

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 18 March 2009

Session 3

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

9th Meeting 2009, Session 3

CONVENER

*Maureen Watt (North East Scotland) (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 ALSO ATTENDED:

Christine Grahame (South of Scotland) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Roseanna Cunningham (Minister for Environment)

Ian Strachan (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 18 March 2009

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

Flood Risk Management (Scotland) Bill: Stage 2

The Convener (Maureen Watt): I welcome everybody to the ninth meeting in 2009 of the Rural Affairs and Environment Committee. I remind everybody to switch off their mobile phones and pagers, as they impact on the broadcasting system.

Apologies have again been received from Karen Gillon, who is a long-term absentee from the committee. She is on maternity leave, and Rhoda Grant is substituting for her. Christine Grahame has said that she will join us for items 4 and 5.

The first and main item of business is stage 2 consideration of the Flood Risk Management (Scotland) Bill. The committee will also consider two items of subordinate legislation before moving into private to consider further the rural housing inquiry report.

Sections 1 to 61 of, and schedules 1 and 2 to, the Flood Risk Management (Scotland) Bill have already been agreed. The aim for today is to complete consideration of the bill at stage 2. Members should have in front of them copies of the bill, the marshalled list and the groupings.

I again welcome the Minister for Environment and her officials. It seems that she has never left the committee.

After section 61

The Convener: The first group of amendments is on Scottish Water: flood risk management functions. Amendment 78, in the name of Peter Peacock, is grouped with amendments 132 and 134.

Peter Peacock (Highlands and Islands) (Lab): Amendment 78 seeks to deal with concerns that were raised in the committee's flooding inquiry and the stage 1 committee report, which featured a recommendation on the matter.

We have heard concern that the Water Industry Commission for Scotland may not be able to take full account of the need for Scottish Water to act in the most sustainable way. That may happen if the

commission's powers to regulate with a view to securing a good price for water consumers conflicts in any way with the need for Scottish Water to act in the most sustainable way.

As the convener knows, we have recently received correspondence from the Water Industry Commission for Scotland. The commission believes that the existing regulatory powers do not impinge on its ability to act in support of Scottish Water's duties on sustainability, but I noted the underlying assumption in the letter that supporting Scottish Water to act in the most sustainable way may always bring cost benefits. That may be the case in many instances, but it is not necessarily the case in all instances.

We also heard evidence from Scottish Water that it felt under pressure always to secure the most cost-effective way of making its contribution. For Scottish Water, cost is a major factor—perhaps the major factor—in investment decisions. The committee has expressed concern about that in the past. The previous Minister for Environment accepted, to an extent, that issues remain to be addressed and said that the Government was in discussions on the question of instructions to the Water Industry Commission to clarify matters.

The purpose of amendment 78 is to make the matters clear in law. The amendment would place the Water Industry Commission under a clear duty to

“have regard to Scottish Water's duty under”

proposed section 51A, under which Scottish Water would have to

“act in a way best calculated to manage risk in a sustainable way.”

I understand that amendment 78 may contain a drafting flaw and that the proposed changes could be placed more effectively in a different section—that could be rectified at stage 3. Before deciding whether to press amendment 78, I want to hear what the minister says about the action that the previous minister said was under way. It would also be useful to know the Government's plans for guidance to the Water Industry Commission and Scottish Water on these matters. If the minister gives me sufficient reassurance, I will not press amendment 78 today.

Amendment 134 seeks to reflect the changed role of the Scottish Environment Protection Agency that will result from the bill's becoming law. SEPA has a clear role in the improvement of flood risk management so it will be important that it is part of all appropriate considerations. The Water Industry (Scotland) Act 2002 requires the Scottish ministers to issue Scottish Water and the Water Industry Commission with a statement of policy on charges under a charge scheme. Under that scheme, the Scottish ministers must consult a

range of bodies but, as I understand it, SEPA is not currently included. Amendment 134 seeks to ensure that SEPA will be a statutory consultee.

The policy intention of amendment 134 is clear, but again I will listen carefully to the minister and, if there is a better proposal to meet that policy intention, I will not press the amendment today. However, I reserve the right to bring amendments 78 and 134 back at stage 3.

I move amendment 78.

The Convener: I invite John Scott to speak to amendment 132 and the other amendments in the group.

John Scott (Ayr) (Con): Thank you—but I will speak only to amendment 132.

Amendment 132 is, in essence, based on paragraphs 71 to 76 of this committee's stage 1 report and on our recommendation 8, which is that the Government

“align the timing of funding streams”.

In its submission to the committee, Scottish Water strongly made the point that the current planning processes do not fit in with the six-year planning cycles proposed in the bill. Scottish Water's planning cycles are four-year cycles, and it is currently considering the period beyond the existing planning cycles but before the implementation of the bill. The funding streams therefore need to be aligned.

Amendment 132 seeks to amend the Water Industry (Scotland) Act 2002. At the moment, charging is applied over a four-year period, but amendment 132 will specify a period and make the Government have regard to the Flood Risk Management (Scotland) Bill, once enacted.

I want to hear what the minister says before I decide whether to press amendment 132, but a change is essential given the intensity of the argument that Scottish Water made to the committee on the need to align funding streams for future programmes.

Alasdair Morgan (South of Scotland) (SNP): There is one point that Mr Peacock might address when he sums up. I take his point about amendment 78 affecting the wrong part of the bill, but I am struck by proposed section 51A, which says that

“Scottish Water must, in exercising its functions, act in a way best calculated to manage flood risk in a sustainable way.”

Does that refer to all of Scottish Water's functions? If so, it would mean that Scottish Water, in all that it does, would have to consider the management of

“flood risk in a sustainable way”

as its most important priority. I presume that that is not exactly what Mr Peacock seeks to achieve, so he might like to address that point.

Liam McArthur (Orkney) (LD): Alasdair Morgan raises an interesting point about not only the location but the wording of the amendment.

Despite the Water Industry Commission's assertions about its requirements, there is no doubt that some uncertainty exists, as Scottish Water said in its evidence. The previous Minister for Environment seemed to accept that point when he gave evidence, so I am interested to hear whether the current minister intends to propose alternative wording in this or another part of the bill to address the committee's clear concern in its stage 1 report.

The Minister for Environment (Roseanna Cunningham): I apologise for the time that I will take in speaking to all three amendments, but they raise serious issues, and serious concerns have been expressed. The framework for the economic regulation of Scottish Water might seem complex, but it was carefully designed and has a logical structure, which I want to ensure that all committee members follow all the way through.

I share the committee's wish to ensure that Scottish Water's functions under the bill are properly taken into account in the process of determining its charges. It is important that Scottish Water is properly funded to undertake its role, and an important aspect of that is the charge determination process that the Water Industry Commission undertakes. However, the amendments would add nothing to the existing duties on the commission in the charge determination process.

Members might find it helpful if I talk first about the funding of Scottish Water and the commission's role in determining and setting charges under the Water Industry (Scotland) Act 2002. Sections 29A to 29G of that act provide for how charges are determined. To determine maximum charges for a period that ministers define, the commission considers the cost of all the core functions that Scottish Water must perform in that period, together with the requirements of any guidance or applicable directions that ministers have given Scottish Water.

Under section 56A of the 2002 act, ministers issue a direction to Scottish Water that sets standards of service in the exercise of its functions for the period for which charges are determined. That direction can identify a time by which those standards of service must be achieved. It also sets investment objectives that guide Scottish Water's investment programme—investments are

designed to improve the system in order to achieve the directed standards.

The definition of core functions in the 2002 act is broad and includes the basic functions of providing water and sewerage services. When the bill is passed, the definition will include all Scottish Water's flood risk-related functions under the bill. That means that the 2002 act will require the cost of performing flood risk-related duties to be taken into account when charges are set.

The Scottish Government has published a draft direction that sets investment objectives for Scottish Water for the next charging period—2010 to 2014. That direction includes requirements that relate to Scottish Water's duties under the bill, which the commission will have to take into account when it sets charges.

Once the commission has determined the overall cost of performing the core functions, it decides what proportion of that may be passed on to Scottish Water's customers through the determination of maximum charges. The key point to bear in mind is that the framework in the 2002 act ensures that Scottish Water receives sufficient funding to perform all its core functions, which will include the sustainable flood management functions and the required standards of service in the direction from ministers.

Amendment 78 would place a duty on Scottish Water to act in the way that is best calculated to promote sustainable flood risk management when exercising its functions, which would duplicate what section 1 provides for. The amendment would also impose a duty on the commission to have regard to the new flood risk management duty when determining maximum charges in a charging period. The bill already contains a similar duty, and the commission will have to have regard to the requirements of the duty on Scottish Water when setting maximum charges. The amendment is therefore unnecessary.

10:15

I am also concerned that identifying one specific function in the manner proposed is inconsistent with the general structure of the regulatory framework, which requires a balance to be struck in how different Scottish Water functions and responsibilities are exercised.

I am aware that the commission has written to the committee to address concerns that have been raised in some quarters that economic regulation favours non-sustainable approaches. In that correspondence, the commission has clarified that less traditional approaches may well be the better economic option in a number of areas. The commission may challenge Scottish Water's investment proposals when that is the case and

determine the revenue requirement accordingly. Scottish Water is under a duty to act in the way best calculated to contribute to the achievement of sustainable development—and that duty will apply to its functions under the bill.

Ministers have issued guidance to Scottish Water on its sustainable development duty and will review it regularly. It may be appropriate to revise the guidance to take account of the new duties imposed by the bill. As with all ministerial guidance to Scottish Water, including any that is issued as a result of the bill, the commission is under a duty to take it into account.

Scottish Water is also under a duty to undertake its functions at the lowest reasonable cost. The commission will apply that test to all its investment and cost proposals, including those relating to flood risk management. It is an important test and will ensure that the most economic and sustainable proposals will be developed—Scottish Water's customers would not expect anything else from that organisation. I am therefore confident that flood risk management functions will be important considerations for the Water Industry Commission for Scotland, Scottish Water and the Scottish ministers. For those reasons, I invite the member to withdraw amendment 78.

Amendment 132 requires ministers to have regard to the dates by which Scottish Water must carry out its functions under part 3 of the bill when they set the charging period under section 29B of the 2002 act. Ministers set the charging period under section 29B(2) with reference to a number of different factors. Performance of functions under other enactments, such as the bill, is a relevant factor, as are other important functions under other statutory instruments.

In reality, many investments can be delivered only in more than one charge period. The investments that form part of the metropolitan Glasgow drainage plan are a case in point and, if I recall rightly, when the committee was in Elgin it was made clear that the investment there would cover more than one charge period. Scottish Water's investment plans recognise that and the commission takes account of those factors when it assesses the revenue requirements.

The commission will be obliged to consider the cost implications of any functions related to flood risk during a charging period. That will be done alongside consideration of other critical dates, and I cannot see any advantages in requiring ministers to have particular regard to flood risk management dates when setting the charging period. I cannot therefore support amendment 132, but I assure John Scott that we are working with Scottish Water and others to ensure that flood risk management plans are aligned with other spending cycles, including Scottish Water's

investment cycle. There are already examples of how its investment cycle can be aligned with other cycles, such as the river basin planning cycle. I therefore invite John Scott not to move amendment 132.

I turn back to Peter Peacock and amendment 134, which concerns the statement of policy on charges that ministers make under section 29D of the 2002 act. The amendment would require the Scottish ministers to consult SEPA before issuing the statement, in so far as it affected Scottish Water's performance of its functions under part 3 of the bill.

The statement made under section 29D deals only with the principles that should apply to charges made by Scottish Water to its customers. Those principles include, for example, a requirement for Scottish Water to charge the same in all parts of the country and to establish arrangements for those who have difficulty paying. The statement does not make reference to or provision for the performance of particular functions or the achievement of particular investment projects or activities. As Scottish Water receives funding to perform all its core functions and to achieve the standards of service directed by ministers, the content of the statement will not affect the performance of those functions.

The bodies that must be consulted on the statement are those that have responsibilities concerning Scottish Water's relationship with its customer. SEPA has no such responsibilities, so there would be no occasion to consult it and the amendment would be redundant. Furthermore, it would not be appropriate to single out flooding and SEPA as a special case for consultation. Scottish Water performs a number of important functions, all of which must be considered and balanced appropriately. For those reasons, I cannot support amendment 134 and ask Peter Peacock not to move it.

I accept that committee members have considerable concerns about the relationship between the bill and the functions of the Water Industry Commission for Scotland and Scottish Water, and I am willing to discuss those concerns further prior to stage 3. A considerable amount of work is already being done on a number of the issues to which the amendments relate. I undertake to continue discussions with members before stage 3 if they think that that is appropriate.

Peter Peacock: I am grateful to the minister for her comments. Some of the arguments that she set out are quite complex, and I would like to reflect on them once I have seen the *Official Report*. I note that she considers that the WIC is required to consider all the core functions of Scottish Water in its work and determinations, that guidance is available, and that directions have

been issued to Scottish Water on some of the matters that we are debating. From the minister's comments, I also understand that there are draft further directions.

In view of those comments and the assurance that we can have further discussions before stage 3, I am happy not to press the amendment until I have had a chance to reflect on the issues that have been raised.

Amendment 78, by agreement, withdrawn.

John Scott: Like Peter Peacock, I accept the minister's explanation and welcome her assurance that there are on-going discussions with Scottish Water about how to align funding streams. For that reason, amendment 132 is unnecessary.

Amendment 132 not moved.

Amendment 134 not moved.

Sections 62 to 67 agreed to.

After section 67

The Convener: The next group is on fire and rescue authorities: flood risk management functions. Amendment 133, in the name of John Scott, is the only amendment in the group.

John Scott: Amendment 133 is about learning the lessons from the flooding in England in 2007, which showed that a co-ordinated approach to flood rescue is needed in Scotland. In its evidence to the committee, the fire and rescue service argued cogently that it is best placed to play that co-ordinating role in Scotland. In addition, the Pitt inquiry in England made recommendations similar to those that are proposed in the amendment. I am grateful to Liam McArthur and Peter Peacock for supporting the amendment today.

It is important that provision is made in the bill for the fire and rescue service to play a co-ordinating and planning role before and after flooding events. In my view, waiting for a review of the Civil Contingencies Act 2004 is not a good alternative, as there is a current and urgent need to plan and co-ordinate rescue responses, and a review of civil contingencies legislation may be several years away. I look forward to hearing what the minister and my colleagues have to say on the amendment.

I move amendment 133.

Liam McArthur: I echo John Scott's comments. Amendment 133 deals with an issue that was raised in evidence to the committee. There is a fit with requirements under civil contingencies legislation. However, the point was made that we seem to be well covered once we are up to our waists in water but not in relation to the potential threat of finding ourselves in that situation. The

amendment seeks to address that issue and makes sensible changes that will ensure that data are collected and the risk is properly managed.

Elaine Murray (Dumfries) (Lab): I have considerable sympathy for amendment 133. I appreciate that it was made clear when the bill was introduced that it covered not civil contingencies but flood risk management planning. However, the likelihood of flooding is increasing with climate change, so addressing the issue has become more urgent. If it is possible to do that through the bill, it is worth considering doing so, if it will be several years before the Civil Contingencies Act 2004 is reviewed.

Alasdair Morgan: Most of us have had meetings with our fire and rescue authorities to discuss our concerns, and I am sure that most of us sympathise with what amendment 133 is trying to achieve. However, I have a little concern about the amendment, although, not being a draftsman, I am not sure whether my concern is valid.

Subsection (1) of the proposed new section that the amendment would insert asks the authority to

“prepare a strategy with a view to reducing overall flood risk”.

It strikes me that that is a somewhat wider duty than one might expect a fire and rescue authority to carry out. Proposed subsection (2) tries to narrow it down, but that might be shutting the stable door after the horse has bolted. Although the committee sympathises with the amendment's objective, proposed subsection (1) might not be the way to achieve it. I will listen to what the minister and John Scott say about that.

Peter Peacock: Amendment 133 is helpful. As Liam McArthur said, it would help to improve the advance co-ordination of the emergency response to flooding. I remember vividly that, when we were in Elgin to take evidence about the effects of flooding, people recounted their difficulty in understanding who was responsible for what. At subsequent meetings, we also heard evidence that the emergency services' responsibilities kick in at different points.

The amendment tries to provide some clarity on those matters and to fill an apparent gap in the predetermined procedures. The issue is important for people who experience flooding. I am glad that John Scott has lodged the amendment and I am happy to support it. If the minister has a better way of achieving its objective, I will be happy to listen to her, but the objective must be achieved because it is clear that more needs to be done. I hope that we will agree to the amendment, but I will listen to the arguments and reserve my position for stage 3 if necessary.

Bill Wilson (West of Scotland) (SNP): I have a lot of sympathy for the principle behind amendment 133. The committee's inquiry into flooding and flood management raised concerns about the lack of co-ordination between when a flood warning is issued and when flooding occurs. The committee called for action to be taken to address that problem.

I take Alasdair Morgan's point that the amendment overstates, or does not quite achieve, its objective, but the principle is good and I hope that we can find a way to ensure that the problem is solved.

John Scott: The concern that Alasdair Morgan expressed is due to overenthusiastic drafting on my part. Neither I nor—I believe—the fire and rescue service ever intended that the service should take responsibility for “reducing overall flood risk”; it would seek only to co-ordinate flood risk management planning and the response to flooding. That is a drafting error, for which I apologise. I welcome my colleagues' comments.

Roseanna Cunningham: Amendment 133 is clearly intended to implement a recommendation that the committee made in its stage 1 report, which it originally made in its report on the flooding and flood management inquiry. However, I remind members that, when the committee took evidence for that inquiry, it knew that any recommendations on civil contingencies would not be implemented in the Flood Risk Management (Scotland) Bill, because it knew from the outset of the inquiry that the bill would not cover that aspect.

10:30

Amendment 133 looks to ensure that the appropriate emergency service acts proactively to manage flood risk. Our concern is—we spotted the slightly overstated aim—that the amendment goes well beyond the committee's recommendation and instead proposes an additional flood risk management planning process. Although I accept that that is inadvertent, nevertheless that is what it proposes because it requires fire and rescue authorities to prepare a strategy for reducing flood risk in their area. That strategy would include many of, if not all, the things that we are already providing for in the bill.

I am happy to continue to explore ways of ensuring the appropriate response from the emergency services, but there are several reasons why amendment 133 would create problems, not least its drafting difficulty. The drafting is very wide, because the proposed strategy is not a simple co-ordination of flood rescue assets in the event of flooding. The amendment would require fire and rescue authorities to develop and co-ordinate strategies well beyond their legal and

practical competence and would involve their being drawn into all sorts of discussions far beyond their professional expectations—I do not think that they would be particularly interested in such discussions. The proposed new role would also overlap massively with SEPA's role in the context of the bill and with that of local authorities in developing flood risk management plans.

Even if the scope of the amendment were reduced simply to cover the co-ordination of flood risk assets, our initial view is that existing legislation more than adequately covers what we understand to be the intended requirement. The Civil Contingencies Act 2004 and related regulations impose a series of duties on responders, including duties to assess the risk of an emergency occurring, to maintain plans for the purposes of responding to an emergency and to co-operate with other responders in the form of a strategic co-ordinating group. Civil contingencies legislation already enables category 1 responders, such as the fire service, to make arrangements with one another for the discharge of their duties jointly, for one responder to perform those duties on behalf of another or indeed for lead category 1 responders to be identified, as would be the case under amendment 133—the power already exists for that to be done. Those arrangements more than adequately cover the requirement to co-ordinate flood rescue assets, but, importantly, they allow co-ordination to be undertaken as local circumstances require and by using the common approach to local emergencies that the Civil Contingencies Act 2004 intended.

In addition, under the Fire (Additional Function) (Scotland) Order 2005 (SSI 2005/342), each fire and rescue authority in Scotland already has a specific duty to make provision for the purpose of rescuing people who are trapped, or likely to become trapped, by water and to protect them from serious harm in the event of serious flooding in its area. In that way, we are already more prepared than they are in England, where such a specific duty is still being discussed as part of the Pitt review considerations.

Taken together, those arrangements provide a sufficiently robust legislative framework to enable the level of planning and co-ordination that responding to local emergencies, such as flooding, requires. If amendment 133 is agreed to, we are concerned that it would put in place a potentially confusing arrangement that might turn out to be a waste of public money and could misdirect firefighter resources from the service's current front-line duties.

I accept that the real concern behind amendment 133 is to link the issuing of a flood warning with the appropriate responses from the emergency services, but it would be better to look

at actions on the ground rather than introducing further legislation. The gap appears to be operational, not legislative. I agree that it is important to ensure the correct response from all emergency services. I mentioned the Pitt report down south, which was undertaken in the light of the experience of summer 2007. Its intention is to improve flood rescue capability in England and Wales so that a comprehensive emergency response can be deployed by and co-ordinated among all flood rescue service providers, including all public, private and voluntary organisations.

As we believe that the outcome of that project will be extremely useful in informing procedures in Scotland, we plan to revisit the issue when it concludes—this summer, we think. We will do so in consultation with Scotland's eight strategic co-ordinating groups to ensure that we take on board the views not just of a single category 1 responder but of all flood rescue service providers.

The problem is that the issue is right at the interface between the bill and the Civil Contingencies Act 2004, and we are trying to find some way of plugging a perceived gap. It is also, I should add, at the interface between my head and a brick wall. Given that, as you might imagine, I am not particularly keen on brick walls, I have asked my officials to speak directly to officials on the civil contingencies team to find out whether something stronger that addresses the interface issue in a way that works for both the bill and the 2004 act can be put together timeously for stage 3.

For all those reasons, I ask the member to withdraw amendment 133.

John Scott: I thank the minister for that long explanation of why she is prepared to bring something forward at stage 3. Obviously, I welcome that but, given the evidence that we have received from the fire and rescue service, I find it strange that she feels that this is not about legislative requirements but about better implementation and operational practice on the ground. I am torn between knowing whose view to accept, but, on balance, and with no disrespect to the minister, I have to say that I find the fire and rescue service's view more compelling. Nevertheless, given that the minister is prepared to address the matter at stage 3, I am happy to withdraw amendment 133. In doing so, I want to take forward the spirit of the committee's report and the views that my colleagues have so eloquently expressed.

Amendment 133, by agreement, withdrawn.

Section 68—Powers of entry

The Convener: The next group is on powers of entry: flood risk assessments. Amendment 105, in

the name of the minister, is the only amendment in the group.

Roseanna Cunningham: Amendment 105 seeks to extend the powers of entry available to SEPA under section 68 by allowing the agency to enter land in connection with preparing, reviewing or updating flood risk assessments under sections 9 and 10. I believe that that power will ensure that SEPA can access land to check the accuracy of information underpinning the flood risk assessment. It is essential that that information is reliable, given that it will be used to identify parts of Scotland that are potentially vulnerable to flooding.

I move amendment 105.

Amendment 105 agreed to.

Amendments 52 to 54, 106 and 55 moved—[Roseanna Cunningham]—and agreed to.

Section 68, as amended, agreed to.

Sections 69 and 70 agreed to.

Section 71—Compensation

Amendment 56 moved—[Roseanna Cunningham]—and agreed to.

The Convener: The next group is on compensation: variation and revocation of improvement orders. Amendment 107, in the name of the minister, is grouped with amendment 108.

Roseanna Cunningham: Section 53 allows improvement orders under the Land Drainage (Scotland) Act 1958 to be varied or revoked where they affect land on which operations to be carried out under a flood protection scheme are undertaken.

Amendment 107 provides that

“A local authority must compensate any person who has sustained damage”

as a result of

“the variation or revocation of an improvement order under section 53”.

Amendment 108 is a technical amendment. To ensure that amendment 107 will work, it disappplies a restriction on the circumstances in which compensation is payable. The two amendments together ensure that any depreciation in the value of a person's interest in land or disturbance to their enjoyment of land as a result of changes to an improvement order is compensated for.

I move amendment 107.

Amendment 107 agreed to.

Section 71, as amended, agreed to.

Section 72—Compensation: supplementary

Amendment 108 moved—[Roseanna Cunningham]—and agreed to.

Section 72, as amended, agreed to.

After section 72

The Convener: The next group is on flood risk management: agreement or arrangement with an owner or occupier of land. Amendment 135, in the name of John Scott, is grouped with amendment 137.

John Scott: I begin, as seems to be the way of things today, by apologising for a drafting error in amendment 135. An unintentional double negative has crept into what should be subsection (4) of the new section that the amendment would introduce—the subsections are misnumbered.

Notwithstanding the foregoing, amendment 135 encourages farmers and landowners to support natural and sustainable flood management schemes. It seeks to implement recommendation 38 in the committee's stage 1 report. The proposal to create an annual funding stream for good works that give a public benefit is not new. Such an approach already exists under schemes such as the Scotland rural development programme and through cross-compliance in some other schemes, including the less favoured area support scheme.

Amendment 135 suggests that, once flood risk plans have been developed, the likelihood and magnitude of the need for natural flooding defences will have been evaluated; so, too, will the potential income that could be lost to or forgone by farmers and landowners. A scheme needs to be developed to encourage farmers to carry out and maintain the natural flood defences that we are all keen to create—“maintain” is the key word. It will be more cost effective to spend money on promoting and maintaining natural flood prevention techniques than on hard engineering solutions, and doing so will encourage farmers' and landowners' buy-in to proposals that we all wish to succeed.

It has been suggested to me that the SRDP might not be the best vehicle for funding such a scheme, as it is already underfunded. Perhaps funding could be delivered by local authorities as part of the cost of the overall schemes that they and other bodies might, or will be obliged to, bring forward.

Alasdair Morgan: In view of the stance that Mr Brownlee, in particular, has been taking in the chamber with regard to the costs of bills, does Mr Scott have any figure in mind for the budget for his proposed provision?

John Scott: I have to admit that I have not, although I thank Alasdair Morgan for his intervention.

On how such a scheme would work for a piece of land that is likely to be flooded infrequently—for example once every 20 or 30 years—the compensation payment for that would be very small. At the other end of the scale is land that is now likely to be flooded annually, whereas before it was not. If that would change the existing farming or land use practice, the compensation for that loss of land should be much greater. A complicated matrix or equation balancing potential damage against the public benefit needs to be worked out—possibly by organisations such as the Macaulay Land Use Research Institute or the Scottish Agricultural College. I look forward to hearing the minister's views on the amendment.

I move amendment 135.

10:45

Peter Peacock: I understand entirely the reasons behind John Scott's amendment. However, I suspect that the amendment has another couple of drafting errors, so I am not sure that it can be agreed to today. There is also a concern that, as John Scott acknowledged, ministers might be forced to take funds for one particular group of landowners and occupiers from the SRDP, which might put pressure on funds that might be available for other suitable good purposes. I caution that a lot of work needs to be done on the matter. I stress that we need to recognise the requirement to ensure that society can fund those people who make some sort of sacrifice to assist the better management of flooding.

Elaine Murray: Like Peter Peacock, I sympathise with the intention behind the amendment. We have had a number of stabs at approaching the issue in various parts of the bill. As Peter Peacock said, there are some concerns about the wording of the amendment. For example, the agreement is entered into with the local authority, not Scottish ministers, which means that there is probably a drafting error in subsection (1) of the proposed new section that the amendment would introduce.

I agree that it would not be appropriate to put additional pressures on the SRDP. However, the alternative suggestion of placing the burden on local authorities would put pressure on their budgets. That is not reflected in the financial memorandum, so I would be concerned about that approach, too.

We need to address the issue, but I am not convinced that amendment 135 is appropriate—or correctly worded.

Roseanna Cunningham: I appreciate that John Scott has concerns about whether land managers will receive adequate funding or compensation for flood risk management work undertaken on their land without having to go through a lengthy negotiation process in order to receive it.

Amendment 135 would require Scottish ministers to make regulations establishing a grant scheme for payments to owners or occupiers of land who agree to maintain, alter, enhance or restore natural features and characteristics of their land in order to manage flood risk. I am not convinced that the amendment is necessary, and I am particularly concerned that it cuts across existing funding mechanisms. For instance, the Scottish Government already operates a grant scheme that serves the same purpose, which comes under the SRDP and is called rural development contracts—rural priorities. Within rural priorities, there is a package of options that targets flood risk management. Where land is identified by local authorities as being within the areas where natural flood risk management can make a difference to lowering flood risk and bring other benefits, land managers can apply for funding for options in the sustainable flood management package.

I acknowledge that the package might not yet include every management option that could potentially contribute to achieving sustainable flood risk management. Nevertheless, the framework is already in place and, of course, SRDP payment rates can be reviewed to reflect higher likely frequency of funding for such measures.

The current SRDP covers from 2007 to the end of 2013, at which time a new programme will have to be agreed with the European Commission. The Scottish Government is happy to work with stakeholders to develop a full suite of options to address sustainable flood risk management, which can be accommodated within the current SRDP through a modification to the programme or can form part of the next programme.

An independent review of the SRDP is under way. It will consider the impact of the economic downturn on the rural economy and identify lessons learned from the first year of operation. We are taking this opportunity to review and potentially refine the priorities and objectives as well as the delivery mechanisms.

I draw the committee's attention to the commitment that I gave Elaine Murray last week to amend the bill to clarify that the general power of local authorities to manage flood risk under section 49 includes land management operations. That power would also allow local authorities to enter into agreements and would provide monetary compensation to landowners in relation

to the management of their land. It would cover the full range of natural flood management techniques that are available.

Those elements provide a co-ordinated model for flood risk management operations. The SRDP provides incentives to land managers for management that will contribute to reducing flood risk.

Section 49 provides the means for local authorities to enter directly into agreements with landowners and to compensate them for any costs that they incur. Where agreements cannot be reached, flood protection schemes can be used to provide local authorities with coercive powers to take forward flood risk management work.

Amendment 135 would create a separate route for direct payments and agreements between ministers and landowners. That would cut out the local authorities, which would usually be able to decide how to implement flood risk management measures that are set out in the flood risk management plans for their areas. The amendment risks creating parallel funding routes, parallel processes, delays and confusion among landowners. The creation of a separate funding scheme would result in confusion about where to access funding for managing land in terms of reducing flood risk, potentially lengthening the time that it takes for land managers to access funds.

Finally, as other members have indicated, there are technical problems with amendment 135 as it stands. In particular, the second proposed new subsection (3) appears to allow for payments to be recovered if the recipient complies with the scheme conditions, which seems to run counter to the intention behind the amendment. Also, in proposed new subsection (4), a new body appears to have crept into being. I assume that the member meant to refer to Scottish Natural Heritage and not "Scottish National Heritage", which is not a body that exists at present—

John Scott: Yes.

Roseanna Cunningham: Of course, he could lodge another amendment to set it up. That is always a possibility.

I suppose that the intention was to allow for recovery of payments if the recipient did not comply with scheme conditions. That would make a lot more sense.

For those reasons, I ask the member to withdraw amendment 135 and not to move amendment 137. I also ask him to keep in mind the on-going discussions on Elaine Murray's amendment, which we discussed last week.

John Scott: I thank the minister for her comprehensive dismissal of my amendment. I am swayed by her arguments.

On the basis of the on-going discussions on section 9 and Elaine Murray's amendment, I am prepared to withdraw amendment 135. Notwithstanding the inadequacies of the amendment, I hope that the discussions will cover the elements of compensation that still need to be dealt with. Landowners and farmers will undoubtedly suffer loss of income as a result of natural flood management schemes. I take the minister's assurances that she will look after those interests effectively.

Amendment 135, by agreement, withdrawn.

Section 73 agreed to.

Section 74—Transitional arrangements

The Convener: The next group is on reservoirs: timescale for transitional arrangements. Amendment 109, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: Section 74 makes transitional arrangements to support the transfer of reservoir enforcement responsibilities from local authorities to SEPA. The transfer of registers and documents to SEPA from local authorities forms an important part of the transfer of enforcement responsibilities.

As drafted, the bill requires local authorities to hand over to SEPA their registers of reservoirs and other reservoir-related documents "as soon as practicable" after section 73 comes into force and SEPA takes over as the enforcement authority under the Reservoirs Act 1975. Amendment 109 will replace the obligation to hand over information "as soon as practicable" with an obligation to hand over information within "28 days" of the commencement date.

The intention is to avoid any problems that could be encountered as a result of the slow transfer of important information between local authorities and SEPA. Local authorities will be expected to prepare in advance to transfer information, because they will know that they have to meet the deadline.

I move amendment 109.

Amendment 109 agreed to.

Section 74, as amended, agreed to.

Sections 75 and 76 agreed to.

Section 77—Incident reporting

The Convener: The next group of amendments is on reservoirs: incident reporting. Amendment 110, in the name of the minister, is grouped with amendments 111 to 115.

Roseanna Cunningham: Section 77 will insert new section 12ZA into the Reservoirs Act 1975,

which will enable the Scottish ministers to introduce a statutory system for reporting incidents that affect safety at reservoirs. As drafted, the power would allow an incident reporting system to be introduced only for large raised reservoirs. Although the 1975 act focuses on large raised reservoirs, some of those are in remote areas and may present very little risk downstream. On the other hand, some smaller reservoirs present higher risks because homes and important infrastructure are downstream of them. Those risks were illustrated in October last year by an incident at the Maich Fishery reservoir, which is too small to be classified as a large raised reservoir under the 1975 act. Heavy rainfall there created a high risk of dam failure, and the council, the local police, the fire and rescue service and SEPA had to take measures to address the risk and prevent damage to people and property. In light of the risks that some smaller reservoirs can present, it is appropriate to ensure that the requirements to produce incident reports can cover smaller reservoirs as well as large raised reservoirs.

Amendments 110, 111 and 115 will revise the enabling power so that regulations can be used to create a more risk-based incident reporting regime. Amendments 110 and 111 will allow incident reports to be required for any reservoirs that meet criteria that are set in regulations. Those criteria could be based on risk and set by the Scottish ministers, SEPA or a body such as the Institution of Civil Engineers. As with reservoir plans, a lot of work is required to develop a risk-based incident reporting regime. Extensive input will be required from SEPA, reservoir engineers and reservoir undertakers, which is why the power to make regulations to introduce incident reports is already subject to extensive consultation requirements and the affirmative procedure.

Amendment 115 will allow different criteria to be set to identify high-risk and low-risk reservoirs and different incident reporting requirements to be applied in different cases, possibly according to the nature of the incident or the level of risk that the reservoir poses.

Amendment 114 is a consequential amendment that will require the Scottish ministers to consult all reservoir undertakers whose reservoirs would be covered by incident reporting requirements.

Amendment 112 will allow regulations to provide SEPA with powers to enter land in connection with its role in enforcing incident reporting requirements. SEPA might need such powers of entry to verify information that it has received about incidents.

Amendment 113 is a technical amendment that will correct a minor typographical error. I assure

John Scott that errors do not occur only on his side.

I move amendment 110.

Amendment 110 agreed to.

Amendments 111 to 115 moved—[Roseanna Cunningham]—and agreed to.

Section 77, as amended, agreed to.

After section 77

11:00

The Convener: The next group is on reservoirs: flood plans. Amendment 116, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: Although the likelihood of a dam failure is very low, in most part due to the inspection and maintenance regime that is required by the Reservoirs Act 1975, the consequences of such a failure could be significant. Amendment 116 will introduce an enabling power in the 1975 act to allow the Scottish ministers to make regulations that require undertakers of some reservoirs to produce flood plans for their reservoirs. The intention is to create a risk-based regime with the scope and content of reservoir flood plans tailored to the risk that particular dams represent.

Requiring reservoir undertakers to produce flood plans should ensure that the undertakers have arrangements in place to understand and manage uncontrolled releases of water from their reservoirs. The plans will set out emergency action that the undertakers would take on site to delay or prevent dam failure or minimise damage. They could include information about how the undertakers would communicate with the emergency response services, or maps showing where flooding might occur if water escaped from reservoirs. Reservoir flood plans will provide a vital link between dam undertakers and the emergency response services, but they will not replace wider flood risk management plans or other forms of emergency response plan, which are covered by the provisions of the Civil Contingencies Act 2004 and are the responsibility of the category 1 responders, including the emergency services and SEPA.

The enabling power will allow ministers to make provision for approving, registering or publishing reservoir flood plans. SEPA will act as the enforcement authority for that work. The enabling power could also be used to give SEPA enforcement powers, as well as to create offences to ensure that plans are prepared and implemented. Of course, there would be a full and thorough consultation process before any such regulations were issued.

The Department for Environment, Food and Rural Affairs has already introduced a direction-making power allowing the secretary of state to require reservoir undertakers to produce on-site reservoir plans, and the Environment Agency in England and Wales has produced guidance on the preparation of reservoir plans. Amendment 116 will allow us to improve the reservoir safety regime in Scotland. I trust that the committee will support it.

I move amendment 116.

Amendment 116 agreed to.

Section 78 agreed to.

Section 79—SEPA's power to obtain information about land

Amendment 57 moved—[Roseanna Cunningham]—and agreed to.

Section 79, as amended, agreed to.

Amendment 58 agreed to.

Section 80 agreed to.

Section 81—Offences by bodies corporate etc

Amendment 117 moved—[Roseanna Cunningham]—and agreed to.

Section 81, as amended, agreed to.

Section 82 agreed to.

Section 83—Orders and regulations

The Convener: The next group is on power to give effect to Community obligations etc: parliamentary procedure. Amendment 118, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: I will be brief. The committee agreed with the Subordinate Legislation Committee that regulations that are made under section 44(1) should be approved by the Parliament before they are made by the Scottish ministers. I have considered the point and I am happy to accept the Subordinate Legislation Committee's recommendation. Amendment 118 therefore provides that regulations under section 44(1) will be subject to the affirmative procedure. As amendment 118 meets the Subordinate Legislation Committee's wishes, I look for members' support.

I move amendment 118.

Amendment 118 agreed to.

Amendment 137 not moved.

Section 83, as amended, agreed to.

Section 84—Interpretation: general

Amendment 59 moved—[Roseanna Cunningham]—and agreed to.

The Convener: The next group is on definition of flood protection work. Amendment 138, in the name of Rhoda Grant, is grouped with amendment 131.

Rhoda Grant (Highlands and Islands) (Lab):

Amendment 138 would amend the interpretation of flood protection work by adding the terms "restoration" and "enhancement". I hope that the amendment will go some way towards shifting the mindset and ensuring that natural flood risk management options are given the same weight and consideration as other options.

Amendment 131 replaces amendment 88, which we have already debated. When amendment 88 was discussed, one of the main concerns that the committee and the minister expressed about it was that it would remove from the bill the wording:

"the sowing or planting of vegetation or forestry".

I was sure at that point, and I still am, that amendment 88 was in keeping with the spirit of that provision and would not have prevented the sowing and planting of vegetation and forestry. However, after listening to the committee's concerns, I have changed the wording of the amendment. Amendment 131 allows for

"the alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area"

and makes clear that that includes the sowing and planting of vegetation and forestry. I hope that amendment 131 addresses the concerns of both the minister and the committee.

I move amendment 138.

Roseanna Cunningham: I thank Rhoda Grant for explaining the purpose of amendments 138 and 131.

The definition of flood protection work in the bill is intended to capture the physical works that local authorities will need to undertake to implement measures. The definition is used in part 4 in relation to local authority powers to manage flood risk. It is also used in the definition of structural measures in section 24.

The definition has been carefully drafted to ensure that it covers the full range of physical changes to land that a local authority may need to make in order to implement measures, including measures that use more natural approaches to managing flood risk. For example, channel or coastal realignment typically involves some form of alteration to the landscape. That could include changing the shape of rivers or coasts, possibly accompanied by the removal of old structures.

Likewise, restoration of flood plains typically requires the removal of embankments or other structures, the planting of vegetation and, possibly, other alterations to the landscape, such as the lowering of land. All those types of alteration are covered in the definition of flood protection work in sections 84(1)(a) and 84(1)(b).

The definition covers works that are targeted at storing water on some land to protect other land, and works that are targeted at slowing water. For example, an embankment could be removed to create flood storage capacity, and trees could be planted to create roughness, which would help to slow down flood waters. I am satisfied that the current definition of flood protection work covers all the works on land that might need to be carried out to implement natural flood risk management measures. I do not believe that either of Rhoda Grant's amendments is needed to fill a gap in the definition.

I highlight the fact that the general power that section 49 will confer on local authorities is not limited to flood protection work. Flood protection work is just one example of the steps that local authorities can take; they can also implement any other measures, including more general land management measures. Last week, I committed myself to working with Elaine Murray to lodge an amendment at stage 3 that will make it clearer that the section 49 power covers all measures, including land management operations.

The effect of amendment 131 would be to limit the planting of trees and vegetation—which is given as an example of flood protection work in section 84(1)(b)—to cases in which planting takes place for the purpose of altering or restoring natural features or characteristics. That could exclude work to plant trees in places where there had never been trees—not because trees are not natural, but because planting them in such places might not involve altering, enhancing or restoring a natural feature or characteristic. It is not clear exactly what legal effect the limit would have in practice, because the definition of flood protection work is not used to restrict the measures that can be included in flood risk management plans or the steps that local authorities can take to manage flood risk, but it seems unnecessary to limit the definition in that way and to create a source of doubt about how it should be interpreted. For those reasons, I cannot support amendment 131 and I ask Rhoda Grant not to move it.

Amendment 138 would alter the definition of flood protection works to provide that flood protection work included any work of restoration or enhancement. The terms “restoration” and “enhancement” are also used in section 16, with reference to the restoration or alteration of natural features and characteristics. Although the current

definition of flood protection work covers such work, inclusion of the terms would be appropriate, as it would provide a link between section 84 and section 16 and make clear that all works involving natural approaches to managing floods are captured by the definition. I accept amendment 138, but not amendment 131.

Rhoda Grant: I will press amendment 138.

I hear what the minister says about amendment 131. It was certainly not my intention to place any restrictions on the planting of forestry, but I do not think that the definition in the bill goes far enough—it does not include flood plains or wetlands, for example. Although I will not move amendment 131, I still feel that an amendment is necessary, so at stage 3 I will lodge one that does not cause the problems that the minister has mentioned.

Amendment 138 agreed to.

Amendment 131 not moved.

Section 84, as amended, agreed to.

Schedule 4

INDEX

Amendments 60 to 64 moved—[Roseanna Cunningham]—and agreed to.

Schedule 4, as amended, agreed to.

Section 85 agreed to.

Schedule 3

MINOR AND CONSEQUENTIAL MODIFICATIONS

Amendments 119 to 122 moved—[Roseanna Cunningham]—and agreed to.

Schedule 3, as amended, agreed to.

Section 86 agreed to.

Long Title

Amendment 65 moved—[Roseanna Cunningham]—and agreed to.

Long title, as amended, agreed to.

The Convener: That ends stage 2 consideration. I thank all members of the committee and, for the amazing amount of work that they have had to carry out over the past three weeks, the clerks.

We will have a short adjournment while the officials change over.

11:12

Meeting suspended.

11:18

On resuming—

Subordinate Legislation

Scottish Government Code of Practice for the Welfare of Equidae (SG 2009/20)

The Convener: Item 2 is consideration of the Scottish Government “Code of Practice for the Welfare of Equidae”, which, in accordance with section 37 of the Animal Health and Welfare (Scotland) Act 2006, is not a Scottish statutory instrument. However, it is subject to parliamentary consideration under the affirmative procedure.

I welcome the minister and the Scottish Government officials Kirsten Simonnet-Lefevre, principal legal officer, Ian Strachan, head of animal welfare branch, and Alan Williams, divisional solicitor. The Subordinate Legislation Committee has commented on the code, and an extract of its report is in paper RAE/S3/09/9/5.

Under this agenda item, members can ask questions about the code's content and officials are free to speak, but the officials will not be able to participate when we debate the motion under item 3. I invite the minister to make a brief opening statement.

Roseanna Cunningham: I will be very brief.

The code has been made under section 37 of the Animal Health and Welfare (Scotland) Act 2006, which allows the Scottish ministers to make codes of practice for the purpose of providing practical guidance on animal welfare. The aim of the code is to provide guidance to owners and keepers of horses, ponies, donkeys and hybrids on how to care for their animal. It details a set of underpinning principles of care, which are designed to cover the different management techniques that are used to keep equidae—I am not sure whether my pronunciation or the convener's is correct. It contains information and outlines good practice on horse welfare, and gives advice on how to meet the duty of care and the welfare needs of equidae as set out in section 24 of the 2006 act.

The code was developed with the assistance of the main equine and animal welfare organisations in Scotland, which have been involved in all stages of its preparation. Around 400 organisations and individuals were formally consulted on the draft code, and 69 organisations and individuals responded. The overwhelming majority of respondents welcomed the code and the helpful and detailed information that it contains.

The code provides practical advice and guidance to owners and keepers and will be a

useful tool for those who are charged with investigating cases relating to animal welfare or cruelty. It sets the expected standards for the care of all equidae.

My officials and I will, of course, answer questions from committee members and from you, convener.

The Convener: Do members have any questions?

Elaine Murray: I found the code extremely interesting—as the keeper of a horse which is, according to the diagram, fat.

My only point is that different breeds of horses have different physiques. For example, native horses naturally tend to be stouter than thoroughbreds. However, the guidance seems to be standardised; it does not seem to take account of the differences between different breeds of horse.

Ian Strachan (Scottish Government Rural Directorate): You are quite right that there are different breeds and some horses are more naturally stocky than others. However, unless we prepared volumes of information, it would be impossible to cover everything. The code is designed to offer general and helpful guidance. It gives a little bit more than basic information to the keepers of horses, but not a great deal more.

John Scott: As someone who has a little practical experience of the conditions of animals, I could offer Elaine Murray some instruction later, if that would help.

I note that the code does not mention passports being required for veterinary treatment. Issues relating to the licensing of farriers also arise.

I note the Government's response to the consultation on the code, and I welcome the guidance in principle. However, from reading it, I am not sure whether the differentiation between statutory obligations and non-statutory obligations is as clear as it might be. Despite that, I am sure that the guidance is adequate. For most conscientious owners of horses or donkeys, I am sure that the guidance will be unnecessary, but I welcome it.

The Convener: Item 3 is the formal debate on the code of practice. I remind members that officials may not participate in the debate. I invite the minister to move motion S3M-3693.

Motion moved,

That the Rural Affairs and Environment Committee recommends that the Scottish Government Code of Practice for the Welfare of Equidae be approved.—
[Roseanna Cunningham.]

Motion agreed to.

Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009 (Draft)

The Convener: Item 4 is an affirmative instrument. I welcome Christine Grahame MSP, who has joined us for items 4 and 5. She is the convener of the cross-party group in the Scottish Parliament on animal welfare, so she has a particular interest in this subject area.

I remind members that these amended regulations replace the regulations that were withdrawn by the Cabinet Secretary for Rural Affairs and the Environment at the meeting of this committee on 25 June 2008, on the basis of concerns raised by members. The Subordinate Legislation Committee has made no comment on the amended regulations.

Members can ask questions about the regulations before we move to the formal debate, which is item 5. Officials can respond to questions now, but will not be able to participate in the formal debate. I invite the minister to make a brief opening statement.

Roseanna Cunningham: The impetus for these regulations came from Christine Grahame's member's bill of some years ago; the regulations are the culmination of a process that she started.

The regulations aim to address serious concerns about animal welfare in the trade in young cats and young dogs under the age of 84 days. Dealers who intend to sell such animals in Scotland will first have to obtain a licence from the local authority, which will remain in force for a maximum of three years.

Many such young animals are acquired by dealers from puppy farms outwith Scotland and are often in poor health because they have not been given proper care and attention. The regulations will require licence holders who take possession of such young animals to keep them separate from all other animals for 10 days and to have them examined by a veterinary surgeon in the first day of that separation period. That will ensure that treatment for any health problems can be administered before an animal is resold.

The regulations will secure the welfare of kittens and puppies that are sold in Scotland. They also address the concerns of the Scottish Society for the Prevention of Cruelty to Animals and other organisations, which have received complaints from the public about the health problems of puppies and kittens that dealers have sold.

As the convener said, the committee considered the original regulations in June last year. I hope that the committee accepts the Subordinate Legislation Committee's verdict that the new regulations will do what they are supposed to do

and are drafted properly. All the points that that committee raised have been fully addressed and I am happy to re-present the regulations for consideration.

The Convener: Do committee members have questions?

Rhoda Grant: I understand and welcome the aims of the regulations. What impact will they have on individuals who do not breed animals for sale but who, once in a while, have one or two puppies of a pedigree dog to sell? Would such individuals be required to be licensed?

Ian Strachan: Anyone who breeds such puppies or kittens will be exempt from the regulations. We have also exempted anyone who sells up to two puppies or kittens in a 12 month period. We deliberately included that exemption to allow for someone who buys a couple of kittens and discovers that doing so was a mistake because the kittens climb up their curtains.

Elaine Murray: Will the regulations cover rescue kennels and catteries, which sometimes have puppies and kittens to rehome?

Ian Strachan: No, those establishments are exempted. We exempt rescue sanctuaries, animal sanctuaries and rehoming centres, because whether they are asking for a rehoming fee or selling animals is an issue.

Liam McArthur: I will follow up Rhoda Grant's questions. I have a dog that came from a recognised breeder in Orkney. The breeder's dog is still a family pet, but breeding is perhaps more regular and routine than was suggested in Ian Strachan's response to Rhoda Grant.

Nobody disputes the seriousness of the problems. Perhaps the issue comes down to scale as much as anything else. Grey areas exist when breeders are involved in producing quite a number of puppies but when no welfare issue has been raised in the past. How is that being managed?

I was slightly concerned to note that the individual from whom we got our dog—that person is fairly well-informed and breeds puppies fairly routinely—was blissfully unaware of the regulations. The consultation appears to have been extensive, but one organisation that is not named as a consultee is the Kennel Club. Was it involved? Did it submit evidence and did it correspond with its members?

A limited number of licences is likely to be issued in my constituency. The problem with cost recovery is that recouping the base cost of the licensing structure is far more difficult when the number of people involved is low than when more people are covered by the regulations.

11:30

Ian Strachan: I think that the first point was about dog breeding. Someone who is dog breeding on a commercial scale, which means five or more litters a year, is covered by other dog breeding legislation. The problem was that no legislation covered people who trade in dogs and kittens rather than breed them. People buy litters of puppies from breeders, then sell them on. The dealer was not covered by legislation, but these regulations will plug that gap.

The regulations do not stipulate a cost for a licence. We leave it to each local authority to set its own licence cost. The cost needs to be appropriate and reasonable, but it should cover the cost of inspecting, policing and monitoring the scheme. As the minister said, the licence can last for three years, so it will be a one-off cost every three years.

Liam McArthur: I accept what you say, but it almost makes the point about local authority areas with low numbers of dealers, where the cost per licence could be significantly higher than that in other areas. I am not aware of any great incidence or history of dealing in kittens or puppies in Orkney, for example, but I am aware of any number of instances whereby licensing systems have been put in place that are more costly to set up and run in smaller local authorities.

Ian Strachan: The inspection of pet dealers' premises will be similar to the inspection of dog breeding premises. Although there will be few pet dealers, a number of local authorities will have pet shops and dog breeding establishments to inspect. I anticipate that the licence cost will be on a par with costs for those.

Christine Grahame (South of Scotland) (SNP): I feel like giving evidence on this issue, having lived with it for a long time. I very much welcome the regulations. I put on the record my thanks to Ross Finnie, a previous minister, who had meetings with me and undertook to produce regulations that would subsume my proposed bill, which is now happening. I also thank Ian Strachan for his tolerance and persistence. We had a number of meetings on the issue.

I have one question for clarification, which I am sure I will regret asking. Regulation 6(2) states:

"The licensing authority must, before reaching a decision as to whether or not to grant, renew, vary or refuse an animal dealing licence, consider a report made to the authority by an inspector, unless—

(a) the applicant does not have premises in Scotland on the date the application is received, in which case no report will be required as no inspection will be carried out".

That is obvious. However, regulation 7 states:

"The licensing authority may grant or renew an animal dealing licence which must be in writing and must state ...

the address of the premises where the animals must be kept during the period referred to in regulation 15(1)".

If there are no premises, how can there be an address? I am sure that there is a straightforward answer, but I just wondered about that point.

Ian Strachan: That aspect is to deal with dealers who do not have premises in Scotland but who have premises elsewhere, for instance in Ireland. It was not possible under European legislation legally to construct a regulation to insist that dealers had premises in Scotland. However, we wanted to ensure that, if dealers had premises in Ireland, for instance, the conditions that applied to those premises were the same as the conditions that would apply to premises in Scotland. Although it will not be practical for the licensing authority—in this case, the City of Edinburgh Council—to visit premises in Ireland, nevertheless the dogs must be kept at those premises, which will be detailed on the licence.

In addition, the dogs will still have to be seen by a veterinary surgeon within the first 24 hours of the dealer taking possession of them, and be kept in quarantine for 10 days at those premises. The paper trail with the dog will specify the name and address of the vet who conducted the initial examination and the date of the examination.

Christine Grahame: That is quite interesting, because you are really extending Scottish jurisdiction—strike that from the record! You have found a perfectly legal method of having some kind of regulation. This question may follow on from that. Will there be, or has there been, any kind of co-operation with the southern Irish Government? Are we looking to it to go down the same route? As we know, the evil starts in the euphemistically called puppy farms.

Ian Strachan: We have had no discussion with the Republic of Ireland Government on the issue. However, as an aside, we have had informal discussions with Republic of Ireland officials on their proposals to introduce new animal welfare legislation, which they are keen to base on the animal welfare legislation that we introduced in 2006.

The Convener: Item 5 is formal consideration of the motion to recommend approval of the draft regulations. I remind members that officials cannot participate in the debate. I invite the minister to move motion S3M-3502.

Motion moved,

That the Rural Affairs and Environment Committee recommends that the draft Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009 be approved.—[Roseanna Cunningham.]

Motion agreed to.

The Convener: I thank the minister, officials, Christine Grahame and members of the public for their attendance.

11:36

Meeting continued in private until 12:09.

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