

# **RURAL AFFAIRS AND ENVIRONMENT COMMITTEE**

Wednesday 28 January 2009

Session 3

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# **RURAL AFFAIRS AND ENVIRONMENT COMMITTEE**

## **3<sup>rd</sup> Meeting 2009, 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:**

Professor Jim Baird (Glasgow Caledonian University)

Stuart Foubister (Scottish Government Legal Directorate)

Dirk Hazell (Scottish Environmental Services Association)

Pauline Hinchion (Community Recycling Network Scotland)

Richard Lochhead (Cabinet Secretary for Rural Affairs and Environment)

Susan Love (Federation of Small Businesses in Scotland)

Linda Rosborough (Scottish Government Marine Directorate)

Ian Strachan (Scottish Government Rural Directorate)

Andrew Voas (Scottish Government Rural Directorate)

### **CLERK TO THE COMMITTEE**

Peter McGrath

### **SENIOR ASSISTANT CLERK**

Roz Wheeler

### **LOCATION**

Committee Room 2

## Scottish Parliament

### Rural Affairs and Environment Committee

*Wednesday 28 January 2009*

[THE CONVENER *opened the meeting at 10:02*]

### Subordinate Legislation

#### Transmissible Spongiform Encephalopathies (Scotland) Amendment (No 2) Regulations 2008 (SSI 2008/417)

#### Beef and Veal Labelling (Scotland) Regulations 2008 (SSI 2008/418)

#### Freshwater Fish Conservation (Prohibition on Fishing for Eels) (Scotland) Regulations 2008 (SSI 2008/419)

#### Zoonoses and Animal By-Products (Fees) (Scotland) Amendment (No 2) Regulations 2008 (SSI 2008/423)

#### Conservation (Natural Habitats, &c) Amendment (No 2) (Scotland) Regulations 2008 (SSI 2008/425)

**The Convener (Roseanna Cunningham):** I remind everybody to switch off their electronic devices, or at least to put them into flight mode. We have long-term apologies from Karen Gillon, who is on maternity leave. We welcome Rhoda Grant, who is her long-term substitute.

Today, we will take evidence on the legislative consent memorandum on the United Kingdom Marine and Coastal Access Bill, and on the Climate Change (Scotland) Bill.

Agenda item 1 is subordinate legislation. We will consider five negative instruments. The Subordinate Legislation Committee has commented on all of them except SSI 2008/425 and the relevant extract from its report has been circulated to members.

I understand that John Scott wants to make a point about SSI 2008/417.

**John Scott (Ayr) (Con):** It is a minor detail. Under the heading "Policy Objectives", the Executive note states:

"From 1 January 2009, the GB administrations will raise the age at which cattle born in the UK require to be tested for Bovine Spongiform Encephalopathy (BSE) surveillance purposes from to over 48 months."

The words "30 months" should be included between the words "from" and "to". They have not been put in, so the Executive note is remiss.

I am also concerned about what the costs of the change to farmers may be, albeit that there may be no costs to them. I do not know whether the minister is willing to answer that question, as he is here; in fairness, he may not be willing to do so.

**The Convener:** We did not give notice to the Cabinet Secretary for Rural Affairs and the Environment that we would question him about SSI 2008/417, so I suggest that we write to him to ask for clarification on that matter. However, we must dispose of SSI 2008/417 today. Are you happy to do so if we agree to write a follow-up letter?

**John Scott:** I am.

**The Convener:** Do members agree to make no recommendation on the instruments?

**Members** *indicated agreement.*

#### Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Amendment Regulations 2009 (Draft)

**The Convener:** Item 2 is draft regulations that are subject to the affirmative procedure. We are grateful to the Cabinet Secretary for Rural Affairs and the Environment for attending the meeting. He is accompanied by officials from the Scottish Government. Kirsten Simonnet-Lefevre is a principal legal officer; Caroline Mair is a solicitor; Alan Williams is a divisional solicitor; Ian Strachan is head of the animal health and welfare branch; and Andrew Voas is a veterinary adviser.

The Subordinate Legislation Committee made no comment on the regulations. I invite the minister to make opening remarks, after which members may ask questions before we move to the formal debate on the regulations.

**The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead):** Under section 20 of the Animal Health and Welfare (Scotland) Act 2006, it is an offence to interfere with the sensitive tissues or bone structure of an animal. Procedures that take place for medical reasons, such as the amputation of a diseased or badly damaged limb, operations to remove a growth or to repair tissue, and animal dentistry are exempt. The 2006 act allows the Scottish ministers by regulation to exempt other procedures, such as ear tagging, the dehorning of sheep and cattle, the insertion of microchips and the neutering of pets.

The draft regulations will amend the principal regulations, the Prohibited Procedures on Protected Animals (Exemptions) (Scotland)

Regulations 2007, which exempt a number of procedures from the general prohibition in the 2006 act. Since the principal regulations came into force, it has been brought to our attention that some procedures that are needed to identify animals and to control reproduction are not listed in the schedules to the regulations. The draft regulations will correct the omissions and bring our legislation into line with legislation that is in force in England and Wales.

The draft regulations will allow additional procedures: ovum transfer from animals when embryo transfer was already permitted; laparoscopic insemination of sheep and goats to control reproduction or for general animal management; implantation of a subcutaneous contraceptive in non-farmed animals, such as zoo animals, as part of our conservation programme; castration, ovidectomy and vasectomy of non-farmed birds as part of a conservation programme; and wing tagging and web tagging, to identify farmed birds for breeding or testing for the presence of disease and to identify non-farmed birds for conservation or research.

We consulted the industry and welfare organisations on the exemption of the additional procedures and our proposals met with no objections. On advice from the Scottish Government's veterinary advisers, we also sought stakeholders' views on the recommendation that the current exemption of the spaying of cattle, sheep, pigs, goats, deer and horses should be removed. The proposal elicited no challenge from stakeholders, so the draft regulations will remove the exemption.

My officials—in particular my veterinary adviser—will be happy to answer members' questions.

**The Convener:** I remind members that at this stage we are asking about factual matters. Contentious matters can be debated under item 3.

**Elaine Murray (Dumfries) (Lab):** Will the regulations affect the use of a horse twitch? A twitch is sometimes used to put pressure on a horse's nose, to calm it down so that other procedures can be undertaken.

**Ian Strachan (Scottish Government Rural Directorate):** The offence is to undertake a procedure that interferes with the sensitive tissues or bone structure of the animal. A horse twitch does not penetrate anything, so it is not covered by the legislation.

**John Scott:** Why is the spaying of cattle, sheep, pigs, goats, deer and horses no longer to be allowed?

**Andrew Voas (Scottish Government Rural Directorate):** Although spaying of cats and dogs

to prevent females from breeding is a common procedure, it is unheard of in farm animals and horses. The procedure was inadvertently permitted in the previous list—[*Interruption.*]

**The Convener:** I reminded people to switch off their mobile phones and BlackBerrys.

**John Scott:** Thank you for that warning.

**Andrew Voas:** The intention is to tidy up the list of permitted procedures by removing procedures that would never be done in practice. There would be no justification for spaying animals of the species in question.

**John Scott:** I am thinking, in particular, of horses. Might there be a horse that, for some reason, required to be spayed?

**Richard Lochhead:** We spoke to stakeholders and there was no objection to removing spaying from the list of exempted procedures.

**John Scott:** Okay. Thank you.

**The Convener:** As there are no more questions, we move to agenda item 3, which is to complete consideration of the regulations. During the formal debate, we cannot hear from officials. I invite the cabinet secretary to move motion S3M-3113; in the circumstances, he might want to waive his right to speak.

**Richard Lochhead:** I am happy to waive my right to speak.

*Motion moved,*

That the Rural Affairs and Environment Committee recommends that the draft Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Amendment Regulations 2009 be approved.—[*Richard Lochhead.*]

**The Convener:** Do any members wish to take part in the debate?

**Liam McArthur (Orkney) (LD):** Perhaps I should have brought this up earlier, but I would be interested in knowing why the oversights have emerged only now, given that a consultation was held previously. Have there been changes in practice that have resulted in the need to amend the regulations? Are we simply talking about an oversight in the original regulations?

**Richard Lochhead:** There was an oversight in the original regulations that no stakeholder brought to our attention at the time but which was brought to our attention thereafter.

**The Convener:** No other member wishes to speak. The cabinet secretary has the right to make a short winding-up speech, if he wishes.

**Richard Lochhead:** I am happy to waive that right, given that I have already explained the rationale behind the amendments.

*Motion agreed to.*

**The Convener:** I thank the cabinet secretary's officials for their attendance. The cabinet secretary will stay for the next item, but I guess that the officials will change.

## Marine and Coastal Access Bill

10:11

**The Convener:** Under item 4, we will take evidence from the cabinet secretary on a legislative consent memorandum on the United Kingdom Marine and Coastal Access Bill. We have been appointed lead committee for consideration of the LCM. The committee issued a targeted call for evidence before Christmas, in which it invited stakeholders to flag up any issues that they wished members to raise with the cabinet secretary. Following today's evidence taking, we will produce a report on the memorandum, which will inform consideration of a legislative consent motion on the bill by the whole Parliament.

The cabinet secretary is still with us. I welcome his officials: Stuart Foubister is deputy director, legal directorate, and Linda Rosborough is deputy director, marine strategy division. I invite the cabinet secretary to make a brief opening statement explaining the purposes of the LCM.

**Richard Lochhead:** As the convener said, I am joined by officials on the legal and policy sides to discuss a somewhat complicated but extremely important issue. For that reason, I welcome the opportunity to make a five-minute opening speech, in which I will put the legislative consent memorandum in context.

As you will recall, on 27 November I announced in Parliament that, following discussions with UK ministers, Scottish ministers had achieved additional devolution of marine planning and nature conservation between 12 and 200 nautical miles from the coast, which will greatly extend Scotland's responsibility for the Scottish marine area. As you might expect, I would have preferred full devolution of those functions, but I believe that the agreement with UK ministers represents a fair compromise for all interests, given the circumstances, which will allow us to improve our stewardship of Scotland's seas. Seas, of course, do not always recognise international boundaries.

Executive devolution will be granted to Scotland through the UK Marine and Coastal Access Bill, which was introduced on 4 December 2008. The bill, which is currently at the committee stage in the House of Lords, is the vehicle through which additional devolution will be achieved. The LCM sets out the agreement between Scottish ministers and the UK Government with regard to the management of Scotland's seas in the offshore zone from 12 to 200 nautical miles out to sea, and seeks Parliament's approval for Scottish ministers' additional responsibilities.

The agreement that has been reached is complex. As I have said, we would like to have

achieved full devolution for the waters between 12 and 200 nautical miles from Scotland's coast, but the outcome provides a significant expansion of Scottish ministers' functions in the seas around Scotland. It will provide a framework for Scottish ministers to work co-operatively with the UK Government on marine management and will offer a mechanism through which we can meet our European and international obligations.

Central to the deal is a UK-wide marine policy statement that will be drawn up jointly by Scottish ministers, UK ministers and ministers from the other devolved Administrations. Scottish ministers will be able to plan for the seas out to 200 nautical miles, but for Scotland's plans to include reserved matters such as oil and gas, they must be agreed by UK ministers. The marine policy statement will guide marine planning, but it cannot be imposed by UK ministers. To respect devolved arrangements, Scottish ministers can decline to adopt a marine policy statement, but we would then lose the ability to produce comprehensive plans that are driven from Scotland.

10:15

Members will be glad to hear that the agreement on conservation is slightly simpler. There will be executive devolution of conservation powers in the UK bill. We will in effect have the power to designate conservation areas. However, any designation of a conservation area will be subject to agreement by UK ministers. On licensing, the agreement recognises the status quo. Scottish ministers are already the licensing authority for deposits in the marine environment out to 200 miles, and the UK bill gives streamlined new licensing and enforcement powers to Scottish ministers.

The agreement is not only the culmination of the First Minister's successful resurrection of the joint ministerial committee as a formal mechanism for taking forward issues that involve the UK Government and the devolved Administrations, but the realisation of the wishes of Parliament and stakeholders.

In March 2008, Parliament supported our bid for additional responsibilities in the waters around Scotland to ensure better integration and a coherent framework to deliver greater economic growth, enhanced planning and improved nature conservation. Parliament asked Scottish ministers to work constructively with the UK Government and other Administrations to ensure an integrated and joined-up approach to legislation. I believe that the deal that is reflected in the legislative consent memorandum delivers Parliament's wishes.

In "Sustainable Seas for All: a consultation on Scotland's first marine bill", we asked stakeholders whether they agreed with the Scottish ministers' approach of having

"further discussion with the UK Government on the allocation of responsibilities around the seas of Scotland."

Eighty-six per cent of respondents to that question supported the approach. The agreement therefore delivers on the wishes of both Parliament and stakeholders.

My officials are currently working on the Scottish marine bill, which will legislate for Scotland's territorial seas out to 12 nautical miles. The bill will deliver improved economic growth and a sustainable approach to marine management that balances improvements for marine conservation with the growth of marine industries.

We will seek to ensure that the Scottish bill integrates with the wider arrangements to deliver a joined-up coherent system for Scotland's seas. A coherent system of marine management will support our aim of increasing sustainable economic growth, which is good news for our marine industries, communities and precious marine environment.

I commend the motion to the committee and ask members to agree to it.

**The Convener:** Members wish to ask some questions.

**Liam McArthur:** In its written evidence to the committee, the Scottish coastal forum states:

"the very flexibility that Scotland seeks to determine the best solutions for our own waters may result in differences of approach from elsewhere in the UK. A number of SCF members are part of UK-wide industries and are concerned at any reduction in consistency of approach. They fear this may result in delays in marine developments, which might harm both Scotland's and the UK's overall drive for sustainable economic development."

In light of those concerns and of some of the statements from Scottish ministers and their UK counterparts, do you accept that differences in the approach to marine management could prove problematic? What steps are you and the Government taking to allay the concerns that Scottish coastal forum members have expressed?

**Richard Lochhead:** I understand that concern. It is in the interests of our marine environment in Scotland that, as far as possible, we take a joined-up approach on the matter. The agreement that we have reached with the UK Government allows for a joined-up approach from zero to 200 miles, but it also provides safeguards. It respects the constitutional responsibilities of both the UK Government and the Scottish Government and allows us to further what we believe are the interests of our own unique circumstances.

To address your point, we intend to work constructively with the UK Government. The first opportunity to do that will come in drawing up the marine policy statement, which is the first stage. That will, I hope, be a high-level statement that will set out the objectives and aspirations for the marine environments, not just in our own waters but throughout the UK. We will, of course, have an input to that policy statement, which will allow Scotland and its Parliament to influence what we believe should be the route to achieving sustainable seas.

**Liam McArthur:** Do you accept that you are part of a Government that has been characterised by its determination to accentuate differences rather than promote similarities in approach north and south of the border? That might be a concern to the SCF and others.

**Richard Lochhead:** The Government has been characterised by its willingness to stand up for Scotland, which it has accentuated. We stood up for Scotland in achieving the agreement with the UK Government, which gives us the opportunity to protect Scotland's interests. As I said in my introduction, 86 per cent of respondents to "Sustainable Seas for All" believed that our approach of gaining additional powers out to 200 miles was right, and the Scottish Parliament adopted that view. I fully accept that we must handle that extra responsibility sensibly and constructively. We intend to do that.

**Liam McArthur:** I will ask a couple of more specific questions. The Scottish inshore region is not covered by the UK's Marine and Coastal Access Bill, so who will be responsible for planning for reserved matters in Scottish inshore waters?

As the UK bill does not include a biodiversity duty, could the biodiversity duty that applies to public bodies and office-holders under the Nature Conservation (Scotland) Act 2004 also apply to UK Government and public bodies that operate in the Scottish offshore area?

**Richard Lochhead:** You ask who will be responsible for reserved matters from zero to 12 miles. The agreement with the UK Government allows Scotland to draw up a marine plan for the seas from zero to 200 miles. If that plan is agreed with the UK Government, it will apply to reserved matters in the area from 12 to 200 miles, but it will also bind the UK Government to reserved powers from zero to 12 miles. If we do not have the UK Government's agreement, reserved matters will continue to be reserved and the marine plan under our bill will not apply to reserved matters.

We in Scotland have the opportunity to be in the driving seat with a new power to draw up a marine plan for the area from zero to 200 miles. The

legislative consent memorandum offers the committee the opportunity to support new powers that will flow from the UK bill to Scotland. The aim is not to allow Westminster to legislate in areas where powers already exist; new powers would be created, which would be a big step forward. That requires us to work co-operatively with the UK Government to agree a marine plan—that relates to your earlier question—to which we can all sign up.

**Liam McArthur:** I also asked about the biodiversity duty.

**Richard Lochhead:** As Scottish Environment LINK says, the UK bill does not include a biodiversity duty. We consulted on having such a duty, but in the context of full devolution. If the duty is not in the UK bill, there cannot be executive devolution of it to Scotland for the seas from 12 to 200 miles. The UK bill contains clauses that place duties on public authorities to exercise their powers in such a way as to further the conservation objectives of marine conservation zones, so the bill covers biodiversity to that extent. However, the bill does not contain the duty to which you refer.

**Alasdair Morgan (South of Scotland) (SNP):** Is the minister's stance backed up by the fact that the Scottish coastal forum produced no evidence to support its concerns and by the fact that when one major offshore development—the Robin Rigg wind farm in the Solway Firth—was subject to different Scottish and English planning legislation, albeit not marine planning legislation, none of the delays to that development was attributed to the different planning regimes on either side of the border?

**Richard Lochhead:** If anxiety is felt about the potential for Scotland and the UK not to work together, we want to answer that. We will be big and mature in our approach to the future of our marine environment. However, you are right—I have seen no evidence to back the concern that major fallouts will occur over measures that we think are sensible for Scotland and the UK. You cite an example of the system working perfectly well in the past.

**The Convener:** Cabinet secretary, I remind you that this is an evidence-taking session, so your officials are entitled to speak on their own behalf.

**Richard Lochhead:** Of course. I am not trying to blank out my officials. If you feel that you might get more accurate answers from them, I will happily invite them to speak.

**The Convener:** I simply want to short-circuit the notes from officials.

**Peter Peacock (Highlands and Islands) (Lab):** I want to follow up the point about marine

conservation zones and the limits. Scottish Environment LINK's written evidence suggests that there will be no subordinate legislative power in Scotland to back up the marine conservation zones, although there will be such a power in other parts of the UK. LINK suggests that Scottish waters could be compromised as a result. Are those assertions correct? Is that an omission from the bill, or did the Scottish Government specifically seek it?

**Richard Lochhead:** Heeding your advice, convener, and given that Linda Rosborough has volunteered to provide some information on that, I will hand over to her.

**Linda Rosborough (Scottish Government Marine Directorate):** The answer is yes and no.

**Richard Lochhead:** That is my line.

**Linda Rosborough:** The bill provides enforcement powers in relation to offshore marine protected areas. There are specific powers relating to byelaws, about which concerns have been raised. Those powers are conceived primarily to protect nature conservation sites that are very close to the shore, where there are concerns about jet-skis and other issues that might interfere with the site. That is a park-type control. The powers do not extend into the offshore zone.

There are one or two technical omissions from the bill relating to the extension of powers to other elements of relevant legislation. I will pass over to Stuart Foubister, who will provide a more legal answer. The two sets of lawyers are discussing amending the bill on that issue.

**Stuart Foubister (Scottish Government Legal Directorate):** Scottish Environment LINK also pointed out that the bill apparently gives no enforcement powers in relation to the wider nature conservation offences in the Scottish offshore zone. That is simply an error and it will be dealt with by amendment to the UK bill.

**Peter Peacock:** So you are negotiating on that with the UK Government.

**Stuart Foubister:** Actually, the UK Government spotted the omission itself.

**Peter Peacock:** So both those matters will be rectified, to the extent that you have described, as the bill proceeds.

**Stuart Foubister:** The first matter is that the byelaw powers will not extend to the offshore zone. That is the policy. As I understand it, they will not extend to the offshore zone in England and Wales either.

**Peter Peacock:** So that is on purpose.

**Stuart Foubister:** Yes.

**Linda Rosborough:** Yes, for the reasons that I explained.

**Liam McArthur:** I hesitate to quote the Scottish coastal forum again, given what Alasdair Morgan said, but it has suggested that there is a potential conflict of interest between the Scottish ministers' role as the licensing authority for the offshore region and their role as the enforcement authority. Do you perceive any potential conflict of interest in the new marine licensing arrangements? How will the arrangements be managed? The note that we received from the Government on the LCM suggests that any licence charge will be set simply to cover the costs and will not be at a level that will be a disincentive to new businesses. I am not entirely sure how that can be achieved in every instance. Will you comment on that, too?

**Richard Lochhead:** The Scottish ministers will issue licences and will therefore be responsible for enforcement. We do not see a conflict of interest in that—it is a sensible and practical arrangement. In many areas at present Governments issue licences and are responsible for enforcement. I hear what the Scottish coastal forum says, but we cannot identify any conflict of interest. We agree that the cost of licences should be proportionate. We have said all along that licences should not be disproportionately expensive and therefore an obstacle.

10:30

**Liam McArthur:** When fines are levied because of breaches of consent or licences, will the funds accrue to marine Scotland or the marine management organisation?

**Richard Lochhead:** Unfortunately, I understand the legal position to be that we would collect the money but would then hand it to the UK Government. That is perhaps an incentive for us to keep the fines as low as possible.

**Stuart Foubister:** The minister is correct: criminal fines generally find their way back to the Treasury.

**Richard Lochhead:** Unfortunately, that applies to all kinds of fines that are imposed by justice agencies in Scotland.

**The Convener:** So, we get all the opprobrium and they get all the money.

**Richard Lochhead:** I guess so.

**John Scott:** I would like to ask about financial implications. The costs of marine planning in the offshore zone will be met from resources for the Scottish national marine plan. That suggests that the Scottish Government will be providing the necessary funding for the new responsibilities that it intends to take from the UK Government. What

is the most up-to-date estimate of the on-going costs to the Scottish Government of the new responsibilities?

**Linda Rosborough:** We have included in the legislative consent memorandum an estimated cost of about £1 million a year for the additional responsibilities for nature conservation, which we regard as the biggest and most expensive element.

One reason for negotiating this whole package is that Scotland is already the major active player in the offshore zone. The Scottish Fisheries Protection Agency and the Fisheries Research Services both have boats that are actively involved in monitoring and enforcement. The Scottish FPA also has planes. Our intention is to make use of existing resources as far as possible.

We envisage that the new responsibility will be added to the marine planning responsibility, which will be part of the forthcoming marine bill. The additional cost that will flow from the extra responsibility will be fairly modest, we feel, when compared with the cost of major inshore activities. Most activities are inshore. The extra cost will be a small percentage of the overall cost of marine planning and the extra activities will go alongside marine planning. They will not be separate.

**John Scott:** In discussions with the UK Government, what progress have you made on the financial implications of shifting responsibilities?

**Richard Lochhead:** The UK Government said at the outset that no resources would be transferred to Scotland if we wanted the powers. However, as Linda Rosborough has just said, we already budget for our existing responsibilities.

As the member will recall from previous budget discussions in the committee, there is a budget line for such activities in future, once the marine bill is in place. It is difficult to sit here in 2009 and give exact costs for the next few years, but we have already built many of the costs into our plans. Our bill will allow us to deal with the waters from zero to 12 miles. The costs of the marine plan are already built in, out to 12 miles, so the additional costs of extending the plan out to 200 miles should not be great.

**Elaine Murray:** I have a more parochial question. Under the Scotland Act 1998 (Border Rivers) Order 1999, the Environment Agency manages a section of the River Esk that is in my constituency. As a consequence, the EA decided to introduce a system of rod licensing that did not exist in the rest of Scotland. The system caused a fair amount of local discontent. There was no consultation with local people and I do not think that there was much consultation with Scottish ministers either. My concern relates to any

consultation that may be done prior to an emergency order having to be made because of an event in the warmer waters of the south of England. What consultation would be done with you or with me and my constituents on such an order and its relevance to the situation on the River Esk?

**Richard Lochhead:** We would be keen to ensure that the UK Government consulted us on the matter. Indeed, there was press coverage last week on the River Esk and issues of this sort. Under the cross-border rivers legislation, we have responsibility for the River Tweed and the UK Government has responsibility for the River Esk. Given the concerns about the River Esk, I have asked my officials for an up-to-date report on the situation, which I have not yet received. I take on board the member's comments that we should ensure that we are consulted.

**Elaine Murray:** In looking into the rod licensing issue, I found that consultation was undertaken with UK ministers but not with Scottish ministers.

**Richard Lochhead:** I am happy to write to the committee on the point to give Elaine Murray the information she requests.

**The Convener:** As there are no further questions, I thank the cabinet secretary and his officials for their attendance at committee. There are no questions arising from the evidence this morning that require further elucidation but, if you have further information, please feel free to forward it to us. We will consider our draft report at our meeting of 25 February. Thank you again for coming before the committee.

**Richard Lochhead:** Thank you very much.

10:36

*Meeting suspended.*

10:38

*On resuming—*

## Climate Change (Scotland) Bill: Stage 1

**The Convener:** Item 5 is stage 1 consideration of the Climate Change (Scotland) Bill. Our focus today is on sections 52 to 61, which deal with waste reduction and recycling. Although we are a secondary committee on the bill, we are the only committee to take evidence on this chapter.

I welcome the panel: Professor Jim Baird of Glasgow Caledonian University; Pauline Hinchion, chief executive of the Community Recycling Network Scotland; Susan Love, policy manager of the Federation of Small Businesses in Scotland; and Dirk Hazell, chief executive of the Scottish Environmental Services Association.

Given that panel members do not represent one set of interests, members should make it clear to whom their question is addressed. Equally, if any panel member wants to contribute to a question that is addressed to another panel member, they should indicate and I will bring them in.

SESA has provided a submission to the committee and we have responses to the Scottish Government's consultation on waste management from the Community Recycling Network Scotland and the FSB, so we will move straight to questions from members. I come first to John Scott.

**John Scott:** Thank you, minister.

**The Convener:** Minister?

**John Scott:** Convener.

**Bill Wilson (West of Scotland) (SNP):** You are rising rapidly, convener.

**John Scott:** Everyone has zero waste as an objective, but is it doable? Can we achieve it in the real world?

**The Convener:** I guess that all the witnesses will have something to say about that.

**Professor Jim Baird (Glasgow Caledonian University):** Zero waste has its origins largely in New Zealand and Australia, where many of the initiatives started. Its purpose is to decouple waste growth from economic growth and to move us away from dependency on landfill and incineration. The debate often focuses on whether we should send waste to landfill, but zero waste is properly defined as trying to reduce consumption and the production of waste, followed by recycling, so that, in effect, society does not produce waste in the first instance. Zero waste is quite an emotive term and people tend to be polarised on the question of

whether it is doable, but everyone acknowledges that we should aspire to achieve it.

I mentioned New Zealand and Australia because they often present themselves as leading the way on zero waste, but I was there in September and was able to unpick some of their figures. Some of the major states in Australia are performing just slightly better than us on recycling, with figures of 38 or 40 per cent, as against the Scottish average of about 32 per cent. Although other countries portray themselves as leading on zero waste, Scotland is doing rather well. Zero waste is an aspiration—the real challenge is consumption in society—and it is unlikely that we will ever reach the point of zero landfill.

**Pauline Hinchion (Community Recycling Network Scotland):** I see zero waste as achievable. The CRNS has tied its colours to the mast of zero waste but, if that is to be achievable, we must move away from the notion that it is about managing waste and recognise that it has implications for the whole economic system—it is about how we design, produce and consume our products. If we look at zero waste in a comprehensive sense, it is achievable, but in Scotland the concept is seen as being about preventing landfill, which reduces its ability to make a significant contribution and to be achievable.

**Susan Love (Federation of Small Businesses in Scotland):** It is important to make the point that the owners of most small businesses are just people who share the environmental concerns of the public at large. There is a general desire among businesspeople to reduce their businesses' carbon and environmental footprints, but zero waste is a concept that does not seem particularly realistic to many small businesses. We have suggested that a more helpful approach with small businesses is to promote the resource efficiency angle of waste reduction.

**Dirk Hazell (Scottish Environmental Services Association):** Scotland is already falling short of meeting its obligations to divert a certain amount of biodegradable municipal waste from landfill by 2010, and the European Union waste framework directive that was put in place at the end of last year will apply further specific recycling targets to Scotland. In that context, it is probably more helpful to focus directly on the European target, certainly in legislation, than on a phrase such as zero waste, which has a slightly different meaning as used by the Scottish Government from the meaning that environmentalists originally gave it.

I agree strongly with what Pauline Hinchion said about product policy: if we want to get long-run amounts of waste back into the productive economy, products must be better designed in the first place. Realistically, however, some waste will

always have to go to landfill—for example, if committee members were unlucky enough to have to go to hospital, I do not think that they would want to see recycled syringes being used.

10:45

**John Scott:** Is the current waste infrastructure sufficient to meet current and future waste policy?

**Dirk Hazell:** There is nowhere near enough waste infrastructure anywhere in the United Kingdom to comply with existing European obligations. In Scotland, we need to accelerate our transition from a disposal to a recycling society, but to do so requires more infrastructure. It also requires much stronger green public procurement to give an impetus to recycling markets—there is a bit of provision for that in the bill, but it is anaemic.

**The Convener:** Does anybody else want to comment on that aspect? You do not all have to.

**John Scott:** The question is whether current waste infrastructure is sufficient to deliver for the future.

**Pauline Hinchion:** I agree with Dirk Hazell that the current infrastructure is insufficient and, ironically, that is probably particularly the case outside the municipal waste stream. There has been a focus on that infrastructure at the expense of construction, demolition and private-sector waste, but wider public sector bodies have invested insufficiently in managing and reducing their waste. I welcome the Waste and Resources Action Programme anaerobic digestion grants for food waste in particular because there is no doubt that the methane produced when organics are put into landfill has a significant effect on greenhouse gas emissions. We need to get to grips with that aspect, which has been a poor relation up to now.

**Professor Baird:** Let me respond to SESA's comment about the zero waste concept being unhelpful. Any waste is a measure of inefficiency in society, whether it comes from a small business, a home or a big business, and when we attempt to deal with that, it means that we are all engaged in the process. When we try to communicate policy initiatives that have been introduced by the current and previous Administrations, it is useful to engage the public through the concept or brand of zero waste, which I think is a helpful device. The Cabinet Secretary for Rural Affairs and the Environment has set targets that go beyond the European waste framework directive, which means that, in many ways, we lead the UK and Europe in setting demanding drivers on waste.

**Susan Love:** The FSB has been involved in the issue of recycling waste for several years, investigating possible further options for small and

medium-sized businesses, but we keep coming back to the same problem that there are no facilities for SMEs to use. The committee will see that point running through our written response. It will not be remotely possible to implement many of the bill's measures unless we make progress with facilities, and the local authorities' comments about why their waste services for businesses are limited bring us back to the lack of resources for infrastructure. Unless that central problem can be solved, we fail to see how parts of the bill can be implemented.

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

We have heard that the zero-waste initiatives target the end product rather than the start of the process. We have also heard, from producers, that if we do not use packaging we will end up with more waste because more products will be damaged. Is there a balance that needs to be struck?

**Professor Baird:** Packaging exists for a reason: it protects products and ensures that, for example, our fruit and vegetables arrive in the shop safely. If we were simply to bundle apples into a big box, more would get bruised and subsequently thrown away. We fully accept, therefore, that there is a role for packaging.

Through the Courtauld commitment with retailers, we are trying to drive down the amount of packaging by 25 per cent over the next couple of years. That should result in, for example, ready-made meals coming with a little watchstrap of cardboard around them rather than a full cardboard box. Attention is being paid to design, which is resulting in reductions in the packaging that is used. You are right to suggest that we need to balance a reduction in the use of packaging with the need to maintain product integrity.

**Pauline Hinchion:** Tesco would argue, rightly, that there is a spoilage rate of about 30 per cent in food that has no packaging and, given what we were just saying about methane being dangerous for greenhouse gas emissions, we have to take cognisance of that.

Like Jim Baird, I suggest that we need to think about the type of packaging that is used. Do we need many layers of packaging made up of plastic, cardboard and foil around one item? Could we simplify the packaging so that it is more readily recycled? People have not got to grips with the notion of refills. How do we encourage people to reuse their packaging so that, instead of buying new containers of Fairy Liquid, they refill their old container? It is too simplistic to say that we will be able to do away with packaging or that having no packaging is best for the environment.

**Elaine Murray:** Last October's European Union waste directive indicated that there should be a

hierarchy of ways of dealing with waste, with prevention being the most desirable method, followed in descending order of desirability by reuse, recycling, energy production and landfill. Do you agree with ministers that the bill takes sufficient cognisance of the EU framework, which will come into legislation in the next two years?

Local authorities have decided how to deal with municipal waste without having had regard to the framework. Some areas are considering autoclaving waste, while others are introducing power-from-waste plants. The local authority that covers my constituency recycles a certain amount of waste but uses quite a lot of the paper and plastics to produce power. I am concerned that our local authorities might be going in a direction that the EU has now abandoned. Do you think that the EU framework has an impact on local authority policies?

**Dirk Hazell:** The bill clearly does not take sufficient cognisance of the EU framework.

There are two fundamental issues about the bill. One is that it proposes extremely wide powers for ministers, and ministers have not explained to Parliament exactly what those powers will mean in practice. For example, in sections 52, 53, 54, 56 and 57 the Parliament is asked to confer on ministers powers to turn unspecified classes of people into criminals on whom unlimited fines can be imposed. That is a question for the Parliament, and it will be interesting to see what scrutiny you apply to the minister on that point.

Secondly, I have a more general point about terminology—there is some disagreement between Professor Baird and me on this. It is one thing to use terminology for the purposes of public presentation; it is quite another to use it in a bill. It is extremely unfortunate that the bill does not reflect the terms of the waste framework directive. References in the bill to recycling do not address Scotland's duties under article 11 of the waste framework directive, which is specific on recycling. The definition of "recycling" in the directive is different from the definition in the bill. The fact that the Scottish Government does not have the courage to advocate energy from waste is not a reason to include unhelpful terminology in the law. If the Scottish law means "recycling" it should say "recycling"; if it means "general recovery" it should say "general recovery."

Your question had a number of components, but I should let other witnesses comment.

**Professor Baird:** There is an interesting point in that, although Governments and Administrations have tended to focus on challenging local authorities to deliver on recycling, this bill tries to address the other major part of the waste stream, which is commercial and industrial waste. It also

picks up on fairly innovative ways in which we can move towards the aspirational, longer-term, 70 per cent recycling target. As members know, the bill is an enabling bill, so at some point the Administration will have to come back to the Parliament to define other measures.

When clear signals are sent to producers and the waste sector about what is expected or required of them, they will deliver. We have sent clear messages about landfill tax, and strong messages have been sent to councils and the retail sector about reducing packaging. When such messages are sent, people sit up and respond. The bill is trying to send innovative signals to producers and the waste sector about how Scotland wants to deliver on ambitious targets. I broadly support the approach, which is quite innovative for Scotland.

**The Convener:** Do you take issue with Dirk Hazell's comment about the Scottish Government's lack of courage?

**Professor Baird:** SESA is making a point about capping energy from waste. A dash for incineration would be the simplest solution for all of us, but when we start to consider how to drive forward recycling and waste prevention, we might be right to temper our enthusiasm for energy from waste.

**Elaine Murray:** Is that not in accordance with the view in the waste directive, which puts recovery of energy in fourth place out of five approaches to waste?

**Professor Baird:** Indeed. We are talking about a hierarchy, and we should focus on prevention, reuse and recycling. The current Administration has taken a policy decision on capping energy from waste.

**Dirk Hazell:** I do not want to monopolise the discussion, but I want to ensure that what I have said is clear. The bill should use the term "recycling" in the same way that the waste framework directive uses the term. The WFD gives a precise definition of "recycling": putting material back into the economy for productive reuse. The word should not be a cover for other things that are not recycling, as using a very wide definition of so-called "recycling" softens the target for the Scottish Government. Scotland is twinned with Bavaria, which has a recycling rate of around 75 per cent. In that context, we are not being ambitious.

11:00

**Alasdair Morgan:** Am I right in thinking that the waste framework directive does not have to be transposed until 2010? Are you saying that if we pass the bill in its current form, we would be in

breach of that directive, which was finalised only in October?

**Dirk Hazell:** My point is simple. European law is a statement of what states such as Bavaria—with which Scotland is twinned—achieved some time ago. European law sets a waste target that is difficult for us to reach because waste has been ignored for generations. We have had cheap landfill for a long time and we must make huge investment in infrastructure.

As I say, my point is simple. Because European law is the driver, Scottish law ought to reflect our obligations under European law. Compliance with European law ought to be made as simple as possible in Scotland, particularly as, I suspect, the context is one in which the Scottish Parliament and the Scottish Government will not devote vastly more generous resources to dealing with waste than are thought to be absolutely necessary to achieve compliance.

**Susan Love:** I want to pick up on a couple of points that Dirk Hazell made in his first comments, in case we do not return to them. They are quite important from our perspective.

First, it is important to mention again the powers in the bill. I represent the FSB on the regulatory review group. The bill takes massive enabling powers, which, from our perspective, is extremely unhelpful if we are trying to work out what the potential impact of the legislation might be. Consider, for example, waste prevention plans. On the one hand, the Government might be looking at bringing in waste prevention plans for construction sites, which is quite logical; we can see the point of that. However, the bill also gives the Government the power to require waste prevention plans for all business premises in Scotland. There is a vast difference between those two objectives, but all of that can be achieved under one section. We do not think that that is a helpful way to draft legislation if we are keen on having better regulation.

My second point is about local authorities' plans. Local authorities are critical from the SME perspective. Municipal waste includes a lot of business waste. Local authorities have invested money in recycling facilities for the public, but they will, in some circumstances, still pick up from business mixed waste that is not segregated. That seems to us to be utter madness. It is important to bear it in mind that municipal waste includes SME waste.

**Liam McArthur:** I would like to return to the point that has been made about infrastructure, which is relevant to Susan Love's point about uncertainty arising from the enabling nature of the bill. Obviously, we have come quite a way from being extremely far behind in our recycling rates—

I think a current rate of around 30 to 32 per cent has been suggested. I am interested in whether that kind of percentage is locked in. I refer to SESA's evidence on section 58, which is on deposit and return schemes. There is a suggestion that, under the bill, the Government might take decisions on deposit and return schemes that will divert infrastructure investment and that any gain may come at the expense of losses in other areas. Could decisions result in zero-sum games? I am interested in Mr Hazell's comments and those of the rest of the panel on that.

**Dirk Hazell:** That is a very pertinent question. From an appallingly low base—lower even than that of England, which was quite difficult to achieve—there has been a 500 to 600 per cent increase in recycling in Scotland since devolution. That is a very short time, and the increase has been achieved much more quickly than anything that has been done elsewhere in Europe. It has been achieved on the basis of some investment and some assumptions. By and large, the strategy has been to try and persuade most householders to think of themselves as recyclers and, through their collection system, to increase recycling progressively.

It is an undeniable fact that deposit and return works very well in a number of European countries. Our point is that we cannot keep chopping and changing. Whatever Scotland goes for must remain stable between Administrations. If we superimpose deposit and return on infrastructure that has already been put in place for home-based collection systems, that will not bring about the best value for money for the infrastructure that is already in place. It can be confusing for the public if they keep getting different signals. The public want to know how to recycle. Most people want to be recyclers now, which is a much better situation than before devolution. There needs to be consistency between Administrations.

I have looked through the deposit and return briefing that the committee has received, and there is not one word of justification in it for changing to such a system. It is incumbent on the ministers who come before you to say why, exactly, they think that it would provide a better model than the model that has been employed in Scotland so far, which has raised recycling levels at a record rate. Why do they think that deposit and return is better? Where is the life-cycle analysis? Where is the cost benefit analysis? You have not been given one fraction of a sentence on any of that.

**Pauline Hinchion:** There are concerns about that proposal. I can see deposit and return schemes impacting on kerbside collection, with people making additional journeys to return

containers because of the financial incentive. That could undermine the kerbside recycling schemes that have been set up.

There is a driver behind the idea, however. There are concerns on the part of reproducers—the Confederation of Paper Industries and O-I, the glass people, for example—that the quality of the stuff that comes from kerbside collections is just not good enough. You will have read about the matter in the papers over the past couple of weeks, including in *The Observer* last weekend. Unless kerbside collection is done well, by which we mean that it is source separated at the kerbside, reproducers get mixed-colour glass, which can only go for cullet in road making. If it is not properly sorted, it cannot go back into the reprocessing and manufacturing process. It would not surprise me if a large number of deposit and return schemes are being punted because a better quality of return might result. As long as materials are commingled, quality suffers. As a result, reprocessing opportunity suffers.

**Susan Love:** We were relatively relaxed about the deposit and return idea when it was first being discussed by the Government. The more we consider the evidence, however, the more we are becoming concerned that it might not be an appropriate approach, particularly because we are trying to push the message that the schemes that have worked for households have involved making recycling as easy and accessible as possible for people. Some elements of deposit and return seem to reverse that. It does not seem to make a great deal of sense.

**The Convener:** I wonder how easy and accessible householders think the various schemes are, and are becoming. I have seen some very complicated calendars for various pick-ups, and it is easy to understand why people have become confused and fed up with the whole process. I wonder what would happen if we went even further with separation at the household level—I wonder what kind of resistance we might start to hit. That in itself might become a barrier.

**Pauline Hinchion:** When local authorities roll out new kerbside services, there is rarely an intensive awareness-raising campaign. People might get something through their doors to say that the council is now picking up paper fortnightly on Tuesdays, for instance, but that misses the point that behavioural change is difficult to achieve. People need consistency, and there needs to be a relentless effort to get them to appreciate what is being done.

A good example was recently provided by the Welsh Assembly Government. One local authority in Wales actively engaged with people, knocking on their doors and telling them about the scheme. People will get the message that way, but councils

cannot just come up with a commingled or three-bin system and expect people to understand why it has been introduced. Not enough attention is paid to awareness raising and giving out information. Having a website is not enough; it requires resources and knocking on people's doors. However, when people get it, they really get it.

**John Scott:** The system in South Ayrshire works very well; the council is second-top of the league for recycling and the complicated planners that the convener mentioned seem to work. Here in Edinburgh, however, I do not quite know how to go about recycling. I am an avid recycler, but I do not know how to do it here.

**Dirk Hazell:** Susan Love and Pauline Hinchion have made entirely valid points, but it is necessary to be pragmatic, rather than dogmatic. Different collection systems will work well in different places. What works in an urban area where there are tenements will be a very different collection system from what might work well in suburbs, where people have front gardens and live on quiet roads.

Pauline Hinchion made one important point that I must rebut. She said that commingled collections result in poor-quality materials for recycling. Given the amount of investment that is going into material recycling facilities—MRFs—that is not in fact the case.

I will not be rude about *The Observer*, which is usually on the side of the angels on green issues, but you should not believe what you read in the Rothermere press. The photographs that were shown of bales of paper that were allegedly stranded at a London facility two Sundays ago did not tell a true story. That paper was in fact going on for further reprocessing. It is important to make the point that SESA's members are still placing materials for recycling, based on commingled collection, for further use on international and domestic markets, even in the heart of one the worst and most rapid falls in commodity prices. That material is being used. One should not be too dogmatic about commingled and separated collection.

**Professor Baird:** I return to the point about undermining the existing infrastructure. One of the challenges for Edinburgh, for example, is that only 100,000 households can get a box collection service. Another 100,000 at least—perhaps 130,000—cannot. Much of that is to do with property types. We want measures to be introduced to make it easy for all of us to engage in recycling. I would not wish to deny people living in flats and multirise premises the opportunity to recycle. If they can go along to their local Tesco or Asda and use a deposit and return system, that is great, and that should be welcomed. Recycling on the go, at events and so on, should be in place, too.

My only slight concern about deposit and return is about how it sits with attempts to drive through change using existing packaging regulations. How could Scotland go it alone in that regard?

**The Convener:** We need to move on. We have done quite a lot on that subject, and we need to get through some more.

**Peter Peacock:** I wish to hear some comments from Pauline Hinchion and Professor Baird on the point that Dirk Hazell and Susan Love have covered, about the sections of the bill that deal with waste—sections 52 to 59—and the extensive enabling powers that are being sought. Is that the right way to proceed, as a matter of principle? Do you have concerns about that? Do you see any disadvantages in that approach? Dirk Hazell and Susan Love have already made known their points of principle in that regard.

Then perhaps everybody could answer this second question. If you have concerns about the provisions, what is the alternative? What are you suggesting? Do we await the next primary legislative slot? Perhaps Professor Baird and Pauline Hinchion could start on the first point.

11:15

**Professor Baird:** I cannot comment on the parliamentary process and, therefore, the benefits of taking significant powers and introducing secondary legislation later. We have focused on municipal waste in the past, but we also need to target business, commercial, industrial and other waste streams. We acknowledge that our data and ability to target those waste streams are a little bit restricted because of limited policy levers. I broadly support the fairly ambitious and innovative steps that are proposed, particularly if they target waste prevention. One reason for encouraging businesses to measure their waste is that if they cannot measure it, they cannot manage it; measuring it is the first step in trying to reduce and recycle business waste more effectively.

**Pauline Hinchion:** In one sense, the bill is really ambitious. It gives people powers finally to take control of the situation. Ultimately, if we are to achieve an 80 per cent reduction, somebody has to manage the process. In that sense, it is good. However, there is a danger that everything will become instrumental and the concerns of small businesses or householders will be ignored. When people are given so much power, it can become all about delivering on the powers, the control and actions.

I will give an example. We have members in Shetland who collect, recycle and reprocess glass into really nice glass awards. Theirs is a small business, but Shetland is a small place and they do great work. Under the bill, it would probably be

better for the climate if they just put the glass on to a ship and sent it down to Alloa to be processed.

We have to be careful that the powers do not become too instrumental and that some of the other factors that may have to be taken into consideration are not ignored. That is what I would be concerned about, if that makes sense.

**Alasdair Morgan:** I did not understand that point. You said that, under the bill, it would probably be better if the people in Shetland shipped the glass to Alloa. Are you saying that their net use of energy would be less if they shipped it to Alloa?

**Pauline Hinchion:** Yes.

**Alasdair Morgan:** That is nothing to do with what the Government says; it is just a fact.

**Pauline Hinchion:** No—I am sorry, I meant that it would probably be easier to achieve an 80 per cent reduction if they just shipped the glass to Alloa than if they continued to collect and reprocess it, but there is a job creation and social side to that activity as well.

**Professor Baird:** Some work that we have done at Glasgow Caledonian University shows that, if we move towards the levels of recycling targets that we are talking about and crack waste prevention, the waste sector could contribute around 6 per cent of the 80 per cent reduction that you want for 2050. That is a significant contribution towards achieving the carbon reductions.

**Susan Love:** I am sceptical, because I have yet to see many powers that have been taken not subsequently being used when Governments want to make annual reports and show that they have taken action. The Federation of Small Businesses in Scotland is nervous about powers being taken with the assurance that they might not be used.

I also have concerns about the level of scrutiny for secondary legislation. Legislation that affects business is often made through secondary legislation and, in our view, the development process for it simply does not attract the level of scrutiny and attention that primary legislation does. It is also harder to change secondary legislation.

My third point is about timing. All through the policy memorandum, there are phrases saying that the Government has to take powers now or might as well take them now, but I do not understand the justification for that. Why is there a sudden rush to confer all the powers now, as if there would be no further opportunity in future? It is not as if the problem will go away.

The Government should simply decide what it wants to do. I am not saying that there is no

ambition, but the bill speaks to me of hedging your bets. The Government suggests throughout that it will probably not need to include small businesses in these provisions or that there may be a de minimis route for that; if so, why is the bill not drafted to say that provisions will apply only to public bodies or large businesses? The same point applies to recycling options. After all the consultation that has taken place, the Government should have a clearer idea of what it wants to do and should draft the bill accordingly.

**Dirk Hazell:** I agree with much of what Susan Love said. We warmly welcome what we assume to be the principal intent of the bill. Our industry is about helping to make the planet more sustainable. We exist only because of regulation—our job is to provide what is safe for the environment and human health. However, as Susan Love said, the bill is very imprecise; it has not been thought through in the way in which one would have wished. If we as an industry are to be on the receiving end of some of the powers that are being sought, we would like to know that at the primary legislation stage, so that we can demonstrate outside. It is much more difficult to do that at secondary legislation stage.

Section 56 is on the procurement of recycle. Any Government in the European Union ought by now to be coming up with pretty tangible figures for green public procurement. There are some in Scotland, but they are not very ambitious. In construction and demolition, such figures make a lot of sense. Our members in the Netherlands are getting 99 per cent reuse and recycling from construction and demolition; with the right regulatory framework, that is easy to do.

I turn to section 53. Our industry has said for years that we really want better information on waste. The Government needs more data to inform its policy on both household and business waste; we welcome the recognition of that need. However, under section 53 the Government will have the power to create a criminal offence with unlimited financial liability. On whom will that offence fall? If it falls on our members, we will have a problem, because we do not necessarily know what is in the waste that our customers provide; we rely on the waste producers, especially those on the business waste side, to tell us that. Susan Love and I may not agree on the specific point of who should assume liability for waste data, but we agree that there is a political issue to be resolved, and that it should be addressed in primary legislation.

**The Convener:** Some organisations have indicated to us that they object to the use of enabling powers—they want powers to be enacted through the bill. You appear to take the opposite view—you would be even unhappier about that

than about the inclusion of enabling powers in the bill.

**Dirk Hazell:** As an industry, we would be happy with clear regulatory powers for collection of data that applied on a level playing field—which is more than we have at the moment—and were enforced. That is our basic position. Our secondary position—this is where Susan Love and I part ways—is that the primary duty should be on the waste producer, rather than the waste manager.

**The Convener:** At this stage, we are talking at a slightly higher level. The bill includes enabling powers that may or may not subsequently result in subordinate legislation. I take on board Susan Love's scepticism and her suggestion that if the Government can do something, it will. However, I suspect that if she were to look at some of the legislation that we have passed over the past 10 years she would find that that is not the case. Some organisations have lobbied against the use of enabling powers that would allow us to do one or another or everything that the bill mentions at a future date; they say that we should do those things right now. Do you not want that, either? Dirk Hazell appears to be saying that the bill is flawed to the extent that none of the enabling powers should be enacted in the way in which they are being presented at the moment.

**Dirk Hazell:** I am saying that, if we want to create new criminal offences with unlimited financial liability, the primary legislation should say who the guilty people will be.

**The Convener:** So you do not want the powers to be enacted as they are in the bill.

**Dirk Hazell:** The bill should say who the guilty people will be.

**The Convener:** Right—you do not want the powers to be enacted as they are at present.

**Dirk Hazell:** We want more precision.

**Susan Love:** We do not want them to be enacted because the bill does not say exactly what the Government wants to do. The proposed powers are so wide that it would be hard to say what we would be putting into legislation if we enacted the bill as it stands. That is the problem.

**The Convener:** So you would rather not have to wait for the subordinate legislation—you want the details to be in the bill.

**Susan Love:** If we are to have an argument about whether the provisions on waste plans will apply simply to construction sites or to every business premises in Scotland, I would rather that the Government was clear about its view and that we had a debate among our members, rather than have me fight it out with an official behind closed doors.

**Pauline Hinchion:** I have concerns about enacting the powers as they are drafted, because, as Dirk Hazell pointed out, the term “recycling” is used in the bill for recovery and reuse. Reuse should be higher up the waste hierarchy. It seems that many processes have been concentrated into the term “recycling”. That will not allow for the infrastructure that is required for reuse or for the way in which re-usable material is procured compared, for example, to the procurement of recyclate.

**Professor Baird:** I am broadly supportive of the measures. If we are challenging ourselves to deliver more and better reuse, waste prevention and recycling, the powers in the bill are the kind of powers that we should take. The bill is written in a language that is so broad that it is difficult to understand where the responsibilities will fall. However, I broadly accept that that is the way in which Government legislation works. The broad powers are taken and then there is a debate and argument about how they are delivered. I hope that several of the measures will be taken at the earliest opportunity.

**The Convener:** We need to move on. Elaine Murray has some questions, although she may feel that some of the issues have been covered.

**Elaine Murray:** Yes. Dirk Hazell touched on the media coverage of piles of recyclable material sitting in warehouses. On the news last night there was another item showing vast stores of recyclable paper and plastic. Strangely, a UK Government adviser implied that the carbon footprint of recycling means that it is not worth doing and could actually have a deleterious effect. Will you say a bit more about the current economic situation? Will you also talk about the science and the arguments on whether some things that we do when we attempt to recycle do not do as much good as we hope they do?

**The Convener:** I will add a point that follows on from Elaine Murray’s question. A personal bugbear of mine is that an awful lot of recycling is predicated on people loading stuff into their cars and then driving it to a central point. When I have queried that in the past, I have found that nobody ever factors that into the equation. That takes us back to points that Pauline Hinchion made earlier.

**Dirk Hazell:** If I may say so, you have hit on one of the most important points underlying the debate. Every time we talk about the environment, we are in the area of theology as much as substantive science. It is difficult for you as public leaders to do the job that you are asked to do without knowing what the most sustainable route is. The Organisation for Economic Co-operation and Development—an international organisation that is based in Paris and which the UK is a member of—has for years tried to get

internationally agreed measures of sustainable conduct. The typical pattern is that a particular Government says to the OECD, “We want these figures, because they make us look really sustainable.”

As a reaction to that, various sectors are developing their own measures of sustainability, although that is not as satisfactory as international public agreement. Our sector is doing precisely that. We are not entirely satisfied with the indicators that the regulators have come up with throughout the UK, so we are developing our own robust measurement to show the carbon footprint of individual facilities, which we hope will be done by the end of 2009. That will enable people to compare the carbon footprint of one facility with that of another, which will enable benchmarking and raise overall standards. However, I do not pretend that that is as good as having robust analysis. WRAP has produced no end of stuff, some of which is quite good, but it is not scientific analysis that shows exactly, for example, how recycling something is by far the best thing to do; it is just a collection of other people’s work, by and large. We need robust international—or European, at least—agreed measurements of sustainability. That would make this sort of bill much easier to implement.

11:30

**Susan Love:** I will let the experts next to me comment on the science. On the economics, though, the situation has deteriorated significantly since we started talking about the bill. We have made the point to the Scottish Government that, given the potentially vast costs to businesses of certain provisions in the bill, we do not think that this is the time to send out the bill’s message to business.

**Pauline Hinchion:** To me, there are two sides to the question. One side, with reference to section 53, is about data quality and how we standardise the various accounting mechanisms that are in place. Every time I go on to the internet there seems to be a new carbon accounting tool. The issue is how we ensure that we measure in the same way and are not comparing apples with pears. There are therefore problems around data quality, the type of data that are collected and, more important, how we measure data—I think that that was Dirk Hazell’s point. Instead of everybody using their own carbon accounting tool, we must get agreement on how we measure data.

The other side of the question is the quality of recyclate. The campaign for real recycling, whose members are recyclers and reprocessors, and the Confederation of Paper Industries have said in the past few weeks that there are good prices for good-quality material. However, the media

bombard us with the incorrect perception that, in the recycling world, nobody is selling recyclate to anybody. We are not selling poor-quality stuff, which I would argue with Dirk Hazell comes largely from the commingled approach, and there are good prices to be had, as two reputable bodies have said. Ironically, the article on recycling in *The Observer* was about somebody following their basket of recycling to its logical conclusion. The interesting point is that because the London Borough of Hackney Council does source-separated recycling, the collected bottles, plastic, cardboard and paper are recycled in the UK. It is clear that our reprocessing industry needs quality material. The situation looks worse than it is, but we must have quality material.

**Professor Baird:** I have two points: one on environmental impacts and the other on paper. Through the remade Scotland programme, which the Government funds, we did some work with the Convention of Scottish Local Authorities on the drop in prices since August. There has been a significant drop, but material continues to flow. In particular, in local markets for recyclate such as glass, which is largely dealt with in Scotland and in the UK, prices have held up. Prices have also held up for materials flowing into the compost market. Paper prices have partly held up because we have domestic demand for it, but we ship some paper to China and other places overseas. Because there have been collapses in some areas, we have a fragile economy that is trying to establish itself. It is a little bit vulnerable, but material is still flowing. It is therefore a pity that the media choose to present it in a negative way.

We can take two approaches to considering environmental impact or sustainability. To make my argument, I will take carbon as a surrogate for sustainability. We can take a life-cycle analysis or an inventory analysis. Unfortunately, countries take an inventory analysis. If we ship bauxite over here from Australia to make aluminium, Australia picks up the tab on the bauxite production side, and we pick up the tab when we melt the bauxite or process it into cans. Issues arise because of countries owning inventories.

Life-cycle analysis considers the broader, global perspective. It has been said that with the bill, Scotland will take a more holistic, global point of view. We see that happening on the issues of air transport and shipping emissions. Although I am not sure how it will work, we have to think globally on those issues.

Dirk Hazell is right to say that there is no nationally or internationally agreed approach. My views are based on every study that I have worked on, reviewed or learned about.

There are four elements to recycling. The first is the collection process, which includes taking

materials in vehicles to collection centres. The second is reprocessing and sorting the materials for particular markets. The third is the displacement of aluminium from our recycled aluminium. The fourth is landfill. From the studies, it is clear that the impact of the first two elements—which include people taking their cars to the local civic amenity site—is small in relation to the environmental impact of methane from landfill sites. Unquestionably, there are gains to be made from substituting raw materials with recycled materials. Even if lots of trucks are running around to collect materials, the impact is insignificant when compared with the gains that can be made elsewhere. The difference is huge.

The direction in which we are going, and the measures that are being proposed, are contributing to reducing Scotland's greenhouse gas emissions.

**Elaine Murray:** I want to ask about the reliance on voluntary agreements. We are probably achieving the targets that were set for last year, but future targets are pretty ambitious. At the moment, things are being left to local authorities. However, in the same way as issues arise internationally, issues may arise to do with the way in which local authorities count their contributions towards reducing their greenhouse gas emissions. People in local authorities sometimes consider issues in silos and say, "Once we give it to somebody else, it doesn't really matter."

Will it be possible to achieve the 80 per cent target without using more of a stick? Landfill fines have been suspended, so there is not much of a stick there at all. Will we need more of a stick in later years so that we can meet the targets?

**The Convener:** I will ask Susan Love to answer that one.

**Susan Love:** From a grass-roots business perspective, I cannot see any point in a stick being used if there is nothing that businesses can do. You cannot force businesses to recycle if no recycling facilities are available.

**Elaine Murray:** I was thinking more about the responsibilities of local authorities in achieving the targets.

**Susan Love:** I am sure that COSLA will give you a good response to that next week.

**Professor Baird:** In 2003 and 2004, I worked with most Scottish local authorities to help them to decide how to spend the strategic waste fund that was available at the time. I remember sitting down with many councils and trying to figure out what recycling could be achieved for the available money. At that time, we were planning for 25 or 30 per cent. We are now going through another

exercise with councils, and this time we are thinking about achieving 52 or 54 per cent.

A cultural shift has taken place in the way in which people think about recycling. I stood in Tesco in Wishaw the other day with my daughter, and we saw just how many people there now bring their own bag; and I go to my local civic amenity site, and I see people engaging in the whole idea of recycling. There has been a cultural shift.

If you had asked me four or five years ago where we would be today in terms of recycling, I would have said, "Nowhere." If you asked me now, I would say that 60 per cent could be delivered. If you asked me again in five years' time, I would say that perhaps 10 years from now, 70 per cent could be achieved. There is a shift in how we as a people are responding to the issue.

**Dirk Hazell:** I agree with both the previous speakers. We believe that the landfill tax is proving to be quite a good driver, and we think that by 2011, when the tax reaches £48 a ton, it will begin to be quite an effective driver of business behaviour in particular. The tax works on the polluter-pays principle, and it sends a long-term, clear signal. All our leading members believe that it will drive higher levels of recycling within the business community.

There is a caveat, in that the higher the landfill tax rises, the greater incentive there is for criminals to bypass the regulatory system altogether. There have been quite serious problems with that in Scotland, and we need to ensure that the white van tendency is regulated out of business. We welcome the establishment of specialist procurators fiscal, and we have asked for the Scottish Environment Protection Agency to be given additional resources to capture criminals in the first place.

We support putting up the landfill tax, probably to well above £48. We think that a long-term, clear signal will suffice—particularly with regard to business waste—to change behaviour. However, some of that landfill tax revenue must be used to protect the landfill tax revenue by providing resources for extra procurators fiscal on the environment side so that cases are brought to court, and extra resources for SEPA on the prosecuting side so that it can capture criminals in the first place. Those two things cannot be separated.

**Pauline Hinchion:** I agree with Elaine Murray—once we get beyond the easy hits on recycling, and we talk about a figure of 80 per cent, significant cultural and societal change is necessary. We all think that it will be enough simply to increase recycling, but it will not: it will require much more than that. One of the great things about the bill is that it includes aviation,

which is an area in which we will require big cultural and societal changes.

My concern is that we use the stick all the time. I would like a bit more carrot to be used, particularly on a smaller scale. We need to encourage people and reward them for being citizens and taking proper responsibility for their environment.

**John Scott:** Some of the submissions have suggested that there may be policy divergence between Scotland and England. What might be the impact of the possible divergence in waste policy in Scotland from the policy in the rest of the United Kingdom?

**Susan Love:** I suspect that you would get a different answer from us than from the Confederation of British Industry Scotland. Most of our members operate within Scotland, so they would not be subject to two different regimes. The issue arises of putting businesses at a competitive disadvantage if they are required to comply with more onerous regulations—and their associated costs—than are businesses south of the border.

The other issue is that in developing a regime with carrots and sticks, I suspect that the Government south of the border will introduce fiscal incentives to accompany some of the options to reduce waste. We do not have such a package in Scotland, so our approach might have to be slightly different from that south of the border.

**John Scott:** Coca-Cola, for example, has concerns about there being different policy in that area in different parts of the United Kingdom.

11:45

**Dirk Hazell:** I agree with Pauline Hinchion's final comment—we need a cultural change. In particular, we need stronger laws on producer responsibility: there is a generic provision in the new waste framework directive for extended producer responsibility. When you talk about waste policy, you are talking about European Union law and global markets for materials.

Going back a few years, one distinguishing feature of the UK was that waste was cheap, therefore there was no incentive to be criminal. Also, the whole country was run as an island. In effect, devolution has put us into exactly the same position as any other mainland European member state—we face the same issues.

The cost of waste treatment in Scotland should be broadly the same as the cost in England. There should be roughly the same standard of enforcement of regulation—in other words, zero tolerance for environmental crime—in Scotland as in England. If we are to get the best possible value, we will need to put in place broadly

compatible regulations. For example, in terms of requirements on data collection, it makes no sense to require one part of the European Union to collect data in one way and for another part to have to do things differently. It makes even less sense for that to happen where there is a common land boundary, as is the case with the Irish Republic and Northern Ireland, and Scotland and England.

The last thing that we want is for waste to be moved around the country as a result of regulatory arbitrage between England and Scotland. The EU directive contains a broad statement on the proximity principle. As a general rule—certainly, for the initial treatment stage—we should stick to that principle. We need to make life as difficult as possible for the criminals.

**Professor Baird:** Under English law, provision is made for site waste management plans that cover construction sites. England has chosen to go it alone on that one.

I agree that there are concerns. We have to be mindful of the impact of competition on the bill. I am thinking of deposit and return schemes and how the new measures will sit with existing packaging regulations.

In principle, dealing locally with waste and providing services at the local level should not affect competition south and north of the border or how business functions across borders.

**John Scott:** It is all very well for us to talk about comparing the situations in England and Wales and in Northern Ireland and southern Ireland, but what about comparing the UK or England and France? Will there be uniformity, or could we be putting retailers at a disadvantage? For example, will international retailers buy into what we are doing in Scotland as opposed to what is being done in France, Italy or wherever?

**Professor Baird:** We have struggled to get consistent product labelling from retailers at the international level. Challenges lie ahead in that respect. Europe is coming at the issue slightly differently from the way in which Scotland is doing things. Europe has an established mix of energy from waste, recycling and landfill. Given that Scotland has less of an appetite for energy from waste, we have to compensate by focusing on the recycling and recovery side. That said, in fairness to Europe, it is pushing hard on recycling.

There is uniformity in the ways in which waste is dealt with—global markets are involved. That said, a large element of waste will always be dealt with using local solutions. For example, a huge amount of organic material will only ever be dealt with by means of composting, anaerobic digestion and food treatment systems.

**Dirk Hazell:** There will not be uniformity through the European Union. When the waste framework directive was being negotiated, countries made clear their national interests. For example, Germany has gone for a high-end, value-added process, but there is no realistic prospect that any Government of any party in any part of the United Kingdom will go down that route.

In broad terms, the various parts of the UK are trying to align economic and environmental sustainability—they are trying to get the best environmental results as cost effectively as possible. That is a slightly different approach from that which Germany and some other EU countries have adopted.

Public policy has been right in this country. I disagree slightly with what Professor Baird said on the matter. Given that we started from such a low base, with so much landfill, public policy was right to put the initial emphasis on high levels of recycling, so we did not go straight into energy recovery. The next phase will need to include more energy recovery, so in that respect there will be more uniformity.

The real point is—as it is for any mainland European member state—that when there is devolution of the policy area that we are considering, we must be mindful not to create arbitrage between England and Scotland, because criminals and others will exploit significant regulatory and price variations. As a general rule, it is sensible for the regulators to speak to each other, even though the matter is a sovereign area for Scotland. I think that the regulators are starting to speak to each other more.

**The Convener:** I thank you all for coming. There will be another evidence session on the bill on 4 February, when the cabinet secretary will join us. Some of the issues that we have discussed will come up then. If any of the four witnesses wants to forward further evidence to us as a consequence of our discussions, please do so, bearing in mind that we need such information quickly, because the next evidence session will take place next Wednesday morning. We would appreciate further written evidence being provided as timeously as possible.

## Petitions

### Coastal and Marine National Park Process (PE1047)

#### Maritime Organisations (PE1081)

11:51

**The Convener:** Item 6 is consideration of petitions. PE1047 was brought by Mark Carter on behalf of the Hebridean Partnership. PE1081, which was brought by Ronald Guild, calls on the Scottish Parliament to urge the Scottish Government to seek a UK-wide reappraisal of all Government, local authority and non-governmental organisation maritime and maritime airspace responsibilities, and organisations. Both petitions relate to marine issues.

The clerks have circulated background paper RAE/S3/09/3/15. The petitions were referred to the Rural Affairs and Environment Committee with a suggestion that we might consider them as part of scrutiny of the forthcoming marine bill—that would have occurred to me without anyone else urging me to do so. It is proposed that we treat the petitions as we would written evidence on the bill at stage 1 and write to the petitioners to ask them to submit further written evidence in response to the specific provisions of the bill when it is introduced. Indeed, Mark Carter has provided a supplementary submission, which was supplied to members this morning. In general, do members agree to the recommended course of action?

**Peter Peacock:** Mark Carter has drawn on his experience of what happened during the discussions about the establishment of a coastal and marine national park. The debate was characterised by early polarisation of positions, rather as happened when land-based national parks were being considered 20 or 25 years ago. In preparation for the evidence that we will eventually take, can we invite Scottish Natural Heritage and the minister to give thought to how the consultation process might have led to polarised positions being taken early in the process, so that we will have a better feel for what has happened when we come to scrutinise the bill?

**The Convener:** When we put out our call for written evidence we might ask for some of that information.

Do members agree to take the recommended course of action?

**Members indicated agreement.**

**The Convener:** The committee is agreeing to close formal consideration of the petitions on the

basis that we have agreed. Of course, we will treat the petitions as written evidence in respect of the bill.

**Rhoda Grant:** If the petitions address issues that go beyond the bill, can we go back to them at the end of the process? I suppose that that is a procedural issue.

**Peter McGrath (Clerk):** If you close the petitions they will not formally be part of the process, but there is nothing to stop the clerks getting in touch with the petitioners to keep them informed of matters.

**Rhoda Grant:** I am not sure that that answered my question.

**The Convener:** We either deal with the petitions as part of the marine bill or we do not. If we deal with the petitions as part of our consideration of the marine bill, the process requires us to close consideration of them today. When the bill has been dealt with, it will be for the petitioners to come back to us. They will have to re-petition on the basis of any outstanding issues. There is nothing to stop people coming back to us on outstanding issues.

Do members agree to take that course of action?

**Members indicated agreement.**

11:55

*Meeting continued in private until 12:38.*



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