

# **RURAL AFFAIRS AND THE ENVIRONMENT COMMITTEE**

Wednesday 26 November 2008

Session 3

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## RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

22<sup>nd</sup> Meeting 2008, Session 3

### CONVENER

\*Roseanna Cunningham (Perth) (SNP)

### DEPUTY CONVENER

\*John Scott (Ayr) (Con)

### COMMITTEE MEMBERS

Karen Gillon (Clydesdale) (Lab)

\*Liam McArthur (Orkney) (LD)

\*Alasdair Morgan (South of Scotland) (SNP)

\*Elaine Murray (Dumfries) (Lab)

\*Peter Peacock (Highlands and Islands) (Lab)

\*Bill Wilson (West of Scotland) (SNP)

### COMMITTEE SUBSTITUTES

\*Rhoda Grant (Highlands and Islands) (Lab)

Jamie Hepburn (Central Scotland) (SNP)

Jim Hume (South of Scotland) (LD)

Nanette Milne (North East Scotland) (Con)

\*attended

### THE FOLLOWING GAVE EVIDENCE:

Hugh Clayden (Forestry Commission Scotland)

Mike Donaghy (Scottish Environment LINK)

Nigel Miller (NFU Scotland)

Dr Karen Smyth (Scottish Rural Property and Business Association)

John Thomson (Scottish Natural Heritage)

Gareth Williams (Scottish Council for Development and Industry)

### CLERK TO THE COMMITTEE

Peter McGrath

### SENIOR ASSISTANT CLERK

Roz Wheeler

### LOCATION

Committee Room 2



## Scottish Parliament

### Rural Affairs and the Environment Committee

*Wednesday 26 November 2008*

[THE CONVENER *opened the meeting at 10:01*]

## Subordinate Legislation

### Plant Health (Scotland) Amendment (No 2) Order 2008 (SSI 2008/350)

### Sheep and Goats (Identification and Traceability) (Scotland) Amendment Regulations 2008 (SSI 2008/368)

**The Convener (Roseanna Cunningham):** I welcome everyone to the meeting and remind those present—including me, it seems—to switch off mobile phones and electronic bits and pieces. We have received apologies from Karen Gillon, who is on maternity leave, and I welcome Rhoda Grant as her long-term substitute.

Under agenda item 1, we must consider two negative instruments: the Plant Health (Scotland) Amendment (No 2) Order 2008 (SSI 2008/350) and the Sheep and Goats (Identification and Traceability) (Scotland) Amendment Regulations 2008 (SSI 2008/368). I feel as if I should quote some gospel rather than a Scottish statutory instrument number for the latter instrument.

The Subordinate Legislation Committee has made comments on the first instrument and the relevant extract of its report has been circulated to members. However, no member has raised any concerns and no motion to annul has been lodged.

Liam, do you wish to make a comment?

**Liam McArthur (Orkney) (LD):** This might not be that significant, but under the heading “Financial impact” the executive note to SSI 2008/350 suggests:

“A Regulatory Impact Assessment has not been carried out for this Order as ... the Commission Decision”

is

“unlikely to have a significant impact on Scottish businesses.”

Are such assessments carried out only if the impact is likely to be significant? It might be sloppy language, but I wonder why an RIA was ruled out on that basis.

**The Convener:** We have to deal with the instrument today, but we could query your point in writing.

**Liam McArthur:** It looks more like loose phraseology than anything else.

**The Convener:** With that caveat, do members agree not to make any recommendation on the two instruments?

**Members indicated agreement.**

## Flood Risk Management (Scotland) Bill: Stage 1

10:03

**The Convener:** Item 2 is evidence taking on the Flood Risk Management (Scotland) Bill. I welcome to the meeting our first panel of witnesses: Hugh Clayden, sustainable forest management policy adviser with the Forestry Commission Scotland; Mike Donaghy from Scottish Environment LINK; and John Thomson, director of strategy and communications with Scottish Natural Heritage.

As we have the witnesses' written submissions, we will not have any opening statements and instead will go straight to members' questions. I open the bidding with Peter Peacock.

**Peter Peacock (Highlands and Islands) (Lab):** What does the panel think of the argument made by Government officials at last week's meeting that, as the process set out in the bill will result in better sustainability of flood management, it is not necessary for the term "sustainability" to be stated in the bill? I am particularly interested in hearing from Scottish Environment LINK, which has mentioned the issue in the past, and from Mr Clayden who, as sustainable forest management policy adviser, presumably understands the legal meaning of the term.

Perhaps Mike Donaghy could go first.

**The Convener:** Don't all rush at once.

**Mike Donaghy (Scottish Environment LINK):** I am happy to go first. One of the bill's main principles is sustainability, which is our key to the future—for Scotland and everyone. We must understand that although sustainability is complex and sometimes difficult to define, we must work in a sustainable way. Taking a sustainable approach to flood management will allow us to deal with the unit, and in dealing with flooding we must understand that the unit is the river catchment, which is where all the problems start and where they have their effects.

How would we go about dealing with flooding? We would start by talking to everyone who is impacted by it or has a role in cutting down the impact or influencing it in some way. We would identify such people and groups, then we would get them to work together in a coherent and effective way for the long term. Having an integrated catchment approach and considering everything that must be done is the way forward for modern flood management. That is the sustainable approach.

**Peter Peacock:** In a sense, you are arguing what the Government officials argued at last

week's meeting, which is that the process that the bill will set up embraces the sustainable approach. However, is the bill lacking because it does not contain the word "sustainable" per se?

**Mike Donaghy:** Yes. It is great that the bill is about taking a sustainable approach, but where is that said in the bill's long title or short title? If we could get that into, say, the long title, anyone who picked up the act in future would know right away that the legislation was about sustainability—that would be up there in black and white and there would be a line in the sand. The bill is not about saying, "Let's see what we can get away with," as we used to do; it is about a new approach.

**Peter Peacock:** I would be grateful for comments from the other witnesses on that.

**Hugh Clayden (Forestry Commission Scotland):** In forestry, we now take sustainability as read in everything that we do. The way in which the industry has developed over the past 15 to 20 years is entirely predicated on sustainability being taken as read, so we do not need telling that sustainable flood management is what is meant in the bill. That approach pervades everything that we do; it is the combination of the social, environmental and economic, with good buy-in through consultation and sharing of ideas, and it is based on good if not perfect evidence. Sustainability is part and parcel of everything that we do and of whatever the Scottish Government proposes.

**The Convener:** Before John Thomson comes in, I have a question. Is the argument that the bill does not deliver sustainable flood management, or is it that it does, so the argument is about the small bits and pieces? Mike, are you saying that the bill should say that it delivers sustainable flood management? Is the argument about the bill as a whole, or is it simply about having the word "sustainable" somewhere in the bill?

**Mike Donaghy:** It is more the second, convener.

**The Convener:** Right. So it is not a substantive argument with the bill itself; it is more about putting something about sustainability on the face of the bill.

**Mike Donaghy:** Yes, and making the intentions clear from the start.

**John Thomson (Scottish Natural Heritage):** In our written evidence, we argued that it would be helpful to have a specific reference to sustainability in the bill. We believe that the bill will create a framework in which sustainable approaches can be adopted. Certainly, the policy memorandum suggests that that is the intention. However, we suggest that it would be helpful to have a statement of purpose that makes it clear

that we seek sustainable approaches. Apart from making it clear that that is the intention, such a statement would provide a peg that would, if need be, allow sustainability to be defined and, indeed, redefined. Although, as Hugh Clayden said, the concept has been around for a long time, we are still learning. We are certainly learning what sustainable flood management means in practice. Therefore, it would be helpful to have the word “sustainability” in the bill and to have the opportunity, if need be, formally to interpret and reinterpret the word in the context of flooding.

**The Convener:** Can I just press you on that? Is the argument that the word should be in the bill but there should be no definition of it?

**John Thomson:** Ideally, there would be a definition of it in the bill as well.

**The Convener:** Is there unanimous agreement—not just among the three of you, but across the board—on what that definition would be? If we examine the word “sustainability” and the arguments about its definition, will we open up an entire debate about what an interpretation section might say?

**Mike Donaghy:** It might help if we accept a number of points. First, the Parliament has already produced pieces of legislation that use the word “sustainable”, so we should not redefine it. Secondly, sustainability in flood management is about an approach; it is not about the approach. There might be several choices, all of which are sustainable. It is not desirable to identify only one way of doing things. There will be a range of options.

**The Convener:** So you do not want too specific a definition.

**Mike Donaghy:** There is already a pretty good definition of sustainable flood management. I was involved in coming up with it through the flooding issues advisory committee and the flooding bill advisory group. I am quite comfortable with the existing definition, but I know that there are groups that are less comfortable with it, because they find it too technical to understand. I do not want too specific a definition, but we will still need a working definition.

**The Convener:** I think that Bill Wilson wants to follow up on that.

**Bill Wilson (West of Scotland) (SNP):** I have another question for SNH, which is not specifically on that area.

**The Convener:** You do not want to come in on question 1.

**Bill Wilson:** No—that was Peter Peacock's question.

**Peter Peacock:** My next question moves on rather neatly from what the witnesses have just said. The bill will help to deliver sustainability, but another aspect of it relates to the use of natural flood management methods, techniques and approaches. Last week, Government officials argued that it might be problematic to define too tightly a presumption in favour of the use of natural flood management techniques. Part of their argument was that highlighting that approach could be problematic for the management of the process as a whole. Will you comment on the desirability of having a presumption in favour of the use of natural flood management techniques and on the Government officials' point that that could be problematic?

**John Thomson:** I have read last week's exchanges. I feel that there is merit in having a presumption in favour of natural flood management. Like Mr Peacock, I feel that that in no way would amount to prescribing that that must be the outcome; it would merely be a statement that natural flood management is an option—indeed, the first option—that should be examined.

The reasons for that are several. First, natural flood management captures a concept that is fundamental to the idea of sustainability, which is about working with rather than against nature. In addition, natural processes are much more likely to deliver associated multiple benefits than other approaches, so there is a presumption that the natural flood management option, if it is feasible and will deliver the desired outcome for flood risk management, is the one that is likely to bring the widest set of benefits beyond that primary purpose.

**Mike Donaghy:** I agree completely with what SNH has just said. I think that the Scottish Government has viewed a presumption in favour of the use of natural flood management as prioritising that approach and saying that it must be followed. I would argue that given the number of benefits that come from having natural flood management as a tool in one's toolkit for achieving sustainable flood management, if one has the option to incorporate natural flood management in one's approach, one should do so. Maybe it is the idea of having a presumption in favour of natural flood management or of prioritising it that is causing problems. We might need something that is a little stronger, such as a duty to consider it, or even something that is a bit more definitive, but we do not want babies to be thrown out with bathwater. If natural flood management can be done, it should be done.

10:15

**Hugh Clayden:** Our locus is always in the natural flood management part of sustainable

flood management, so that would be our starting presumption—that is where we would come in. I can see the argument that an overemphasis on the word “presumption” might make people feel that that must always be the solution, but sustainable flood management should always consider natural flood management as part of the suite of objectives.

Part of our experience—and, having been flooded, I can speak personally—is that people can doubt that a natural flood management process will work in the here and now, although it might work in future, and might well need a great deal of persuading that natural flood management is the solution in all cases. Therefore, we should have a presumption that natural flood management will always be considered, but I would fight against saying that it will always be the solution.

**Peter Peacock:** That is a helpful clarification; I thank all the witnesses.

Government officials and, to some extent, the policy memorandum argue that capturing a duty on the Scottish Environment Protection Agency to consider natural features has gone a long way towards meeting the requirement for a presumption in favour of natural flood management. What is your view on that?

Also, several people, including Scottish Environment LINK, have argued that we need to capture a definition of natural flooding processes as opposed to just features. What do you mean by processes? Is that essential, or even desirable?

It is not clear to me that section 16 of the bill is sufficient to have an impact other than on SEPA at a high level. What would the impact of section 16 be on local flood management plans? Notwithstanding the point about processes, is section 16 strong enough?

**Mike Donaghy:** I will deal with those points.

The first question was about whether such a definition is essential or even highly desirable. A key message that we must get over about the new theme of natural flood management is that it is about more than just features. Features can be wetlands, flood plains, or wet woodlands, for example. If someone who does not know anything about natural flood management—and there could be a lot of them about—takes that at face value, they could just think, “Well, we’ll just put those features in,” and think that processes will be associated with the features. However, they could put the wrong feature in the wrong place at the wrong time.

The process, in conjunction with the feature, gives us the effect. The definition of natural flood management is the restoration of natural features

and processes to lower flood risk. Therefore, it is true to say that when we put in a natural feature, a process will be linked to it.

To anyone who is trying to interpret the definition or to engage in work on the ground, it will be much clearer if the word “processes” is included in the definition.

The second point is fundamental. Section 16 looks a little bit odd. In effect, it asks SEPA to take a low-resolution, national look at the potential or capacity for natural flood management in the Scottish river basin, although that information will be used and implemented right down at the local plan level, through local authorities. That is probably the wrong resolution if we want to achieve anything. SEPA will be looking at the top level of detail that will be used at a catchment or subcatchment level, and that is a mismatch. We have section 24, and then there will be implementation through section 29, on local flood risk management plans. We must find a way of getting SEPA, the local authorities and the other responsible authorities to work together to get the right resolution for the approach to implementation.

**Peter Peacock:** I accept your argument on my first point, but on your second point, are you saying that although section 16 places a duty on SEPA to look at natural features at the national level, it does not place a duty on local authorities and others when they are developing local plans to have the same regard to natural features? Is there a disconnect in that sense?

**Mike Donaghy:** A disconnect exists, but not precisely in the way that you describe. The disconnect relates to the resolution or level of detail. The proposal is the equivalent of handing a big map of Scotland to someone in Edinburgh and telling them to use it to reach Leith. The resolution and the scale would be wrong. We need to find a way of collecting the information at the correct level, so that it is useful locally.

**Peter Peacock:** I would be grateful for comments from John Thomson or Hugh Clayden on natural processes and the other issue.

**John Thomson:** I support what Mike Donaghy has said on both counts. I acknowledge that some reluctance might be felt about using the word “processes” in the bill, because it might not be readily defined. I am not sure whether it has been customarily used in legislation, but Mike Donaghy is right to say that processes are fundamental, that we should recognise that and that the bill should be explicit about that.

**Hugh Clayden:** The issue is all about definition. We work in forestry, where natural features are part and parcel of processes. We do not regard a woodland as anything other than a process, too—



it is not about the trees but about everything else that goes on. The key point is that a feature must be functional—that can be dealt with through a definition or through inclusion of a process. I take it on board that a feature without due process and functionality will not do what it should do. There is something in how the term “feature” is defined. That is not an issue for us; we understand that a feature includes processes. However, if the bill is to be used as a tool to help others, more definition would help.

I take the point about the resolution, but SEPA will have a key role in setting the tone and the frame for looking closely at natural features. The resolution at local plan level is less of an issue. The various advisory groups will involve a range of people who press home the point that processes are important at the local level. Nationally, it is difficult to define processes other than by setting the tone broadly. The concern that exists can be accommodated within the existing advisory structure.

**Liam McArthur:** You all unequivocally support a presumption in favour of natural flood management, which the committee supported in its inquiry into flooding. The Forestry Commission’s submission mentions the time lag between the implementation and the effectiveness of natural flood risk management projects—Mr Clayden mentioned that in an earlier response to Mr Peacock. Does a conflict exist between the long-term objective of the presumption in favour of natural flood management and the more immediate flood risks that might need to be addressed through harder engineering solutions? If so, how will that conflict be managed?

**Hugh Clayden:** That question is hard to answer in the abstract, because the answer depends on local circumstances. I did not intend to say that natural flood management processes are always long term. If a site has an existing woodland or wetland feature, quick wins can be obtained by undertaking simple and inexpensive measures such as drain blocking. However, I had been thinking of the establishment of a flood plain woodland, for instance. By definition, it will be several years before that starts to make an impact and years beyond that before the maximum impact is achieved.

The issue is how the two elements work together. I am conscious that people are being flooded now and that they want a solution now as well as for the future. A parallel system might be worth thinking of. When a natural flood management process cannot be implemented immediately because we have nothing on which to implement it, we might need to rely first on hard engineering for today’s events and increasingly flow in natural flood management to cope with the

longer-term, larger events that might occur. That will always come down to local interpretation. Local circumstances will dictate the mix.

**Mike Donaghy:** Let me take Hugh Clayden’s point a little further. The quality of the Scottish Government team that we have been working with is very high, and its outputs are good. On the point about whether there are natural flood management measures that we could take right now, I am a bit frustrated by the fact that we saw things that could be done right away in 2004, when WWF started its demonstration site.

Hugh Clayden gave the example of a flood plain forest. That will indeed take some time to have an effect—trees grow slowly. However, if we were to block off drains in uplands that are not used any more, that could have an almost instant effect. There are things that can be done right away. My frustration is that we have been saying that for many years now and we are only now about to embark on the whole project of natural flood management demonstration sites. One focus should be on what we can do right now that would start to make a difference. We could do something in the uplands, probably. If there is a lot of uncertainty about it, let us go to an area where there is less risk of getting things wrong. There are areas in the uplands where we could do things and measure the effects. Let us not use a project that will last about 10 years as an excuse not to do anything for the next 10 years.

**Peter Peacock:** I wish to move the discussion on again. You will be glad to know that I will shut up shop soon—I am sure that the committee will be glad to know that, too.

**The Convener:** I am anxiously looking at the clock.

**Peter Peacock:** Absolutely. I am conscious of that.

We will be going through all the processes that are contained in the bill and we will get all the local plans and so on sorted out, but people have been surprised that there is no specific duty under the bill to implement any of those plans. We heard arguments last week about why that is the case, including the contention that to provide a specific duty to implement might supersede other general duties. Do you think that the bill would be strengthened by a specific duty to implement the plans that are agreed to?

**John Thomson:** I was a bit puzzled by that argument. I might be wrong, and I am certainly not an expert on much of the legislation under which local government operates, but my understanding is that local government has many mandatory duties. In debates on local authority budgets, the decision on where the money should go is very much influenced by whether a duty is mandatory

or discretionary. I was surprised by the argument that a mandatory duty could not be imposed on a local authority. I would have thought that Government imposes such duties all the time. People might ask whether the matter is felt to be so important as to justify such a duty, but I would think that the mounting evidence of growing flood risk is a good reason for making the duty mandatory.

**Mike Donaghy:** We strongly agree with a duty to implement. We are dealing with a new theme, sustainable flood management, and other sub-themes such as natural flood management. We are finding our way with that. There will be a natural reticence among practitioners to get involved—they might say that they simply do not understand. Allied to that is a piece of proposed legislation showing that flood hazard maps must be produced. However, the bill is weak on saying “Go out and do it.”

The dangerous thing is that local authorities and other organisations are already indicating that they do not have the money. We can just imagine what will happen: authorities will retreat into themselves and do the absolute minimum to meet the requirements of the law. That means that even a really good piece of legislation will produce only a limited effect on the ground.

10:30

**Hugh Clayden:** I appreciate the complexity of the arguments about implementation and duties, so I will restrict my comments to the Forestry Commission Scotland, which, as the Scottish Government’s forestry directorate, has a duty to implement Scottish Government policy. Therefore, we will have a duty to implement what is in the bill.

**The Convener:** That is helpful.

**Elaine Murray (Dumfries) (Lab):** We talked about the duty on local authorities, but there are other responsible authorities, such as SEPA and the Scottish ministers. Should a duty also be placed on them, particularly given the issue to do with funding flood defence schemes?

**Mike Donaghy:** Yes, I absolutely agree with that suggestion. The whole point is to achieve change on the ground that will lower flood risk and secure benefits for people. Anything that makes that happen is a good thing.

**Elaine Murray:** This question is for SNH and Forestry Commission Scotland. SNH expressed concern that it might not be designated as a responsible authority, which might mean that its input to the process would come too late to be effective and might even be counterproductive. At last week’s committee meeting, Government officials countered that argument by explaining

that they were saying not that SNH would not be a responsible authority but that they would put the matter out to consultation, given that the general duties on responsible authorities will be onerous. Will you elaborate on whether you should be a responsible authority?

**The Convener:** I take it that the witnesses from Forestry Commission Scotland and SNH have read the evidence that we heard last week.

**Hugh Clayden:** Yes.

**John Thomson:** Yes. The key point is that we want to be involved at an early stage, as Dr Murray said. Whether that requires us to be designated as a responsible authority is perhaps debateable, but there would be great benefit all round in our being involved at an early stage. In our submission, we highlighted the dangers that could arise if we are not involved at an early stage.

The Government has onerous responsibilities under European directives, including the Natura directives, and we have safeguarding responsibilities in that regard. It is our fervent desire to find ways of reconciling those duties with sustainable flood management and the mitigation of flood risk, but we can do so only if we are brought into the process at an early stage, so that we have an opportunity to explore the options. We want to have that role, whether or not we end up being designated as a responsible authority, and we are pleased that the Government seems to have in mind such a role for us. However, it might be good to consolidate our role by formally making us a responsible authority.

**The Convener:** Government officials argued that doing so would place far more duties and obligations on you than you might be prepared to shoulder. Do you understand that that was their concern?

**John Thomson:** Yes, I understand that. There would certainly be resource implications, which are always a concern for us, but we think that great gains could be achieved.

**Hugh Clayden:** Forestry Commission Scotland would welcome the opportunity to become a responsible authority, but before legislation committed us to such a role we would want to know a great deal about what it would mean. We are fairly relaxed about responsible authorities being designated in secondary legislation.

The principle is important. We want to be involved in discussions early, so that we can help the process rather than come in at a late stage to criticise. We have had experience of being a responsible authority under the WEWS act—

**The Convener:** Will you expand the acronym, for the purposes of the *Official Report*?

**Hugh Clayden:** Yes, I am talking about the Water Environment and Water Services (Scotland) Act 2003. There is no doubt that whatever one feels about the WEWS act, being a responsible authority concentrates the mind wonderfully.

**Alasdair Morgan (South of Scotland) (SNP):** Involvement is fine, but given the general duties that fall on responsible authorities—some people suggest that almost every quango in Scotland will be a responsible authority—is there a danger that when too many people are involved, nobody will take proper responsibility? The advantage of the current situation is that we have a short list, potentially, and we know where the responsibility lies. Will there not be an awful lot of opportunity for buck passing if we designate you all as responsible authorities?

**Hugh Clayden:** It depends on what we are responsible for. Although I recognise your point, you can define the levels of responsibility and make things happen.

**John Thomson:** I echo that and add that engagement in initial discussions about appropriate management is critical. When it comes to delivering that management, I see great advantage in responsibility being relatively concentrated, albeit with an obligation on bodies that might have only a minor part to play to play that part nonetheless. However, it is engagement in the initial analysis and decision-making process that is critical.

**The Convener:** Do you agree that there might be a danger of a protracted debate about levels of responsibility because different organisations will be looking for different definitions?

**Hugh Clayden:** Perhaps it would be helpful to reflect on the role of a responsible authority under the WEWS act. Had that responsibility not come to us, there would have been difficulties for organisations such as SEPA in talking knowledgably to the forestry industry. Being a responsible authority helped us to go out and do that work for organisations such as SEPA. There is a level of understanding out there, and bridging the knowledge gap was a fundamental part of our role.

**The Convener:** Mike Donaghy nodded his head. It looked as if you were agreeing with the concerns about dissipating responsibility among too many organisations. Do you want to say something about that, briefly?

**Mike Donaghy:** The point comes back to the overarching principles behind the bill: it is about taking a new approach, which means identifying who is likely to be effective in trying to achieve it. We have to identify at an early stage who we need to talk to and who needs to be involved. I do not want to get down to the nitty-gritty here and say to

those involved, “This is your exact role and this is where you come in.” The principle is to involve the people whom we need to achieve the purpose of the bill.

**John Scott (Ayr) (Con):** For the sake of a rounded and integrated approach, would it make sense to have the same responsible authorities under the bill as under the WEWS act? Otherwise, it would be anomalous to have different responsible authorities under two different but complementary pieces of legislation.

**Hugh Clayden:** We would welcome the dovetailing of flooding issues with water framework issues to do with water quality and quantity. In relation to our role, we see those areas working together logically.

**John Thomson:** I echo that.

**Rhoda Grant (Highlands and Islands) (Lab):** Evidence has been submitted to the committee regarding community and public consultation and concerns that the bill might not afford adequate space for the public to take part, especially given that planning procedure will be involved. Do panel members think that the bill provides adequately for participation? If not, how can it be improved?

**The Convener:** The witnesses appear to be silent. If you do not have any suggestions or comments, please say so and we will move on.

**Hugh Clayden:** Our only comment is that community buy-in is essential. If we have learned one lesson, it is that that is how you get effective delivery—you have to bring people with you if you want legislation to be effective.

**Mike Donaghy:** That is important. We have evidence, particularly to do with measures on the ground, that if you do not involve the local community you can end up with lots of problems. However, you must look at the mechanisms that enable the community to engage properly rather than simply be consulted. That works both ways, because members of the public or stakeholders have to be aware of their role in the process.

**John Thomson:** I refer to Hugh Clayden's comments about the importance of dovetailing river basin planning under the water framework directive with flood risk management. Community engagement is important in both processes. The scales may be different at times, but such engagement is important. Obviously, there are benefits in not overloading communities, but opportunities need to be sought to integrate involvement across the board.

**Bill Wilson:** SNH's evidence refers to the need to amend the cost benefit rules to take fully into account the benefits of soft engineering. Will the SNH representative and the other witnesses expand a little on that?

**John Thomson:** I am not an expert on the details of the cost benefit techniques that are used, but our point was that the scope of those techniques is too narrow, which means that some wider benefits cannot be taken into account in reaching conclusions. The thrust of our argument is that multiple objectives and benefits should be considered and we must ensure that the methodologies that are used to assess the cost effectiveness of individual schemes take those objectives and benefits fully into account.

**Mike Donaghy:** I welcome Mr Wilson's question and thank him for asking it. WWF and RSPB Scotland have tried to address the issue during the process. We have found that there is a dearth of information to help in considering benefits other than monetary benefits. Of course, much of a cost benefit analysis involves economic analysis, but we must start to explore ways in which we can allow social and environmental benefits to be given a value and considered. In a sustainable context in particular, it is essential that we allow appropriate assessments of costs and benefits, which includes non-monetary costs and benefits.

**Hugh Clayden:** Considering such benefits is a particularly important part of considering natural flood management. It is hard to conceive of something that could be done for natural flood management that would not have a non-market benefit. Such benefits ought to be considered.

Of course, the difficulty lies in valuing non-market benefits. We know from the past 20 years in forestry that it is difficult to put a precise value on such benefits, but techniques are being developed. Our forest research agency has done a great deal of work on valuing social benefits. More research needs to be done on evaluating strict environmental benefits, but there is already fairly good empirical evidence on some non-market benefits.

I suspect that the answer to Bill Wilson's question is that the benefits of soft engineering must be considered. The information might not be perfect at the moment, but I am sure that there is sufficient information to add to an evaluation.

**The Convener:** We are running well behind if we want to reach our time target, so I ask members and witnesses to be as succinct as possible, otherwise, at this rate, we will be here until around half past 1. Committee members may not wish to be sitting here at that time.

**Liam McArthur:** The bill will create a requirement for local authorities to prepare rolling six-year flood risk management plans. I think that Scottish Environment LINK in particular has argued in favour of setting out a longer-term vision in the bill. I would welcome an explanation of the reasons behind that argument.

SNH and Scottish Environment LINK have referred to the inclusion of Natura and water-dependent sites in the mapping assessment exercise. Will the witnesses comment on that and on any amendments that they would like to be made to the bill to rectify such shortcomings?

**Mike Donaghy:** I feel qualified to talk about the first issue, but I will have to get my colleague from the RSPB to give a more detailed written answer on the second one.

**The Convener:** We can follow up the second issue.

10:45

**Mike Donaghy:** If we want to plan for anything, especially to do with flood risk management, we cannot tell people not to worry because we have it all planned for the next five or six years. We must look much further into the future and take a much more cohesive approach. A good timescale for flood risk management is probably 24 or 25 years. There must be a funding mechanism to support such plans. Scottish Environment LINK believes that a 24-year timescale would fit neatly with the six-year cycle for reappraisal of all maps and plans. We think that the timescale should be much longer than six years, as flooding is a long-term issue and we must find ways of supporting and funding plans.

**John Thomson:** A longer-term perspective is essential. It is part of the answer to Mr McArthur's earlier question about whether we will need to use more hard engineering solutions in the short term. As Mike Donaghy said, that may be the case, but often such solutions are needed because of mistaken decisions that were taken in the past. If we want to avoid that situation in the future, we need to take a much longer-term view.

There are upland sites in the Natura 2000 network that are not water-dependent features but may be affected significantly by measures that we want to take under flood risk management plans. For example, afforestation of upland catchments would affect Natura 2000 sites. The issue is important.

**The Convener:** I will allow this evidence-taking session to run until 11 o'clock. We will follow up with written requests any questions that are outstanding at 11. That is the best and fairest way forward for the witnesses and everyone else.

**Elaine Murray:** Concerns have been expressed about possible conflict over land use. The organisations that will be represented on the next panel—the Scottish Rural Property and Business Association and NFU Scotland—suggest that there may be a conflict between the use of land for agriculture and the use of land for flood risk

management. They are concerned about whether the use of land as flood plain will make the remainder of estates unviable and threaten future security. Would you like to comment on that?

We are aware that the climate change bill consultation includes a proposal to lease 25 per cent of the Forestry Commission's estate to the private sector on 75-year leases. Is that proposal of concern to the commission? Will it affect the commission's duties and ability to use its estate for flood risk management?

**Hugh Clayden:** We understand the potential conflict that the NFUS, in particular, has highlighted in relation to the value of prime agricultural land. Currently, such land represents about 6 per cent of Scotland. As climate change happens, the figure will probably rise to 20-odd per cent, according to the latest thinking on mid-scenario assessments, so we need to be aware of the issue. In my view, most of the impact of natural flood management techniques that involve forestry will be further up the glen, rather than in prime land at the bottom, although we need a great deal more evidence on that. Desynchronising flood peaks in smaller catchment areas is likely to have the biggest impact; down at the level of prime agricultural land, the catchment is on a much larger scale, so the battle will probably have been lost by then. I do not rule out entirely action at that level, but we must address the significant issue of food security and the best use of prime land. The problem need not be on quite the scale that has been suggested.

On the climate change bill consultation, forestry will require to be managed to the United Kingdom forestry standard. That in turn will relate to guidance, such as the forest and water guidelines, which will be revised next year. I am quite certain that, in that revision, we will take into consideration not only the water framework directive but the new flooding legislation. That will be reflected in forest and water guidelines that are an adjunct to the UK forestry standard. There will be a protection on woodland management that will not be on estate management.

The money that might be freed up for use on climate change may be targeted at flooding measures as well as other environmental and connectivity measures. There could be benefits from that and safeguards against what I suspect you are asking about.

**Elaine Murray:** My perhaps simplistic concern is about what happens if you lease out part of a forest and subsequently some of it is required for flood risk management after the development of flood risk management plans. If you lose control of that land, is it not more difficult to use it in the most appropriate way?

**Hugh Clayden:** In the UK—and Scotland is no different—over the years we have fought to get away from the forest law aspect of compulsion and used persuasion and incentives. There is no reason why that should not continue. If there is a need for particular flood regulation duties, we already have the instrument of the Scottish rural development programme to fund them.

**Mike Donaghy:** One good principle of the bill is that it will allow grown-up, sensible discussions to be had. For example, there is the question of food or flood. What is the value to society of a big haugh or arable field? If it is identified as both lowering flood risk and being important for food production, the decision must be made, in a democratic and fair way, on its inclusion or exclusion from a flood risk management plan. However, if we know that we can store water on such a field but that we do not, that risk must be paid for and reduced somewhere else in the catchment.

The discussion appears to assume that fields are not flooded. Under big floods, they are flooded, no matter what is in them. Floods do not respect what crop is in them, so they are flooded under certain floods. They are also defended by non-engineered banks. Although they primarily protect fields, they may also afford some protection to communities downstream, so we have to be careful before mucking about with them. The hydrologists lead on that one.

We must make decisions at a catchment level. We need more locally grown food, but we also need flood protection. The bill should allow us to make the grown-up decisions on how to achieve that. There is a limited number of huge arable areas in Scotland, and they are usually where rivers are extremely large, so there is little that we can do in any case—such areas are where water stores itself during big floods. Natural flood management will largely be concentrated further upstream.

**John Thomson:** I endorse what has been said and will add one point. When we talk about resources, we must recognise that, if flood risk management is to work, money may need to be transferred between different budgets to ensure that it is available for the most cost-effective solutions to the flood risk management problem.

**Bill Wilson:** The Scottish Environment LINK submission says:

"we do not feel that the intention for a catchment approach is clear, in particular in relation to requirements on local authorities to consider a catchment approach".

We have a letter from the Government that states:

"The intention is for catchments (basins or sub-basins) to be the primary unit for managing flooding"

and that it is

“considering an amendment that would clarify the basis on which SEPA are to identify local plan districts.”

Would that satisfy your concerns?

**Mike Donaghy:** It would largely satisfy our concerns. What matters is that the appropriate unit is used.

**The Convener:** Does Bill Wilson have another question?

**Bill Wilson:** I had one, but it related to my earlier question about ensuring that social, economic and environmental factors are considered when flood management is addressed.

**The Convener:** Are you happy with the answer that you were given earlier?

**Bill Wilson:** I think so, to be fair.

**Elaine Murray:** The Government has indicated that it is considering lodging amendments at stage 2 on surface water management. There is no mention of coastal flooding in the bill. Are the witnesses content that the bill adequately covers coastal flooding as well as surface water flooding?

**Mike Donaghy:** No, we are not content. That is the Cinderella issue. Two things are missing from the bill: we need much more on surface water in urban areas, and we need much greater consideration of how we work with coastal processes to protect people and reduce flood risk.

**Elaine Murray:** Can you suggest amendments that would address your concerns?

**Mike Donaghy:** Yes.

**Elaine Murray:** Concern has been expressed about the period before the provisions on flood risk come into effect in 2015. Local authorities have said that they do not have enough money in their budgets to address issues in areas that suffer from severe flooding. Do the witnesses have a view on the potential impact of delays in implementing the bill's measures as a result of inadequate funding? What should local authorities' priorities be, if funding is limited, as they say it is?

**Mike Donaghy:** Your second question is the easiest to answer. The first priority of local authorities is to protect their constituents—the people. That is what flood management is about.

Your first question was more interesting. In Europe, Scotland is regarded as a leader in the modernisation and development of flood management—people are looking to see how we do it. If we produce a good piece of legislation that is appropriately funded, we will have a great opportunity to do a good job. We must get away from the mindset according to which there is a great big muckle fund that we must all go for.

Sustainable flood management does not work like that; it opens up other funding streams. We have to be clever and innovative in how we access those funding streams, so that the strain is taken off one pot and shared among a series of pots.

**The Convener:** Do other witnesses want to comment on funding?

**John Thomson:** Mike Donaghy's point is, in essence, the same as the one that I made about the need to bring together moneys from different sources.

**The Convener:** Peter Peacock has a question, but I warn him that I will hold fast to what I said about ending this part of the meeting. You have two minutes.

**Peter Peacock:** I will be brief. Scottish Water has a role to play and will have funding needs. Will its ability to fund schemes properly be impacted on by the Water Industry Commission for Scotland's role?

**Mike Donaghy:** Scottish Environment LINK is concerned that Scottish Water's regulator—the Water Industry Commission for Scotland—seems to be dominated by the economic approach. WICS claims that it allows Scottish Water to do everything in respect of its sustainability duty, but we see with our own eyes evidence that Scottish Water does everything as cheaply as possible, and probably with the short term in mind. If a duty in relation to sustainability were placed on WICS, it could take a longer-term approach and encourage Scottish Water to retrofit sustainable urban drainage systems. SUDS are extremely expensive, so members can imagine that Scottish Water tends to install a big pipe rather than something that is more sustainable and sensible.

11:00

**The Convener:** Members had a few more questions to ask, but we will follow up our inquiries after the meeting. I thank the witnesses for coming. No doubt there will be a continuing exchange between you and the committee during the next few weeks and during stage 2.

I welcome to the meeting the next panel of witnesses: Nigel Miller, vice-president of NFU Scotland; Dr Karen Smyth, rural development manager for the Scottish Rural Property and Business Association and a frequent flyer with the committee; and Gareth Williams, policy manager north with the Scottish Council for Development and Industry.

Because of time constraints, I will first take questions from members who are interested in funding, to ensure that the matter is covered.

**Rhoda Grant:** Councils are obviously responsible for their own maintenance but, in submissions to the committee, some have expressed concern that under the bill they will be unable to recover costs from landowners who have not maintained their flood management schemes. I would like to hear whether the panel thinks—

**The Convener:** Rhoda, will you speak up a bit? It is very difficult to hear you at this end of the table.

**Rhoda Grant:** Sorry.

**The Convener:** It is probably because you are turning your face away from us.

**Rhoda Grant:** Is the panel happy with what I said?

**Dr Karen Smyth (Scottish Rural Property and Business Association):** I am sorry—I did not quite get it.

**Rhoda Grant:** Local authorities have expressed concern that, under the bill, they will be unable to recoup expenditure incurred in carrying out flood prevention work on land where the landowner has not completed such work. What is the panel's view of the suggestion that councils should have the power to recoup that money from landowners?

**The Convener:** Quickly, please.

**Nigel Miller (NFU Scotland):** Our strong view is that if the work is for public good the public should pay for it. Under the proposed integrated approach, agricultural land will be used as a safety net to protect other communities or interests. There will, of course, be costs and benefits, but many of the costs will be pushed on to landowners and agriculture, while many of the benefits will be felt by other communities and land users. That might well be correct, but I feel that land managers and agriculture should not foot that bill.

**Dr Smyth:** I was not aware that local authorities were seeking to draw down money from landowners for such work. In that case, I agree with Nigel Miller. I also agree with the previous panel's point that there should be mechanisms to allow funding for flood prevention and the management of land for flood-related purposes.

**Rhoda Grant:** I should clarify that I am talking about landowners who might be seen to be at fault because they have not, for example, maintained watercourses, rather than about the implementation of larger flood prevention schemes as a result of which they might be asked to adjust their land management.

**The Convener:** Effectively the local authority will be saying to a landowner, "Okay, because you've not been doing the work you should have been doing, we've got a problem. We're going to

come in and sort it out and we're going to get the money back from you." The position is slightly different.

**Dr Smyth:** It is.

**Nigel Miller:** Such work would be part of an integrated plan with wider impacts on land management as a whole.

**The Convener:** Not necessarily. It might be work that should have been done anyway. Do you see the difference?

**Nigel Miller:** Could you give us a specific example of the kind of maintenance that you think landowners might not be doing?

**The Convener:** Clearing blocked culverts.

**Nigel Miller:** If a blocked culvert on somebody's property was causing a problem, it would be reasonable to ask them to maintain it.

**Dr Smyth:** If it is a legal matter, it should go through the appropriate channels, with fines imposed if necessary. However, cases would have to be dealt with individually, so it is difficult to comment.

**Nigel Miller:** You have to take into account the implications of the water framework directive, which makes the maintenance of some channelling quite difficult for farmers and landowners. A SEPA process, which is not easy, has to be gone through. Constraints relating to drainage and to channelling watercourses are being put on farmers. Those constraints almost negate the farmers' own interests, but they are being put on the industry because of wider benefits.

**The Convener:** Does Mr Williams want to comment?

**Gareth Williams (Scottish Council for Development and Industry):** It is probably not so much of an issue for our membership.

**Peter Peacock:** I have a question on finances that probably is for Gareth Williams. In its evidence, the SCDI raised issues to do with funding. Some of your members have spoken about their difficulties in getting insurance for their premises or property. At a UK level, a deal has been done by the insurance industry to stick with flood insurance, provided that sufficient long-term public investment is made in better flood management.

Is the bill adequate, or could it be stronger in requiring consideration of long-term flood investment, which would have the benefit of improving businesses' ability to get insurance?

**Gareth Williams:** We welcome the indications that thinking will cover a 25-year period, although

we would like it to go even further ahead if at all possible. I understand that the Association of British Insurers is in talks on a statement of principles, which would cover Scotland, and that the ABI has welcomed the bill. It is good that we appear to be ahead of the game.

We have some concerns over the lack of detail on investment and on the development of plans, and we would like more detail on the funding over a long period. How will the funding feed down to a local level? We are concerned about flood management schemes being given the priority that they deserve.

**Alasdair Morgan:** We have just had an emergency budget statement, and the chancellor has said that, beyond 2010, public expenditure will be severely constrained. Do you really expect the Scottish Government to give commitments to really long-term funding?

**Gareth Williams:** It will never give hard-and-fast commitments to long-term funding, but it could give us some idea of the funding that would be required as part of future plans. Decisions would be taken in each budgetary cycle, but it would be clear that the Government was working towards longer-term improvements.

**John Scott:** My questions are for all the panel members and are more general. What impact will the bill have on the people whom you represent? What problems and burdens do you foresee? How might they be addressed?

**The Convener:** Discuss—briefly.

**Nigel Miller:** As representatives of farmers, we think that, at a strategic level, a lot of priorities are already laid on agriculture, whether in relation to access, food production, biodiversity or landscape. Those issues all underpin communities. If we are to address them all and are given an additional focus or burden, it is inevitable that we will not be able to deliver quite as well on some of them. That should be taken into account in the national picture.

As far as the bill's impact on small businesses is concerned, there has already been a discussion about the loss of some of the best land in Scotland. There is obviously not a lot of good land in Scotland—only two farms have grade 1 land on them, and one of them is right next to the River Tweed. We are already losing good land for food production due to increased building. There is a more pertinent issue further up the hill, in that very small flood plains are likely to be key in natural flood management schemes. Those small flood plains are crucial to the overall economics of agriculture in the areas concerned. If they are removed or if real constraints are put on their use, large areas will become unviable and land may be abandoned in some hill areas. We are all pretty

supportive of natural flood management, because it makes a lot of sense, but in reality flood management is not very natural; it is about selectively deciding where we want a flood to go.

We must look carefully at the cost benefit analyses, because being under such constraints raises issues for farmers. Obviously, their management options and the procedures that they carry out on the land will be constrained if the land is in a flooding area, so that will have an economic impact. Beyond that, if the land is lying wet, there will be constraints in relation to poaching and spreading fertilisers or muck. Constraints may be placed on wetlands for dirty water control if the area is likely to be flooded. There are also implications for how a tenancy is valued if those pressures are put on a tenant. There are many practical issues. As well as the direct implications for the land involved, there are also implications for the surrounding land. Those factors must all be taken into account and costed, and the money must be recouped in some way if rural areas are to remain viable. That is a real challenge and it is not clear that it has been taken up in the bill.

**Dr Smyth:** I agree with Nigel Miller. It has already been proposed that land managers or farmers may have to change watercourses or plant additional trees, or that lower-lying land may need to be flooded. Such measures could have a significant economic impact on land managers or farmers, and that needs to be adequately costed.

The lack of information on costs does not give land managers great security. As Gareth Williams said, a 25-year funding strategy would be beneficial. I acknowledge that because of the economic situation it is difficult to ensure that level of commitment for 25 years, but we must provide some level of security to land managers. If they are going to have to change watercourses and plant trees, where will they get money from in five years' time when the SRDP is not focused on those agendas? They need security beyond that timeframe.

**Gareth Williams:** Businesses make their investment decisions 25 years in advance in relation to both investing in their own businesses and moving into new areas. If they are making decisions based on that period of time, they need security for that period.

**The Convener:** Even if the Government was in a position to put forward a notional figure for a strategy that would continue for 25 years, it could not bind any future Governments.

**Gareth Williams:** I acknowledged that earlier. I accept that decisions will be taken on a budgetary cycle, but a wider buy-in to those plans, which seems to be the bill's objective, would provide greater reassurance for businesses that the plans



would be taken forward by any future Government. We would welcome that.

Our members welcome the bill as a whole. We also welcome the plans to speed up the planning system. As the committee knows, that has been a particular challenge in Elgin and other parts of Moray. We look forward to having a little more detail on how the plans might be achieved and how local businesses might be able to input into the process.

11:15

**Nigel Miller:** We have concentrated on the direct impacts and the costs of those. At the planning stage, if we want to take an integrated approach in catchments, perhaps we could try to minimise the impacts by considering solutions further up the hill and how we manage wetlands and moorland. We could try to use those areas as reservoirs for holding water, or at least slowing down flows. That might involve hard engineering to supplement or build up existing features. In the long term, that could be more cost effective than relying totally on flood plains and hard solutions further down.

Hard solutions will be part of an integrated plan—they must be if flows are to be maintained through critical infrastructure, such as bridges and villages. The integrated plan is part of the solution. We hope that organisations such as the Scottish Agricultural College and the Macaulay Institute will fit into the planning process, so that wider views of land management and land management options are taken into account.

**Rhoda Grant:** The SRPBA's written submission expresses concern about SEPA being designated the competent authority. We have heard evidence that ministers will be able to give directions to SEPA and that SEPA will be issued with guidance on carrying out its role. Does that give you any comfort?

**Dr Smyth:** Our concern is that SEPA is a regulator and not a facilitator or co-ordinator. Procedures should be put in place to ensure that SEPA undertakes its job appropriately. For example, an ombudsman could oversee how SEPA undertakes its duties. We want to ensure that SEPA is checked in some way. Anything that attempted to do that would be a form of reassurance.

**Rhoda Grant:** The proposal is not to create an ombudsman or a different body to watch how SEPA performs. There will be Government overview of the way in which SEPA carries out its role and the Government will give guidance and direction.

**Dr Smyth:** Guidance and direction will be helpful but, in our experience of working with the water framework directive and the area advisory groups, we found problems on a range of levels. Therefore, advice and guidance may not be the only answer. There is perhaps a need for training and additional resourcing. I do not know whether you want me to go into the details—I submitted evidence on that in our written submission.

**The Convener:** Yes, we have that.

**Dr Smyth:** It highlights some of our concerns with the area advisory group process. We would like those to be addressed to assist in the implementation of the bill.

**Alasdair Morgan:** I will continue on the issue of the role of various organisations. In written evidence, the NFUS has expressed

"doubts as to whether local authorities, who should be accountable to all local interests, are best able to judge the needs of their areas."

What is behind that? If the local authorities are not best placed, who is?

**Nigel Miller:** We want a coherent and integrated plan, but having SEPA defining the overall goals at district level and then rolling that down to a process that is driven by local authorities will not necessarily feed through seamlessly the policy priorities and likely solutions. At times, local authorities, by their nature, will be driven by particular interest groups, rather than take an holistic approach.

**The Convener:** So who should do it?

**Alasdair Morgan:** The idea is to have a cascade down from a central view, which will get gradually more local. Obviously, each solution must be implemented locally. I do not know exactly what you have against local authorities, but if they are not given the role that they are to be given under the bill, who will do that instead?

**Nigel Miller:** We do not have anything against local authorities. However, in our experience, in a forum that is chaired by a local authority with various competent authorities feeding into it, it is difficult to get a meaningful view in for those who are directly affected or the land managers who are involved. Some helpful comments have been made about the need for a robust advisory board. If such a board were feeding into the process, that might protect those people. If there was some sort of ombudsman to ensure that those interests were taken into account and balanced in the overall outcomes, that might be a solution that we could support.

**Alasdair Morgan:** Is there something specific about the way in which local advisory boards are itemised in the bill that you have concerns about?

**Nigel Miller:** There is a level of commitment in the bill to take into account the views of those who are directly affected and the land managers, but it is not a clear commitment. There is also a commitment to the provision of funding, but that is not totally clear, either. If we are to be comfortable that land managers and those who are directly affected will be properly represented, there will need to be a clearer definition of the level of representation that there will be and a commitment to real funding for those representatives to ensure that they can commit the time to balancing up professional submissions from competent authorities and local authorities.

**Alasdair Morgan:** Okay. I will move on. The bill does not mention many responsible authorities—even SNH is not one. The written submission from the SCDI suggests that Scottish Water, the Forestry Commission, SNH, Transport Scotland, Network Rail and the regional transport partnerships should be responsible authorities—it even mentions that power companies could be, if they were not private bodies. Would that approach not diffuse responsibility far too much? Is not one of the benefits of the bill as it stands that, although there are mechanisms to get people involved, the number of responsible authorities is very small so that responsibility can be pinned down?

**Gareth Williams:** The submission to which you refer was our response to the consultation document, not to the bill. In it, we pointed out some issues that the Government might want to consider—we were not necessarily saying that we wanted those bodies to be involved. However, I take your point. I felt that the original consultation document failed to consider critical infrastructure such as transport infrastructure and some of the electricity infrastructure, so I suggested that the Government might consider how those bodies might be involved.

I listened to the evidence that the previous witnesses gave. We would have concerns if SNH were not involved, if it was suggested that it may object to flood prevention schemes at a later stage. That would be an issue if we were trying to front load the planning system as much as possible and to avoid having to deal with late objections.

Not all those bodies should be responsible authorities, but we suggested that they were worthy of consideration.

**Alasdair Morgan:** Okay. Fair enough.

**The Convener:** Elaine Murray had some questions on the same issue. Are you content with what you have heard, Elaine?

**Elaine Murray:** Yes.

**The Convener:** Excellent. Rhoda Grant wants to ask about public participation in consultation.

**Rhoda Grant:** Some of the submissions that we have received express concerns about public participation, how that would be resourced and whether the bill adequately allows for it. The previous panel talked about public engagement and said that it should be more than consultation. Does this panel agree with that? If so, is the matter adequately covered in the bill? If not, what steps should be taken to allow members of the public, communities and stakeholders to engage with the process?

**Dr Smyth:** We raise that as a concern in our written submission. In our experience, the area advisory groups have not been sufficiently funded and representatives have not been able to represent their whole catchment. For example, an SRPBA representative may not necessarily know what the farmer two miles up the road is doing to his land and how he is dealing with it. It is difficult to represent a whole catchment, so we asked SEPA whether village hall consultations could be carried out. SEPA's response was that it was concerned that the resourcing was not in place to do that. The bill should be adequately resourced to allow for more community-level participation where required and when advisory groups feel that it is necessary for and beneficial to the development of the plans.

In our submission, we note that section 43(8) says that financing "may" be made available to members of a sub-district flood risk advisory group. Many advisory group members have to pay out of their own pockets to attend meetings and some will have to travel long distances to participate in meetings. We encourage the committee to consider providing financing for those people who represent their communities at a local level.

**Rhoda Grant:** Is that an either/or suggestion? Do you want funding for village hall consultations or for advisory group members?

**Dr Smyth:** Both.

**Nigel Miller:** I have already touched on the matter and my comments run along pretty similar lines to those of Karen Smyth. There is a requirement for producer organisations to be represented on the relevant body.

The key point that Karen Smyth made is that it is difficult for any representative to get a handle on the requirements of all the communities and individuals whom they represent, and there will be some pretty extreme impacts on some of them. SEPA or the local authority should appoint someone to be a point of contact to whom local people and communities could feed their issues by way of local meetings, individual interview or letter.

The point-of-contact person could sift through the issues, prioritise them and feed them into the process to ensure that individuals are not disfranchised. That is a real danger, given the level of representation that is likely to be put in place and the cost constraints on people in trying to make inputs. There is also the issue of trying to keep the relevant bodies manageable in size.

There will be extreme impacts on some communities, businesses and land managers. The concerns of those people should be fed into the process. Perhaps the word "ombudsman" is not the right one to use, but funding for advocates of some sort should be found so that such persons can be put in place and play a part in the process.

**Dr Smyth:** I agree with Nigel Miller. I have received a number of comments from our members about their involvement in the area advisory groups. One suggestion was that there should be a technical support officer whom they could approach for information. Much of the information that is provided at flood risk meetings is high level and technical. If you are a farmer or land manager without a scientific background, it is difficult to get up to speed on some of the issues and the pace has also been very fast. I encourage the committee to consider how the issue could be addressed.

**Gareth Williams:** I want to echo a couple of points that have been made thus far. First, our members are looking for an influencing role, rather than one that is simply advisory. Secondly, I agree about the technical nature of the discussion. We have found that in our involvement in river basin management planning. Also, meetings tend to be dominated by those with scientific knowledge. It would be helpful if some way could be found for communities and businesses to engage fully in the process and understand what is being discussed.

**The Convener:** We turn to questions from John Scott on the Water Environment and Water Services (Scotland) Act 2003.

**John Scott:** In its submission, the SRPBA argues that

"the structures already set up for the implementation of the Water Framework Directive water basin planning are used in the implementation of the Floods Directive ... However, these structures should be reviewed".

Which aspects of the WEWS act structures are in need of review for the purposes of implementing the flood risk management process?

11:30

**Dr Smyth:** I have probably covered part of that already. It is about how the area advisory group structure operates. There is a need to step back and consider how the groups have functioned and

what can be done to improve the way in which the area advisory groups and the national flooding advisory group interact and work together in order to make the process more streamlined and effective. The technical support that I suggested would be useful must also be considered.

**The Convener:** I take it that the other witnesses agree, given that they are nodding.

I know that Elaine Murray wanted to ask about flood risk management plans and land use, but I think that we have dealt with that already. I invite Peter Peacock to ask about natural flood management techniques and the ability to strengthen them.

**Peter Peacock:** I think that you were all present for the previous evidence session. There are arguments for strengthening the bill's provisions on national flood management techniques. The SRPBA and the NFUS have both expressed concern about that, which they articulated in earlier answers. Would you be concerned about that? Would your concerns be eased if there were adequate compensation packages for the impact on farm activity or land owning activity?

**Nigel Miller:** We would certainly be concerned if there were a presumption that natural flood management should take precedence over other systems. We see natural flood management as part of a suite of measures that should be used in an integrated way. Hard engineering would be part of that suite in some cases but not in others. We have to consider how we can manage the water flows in upland areas more rationally, too. That is what we are looking for. Certainly, there will be times when some areas will have to be used for natural flood management. In such cases, we would definitely look for compensation, not just for the direct impact on the land and the management constraints that were imposed, but for the impact on the overall viability of the business unit. In the uplands, such land is likely to be a key part of the viability of the unit. Compensation is vital for individuals, but before we get to that stage, we want the plan to be right. If we get the planning right, we can minimise the number of areas that are blighted, which would be a real win for everybody.

**Dr Smyth:** The most appropriate method must be implemented, whether it is hard engineering or soft engineering. By introducing a presumption in favour of soft engineering, you might not be implementing the most appropriate method. As part of sustainable flood management, you have to have a toolkit of methods to implement.

We want to raise points about compensation, but perhaps we had better do so in writing. As a general principle, it is vital that the compensation provisions are right, so that land managers are not

dissuaded from becoming willing participants. SEPA and local authorities need to work with land managers to ensure that the appropriate compensation is in place. We have concerns about the wording of the compensation provisions in part 6, but I am not a legal expert, so I think that it would be better if we provided a written submission on that.

**Peter Peacock:** I want to pin you down on this a bit more. I take the point about compensation; you can write to us about that.

I want to clarify what Mr Miller said. Am I right in thinking that you are not opposed to a duty that requires the relevant authorities to consider natural flood management methods and that you would be concerned only if flood management had to be delivered through natural mechanisms, rather than hard engineering, in all circumstances?

**Nigel Miller:** We accept that, in some circumstances, natural flood management would be the correct way forward. It might be uncomfortable for the business or the land manager involved, but it would be the optimal solution. In some cases, it might be the only solution if we wanted to protect a certain community. However, the costs, benefits and other practicalities of the individual situation would have to be considered.

**The Convener:** Do the witnesses from the SCDI have anything to add?

**Gareth Williams:** We will need a mix of measures.

**John Scott:** I declare an interest as a farmer. I understand what Nigel Miller said about the disproportionate effect that using flood plains would have on the viability of upland farm units, but perhaps he might like to discuss it a bit more to point out the importance of flood plains to such units.

**Nigel Miller:** More than 80 per cent of Scotland is under the less favoured area scheme, so huge areas fall into that category. Upland farming is very much livestock oriented, but overwintering the livestock requires some sort of area for cropping to get winter keep. In most of our upland areas, that cropping area will probably be on or very close to the flood plain. Beyond that will be grazing, permanent pasture and hill ground. If the flood plain is taken out of the equation and is no longer part of the business, the unit is not viable because the farmer cannot produce winter feed or does not have sheltered or safe areas for lambing.

Even if the land is not flooded a lot of the time but is open to frequent inundation or lies wet, there are real constraints on cropping. Under regulations concerned with maintaining good agricultural and environmental condition, farmers are not allowed

to spread manure or fertiliser on waterlogged land. That also constrains grass production on such areas. If there is frequent inundation, there will be gravel deposits, which might prevent the farmer from cutting grass. Those deposits would have to be removed. There will also be ingresses of weeds—ragwort, for example, which is poisonous—to which there is a cost and which cause problems. Moreover, Scottish Water has agreements with SEPA, certainly in southern Scotland, whereby the local sewage works can discharge pure sewage into the watercourses in flood conditions. If that inundates land, there are issues not only with animal health but with public health and farm assurance status.

The use of flood plains has a huge impact on one's ability to manage a farm and get a viable system within the constraints of Scottish agriculture. In many cases, a small area of quite good land on the flood plain can ensure viable activity over an area 10, 20 or 30 times larger than that flood plain. In small valleys, if two or three of those areas are taken out of use, whole communities will be lost and the landscape will change. We have real fears that that might happen.

**The Convener:** The SRPBA and SCDI both have some concerns about compulsory purchase in the context of flood management. I ask them to expand a little on those.

**Dr Smyth:** I have already raised some issues on compensation under part 6. If possible, it would be better to incentivise or provide funding rather than use compulsory purchase. If compulsory purchase is necessary, we would like a bit of work to be done on it, but I am not part of the legal team so I cannot really expand on that.

**Gareth Williams:** We accept that there is a case for compulsory purchase but are anxious that businesses receive fair value when it takes place and that there is also an independent element to any appeals process.

**The Convener:** Would the same concerns also apply to the powers of entry for SEPA that are contained in the bill?

**Dr Smyth:** I would have to go back to the legal team on that. Nigel Miller mentioned that, if land is moved into flood plain management, it means that part of a farm is taken out. That is a real concern for us. If the overall size of farmland is reduced, it can have a significant impact on farming practice. That needs to be given full consideration.

**The Convener:** Would Gareth Williams like to say something on the powers of entry?

**Gareth Williams:** The presumption should be that there is agreement with the landowner. If the powers of entry are used, the local authority, or

whoever enters the property, should be able to justify doing so and there should be compensation for any damage that might occur.

**The Convener:** Okay. Rhoda Grant wants to ask about the linkage between structure plans, development plans and flood risk management plans.

**Rhoda Grant:** The SCDI's written submission talks about the conflict between Government policy on house building and flood management plans. It says that it would be "inappropriate" to insist that development plans conform to the flood management plans. What should the balance be between those two kinds of plan? There is an obvious need for house building, but there is an equally obvious need to protect people from flooding. How should the plans interlink and where should the balance of power lie between the plans?

**Gareth Williams:** The development plan would take precedence and the flood management plan should inform the development plan. We take the view that some building on flood plains is inevitable and desirable, given the wider social and economic context. The insurance industry, too, accepts that that will take place. However, we recognise the need to include flood resilience measures in those developments.

**Nigel Miller:** There is general agreement that flood risks are increasing, that we need to look to the long term and that not taking flood risk into account in a development is a big mistake. That would multiply or generate the challenges that we would face. It would also increase costs not just on the farming industry, but on other sectors and local government as well. That does not make sense.

Scotland is lucky in that it has quite a small population and there is a reasonable amount of land. For goodness' sake, let us develop in areas where that will not increase pressures and costs or blight large areas of productive land.

**The Convener:** Bill Wilson has a supplementary question to ask.

**Bill Wilson:** According to global warming predictions, the sea level will rise by anything between 10cm and a catastrophic 5m and there will be an increase in the number of storm surges. What is your view on the Government saying that significant developments cannot be built below, let us say, a height of 1m at coastal sites?

**The Convener:** Should the Government do that? I do not think that Bill is suggesting that that is what the Government has decided—he is asking what your view on that would be if the Government were to do that.

**Nigel Miller:** As somebody with no expertise at all in the matter, I totally agree with you.

**Bill Wilson:** I am delighted that you agree with me.

**The Convener:** I am not sure what level of concern the SRPBA would have about building in very coastal regions.

**Dr Smyth:** We probably have some members in those areas, but I cannot really comment.

On planning more generally, the SRPBA has advocated an integrated land use plan since at least 1995. We were therefore heartened to see the Government launch its rural land use study. We hope that that will start people thinking about how we can link different land use issues more closely in the future. That may form a useful framework in which to address flooding and other issues.

**The Convener:** The SCDI might have more members who are affected in coastal areas.

**Gareth Williams:** I am trying to imagine what areas would be covered by a 1m limit.

**Bill Wilson:** I am thinking specifically of coastal areas, not of a 1m limit 10 miles inland.

**The Convener:** It is about coastal inundation where there are roads and other transport infrastructure.

**Gareth Williams:** Some of the tourism developments that are taking place around the country might be affected by setting a barrier at 1m. They are significant investments for the economy, and I would have thought that such decisions should be taken at a local level rather than being controlled by Government regulations.

**The Convener:** We have exhausted our questions. I thank the witnesses for coming along. If there is anything that we want to follow up on, we will do that. Equally, if there is something that you feel that you missed saying to us, you are welcome to get in touch with us hereafter. I am sure that you will follow the progress of the bill with interest.

## Ticks and Tick-borne Diseases

11:45

**The Convener:** Agenda item 3 is ticks and tick-borne diseases. Committee members will recall that John Scott is the committee's reporter on the tick task force. This is his opportunity to give us some feedback on the 7 November meeting. The task force was set up last summer and its next meeting will be in the spring.

**John Scott:** We had a very good meeting. The key concern was the increase in Lyme disease in the human population. Tick-borne diseases have been around in animals for hundreds of years, but there has been an increase in the number of cases of Lyme disease, especially as sheep come off the hills and particularly in the north and west of Scotland, which is one of the key areas. As the population at large takes greater countryside access, the potential for Lyme disease to spread will increase. That is a real issue.

It is likely that climate change will further enhance the environment in which ticks breed, which will exacerbate the problem.

Ticks are a worldwide problem, and there are different ticks in different parts of the world that carry and transmit different diseases—particularly encephalopathies, which are even more serious than Lyme disease.

As paragraph 13 of the briefing note states, we are putting together a working group to disseminate information. The main points of the meeting are summarised in paragraph 15. There needs to be greater awareness among general practitioners—and doctors generally—about tick-borne diseases, and a leaflet should be distributed. Several were produced on that day, which will form a template for yet another leaflet.

There needs to be a far greater exchange of knowledge between organisations, as it is evident that there is not much of that at the moment. For example, there is a huge wealth of knowledge in the Moredun Research Institute, which developed the louping-ill vaccine for sheep many years ago. There is a bank of knowledge there and I am certain that there is a crossover of knowledge between the medical and veterinary professions that should be tapped into. With that in mind, a communications group will be set up to raise awareness.

That is the long and the short of it. The meeting lasted just over an hour and the task force's work is still in progress. The minister, Mike Russell, is, as you would expect, keen to see outcomes from such meetings rather than their being just talking

shops. That is certainly the direction of travel at the moment.

**The Convener:** Thank you, John. As a constituency MSP, I have had the issue of Lyme disease raised with me. There are huge issues surrounding its diagnosis and I suspect that, for most MSPs, the potential for human illness is the most concerning aspect.

**Peter Peacock:** I acknowledge the work that John Scott is doing on the subject. It may seem trivial, but it is far from that. It can have serious consequences and I am glad that he is paying attention to it.

I am interested in awareness raising. Last summer, I happened to be in a hotel reception area somewhere in the Highlands—I will not say where—when a guest asked about an insect that had burrowed into her arm. Through no fault of her own, the hotel receptionist, who happened to come from another country, knew nothing about it. That might sound trivial, but there is a certain way to remove ticks and raising awareness about it in the leisure industry is important because, increasingly, people are walking on our hillsides. If that matter was not discussed, I would encourage you to discuss it.

**John Scott:** It certainly was discussed. A lot of information about and tools for removing ticks sensibly are available, although it depends on the size of the tick. A mature tick is about a quarter of an inch long, whereas you can barely see a very small one when it first attaches itself to you.

As you can imagine, there is a balance to be struck between raising public awareness and providing information about removing ticks, and alarming the public and frightening them off our hills. We all share the view that we want people to have such access to enhance their lives and the tourism industry. GPs also need to be more aware, particularly of the early symptoms of Lyme disease. I might have said this in my previous report to the committee, but it is vital to know that the sooner you take a tick off your body, the less likely you are to attract disease, because it takes up to 24 hours for the disease to move from the animal's body through its salivary glands into yours.

**Liam McArthur:** I echo Peter Peacock's comments about John Scott's work on the subject.

I was looking at the report of the task force's meeting in April, which says that

"the Minister identified some immediate actions for this summer—production of an information leaflet on ticks and tick-borne diseases for circulation in hard copy and in a downloadable form".

He seems to be requesting the same thing come November. I wonder whether that action did not

happen, because there was no reference to it in the November meeting.

I agree with John Scott's point about getting a balance between spreading information and being alarmist—the representative from Forest Research indicated the same thing in April. Can you say any more about the sort of information that the minister was looking to impart to and through VisitScotland?

The point about GPs is pertinent. Looking at the list of attendees at the April meeting compared with those who were there in November, you appear to have lost NHS Highland and the Scottish Government chief medical officer directorate and replaced them with someone from Jamie McGrigor's office. That does not seem a fair swap. Was it the intention to try to ensure that someone from NHS boards or the CMO's office would be involved in future meetings? That seems critical to the point about the GPs.

**John Scott:** Notwithstanding the gratuitous swipe at Jamie McGrigor—I can only recommend Douglas Pattullo to you as a valued member of Jamie's staff and, indeed, our team—it was noted by Minister Russell that it was a matter of concern that the chief medical officer was not there and had had to call off at very short notice.

On your point about the leaflet, I do not think that adequate communication work was done, despite the good intentions of those at the April meeting. There was enthusiasm for such work to be addressed more fully and better. Again, the minister was robust in his expectation that results would be achieved. We must move to achieving results fairly quickly. That said, there is still a need to get people to work together, which is why it is so important that a communications team is set up and starts producing stuff.

**The Convener:** I reiterate what I said at our meeting on 28 May: ticks are not just an issue for people walking in the countryside; they can be picked up in suburban gardens and folk need to be aware of that. Some people think, "I'm not going up into the hills, so I don't have a problem", but that is not the case. Awareness of the problem needs to be disseminated in such a way that people do not imagine that it is only an issue if they go for long walks in the country.

I do not want us to go on about the subject for too long, but Elaine Murray has a question.

**Elaine Murray:** I have not been a member of the committee for long, so I was not previously aware of John Scott's involvement with the task force. I presume that louping-ill is the equivalent of Lyme disease in animals.

**John Scott:** It is a disease of sheep, in particular. Red water is a disease of cattle. There

is a generic group of diseases known as tick-borne diseases.

**The Convener:** Are all the diseases that we are discussing tick-borne diseases?

**John Scott:** Yes.

**Elaine Murray:** My experience is of finding ticks on dogs that they have attacked. Is that linked in any way to the transmission of tick-borne diseases to people?

**John Scott:** Absolutely. Uncomfortably, ticks on dogs or cats can be brought into people's living rooms, where they may fall off or remove themselves from the carrier and breed. If people have been in the countryside and even, as Roseanna Cunningham said, in the garden, they need to be aware that dry vegetation such as dry bracken, whin bushes, forestry, woodland or shrub is an ideal breeding ground for ticks. Much housing is on reclaimed farmland; the parasites on that land remain there even after the houses are built.

**The Convener:** I do not want to go on about the problem, but it is not limited to rural areas, farmland or even reclaimed farmland. It can affect suburban gardens.

**John Scott:** Absolutely.

**The Convener:** I will stop the discussion now, as we have spent a considerable amount of time on it. I am surprised and heartened by the enthusiasm and interest in the issue that members have shown. We will send the *Official Report* of today's meeting to the task force, to make clear the committee's concerns in respect of the dissemination of information.

## Pig Industry

11:57

**The Convener:** Agenda item 4 relates to our correspondence with the Cabinet Secretary for Rural Affairs and the Environment on the pig industry. Members may recall that we asked the cabinet secretary in a letter to explain why, having set up the pig sector task force, he did not accept any of its recommendations. I invite members to comment on the letter that we have received from him. I remind members who would like us to discuss undertaking further work on the issue that we can do so under a later item relating to our future work programme.

**Liam McArthur:** The cabinet secretary's most recent letter is two and a half pages long. The first page seems to deny that there has ever been a problem; the second rebuts four of the task force's six recommendations. It is not clear on what the £1 million that has been announced will be spent. The reasons that the cabinet secretary gives for rebutting four of the six recommendations as backward looking could apply equally well to the Government's compensation scheme for lamb, which was welcome. I am not sure that the letter addresses all the issues. However, I recognise that market conditions have developed and that the industry appears to be expressing less anxiety publicly. I am not sure where we should take the matter, but I have problems with aspects of the cabinet secretary's response.

**Peter Peacock:** Like Liam McArthur, I think that we are at an impasse. In his response, the minister makes his position clear—he has set it out for the umpteenth time. Whatever I may think and regret, he will not shift on the matter. However, in light of the changing market conditions to which Liam McArthur referred, it may be useful for us to get a brief update from the pig industry on where it stands now. I would be happy for us to do that by correspondence.

**The Convener:** We will talk about that when we come to discuss our work programme.

**John Scott:** I understand that there have been subsequent meetings with the minister—perhaps not since the letter was written, but since he announced his response to the pig sector task force's report. The industry is working with the minister in a more agreed way than was once the case. Notwithstanding that, I share Liam McArthur's view that it is a shame that only two of the six recommendations were accepted and acted on.

Just on a point of correction, it was not a lamb scheme but an ewe scheme by which sheep farmers were compensated. There was a strong

case for recognising the particular difficulties faced by pig farmers, but the situation is as it is.

**The Convener:** I propose that I write, on behalf of the committee, to the industry representatives and ask if they would be prepared to give us a written update, given the current circumstances. We can share with them the exchange of correspondence and say that we are well aware that things have moved on considerably since then. We can invite them to give us a written update from their perspective, and tell us what issues still concern them. Is that agreed?

**Members indicated agreement.**



## Crown Estate

12:00

**The Convener:** Agenda item 5 is correspondence from the Crown Estate commissioners.

We wrote to the commissioners in October to welcome the various steps that they have taken since they first engaged with the committee. I appreciate that our new members are coming to this subject late on. There is a background paper on the issue and some late correspondence was e-mailed to committee members, although I do not know whether all members will have picked it up, so hard copies are available. I understand that Highland Council will write to us again. I invite comments from members on what they have seen so far.

**Peter Peacock:** I raised the issue way back, along with other members, and I have followed the changes that have taken place. Ian Grant's response is an indication that the Crown Estate continues to be prepared to move on issues. The fact that Ian Grant and Michael Foxley agree about anything is rather surprising, but, in fairness, the Crown Estate is saying that it will be happy to accommodate some of the points that Mr Foxley has raised, and that is the sign of a changed approach. I am happy to note the correspondence.

**The Convener:** Is everyone happy with that?

**John Scott:** There still appears to be an issue with the harbour at Tarbert, but that is not for the committee to resolve.

**The Convener:** There might be an opportunity to consider some of those specific points during our consideration of the marine bill

**Alasdair Morgan:** These are issues for individual members, rather than for the committee.

**The Convener:** Yes.

I close the public part of the meeting. I was going to thank the public for their attendance, but I see that everyone has scarpered anyway.

**Alasdair Morgan:** That is very discerning of them.

12:03

*Meeting suspended until 12:07 and thereafter continued in private until 12:43.*



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