TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 18 December 2002
(*Morning*)

Session 1

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TRANSPORT AND THE ENVIRONMENT COMMITTEE
36th Meeting 2002, Session 1

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

*Nora Radcliffe (Gordon) (LD)

COMMITTEE MEMBERS

*Bruce Crawford (Mid Scotland and Fife) (SNP)
*Robin Harper (Lothians) (Green)
*Angus MacKay (Edinburgh South) (Lab)
*Fiona McLeod (West of Scotland) (SNP)
*Maureen Macmillan (Highlands and Islands) (Lab)
*John Scott (Ayr) (Con)
*Elaine Thomson (Aberdeen North) (Lab)

COMMITTEE SUBSTITUTES

Helen Eadie (Dunfermline East) (Lab)
David Mundell (South of Scotland) (Con)
Iain Smith (North-East Fife) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Dorothy-Grace Elder (Glasgow) (Ind)
Des McNulty (Deputy Minister for Social Justice)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Rosalind Wheeler

LOCATION

Committee Room 1

Scottish Parliament

Transport and the Environment Committee

Wednesday 18 December 2002

(*Morning*)

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

The Convener (Bristow Muldoon): I welcome members of the press and public to the 36th and last meeting of 2002 of the Transport and the Environment Committee.

We have received no apologies for absence. I have been advised that Fiona McLeod is running late, although she will arrive at some point this morning.

Item in Private

The Convener: Item 5 on our agenda is consideration of the committee's work programme, which we usually conduct in private. Do we agree to do the same today?

Members *indicated agreement*.

Building (Scotland) Bill: Stage 2

The Convener: Our main item of business this morning is stage 2 consideration of the Building (Scotland) Bill. I ask members to check that they have copies of the bill, the marshalled list of amendments and the list of groupings to assist them during today's proceedings.

I welcome Des McNulty MSP, the newly appointed Deputy Minister for Social Justice, to the meeting. Des is familiar with the bill, having participated in the committee's stage 1 deliberations on it. I am sure that he will have no problem slipping into his new role as the deputy minister responsible for taking the bill through the Parliament. I congratulate Des McNulty on his appointment and offer him best wishes for the future.

I also welcome Lorimer Mackenzie, Heather Wortley and Paul Stollard, officials from the Scottish Executive who will assist the minister during stage 2 consideration of the bill.

Section 1—Building regulations

The Convener: The first amendment for debate is amendment 80, which is in a group on its own.

John Scott (Ayr) (Con): I congratulate Des McNulty on his new role as gamekeeper, after having previously been a poacher. It is reassuring to see so many amendments in Des's name—nothing has changed.

Amendment 80 is a probing amendment that seeks to establish the difference between conversion and alteration. I appreciate that the definition of construct in section 51 includes alteration, but I believe that there is a fundamental difference in common usage between a conversion and an alteration. If the word "alteration" were not used elsewhere in the bill, there might be no need for the further clarification that amendment 80 seeks. However, in section 20(11) construction is stated specifically to exclude alteration, whereas section 10 specifically includes alteration and conversion. There is no definition of alteration in section 51, and I regard that as a gap in the bill.

I am asking the minister to consider this point at an early stage, although the need for the terms "alteration" or "alter" to be included in the bill is much more evident in sections 8 and 9.

I move amendment 80.

The Deputy Minister for Social Justice (Des McNulty): I hope to be able to provide John Scott with reassurance. Alteration falls within the definition of construction in section 51(1), for which section 1 already provides. On that basis, I ask John Scott to withdraw his amendment.

John Scott: I thank the minister for his comments. I will seek leave to withdraw the amendment, although at stage 3 I will probably lodge other amendments to include the term "alteration" in sections 8 and 9. I would like the expression to be explained in more detail.

Des McNulty: Before stage 3, I can indicate to John Scott in writing how the issue of alteration is dealt with under construction, if that would be helpful.

John Scott: I would be grateful if the minister could circulate the letter to other members of the committee.

Amendment 80, by agreement, withdrawn.

The Convener: Amendment 1, in the name of the minister, is in a group on its own.

Des McNulty: The Executive lodged amendment 1 in direct response to a recommendation by the Subordinate Legislation Committee in its stage 1 report.

Section 1(1) sets out the core purposes of building regulations, which are:

(a) securing the health, safety, welfare and convenience of persons in or about buildings ...

(b) furthering the conservation of fuel and power, and

(c) furthering the achievement of sustainable development".

Although schedule 1 does not prejudice the generality of section 1(1), paragraph 5(2) of the schedule lists some of the more specific matters for which building regulations may make provision, such as fire precautions, drainage and ventilation. Under section 1(4), ministers have the power to modify by order the list in paragraph 5(2) of schedule 1, which is intended to be purely illustrative.

Amending the list does not alter the scope of section 1(1); it can alter neither the purposes nor the scope of building regulations. However, the Subordinate Legislation Committee was keen to ensure that consultation should take place before Scottish ministers made an order to modify the list in paragraph 5(2) of schedule 1. We are committed to consultation on various aspects of building standards and regulations and that will continue to be the case under the new system. We lodged amendment 1 to take account of what the Subordinate Legislation Committee said, and I ask the committee to endorse it.

I move amendment 1.

Amendment 1 agreed to.

Section 1, as amended, agreed, to.

Schedule 1

BUILDING REGULATIONS

The Convener: Amendment 81, in the name of Fiona McLeod, is in a group on its own. Fiona is not here, so I invite Bruce Crawford to move the amendment on her behalf.

09:45

Bruce Crawford (Mid Scotland and Fife) (SNP): Fiona McLeod has discussed amendment 81 with the Disability Rights Commission. The DRC and others, including Fiona and I, appreciate the rationale behind the Executive's move towards less prescriptive mandatory standards both to meet the requirements of the European procurement legislation and to encourage more innovation in the design process. However, we believe that more remains to be done to ensure that the considerations of accessibility and usability are grounded in the bill.

The bill's intention is to be inclusive, and it would be helpful for amendment 81 to be accepted. The amendment would make it explicit that building regulations will take into account the access to and use of buildings by disabled people.

Amendment 81 would insert the phrase

"including in particular access for disabled persons,"

and the subparagraph

"suitability for use by disabled persons"

and is concerned with specifying the issues that I have mentioned in the building regulations. We would all agree that good design is inclusive design, and amendment 81 would enable the bill to ensure that access and usability are given proper regard in the building regulations. Schedule 1 lists such matters as drainage, heating and lighting. The amendment would strengthen and clarify those provisions by making it explicit that accessibility and usability of buildings by disabled people falls within the scope of the regulations.

The Executive constructively used the terms "accessible" and "usable" in the explanatory notes, and we have heard public statements from former ministers to that effect, which was good. However, the inclusion of provisions in the bill is important and would make it explicit that accessibility and usability are to be subsumed in the Executive's functional standard of convenience.

Just as "fire precautions" and

"resistance to the transmission of heat"

are implicit in the functional standards of health and safety and welfare but, rightly, made explicit in the schedule, so the accessibility and usability that are implied by the terms "convenience" and

"health and safety and welfare"

should be made similarly explicit in the building regulations. I hope that that is what amendment 81 would do.

We are trying to be constructive, and I hope that the minister accepts that. Before I forget, I should welcome Des McNulty back to the committee, this time as a minister. When I saw the list of amendments, I was not sure how many of his were from him as a minister or as a former committee member. We will find out as we go along.

I move amendment 81.

The Convener: I, too, was confused when I first saw the list. I thought to myself, "Des has left the committee, but there are all these amendments in his name."

Maureen Macmillan (Highlands and Islands) (Lab): We have all been impressed by the arguments that the Disability Rights Commission has used for having strong signals about inclusion and access in the bill. It is important that we include the provisions, not because access issues would not be addressed if they were left out, but because it is important to include the signal that we are becoming a more inclusive society. I support the amendment.

John Scott: I, too, support the sentiments behind the amendment. We will hear from the minister whether it is entirely appropriate, but I am completely in accord with the sentiments behind it.

Robin Harper (Lothians) (Green): I agree. I want to record my strong support for the amendment. It is important that such provisions are included in the bill.

Des McNulty: While drafting the bill, we had a lot of discussion with the Disability Rights Commission, and we know that the commission is concerned that the bill does not make explicit mention of the access to and use of buildings by disabled people. Although it was always the Executive's position that accessibility and usability would be included in the building regulations in terms of section 1 and schedule 1, we accept the argument that they should be mentioned on the face of the bill. On that basis, I am content to accept amendment 81.

Bruce Crawford: I am glad that such a pragmatic approach has been taken and offer my thanks to the minister.

Amendment 81 agreed to.

Schedule 1, as amended, agreed to.

Section 2—Continuing requirements

The Convener: Amendment 2 is grouped with amendment 3.

Des McNulty: Amendment 2 is intended to distinguish continuing requirements that are imposed in building regulations from those that are imposed by verifiers. Although the bill does not allow verifiers to impose continuing requirements when granting a building warrant, I advise the committee that I intend to lodge amendments at stage 3 to allow that and to bring the provisions in line with the proposals on which we have consulted.

The application of continuing requirements is currently restricted to the categories that are outlined in section 2(4). However, it is anticipated that European legislation will, for example, require ministers to impose continuing requirements to maintain energy performance or to require labels regarding energy efficiency to be constantly displayed on buildings. Section 2(4) will, therefore, be amended by amendment 3 so that continuing requirements can be imposed on any aspect of a building.

I move amendment 2.

Angus MacKay (Edinburgh South) (Lab): Why does amendment 3 seek to delete section 2 (4)(a), (b) and (c)? Would it not be a sensible idea to refer to the matters that are listed in paragraph 5(2) of schedule 1, which include the preparation of sites and the re-use of building materials in relation to building regulations?

Des McNulty: To answer Angus MacKay's first point, amendment 2 is intended to widen the scope of continuing requirements. As I said in relation to amendment 81, the list in schedule 1 is illustrative; it can be added to. At stage 3, the scope will be further widened to allow verifiers to establish continuing requirements.

Angus MacKay's second point referred to schedule 1. In my previous answer, I stated that the provisions that are highlighted in schedule 1 are purely illustrative and can be added to.

Angus MacKay: I think that I understand the minister's intent for amendment 2; he is trying to broaden the options. However, he appears to be trying to do that by being less specific. Is that correct?

Des McNulty: We are removing specific limitations that are contained in the previous version. Therefore, we are broadening the process rather than narrowing the ambit.

Angus MacKay: I am not entirely happy about what the minister says, but may I take it that the minister is not being too dogmatic about the matter and that he will listen to further representations at stage 3?

Des McNulty: Absolutely. We are happy to listen to any further representations. Our purpose is to get things right. With amendments 2 and 3,

we were responding to people who wanted a less prescriptive approach to be adopted and a broadening of responsibility. If there are requirements to reinstate more specific limitations, we will consider them, but we are not aware of such a requirement from specialist areas.

Amendment 2 agreed to.

Amendment 3 moved—[Des McNulty]—and agreed to.

Section 2, as amended, agreed to.

Section 3—Relaxation of building regulations

The Convener: Amendment 4 is in a group on its own.

Des McNulty: Amendment 4 was lodged in response to one of the Subordinate Legislation Committee's recommendations. The committee expressed concern during initial consideration of the bill that there would not be adequate parliamentary scrutiny over the power of Scottish ministers to give directions to relax or dispense with the provisions of building regulations.

As it stands, the bill places no restrictions on Scottish ministers' ability to relax building regulations. Amendment 4 will provide that where regulations under the bill state that specific provisions of building regulations may not be relaxed, ministers may not give directions that would relax those provisions. Therefore, Parliament will be able to scrutinise the extent to which the power is available to ministers.

I move amendment 4.

Amendment 4 agreed to.

Section 3, as amended, agreed to.

Sections 4 and 5 agreed to.

Section 6—Building standards assessments

The Convener: Amendment 5 is in a group on its own.

Des McNulty: Amendment 5 will extend the scope of what a building standards assessment can include under section 6. It is intended that such assessments should be available to owners in situations where a letter of comfort is currently sought. Members might remember that Murdo Fraser raised the issue in the stage 1 parliamentary debate. Such letters of comfort have become commonplace in the house-buying process and they give the buyer some reassurance that no enforcement action will be taken in relation to unauthorised work that has been carried out on a building. One of the aims of building standards assessments is to give a formal basis and some uniformity to the process.

As it stands, section 6 defines the building standards assessment too narrowly to achieve that purpose. Amendment 5, therefore, will allow other matters to be covered by the assessment, including the extent to which a local authority considers unauthorised work has been done, whether a continuing requirement has been complied with and whether a defective building notice could be served.

The amendment will also permit Scottish ministers, by regulation, to make further provision on which matters a building standards assessment might cover, including the period for which unauthorised work would be assessed, the circumstances in which only part of a building might be assessed and matters that are not to be assessed in particular cases or types of cases. That would permit some flexibility in the application of such assessments, which we do not have in the present drafting, and help to meet concerns that have been raised by people in the industry about the effect of the assessments when they are introduced.

I move amendment 5.

Bruce Crawford: I seek clarification. In amendment 5, subsection (2)(d) states that a building standards assessment is an assessment of the extent to which

"the building has defects which entitle the authority to serve on the owner a defective building notice."

In the past, it was commonplace for people who made modifications to their houses to seek building warrants. That is the reason for that sentence. I am concerned for individuals who have bought their home in good faith and taken on a liability that was incurred by a previous occupant. The new occupant might be required to put right a defect, even though it was not their fault. How do you intend to deal with such circumstances? That would be an unfair liability for an individual to bear, given that the property had been handed on in an unfit state. That concerns me somewhat.

10:00

Des McNulty: What we are trying to do is right; defective buildings should be identified. I can give Bruce Crawford two matters of comfort. First, the process will be introduced over a transitional period. We hope that owners would have buildings inspected so that any serious building defects could come to light. Secondly, when buildings are being bought and sold, we want to encourage surveyors to examine areas of defects and, where a defect is suspected, to get a building standards assessment in place.

We are trying to provide greater protection for the public and perhaps to place an additional onus of professional responsibility on the way in which

surveyors undertake their tasks. We must encourage the different professional agencies, especially surveyors, to ensure that they are making all the requisite assessments on whether there are building defects. In the course of time, it is hoped that that would avoid the situation that Bruce Crawford describes.

Bruce Crawford: I do not dispute that you are trying to do the right thing, but I am not sure that what I heard helps to alleviate my concerns. For example, take a person who does not expect that a serious defect exists in a property. If a loft extension is completed without the required engineer's certificate being submitted to building control and the house is then sold to someone else, it is only when that person sells the house that a serious defect might come to light. I seek to ensure that those people are not unduly penalised by that process. There is still a danger that that might happen, despite what the minister has told me.

Des McNulty: The situation that Bruce Crawford describes is one in which people have not done things properly and got a warrant. It is not the Government's responsibility to set more flexible regulations that will retrospectively allow that to happen or indemnify the situation in any way. Our objective is to establish a clear set of building regulations to prevent the situation that Bruce Crawford described. That is our intention. There will probably be consequences for some individuals if corners have been cut or things have been done incorrectly. However, that does not cut against what is the right thing to do with regard to establishing the regulations that we want to operate.

Bruce Crawford: I am still concerned that innocents who had nothing to do with the process will get caught. I need to think more about what I might do at stage 3. I understand what the Executive is trying to achieve, but the bill might need some process whereby innocent parties would have a right of appeal to a local authority for help. Individuals might get caught in a trap through no fault of their own and incur substantial costs.

Des McNulty: I do not think that it is within the scope of the bill to find a mechanism for dealing with defective procedures that have occurred in the past. Our objective is to establish correct procedures that should apply in any future building regulations. If people have liability claims against surveyors or previous owners for not doing things correctly, it is up to them to pursue the matter. I do not think that there is any scope for the Executive to get involved; instead, our job is to set up an appropriate legal framework.

The Convener: John Scott has signalled that he wants to ask a further question. Actually, he should have asked his question earlier when I gave members the opportunity to do so, but I will allow him to come in now if he is brief.

John Scott: I do not want to raise any constituency cases in this respect, but would section 6 cover defective building work that was carried out by rogue builders? Would that be addressed by another section?

Des McNulty: Other sections of the bill address part of that issue. However, if someone contravenes building regulations, section 6 allows the authority to resolve the matter by serving a notice. As a result, section 6 provides a vehicle for detecting and dealing with cases of defective building or failures to apply appropriate building standards.

Amendment 5 agreed to.

Section 6, as amended, agreed to.

Section 7—Verifiers and certifiers

The Convener: Amendment 6 is grouped with amendments 82, 7, 8, 83, 9, 10, 37 and 51.

Des McNulty: I would prefer not to speak to amendments 82 and 83 at the moment, because I would welcome the opportunity to hear what John Scott says about the intention behind them.

Amendments 6 to 10, 37 and 51 will implement more fully the policy intention behind sections 7, 11 and 18 and schedule 2 on approved certifiers, and they will establish ministers' powers to exercise the functions of verifiers in certain circumstances.

As drafted, section 7 will allow ministers to appoint persons as approved certifiers of design and construction. In practice, ministers will often wish to consider trade bodies' schemes that cover contractors such as plumbers and electricians. I do not want to appoint plumbers or electricians on my own; I certainly do not think that other ministers would necessarily want to have that responsibility or to try to find an appropriate vehicle for making such appointments. Should the terms and conditions of appointment to such schemes be consistent with the criteria that ministers will use in appointing certifiers, ministers might wish to approve the schemes. In that way, ministers will not have to approve thousands of tradespeople individually.

Where such schemes seek approved status, they will of course be subject not only to rigorous criteria for appointment, but to a monitoring and auditing scheme that will include measures such as regularly sampling the performance of individual scheme members. Amendment 6 will allow for such schemes to be approved and will also permit ministers to approve certain schemes, subject to limitations such as restricting their application to a certain geographical area or types of buildings.

Amendments 7 and 10 are consequential on amendment 6. Amendment 10 will provide that any certifier who has such status by virtue of a scheme that has been approved by ministers is subject both to limitations that are imposed by ministers on the schemes and to any limitations that the scheme itself contains. Amendment 7 will provide that, in section 7(3), the lists of approved certifiers that are held by Scottish ministers should hold details of any such limitations.

Amendment 9 clarifies that the reference to appointed verifiers and certifiers in paragraph 1 of schedule 2 means those who are appointed individually under section 7(1), not members of an approved scheme. Amendments 37 and 51 are also consequential on amendment 6 and relate to the ability to issue certificates under sections 11 and 18 in relation to design and construction. They provide that such certificates can be issued by certifiers who are members of approved schemes as well as by those who are appointed individually.

Amendment 8 will expand ministers' powers under section 7(5) to exercise the functions of a verifier in certain highly defined circumstances. It will add proposed subsections (5A) and (5B) to section 7. The purpose is to allow ministers to take over the verifier's function after an application for a building warrant has been made but not accepted, and where a completion certificate has been submitted but not accepted by a verifier. In other words, the amendment will allow ministers to take over a job during the verification process where that becomes necessary. Proposed subsection (5B) to section 7 would stipulate the circumstances in which that could occur, which would be where the verifier requests that ministers do so or where ministers consider that a verifier is for any reason incapable of exercising the verification function in a particular case. We anticipate that that would happen only rarely.

I move amendment 6.

John Scott: Amendment 82 would simply allow lists to be prepared for verifiers and certifiers to consider, which might be shorter than current lists. For example, it might be appropriate in seeking a verifier or certifier's authorisation to consider all relevant claims under the eventual act, with exceptions and exclusions. A parallel example is the way in which the Scotland Act 1998 devolves all powers to the Scottish Parliament with the exception of the areas of responsibility that are retained by Westminster, such as pensions, defence and taxation. Amendment 82 seeks to reduce the bureaucracy and the length of the lists. We would be saying, "You will do everything except this".

Amendment 83 seeks to substitute "character" for "nature" on the basis that direction of a general or specific nature scans rather better than does direction of a general or specific character. I feel that "character" is a less appropriate word in this instance than is "nature", but I will welcome the minister's explanation for why the word "character" was chosen in preference to "nature". I have no more complicated reason than that for lodging the amendment.

Angus MacKay: I will give the minister a bit more time to get some briefing together to answer John Scott's question by speaking for a bit. I want to make two points. One relates to the principle of appointing verifiers in general. I would like the minister to tell us how he envisages that the bill and any regulations that are attached to it will ensure a consistent and holistic approach among the roles that the different verifiers will perform.

Section 7(6), which John Scott has just touched upon, states:

"The Scottish Ministers may give verifiers direction of a general or specific character".

Will the minister tell us what he means by that, because I hope that he means a lot more than just "may"? If the function is not going to continue to be discharged as it is currently, and if a wider set of players are going to come on to the field, it is particularly important that they are given clear instruction, advice and guidance to ensure that the approach that individual verifiers take in individual circumstances is consistent across a range of projects and works.

Des McNulty: On John Scott's amendment 83, the word "character" is well precedented in acts of the Scottish Parliament. It has been used in, for example, the Water Industry (Scotland) Act 2002, the Housing (Scotland) Act 2001, the National Parks (Scotland) Act 2000 and the Ethical Standards in Public Life etc (Scotland) Act 2000, so it is pretty well defined. "Nature" has a more general meaning—"character" is a more precise word in this context.

On amendment 82, our view is that, given the way in which the bill is drafted, we already have the capacity to define what is done in the way that John Scott suggests. Amendment 82 is not necessary, because we can, under the bill as drafted, list verifiers in the way that John Scott describes. In fact, we intend to do so. Our intention is not to produce long and bureaucratic lists; we want to make things as sharp as possible. I therefore ask John Scott not to move amendment 82.

10:15

Angus MacKay appealed for a consistent and holistic approach. Verification is done by local authorities and will continue to be done by local authorities. That is probably the best way of ensuring a consistent and holistic approach, which Angus MacKay suggests is important.

He also asked whether ministers will be able to impose uniformity on the wider set of players that are coming on to the field. Section 7(6) is a new provision that gives ministers powers to do that, which they did not previously have. Our intention in introducing the provisions is to do precisely what Angus MacKay suggests needs to be done. I assure him that we intend to be proactive not only in the way in which the new agency will work and the way in which the Executive will monitor that, but in the liaison between the Executive, local authorities and the industry. We are proceeding on the basis of trying to agree on uniformity and to introduce mechanisms to do that in the way in which we apply section 7(6).

Amendment 6 agreed to.

Amendment 82 not moved.

Amendments 7 and 8 moved—[Des McNulty]—and agreed to.

Amendment 83 not moved.

Section 7, as amended, agreed to.

Schedule 2

VERIFIERS AND CERTIFIERS

Amendments 9 and 10 moved—[Des McNulty]—and agreed to.

Schedule 2, as amended, agreed to.

Section 8—Building warrants

The Convener: Amendment 11 is grouped with amendments 12 to 17, 20, 44 to 46, 46A, 49, 54, 57, 58, 60 to 66, 68 to 74, 76 and 77.

Des McNulty: I begin by referring the committee to the detailed letter that I sent to the convener, which I presume has been circulated to committee members. As I said in that letter, the Executive is aware that the bill's focus on owners as the only people who can apply for building warrants and submit completion certificates has been unduly restrictive and would introduce constraints that the Executive and the construction sector would find difficult.

I have therefore lodged amendments 12 to 17, 20, 44 to 46, 49, 54, 57, 58, 60 to 66, 68 to 74, 76 and 77 to change that approach. The intention is to allow anyone to apply for a building warrant, as is the situation now. The owner, the person who carries out the work on the owner's behalf or the person on behalf of whom the work is done will be able to submit the completion certificate. Building warrant enforcement notices, which are to be used when the building warrant and completion certificate procedures have not been complied with, will be served on those who carry out work on their own behalf, those who instruct others to carry out work for them, or the owner if no one else with responsibility for the work can be found. However, once the completion certificate has been accepted, enforcement and compliance provisions will apply only to the owner because, as with current practice, the owner has continuing responsibility for the building.

We believe that our amendments will ensure a much more realistic approach to the process of warrant application and to submission of completion certificates, while ensuring that the responsibility for the building and the process as a whole rests with the owner.

As I also said in my letter to the convener, the amendments will address issues that have been raised by the Disability Rights Commission and by fire interests, who were concerned about the interaction of the bill with the Disability Discrimination Act 1995 and with the European workplace directive, which places duties not on owners but on service providers and employers. The amendments also address concerns that were expressed by Rhona Brankin in the stage 1 debate by ensuring that absent owners do not slow down the process and that leaseholders who want to make alterations are not prevented from doing so.

Amendment 15 is a logical addition to the defences in section 8 of the bill and relates to situations in which work is carried out without a warrant or not in accordance with a warrant. The bill already provides a defence relating to a situation in which a person who was carrying out work had reason to believe that a warrant had been granted. The amendment provides a defence where owners, or persons on whose behalf work is carried out, had no reason to believe that work was not being carried out in accordance with the warrant. It also creates an additional defence for owners where they did not know or have reasonable cause to know that work was being carried out at all. Amendment 15 will deal with a series of anomalies.

Amendment 16 is consequential on amendment 15. Section 8(5) sets out how the defences in section 8 can be used and amendment 16 would ensure that it included that new defence.

Amendments 17, 44, 45 and 46 are the key changes. Amendment 17 will have the effect of allowing anyone to submit a warrant application and amendments 44 and 45 will require the relevant person to submit a completion certificate. The relevant person is defined by amendment 46 and includes the three categories of people whom I have already outlined. In passing, I point out that the intention of John Scott's amendment 46A appears to be a bit different from that of amendment 46, which is that the person instructing the work should be responsible for the completion certificate, with the owner assuming responsibility on the failure of the responsible

person. If a tenant instructs work on his own behalf with the authority of the owner, he will be able to submit a completion certificate under amendment 46. Where he is working under the instruction of the owner, we consider that the owner must be responsible, which is what the current draft provides for. On that basis, I ask John Scott not to move amendment 46A.

The remaining amendments in this group are consequential on amendments 17, 44 and 46. Amendments 11 to 14 will amend the parts of section 8 that relate to the offence of carrying out work either without a warrant or not in accordance with a warrant, and to the defence that the bill provides in those cases. Amendment 20 will expand the category of those who may apply for an amendment to a warrant. Amendment 49 relates to those who may submit certification of construction along with a completion certificate and amendment 54 relates to whose who may apply for temporary occupation or use of a building before a completion certificate is granted.

Amendments 57, 58 and 60 will allow building warrant enforcement notices to be served on persons other than the owner. Amendments 61 to 66 are directly consequential on those amendments and will amend references to the person on whom notices are served. Amendments 68 to 74, 76 and 77 are also consequential on those amendments and apply variously to sections 32, 37 and 41.

I am sorry that that was so technical, but that is the nature of the amendments, I am afraid.

I move amendment 11.

John Scott: Amendment 46A is a probing amendment that was designed to test the minister's position on the definition of a tenant—or to find out whether one exists. As he said, the minister undertook at stage 1 to introduce amendments on that matter and I welcome what he has said in that regard this morning, and the fact that he has lodged amendments 44, 45 and 46. However, I am not sure that the term "relevant person" covers all the permutations that are currently covered in law by the definition of owners and tenants and I would welcome more comments on that matter.

Angus MacKay: The issue of the general safety of buildings has been important in Edinburgh in recent years, but it is relevant throughout the country. There have been one or two high-profile incidents in which people have been killed because of buildings' not having been properly repaired or maintained, or because of accidents that might have been avoidable.

This grouping of amendments is headed "Owners and other persons connected with a building: rights, responsibilities and offences". Understandably, we are concentrating on who takes responsibility when building work is taking place, and on whether warrants have been properly obtained. I am sure that the minister will appreciate the fact that buildings can be dangerous in other circumstances that are not related to times when work is going on without a warrant, but where repair and maintenance has not taken place for some time.

What are the minister's views about a regime that will ensure, or that could ensure, that buildings are repaired and maintained in proper order, and under which owners who fail to carry out such repairs and maintenance are subject to proper liability? Might the minister consider at stage 3 an amendment that would have the general effect of requiring owners to take reasonable measures to ensure that they have at least inspected their buildings to determine whether there is any requirement for repair and maintenance and that, where that is required, they have taken all reasonable steps? Perhaps local authorities could play a role in ensuring enforcement of such repairs and maintenance where a need for that is discovered.

Des McNulty: On John Scott's points about amendment 46A and our amendments in the group, I think that we have shied away from legally defining a tenant. Our objective is to be more flexible, which is why we propose terminology such as "relevant person". John Scott is right to highlight the vast variety of circumstances that can arise in the course of professional experience. We think that it is better to use the phrase "relevant person" as a mechanism for addressing that complexity, rather than jump through hoops trying to define ever more precisely what is meant by a tenant. It is a question of determining the most appropriate approach. We think that using that phrase is the best way to achieve the aspiration that I think John Scott and I share. I hope that he accepts that assurance. The notion of "relevant person" potentially allows us to deal with issues in regulations more effectively than through defining "tenancy".

Angus MacKay's point relates to dangerous buildings or to buildings that are reaching the point of being dangerous. A combination of legal mechanisms is in place, under both common law and the occupiers' liability act 1968, which contains the legal mechanism for dealing with such issues. It is difficult to see how we can address those issues within the framework of a building standards act if the scope of that legislation is not expanded beyond what it is intended to cover.

The proposed legislation is not geared towards identifying liabilities for accidents in relation to the circumstances that Angus MacKay highlights. The

bill will, however, place a number of responsibilities on owners and professional people in relation to the way in which buildings are designed and put together. That will, I hope, reduce the possibility of buildings' becoming dangerous, but it does not provide a mechanism for actually dealing with liability. That might be the point that Angus MacKay is homing in on.

Angus MacKay: Although liability is consequential on the matter, I am trying to focus on the responsibility that would apply to property owners to take all reasonable measures in relation to repair and maintenance. If an owner failed to take those measures, there would clearly be potential for a consequential liability if something happened as a result of the owner's failure to have due regard to that requirement.

However, I do not seek to deal with that part of the process, because that matter could be settled by common law or elsewhere. I seek merely to place an obligation on owners not simply to undertake repair and maintenance as and when they feel like it but to have due regard to public safety. That would require owners at least to satisfy themselves that they have inspected their buildings or have had the buildings inspected. We would need to fit that into a broader regime.

I would be satisfied if the minister at least gave an undertaking that, if I write to him, he will give the matter proper consideration. Perhaps he could lodge an amendment at stage 3. We need to press the issue further so that we make the concerns and how they might be resolved a bit more transparent.

10:30

Des McNulty: I will make one correction for the record: the act that I meant to mention was the Occupiers' Liability (Scotland) Act 1960, rather than a 1968 act. My colleague has whispered in my ear that I should rectify that.

The Convener: I am sure that one of my colleagues was just about to point out that mistake.

Des McNulty: During its previous deliberations, the committee considered the role of owners and what responsibilities for inspection of buildings can be placed on them. It would be hard to establish precise duties that could be applied across the different kinds of ownership, which range from domestic houses to public buildings. However, I am happy to examine the issue and to reply to Angus MacKay and the committee on the practicalities of the duty of inspection that Angus MacKay seeks.

The Convener: I will let Bruce Crawford in if what he has to say is related to the specific point in question.

Bruce Crawford: I understood that local authorities already had powers to deal with a situation in which a property is in such a state of disrepair that it is becoming a danger to the public. I am not sure which legislation those powers come under, but I know that environmental health officers can carry out such activity. However, perhaps that is not what Angus MacKay is after.

Angus MacKay: There might well be existing powers that allow a local authority to take action when it knows that a building is in a state of disrepair. However, if the local authority does not know the state of repair of every building in the city, it will be difficult for it to take action. That is why it is important that individual owners, who have the benefit of the asset, should be required to have proper regard to public safety in relation to the condition of the asset.

Des McNulty: I will, if I may, pick up on the point that Bruce Crawford made. The bill will give local authorities additional powers to go in and check defective buildings. However, Angus MacKay wants a duty to be placed on owners to ensure that their buildings are kept in the right state. I am happy to examine the practicalities of that suggestion and to respond to Angus MacKay and the committee on that.

Angus MacKay: If I may expand on that—

The Convener: I would prefer to move on. The minister has said that he will respond in writing to the points that the committee has raised. If Angus MacKay wants to expand on those points, he can do so by writing to the minister.

John Scott: Convener—

The Convener: We have had the response to the debate, John. I have been quite liberal in allowing people to intervene while the minister was winding up. I would prefer to make progress.

Amendment 11 agreed to.

Amendments 12 to 16 moved—[Des McNulty]—and agreed to.

Section 8, as amended, agreed to.

Section 9—Building warrants: grant and amendment

Amendment 17 moved—[Des McNulty]—and agreed to.

The Convener: Amendment 84 is grouped with amendments 18, 19, 21, 22 and 25.

John Scott: Amendment 84 would allow a verifier, if they wished, to take a wider view of an application for a grant and not to be limited to considering only the documentation submitted with the application. Local knowledge may be available in Edinburgh about subsidence and in the Lothians

about old mining workings that could affect the outcome of an application for a grant for construction or demolition. However, that knowledge may not be included in the plans, specifications or other information that has been submitted. Amendment 84 would include in the bill a verifier's right to take a broader, more holistic view of an application. I believe that that would be in line with the committee's views, as debated previously.

I move amendment 84.

Des McNulty: We believe that amendment 84 is unnecessary and that the existing provisions are adequate to ensure that the verifier takes a fully informed decision. Regulations under section 33(1) will provide for the form and content of applications for warrants. Procedural regulations under section 30 will set out the procedure that is to be followed in connection with applications. Under paragraph 1 of schedule 4, procedural regulations may make provision for the submission with applications of various material, including "other information". Those provisions have been drafted to address the valid point that John Scott makes. On that basis, I ask John Scott to withdraw amendment 84.

Amendments 18, 19, 21 and 22 relate to the provisions in section 9 that deal with amendments to a building warrant. They are relatively minor and would focus the relevant provisions more closely on the policy intention and make the bill more consistent.

As drafted, section 9(5) restricts amendments to a building warrant to deviations from plans or specifications. However, it is clear that people may want to change other aspects of the warrant. For example, they may wish to change the purpose of a conversion without changing the plans or specifications. Amendment 18 would ensure that all warrants are subject to amendment.

Amendment 19 relates to section 9(5)(b). It would make clear that references that are made to completion certificates are to completion certificates

"in respect of the work or conversion".

Amendment 21 would remove the restrictions on what an amendment to a building warrant may include, which the bill as drafted restricts unnecessarily. It would make it possible to amend any part of the warrant, rather than just the plans and specifications.

Amendment 22 would provide that where an application for an amendment to a building warrant has been made, a verifier must continue to be satisfied with all the matters with which they were satisfied when granting the initial warrant, taking into account the proposed amendment and the information that has been supplied with it.

In general, the Executive wants the building regulations that apply to any application for an amendment to a building warrant to be those that were in force when the application for the original warrant was made. The exception to that provision is cases in which ministers have made a relevant relaxation or dispensation after an application for a warrant has been made. Amendment 25 would provide for such cases. Without the amendment, it would be possible for someone to be granted a relaxation by ministers on a building that they were constructing, but they would not be able to amend the relevant warrant to reflect that. It is unfair that someone who has started work on a building should not be able to benefit from subsequent relevant relaxations that ministers may make.

I reiterate a point that I made in my closing speech during the stage 1 debate—the use of relaxations will be rare. We have proposed this framework on the basis that it will be used sparingly.

Bruce Crawford: When I read amendment 84, I was taken by the proposal, particularly because of subsidence, old mine workings, potential landslips and other unforeseen circumstances. The minister talked about sections 30 and 33 of the bill—

Des McNulty: I spoke about sections 33(1) and 30.

John Scott: Could the minister repeat what he said?

Des McNulty: Regulations under section 33(1) will provide for the form and content of applications for warrants. Procedural regulations under section 30 will provide for the procedure that is to be followed in connection with applications.

Bruce Crawford: I have read through those sections. Section 33(1) deals with what the form will say; it does not deal with the other information that might be available. Section 30 does not seem to provide a verifier with any flexibility to take on board other circumstances that might be known about but which are not contained in the application form or plan. The minister's answers so far have not convinced me that amendment 84 is unnecessary. Unless the minister can be a bit more specific on exactly what sections 30 and 33(1) will achieve, I will support amendment 84.

Des McNulty: I refer Bruce Crawford to schedule 4, which is introduced by section 30. Paragraph 1 refers to "other information", and that mechanism deals with John Scott's point. Our interpretation is that the matters to which John Scott is referring could be dealt with under that procedural regulation.

Given that John Scott raised the issue, we will reflect on it. If we feel that the way in which that section is drafted is inadequate, we will return to

the committee on it. Our feeling is that the matters raised by John Scott could be addressed by the way in which the bill is drafted.

Bruce Crawford: That would be useful because, as far as I can see, schedule 4(1) does not deal with information extraneous to the application or to something submitted to the verifier. Amendment 84 could apply to information that is not submitted or made available to the verifier immediately and must, therefore, be considered.

John Scott: I thank the minister for his comments and Bruce Crawford for his support. I am still not clear that paragraph 1 of schedule 4 does what I had intended to do with amendment 84. If the minister is giving an undertaking that he will reconsider the matter and give further clarification or lodge an amendment at stage 3, I am happy to withdraw amendment 84. If he is not proposing to do so, I will press amendment 84.

Des McNulty: We will write to John Scott, with copies to other committee members, when we have had a chance to consider the matter in more detail. Our view is that the matter is dealt with under the existing mechanism, but if John Scott is not satisfied with our explanation or if there is no movement from the Executive, he is free to lodge an amendment at stage 3. However, we will consider the matter and get back to him well in advance of stage 3.

John Scott: I am happy with the minister's assurances.

Amendment 84, by agreement, withdrawn.

Amendments 18 to 22 moved—[Des McNulty]—and agreed to.

The Convener: Amendment 23 is grouped with amendments 24, 47 and 48.

Des McNulty: Amendments 23 and 24 would amend section 9 to provide that where the verifier who grants the warrant or amendment to a warrant is in a local authority, but not the local authority for the geographical area in which the building is situated, he or she will be required to send a copy of the warrant to the local authority for that area.

Amendments 47 and 48 would have the same effect on section 19, in relation to verifiers accepting completion certificates. Therefore, the amendments deal with a potential anomaly.

I move amendment 23.

Amendment 23 agreed to.

Amendments 24 and 25 moved—[Des McNulty]—and agreed to.

Section 9, as amended, agreed to.

Section 10—Building warrants: extension, alteration and conversion

The Convener: Amendment 26 is grouped with amendments 27, 28, 29, 30, 31 and 32.

10:45

Des McNulty: This group of amendments relates to section 10, which sets out the particular circumstances in which a verifier must refuse building warrant applications in relation to extensions, alterations and conversions. Our intention is to bring the bill more into line with the established policy intention of the section. Amendments 26, 27, 29, 30 and 32 are intended to deal with a situation in which an entire building fails to comply, or fails to comply to a greater degree, with building regulations following the extension, alteration or conversion of part of it. As drafted, the bill is unclear whether the verifier would be able to consider the effect on the whole building or on only the part of the building that is directly concerned. As a result of the amendments, the effect on the whole building would be relevant.

Amendments 28 and 31 are intended to remove the potential for ambiguity arising in practice in relation to extensions that cause a building to fail to comply, or to fail to comply to a greater degree, with building regulations. The use of the word "direct" in sections 10(2)(b) and 10(3)(b) creates the potential for arguments about whether extensions cause a building to fail to comply as a direct or indirect result of the extension. The amendments would provide that where the result is direct or indirect, a verifier must refuse to grant the warrant. We were trying to sort out a wording problem.

I move amendment 26.

Amendment 26 agreed to.

Amendments 27 to 32 moved—[Des McNulty]—and agreed to.

Section 10, as amended, agreed to.

Section 11—Building warrants: certification of design

The Convener: Amendment 33 is grouped with amendments 34 and 35.

Des McNulty: Amendment 33 would broaden the range of types of building warrant that may be accompanied by certification of design. It would remove the reference to warrants or amendments to warrants for the construction of a building, thereby permitting all types of warrants to be accompanied by design certification. Our purpose is to permit such certification to apply not only to warrants for construction but to warrants for

demolition or conversion or the provision of services, fittings and equipment. That would broaden the process out.

An important factor in the approval process can be the way in which the demolition is carried out, and the certifier could be appointed to certify that the process to be followed in the demolition complies with building regulations. In relation to conversion, a certifier might be able to certify that the building as designed complies with the building regulations that apply to the new use.

Amendments 34 and 35 should be read in tandem. They would expand the matters that an approved certifier may certify, including that the proposed method of working in relation to work for construction, demolition or the provision of services, fittings or equipment complies with building regulations. That might exclude certifying that the process for demolishing a building complies with building regulations.

I move amendment 33.

Angus MacKay: Section 11(3) states:

"In determining the application, the verifier must accept the certificate as conclusive of the facts to which it relates."

Is that the current practice? I would like a yes or no answer.

Des McNulty: I am being advised that the answer is yes, but that there are very few such cases. Under the process in which we are engaged, we have to license the certifiers.

Angus MacKay: I will take that as a qualified yes.

Section 11(3) states:

"In determining the application, the verifier must accept the certificate as conclusive of the facts to which it relates."

What happens if the verifier spots that one of the facts is wrong? While the minister is thinking about that, I suggest that it might be more sensible to replace that subsection with section 17(2), which says:

"The verifier must accept the certificate if, but only if, after reasonable inquiry, it is satisfied as to the matters certified in the certificate."

Would that not supply the wiggle room required? I would be happy if the minister wished to write to me on that matter.

Des McNulty: We will write to you. There is a difference between the completion arrangements and the initial certification. Perhaps I could clarify that in correspondence with the member.

Angus MacKay: If the minister would do that well before stage 3, I will be happy to consider his response.

Amendment 33 agreed to.

Amendments 34 and 35 moved—[Des McNulty]—and agreed to.

The Convener: Amendment 36 is grouped with amendment 50.

Des McNulty: Amendments 36 and 50 relate to new offences under the bill. The new offences are in line with policies that we have already outlined, and are a logical extension of offences in the bill as introduced. The new offences relate to a certifier of design and construction who knowingly or

"recklessly issues a certificate … which is false or misleading in a material particular".

As I said, that is in line with offences already in the bill that relate to verifiers who knowingly grant building warrants or accept completion certificates containing false or misleading information and to persons who knowingly or recklessly submit building warrants or completion certificates containing materially false or misleading information.

I move amendment 36.

Angus MacKay: This is like "Groundhog Day": I ask the minister to write to me in the same terms as those in which he undertook to write to me in relation to our discussion of the previous group of amendments.

Section 18(2) reads:

"In determining whether or not to accept the completion certificate, the verifier must accept the certificate of the approved certifier of construction as conclusive of the facts to which it relates."

My point is exactly the same as the one that I raised earlier: what happens if one of the facts is spotted as being wrong?

Des McNulty: We can deal with that matter in the same correspondence.

Amendment 36 agreed to.

Amendment 37 moved—[Des McNulty]—and agreed to.

Section 11, as amended, agreed to.

Section 12—Building warrants: reference to Ministers

The Convener: Amendment 38 is grouped with amendments 39, 85, 86 and 40.

Des McNulty: Amendments 38 to 40 relate to the reference to the Scottish ministers of doubts arising over the compliance of building regulations in the context of building warrant applications. As drafted, section 12 permits only verifiers to refer such matters to ministers and states that that must be in agreement with the applicant. Amendments 38 and 39 permit either the applicant or the verifier

to refer such matters to ministers without the agreement of the other parties, so it is a mechanism that anticipates potential disputes between the parties.

Ministers have discretion over whether to express a view on a matter referred to them. We intend to issue guidance on the situations where it will be appropriate to refer matters to ministers and on the situations where ministers might refuse to give a view—for example, where they consider that there is no element of doubt. Amendment 40 provides that where ministers wish to express a view on a matter referred to them, they must intimate that view to the relevant verifier and to the applicant.

I would like to listen to John Scott's statement on amendments 85 and 86 and respond on the basis of what he says, if that is permissible.

I move amendment 38.

John Scott: Amendments 85 and 86 should be read together. The amendments seek to encourage verifiers to consult as widely as possible and to take an holistic view of any project, which Angus MacKay mentioned earlier.

Although a certifier of design might have approved part of the Ronan Point building, which was mentioned in evidence, the ensuing progressive collapse following a gas explosion might have been averted had the overall design of the building been considered more carefully and by a wider group of people.

Although it might not be the place of the certifier of design to be consulted after he had certified his part of the building, it should, in practice, be possible for verifiers to consult as widely as they see fit if they have doubts about a building or if they spot mistakes. Human safety is the key consideration, and if more minds examine new concepts and designs, that is likely to reduce the risk of concept and design failure, as happened in the Ronan Point disaster. That is the reasoning behind the amendments.

The Convener: I will take any other members who wish to speak to this group of amendments.

Bruce Crawford: It is difficult to speak to the group until I hear what the minister says. That is the problem.

The Convener: I will allow the minister to speak now as some members are interested in what he has to say about John Scott's amendments. The minister will address those amendments first. I will give him an opportunity to wind up later after other members have spoken.

Des McNulty: I am doubtful whether John Scott's amendments will achieve their intention. An approved certifier is employed by the applicant. An applicant may be an approved certifier. Either way, the certifier is not really a third party in the way that John Scott suggested. The role of the certifier is to certify that a certain part of a building meets regulations. The locus of that certificate relates only to the part of the building that has been certified. Once the certificate has been issued, the verifier accepts it. There should be no element of doubt attached to anything that is certified by an approved certifier.

The section deals only with cases where there are doubts, so it is very difficult to see how it can be manipulated to allow it to apply to anything certified by an approved certifier. John Scott is putting his finger on an issue, but we think that the system of certification and verification should deal with it. Amendments 85 and 86 do not assist that process.

The Convener: Do any members want to participate in the debate?

John Scott: I may not be making my point satisfactorily. In the Ronan Point building, there were four columns of bricks that were not adequately tied together, yet each individual brick was a building block that was certified by a certifier of design as being adequate in its own right. However, the overall concept failed. I am trying to ensure—although the wording of the amendment may not do so adequately—that overall responsibility is not confined to the verifier. If the verifier or anyone else has doubts, they should be able to raise them with the certifier of design. That is better than watching a building collapse because it was not someone's place to raise concerns. These situations do not happen often, but when they do they are dramatic and terrible.

11:00

Des McNulty: John Scott is trying to take a belt-and-braces approach that involves referring issues back to the certifier of design. We believe that that would lead to confusion. The certifier's job is to certify buildings. It is the role of the certifier to issue a certificate for part of a piece of work. Verifiers check the certification process and have a broader general responsibility. If a verifier is in doubt, they should be in discussion with the applicant. If there is further doubt, they should refer matters to ministers, at which point there would be professional input. If doubts are not resolved, the warrant will be withheld. That is the mechanism for dealing with such issues.

The mechanism that John Scott is trying to establish might confuse the roles of the certifier and the verifier. The member is trying to ensure that verification is done properly. The mechanism that we are trying to establish for handling doubts and uncertainties is probably better than the one that he proposes.

Amendment 38 agreed to.

Amendment 39 moved—[Des McNulty]—and agreed to.

The Convener: Does John Scott wish to move amendment 85.

John Scott: In the light of what the minister has said, I will not move the amendment. I do not want in any way to endanger or complicate the bill. I welcome the fact that the minister has taken on board what I am trying to achieve.

Amendments 85 and 86 not moved.

Amendment 40 moved—[Des McNulty]—and agreed to.

Section 12, as amended, agreed to.

Section 13—Building warrants: further provisions

The Convener: Amendment 41 is grouped with amendments 42, 43 and 78.

Des McNulty: The amendments would add new offences to the bill that are in line with policies that have already been set out. I hope that they will be seen as a logical extension of the bill's existing provisions.

Amendment 41 clarifies that, where a building warrant relates to a limited-life building that must be demolished at the end of the period stated in the warrant, the warrant does not constitute a warrant to carry out that demolition. A separate application for a warrant for demolition must be made.

Amendment 42 creates two new offences relating to limited-life buildings. If an owner fails to demolish a limited-life building at the end of the period specified in the warrant, that will be an offence. If someone occupies or uses such a building after the period specified in the warrant, that, too, will be an offence. Proposed new section 13(9), which the amendment would insert in the bill, specifies the penalty that applies to the second offence that I have outlined. The penalty is in line with that for occupying a building without a completion certification. The new subsection makes provision for local authorities to seek to prevent or restrain occupation of such buildings by applying to the civil courts for an interdict.

The new offences are necessary to ensure that buildings with a limited life do not exist and are not used beyond the point determined by the verifier, because they may present a danger to the public.

Amendment 78, which is consequential to amendment 42, would add the new offence of occupying or using a limited-life building after the period specified in the warrant to the list of exceptions to the standard penalty for offences that is outlined in section 43(2).

Amendment 43 would split section 13 into two sections. The amendment is simply due to the extra six subsections on limited-life buildings that amendment 42 would add to section 13.

I move amendment 41.

Amendment 41 agreed to.

Amendment 42 moved—[Des McNulty]—and agreed to.

Section 13, as amended, agreed to.

Amendment 43 moved—[Des McNulty]—and agreed to.

Sections 14 and 15 agreed to.

Section 16—Completion certificates

Amendments 44 and 45 moved—[Des McNulty]—and agreed to.

Amendment 46 moved—[Des McNulty].

Amendment 46A not moved.

Amendment 46 agreed to.

Section 16, as amended, agreed to.

Section 17—Completion certificates: acceptance and rejection

Amendments 47 and 48 moved—[Des McNulty]—and agreed to.

Section 17, as amended, agreed to.

Section 18—Completion certificates: certification of construction

Amendments 49 to 51 moved—[Des McNulty]—and agreed to.

Section 18, as amended, agreed to.

Section 19 agreed to.

Section 20—Occupation or use without completion certificates

The Convener: Amendment 52 is grouped with amendments 53, 55 and 56. Before calling on the minister, I propose that we should go no further than the target that we set ourselves for today, which is to the end of section 21.

I call on the minister to speak to all the amendments in the group and to move amendment 52.

Des McNulty: Amendment 52 will have the effect of reducing the number of situations in which occupation of a building is prohibited. The amendment will focus section 20(1)(b) more directly on the policy intention for that section.

Where a building regulations compliance notice or a defective building notice is issued, the

Executive does not wish necessarily to prohibit occupation or use unless a building warrant is required and the criteria in section 20(1)(a) apply. Consequently, references to such notices will be deleted by amendment 52. As currently drafted, section 20(1)(b)(i) would have the undesirable effect of criminalising anyone who occupied the building to carry out minor works as a result of such notices. Amendment 52 will prevent the occupation of buildings that have been subject to a dangerous building notice only if it is necessary in the first place to evict people from the building under the powers given in section 26 and in schedule 3.

It may be that the work that is required by the dangerous building notice does not require people to evacuate the building. That could depend on the nature of that work. Amendment 52 will provide that, when the powers of the bill are used to remove people from a dangerous building and a dangerous building notice is served, occupation or use of the building is prohibited until the completion certificate for the work required by virtue of the dangerous building notice has been accepted.

Amendments 53 and 56, like amendment 19, which we dealt with previously, relate to sections 20(2) and 20(5)(a) and make it clear that when references are made to completion certifications, the references are to completion certificates in relation to the relevant construction or conversion work.

Amendment 55 provides that in section 20, where a verifier who is not the local authority grants permission for the temporary occupation or use of a building, a copy of that permission must be sent to the relevant local authority. That will help to ensure that the local authority does not take enforcement action against the occupants.

I move amendment 52.

Bruce Crawford: The minister's lodging of this group of amendments is a sensible and pragmatic step. I wonder what happens in a situation in which part of a building is considered to be dangerous. It might be only a small part of a building, such as an extension to a home. What would happen in such circumstances and what part of the bill would allow individuals to remain in the substantial part of their home, but not occupy the bit that was considered to be dangerous?

Des McNulty: The dangerous building notice would specify the bit that people were not allowed to go into, so a part of the building, rather than the building as a whole, would be specified.

Amendment 52 agreed to.

Amendments 53 to 56 moved—[Des McNulty]—and agreed to.

Section 20, as amended, agreed to.

Section 21 agreed to.

The Convener: That brings us to the end of part 2 of the bill, which is the point that we agreed not to proceed past. Stage 2 of the Building (Scotland) Bill will continue at our next meeting, on 8 January, and the target point for consideration of the bill will be published in the business bulletin tomorrow. I thank the minister and the officials from the Scottish Executive for their participation in the meeting. I do not know whether it is an all-time record that we have got through a whole meeting of stage 2 consideration of a bill without a vote. Thanks to all the members for their participation and we shall continue after the new year. Have a good Christmas and new year, minister.

Des McNulty: The same to you, convener, and thanks to members of the committee.

The Convener: I will allow members a brief break before we consider the next item on the agenda. Dorothy-Grace Elder asked for a document to be circulated as she will be unable to participate. I shall ask the clerks to circulate it now to give members the chance to look over it during the break.

11:12

Meeting suspended.

11:18

On resuming—

Petition

Polluting Activities (Built-up Areas) (PE377)

The Convener: Item 3 is consideration of petition PE377, on polluting activities in built-up areas. The purpose of the item is to consider a paper that Fiona McLeod has prepared as reporter on behalf of the committee, with a view to asking the committee to endorse or amend it. It is proposed that we then submit the paper to the Deputy Minister for Social Justice, the Minister for Environment and Rural Development and the chief executive of the Scottish Environment Protection Agency to respond to the comments and recommendations in the report.

I invite the committee to consider the report's conclusions and recommendations in respect of the role of SEPA and planning authorities in assessing planning applications for incinerators, the regulation of incinerators, particularly in relation to the potential incineration of BSE-infected cattle, and the respective powers of SEPA and the Executive with regard to the regulation of incinerators. Before I invite members to comment on the paper, I invite Fiona McLeod to make additional comments or highlight specific points.

Fiona McLeod (West of Scotland) (SNP): I will highlight a few areas, but I begin by thanking everyone involved—SEPA, the ministers, Sacone Industries and the petitioners—for their help and for the openness with which they shared information. Most of all, I record my thanks to Ros Wheeler for her superb support.

PE377 first came before the Public Petitions Committee in June 2001; it is now December 2002. For petitioners and others, the process will seem to have taken a very long time. I assure all those involved that that was because we wanted to treat the petition with great care and to ensure that we produced sound results. In many ways, the time factor is as it is because for almost every question that we asked, the answer raised yet more questions, which highlights the complexity of the issue.

I adopted the Transport and the Environment Committee's practice of considering the generic implications of the specific examples that were brought to the committee. That is reflected in the remits that the convener reiterated and in paragraph 16 of my report, which highlights three key areas that I felt that the committee should consider.

It may be helpful to elucidate some of the things that we have learned in the three key areas. When considering the role of planning authorities and SEPA, we referred to the Environmental Impact Assessment (Scotland) Regulations 1999. Those regulations state that a local authority decides whether an environmental impact assessment needs to be done for a planning application and, if the decision is that an assessment is necessary, the local authority carries it out. SEPA does not have a specific role in environmental impact assessments.

My recommendation is that SEPA should be made a statutory consultee to that process, because the current arrangements seem to be deficient.

I remind the committee that before the introduction of the 1999 regulations, we adhered to the Environmental Assessment (Scotland) Regulations 1988, in which an animal carcase is not considered a controlled substance. The committee will agree with me that since 1988 the situation regarding animal carcases has moved a long way.

Therefore, my second recommendation for the role of planning authorities and SEPA is that a retrospective review should be carried out of the six incinerators in Scotland that incinerate animal carcases under the 1988 regulations rather than the 1999 regulations. I am suggesting that because we have learned from the minister that national planning policy guideline 10, on planning and waste management, which is relevant to this situation, is not a priority in the review of planning regulations.

To sum up, I would like SEPA to become a statutory consultee; there should be environmental impact assessments for planning; and we should carry out a retrospective review of incinerators that dispose of animal carcases under the 1988 regulations.

The second key area attracted the most information. It refers to the current system for the disposal of BSE-infected cattle. The disposal of BSE-infected cattle is monitored under the auspices of the Rural Payments Agency. SEPA has no particular role in the disposal or incineration of BSE-infected cattle. We must bear that in mind throughout.

There is currently a test for BSE-infected cattle. The test is specified by the European Commission and results take 10 to 14 days to come through. In a letter of 26 June, Mr Finnie stated that, when the monitoring scheme was put in place, it was decided that it would not be economic to await the test results before the incineration of cattle.

There are two incinerators specified by the Scottish Agricultural College for cattle under the BSE fallen cattle scheme. That would lead one to think that BSE-infected cattle are going to

specified incinerators. However, with a wait of 10 to 14 days for the test results, and the fact that those results are not waited on, we can take no comfort or assurance that the other incinerators that can handle animal carcases are not incinerating BSE-infected cattle.

The issue went backwards between the minister and me. In July, Mr Finnie stated that he could not state whether BSE-infected cattle had been burned in the specific instance of Carntyne, although that comment can be transposed to the other six incinerators. I had my doubts about that answer, given that we knew how the RPA scheme followed cattle from the farm all the way through the chain. The minister must also have reconsidered those doubts because, in September, he said that he had instructed officials to go back over the paperwork. From that, the minister ascertained that two BSE-infected cattle had been burnt at Carntyne in a specified period.

The minister said that that had taken much effort and work and that he had done it as a one-off because he realised that the local environment community and we were concerned about what was happening at Carntyne. He thought about it again and, in October, said that he would continue to have that work done in relation to Carntyne and the information would be given to SEPA, as the environmental regulator, for six months after the incinerator reopened.

I make it clear to members that planning condition 6 of the planning permission for the Carntyne incinerator to incinerate cattle stated that it must not dispose of or incinerate BSE-infected cattle. We are in a situation where we know that a planning condition has not been met. It took quite a long time for the minister to work through the process to find out that the information for that planning condition was available, but he is prepared to give it on a conditional six-month basis.

I want to make a reassurance about what is happening at Carntyne. Based on technical advice from SEPA, the burning of BSE-infected cattle at a minimum of 850 deg C destroys the BSE prion. None of SEPA's enforcement notices on the Carntyne incinerator has concerned the temperature dropping below 850 deg C. BSE-infected cattle are being burnt at Carntyne, but from the technical evidence that I have been given, we can be reassured that it is done as safely as possible.

The Convener: I want you to clarify one point. You draw attention to planning condition 6 for the Carntyne incinerator, which states:

"No special waste, clinical waste, remains from animals clinically confirmed or diagnosed as suffering from BSE … shall be burned at the plant."

Who set that condition? I recall that the local authority rejected the application.

Fiona McLeod: The rejection was overturned by the Scottish Office. Glasgow City Council set the condition.

Dorothy-Grace Elder (Glasgow) (Ind): The Scottish Office reporter set the condition just prior to devolution.

11:30

Fiona McLeod: The planning condition is enforced by the local authority and is regulated by SEPA. Neither of those organisations had the information to ensure that the planning condition was being met. They are now being offered that information for six months. I recommend that the review of the RPA's paper trail of BSE-infected cattle should not be limited to six months. Now that the Executive knows that it can review the matter, it should do so for as long as is necessary for all the incinerators that are burning cattle.

I turn to the regulation of incinerators by SEPA. The third bullet point of paragraph 16 is best characterised in layman's terms. The committee is considering a specific instance in relation to all regulatory enforcement situations. I kept returning to the question of how many notices must be issued before we say enough is enough. Should we pursue a policy of "three strikes and you're out"?

When SEPA is concerned about the environmental impact of an operation, it may produce enforcement notices. In the case of Carntyne, four enforcement notices have been produced, one of which was technical. The plant is closed while the operators bring their equipment up to the standard that the enforcement notices demand. However, it is clear from one of Mr Finnie's letters that both the Minister for Environment and Rural Development and the regulator are concerned about operators against which enforcement notices are continually issued but which fail to meet the conditions that are set down in those notices. In layman's terms, when can we say that enough is enough?

The minister and I debated the Executive's position on this matter. Although SEPA is the environmental regulator for Scotland, the minister can direct its operations. The minister stated clearly that he believes that that would be inappropriate. He knows that he has the power to direct SEPA, but he would be reluctant to use that power for fear that it would mean the Executive's interfering in the regulatory process. The minister is worried that if he issues guidance to SEPA he might cut across different Government portfolios.

I was not entirely satisfied by the minister's statement. Members will have read my exchange

of correspondence with the minister on the issue. SEPA must have a firmer belief in its powers as a regulator and its power to enforce regulation. That firm belief must be backed up by the knowledge that the Executive expects the regulator to pursue the implementation of all regulations to the furthest extreme and as rigorously and robustly as the evidence that it possesses on any case requires. I recommend that the minister and SEPA should have a clearer understanding of their roles and of how they should exercise their respective powers.

That brings me to an issue about which the committee has raised concerns. We received evidence from SEPA about the enforcement of regulations and the prosecution of regulatory infringements. We found that SEPA sent a good percentage of depositions to the Crown Prosecution Service, but that a large number of those cases were not taken up. The committee had recommended previously that the Crown Prosecution Service needs to examine how it trains its staff to ensure that environmental regulations are adhered to. I hope that the committee will look at the final recommendation as part of that earlier concern.

I hope that I have taken the committee as clearly as I can through the difficulties that have been encountered in that specific situation. I also hope that we, as a committee, will want to consider the wider impact on other situations throughout Scotland. If anyone wants to question me, I will do my best to answer.

The Convener: Before I invite comments from members, does anyone have any points for clarification?

Maureen Macmillan: Are the recommendations for retrospective review on all planning permissions with a view to having them retrospectively rescinded, or is it the intention to monitor whether planning permissions are being adhered to or whether regulations need to be tightened? I am concerned about retrospective legislation.

Fiona McLeod: I was aware of that when I recommended that we, as a committee, decided not to consider retrospective reviews. Six of the large incinerators in Scotland that are currently licensed to dispose of animal carcases do so under the Environmental Assessment (Scotland) Regulations 1988, in which an animal carcase is not considered a controlled substance. The minister responsible for planning has told us that it is not a priority to review NPPG 10, which is the relevant planning guideline. The fact that backs up those general assertions is that we discovered that two BSE-infected cattle have been incinerated at Carntyne. Therefore, the other six incinerators must be reviewed to see how it all ties up.

Nora Radcliffe (Gordon) (LD): I do not know whether Fiona McLeod will know the answer to this question. Do most incinerators achieve the required temperature of 850 deg C for burning cattle? The practicalities of the 10 to 14-day delay cannot be avoided if that is how long it takes for the tests to be carried out.

Fiona McLeod: That is the EC-specified test.

Nora Radcliffe: But some tests require a waiting time to see whether things develop. The pragmatic thing seems to be that there is less concern if all incinerators are at that minimum temperature than if they are not.

The Convener: I will add to Nora Radcliffe's point, which also refers to a point that was made by Dorothy-Grace Elder in the e-mail that has been circulated. Dorothy-Grace Elder raised concerns about the delay, stating that European Commission officials were surprised that the tests were taking 10 to 14 days to produce results.

Fiona McLeod might not know the answer, but does the EU require us to operate in that manner or is it because of the way that the UK or Scotland has implemented the EU requirements?

Fiona McLeod: Until I received that e-mail, I did not know that the tests could be completed in a shorter time. The minister's answer stated that the tests that we are obliged to use are specified by the European Commission.

The Convener: We can debate that issue later. It may be an issue that we need to clarify in correspondence with the minister. Dorothy-Grace Elder might want to comment on that specific point.

Dorothy-Grace Elder: As a result of the petition that I took to Brussels in July, a European delegation is going to Glasgow to inspect the incinerator. When I spoke to the Commission officials who deal with the BSE surveillance programme, it was made clear that it is up to member states to decide where incineration takes place. No one in the European Commission has ever said that incinerators should be located in built-up areas.

When I said that it takes 10 to 14 days for the results of BSE tests to come through, the officials queried that and found it hard to believe. They explained that test results in Germany and France are rushed through the night to laboratories by courier, e-mail or motorcycle. To protect the workers in abattoirs and incinerators, the result must be available in a few hours. Similar protection for workers in Scotland does not exist. The 10 to 14-day tests are shocking.

Of course, Germany and France are better provided with laboratories to do the testing. They test according to the over-30-months scheme,

and, if the stock is passed as safe, it is released back into the food chain within a few hours. On the other hand, we incinerate all the OTMS as well as fallen stock. Therefore, the fallen stock content in Germany and France, which is more dangerous than the OTMS, speeds up the testing process because it has led to the establishment of many more laboratories. Members must not forget that Carntyne deals with fallen stock.

The authorities in Germany and France are not willing to take the risks with human life that we are clearly taking.

Nora Radcliffe: The French and German authorities will not risk putting the OTMS back in the food chain. That would really change the parameters of the tests.

Dorothy-Grace Elder: If the OTMS is negative, it goes back in the food chain.

John Scott: As I understand it, OTMS means over-30-month-scheme animals. Is Dorothy-Grace Elder perhaps referring to SRM, which stands for specified risk material?

Dorothy-Grace Elder: No. Specified risk material is from the fallen stock. Britain decided to destroy the OTMS, and the fallen stock programme was introduced in July 2001.

Fiona McLeod: The 850 deg C refers to the temperature enforced by SEPA based on the BSE Monitoring (Scotland) Regulations 2001, which were based on advice from the Spongiform Encephalopathy Advisory Committee.

Nora Radcliffe: I am happy to accept that that is the right temperature. I do not know whether normal incinerators burn at that temperature, and, if they do, we would have less reason to be concerned.

Fiona McLeod: SEPA will ensure that an incinerator burns at the temperature necessary to destroy the waste that it is burning. Therefore, given that most incinerators would not be burning animal carcases, I do not imagine that all incinerators burn at 850 deg C.

Nora Radcliffe: I want to know the normal range of temperatures at which a bog-standard incinerator would be capable of burning.

Fiona McLeod: I do not know. I do not think that there is such a thing as a bog-standard incinerator. I have learnt that incinerators are specialised and are awarded licences and conditions based on the waste that they are burning.

The Convener: To clarify that, incinerators that burn animal carcases do so at a temperature of 850 deg C.

Fiona McLeod: SEPA's licence states a minimum temperature of 850 deg C.

Bruce Crawford: As Fiona McLeod rightly stated, 850 deg C is the temperature at which SEPA believes prions are destroyed. The medical profession no longer re-uses surgical equipment because, following operations such as tonsillectomies, it is impossible, no matter how much heat is applied, to destroy prions. I am sure that the regulations state that 850 deg C is the correct temperature, but other evidence suggests that prions can never be fully destroyed.

That might be SEPA's view, but I wonder whether Fiona had the chance—perhaps it was not appropriate on that occasion—to take evidence from other sources on whether prions can indeed be destroyed through incineration or by any other method.

Fiona McLeod: No, we did not. The advice that I was given by SEPA was that, in adopting the precautionary approach, 850 deg C would render the prion as far as could be achieved and that the risk was therefore acceptable.

The Convener: Perhaps applying that temperature to the medical instruments would damage them. I do not know the answer to that, but perhaps that is an issue.

11:45

John Scott: I wanted to clarify Bruce Crawford's point. If temperatures of 850 deg C were applied to metal, it would melt, so there would be no point. The instruments might be rendered sterile, but they would be valueless.

Bruce Crawford: That is true.

John Scott: Does Fiona McLeod think that it would be appropriate to press the minister to keep lists of every incinerator, particularly if they are disposing of BSE-infected cattle?

Fiona McLeod: That is why I think that the retrospective review of the six other incinerators is important. I understand from all the correspondence that if an animal is identified as BSE infected, and if that is why it is disposed of, it has to go to the two SAC incinerators. The majority of BSE-infected cattle and suspected BSE-infected cattle go to those two incinerators, which are for that purpose. What we have discovered is that, because of the 10 to 14-day test and the wait for the results, cattle that turn out to be BSE infected, but which were not suspected to have BSE, are going to the animal carcase incinerators. We therefore have a problem. We are burning animal carcases, which we have now established can include BSE-infected carcases, in incinerators that are not licensed to do that.

John Scott: That is a very valid point.

Fiona McLeod: The minister has said that SEPA will be sent that information for six months after the reopening of Carntyne. Members will have read in the report that SEPA initially asked for that information and was told that it could not have it. We have to say to the minister, "You worked out how to find the information. Now you must do it, and do it on a regular and on-going basis while this is still a problem."

John Scott: I agree totally. That practice should be put in place for every incinerator. Indeed, the—

The Convener: We want to stick to questions first before we get into the debate.

If John Scott does not have a further question, does Robin Harper have one?

Robin Harper: No. I have no questions, but I would like to speak later.

Angus MacKay: I would like to take Fiona McLeod back to Maureen Macmillan's first question, which was about the recommendation for a retrospective review. I understand why that recommendation is being made and I understand the concerns that underpin it. What I am not clear about is what you are really recommending after such a review has taken place. Are you recommending that some kind of retrospective action should or could be taken against the planning permission? Or are you saying, "Let's at least find out what the position is in those places"?

Fiona McLeod: You know that my view is that we should always base everything on the evidence. We have to review what is happening and then decide if that has given us the evidence to say that an incinerator cannot burn animal carcases under the Environmental Assessment (Scotland) Regulations 1988.

Angus MacKay: Are you saying that, in the light of that concern, the reporter recommends that a review be carried out on all planning permissions? If you say "retrospective", what you are implying is that you want to revisit the planning permission that was granted with a view to revoking or changing it. However, I think that what you want to say is, "Let us look at the planning permission and see what licences were granted and what the position is." That is what I am trying to clarify. The two are quite fundamentally different in import.

Fiona McLeod: Do you think that they are?

Angus MacKay: Yes.

Fiona McLeod: I said that we have to review the planning permissions for the incinerators because we have identified six incinerators with planning permission granted under the 1988 regulations. The planning permission was based on regulations that say that animal carcases are not a controlled waste.

Angus MacKay: I understand why you want to do that, but what would be the consequences? Are you saying that we should review the planning permission with a view to revoking it so that those incinerators cannot function, or do you want to examine the conditions attached to the planning applications to ascertain the basis on which the incinerators are functioning?

Fiona McLeod: We have to proceed one step at a time. Let us find the evidence and then work out what we have to do next. We know that a planning condition 6 was placed on the incinerator that is named in petition PE377, under which the plant cannot burn BSE-infected cattle. However, we also know that the plant has done just that.

Given that the plant was granted planning permission under the 1988 regulations, under which an animal carcase is not classified as a controlled waste substance, all the incinerators in Scotland that are incinerating animal carcases should be looked at to find out the regulations, planning consents and other conditions under which they operate. A wider review would allow us to discover whether the subject needs to be revisited. We may find that there is not a problem in respect of the other incinerators.

The Convener: Could we try to move on to our consideration of the report? I ask members to indicate whether they are content with the report or whether they want to comment on it and suggest amendments. We need to do that before we submit the report to the various organisations to which we are to pass it. I ask members to be clear about their suggestions for amendments, so that I can pull together the proposed changes to the report. I will give committee members an opportunity to comment, after which I will bring in Dorothy-Grace Elder.

Bruce Crawford: The issue is remarkably complex. I visited the site on a couple of occasions and spoke to the people who are involved in petition PE377. I did that on my own volition. I was struck by the commitment of the community and the complexity of the issue with the number of different agencies that are involved. Considering the difficulty of the subject, Fiona McLeod has undertaken a remarkable piece of work. She has managed to prepare a concise report.

I turn to the last point, which was raised by Angus MacKay. Planning permissions may have to be re-examined and consideration may have to be given to other measures such as the planning guidelines that apply to such plants or the powers that are available to SEPA under the planning regulations. The extent of the consideration would depend on the terms of a long-term review of the issue, if such a review is conducted. We do not want to be too prescriptive at this point about the outcomes of such a review. The right way forward

is to establish a process that allows us to re-examine where legislation should go in future.

I remain to be convinced on the 850 deg C issue. Evidence suggests that that level is not safe, but the Government has taken a line on that. I want to draw members' attention to one section of the report, in respect of the disposal of BSE-infected cattle. The Executive has got the issue completely wrong. Fiona McLeod makes a couple of recommendations, the first of which is that

"SEPA should have a statutory role in the process for regulating BSE"

specifically with regard to

"the conditions regarding the incineration of BSE infected cattle."

That is needed because of the pollution that results from such incineration. She also recommends:

"SEPA should assume that all animal carcass incinerators in Scotland may be burning BSE infected cattle and license and regulate incinerators on that basis."

SEPA is involved as the environmental agency and it must consider the polluting effect of what is going up the stacks of those incinerators.

I draw members' attention to paragraph 32 of the paper, which states:

"The Minister notes that it is the Executive's policy, for control and economic purposes, that rather than store carcasses and await tests results, it is more efficient to incinerate the carcasses quickly."

Frankly, that is an astonishing statement by the Executive. In Scotland, 180,000 tonnes of BSE-infected rendered cattle has been stored since the beginning of the BSE crisis, when the 30-month scheme began. Much of it is stored in a warehouse in Glenrothes. If the Executive can store that material for two to three years—in some cases, for four years—before final disposal, the statement that I quoted, which sets out the Executive's position, is incredible. It strengthens my view that Fiona McLeod's recommendations must be taken on board, as the Executive's position just does not wash.

I know that fact because it was confirmed recently in a letter to me from Ross Finnie, following a number of parliamentary questions that I asked regarding the rendering process for BSE-infected cattle. If the Executive can store 180,000 tonnes of rendered cattle for that length of time, there must be a storage issue about containing the cattle to allow the tests to be undertaken before they are burned.

John Scott: I think that we are talking about two different things. We are talking about disposing of rotting carcases, but Bruce Crawford is talking about 180,000 tonnes of rendered cattle. Once an animal has been rendered, it is no longer in carcase form or decomposing form.

Bruce Crawford: It is in pelletised form. I am aware of that. All that I am saying is that there is an on-going process that allows for storage over a long period of cattle that have been infected with BSE.

John Scott: If cattle were stored for longer than 14 days, it would be difficult to get them into an incinerator, as they would be falling to bits.

Bruce Crawford: If that was the case and there was going to be a problem, it may be that the existing regulations would require the cattle to be rendered and pelletised before they were burned. At least that would allow the process of examination to take place before the cattle were finally incinerated. That is the crucial issue. If BSE-fallen cattle are going up the stack, regardless of how few they are, that is a danger. We cannot allow that to happen. The procedures must be made to work to ensure that that does not happen, and that is exactly what Fiona McLeod is trying to achieve. To me, that is one of the main things to come out of this report.

Robin Harper: I congratulate Fiona McLeod on an excellent report. It is very detailed and well researched, and I support all the recommendations in it. However, I would like to make some further observations on the siting, regulation and operation of incinerators.

Let me begin with the operation of incinerators. A large, state-of-the-art incinerator was built at Edmonton, in England. To date, that incinerator has breached regulations in one way or another more than 100 times. The safety of any incinerator depends largely on the way in which it is operated. Clearly, the incinerator at Carntyne has been operated safely, by and large; however, its operators have belatedly had to install some equipment to ensure that they keep within the particulates regulation. That gives rise to the whole question of regulations and sanctions. The only sanction that has been imposed on the company is that it has been closed down while it fits the equipment. If the incinerator had been in Norway, the company would have been fined at least the amount of money that it had saved during the years before it had installed that piece of equipment. That would have been the minimum fine and the minimum sanction to be imposed.

The Executive should be beginning to think about the operation of incinerators, by encouraging their safe operation and ensuring that the equipment that is installed is up to date. As the bottom line, fines could be imposed according to those criteria. Where it is clear that breaches are the result of carelessness and poor supervision, further fines and impositions should be imposed on incinerators. Taking those points into account, the siting of the Carntyne incinerator is still very much in question. Should it ever have been built and operated in that situation?

12:00

Maureen Macmillan: I am sorry—I thought that we were looking to make amendments, rather than just making general statements.

The Convener: No. You can do either.

Maureen Macmillan: I want to go back to the paragraph on retrospective—oh heavens, I am sorry; I cannot find it.

The Convener: Do you mean paragraph 21?

Maureen Macmillan: Yes, that is right. I would be happy if the paragraph said, "a retrospective review be carried out on all the conditions attached to planning permissions", so that we are clear that we are looking at the conditions, rather than at whether planning permission should have been granted. Is that acceptable?

Fiona McLeod: I would be reluctant to do that, because we are talking about incinerators that are operating under the 1988 regulations, which we now know are not accurate.

Maureen Macmillan: Yes, but those are the relevant regulations. I presume that you are, in the review, hoping to find that some BSE-infected animals have been incinerated at Carntyne, and that you want to ensure that the regulations are changed so that such animals are burned at a higher temperature, but that you are not looking at rescinding the planning permission.

Fiona McLeod: I will put it another way; I will put it as a question to you. What would we do if we carried out the review and found that the six incinerators that are operating as per their planning permission and as per the 1988 regulations are burning BSE cattle at lower than 850 deg C? Are you saying that if we find such evidence we will just have to leave them to get on with it?

Maureen Macmillan: No, we should change the regulations, but we would not close the incinerators down. We should not say, "Right, we're going to rescind your planning permission." I presume that regulations would be changed in light of the circumstances that were discovered.

Fiona McLeod: No. I hope that those who operate the incinerators would be told that they must operate under the 1999 regulations; that would address the situation. However, that would not have to be done, because the planning permissions state that the incinerators must operate under the 1988 regulations. There would have to be review and we would have to say that although the planning permission might previously have been fine, we now have evidence that suggests that allowing the incinerator to continue to do what it has been permitted to do would be harmful.

Bruce Crawford: I have a useful point of information about the process. Local authorities can, when there has been a change in regulations, initiate a process to rescind planning permission in order to allow an applicant to submit a new application to bring themselves up to standard. We might find at the end of the review that there was a requirement to rescind the planning permission in order to allow a new application to be submitted. The only way in which a local authority can properly apply new regulations is for a new application to be submitted, which can be done only after permission has been rescinded.

The Convener: I will take views from a range of members, and we will try to move forward from there.

John Scott: I congratulate Fiona McLeod on the depth and complexity of the report. One issue that was touched on only briefly is the Health and Safety Executive. It appears that if incineration that conforms to the SEAC recommendations is taking place, emissions should not be dangerous. However, I am concerned about people who are handling cattle in that situation. I would be interested to know whether the workers at specified animal carcase incinerators are protected if the cattle that go there are BSE suspects. Even if they are protected, it appears from what has been said that there is little or no protection for the staff at the incinerators at Carntyne and probably elsewhere in Scotland. If a number of the cattle are BSE suspects—it does not matter how small the number is—there should be special protection for staff at the incinerators.

I agree that the planning conditions need to be reviewed, as has been discussed. I welcome Bruce Crawford's comments. After the analysis has been carried out, the process that he suggests might be a way of amending the planning situation.

On Robin Harper's point, I think that it is utterly unacceptable—as I said in evidence when I was on the Public Petitions Committee—that an incinerator was sited at Carntyne in the first place. I thought so a year and a half ago and I still believe it to be the case. Glasgow City Council is right—health studies should be carried out on the potential implications of what I think could be a disaster for public health. A similar incinerator somewhere near Stirling back in the 1980s also affected animal and public health in that area. I am extremely concerned that the incinerator has been allowed to discharge into human populations.

On paragraph 21 in Fiona McLeod's report, if changes had to be introduced into the disposal of OTMS cattle as a result of a review, I would sound a note of caution to the effect that such changes would have to be introduced gradually because there is a huge problem of disposal of that type of

cattle. Nonetheless, I think that we should work towards that. I confine myself to those comments.

Angus MacKay: I am, with one or two caveats, perfectly happy with the report—it is a good report. I agree with Bruce Crawford that the issue is complex and that the information and conclusions are presented in a way that is lucid and helpful to someone who is coming fresh to the issue.

I said that there are one or two caveats. There is a danger that we might lose sight of our objective for the want of a slight amendment to one of the recommendations—I refer to the word "retrospective" in paragraph 21. We can carry out a review without calling it a "retrospective review". We should see where the evidence takes us in the review of all the facilities that Fiona McLeod suggests. If the review throws up areas of difficulty, a number of options are open to us.

I take Bruce Crawford's point about the possibility of rescinding planning permission, although I think that that option depends on individual circumstances. It might not be the case that that is the easiest path forward. Ministers might consider taking action centrally, if the problem merits that, whether by legislation or whatever. We should require all such facilities to become compliant with a new minimum threshold. That might be one way forward. There are a number of different ways of skinning this cat. Perhaps the use of the word "retrospective" would not help us to reach our objective of getting as much evidence as possible about the risk and danger.

There are two separate issues; one is the problem that arises from the disposal of BSE-infected cattle at Carntyne, and the other is the wider problem of the very existence of the Carntyne incinerator. It seems to be evident that the vast majority of people who have expressed opinions—whether in the committee or outside it—feel that the incinerator should not have been sited there in the first place and that it should not remain there. That is one issue. The second issue is whether the incinerator should be allowed to dispose of BSE-infected cattle. We should deal with that issue and let the broader issue develop.

I will comment on the e-mail from Dorothy Grace-Elder, which has been submitted to the committee. The way I read it, Dorothy suggests that Fiona McLeod's paragraph 49 should be one of the specific recommendations. I think that it is one of the recommendations—it is highlighted in black.

Dorothy-Grace Elder: My point is about where the heading comes in.

Angus MacKay: I agree with Dorothy-Grace Elder's second point, which raises an interesting issue about the lines of demarcation between ministers and executive agencies or arm's length agencies in relation to the way in which powers are controlled and executed. That is a good point to make, as is the point that Fiona McLeod raises in her report. When dealing with legislation and policy issues in other areas, we have seen that there is no point in there being both ministerial powers and executive agency powers when there is not sufficient delineation of when those powers should be used. That results in failure to implement powers fully when it is appropriate to do so. A response from the Executive on that point would be welcome. The issue is a good one on which to punch up how powers play across different agencies.

Fiona McLeod made a point about the exchange of correspondence between her and Ross Finnie on the release of information. It looks like that is a textbook example of a department and a minister being dragged into putting information in the public domain only once they have been jabbed repeatedly with a pointy stick. There are lessons to be learned about that. If the information is held—information certainly should be held on the Carntyne situation—and if putting it in the public domain can help to minimise public alarm, to maximise transparency and to inform debate, that information should be made available. It is worth pursuing that point. Again, we have a specific example that represents a good way in which to raise a broader general principle.

It is hard to come to a conclusion on Dorothy-Grace Elder's third point about the incinerator's not being allowed to reopen. In my view, we should deal with the burning of BSE-infected cattle rather than with the broader issue. However, I understand why Fiona McLeod made her point.

The Convener: The practice of the Transport and the Environment Committee has been not to take views on individual planning applications. If we follow our previous practice, we will make general points about the management of such incinerators, but leave specific points to the appropriate authorities to deal with.

John Scott: If a review resulted in regulations being introduced, the Executive would need to address compensation matters. I am not referring to any specific planning case.

The Convener: We do not need to second-guess the outcome of the review and what the consequences of any changes would be.

Nora Radcliffe: I want to congratulate Fiona McLeod on a good piece of work. I endorse what Angus MacKay said about the removal of the word "retrospective" from her recommendation in paragraph 21, which would mean that we would lose only some unnecessary connotations. The omission of "retrospective" will not weaken the report in any way and might prove helpful.

We should establish some factual matters. Are all animal carcases, or only ones that are suspected to be BSE infected, disposed of at 850 deg C? It would be useful to obtain that information. We might also want to consider the test, which takes 10 to 14 days to generate a result. Some tests involve the growing of cultures. It might simply be the case that the test in question takes 10 to 14 days and that sending the results by courier would not make any difference. Although there might be some crossing of wires, we should be able to establish whether the period of 10 to 14 days is the time that it takes to grow the culture to get the result or whether that time is a result of pressure on the laboratories. Such pressure could mean that tests are not started until 12 days after the material is received, although it might take only two days to get it.

My third point relates to incinerators that were established under the pre-1999 regulations. I wonder whether the fact that the material that those incinerators are disposing of is now controlled waste—it was not previously classified as controlled waste—brings with it a whole set of regulations, because controlled waste would still be picked up under the old regulations. I am not sure that members see what I am getting at.

If a set of planning conditions says, "You can do this, this and this with waste, but controlled waste has to be dealt with differently", the identification of waste as controlled waste brings with it a whole other set of regulations. It might be useful to establish whether protection is afforded by waste's being designated as controlled waste, which does not exist before such designation.

12:15

Bruce Crawford: I would like to make a point for clarification. I am worried about the direction that the debate could go and the perception that could be created. We, as individuals, might all think that Carntyne should be closed down. Anyone who has visited there and talked to people in the community would understand that the incinerator should never have been built at that location. However, there is a danger that our discussion could give the impression that the committee has the power to change that. I want the convener to clarify that that is not the situation. Our remit would not allow the closure of the incinerator to be an inevitable conclusion of the committee's work. The only groups that could be involved in such action would be the Scottish Environment Protection Agency or Glasgow City Council. They must make a decision in the light of Fiona McLeod's evidence. This committee could never come to that conclusion because it never set out on that road.

The Convener: Nor, indeed, does the committee have the powers to do so.

Bruce Crawford: I want to ensure that everyone is clear about that.

The Convener: That is useful clarification. I invite Dorothy-Grace Elder to comment. I apologise for taking so long to get to you, but it demonstrates members' interest in the issue.

Dorothy-Grace Elder: Indeed, I am grateful for their interest. I thank Fiona McLeod for taking on this special case despite a very heavy work load.

I cannot propose any amendment, but perhaps a member of the committee can propose an amendment to add to Fiona McLeod's points that incinerators that are not licensed to burn BSE-infected cattle should not be allowed to take any animals that are in the high-risk categories, including fallen stock. Fallen stock is currently the most high-risk category. That is an official phrase; it might mean only two cows in a hundred, but they will still be categorised as that.

I do not think that any of us approve of the fact that a burner that was never licensed to take BSE-infected cattle is now taking such cows. However, it is known before the animals enter the incinerator that fallen stock is a high-risk category. No one ever envisaged that that category would be investigated. Those animals used just to die in the fields; a hole was dug, and that was it. However, the EU rightly insisted that those animals be studied in relation to the beef ban in order to establish the incidence remaining in herds in the member states. However, the burner at Carntyne was never licensed.

We have a major problem. There is a definite democratic deficit, which could conceivably happen in other areas because one must set the matter in a Scottish context. First, four years ago, elected councillors in Glasgow City Council turned down planning permission at the site, but it just got through on appeal before devolution—one persons' word did it at the time. The burner then got a few contracts under the OTMS, but there was so much pollution that it had to close down and the burner lost the contract. The new owners, Sacone Environmental Ltd, took over but the burner was still not licensed to take BSE-infected cattle. From July 2001, the burner was suddenly taking cattle that were at high risk of BSE.

The one good thing that the appeal reporter from the Scottish Executive did was to include planning condition 6 in the report. That was meant to prevent any BSE-infected animal from being incinerated at Carntyne; the condition states that cattle that have been clinically confirmed or diagnosed as having BSE cannot be incinerated. SEPA chose to interpret that to mean that it was all right if the animals were diagnosed after they entered the plant and the test results were returned. One must ask whether SEPA, as a

watchdog, should do that. We should forget about people who own burners and simply want to make money—we must consider the fact that the environmental watchdog chose to err on the side of the company and to interpret the planning condition in that way. Any normal person reading the report's planning protection clause would assume that no BSE-infected animal had ever been incinerated. The public were not informed that the incinerator was connected with BSE in any form. There was another democratic deficit in that the public were not informed that the burner was in any way connected with BSE.

I was present at the public meeting on 29 May 2001. SEPA was on the platform, along with the burner's owners. There were repeated reassurances to the public who were present that the burnings would have nothing to do with BSE. The owners said that the burner could not take BSE-infected cattle and SEPA said that the incinerator was not licensed to burn BSE-infected cattle, which was completely true. However, it was another play on words. We found out for ourselves that the burner was going to take cattle in the category that was at high risk of containing BSE.

Let me move on a wee bit to address the question of the 850 deg C safety requirement. I am sorry to say that it is one of the few points on which I do not agree with Fiona McLeod. I tend to support the view that Bruce Crawford has expressed. I have documentation that says that burners need to burn at 1,000 deg C to destroy BSE. Unfortunately, as I saw Fiona's report only in the early hours of the morning, I have not managed to bring that information with me. However, a number of scientists believe that to be the case. In response to Nora Radcliffe's query, we should find out at what temperature the special burner that is purely for destroying BSE burns matter. I do not mean the Carntyne incinerator, but the special one in Scotland.

When I was in Brussels talking to people who are concerned about the incineration of the cattle, they queried the required temperature's being only 850 deg C. When the delegation comes, it will tell us much more. It must be borne in mind that the burners cool down during the night, although there is still material in them. We must think about how well managed a plant might be and what mistakes could be made. If 850 deg C is the top temperature of a burner, is that good enough? The local MSP and others do not think so—we do not regard that temperature as being safe for Carntyne. Of course, we regard the whole enterprise as not being safe.

Fiona McLeod has at last dragged out with forceps the figure for the number of BSE-infected cattle that have been discovered at the burner. It was only two, which reminds us that the incidence of BSE is infrequent. Nevertheless, I wonder about that figure. A figure has not been revealed for the total number of cattle that have been burned there, and I am not surprised that a half-fact was given after great effort had to be made to get any figure at all.

As I say in my written statement, the burner has been closed many times. The two cattle that were tested positive for BSE went through between September 2001 and March 2002. I know for a fact that the burner was closed between October 9 and Christmas 2001, so it was not operating for very long between September 2001 and March 2002. We would like to know how many cattle in total went through the plant before as many as two were discovered definitely to have BSE. We must get the proper facts and figures out of the Department for Environment, Food and Rural Affairs and from all those who are involved. I do not know whether the burner's cattle licence has been renewed by the Rural Payments Agency. The burner has been stopped so many times because it has caused so much pollution, so I do not see the point in renewing its contract—the taxpayers are paying for it.

I have another terrible concern about the water situation, which Fiona McLeod has not had time to go into. Scottish Water has granted permission for the burner to discharge into the public drainage system. The drainage system in the east end of Glasgow has worsened since the floods of 30 July, but it was bad before then. Raw sewage was coming up in streets quite near the burner. That sewage was not from the burner, but it showed that there were problems deep down in the drains. I do not know whether the burner has been discharging, because it has not been burning for the past two months. Nonetheless, it has permission to discharge into the public sewers, which is quite shocking.

The BSE prion cannot be killed off in the public sewers. Bruce Crawford spoke about sterilisation, but in that case the sterilisation was of hospital instruments with chemicals, and the instruments later infected a mother with new variant CJD. I spoke to the official from the European Commission who deals with the veterinarian side of the BSE surveillance scheme and I told him that the burner owners had put a fine mesh over the outlets—finer than they had needed to. However, he said that no mesh will stop the prion if it is there. If the prion is present in the sewerage system, it will go into the Clyde eventually. It will be diluted with a lot more sewage, but who wants to take that risk?

The population of the area around the Carntyne incinerator is 60,000. It is the only incinerator in Europe that is in the middle of a city. Before I went to Brussels, I checked that fact endlessly and

when I was in Brussels, I asked as many officials and MEPs as I could whether they knew of another cattle incinerator in a built-up area. The answer was always no. It took some time for the MEPs to realise that the incinerator is in an area as big as Carntyne and some of them were visibly shocked. When they found out about the discharge into the sewerage system and that it takes 10 to 14 days for test results to come back, some of them wondered what sort of people we are.

If there were a "Dirty Man of Europe" competition, Scotland would definitely come close to topping the poll. We are taking unnecessary risks with human beings.

I thank the committee for allowing me time to speak. If there are any questions, I would be pleased to answer them.

Nora Radcliffe: Dorothy-Grace Elder's comment about the role of reporters in the planning system concerns me. As she said, although a planning authority may have made a decision on an application, one person can override it. I hope that that will be picked up in the proposed planning bill, but perhaps the committee should highlight it as a general issue.

The Convener: That issue is probably best left until we consider the review of planning.

Nora Radcliffe: It is a general issue that we should perhaps mention.

The Convener: The other point about a reporter's report is that it is signed off by the relevant minister before it is implemented.

John Scott: Dorothy-Grace Elder spoke about the countrywide cattle statistics, which must be available. I am surprised that the minister has found it so difficult to tell members where the cattle were and where they have been burnt. We should have that information—given the tracing systems, it is merely a matter of punching data into a computer. I do not accept the minister's argument that it is difficult to maintain records. Those figures should be readily available for each incinerator in the country.

During the foot-and-mouth epidemic, I raised the matter of cattle aged over 30 months being burnt on funeral pyres. Many of those carcases were burned at temperatures that were well below 850 deg C; in fact, given the conditions in which they were burnt, that temperature could not possibly have been reached.

I pointed out to the minister then that I thought that he had been cavalier in his approach to the way in which those cattle were disposed of, but he pointed out to me that that was a pragmatic approach, which, under the circumstances, was the only option. Nonetheless, the minister has been a bit cavalier with public health, and the situation at Carntyne must be investigated further.

Robin Harper: Fiona McLeod's report states that the incinerator could operate at temperatures of up to 1,000 deg C. Therefore, it is open to the committee to recommend to the Executive that when the incinerator is started up again, it should be operated at that temperature, pending any further decisions that the Executive might take.

The Convener: If members are satisfied, I will conclude our discussion of the report. Angus MacKay suggested that paragraph 21 be amended to delete the word "retrospective". Some members suggested that the committee should receive more clarity on the 10 to 14-day test. Is it feasible for the test to be carried out in a shorter time? That is fairly non-controversial and likely to have the support of all members, so perhaps an additional paragraph seeking that clarity could be inserted after paragraph 32. Robin Harper and others suggested that the committee should seek further information on the burning temperature and whether 850 deg C is robust enough. At an appropriate point in the report, we could insert a paragraph requesting further information on that matter from the Executive and SEPA. Those seem to be the key issues that have arisen. Do members wish to pursue other issues?

12:30

John Scott: The statistics on all incinerated cattle are readily available.

The Convener: We agree with that.

John Scott: The figures have been available since 1996 because they were used for predictive studies on the distribution of the disease. It beggars belief that the minister has said that he cannot supply those figures.

Robin Harper: Further to the recommendations on the regulatory process, I would like the Executive to consider sanctions.

Dorothy-Grace Elder: Do members wish to take me up on my point that the committee should consider stating that incinerators that are not licensed to take BSE-infected cattle should not be allowed to take animals that are in the high-risk category, which include fallen stock? One wonders why on earth we have a special incinerator for BSE-infected cattle if people can get away with burning such cattle in incinerators that are regarded as unsuitable for that purpose.

John Scott: Assuming we receive confirmation that 850 deg C is the correct temperature, what should we do with the cattle if we prevent them from being burnt in that way? Dead cattle will still come forward like a wave of soldiers to be disposed of.

The Convener: Dorothy-Grace's point is that, if an incinerator does not have permission to burn BSE-infected cattle, it should not be allowed to burn fallen stock or high-risk stock.

John Scott: That applies to nearly all incinerators in Scotland.

Fiona McLeod: Yes. Only two incinerators are licensed to take known BSE-infected cattle.

John Scott: The SAC incinerators are tiny—they incinerate only around eight animals a day.

Maureen Macmillan: So the issue is one of capacity.

John Scott: The capacity does not exist. Although we might not like it, there does not appear to be a problem as a result of burning cattle, assuming that 850 deg C is the right temperature. However, there is a problem in relation to the safety of the operators who dispose of animals and put them into incinerators. There might also be a problem with water supplies.

Dorothy-Grace Elder: In one case, blood was being put into the streets.

Brussels did not allow an ordinary domestic incinerator in a village called Drogenbos, which is a few miles from the centre of Brussels, simply because it was too near. If something is not good enough for Brussels, it is not good enough for Glasgow. People in Glasgow suffer from poor health already.

The Convener: I want to draw the discussion back together. We should make general recommendations, not ones that are specifically about Glasgow, which would be outwith the committee's remit.

John Scott: I ask that we include in the report the point about the safety of workers who operate the plants in Scotland.

The Convener: That goes back to the issue of tests and how quickly the results are available. Your point could be incorporated into that part of the report. Before I ask Fiona McLeod to respond in general and to say whether she is comfortable with John Scott's suggestion, I will allow Angus MacKay and Bruce Crawford to make their points.

Angus MacKay: I appreciate Dorothy-Grace's point about approvals to burn BSE-infected animals and fallen stock. However, our report should not say that incinerators that may not be used to burn BSE-infected animals should not be used to burn fallen animals. Instead, we should say that there appears to be a contradiction. The Executive—or the appropriate body—should attach a condition to incinerators that are used to treat fallen animals to ensure that they treat those animals acceptably, whether by increasing the heat threshold or by some other means. If that condition could not be met, one might conclude that there would be a danger in allowing the use of incinerators to dispose of fallen animals. However, we should try to find an enabling way forward.

Bruce Crawford: I want to concentrate on that point as well. I understand why Dorothy-Grace Elder raised the issue. John Scott just told me that very few fallen animals would be infected with BSE. We need to ensure that there are guarantees that BSE will not get into the system. If we can get guarantees beforehand on some of Fiona McLeod's recommendations, it would not matter what the incinerator was burning as far as BSE was concerned. We must try to get to that stage rather than allow the beasts to be put into incinerators that cannot deal with them appropriately.

The Convener: I will let you respond to those points, Fiona. It would be helpful if you, as the reporter, were prepared to accept the amendments that members have suggested. If you are not, we will return to those issues. Perhaps you could give us an overview of the debate.

Fiona McLeod: You are confusing me, convener. I thought that the recommendation in paragraph 21 was the only one to be changed.

The Convener: Yes, but additions to the report were also suggested.

Fiona McLeod: I will go with what Angus MacKay said and take out "retrospective". My recommendation is about reviewing what is happening in the six incinerators that are licensed under the 1988 regulations. In undertaking that review, the Executive could start to get evidence for some of the questions that have been asked subsequently to my questions.

I should have thought of the point that John Scott made—but I did not—about whether workers are handling BSE-infected carcases at non-BSE licensed premises. I will ask for that to be looked into as part of the review. The review should include a review of temperature, handling conditions and everything about which the 1999 regulations are more stringent than the 1988 regulations. We now know that BSE-infected cattle will be burned at non-BSE licensed sites. However, the committee wants to ensure that, when that happens—and we know that it will happen—it will not pose an unacceptable risk to the workers, the local population or the environment. I take it that that encapsulates what we are looking for from the review.

We want the Government to learn lessons from the review and to decide whether it is sufficient to rescind or change planning permissions, or whether it has to start from scratch. The first point in the remit was to consider planning guidelines

and reviews of planning guidelines. The Executive has told us that a review of NPPG 10 is not a priority. I hope that the evidence that it will get from the review of what is actually happening will inform its decision as to whether that should be a priority.

Everything has become tied up together as the debate has gone on. We are talking about the collation of BSE information, not the collection of it—I am sorry, but I am an information professional. There is no way that the minister could not have given those answers at any point. Information on BSE-infected animals is collected and stored. We simply have to question it to get the answers that we need. Therefore, as part of the review, the minister must produce evidence on a continuing basis on the number of BSE-infected cattle that are being incinerated at non-BSE licensed facilities. That will enable him to undertake a risk assessment as part of all the evidence gathering that we are asking him to do to inform us. It will also inform him whether he needs to review planning permissions and the way in which BSE is handled altogether.

The Convener: Okay. We have broad agreement to endorse the report, with minor amendments.

Dorothy-Grace Elder: On a point of information, convener. The petitioner is concerned about animals of any kind being burned at the plant. Naturally, the pollution risk from particles is just as bad whether they are BSE-infected or not. The local people do not want any animal burning in the area—it does not happen anywhere else.

I also have a small point to make about the regulations. Perhaps the committee would also consider the sewerage regulations. The plant is operating under the Sewerage (Scotland) Act 1968, which was passed long before anyone had heard of BSE. The guidelines on BSE and the contents of abattoirs getting into drains are from 1997, which was quite a long time ago, and we now know an awful lot more about BSE. All the regulations and guidelines on BSE are either totally outdated or rapidly becoming outdated because of more recent legislation.

The Convener: The Health and Community Care Committee, rather than this committee, has a remit to cover the health impacts of BSE. I do not want to continue the debate. Fiona McLeod's report has received broad support from the committee, with the minor amendments that we have talked about.

I recognise the fact that the petitioner does not want the plant to be there. However, it is outwith the powers of the committee to decide its location. The committee can consider the regulations and guidelines that apply to such plants—as we have done—but that is as much as we can do. If any further action is required, the matter must be pursued with the appropriate authorities.

Dorothy-Grace Elder: I appreciate that, convener. I have been stressing the issue of BSE all along, but the plant will cause pollution whether it is burning BSE-infected carcases or not. That is the nub of the petitioner's argument. The fact that the plant is handling animals in the high-risk category just makes the problem very much worse.

The Convener: I understand that.

John Scott: On a point of information, convener. For the benefit of the *Official Report*, I advise members that the plant to which I referred earlier, which caused such consternation in the 1980s, was ReChem International. It certainly got a very bad press 15 to 20 years ago.

The Convener: Let us conclude. We endorse the report, as discussed. In addition to the organisations to which members suggested that we should send the report, perhaps we should send it to the Convention of Scottish Local Authorities for comment. We have already agreed to send it to SEPA and the two departments. Is that agreed?

Members *indicated agreement*.

John Scott: Did you say that we would copy it to the Health and Community Care Committee?

The Convener: I did not. I would be happy for that committee to receive a copy of it, but I suspect that it will not be able to undertake any substantive work on it, given its work load on a range of other issues. However, that will be for that committee to decide. Is that agreed?

Members *indicated agreement*.

The Convener: I thank members for their attendance and participation on that item. We now move into private.

12:42

Meeting continued in private until 13:34.

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