RURAL AFFAIRS COMMITTEE

Monday 19 June 2000
(*Afternoon*)

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RURAL AFFAIRS COMMITTEE
19th Meeting 2000, Session 1

CONVENER

*Alex Johnstone (North-East Scotland) (Con)

DEPUTY CONVENER

*Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)

COMMITTEE MEMBERS

*Alex Fergusson (South of Scotland) (Con)
*Rhoda Grant (Highlands and Islands) (Lab)
*Richard Lochhead (North-East Scotland) (SNP)
*Irene McGugan (North-East Scotland) (SNP)
*Des McNulty (Clydebank and Milngavie) (Lab)
Mr John Munro (Ross, Skye and Inverness West) (LD)
*Dr Elaine Murray (Dumfries) (Lab)
*Cathy Peattie (Falkirk East) (Lab)
*Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

*attended

THE FOLLOWING MEMBERS ALSO ATTENDED:

Sarah Boyack (Minister for Transport and the Environment)
Dr Sylvia Jackson (Stirling) (Lab)
Tavish Scott (Shetland) (LD)
Nicol Stephen (Deputy Minister for Enterprise and Lifelong Learning)

CLERK TEAM LEADER

Richard Davies

SENIOR ASSISTANT CLERK

Richard Walsh

ASSISTANT CLERK

Tracey Hawe

LOCATION

Committee Room 1

Scottish Parliament

Rural Affairs Committee

Monday 19 June 2000

(*Afternoon*)

[THE CONVENER *opened the meeting at 13:34*]

The Convener (Alex Johnstone): Ladies and gentlemen, it is a pleasure to welcome you here once again, to what I sincerely hope will be the last meeting at which we deal with stage 2 of the National Parks (Scotland) Bill.

I remind members that we have a full agenda today, which includes several items that we have mentioned before. There are two items of subordinate legislation to deal with under item 2, and a petition under item 3. Item 4 is consideration of our approach to the gathering of evidence, at tomorrow's meeting, on our inquiry into changing employment patterns in rural Scotland. I remind members that we have agreed to take item 4 in private.

National Parks (Scotland) Bill: Stage 2

The Convener: Item 1 on the agenda is consideration of the National Parks (Scotland) Bill at stage 2.

Section 12—Duty to have regard to National Park Plans

The Convener: We begin with amendment 55 in the name of John Munro, which concerns duty to have regard to national park plans and is grouped with amendments 141 and 56. I advise members that amendments 55 and 141 are alternatives; one does not pre-empt the other. Technically, there is nothing to prevent both amendments going into the bill, should members agree to them, but that would not make for very clear legislation. With that in mind, I ask Mike Rumbles whether he wants to move amendment 55 and speak to the rest of the amendments in the group.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Yes. I will do that.

First, I convey apologies from John Munro, who cannot be here today; he has asked me to speak to amendments 55 and 56 on his behalf. In amendment 55, John Munro wants to remove the phrase "have regard to". Section 12 states:

"The Scottish Ministers, a National Park authority, a local authority and any other public body or office-holder must, in exercising functions so far as affecting a National Park, have regard to the National Park Plan".

Amendment 55 would remove

"have regard to the National Park Plan"

and replace it with

"act in accordance with the National Park Plan, unless material considerations dictate otherwise."

That would strengthen the bill a great deal. The information I have is that in planning arrangements, local authorities have already moved away from the legal term "have regard to" to the much stronger term "act in accordance with." I have been asked to relay that to the committee today.

Amendment 56 states:

"Local authorities and other public bodies must seek the prior approval of Scottish Ministers for any intention to act contrary to the National Park Plan."

That would give the national park plan its fitting status as an extremely important plan, which should not be moved away from without serious cause.

I move amendment 55.

Des McNulty (Clydebank and Milngavie) (Lab): Amendment 141 is broadly similar to amendment 55. I had reservations about the use of the term "material considerations" in John Munro's amendment; I did not think that it was appropriate to word the amendment in quite that way, given the technical meaning of the term "material considerations".

I was concerned about an apparent weakness in the bill, in the phrase "have regard to", and I wanted a strengthening of that wording along the lines that Mike Rumbles suggested. The purpose of the amendment was to tease out from ministers how the national plan would operate, what status it would have and what would be the most effective phraseology to ensure that it was given appropriate consideration and had due weight in the handling of planning matters, not only by the park authority, but by the different public agencies involved with the park.

The thrust of the amendment is to identify whether the form of wording in the bill is correct, and whether there is any means of strengthening it. That would not necessarily mean accepting my amendment 141 or John Munro's amendment 55, but I wondered whether the minister could give commitments on the operation of the bill under the existing wording, and whether that wording could be strengthened.

The Convener: As a supporter of amendment 141, do you wish to speak at this point, Sylvia?

Dr Sylvia Jackson (Stirling) (Lab): Yes. I

gather that both the Transport and the Environment Committee and the Rural Affairs Committee, in their reports, were concerned about the phrase "have regard to" in section 12. We are seeking reassurance that the bill is strong enough, and that—as I think Sarah Boyack reported at a committee meeting—it has the force that Des McNulty described.

The Convener: I invite the minister to comment on the first group of amendments.

The Minister for Transport and the Environment (Sarah Boyack): During consultation on the draft bill, a number of organisations, as Sylvia Jackson said, raised questions about whether the "have regard to" phrase in section 12 of the bill was too weak.

We spent a lot of time considering the alternatives and, in a sense, the amendments provide the alternative approach to dealing with the issue. The amendments are a serious attempt to provide that alternative, and Des McNulty's comment about needing to explore the different forms of wording was important. I suspect that there is not much between us on what we are trying to deliver and that the issue is about getting the precise words to deliver what we all intend.

As regards how things will work on the ground, a variety of public and other bodies will continue to exercise functions in a national park area. They will have various purposes, sometimes statutory, which will, at least partly, relate to the aims of the national park, and they may be active with regard to only part of the national park plan.

The national park authority will give us the opportunity to focus on all the activities that are undertaken by the various bodies so that those activities can be directed towards maximising the benefits of the national park. We would wish to ensure not only that the different bodies' activities are not damaging, but that the bodies all pull in the same direction, so that we get the benefits of synergy and achieve joined-up government in the national park area.

The first point that I want to focus on is that the bill already provides that the national park plan should be approved by Scottish ministers. Any fundamental differences or problems that arise among different bodies, concerning the approaches or policy suggested in the national park plan, will have to be addressed and could be elevated to a national level if necessary. That could be the case if, for example, an organisation was not keen to sign up to any of the provisions of the national park plan; such fundamental differences would have to be ironed out before the plan was adopted. The adoption of the plan provides the opportunity to build in the weight of legitimacy.

Secondly, on the process by which a national park plan is prepared, we have debated in great depth the ways in which the national park plan will be approved. The plan needs a sense of ownership if it is to be successful. That must mean that it is brought together on a partnership basis—not just the consultation on the final product.

In considering some of the research that was commissioned by Scottish Natural Heritage to inform our debate on the national park legislation, we should note that there has been a recent review of management in national parks in England and Wales. The review considered the actual process of preparing plans and identified that benefits were yielded during that process as much as in the drawing-up of the final plan.

If there is a properly inclusive approach at the drafting stage of the national park plan, the degree of co-operation and ownership that is engendered by the fact that key agencies and bodies are part of the process gives strong weight towards compliance with the park plan. That is the key issue. I am not suggesting that there is no requirement for a plan thereafter, or that the duty to follow what it says in the plan is not important. However, getting the sense of proportion right is critical, given the degree of regulation that we are imposing in the bill.

A plan that has not secured the co-operation of partners and of those who will be affected by it will struggle to be implemented successfully. That is why the phraseology that we use—whether that be "have regard to" or "act in accordance with"—is not the critical issue; what is critical is how the plan is prepared.

13:45

Thirdly, the park authority, in preparing its plan, must identify a policy for co-ordinating the exercise of the functions of other public bodies with a view to accomplishing the purpose as stated in section 8—in other words, the collective and co-ordinated achievement of the aims. If a public body has agreed to a plan that has been approved by Scottish ministers, it would be unreasonable for that body to act contrary to the plans, policies or actions that are set out in that plan. Such actions would be open to legal challenge, so more weight is added through that process.

The fourth point concerns the nub of people's concern over the phrase "have regard to", which is that it seems weak. "Have regard to" is a well-established legal phrase; it does not mean that a specific course of action is guaranteed, but the amendments would not guarantee that either. It would be impossible to foresee all the actions that may be taken and the circumstances that might arise in future, so we must acknowledge that other

matters could justify another course of action. The other reason for using the phrase is that circumstances will change over time. A plan will take much time and effort to prepare and will endure for some time. However, as with development plans, it may become out of date, in some respects, before it is reviewed, although we intend the national park plan to be reviewed from time to time.

If asked to provide reasons why "have regard to" is too weak, people could point to other cases in which the duty is to have regard to some aims. That is the case for parks south of the border. The national park management plans there do not have the same status as the proposed national park plans in our legislation for Scotland; south of the border, the plans are not approved by ministers and there is no requirement for other bodies to take notice of them. Such bodies are required to have regard to the aims of the national parks, whereas we will require them to have regard to the national park plan itself. The way in which the responsibilities are identified is therefore different south of the border.

It would be relatively easy to demonstrate that someone had had regard to, or had taken into consideration, some aims that are, by their nature, framed in pretty broad terms, even though we have beefed them up during this process. It would be considerably more onerous to prove that someone had taken into consideration a plan that contained specific plans, policies and agreed actions. We also have the added weight that certain types of public bodies can be subject to a direction from Scottish ministers; that could be a way of beefing up action if it became apparent that bodies were not meeting their requirements.

Amendment 55, in the name of John Farquhar Munro, and amendment 141, in the name of Des McNulty, would both make the duty to

"act in accordance with the National Park Plan".

That would make the pre-eminent purpose of the involvement of all public bodies in a national park the plan itself. We all agree that the plan is important, but would it be right, for example, for the Scottish Environment Protection Agency's functions to become secondary to the purpose of the national park plan? The functions of public bodies should remain their functions, with the plan having appropriate weight. That is the right balance. It would not be right to tie those bodies into a straitjacket of a presumption in favour of the park plan that pushed their legitimate functions into "other material considerations".

I will pick up the points that were raised in Mike Rumbles's opening remarks. The formulation that we have chosen—"have regard to"—comes directly from section 25 of the Town and Country Planning (Scotland) Act 1997. Section 25 states:

"Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise."

That is the legal reference that we are paraphrasing, and where the phrase "have regard to" comes from.

Section 25 of that act refers to one specific function that is exercised by one authority according to the statute that determines how that function should be carried out. It is important to acknowledge that, although "have regard to" is identified in the 1997 act, the situation is different in respect of national parks, as a whole range of organisations will exercise a series of functions. The national park plan is about co-ordinating those functions rather than setting the basis for the exercise of a single statutory function. That is an important distinction. I suspect that that is the clarification that Des McNulty seeks.

Amendment 141 goes further than amendment 55, in that it does not allow for any occasion on which action might be taken that was not in accordance with the national park plan. It does not recognise that there could be occasions on which the plan is out of date and, by common agreement in the national park authority, not relevant to a particular situation.

The amendment introduces the idea of facilitating implementation in accordance with the aims, but that positive duty will not be appropriate for many bodies, such as fire brigades, tax inspectors and so on. Furthermore, the phrase

"in accordance with the National Park aims"

is not necessary, because the whole plan has to be drawn up in accordance with the aims; that duty is placed on the national park authority in sections 8 and 10. We have tried to embed in the bill a series of different ways of reinforcing the aims through the national park plan.

Amendment 56, in the name of John Farquhar Munro, would require local authorities or any other public bodies to seek the prior approval of Scottish ministers for any intention to act contrary to the plan, and would give ministers powers to intervene, regardless of what the parent act says. That would be particularly inappropriate in relation to town and country planning, where the planning authority—the planning authority that will exercise those functions will be determined at the designation order stage—already has discretion to make decisions, and is required to pay special attention to the national park plan. The amendment would require the planning authority to seek ministerial views every time that it wanted to exercise that discretion. It would also give ministers two planning roles—one at that stage,

and one at the call-in, or appeal, stage.

In summary, according to the current formulation in section 12, if a public body is acting properly, it will act in accordance with a plan that it has helped to prepare, which has been approved by Scottish ministers. There may be occasions when there are compelling reasons to act otherwise, for example when the plan has been overtaken by circumstances. I think that the section gives the right balance. On this issue, we should refer not just to section 12; several areas of the bill reinforce the concept of having regard to the national park plan.

Dr Sylvia Jackson: I am not trying to be awkward, but I thought that what you said about the national park plan possibly being at odds with organisations such as SEPA was interesting. Can you think of an example? I am mindful of the aims that are behind the national park plan, so I fail to see why that might be the case.

You said that national park plans might be overtaken by events. Should something be written into the bill about an on-going review? We touched on that issue last time. You have raised an important point.

Des McNulty: The minister has responded positively to what we are trying to achieve. I now appreciate the salient point about the duty that having to "act in accordance with" the national park plan would impose on a range of public bodies as well as on the national park authority.

I had in mind such things as structure plans and green belt schemes; authorities that wish to move away from those plans should have to go through some special mechanism. That concern is also flagged up in the next group of amendments, which reflect the same approach. However, given what the minister has said about how the phrase "have regard to" would apply, I am reassured by the commitment that she has given.

The Convener: Does anyone else wish to comment on this group?

If not, I invite the minister to comment on what she has heard in the past few moments, then I shall ask Mike Rumbles to wind up on the group.

Sarah Boyack: It is difficult to predict the circumstances in which a body would feel unable to implement all the elements of the national park plan. For example, SEPA might sign up to a national park plan and it might become evident later that there were unforeseen financial implications; that might rejig SEPA's financial priorities for other areas, such as the implementation and the regulatory functions.

In a sense, I am inventing a circumstance in which we might want a body not to go with the national park plan but to have had regard to it. The body would have to be able to demonstrate that it had given the plan due consideration.

On structure plans and local plans, there are formal procedures not only for reviewing the plans, but for amending them. There is the concept that if a significant new issue comes up, there should be an amendment to the plan to give it statutory weight. In taking a decision, the authority has to have regard to its own plan.

We have not built in that process of amendment. Over time, we would have to consider how the national park plan developed. That would come down partly to the designation order and partly to who would have the planning powers and where they would be allocated in the order. There is an extent to which it is important that we acknowledge the functions and the specific processes that the development plans have to go through, which would be different from the national park plan.

However, both types of plan should be considered properly and an authority or a body should be able to demonstrate that it has had regard to the plan. That picks up Des McNulty's point about green belts that come through the national park plan being given statutory weight in the structure plan at the broad level and the local plan at the detailed level. I hope that helps to clarify those issues.

Mr Rumbles: The minister has recognised the disquiet that people feel about the "have regard to" phrase in this section.

I will not go through all the minister's quite lengthy points, but she said that John Munro's amendment 55 was too much of a straitjacket. However, all that the amendment is suggesting is that we remove "have regard to" and insert

"act in accordance with the National Park Plan"—

and this is the important point—

"unless material considerations dictate otherwise."

In my view and, I am sure, in that of John Munro, that is not a straitjacket at all. It simply addresses the concerns that people have expressed about the rather weak—the minister said that herself—phrase that is currently in the bill.

Amendment 56, read with amendment 55, shows that the former says that local authorities and other public bodies must seek the prior approval of Scottish ministers

"for any intention to act contrary".

That is, they must seek that approval to act opposite to the national park plan. There is a good safeguard in there.

Des McNulty has withdrawn his amendment, so

the issue has been clarified. Instead of having three options, we have the choice between going with the bill as it is written, with the recognition that it is rather weakly written, and going with John Munro's two amendments, which make clear, without being a straitjacket, the committee's intentions. I hope that the committee will look upon it in that light when we come to the vote later.

The Convener: Thank you, Mike.

Sarah Boyack: On a point of order. I did not say that the phrase was weak; I said that people perceived it to be weak. There is a distinction.

The Convener: The question is, that amendment 55 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Lochhead, Richard (North-East Scotland) (SNP)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Fergusson, Alex (South of Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Johnstone, Alex (North-East Scotland) (Con)
McGugan, Irene (North-East Scotland) (SNP)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Murray, Dr Elaine (Dumfries) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

The Convener: The result of the division is: For 2, Against 8, Abstentions 0.

Amendment 55 disagreed to.

Amendment 141 not moved.

Amendment 56 not moved.

Section 12 agreed to.

After section 12

14:00

The Convener: We now come to amendment 142, in the name of Des McNulty, which deals with the impact of the park plan on planning and development control. Amendment 142 is grouped with amendments 61 and 62.

Des McNulty: Murray Tosh and I are addressing similar themes in terms of the limitations on development contrary to the plans. The Transport and the Environment Committee identified the issue in its deliberations on the draft bill. My amendment has two elements. First, I want to establish that the national park plan should be deemed "a material consideration" in relation to any planning application to the local authority. Members will recall that there is some flexibility in how planning is dealt with in the framework established by the bill. My intention is to deal with a perceived anomaly; if local authorities maintain planning functions, the national park plan might not be seen as a material consideration.

Secondly, I want to deal with an issue that was raised by several people who gave evidence to the Transport and the Environment Committee. They were looking for some sort of stop clause that could be used in extremis if there were a proposed development that was clearly in contravention of the national park plan. Such a provision would give ministers notification of the proposal and an opportunity to respond.

It is appropriate that the amendment is grouped with amendment 62, which has been lodged by Murray Tosh, who is trying to achieve the same mechanism through another part of the bill.

I move amendment 142.

The Convener: Amendment 61 is in the name of John Munro. I call Mike Rumbles to speak to it and the others in the group.

Mr Rumbles: I have concerns about the current wording of the bill. I have received advice that there is no case law to support the phrase "special attention", whereas there is for "significant material consideration". That is the basis of the amendment—to beef up the section and make it clearer in legal terms.

Alex Fergusson (South of Scotland) (Con): I can speak to amendment 62 in the very words that Murray Tosh would have used had he been here.

Amendment 62 reflects evidence given to the Transport and the Environment Committee by several witnesses. I am sure that Des McNulty will confirm that. I wish to point out that the committee recommended that the paragraph in question be amended. During the passage of the bill so far, ministers have rejected several amendments on the ground that they are inappropriate because they are founded on terms that lack precision and would create uncertainty.

All the evidence taken by the Transport and the Environment Committee made the same point about the phrase "special attention", which is used in the bill. No one is clear what that expression means or, given that fact, what weight would attach to the national park plan. Every witness suggested that the bill should contain the phrase "material consideration", a standard expression whose meaning is clear to planning authorities and those who deal with them regularly. It appears in all three amendments that we are debating.

I am unaware of ministers' intentions in using the unfamiliar and imprecise expression "special attention" and I have not suggested that it be deleted in case it is important to ministers in a way that is not yet revealed. I have suggested the

addition of the words in the amendment to clarify and strengthen the role that national park plans will have in relation to other plans in the national park areas and to ensure that national park plans have a status in the hierarchy of plans that makes national parks' policies material considerations in arriving at all decisions on planning matters.

The Convener: Fergus Ewing is listed as a supporter of amendment 61. As nobody wishes to speak on his behalf, I invite the minister to comment on this group of amendments.

Sarah Boyack: The amendments in this group seek to ensure that the national park plan is given proper status and consideration in planning decisions. In response to the consultation exercise that we conducted on national parks, we added paragraph 15 to schedule 5. It requires that in respect of any land in a national park and any power under the Planning Acts, special attention should be paid to the national park plan.

It may help the committee if I clarify that the term "special attention" was not dreamed up by us, but is used in respect of listed buildings. We felt that the phrase already had some legal weight and that it was a tried and tested formula that struck the right balance. We were trying to avoid saying that the national park plan was exactly the same as the development plans for an area, and we wanted to ensure that the plan was given enhanced status in respect of town and country planning matters.

I am happy to debate all these amendments, as it is important that we clarify what we intended when drafting the bill. Amendment 142 would ensure that the park plan is "deemed a material consideration" in planning applications, while amendment 61 would make it a "significant material consideration". The term "material consideration" has a particular meaning in planning. It would not be appropriate to elevate the national park plan above the approved development plans, which is what would happen under amendment 61.

The addition of "significant" might mean that the national park plan would carry more weight than other material considerations. It is important that it should remain for the decision maker to determine what weight is given to each material consideration. "Material consideration" has a particular meaning in planning. We did not consider it appropriate to use the phrase that we use in planning legislation and with development plans in this context. That is why we use a different term and why we amended the bill before its introduction; paragraph 15 of schedule 5 requires the national park plan to be given "special attention" in planning decisions. I have explained how we arrived at that phrase.

It is our intention that the bill should achieve the aim behind amendments 142 and 61. I would like in particular to highlight the second part of amendment 142, which requires that any application contrary to the national park plan should be notified to the Scottish ministers for their decision. Planning authorities will already consult a range of bodies before they determine certain categories of application. In some cases, that leads to Scottish ministers being notified when agreement has not be reached. Those provisions could be extended to cover national park authorities in circumstances where they are not designated as a planning authority.

However, amendment 142 requires both notification to the Scottish ministers, without the option of discussion with the national park authority, and determination of the application by Scottish ministers, without the option of clearing it back to the planning authority—whoever that may be under the designation order. That is unnecessarily restrictive and would tie the hands of the planning authority. It would not give the authority the discretion it requires. I believe that sufficient procedures and safeguards are in place. I hope that that explanation helps to clarify matters for Des McNulty and Mike Rumbles and that they will not press their amendments.

I can see exactly where Murray Tosh is coming from in amendment 62. He is trying to give the national park plan exactly the same status as a local plan by treating it as a "material consideration" in planning decisions. I hope that I have addressed that issue to some extent.

Planning decisions are required to be made in accordance with the development plan unless material considerations indicate otherwise. Our wording of schedule 5 indicates that a planning authority exercising any of its powers under the Planning Acts is required to pay special attention to the national park plan. We believe that that would be sufficient to ensure that the national park plan is treated as a material consideration, and it follows that if there is conflict between the national park plan and the development plan, the decision maker must decide what weight must be given to each.

By considering both plans alongside each other, equal status will be given to each. After all our discussions about how the national park plan will be put together and approved by Scottish ministers, it seems most unlikely that the development plan and the national park plan will diverge in policy terms. Although there is a potential problem with timing in that both plans could go out of sync, when we take the requirement to review the national park plan from time to time into account with the more rigorous process for structure and local plans of enabling amendments in addition to the review process, we

have the opportunity to address those issues.

I hope that my explanation assures the committee that we have thought about these matters and that we have reached our formulation in light of the issue of material considerations. I want to avoid a straitjacket on determining planning applications and the concept of special material considerations; material considerations are, by definition, significant. I hope that that has helped to clarify how we reached our initial formulation and why we believe that the amendments do not improve matters, even though I appreciate exactly where they come from.

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): Amendment 142 has a technical flaw; it mentions a "local authority" when we know from section 9 that the local authority might not be the planning authority.

The minister said that the bill provides that the national park plan should be treated as a material consideration in planning decisions. If that is so, I cannot for the life of me see why we cannot ensure such an effect by including it in the bill. Murray Tosh's amendment would do precisely that.

Dr Elaine Murray (Dumfries) (Lab): It might just be the way I am reading it, but I have a slight concern about the first part of amendment 142, which says:

"For the purposes of any planning application to a local authority, any part of whose area is within a National Park, the relevant National Park Plan shall be deemed a material consideration."

That suggests that if the planning application applied to an area outwith the national park, the national park plan would still have to be a material consideration, which seems rather restrictive on development outside national park boundaries.

Mr Rumbles: I am quite relaxed about whether Murray Tosh's amendment or John Munro's amendment is accepted, but I am a little perturbed that the ministerial team has accepted only one non-Executive amendment. It is very difficult for committee members to judge ministers' real objections if they reject every other amendment. I agree with Alasdair Morgan: if something in the bill will have a certain effect, that should be made clear in the bill. Murray Tosh did not want the phrase "special attention" to be removed if ministers had some special reason for including it, but it now turns out that the phrase comes from listed buildings legislation.

I find it odd—that is all. I do not think that this is a major issue that we should be falling on our swords about. If we mean "significant material consideration", that expression should be in the bill. I would be happy with either amendment 61 or amendment 62, but as Murray Tosh said that he did not know why "special attention" was included, I would prefer amendment 61.

14:15

Sarah Boyack: As Elaine Murray said, there should be liaison between planning authorities in drawing up their plans, so there should be knowledge of the different interests across the park plan boundaries. We feel that amendments 142 and 61 are not appropriate and have a policy objection to them but, if pressed, we would be prepared to reconsider amendment 62 and return to the issue at stage 3 if the committee considered that appropriate.

I acknowledge that the distinctions we are drawing may seem very fine, but I would like to do a final check to ensure that the legalities are absolutely right for the final version of the plan. If members wish, I shall study the wording of amendment 62 and decide whether it is appropriate or whether the Executive should lodge a slightly different amendment at stage 3. I resist amendments 142 and 61 for the reasons I have outlined: they would change the bill in ways that I do not think would be helpful or constructive.

Des McNulty: I had presumed that when the national park authority was the planning authority, its own plan would, by definition, be a material consideration in deciding how to deal with planning applications. The intention behind subsection (1) of amendment 142 was to deal with the anomalous situation.

This has been a valuable discussion and I welcome the fact that the minister is taking on board the concerns of the Transport and the Environment Committee about the plan being a material consideration. I would be quite happy for the minister to go away and consider how that might best be done.

It might be appropriate to consider this point not only in the context of paragraph 15 of schedule 5, but to see whether there is an option for clarifying it in one of the sections of the bill. It should be made as explicit as possible, if that can be achieved, rather than at the very end of a long swathe of technical amendments to existing statutes. With that in mind, I feel that the minister has responded positively to the concerns that members have expressed. I therefore seek leave to withdraw amendment 142.

Amendment 142, by agreement, withdrawn.

Section 13—Management agreements

Amendment 18 moved—[Sarah Boyack]—and agreed to.

Section 13, as amended, agreed to.

Section 14 agreed to.

Section 15—Agency arrangements and joint operations

The Convener: I call the minister to move Executive amendment 125, which is grouped with Executive amendments 126, 88, 127 and 128.

The Deputy Minister for Enterprise and Lifelong Learning (Nicol Stephen): This group of amendments allows sensible arrangements between public bodies in relation to the exercise of functions by a national park authority. Section 15(2) enables any local authority to arrange for any of its functions that are exercisable in relation to a national park to be exercised on its behalf by the national park authority. Amendments 125 and 127 allow for other public bodies to do likewise. For example, Scottish Natural Heritage might delegate the management of a national nature reserve to a national park authority. Responsibility for the function would be unchanged and would remain with the relevant public body.

Amendment 126 provides a restriction on the functions that can be delegated. It would not be appropriate for a national park authority to take over a local authority's responsibility for its byelaws or to decide on its nominations for appointments to the national park authority.

Amendment 88 is largely technical. It relates to arrangements whereby two or more national park authorities exercise their functions jointly through a joint committee. The amendment replicates the rules governing the establishment of committees of one national park authority as set out in paragraph 14 of schedule 1 to allow membership of a national park joint committee to include non-members of the authority; to make provision for payment of remuneration; and to ensure that adequate controls for the authority are placed on any joint committees that are established.

Amendment 128 is technical and allows for any function delegated by Scottish ministers to a national park authority to be exercised accordingly.

I move amendment 125.

Amendment 125 agreed to.

Amendments 126, 88 and 127 moved—[Nicol Stephen]—and agreed to.

Section 15, as amended, agreed to.

Section 16—Delegation of functions by Scottish Ministers

Amendment 128 moved—[Nicol Stephen]—and agreed to.

Section 16, as amended, agreed to.

Sections 17 to 24 agreed to.

Before section 25

The Convener: We now come to amendment 144, in the name of Sylvia Jackson, which addresses the powers to limit damaging activity. It has been grouped with amendment 145.

Dr Sylvia Jackson: Amendment 144 would be a power of last resort to prevent significant damage to the natural and cultural heritage. During consultation on the bill, the Scottish Council for National Parks and SNH stressed the importance of a last-resort power to enable the Scottish ministers to deal with extreme cases of intransigent behaviour leading to significant damage or risk of damage to the natural and cultural heritage. In their stage 1 reports on the bill, both the Transport and the Environment Committee and the Rural Affairs Committee acknowledged that advice—in paragraphs 80 and 68 respectively.

Amendment 145, which would amend section 32, is consequential on amendment 144.

I move amendment 144.

Nicol Stephen: It is important that a balance is struck. We have discussed at great length the need to have an inclusive process to involve local communities and to reassure people who live and work in national parks. We also want to devolve powers as far as possible to national park authorities. Nevertheless, there are significant safeguards and restrictions. For example, a range of bodies can exercise different powers, such as protection orders, compulsory control scheme orders, traffic management orders, compulsory purchase orders, general permitted development orders, statutory nuisance powers, site of special scientific interest powers, and the power of the Scottish Executive as the ultimate planning authority.

Our concern is that a catch-all power would be inappropriate. I feel as if I am making the argument that the committee should be making to the Scottish Executive, rather than the other way round, because most often Parliament and the committees try to restrict the powers of ministers and the Executive. It is fair to say that the objective of such a wide power is ill defined. With it being so inevitably broad, we think that the power might be disproportionate to the number of cases it is likely to be able to catch. It is a question of balance and judgment. We believe that the power is unnecessary.

Alasdair Morgan: I know that the committee argued for some kind of power of last resort, but I tend to agree with the minister that this particular one seems to be a bit ill defined—or not defined at all. It is not even clear to me whether we are

talking about powers that ministers currently have. This amendment appears to give ministers a range of powers to restrict anything that comes within their powers under the Scotland Act 1998. As such, it is impossibly broad. While I sympathise with the idea behind the amendment, the words are not words that we can go along with.

Dr Jackson: If there is no support in the committee I will withdraw the amendment, but I detected from organisations that approached me and from the two committees' reports that there was some sympathy with the idea.

I ask to withdraw the amendment.

Amendment 144, by agreement, withdrawn.

Section 25 agreed to.

Sections 26 and 27 agreed to.

Section 28—Modification and revocation of designation orders

14:30

The Convener: Amendment 119, in the name of Fergus Ewing, was debated with amendment 102 on 13 June.

Irene McGugan (North-East Scotland) (SNP): Fergus Ewing does not want to move the amendment, on the basis that section 2 was not deleted.

Amendment 119 not moved.

Section 28 agreed to.

Section 29—Application in relation to marine areas

The Convener: We now come to amendment 20, in the name of Tavish Scott, which is about marine national parks. It is grouped with amendments 21, 143 and 143A. We have also accepted a manuscript amendment 143B, which has been circulated to members. I remind members that, as an amendment has been lodged to amendment 143, immediately after amendment 143, amendments 143B and 143A will be moved.

Mr Rumbles: Tavish Scott would have been here if he could have been. As we speak, he is flying here from Shetland, but he has been delayed, as have so many other people in recent times. He has asked me to speak to his amendments.

I shall speak to amendments 20, 21, 143A and 143B together. There are two main themes. The designation of a marine national park to be

"comprised wholly or mainly of sea"

should be changed to "that includes the" sea, as it is too restrictive. More important, it is felt that the bill, even amended by amendment 143, would leave too much power in the hands of the ministers to amend the regulations that would apply to marine areas. Amendment 143A adds at the end of amendment 143 the following:

"but may not make any modifications which would lead to a reduction in the consultation with, or representation of—".

The ministers will say that their amendment is not intended to provide marine national parks with any lesser service, or to provide less consultation, but amendment 143A would put the requirements for service and consultation in the bill, to ensure that there was the same connection with the community in the setting up of a marine national park. Tavish Scott feels that the bill leaves too much power in the hands of the ministers, to set up a marine national park without the same involvement of the people who live and work in the area.

I move amendment 20.

Nicol Stephen: As members know, following consultation, section 29 was added to the bill to allow for the possibility of marine parks. The section has led to considerable debate. Although the bill, as it was then drafted, did not exclude marine parks, it was felt that some provisions might need to be modified to apply the bill sensibly in such cases. For example, the provisions giving particular roles or duties to local authorities would not apply in cases of wholly marine parks, because there are no local authorities in such areas. Therefore, section 29 allowed for a general power of modification of the act when setting up marine parks.

The Subordinate Legislation Committee raised concerns at stage 1 that the powers in section 29 allowing Scottish ministers by order to modify sections in the bill were too wide. Executive amendment 143 seeks to respond to that concern by replacing section 29 with a new section, which will clearly state which parts of the bill can be modified by order by the Scottish ministers. As members will see, the amendment is very precise in identifying the elements of the bill—at section, subsection and paragraph level—which could be modified by the power that is being given to Scottish ministers.

I will go through the provisions that are identified as being open to modification. The fourth aim is identified as amenable to modification. We do not wish a national park proposal to be invalidated simply because there are no people living in the area, even though people may make their living there. Similarly, the second condition, that an area should have

"a distinctive character and a coherent identity"

should be open to modification. It does not seem right implicitly to exclude the possibility of a marine

park on the basis of a disagreement over whether a piece of water has a coherent identity.

The role played by local authorities in the consultation process, as set out in sections 2 and 3 and amended section 5, is also important. If local authorities have no locus in wholly marine areas, those provisions would need to substitute an alternative—not just as consultees, but as bodies to make copies of consultation documents available for public inspection. The same argument applies to the references to local authorities in section 6, in relation to designation orders, and section 11, in relation to national park plans.

Section 15 refers to a local authority making arrangements to delegate its functions to a national park authority. Schedule 1 refers to membership of the national park authority, and provides for some members to be appointed on the nomination of local authorities. Paragraphs 8 and 9 of schedule 2 refer to byelaw-making powers, and schedules 3 and 5 relate to miscellaneous functions.

We have gone through the bill in a detailed and careful way to identify only the elements of the bill that would need to be amended for a marine park. We have limited the order-making power accordingly to take on board the concerns of the Subordinate Legislation Committee. Tavish Scott has tried to address those concerns in an equal but opposite way, by identifying the elements of the legislation that cannot be changed; we have preferred to identify only the detailed aspects of the legislation that it will be necessary to change, to give proper effect to the legislation if a marine park is to be introduced.

Members might argue that the provisions that mention local authorities are not a problem, as they have no effect if there are no relevant local authorities but, as I said, if local authorities are not the appropriate bodies to make copies of consultation documents available, who will perform that duty? Apart from the fact that we believe that the legislation would be untidy if there were continuing references to local authorities, we are concerned that we need an organisation—perhaps a local authority that has a boundary with an area of water—to carry out those sensible functions.

Amendment 21, because of the sections that it would prevent us from changing, would preclude us from doing some of the things that we believe need to be done to give sensible effect to the bill.

Amendment 143A adds a rider to the Executive amendment so that that amendment may not be used to make

"any modifications which would lead to a reduction in the consultation with, or representation of"

relevant local authorities, community councils or others.

The Executive has total sympathy with that aim; it would not be our intention to use those powers to reduce the consultation with local authorities, communities or community councils. I will go further than that and put it on record that our purpose is to ensure only that the bill applies appropriately and that the power of modification is construed narrowly. Our intention would be to make the minimum possible number of changes to give proper and meaningful effect. It would not, for example, be appropriate to use the powers of modification to remove the rights of local authorities or community councils, or to remove the right to local consultation. It would not be appropriate to use those powers to lessen consultation or local involvement.

I hope that those assurances are of assistance. The amendments all raise helpful and useful issues. They help to identify areas where there is anxiety that the general powers of modification might be too widely used and might be used to undermine some of the most important aspects of the bill.

In the context of the approach to Sylvia Jackson's amendment 144, I hope that members will be reassured that Scottish ministers are not seeking to take on wide-ranging and open powers in that area. We simply want to do what is right and appropriate in the tightest and most focused way in relation to the possibility of marine national parks. That is what we seek to do in Executive amendment 143.

Dr Murray: Perhaps Mike Rumbles can clarify this, but I am not sure that I understand the intention behind amendment 20. The amendment would not totally exclude marine parks; it would simply increase the potential for modification to national parks that had only a small bit of sea attached to their area.

It is beneficial that, with amendment 143, ministers have specified more clearly what would require to be modified in the case of a marine park. Amendment 21, on the other hand, is rather a blanket indication of what would not need to be modified. In fact, it seems that amendment 21 is incorrect, because parts of the sections indicated would need to be modified in the case of a marine park. Amendment 143 also indicates that the modification could be made only by order. It is not as if ministers could just go off and make changes; they would be held accountable for the modifications that they made.

Given that amendment 20 does not exclude the possibility of a totally marine national park, the line in amendment 143A that begins with the words

"a local authority or community council"

would fall should there be a totally marine national park. That amendment does not seem to be totally logical either.

14:45

Rhoda Grant (Highlands and Islands) (Lab): Elaine Murray has said much of what I wanted to say, so I will not repeat those points.

I am pleased that consultation will not be reduced by any of those modifications—it is important to have that noted.

On amendment 20, I understand that if the sea is included, it must be included with something, and that suggests land to me. Therefore, a marine national park must have some land in it, if the legislation is to be modified by ministers to include marine national parks.

Therefore, the amendments that could be made to the bill for a marine national park could not be made for a wholly marine national park. I do not think that amendment 20 works, as it puts an awful lot of obstacles in the way. It would mean that one would have to make a wholly marine national park a lot bigger, in order to include some land, or one would not be able to modify the legislation to establish wholly marine national parks.

Nicol Stephen: Amendment 20 would widen section 29, so that it applied not just to proposed parks that consisted wholly or mainly of the sea, but to any proposed park area that included sea. Therefore, the amendment would widen the circumstances in which ministers' discretion, or powers of modification, could be used. I thought that the general intention of the Rural Affairs Committee and of the Subordinate Legislation Committee, which we tried to meet with Executive amendment 143, was to try to restrict the use of those powers. Amendment 20 moves us in the opposite direction from that intended by the Subordinate Legislation Committee.

I am not convinced that amendment 20 is necessary. It was always envisaged that a national park could include sea, and the bill as drafted adequately covers those circumstances. The innovation is a national park of entirely or mainly sea, which none of us around this table considered initially. We now have a good balance between the detail required to implement the original intention and a slowing down or stopping of the legislation to allow us to dot every i and cross every t in a circumstance that remains unknown because, as yet, there are no proposals for a wholly or mainly marine national park.

Mr Rumbles: Executive amendment 143 drops the completely free hand that it had in the bill when dealing with national parks. I want to be clear that such a move is welcome.

We might wish to leave in the reference to marine national parks that consist wholly or mainly of sea because, of the two themes in this group of amendments, that is the most important. It deals with ministers' powers, never mind the definition of the sea area.

Ministers dealing with marine national parks—those consisting wholly or mainly of sea—are still allowed to modify a series of specified sections. They are allowed to modify the requirements to consult and inform local authorities and others with an interest in a park. The amendment permits ministers to leave the membership of the marine national park authorities in the hands of ministers, allowing them to take out the requirements for local authority membership and so on—the power is there.

The flexibility of the Executive amendment—it is flexible compared with the previous position—is needed to give ministers powers to widen consultation, which the minister mentioned. It gives representation to a neighbouring local authority that has an interest in an area of sea that is not within its boundaries.

That is a valid argument, and the Executive contends that modifications would be all in the right direction, as the minister made clear—increasing, not reducing, accountability. On the inference that modification cannot be removal or deletion, many people, especially fishermen, are suspicious of marine national parks, and the details of marine areas need to be in black and white. We have to recognise the problem, and it is important to address that in the bill. The Minister for Transport and the Environment has quite rightly told us her intentions, and they are on record in the *Official Report*, but they are not in the bill.

Amendment 143A, which is Tavish Scott's amendment to the Executive amendment, states that modifications cannot

"lead to a reduction in the consultation with, or representation of—

(a) a local authority or community council . . . or

(b) such persons as appear . . . to be representative of the interests of those who live, work"

in the area of the marine national park. That is absolutely clear.

This is a matter of whether we let the matter ride and are satisfied with the minister saying on the record that that is the intention, or whether we put it in the bill. I believe that it is particularly important for the fishermen's organisations, which have registered the problem, that we address it in the bill.

Tavish Scott has told me that, with his amendment 143A, the Executive's amendment

143 is fine.

Nicol Stephen: I did not mention the fishing interest. It is very important to add to the record our commitment with regard to any marine national park proposal, that the fishing interest would be one of the key interests. That interest is not clearly covered in the bill as introduced, and it is an area where we would wish to strengthen the consultation and make very sure that all the key fishing interests were appropriately involved before moving to a designation proposal.

Mr Rumbles: I wish to withdraw amendment 20 and not to move amendment 21, but I will not withdraw amendment 143A.

Amendment 20, by agreement, withdrawn.

Amendment 21 not moved.

The Convener: I should clarify to any members who might be confused that I accepted manuscript amendment 143B because it allowed the material content of amendment 20 to be considered as an amendment to Executive amendment 143, so that the new amendment would not be pre-empted.

Amendment 143 moved—[Nicol Stephen].

The Convener: We now come to manuscript amendment 143B, and I invite—[*Interruption.*]

I will pause for a moment, as Tavish Scott takes his seat. Now that you have arrived, Tavish, do you wish to move manuscript amendment 143B? [*Interruption.*] I am reminded that it is Mike Rumbles's amendment.

Amendment 143B moved—[Mr Rumbles].

The Convener: The question is, that amendment 143B be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fergusson, Alex (South of Scotland) (Con)
Johnstone, Alex (North-East Scotland) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

The Convener: The result of the division is: For 6, Against 4, Abstentions 0.

Amendment 143B agreed to.

Amendment 143A moved—[Tavish Scott].

The Convener: The question is, that amendment 143A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Lochhead, Richard (North-East Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Fergusson, Alex (South of Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

ABSTENTIONS

Johnstone, Alex (North-East Scotland) (Con)

The Convener: The result of the division is: For 4, Against 5, Abstentions 1.

Amendment 143A disagreed to.

Amendment 143, as amended, agreed to.

Section 29, as amended, agreed to.

Sections 30 and 31 agreed to.

Section 32—Orders

The Convener: We now move to amendment 120, which was debated on Tuesday 13 June. Members will note that this amendment relates to a new section, which the committee did not agree to include in the bill. Can I assume that amendment 120 will not be moved?

Amendment 120 not moved.

Amendment 145 not moved.

Section 32 agreed to.

Section 33—Interpretation

The Convener: Next is amendment 89, which was debated with amendment 133 on Friday 16 June. I remind members that an amendment to amendment 89 has been lodged, so that once 89 has been moved, amendment 89A will immediately be moved. If amendment 89A, which was debated last Friday, is agreed by the committee, it will amend amendment 89.

Amendment 89 moved—[Nicol Stephen].

Amendment 89A moved—[Irene McGugan].

The Convener: The question is, that amendment 89A be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Lochhead, Richard (North-East Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

ABSTENTIONS

Fergusson, Alex (South of Scotland) (Con)
Johnstone, Alex (North-East Scotland) (Con)
Peattie, Cathy (Falkirk East) (Lab)

The Convener: The result of the division is: For 3, Against 3, Abstentions 3.

The convener's casting vote will mean that this amendment is not agreed to.

Amendment 89A disagreed to.

Amendment 89 agreed to.

Amendment 19 moved—[Nicol Stephen]—and agreed to.

Section 33, as amended, agreed to.

Section 34 agreed to.

Schedule 4 agreed to.

Schedule 5

MODIFICATION OF ENACTMENTS

15:00

The Convener: Amendment 90 opens up the matter of amendments to other acts and is grouped with amendments 91, 92, 93, 94, 95, 96, 97, 98 and 99. I ask the minister to move amendment 90 and to speak to this group of amendments.

Nicol Stephen: I move amendment 90.

I am sure that members will agree that amendments 90 to 99 are largely self-explanatory.

The Convener: That is a good one.

Nicol Stephen: I have speaking notes for each of the proposed Executive amendments, but—subject to your guidance, convener—I could simply ask committee members to indicate whether they have concerns about any of them. I would be happy to give explanations for those amendments that members highlight. That might make for a speedier debate.

The Convener: No members have indicated that they wish to ask questions about amendments 91 to 99.

Amendment 90 agreed to.

Amendments 91 to 99 moved—[Nicol Stephen]—and agreed to.

Amendment 61 not moved.

Amendment 62 moved—[Alex Fergusson].

Dr Murray: I thought that the minister had agreed to consider this issue at stage 3.

Nicol Stephen: It is still up to the member to decide whether he wishes to move the amendment.

Alex Fergusson: Thank you, minister. If the committee wishes me to provide a reason for moving the amendment, it is quite simply—

Mr Rumbles: We should just get on with it.

The Convener: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fergusson, Alex (South of Scotland) (Con)
Johnstone, Alex (North-East Scotland) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)

ABSTENTIONS

McNulty, Des (Clydebank and Milngavie) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

The Convener: The result of the division is: For 6, Against 1, Abstentions 3.

Amendment 62 agreed to.

Schedule 5, as amended, agreed to.

Section 35 agreed to.

Long title agreed to.

The Convener: My goodness, we have come to the end of our consideration of the National Parks (Scotland) Bill. Thank you for your indulgence. I thank the Minister for Transport and the Environment, Sarah Boyack, the Deputy Minister for Enterprise and Lifelong Learning, Nicol Stephen, and the representatives whom they brought with them for their co-operation. I also thank those who are not members of the committee, but who have been involved in this stage 2 debate, for their regular attendance and keen participation.

I adjourn the meeting for five minutes before we proceed with the agenda items that have been deferred for several days.

15:06

Meeting adjourned.

15:17

On resuming—

Subordinate Legislation

The Convener: The next item on the agenda is subordinate legislation. We have two instruments before us: the Food (Animal Products from Belgium) (Emergency Control) (Scotland) Revocation Order, SSI 2000/159, and the Food (Animal Feedingstuffs from Belgium) (Control) (Scotland) Revocation Regulations, SSI 2000/158. These orders repeal two orders that were dealt with earlier in the year. The Health and Community Care Committee has been nominated as the lead committee on these instruments, and the Rural Affairs Committee has been designated the secondary committee on them.

The orders came into force on 31 May and are laid under the negative procedure, which means that the Parliament has the power to annul them within 40 days, excluding the recess. The time limit for parliamentary action ends on 9 July. Any MSP may lodge a motion to the lead committee to recommend that the orders be annulled. The Rural Affairs Committee is obliged to report its views to the Health and Community Care Committee by 23 June. In putting off consideration of these orders, we have left ourselves less time to do so.

Committee members have been supplied with a summary, the instruments themselves and an explanatory note from the Executive. Do members feel that they have enough information to come to a decision?

Members *indicated agreement.*

The Convener: Does the committee want to make any comment to the Health and Community Care Committee? The members do not.

Petition

The Convener: The next item on the agenda is PE197 from Mr John R D Stewart, regarding the transparency of agricultural subsidies. Are there any comments on the petition? It might be a good idea to declare interests before we begin. I am in receipt of agricultural subsidies.

Alex Fergusson: I used to be in receipt of such subsidies, but sadly I am no longer.

Richard Lochhead (North-East Scotland) (SNP): I am interested in how much you get, convener.

The Convener: I was just saying to Alasdair Morgan that I cannot quite work it out.

Rhoda Grant: The petitioner has a point in that public money is being spent and there is very little transparency. My concern is whether such a procedure would create yet another layer of red tape. However, the matter warrants closer examination.

Des McNulty: It seems rather strange that the model of transparency used in the petition is that of the legal profession.

The Convener: Fair comment.

Des McNulty: I do not know whether Mr Stewart has read "Bleak House", but there seems to be some inconsistency here. If there is any comparison between the transparency of the legal profession and the method of agricultural subsidy payment, the matter may require some examination.

The Convener: We must decide whether we wish to proceed with the petition in some way.

Alex Fergusson: I think that we would be in danger of creating another layer of bureaucracy in some form. There would have to be some way of disclosing the amount received in subsidy and that would impose yet another layer of form-filling on the agricultural practitioner, who has enough of that already. It is a well-known fact that in the present state of agriculture the subsidy that most farmers receive is several times greater than the profit that they are currently making—if, indeed, they are making a profit at all. To ask individual farmers what they receive in public funding—perfectly legitimately—is going a step too far. It is unnecessary. I do not really understand what the petitioner is getting at and I suggest that the committee notes the petition and moves on.

Rhoda Grant: The point behind the petition is that nobody really knows how many subsidies are going where and whether they are going to an individual or are being spread across the rural community. The petition flags up one small part of

a bigger issue. Might we consider the matter when we examine modulation?

The Convener: We could choose to look into that in connection with modulation.

Richard Lochhead: I sympathise with Alex Fergusson's comment about adding another layer of bureaucracy. However, there must be other people around who know how much money farmers receive in subsidies; perhaps they could make that information available.

Is it worth copying the petition to the minister for his comments?

Des McNulty: I take Alex Fergusson's point. We would not want to impose an additional layer of bureaucracy on farmers and make them responsible for ensuring transparency in respect of subsidy payments. To ensure greater transparency, there should be some investigation of the way in which subsidy payments are carried through, but perhaps that should not be done in response to this petition. That could be part of another inquiry, but I do not think that it should be done in the context of a comparison between the levels of disclosure in relation to farmers and the legal profession. That appears to be simply a hobby-horse of the petitioner.

Alasdair Morgan: The petitioner's argument about bureaucracy is not valid as it is the Scottish Executive rural affairs department that has the information. We are not asking farmers to provide it. The point is that, while the suggestion would increase transparency, it shows only a part of the picture. It does not provide details of farmers' expenses or other income. It shows only the size of the subsidy. It would be more useful to have the aggregate amounts that are being spent, rather than what any named individual is getting. I may be wrong, but I do not think that enterprise companies, for example, publish the details of grants or loans that they give to named individuals.

Mr Rumbles: I do not know if this has been covered—I was delayed earlier—but I would like to know how many people have signed the petition. How many thousands are we talking about? One thousand?

Alex Fergusson: One person.

I understand what Alasdair Morgan said about the figures being in the hands of SERAD, but the petition requires the farming profession—not the civil service—to disclose the figures.

We are having an inquiry into agriculture in the autumn and I see no reason why this matter could not be dealt with then.

The Convener: The views expressed by Alasdair Morgan were close to the position that we want to be in when we analyse the budget in the next 12 months.

Do we agree to note the petition and act accordingly during the investigations that we will carry out in the next 12 months?

Members *indicated agreement.*

The Convener: We agreed to take item 4 on the agenda, which is a discussion of our approach to taking evidence from ministers in our inquiry tomorrow, in private.

15:28

Meeting continued in private until 15:45.

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