# TRANSPORT AND THE ENVIRONMENT COMMITTEE

Tuesday 18 February 2003
(*Morning*)

Session 1

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## Tuesday 18 February 2003



## TRANSPORT AND THE ENVIRONMENT COMMITTEE
**4th Meeting 2003, 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)

**WITNESSES**

David Banford (Dumfries and Galloway Council)
Nigel Hooper (East Dunbartonshire Council)
Douglas Murray (Association of Scottish Community Councils)
Timothy Parker (Church of Scotland General Trustees)
Findlay Turner (Scottish Churches Committee)
Graham U'ren (Royal Town Planning Institute in Scotland)
Allan Wilson (Deputy Minister for Environment and Rural Development)

**CLERK TO THE COMMITTEE**
Callum Thomson

**SENIOR ASSISTANT CLERK**
Alastair Macfie

**ASSISTANT CLERK**
Rosalind Wheeler

**LOCATION**
The Chamber

# Scottish Parliament

## Transport and the Environment Committee

*Tuesday 18 February 2003*

(*Morning*)

[THE CONVENER *opened the meeting in private at 09:50*]

09:59

*Meeting continued in public.*

## Item in Private

**The Convener (Bristow Muldoon):** Before we deal with today's first agenda item, which is consideration of an item in private, I should record the fact that we have received apologies from Nora Radcliffe. I expect that both Elaine Thomson and Fiona McLeod will attend the meeting at a later stage. I also advise that Dorothy-Grace Elder has indicated that she intends to attend the committee for our consideration of petition PE377.

Item 1 is to ask the committee to agree that we consider agenda item 8 in private. Item 8 is consideration of the evidence that we have taken on telecommunications development. Is that agreed?

**Members** *indicated agreement*.

## Telecoms Developments

**The Convener:** We can now welcome our first panel to this morning's meeting of the Transport and the Environment Committee. Douglas Murray is the secretary of the Association of Scottish Community Councils. Timothy Parker is the deputy secretary of the Church of Scotland General Trustees. Findlay Turner is a member of the Scottish Churches Committee.

The witnesses have provided written evidence, which members should have received in advance. We do not intend to take any opening statements from the witnesses, but our initial questions will be quite general, so that should allow people to expand on how their organisations view telecommunications developments in general.

I invite John Scott to start us off.

**John Scott (Ayr) (Con):** Good morning, gentlemen. Have the new planning regulations afforded organisations and local communities a greater say in the siting of telecommunications developments?

**Findlay Turner (Scottish Churches Committee):** My feeling is that the effect has been quite neutral. My impression is that, from the churches' point of view, the regulations have not made people more vocal in these matters.

**Timothy Parker (Church of Scotland General Trustees):** Certain procedures have been in place ever since we first started dealing with applications for inserting things in our buildings about six or seven years ago. The new procedures have possibly had the advantage that proposals for the installation on buildings of equipment such as radiocommunication masts are now brought more speedily to the attention of members of the community, particularly those who are adjacent to the buildings, because of the procedure for neighbour notification that is part of the planning application.

**Findlay Turner:** Churches are very much part of the community. Once such applications become known within congregations, the knowledge very quickly becomes public. The processes of the Church of Scotland at least are quite public. The meetings are open. Anyone who wishes to make representations to the Church of Scotland can ask to do so. Normally, the court would allow them to speak and make their problems known.

**The Convener:** Does Mr Murray want to respond on behalf of the Association of Scottish Community Councils?

**Douglas Murray (Association of Scottish Community Councils):** The new regulations have helped make people more aware of the planning

system and the guidance that has been published. I have the perception that many more communities are now aware of what is happening. Prior to the introduction of the legislation, the fact that people did not know about developments was often what caused more of a problem when something suddenly appeared on their doorstep. The new regulations have addressed the main problem of awareness.

**John Scott:** Have mobile operators become more sensitive to community, environmental and amenity issues since the introduction of the new regulations, or have they become less sensitive?

**Timothy Parker:** I think that the mobile operators have become more sensitive. With the introduction of the 10 commitments, the operators know that if they do not take the community along with them there is a strong chance that health fears and so on may mean that the development will backfire on them. The operators know that involving the community at an early stage and endeavouring to answer questions can be helpful to them. The regulations have therefore been beneficial.

**Bruce Crawford (Mid Scotland and Fife) (SNP):** The papers that we have received suggest that the Church of Scotland has the greatest experience of dealing with masts, as among the largest number of masts is attached to its churches. Do you have a feel for the number of times a proposal to erect a mast within the confines of a church or its grounds has been made and for the number of occasions such a proposal has been rejected? What percentage of mast proposals is rejected by the church because of the reaction in the local community, or by the planning department?

**Timothy Parker:** It is difficult to tell. I am the main person who deals with the proposals—I receive applications through the agents and have correspondence as a result of the local complications. About two thirds of proposals go forward, at least to the design or drawing stage, and about one third are rejected out of hand, for whatever reason. A further percentage is rejected once the plans and specifications have been examined, as certain concerns might arise at that stage. I would estimate that roughly two thirds of applications are successful and about one third are unsuccessful.

Although it is probably true that we have the largest number of church buildings with installations on them or in their grounds, it should be remembered that their number is small compared with the number of other buildings that are used.

**Bruce Crawford:** I want to focus on the proposals that reach the planning application stage. How many planning applications have been rejected? Can you give us a feel for how many have been rejected by planning departments? Is it a small percentage or a large percentage?

**Timothy Parker:** I would say that it is a small percentage. As is outlined in our submission, we always seek an indication that the planning department of the relevant local authority and, where a listed building is involved, Historic Scotland are satisfied that any proposal is acceptable within the existing regulations. We have far more dealings with those bodies than with the operators.

Following the recent introduction of the regulations, some agents—on behalf of their clients—have applied for planning permission on a particular building before they have cleared it with us, even though they are advised not to do so. Some proposals get knocked back as a result. As I do not get to know of those cases, it would be difficult for me to say how many fall into that category. The number of such cases is probably small—I doubt that more than about 10 would be involved. If the agents come back after the first knock-back and consult us, we might be able to suggest certain alterations that are acceptable to the local planning authority or to Historic Scotland.

**Bruce Crawford:** That leads to my final question, which is about the process. Given that people are being alerted earlier to the fact that applications have been made and it is more visible that that is happening, is the planning process responsive enough to local people's concerns, in your experience? They might be worried about a particular mast in a particular location.

**Timothy Parker:** It is difficult to say because, as I understand it, just as with a normal planning application and neighbour notification, there are relatively few grounds for a successful objection to a proposal for an adjacent building.

**Findlay Turner:** What about health grounds?

**Timothy Parker:** The system enables people in the vicinity to bring concerns to the local authority planning department's attention. Those concerns might not, strictly speaking, be about planning matters; they might be health concerns. Members will be aware that the Scottish Executive has views on how health considerations should be taken into account in the consideration of planning applications.

As I said, depending on how a congregation consults the community, the system has the advantage of allowing people to bring their concerns to the attention of the planning department, which might be a bit more alerted to whether it should give serious consideration to the objection.

**John Scott:** Could the Mobile Operators Association's 10 commitments to best siting practice be improved and, if so, how?

**Timothy Parker:** I am not actively involved with the 10 commitments because we have laid down our own procedures, which are described in our submission, but I know of the 10 commitments and I have a copy of the amended version, about which I consult MOA from time to time. The commitments are basically adequate, although there might be room for more consultation. However, the operators complain that they do not get the feedback that they want from certain local authorities.

**Douglas Murray:** I recall a recent media article in which concerns were raised about the siting of equipment in advertising signs at places such as petrol stations. The main concern was that that is an underhand way for operators to put equipment in place. If there were more transparency in the application process, community concerns would not spring up automatically. Communities should be consulted on special siting arrangements, including masts in church buildings, rather than only on the physical presence of ground masts. Concerns will automatically be raised in relation to anything that is seen to hide the equipment, rather than straightforward applications. Having said that, the pre-application process that most local authorities carry out with operators goes a long way to address the siting issues in many areas.

**Findlay Turner:** I am not terribly familiar with the commitments and how they work, but I wonder whether there is room for an advertisement stage in advance of the planning stage. If operators put adverts in local newspapers to say that they were considering an installation, that would give the public early notification and bring the matter to the public's attention earlier.

I wish to respond to an earlier question. I have a paper, which I believe was produced by Mr Des McNulty, that was submitted in evidence to the committee. It outlines the number of applications made and the success rates although it does not relate specifically to churches—it addresses planning applications overall. I can also supply the committee with a paper that shows the number of churches in each denomination, the number of masts that are involved and so on. That paper may be helpful to the committee.

**The Convener:** It would be useful if the paper could be supplied to the clerks for circulation. Thank you.

**Timothy Parker:** The paper is based on the guesstimates of the various other denominations. They stressed that the figures are not hard and fast, as quite often we do not know whether a building has something on it—buildings occasionally slip through the net.

10:15

**Maureen Macmillan (Highlands and Islands) (Lab):** I will direct to Mr Murray some questions about the views of the Association of Scottish Community Councils. In your submission you say that a community council would object to a telecommunications development only in exceptional circumstances. Will you expand on what you mean by that?

**Douglas Murray:** Objections on the ground of exceptional circumstances would be likely to relate to health concerns that might be raised by a community. The guidance in the new regulations has taken the sting out of health as a planning matter.

Objections on the ground of exceptional circumstances have been made in one or two instances. In most cases, we would need to refer to the pre-regulation date when areas of particular scenic value had masts imposed on them. I was told of one instance where a mast was erected at Pitlochry 24 hours before the cut-off date for implementation of the new regulations. Following pressure from the local community council and the expression of community concerns, the operator agreed that the mast had been sited in an inappropriate location. The operator also commented that it was not sure that the mast was needed. That instance would seem to be a case of more haste and less speed. The mast was removed within two months. I stress that that happened before the current regulations came into being.

**Maureen Macmillan:** Does the fact that the new regulations are in place mean that not so many objections are being made on the ground of exceptional circumstances?

**Douglas Murray:** Our general impression is that a large number of concerns are addressed prior to the application going to a community council or out for general consultation. I note in other witness submissions that some applications are subject to bad neighbour notifications in the press. That requirement raises greater awareness of the subject.

The situation might change over the next few years: a press article this weekend suggested that the number of telecoms apparatus installations in the UK will increase from 35,000 to 48,000 over the next three to four years. That would represent a substantial increase over a fairly short period. The subject of exceptional circumstances may crop up again, but in most cases it will relate to health concerns rather than to anything else.

**Maureen Macmillan:** Thank you. In your submission, you say that

"There appears to be little or no contact from Telecom Operators to Community Councils".

The telecommunications operators say that they consult the local community and the local authority as a matter of course. Were you referring to the situation before the new regulations came into effect or the present situation with the new regulations in force?

**Douglas Murray:** I received one specific response from an urban area that said that telecommunications operators have approached community councils. In that particular set-up, the community councillor said that he would prefer not to have direct communications with the operators because, as a statutory consultee, a community council might have to consider the ethics of considering an application before a public meeting in the same way as local authority members must operate under specific guidance to give planning authority.

**Maureen Macmillan:** So you would be concerned if the telecommunications industry was lobbying community councils rather than just informing them that an application was going to be submitted?

**Douglas Murray:** Yes. Things vary from area to area. My community council represents a rural area. At our last meeting, which was around two weeks ago, there were three applications under the airwave project and there were no objections. The council was happy to pass both applications without any specific comments. Urban areas might view things differently.

**Maureen Macmillan:** Obviously, rural and urban areas have different concerns. Rural areas are often concerned about visual impact, whereas urban areas might not be. Health issues arise in rural and urban areas.

You state in your written evidence that "objections are disregarded"—I presume that that means disregarded by local authorities in making planning decisions. Will you elaborate on any evidence that you might have of that?

**Douglas Murray:** I have nothing specific. Community councils have made the general complaint that any major comments that they make on applications—whether or not they are for telecommunications masts—are largely disregarded unless there is quite a headstrong opinion that something is wrong with the application. Many community councillors do not look at the detail in pre-application discussions and the restrictions the system sets down, but there will possibly be a not-in-my-back-yard syndrome.

**Bruce Crawford:** You rightly commented on the expected increase in the number of masts in the next few years and the increased number of applications. How would community councils view the idea of strengthening legislation to ensure that local authorities have the power to force operators to share masts? Rather than there being an increase in the number of masts throughout Scotland, perhaps there could be an increase in the number of masts that are shared by operators.

**Douglas Murray:** It seems to be thought that mast sharing should be more rigorously enforced. The companies seem to prefer not to share. A recent press article suggests that masts would have to go up every 500m to achieve coverage. They might have a problem with mast sharing, but I would have thought that, given telecommunications companies' current financial circumstances, they would opt for mast sharing rather than incur debt.

**John Scott:** I hear what you say. However, given advances in technology whereby masts can now be only 9in high—I think that 210mm is quoted in a paper in Cardiff—would you not prefer a proliferation of smaller masts because of vertical height and separation distance requirements rather than a 40ft high structure in a community? Is not the jury still out on that matter?

**Douglas Murray:** I agree that the technology is advancing daily and that what was in place prior to the legislation is possibly no longer the norm. Smaller equipment can be set up in certain buildings and locations without anyone—apart from those who are involved—being aware of it, but I still feel that mast sharing or building sharing would have benefits for everyone.

**John Scott:** Where it is suitable.

**Maureen Macmillan:** I will follow up on John Scott's comments. I am thinking in particular about rural areas where the visual impact often causes concern. Would local communities in rural areas prefer one big mast, which is highly visible because a lot of users put their equipment on it, or several smaller ones? I suspect that the answer is that it depends.

**Douglas Murray:** I come back again to the initial point that John Scott made. The changes in technology enable more mast sharing or equipment sharing. I know that there are concerns about the proliferation of equipment in one location, but given that the equipment is being reduced in size and its frequency is being increased, it should not be a problem. Any environment—rural or urban—would be tidied up if all the operators got together and agreed on where they wanted to site their equipment rather than spread it all around without due regard for the environment.

To illustrate the point, I offer the example of an operator who went out of business. Questions are now being asked about who will remove the equipment. If it were a one-site operation, I would have thought that the other operators would be

able either to utilise the equipment or to remove it and use the space themselves.

**Angus MacKay (Edinburgh South) (Lab):** I will direct my questions primarily to the church representatives. If Douglas Murray wants to comment from the perspective of the community councils, he should feel free to do so.

The written evidence presented to the committee states that the Church of Scotland is undertaking a pilot project that requires developers to consult Historic Scotland and local authorities when they want to undertake work on listed churches. Can you give us more detail on that? I appreciate that you may already have touched on some of the issues that I am asking about.

**Findlay Turner:** There may be a slight misunderstanding. A pilot scheme is being run in conjunction with Historic Scotland. There is an ecclesiastical exemption on church buildings that are in use, whereby normal planning consent is not required for alterations. In the voluntary pilot scheme between the churches and Historic Scotland, the planning procedure is gone through although it is not necessarily binding; it is advisory. The pilot scheme is not specifically related to telecoms.

**Angus MacKay:** That is genuinely enlightening; I was not aware of that so thank you for the information.

It would be useful to know which congregations are represented this morning under your umbrellas.

**Findlay Turner:** The Scottish Churches Committee is an interface between the statutory bodies and the churches in Scotland. We list at the foot of our written submission the denominations that are represented on the Scottish Churches Committee. I can supply the committee with a copy of the constitution if it wishes. I also have a sheet that shows the involvement of those denominations with masts.

**Angus MacKay:** Thank you. I have that list.

10:30

**Findlay Turner:** Only three denominations are involved with masts. The Church of Scotland has approximately 2,500 buildings. As far as we know, 38 masts are involved and there are some applications in the pipeline. The Episcopal Church of Scotland has 300 buildings and it estimates that there are 12 masts, four of which have planning permission. The United Free Church of Scotland estimates that it has 70 buildings but no masts as yet. The remaining denominations do not appear to have masts.

**Angus MacKay:** What are the general financial benefits of having a mobile telephone mast mounted on or near a church?

**Timothy Parker:** All of the operators enter into agreements or leases with the owners of the buildings or grounds upon which they put their masts. An annual payment is agreed as part of that lease. I do not know the practices of the other denominations, but the Church of Scotland employs a firm of chartered surveyors, who are skilled in such matters, to negotiate annual payments for us with the companies concerned. The general trustees who own the buildings ultimately receive payments in respect of most of the buildings. However, in some instances local trustees own the buildings and the payment goes directly to them. The funds are available for all purposes, although they are primarily for maintaining the fabric of the buildings.

Although that income is useful to the congregation concerned, it is a small drop in the ocean when one considers the substantial amount of money that is usually required to maintain many church buildings. Although it is sometimes inferred, it is not necessarily the case that a congregation is offered and grabs a sum of money without regard to any other circumstances.

**Findlay Turner:** A church is not required to take a mast; it is entirely a matter for the local people. For example, someone who wishes to put up a mast might have had their application turned down out of hand because the minister did not want the mast as a result of his views. On other occasions, representations have been made and the mast has still not gone up. There is a broad range of final decisions. However, although it is easy to assume that money is a big factor, it is not the ultimate deciding factor.

**John Scott:** What is the range of rents that are agreed between the operating companies and you, as trustees?

**Timothy Parker:** The rents vary—some base stations have been erected on churches for a while, but the range is roughly between £5,000 and £8,000 or £9,000 a year. The majority of rents tend to be in the middle of that range.

**Angus MacKay:** I know that the annual range of maintenance expenditure for the congregations of some faiths is many multiples of those sums, but in others the running costs are, perhaps, a lot lower. That must be quite useful annual income on which to be able to depend for routine maintenance.

**Timothy Parker:** I am sure that the treasurers think that.

**Findlay Turner:** I am a congregational treasurer, which perhaps brings us conveniently to another issue. My church is adjacent to two blocks of council flats that are about twice the height of

our tower. There is a school playground about 50 yards in the other direction. To be frank, I would hope that if a mast were to be installed, it would go on the council flats, obviously because that is—ostensibly—much safer. However, if that were not possible and we were approached, I would not, on purely precautionary grounds, be in favour of the installation. However, I cannot prejudge the decision of my court. As treasurer, the fact that the congregation might get £7,000 or £8,000 a year—an amount that would, as has been suggested, be very handy—would not influence the decision. I suspect that we would turn down the application.

**Angus MacKay:** I am tempted to press you on a number of interesting issues about community use of churches and the dependence of communities on the facilities that the Church of Scotland provides. There are also issues about the relationship between stable rental income and community benefit. However, I will pass over those issues because we could get into all sorts of complicated byways.

Instead, I will ask my third question. Your written evidence mentions two cases, one in which a congregation decided to approve a telecommunications development in spite of local opposition, and another in which the congregation changed its mind because of such opposition. Will you give us more detail of those cases and a bit of background as to why the decisions were made?

**Timothy Parker:** As we said earlier, the decisions in both cases related to health concerns, which are not really covered under the new regulations. The decision about what consultation to have with the local community in which a church is located is left up to each congregation. After all, the building belongs to the congregation; it looks after the building and, in many instances, there is no contribution to—or attendance of—the church by the community. It is left up to the congregation to decide whether, notwithstanding that, it should consult the local community or simply consult the congregation.

In the case in the west of Scotland, in which the congregation decided to go ahead, a petition was raised, which was signed by a large number of people, including people from far away and nearby, and there were various other objections. Pressure was put on the congregation to change its mind but, at the end of the day, having considered all the circumstances, including the evidence on health issues, the congregation decided to go ahead.

In the other case, which was in Edinburgh, after the appropriate approvals were obtained from local parties, the presbytery and the general trustees, and while we were in the process of negotiating with the operator on the agreement, a person living in the locality raised a petition about the health issues, and that petition subsequently snowballed. The congregational board reflected on the situation and decided to rescind the original decision because it would have caused too much disharmony. As our submission points out, and as Mr Turner said, if the congregation whose building is being considered, or the presbytery of which the congregation is a member, decides for whatever reason not to go ahead, we do not pursue the matter further.

**Angus MacKay:** My final question also relates to your written submission, which outlines the Church of Scotland's policy on the matter. Do other denominations that are represented on the Scottish Churches Committee have procedures in place and, if so, will you explain what they are?

**Timothy Parker:** I have little knowledge of the arrangements of the other denominations. I am aware of the Baptist position because I spoke to Mr Slack, who is the general secretary of the Baptist Union of Scotland, after an article about downloading of pornographic material appeared in the newspapers. He appeared to say that the Baptists do not give specific guidance on such installations to local congregations.

A while ago, I met representatives of the Scottish ecclesiastical committee and outlined the Church of Scotland's procedure. Some of the advice that I give to Church of Scotland congregational representatives is also given to Episcopal churches. However, I cannot speak definitively on what guidance is given in other denominations. I am aware that the decisions in the Roman Catholic Church in Scotland are left up to each diocese and the local priest, but I can give no more definitive information.

**Findlay Turner:** Mr Parker has dealt with my point that the Roman Catholic Church in Scotland delegates the issues to priests, who carry the procedures through, which means that there is no central record of how many churches have masts. As I understand the Catholic church, it is administered according to dioceses, which are under bishops, and each diocese may have different policies.

The Scottish Episcopal Church said in a note to us that it is not aware of any planning difficulties in relation to the masts on its buildings. The Free Presbyterian Church of Scotland said that it does not permit masts on its buildings for the practical reason that the operators require access at all times, which is a problem.

**The Convener:** That draws the questions for the panel to a close. I thank Douglas Murray, Timothy Parker and Findlay Turner for their evidence.

10:41

*Meeting suspended.*

10:47

*On resuming—*

**The Convener:** We continue with the next group of questions. I welcome to the committee Graham U'ren, director of the Royal Town Planning Institute in Scotland, Nigel Hooper, the planning manager of East Dunbartonshire Council, and David Banford, the area planning manager from Dumfries and Galloway Council.

We have decided that we will go straight to questions rather than hearing opening statements. The initial questions that we are will ask are quite general, so if you want to give an overview of telecommunications planning, please take the opportunity to do so.

**John Scott:** Good morning gentlemen. Since the introduction of the new regulations, has the mobile telephone industry improved its communication with local communities and local authorities regarding development?

**Nigel Hooper (East Dunbartonshire Council):** The issue of the relationship between communities and development rather than the industry per se has been at the heart of many of my responses to the committee's questions. It is probably apparent from my submission that I think that that relationship has improved enormously, certainly in comparison to what it was like before the regulations were introduced. The relationship continues to improve. That has been the experience of East Dunbartonshire Council, but I cannot speak with the same level of clarity for other authorities. I believe that that relationship is in general continuing to improve across the board.

In East Dunbartonshire, it was most significant that the council was able to find the resources to employ a dedicated telecommunications officer. That personal relationship with the industry has facilitated the relationship between the industry and the council, and has enabled improved communication with communities.

**David Banford (Dumfries and Galloway Council):** My experience is that since the legislation was introduced, dialogue with the industry has improved greatly. Council officers have been able to agree to all sorts of improvements to the schemes that the industry wanted to pursue. Dialogue with the community tends to operate through local authority staff and members rather than through the industry itself.

Schemes that are proposed to the council—such as individual masts—are relatively small-scale compared to those in urban areas. I do not think that the industry is making direct contact with community councils about such schemes, but it is involved with the process through the local authorities. Community councils all get copies of the weekly list so that if they want to engage with staff about a scheme, they know how to do so. If a proposal goes before a committee in response to any kind of objection, the parties who object are invited to the committee to speak to their concerns. If that happens, the industry applicant would also be asked to the meeting to explain the proposal. In my authority, therefore, there is a very public dialogue on masts and related issues.

**Graham U'ren (Royal Town Planning Institute in Scotland):** I will take the opportunity to make some general points. My answer to such a specific question is based more on second-hand information than are those of my colleagues who are directly involved.

However, I am able to draw on the experience of local government people and that of the planning consultancy sector because the RTPI has members in all sectors. I confirm that there have been significant improvements from the public sector's point of view, but there are more planning consultants involved in helping to facilitate applications from the operators. Perhaps the consultancy sector could also be used more to help facilitate the consultation and discussion processes.

**John Scott:** Do you think that the level of consultation is adequate?

**Nigel Hooper:** The difference between local authority or planning authority planning powers and the community's expectations are at the heart of the matter. There is a gulf that has to be filled by liaison between the community and the planning authorities or developers, who should be trying to reassure the community. However, I feel that the most sensitive communities are almost incredulous that planning authorities can approve telecommunications equipment in the face of significant local concerns.

In East Dunbartonshire Council, our finalised draft local plan contains a requirement that in specified sensitive locations, a circle with a radius of 250m be drawn around schools, play areas and other sensitive areas. If there are proposals for that zone, the developers have to demonstrate that they have engaged actively with the community. That type of engagement is beginning to make progress but it needs to go a great deal further. It is a process by which reassurance is given.

**Bruce Crawford:** I have a quick supplementary question. The issue is obviously quite important. You talked about the gulf between the community and what it expects from its local authority. There is also a gulf between what planning officials and councillors might expect. You can consider only direct planning issues, but councillors will be lobbied about wider concerns, especially health

matters, and they might then go against the decisions of the directors. Perhaps that is not happening often.

You said that the developers had to fill that gulf by communicating with the community. Are not there other ways in which that gulf could be filled—for example, by strengthening the national planning policy guidelines for councils and planning advice notes for councils, in terms of what councils can consider by way of precautionary measures in respect of potential health implications? The jury is out on the matter, which is why there is a gulf. That is the bottom line. There are issues about general amenity and what a mast looks like, but the nub of the matter is the issue of taking precautions or otherwise.

**Nigel Hooper:** That is correct. The issue runs to the heart of the difficulties that we—the community, planning authorities and developers—face jointly. You ask whether there are other ways of filling the gulf; I think that there are. I draw Bruce Crawford's attention to ways in which we have tried to do that through the East Dunbartonshire local plan. We acknowledge that the technology is still developing and that, even in the past two years, it has developed significantly—I gave examples in my written submission. The technology will continue to develop.

Like other authorities, East Dunbartonshire Council is issuing only temporary consents. Some authorities issue 10-year consents, but we have chosen to issue five-year consents. That system need not be a threat to the industry, because it is not uncommon for planning authorities to give temporary consents when such matters are developing. Temporary consents give communities some confidence that things are not set in stone.

East Dunbartonshire Council has tried to tackle the issue in a second and perhaps more significant way. Often, people's incredulity is at its highest when telecommunications equipment is planned in close proximity to sensitive locations. The example of schools keeps cropping up, as do nurseries and play areas. I draw a distinction between direct health effects—on which, as Bruce Crawford said, the jury is still out—and indirect effects on the health of the community.

In my submission, I refer to learned articles in legal journals that go into some depth—from an English perspective—about the stress that is caused in communities by feelings of disempowerment and constant reminders of what has happened. Council members have heard that when a community has expressed a strong view about telecommunications apparatus, it is considered to be almost an insult when people walk out of their front doors every day and see such apparatus there. Our idea was, therefore, to include in policy a clear statement that the council would not approve the siting of apparatus on land or premises immediately adjoining sensitive locations. That is not to say that there is a direct health effect; it is merely to say that the council respects the views of the community and the community's health.

**Bruce Crawford:** In effect, though, what you have done is implement the precautionary principle in its widest sense, not just in terms of direct health implications, but in terms of the health of the community as you see it. Let me take that a wee bit further: if you, as a local authority, are prepared to do that in respect of your properties, how would you feel about guidance coming from central Government—either through the NPPG system or through the planning advice note system—that said to local authorities that an exclusion zone around residential properties, schools, nurseries, hospitals, and so on would be a reasonable way to start to deal with some of the conflicts that exist and to bridge the gulf that exists?

**Nigel Hooper:** What you are suggesting is not unreasonable in the light of what I have just said. We are talking about the health of the community and community attitudes, and your suggestion ties in with the emerging proposal for a power of community well-being for councils, which will consider the issues in the round. However, we should be clear that that would involve something additional to land use planning and assessment of pure environmental impact—it would have to be to do with perceptions and perceived impacts. Clearly, local authorities would implement the guidance that was given in Scottish Executive publications.

**The Convener:** Does either of the other witnesses want to comment on the issues that Bruce Crawford has been pursuing?

11:00

**David Banford:** The point was debated in considerable depth when the original working party was in session. The broad conclusion was that the community health issue would be best left with the licensing authority—a Government agency—rather than the local planning authority which, in all likelihood, would not have the resources to test an individual application for health effects. That was the conclusion of the industry, the officers who contributed to that working party and, in due course, the Executive.

If the Government takes the view that the wider community interest needs to be protected by the precautionary principle, that should be done via the NPPGs and the PAN system, which would give specific guidance to local authorities that

would empower them to do that. They could then build that back into their operating systems. What we do not have at the moment is an overview and it is left to the Government, as the licensing authority, to address the issue. That is why the International Commission on Non-Ionizing Radiation Protection certificate is expressing support for applications to the planning authority.

The point was made that a distinction should be drawn between the two arms of government; those being local government and national Government. The local authorities deal with local issues, but not with the wider health issue. That is a problem, because the public cannot understand why their objections cannot be handled as they want them to be handled by planning authorities, as Nigel Hooper said. However, if the Government wants to do that, it will have to adopt a different mechanism from the one that currently exists.

**Graham U'ren:** This is one of the most difficult areas of the regime. The problem is that, at the moment, it can be established only by case law that an ungrounded fear may be a material consideration, and it becomes a consideration only as far as that fear is concerned. When it comes to the question of proof regarding whether the fear is founded, health is not a material consideration. In many respects, the guidance about adopting a precautionary principle—which cannot be backed up by specific guidance on how to deal with the issue itself—is making life more difficult for local authorities. I am not entirely sure whether it is a matter of reviewing the central guidance or whether it is a matter simply of waiting for a case to be decided finally one way or the other. However, the present situation is not helpful to anybody.

David Banford said that the community health aspects are an issue for the licensing procedure rather than for the planning procedure. That is probably the key; more consideration should be given to it. After all, all other quantifiable environmental impacts are dealt with by separate—albeit parallel—licensing procedures, whether through waste management, under the integrated pollution prevention and control regime, or by the environmental health services, if the impacts relate to noise and other nuisances. All those matters are subject to separate consent procedures, and the planning advice that is upheld by case law is that planning should be involved when there is a separate regime.

We have, at least, got the ICNIRP certification procedure, which is separate from the planning procedure. The fact that a certificate has to be produced does not mean that the process is part of the planning procedure; it is a prerequisite for planning and that is all. Such a parallel procedure should deal lock, stock and barrel with the health issue. Planning decisions can be made only on the basis of the application of a weighting to every factor that is under consideration. Come the day that there is a proven issue about health, that will become a definitive criterion. It will then be impossible to say, "That is just a hostage to fortune. If there is a better argument for jobs, we will discard the health argument." The planning procedure cannot deal with a situation in which a definitive criterion is involved. Only the licensing procedure can deal with such situations.

The other issue is the fact that planning works on the principle of a development's being on a site for all time. The health issue—either in proven cases or in terms of different interpretations of it over time—is not something that the planning procedure can deal with, because a decision must be made for all time.

The closest, perhaps, that you can get to legitimate application of the precautionary principle is to consider whether temporary consents can be granted, so that in the fullness of time the issue can be clawed back, if and when one has the evidence about what the problem is, or how it can be dealt with. More work needs to be done to avoid leaving the planning authorities in the situation that they are currently in.

Whereas my colleagues have referred to policies and procedures with which their councils might be reasonably comfortable, there are councils that find the political pressures very uncomfortable, and which are refusing a high number of applications, many of them against recommendations from officers. The officers have nowhere to refer, other than the policy that they are given. Many such submissions are subsequently overturned on appeal but, at the end of the day, planning by appeal is not the way forward for our planning system because it is unsatisfactory in all senses.

The precautionary principle issue is not, to be honest, the same in telecoms as it is in other areas of environmental concern, where we are talking about a balance in environmental considerations. If, at the end of the day, it transpires that there is a real health issue in telecoms, it must be a separate licensing matter.

**John Scott:** I think that the questions that were allocated to me have been answered.

**Bruce Crawford:** I apologise, convener, for cutting across John Scott. I did not mean to do that. It just seemed like an appropriate stage to ask the question.

I want to ask Graham U'ren about something on mast sharing in his written submission, which states:

"There does not appear to be any effective system for securing mast sharing nor for securing the reduction of clutter on prominent buildings".

How could that process be best improved?

**Graham U'ren:** Although I have obtained some evidence to support what I said, I am not sure that I have particularly good answers to that question. Behind all is the need to consider not just development on the planning policy front and procedure front, but development of the relationship with the industry. On the point that we have just addressed, perhaps it would be easier to talk about buffer zones if the industry was prepared to co-operate, rather than rely on a planning policy. Equally, perhaps it would be easier to talk about a protocol with the industry because, in trying to achieve mast sharing, we are more dependent on it than on anything that planning policy can dictate.

Mast sharing is probably the most obvious issue, because it has been a matter of concern ever since free-standing lattice masts started to appear in fairly open landscapes and townscapes. In urban areas, the issue is moving on because although many of the small antennae on the tops of buildings were permitted developments, we have developed a huge clutter of them. Each new mast simply adds to that clutter, although there is a planning advice note that gives technical advice on how to avoid clutter on buildings.

One of the concerns in urban areas is that there seems to be no way in which to resolve the problem of clutter, and it might not be merely a question of persuading the operators in each new case to introduce mast sharing and better design on buildings. It might be necessary to get together with the operators and the building owners to try to rationalise the existing clutter.

**Bruce Crawford:** In terms of the overall impact of masts on the community, the committee heard evidence earlier today and two weeks ago about the growth that there will be in the number of masts. Although local authorities cannot address health concerns, they can concern themselves with over-development, clutter, amenity and visual obtrusiveness. On over-development—by which I mean too many masts' being clustered in one area—there seems to be potential. Graham U'ren talked about persuasion, but is not there an opportunity for Government to give powers to local authorities so that when they receive applications they can enforce mast sharing, so that we can control some of the problems? Without strengthening local authority powers, all the persuading in the world will not convince some operators that they should—because of clutter, amenity, over-development or visual obtrusiveness—share masts.

**Graham U'ren:** I can only agree that a means of enforcing or persuading would be highly desirable. The problem is whether the planning system—how planning policy is drafted and how planning law operates—would allow us to ensure enforcement. I think that that would be difficult, which is why I tend to suggest co-operating with the industry as a whole to achieve the objectives. I do not know what my colleagues would say, but I think that legal enforcement would be difficult.

**David Banford:** The table that I circulated to members illustrates the problems that we are facing. Of the 46 cases indicated, only nine involved mast sharing, despite the fact that we, as local government officers, tried to persuade applicants that they should be mast sharing. In our experience, mast sharing is the last item on operators' agendas. They do not like mast sharing because it involves more organisation and perhaps exposes them to a bit of horse trading with a competitor or a landowner.

Some operators are willing to share masts, but it is clear that many are not. Our lever for trying to force the issue is to take a case to committee, with a recommendation of refusal. That seems to galvanise operators into action, which can produce a result. However, the council's only power is to refuse an application. We might be faced with an application for a new mast that would be reasonably close to an existing one. However, if the proposed site did not raise a landscape or amenity issue, we would not necessarily pursue mast sharing as an overarching objective. We have to test each case to ascertain whether we should pursue mast sharing.

In cases where we think that there could be a growth of clutter and an adverse impact on amenity, we first ask the operators what other sites they have considered. However, we always bump into the difficulty that operators will give reasons for not considering alternative sites. A favourite industry way of declining a mast share is to present planning staff with all sorts of technical reasons, which are completely mystifying to the layman, to explain why mast sharing cannot be done. Operators give a raft of reasons why the technical performance of another mast would be inadequate for what they want to do. It is somewhat ironic to be faced with such arguments. When an operator claims that another mast is inadequate, we ask how another company has been able successfully to use that mast year in, year out. The truth is that operators cannot be bothered to share masts because it is too much of a nuisance for them.

On the siting of masts, we have a problem in cutting through what we think is often just obfuscation. We do not have easy access to an agency that could give us good, third-party technical advice on a mast-sharing proposal or, indeed, on any site choice. We are a bit vulnerable

to the whims and wiles of individual operators because we do not have access to their level of technical expertise.

**Bruce Crawford:** If local authorities had planning guidelines that allowed them to refuse an application because an alternative solution existed, that would reduce the number of successful appeals and the number of appeals overall. Such guidelines could give local authorities the power to tell operators to do further work on an application.

**David Banford:** If we can demonstrate that there is an appropriate alternative, that greatly strengthens the local authority's hand.

11:15

**Nigel Hooper:** The power that we are talking about does not necessarily require changes to guidance or statute; it is already available through the requirements in the local plan policy under which mast sharing will be sought. If mast sharing is not feasible, that will require to be demonstrated. However, I concur with my colleague that it can sometimes be baffling to be presented with technical details, which can cause difficulties.

The other side of the question is that a great deal of emphasis is placed on mast sharing and, indeed, site sharing. We are starting to hear of cases—not just in my local authority—in which local communities and elected members have exerted pressure in favour of mast sharing. A mast-sharing scheme has now been developed and an application has come forward.

The sheer scale of the development is due to the need for vertical separation between antennas, which leads to a significant increase in the height of masts if they are shared. If masts are to hold a large number of antennas, different structures are required. Those changes have caused even more significant adverse reactions. Mast sharing is not a panacea. Recently, we have had experience of lamp post-style masts being erected on opposite sides of roads. Their impact on local amenity is insignificant, whereas the impact of a shared mast could be very significant. We tend to lose sight of that when we talk about mast sharing.

**John Scott:** I appreciate Nigel Hooper's comments. That was essentially the point that I wanted to draw out. In discussion with the churches, it was acknowledged that the modern-day, next-generation masts might not be taller than 1ft and so would not be visually intrusive. One does not need a degree in radio communications to understand the separation distances required, but it seems likely that there will be less visual intrusion if antennas are placed on separate masts, rather than together. I agree that there is a case to be made for mast sharing where it is deemed suitable, but I believe that, if companies are forced to share masts, the visual intrusion could be greater. Do you agree with that premise?

**Nigel Hooper:** I agree—that is the point that I have just made.

**John Scott:** David Banford is obviously in favour of an increased burden of regulation on the telecommunications companies. Does he accept that more red tape and greater controls—as espoused by Bruce Crawford—would eliminate the companies' freedom of choice and their ability to come to their own agreements with communities and individuals?

**The Convener:** I am not sure whether that was a question or a statement of John Scott's views, but I will allow David Banford to come back on it if he feels that he has been misrepresented in any way.

**David Banford:** I was not promoting the idea of more regulation. My plea is for a bit more honesty on the part of the industry in the pursuit of objectives. Companies might sign up to the idea of mast sharing, but they are often reluctant to pursue it in practice, even if we think that there is an appropriate reason to do so. I fully accept Nigel Hooper's comments about advancing technology providing much neater ways in which to accommodate multiple aerials.

**John Scott:** Why, then, do you make such a strong case for mast sharing?

**David Banford:** In rural areas, the antennas tend to cover a bigger geographical area. In my area, for example, the industry tends to look for additional masts, whereas in urban settings there is often a different approach to the multiple network of cells. The geography of my area is different from that of urban areas and the industry responds in a different way. The applications that we get tend to be for ground-based masts rather than for other types. That may indicate why I have an interest in mast or site sharing. However, I accept that evolving technology will change the way in which planning authorities need to respond to the infrastructure. There is a geographical difference between rural and urban infrastructure. I am not pursuing more regulation as an end in itself.

**Elaine Thomson (Aberdeen North) (Lab):** My question is about redundant masts. There is a general issue of how the planning system may be used to ensure that when masts reach the end of their useful life they can be replaced. Technology moves on and changes in the style, size and type of masts have an impact. It is likely that some equipment that is functional at the moment will be redundant in a year or two.

Aberdeen was the home of Atlantic Telecom. Like many members, I have constituents with totally defunct masts close to their homes. Can anything be done to ensure that such masts are removed? In his paper, Nigel Hooper proposes the establishment of a bond or fund for that purpose. Can he expand on that suggestion? Given what has happened with Atlantic Telecom, what can be done to address the problem of defunct masts retrospectively?

**Nigel Hooper:** The member raises an issue that is important locally. Some areas have experience of problems arising from what happened with Atlantic Telecom, but others do not. I draw a distinction between what happened with Atlantic Telecom and concerns about installations that have been developed under current planning powers. Where a planning consent is issued for the installation of equipment, but that equipment is not removed once it has become redundant, the planning authority can enforce its removal.

I suggested that consideration be given to the establishment of a bond because, if a company goes into receivership, it can be difficult for the planning authority to recover the costs of a removal that it has carried out, as the equipment often has nil value.

The case of Atlantic Telecom is different, because much of the equipment was put up before the planning regulations were introduced. East Dunbartonshire Council has considered in depth the opportunities that exist for removing the equipment and has concluded that, if the receivers and landowners are unwilling to remove it—we have experience of one such case in the East Dunbartonshire Council area—there is nothing that the planning authority can do. The mast must simply be allowed to rust and fall to pieces.

That is a serious concern, because we are talking about equipment that was installed some years ago. It was not state of the art, compared with the equipment that is being installed now. Some of it is in very visible locations and has a significant impact on amenity.

**Elaine Thomson:** I would like to pursue that issue. What would happen if some of the equipment became dangerous as well as unsightly? Is there not an obligation on someone—even if it is only the landowner—to ensure that the equipment is safe?

**Nigel Hooper:** The obligation is the same as exists for any structure or building and lies with the landowner. The local authority has responsibilities for community safety. If the land is not accessible and has a security fence around it—as is the case with most telecommunications masts—there is almost certainly no threat to the community.

**Elaine Thomson:** It does not sound as though communities located near masts can hold out much hope for their removal.

On a completely different topic, some of the witnesses who gave evidence to us two weeks ago suggested that there was a link between the ease of roll-out of mobile and third-generation technology and the roll-out of broadband. Do you think that putting up barriers to the roll-out of mobile telephony has a negative impact on the roll-out of broadband?

**David Banford:** We have had no difficulty at all with that in my authority.

**Bruce Crawford:** Elaine Thomson spoke about redundant masts. A section 75 agreement or a similar mechanism, such as a bond, could be applied at the beginning of the process to ensure that there was a remedy for the community and local authority at the end of a mast's useful life, thus ensuring that there was no unsatisfactory residue. I do not know whether that could be done.

**David Banford:** There is already provision for that in the planning advice note. If one applies a temporary permission for five or 10 years, for example, one can require the removal of the equipment at the end of that time. That is a fairly straightforward, tried-and-tested method. It simply requires that the company still exists and trades. That was the problem with Atlantic Telecom; the company no longer existed and there was nobody left to remove the equipment. If that problem has not arisen, the operator could be required under a planning condition to remove the equipment. Section 75 agreements are cumbersome beasts, so a planning condition would be the device of choice, as that method is tried and tested.

**John Scott:** Would it make sense if an industry bond were introduced for the removal of redundant masts in the event of companies failing and no one else taking on the installations? That idea came to me only when we were discussing the matter.

**David Banford:** That is fairly common practice in the minerals industry. There is long experience of mineral sites failing to be restored because the operator has gone into liquidation or no longer exists for some other reason. If a bond is placed prior to the commencement of the work, the local authority has access to those funds to restore the site, which the operators would otherwise have done themselves. We have not looked at that, so I am not sure how much money would be involved for each case. However, such a mechanism would be a safeguard against the operator ceasing trading or the equipment falling out of use. The local authority would then be able to access the bond and remove the installation.

**Graham U'ren:** As I understand it, under the Department of Trade and Industry's code, an operator's licence involves the requirement to

remove the equipment when the licence expires or the equipment ceases to be used. There is already an in-built procedure, but that does not take care of cases such as Atlantic Telecom where there is no licensee left. That is why such situations arise.

In the case of a live company, we could take the belt-and-braces view that, notwithstanding the requirement to remove the equipment, we should also use a bond if we wanted a backstop in the event of a company's going bust. I can certainly confirm that that procedure is widespread in minerals applications and consents.

On one significant occasion, we sought to protect against the effects of the privatisation of the coal industry by issuing a large opencast coal mine with a personal consent to try to get round the fact that we did not have a bond and that, if the industry were denationalised, we would have to renegotiate with another party. However, a paragraph buried in a schedule to the Coal Industry Act 1994 said that the new owners of the interest would be treated in law as the same party as British Coal. We found ourselves circumvented in that case. It is worth getting a bond if one has the resources to do so.

**Maureen Macmillan:** The Mobile Operators Association raised with us three concerns in particular about the way in which local authorities implement the new regulations. The association highlighted inconsistencies in neighbour notification and pointed out that, when communities are not properly informed, the issue rebounds on the mobile operators rather than on the local authority. In addition, the association felt that the request for additional information over and above what is required by statute is inappropriate. It also felt that planning conditions were being used inappropriately. Are those concerns legitimate? What is being done to address them?

11:30

**David Banford:** Unfortunately, inconsistency over neighbour notification is a problem that afflicts not only the telecommunications industry. The whole issue is somewhat thorny and a separate study on neighbour notification has been carried out recently. Without knowing the specific complaint from the operators, I can speak only in general terms. The fact that the neighbour notification legislation is quite convoluted leads to some differences in day-to-day interpretation not only for telecommunications applications but for all applications that might lead to a complaint from the public. If there is a problem with telecoms, it needs to be considered in that wider context. In rural areas, we tend to find that, as an individual mast will be outside any towns, there are no neighbours to notify in any event and the landowner is the only one who must be involved. The problem is variable and the size of the problem depends on where one is.

On requests for information beyond what is required by statute, I can again speak only in general terms without seeing the detail of the complaint. It is quite common for any applicant to be asked for additional information to clarify and expand on what is stated in the application. If something crops up in the processing of a case, it is not uncommon for the planning officer to ask the applicant or the applicant's agent for additional information. As the information that is required by statute is fairly minimal, it often does not adequately cover the territory that we need to cover. I suspect that, in cases where additional information is requested, the request is probably legitimate. My guess is that the industry just does not like being asked for it.

There may be a problem with the improper use of conditions. The circular on the use of conditions is comprehensive and quite clear in its advice. If conditions are being used improperly, the staff who are responsible for those conditions—if they come from the staff level—need to sharpen up their practice. It may be that a condition is introduced at member level rather than by the officers. However, even where that happens, officers should advise their members that a suggested condition is not appropriate and does not meet the terms of the circular. So, yes, it is quite likely that difficulties might arise from time to time, but there should not be a general problem because good advice is available on the use of conditions.

**Maureen Macmillan:** So the problem, if it exists, is not too widespread.

**Nigel Hooper:** I might add that none of those concerns is unique to telecommunications developments. It is quite common for developers to raise such concerns. Where a developer chooses not to involve planning consultants in the development, there is often an issue about the relationship between planning staff and the developer and the extent to which they understand one another and understand what is reasonable. The planning advice note helpfully sets out model conditions, which can be very useful.

If conditions are considered to be unreasonable, the developers have the right to appeal those conditions, as my colleague said. Equally, if the developers consider that requests for additional information are unreasonable, they can appeal against non-determination, so they have a remedy in law if they consider that the local authority is acting unreasonably.

**Graham U'ren:** I concur with what has been said, particularly about neighbour notification being a wider issue. Of course, that is under

review by the Executive in its consultation on "Getting Involved in Planning". We could probably anticipate a proposal for a changed regime. Although that might not solve all the problems, it would certainly get over some of the basic problems of people claiming that they should have been notified but were not, or of people being notified and going along to the planning office in the belief that the application has been submitted, only to find that it has not, or at least that it has not been fully validated and made available for inspection. We might get round some of those problems with a different regime. The issues should certainly be addressed in the wider context.

**Maureen Macmillan:** There are two further points on which I would like clarification. The first is about plans to roll out new services and about how local authorities have tried to improve engagement with the industry, in particular at a strategic level. You indicated that that was happening. Would you elaborate on that?

I am also interested in what you said about local authorities operating moratoria. You seemed to indicate that that is a good idea, yet we heard from the mobile operators that when local authorities put a blanket moratorium on local authority-owned land, that can mean that the most appropriate sites cannot be used, and that operators then have to consider less appropriate sites elsewhere. Could you comment on that?

**Nigel Hooper:** The issue of access to local authority-owned land and premises—whether you call the policy a moratorium or not—is difficult. As I understand it, local authorities that operate such a policy do so not through their planning powers but through their powers as landlord. Such a policy is not restricted to local authorities. In my council's area, a number of private landowners operate a similar policy, because they see masts as a potential cause of friction with the community.

What was your other question?

**Maureen Macmillan:** It was on strategic issues to do with roll-out.

**Nigel Hooper:** Engagement over roll-out is improving. The quality of roll-out submissions affords a significant opportunity to improve that engagement. The detail that is given in roll-out plans can sometimes be so limited as to be almost meaningless. Including large areas of towns or almost whole communities in search areas does not add a great deal.

**Graham U'ren:** In discussing with operators their forward planning intentions, apart from the need for adequate information, we come up against the issue of the resources that planning departments require to engage in a full discussion, which is extremely useful and important. With telecoms we are always coming up against issues to do with the planning system—not just the legal framework, but the way in which it is managed and resourced.

We have before us as good an example as any. Although we have here two authorities that I believe are reasonably well equipped to deal with consultations with the industry at all stages, some authorities are unable to engage, even when schemes are submitted to them for network roll-out proposals. That is a serious issue, which it is in everybody's interest to overcome. There is a quantitative issue to do with staff resources, and a qualitative one to do with the knowledge and specialist interest of the staff concerned. The situation is patchy.

**Fiona McLeod (West of Scotland) (SNP):** On roll-out plans, the evidence that Nigel Hooper gave us states that East Dunbartonshire has a

"typology of 'preferred locations'",

but that the operators will object to that through the local plan inquiry.

When mobile phone operators gave evidence at our previous meeting, we asked them about their engagement with local authorities. They claimed—they subsequently submitted written evidence of this—that although they wrote to all 32 local authorities, they received only five acknowledgements and only four local authorities commented. No meetings were held with any local authorities in Scotland to pursue discussions about roll-out plans. What is the reason for the great discrepancy between the evidence of mobile phone operators and evidence of local authorities?

**Nigel Hooper:** I noticed that in the evidence that was submitted and I admit that it mystified me a little, because it reflects neither the information that I receive from colleagues in other planning authorities nor the circumstances in East Dunbartonshire. The operators acknowledged that, if detailed discussions had already taken place between operators and planning authorities, they would not expect a request for a meeting.

In one of the committee's previous discussions, it was said that if roll-out plans were more detailed and focused, they might engage a planning authority's attention a little more. For some authorities—particularly those that do not have a dedicated telecommunications officer—it can be difficult to respond to general roll-out plans, which operators provide in varying formats.

**Fiona McLeod:** It has been said often today that local authorities must interpret circulars and other documents to achieve their councils' policies. Engagement is the second commitment of the Mobile Operators Association's 10 commitments and it was dealt with in recommendations 6 and 7 of our report. Is it another matter on which the

NPPG and the PAN need to be more explicit, so that mobile phone operators submit useful standardised plans to local authorities, to ensure that we all have the information that we need to make an informed decision?

**Nigel Hooper:** All planning authorities would welcome some standardisation and improvement of roll-out plans. I am not in a position to say whether it is the role of Scottish Executive guidance or policy to do that. I said in my submission that the Mobile Operators Association might want to consider that role in improving its own housekeeping.

**The Convener:** I draw questions to a close, because we are overrunning considerably and have numerous other items of business. We have not had the opportunity to ask a few questions that we wished to ask, so we propose to ask you to respond to some questions in writing. The clerks will be in touch with you to arrange that in due course. I thank Graham U'ren, Nigel Hooper and David Banford for their useful evidence.

After the break, we will go straight to agenda item 6—consideration of a statutory instrument—and take evidence from the Deputy Minister for Environment and Rural Development. I ask members to return promptly after the suspension, as we have a large number of items to deal with.

11:43

*Meeting suspended.*

11:46

*On resuming—*

# Subordinate Legislation

## Nitrate Vulnerable Zones (Grants) (Scotland) Scheme 2003 (SSI 2003/52)

**The Convener:** Item 6 is consideration of a piece of subordinate legislation that is subject to affirmative procedure and requires the Parliament's approval before it comes into force. I welcome to the committee the Deputy Minister for Environment and Rural Development, Allan Wilson, and Executive officials James Shaw, Frances Reid and Neil Sinclair.

The normal practice for considering a statutory instrument is that, before the minister moves the motion, members have the opportunity to ask the minister and his officials questions. Before that, the minister will have the opportunity to make introductory remarks about the scheme. If members want to ask Executive officials questions, they must do so before the minister moves the motion, as officials are not permitted to participate in the debate on the motion.

**The Deputy Minister for Environment and Rural Development (Allan Wilson):** I welcome the opportunity to introduce the nitrate vulnerable zones grant scheme. By agreeing to recommend the scheme's introduction, the committee will offer many farmers the opportunity to access public funds. That will assist them in fulfilling NVZ action programme requirements.

The scheme delivers on the commitment that the Scottish ministers gave in March 2000—almost three years ago—to introduce a 40 per cent grant scheme to help farmers in areas that are designated nitrate vulnerable zones. At that time, an undertaking was given to discuss the scheme's detail with the industry, with the proviso that the scheme would be designed to assist farmers who needed to change their business practices to protect our water environment. We have subsequently consulted those who are most likely to have an interest in the issue on the scheme's principles and on the proposed Scottish statutory instrument. In reaching a view, our objective was to target the grant scheme to help farmers to comply with the requirements of any NVZ action programmes.

Where do action programme measures come from? As members know, they are designed to minimise pollution from agricultural activity. The nitrates directive requires member states to identify and designate zones and to put in place mandatory measures to reduce inputs of nitrate

pollution. The directive further identifies features that all action programmes must have. The scheme that is before the committee was formulated on those compulsory measures.

One of the most significant aspects of the compulsory measures that will impact on a farmer's business is the need for sufficient manure and slurry storage during closed periods. As members know, closed periods are set periods when organic manures and slurries cannot be spread on agricultural land. The cost of the provision of storage during the closed period, when they cannot be spread, can vary considerably, depending on the facility that is required, but it will more than likely involve a significant capital outlay for most businesses that require to make that change. That is why we have designed a scheme to meet that need.

The powers to introduce the capital grant scheme come from section 29 of the Agriculture Act 1970. The scheme that is before you today does not go into the details of the elements that make up the grant scheme. Rather, it provides the regulatory framework in which we wish to operate. It sets out the procedures in relation to applications for grants and their determination, but the details of what is included and how applications will be assessed are given in the guidance document, which is attached.

An applicant must have some land situated within a zone. Provision for the payment of a 40 per cent grant for eligible work is subject to the condition that the expenditure on the work does not aggregate in excess of £85,000. Administration will be done on a tranche basis, and unsuccessful applicants in a particular tranche will be able to submit another application in subsequent tranches. A ranking system will operate to ensure that priority is given to applications from those who have the greatest need to improve their storage facilities, and it is expected that there will be at least one tranche in each financial year that the scheme runs.

Grant assistance to meet storage needs will be limited to the greater of the current stocking levels, and the average stocking levels during the previous 12 months. The scheme will be time limited to five years, and there will be a process to allow for representations from applicants where Scottish ministers vary the approval or amend the conditions that are attached to the approval of an application. Last, but by no means least, there will be a process for appeals where Scottish ministers propose to withhold, reduce or recover grant moneys.

As the committee will see, the grant scheme does not specifically define the geographical area to which it applies. That is covered by the cross-reference in the scheme to the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003. By not defining the specific geographical area in the proposed grant scheme, should there be further designation of nitrate vulnerable zones, they too could be included within the scheme without the need to come back here and make a further Scottish statutory instrument.

The scheme has been submitted to the European Commission to ensure that it complies with state aid rules. Although we have not received confirmation, we believe that the scheme will meet such requirements. No decisions on applications to the scheme will be made until such time as that clearance has been granted, but we intend to launch the scheme on the successful completion of the Transport and the Environment Committee's scrutiny and the parliamentary process, but with that important proviso.

In conclusion, I welcome the opportunity to be here. My colleagues and I will try to answer any questions that the committee has about the scheme. The farming industry has been aware of the prospect of the introduction of a grant scheme for some time. As I said, we originally indicated our intention in March 2000. Many farmers who are located in the areas that are affected by nitrate vulnerable zones will welcome the scheme, so that they can get on with changing or improving their slurry storage facilities in a way that will help them to meet the requirements of the action programme, and help to improve our water and related environment as we seek to introduce closed periods for slurry waste distribution.

**The Convener:** Four members have indicated that they wish to ask questions. I will take them in the order in which I saw them.

**John Scott:** Minister, did you say that the instrument would give you the power to expand nitrate vulnerable zones without the introduction of further SSIs if you felt that that would be appropriate?

**Allan Wilson:** I said that the SSI is not location-specific and is written sufficiently broadly so that if another area were designated, the farmers in that zone would have the opportunity to apply. It is not about designating additional zones.

**John Scott:** I appreciate that you would not designate other areas.

I have two principal questions. First, will that scheme be adequately funded? Secondly, can you assure me that if any farmers are unable to access the funding to which they are entitled simply because the Government has been unable make the 40 per cent funding available in the tranche-bidding system, those farmers will not be prosecuted?

**Allan Wilson:** The scheme is adequately funded: £6.8 million is available in 2003-04; £4.8 million in 2004-05; and £5.8 million in 2005-06. In anybody's language, those are considerable sums. It is difficult to estimate the total likely demand because several factors will influence it. The grant will be 40 per cent of eligible expenditure with a maximum of £85,000 for each business—equivalent to £34,000, in grant terms. It has been pitched at a level that meets the aim of funding as many projects as possible using available resources. The use of those resources will depend on the number of applications received and the level of grant required. We will have to see how the process develops. Obviously, the scheme will add to existing storage facilities and perhaps update them or create new ones that are designed to improve the water environment.

**John Scott:** I accept what the minister says and the spirit in which he says it. However, if everyone who applies for the schemes in the first year is not accepted because of the cap on funding, I seek an assurance that he will not take action against people who wish to upgrade their premises but are unable to do so simply because their grant application has been unsuccessful.

**Allan Wilson:** The member has raised a hypothetical scenario. We cannot give any categorical assurance about the future application of the scheme. All I can say is that the scheme is designed to assist farmers and involves a significant sum that will enable them to make adequate provision for slurry storage during the closed period, so that they will not find themselves in the situation that he describes.

Who is to say how an individual operator will act? I cannot give a blanket assurance that suitable action would not be taken at some stage in the future if the provisions of the scheme were being abused, ignored or whatever. The scheme is designed to be applied flexibly so that those in greatest need will have greatest access to it. I do not anticipate the problems that the member envisages.

**Robin Harper (Lothians) (Green):** The action plan seems to be detailed, sensible and workable.

My question follows on from that of John Scott. Has any attention been given to the possibility of retrospective grants for farmers who find that they did not manage to get a grant from their first application but have nevertheless seen it as sensible—and their duty—to proceed with upgrading their storage facilities?

12:00

**Allan Wilson:** The short answer is no. If the committee approves the SSI today and the EC approves the scheme as complying with state aid rules, we will give farmers who make unsuccessful applications in the first tranche the chance to make subsequent applications in the second and third tranches. The money will be allocated according to the greatest need, as far as existing storage facilities are concerned. A scoring system has been designed to rate applications. However, farmers who have installed facilities prior to the introduction of the scheme will not be entitled to any retrospective grant assistance.

**Robin Harper:** Will you issue clear advice to farmers that it is important for them to get their feet on the ladder at the beginning and apply in the first round?

**Allan Wilson:** Yes. The advice that we are giving has been circulated to members of the committee.

**Maureen Macmillan:** I presume that you are not just plucking out of thin air the figures on how much money will be necessary and that you have a good idea of how many farms are affected and what work needs to be done. I also assume that the money that you are allocating is going to cover the need.

**Allan Wilson:** The Scottish Agricultural College's risk impact assessment for the action programme regulations suggests that the estimated cost of storage for the one-month closed period that we are talking about will be between £4.42 million and £6.32 million.

There are approximately 12,000 holdings with land in the designated areas. However, without looking at each farm and surveying all their individual requirements, it is not possible to give a definitive figure for the number of businesses that will need assistance to comply with the measures. We have based the scheme on expected requirements arising out of the risk impact assessment. We will obviously monitor and review the situation in the initial years of operation.

**Bruce Crawford:** As I said to you in the tea room, you have a difficult job. If someone says that there is not enough money, but the WWF says there is too much, the balance is probably right, somewhere along the line.

There is competition for the money because the process is cash limited. There must be some concern about whether the level of resource available will be able to meet the demand created by 12,000 potential applicants. I would like you to reflect on that a bit more, particularly in view of the experience of the rural stewardship scheme that saw many more applicants than were able to secure resources.

I am concerned that the farmers should not be faced with the same culture of bureaucracy and form filling only to find that they are unsuccessful,

which might put people off applying in future years. That might suit the Government's budget but it is not necessarily a good process. What can be done to keep the load of bureaucracy as light as possible? One of the biggest gripes I hear from farmers is about the amount of paperwork they have to undertake.

The background paper also says that the scheme will be available for all nitrate and phosphate pollution areas and point sources. Before NVZs came along, areas of Scotland such as Forfar loch and Loch Leven had become phosphate rich and had algal bloom problems. Will farmers in those areas be able to apply for grants under the new scheme? If so, were they included in the 12,000 separate businesses?

The ranking system will be important. Will it be made available to farmers before they apply, so that the process is as transparent as possible and allows farmers to decide whether applying is worth while?

Finally, £6.8 million cannot be magicked out of the air. It is not easy to find that level of cash. Have you had to re-examine any other budgets to divert resources from them to make the £6.8 million available in the first year and the other sums in subsequent financial years? It would be interesting to find out what commitments have been made and their effect on other matters.

I apologise for asking so many questions.

**Allan Wilson:** It is strange to be lectured by a nationalist on finding money out of the air, given the spending commitments that usually emanate from the nationalists. The Executive is providing new money. We are not borrowing from Peter to pay Paul. A bid was made in the spending review for additional resources to meet the cost of the scheme, so it is a product of the Labour Government's successful management of the economy, which has allowed us to pay farmers additional sums.

**Bruce Crawford:** Oh dearie me—forgive me if I yawn, minister.

**Allan Wilson:** You asked the question.

It is possible that more farmers might feel that their current storage capacity is sufficient to enable them to comply with the closed period requirement in the action programme regulations. If so—good grounds exist for believing that that should happen in some cases—the pressure on available resources will reduce. In that way, we will be able to fund grants to a higher percentage of applicants. That is self-evident.

The impact assessment that the SAC prepared suggested that 23 per cent of dairy farms and 55 per cent of pig-breeding farms have one month's storage capacity or less. That is only an estimate, and the nature and size of storage requirements vary widely, reflecting the different sizes of businesses and the mix of enterprises. It is difficult to predict the demand that has to be met from the additional funds. However, appropriate advice will be given to applicants—you asked about that—on the criteria that will be applied in assessing their applications, so they will be forewarned about the likelihood of success.

Did you have another question?

**Bruce Crawford:** It was about the level of bureaucracy.

**Allan Wilson:** In the circumstances that you describe, a farmer in an NVZ would be eligible to apply. The consensus is that the level of compliance would be considered in conjunction with the action programme regulations, which are the responsibility of a different department from that which my colleagues represent, which is responsible for preparing the scheme. Perhaps we could pursue the matter with that department.

**Bruce Crawford:** Can we make the level of bureaucracy and form filling as light as possible?

**Allan Wilson:** That is my point. I have looked at the form, which is about 14 pages long, and it struck me as fairly bureaucratic. When dealing with such a level of disbursement of public funds, it is important to have all the relevant details on paper, but the officials who are present are responsible not for the scheme's implementation or its bureaucracy, but its preparation.

**John Scott:** Although the minister does not anticipate that Europe will regard the grants as unlawful aid, can he give me an assurance that, should that prove not to be the case, he will not seek the return of grants from affected businesses?

**Allan Wilson:** The grants will not be paid out until such time as we get that approval. As I explained, we will make an announcement to Parliament about our intent following today's meeting. No moneys will be paid out until the EC position has been secured.

**John Scott:** Is the minister absolutely certain that the figure for affected holdings is as high as 12,000? By simple arithmetic, such a figure would suggest that there are in the region of 100,000 agricultural holdings in Scotland. I was not aware that there were so many. Did the minister mean 1,200 affected holdings, by any chance?

**Allan Wilson:** No. I think that the risk assessment gave the total number as 12,000. However, as I said to Bruce Crawford, we do not anticipate that all those holdings would require or seek assistance. The amount requiring assistance depends on what percentage of the total makes an application. Applications will be assessed

according to the ranking system that we have established to determine the priority for the grants.

**The Convener:** If there are no more questions, we shall move on to the debate. I offer the minister a further opportunity to speak to motion S1M-3895, in the name of Ross Finnie. He should then move the motion.

**Allan Wilson:** As we have discussed, the introduction of the action programme measures will mean that of the total that we have described, some farmers will be required to invest in their slurry and manure storage. The 40 per cent grant scheme will allow those farmers access to public funds to help them meet those requirements.

Obviously, our priority will be to help those who are most affected. However, if businesses that currently meet the action programme requirements want to replace or improve their current storage facilities, they will also have access to the scheme. Therefore, we will need to determine priorities among applicants.

We know that many farmers will welcome the assistance that is being provided. If farmers who find themselves within an NVZ are required to make the necessary upgrading to their slurry storage facilities, they should be able to seek grant assistance if the committee approves the SSI.

I move,

That the Transport and the Environment Committee recommends that the Nitrate Vulnerable Zones (Grants) (Scotland) Scheme 2003, (SSI 2003/52) be approved.

**The Convener:** Do any members wish to speak to the motion?

**John Scott:** After all the hassle that we have had over the scheme, I welcome its introduction and the fact that the grant level will be 40 per cent. As Bruce Crawford said, some people think that 40 per cent is too much and some think that it is too little, but I suspect that the figure is probably reasonable. I also welcome the introduction of the appeals procedure, which will be valuable, and the reduction in the closed season, as it were, for the spreading of slurries. At a later date, I will come back to the minister with a question on the number of agricultural holdings in Scotland.

**The Convener:** No other members wish to speak. I presume that the minister does not want to respond.

**Allan Wilson:** No. The figure of 12,000 is based on the advice that I have received, so I assume that it accurately reflects the total number of holdings within NVZs.

**The Convener:** The question is, that motion S1M-3895 be agreed to.

*Motion agreed to.*

That the Transport and the Environment Committee recommends that the Nitrate Vulnerable Zones (Grants) (Scotland) Scheme 2003, (SSI 2003/52) be approved.

**The Convener:** We will report to the Parliament that the committee recommends the approval of the instrument. I thank the minister and his officials for giving evidence today.

## Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003 (SSI 2003/51)

12:15

**The Convener:** I suggest to members that we take the other item of subordinate legislation before bouncing back to earlier items on the agenda. Item 7 is the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003 (SSI 2003/51), which is a negative instrument. No members have raised any points on the instrument, and there is no motion to annul. Is it agreed that the committee has nothing to report on the instrument?

**Members** *indicated agreement*.

## Highlands and Islands Ferry Services

**The Convener:** We will take item 5 next, as it should be shorter and more straightforward than petition PE377. The item is our consideration of the Executive's response to the committee's paper on the Clyde and Hebrides network. We are to consider developments on the Gourock to Dunoon route, note the time scale for the final service specification for the Clyde and Hebrides network and consider which issues in relation to the competitive tendering of ferry services we want to highlight in a legacy paper.

I invite Maureen Macmillan, as reporter to the committee, to comment first on the response to the paper. I shall then give other members the opportunity to comment.

**Maureen Macmillan:** The response so far from the Executive is narrowly focused on the Clyde crossing, and gives us no indication of what will happen about our other recommendations.

I am pleased that there has been movement on the Gourock to Dunoon crossing, as there was a great deal of concern about the original proposals to include the crossing in the bundle. The committee can probably note with satisfaction the fact that the service has been removed from the Clyde and Hebrides network to be put out to tender separately. Bidders will also be allowed to produce bids on the basis of a combined passenger and vehicle service, or a passenger-only service—whatever the bidder wants.

There is only one area of concern. The minister says that he intends to maintain the restrictions on the frequency and length of the operating day. I realise that that is probably based on the advice of the European Commission, but I would like to explore that further with the minister, because I do not see the logic for maintaining the restrictions. If the passenger-only service is not competing, and the vehicle service is self-sufficient—that is, not subsidised—why is the Commission still advising that there should be restrictions?

I am also concerned about pedestrian access from Glasgow later in the evening. That particularly worried young people to whom I spoke when I was in Dunoon, although it is not included in the reporter's report—I wrote to the Executive about it separately. Pedestrian access to Dunoon by ferry later in the evening is an issue, so I would like the committee to consider raising that with the minister.

Everything else in the committee's recommendations ought to be raised again in the committee's legacy document. The Clyde and Hebrides services are extremely important to the communities and the economy of the west of Scotland, in particular on the islands. Some of those communities are fragile, and we must ensure that they receive the best possible deal from the new specifications. I look forward to hearing input from other members of the committee.

**The Convener:** Does any other member wish to speak? I hear John Scott commending Maureen Macmillan's good work.

Maureen Macmillan has raised a number of points that she wishes us to pursue with the minister. Are members content that we should correspond with the minister?

**Members** *indicated agreement*.

**The Convener:** We can also update a legacy paper for our successor committee on the issues, which will obviously be considered after the elections.

# Petition

## Polluting Activities (Built-up Areas) (PE377)

**The Convener:** Agenda item 4 is consideration of petition PE377, on polluting activities in built-up areas. We have received responses from the Executive, the Scottish Environment Protection Agency and the Convention of Scottish Local Authorities to a reporter's paper that Fiona McLeod produced on petition PE377, which we will consider with a view to producing a draft final report for our next meeting. That report will be based on Fiona McLeod's interim report and will take into account subsequent developments. We will consider it in private at our next meeting, but there is an opportunity today for members to raise issues that they think the clerks should take on board in preparing the draft with Fiona McLeod. At the next meeting, there will be an opportunity for members to make alterations to the draft report that is put before the committee.

I will give Fiona McLeod the opportunity to comment on the responses, after which other members may make comments.

**Fiona McLeod:** I want to highlight four points from paper TE/04/03/7, but first I thank Ros Wheeler for all her hard work in keeping the matter going and ensuring that questions were asked that needed to be asked and that we received all the answers.

We probably now have a fairly complete set of answers from SEPA and the Executive. The four areas that I want to highlight are planning, BSE, the regulator and the European Parliament Petitions Committee's report, which we have received since we discussed our concerns in December.

On planning, members will note from paragraph 18 of the paper that we accept that the Government has understood that we have concerns about the need for the planning regime and the environmental regime to work more closely together when considering whether to allow buildings such as that at Carntyne to go ahead. I have stated that getting a study under way is urgent and I hope that the committee will support that statement. From discussions with the Government about other planning areas, we know that it will consider such issues. If a study is carried out in the immediate future, it would certainly inform the planning bill in the next Parliament.

On paragraphs 33 and 34, I am concerned about the minister's response to us on SEPA's role in the regulation of BSE and the disposal of BSE-infected cattle. He said that BSE regulation is animal health policy, but, as I have said in paragraphs 33 and 34, we must point out that the disposal of BSE-infected carcases has an environmental impact. Therefore, I suggest that the environmental regulator—in this case, SEPA—has a role to play and that the issue is not merely an animal health issue that should be considered by the Rural Development Committee.

On paragraphs 29 and 37, we had looked for more information on the time that it takes to get the results of a BSE test in the United Kingdom, as opposed to in Europe. We were given information rather than evidence that such tests are carried out more quickly in Europe as well as information on the temperature that is necessary to incinerate a BSE carcase. The minister's letter says that, to his knowledge, our 14-day test result lag is no greater or shorter than that in any other country. We have explored that issue as far as we can.

I am assured that the appropriate committee's advice is that 850 deg C is the correct temperature. I was pleased to learn that that is the temperature that SEPA expects to be used at all cattle incinerators, to ensure that the BSE prion is destroyed, should it get into the chain.

SEPA has made it clear that it would be useful if it received information about where BSE-infected cattle are incinerated. As members know, only two incinerators in Scotland deal with known cases of BSE, but, as we found out, it can be discovered later in the chain that a BSE-infected carcase has been incinerated at another site. SEPA says that it would be useful if it had information about the end incineration of such cattle to allow it to deal with, among other issues, the disposal of ash from those sites.

In December, the minister gave a commitment to provide to SEPA information for a six-month period on the end incineration of BSE-infected cattle. In his latest letter, he said that he would be "prepared to consider" a request from SEPA for that information to be provided regularly. SEPA made that request many months ago, but it was only as a result of letters from the committee that the minister finally gave the information to SEPA and committed to a six-month continuation of the procedure. Our report should recommend, as paragraph 37 of my paper states, that now that the Executive can obtain the information, it should be given to SEPA at all times and for as long as is necessary, to allow SEPA to do its job as an environmental regulator to the fullest.

We have concerns about the robustness of our environmental regulator and the manner in which the regulations are prosecuted in Scotland. We have had evidence on the Environmental Protection Act 1990 from the minister, who said that he has the power to direct SEPA but would be

unhappy to do so in many circumstances. Although the minister's letter states:

"Persistent breach of environmental regulation will not be tolerated",

one incinerator is now on its fourth enforcement notice. The letter states that, if action is required following persistent breaches,

"One such action perceived as 'required' may be revocation"

of the original licence. We must impress upon SEPA that the committee expects Scotland's environmental regulator to be robust and to use all the tools at its disposal to protect the environment in Scotland, preferably without ministerial intervention. I hope that SEPA has learnt lessons from Carntyne and will apply those to similar situations should they arise with other operators.

The European Parliament's Petitions Committee report contains conclusions similar to those in my paper but goes one step further and recommends the closure of Carntyne. However, the report does not explain how a Government organisation or the Government could effect that closure. I reiterate for the record that it is not our practice to make recommendations on specific sites. We have tried to consider what lessons can be learned from specific issues and applied for the betterment of environmental regulation throughout Scotland. I realise that our practice is frustrating for petitioners who have come to us with specific concerns in the past four years, but one advantage is that our evidence taking and the work of reporters has often provided evidence that has allowed individual petitioners to pursue their case further.

I have thought long and hard about this, and I think that it is probably appropriate that the committee took the decision to examine the generic rather than the specific, because we could be involved continually in petitions, and the Parliament would be making decisions for which we are not democratically accountable. In planning, local authorities and local councillors should make the decisions, but we often provide them with further evidence that they could not have obtained by any other means.

12:30

**The Convener:** I will take other members and I will also take Dorothy-Grace Elder.

**Robin Harper:** I would like to record my personal appreciation of the enormous amount of work that Fiona McLeod has done on this matter, and of the quality of her report.

**John Scott:** I, too, congratulate Fiona McLeod and Ros Wheeler on the huge amount of work, and on their diligence in pursuing all the questions. I agree with many of Fiona McLeod's conclusions. Planning and environmental impact assessment decisions should be taken as one. I am surprised that they are not, and have not been in the past. I would be interested to know why they have not been taken together. I also agree with Fiona McLeod that the disposal of BSE carcases should not just be an animal health issue. In this case, and I am sure in other cases across Scotland, it is an environmental impact problem.

I am relieved to hear that 850 deg C is being pursued and effected as the temperature to destroy the prions. I am surprised by the Minister for Environment and Rural Development's continuing reluctance to divulge the number of BSE-infected cattle that are disposed of at plants across Scotland. I would have thought that that figure was readily available. He may not be willing to disclose it, but I am certain that the figure is readily available.

I am also concerned that the recommendations of the European Parliament Petitions Committee, which visited Scotland, can be so lightly brushed aside. We do not appear to have adequate regulations in place. That boils down to the fact that SEPA does not have the teeth to effect what it wishes to do. We might have to examine that, because if the planning system is failing at the beginning, and the regulatory framework at the end in effect has no teeth, we have a problem. It may be that by the Government applying pressure—and probably not much else—we will be able to ensure that the plant works properly, but if we cannot, what will we do?

**The Convener:** I will let Dorothy-Grace Elder know the state of play, because she came in as we began the item. We are considering the response to Fiona McLeod's initial report—we have responses from a number of bodies. I am sure that the member will have read them carefully. Today, we are just looking for comments from members on those responses. As a committee, we will consider our final report at our next meeting, which will be in private, so this is the opportunity to comment on the responses.

**Dorothy-Grace Elder (Glasgow) (Ind):** I thank you, your committee and Fiona McLeod for the large amount of work that has been put into this issue, but I do not agree with Fiona McLeod on the point that the matter should be seen as a local issue. She said that it was the practice of the Transport and the Environment Committee not to consider issues that are too local, but the siting of an incinerator in a heavily built-up area—indeed, in an area of ill health and poverty—is a national issue. In fact, the Europeans saw it that way. I urge the committee to be stronger on that line, because if there is any wobbling on the issue, people will dive in. The issue will keep on going for ever, and that will be interpreted as backing by the

committee, although I know that that is not the true feeling of the committee.

Unfortunately, Ms Margaret Curran, who is intensely interested in this matter as the constituency MSP, cannot be here today, because we realised rather too late that the committee was considering the issue today, but I am sure that she will give you a submission. The timing of the letters is unfortunate, as is the date when Fiona McLeod's extra submissions were written, which was around 9 January. The Minister for Environment and Rural Development's reply is from early February. Notably, SEPA and the minister totally ignore the European decision of 23 January, although the minister's letter is from February.

What the European Parliament Petitions Committee said—members will all have the report—was strong: the closure of the Carntyne incinerator plant is to be considered as an urgent priority. That committee talked of the absurdity of hauling dead cattle from the countryside into the east end of Glasgow; it appealed for consideration of the health of the people; it pointed out the poverty in the area; and it did its duty in seeking to protect the public most thoroughly. It also mentioned a large number of European directives and amendments. For the minister or us to ignore that in any way would be devastating for the people of the east end, as well as wrong for the whole system.

The issue is under separate investigation by the European Commission, and Margot Wallström, the European environment commissioner, has written to me, to Bill Miller MEP and to others, asking about our interest in the situation at Carntyne. It is a huge concern. The minister's letters ignore the fact that everything has moved on. They reply to Fiona McLeod's original report, but by the time they were written, the minister surely knew what Europe had decided.

The President of the European Parliament, Pat Cox, is coming here to address us next week. Many people in Glasgow want to thank Mr Cox, who was among the first people to reach out to us and who wanted to protect us. However, what can we say? "Mr Cox, the European Parliament has put enormous effort into this investigation. There is a better relationship between the Scottish Parliament and Europe because of the European Parliament's concerns and hard work. However, we have decided to do nothing at all, and we are ignoring all your work." We cannot do that. We cannot give the impression that we are content to allow the burner to operate.

Neither can we allow SEPA to be the be-all and end-all on this matter. The people of the east end of Glasgow have no faith whatever in SEPA, and nor do some of the elected members who have been involved with the issue for 18 months to two years. Our experience is that SEPA has been a poodle, not a watchdog. Indeed, the documentation that we have reveals the major cause of the whole problem. SEPA says that it played an important role in the original planning appeal, but it then admits what that important role was: it did not make an objection at the time. That was SEPA's important role. It said that the burner could work out all right and that the technology would function. It did not ever consider the area, which is not only home to 67,000 people, but is in a valley. That was what caused the problem. Had there been a watchdog organisation that pointed out the geography of the area, we would not be in this situation. Indeed, the Scottish Executive would not be in this situation.

In reading the letters from SEPA, which, oddly enough, mirror Mr Finnie's line, let us imagine the worst-case scenario. Is Mr Finnie thinking that, by spinning the issue out, replying to comparatively old mail and ignoring the new European development, he can put off acting until the Parliament ends, so that the burner will continue for ever and a day? We are running out of time. Some of us are not prepared to let that happen, because we have a deep and sincere interest in protecting the health of the people of the east end of Glasgow.

The European Parliament has backed action, and we cannot buck that. The decision of the European environment commissioner is also coming up. The European Parliament Petitions Committee has stated that the closure of the burner is an urgent priority and has called for a meeting between the interested parties, including the burner's owners. It has pointed out that the owners of the burner would move it and that no one, including Glasgow City Council, is in favour of the burner remaining where it is. The owners have said that they will move the burner if they get a suitable piece of land. The European Parliament has called for that piece of land to be found for them and for the interested parties to get together on the issue. Has that meeting taken place? No. The minister has not said anything about it.

I am sorry, but we cannot stand for this matter to be swept under the carpet. We must move ahead. I ask you to back the European Parliament Petitions Committee's report and to thank that committee sincerely for putting the public of Glasgow first—something that the environmental watchdog, SEPA, most certainly has not done.

**The Convener:** We will note all the points that have been made by members today and consider them at our next meeting before we produce our final report. Our consideration of the draft report will be in private but, given your interest in the matter, we will ensure that you receive a copy of it

as soon as the document becomes public. Our next meeting will be on 4 March, when I hope that we will conclude our consideration of the matter.

**Dorothy-Grace Elder:** Would it be possible for Ms Curran, myself and others to make written submissions to you?

**The Convener:** Any letters that are sent to the committee clerk will be circulated to committee members for their consideration.

**Dorothy-Grace Elder:** In the meantime, would you be kind enough to write to the minister, asking him whether any meeting of the interested parties has been arranged in view of the European Parliament's recommendation? Members of the European Parliament have written to Westminster and the Scottish Executive, saying that, if no action is taken here, they are prepared to debate the issue in the European Parliament and to use legislation.

**The Convener:** If members are agreed, we can try to clarify that point with the minister in advance of our next meeting.

**Dorothy-Grace Elder:** Thank you very much for your patience.

**John Scott:** I certainly see no harm in an exploratory meeting taking place between the minister or Scottish Executive officials and the owners of the plant, to see whether—if all parties were agreed—another site could be found for the burner. That would be in everybody's best interests. Until Dorothy-Grace Elder told us, I was unaware that the owners were prepared to move elsewhere. The difficulty for them will be getting planning permission elsewhere.

**Dorothy-Grace Elder:** The burner could be sited in the countryside. If expense is involved, it should be remembered that it was SEPA that dumped everybody in this mess in the first place.

**The Convener:** We will clarify those points with the Executive in advance of our next meeting. Is that agreed?

**Members** *indicated agreement*.

**The Convener:** That concludes our consideration of the issue at this meeting. We will return to it at our next meeting. I thank Dorothy-Grace Elder for her attendance.

12:43

*Meeting continued in private until 12:49.*

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