TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 22 September 1999
(*Morning*)

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TRANSPORT AND THE ENVIRONMENT COMMITTEE
3rd Meeting

CONVENER:

*Mr Andy Kerr (East Kilbride) (Lab)

COMMITTEE MEMBERS:

*Helen Eadie (Dunfermline East) (Lab)
*Linda Fabiani (Central Scotland) (SNP)
*Robin Harper (Lothians) (Green)
*Janis Hughes (Glasgow Rutherglen) (Lab)
*Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab)
Mr Kenny MacAskill (Lothians) (SNP)
*Des McNulty (Clydebank and Milngavie) (Lab)
*Nora Radcliffe (Gordon) LD)
*Tavish Scott (Shetland) (LD)
*Mr Murray Tosh (South of Scotland) (Con)

*attended

THE FOLLOWING MEMBERS ALSO ATTENDED:

Elaine Smith (Coatbridge and Chryston) (Lab)

WITNESSES:

John Gunstone (Scottish Executive Development Department)
Roger Herbert (Forestry Commission)
Mary Dinsdale (Convention of Scottish Local Authorities)
Bill Hepburn (Convention of Scottish Local Authorities)
Dr Andrew Mackie (Convention of Scottish Local Authorities)

COMMITTEE CLERK:

Lynn Tullis

ASSISTANT CLERK:

David McGill

Scottish Parliament

Transport and the Environment Committee

Wednesday 22 September 1999

(*Morning*)

[THE CONVENER *opened the meeting at 10:03*]

The Convener (Mr Andy Kerr): Good morning to the committee, the officers and the people in the gallery. I am very pleased to see another good turnout for a meeting of the Transport and the Environment Committee of the Scottish Parliament. As convener of the committee, I welcome you all.

Kenny MacAskill has sent his apologies as he will not be able to attend.

Environmental Impact Assessment (Scotland) Regulations 1999 (SSI 1999/1)

The Convener: Our first item of business is consideration of SSI 1999/1. As committee members will be aware, it was laid on 9 July 1999 and is subject to annulment until 9 October 1999. I further advise the committee that the European Committee and the Subordinate Legislation Committee have considered the instrument and have nothing to report. At our previous meeting, members will recall, we requested further briefing from the Executive, which presented us with briefing paper TE/99/3/1. John Gunstone joins us today to brief the committee on the instrument. He will take 10 to 15 minutes to do that, after which the committee will have time to ask questions.

John Gunstone (Scottish Executive Development Department): I read with interest about the committee's consideration of the recommendations. I am sorry that we had not given you explanations of what it was all about in the form that you would have liked. We will do so in future.

I tried to keep the paper that I have given you short, but I have backed it up with a lot of annexes, in typical civil service style. I hope that the paper went some way towards answering the questions that you had. I will take the committee through the paper and try to flesh it out a little.

Environmental impact assessment has been with us for some time. We have had regulations since 1988 as a result of the 1985 directive, but we had been doing work in the area for a long time before that. From the early 1970s, with the rise of the North sea oil and gas industry and the attendant development on the east coast, there was a need for planning authorities to think carefully about the environmental impact of such developments. Custom and practice built up during the 1970s and the 1980s and the United Kingdom was a major player in Brussels in preparing the original directive. I hope that that little bit of background puts the issue in context.

A quotation in the circular that I have included as annexe D sets out what the issue is all about. Paragraph 6 says:

"The directive's main aim is to ensure that the authority giving the primary consent (the 'competent authority') for a particular project makes its decision in the knowledge of any likely significant effects on the environment."

The authority that is referred to generally means the planning authority, but I know that the committee is considering the Forestry Commission's work as well. The paragraph continues:

"The directive therefore sets out a procedure that must be followed for certain types of projects before they can be given 'developmental consent'. "

Our regulations do that, too. You were given them in the form of a 112-page document, but they were published in a far less intimidating form.

For practitioners, the new regulations do not cause a huge problem. The changes are significant in what they aim to achieve, but the processes that are involved are much the same as before. The new directive is aimed at improving the things that were criticised in the earlier directive, particularly relating to the scope of what should be included as part of the environmental impact assessment. That information is included in the annexes to the directive at the end of your copies of the regulations.

The new directive requires developers' submissions to talk about the alternative schemes that have been considered. The planning authority, when considering an application, cannot suggest that the project be done a little further down the road or any other such change; it has to consider the application as submitted and approve or refuse it as it stands.

There are a number of procedural changes, which deal with scope and the way in which planning authorities decide whether schedule 2 projects qualify for environmental impact assessment. The other important purpose of the new directive is to improve the overall quality of the environmental statements that developers produce in support of their projects.

I refer now to the means of achieving the objectives. The procedures are spelt out in considerable detail in the regulations. They are very precise as to the way in which the developer

must make the application, which must be considered by the planning authority. Copies of the application must be provided for the consulting bodies—the Scottish Environment Protection Agency, Scottish Natural Heritage, the Scottish Executive and the Health and Safety Executive and others who have a particular interest. The details of that procedure are quite bulky and form a large part of the regulations. Duties are placed on the developers, the applicants, the planning authorities, the Scottish ministers and the consultation bodies.

The other new element of the directive is the use of thresholds. The scheme is straightforward for a schedule 1 project—there is no debate; it simply requires an environmental statement and environmental assessment. For schedule 2, it is a little bit more difficult, and whether an environmental impact assessment is necessary is much more likely to depend on the sensitivity of the location of the planned project and the scale of the operation.

The point of the thresholds was to make it easier for the planning authorities. The thresholds that are listed in column 2 of schedule 2, which we call exclusive thresholds, are de minimis. If a project fits the description but falls below the exclusive threshold, no environmental statement is required. That leaves us with a grey area of schedule 2 projects that are above the exclusive threshold, but are not of a scale as to fall under schedule 1.

In annexe A of the circular—not in the regulations—we have tried to offer some help in the form of indicative thresholds. Without stipulating that anything of that scale will necessarily require an environmental statement, we give clear indications. We say that projects above a certain size are more likely to need environmental assessment, for example. We hope that that proves helpful to planning authorities and applicants alike.

There was a question about the nature and scale of the consultation that we undertook in moving from the directive to the regulations. The Scottish Executive development department has a fairly standard list of consultation names and addresses, which extends to more than 700 individuals and organisations. The list includes local authorities, councils, planning consultants, developers, the public consultation bodies to which I referred, and pressure and environmental groups, such as Friends of the Earth and Greenpeace.

10:15

We regularly add names to that list, as people phone up to tell us that they would like to be consulted on an issue that we are examining. The names always go on the list, even if only for that exercise. Very often people ask that their names stay on our list so that they can be consulted in future.

I am pleased to say that we seldom receive anything like 700 responses—it would be daunting to deal with that.

We consulted three times. The first consultation acted by way of an explanation to people working with the existing regulations, so that they could familiarise themselves with the changes, get used to the idea, and comment on how we might proceed.

However, there is a limit to the extent to which we can take on board all comments. It is not open to us to act on a comment such as, "I do not think such-and-such an operation should be included within schedule 1." The European Commission has issued the directive and we are required to transpose it into domestic law. There is not a huge amount of latitude in the implementation of the directives.

The first consultation also opened up the question of thresholds. The directive had given us options on that: we could leave consideration on a case-by-case basis for all projects, or introduce thresholds, or mix and match. The overwhelming response was that we should do as we have done, which is to mix and match.

Our second consultation paper dealt exclusively with levels at which thresholds should be set. Again, responses were predictable. Developers might have liked higher thresholds, whereas those who wanted greater control might have liked them to be lower. Some changes have been made to the levels that were suggested at the consultation paper stage, but by and large we have ended up with what we proposed.

Finally, we consulted on a set of draft regulations, which brought similar comments. There were not many constructive comments on how they might read or be interpreted more easily. It was more a case of people saying, for example, that certain things should not be included, or that consultation was not necessary—matters on which we had little latitude. As you know, the regulations are now in place.

Another request was for a synopsis of what the regulations do. I do not want to read them out to you, but I commend as a good read annexe F to my paper, which is a lift from the explanatory notes at the back of the regulations. It straightforwardly talks through the functions of each regulation. It is difficult to read each regulation, because they tend to refer the reader elsewhere in the regulations or even to other pieces of legislation. Unless you want me to, I will not take you through annexe F.

We will have to wait and see what the effects of the directive will be. Clearly, more schemes will be subject to environmental assessment. I have given you annexes showing the projects that were already in and the new ones. Clearly, anything that has come in for consideration for the first time will be caught by the regulations.

Local authorities do not have to deal with environmental assessments every day. Since the 1988 regulations came into force, fewer than 400 environmental assessments have been carried out on projects in Scotland—between 30 and 35 per annum is the norm. They tend to be concentrated in particular areas, such as the central belt and up the east coast.

A good number of authorities will have had few if any environmental assessments to deal with, and that is why we issue clear guidance to talk them through how they should be handled in parallel with the regulations.

That is all I have to say at the moment, but I shall try to answer any questions that members have.

The Convener: Thank you, John. We appreciate your contribution, particularly as regards the way in which such matters could be handled in future. It would be useful for the committee to have brief synopses of Scottish statutory instruments as they come before us. The fact that you have been deeply involved in consultation is to be welcomed.

One question that I would like to raise concerns paragraph 3, where you used the word compromises when referring to issues relating to drafts at European level that were addressed at a later stage in the amended directive. How confident are you that the compromises and resolutions to those issues have been dealt with in the best way, so that the legislation fits and the global environment is protected?

I should be interested to hear about that, but I should also ask my colleagues to put some questions to you, and you can respond to all our queries in due course.

Des McNulty (Clydebank and Milngavie) (Lab): My first question concerns paragraph A36 on page 45 of annexe D, about installations for the disposal of non-hazardous waste. Given the issues that were raised in the earlier briefing session about the mountain that we have to climb to meet the European waste management directives, I wonder whether that paragraph is strong enough. It mentions installations, but I would be keen for waste management strategies not just to indicate which installations waste over a certain size would go to, but to specify partnership arrangements.

My other question concerns the obligation to institute an environmental impact assessment, which comes either from the applicant or from a regulatory framework. I am thinking particularly of the water boards. Water and sewerage authorities have responsibility for dealing with spillages or other emergency problems caused by accidents at other kinds of installations. However, if I understand the regulations correctly, those bodies have no locus in being able to institute environmental impact assessments. That power lies either with the Scottish Environment Protection Agency, as the regulatory agency, or with the applicant. Are the water authorities able to express a view about how a development might impact on the provision of their services, either on an on-going basis or, more worryingly, in an emergency? Could that be part of an environmental impact assessment regime?

Mr Murray Tosh (South of Scotland) (Con): I found the section of the report on permitted developments rather dense and difficult to grasp in its entirety. It seems to deal with processes and activities rather than with locations. Obviously, there are specific facilities, such as airfields or harbours, where people enjoy permitted development rights. How are developments that might have an environmental impact assessed in those circumstances?

On a related point, how satisfactory are the procedures—which are semi-voluntary and not mandatory under the directive—for development on Crown land and on defence installations? In practice, do the environmental statements that those agents lodge give the planning authority enough control over development?

Robin Harper (Lothians) (Green): As far as I can see, the only matter that we have the power to decide is whether in schedule 2 we opt to proceed on a case-by-case basis, to introduce thresholds or to combine the two. I would like to know more about the argument in support of a mix-and-match approach. How would that work in practice?

The Convener: No other members have indicated that they have questions, so I ask John to address the ones that have been asked.

John Gunstone: I will do my best.

I was asked first about the comment in paragraph 3:

"A number of compromises were made between individual Member States".

I must say that 1985 was a long time ago, and that I was not involved in planning issues at that time—I was certainly not at the table in Brussels doing the deals and making compromises. Indeed, the Scottish Office would not have been at the table—the member state for European directives is the

United Kingdom, so the then Department of the Environment would have been the lead department. We would have had a say in determining the UK line—I would not want to suggest that we were not involved in the discussions, even if we were not at the table in Brussels. What I said about compromises being made is, therefore, to some extent received wisdom. All directives involve a degree of compromise—to get a paper that is acceptable to everyone, certain things must be left out, which means that the end result might be the lowest common denominator rather than the ideal.

Some of the criticisms that were levelled at the directive at the start have now been addressed. Over the years, pressure has built up for the scope of annexes I and II to be increased, so that the directive now applies to a slightly wider range of projects. On the procedural side, greater attention has been paid to matters such as scoping. Now, the director of a project can ask the planning authority what he should address in his environmental statement, instead of spending considerable time and money on having a statement produced, only to find that he has addressed some matters that did not require consideration and omitted to include others that he should have dealt with. I imagine that it was in the areas where changes have since been made that compromises had to be reached at the outset.

I am not sure whether Des McNulty wanted his question about non-hazardous waste answered, as he seemed to half-answer it himself. We are moving towards adopting waste strategies. I do not know whether that will deal with the flaw in the regulations that he perceives.

Des McNulty: My question is whether moves towards a waste management strategy have fully informed the way in which the regulations have been framed. Are we imposing adequate requirements on new developments, to ensure that they have waste management strategies in place as part of an environmental impact assessment?

John Gunstone: We have consulted widely in the preparation of the measure, as I have already described. Besides the public consultation that was sent out to more than 700 names and addresses, we consulted within the department. We talked to our waste management colleagues in the rural affairs department, who contributed to the finished product. I believe that we have addressed the issue that Des McNulty raises.

You asked, I think, whether the water authorities should be consulted.

10:30

Des McNulty: I was wondering about the right of third parties to institute environmental impact assessments. As I understand it, at the moment there is the regulator—the planning authority in most instances—and the applicant. How can a third party, which may feel that a project will impact on its activity, get into the loop?

John Gunstone: As you say, the directive contains no specific provision for third parties. However, a third party could, if it got wind of a particular project, seek to influence the planning authority, which can of course stipulate a requirement for an environmental assessment. The third party could also go to an MSP or directly to the minister, because Scottish ministers can also call for an environmental assessment, if they think it necessary.

Des McNulty: I am concerned that there has been a considerable change since the abolition of the regional authorities, which would have dealt with most of these issues and which were responsible for the provision of infrastructure, including water and sewerage. Because of the disaggregation of those authorities, groups that are outwith the planning loop are left with relatively little direct influence. They can have input, but only in the context in which an individual can have input.

John Gunstone: As far as environmental assessment is concerned, we would probably consider the water authorities as developers rather than as regulators. They build sewage treatment works and water treatment works, both of which fall within the scope of environmental assessment. Arguably, we are looking through different ends of the telescope. Where there is a concern about pollution of water that the water authority might subsequently want to use for the water supply, we would have to rely on the Scottish Environment Protection Agency to protect the water environment.

Des McNulty: That would be dealing with the problem after it had happened. There should be a way in which water authorities can be notified of major environmental schemes, so that they have the opportunity to get involved in the environment assessment process. Under certain circumstances, it might be appropriate for them to have the right to initiate such an assessment. A number of incidents, north and south of the border, of spillage or other forms of pollution because of the activities of third parties, have resulted in some disruption or pollution of the water supply. That could happen to the sewerage system as well, with significant consequences. I wonder whether the reliance on the regulators is allowing key providers, such as the water authorities, adequate access.

John Gunstone: The requirement to publicise is important. All schemes that are subject to an

environmental assessment would be advertised. A water authority—assuming that it has the same access to public notices as anybody else—could learn of any such schemes and either make representations to the planning authority or go directly to SEPA to ensure that its point of view is put over.

The Convener: Thank you. Would you like to move on to Murray's question on permitted development rights?

John Gunstone: Yes, the regulations are dense, and I would not want to sit here and try to explain how they work.

Mr Tosh: I am glad that you said that the regulations were dense, because I was worried that I was.

John Gunstone: The key thing to remember about permitted development and environmental assessment is that, if a scheme that is subject to a planning application is caught by the environmental assessment provisions, it no longer has permitted development rights. In fairness, that regulation appears only in the permitted development legislation. In other words, if a developer is proceeding with a project for which he does not think that he needs planning permission, and if the nature of the development means that it requires an environmental impact assessment, the permitted development rights fall and the developer is required to submit a planning application—he is therefore caught by the environmental impact provisions

Mr Tosh: Does he have an obligation to go through this scoping process and determine from the planning authority whether his activity, which he might think is a permitted development right, requires planning permission because of the environmental impact assessment burden on him?

John Gunstone: One would hope that he would have the good sense to do so. The sanction is that, if he proceeds with the development without having gone through the necessary steps, the planning authority could take enforcement action. There is a panoply of enforcement provisions in the planning legislation.

Mr Tosh: Sometimes planning enforcement is difficult to push through a court or impose in practice. One would hope that, where there is a major environmental impact, courts would take the case more seriously than they do lesser infractions. I understand the point that you are making on that. What about the defence of Crown immunity?

John Gunstone: For the time being, in legislative terms, Crown development is exempt from planning control. However, there is a circular, which in effect sets out a quasi-planning system for Government departments and Crown representatives. Most, if not all, developments are put through a scheme that is parallel to the planning process. When a Government department is constructing a building, it would probably fill in a planning application form, even though there is no statutory requirement for it to do so.

The UK is under an obligation to remove Crown exemption from planning control at a suitable opportunity; when we have a planning bill, one of the items in it will be the removal of Crown exemption. We were taken to task by the European Commission as long ago as 1992, because a scheme that would normally fall within the scope of the environmental assessment legislation could be missed if the Crown were promoting the development. The minister at the then Department of the Environment gave an undertaking that, when a suitable legislative vehicle came along, we would remedy the situation—the need for parallel provision will drop at that stage.

I hope that I understand Robin's question on mix and match and thresholds. You suggest that they might lead to confusion.

Robin Harper: Yes, will they?

John Gunstone: We hope not, but only time will tell whether they do. Planning authorities may be in a better position to tell you whether what we have put in place is helpful. We think that it is, as did those who responded to our consultation. An alternative would have been not to include the thresholds in schedule 2, but to leave it that all schedule 2 projects would be considered case by case.

At the smaller end of the scale, planning authorities would still have been scratching their heads as to whether they could justify not requiring an environmental statement or whether they should be safe and ask for a statement to ensure that they have caught any potential environmental effect. That might lead to the clogging-up of a system that has already been criticised for being too slow and cumbersome. We hope that we have gone some way towards preventing the system from becoming clogged up with a lot of small schemes.

Robin Harper: Could you give any indication as to how fast the system works at the moment? You say that there have been 400 assessments.

John Gunstone: The statute requires planning applications to be dealt with within two months. Where an environmental statement is involved, that is stretched to four months. A good number of those applications probably do not meet the four-month deadline. We have statistics on that, although I do not have the numbers at my

fingertips. If you would like to know what they are, I could write to the clerk.

Robin Harper: That broad indication is quite helpful enough.

The Convener: Tavish Scott has bid for a question. I will be lenient and accept it, but I remind the committee that we have limited time this morning.

Tavish Scott (Shetland) (LD): I share Robin Harper's concern that we might set up a system that planning authorities will judge and then decide that there is a different way in which to do things. There could be problems there and I will be interested to see how the practicalities work out.

Can you describe the relationship of the regulations to the role of the Scottish Environment Protection Agency? I have not worked that out from your answers to earlier questions. For example, paragraph A5 of the Scottish Executive development department circular, which deals with intensive fish farming, suggests that salmon farms over the threshold would all have to provide an environmental impact assessment. However, those farms are already providing a lot of information to SEPA to secure discharge consent. In practical terms, how will the EIA be more than just another piece of work that the farmers must do to comply with the planning process at the same time as securing their discharge consent?

John Gunstone: I hear what you say. You mean that you would not like to see this as an increased burden on developers.

Tavish Scott: They are doing a lot already. What they are being asked to do is entirely consistent and correct, but I am concerned that they will have to provide another great tier of paperwork.

John Gunstone: I hope that the two processes will have a lot of paperwork in common. Much of the information that SEPA requires to determine the discharge consent would be the sort of information that the planning authority would wish to see.

The Convener: Thank you, John, for your presentation, for the paper that you provided and for answering the questions. I appreciate that that is difficult when you do not know from where any of the questions might come. We welcome your contribution, which has given us a much clearer understanding of the SSI. Is the committee content, both with the presentation and with the content of the SSI?

Members *indicated assent*.

The Convener: I take it that we have nothing to report to the Parliament regarding this SSI.

Environmental Impact Assessment Forestry (Scotland) Regulations 1999 (SSI 1999/43)

The Convener: We move now to a similar process with regard to agenda item 2. This instrument was laid on 3 September 1999 and is subject to annulment until 27 October 1999. The European Committee and the Rural Affairs Committee have considered the instrument and have nothing to report.

The Subordinate Legislation Committee considered the instrument at its meeting yesterday. We await the formal report from that committee, but I understand that the committee intends to draw the regulations to the Parliament's attention because it appears that there has been an undue delay in implementing European Community legislation. Moreover, the regulations were brought into force unreasonably soon after they were made, which resulted in an unjustifiable breach of the 21-day rule. The Subordinate Legislation Committee also raised concerns about drafting. The committee's concerns were to do not with content, but with process, so it has every right to do what it has done. We are more focused on the content.

The Forestry Commission has submitted a briefing paper and representatives have come to speak to it, including Roger Herbert. I want to say "Come on down, Roger", but I had better not. Oh well—it is in the *Official Report* now. David Henderson-Howat is also with us.

We very much appreciate your coming along to discuss this matter. Can you please give us a quick presentation on the SSI?

10:45

Roger Herbert (Forestry Commission): As John said much of what I was planning to say in his presentation, perhaps I should go through the briefing notes and draw out one or two additional points.

The Forestry Commission has had EIA regulations that have operated since 1988—which is similar to the planning situation—and I have gained considerable experience in dealing with them. Unlike planning, we have no schedule 1 projects; all our projects are schedule 2 projects. With the introduction of the new regulations, we have four different types of project, three of which—afforestation, forestry roads and forestry quarries—have been dealt with in the past. Our new project, which was introduced by the amending directive, is deforestation.

We deal with some 20 to 25 EIAs a year in Scotland, the vast majority of which are

afforestation proposals. There was a forestry road case in England, but I am not sure whether there has been such a case in Scotland.

The policy objectives behind the regulations are identical to those behind the town and country planning EIA regulations and there is not much that I can usefully add on those. As I said, we have introduced deforestation as an additional project and have set thresholds for determinations of projects. As with the town and country planning regulations, we have defined sensitive areas where lower or no thresholds will apply. We have a mix-and-match system through which we determine every case above the thresholds, but not those below. Exceptionally, the Forestry Commissioners or Scottish ministers might decide that a project below the threshold will need formal consent and be subject to the EIA process.

Our regulations include a scoping provision, which allows an applicant formally to ask the Forestry Commission for an opinion on the information that will be given in an environmental statement. Information about determinations, environmental statements and scoping opinions will be published in a public register, which will be held initially at Forestry Commission offices. We also plan to put the register on the internet. In that respect, the register will be similar to our current public register of felling applications and grant applications for afforestation and, as such, we are building on the back of an existing mechanism.

Our consultation on the regulation was similar to the exercise that has been described. The Scottish Executive and the Forestry Commission were partners in the two general consultations undertaken by Government on the proposals for implementing the amending directive. We then had a specific consultation on proposals for the forestry regulations.

From the list of people and organisations that responded to the initial consultations, we picked up those that had expressed an interest in forestry matters and used that as our focus for the final consultation on our specific proposals. Some 75 individuals and organisations had expressed an interest and, as I have mentioned, we had some 30 responses to the specific consultation.

I have set out a synopsis of the regulations, but I do not propose to go through it in detail. As to the likely effects of the regulations, we estimate that, because we are adding only one new type of project to the 1998 regulations, the increase in the number of EIAs will be very small, perhaps as small as one per annum in Scotland in relation to deforestation.

The overall impact will be small in terms of EIAs, but there are benefits from adopting thresholds and giving clearer guidance on the circumstances in which a determination is required.

The Convener: Thank you, Roger. The structure of the two papers is similar, so we appreciate the fact that you have been able to truncate your presentation.

Mr Tosh: I want to ask about the bigger picture. What practical impact will the directive have on the landscape in terms of deforestation? I assume that there is a strategy for appearance and for after-use and that there is a goal at the end of the process, but that was not clear from the paper, although the technical stuff was.

On a related matter, the second page of your note comments on exceptional cases in which the forestry commissioners would require a determination for projects that would usually be below the threshold. Again, could you flesh out the sort of thing that would lead you to use that process where it would not usually be required?

Linda Fabiani (Central Scotland) (SNP): I welcome the deforestation regulation and the exceptional power, which you are going to clarify.

I would like clarification on one small point. You say that a determination decision would expire after five years. Does it work both ways in being reassessed? In other words, if no need for assessment was determined, would the situation be revised in five years' time if a need had arisen because of changes that had taken place?

Roger Herbert: On the larger impact of deforestation, there are a number of circumstances in which we are trying to change things. Forestry policy and practices have moved on, as members will appreciate, and there are circumstances in which the removal of woodlands and plantations would have environmental benefits. The mechanism will enable us to judge the cases in which there would be an environmental gain from removing woodland. For example, we may be removing previously established plantations from what are now regarded as more sensitive areas.

We have one or two examples up in the flow country, where some deforestation proposals might be coming forward. The process of environmental impact assessment will allow us to assess properly those circumstances.

We felt that, in setting thresholds, we needed a mechanism that allowed us to pick up exceptional cases below the threshold. With the best will in the world, there will always be the exception. Relatively small cases of afforestation or deforestation might be outwith a sensitive area, yet have an impact on a species or on the visual appearance of a location. We were keen to ensure that, in those exceptional circumstances, we were able to call for an EIA if one was required.

On the five-year expiry point, we felt that circumstances change. Nothing stands still in life or nature—species move around from location to location. For example, somebody might come forward with another proposal for an area that was given a determination four or five years ago, the work might not have gone ahead and a species might have moved into the area. Sensitivities and views on sensitivities could have changed. Therefore, we felt the need to limit the termination period and—if work had not been carried out—ask for proposals to be resubmitted after a five-year period.

Linda Fabiani: Will you confirm that it works both ways, so that, even if there had been no need for an assessment five years ago, applicants would have to reapply?

Roger Herbert: Yes. Sorry, I should have made that point clear.

The Convener: I thank Roger Herbert and David Henderson-Howat for coming along today. We appreciate the paper that you submitted and the presentation, which, because John Gunstone had covered some of the territory, was shorter than it would have been. Thank you for answering our questions.

Is the committee content with the SSI?

Members *indicated agreement.*

Telecommunications Development

The Convener: I welcome Elaine Smith, who has joined us for agenda item 3. A number of members have expressed an interest in telecommunications development, and Cathy Craigie and others have been declaring their views on the matter. It is certainly a topical issue. The committee identified telecommunications development as one of its priority considerations and a briefing note on the subject was prepared by the Parliament's information centre. Members have a copy of that and will appreciate that it is a well-constructed explanation of the issues, organisations and views involved. We appreciate Stephen Curtis's work on it.

The Scottish Executive and the Convention of Scottish Local Authorities have been invited to brief the committee on the process for consideration of telecommunications development. Following our discussions with those who are submitting evidence to us today, we may wish to investigate the matter further. I suggest that, if we do that, we agree terms of reference for an inquiry and our approach to taking evidence. That, and to assess the views of the Executive and COSLA, is the purpose of what I would call the pre-investigation stage.

I invite John Gunstone, on behalf of the Scottish Executive, to rejoin us. He will brief the committee on the process for consideration of telecommunications development, the issues involved and the outcome of recent consultations. You are having a busy morning—welcome back.

John Gunstone: I will talk about the existing planning procedures and guidance on the consideration of telecommunications development. We have to look at telecommunications against the backdrop of the Government's overall desire that the telecommunications network should be established and available to as large a part of the population as possible.

11:00

The Telecommunications Act 1984 set up the current regime for the development of the network. Organisations that we refer to as code systems operators, such as Cellnet and British Telecom, have certain rights and obligations under the act, particularly in terms of access to land. They have strong powers to get access to public and private land and, if they cannot get the access that they need, they can go to the courts, which will determine what recompense should be made to the landowner. None of that has anything to do with planning.

Within the planning system, the developers have a range of permitted development rights, the most well known of which is that telecommunications masts less than 15 metres high do not require planning applications to be made. There are about two pages of detailed information on that in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, but I will not go into that in such detail, unless the committee wants me to.

In return for the granting of those rights, some conditions have been placed on the developers. The conditions are spelled out in the licences that are granted by the Department of Trade and Industry, I think—the Scottish Executive does not issue the licences. They are required to notify planning authorities, or, in certain circumstances, Scottish Natural Heritage, of their proposals. They have to take account of the visual amenity of their work. They are required to make provision for mast sharing and to aim for a minimum number of masts. How well that works is a matter of debate. I do not know if all developers tell the local authority about everything that they propose to do.

That, in essence, is the current arrangement. I could go on at some length about the details but I think that you are more interested in the principles.

Our guidance is a 1985 circular, 25/1985, that was issued after the Telecommunications Act 1984. There have been amendments to what is

and what is not permitted, but the circular remains our substantive guidance. South of the border, the Department of the Environment, Transport and the Regions has a code of practice that was prepared in consultation with local authorities and the industry. I suspect that many people who operate in Scotland will refer to that code, although it has no force in Scotland. We do not have a parallel code at the moment.

You asked what the problems are about the current procedure. I think that the committee knows what they are as well as I do: several of you have written to the minister with matters that your constituents have raised. Many members of the public write to us directly as well.

There is a great deal of public concern about masts popping up all over the place. There is concern about whether operators are going through the notification arrangements that are required of them under their licences. Perhaps local authorities will have something to say about that.

There is concern about whether planning authorities respond as well as they should to proposals from developers. Many people write to the department to say that they have been in touch with the planning authority and have been told that the situation is nothing to do with the planning authority and that they have no control of it. As I have said, developers are required to notify planning authorities and the planning authorities can make comments and observations. The developers are meant to take the concerns of the planning authority on board before going ahead with their proposals.

There is concern that the planning authorities in Scotland have less control than those in England and Wales, and, lastly, there is concern about the possible health effects of electromagnetic fields that emanate from telecommunications base stations and masts. People are concerned that those masts might be sited too close to schools, hospitals and residential areas.

That covers most, if not all, of the concerns. There might be others, but that is the situation in a nutshell.

We consulted recently because of those concerns, and with a view to consideration of whether we should change the current regime. I should remind the committee that the Department of Trade and Industry takes a great interest in anything we do, and while we are not beholden to that department regarding planning in Scotland, we will keep them informed of any proposals.

There were more than 700 consultees. We first consulted last May on four substantive issues. We asked whether we should stay with the status quo regarding masts and whether the 15 m limit was inappropriate and should be changed to 10 m or to some other height. We consulted on whether we should introduce a prior approval mechanism similar to that which is in place in England and Wales.

There were no votes in favour of the status quo. A few votes favoured reducing the threshold, but the counter-argument to that was that reduction of the height of the masts from 15 m to 10 m would only result in more masts, so that approach might not solve the problem at all. One might see less of them from one's garden, but there would be more of them around. The vast majority of responses favoured the introduction of prior approval. A substantial handful said that we should not bother with prior approval but that full planning control should be required.

We also consulted about clarifying whether extensions to existing masts, which made the structures higher than 15 m, constituted permitted development. I understand that a number of developers tried that one on. The suggestion was that we should make it clear that that is not on. There was only one vote in favour of that option and that was from a developer. The response indicated that we should make it crystal clear that a developer could not build a mast up to a height of 14.9 m one day and then come along to stick on another 6 m or 10 m the next day.

Regarding equipment housing, there are currently specific building sizes stipulated. Buildings can be up to 4 m high and up to 200 cu m in volume and still qualify for permitted development rights. We discussed whether to maintain that, to reduce it, or to introduce prior approval. The general feeling was that we should reduce the size and introduce a prior approval mechanism.

We raised the question of whether we should have a code of practice in Scotland for planning authorities, the industry and others with an interest in the process. The overwhelming view was that we should have a code of practice, planning advice note, or whatever we want to badge it as, and that we should have a number of volunteers, particularly from the industry, involved in helping to draw up that code.

We consulted again later, partly in response to that view, and partly in response to further moves by the Department of Transport, the Environment and the Regions in England. We consulted on introducing not a straightforward prior approval scheme but a two-stage scheme, whereby someone could come with an application and be told quickly whether he requires prior approval. If he had chosen a non-sensitive location and if the application was suitably sympathetic to the environment, he might be given the nod to proceed by the planning authority. Alternatively, he

might be told that the application would raise public concern and was in a sensitive area and so on, and that he would need to submit full details of it and await the seeking of comments from the public before we gave him the nod or a refusal.

There was support for that, or for anything that would increase the level of control, but there was considerable disquiet about the complexity of the system. It is bureaucratic and potentially difficult to understand, in which case there is potential for abuse or misuse of the process.

There was a varied view on how long was required to make the initial determination of whether prior approval was necessary, and about how long it would take to come to a decision about the more difficult cases.

We consulted about increasing the level of control in sites of special scientific interest to that which exists under the Wildlife and Countryside Act 1981 in national scenic areas and conservation areas. A considerable majority was in favour of extending the control, as suggested.

Finally, we asked whether we should be giving clearer guidance to planning authorities and developers about the use or possible use of agreements—formal or legally binding agreements—about mast sharing. The vote was split on this one between the councils, which thought that it was generally a good idea, and the industry, which thought of lots of good technical reasons why it is not always possible or a terribly good idea to share masts. That was a fairly predictable response.

Our response to those views was declared to this committee by the Minister for Transport and the Environment a fortnight ago, when she came to answer questions on this and other matters. I believe that she listed seven points on which she had given clearance for the development department to take forward.

The first is a 42-day prior approval scheme for ground-based masts, which would allow a 42-day period during which the proposal could be advertised in the local press, at the developer's expense, I hasten to add. Residents in the area could make their opinion known to the planning authority before it came to a view about the development.

The second is a 28-day prior approval procedure for other installations: the ones on buildings and so on. Thirdly, there is clarification on the point to which I referred earlier about the height of 14.9 m being extended by 6 m. Fourthly, there will be a fairly tight reduction in the size and height of equipment housing, from 200 cu m to 90 cu m, and a height reduction from 4 m to 3 m.

11:15

Fifthly, we will extend the restriction on permitted development rights for telecommunications operations in national scenic areas and conservation areas to sites of special scientific interest. Sixthly, we will work up a Scottish code of best practice or planning advice note for the benefit of planning authorities and the industry. Lastly, we will produce advice on the use of planning agreements to encourage mast sharing.

Those matters are now in hand. The instructions have gone to solicitors and they are working on the amendments to the secondary legislation that are required to bring into effect the measures that I have outlined.

The Convener: Thank you, John. I am sure that we have all been lobbied by people who are very concerned about this issue. The East Kilbride high flats residents associations have contacted me and Cathy has told me that people in other areas have been lobbying. I thank John for providing us with some of the history behind the regulations and reiterating the Executive's position on the action that it intends to take. I now open up the discussion to committee members.

Helen Eadie (Dunfermline East) (Lab): I come from Fife, where for the past 18 months there has been great concern about telecommunications masts. John may have been informed about that by the solicitors of Fife Council. When I was on the council's strategic development committee, I pushed to get it to introduce a policy that would begin to address some of the issues.

I am particularly concerned that in all that John has said and in all that I have read so far there has been very little mention of the European dimension. There are references to the National Radiological Protection Board, which is considering the health and safety aspects, and to other work that is going on internationally, but there is not much about Europe. However, I understand that an expert body was established and reported, and that it later indicated that further work was needed. The body neither dismissed the health concerns nor concluded that people were definitely at risk.

I accept that health and safety is a matter reserved to the Westminster Parliament and that the developers will continue to want to take these projects forward, but I am a great believer in the Maastricht treaty, which articulates the precautionary principle. We do not seem to be applying that in this case, so that local authorities can be given unambiguous advice on how to deal with planning applications for masts. Will John comment on that?

The Convener: I would prefer to group questions.

Robin Harper: I want to reinforce what Helen has said. The Scottish Parliament information centre research note that we have been given states that Professor Sir Richard Doll has reviewed the scientific evidence on exposure to electromagnetic fields and the risk of cancer and concluded that

"there is no firm evidence that electromagnetic fields cause cancer but that there is a need for further good quality research to be carried out."

In other words, there is no evidence that they do not cause cancer either. That is what the report says.

My question relates to how, during the 42-day prior approval period, it will be advertised that masts are to be put up. I am concerned that, under current planning regulations, it seems to be sufficient to put an advert in the local paper, pin a few notices to lampposts and hope that people pick up on what is about to happen. Has any thought been given to asking developers to send letters to people who live within, say, half a mile of planned masts?

Linda Fabiani: My question follows on from what Robin has just said and concerns the mechanics of the prior approval period. I, too, was concerned about advertising. The SPICe note states that

"the planning authority … would have a specified period of time in which to consider the proposal".

It goes on:

"If in either of the two stages the planning authority fails to meet these timescales, then the operator would have the right to carry out the development".

That bothers me, because it assumes that local authorities will always be able to meet the time scale. For various reasons, they may on occasion be unable to do that, and something may slip through the net.

The other aspect that bothers me slightly is the code of best practice. I would like to know what action could be taken against a local authority if the code of best practice is not adhered to, either by the authority or the developer. The convener mentioned the siting of masts next to high flats; on occasion, local authorities are paid by developers to allow properties to be used. We should have something a bit tighter than a code of best practice.

John Gunstone: I will start with the question about the precautionary principle. However, I would preface what I am about to say by reminding the committee that I am not a representative of the health department and I would not want to comment on the quality of its research or the validity of the opinions that it has put forward. The Scottish Executive takes advice from the National Radiological Protection Board on such matters.

I understand that a few planning authorities are endeavouring to, or indeed succeeding at, implementing a precautionary principle, so that further masts on schools, for example, are being refused. Those are the most emotive cases and councils see that as the most straightforward way of responding to public pressure. I do not know whether that will be tested in court. A developer would have to press the point and perhaps bring the issue to a head.

My understanding is that the requirements in the Maastricht treaty on the precautionary principle relate to keeping things in proportion. It is all very well to take precautionary action, but it must be proportional to the risk. One of our consultation papers includes a discussion about whether a cordon sanitaire should be established around installations such as telecommunications base stations—200 m was suggested as an appropriate distance. If the NRPB tell us that, as long as the public does not go inside the fence which demarcates the area, there is no evidence of a causal link between that level of radiation and any ill effects, it would be difficult for the Executive and local authorities to say that a 200 m cordon sanitaire is proportional to the risk.

The difficulty with much of the research, as Mr Harper pointed out, is that the conclusion often seems to be that there is no evidence, but with an immediate caveat that further research is needed. The problem is that the public wants the researchers to prove the negative and I am not sure that that will ever be possible. There must be a hypothesis of the problem before the research can be directed appropriately. I am straying out of my territory and have reached thin ice, so I will end my comments on the precautionary principle there.

Mr Harper asked about the form of advertising. The details about whether a precise form needs to be specified or whether it can be left to the planning authorities will need to be thrashed out. At present, there is provision within a concept called neighbour notification. As the phrase suggests, neighbours of a proposed development are given specific notification of what is intended.

I take Robin Harper's point about requiring letters to be put through letterboxes, and about whether a radius of half a mile for that is appropriate or whether the radius should be bigger or smaller. The potential difficulty is how we know that it has been done. We already have that difficulty with neighbour notification; applicants are required to certify on their planning application forms that they have conducted the necessary neighbour notification round, but we suspect that it is not always done. We are considering tightening

things up.

The idea of putting letters through letterboxes, or putting more notices on lampposts, is worth exploring. I do not know whether we would want to regulate for that and have the problem of establishing that it has been done and deciding on sanctions for cases in which it has not. It might be better to include it in the code of practice, so that developers could be exhorted to do it. Developers are always keen to tell us how open and public-spirited they wish to be, so the idea might not fall on deaf ears.

Finally, on what could be dubbed a deemed approval, which would be given if a planning authority failed to respond negatively to a development proposal under the prior approval scheme, I would have to go back to the consultation responses to spot whether that point was picked up—I do not recall it. My response at the moment is that we would have to rely on the planning authorities to ensure that they responded within the due time.

Linda Fabiani: I find that worrying.

John Gunstone: I take your point.

Linda Fabiani: What about the code of best practice?

The Convener: How does enforcement of a code of best practice fit into the legislation?

John Gunstone: A code of best practice would be just that—or a planning advice note. It would not have regulatory force.

Linda Fabiani: For the record, I, too, find that worrying.

Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab): I welcome this discussion. I hope that it will not be the last one, as a number of issues have been highlighted that need to be considered. I want to pick up briefly on a number of points that have been raised.

On health, and following on from what Helen said about the Maastricht precautionary principle, I understand that the Government has asked for an expert working group to be set up with NRPB. When will that group report?

My second question is on what would constitute the replacement of an existing mast. I want to clarify that the proposed guidelines will be tight enough. An example is where a developer offers to build a new mast for the police on a site on which there has been a police communications mast for many years, but shifts the position of the mast on the same piece of ground so that it is only a few metres away from someone's house. Does that count as the replacement of a mast on the same site? It seems to me that it should not, but it is not covered by the present regulations, and residents have no comeback.

I am also concerned that it is difficult to get information in advance about telephone operators proposals, as they claim that the information is commercially sensitive. I suspect that competition between phone operators will make it difficult for them to reach agreements.

I do not expect you to have all the answers, but perhaps you will pick up on some points.

11:30

The Convener: We may wish to speak with the NRPB on that matter at a future date.

Cathy Jamieson: When will the group report?

The Convener: In early 2000. John, would you like to comment on that?

John Gunstone: You know more than I do. Early 2000 has been proposed for the publication of the report from Tessa Jowell's group, so we have a little while to wait for it.

The issue of mast replacement and what constitutes the same site must be taken up with the planning authority, not the Executive.

Cathy Jamieson: The anomaly is that the planning authority says that it does not have jurisdiction because of the prior approval that was given. I wanted to clarify the fact that the new proposals would not deal effectively with that anomaly.

John Gunstone: I do not think that the proposals address that anomaly. If you would like to write to me about that case I would be happy to give written comment on it.

Cathy Jamieson: I will do that.

John Gunstone: I thought that you would.

The Convener: Cathy, you have done a grand job in getting that issue across.

John Gunstone: I cannot comment because of commercial sensitivity.

The Convener: The principle has now been raised and John has said that it can be examined. Is that fair to say?

John Gunstone: I am sorry: I did not hear you.

The Convener: I said that the principle has been raised, not of the actual event but of what can and may happen, and therefore that will be examined in the code of practice.

John Gunstone: We would hope that developers already discuss their development plans with planning authorities, but I do not know to what extent that happens. The COSLA representatives may be able to shed some light on

whether developers are sharing their planning proposals with planning authorities.

Des McNulty: I thought that the biggest problem arising from the Telecommunications Act 1984 was the fact that cable operators were digging up the roads willy-nilly all over Scotland. We got over that but we now have another implication to deal with.

I want to address three issues. First, you have identified that the precautionary principle is the route that you want to take. How will you flesh that out in terms of developing a core standard around which the precautionary principle can be written? It would be dangerous if we ended up with different authorities in different parts of Scotland with different standards and different operating procedures, so we need some guidance from the Executive about how these measures can be put into effect.

My second point relates to the precautionary principle governing the positioning of new masts which, if we are being optimistic, will be in effect from the middle of 2000. What impact, if any, will that have on existing masts, some of which may have been located in inappropriate sites under the procedures that operated prior to the precautionary principle being introduced?

As a former local councillor I know that one of the problems that planning authorities face is that, given the choice between a more isolated site and a site that is closer to housing, population centres, schools and so on, operators typically proceed on a cheapness-first principle, which generally means that they locate the mast nearer to a populated site, even when an alternative, less potentially hazardous location is available.

We might want to write into the precautionary principle some kind of retrospective element in the code of guidance that advises operators to relocate existing masts, where possible, from places where they pose a potential hazard to where they pose a lesser potential hazard. Planning legislation is always about what happens next. We should examine what has already happened and determine whether there is a mechanism that we can introduce.

The third issue is the health dimension and how we address it. Perhaps that is a question for the convener rather than for John. When we discuss the health issue it would be worth meeting a health expert who can give us some information. I am conscious that there is a difference between the NRPB standard and the European standard in relation to the emission levels that are considered appropriate. We require some information on that.

The Convener: After today's two presentations, the committee will discuss how it will deal with the health issue. The Parliament has a health committee with which we may want to conduct a joint investigation. We can consider health matters in this committee, but we cannot do much with the information. Let us leave the health issue until the end of the two presentations, then we can deal with it in our discussions of how we are going to proceed.

John Gunstone: If we could work out what we wanted to say, regarding guidance on the precautionary principle, we could give such guidance. The NRPB is saying, among other things, that there is no good reason for establishing a cordon sanitaire around masts. It would be difficult for ministers to give definitive guidance and to defend the necessity of having masts at particular distances from residential areas on health or other grounds.

Des McNulty: Is the implication that it will be left to individual planning authorities to decide on what basis the appropriate procedures might operate?

John Gunstone: Last year, in conjunction with the Executive health department, we issued a draft paper on electromagnetic fields and planning. To an extent, that paper served only to stir up the issue; it did not solve much. That has perhaps been constructive, as we have brought the debate out. It will be some time before we find a clear way forward.

If the decree were to come out, "Thou shalt not build a mast within 50 m of a residential dwelling," what would that do to the value of a property that was already within 50 m of a mast? It would be blighted until the offending mast was moved. Questions are raised of who pays for that and how it is brought about. We are not in that position yet.

The order could be extended further than saying that there should not be a residential property within 50 m of a telecommunications mast. What about a broadcasting station? What about electricity pylons and substations? I am not an expert on electromagnetic fields, but I know that those things generate electromagnetic fields. Should one be allowed within 5 m of the microwave oven in one's kitchen? Without wanting to trivialise the matter, I point out that we are exposed to electromagnetic fields every day. As I said earlier, we must try to keep things in perspective, based on the right evidence from people who are in a position to give that information.

Mr Tosh: Convener, I want to pick you up on the point that you made about our future course of action. John indicated that there were seven areas of control in which the Executive intended to take action. Would that involve Executive action rather than legislation? Some of those areas clearly require only Executive action; no law would have to be passed to introduce a planning advice

notice. Is there any requirement for legislation on those seven principles? If we were to try to exercise what our briefing note calls "full planning control", would that require legislation? If we were to try to make any regulatory system retrospective, would that also raise issues of legislation and compensation? How do you think we should proceed on this issue?

John Gunstone: The first five proposals that are being progressed—all except the code of best practice and the preparation of advice on the use of planning agreements to encourage mast sharing—require changes to regulations at the level of secondary legislation. We can make those changes without a planning bill, as soon as our solicitors can get the work done for us.

On the question of full planning control, we could also achieve that—if we wanted it—by regulation. The effect would be to remove class 67 from the permitted development order.

Mr Tosh: The third leg of my questions was on the attempt to make a regulatory regime retrospective. Could we do that by secondary legislation?

John Gunstone: I do not know, but I think not. Can I come back to the committee on that?

Members: Yes.

Tavish Scott: I was interested in the consideration of full planning permission, having read some of the notes. The point was put that there are delays to operators, in terms of the prior approval mechanism, or method. Are those delays significant and did the result of the consultation that you conducted earlier in the year suggest that they would continue to be significant if we moved towards full planning control? I do not hear any arguments as to why you should not have a full planning procedure.

John Gunstone: Is that the question, or is the question—

Tavish Scott: I want to know whether your consultations came up with real arguments as to why you should not have a full planning procedure, in terms of the delays that operators perceived. On the other hand, are the prior approval procedure delays real? What are the arguments for not moving towards full planning approval?

John Gunstone: As I said earlier, the responses were generally along the lines that the planning authorities felt that the procedures were terribly tight. I have some sympathy for them as the planning system is under considerable pressure at the moment. If we load another chunk of case work on the planning authorities, presumably the strain will show somewhere in the system.

The developers, who obviously want decisions as quickly as possible, put the counter argument. I suppose that there may be less sympathy for them, on the ground that they could make their proposals a little earlier, perhaps, and the effect would be the same—they would get the decision when they needed it. It is a matter of which perspective one looks at the issue from.

I think I am right in saying that, technically speaking, one could always deal with a particular application within 14, 28 or 42 days, or whatever. However, there are many other things sitting on planning officials' desks at the same time and the general flow of case work has to be kept moving. The implementation of a full planning procedure would be an addition to that burden.

Tavish Scott: But would it be? Cathy said earlier that some planning authorities say that they do not have an issue with that, while others said that they do. It does not sound as if there is a clear position across Scotland as to how the procedures have been dealt with. Like Des, I was formerly a councillor and I saw the work load and how quickly, under the requirements, planning authorities were asked to deal with things. They have performance targets that are, effectively, set by the Executive, which they are meant to achieve. If we had a full planning procedure, would that not clarify the situation?

John Gunstone: It would be a clear and simple way forward if these developments were to be brought within full planning control.

Tavish Scott: Oh, really? What is wrong with that, then?

John Gunstone: I think that the argument is that there is no absolute requirement to apply full planning control.

The Convener: We should remember the stage that we are at in our discussion. There is other advice that we can take and other organisations that we can consult. To be fair, Tavish, we could pursue that point on another day, so to speak.

Are there any other questions from committee members?

I wish to ask about the code of practice and your perception of how the codes of practice work within local authorities. I was not a councillor, but I used to work in local government. We had to pay due attention to codes of practice—otherwise, although the codes are not legislative or prescriptive, staff would find themselves in some difficulty at a later stage. What is your view on that?

John Gunstone: That is right. I can go back to personal experience—I was a local government engineer once upon a time. Most engineering design is done to a British standard code of

practice, whether it involves steel, concrete or whatever. Engineers take great comfort from the fact that they have designed something to a British standard because the chances are that their design will stand up and support the loads that it is subjected to. There may be a cheaper and more innovative solution, but that would mean deviating from the code of practice, which in turn might mean being subject to action and criticism for having done so. I suspect that planning advice notes—even if people have not done so already—can be thought of in the same way. It is very easy to defend decisions or actions if you can say that you are following what is laid down in the code of practice. By and large, planning authorities adhere to a code of practice and prefer not to depart from it.

11:45

The Convener: The speakers from COSLA who are to follow may want to pick up on that point.

John, thank you very much. That was very useful and we appreciate your coming.

Mary Dinsdale, Dr Andrew Mackie and Bill Hepburn of COSLA will now join us, to brief the committee on the procedure for telecommunications development from local authorities' perspective. They will talk about the telecommunications development issues facing local authorities and local authorities' response to recent consultations and guidance on the matter.

We appreciate your coming along. I know who Mary is—Mary, could you do us a favour by introducing your colleagues?

Mary Dinsdale (Convention of Scottish Local Authorities): On my right, I have Bill Hepburn, who is the principal planner in development and control from Highland; and on my left is Dr Andrew Mackie, who is head of analytical and scientific services from Glasgow.

Dr Andrew Mackie (Convention of Scottish Local Authorities): Edinburgh.

Mary Dinsdale: Sorry, Edinburgh. [*Laughter.*]

I would like to provide a brief overview from COSLA's point of view, and then hand over to my colleagues to comment on their particular councils' policies.

COSLA welcomes the opportunity to provide a briefing on this issue. I would indicate at the start, however, that this is an area that we are currently investigating. We do not yet have a formal policy. We have carried out a survey of councils' policies on their own property, but it is not yet complete. The results of the survey will feed into a seminar in November that we are organising. We have invited speakers from the industry, the Scottish Executive, local authorities, the NRPB and Friends of the Earth. Members of the committee are welcome to attend, if they think it would be useful.

I had intended to cover the legislation, Government consultations and the survey, but I think that I will skip the legislation as John Gunstone has given a fairly extensive presentation. The only point that I would make is that the Town and Country Planning (General Permitted Development) (Scotland) Amendment (No.2) Order 1997 and the Telecommunications Act 1984 mean that there is both United Kingdom and Scottish legislation—it would be helpful if there were inter-relating controls.

In the review of planning procedures in Scotland relating to telecommunications equipment, councils raised some general points, including: the need for publicity of applications for third party objections to permitted development; the need for early discussion—prior to site acquisition—between the operator and the planning authority; a requirement for site sharing by operators to minimise the number of sites; and the need for details of different mast designs to be provided.

One council highlighted the fact that the planning authority could request changes to appearance, landscaping and siting of masts, but that, although operators were expected to respond positively, they were not required to amend proposals on the basis of objections from the local authority. The council is seen as a consultee rather than as a decision maker. Another council thought that the 28-day period should be extended to two months to allow for consultation, advertising and reporting to committee.

The proposed code of best practice was generally welcomed. The code should include details of all operators and the areas covered by their licences, and a clear complaints procedure to cover, for example, complaints about work on private property that was outwith the scope of planning legislation.

The second consultation that I will comment on is the draft circular on land use planning and electromagnetic fields, which provides guidance to councils in determining applications in the vicinity of power lines or base stations. The circular advises that operators require to comply with health and safety legislation and that there is no reason for planning authorities to take health and safety matters into account. It was pointed out that paragraph 21 states:

"The courts have held that any genuine public perception of danger is a valid planning consideration, although the weight to be given to this will be a matter for the body determining the application taking into account the particular facts of the case".

One council commented that the draft circular

should give scope for refusals, where expert advice is inconclusive. The general view was that the draft provides little practical guidance on how land use planning should take issues arising from EMFs into account.

On the results from the survey that we carried out, we received 18 responses on councils' policies in relation to applications for sites in their ownership. Eight councils have adopted the precautionary principle or have put in place a temporary moratorium regarding applications for sites on council-owned land and buildings, particularly schools and education premises. A further six councils are reviewing their policies. Two councils have carried out monitoring of electric fields in areas where masts are close to primary schools and nurseries—the findings were well below the levels recommended by Friends of the Earth. Two councils have not adopted specific policies on the issue.

The data from the survey will feed into our seminar in November. COSLA is aware that guidance on telecommunications planning policy in relation to health and safety is contained in Scottish Office development department circular 25/85 and that the NRPB has stated that there is no firm evidence that health risks are associated with EMFs. The consistent message from councils is that they are mindful of public anxiety and until studies of the long-term effects are available and conclusively report that there are no risks, precautionary principles will continue to operate on council-owned land and premises.

If there are specific issues that I have not covered, we can prepare further evidence. I will now hand over to my colleague.

Bill Hepburn (Convention of Scottish Local Authorities): I come from Highland Council, which covers a large geographical area—as I am sure most of the committee will know. We have had considerable experience in dealing with new telecommunications apparatus. There has been a rapid expansion, owing to the evolution of the industry and because Vodafone and Cellnet have entered into an agreement with Highlands and Islands Enterprise. With the assistance of European money, they are establishing wide networks to the most remote parts of the Highlands and Islands. By the nature of the technology, this requires a lot of installations.

Since 1996, when the process began, we have had more than 250 notifications, of which only 10 per cent have been planning applications. The rest have been permitted development notifications. As John Gunstone said, they can be fairly significant. For example, the diagram I have with me shows a 15 m mast—approximately 50 ft. It will significantly affect the environment. There have been some controversies, generally on orthodox planning issues of amenity, but a health issue has emerged and is rumbling on. The council's policy is to support telecommunications. It supports the initiative of Vodafone, Cellnet and the development agencies in introducing telecommunications to remote areas as it will assist social and economic development in an area that is bigger than Wales but has a population of 250,000.

Because of the increasing number of controversies, the council instigated an informal consultation procedure. We consult local councillors, community councils, Scottish Natural Heritage and anyone else whom we think has a particular concern about a notification that we receive. We get only 28 days to deal with that notification, and the procedure is entirely inadequate, although it does sift out some problems.

We have had our successes, where we have been able to advise operators that they should try something else, but we have had our failures too. The operators will have investigated alternatives and they will get to the end of the line and decide that what they wanted in the first place was right. At that point the operator will go ahead with the development, despite the wishes of the council or anyone else.

Since 1996, the council has made various representations to the Scottish Office and latterly the Scottish Executive. Highland Council's view is that permitted development, as it is now constituted, should require full planning permission. There is no ambiguity about that whatsoever. Permitted development should be reduced to an insignificant amount—and those remarks are without prejudice to any health issue that might arise from the use of smaller scale apparatus.

I felt that it was not clear from the Scottish Executive paper that these masts occur on various scales, from large installations that include many operators, through a continuum to very small items. You will see them here in Edinburgh. Micro-cells are being developed that, in planning terms, are de minimis. They are no more obvious than burglar alarms or light fitments on the side of buildings. The problem of scale must be taken into account for planning and in health terms.

Highland Council's view on prior notification is that it is an entirely unsatisfactory hybrid process, bureaucratic, and procedurally not helpful to either the public or the planning authority or, I would argue, to a developer. If a developer is faced with a full planning application, it has a proper pathway to a decision, whether through the council or the Scottish Executive. I was disheartened by what John Gunstone said this morning, because decisions appear to have been taken already. As a

practising planner, I believe that there is no advantage whatsoever in undertaking a prior notification procedure, or to the time scales that that will involve, as compared with dealing with a planning application in the normal way.

John Gunstone commented on neighbour notification. One of the features of any existing prior notification arrangements—for example for agricultural buildings—is that no neighbour notification is required. The public do not understand that they can get a 15 m mast on their doorstep without notification, but that they will be notified if their next-door neighbour wants to build on a front porch. That inconsistency must be tackled and I am not confident that the prior notification procedure as described will do that.

A full planning application is by far the best way forward. It would place no greater burden on planning authorities than the prior notification procedure. In Highland Council, prior notification would raise even more difficulties in terms of the staff and the time that we would need to give it. Also, we would give more or less full planning consideration to those issues but we would not get a planning fee. That fiscal issue must be taken into account.

The council is aware of persistent expressions of public concern on health issues. For our part, we have adopted an interim policy which is precautionary in a sense: whether we would allow these installations on sensitive properties—schools or old people's homes or whatever—is subject to formal council consideration. That policy is pending further guidance from Government or the National Radiological Protection Board, which may be long in coming and inconclusive.

The Convener: Thank you very much. Dr Mackie.

12:00

Dr Mackie: I have a few supplementary remarks regarding the precautionary principle and the difficulties that councils face in responding to public perception and opinion. Those difficulties arise partly because the councils, as we have heard, do not have the planning powers that the public perceive them to have. Further, the councils own large numbers of properties and, particularly in urban areas, telecommunications operators consider those properties to be ideal sites. Councils also have the additional responsibility of considering the situation with regard to their tenants, schoolchildren, older people and so on.

The precautionary principle, which has been mentioned quite a lot this morning, is a very ill-defined statement. It does not apply to telecommunications alone, but was incorporated into the Maastricht treaty to apply to anything where there could be concern about a health risk or some other aspect of life. It is being developed, in a piecemeal fashion, to apply to telecommunications activities and, in many cases, it is being interpreted as meaning either a ban or a moratorium on the erection of masts in certain locations. That may not be the most appropriate way forward; therefore there is a need for further guidance.

I will give an example. If, after a precautionary principle was adopted, it was decided not to erect a mast on top of a school, the telecommunications director may decide to erect the mast on private land adjacent to that school. As a consequence, the exposure—perceived or otherwise—that the children in the school would receive will be the same whether the mast is on the school or adjacent to it.

The precautionary principle needs to be fleshed out in a great deal more detail. Many aspects—such as the configuration of the operator's particular antenna at a given location, the power rating, the likely levels of emissions at different points at ground level or in different locations on adjacent buildings—need to be brought into a code of practice. The code could assist local authorities to evaluate individual sites, to determine whether they present a potential risk to the community, and to make a judgment based on that evaluation.

At present, because there is a lack of information, local authorities take different views, some in response to public opinion and others in response to perceived scientific information. The scientific information is very complex and by no means clear-cut and, in the short to medium term, I do not think that it will be. To expect councils to make scientific judgment on health issues alone is beyond their resources and, in many cases, beyond their expertise.

The Convener: Thank you very much. We will revisit those issues but, in the meantime, are there any questions for the COSLA representatives?

Helen Eadie: I have an observation rather than a question. It has been very helpful to hear both sides of the argument this morning and I appreciate everyone's work and effort. The presentations were very interesting. I am not opposed to mobile phones—I love new technology—but I want the sort of approach that has been illustrated this morning to be adopted.

The Convener: If there are no further questions, it remains to me to thank our visitors very much. As I said, we will probably investigate this matter further. I am interested in the seminar that was mentioned, as I am sure other committee members will be. We look forward to receiving details of it.

Can I have a general view from the committee on whether we wish to proceed further with this matter? I take it from the level of questioning and interest that the answer is yes. We plan to have further briefings on the matter. We should take cognisance of the COSLA seminar, which will bring together other bodies, and we can also call people to tell the committee their views. It may be appropriate to invite the NRPB, the industry itself, Friends of the Earth, who have been fairly vocal on the matter, and other organisations that may have a view.

On health, we could proceed in two ways. We could hear evidence here but not take direct action on the information that we receive. Alternatively, we could work jointly with the Health and Community Care Committee. Those are the parameters. I am not saying that that is what we have to do, but I wanted to give you a flavour of the possibilities.

Helen Eadie: I support your suggestions, which I think are first class. I wonder whether the committee clerks could find out more about the work of the European experts. If necessary, we could ask a representative from that expert body to give evidence to the committee. I do not think that the NRPB is the only organisation in the system and, indeed, the briefing note indicates others.

Janis Hughes (Glasgow Rutherglen) (Lab): I agree that the NRPB is one of the most important groups that we could talk to besides the industry. Could you clarify how our work would correlate to that of the health committee? If we take evidence from the NRPB, would the health committee want us to do that jointly? What would the mechanism be?

The Convener: I would need to discuss the matter with the Convener of the Health and Community Care Committee to establish whether that approach would be welcomed. We are all under different pressures. This committee has a huge work load, and it would understandable if other committees wanted to stick to their plans. If it cannot be done because of the pressure of work on that committee, I suggest that we revert to plan B, to bring witnesses to this committee only. We would be limited in the action that we could take, but we could refer the matter back to the health committee or to the floor of the chamber.

In summary, our best course of action would be to conduct a joint investigation with the health committee. If that committee cannot assist us, we shall have to do it ourselves and, depending on the results, deflect the matter to other parts of the Parliament.

Des McNulty: I have a slight reservation about going down the route of endless joint investigations. It could be argued that the Social Inclusion, Housing and Voluntary Sector Committee should be involved in every possible investigation, as its remit covers everything, and that this committee, as an environment committee, could get involved in housing issues. It would be helpful if committee conveners could agree early on about how they intend to play that issue.

I do not think that we should be too worried about taking a bit of health evidence in relation to something that we are pursuing as an area of interest of our own. If that suits our work plan, that seems fine to me. We should notify the health committee that that is what we are doing, but I would prefer not to end up in a situation in which the two committees take joint evidence as a routine mechanism. That could be quite clumsy, so we need some protocol to allow us to maintain the integrity of inquiries. As we evolve, we can work something out in practice.

The Convener: There is some difficulty in establishing the role and remit of this committee and whether the scope of our inquiries should be confined to planning regulations and local authority involvement and processes. If we want to branch out into health issues, we should take advice on that. Within the parameters and remit of the committee, we can quite happily investigate the roles of planning authorities, advice notes from the Scottish Executive, international advice and so on, but we cannot get heavily involved in health issues.

Where do members think that we should expend our energies: simply on the processes, regulations and advisory aspects outlined by COSLA and by the Scottish Executive, or on joint investigations with other committees?

Tavish Scott: I am concerned about the planning regulations. COSLA has illustrated a need for full planning control to be considered. On the other hand, the Executive is clearly moving in a different direction. If we are to address this issue, we must do so quickly because money is being spent on solicitors.

You should discuss the point about health with your colleagues in the conveners group, Andy, but there is no reason why you could not set up a smaller group made up of a small number of members from each committee to do work on that aspect. I think that we should pursue the other issues that have been raised this morning as they are within our remit.

Mr Tosh: I would be inclined to stay within the remit but it is perfectly legitimate for us to consider the health aspects of the matter, as long as we clear it with the Health and Community Care Committee. What is its work load? That committee might want to consider the issue in conjunction

with us, if only for the benefit of witnesses who we will want to bring before us. If that committee does not have the issue in its programme—we should all be alert to the burdens on committees' programmes—we should feel entitled to examine aspects of health.

I agree with Tavish, though, that our priority should be matters that are within our remit.

Cathy Jamieson: Consensus is about to break out, I think.

I support what has been said already. In order to take action in the short term, we should investigate the issues that relate to planning control. We have heard that a Government report will deal with the health implications of the issue and we should take that into account. We might want to pose some questions that could be asked during that investigation. However, that does not stop us doing something in this committee as long as we notify the Health and Community Care Committee. In the short term, though, our focus should be on what we can achieve in terms of planning regulations.

Linda Fabiani: Consensus has indeed broken out.

It is necessary for this committee to have some background on the health issue but not to get too hung up on it. Information about the health aspect could inform our decisions as to how regulatory the planning regulations should be.

The Convener: That makes my job easier. We have a broad consensus that that is how we will proceed. We will build our decision into our work programme.

Work Programme

The Convener: We are continuing the distillation process in regard to our work programme and putting some meat on what we have previously discussed. As you will all be aware, at our last meeting, we identified a number of priorities. One was telecommunications, which we have agreed to pursue. The list also included concessionary fares, further briefing in the framework for water and fuel proposals and rural petrol stations.

It has been difficult to ensure that we reflect the requirements of the committee and the desire to consider certain areas. A number of Scottish statutory instruments are coming our way. We need to bear that in mind, as consideration of such instruments is one of our roles. Petitions will come our way, too, as will matters referred to us by other committees. By the end of December, we will have draft legislative proposals for transport, national parks, land reform and the access question. Around that time, we will also have the Executive report on the strategic roads review and, probably, the outcome of the national waste strategy consultation process.

We have had to be cautious in our approach to the work programme. The draft programme that you have before you is not set in stone; it is an attempt to regulate the way we are going to work in the coming months. We will respond to matters that the committee raises.

Mr Tosh: I am happy with that.

12:15

Robin Harper: I am happy with it, too, but I would like to know when we will be able to discuss our next round. As you all know—I have lobbied you individually—I am keen for us to get involved in the genetically modified foods debate. All day today and tomorrow, a big conference is taking place in Edinburgh, at Heriot-Watt University. Evidence is being taken from both sides and that might provide us with a good lead as to which people we want to invite to appear before the committee in order to have a balanced argument. It is a matter of enormous public concern and we should signify as soon as possible that we are prepared to take on the debate. The only person who backs me on that point is not here at the moment.

The Convener: I appreciate your point and also that you made a request for that earlier. If I recollect correctly, Iain Gray took the GM issue into the health arena in the summation of the public health debate. He said that GM was, in the first instance, a question of health. However, we have not forgotten the issues that are not in the work programme. We will revisit them and discuss the way in which to slot them in. We will review our work programme on a regular basis to update and develop it.

Tavish Scott: I agree with what you are saying and I take Robin's point. We should consider GM when time allows, but we have two other issues on the list.

Do documents such as the annual reports of the Scottish Environment Protection Agency and Scottish Natural Heritage come to the committee? What are the procedures for reports that are laid before Parliament? Will a meeting with the chief executive and the chairman of those quangos be built into our programme, when those reports are presented to Parliament?

The Convener: I take my advice from the clerk, who says that there is no requirement for those reports to come to the committee, but that it is our choice.

Tavish Scott: Can I make a plea that we could do that when the reports are published? I presume

that publication is tied to the financial year, so we could not hear from witnesses until well into next year.

The Convener: That point is valid and well made.

Cathy Jamieson: We have enough work to be going on with and I am pleased to see that we will be taking the issue of telecommunications further, as well as the other issues that we have prioritised.

I remind the committee that we agreed a few priority areas, including a closer examination of rural transport, and the bus industry in particular. I do not want to lose those matters at the beginning of next year. I do not want to come back to a totally new set of priorities.

The Convener: I think that we are taking a bite-size approach. I take on board what Cathy has said.

Are there any other questions on the work programme?

Des McNulty: I agree with Cathy's point. There is an issue about the way in which we handle the agenda. We spent quite a long time on two SSIs today, but there is a huge programme of other SSI matters on the horizon. Perhaps we should take them in a defined and relatively short period at the end of meetings, rather than at the start. In other words, the key priorities that we have defined should be at the top of our agenda. The mechanics of handling SSIs should be dealt with in a later part of the agenda.

I suggest that we have a routine mechanism at the start of the meeting so that if someone particularly wants to raise a matter in relation to an SSI we could increase the allocated time, but otherwise we should try to deal with SSIs in 15 minutes at the end of the meeting.

The Convener: There seems to be general approval for that suggestion and I am happy to take it on board.

Mr Tosh: This morning was slightly different. We laid a marker that we wanted the matter properly dealt with and were establishing a better standard than had existed. That may settle down. I am impressed by the fact that my business manager notified me that there were five SSIs to deal with. This issue will just keep rolling.

As I suspect that not every member is all that excited about many of these instruments, perhaps it would be more appropriate to establish a sub-committee, which would take the issue out of the committee agenda. Are there any volunteers for that body? If we deal with the matter in 15 minutes at the end of the meeting, there will be a risk of people not paying attention. Traffic regulations and the Parking Attendants (Wearing of Uniforms) (City of Glasgow Parking Area) Regulations 1999 do not sound terribly exciting, but we have to discharge our duty properly.

Cathy Jamieson: Are you volunteering, Murray?

Mr Tosh: Not really, but somebody has to do it.

Nora Radcliffe (Gordon) (LD): I do not agree with the idea of a sub-committee. There is merit in all of us considering the SSIs, even if briefly. Murray says that committee members will not pay much attention to the matter, but those of us who are not on that sub-committee will pay even less attention.

The Convener: I share Nora's view. With respect to Murray, we can suck it and see and if there is a problem, we might revisit the option. However, Murray is right. We laid down a marker with the first two instruments by having a written briefing and presentations to the committee. I would not choose to have that mechanism at every meeting; a written briefing might be fine for most occasions. If we are discussing an area of significance, we might invite a representative from the Executive or another body to brief us. This is a fledgling committee. As we will be around for a long time, we will take Murray's view on board and, based on what happens in the next few months, we might revisit the topic.

I have lost track of things. Is Robin next to speak, then Cathy?

Robin Harper: I just want to mention a couple of points. There was quite a lot of information to read through for this committee and, as I had a full day of commitments yesterday, I was unable to give as much attention to those papers as I would have liked. I would have asked further questions about the forestry SSI, but I needed time to consult a few people outside the chamber, particularly on the issue of acreage where there might be concern. However, I will not know about such concerns until I have collected further evidence. Can we come back to such a question and say, "After consultation over a period of weeks, we find that there is a problem that we have not spotted"?

Des McNulty: The way around that is to require such papers to come before the committee at a specified time and to invite written questions. That kind of business has a schedule and people putting such material before us will know that they have to meet a deadline if the issue is to be discussed by a particular committee.

Mr Tosh: It would be helpful if the need for a briefing were anticipated well in advance of the designation of the lead committee. We do not need to wait a long time for Parliament to designate the committee to know that some

committees will need certain information.

The Convener: At the moment, our time scales for receiving information on these matters are very tight and we have expressed views about that. We could also try to second-guess what issues will come our way to ensure that we have a sufficient briefing beforehand. The point is legitimate and we will try to find sufficient time to deal with these matters.

Robin, can I suggest that we do not revisit certain topics, unless the officers can work out a mechanism of doing that? We need to deal with these issues, and once they are gone, they are gone.

Can I formally agree the work programme? It is agreed.

I forgot about invitations from certain bodies.

Invitations

The Convener: We have received three invitations. One is from ScotRail, to travel on the Turbostar train on its preview journey on Thursday 23 September, which is tomorrow. How are people fixed?

Linda Fabiani: Does it go to Inverness for the conference?

The Convener: I do not think that Inverness is on the route, but I could perhaps arrange it. You might end up somewhere else on the way back, Linda.

There has been an invitation from the Confederation of Passenger Transport, the trade association for bus, coach and light rail, to meet with them and attend a dinner on 16 or 17 November, to meet operators. My personal view is that that is a bit early. It would be more appropriate to meet them when we are discussing buses and rail and so on. That is not to say that I have not informed members about their intentions.

We also have an invitation to visit the plant at Dounreay, to familiarise the committee members with the on-site activities and to discuss the issues. I would again argue that it would be more appropriate to go there when we are discussing related matters. I think that we should respond positively to both those organisations, but arrange the visits when they would fit more appropriately with what we are discussing.

Does that meet with the approval of the committee?

Members *indicated agreement.*

The Convener: Have I forgotten anything else, Linda? If not, I thank members for their attendance and for another very good meeting.

Meeting closed at 12:25.

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