

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 17 January 2001
(Morning)

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TRANSPORT AND THE ENVIRONMENT COMMITTEE

1st Meeting 2001, Session 1

CONVENER

*Mr Andy Kerr (East Kilbride) (Lab)

COMMITTEE MEMBERS

*Bruce Crawford (Mid Scotland and Fife) (SNP)
*Robin Harper (Lothians) (Green)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Fiona McLeod (West of Scotland) (SNP)
*Des McNulty (Clydebank and Milngavie) (Lab)
*Bristow Muldoon (Livingston) (Lab)
*Mr John Munro (Ross, Skye and Inverness West) (LD)
*Mr Murray Tosh (South of Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Helen Eadie (Dunfermline East) (Lab)
Nora Radcliffe (Gordon) (LD)

WITNESSES

Colin Bayes (Scottish Environment Protection Agency)
Caroline Davies (Scottish Environment LINK)
Ian Findlay (Scottish Environment LINK)
Tricia Henton (Scottish Environment Protection Agency)

CLERK TO THE COMMITTEE

Shelagh McKinlay

SENIOR ASSISTANT CLERK

Tracey Haw e

ASSISTANT CLERK

Alastair Macfie

LOCATION

Committee Room 1

Scottish Parliament

Transport and the Environment Committee

Wednesday 17 January 2001

(Morning)

[THE CONVENER opened the meeting in private at 09:32]

09:50

Meeting continued in public.

The Convener (Mr Andy Kerr): I welcome everybody to the first meeting in 2001 of the Transport and the Environment Committee and wish you all a happy new year—the new year seems some time ago now but, none the less, this is our first meeting of the year.

The committee has a number of new members. I welcome them to what I hope will be an enjoyable, interesting and successful number of years on the Transport and the Environment Committee.

I also thank members for the kind remarks that they made during the stage 3 debate on the Transport (Scotland) Bill, when I was off with the flu. I notice from the *Official Report* that a number of members wished me a speedy recovery.

We await the arrival of Des McNulty and Murray Tosh, who have not yet been able to join us, although we have received no apologies.

Interests

The Convener: As on previous occasions when new members have joined the committee, I ask the new members whether they have any interests that they think are relevant to the committee's work and which they would like to declare.

Mr John Munro (Ross, Skye and Inverness West) (LD): I am a fellow of the Institute of Logistics and Transport. As the committee has an interest in the environment, I should also declare that I am a crofter.

The Convener: I am sure that your insights will be most useful to our work.

Maureen Macmillan (Highlands and Islands) (Lab): I do not have any interests to declare, except that I might be married to a Friend of the Far North Line. That is not to question my marital status—I am not sure whether my husband ever sent away his membership application form.

The Convener: He will know about it now, because he will read about it in the *Official Report*.

Bristow Muldoon (Livingston) (Lab): I am a member of the Transport Salaried Staff Association. Livingston constituency Labour party also has links with that association and with the National Union of Rail, Maritime and Transport Workers. Although it is not a current interest, I should perhaps also mention that I worked in the rail industry for 13 years, most recently with Great North Eastern Railway.

The Convener: With all that new experience being added, the committee has interesting times ahead.

Item in Private

The Convener: Agenda item 3 is a decision on whether to take in private item 7, which concerns the practical arrangements for our fact-finding visits for the water inquiry. Do members agree that it would be appropriate to take item 7 in private?

Members indicated agreement.

Subordinate Legislation

The Convener: Agenda item 4 is subordinate legislation.

I refer members to the Financial Assistance for Environmental Purposes (Scotland) Order 2000 (SSI 2000/430), which is accompanied as usual by a committee covering note. The instrument, for which we have been designated the lead committee, was laid on 30 November 2000. The order was laid under negative procedure, which means that the Parliament has power to annul the order by resolution within 40 days, excluding recess. The time limit for parliamentary action expires on 26 January 2001. We are therefore required to report on the instrument by 22 January 2001.

The Local Government Committee was designated as secondary committee on the instrument, but has made no recommendations on it.

The Subordinate Legislation Committee considered the instrument on 5 December 2000 and agreed to raise points with the Executive. The relevant extract of the Subordinate Legislation Committee's report has been provided to the committee. Are members agreed that the committee has nothing to report on the instrument?

Members indicated agreement.

The Convener: The next negative instrument is the Control of Pollution (Registers and Consents for Discharges) (Secretary of State Functions) Amendment Regulations 2000 (SSI 2000/432), which is accompanied by a committee covering note. The instrument was laid on 30 November 2000. The Transport and Environment Committee has been designated the lead committee for consideration of the instrument. An Executive covering note and regulatory impact assessment accompany the regulation. The order was laid under negative procedure. The time limit for action is 26 January 2001 and the committee is required to report by 22 January 2001.

The Subordinate Legislation Committee considered the instrument at its 35th meeting on 5 December 2000 and agreed to raise points with the Executive. The relevant extract of the Subordinate Legislation Committee's report is provided. Are members agreed that the committee has nothing to report on the instrument?

Members indicated agreement.

Water Inquiry

The Convener: Agenda item 5 concerns the committee's continuing inquiry into water and the water industry. Members might be interested to note that we have formally appointed as our adviser to the inquiry Ian Jones, who is the chief executive of Quayle Munro Holdings plc. I will report in writing to members on Ian's activities.

I welcome to the committee Tricia Henton and Colin Bayes of the Scottish Environment Protection Agency. I thank them for their brief note—which has been circulated to members—on some of the issues that they want to bring before the committee. It is normal practice for me to give witnesses the opportunity to make short opening remarks. We try to keep our questioning as informal and painless as possible; nevertheless, we need some formality.

I hope that the witnesses enjoy the next half hour or so with the committee.

Tricia Henton (Scottish Environment Protection Agency): Good morning, ladies and gentlemen. I am the chief executive of the Scottish Environment Protection Agency and my colleague, Colin Bayes, is the head of policy co-ordination for water.

I have some brief comments to make before I hand over to Colin. The creation of the water authorities was welcome because it allowed significant improvement to be made to Scotland's water services. In particular, the size of the new authorities has allowed them to become extremely competent, technically and professionally, and has allowed them to take a more strategic approach to planning and delivering infrastructure improvements—provided always that they have adequate resources to do so.

SEPA works closely with the water authorities in many ways and on many projects. On the other hand, sewage pollution is the biggest cause of water pollution in Scotland and the close working relationship between SEPA and the water authorities does not preclude our taking them to court or prosecuting them whenever we feel that that is justified.

Colin Bayes (Scottish Environment Protection Agency): Good morning, ladies and gentlemen. SEPA is the prime environmental regulator of the water authorities' activities in respect of discharge of sewage effluents. We have a system of issuing consents under the Control of Pollution Act 1974, and those consents are subject to conditions to protect the environment. We undertake audit monitoring of water authorities' discharges—that monitoring is valued by the public—and we take enforcement action, as Tricia

Henton said. In the previous financial year, 86 per cent of monitored water authority sewage effluent discharges complied with the conditions of the consent. That was an improvement from the 78 per cent compliance rate in the first year of the authorities being formed. In addition, SEPA works with the water authorities to prioritise capital investments so that maximum environmental benefits—in compliance with European directives—are delivered as cost-effectively as possible. That is part of the quality and standards process, to which I will return.

We work in partnership with the authorities to promote environmental initiatives, such as the sustainable urban drainage Scottish working party or the more recent VIBES—vision in business for the environment—award for waste minimisation and best practice in environmental activities.

I want to summarise five key points in our submission. The first point concerns the extent of sewage pollution in Scotland, because inadequate sewage discharges and unsatisfactory sewerage systems are the primary cause of water pollution in inland and coastal waters. There are others, but those are the primary causes. They are responsible for 34 per cent of our most seriously polluted rivers, 21 per cent of polluted lochs, 92 per cent of polluted estuaries and 89 per cent of polluted coastal waters. In addition, complaints from the public about sewage pollution are the most significant that SEPA receives.

10:00

Underinvestment in Scotland's infrastructure over many years has resulted in inadequate environmental protection and difficulties in compliance with European directives, such as the bathing waters directive. My second point, therefore, is to welcome the more formal approach to planning the investment cycle of the water authorities, which has been introduced through the quality and standards process. We have the water quality and standards document for the current two-year period, while the consultation is out on the next, four-year round of planning. SEPA welcomes that more formal approach and the role of the water industry commissioner in ensuring that that planned expenditure is delivered effectively.

My third point relates to surface water drainage, in which the water authorities are also involved. That is the drainage of rainfall from urban areas, which in itself causes pollution. Nearly 500km of inland waters are polluted due to surface water drainage—not sewage pollution—from our urban areas. Mixed responsibility with the Highways Agency on that issue is, perhaps, precluding progress. SEPA is concerned that the issue might not be dealt with adequately through the current

quality and standards investment planning process.

My fourth point concerns the new provision of sewerage facilities in rural areas. In Scotland, universal public sewage treatment is not required for environmental or public health protection reasons. Private septic tanks and treatment facilities can be, and are, perfectly adequate in certain circumstances. However, there are villages where there is an accumulation of such facilities, such that the only cost-effective and practical solution is the provision of first-time public sewage facilities. Understandably, that attracts a low investment priority with the water authorities when their existing facilities need to be upgraded. Even when such facilities are provided, there is reluctance on the part of householders to connect to them because of the cost of connection and the fear of future charges. SEPA believes that a highly targeted rural support scheme is needed if we are to deal with the relatively small number of priority villages that still require sewage treatment facilities.

Finally, there is no comprehensive system of water resource management and abstraction control in Scotland. SEPA and its predecessor bodies have expressed concern on that issue over a number of years. The absence of such a system prevents the effective protection of water authority abstractions for potable supply from any other persons deciding to make abstractions. The introduction of the Competition Act 1998 provides further concern that we do not have an effective system of water resource management in Scotland. That could be damaging to the water authorities. Such a system will be required under the water framework directive, which was adopted in the latter part of last year.

In conclusion, SEPA believes that the water authorities are in the process of delivering major improvements to our water and sewerage infrastructure in Scotland, which will bring about improved environmental quality in our rivers and beaches and in the vicinity of our towns. The improvements will have major economic and recreational benefits. Our concern is that any changes that might arise—especially through the Competition Act 1998—should not detract the attention of the management from the delivery of a major investment programme for the benefit of Scotland's environment.

The Convener: Thanks for those opening remarks. Our first area of questioning centres on relationships and structures within the industry.

Maureen Macmillan: That was a most useful presentation. Will you explain the relationships between SEPA and the Executive, the water industry commissioner and the water authorities? For example, it is not always clear who is

responsible for what and how independent SEPA is of the Executive. What is SEPA's remit?

Colin Bayes: SEPA is a non-departmental public body and it has its own board. However, although it sets its own enforcement policy and deals with the water industry as an NDPB that is independent of the Executive, it must undertake to deliver the Executive's requirements, such as on compliance with European directives.

Maureen Macmillan: Do you see yourselves as having the same relationship with the Executive as the Food Standards Agency?

Tricia Henton: No. As Colin Bayes said, SEPA is an NDPB, which means that we set the standards that we require the water authorities to meet in order to protect Scotland's watercourses. We set consent levels and we must therefore be mindful of a large number of European directives. Some of those are prescriptive and others are used to set environmental quality standards. We determine those levels and we enforce the consents that are set. The numbers that are attached to the consents are designed to achieve the requisite water quality.

Maureen Macmillan: So SEPA sets standards in the context of European directives and the Executive's wishes. Would it decide unilaterally on something?

Colin Bayes: SEPA certainly sets its own targets for improvement in the quality of the environment. However, although the agency determines its own five-year water quality targets for Scotland's environments, those targets go, in our corporate plan, to the Executive for ministerial approval.

Maureen Macmillan: Has SEPA a relationship with the water industry commissioner?

Colin Bayes: Yes, we interact considerably with the commissioner—as the water supply regulator, as opposed to the environmental regulator—we are jointly involved with the commissioner, the three water authorities and the Executive in the development of the quality and standards process for capital investment over the four years.

Maureen Macmillan: Are there clear distinctions about what everybody does? Are the lines of communication also clear?

Colin Bayes: Yes. There are clear distinctions and good lines of communication.

Maureen Macmillan: In your evidence, you mentioned that the increased size of the water authorities has improved the delivery of their services. Of course, the three authorities are very different; for example, North of Scotland Water Authority must cope with the problems and features of the Highlands, which are quite distinct

from those of the central belt. Do you have a better working relationship with any particular water authority? Perhaps you do not want to answer that question.

Colin Bayes: We have a good working relationship with all three water authorities, which can bring us into confrontation. Indeed, that is part of our role as regulator. However, I would not say whether that relationship was better or worse with any one of the three—the honest answer is that the relationships differ from time to time.

Maureen Macmillan: You said that the increased size of the water authorities was an asset. Would a single Scottish water authority be an improvement? Perhaps you do not want to answer that question, either.

Tricia Henton: We are fairly neutral about that. We will obviously work with any authorities that exist, but although there will be some benefits and disbenefits, we do not have a particular view on the matter.

Maureen Macmillan: Do you think that restructuring of the water industry has improved water quality?

Tricia Henton: Yes.

Maureen Macmillan: What about bathing water standards? You did not seem terribly hopeful about that issue.

Colin Bayes: Without doubt, there is a historic problem about bathing water quality in Scotland, which is, in many areas, due to the historic underinvestment in sewerage and sewage treatment facilities to which I referred. The programme of investment that is under way is designed to address the problems that arise from sewage discharges. Other impacts on bathing water, such as diffuse run-off from farming areas, are not to do with the water authorities and require parallel action.

Bruce Crawford (Mid Scotland and Fife) (SNP): Is SEPA's opinion that increased competition in the water industry will improve water quality services or that there is a danger that corners will be cut for the sake of cost savings? For example, I have been told that, as part of the preparation for the competition process, authorities have been asked to trim their operating costs. From the water commissioner's statements during the past couple of weeks, it is clear that that is what the authorities are expected to do.

It has been drawn to my attention that West of Scotland Water is examining the demarcation of its operatives. At present, cross-contamination means that those who work in sewage plants are supposed to work only in sewage plants and those who work in water treatment plants—that is, in the provision of drinking water—are supposed to work

only in that area. However, West of Scotland Water is examining the potential for multiskilled work forces, which would create a situation where cross-contamination might become more likely.

What is SEPA's view of the overall problem of the cost-cutting exercise to prepare for competition? Will that exercise affect quality? I am not sure whether SEPA is responsible for the specific work in which WSW is involved, but I would like you to address that, too.

Colin Bayes: On driving operational efficiencies, or cost-cutting, SEPA has made it quite clear that, as far as we are concerned, the authorities have a legal responsibility to comply with the conditions of their consents. If they take action that results in failure, they will be subject to enforcement action. As the enforcing authority, we have made our position clear.

At this stage, I do not think that we are in a position to say that we would object to any particular management actions to cut costs per se. We are the regulator with which the authorities must comply. We would be concerned if operational standards started to fall and we will take action in any such circumstances.

Bruce Crawford: Is SEPA involved in issues such as deskilling, or does responsibility for dealing with and regulating such matters lie elsewhere?

Colin Bayes: It is up to the authorities to ensure that they have the right mix and level of skills in order to deliver their legal responsibilities. If they are starting to strip out those skills and that has an effect on performance, we will take action.

Your second question was about the danger of cross-contamination between sewage workers and water supply workers—if I may use those general expressions. That is for the Executive—as the drinking water regulator—to respond to, rather than SEPA. The concern whether there will be bacterial cross-infection if somebody who works in a sewage works goes into a water treatment works is definitely an issue for the Executive, in its role as the drinking water regulator.

Bruce Crawford: So SEPA regulates sewage and the Executive regulates drinking water.

Colin Bayes: Yes. The Executive regulates what comes through the tap and we regulate what comes out of the pipes.

Bruce Crawford: That is a potential nightmare.

Fiona McLeod (West of Scotland) (SNP): As I would like to explore that issue further, may I ask a supplementary question? While the Executive is responsible for regulating drinking water, who enforces those regulations, if not SEPA?

Colin Bayes: The Executive enforces them.

Fiona McLeod: Through which body does it do that?

Colin Bayes: Part of the water services unit is responsible for compliance with the drinking water directive.

Bruce Crawford: How big is that unit?

Colin Bayes: In all honesty, I would be guessing if I were to reply. It would probably be better if that question were put to the water services unit.

The Convener: The Executive published a document on water quality standards recently.

Mr Murray Tosh (South of Scotland) (Con): I would like to explore that point further. It is clear that SEPA was set up for a range of purposes, one of which is to monitor discharge consents and whether standards are being reached. Should not there also be a comparable, independent and separate organisation for monitoring water quality? That may be an unfair question, but you have a role in one discipline, so you must have a view on the importance of your independence in that discipline, which must entitle you to a view on the effectiveness of independent regulation in other sides of the work.

Colin Bayes: In principle, SEPA believes that there should be a role for an independent auditor on performance on issues of environmental quality or public health.

10:15

Bruce Crawford: That leads in nicely to the following question. Maureen Macmillan spoke about communication and lines of responsibility. The Executive has indicated to the committee that it is considering having a Scottish drinking water inspectorate, a proposal that might be included in the forthcoming legislation. Do you think that such an inspectorate is necessary, or would it simply add another level of bureaucracy? Should SEPA take on the regulation of drinking water?

At the moment, we have the water authorities, we have the Executive—which has, in effect, the role of inspector through its water services unit—we have SEPA, and now we may have another water inspectorate. I would hate to think that we would end up with a situation akin to that in the railways, where the industry is so disjointed and has so many players that no one understands who is responsible for what. How does SEPA feel about having more players in the industry? Could SEPA take on the role of regulation? Where does responsibility for that role best lie?

Tricia Henton: SEPA's role is that of environmental regulator—consideration of the quality of the environment. Drinking water is a

public health issue. Although we are obviously required to take account of public health when considering environmental protection, we would not necessarily look to take on the role of the drinking water regulator.

Bruce Crawford hinted at confusion over who regulates what. At the moment, things are quite separate. In the industry, the water authorities clearly understand that drinking water is managed by the drinking water inspectorate and that the environmental aspects—discharges and so on—are regulated by SEPA. I am therefore not convinced that confusion would arise in this case. I do not think that we have a view on whether the drinking water inspectorate should stay where it is or become a separately constituted body.

Bruce Crawford: I can understand that the industry sees clear lines of separation, because it is involved with the matters daily. However, surely Government should ensure that not only those in the industry—or those who are involved with its internal workings—understand, but that the general public understand. After all, we are all accountable to the general public and the taxpayer. From feedback that you have had from focus groups—or however you go about getting feedback—do you think that the public understand who is responsible for what? We must also consider that local authorities are in the mix—they have, through their environmental health departments, responsibilities to deal with issues such as sewage.

Colin Bayes: I do not think that distinguishing drinking water regulation and environmental regulation causes too much confusion for the public. However, SEPA needs to ensure that the public understand more clearly its role as the environmental protector—especially in relation to local authorities. That is where the confusion lies, rather than between the respective roles of the drinking water inspectorate and SEPA.

The Convener: I would like to ask about the impact that water privatisation has had on standards in England and Wales. I presume that you work on an inter-agency basis and that you discuss such matters with colleagues down south. Has there been any discernible impact on water quality or emissions?

Colin Bayes: Discussing what happened in England and Wales with the privatisation of the water authorities could lead to a long answer. Much of what I would say would clearly be anecdotal evidence from our colleagues; we have not studied this subject.

Our colleagues certainly went through a difficult period of seeking to comply with discharge standards. River quality did, in fact, deteriorate and prosecution rates rose. There has been

investment to correct that, but there were difficulties in the years of transition.

The Convener: That is interesting. You said that the Competition Act 1998 must not impair the achievement of an adequate investment level in Scotland's sewerage infrastructure. Can you provide some background to that comment?

Colin Bayes: Two issues concern us. First, there is the danger of cherry-picking by people trying to come into the industry as a result of the Competition Act 1998. They will generally target the higher water users or the areas of the business where the service can be provided at the least cost per capita, which means that they will try to provide alternative water supplies to areas of high population or big industries. As a result, we are concerned that the financial base of the water authorities will be reduced and that they will also be left dealing with users with higher unit costs to provide an adequate service.

Secondly, the management attention and resources of the authorities will be diverted to deal with issues raised by the Competition Act 1998 instead of efficiently and economically delivering a major investment programme.

The Convener: Thanks. Those points have been well made.

We will now move on to European directives.

Bristow Muldoon: In your introductory remarks and briefing document, you have indicated that investment levels over many years have resulted in difficulties complying with European directives. How do you regard the current situation? Is Scotland on course to meet its obligations under European directives and, if not, why not?

Colin Bayes: We have had difficulty complying with some of the existing European directives—some of which date back to 1975, with the most recent issued in 1991—because of inadequate investment over many years. However, a major investment programme worth £1.5 billion over three years is currently going ahead and the quality and standards process consultation that has just come out suggests a further spending of between £2 billion and more than £3 billion over the subsequent four years. We have had some problems with compliance; for example, we have not achieved some of the compliance dates in the urban waste water treatment directive for provision of secondary treatment for some of our coastal discharges. That said, we are in the middle of a major investment programme that will help our water authorities to deliver.

Bristow Muldoon: Will the current investment programme bring us closer to compliance?

Colin Bayes: Most certainly. SEPA's job as a regulator has been to ensure that the investment

programme is prioritised and focused to deliver environmental benefits under European obligations. We have worked very closely with the authorities and the water industry commissioner on the development of the programme that has been put out for consultation.

Bristow Muldoon: Are there any areas where the European Commission might bring Scotland to court to improve compliance with specific areas?

Colin Bayes: It is public knowledge that Scotland is facing infraction proceedings in the European Court of Justice because of its difficulties complying with the bathing waters directive. The Commission is concerned about our compliance. I should add that it is concerned about compliance in many other countries. Ironically, Brussels is facing action in the European Court of Justice for not having a sewage works.

The Convener: Murray Tosh, do you have a supplementary to that point?

Mr Tosh: Yes. The achievement of these standards by the big investment programmes might have been overtaken by increased awareness of the problems stemming from diffuse agricultural pollution. The investment has clearly been targeted at urban waste water but, as you said, it is conceivable that the bathing waters directive might not be met. Indeed, in their evidence to the committee, the water authorities raised concerns that the investment might not lead to complete or even satisfactory compliance with that directive. Has the further investment programme been targeted to deal with agricultural issues or is that an entirely separate area of activity? It might be appropriate for you to give us a brief account of the role that SEPA might play in monitoring and enforcing that aspect.

Colin Bayes: Certainly. In some areas, a water authority investment programme can deliver compliance overnight. For example, in Burntisland there were crude sewage discharges on to the foreshore and the waters there failed the mandatory standards year in, year out. A scheme was put in place and the area now complies with the most stringent guideline values in the directive. Investment there has changed the situation completely.

On the west coast, which I know you are more familiar with, the issue is more complex. If we do not resolve the issues of inadequate sewerage and sewage treatment, we will never comply with the directive. However, those measures would not be sufficient to comply with the directive in themselves, which is what you are indicating. Diffuse agricultural pollution has been identified as a problem in the joint studies that have been carried out by SEPA, the water authorities, various

organisations and the Executive.

We need to take action. The water authorities' programme will not deal with diffuse agricultural pollution at all. We are working with the farming sector through the National Farmers Union of Scotland, which has co-operated closely with us, and the Scottish Agricultural College to identify whether the problem of diffuse agricultural pollution is due to a failure to adopt the good environmental practice that is laid out in various codes of practice or whether something more needs to be done. Some support to agriculture may be required. Compliance is an issue that must be dealt with in parallel, because in some areas—Ayrshire is an example—the water authority's programme alone will not guarantee compliance.

Bruce Crawford: I have an add-on to Murray Tosh's point. The agriculture issue and the sewage sludge to land issue are important, but so are abattoir waste, tannery waste and paper waste and their impact on water quality. I am aware that some time ago—I think that it was October 1998—SEPA submitted an organic waste to land strategy to the Executive. The Executive has not responded—or has not published a response—to the strategy, so what difficulties is that creating for SEPA? This may be a difficult area, because it concerns the relationship between a quango and ministers, but there is an issue because the Executive has not responded to material that you have given it. That matter should have been tied up in "Water Quality and Standards" but it is not even mentioned.

Colin Bayes: The organic waste to land study, the "Strategic Review of Organic Waste Spread on Land" which is also known as the OWL report, that SEPA produced for the Executive reviewed the issue of organic waste, sewage sludge and industrial waste going to land. There has now been a formal response from the Executive, which came out on 21 December. There was a ministerial statement on tightening up the regulatory regime. That did not include sewage sludge.

SEPA's view in the report was that the controls on sewage sludge to land were the most rigorous of any material going to land. We recommended that the regulations and the code of practice be updated because they are out of date and best practice is far ahead of what the regulations require. The code that is worked to, which was developed with the British Retail Consortium, is more demanding than the current regulations and code of practice, so we recommended that they be improved for sewage sludge, even though that organic waste to land is the most carefully controlled activity that goes on.

I will now deal with non-sewage sludge, such as industrial waste, going to land. The Executive

responded on, I think, the Thursday before Christmas with proposals to tighten the waste management licensing regime to address some of the issues in the "Strategic Review of Organic Waste Spread on Land". We have not yet seen the consultation on the proposals, so we do not know what will be said. We will respond when we do. However, progress has been made. We will wait to see whether it is sufficient.

Bruce Crawford: That is very useful. Thank you.

Bristow Muldoon: I want to go back to the broader question of European directives. Government at UK and Scotland level has a role to play in influencing European legislation and in its transposition into national law. At what stages does SEPA become involved in trying to influence the development of European Union legislation and its transposition?

10:30

Tricia Henton: SEPA is involved through the Scottish Executive. As members will know, there is a complex link through ourselves, the Scottish Executive and the Department of the Environment, Transport and the Regions to the UK permanent representation. That is the official line because, of course, the UK is the member state. Scotland has a part to play in putting its view forward.

We get involved at an early stage. We keep a close watch on what is happening in Brussels when directives are proposed—on the whole range of subjects that we cover, not just the ones that are pertinent to this inquiry. We have contributed substantially, perhaps to a greater degree than our size and weight would indicate. We have had quite a substantial input in the shaping of the water framework directive—which Colin Bayes might pick up on because he was closely involved with it. Once a directive is agreed and has to be transposed into UK and Scottish legislation, we have a strong role in putting our views forward and, we hope, influencing the way it turns out.

Colin Bayes: In connection with the water framework directive, we have provided one of the two UK experts who have been helping with the final negotiations on that directive. We run two of the European Commission research programmes into the implementation of the directive, trying to put some flesh on it. We are closely involved. Once a directive is adopted, we are involved with both the DETR and the Executive in the transposition.

Bristow Muldoon: Are you satisfied with the level of influence that you have over the framing of EU legislation?

Colin Bayes: That is a difficult question: is any member state satisfied with its degree of influence? The political process is complex. There are three parts to the determination of a directive—the European Parliament, the Commission and the Council of Ministers. During SEPA's short existence, we have made a substantial contribution—one that has increased and is far better than our predecessor bodies could have offered.

Maureen Macmillan: I want to ask about EU legislation. It is now the 11th hour for businesses and processors to get their discharges in order, yet we have seen a rash of people rushing to get that done. Was there enough warning? Have people known for long enough what they have to do? One or two seem to have been surprised that they have had to do it.

Colin Bayes: You are referring to the urban waste water treatment directive?

Maureen Macmillan: Yes—there have been cases involving fish processors and there has also been Campbeltown Creamery Ltd, about which there has been a lot of controversy.

Colin Bayes: That directive was negotiated in the late 1980s. It was signed and adopted in 1991. We have therefore had a decade of lead time. In my experience, industries have been informed of what has been coming for quite some time, although I accept that there appear to have been difficulties and an 11th hour rush. SEPA is trying to work with industries to find sensible solutions. We are working hard to deliver compliance with the directive and to find the best solutions for industries. Progress is being made. It is being made up in Aberdeen with fish processors, I believe.

We would be concerned if the directive led to industrial waste being taken out of the public sewage treatment facilities without adequate alternative options being provided, because that would be a recipe for future environmental degradation.

That is rather a long answer. The companies ought to have known. The directive was signed up to 10 years ago—they probably knew five years prior to that. The industries on which it impacts are listed in annexe 3. We are having difficulties but we are trying to work with the industry. We do not want a wholesale departure of industry from the sewerage system and a subsequent proliferation of inadequate treatment works that are owned by private companies.

The Convener: Thank you. If members have no other matters to raise that relate to European directives, we will move on to environmental protection.

Fiona McLeod: I am interested in the enforcement regime that is at your disposal. It would help the committee if you could outline the armoury that you have for enforcement. Is the system that you have to go through satisfactory and are the powers in your armoury adequate? If there are inadequacies, how would you change those powers? Can you tell us the number of prosecutions that you have carried out over a number of years, in what areas those were made and what the results were? If not, can you deliver that information to the committee in future?

Colin Bayes: Certainly. The primary means of control is a consent and the conditions of that consent. Before 1 January, when a discharger or water authority failed the consent, we had two options: we could either issue a warning letter with no legal status or take evidence of the failure and refer the matter to the procurator fiscal. On 1 January, we were granted an additional power of enforcement notices. That allows us to issue a statutory notice against somebody who is failing a consent, which stipulates actions that they must take to put their house in order and comply with the conditions of the consent. Failure to follow that notice is a statutory offence.

We therefore now have three options. The first is a warning letter; the second is an enforcement notice; the third is referral to the procurator fiscal. The circumstances of the event determine what action is taken. A serious breach of a consent that caused major pollution would probably be referred to the procurator fiscal straight away.

Environmental offences are complex and we sometimes have difficulty securing prosecutions. Procurators fiscal deal with a wide range of activities and I sympathise with them when they are dealing with complex, scientific prosecution cases. Whether there is scope to establish a specialised branch of the PF service to improve the situation, I leave as an open question. That is one area in which we and the fiscal service suffer. A defendant will employ a specialist in environmental law, the result of which is a difficult playing field. Such cases are dealt with under the Control of Pollution Act 1974.

We also have powers to take action when there are illegal discharges without consent—one-off spillages—by sending a warning letter or referring the matter to the procurator fiscal. A parallel system of anti-pollution notices will be implemented this year, which will provide an intermediate step between a warning letter and a referral of a case to the procurator fiscal. To refer a case to the procurator fiscal is to close the door after the horse has bolted, whereas an intermediate step—the enforcement or works notice—can provide a means of preventing the offence before it occurs. We welcome notice

powers, which we hope the Executive will develop. They are already in the statutes as they are in the Environment Act 1995.

Successful prosecutions are listed each year in SEPA's annual report. The organisations, companies and individuals who have been prosecuted for a range of environmental offences across all our activities, from radioactive substances through to waste management licensing, air pollution control and so on, are listed in SEPA's annual report. Cases that have been referred to the fiscal and have not succeeded are not listed.

Fiona McLeod: Can you provide us with that information?

Colin Bayes: Yes.

Fiona McLeod: You hinted that a dedicated department within the procurator fiscal service may help. Would that be your solution to a more effective enforcement regime or are there other options? I am thinking along the lines of the Health and Safety Executive in England and Wales; as I understand it, the inspectors there can bring their own prosecutions. That is not the case for the Health and Safety Executive in Scotland. Would SEPA consider that route to be valuable in Scotland?

Tricia Henton: We keep the issue of successful prosecutions under close review. We have established good links with the Crown Office because it is of extreme importance to us, when we go to the time, effort and trouble of submitting a case to the procurator fiscal, that it is proceeded with. The Crown Office is, rightly, an independent body. We think that the best route is to have mutual exchange of information, so that we understand what it wants of us when we put a case to it and it understands the importance of the cases.

Environmental cases form a small proportion of the work that the Crown Office does, so it is not so familiar with them. We are pursuing the course of mutual training, away-days and seminars so that there is a good understanding, between the Crown Office and ourselves, of the seriousness of those cases and the detail of how we go about them. That is on-going.

Fiona McLeod: I do not want to labour the point, but can you give an indication of the percentage of cases that went to the procurators fiscal then were not proceeded with last year?

Tricia Henton: We can supply those figures to you in writing.

The Convener: If you liaise with Shelagh McKinlay on that matter, we will ensure that committee members are informed of your response.

I give committee members a gentle reminder of the time scale this morning, as we have other matters to discuss.

Fiona McLeod: Enforcement has now been covered.

Would you like to give us a menu of the major areas of environmental pollution that Scotland has to deal with vis-à-vis the water industry? You might want to think about that and come back to it at the end of the meeting.

Tricia Henton: We may have an immediate response on some of it.

Colin Bayes: I can give you an immediate response because in 1999 we produced a review—"Improving Scotland's Water Environment"—of the state of our waters, rivers, lochs, estuaries, groundwaters and coastal waters.

SEPA has classification schemes that take our environmental monitoring data, which can be chemical, biological and so forth, and integrates them to arrive at a quality class. We also consider aesthetics. A watercourse that looks clean but is full of sewage debris will not be classed as good quality. The classifications go from excellent through to seriously polluted. That is all described in the report but, furthermore, it goes on to present our assessment of the causes of water pollution in Scotland—I think that that is what is behind your question.

The report concludes that inadequate sewerage and sewage treatment facilities are the primary cause of water pollution and says that other major causes are urban drainage, which I described earlier; discharges from abandoned coal mines in the central belt of Scotland, including ferruginous discharges such as the classic one that comes out of the area around Fordell Castle on the north of the Forth; agriculture, particularly diffuse agricultural problems from pesticides and nutrients; and industry, which is a remarkably small cause. The Scottish Parliament information centre has a copy of the document and we can provide more for committee members.

10:45

Mr Munro: In evidence to the Westminster Environmental Audit Committee, the Environment Agency made a bold and ambitious statement to the effect that, by 2005, the problems relating to water pollution by water companies would be solved. When will Scotland reach that happy state?

Colin Bayes: In the lead-up to the consultation on quality and standards, we have tried to identify all schemes that would need to be implemented to bring us to the happy state that you describe. At the same time, we are dealing with an

infrastructure—sewers and sewage works—that requires investment. To some extent, the answer will depend on the outcome of the quality and standards consultation.

Three options are provided. The minimal option is to do what has to be done in terms of new spend but it is, essentially, a patching up of what exists. With that option, there is a relatively high risk that the treatment facilities will not perform and will not deliver the improvements that you describe. The central option is to try to keep the existing assets in a similar condition while delivering the new sewers and so on. The enhanced option is to try to make inroads into the historic legacy of under-investment in what we currently have and to try to bring the facilities up to a satisfactory performance level.

To some extent, the final decision will depend on the outcome of the consultation and on the recommendation of the water industry commissioner to the minister. If the minimum option is taken, there is no doubt that we will not eliminate sewage pollution by 2005.

Mr Munro: I am rather confused because the evidence to the Westminster committee mentions sewage pollution by the water companies. What is the relationship between the water companies and sewage pollution? What sewage pollution do the water companies generate?

Colin Bayes: "Water companies" is the name used to describe water and sewerage service providers in England and Wales, which are, if you like, the privatised version of our water authorities.

Mr Munro: You indicated concern about pollution emanating from farms, mines and such like. You will probably be aware that in 1998 Wessex Water began offering financial incentives to farmers and others to try to arrest that kind of pollution. In Scotland, with whom lies the responsibility for tackling diffuse pollution, especially that originating from agriculture and old mines? Would you support giving financial incentives to people who are, essentially, polluters?

Tricia Henton: On agriculture, we are aware that Wessex Water has been strongly encouraging some of the farmers in its area to become registered organic producers. Organic farming has a less intense input to the land and so produces less of the run-off that causes problems with the quality of water and, in the Wessex Water area in particular, with the quality drinking water supply.

We are addressing that issue through partnership working with the Scottish Executive and with various agricultural agencies, such as the NFUS and the Scottish agricultural colleges. We have spent, and will continue to spend, a lot of time considering how to make progress. We

strongly advocate the revision of the relevant codes of practice and we want to ensure that the agricultural community is aware of, and follows, those codes.

It is difficult for us to regulate diffuse pollution, as the relevant legislation does not lend itself easily to such regulation. We regulate end-of-pipe pollution, but diffuse pollution is much more difficult. We have to be much more inventive in addressing that problem and we believe that working in partnership with the bodies that I have mentioned is the way forward.

We are also tentatively examining issues such as the quality assurance schemes—quality control from the farm to the consumer—that the agricultural community has linked into, as many of the quality-of-production requirements are the same environmentally for them as for us. There will be benefits if we are able to align our interests with the interests of those schemes. I do not wish to overemphasise that example, but I hope that it illustrates the ways in which we are trying to tackle problems where it is not possible to have direct legislation to control difficulties.

Mr Munro: I accept that trying to legislate for an old mine working that has long been closed up is a problem, as one cannot determine who the owners or polluters are. That will be a continuing problem.

I have a supplementary question. In your opening remarks, you mentioned the problems that you envisaged with the provision of sewerage facilities in small rural communities. I accept that that is a continuing problem but—I ask this for my own satisfaction—what do you accept as the minimum size for a small community?

Colin Bayes: We considered the problem differently. We asked, “What environmental or public health concern is being produced?” We regard an intense cluster of a dozen houses around a small watercourse that runs into a play area as a high-risk, high-priority issue. Equally, 50 houses that are dispersed sensibly but still make up a village and that have their own septic tanks may not be a priority. Rather than asking how many houses there are, we approach the problem from the point of view of identifying the environmental concern.

On the first point, newly abandoned mine workings are covered by legislation—if someone were to abandon a mine today, they would have legal responsibilities. The difficulty is with historic abandoned mines from which there is pollution. We believe that one such mine that is causing mild—not major—problems in Fife was abandoned by monks in about the 16th century. However, most were abandoned in the 20th century and in the 1960s in particular.

Although there is no liability for those mines, the

Department of Trade and Industry gave the Coal Authority the responsibility and the finance for producing a programme of improvements to such mines. We work with the Coal Authority to prioritise where that money should be spent throughout the UK—we bid with the Environment Agency—and some of it has been spent in Scotland. For example, money has been spent on a reedbed wetland system to remove iron from the discharge from the Minto abandoned coal mine in central Fife. To some extent, the rate of spend is governed not by the money that is available but by land acquisition, which is a difficult issue.

Robin Harper (Lothians) (Green): I will take another wistful glance south of the border, where the Environment Agency controls flood prevention. SEPA does not have similar powers. What flood prevention powers does SEPA have? I consider it a problem that, at present, 32 local authorities are charged with flood prevention and control. How will you make progress on that?

Tricia Henton: You are right to say that we have no powers in relation to flooding, apart from enabling powers that allow us to set up flood warning schemes where there is a need or a requirement to do so. A cost is attached to those powers. From our predecessor organisations, the river purification boards, we inherited about 32 flood warning schemes. If the committee wishes, I will check that figure and provide details of the schemes. In most situations, the schemes involve links with the police, who take the appropriate action when we warn that a flood is likely.

The arrangements for who deals with preventive action or flood prevention schemes are complex in Scotland. Basically, a part of the Scottish Executive rural affairs department is responsible for that in rural areas and local authorities are responsible in urban areas. That means that 32 local authorities have responsibilities for the matter.

Robin Harper: Are any moves being made to address that situation?

Tricia Henton: I am not aware of any proposed changes.

Colin Bayes: When proposals are made for planning developments, we have a role in providing advice on flood risk assessment in places for which we have information. However, we have no duty to go out and look for information.

Robin Harper: Let me clarify this. At present, if someone speaks to you, you will provide help, but they must request it.

Tricia Henton: Yes.

Robin Harper: Some parts of Scotland have been described to me as looking like a pin-cushion, because of uncontrolled water

abstraction. You expressed a view on that. I invite you to expand on the advisability of introducing controls on water abstraction. Do you envisage that water abstracters could be charged in much the same way as people with discharge consents are subject to costs?

Colin Bayes: Yes. I agree with your description that parts of Scotland are beginning to look like pin-cushions. Industry and private organisations are undertaking considerable activity to look for alternative sources of water. Some of that is driven by fear about future water charges. There is no comprehensive system of water resource management to deal with that activity. Concerns are already being raised—for example, there is concern that the public water supply borehole in Dumfries may be at risk because of saline intrusion, which is the pulling back of seawater into the aquifer because of other abstracters.

The situation is unsatisfactory. We believe that a system of water resource management and abstraction control is required for the efficient use of the water resource and the protection of existing users, which is a particular concern. Such a system would have an additional benefit. SEPA has no register of users of groundwaters for purposes such as potable supply or, indeed, other uses. When we go about our pollution control functions, we have concerns that we may not be protecting some existing users. We try to cover that as best we can, but it is impossible to do so without a comprehensive abstraction registration scheme.

We favour an abstraction registration and control scheme. The SEPA board has issued our view that such a scheme should be targeted, should deal with the issues and should not be draconian. If the Executive thinks that the activity should be cost recoverable, as discharge consents are, we will develop a charging scheme. The step in the middle is to ensure that the scheme is targeted and focused and that it deals with the real problems, so that it uses our resources—rather than the water resources—wisely without imposing high costs, if a cost-recovery programme is put in place.

Robin Harper: On a scale of values, would you say that action on the issue is urgent, very urgent or extremely urgent?

Colin Bayes: Very urgent to extremely urgent.

Robin Harper: Thank you. Finally, do you have a role in encouraging business and domestic water efficiency, similar to the work of your waste minimisation team?

Colin Bayes: The short answer is no. The water authorities should be encouraging efficiencies, although that is probably too short an answer—I was thinking of the domestic consumer, with

whom we do not have a role. We have a role where we authorise industrial processes under integrated pollution control authorisations—in future, under the new integrated pollution prevention and control regulations, we can require improvement programmes for water efficiency in those major industrial sectors.

11:00

Des McNulty (Clydebank and Milngavie)

(Lab): Are water authorities the best bodies to be left with responsibility for domestic water efficiency, given that their interest is in maintaining volume of take-up?

Tricia Henton: That might be the initial view. However, increasing water demand will eventually lead to the requirement to develop new water resources, such as boreholes. What is more likely—in Scotland, at any rate—is a requirement for the use of surface water resources, through impoundments, for example. Those requirements are costly to the water authorities, which will therefore have a vested interest in ensuring that water is used effectively and efficiently.

Des McNulty: I can see that what you say may apply in relation to additional investment. However, given the scale of investment that the water authorities have already made, if people used 50 per cent less water, the authorities would presumably be left in a difficult position.

Colin Bayes: Given that the charging regime for the water that is being supplied to domestic consumers does not involve metering, there is to some extent no incentive for the water authorities not to encourage water reduction—the authorities will receive the same income anyway.

Supplies to industrial users are metered so, depending on the charging scheme and the way in which the tariffs work, the authorities could have an incentive to supply more water. However, if we think in terms of water efficiency and the sensible use of water, the biggest area where improvements can be made is in leakage control, which becomes cost-effective where the existing resource is under stress—that is, where there is not enough of it—and there is a danger that new sources might have to be developed.

Des McNulty: In some domestic settings, there might be an argument for using rainwater capture schemes, for example, as an alternative source of supply. That would be a diversion away from the water authorities, which do not have an especially strong interest in people adopting alternative, ecologically friendly approaches.

Colin Bayes: Yes and no. If we consider the issue from the water-supply side, I might agree. However, the more rainwater that the sewerage

industry can get out of sewers the better, as that will mean that it will not have to expand and replace sewers as frequently, despite the fact that our urban areas are developing. That is one of the concepts in the sustainable urban drainage initiative in Scotland—the three water authorities are strong participants in the working party for that.

The Convener: Thank you. I see no indication of further questions to SEPA, so I thank Tricia Henton and Colin Bayes for coming along. The session has been most interesting. We appreciate the written documentation that you gave us beforehand and we will ensure that your responses are distributed to all committee members.

Tricia Henton: We thank the committee for inviting us to give evidence.

The Convener: I offer the committee a short break.

11:04

Meeting adjourned.

11:10

On resuming—

The Convener: I welcome the representatives of Scottish Environment LINK. I hope that you will have a short statement for us, but the main purpose of these sessions is for committee members to ask questions so that we can develop our views on the matters at hand. I thank you for your written submission and invite either Ian Findlay or Caroline Davies to make some opening remarks.

Caroline Davies (Scottish Environment LINK): Thank you, convener. Good morning, ladies and gentlemen. I am the wetland policy officer for RSPB Scotland. My colleague, Ian Findlay, is director of conservation at the Scottish Wildlife Trust. Today, we are here to represent Scottish Environment LINK, the liaison body for voluntary organisations that are interested in ensuring a sound future for Scotland's environment.

LINK is made up of 36 member bodies and represents about half a million people in Scotland. We are pleased to be here to give evidence for what is an important inquiry. I stress that the evidence that we have submitted and that we will discuss focuses on general environmental issues relating to the water industry, rather than on technical detail. We will be pleased to give further evidence at the second stage of the inquiry, which we understand will deal specifically with the water framework directive.

At this stage, we want to highlight the unique importance of water, which underpins natural systems, habitats and species. The water that comes out of our taps is an integral part of our environment; providing good-quality water means looking after the whole water system, including our rivers, lochs, wet grasslands and seas. We believe that sympathetic water management makes good economic, social and environmental sense and that the industry should work with natural systems, including flood-plains and reedbeds, which help to prevent problems that otherwise have to be tackled. Such habitats play a major role in treating waste water, in removing pollutants, in absorbing nutrients and in holding back floodwater, and thereby reduce the need for costly treatment plants and for hard flood defences.

We believe that the water industry, in whatever form, has a duty to protect and enhance the environment. We believe that prevention is better than cure and that it is cost-effective for the industry to work with, not against, natural systems. Appropriate incentives will be essential to achieve such a level of integration and the water framework directive provides an important opportunity to deliver sustainable water management.

I thank you again for this opportunity to present our case. We will be pleased to answer your questions.

Maureen Macmillan: Can you give me an overview on the structures of the water industry? Is the current set-up efficient, transparent and effective? Could improvements be made or are you happy with the current situation?

Caroline Davies: I think that improvements can be made. The water authorities have made efforts to work towards environmental goals; they each have conservation strategies. We applaud that. However, we want the environment to be at the heart of the water industry, rather than being an add-on, which I think it is at the moment. The industry should integrate the bigger ideas of using flood-plains, wet grasslands and reedbeds as part of its infrastructure. Those ideas should be at the heart of its everyday work.

11:15

Ian Findlay (Scottish Environment LINK): The other key point is that the water industry should use both the carrot and the stick. This morning, we have heard from SEPA about regulation, which LINK is sure is important. However, regulation is much more effective if it is supported by the carrot approach. We would like the water industry to develop positive incentives relating to the wider environmental issues as well as to water industry infrastructure. For example, there should be

positive incentives for land management that involve working with natural systems. We are keen for regulation to be supported by incentives.

The Convener: You have spoken of the environmentally friendly use of reedbeds and flood-plains, for example. Are there benchmarks and good examples of such uses in Scotland and elsewhere? There will be a huge investment in infrastructure. Are you suggesting that that investment should take the form of more natural processes? Where are those methods used and do they work?

Caroline Davies: We are suggesting that such alternatives should be considered as part of the investment that has been announced to tackle pollution, flooding and so on. In Scotland, the Insh marshes on Strathspey are an incredibly important flood-plain, which hold back an awful lot of water in flood vents. The marshes flood every winter and protect areas downstream, such as Aviemore, from flooding, and obviate the need for major investment in big defences. Moreover, because the vegetation on flood-plain grasslands is growing, it helps to absorb nutrients, and in particular nitrogen, from diffuse pollution from farms, which alleviates the need for expensive waste treatment plants. There are examples from all over Europe and the rest of the world, but the Insh marshes are a good one from Scotland.

The Convener: Is that example a naturally occurring environmental benefit?

Caroline Davies: Yes.

The Convener: I am trying to determine whether there are good examples of man-made environmentally sensitive methods of treatment.

Caroline Davies: When you say "man-made", do you refer to the creation of reedbeds and so on?

The Convener: Yes.

Caroline Davies: I do not think that such methods of treatment are used much in Scotland, but, for example, ICI at Billingham in England has built a reedbed to cope with its effluent. In effect, that is a man-made example of a natural habitat. Obviously, ICI had to make an investment to create the reedbed but, if it had not done so, it would have had to build a treatment plant. As well as treating effluent, that reedbed has great wider benefits for wildlife and the landscape.

Ian Findlay: There are also good examples of wider catchment management. At its simplest, what we are trying to do is to make the earth more porous. If the earth acts as a big sponge, that provides benefits in summer, in that there are not so many droughts and the release of water is slower over time, and it provides big benefits in winter for flood prevention, as the water does not

run off the land so quickly. There are man-related activities and wide catchment management measures, such as riparian zone woodlands—woodlands alongside rivers and watercourses—that can help to make our landscape more porous. In the Highlands and Islands, another way in which man's activities can assist that is through the maintenance of the quality of our peat-lands.

The Convener: Thank you. I am sorry that I interrupted Maureen Macmillan.

Maureen Macmillan: That is okay. In fact, what you asked was probably much more interesting than what I was going to ask about the structures.

We were talking about each authority having a conservation strategy. Do conservation strategies differ from authority to authority?

Caroline Davies: Yes.

Maureen Macmillan: Would it be more helpful if there was a single authority that you had to deal with?

Caroline Davies: We are pretty neutral on that. Whatever structure the water industry adopts, the principle that we want to emphasise is that the environment should be an integral part of it. However, we do not have a view on whether there should be one strategy or more than one.

Maureen Macmillan: I wondered whether, rather than dealing with three different strategies, it might be helpful if there was a strategy for the whole of Scotland.

What do you see as the priorities facing the water industry? You have talked a lot about that already, but do you think that you have answered that question in response to Andy Kerr's point? Is your priority to have more natural ways of dealing with pollution?

Ian Findlay: We want to work with natural systems rather than against them, looking at the causes of problems rather than treating symptoms. Most important, that must be backed up with positive incentives. In general, biodiversity management works best where positive incentives are available for people to manage the regulations that are in place. We see a link between the two: strong environmental objectives in the water industry need to be backed up by positive incentives.

Maureen Macmillan: I have seen some examples of what you were talking about. I live in the Black Isle, where reedbeds have been very successful, but I wonder how such systems can be developed in non-rural areas.

You may see natural ways of dealing with pollution as being more cost-effective but, whatever happens, it will be necessary to invest an awful lot of money in the water industry. Where

do you think that that money should come from? Should more of it come from the polluters and abstracters or from the users and customers?

Ian Findlay: It could come from various sources. There is merit in the polluter-pays principle, as we have seen with landfill tax, which redirects money to positive environmental management. That is one way of finding the money. Land management schemes, such as agri-environment schemes, provide other avenues and opportunities for bringing about wider environmental benefits, but extra resources are also needed.

Bruce Crawford: The water framework directive will obviously be significant for water legislation in Scotland. Are you satisfied with the progress that has so far been made towards the implementation of existing directives? Your written evidence shows that you are interested in regulating the burden on industry that might arise from the water framework directive. What are your views on that?

Caroline Davies: It has been a long and drawn-out process to get the water framework directive to where it is today. Now that it is there, we are happy with the way in which SEPA has paid a lot of attention to the issue and is working with the Scottish Executive on it. We are happy to work with SEPA to make progress on the matter. We want to find imaginative and proactive ways of implementing the directive in Scotland.

"Burden" may be the wrong word, but the directive will introduce regulation on industry, in relation to abstraction, for example. Although there should be abstraction controls in Scotland, the framework directive contains exemptions where the good status of waters is not affected. We are perfectly happy that industry should not be burdened where there is no effect on the good ecological status of waters that they use.

Bruce Crawford: Are you suggesting that that should be part of the water framework directive?

Caroline Davies: It is already part of the directive.

Bruce Crawford: England has seen competition in the water industry and greater investment for a bit longer than Scotland—we are engaged in a bit of a catching-up exercise as far as competition is concerned. Has competition in England helped to improve water quality? Might there be an advantage in seeking a postponement of competition in Scotland to allow investment levels to catch up with English levels and to prepare the industry a bit better for the competition to come?

Caroline Davies: I cannot go much beyond my earlier answer about our neutral stance on competition. We will remain neutral on the matter. However, whatever form competition takes and

whenever it happens, we believe that no corners should be cut on environmental issues.

Bruce Crawford: Has competition south of the border made any difference to the quality of water?

Caroline Davies: When I discussed that with my equivalent in England, she said that the results were variable. Although some of the water companies are quite good at delivering better water quality and working towards conservation, others are not.

Bristow Muldoon: I had intended to ask this question later, but it follows on neatly from Bruce Crawford's points.

I am aware that many LINK members will have colleagues in sister organisations in England and Wales. From discussions with those organisations, how do you think that their relationship with the privatised English water companies compares with your relationship with the Scottish water authorities?

Caroline Davies: That is quite a difficult question to answer. I will probably need to ask the organisations more detailed questions about their relations with the water companies.

Ian Findlay: The Scottish Wildlife Trust is one of 46 wildlife trusts operating throughout the UK. Our discussions about the water industry through Water UK emphasise the point that Caroline Davies has just made: relationships seem to be good north and south of the border. Wildlife trusts south of the border have built constructive links with the private water companies in the same way that we have managed to do with the water authorities in Scotland. We do not have a strong view on the structure of the water industry; we are more concerned about how the industry plans its work and delivers its operations.

The Convener: We will now move on to issues of pollution, abstraction and flooding.

Robin Harper: Is there any evidence that the present system of fining is proving to be a deterrent to polluters?

Caroline Davies: I can get back to you with more information on that one. I am afraid that I do not know the answer off the top of my head.

Robin Harper: So, there is no evidence on the effect of fines—at least, to your knowledge at the moment.

In some quarters, there is a belief that Scotland's water supply is sufficient not to need abstraction controls, although we have heard evidence to the contrary. Should users be charged for abstraction? Would you welcome the introduction of abstraction controls?

Caroline Davies: We would definitely welcome the introduction of abstraction controls. As you heard from SEPA, such controls would help to give a much better picture of how water throughout Scotland is being used. It is unsatisfactory that we do not know what is being abstracted and where. Controls would help us to work out how wetlands are being affected by abstraction. At the moment, we just do not know.

You also asked about costs.

Robin Harper: Yes—should users who abstract water be charged?

11:30

Caroline Davies: Yes, they should and an element of environmental stewardship should also be built in. The cost to the environment should be central to water charging.

Ian Findlay: There are clear environmental benefits in having controls on water abstraction, but it is important to point out that there could also be socioeconomic benefits. Much of the water abstraction industry relies in its marketing on the high quality of the water. The whisky industry is a classic example of that. It is a global industry. If it can demonstrate that it has abstracted water in a way that is fully consistent with the water framework directive and with abstraction controls, it can use that as a strong marketing tool. We consider regulation as bringing not only an environmental benefit but a socioeconomic benefit.

Maureen Macmillan: What regulation is there of water abstraction? What happens if a person builds a house where no mains water is available and then wants to dig a borehole?

Caroline Davies: I think that they can just do it, but I would have to check; I might be corrected.

The Convener: That question might have been better asked of SEPA.

Maureen Macmillan: Yes, it should have been asked before.

Robin Harper: Is there evidence of environmental damage caused by unregulated abstraction through boreholes?

Caroline Davies: Yes, there is evidence of damage to habitats through unregulated abstraction. In summer, for example, there have been examples of rivers, which, if they have not exactly run dry, have had a very limited flow. That has affected species such as salmon, which are trying to get back to the headwaters for spawning. There has also been damage to wetland habitats, such as wet grasslands and marshes.

Robin Harper: Would you be able to furnish us

with specific examples?

Caroline Davies: Yes, we could definitely do that.

Robin Harper: Thank you. That would be useful.

I have one final question to which we may already have heard an answer. Should flood control come within the remit of local authorities or could we invent a more imaginative and productive way of dealing with flood control in Scotland?

Caroline Davies: There is a more imaginative, and better, way of considering flood control. As Tricia Henton said, the way in which flood control is currently considered is fragmented. There is a good case for having a more integrated system. We should be considering major catchment management issues and flood alleviation within those bigger systems. SEPA has a bigger role to play in advising local authorities, for example, on which flood alleviation measures might help. The Scottish Executive should also be part of the loop. The alternatives, such as the idea of using flood-plain washlands rather than building flood defences, should be part of the bigger picture. The water framework directive will help us to go down that route.

Robin Harper: Would you recommend the World Wide Fund for Nature's "Wild Rivers" document as being required reading for the committee?

Caroline Davies: Absolutely. "Wild Rivers" is a good source of information on giving rivers more space and working naturally with them.

The Convener: Does it have a good executive summary?

Robin Harper: Yes.

Fiona McLeod: When I was talking to SEPA, I inquired about its enforcement abilities to prevent pollution. As an environmental body, Scottish Environment LINK wants to promote the environment, but one of the ways of promoting it is to have a good enforcement regime to prevent deleterious effects on the environment. Is SEPA's enforcement regime adequate?

Caroline Davies: That is a difficult question to answer. You are right that enforcement is an important part of environmental protection. I know that SEPA uses its enforcement powers on many occasions. I would need to go back and consider examples to give you a more thorough answer on whether it should be exercising those powers more often. I would be happy to do that.

Fiona McLeod: Can I take it from that that your general feeling is that SEPA enforces its regulations to an extent that means that Scottish Environment LINK is not concerned that the

regulations are not being enforced?

Caroline Davies: SEPA is very good on its regulatory obligations. We would like to encourage SEPA to come out of the regulatory box a bit more and to be more proactive on the matters that we mentioned. It would need the right resourcing and structures to do so. The framework directive is a good opportunity to consider the matter.

Fiona McLeod: Before SEPA comes out of its regulatory box, do you think that—when there is a successful prosecution in the courts—the fines that polluters have to pay are commensurate with the pollution that they cause? Are the fines big enough?

Caroline Davies: That is a good question. Can we come back to you with information on that?

Ian Findlay: As a general principle, the fine needs to be commensurate with the act that has been committed. We support fines that are a strong deterrent. If the evidence suggests that that is not the case, it would lead us to believe that the fines are not sufficient. Regulation is successful only if there is adequate enforcement of a regime that is considered appropriate.

Robin Harper: On cost-effectiveness, can you adduce any figures at the moment that suggest that the proposed river catchment schemes, which I am in favour of, would be more effective in flood control and preventing pollution than other methods?

Caroline Davies: I can give one example off the top of my head. The Morava flood-plain in the Danube delta is a flood-plain of about 1,700 hectares, which absorbs about 450 tonnes of nitrogen a year; it is taken off as hay. If that flood-plain was not being used, a sewage treatment plant would have to be built—I have seen the figures—which would cost about £10 million. I would be delighted to follow up with more examples.

Bristow Muldoon: My question follows on from one of Robin Harper's earlier questions and from my previous question. How do you see Scottish Environment LINK's working relationship with the three water authorities that currently operate in Scotland? Is it more productive than the relationship that existed prior to the restructuring of the industry in 1996?

Caroline Davies: I am sure that it is. We work with the authorities on their conservation strategies. We have good links at the regional level. The RSPB's regional offices, for example, have close links with each of the water authorities and input into the conservation strategies, which is an improvement on the situation before restructuring.

Bristow Muldoon: My final question concerns

the Scottish water environment and initiatives to improve the general environment. How well are voluntary or agreed joint initiatives that involve organisations such as yours, the water authorities, private businesses and landowners working compared with regulated initiatives to improve the water environment? Can you give us any examples of partnership working producing benefits?

Caroline Davies: There is merit in both approaches. Partnership agreements can be very effective.

Ian Findlay: The local biodiversity action plan partnerships, which involve the water authorities, are a good example. A much more integrated approach is starting to be taken and we want to use that as a base for greater integration. We are starting to work with the water authorities on water vole conservation, for example. The water framework directive and the river basin management plans will require a partnership approach and give a superb opportunity to build on partnerships between the private and voluntary sectors.

Bristow Muldoon: Will private business and landowners work positively with such partnerships, or is regulation required to push them in that direction?

Ian Findlay: Businesses, landowners and land managers have to be involved in anything that concerns the environment. There must be a mixture of the carrot and stick approaches—neither can be relied on alone. Regulation works best when it is supported by good carrots. I would like good carrots to be provided to land managers through agri-environment schemes and good partnership working with the business sector. Water is important to many different aspects of life, and because there are environmental, sociological and economic benefits to partnership working, productive partnerships must be the way forward.

Bruce Crawford: I am aware of the work that has been undertaken in the Loch Leven basin, in Kinross-shire, and the catchment management plan that was drawn up there. As part of this inquiry, we could ask for evidence to show the impact of catchment management plans involving bodies such as Scottish Natural Heritage and SEPA, the agricultural industries and the various estates so that we can determine how the plans are starting to make a difference to the quality of places such as Leven.

It might be useful for us to understand the dynamics of catchment management plans. If we are to start to deal with water quality issues throughout Scotland, we must break out of the boundaries that exist between local authorities and

between the various non-departmental public bodies. If you could provide us with such evidence in writing, that would help us with our inquiry.

Caroline Davies: We would be delighted to provide that information.

The Convener: As no other members have indicated that they have questions, I thank you for your attendance today. Rest assured that the committee does not see the adoption of a neutral position as a sign of weakness; it is simply an acknowledgement that you want to hold an initial view on the matter. We are happy with that and look forward to hearing from you on the follow-up issues that members raised.

Caroline Davies: Thanks for inviting us.

Telecommunications Developments

11:45

The Convener: We now move on to the sixth agenda item, which concerns telecommunications developments. The closing date for responses to the Scottish Executive consultation document is 16 February. I suggest that the committee forms a response based on members' views on the matter and puts that in writing to the minister, Sam Galbraith.

The committee has led many of the discussions on this matter and we can claim to have done much to make significant changes to the Executive's approach. Although we began with a prior approval system, in many areas full planning permission will now be required.

This is not normally my practice but, as one of the surviving members of that long inquiry, I would like to lead some of the discussion on this matter. Although we should recognise that the Executive has come a long way, there are some areas where it has not picked up and run with our ideas, and I would be happy to hear from members on that point.

First, the fact that non-ground-based masts will not be included in full planning powers causes me great concern; we deliberately focused on that and made straightforward recommendations to the Executive. Furthermore, although the Executive gives the nod to mast sharing, a nod is not strong enough to make it clear where the issue fits into priorities related to the rolling out of masts.

The committee was fairly vociferous about the precautionary approach on health issues and about making health a material planning condition. Although the Executive has acknowledged aspects of that area, it has not gone the distance with us, which I hope is a concern shared by the committee. The absence of risk assessment on any developments, which is an issue that we raised in our report, is also a weakness.

I am also concerned that the Executive has made no commitment to fit telecommunications development planning into the national planning process. Although doing so would have acknowledged the importance of the industry and its key social and economic role, it would nonetheless have made it clear that the roll out of masts throughout Scotland is a national planning issue. I am not sure about the Executive's position on including communications in the national planning strategy.

I am sure that members will raise other issues,

but having reflected on our discussions, the detailed advice that we received, our own lengthy inquiry and the Stewart inquiry that followed—which highlighted the precautionary approach and other health issues—I feel that the Executive has not taken sufficient cognisance of all the information. Although it has come a long way, we should push further on the issues that I have raised. After that fairly lengthy introduction, I am more than happy to take views from committee members.

Bruce Crawford: The committee as it was formerly made up did a very good job on the inquiry; I understand how it reached its recommendations based on the evidence that it took. Although I agree that the Executive has come some way, I share the convener's concern that the planning requirements for ground-based masts should be extended to non-ground-based masts. However, the antennae are as much of an issue as the masts. The masts can stand without the antennae and not create difficulties—although I realise that there would be no point in having a mast in that case. The problem is with the antennae. Consideration should be given to whether a planning application should have to be submitted for a certain size of antenna of a given strength.

I share your view on mast sharing, convener. I am disappointed that the consultation paper does not recommend that mast sharing should be a legislative requirement or enforced in some way.

I have read the consultation paper, which seems to be a planning document that deals with the aesthetics and amenity value of masts rather than one that deals with health issues. Like you, convener, I am concerned that the paper does not say more on health. Development planning must be part of the national planning process, but stronger guidelines should also be issued to local authorities on dealing with exclusion zones—areas where masts cannot be located because they are sensitive for the community. The paper does not say much about that.

The paper deals with some specific issues, such as that of replacement masts. The draft order talks about replacement masts being permitted development if they grow by less than 2m. How many times can a new mast be put in place? Can the operators' difficulties with replacement masts be overcome if those masts are new masts that are allowed to grow by 2m? From what I have seen, there is no conclusive evidence on how the Executive intends to deal with that issue. Beanpole masts, which exist to supply the police, are thin but tall and could be replaced suddenly by a mast that is 2m wide. The issue of replacement masts must be examined, as the parameters have been drawn too widely.

I share the convener's concern about the material on housing the masts. We are talking about permitted developments for something that is under 9m high, but that is a heck of a development, particularly when one considers the legislation that requires people to seek planning permission if they want to install a fence of more than 2m high within 200yd of a road. That is another contradiction, particularly given the relative impact of a mast and of the equipment that houses it compared with that of a fence. We should require a reduction in the height of those developments.

I am not entirely convinced about microcells, on which I would like to hear the views of other committee members, particularly as microcells are now appearing on local authority lamp posts. The beam effect from microcells may be at the same height as people's bedrooms and they might be subjected to long-term exposure. I am not sure that the Executive has got that issue right yet. Some evidence was led during the committee's earlier deliberations and I am not sure that we got to the nitty-gritty on microcells.

I would like to discuss retrospective planning permission, which is the most difficult and onerous issue for the Executive to tackle, as I would like to suggest some solutions if full retrospective planning powers are not put in place. The question is whether a legislative framework that would allow for retrospective planning permission for all masts should be introduced. Although I would like to try to find a way to do introduce such a framework, I understand the difficulties that that might present because of the costs involved.

At this stage, I am simply signalling the menu of issues that I would like to discuss, rather than being specific about what I think the proposals should contain. I could be specific, but I understand that other members also have views.

Des McNulty: I will not reiterate the points that other members have made but will try to add to the discussion.

One of the forward-looking elements of the committee's report was our attempt to use the introduction of planning permission to enforce a dialogue between the operators and the planning authorities on developing a more rational approach to the distribution, development and siting of masts.

What came out of the consultation seems to have stemmed from a dialogue between the Executive and the operators, and was geared to particular regulations on masts. Evidence of a clear debate between the Executive and local authorities on amenity issues is missing from that dialogue, as are mechanisms to arrive at a more rational approach. I would like there to be either

information or some realignment of approach, which would give the authorities grounds for rejecting planning applications for telecommunications masts that are not based on the aesthetics or size of the mast, but on its effect on the local community. That need not be done in an unreasonable way, as everybody recognises that masts have to go up to provide a service—after all, many if not all committee members are mobile phone users.

There is a sense that the clustering of masts is affecting certain localities. That is sometimes simply because of geographical facility, and is often because the companies are lazy. They simply try to find the most easily acquirable piece of land and slap their mast there.

There is evidence in my constituency—and, I am sure, in others—that the operators are not adopting a view that is in the broader public interest. We have to develop some mechanism whereby the broader public interest can be secured more effectively. That means that we need some mechanism for propelling the operators towards mast sharing and towards consideration of alternative sites—despite their being more expensive or technically less optimum.

We need our final report to include some mechanism whereby authorities have greater space in which to push operators in broadly desirable directions.

Robin Harper: I support everything that Bruce Crawford and Des McNulty have said. I want to concentrate, first, on the health issue. The expansion of the network is predicated on an expansion in people's purchase of cellphones. There is already evidence that young children should not use them extensively. I am very disappointed that the Executive's paper seems more or less to tell local authorities to introduce the precautionary principle on health issues at their peril, because they could land up fighting a court case. The Executive is placing all the responsibility on local authorities, and is not accepting any responsibility for setting standards itself.

Secondly, I am very disappointed by the failure to introduce planning permission for masts on buildings. I can see that problems will arise in rural areas as a result: to avoid erecting masts in places where there will be controls—at ground-based sites—the companies will use every farmhouse, barn and unused building in the countryside that they can get their hands on. We will end up with no controls on masts whatever.

Thirdly, we should include a forceful response to the Executive's lack of understanding about what we have said on mast sharing, on the retrospective consideration of the planning of

masts and on a need for the companies and the local authorities to get together—I am very disappointed in that, too.

Helen Eadie (Dunfermline East) (Lab): I agree with you, convener, and with other members. The piece of work that the committee did on this matter has most visibly and immediately affected communities, and the committee reacted forcibly to the evidence session and to all the letters from the public.

I particularly agree with the point that Robin Harper has just made. For me, the greatest disappointment of all has been on the health aspect. Not a week goes by without some other research or study that raises health concerns about the radiation. No definitive scientific evidence to that effect exists, but late last night I read in *The Sunday Times* yet another article that gave chapter and verse on the issue.

I hope that the committee will make strenuous representations to the Scottish Executive that health boards should be allowed an input into the planning process. That is vital. Robin Harper is right to say that it is just not good enough to put the onus on local planners to consider whether to take on board the issue. If we value the precautionary principle, about which we have all spoken, it is vital that we do that.

The last issue that I will raise is a moratorium on the developments that are taking place. I think that every member has seen the rush of applications to erect masts. The minister should be implored to ensure that a moratorium is adopted, because the way the process works means that the public are suffering. The inquiry was long and detailed and the committee deserves to be appreciated for all the effort that it put into such a vital issue.

12:00

Nora Radcliffe (Gordon) (LD): I thank you for giving me the opportunity to speak today, convener. I reiterate the grave concerns about not including all masts and structures in the planning regime. Such large exceptions mean that control and influence are lost.

It is always difficult to adopt retrospective legislation, but I have lodged a motion on the point, arguing that it is not unreasonable to suggest that we should call for retrospective planning applications from the date at which it became obvious that masts are a serious consideration that require planning permission. In that way, companies could reasonably expect to have to apply for planning permission. Making the process retrospective to that point did not seem unfair. That was not accepted, but the committee could push the idea, because the solution it would achieve would be similar to that which a

moratorium would achieve, without stopping mast installation. It would make the companies consider the criteria that are relevant to planning applications.

Companies are becoming more aware of public pressure on mast siting. From events in my constituency, my impression is that they are becoming more sensitive to public pressure. At least twice, at opposite ends of my constituency, public pressure has resulted in a mast installation being moved or adjusted. It is obvious that bringing the masts within the planning regime will have an effect—the threat of doing that is having an effect now. We might formalise that by making planning permission retrospective to a time at which the companies could reasonably have been expected to have taken such considerations into account.

The Convener: Thank you very much. I do not think that any other members wish to comment on the matter, so I will try to summate and give our response.

The committee's response must rest on its report. Therefore, members who have introduced other considerations may wish to submit their views to the minister under their own steam. I will pick out a couple of points, which Nora Radcliffe finished on and which Bruce Crawford mentioned. When the committee prepared the report, we had a fairly lengthy discussion about retrospectivity. We chose not to recommend retrospective planning legislation because of several problems. The committee was clear about that issue. However, that decision does not stop members from writing to the minister about that approach.

In the report, the committee said that the communications plans in local communities would allow local planning officers to negotiate over existing sites and sites for development. Therefore, they could—for want of a better phrase—remove the eyesores. As the companies came along with plans for future proposals, the officers could negotiate by removing some sites and offering others. That would increase the quality of previous decisions that were made under a much slacker legislative position.

With regard to microcells, the point that we put to the minister was about output and the effects of individual pieces of appliance and equipment. Even in the time since we completed our inquiry, technology in the industry has moved on. I suggest to members who have raised that issue that it would be more appropriate to raise those concerns with the minister. Obviously, we will cover the issue that Helen Eadie and Robin Harper raised: that although responsibility for decision making in this area has been put back into the hands of local authorities, they have been given no framework and no guidance. That must

be linked to our concerns about output and possible health effects. If members are comfortable with that, I think that that would be the best way to proceed. To be blunt, we do not have time to reinvestigate retrospective planning and microcells. We based our report on our decisions at that time. I should stress that that decision does not prevent members from making their own views known to the minister.

Fiona McLeod: Given that the deadline is February 16 and we do not have time to reinvestigate, and given that some of us were not members of the committee when the decisions were made, when we submit our response, could we indicate that the committee accepts that the situation has moved on since our report and that there are considerations that we did not investigate at the time? Would that be a way of dealing with the fact that the situation has changed?

The Convener: To be blunt, I would prefer to take the route that I suggested because I would like to take more advice about microcells before commenting. That may mean that we conduct a further investigation or take advice under a separate heading in our future work programme. I think that it is important that we stick to our original report, although it is true to say that technology has moved on.

On the extremely poor conduct of the industry, which a number of members have mentioned, there was a rush to make developments—I saw that in my constituency—and the local authority has one hand tied behind its back when it tries to deal with the problem.

I accept that the situation has changed since we completed our report, but I suggest that, as that report was based on the scientific and technical evidence that we had at the time, it might not be worth while revisiting some of the issues.

There is not much disagreement with what Bruce Crawford says about microcells. Our report was based on information about the power output and specification of the cells and the valid point that microcells should not be brought within the planning system remains in the report. I do not think that we have time to deal with that issue before February 16 in the investigative way in which we conducted the inquiry. I would prefer it if we stuck to our original findings on the matter.

Des McNulty: The fact that some of the important issues in our report have not been taken up means that we should emphasise their importance. If we are unhappy about the way in which some of the issues that have been taken up have been dealt with—as is the case with the ground-based masts as opposed to the buildings-based masts—the most effective action that the

committee could take would be to submit a crisp and, I hope, short report that points out the difference between what we recommended and what is being proposed and asks whether that is satisfactory. If we decide that it is unsatisfactory, we should set out the reasons why we believe it to be so, referring back to our report. We should not take on new issues at this stage, although I accept the point that new members who have additional experience on matters that they want to raise should be able to do so. Our role is to match the Executive's response to our report and make our comments based on that.

Robin Harper: I support what Des McNulty has said. It has taken the Executive nearly a year to respond to our original report, which I regard as quite intolerable. We should press the points that we want to make as quickly and expeditiously as possible, and preferably through Parliament, so that we can get something on the statute book as soon as possible. Otherwise, the entire stable will have bolted before the door has been closed.

Bruce Crawford: Obviously, we have to accept that we have an inheritance from the committee's previous work. As individuals, we might not agree with everything that emerged from the inquiry that took place, but the committee has to proceed on the basis of what has happened.

However, I think that Fiona McLeod was not making a point about the specifics of microcells, but was arguing for the inclusion in our response of a general recognition that things have moved on and that there are issues that the committee did not discuss that will need to be considered, although the committee will not do so itself. That would allow the public to see that there has been movement.

I would like clarification on two matters. There is new information about replacement issues and equipment issues—about the dimensions of the housing, and the statutory instrument. Are we taking on board my suggestion about the dimensions of the equipment? Perhaps doing that would be opening the door too far. That is new information from the Executive, which could not form part of the previous evidence, because we did not know what the earlier proposals were. What will we do on replacement and equipment issues?

The retrospective planning aspect is the most difficult one. Nora Radcliffe suggested how that might be dealt with. I understand the committee's situation, but having read through the material, I think that if I had taken part in the process, I would have suggested that we seek zones around sensitive areas. For example, if a mast were within 100m—to use a distance off the top of my head—of a school it would require planning permission retrospectively. If we had done that, we would

have started to deal with the matter of retrospective planning permission for all masts. You did not discuss that element during the inquiry process, and I feel a bit encumbered now. I recognise that and will deal with it in my own way.

The Convener: It is open to you to do that. I will not express a view on what you have said, but if the committee were to adopt that view, I would want to take evidence again from planning officers and representatives of the industry, and go through the issue again. I am happy if any member of the committee or the Parliament wants to pursue that issue.

We recommended that anything in excess of 90 cu m—that is, 3m high—would be subject to full planning. The Executive has been more stringent on occasion than what we recommended, so it is not the case that it has done only the minimum. We will bring back to the committee a draft report or letter to the minister, so you can raise any further concerns on the detail. What I wanted to do today—I think that we have done so—was to identify clearly the hotspots from our previous consideration and what members regard as acceptable and unacceptable in the Executive's response. Once our letter has been drafted, we will welcome further comment on its content. It would be useful if the committee agreed to proceed on that basis.

I reiterate my extreme disappointment with the conduct of the industry. Since our report and the Stewart inquiry report were published, the industry has acted irresponsibly. In many ways, it has increased the concern and has done nothing to enhance the public's opinion of operators or of agents who operate on behalf of companies. I have heard of cases locally where plots of land have been bought, divided into five and sold to five different companies for five different masts. None of that makes sense; it is all designed to subvert the intent of the Parliament and the Executive. I hope that the operators will learn from this lesson that that approach will only increase our desire to have further control over them if they intend to act in that way in future.

I am happy that members continue to bring to me constituency issues that are of common concern. On that note, unless there are any other comments I will close this item.

Robin Harper: I have one point. It would be useful for the committee to indicate its unanimous support for your remarks.

The Convener: Indeed. I am happy to record that the committee's view on the matter was unanimous. I thank Robin for that comment.

We now move to agenda item 7, which we agreed to take in private because it is a discussion about a fact-finding visit on the water inquiry. I

thank those who have sat with us throughout this morning's proceedings, in particular those former committee colleagues who have attended. We will discuss our fact-finding mission, and once we have agreed our decisions, our actions will be made known to the public.

12:15

Meeting continued in private until 12:26.

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