeting suspended.

11:21

On resuming—

The Convener: I welcome Richard Lochhead, the Cabinet Secretary for Rural Affairs and the Environment, and his officials, who are David Henderson-Howat, deputy director, agriculture and rural development, and Aileen Bearhop, principal policy officer, agricultural commodities.

Cabinet secretary, you may make a brief opening statement after which we will move to questions.

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): Thank you for the opportunity to give evidence. I am pleased that you are discussing this important matter because I share your concerns about the future of Scotland's pig sector, which, I am sure we all agree, produces a first-class product.

Like many people, I am worried about the sector and keen to assist the industry where that is possible and I can justify doing so. Excess pig meat production in Europe has combined with rapidly increasing grain prices to create particular difficulties for the sector in recent months. Prices have held up fairly well, but production costs have risen almost 100 per cent in a year and incomes have, of course, fallen. The position for all livestock sectors in Scotland was made difficult by last year's outbreak of foot-and-mouth disease in

England, which disrupted trade, prevented exports and put considerable additional stress on Scotland's industry.

Most of the difficulties that are currently faced by the pig sector are not unique to Scotland but are shared across Europe. Indeed, global economic factors are at the heart of the issue. The competitiveness of pig production in Europe is not a new problem and, of course, the sector has traditionally been unsupported by the common agricultural policy.

Recognising the European nature of the problem, I have taken the matter to Brussels and discussed the pressures on the pig sector in Scotland with the Commissioner for Agriculture and Rural Development, Mariann Fischer Boel. I urged the European Commission to explore possible ways of assisting the sector, but I am afraid that it is not inclined to intervene beyond the measures that are already in place.

We have supported the action taken by the Commission to assist the industry through, for example, export refunds and reduced zero import duties. Those measures were designed to improve the market position.

The falling value of sterling against the euro assists Scottish producers and helps all those who are involved in the export market. It also reduces the competitiveness of pig meat that is imported from the euro zone.

The Government cannot influence world markets, nor can we interfere with domestic markets and the prices that are paid to producers. We are also bound by EU-wide state aid rules. I am, however, anxious that we do all that we can to assist the sector in Scotland. We have been working closely with the industry to see how and where assistance can be given. I have met a number of industry representatives in recent weeks, including as recently as Monday this week, to discuss the state of the pig sector and possible actions to ease the situation. I visited a pig unit in my constituency to see at first hand the problems in the industry.

Although it has not been possible to introduce the post foot-and-mouth support scheme requested by the pig sector, not least because of state aid rules, the pig industry will benefit from the £1 million support package that I announced in October as part of the package for the industry post foot-and-mouth. The purpose of the £1 million is to enhance long-term sustainability of the red meat sector in Scotland.

Some £330,000 has already been allocated to Quality Meat Scotland for two projects. The first project is a strategic review of the pig sector to analyse it and provide recommendations on the future outlook for the industry, marketing

opportunities and requirements for investment. The contract has recently been awarded to a consortium led by the Scottish Agricultural Organisation Society. The work should be getting under way by now and I will be very interested to see the outcome.

The second project is aimed at adding value to what is referred to as the fifth quarter of the carcass—the offal products. Both projects will benefit the pig sector. The remainder of the funding for the industry will be provided over the next few years or so.

We welcome new ideas for projects that meet the aim of enhancing the industry in the medium to longer term. We need to do all that we can to promote Scottish pork. The week before last, I took part in a promotional event at a supermarket in Glasgow that was linked to the recent QMS campaign to encourage consumers to buy and eat pork that is produced in Scotland. I reiterate that plea today to all consumers in Scotland.

It is essential that the whole food supply chain works together to ensure that there is a sustainable future for the pig sector. Although we cannot intervene in the market, I continue to encourage the supply chain to work together. We must ensure that good-quality fresh meat can continue to be sourced from local suppliers. I am in regular contact with retailers and wrote to them on 28 March to ask what they are doing to secure the long-term future of the industry. I hope that they feel able to respond positively in the very near future. Indeed I spoke to the British Retail Consortium last week. It has agreed to ask its members if they will join with caterers, processors, producers and wholesalers to consider further discussion on the sustainability of the sector.

In summary, the Scottish Government recognises and is very concerned about the difficulties that are facing the pig sector in Scotland, largely as a result of rising feed prices. We are working with the industry to identify things that we and the industry can do to help the sector. Following our meetings over the past two weeks, I am offering the sector the opportunity to form a short-life task force with the Government to take forward some of the emergent issues about which we will no doubt hear today and to do what we can to secure the long-term future of Scotland's vital pig sector.

The Convener: Three members are waiting to ask questions. One of them is not Mike Rumbles, but I assume that he wants to go first.

Mike Rumbles: Thank you, convener, and thank you, minister, for coming to the meeting. We have just had an interesting and helpful evidence session. I was taken with Robin Traquair's point, which he put across very succinctly and repeated

several times, that where there is a will, there is a way to help. I should make it clear that I am talking about the reaction to the compensation process for foot-and-mouth; I am not talking about the major issue of dealing with the pig industry in general and the market conditions to which you referred. I was struck by your letter to committee members, which we received last night and in which you said:

"On the question of compensation for the pig sector in the form of headage payment, this is something I carefully considered in the autumn but concluded was not an option ... I am afraid that we felt unable to construct a successful case for headage payments for the pig sector"

to take to Europe. I turn Robin Traquair's point over to you—where there is a will, there is a way—and ask you to consider what other Governments, such as the French, have done.

Are your civil servants and advisers saying to you, "Minister, these are the EU state aid regulations—we can't do this," or are they saying to you, "Minister, we need to help the pig industry in a practical way and we can do it in this way"? We heard about some welfare issues this morning when witnesses presented a whole host of issues that I am sure members will raise. I will mention just a couple of the practical issues, never mind the headage payment, which would come to only £573,000, although we heard witnesses say that that was a welfare issue. There are practical things that you in the Scottish Government could do, such as implementing an audit of imported product from abroad. Is it what it is claimed to be? Is it not the case that you are looking at the state aid rules and saying, "Well this is what we can't do," rather than, "Yes, we can do it this way"?

11:30

Richard Lochhead: Mike Rumbles raises a number of issues, which I am happy to address. I will try to keep my comments relatively brief.

The Government has the will to help the pig sector in Scotland, which everyone in the room agrees is a vital sector. We will do whatever we can to help it through the difficult months and—who knows?—years ahead.

Mike Rumbles mentioned the assistance that the French are giving to their pig sector. To my knowledge, no European Union member state has made any headage payments to its industry. It is useful to clarify that.

There are two points to make about the foot-and-mouth outbreak and welfare. First, the advice that I received from the chief veterinary officer was that the pig sector did not face a welfare issue that would have justified payments during the foot-and-mouth crisis.

Secondly, during the foot-and-mouth crisis, quick decisions had to be taken in challenging and difficult circumstances. Our approach was to work in partnership with the industry. Members will be well aware that many sectors in Scotland—the lamb sector, the cattle sector, the pig sector, of course, the haulage sector, auctioneers, processors and abattoirs—suffered financial consequences as a result of the outbreak and virtually all of them asked the Scottish Government for support during it. We sat down with the industry and worked out where support should be targeted and where it would make the biggest difference in that difficult situation. The industry was involved at all stages of the decision-making process. Its view was that the lamb and sheep sectors should be the priority because they were facing market collapse, which was not the case with the other sectors. I do not dispute that the pig sector suffered financial consequences as a result of the foot-and-mouth outbreak, but the Government worked in partnership with the industry at a difficult time and asked it where the priority was and where we should help. If we could intervene, we did so.

There is another point that it is important to make. We thought that, given the circumstances, the market collapse in the lamb sector would mean that the aid package that we announced for it would fly through Europe under the state aid rules, but it did not. We had to battle with the Commission. As we did not have the same evidence to present for the pig sector, my position was—and remains—that there would have been no possibility of getting state aid clearance for it. I wish that we could have helped more but, unfortunately, that was the situation that we were in, which the industry signed up to at the time.

Mike Rumbles: As a result of the first outbreak of foot-and-mouth, the previous Administration gave aid to the sheep industry and then claimed money back from Europe. It took action straight away. The current Administration went to Europe first, got things cleared and then produced the cash. It gave £18.8 million to the ewe scheme, £3.7 million to the light lamb scheme and nothing to pig producers. I do not dispute what you are saying—indeed, there is no doubt that the sheep sector was the priority, as your advisers and the industry told you—but making something a priority does not mean that only it should be focused on while the pig industry is excluded from consideration.

We all know about the dire straits that the pig industry is in. Many of its problems result from market forces. I understand what you said about not interfering with market forces, but there are things that you, as Cabinet Secretary for Rural Affairs and the Environment, have the power and authority to do. This morning, the industry

produced a list for us. You could do one thing on that list, several things or all of them. That is within your gift and power. Leaving headage payments to one side, all imported food could be audited and there could be capital help for the industry in nitrate vulnerable zones. There are many practical measures that you could take. Even at this late stage for the pig industry, rather than simply saying that state aid rules prevent us from doing things, can you not consider ways of interpreting the rules positively to help the industry? Your letter from last night said that you thought that you could not produce a package to put to Europe. Rather than you being the judge, can you not put a package to Europe and let it judge?

Richard Lochhead: There are two overlapping issues. The letter referred to the foot-and-mouth situation, but you are also talking about other ideas and proposals that have emerged over the past few weeks. I met the industry last week and I had a further meeting with producers in Oldmeldrum on Monday. Those producers represented 30 per cent of the Scottish herd and another substantial proportion of the Scottish herd was represented in the meeting the week before.

I have had many meetings with the industry, even over the past couple of weeks, during which many interesting ideas have emerged. I have offered to investigate all of them with the industry. I am hopeful that we will be able to deliver on some of them but, obviously, I cannot say at this point which ones as we have to investigate the feasibility and affordability of each of the proposals. That is why I am offering a short-life task force to take forward those ideas. I appreciate that other ideas have been around for longer, but some of the new ideas have sparked interest and I want to sit down with the industry and take them forward. We recognise that, as the price of cereals has continued to rise over the past few months, the pig sector faces an extremely desperate situation that is going from bad to worse, although, hopefully, there is some light on the horizon.

Mike Rumbles: A last brief point—

The Convener: I want to bring in some other committee members.

Mike Rumbles: Can I ask just one question?

The Convener: As long as it is a short question, not a speech.

Mike Rumbles: Minister, I take it from your response that you think that you will be able to report back to the committee in the fairly near future that you will be able to implement a scheme to assist the pig industry in one form or another. Is that what you are saying to us?

Richard Lochhead: I am saying to you, first of all, that we have already delivered support.

Indeed, if you compare our track record with that of many other countries in Europe that are more dependent on the pig sector than we are and which are dealing with the same Europe-wide problem, you will find that our record stands up well.

I am also saying to you that we are offering the industry the opportunity to participate in a short-life task force to examine in detail the interesting proposals that have emerged in our meetings with the industry in the past fortnight. I am attracted to some of those proposals. As I said, however, we must consider the affordability and relative effectiveness of each of them. We are keen to sit down with the industry and build on our previous measures and previous meetings. We will report back to the committee on the situation.

John Scott: I welcome the creation of the short-life task force. If this inquiry has done nothing else, it has at least produced that commitment from the Government.

Although I accept what you said about it not being possible to grant state aid in this case and I understand your position, I would like to move the argument on to the actual proposals.

Could you give us a steer on your thinking with regard to an on-goers scheme and help with NVZs, particularly slurry control? What do you think about the possibility of introducing in Scotland the post-weaning vaccination pilot that is taking place in England? I appreciate that this might relate to a reserved matter, but what is your view on zero tolerance of genetically modified imported soya? At the moment, if there is contamination of even 1 per cent of shipped-in soya, we are, apparently, not allowed to use it here. Is there anything that the Scottish Government can do about that? I think that I know the answer, but it would be interesting to hear your views.

Richard Lochhead: In 2001, the Prime Minister announced an on-goers scheme for the pig sector across the United Kingdom. The industry has suggested a resumption of that scheme as one of the 10—at the latest count—ideas that have been put to me over the past couple of weeks. We have to be careful because one of the conditions that were attached to the previous scheme was that there should not be another such scheme within 10 years. Given that the last scheme was announced in 2001, it will be 2011 before Europe would accept a similar scheme. However, that might not be the case, depending on the definitions of restructuring and other elements of the proposal.

We have an open mind on the matter at this point. My main concern about the scheme is not only its acceptability to Europe but its

affordability—we would have to consider the budget implications. However, we are happy for the task force to investigate that idea.

NVZs present an on-going issue, as you can imagine. We are setting up a joint industry-Government implementation group to take us through the implementation of the action programme, following clearance of the Scotland rural development programme—which was made partly conditional on our having a new action programme.

We want to investigate every possible avenue for helping sectors such as the pig sector to adapt. There are various opportunities that could bring benefits to pig producers and other producers—it is not just about the costs and the pain of trying to implement new regulations. That could involve renewable energy schemes, anaerobic digestion and the production of biogas from slurry, with farmers working together—whatever the options, we want to investigate them with the implementation group. Support of up to 40 per cent is available for slurry storage, and of up to 50 per cent in some circumstances—for new entrants and for farms in less favoured areas. We are keen to explore, through the group, how to help the industry to adapt to the new conditions in NVZs. We all agree that it is imperative to reduce the amount of nitrate going into the environment from the agricultural sector. That is the ultimate aim.

Vaccination is one of the 10 ideas that have been suggested to the Government. We are always keen on measures that promote animal health and reduce mortality. That is effectively the purpose of the proposal for a vaccination trial. I am interested in exploring what that might comprise, as well as the cost and other implications. We are keen for the task force to address that idea.

The Government's position on GM is that, given that the genie is out of the bottle as far as feed is concerned, with GM feed coming into Europe from the rest of the world, we must maintain a rigorous, precautionary approach. I recognise the frustration among all livestock producers, particularly in the pig sector, which is intensive in its feed usage, as to the length of time that authorisation takes. I have undertaken to obtain a report from Europe about the current state of play. Many member states have raised such issues with the European Union, and our Government's resolute position remains that we want a vigorous and precautionary approach to be taken.

If there was an accidental importation because we had not taken a rigorous approach with feed with a GM content, it could potentially lead to a suspension of imports. It is therefore in everyone's interests to maintain a rigorous approach to ensure that nothing slips through the net that might lead to a suspension, which would take

place during any investigation of why the incident happened. I repeat: it is in all our interests to ensure that a rigorous approach is maintained.

John Scott: I do not understand what you mean when you say:

“it could potentially lead to a suspension of imports.”

Richard Lochhead: Any GM feed that is imported to Europe must go through a rigorous authorisation process. Without that in place, things could backfire. Something could slip through the net and come into Europe. That could lead to a situation where we do not know where the feed in question has come from and we have to suspend the importation of certain feeds. That could happen—although I am not saying that it will. I am saying that it will work in everyone's favour to have a rigorous authorisation process to ensure that nothing that should not be coming into Europe slips through the net.

John Scott: In relation to costs to the industry, is that your last word on bringing in GM wheat and grain for animal feeds? Are you determined that there will be no GM, now and in the future?

Richard Lochhead: I am not saying that. I am saying that it is already being imported to Europe—much of the feed that comes into Europe is GM. The industry's frustration is about the length of time that the authorisation process is taking and about the speed at which feed from elsewhere can be brought into Europe. My point is that we must maintain a rigorous approach to that.

The Convener: Four members are still waiting, so I ask for questions to be as concise as possible.

Jamie Hepburn: Mike Rumbles spoke earlier about the French Government and others taking action to mitigate market pressures and the increase in the cost of production that faces the pig sector. The previous panel could not name any other Government—including the UK and Welsh Assembly Governments—that had taken specific action. I think that you answered this question when you responded to Mike Rumbles, but I will ask it anyway: are you aware of what other EU countries are doing to help the pig sector? I am particularly interested in countries that might be more reliant on the pig sector, such as Denmark. What is your assessment of the action that previous ministers took when the pig industry was in trouble?

11:45

Richard Lochhead: You asked about countries that are more dependent on the pig sector than we are. Although the pig sector is extremely important to us, given its decline in Scotland and the rest of the UK over the past 10 years there are other

countries in Europe that have bigger pig sectors. To my knowledge and from our investigations, none of those countries has provided its pig sector with any support, even though they are more dependent on the sector than we are in Scotland.

The action of the French is being reviewed—I think that that is the official term for it. They have used two routes to offer support for their pig industry, the first of which is the provision of tax breaks. Even if we wanted to take such a measure, the Scottish Parliament does not have the power to do so because taxation is a UK issue. The second is the provision of soft loans. I am not alone in not finding it easy to find out about those measures. France is the only country in Europe that I am aware has taken action to support its pig industry.

If we decided to provide our pig sector with state aid and that decision could not be defended and was successfully challenged, on the basis that many pig producers across Europe are experiencing the same pain that our pig producers are experiencing, every pig producer that had received aid through our scheme would have to pay it back, with interest. In six months or a year, the committee would call me back to lambast me for allowing the implementation of a scheme that only inflicted much more pain on the pig sector. I must take that factor into account, as I suspect Governments across Europe have done.

As regards the action of previous ministers, I have mentioned the UK Government's position on the on-goers scheme and the restructuring that took place back in 2001. I am unaware that previous ministers have provided any other significant support for the industry. Indeed, previous ministers, both in the Scottish Administration and at UK level, have always made the point that it is for the market to rescue our livestock sectors in difficult times.

Karen Gillon: A practical measure that the UK Government has taken in England and Wales is the establishment of a vaccination scheme. Why is Scotland lagging behind on that? When do you envisage a vaccination programme being set up here?

The previous panel made a clear plea for an audit to be carried out of goods coming into Scotland for our supermarkets that it is claimed meet GB welfare standards. That would benefit not just the pig sector but Scottish agriculture across the board. You have the power to carry out such an audit. When will you do so?

Richard Lochhead: To be fair, vaccination is an issue that has emerged in my discussions with the industry only in the past two or three weeks, and I have already expressed an interest in exploring it.

Karen Gillon: What is the timescale for that?

Richard Lochhead: We have made an immediate offer to the industry to set up a short-life task force to look at vaccination, among other issues. As well as accepting every invitation that the pig sector has made to discuss the issue, I have been proactive in requesting meetings. There has been a great deal of dialogue and positive discussion, even as recently as Monday. It is only in the past fortnight that the industry has approached me directly on the issue, and I am keen to explore it. I hope that Karen Gillon will accept that in the positive tone in which it is meant.

I am extremely concerned about the fact that there might be produce that does not meet the same standards as Scottish produce sitting alongside it on supermarket shelves. That is partly why we want a national food policy in Scotland and why we want to involve retailers in that.

Coincidentally, yesterday I met the chair and lead officials of the Farm Animal Welfare Council and asked them to give me an opinion on whether the pig produce from abroad that sits next to Scottish produce on our supermarket shelves meets the same welfare standards. They have agreed to give me an official, short-term opinion in the next few weeks. If we want a proper opinion it will take up to a year. To my knowledge, that has not been done before. I am keen to pursue that avenue, and to ascertain whether produce that is the result of inferior welfare standards has a competitive advantage over Scottish produce, which is of the highest quality.

Karen Gillon: In opposition, you made various statements about inferior produce coming into Scotland. Yesterday, the NFUS sent us a press release about Brazilian beef and the standards in Brazil. Evidence is growing. There is probably unanimity in the committee and in the Government that we should just get on and do it, rather than prevaricating and setting up task forces and so on. For the sake not just of the pig sector but of agriculture throughout Scotland, it would be good if we could take that practical step and have an audit undertaken.

Richard Lochhead: The Government has put a lot of effort into issues to do with beef and food produce generally in Scotland. I profoundly disagree with the suggestion that we have not acted. I emphasise the point that we have requested an opinion from the Farm Animal Welfare Council. To my knowledge, the previous Government, in its eight years in power, did not request such a report. After only a few months in power, I am doing so. It is easy to sit there and accuse the current Government of not acting, but the Scottish Parliament has been up and running for nine years.

Karen Gillon: The committee has had a specific request from the industry for an audit. You have been in power for a year. You receive a specific request and you say that it would take a year to carry it out. Surely we should just get on and do it rather than waiting for the outcome of a short-life task force.

Richard Lochhead: You heard that request today. I have already made a request to the Farm Animal Welfare Council, which has offered a quick view in the coming weeks. It has a process called an official opinion, which can take up to a year. Are you saying that I should have delivered that within 11 months, when the previous Administration had eight years?

Karen Gillon: No. I am saying that we have been asked today for an audit of all produce that comes into Scotland. I am asking you not to prevaricate or to look for a short-term fix but to get on and do it.

Richard Lochhead: I have given you evidence that I am doing that. The previous Administration had eight years and did not do it.

Bill Wilson (West of Scotland) (SNP): We heard that the pig industry is keen to acquire more opportunities for procurement from public bodies. I know that the Government is keen to increase local procurement by public bodies. We also heard evidence that the welfare of pigs in Scotland is generally higher than in Europe. Is it possible to tie the two together and to require public bodies—the national health service, schools, local councils and so on—to consider welfare issues in food procurement?

Richard Lochhead: To give comfort to Bill Wilson—and to Karen Gillon—those are the kind of measures that we have been implementing over the past 11 months. There has been correspondence between the Scottish Government and public agencies about procurement contracts, which we hope will bear fruit. It tends to be when the contracts come up for renewal that the opportunity to revise them presents itself. The contractor for the Scottish Government's staff canteens has assured us that 100 per cent of the pork served in the canteens is sourced in Scotland.

It is worth mentioning that the Food Standards Agency Scotland is consulting on food labelling. We will be making a submission to that consultation and I would urge the committee and all livestock sectors to take an interest in that issue in order to ensure that we improve labelling.

Bill Wilson: We heard that it may be possible to adapt slurry to make it more effective as a fertiliser—we would presumably use that in preference to petrochemical fertilisers, which could have a follow-on effect with regard to climate

change. Is it possible for the Government to assist that process, not just from the point of view of farmers but from the perspective of tackling climate change? I appreciate that that is a slightly speculative question, so I am not necessarily expecting a detailed answer.

Richard Lochhead: We are actively considering that. If it has not been published yet, I will ensure that the committee receives a copy of the report on the relationship between agriculture and climate change that Henry Graham authored in the past few months.

The specific example that you raise is certainly one that we want to consider. Various funding streams are available in relation to the use of slurry as fertiliser or for renewable energy and I hope that the agricultural sector can tap into those to take forward such initiatives.

Bill Wilson: We have not heard a lot about the organic sector today. Do you have a comment to make on the organic sector and pig farming?

Richard Lochhead: Yes. The organic sector also faces rising costs. Of course, it has to source organic feed. However, it commands a premium in the marketplace. Coincidentally, I spoke to an organic pig farmer in my constituency a couple of weeks ago. I do not think that there are that many of them in Scotland. He told me that he gets a significant premium over and above what non-organic farmers get. Hopefully, that is a major benefit to him, but of course organic pig farmers' costs are increasing as well.

Peter Peacock: I have two points. The first is a point that remains unreconciled following your evidence and the evidence that we took from the earlier panel. In paragraph 20 of NFU Scotland's written evidence, it states:

"We believe that the case for compensation remains strong and that it can be justified under Article 10 of Commission Regulation (EC) 1857 of 2006."

Is there simply a fundamental disagreement about that? Do you believe that the NFU is wrong and that there is not a strong case for compensation?

Richard Lochhead: I do not believe that there is a strong case related to foot-and-mouth disease. The current edition of *The Scottish Farmer* contains two graphs that show the prices and trends for sheep and pigs. The graph for sheep plummets during foot-and-mouth. The graph for pigs is relatively steady. I am not saying that there was no impact, but the graph for pigs is relatively steady throughout last year compared with sheep.

To be frank and honest, the situation that I faced as a Government minister is that it was difficult to justify going to Europe and saying that the two cases were equal. It is not that I do not want to

help the pig sector. I would love to be able to help the sector more than we can at present, but so much of the solution lies with the marketplace. Please bear in mind the evidence that I would have to take to Europe.

Peter Peacock: I am not trying to make a point of contention. I am just trying to establish that you think that the NFU has got it wrong when it says that there is a strong case.

Richard Lochhead: Clearly there is a disagreement if that is its position, but it was part of the decision-making process during the foot-and-mouth outbreak.

Peter Peacock: This morning, the industry representatives emphasised the importance of the difficult-to-define concept of confidence in the industry. They said that more confidence is required and that it needs to be visible, so that the farmers who participate in the industry and are part of it will stick with it. It is important that they believe that the will exists to have a pig industry.

Also, the banks will be observing the conversation and saying, "Shall we foreclose on that business? There isn't a big future in the industry." What can you say to us and to the observers—the industry and the banks—that will give them the confidence to stick with the industry? What is your view on the size of the pig industry that you want Scotland to have in five years' time? Is it as it is today? Is it expanded from where it is today? Is it 10 per cent reduced? Is it 20 per cent reduced? What view can you give on that to help to give the sector confidence?

12:00

Richard Lochhead: The biggest factor that should give the industry confidence is the fact that it produces a top-quality product. That is the message that we must get across to consumers, so that they buy more Scottish pork. The industry plays a vital role in food production in Scotland and it should be proud of its top-quality product. It should also have confidence that the Scottish Government, the Parliament and this committee support the sector in Scotland and believe that it should have a future. We will do whatever is in our power to help it to achieve that.

I thought that the best way in which to ensure that the banks maintain confidence in the sector was to meet them; therefore, when I met the clearing banks in Scotland the pig sector was on the agenda. I explained to the banks that we will do everything that we can to help the pig sector in Scotland. I told them that we recognise the European and global pressures and that we hope that they will take on board the vital role that the pig sector plays. Of course, the banks have commercial decisions to make, as do pig

producers. I felt that the meeting with the clearing banks was very positive, but I cannot make their decisions for them; I can only use what influence I have as the cabinet secretary.

Peter Peacock: Do you have a view on what size the pig sector should be in five, six or seven years' time?

Richard Lochhead: The size of the pig sector in Scotland will very much depend on the response from retailers and processors, who need to ensure that they get the income that they require to make a profit. It will also depend on the size of the pig sector elsewhere in Europe. I know many pig producers and have spoken to dozens of pig producers throughout Scotland over the past few months. They take the view that they are among the best in Europe; therefore, they want to survive. They are doing all that they can to do that.

Peter Peacock: So, you do not have a view on what size the industry should be?

Richard Lochhead: I am not sure that it is my job, as the cabinet secretary, to write down a figure for the size of any particular commercial sector in Scotland.

Peter Peacock: You have emphasised the quality of the Scottish product, and I do not disagree with you about the importance of quality. However, a product of better quality could perhaps be produced by an industry of half the size. Quality alone is not an indicator of the size of the industry. Do you want the pig sector in five or 10 years' time to be every bit as large as it is today, or larger?

Richard Lochhead: I want the pig sector in Scotland to be as large as is commercially possible. However, I am unable to determine what the future will be for any commercial sector in Scotland. All that I can do as the cabinet secretary is support the industries that we value and the Government's policy is that the livestock sector overall in Scotland is vital. It produces fantastic foods and sustains many jobs—in our rural communities in particular. That includes the pig sector.

The Convener: Cabinet secretary, what is the timescale for the short-life working group? That will inform us with respect to what we will do next.

Richard Lochhead: The proposal came out of a discussion that I had with the industry on Monday, and we are now going back to the industry to make the offer. It is the industry's decision whether it wants to participate in that group. I am sure that it will and that the group will be set up immediately.

The Convener: When will the group report?

Richard Lochhead: As soon as possible, once we have explored all the various issues. I will write

to the committee with further details when we have had the first meeting of the group.

The Convener: It would be helpful to us, in our deliberations, if you were to write to the committee within four weeks, letting us know what the position is, whether you have a clear idea of the timescale for the short-life working group and whether there are things that have already been ruled out or in—a kind of progress report. Would that be reasonable?

Richard Lochhead: Yes. I am delighted to do so.

The Convener: Thank you.

Karen Gillon: Given the fact that the timescale for some of the issues is quite pressing, it would be useful if the cabinet secretary came back to the committee before the summer recess to update us on what has been done.

The Convener: Four weeks is obviously before the recess.

Karen Gillon: Yes, but that will be a letter.

The Convener: Do you mean that the cabinet secretary himself should report to the committee?

Karen Gillon: Yes.

The Convener: We will need to look at timetabling issues, but we can consider that. However, if we can have a progress report within four weeks, that will help us immensely.

Richard Lochhead: Certainly.

The Convener: Thank you. I thank you and your officials for coming to the committee.

Subordinate Legislation

Water Environment (Diffuse Pollution) (Scotland) Regulations 2008 (SSI 2008/54)

Crofting Counties Agricultural Grants (Scotland) Amendment Scheme 2008 (SSI 2008/58)

12:04

The Convener: There are eight statutory instruments for our consideration under agenda item 4. The first two instruments are carried over from our meeting on 19 March. [*Interruption.*] Can people in the public gallery please take their conversations outside? Thank you.

Correspondence between me and the cabinet secretary on the two instruments is reproduced for members in paper RAE/S3/08/7/8. The 40-day period for scrutiny of the instruments expires today in respect of SSI 2008/54 and tomorrow for SSI 2008/58, so we need to deal with them. At our previous meeting, John Scott raised issues in relation to SSI 2008/54. Does he or any other member have any comment on the cabinet secretary's response?

John Scott: The answer is that I am not sure.

The Convener: While John is having a look at that, we will move on to SSI 2008/58, on which Peter Peacock raised concerns. There has been correspondence between me and the cabinet secretary. Peter, do you want to comment on the cabinet secretary's response?

Peter Peacock: I appreciate that we are up against time, with the deadline being tomorrow. The cabinet secretary's response cites the EU requirements as a large part of the reason why the action is being taken. It might be interesting to know at some future date the extent to which the EU has been questioned on those requirements. That said, the correspondence usefully points out that the powers will be used only "in extremis", after an applicant has been given a chance to comply and where there is a reasonable belief that the seizure of a computer would be absolutely necessary in the circumstances. Now that we have those assurances, I am happy not to object any further.

The Convener: Do we agree to make no recommendation in relation to SSI 2008/58?

Members indicated agreement.

The Convener: Has John Scott had an opportunity to locate his paperwork on SSI 2008/54?

John Scott: Yes. I am happy with the explanation and further information that the cabinet secretary provided.

The Convener: As no other member wishes to comment on SSI 2008/54, do we agree to make no recommendation on it?

Members indicated agreement.

**Horses (Zootechnical Standards)
(Scotland) Regulations 2008 (SSI 2008/99)**

**Rural Development Contracts (Rural
Priorities) (Scotland) Regulations 2008
(SSI 2008/100)**

**Aquaculture and Fisheries (Scotland) Act
2007 (Fixed Penalty Notices) Order 2008
(SSI 2008/101)**

**Sea Fishing (Control Procedures for
Herring, Mackerel and Horse Mackerel)
(Scotland) Order 2008 (SSI 2008/102)**

**Eggs and Chicks (Scotland) Regulations
2008 (SSI 2008/129)**

**Forestry Challenge Funds (Scotland)
Regulations 2008 (SSI 2008/135)**

The Convener: We come to the six remaining instruments. The Subordinate Legislation Committee has not yet considered SSI 2008/129 and SSI 2008/135, so I advise the committee that we will carry them over to our meeting on 30 April, to wait for the Subordinate Legislation Committee to comment. Do members have any views on that?

Mike Rumbles: That would be sensible. Can I raise a question on one of the other instruments?

The Convener: Can we deal with SSI 2008/129 and SSI 2008/135 first? Do we agree to hold those instruments over until 30 April to allow the Subordinate Legislation Committee to comment?

Members indicated agreement.

Mike Rumbles: I have a question about SSI 2008/100.

The Convener: That is on rural development contracts.

Mike Rumbles: Yes. Regulation 8 states:

"The Scottish Ministers may approve ... or may reject an application for aid and in determining whether an application should be so approved or rejected, they must have regard to"

whether the application "meets regional priorities". The expression "meets regional priorities" is

terribly vague. I am keen to find out from the minister what the intention is. Is it to have ring-fenced funds for particular regions of Scotland? Does the talk of priority mean that the funding may be skewed in a particular way? We need more information on that.

The Convener: John Scott has questions, too.

John Scott: Yes, also on SSI 2008/100. I am concerned about rights of appeal. We have had assurances from the cabinet secretary that the issue is being addressed, but notwithstanding the fact that a group is considering the issue, I want to know whether the right of appeal that we are introducing in the regulations will be set in stone for the next six or seven years. There was a manifesto commitment from the Government to address the issue sympathetically, but I am not sure from reading the regulations whether they do that. Obviously, the matter is germane to the industry.

The Convener: Mike, on page 3 of the regulations, there is a slight expansion of the rural priorities statement. It is about two thirds of the way down the page in the interpretation provision of the regulations. You may feel that it is still not enough.

Mike Rumbles: It is too vague.

The Convener: I think that we have time to reconsider the regulations and, in the meantime, ask for clarification from the cabinet secretary on the points that Mike Rumbles and John Scott made. Do we agree to hold over SSI 2008/100 as well?

Members indicated agreement.

The Convener: I should say that, although no issues have been raised on the other instruments and no motions to annul have been lodged, the Subordinate Legislation Committee commented on SSI 2008/99, SSI 2008/101 and SSI 2008/102. Are any of its comments of interest to any member of the committee?

John Scott: I put it on record that the work that the Subordinate Legislation Committee has done is valuable. It has pointed out errors to the Scottish Government, which the Government has acknowledged, particularly in SSI 2008/101. We should acknowledge the fact that the Government has admitted the errors and will address them at the earliest opportunity.

The Convener: There being no other comments, do we agree to make no recommendations in relation to SSI 2008/99, SSI 2008/101 and SSI 2008/102?

Members indicated agreement.

Karen Gillon: I suggest that we do not recirculate the instruments, given the considerable paperwork that is involved.

The Convener: I am advised that, as a matter of course, we do not recirculate them in such circumstances. This meeting's set of papers was extremely bulky and I felt sorry for the posties who had to cart them around.

Mainstreaming Equal Opportunities

12:12

The Convener: Agenda item 5 concerns mainstreaming equal opportunities. The convener of the Standards, Procedures and Public Appointments Committee has written to all conveners seeking committee views on a proposal by the Equal Opportunities Committee. The proposal is that all committees report to the Equal Opportunities Committee towards the end of each four-year session on how they built equalities considerations into their work during that session.

One member of this committee—Bill Wilson—is a member of the Equal Opportunities Committee. As a matter of courtesy, I ask him to comment on the proposals, after which I will invite comments from other members.

Bill Wilson: The Equal Opportunities Committee is concerned that, although equal opportunities are theoretically mainstreamed, they are generally not considered. In a lot of subjects, we will probably find that there is no obvious equal opportunities mainstreaming issue anyway, but one may arise on other issues. In rural housing, for example, there may well be an equal opportunities issue. If we are not going to report back to the Equal Opportunities Committee, it would be easy for us to examine an issue and never consider equal opportunities as part of the process, so I would like us to adopt the proposal.

The Convener: Do other members want to comment?

Mike Rumbles: I would like to know what prompted the proposal.

John Scott: Will the Equal Opportunities Committee issue any guidance on how we should mainstream equal opportunities, particularly with regard to flooding?

Bill Wilson: There is guidance on it. There is a checklist—I have rather inconveniently forgotten what it is called—that we can go through to check that we are mainstreaming equal opportunities, so there is some guidance.

Des McNulty: My view is that the proposal is probably the wrong mechanism to deal with mainstreaming. Surely the issue should be whether committees effectively scrutinise the Scottish Government's approach to mainstreaming equality, not whether we report on what the committees themselves do. Having a mechanism that addresses what the bodies that the committees scrutinise are up to is more important than having the proposed mechanism.

The Convener: How would that apply when we launched an inquiry? A committee inquiry is not just a matter of scrutiny; we also consider a specific issue.

12:15

Des McNulty: That is the case, but I hope that all committees take on board equal opportunities as a matter of good practice. If we are considering outcomes and change, we should focus on what the Government is doing.

Karen Gillon: In much of what the committee does, such as considering agricultural regulations, huge equal opportunity issues do not arise. However, Bill Wilson is right that equal opportunities issues will emerge from the rural housing inquiry. I am sure that the committee will consider how rural housing policy affects people with disabilities, for example. When housing associations build new houses, or under the new scheme in which the private sector will be eligible for grants, will a proportion of houses be required to be accessible or available to people who have low incomes? I am sure that such issues will emerge from our inquiry, but I am not sure whether we would need to report to the Equal Opportunities Committee on them and, if so, what form that report would take. However, committee members have a duty when producing reports to consider equal opportunities issues across the range of our responsibilities.

The Convener: I remind the committee that the rural housing inquiry's remit was changed to cover affordable rural housing, so we will address housing for people with low incomes.

Jamie Hepburn: Perhaps I approach the proposal from a slightly different angle, which I thought that the convener suggested. It is right that, when we assess any public policy—whether it is our suggestion in a report that stems from an inquiry or a Scottish Government initiative—we ensure that equal opportunities are mainstreamed. However, I understood that the proposal was more about how the committees work and about considering how, when we undertake any public session in an inquiry, people can access that equally. The recommendation makes sense.

The Convener: That is a fair point—that is a slightly different angle on equal opportunities.

I have a question that is a bit of a challenge to the Equal Opportunities Committee. If the expectation is that equal opportunities will be mainstreamed in all the committees, what will be the Equal Opportunities Committee's purpose? In a sense, should that committee scrutinise us? If it does not do that and if we mainstream equal opportunities more overtly and proactively, where lies that committee's responsibility?

Mike Rumbles: I am trying to find out exactly what Keith Brown, as convener of the Standards, Procedures and Public Appointments Committee, is asking us to do. Is he saying that a rule change would require us as a committee to report on our work to mainstream equality issues and that the Equal Opportunities Committee would collate such reports? Would we report every four years to another committee?

The Convener: That seems to be the proposal.

Mike Rumbles: Why would we report to another committee? We do not produce reports for other committees, do we?

The Convener: I am not sure whether one can draw a parallel from the past nine years. Are the clerks aware of similar circumstances, other than when we are a secondary committee on a bill or in an inquiry?

Andrew Mylne (Clerk): The nearest equivalent is the budget process, in which subject committees report to the Finance Committee, which publishes a report. The Finance Committee includes its own substantive views in the main section of that report and the subject committees' substantive views are attached as annexes. Parliament then considers and debates that report. However, the letter does not make entirely clear what the Equal Opportunities Committee would do with other committees' reports, so perhaps the situation is slightly different.

Mike Rumbles: That is a different process. On the budget, we make recommendations to the Finance Committee. It is not clear to me that we are being asked to do the same in this case.

John Scott: Are not we under an obligation to mainstream equal opportunities in everything that we do? It is a given. Is this not just a tick-box exercise?

The Convener: I have another question for Bill Wilson. The committee is already required to produce an annual report, the layout of which is strictly constrained. The report that we produce is quite brief.

Andrew Mylne: Under standing orders, all subject committees are required to report annually. Standing orders say very little about what the report must include, apart from the number of meetings and the number of meetings that are held in private. It is open to committees to decide what else they want to say. In the previous two sessions, the Conveners Group has agreed a template to which all committees have signed up. That involves committees sticking to a certain word count and using standard headings in the reports, but it is not a requirement in standing orders. As far as I am aware, the Conveners

Group has not yet taken a view on the matter in this session.

The Convener: Did the Equal Opportunities Committee consider raising the issue with the Conveners Group? For example, if we are to continue producing annual reports—which are controversial, because people are not entirely sure of their purpose—as we have done for the past eight or nine years, would not it be appropriate for us simply to add a heading on mainstreaming equal opportunities? Those are questions for Bill Wilson, as a member of the Equal Opportunities Committee.

Bill Wilson: The first question is why it is necessary for other committees to examine equal opportunities when the Equal Opportunities Committee already does it, but, inevitably, many issues will arise in other committees that the Equal Opportunities Committee will not examine. Rural housing is a good example. Lack of available housing for people with limited mobility is a real problem. In four years, the Equal Opportunities Committee may not get around to covering that, but the Rural Affairs and Environment Committee is about to conduct an inquiry into rural housing, so the problem should be covered in that inquiry because, as John Scott said, we have an obligation to mainstream equal opportunities issues in our work.

It is reasonable for the Equal Opportunities Committee to ask other committees to consider equal opportunities issues when they arise because, with the best will in the world, they may not be covered by the Equal Opportunities Committee in a four-year session. If they are not, the opportunity to consider them is lost.

I was not here for the previous eight years, but the Equal Opportunities Committee seems to think that there was limited evidence over that period of mainstreaming and of committees meeting their obligation to consider the equal opportunities aspects of each issue they consider. I am merely informing members of that committee's position. It takes the view that, although mainstreaming is an obligation in theory and committees are supposed to consider equal opportunities issues when they raise other issues, that does not occur. Requiring other committees to provide a report would encourage them to consider and to report back on equal opportunities issues when they examine issues such as rural housing. It is a way of ensuring that mainstreaming happens.

The Convener: Members are expressing a degree of scepticism about what a report would achieve. One is supposed to be produced at the end of four years, by which time all committees will have completed their work, with or without mainstreaming equal opportunities. I am not certain how effective a report at the end of the

session would be, because after an election everything changes and the dial is set back to zero.

Karen Gillon: The convener has suggested a more useful way forward, which is to include in our annual report what we have done on equal opportunities issues. Equal opportunities issues relating to rural housing will be raised in our inquiry into that; if they are not, we will be failing to do our job. We may want to reflect on whom we invite to give evidence in order to ensure that we cover that base. This has been a useful exercise because, if nothing else, it has ensured that we are thinking about equal opportunities issues.

In our response to the convener of the Standards, Procedures and Public Appointments Committee, we should say that we would prefer to include a section in our annual report detailing how we have mainstreamed equal opportunities, rather than to send a report to another committee at the end of each session. As our convener has rightly said, such a report would be obsolete because no one would have time to consider it if it was produced at the same time as the legacy paper. The inclusion of a section in our annual report would be more useful. It might help us to focus over the course of the year and ensure that we are doing what it says on the tin.

The Convener: Does the committee agree that we should express a preference for including a comment on equal opportunities in our annual report? That will require a proposal to be taken to the Conveners Group, which has in effect produced a template for annual reports that everybody agreed would be complied with. From our perspective, would that be a better route forward? If we reply to Keith Brown in that context, he will be aware that the issue will need to be raised at the Conveners Group. Is that appropriate?

Andrew Mylne: The paper that has been circulated includes three specific questions. The committee's discussion probably gives us a fairly reasonable steer, but it may be worth considering those questions.

The Convener: It is fair to say that we are not impressed with the notion that we should report at the end of four years, which appears to be a pointless exercise. Committee members may recall the extent to which they looked at our predecessor committee's legacy paper, which was given some consideration only at the very beginning of the session. A new committee that is made up of new members will have new ideas about what issues it wants to progress. That difficulty may arise whenever there is a complete change of Government at the end of a session.

As we do not think that a report at the end of four years will be particularly useful or appropriate, the proposal for

“a Rule-change to make the preparation of such a sessional report mandatory”

also falls. We would not want to proceed with that.

The option of including a section on equalities issues in our annual reports is recommended by the committee as being more appropriate. That option might result in committees addressing equalities issues more consistently because they would have a more consistent reminder—given that an annual report is required annually—that such issues should not be ignored.

Is that agreed?

Members *indicated agreement.*

Flooding and Flood Management Inquiry

12:27

The Convener: We move to agenda item 6, which I understand we agreed to take in public. For obvious reasons, the private paper that was circulated to members need not be treated as such now that we have agreed to discuss the item in public.

In the paper, the clerks raise four outstanding issues on which they are looking for a steer to allow them to make progress with drafting the report. I remind everyone that the decisions that we take today are not final decisions. We will simply work through the four issues to get a feel for where things are, but any decisions that we make are not final. We have allocated until 12.45 to go through the paper.

Karen Gillon: I seek clarification from the clerks on whether the evidence that we received from the Met Office about weather predictions, which is not mentioned in the paper, will feature in the report. I am quite keen to see that.

Mark Roberts (Clerk): Yes.

The Convener: The paper is not a summary of the report—it simply lists some outstanding issues on which the clerks feel they need a clearer steer. One such issue, as will be dead obvious, is whether the Scottish Environment Protection Agency should act as an umbrella group. We heard conflicting evidence on that question.

Let us consider the issues in turn. Paragraph 2 refers to the question whether flood management should take place at a catchment level. Two points are raised about that. First, we are asked to consider

“whether funding to local authorities should be allocated on a catchment basis (for example, with a requirement that local authorities’ expenditure on flood management contributes to an agreed catchment plan rather than to just their individual needs)”.

What is our feeling about that? Does anyone want to comment on that issue?

12:30

Peter Peacock: I certainly feel that money should be distributed “on a catchment basis”, but I do not think that the wording actually helps. Believe it or not, I think that we should take out the phrase “on a catchment basis” so that we are asked “whether funding to local authorities should be allocated with a requirement that local authorities’ expenditure on flood management contributes to an agreed catchment plan”. That

sounds exactly right to me. It seems pretty obvious that money has to be distributed “on a catchment basis”, but how that should be done raises many technical issues. I do not know whether that helps.

The Convener: Does anyone else have any comments on this issue?

Karen Gillon: We are trying to ensure that funding is available for catchment areas. Whether a body should be established to receive that funding is a separate question. The point is that, wherever the funding goes, there must be acceptance that whatever happens upstream affects what happens downstream and vice versa, and that people simply need to work together.

Des McNulty: The other issue is the basis on which funding should be allocated. Read simpliciter, the text appears to suggest that each catchment should receive annual funding. However, flood management works more on a project basis and, because it all depends on need, allocations are uneven. Although Peter Peacock is entirely right to say that funding

“should be allocated with a requirement that ... expenditure ... contributes to an agreed catchment plan”

the Scottish Government is also responsible for finding a generally understood mechanism that identifies need from catchment to catchment and which allocates resources systematically.

The Convener: If members have no other comments, the clerk can go off and start work on a more detailed draft.

Karen Gillon: A simple funding formula will not work. Authorities such as Perth and Kinross Council and the City of Edinburgh Council have had to deal with big problems, while others have not had to introduce any major schemes. I realise that there is already a system in place but, given that flooding money has been de-ring fenced, how do we ensure that authorities that genuinely need the money get it, and that those that do not have the same problems do not receive a disproportionate amount of the funding?

Des McNulty: Essentially, the system must be strategic and transparent.

The Convener: I think that we have given Mark Roberts enough to go on for the draft. I repeat that the decisions are not final.

Do members have any comments on the second bullet point in paragraph 2, which asks

“whether there should be a duty on local authorities and other relevant bodies operating in the same catchment to work together or should this be left to a partnership approach such as that illustrated by the Metropolitan Glasgow Strategic Drainage Plan”?

Peter Peacock: I think that partnership working is great. If we have learned anything at all, it is that it has to happen. As a result, it must be a duty.

The Convener: I agree.

John Scott: I wonder whether such a move should be a last resort.

Mike Rumbles: The people from Glasgow, who already work well together, wanted it to be a duty.

Jamie Hepburn: That is kind of true. I think that partnership working should be made a duty, but I would not say that everyone agreed with that.

The Convener: Everything that will be drawn out in our discussions and any contradictory evidence will be highlighted in the report. Regardless of what people on either side of the argument say, the committee can reach a view one way or the other. If members feel that working together should be made a duty, the clerks will be able to draft that section in those terms. Is everyone happy with that?

Karen Gillon: The Glasgow approach probably worked because it benefited everyone—although perhaps not always to the same degree. With catchment areas, however, there might not be any common benefit and without a duty we might not get any action. That is why we need it.

The Convener: We move to paragraph 3. The European flood directive demands that a competent authority for flood risk management be appointed. The Scottish Government’s consultation on its proposed legislation suggests that the body should be SEPA. Do members agree that SEPA should take on the role? Should it be some other body? If we agree that it should be SEPA, should it have additional powers? That is one of the areas in which there was a huge variation in the evidence.

Mike Rumbles: Our work here is not complete, so we cannot possibly tell the clerks whether SEPA should have that role. What emerged when SEPA gave evidence was a question over its independence, and whether it is able to resist interventions from other authorities, such as the Government. The minister told us:

“I have never intervened in a planning process.”—[*Official Report, Rural Affairs and Environment Committee*, 19 March 2008; c 613.]

We still need to explore how effective SEPA is in defending its role from Government intervention on, for example, building houses on a flood plain.

The Convener: That would be part of the follow-on point. If we were to agree that SEPA should be the competent authority, would the way in which it is set up need to be changed or bolstered to allow it to assume that role?

Mike Rumbles: I feel—as I think do other committee members—that we need to take more evidence from SEPA.

The Convener: There is no time to do that.

Mike Rumbles: I am sorry, but I feel strongly about this. I requested—in fact half the members of the committee requested it—that SEPA be asked to come back to the committee to give us that information. There will be a fundamental problem with our report if we have not explored that issue.

The Convener: Your argument would be that SEPA would have to be given more powers, on a basis that would be different from that on which it is constituted.

Mike Rumbles: That is not my position. I am trying to find out—as I could easily have done had I been allowed to ask SEPA—whether SEPA is sufficiently robust in its current construction to take on the role of competent authority. I am not talking about whether it should have additional powers. There is a genuine question, which SEPA needs to answer: Is it robust in its dealings with other organisations, including the Government? If we recommend to the Government that it set up SEPA in that role, we should be certain that SEPA has an arms-length and robust approach. That is fundamental.

The Convener: Do any other members have comments on this section?

Peter Peacock: There is something in what Mike Rumbles says, but I will perhaps come back to that.

It is hard to envisage what organisation other than SEPA could fulfil the function of competent authority. As far as its grasp of the issues is concerned, SEPA's evidence was hugely impressive. That said—and partly to address Mike Rumbles's point—SEPA would have to be subject to further statutory requirements so that it was protected from potential interference. Mike raises an important point about the ability of an independent body to sustain its independence and to take a tough position, against the interests of others, in order to protect the interests of the wider population.

That ties in to the question of additional powers. John Scott has raised the point on more than one occasion—I am sure that he will again today—that if we give SEPA the role of competent authority, how would it, as a non-democratically elected body, instruct democratically elected bodies? That presents us with a difficulty, but I do not see an alternative.

I would put conditions on SEPA's powers. For example, SEPA could have the power to seek plans or to ask a local authority to reconsider its plans if SEPA was not satisfied. I suspect that, ultimately, the decision would have to lie in the hands of a minister; therefore, SEPA would have

the power to refer to a minister if it was not satisfied that plans were being upheld. The matter is not quite as straightforward as it appears in the paper. However, subject to such considerations, SEPA is probably the right body.

The Convener: This discussion is useful for the clerks, as it allows them to explore the matter in greater depth.

Karen Gillon: We are all aware of examples of the need for statutory provision regarding flood risk assessment, which is an issue that came out of the evidence sessions. SEPA said clearly that, where there is a risk of flooding, it would want a statutory flood risk assessment to be provided before a planning application was considered. That backs up what Mike Rumbles said about the potential need to enhance SEPA's role. Given everything that has happened and in order to protect everybody who is involved, carrying out a statutory flood risk assessment before a planning application was considered would help everybody and would prevent people from being put in houses that are at risk of being flooded.

The Convener: If we were to go down that road, we would need to think carefully about the size of planning proposal to which that measure would be applied. It would become an onerous burden if we were talking about applying it to relatively small developments. We must balance our concerns in this area against our concerns in our inquiry into rural housing. Therefore, when we discuss that suggestion in the detail of our report, we will need to consider how the process could be managed in practical terms.

Karen Gillon: Yes, but the evidence that we have received puts forward a case for such a measure.

Jamie Hepburn: I back up pretty much everything that Peter Peacock has said about SEPA.

The Convener: He is looking worried.

Jamie Hepburn: Is he? Oh dear. I will temper my comments somewhat.

Opinion is divided between those who believe that SEPA should take on the lead role and those who believe that it should not. However, when asked, those who said that it should not did not suggest any alternative.

The Convener: The choice is either to give SEPA the role or to create a new organisation.

Jamie Hepburn: Precisely, and we are left saying that it has to be SEPA. Peter Peacock made the point well that we must supplement that recommendation with another recommendation—or recommendations, although I am not saying what they should be—as to what exactly that means.

The Convener: Yes—perhaps by bringing in some of the points that have already been raised.

John Scott: I agree largely with all that has been said, especially by Peter Peacock and Jamie Hepburn. We must ensure that SEPA operates at arm's length from the Government. However, notwithstanding that, and as Peter Peacock rightly said, decisions must ultimately be in the hands of ministers. SEPA will make recommendations to ministers, but that must be done from an arm's-length position. The situation is no more complicated than that.

If, on examination, SEPA is not regarded as being sufficiently at arm's length, perhaps it should be made more so. However, I would not go any further than that. I do not think that there is any need to take further evidence, as that is the conclusion that we would probably arrive at.

Bill Wilson: Karen Gillon mentioned the need for statutory flood risk assessments and the convener talked about rural housing. We should also think about making such assessments compulsory for strategic developments such as power stations and emergency services. We do not want our fire stations and police stations to be stuck in the middle of a flood plain so that, when the flood comes, they are the first places that have to be abandoned. We do not want the police to say to people that they cannot help because they are busy moving out their equipment.

John Scott: We could recommend the statutory provision of flood risk assessments for strategic projects and projects above a certain size—major developments—which we could define.

The Convener: Is what has been said so far helpful?

Members indicated agreement.

12:45

Mike Rumbles: John Scott asked—I wrote this down—how we can ensure that SEPA operates at arm's length from ministers. To me, that is the fundamental question. If we are going to make such dramatic statements, we should ask SEPA and ministers how they operate together. That is our job.

Jamie Hepburn says that SEPA should take the lead role, as do many other people and organisations. That is what concerns me. I do not think that we, as committee members, are competent to produce a report that recommends action one way or another because we have not been allowed to question SEPA or ministers about that. It is essential and fundamental to the effectiveness of our report that we treat the matter properly and seriously. I cannot see how we can do that unless we ask SEPA and the ministers to give evidence again.

The Convener: A number of questions were asked of SEPA about precisely that—although not in the context of the specific planning application that you were talking about. That is the difference.

Bill Wilson: I presume that Mike Rumbles is suggesting that the responsible body must be an organisation other than SEPA. However, if we cannot come up with an alternative to SEPA, we are at a dead end. If Scottish Water, for example, was suggested and there was an argument for that, there could be an argument for our taking further evidence. However, without an alternative being proposed—

Mike Rumbles: That is not what I am saying.

The Convener: There is a discussion to be had about the possible extension, bolstering or protection of SEPA's powers in respect of the issue. We need to be careful, as there is an awful lot of criticism outside the Parliament of SEPA's role. We are talking about flood management issues, not the whole of SEPA's operations. There is already considerable resistance to many of the things that SEPA does, and it would not necessarily be a very popular move if we were to make SEPA even more independent and less accountable. We are talking specifically about flood management in this instance.

Des McNulty: There are a variety of ways in which we could develop additional powers. Probably the easiest and most practical way would be to have some sort of precept operating on authorities in order to gather in the resources that would be required to achieve the goal. Alternatively, we could put in place retrospective legislative triggers. The issue is the safeguards in the context of which SEPA would exercise those powers and who the overseeing authority would be. Ministers would probably have a role in that, but Mike Rumbles is right to say that we do not want ministers to interfere with the professional, operational decisions that are made by the people who are involved.

Saying that we want SEPA to have additional powers raises two questions. First, what are those powers and what financial elements would be tied into them? Secondly, how can we use ministers as the safeguard in driving through both the financial precepts, or something similar, that might be necessary and the imposition on SEPA of a framework of powers that are subject to ministerial authority without allowing ministers to interfere in the professional judgments that are made in specific cases? We need to unpack those arguments in putting forward the idea of giving SEPA additional powers.

The Convener: We will obviously have a longer discussion about those aspects when we consider our draft report.

We have two more questions to deal with.

Karen Gillon: I think that the body should be SEPA. If it is not SEPA, we will have to invent a body. It is a bit like the sportscotland debate—if you want a sportscotland, you have to make a body that is sportscotland.

For me, the issue is about the safeguards and the openness and transparency of the process. A statutory requirement for a flood risk assessment before a planning decision was made would provide the necessary safeguard. Everybody needs to know the circumstances under which we are operating—what the risks and the mitigating factors are that need to be taken into account. They need to know that planning applications are not speculative or subject to planning conditions that will not be enforced. The risks and mitigating factors need to be known up front before anybody makes a planning decision, whether the application is for a major housing development, a large supermarket, a police station, an ambulance station, a hospital or whatever. That would give protection so that nobody—whether a local authority, a minister or a developer—could be seen to have undue influence on SEPA or put undue pressure on it.

If something is statutory, it cannot be set to one side—a statutory requirement is one that must be fulfilled. At the moment, the problem is that there is no statutory requirement, so such an assessment can be set to one side. A form of words can be found.

The Convener: Okay. I want to move on to the other two issues.

Mike Rumbles: A decision must be made before we move on. If we do not take evidence, we will fail in our duty as members of the committee to address a fundamental issue for our report. I understand what Karen Gillon is saying. She has made a point from a particular viewpoint, but I do not know what her view is based on, as we have not been allowed to question SEPA or the ministers on the matter. Unless we are allowed to question them, I do not see how we can produce an effective report that will stand up to scrutiny. It will not be effective—it will be holed below the water line if we cannot ask those questions.

The Convener: There have been questions—

Mike Rumbles: You ruled me out of order for pursuing that line.

The Convener: SEPA has been asked questions about the matter.

Mike Rumbles: You did not allow me to ask questions.

The Convener: I am sorry, but I did not allow you to ask questions about a specific planning application. That is not the same thing, as you well know.

Mike Rumbles: That is not true.

The Convener: I will not rerun the debate.

Mike Rumbles: I was not asking about a planning application; I was asking about something that had taken place.

The Convener: I will not rerun that debate. The decision has been made.

Mike Rumbles: The problem in this committee is that you will not allow discussion.

The Convener: You are now out of order.

Peter Peacock: I will try to be helpful. There is an elephant in the room, and identifying it might help to sort things out.

Mike Rumbles alluded to the fact that there is correspondence between some committee members and the convener on taking further evidence. The convener properly made a ruling in accordance with her rights, but the problem is that that people do not know about that correspondence because of how such things happen. Therefore, it would be helpful to make it available on our website at some point as a record that some members expressed the view that more evidence should be taken.

Mike Rumbles: Four members requested that.

Peter Peacock: The convener properly exercised her powers. I am not challenging that, but it would be helpful if the correspondence was on the public record somewhere.

The Convener: I would need explicit consent to make that correspondence public from all members who participated in producing it, as it was not produced as public correspondence.

Mike Rumbles: Four members of the committee requested more evidence. You refused even to put the matter on the agenda. I agree with Peter Peacock that the correspondence should be published.

The Convener: That is fine. It can be published, as long as all members who participated in producing it are happy about that. As I said, it was not produced as public correspondence; it was produced as private correspondence.

Mike Rumbles: Are we going to go back into the matter?

The Convener: No. We are not going to reopen oral evidence sessions.

Mike Rumbles: I request a vote on that, please.

The Convener: I am sorry, but we are not continuing with the matter. There are questions that we need to deal with today. We must move on to paragraph 4 of our paper.

Mike Rumbles: The proper procedure is that if we have a disagreement, it should be recorded.

The Convener: A vote is not the way forward. It is not required or necessary, and it is not going to happen.

Mike Rumbles: In that case, the committee will not agree to the report.

The Convener: Accept the ruling, Mike. You are out of order and wasting the committee's time.

Mike Rumbles: No. You are wasting the committee's time.

The Convener: I will move on, if I may. Paragraph 4 in our paper is on natural flood management techniques. We must consider whether there should be a duty to consider natural flood management or whether people should be left to consider that on an ad hoc basis.

Des McNulty: We should argue for a presumption in favour of natural flood management.

The Convener: So people would have to say why they are not considering natural flood management techniques. Is everybody happy with that?

Mike Rumbles: Everybody is not happy with what is going on here. I am certainly not happy.

The Convener: I have already ruled you out of order.

Mike Rumbles: You asked me a question and I responded to it.

The Convener: Are you talking about natural flood management techniques?

Mike Rumbles: Yes. I am not happy with what is going on here. I am not happy with the paper that is in front of us or that we have been unable to take proper evidence.

The Convener: Do you have a comment to make on whether natural flood management techniques should be required?

Mike Rumbles: We could ask SEPA that, could we not?

The Convener: We need to make a decision on the matter.

Mike Rumbles: That is what I have been asking for.

John Scott: Des McNulty spoke about a presumption in favour of natural flood management. Should the approach be as strong as that? Is a duty in law to consider natural flood management not sufficiently strong?

The Convener: A presumption is a slightly different thing. There would not be a duty to

consider natural flood management techniques in every case. If a presumption were imposed, the body would have to say why it decided not to do something. Pre-existing evidence could militate against doing something. In that case, we would not want the same approach to be taken every time.

John Scott: I am happy with the general principle that there should be as much natural flood management as possible.

The Convener: A presumption is not as strong as a duty.

John Scott: I see. I beg your pardon.

The Convener: With a presumption, the onus is on bodies to say why they will not do something, but the possibility that they will not do it is left open. I can think of situations where something had been considered previously, and the proposal did not work, or where something was already ruled out by a previous study. It might be felt in such circumstances that going over the same ground again would not be helpful.

Will we take Des McNulty's suggestion on board? When we expand on it, we can have a further discussion about it. That seems a reasonable compromise.

Paragraph 5 says:

"Local authorities have been universally critical of the current three stage approval process for flood prevention schemes which requires approval for the scheme from Scottish Ministers, planning permission and approval from SEPA under the Controlled Activities Regulations regime. The Scottish Government has proposed ... two alternative models to streamlining this system: one relies on Ministerial approval carrying deemed planning consent for a flood prevention scheme ... and the other would remove Ministerial input and place responsibility solely in the hands of local authorities. Does the Committee have a view on either of these models?"

Indeed, do we have a proposed third model, or even a fourth?

Bill Wilson: I am idly curious about this. To go back to paragraph 3, we are making SEPA a possible responsible body. Is it not possible to have a third model whereby SEPA provides the required consent? I merely put that forward as a question.

Peter Peacock: On paragraph 5, it is entirely right to do away with the two processes, and to have deemed planning consent being given on the back of one process. The question is whether the process should lie purely in the hands of local authorities or whether ministers should take a view. I suspect that the reason for that question even being raised is that, as soon as we build in ministerial approval, further delays inevitably arise. I recognise the dilemma. In circumstances where flooding schemes impact on more than one local

authority, perhaps on different sides of an estuary or river that is a boundary, there must be some process whereby just one authority cannot make the decision. There might also be conflicts of interest over local authorities' land uses. Ministers would ultimately be required to have a role there. If we accept that, can we reform the way in which ministers operate administratively? That is a cause of delay in itself.

I wonder whether the processes could be put in parallel—whether ministerial consideration could happen alongside, and whether the time taken to sign something off could be truncated at the end of the process. There is a series of issues there, but I cannot see how ministers can remove themselves from their position. There will be conflicts of interest to resolve and, on occasion, decisions will need to be taken that concern more than one local authority.

Des McNulty: It might be possible for both models to coexist, for different kinds of application. I would have thought that smaller applications could be dealt with entirely by local authorities, and that there would be no need for ministers to get involved. It might be inappropriate, however, for local authorities alone to deal with larger applications that cut across two local authority areas or that are of sufficient size or significance, and they might be better dealt with through ministerial approval. That is akin to the planning system. We could argue for a similar arrangement for flood management.

When ministers take decisions on such matters, there is a need for a mechanism to ensure that it is done on the basis of independent advice from someone who was not involved in any previous process. If SEPA is the flood risk management authority—

The Convener: Where does the advice come from?

Des McNulty: Will SEPA also act as the mechanism that provides the advice? An independent section within SEPA might be required to deal with such situations. That, again, would be similar to the planning system. It is a question of complexity within the mechanism that is proposed.

Bill Wilson: The problem is that even small developments might have quite an effect downstream, possibly in another council area. There would be a problem with saying, "This is a matter for the council and that is for a minister," because of the possible effects downstream.

John Scott: I largely agree with Des McNulty that whether a scheme is referred to ministers might depend on its size, but when, for example, a scheme involves local authorities on opposite sides of the Forth there has to be a final arbiter.

The existing system might not be the best, but it is the best we have and we should tread very carefully before we rush to change it. The existing system—and no other way—has been involved empirically over the years. While the process is protracted, it is reasonable.

13:00

Karen Gillon: Timeframes and timescales are frustrating people, so maybe we should recommend that ministerial decisions have to be taken within X months. I do not think that ministers can be taken out of the process.

The Convener: But the time issue is not just about ministers; it is about the whole process. It all adds up to an extraordinary length of time. There should be tighter timescales throughout the process.

Karen Gillon: Sarah Boyack was talking about the Edinburgh scheme the other day. She said that it takes something like eight years. Perth would have a similar timescale. How do we speed the process up? That is really the issue for the reporters. It does not matter what the process is; if no timescales are set, how long it takes is like a piece of string. People have been flooded. They could be flooded again next year. And the next year. We have a duty to get on with it and set the timescales within which we are going to work.

Bill Wilson: I have two minor points, one of which I meant to mention when I was talking about what Des McNulty said. It is about the idea of having an independent subdivision, if you like, of SEPA. I am always a bit cynical about the idea of an independent body within a body, because a member of the independent body might want promotion, or to move out. It is not really practical.

Karen Gillon: Oh, you are so cynical.

Bill Wilson: I know I am, but there we are.

Also, I seem to recall that there were a lot of concerns about who could appeal against or object to a flooding planning decision. Was it Moray Council who said that there were some objectors downstream because they wanted a similar deal, and that that was their ground for objection? I do not know whether that touches on what we are talking about, but it seemed to be a significant point that was raised in evidence.

John Scott: All we need to say in the report is that we have to be very careful. I accept Karen Gillon's point that the process must be streamlined. I will allow those who are better equipped to come up with a better solution.

Karen Gillon: Could we ask the clerks to look at what happens with railways, for example, when the new system that is not the private bill system

comes in? Can we learn anything from that that could be applied to major flood prevention schemes?

The Convener: It might be possible for the clerks to produce a factual paper about that, but it would be difficult to take it on board in detail at this late stage in the game.

Karen Gillon: Absolutely, but we have seen that there are problems with who is allowed to object and the timeframe within which they are allowed to object.

The Convener: You would like to see an example of a different way of doing it, to inform our report?

Karen Gillon: Yes. We are just making recommendations to the Government at this stage.

The Convener: Yes. I propose to have the previously private paper put on the website, given that the agenda item has been discussed in public. The first draft of the report will be discussed at our next meeting, which is next week—I remind everyone that we have an extra meeting.

Mike Rumbles: Convener, as you are aware, I submitted evidence to the clerks on the flooding inquiry. I see that the clerk is shaking his head, but I did. I also asked that that evidence be copied to other committee members. I understand that that evidence has not been copied to other members. I would have hoped that, as a simple courtesy, the information that I passed to the committee clerks would be published as part of the evidence to the committee and been made available to other members of the committee. That is quite normal practice.

The Convener: I am not sure that it is relevant to this agenda item.

Mike Rumbles: It is fully relevant to it. The agenda says that

“The Committee will consider issues that have arisen in the inquiry.”

The Convener: The issue of what was then a set of correspondence about a particular issue is not relevant to the discussion that we have been having during the past half hour.

Mike Rumbles: Again, you have prevented other members of the committee from receiving it. That is discourteous, to say the least.

The Convener: I am not going to go into that in detail. All the correspondence will be put on the website and everyone will be able to see exactly what the exchanges were.

Peter Peacock: I do not know whether this is appropriate, but there are two things in the papers that were circulated for information to which it is worth drawing attention. One is the note from the

Crown Estate, which shows that it has made substantial movement on the advisory committee. It is worth noting that; the body is wide ranging. Secondly, there is a fascinating piece of evidence from Professor Putnam about the Deer Commission Scotland. It is not something that I would normally get very excited about, but he makes some extremely pertinent points and I hope that we can return to that at some point.

John Scott: I would like to see both of those comments on the website, particularly the one about the Deer Commission Scotland. If it is to become part of Scottish Natural Heritage, it too must stand alone within SNH, given the obviously high regard in which it is held.

The Convener: I do not want to move into completely separate agenda items.

I remind everyone that we have an away day in June, at which suggestions can be made for future work for the committee. Those two issues sounded to me like ones that could be raised in that context.

Meeting closed at 13:06.

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