TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 8 May 2002
(*Morning*)

Session 1

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TRANSPORT AND THE ENVIRONMENT COMMITTEE

15th Meeting 2002, Session 1

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

*Nora Radcliffe (Gordon) (LD)

COMMITTEE MEMBERS

*Robin Harper (Lothians) (Green)
*Mr Adam Ingram (South of Scotland) (SNP)
*Angus MacKay (Edinburgh South) (Lab)
*Fiona McLeod (West of Scotland) (SNP)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Des McNulty (Clydebank and Milngavie) (Lab)
*John Scott (Ayr) (Con)

*attended

WITNESSES

Derek Bearhop (Scottish Executive Environment and Rural Affairs Department)
Antje Branding (Scottish Executive Environment and Rural Affairs Department)
Paul Cackette (Scottish Executive Environment and Rural Affairs Department)
Ross Finnie (Minister for Environment and Rural Development)
Alistair Montgomery (Scottish Executive Environment and Rural Affairs Department)
David Williamson (Scottish Executive Environment and Rural Affairs Department)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Tracey Hawe

ASSISTANT CLERK

Alastair Macfie

LOCATION

Committee Room 2

Scottish Parliament

Transport and the Environment Committee

Wednesday 8 May 2002

(*Morning*)

[THE CONVENER *opened the meeting in private at 09:38*]

11:03

Meeting suspended until 11:47 and continued in public thereafter.

The Convener (Bristow Muldoon): I welcome members of the press and public to the public part of today's Transport and the Environment Committee meeting. I also welcome the Minister for Environment and Rural Development, who will speak to several items on the agenda, and his officials, whom I will invite the minister to introduce when we reach that part of the agenda.

Petitions

The Convener: I advise members of the press and public that, because our earlier discussions overran, we intend to take the third item on the agenda—our consideration of public petitions—at a subsequent meeting. It would simply be too difficult to include that item because of time constraints. That item will be rescheduled at the earliest opportunity and I apologise to anyone who has attended the meeting with a particular interest in those petitions. I should perhaps make it clear that I am talking about the petitions that the committee is considering for the first time; we will still deal with petition PE470 on genetically modified crops, which is the last item on the agenda.

Subordinate Legislation

Road Traffic (Permitted Parking Area and Special Parking Area) (City of Glasgow) Designation Amendment Order 2002 (SSI 2002/187)

Road Traffic (Permitted Parking Area and Special Parking Area) (City of Edinburgh) Designation Amendment Order 2002 (SSI 2002/188)

The Convener: The fourth item on the agenda is our consideration of two statutory instruments that are subject to the negative procedure. As members have not raised any points on these orders and no motions to annul have been lodged, I seek the committee's agreement that the committee has nothing to report on either of these orders. Are members agreed?

Members *indicated agreement*.

Air Quality (Scotland) Amendment Regulations 2002 (Draft)

The Convener: Item 5 is the draft Air Quality (Scotland) Amendment Regulations 2002. I welcome Ross Finnie to the meeting to speak to the regulations, which are subject to the affirmative procedure. I should point out for the record that the minister has other engagements and has to leave by 12.50. As we have to get through this and two other agenda items, I ask members and the minister to be as concise as possible in their questions and answers.

A note on the regulations has been circulated to members. Following the usual procedure, I will give members the opportunity to put questions to the minister and the officials before we have a substantive policy debate on the regulations. The minister will then move a motion asking us to approve the regulations. However, before I invite members to ask their questions, I give the minister an opportunity to make his opening remarks.

The Minister for Environment and Rural Development (Ross Finnie): Thank you very much. I am pleased to speak to the regulations, which set tough new limits for three pollutants: benzene, carbon monoxide and particles. I want to stress that air quality in Scotland is generally good. However, evidence from our health experts shows that we cannot afford to be complacent. Indeed, the Committee on the Medical Effects of Air Pollutants reported last year that the health effects of long-term particle air pollution might be at least 10 times greater than the short-term effect of day-to-day changes in particle levels that was reported in 1998. The committee concluded that cutting particulate air pollution is likely to be much

more beneficial to health than we had previously thought. That message is important.

As a result, the requirement for local authorities to undertake a review and assessment of air quality in their areas is at the core of the air quality strategy. We must ensure that most local authorities are able to meet all the objectives by the required dates. That leaves only the hotspots in our city centres in Aberdeen, Edinburgh and Glasgow where air quality management areas have been declared on the basis of transport-related nitrogen dioxide emissions.

The current objectives for benzene, carbon monoxide and particles are likely to be met by the prescribed dates. In the case of benzene and particles, the policy aim of the new regulations is to give local authorities additional long-term targets to move towards. However, the progress that has been made towards meeting the current limits for carbon monoxide means that it can be directly replaced by a more stringent objective.

A new, long-term annual target is proposed for benzene, and is to be met by the end of 2010. It is based on the recommendation of the expert panel on air quality standards and supplements the current objective. A tougher objective for carbon monoxide replaces the current one, but has the same target date of the end of 2003. That is based on the limit value in the second European Union air quality daughter directive. New, long-term 24-hour and annual objectives for particles are being introduced, which are to be met by the end of 2010 and will supplement the current objectives that are to be met by the end of 2004.

Last year, we completed a range of reviews that we have used to inform our proposals, which will set tough, long-term objectives for particles. As the research and modelling work showed that we could set tougher targets, we have decided to adopt that approach. The new objective will be more than 50 per cent lower than the current one. The fact that it will also be tougher than the objectives proposed for the rest of the UK and for London reflects the high standard of air quality that we already enjoy in Scotland.

Furthermore, we will be reducing the number of exceedences allowed of the 24-hour mean particles objective from 35 per year to seven. That will make the 24-hour objective at least as tough as the one in the original 1997 strategy. The new objective will be challenging, but our modelling work suggests that it will be no more so than the less stringent objectives elsewhere in the UK. That will be the first departure from a UK-wide approach to the strategy. Due to the trans-boundary nature of our air pollutants, it is appropriate to have an air quality strategy presented in a document covering all parts. Nonetheless, our air quality is a fully devolved issue and we feel that we are free to advance policies that reflect our own specific circumstances, which are reflected in the new regulations.

The Convener: Thank you for those comments, minister. Robin Harper has the first question.

Robin Harper (Lothians) (Green): We were told last week that the long-term objective for traffic control, rather than traffic reduction, was to achieve traffic levels in 2020 that are limited more or less to the present traffic levels. If controlling traffic levels, rather than reducing traffic, is the sole overall objective in Scotland, how can that feed into achieving the reductions in air pollution and the targets that you are now setting for 2010?

Ross Finnie: As you said, that is the only published standard that we have set at the moment. I have made it clear in all the contributions and discussions on setting targets and indicators that it is an evolving process. A range of measurements are used to measure the effects of pollution but not to show the impact from some of the sources of pollution. Governments throughout Europe have acknowledged that we need measures not only of the level of pollution, but also of the sources of pollution and their contribution to the overall targets. We believe that setting standards for air quality measurement and testing for benzene and carbon monoxide particles as outlined in the strategy can be achieved within the current programmes.

I whole-heartedly agree with Robin Harper that there is a lot more to be done on measuring pollution produced by road traffic, and the overall aim of stabilising car use is but part of that. However, the air quality strategy puts greater impositions on the regulations for traffic in towns and on local authority controls of heavy vehicle emissions. The strategy places an obligation on local authorities to take action against those over whom they currently have control and to exercise that control more strictly. If local authorities do not do that, they will be in breach of the regulations.

Robin Harper: I have a rough figure that shows that about 80 per cent of pollution comes from 20 per cent of vehicles, which consistently break emissions regulations through poorly maintained engines. Has there been any discussion about how to address that problem?

Ross Finnie: I am aware that the imposition of the regulations has certainly opened up discussion as to how that can be achieved. As I said, that will not only create a much heavier obligation to test for emissions, but will create a fallback position in which a failure to reduce emissions will constitute a failure to impose the regulations, as set out in the EU directive. In a sense, the stick that has been absent will come into play with the coming

into force of the regulations.

Nora Radcliffe (Gordon) (LD): We are talking about PM10s, referring to the size of the particulate matter. I believe that there is evidence that smaller particles are actually more hazardous. Is any work being done to investigate whether we should be considering smaller particulate matter in tightening up the regulations as we progress towards better air quality?

12:00

Antje Branding (Scottish Executive Environment and Rural Affairs Department): You are right to say that medical evidence has emerged recently to show that it is particulate matter smaller than 2.5 micromillimetres that causes the worst health effects.

The expert panel on air quality standards looked into the matter of whether the measurement based on PM10s—particles slightly bigger than PM2.5s—would still be adequate to protect human health. After considering all the evidence, the expert panel concluded that a particles objective based on the PM10 measurement would be the best standard. Although the health effects of PM2.5s are recognised, there are also the effects of those particles in the range between PM2.5 and PM10. By setting the standard at PM10, all those particle sizes can be encompassed and better protection of human health can be achieved. The expert panel on air quality standards will keep the matter under review as new evidence is produced.

Nora Radcliffe: Thank you. That is helpful.

Antje Branding: Most of the policy measures to reduce particle emissions are targeting the small fraction of PM2.5s. It is that fraction that will be reduced.

Maureen Macmillan (Highlands and Islands) (Lab): Are these particles emitted from the internal combustion engine, or are you talking about pollution more generally?

Antje Branding: They are particles emitted from vehicles and industrial processes. Particles are also re-suspended from the roads while vehicles are passing, by the rub of the tyres. We are targeting all those particles.

Maureen Macmillan: Minister, You said that most local authorities would be able to deal with the emissions. You then said that city centres were exceptions and would be exempted from air quality management areas. Is that right? I am not quite sure what you were describing, minister.

Ross Finnie: I do not think that we are exempting such areas. We have had to change the compliance dates for city centres, as they are hotspots. We have declared them air quality management areas to bring them up to speed. Regrettably, we may have to extend some of the deadlines, but we have not lost sight of the imperative to control pollution or the need to designate air quality management areas. Over a period, we have not been meeting the targets, but we are determined that we will establish the conditions in which we can meet the targets. That is why we have established these air quality management areas.

John Scott (Ayr) (Con): I am interested in the pollution from benzene that is given off from petrol. I understand that a new type of petrol pump is being introduced to address that problem, which will incur a considerable cost to filling stations. Will you do anything to help more remote, rural filling stations to meet the costs that the new standards will incur, or is that not part of the regulations?

Ross Finnie: There is nothing in the regulations that requires Scottish ministers to provide subsidies to the international oil companies.

John Scott: With respect, I am not talking about the oil companies. I am talking about the operators of small, rural garages.

Ross Finnie: Yes, but who imposes a price for general consumption?

John Scott: The Government.

Ross Finnie: Well, is it? We are now talking about something slightly different. Taxation is not within my remit. My purpose in introducing the regulations is to set standards. I hope that all producers of materials that emit particles during their use will have regard to the need to meet those standards. If someone engages in the provision of materials that cause emissions, they must have regard to the impact on the economy of unnecessarily imposing additional cost. I will have to look at the details. You refer to the possible cost, but I will have to investigate the matter before I can give a definitive answer on it.

The Convener: As members have no other questions, I ask the minister to move motion S1M-2984.

Motion moved,

That the Transport and the Environment Committee recommends that the draft Air Quality (Scotland) Amendment Regulations 2002 be approved.—[*Ross Finnie.*]

Motion agreed to.

Scotland Act 1998 (Agency Arrangements) (Specification) (No 2) Order 2002 (SI 2002/800)

The Convener: Item 6 concerns the Scotland Act 1998 (Agency Arrangements) (Specification) (No 2) Order 2002 (SI 2002/800), which is subject

to the negative procedure. Members are aware that Fiona McLeod has lodged a motion to annul the instrument. A covering note on the order has been circulated with the papers for the meeting. That note sets out the procedure for a debate on a motion to annul.

Prior to debating the motion, I will give members the opportunity to raise any points of clarification or other questions with the minister and Executive officials. I ask members to keep to questions. You will have the opportunity for a full debate once we are past the questions. I also remind members that the officials who are here to advise the minister have the opportunity to give answers during the question and answer session only. They will not have the opportunity to answer once we move into debate.

I ask the minister to comment on the instrument.

Ross Finnie: I direct the committee to section 93 of the Scotland Act 1998, under which the order has been made. That section enables Scottish ministers to make agency arrangements for any of their specified functions to be exercised by a minister of the Crown, and vice versa. The arrangements are, in effect, agreed contracts between Scottish ministers and the ministers of the Crown. They are tailored to reflect policy objectives and are the most efficient and effective way of conducting business.

I stress, and draw the committee's attention to, section 93(2) of the Scotland Act 1998, which expressly states:

"An arrangement under this section does not affect a person's responsibility for the exercise of his functions."

It could not be clearer or any more black and white that nothing in the three elements of the order—on air quality limit values, the processing of applications for releases of genetically modified organisms and dealing with certain aspects of ozone-depleting substances—in any way changes the responsibility of the Scottish ministers for taking decisions on any of those matters.

In practice, the order allows us to take advantage of certain agency arrangements, some of which have been in place for a long time and which we believe are good value for money and expedient for us to continue.

The arrangement on the Air Quality Limit Values (Scotland) Regulations 2001 (SSI 2001/224) relates to who monitors air pollutants. Those services are provided by a firm with over 1,000 stations throughout the United Kingdom. We take advantage of that firm's expertise by using it to provide the monitoring so that we can comply with the regulations.

On the release of GMOs, the order specifies certain administrative functions—I stress that those functions are administrative—to be carried out under the Environmental Protection Act 1990. There are persons at the UK level who have the expertise to deal with the initial handling of applications for the release of GMOs. That does not affect the final independent advice in any way, nor does it affect the Scottish ministers' decision.

The order also specifies that functions that are devolved to the Scottish ministers under the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002 (SI 2002/528) in relation to the control and regulation of certain ozone-depleting substances will be carried out on an agency basis.

The section 93 and agency arrangements are relatively common practice across the Executive. There are six separate section 93 orders in force. I believe that they are a sensible use of resources. Without agency arrangements, Scottish ministers would be required to provide the services themselves, incurring unnecessary costs and duplicating expertise that is already available. On those grounds, we have laid this order. We have been clearly instructed that it in no way transfers any powers to any part of the United Kingdom. Following the well-established law of the principal and agent, the principal is still required to take the decisions. That is what Scottish ministers do and that is why we have laid the order.

Fiona McLeod (West of Scotland) (SNP): I would like to go through a number of the items in the order and ask why you are going down this route.

Paragraph (a) of the schedule to the order deals with section 111(6) of the Environmental Protection Act 1990, which is about applications for the release of genetically modified organisms. Why do you think that a Scottish minister would not want to be able to seek further information from an applicant?

Paragraph (b) of the schedule deals with section 122(1) and (2) of the Environmental Protection Act 1990, which is about maintaining the public register. I am interested to know why a Scottish minister would not want to keep the register on GMOs in Scotland. If it is not in Scotland, how do you propose to make provision for ease of access to the register? The Environmental Protection Act 1990 makes it clear that people have to have ease of access to the register.

When we were debating the Freedom of Information (Scotland) Bill last week, we were told that our legislation is much tougher than that which is proposed down south. Will our Freedom of Information (Scotland) Bill impact on the UK secretary's keeping of the register and the way in which they deal with applications for access to the register from residents in Scotland?

Paragraph (d) of the schedule deals with regulation 14 of the Genetically Modified Organisms (Deliberate Release) Regulations 1992 (SI 1992/3280). I cannot see why a Scottish minister would not want to be involved in the specification for forwarding to the European Community a case for either accepting or rejecting an application for a release. Why would a Scottish minister not want to be involved in evaluating the risks and carrying out the tests and inspections that set the criteria for them?

Paragraph (e) of the schedule deals with regulation 16(1) of those GMO regulations. As you will be aware, Scotland is a European competent authority for GMOs. Why would a Scottish minister not want to retain that status for Scotland? Regulation 16(1) is about Scotland becoming the first European market for a GM product. That suggests to me that Scotland should continue to be a European competent authority for GMOs.

Paragraph (f) of the schedule talks about the Air Quality Limit Values (Scotland) Regulations 2001 (SSI 2001/224), which the Executive said were designed to reflect Scotland's particular circumstances.

I know that your department has had difficulty in obtaining disaggregated data on pollution because it has been difficult to get disaggregated Scottish information in answer to parliamentary questions, particularly on non-terrestrial pollution. Given that difficulty, why do Scottish ministers want to give away the ability to set the criteria for monitoring? You talked about the location of monitoring stations and having access to all the stations. Given Scotland's circumstances—to which you referred previously—surely it is important that ministers should be able to set the criteria, for example, for the location of monitoring stations?

Why do you want to pass over to the Department for Environment, Food and Rural Affairs the responsibility for disseminating information? I understand that when an alert threshold is exceeded, information must be disseminated to the relevant bodies. Why is DEFRA better equipped to disseminate throughout Scotland the information that an alert threshold has been exceeded? The issue takes me back two years, when the Ministry of Agriculture, Fisheries and Food failed to tell the minister that there were GM-contaminated seeds among seeds that had been planted in Scotland. MAFF forgot that you might have an interest in the matter and did not tell you about it for a few weeks.

12:15

The Convener: Can we stick to questions?

Fiona McLeod: I was explaining the background to my question.

Finally, why will the importation of ozone depleting substances still be controlled in Northern Ireland, but not in Scotland? That completes my questions.

Ross Finnie: The issue that ran through four of the five questions—the fifth was on involvement with Europe—is whether Scottish ministers wish to be involved in setting standards, criteria or levels of involvement. An agency agreement is just that—an agreement. Implicit in such agreements will be the standards that the agreement sets. Admittedly, that is not spelled out in the order. The order seeks to give ministers only the power to enter into agency agreements. In setting an agency agreement, Scottish ministers will be extremely concerned about its terms and conditions.

The arrangements that we seek to have the power to enter into have historically been in place. Fiona McLeod asks why a Scottish minister would not want further information. If a Scottish minister wants further information, he or she can still seek it. Entering into an agency agreement does not preclude ministers from requesting further information, given that they have not given up the power. That is the essential feature. Such agreements are made for administrative convenience—they provide a more effective and efficient way of dealing with administrative arrangements. They do not preclude ministers from exercising powers. So, on Fiona McLeod's first point, if Scottish ministers believe that further information is required, they can address that matter. The order does not preclude Scottish ministers from seeking additional information. At the end of the day, Scottish ministers must be satisfied with the information that is given to them. If they are not satisfied, they can seek additional information.

I concede that if there was a suggestion that Scottish ministers did not have the responsibility or that they were not taking the decisions, clearly the effectiveness of agency agreements could be called into question. If Scottish ministers are not satisfied that the information that they request to allow them to take a final decision is adequate or has been researched properly, they can call for further information.

I ask Paul Cackette to deal with the question about the UK position on keeping an overall register of releases and about access to that information in terms of freedom of information.

Paul Cackette (Scottish Executive Environment and Rural Affairs Department): That is right. It is a fair observation that lower standards in relation to freedom of information should not apply as a result of such an arrangement. As the minister says, it would be appropriate to include that kind of thing in the

memorandum of understanding that the order empowers the Scottish ministers to enter into. I expect that the standards that would have applied had the order not been passed would apply in those circumstances.

David Williamson (Scottish Executive Environment and Rural Affairs Department): The register that will be maintained by DEFRA on our behalf is necessary to satisfy the regulatory requirements that certain information is put into the public domain within a defined period. Members will be interested to know that we have a copy of the public register available for public consultation; it is held at Victoria Quay. We are considering the possibility of putting an electronic version of the register on our website.

Ross Finnie: That takes us to the second part of Fiona McLeod's second question, which has a similar answer. In relation to taking matters to the EU or liaising with the EU, if they will involve a decision by Scottish ministers or the commitment of the Scottish Executive to a decision, that process must be exercised by Scottish ministers. The agency agreement permits people to be involved or engaged in evaluating risks only within the confines of the agency remit. It does not remove the responsibility of Scottish ministers to be involved and engaged at the top level in decisions that affect the Scottish Executive or the Scottish Parliament.

I want to re-emphasise the point on testing air quality and the agency that currently deals with testing. At present, there are some 100 automatic and 1,500 non-automatic testing sites throughout the United Kingdom; there are 12 automatic and 200 non-automatic sites in Scotland. There are two issues. First, under the new standards, there will be a need to increase the number of such sites. Secondly, there is an issue about the data that have been assembled—my colleague Antje Branding spoke about that. We need to have a bank of reliable data from across the UK that we can access and from which we can benefit. The standards by which measurements are set and the way in which the data are organised must be uniform. It would not be beneficial to set up a new series of data. It is preferable for us to have access to a continued series of testing across the UK. That improves and enhances our ability to draw on and analyse comparable data from which we can properly determine whether the results from Scotland show anything peculiar.

I will ask Alistair Montgomery to deal with Fiona McLeod's question about a curious peculiarity in the rules on and control of the import of methyl bromide.

Alistair Montgomery (Scottish Executive Environment and Rural Affairs Department): There was a suggestion that Northern Ireland was not covered by the UK rules and regulations on imports.

Fiona McLeod: My question was not whether Northern Ireland was covered by the rules—it is—but how Northern Ireland could reserve the decision about importation.

Alistair Montgomery: The UK regulations cover importation issues for Northern Ireland. The UK regulations apply to England, Wales and Scotland and they also apply to Northern Ireland in relation to importation.

Fiona McLeod: I apologise—I read that the wrong way round.

The Convener: I emphasise to members that we need to deal with this issue promptly if we wish to progress to the final agenda item and hear evidence from the minister.

John Scott: It all boils down to one question, to which Fiona McLeod alluded. Is the minister happy with DEFRA's being responsible for genetically modified crops?

Ross Finnie: It is not. Let us be clear. We are dealing with the initial assessment of an application. We are dealing with a group of people who have scientific experience. An analogy would be a major developer handing in a planning application to somebody with no experience or knowledge of planning law. We need people who have sufficient experience, knowledge and understanding of the regulations and the science that is involved that they can assess the application, evaluate whether all the relevant information has been included, say precisely what further additional information ought to have accompanied the application and determine whether the evaluation that has to be included meets all the requirements. People should know when they pass that information to the Advisory Committee on Releases to the Environment, the Food Standards Agency, Scottish Natural Heritage or any other organisation that, as far as they can assess at the point of application, it is complete. That is not to suggest that the other bodies might not request other information, but there should be people with knowledge and understanding.

I have no reason to believe that the agencies that, or persons who, perform that function are other than knowledgeable and skilled. They are specialists in a particular field and we find that helpful in dealing with the initial siftings. However, they do not give independent advice to ministers on whether scientifically objective tests in respect of threats to environmental health, the environment or health have been met.

John Scott: I do not doubt the theory, but the practice has been that DEFRA has not necessarily served Scotland well in the past. Are you happy

that it will do better in the future, particularly with regard to GM crops?

Ross Finnie: I understand perfectly the point that Fiona McLeod made, but I am bound to say that one cannot take one example and impugn the reputation of every person who works for DEFRA—that would be to carry things too far. We know that the persons have relevant experience, knowledge and understanding of the issue. Applications have tended to be for sites throughout the United Kingdom and we have no evidence or complaints from the FSA or ACRE that the information that has been passed to them has not been of the requisite standard.

The Convener: As there are no more questions, we will move to the formal debate on Fiona McLeod's motion. I invite Fiona McLeod to speak to and move the motion.

Fiona McLeod: The question-and-answer session was useful and interesting, but it has not taken us much nearer to understanding why Ross Finnie, as a Scottish minister, will give away the powers in question or the control of so many issues. Receiving and examining applications is the first step and possibly one of the most important steps in the GM crops process. I thought that the minister would have wanted the ability to set the criteria for applications and evaluating risks.

A memorandum of understanding was mentioned. The minister should forgive my ignorance, but the order will be passed or not passed today. I think that it came into force five days ago. Does the memorandum of understanding exist at the moment? Perhaps knowing exactly what arrangements have been made with the agencies down south would have eased our minds in making a decision.

A question occurs to me when I hear the minister say that similar administrative arrangements exist or have existed in the past. If they exist or have existed in the past, why do we need this order now? Why does the minister now want to say publicly, "It's not my department that will be doing this, but a department furth of Scotland"?

The minister spoke about the ability of the team down south. John Scott and I are not impugning that whole department, but in a recent case it did not have in place administrative arrangements to take full cognisance of the situation in Scotland. This order may be putting the cart before the horse.

12:30

I understand that the Scottish Executive environment and rural affairs department has a GMO team. Why do we have to go to Westminster to find the expertise to process the applications when we have a GMO team here, which would obviously consider the applications from a Scottish viewpoint?

We have heard a lot of answers, but we have not heard solutions to the problem of our passing these arrangements over to the UK Parliament.

I move,

That the Transport and the Environment Committee recommends that nothing further be done under the Scotland Act 1998 (Agency Arrangements) (Specification) (No 2) Order 2002 (SI 2002/800).

The Convener: I will give the minister an opportunity to respond to Fiona McLeod's remarks and then give other members a chance to speak.

Ross Finnie: I repeat that we are talking about agency arrangements; we are not talking about the passing on of powers. Section 93(2) of the Scotland Act 1998 makes it clear that any arrangement that is entered into does not affect a person's responsibility for the exercise of his functions.

If the sum total of the argument for not having these arrangements comes down to a pejorative use of the phrase "down south", that is not especially helpful. It is not in the spirit of devolution to use that phrase pejoratively. The argument holds no great weight in respect of the agency arrangements concerning, for example, air quality regulation or the monitoring and control of ozone depleting substances.

The terms and conditions of agency arrangements will have to satisfy me—on behalf of the Scottish Executive—that I will have adequate access to information to allow me to discharge my responsibilities. A memorandum of understanding will accompany the order and it will set out exactly how we wish to exercise our responsibilities. We simply seek from Parliament agreement that allows us to exercise powers under the Scotland Act 1998 to enter into an administrative arrangement. That is what it is—an administrative arrangement. It does not relieve Scottish ministers of their responsibilities, and it does not relieve me—as the minister particularly concerned—of my responsibilities. I will have to be satisfied that I will have adequate information to allow me to make decisions.

The Convener: Do any other members wish to participate?

Members *indicated disagreement.*

The Convener: I offer Fiona McLeod the opportunity to respond and to indicate whether she wishes to press her motion.

Fiona McLeod: I would simply say that what is pejorative is for a Scottish minister to make

arrangements for the minister's specified functions to be exercised on his or her behalf by someone not controlled by the Scottish Parliament. I will press my motion.

The Convener: The question is, that motion S1M-3012, in the name of Fiona McLeod, on the Scotland Act 1998 (Agency Arrangements) (Specification) (No 2) Order 2002 (SI 2002/800), be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harper, Robin (Lothians) (Green)
Ingram, Mr Adam (South of Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)

AGAINST

MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Radcliffe, Nora (Gordon) (LD)
Scott, John (Ayr) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Motion disagreed to.

The Convener: I would like to confirm the committee's agreement to the contents of our report on the instrument. Do we agree to record the outcome of the debate, which is that the committee will not draw the instrument to the Parliament's attention?

Members *indicated agreement*.

Petition

Genetically Modified Crops (PE470)

The Convener: The final item is public petition PE470, which is from Mr Anthony Jackson, on behalf of the Munlochy vigil, and is on genetically modified crops. I will introduce the petition briefly, because the minister has only about 15 minutes more with us. Following consideration of the petition, the committee has written twice to the minister. I thank him for his prompt response to both those letters. The minister and I realise that not everyone will agree with every aspect of his response, but nonetheless, I thank him for his full responses on both occasions. They have helped the committee by advising it of the Executive's view.

The committee brought the petition back to the agenda to consider the minister's response to our most recent letter. As the minister was due to attend to deal with the statutory instruments, we thought that it would be useful if he could respond to members' questions about his most recent response before we finalise how we progress the petition. Given the time, I propose that we move straight to members' questions about the response.

Maureen Macmillan: I am interested in a couple of aspects of the minister's letter, as I asked the questions about them. The petitioners told me that they had asked the Executive whether a site-specific risk assessment had been conducted at Munlochy. They were told that there was none and that the assessment was conducted at Daviot in Aberdeenshire, after which the effect on Munlochy was projected. When was the site-specific assessment at Munlochy performed? Could a copy of it be given to us or published?

Derek Bearhop (Scottish Executive Environment and Rural Affairs Department): We are talking about two slightly different matters. The legislation requires that, in applying to release a GM crop, an applicant must specify a site on which the crop release is proposed to take place. It is correct that the initial site for the crop that was planted in Munlochy last autumn was at Daviot, where a site assessment was completed.

If a consent holder applies to the minister for permission to release on subsequent sites, they must confirm that those subsequent sites comply with the original risk assessment—in other words, no additional factors may jeopardise the initial risk assessment. As the minister's response says, the regulatory authorities and our advisers say whether the consent holder's judgment is accurate. That was done for the Munlochy site.

Maureen Macmillan: May we have a copy of that information?

Derek Bearhop: We placed some aspects of that assessment on our website. We asked Scottish Natural Heritage about the implications for natural heritage and designated areas. That information is publicly available. I can make the rest available through the same mechanism.

Maureen Macmillan: My next question is about the allergic risk that is posed by the inhalation of pollen and dust. The minister's answer to question 8 talks about

"ensuring that … plantings … do not pose a safety threat to human health",

yet his answer to question 3 says that it is inappropriate for any tests to be undertaken on whether the field trials pose a risk to human health.

That is the most worrying issue for the people who live in Munlochy. They feel that the pollen that is now being released may harm their health in some way. How can we assess whether that pollen will have an impact on human health if we are not testing it?

Ross Finnie: There is some misunderstanding of the status of the seeds that are being used in the trials. It would surprise many people to learn that those seeds have already been approved for use in trials. By 1998, an application could have been made to use them commercially. Before the seeds were approved for use, they were subject first to laboratory tests indoors and then to what are described as plot-scale trials. Many of the seeds that are being used in UK trials have already been grown outdoors, on sites of 20, 40, 60, 80 or 100 sq m. They have already flowered. The crops were tested at the time, both for their alleged herbicide tolerance and for their impact on human health. They were tested both indoors and outdoors. Once those trials were concluded, the seeds were certified under the regulatory process that was in place at the time.

In 1998, the UK Government decided that that was all very well and good, but that full field-scale trials had not been carried out. In those trials, the effect of different herbicide regimes on GM crops, as opposed to conventional ones, would be demonstrated. The impact of sowing GM crops on the immediate biodiversity of an area had not been tested in a farm context. The trials that we are discussing are designed to test that, rather than the seeds per se. I am not saying that people are not concerned about the impact of the trials on human health. I am simply indicating the purpose of the trials and making clear that the crops involved have been grown in the open before.

Maureen Macmillan: What tests were carried out to gauge the impact of the crops on human health when they were grown previously?

Ross Finnie: I was coming to that issue. I simply wanted to put the trials in their proper context.

Derek Bearhop: The regulations require applicants to satisfy the regulator of the safety—in terms of toxicity and allergenicity, and with specific reference to human health—of proposed releases. That process builds on what has been done previously. In the case that we are discussing, the applicant did not come to us in August 2001 with a lab test that had just been done. Rather, it showed us the 20 applications that had already been scrutinised by regulators in the UK and Europe, and indicated what it had deduced from those applications. It then had to present a scientific evaluation that satisfied the Advisory Committee on Releases to the Environment, the Food Standards Agency and the Health and Safety Executive. On that basis, a decision was taken. We are talking about a step-by-step process, rather than one that involves assembling all the raw data for a single application.

Health experts have advised ministers that, on the basis of the work that has been done previously, they are satisfied that the pollen that is being released at Munlochy does not pose the threat to human health that some fear.

Maureen Macmillan: The issue will possibly be taken up by the Health and Community Care Committee, so we should not necessarily pursue it now.

12:45

Fiona McLeod: I want to home in on the second sentence of the second paragraph of your letter:

"It would be illegal for me to withdraw a consent for a particular release in the absence of sound scientific evidence of potential harm."

I want to consider both aspects of that statement—the legality of your withdrawal of consent and the scientific evidence that is available.

On the scientific evidence, in your answer to question 2 you gave the separation distances between the GM oilseed rape and the non-GM oilseed rape as 1.3km, 1.5km and 1.7km. Are you aware of the article by Timmins et al in *Nature*, volume 380, page 487, in which pollen from GM oilseed rape was detected 2.5km away from where it was planted? In an article by Levene et al in *Theoretical and Applied Genetics*, volume 96, pages 886-96, it was found that pollen was travelling longer distances than had previously been thought. Many members of the public are concerned that you and ACRE are perhaps not taking into consideration such scientific evidence, which is coming into the public domain more and more.

Your answer to question 5 related to biodiversity and the effects on wild crops that are related to oilseed rape. I can provide you with references to examples of GM interaction with B campestris, hoary mustard, wild radish and wild turnip. I have references for other areas too. On that subject, what do you believe constitutes

"sound scientific evidence of potential harm"?

You claim that legality is the factor that stops you from withdrawing consent. However, you will know that the Belgian minister has decided to turn down five GM trials for oilseed rape in the past week or so. Why is your advice so emphatically different from the advice that is being received by politicians in Belgium?

I am sure that you are aware of section 111(10) of the Environmental Protection Act 1990, which clearly gives you the ability to withdraw consent. I would like to understand why, when the Welsh Assembly received advice that indicated that sections of the Environmental Protection Act 1990 could be used to stop the growing of GM crops, your legal advice does not allow you to take the same route. It would be instructive to hear on what your legal advice is based.

The Convener: The minister's answer will probably be his last before he goes. Therefore, I invite Des McNulty, Robin Harper and John Scott to add brief points. If their points are not brief, I will have to ask the minister to respond immediately.

Des McNulty (Clydebank and Milngavie) (Lab): You require a scientific basis for refusing an application. What kind of precautionary test do you apply? Does there have to be clear and demonstrable evidence of harm, or is reasonable uncertainty a consideration that would allow you to introduce a ban?

In your answer to question 8, you stated:

"the interest of the Scottish Executive is focused upon ensuring that any plantings which take place do not pose a safety threat to human health or the environment."

When we considered GMOs, the committee's view was that we wanted you to consider the scientific value of a trial in adding to knowledge. Does the planting in question add to knowledge in a significant way? Should that test be applied?

Robin Harper: In your answer to question 7 you said:

"Evidence of harm would ... call into question the commercial future of the crop in North America where it has been grown extensively for a number of years."

So what?

I have one other brief question. There seems to be a deep division between us on what we would call harm to the environment. I maintain that any evidence of cross-pollination with wild relatives within kilometres of a site is a threat to the environment. What do you define as a threat to the environment, if that is not?

John Scott: My question gathers up all those points. It is about liability. The parallels between the GM issue and BSE in the 1990s are stark and horrific. ACRE is giving you the best available scientific advice. Similarly, in the 1990s the Swann committee and the BSE advisory committee gave the Government of the day the best available scientific advice. As a result, there was a huge problem.

Will you give categorical assurances to the public that, should there be a problem with human health or damage to the environment, the Scottish Executive will pick up the tab? Of course, there will not be a problem because you are so certain that there is no problem. Nonetheless, will you give us that assurance?

Ross Finnie: I will deal with the legal question first because it is germane to all of the points.

We have not been able to find out—and the press reports have not been helpful—whether the Belgian minister acted because the scientific advice was equivocal or whether she made that decision of her own accord. I will pursue that.

The Welsh Assembly was advised by solicitors who act for Friends of the Earth. They directed the Welsh Assembly to invoke article 16 of EC directive 90/220. Despite the UK Government not supporting the proposition, the Welsh Assembly also put the case to the UK Government that, as a devolved assembly, it had a right to do so.

I am advised that the commissioner for the environment, Margot Wallström, has made clear that she does not believe that the Welsh case would stand up in law or is sustainable under the EC directive. That is a matter for the Welsh Assembly, but her advice supports the legal advice that I have received. An applicant for a release must meet the test. The test is to demonstrate on an independent scientific basis whether that release will harm the environment or human health. If the application for a release meets that test, there are no other grounds on which that permission could be refused.

Perhaps that is an unfortunate answer to Des McNulty's question. However, another element cannot be introduced into the test—it is not written into the directive. You were seeking to add a further test of whether the release added to scientific knowledge, but an applicant would or would not be seeking permission for a release. We might argue about what the crop is for, but that is not what is in the test. The test is the scientific evidence of damage to the environment.

I could go to another body for that evidence.

That would not get me out of discharging my responsibility under the regulations. I discharge that responsibility by using ACRE. We know that, two or two and a half years ago, some members of that committee were engaged in research that was funded by some of the larger companies. Those people were removed. Michael Meacher acted to remove from ACRE those who were engaged by universities, research institutes or other bodies that were funded by the companies. Those people were removed because there was a clear conflict of interest, which the current committee does not have.

I move on to the questions about Timmins et al and Levene et al and the travelling distance of pollen. I would have to check, but I would be disappointed if ACRE, which has access to all the latest available science, was not taking account of those scientific developments. The pollen transfer issue is not only about the distance that the pollen travels; it is also a question of the time that it takes to travel and whether it is still efficacious at 4.8 miles, 5 miles, or however many miles or kilometres, or whether it has lost its efficacy over the time and distance of travel. That is a matter that ACRE takes into account. The committee constantly takes account of the development of new scientific material and I would be aghast if it was not doing so, as that is the task that it has been set.

The committee was set up to act as an independent advisory body and to take account of new information on tested and properly researched material. I do not set myself up as a scientist; I turn to an expert body for advice on scientific matters. My answer, on the availability of information, is yes. ACRE takes advice on new developments. The legal position is that that is the set test and there are no grounds for permission to be refused other than failure of that test. That is the way in which the regulation is drafted.

Robin Harper raised the issue of the definition of the threat to the environment. That is a difficult debate, as it concerns what is believed to be the precautionary principle. As applied, that principle has meant that those releases have been made on a step-by-step basis. They started with indoor trials and met certain specifications. No jump can be made from allowing an indoor trial to granting a commercial release in a European context. As Derek Bearhop said, at each stage the available knowledge and understanding, as the next steps are approached, is presented on a step-by-step basis. That does not mean to say that, in the absence of proof of there being no risk, the trials are stopped before they even start. That is the other end of the proposition, and no advance in science will be made on that basis.

I stress that I take advice from ACRE and I do not fetter what it can look at or from whom it can take advice. On John Scott's question, the way in which the regulations are drafted means that I have to take advice from somebody. If you tell me that you do not believe ACRE, or if ACRE has given evidence to the committee that I do not have to take its advice, I still have to meet the objective scientific test. It is not up to the minister to say, "I believe," "I think," or "It is my opinion." The regulation requires me to meet the test. I believe that the best way in which I can discharge that responsibility is by asking ACRE to assess the evidence and to come to a view. It is then for me to ask whether that advice is presented in unequivocal terms. If it is not, there is no question that I have powers. If I receive equivocal advice from the scientific advisers, that is sufficient for me to say, "I have not received advice suggesting that there is no risk. There is equivocation and doubt." However, that has not occurred so far.

John Scott: I am asking about liability, minister.

Ross Finnie: Sorry. That is an interesting proposition. The whole objective of the regime is the minimisation of risk. If an applicant is required to undergo a procedure whereby they have to meet a test, the regulator should not grant a consent unless they are satisfied that it would not give rise to a scientifically quantifiable risk to the environment or to health. Any liability claim would have to prove that someone had acted negligently, which would require the normal production in court of proof of negligent action. Paul Cackette may have something to say on that.

Paul Cackette: I have nothing to add to that. On the basis of the current position, a person who has suffered loss would require to establish that there was negligence on the behalf of the Executive in carrying out its regulatory role.

John Scott: So that is a no.

13:00

Ross Finnie: You are positing a hypothetical question. The onus on you and on me is that if the regime, as prescribed by statute, requires you to demonstrate, on a scientific basis, that there is no scientific harm or harm to the environment or to human health, the only potential basis for that occurring is for a person to act negligently. I do not think that it is reasonable for you to ask me to indemnify persons who act negligently. That matter has to be tested in the courts.

The Convener: With that, I draw the questions to the minister to a close. I thank the minister very much for his attendance at the committee, for the evidence that he has given on all three matters and for the fact that he has slightly overrun his time and given us 10 minutes more than had been allocated. I hope that we have not prevented the

minister from getting to his next appointment.

I realise that we have reached 1 o'clock. I suspect that if we enter into a broad debate about how we should respond on this matter, it will take us some time. It might be appropriate to defer final consideration of how we respond until a subsequent meeting. Fiona McLeod is shaking her head. What do other members think?

Maureen Macmillan: I would like to defer consideration of the matter to another time, as I have somewhere else to go now.

Nora Radcliffe: I should have been somewhere else 30 minutes ago.

Fiona McLeod: Without any discussion, I would like to put a motion.

Nora Radcliffe: I would rather that we deal with the matter thoroughly than in a hurry at 1 o'clock when everybody needs to be somewhere else.

The Convener: Is there broad agreement that we defer discussion of the matter to a subsequent meeting?

Mr Adam Ingram (South of Scotland) (SNP): When is the subsequent meeting?

The Convener: It will be fairly soon. I need to consult Callum Thomson on whether the discussion will be on the agenda next week or the week after, but it will be held as soon as it can feasibly be fitted into our timetable.

John Scott: I have no desire to be obstructive, but the fact is that those plants are still flowering and may be creating a problem, so it is a matter of urgency for the committee to make a decision.

The Convener: With respect, I expect that, whatever position the committee adopts, the minister will not change his position. Any consideration of the issue by the committee is more likely to be about broader and longer-term issues.

Robin Harper: The decision of the committee still stands. We have asked the minister to take the decision to plough the crops. We are not rescinding that. We should have a discussion next week. We should add an extra half-hour to the meeting. Members can make arrangements so that they can attend for an extra half-hour next week. That gets round the problem of there not being room on the timetable.

The Convener: I think that we can accommodate that next week.

Angus MacKay (Edinburgh South) (Lab): That is fine, as long as we do not overrun again. The point is that we must leave because the meeting has overrun.

The Convener: With that, I close the meeting. Thank you very much.

Meeting closed at 13:03.

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