



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 1 December 2010

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**Wednesday 1 December 2010**

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**RURAL AFFAIRS AND ENVIRONMENT COMMITTEE**  
**27<sup>th</sup> Meeting 2010, Session 3**

**CONVENER**

\*Maureen Watt (North East Scotland) (SNP)

**DEPUTY CONVENER**

\*John Scott (Ayr) (Con)

**COMMITTEE MEMBERS**

Aileen Campbell (South of Scotland) (SNP)

\*Karen Gillon (Clydesdale) (Lab)

Liam McArthur (Orkney) (LD)

\*Elaine Murray (Dumfries) (Lab)

\*Peter Peacock (Highlands and Islands) (Lab)

\*Bill Wilson (West of Scotland) (SNP)

**COMMITTEE SUBSTITUTES**

Rhona Brankin (Midlothian) (Lab)

Jim Hume (South of Scotland) (LD)

Jamie McGrigor (Highlands and Islands) (Con)

\*Sandra White (Glasgow) (SNP)

\*attended

**THE FOLLOWING GAVE EVIDENCE:**

David Barnes (Scottish Government Rural and Environment Directorate)

Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment)

Stephen Rees (Scottish Government Legal Directorate)

Neil Ritchie (Scottish Government Rural and Environment Directorate)

Ross Scott (Scottish Government Finance Directorate)

Judith Tracey (Scottish Government Rural and Environment Directorate)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

Committee Room 6



## Scottish Parliament

### Rural Affairs and Environment Committee

*Wednesday 1 December 2010*

*[The Convener opened the meeting at 10:04]*

### Decision on Taking Business in Private

**The Convener (Maureen Watt):** I welcome everyone to the Rural Affairs and Environment Committee's 27<sup>th</sup> meeting of the year and remind you all to turn off your phones and BlackBerrys, as they impact on the broadcasting system. Sandra White is substituting once again for Aileen Campbell, and we have received apologies from Liam McArthur, whose attempts to get down from Orkney have so far been in vain.

The first item is consideration of whether to take in private item 7, which is consideration of the evidence that we will hear on the Reservoirs (Scotland) Bill, and future consideration of any such evidence and our draft report on the bill. Are members agreed?

**Members** *indicated agreement.*

## Reservoirs (Scotland) Bill: Stage 1

10:05

**The Convener:** I should make it clear that I have decided to go against the running order in the agenda and will now move to item 5, mainly to accommodate the Cabinet Secretary for Rural Affairs and the Environment, who has found it difficult to get back from Brussels where he has been for the past few days. He is here—I have seen him in the building—but I suggest that in the meantime we carry on with evidence taking from Government officials on the Reservoirs (Scotland) Bill.

I welcome from the Scottish Government Neil Ritchie, head of natural resources and flooding branch; Judith Tracey, head of flooding and reservoir safety policy; and Stephen Rees, solicitor in the food and environment division. I am grateful for your agreement to a change in the running order at such short notice and understand that you propose to make some comments on the bill in general, and in particular on chapter 1. Afterwards, we will move to questions.

**Judith Tracey (Scottish Government Rural and Environment Directorate):** The aim of the bill is to protect the public from flooding from reservoirs by modernising Scotland's reservoir safety regime. It makes substantive provision to introduce a risk-based approach and to require managers of reservoirs greater than 10,000m<sup>3</sup> to register those reservoirs; for the Scottish Environment Protection Agency to classify reservoirs according to their risk; and for reservoir managers to comply with the requirements of each risk category, which can include the appointment of engineers to supervise and inspect the reservoirs.

Chapter 1 defines what is captured in the bill as "controlled reservoirs", which include both individual reservoirs that are capable of holding more than 10,000m<sup>3</sup> and cascades of reservoirs where water could flow between the structures, resulting in a potential cumulative release of more than 10,000m<sup>3</sup>. It also defines reservoir managers and therefore those who are responsible for complying with the bill's requirements, and includes provisions to clarify how the bill's duties apply where there is more than one reservoir manager. In such cases, the bill imposes on the multiple owners and managers a duty to co-operate.

For clarity, chapter 1 also makes it clear that individuals or organisations such as angling clubs that only have fishing rights on the water in a reservoir and have no responsibility for the

operation and maintenance of the structure are not responsible for the reservoir under the bill.

The chapter also requires SEPA to produce guidance on the management of reservoirs and repeals the Reservoirs Act 1975.

**The Convener:** Why has it been decided that we need to do something about reservoirs of less than 25,000m<sup>3</sup>?

**Judith Tracey:** A number of incidents over the past few years have shown that reservoirs of less than 25,000m<sup>3</sup> can pose a risk to the public. In 2008, overtopping at the Maich reservoir in Renfrewshire made the structure unsound, which could have resulted in quite a lot of damage to property and loss of life. In 2007, the potential for a serious incident at the Ulley reservoir in Yorkshire led to a large number of properties downstream being evacuated and the M1 being closed.

Although the existing legislation has ensured that reservoirs of more than 25,000m<sup>3</sup> are properly maintained, the fact is that some of those reservoirs pose quite a low risk to the public, particularly in Scotland. A large number of Scotland's reservoirs are in very remote areas, and any breach would have a very low impact. However, quite a lot of reservoirs of between 10,000m<sup>3</sup> and 25,000m<sup>3</sup> would, if breached, have quite a high impact on the public. We want to move towards a more proportionate approach to managing reservoir safety in Scotland.

**The Convener:** How many reservoirs are currently regulated under the 1975 act?

**Judith Tracey:** Around 650.

**The Convener:** Have there been any incidents on any of those in the past five or 10 years?

**Judith Tracey:** There have been no serious incidents related to any reservoirs that are currently regulated. There are occasionally problems with reservoirs, but, because they are regulated, those problems are spotted and the reservoir manager has to resolve them.

**The Convener:** What are the shortcomings of the current system, particularly with regard to risk classification?

**Judith Tracey:** At the moment, the risk classification does not apply to how the reservoirs are regulated. The current legislation simply requires all reservoirs of more than 25,000m<sup>3</sup> to comply with the same regulatory and supervisory regime. No matter what risk the reservoir poses, it has to have the same level of inspection and supervision as every other reservoir.

Managers of reservoirs in the Highlands that are a long way from populated areas—which if breached might cause some damage to the

environment and minor difficulties, but would cause no damage to property and would not risk lives—must ensure the same level of inspection and supervision as there is for reservoirs that are upstream of fairly major populated areas, any breaches of which could lead to major loss of life or loss of property. The current difficulty is that the approach is not proportionate.

**The Convener:** Part 7 of the Flood Risk Management (Scotland) Act 2009 transferred enforcement responsibility from local authorities to SEPA, required the production of flood plans and extended enforcement authority powers. I understand that part 7 has not yet commenced. Will it ever be commenced? Will the bill, if it is passed, supersede it?

**Judith Tracey:** If the bill is passed, it will supersede part 7 of the 2009 act. The provisions in the 2009 act have been incorporated into the bill.

**Karen Gillon (Clydesdale) (Lab):** My question is more to do with sludge than with water. I have had issues with sludge being discharged from reservoirs and causing significant environmental damage. How will that be affected by the bill? In my case, the sludge completely wiped out the fish stocks in two rivers.

**Judith Tracey:** Sludge reservoirs that hold back more than 10,000m<sup>3</sup> will be covered by the legislation. Is that right?

**Stephen Rees (Scottish Government Legal Directorate):** Yes.

**Bill Wilson (West of Scotland) (SNP):** You said that there have been no serious incidents with the regulated reservoirs. There was an incident with an overtopped reservoir in Renfrewshire, which I presume means that it ended up with more water than expected.

**Judith Tracey:** It does mean that, partly, but it also means that there was a problem with the dam—it was failing.

**Bill Wilson:** So there was a problem with the dam. Okay. I wanted to work out how regulation would have made a difference, but presumably if the dam was failing that answers my question.

**Judith Tracey:** Yes. The reservoir was not coping with the amount of water that had gone into it.

**Bill Wilson:** But it should have been able to cope with that amount of water.

**Judith Tracey:** Yes.

**Peter Peacock (Highlands and Islands) (Lab):** In trying to make the system more proportionate, what is the reason for moving to 10,000m<sup>3</sup> from

the 25,000m<sup>3</sup> limit? Is there a scientific reason for that?

**Judith Tracey:** It is based on advice from the Institution of Civil Engineers, which regulates the panel of reservoir engineers who are responsible for supervising and inspecting reservoirs throughout the United Kingdom. Its advice was that 10,000m<sup>3</sup> was the limit at which a reservoir was likely to pose a risk to life or property if there was a breach.

10:15

**Peter Peacock:** And if it was close to property and population.

**Judith Tracey:** Yes.

**Peter Peacock:** Okay. I presume that that will bring into the regime a significant additional number of reservoirs.

**Judith Tracey:** It will bring in a number of additional reservoirs. We are carrying out an exercise to identify how many additional reservoirs that will be. At the moment, we do not know how many additional reservoirs of more than 10,000m<sup>3</sup> there are in Scotland, which is one of the reasons for producing the bill.

**Peter Peacock:** What is the best estimate?

**Judith Tracey:** The current estimate is between 150 and 1,000. We are narrowing it down at the moment through a desk-based exercise that is looking at maps to identify bodies of water that may be greater than 10,000m<sup>3</sup>. We will then cross-refer those against SEPA's controlled activities regulations database, as every impounding reservoir should have a CAR licence. That should give us a much better idea of the actual number.

**Peter Peacock:** Does SEPA currently have data on every reservoir or only on those of more than 25,000m<sup>3</sup>?

**Judith Tracey:** SEPA will have data on every reservoir that has an impoundment licence—a CAR licence.

**Peter Peacock:** What determines that? What requires a reservoir to have such a licence?

**Judith Tracey:** Any sort of impoundment or dam that has an impact on the water environment requires a CAR licence.

**Peter Peacock:** So, theoretically, every reservoir in the 10,000m<sup>3</sup> category should be in that database.

**Judith Tracey:** Yes.

**Peter Peacock:** But we will find out.

**Judith Tracey:** Yes.

**Peter Peacock:** This may be a daft question, but how big is a 10,000m<sup>3</sup> reservoir? I have no feel for that. It is a ridiculous question, as it depends on how deep the reservoir is. I assume that we are talking about very large bodies of water.

**Judith Tracey:** We are. Such a reservoir is the size of a number of Olympic swimming pools, but I cannot remember exactly how many.

**Peter Peacock:** It would be helpful if you provided that information for us.

**Judith Tracey:** I can do that.

**Peter Peacock:** That might give us a feel for it.

**Bill Wilson:** But then you would just ask what size an Olympic swimming pool is.

**Peter Peacock:** No, I know what size an Olympic swimming pool is—I have seen one. Thank you for that helpful suggestion.

A number of small hydro schemes are currently being created in Scotland; they are being encouraged for climate change reasons and to enable us to meet our renewables obligations. They are, however, generally pretty small, and I guess that they will fall outwith the regulation.

**Judith Tracey:** Generally, I think so, yes.

**Peter Peacock:** It has been reported that a lot of the original plans for the reservoirs, many of which are more than 100 years old, have been lost or no longer exist. What process will be followed to determine whether a reservoir falls into the new regulated category?

**Judith Tracey:** There is provision in the bill for regulations to be made on that. We will take advice from the Institution of Civil Engineers and from panel engineers on the best way of determining that.

**Peter Peacock:** Who will ultimately bear the cost of that? If the question arises whether a reservoir is in that category, who will bear the cost of determining that? Will it be the owner or the public authority?

**Judith Tracey:** Initially, we will do our best to identify all those reservoirs in Scotland. SEPA will probably then be required to visit some of the ones that we are not sure about, so the cost will fall on SEPA. If an owner disagrees with SEPA's identification of their reservoir as being greater than 10,000m<sup>3</sup>, it will be up to them to prove that it is not. We will set out the criteria by which the identification will be made and the owner will have to show that the reservoir specifically does not fall within the criteria. The idea is to make the criteria as clear as possible.

**Peter Peacock:** Who, ultimately, will make the determination?

**Judith Tracey:** SEPA will decide, but there will be an appeals process.

**Peter Peacock:** To whom will appeals be made?

**Judith Tracey:** Initially to SEPA but, ultimately, to the Scottish ministers.

**Peter Peacock:** Okay. You have talked about wanting the system to become more proportionate. On the face of it, moving the threshold from 25,000m<sup>3</sup> down to 10,000m<sup>3</sup> will capture a lot more reservoirs. Has any consideration been given to the idea that low-risk reservoirs in that category might in some way be exempted from regulation because they are low risk?

**Judith Tracey:** If they are low risk, the impact of the bill will be very small. The owner will not have to appoint a supervising engineer or carry out inspections; all they will have to do is have emergency information on a board, in case there is a problem with the reservoir, so that people have a number to call if they think that there is a difficulty. The reservoir will also have to be registered, so that we know where it is, in case its status changes in the future.

**Peter Peacock:** If somebody wants their reservoir to be classified as low risk, and therefore for a less onerous regime to apply to them, what will be the process for their making that case? Will they make the case to SEPA?

**Judith Tracey:** They will make the case to SEPA in the first instance, and ultimately there will be an appeal process.

**Peter Peacock:** There is an issue about the natural level and the surrounding land and how that might apply to flood storage on agricultural land. Are you familiar with that issue? Are there difficulties with the definitions of the terms "natural level" and "surrounding land"?

**Stephen Rees:** There is a provision in the bill to allow those terms to be defined with more precision subsequently. However, I am not aware of any particular difficulty that has arisen with those terms.

**Peter Peacock:** Do you intend to clarify the terms, or is that provision in the bill simply as a fallback in case it is required?

**Stephen Rees:** It is a fallback in case further specification is needed.

**Peter Peacock:** How would that be done? Would it be by order or in guidance?

**Stephen Rees:** If you bear with me, I will check that.

**Peter Peacock:** Perhaps I can move on and you can come back to that.

Another feature of the bill is that, where reservoirs have multiple managers, one must be nominated to take the lead. That could be fairly onerous. There is a requirement to co-operate with other owners. What will happen if one of the other interests simply does not co-operate or take part? Will the nominated manager carry the can, so to speak, for that person?

**Judith Tracey:** No. The idea of having a nominated lead manager of a reservoir is to reduce bureaucracy, so that all the individual managers do not have to carry out the same work, which would be repetition. However, each individual manager will be responsible for their reservoir. The provision on a lead manager is just for the administrative purposes of informing SEPA and keeping it up to date.

**Peter Peacock:** I cannot imagine that there will be many volunteers for that.

**Judith Tracey:** You would be surprised, actually.

**Peter Peacock:** Yes, I would.

**Judith Tracey:** It depends on who is in that group. If a major organisation is involved, the chances are that it will be the obvious choice. For example, if Scottish Water was in a group with a number of small reservoir managers, I imagine that it would be the obvious choice.

**Neil Ritchie (Scottish Government Rural and Environment Directorate):** The issue arose at the reservoirs stakeholder group meeting in early July. The group consists of bodies such as local authorities with current enforcement responsibilities, SEPA and representatives of owners, ranging from small-scale private individuals to large-scale organisations such as Scottish and Southern Energy. There was general agreement that the provision is sensible and will generally work well. There will always be certain cases that stand out as different, but setting out the provision in legislation will make it easier for people to engage with one another to identify who should be the lead.

**Peter Peacock:** How will any difficulties be resolved? If, for particular reasons, nobody steps forward to take responsibility, how will that be resolved?

**Judith Tracey:** If the managers cannot reach agreement, they will all still have individual responsibility for their reservoir.

**Peter Peacock:** So that will simply mean that the bureaucracy will be multiplied by the number of people involved.



**Judith Tracey:** Yes. It is in their interests to work together.

**Peter Peacock:** Is it clear that failure to appoint a nominated person will mean that everybody remains liable?

**Judith Tracey:** Yes.

**Peter Peacock:** Fine—thank you.

**John Scott (Ayr) (Con):** I take you back to the issue of flood storage on agricultural land, for which, as I am sure you remember, provision was made in the Flood Risk Management (Scotland) Act 2009. How will the bill affect those temporary flood storage areas, many of which involve bodies of water a great deal bigger than 10,000m<sup>3</sup>?

**Judith Tracey:** Temporary flood attenuation reservoirs are covered by the bill if they are bigger than 10,000m<sup>3</sup>.

**John Scott:** What liabilities will attach to landowners in that regard?

**Judith Tracey:** If they own the reservoirs, they will have to undertake all the requirements of the bill. However, because most of the time a flood attenuation reservoir is empty, it is unlikely to be a high-risk reservoir.

**John Scott:** I suppose that that is self-evident. However, if a huge amount of bureaucracy is attached to such reservoirs when they contain water, that will be an additional burden for landowners that was not foreseen in the 2009 act.

**Judith Tracey:** I imagine that it is unlikely that flood attenuation reservoirs will fall into a high-risk category.

**John Scott:** Or a medium-risk category.

**Judith Tracey:** Yes. I cannot guarantee that until we consider the potential impact of a breach of water from those reservoirs, but they hold water only for short periods and only to reduce the impact of a flood downstream. If a flood attenuation reservoir were breached, the impact would be the same as the flood, so I cannot imagine that it would be considered to be a high-risk reservoir.

**Sandra White (Glasgow) (SNP):** In response to a question from Peter Peacock, you made a point about duplication and suggested that people should get together and put forward someone to speak on their behalf. However, there are both single and multiple managers. Will the guidance documents on the legislation have to be sent out to and filled in by both single managers and organisations such as Scottish Water and local authorities? That would seem to be overprovision of information.

**Judith Tracey:** Everyone who manages a reservoir will be able to access guidance on the legislation, but not all of it will necessarily be sent out. However, everyone who manages a reservoir will be responsible for providing the documentation to enable it to be registered. It is entirely up to them to decide whether to provide that directly to SEPA or via a lead reservoir manager, if they are in a group.

**Sandra White:** Given that the bill provides for quite high penalties—we will come on to that issue—is it not incumbent on us as legislators to ensure that the guidance documents are given to people? On whom will the onus lie if someone with only a small interest in a reservoir that floods is fined under the bill and they say that they did not know the procedures because they were not sent guidance?

**Judith Tracey:** We can look at whether guidance should be sent to every reservoir manager. We will certainly ensure that every reservoir manager is informed that certain responsibilities go with that role. Every reservoir manager will be written to and informed that, because they own a reservoir that is over a certain size, they are required to register with SEPA by a certain date. I do not know whether they will want to read through a lot of guidance on what that means, but guidance on various aspects of the legislation will be available. Normal practice is to make it available through the internet, but it can be distributed in other ways if that is thought to be necessary.

10:30

**The Convener:** Ms Tracey, you said that you do not know how many reservoirs there are in the 10,000m<sup>3</sup> to 25,000m<sup>3</sup> category—there could be anything from 150 to 1,000 of them. Mr Ritchie, you mentioned that you have had a meeting with stakeholders. Correct me if I am wrong but, some time in the past, Scottish Water or some other organisation gave away smaller reservoirs, and it virtually had to plead with some people to take reservoirs that were on or near their land. Those people are probably completely unaware of the situation. Potentially, hundreds of people will come under the legislation and at some point in the future—perhaps after a breach—they will find out that they were responsible and are liable, despite not knowing about it beforehand. Is there not a big job to be done in that regard?

**Neil Ritchie:** You are right that there is a big job to be done. Taking the bill through will be an important tool for us to identify who those reservoir owners are, under the initial registration process. That will allow us to target information to those people and to identify what their responsibilities are. Most responsibilities for taking action will

involve best practice for what people should be doing with regard to their reservoirs anyway.

For the purposes of implementation, we will need to develop a communications strategy that allows us to maximise people's awareness. This predates my time on this team, but a lot of work has been done on the development of the bill to engage with various representative organisations and other stakeholder groups through a series of public meetings. We are a fair way down the curve when it comes to communicating with people. When we have the legislation in place and are able to require the registration of people, we will have a better understanding of exactly whom we need to target. The desk-based work that is in hand builds on SEPA's CAR registration processes, and that gives us a valuable tool.

We are doing everything that we can to identify who the people concerned are. At this stage, we cannot guarantee that we will pick everybody up, although we are doing our best. The new legislation will help us to take that work further.

**Stephen Rees:** There is a provision in the bill for the Scottish ministers to direct SEPA to publish guidance on the management of controlled reservoirs by reservoir managers. There is also provision for situations where there is a transfer of reservoir manager. Where a person ceases to be a reservoir manager, they must notify SEPA. Under the bill, SEPA will have a duty to take such steps as it considers appropriate to inform the new reservoir manager of their duties. That provision covers only part of the issue—it does not address the informing of existing reservoir managers when the bill comes into force, but it covers the issuing of guidance and dealing with the transfer of reservoir managers.

**Bill Wilson:** I have a point arising from the convener's question about people becoming liable. Under the present law, if there was overtopping because of incorrect maintenance and damage was caused in, for example, Renfrewshire, would the owner of the reservoir be liable for that damage?

**Stephen Rees:** Regardless of the provisions of the bill?

**Bill Wilson:** In the present circumstances—before the bill comes into force. Let us say that a reservoir was not properly maintained and there was overtopping and damage to houses in the flood path. Under the present law, would the owner be liable for that damage?

**Stephen Rees:** My understanding is that they would be liable under the law of delict. If a body of water is held back, a duty of care is owed, I imagine, to those in its path, which means ensuring that the water is not released in such a way as to cause a danger to them. If damage were

caused, that would be a breach of that duty of care.

**Bill Wilson:** So, although the bill places new duties on owners of reservoirs of more than 10,000m<sup>3</sup>, it does not impose a new liability, because the liability already exists.

**Stephen Rees:** That is correct. The intention of the bill is to ensure that such reservoirs are inspected so that, ideally, no water is released and no damage is caused. If there were a release of water, the ordinary delictual duties under the common law would apply.

**Bill Wilson:** Thanks.

**The Convener:** Can you give us some insight into chapters 2 and 3 please?

**Judith Tracey:** Chapter 2 requires SEPA to set up and maintain a comprehensive register of all controlled reservoirs in Scotland. The register is to include information such as location, risk designation, details of any appointed engineers, any reports and certificates, and an inundation map. In addition, every reservoir manager will be required to register their reservoir with SEPA and must notify SEPA of ownership or management changing hands. SEPA is then required to inform the new manager or owner of their duties under the bill. The chapter also requires local authorities to provide such information and assistance as is necessary to enable SEPA to take over the enforcement role. It also makes it an offence for reservoir managers not to register their reservoir.

**The Convener:** Is that chapters 2 and 3?

**Judith Tracey:** I am sorry; that was just chapter 2.

Chapter 3 sets out the framework for the risk-based approach to reservoir safety. Key to that will be SEPA's requirement to assign each controlled reservoir in Scotland one of three risk categorisations—low, medium or high. The designation process will be a two-stage process. Initially, SEPA will give a provisional risk designation to each controlled reservoir. The bill sets out the matters that SEPA must take into account when making a designation, including the potential adverse consequences of an uncontrolled release of water, such as the damage to human health, the environment, infrastructure and cultural heritage, and the probability of such an event occurring. Scottish ministers can direct SEPA to produce guidance on the matters that it is to take into account.

A reservoir manager who has evidence to dispute the initial designation will have two months to present evidence to SEPA that the classification should be changed. SEPA will then make a final risk designation based on consideration of all the evidence, and the reservoir will then be subject to

the relevant level of inspection and supervision requirements that are set out in later chapters. If the reservoir manager is still unhappy, he or she will have the right to apply for a further review.

Chapter 3 also requires SEPA automatically to review each classification every six years, primarily to take account of any updated assessments, maps and plans that are produced under the Flood Risk Management (Scotland) Act 2009.

**John Scott:** How easy is it to calculate the probability of failure of a reservoir? Under what circumstances might it occur? I appreciate that there could be a million and one circumstances, but could you give a brief outline, please?

**Judith Tracey:** The probability of failure of a reservoir is very low in almost all cases. Reservoirs do not fail often, and this legislation is designed to avoid that even further.

The requirement to assess the risk of failure of a reservoir takes into account the consequences and the likelihood, but in almost all cases the likelihood of a reservoir failing is a lesser consideration than the consequence of that failure.

**John Scott:** That is the more important element of risk.

**Judith Tracey:** Yes.

**John Scott:** Could you tell me about planning applications on nearby developments? If a reservoir has hitherto been low or medium risk, and a planning application is granted that turns it into a high-risk reservoir, because of the increased level of building in the flood plain below it, who is responsible for that? Does it automatically become a burden on the owner of the reservoir?

**Judith Tracey:** If a development is given the go-ahead downstream of a reservoir that could have an impact on that reservoir's category, the reservoir owner will have been able to object to the planning application during the planning process. Their reasons for objecting to the planning application would be the potential impact on the reservoir. We are in discussion with planning colleagues about whether that would require a change to the development regulations—I cannot remember the name.

**Peter Peacock:** They are general permitted development orders.

**Judith Tracey:** That is it. We do not think that a change would be required, because reservoir undertakers would have the same opportunity to object and to give good reasons for their objection. Because of SEPA's new duties under the bill, we imagine that SEPA—which is a statutory consultee for planning purposes—will, when advising a planning authority on any proposed development,

take into account the impact on a reservoir of a downstream development.

The new flood risk management planning process under the Flood Risk Management (Scotland) Act 2009 will deal with the potential impact of any flood risk on development. Development plans will have to consider the flood risk under a flood risk management plan.

We imagine that the combination of all those measures means that any new development's potential impact on a reservoir's risk status will be covered under planning legislation.

**John Scott:** The risk would be covered under planning legislation but, notwithstanding what you have said, if the main evaluation of risk is the consequence of a failure and if a low-risk reservoir were turned into a medium or high-risk reservoir, that would create definite burdens in the meantime, simply because a planning application might have been granted. If that burden is given to someone, how does that fit with the European convention on human rights and all such matters?

**Judith Tracey:** If a proposed development would lead to costly safety improvements because it would change a reservoir's risk status, the planning authority would be expected to take that into account, or certainly to consider the reservoir operator's views, and to be informed of any cost implications by SEPA.

We might have to consider further how any improvements to a reservoir because of a change in its risk status would be financed, if a development was given the go-ahead. We might have to consider whether the developer should be given the condition that the development can proceed only if it contributes financially to improving the upstream reservoir. No decision has been made on that, but we are discussing that with planning colleagues.

**John Scott:** That is helpful. To what extent is the proposed regime integrated with the Water Environment and Water Services (Scotland) Act 2003, controlled activities regulation and flood risk management? Do synergies exist?

**Judith Tracey:** Synergies certainly exist. I have said that the bill has been drafted to take into account the flood risk management planning process. That is why the review of the risk status will take place every six years, to take into account any change or information that has arisen via the flood risk management planning process.

SEPA is responsible for issuing controlled activities regulations licences, so it holds much information on the dams. That should make the registration process more straightforward, because SEPA will be able to use the information that it holds from the CAR licensing process when

setting up the register. We are aware of and trying to make the most of the links between the regimes.

**John Scott:** The intention is to integrate the regimes as fully as possible.

**Judith Tracey:** Yes.

**The Convener:** We will move on to chapters 4 and 5 of part 1.

**Judith Tracey:** Chapter 4 retains a successful and well understood aspect of the 1975 act—the involvement of specialist reservoir engineers. The chapter requires the Scottish ministers to set up panels of engineers for Scotland after consultation with the Institution of Civil Engineers. Suitably qualified engineers will be appointed to the panels by the Scottish ministers in consultation with the Institution of Civil Engineers. Under chapters 5 and 6, those engineers will be appointed by reservoir managers to carry out all necessary supervision and inspection of the construction and operation of reservoirs.

Chapter 5 sets out reservoir managers' responsibilities when constructing or altering a reservoir. It requires them to give SEPA notice of the proposed works, to appoint a construction engineer and to notify SEPA of the appointment. The chapter requires the construction engineer to design, supervise and inspect the construction or alteration of a reservoir. The chapter sets out when the construction engineer can or must produce safety reports and requires the reservoir manager to comply with any such safety reports. The chapter also requires the reservoir manager to comply with any certificates and requires all certificates and reports to be copied to SEPA, which can maintain an accurate record of all on-going and outstanding work and deadlines as part of its register. It also makes it an offence for a reservoir manager not to comply with the requirements that are set out in chapter 5.

10:45

**Bill Wilson:** I presume that with 150 to 1,000 new reservoirs, we will need quite a few sufficiently qualified engineers. How many engineers are we liable to need?

**Judith Tracey:** There is already a panel of reservoir engineers. We would be using the reservoir engineers who are already on that panel.

**Bill Wilson:** So, is there is no requirement for any new engineers, even given the expansion.

**Judith Tracey:** There should not be a requirement for new engineers. There is always a difficulty with panel engineers in that there is a very small pool of experience and we are conscious that we do not want to limit it any

further. We have tried to align the bill as closely as possible with the legislation in England and Wales and to continue the operation of the panels through the ICE, so that the same pool of reservoir engineers who operate throughout the UK at the moment can continue to operate throughout the UK.

**Bill Wilson:** You said that you had tried to keep the bill as consistent as possible with the English legislation. However, I noticed that British Waterways Scotland said that some terms that are used in the bill, including "discontinuance" and "abandonment", differ from terms that are used elsewhere in UK legislation.

**Judith Tracey:** They do, but we changed them because we felt that the terms as defined in the bill are clearer than those in the previous legislation.

**Bill Wilson:** Do you mean that the terms were not clear in England and Wales?

**Judith Tracey:** The terms that are used in England and Wales are the terms that were used under the existing 1975 act. They have not changed. England and Wales are still working with the 1975 act; they have made some amendments to it, but they have not brought in an entirely new bill. If they produce consolidating legislation at some point over the next few years, which I understand is the intention, the terms might well be changed.

**Bill Wilson:** That is okay, but if you require engineers from England—which you kind of implied you might end up doing—will that difference in language create any difficulties for them?

**Judith Tracey:** It should not. The engineers operate throughout the UK: there are panel engineers in Scotland who operate in England and Wales and vice versa and we do not want to restrict that practice. We are confident that, as it stands, the legislation is sufficiently close that it should not cause any difficulties.

**Bill Wilson:** The engineers have not expressed any reservations when you have spoken to them.

**Judith Tracey:** No.

**Bill Wilson:** How does the panel influence the construction, alteration and on-going supervision of controlled reservoirs? Do those engineers turn up and have a look at the reservoir?

**Judith Tracey:** The person who is appointed as the constructing engineer is responsible for ensuring that the reservoir is constructed properly.

**Bill Wilson:** Does the panel oversee that engineer, or is the panel engineer that engineer?

**Judith Tracey:** The panel engineer is that engineer.

**Bill Wilson:** Their role is hands on.

**Judith Tracey:** Yes. The panel is simply a panel of all the engineers in the UK who are suitably qualified to be a construction engineer, a supervising engineer or an inspecting engineer for reservoir safety purposes.

**The Convener:** Okay. Can you tell us about chapter 6, please?

**Judith Tracey:** Chapter 6 sets out the differing supervision and inspection requirements for reservoirs that are designated in the medium-risk and high-risk categories. Low-risk reservoirs have no regular supervision requirements. The chapter requires managers of medium-risk and high-risk reservoirs to appoint a supervising engineer at all times to monitor regularly the condition and performance of the reservoir. It sets out the duties of supervising engineers in relation to the reservoir and requires them to produce an annual written statement for the reservoir manager, which has to be copied to SEPA.

In addition, high-risk reservoirs must be inspected every 10 years by an independent inspecting engineer. Medium-risk sites need be inspected only when the supervising engineer recommends it. Chapter 6 sets out the duties of the inspecting engineer, including the production of an inspection report. The inspection report should include any measures the inspecting engineer considers need to be taken in the interests of safety, and any maintenance that is required. It also sets out the records that have to be kept by a reservoir manager.

**John Scott:** You have just drawn our attention to the fact that the bill appears to require a single inspecting engineer to be appointed “at all times”. How do you define “at all times”? Is that a resident engineer? Are ICE and SSE correct in their interpretation of section 43, which is in the evidence that they have submitted? Does that need to be addressed?

**Judith Tracey:** There are a couple of issues around the way in which we have defined when an inspecting engineer must be appointed, and we are addressing those. It is an unintentional consequence of the drafting. There must be a supervising engineer appointed at all times, but not an inspecting engineer.

**John Scott:** Is it wise to have just one person? I suppose that that is really what we are asking.

**Judith Tracey:** The supervising engineer will have responsibility for looking after the reservoir at all times. It will be their professional duty to ensure that the reservoir manager maintains the reservoir properly.

**John Scott:** The expression “at all times” seems a bit vague.

**Judith Tracey:** I am not sure that I understand.

**John Scott:** The resident engineer has to be—

**Judith Tracey:** The engineer is not “resident”. They are not on site at all times. It just means that that engineer is the person who is responsible for the reservoir, and will make a professional judgment about how often they need to look at the reservoir or visit it. They will certainly visit it if they think that there is a problem or that the reservoir manager is not carrying out appropriate maintenance. They will tell the reservoir manager whether they think that the reservoir manager is doing what needs to be done to ensure that the reservoir is maintained properly.

**Neil Ritchie:** The aim is to ensure that there is on-going access to professional support for the reservoir owners.

**John Scott:** Okay. Thank you.

**The Convener:** Can you give us a breakdown of chapters 7 and 8 now, please?

**Judith Tracey:** Chapter 7 covers some aspects of the bill that were previously specified in part 7 of the Flood Risk Management (Scotland) Act 2009. Those include provisions for Scottish ministers to make regulations to introduce a mandatory post-incident reporting regime, whereby any information relating to any incident concerning safety must be reported to SEPA. That will help panel engineers to understand better some processes that are associated with reservoir maintenance. Where information is not willingly provided by reservoir managers, SEPA will have the power to investigate actively.

Chapter 7 also enables Scottish ministers to make regulations that will set out requirements for flood plans, which would specify what action a reservoir manager would take in order to control or mitigate the effects of any flood caused by an uncontrolled release of water from a reservoir. The chapter includes a duty on all managers of controlled reservoirs—including those that are low risk—to keep a record of all relevant documents. Managers will be required to display at their reservoir a sign showing contact information that is to be used in the event of an emergency.

Chapter 8 enables an independent qualified third party to adjudicate in the event of a dispute between a reservoir manager and a panel engineer. Reservoir managers will be able to challenge certain requirements and directions, such as directions from an engineer in any safety or inspection report, and the referee will ultimately have the power to modify any requirements or directions, if it is deemed appropriate to do so. The chapter also enables Scottish ministers to make regulations setting out the procedure for referring the disputes to a referee.

**Elaine Murray (Dumfries) (Lab):** The requirements for the preparation of detailed flood plans will be set out in regulations and the Scottish ministers will have to consult on those. However, concern has been expressed by people who have responded to the consultation and to our call for evidence—this refers to the point that John Scott made earlier—that there could be a fair degree of bureaucracy and expense involved in the preparation of some of those plans. What different degrees of flood planning do you think will be required, depending on the level of risk of the reservoir?

**Judith Tracey:** A sliding scale of flood plans will be required. The flood plan will be minimal for a low-risk reservoir; it will probably just have contact details of who needs to be contacted in the event of a difficulty with the reservoir. Medium-risk reservoirs will require a more detailed flood plan. The idea of the flood plan is to ensure that if there is a potential risk or a potential breach to the reservoir, there are procedures to be followed regarding who needs to be contacted, who is the supervising engineer, when they need to be contacted, what process needs to be undertaken, whether there needs to be any draw-down of the reservoir and whether any work needs to be done to clear the spillway. Those are the sorts of things that will need to be put into any flood plan. It is very much an on-site flood plan, so it is very much to the benefit of reservoir managers to have plans for how to manage their reservoirs in the event of a problem.

**Elaine Murray:** Have you any idea of the cost that might be incurred? Obviously, that will be on a sliding scale as well.

**Judith Tracey:** We have a sliding scale of costs in the financial memorandum. Low-risk reservoirs are expected to have a one-off cost of about £250 per reservoir for the production of simple flood plans; medium-risk reservoirs will have annual costs of between £225 and £600; and high-risk reservoirs will have a cost of approximately £3,000 for the production of flood plans.

**Elaine Murray:** I must say that £250 seems to be rather expensive for just having the name and contact details of the person who must be contacted if there is a flood. It seems to imply that something a bit more bureaucratic is involved.

**Judith Tracey:** There may well have to be something more. That cost is just an average; it depends on what the reservoir manager deems would be necessary in the event of a potential breach.

**Elaine Murray:** It could put off, say, a farmer from using land as a flood plain if they felt that they would have to pay £250 or more to get their name on a piece of paper. One of the concerns is

that there is a conflict between what we are trying to achieve in this bill and what was intended to be achieved in the Flood Risk Management (Scotland) Act 2009 and, indeed, through some of the biodiversity duties. There could be a temptation either not to create the flood plain or, indeed, to drain a reservoir rather than have the hassle of going through the flood plan procedure. Many reservoirs are important habitats for various creatures, so there could be a negative effect on a biodiversity duty.

**Judith Tracey:** The intention of the bill is to ensure the safety and the safe maintenance of reservoirs. A balance must be struck—there will be some cost for reservoir owners, but the bill is intended to be proportionate. It has been drafted in such a way as to try to ensure that any impact on reservoir managers is proportionate to the risk that the reservoir poses to the public.

**Elaine Murray:** Do you envisage a grant scheme that will give people financial assistance with the costs of preparing plans?

**Judith Tracey:** There is nothing in the bill at the moment in that regard, but it was something that we put in the consultation, so we could take it into consideration.

**Elaine Murray:** On the information that will be held in the flood plan, who will be able to access that? In the passing of the 2009 act, we recognised that there could be some sort of security risk sometimes in public access to information about reservoirs. How secure will the information be?

**Elaine Murray:** The security of reservoirs is deemed to be an issue of national security, which is a reserved matter. So, on any security issues, we will follow the advice that the Westminster Government gives to us.

**Elaine Murray:** Will that be the intention for whoever has access to the information in the flood plans and so on?

**Judith Tracey:** It could be.

11:00

**John Scott:** Given that we are talking about bodies of water that are sitting doing nothing, what the bill proposes will represent an increased burden, so some landowners might be tempted just to drain their reservoirs, but that might be incompatible with their biodiversity obligations as regards wildlife. Could a situation be envisaged in which Scottish Natural Heritage or the Scottish Government refused to allow an owner to drain a reservoir because, for example, it was a wintering ground for greylag geese? An owner might want to drain a reservoir but not be allowed to do so without having a further biodiversity financial

obligation imposed on them. Is it unreasonable to envisage such a scenario?

**Judith Tracey:** There is a possibility that some small private reservoir owners may want to decommission their reservoirs, but that is not just a matter of draining them. A process has to be gone through. It is likely that a controlled activities regulations licence would have to be granted for that. The potential impact on the environment of a reservoir being decommissioned would have to be taken into account; it would not simply be a case of a reservoir manager deciding to drain it.

**Neil Ritchie:** I return to the point about the costs. The figures that we have provided are the best estimates that we could come up with on the basis of discussions with stakeholders. As part of the development of the bill, we will develop guidance on what will be required, as far as information is concerned, with a wide range of stakeholders. We will seek to draw into that process other bodies such as SNH and SEPA, which are working with us on the Flood Risk Management (Scotland) Act 2009 to ensure that wider interests are reflected and to make all the connections that are possible to issues such as sustainable flood management.

**Bill Wilson:** John Scott raised the possibility of someone draining a reservoir. Another possibility that occurs to me is that someone might decide to reduce the volume of their reservoir from 10,000m<sup>3</sup> to 8,000m<sup>3</sup> so that it would no longer be between 10,000m<sup>3</sup> and 25,000m<sup>3</sup> and therefore would be outwith the scope of the bill. Is that possible?

**Judith Tracey:** That is possible.

**Bill Wilson:** I presume that that would not require a controlled activities regulations licence.

**Judith Tracey:** Such a person would probably still need a controlled activities regulations licence because they would be carrying out work on a water body. If they brought the reservoir down to below 10,000m<sup>3</sup>, the chances are that it would fall outwith the requirements of the bill.

**Bill Wilson:** I presume that a reduction of 1,000m<sup>3</sup> would not have a significant effect on biodiversity, but you cannot really answer that.

**Judith Tracey:** I add that if a landowner decided that they no longer wanted to have a flood attenuation reservoir because they felt that the requirements under the bill were too onerous, it would be open to them to enter into discussion with the local authority. Under the Flood Risk Management (Scotland) Act 2009, there will be a local flood risk management plan. If the local authority wanted to retain that flood attenuation reservoir, compensation arrangements could be discussed.

**The Convener:** Will you tell us about chapters 9 and 10, please?

**Judith Tracey:** Chapter 9 will enable Scottish ministers to make provision, by order, for SEPA to have access to a toolkit of sanctions in the event of non-compliance by reservoir managers, which will include stop notices, enforcement undertakings, fixed financial penalties, the ability to publish details of enforcement action and, when such measures are unsuccessful in securing compliance, the ability to take forward criminal proceedings.

The intention is that SEPA will be able to deal with each case on a specific and individual basis rather than have to follow a prescribed legal path when it might be inappropriate to do so. SEPA will also be able to appoint engineers if no engineer has already been appointed, and to recover any costs that are incurred as a result.

Chapter 9 will also enable SEPA, in consultation with a panel engineer, to enter a site to take emergency action to prevent an uncontrolled release of water from a dam. Subsequently, it will be possible for expenses to be recovered from the reservoir owner.

Chapter 9 also sets out SEPA's powers of entry and powers to require the provision of reasonable assistance and information, places a requirement on reservoir managers to provide reasonable facilities to panel engineers and sets out offences under the chapter. In addition, it requires SEPA to provide reports to Scottish ministers on its enforcement actions.

Chapter 10 covers a variety of miscellaneous provisions, including procedures in circumstances in which a reservoir manager has revoked the appointment of an engineer or in which the Institution of Civil Engineers ceases to exist.

**Elaine Murray:** Chapter 9 expands SEPA's enforcement powers, yet there were no direct questions on that in the consultation. Why not?

**Judith Tracey:** There was a general question about expanding the toolkit of options that are available to SEPA, but you are right to say that there was nothing specific about the sanctions. As we developed the bill, we wanted to ensure that we were acting along the lines of better regulation as set out by the Macrory report, and we felt that, in giving SEPA a toolkit of options that it could use for enforcement purposes, we were acting in line with the move towards better regulation.

Under the 1975 act, the enforcement authority has only two options if a reservoir undertaker is not complying with the regulation—to write a stiff letter to them, or to pursue criminal proceedings. We believe that it is not appropriate for those to be the only options for the enforcement authority and

that it will help for it to have other options. The options in the bill are in line with Professor Macrory's recommendations. They would have to be made by order, and we would envisage having further consultation before an order was made.

**Elaine Murray:** What about local authorities? What powers do they have to enforce reservoir safety?

**Judith Tracey:** The only enforcement powers that they have are to write a letter or to follow criminal proceedings.

**Elaine Murray:** Could a case not be made that they should have access to a toolkit of other options as well?

**Judith Tracey:** If the bill is passed, local authorities will not be the enforcement authorities.

**Elaine Murray:** They will lose their role.

**Judith Tracey:** Yes. SEPA will be the enforcement authority.

**Elaine Murray:** Does SEPA have similar powers under existing legislation?

**Judith Tracey:** Yes. It does not have all the powers that we have included in the bill, but it has the power to issue fixed-penalty notices under the greenhouse gas emissions trading scheme regulations, the Environmental Protection Act 1990 and the Transfrontier Shipment of Waste Regulations 2007.

**Elaine Murray:** What will happen if a dispute arises? To whom will the dispute be referred if SEPA has a disagreement with a reservoir owner about what it has been doing?

**Judith Tracey:** If a reservoir owner decided not to comply with any of the civil sanctions, the matter would transfer to criminal—

**Elaine Murray:** But if the reservoir owner believes that SEPA is unjustified in what it is doing, will they have a mechanism to appeal?

**Judith Tracey:** Well, they would have the option not to comply. The matter would then have to go to court and a decision would be made there.

**Sandra White:** To follow up on Elaine Murray's questions on enforcement, will you clarify under what authority in the bill SEPA will charge reservoir managers? That does not seem clear. The policy memorandum states:

"SEPA will be responsible for enforcing the provisions under this legislation. This is an administrative role".

Is it under the Environmental Protection Act 1990 that SEPA will have the authority?

**Judith Tracey:** The authority is set out in the bill. SEPA will have the authority only if the bill is passed.

**Sandra White:** You mentioned that there will be some costs for reservoir classification and for work that requires to be done. Do you have a general idea of what the charges will be? It was mentioned that there would be some costs, but we did not get a definitive figure.

**Judith Tracey:** Do you mean the charges for registration?

**Sandra White:** No, I mean the charges for classification and for work that requires to be done under the new powers that SEPA will have if the bill is passed.

**Judith Tracey:** The cost of the work to be done will depend entirely on what the work is. It is not a matter of SEPA charging the reservoir manager to undertake work. If a supervising or inspecting engineer identifies that a certain amount of work needs to be done to bring a reservoir up to standard, the reservoir manager will have to pay for that work to be done. The payment will be made not to SEPA but to the contractor who does the work.

**Stephen Rees:** It is possible for SEPA to carry out the work if the reservoir manager fails to do so and to recover the costs from the reservoir manager.

**Sandra White:** Should the bill make provision for SEPA to advise reservoir managers to take out insurance policies?

**Judith Tracey:** It will certainly be open to reservoir managers to take out insurance policies. It is always advisable for those who own such assets to be properly insured. However, on the advice of the Association of British Insurers, we have not gone down the road of compulsory public liability insurance.

**John Scott:** Forgive me for butting in, but why has the Association of British Insurers said that those who own bodies of water should not have public liability insurance? I should have thought that that would be necessary.

**Judith Tracey:** Public liability insurance is available, but the association advised against making it compulsory, partly because it was not sure how many insurance providers would be willing or able to provide it and how such provision would be policed.

**Neil Ritchie:** In its evidence to the committee, the ABI set out three reasons why it did not think that compulsory liability cover would be helpful. They were:

"1. Difficulty of enforcement of any compulsory insurance;

2. It would require a mechanism for paying claims for the uninsured;



3. It would require a mechanism for enabling owners to take out insurance in situations where insurers had no market-driven desire to insure them."

**The Convener:** I invite you to tell us quickly about parts 2 and 3 of the bill.

**Judith Tracey:** Part 2 allows offences to be set out in support of regulations that were specified in the Water Environment and Water Services (Scotland) Act 2003. Such regulations exist to enforce the European Community water framework directive's requirement for water bodies to meet a "good status" objective. However, fully enforcing the regulations is difficult without offences to back them up. Such offences were omitted from the original piece of legislation. The bill has been identified as the most appropriate vehicle to introduce the necessary measures.

Part 3 applies the bill to the Crown and sets out provisions for regulations, orders and ancillary provisions.

**Karen Gillon:** I have some questions about the offences that are being created. Can you provide us with more detail on the type of offences that you propose to create?

**Neil Ritchie:** I apologise for the fact that we can go into only limited detail, as our expert on that front has been snowed in and has been unable to join us.

**Karen Gillon:** It would be useful if you could provide the committee with some written evidence on the issue.

**Neil Ritchie:** We will do that.

**The Convener:** As there are no further questions, I thank the witnesses for attending and for their evidence. We would be grateful if you could submit your written evidence to the clerks as soon as possible. I will suspend the meeting briefly to allow for a changeover of witnesses.

11:14

*Meeting suspended.*

11:18

*On resuming—*

## Subordinate Legislation

### National Scenic Areas (Consequential Modifications) (Scotland) Order 2010 (Draft)

**The Convener:** We will now consider an affirmative instrument. I welcome to the committee the Cabinet Secretary for Rural Affairs and the Environment, Richard Lochhead MSP, and Bob McNeill, policy officer in the landscape and protected sites team in the Scottish Government. This item enables members to ask questions about the content of the instrument before we move to a formal debate. As members know, officials can contribute under this item but cannot participate in the debate.

**The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead):** I am pleased and—like many other members, I am sure—relieved to be here.

The order is necessary to implement provisions on national scenic areas in section 263A of the Town and Country Planning (Scotland) Act 1997 that provide for the designation by direction of NSA boundaries. The provisions were inserted into the 1997 act by section 50 of the Planning etc (Scotland) Act 2006, as NSA boundaries had never been formally designated. Earlier provisions for that in the Town and Country Planning (Scotland) Act 1972 were repealed in 1991 without having been used.

The order makes consequential amendments to certain legislation for references to be made in terms of section 263A and to remove references to NSA designation under other instruments. That will ensure that the amended legislation continues to apply to NSAs when section 263A designation directions are issued.

**John Scott:** What impact, if any, is the change likely to have on planning?

**Richard Lochhead:** All that it means is that the new power for ministers under recent planning legislation to designate boundaries will be recognised in all the relevant legislation. There are no immediate plans to use the powers, but there are 40 scenic areas in Scotland that were identified under the previous policy on the issue. The order will have no immediate impact.

**The Convener:** As there are no further questions, we move to the formal debate on the order.

*Motion moved,*

That the Rural Affairs and Environment Committee recommends that the National Scenic Areas (Consequential Modifications) (Scotland) Order 2010 be approved.—[*Richard Lochhead.*]

*Motion agreed to.*

11:21

*Meeting suspended.*

11:24

*On resuming—*

## **Draft Budget Scrutiny 2011-12**

**The Convener:** Agenda item 4 is evidence on the Scottish Government's draft budget for 2011-12. We must report to the Finance Committee before the end of the year on the parts of the draft budget in our remit. We are joined at the committee table by our adviser Jan Polley.

Today we will hear from a panel that consists of: Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment; Paul Gray, director general, rural affairs, environment and services; Mike Neilson, director, Marine Scotland; David Barnes, deputy director, rural and environment directorate; and Ross Scott, finance team leader, rural affairs and environment. All are from the Scottish Government. We will also hear from Paul Smith, head of corporate services, Forestry Commission Scotland.

I thank all the witnesses for their attendance. Cabinet secretary, we are pleased that you were able to make it back from Brussels despite the weather. Do you wish to make an opening statement before we move to questions?

**Richard Lochhead:** Yes. Thank you, convener.

It is fair to say that this budget is like no other budget that the committee has ever had to scrutinise. As we are all aware, the Scottish Government's budget in 2011-12 has been cut by £1.3 billion compared with this year. Scotland's revenue budget has been cut by more than £500 million, and our capital budget has been cut by around £800 million. Between 2010-11 and 2014-15, our total spending power, including both revenue and capital, will be cut by 11 per cent in real terms. The cuts will not only affect Scotland for the next few years but have lasting implications for at least the next decade.

The UK Government is cutting the budget too fast and too far in the opinion of the Scottish Government. Scotland's economic recovery and long-term economic growth is being put at risk by the unprecedented reductions in public expenditure, especially the massive cuts to capital. Nevertheless, it is our job as the Scottish Government—and my job as Cabinet Secretary for Rural Affairs and the Environment—to do what we can to protect Scotland and to mitigate the worst possible effects of the budget cuts on the environment, rural and coastal communities, and our more fragile communities in Scotland.

In preparing our draft budget, we had three priorities: first, to support economic recovery and deliver the Government's purpose of increasing

sustainable economic growth in Scotland; secondly, to protect the public services on which people depend; and, thirdly, to establish a competitive advantage through the opportunities offered by taking action on climate change. Those principles having been followed, it is my view that the rural affairs and environment portfolio draft budget for 2011-12 represents a fair outcome in very difficult circumstances.

We have prioritised budgets that are critical to economic recovery and sustainable growth, and we have sought to make savings whenever possible through efficiency savings and reduction on spend on administration. We have also protected spend when it will help us to meet our ambitious climate change targets and to develop a low-carbon economy. For example, we have maintained spend on the sustainable action fund, increased the proportion of that fund spent on the climate challenge fund, and increased spend on our ambitious zero waste agenda.

We will continue to support our rural and coastal industries through the Scotland rural development programme and the European fisheries fund. We will also seek to continue the growth in the value of the Scottish food and drink sector to our national economy.

We have protected the funding for our strategic research through the funding for our main research providers. We will also protect our communities from flooding by working with our partners to implement the Flood Risk Management (Scotland) Act 2009 and by providing funding through the local government settlement for continued investment in flood prevention schemes.

We have had to make real cuts to things that we would have liked to retain in full. Even by striving for all the efficiency gains available, we just cannot do the same as before with the reduced resources that are available to us. Inevitably, we have had to make savings in our programmes, which have included some reductions in the SRDP, reductions of grant in aid to non-departmental public bodies, and reductions in non-strategic research and survey work. We have made every effort to protect the budgets that are co-funded by the European Union, but given the size of the programmes and the relatively small budget lines elsewhere in my portfolio it has not been possible to exclude them.

Overall, the rural affairs and environment portfolio draft budget is focused on the economic recovery and sustainable economic growth, on the protection of our valuable natural resources and rural and coastal communities, and on providing us with competitive advantage through our unique approach to climate change. I hope that that outlines our approach in difficult circumstances. I am, of course, happy to take questions from the committee.

**The Convener:** John, would you like to start the questioning?

**John Scott:** Cabinet secretary, I would take you up on your point that the UK Government is cutting budgets too far and too fast, but rather than debate it now we could perhaps let it lie—acknowledging that you and I could agree, I am sure, that the cuts are a result of the mismanagement of the economy by the previous Labour Administration.

Notwithstanding that, we are here to discuss specifics. At the risk of being rather mundane, I will ask you first about veterinary surveillance. The budget for that has already been cut before the Kinnaird committee has reported. Does that make sense? Do you expect the overall budget to fall in future following the results of the Kinnaird review? Do you expect that the surveillance network will be rationalised?

11:30

**Richard Lochhead:** I take some comfort from your opening remarks—at least we all agree that one of the London parties is responsible for the cuts that Scotland is experiencing. With regard to the Scottish Agricultural College and the surveillance programme, we have unfortunately had to programme a cut into that budget line.

The timing is not perfect, because John Kinnaird's review is taking place, as you rightly point out. I cannot pre-empt the review's outcome, so I cannot answer your question on the extent to which a number of offices will be rationalised or whatever. That is not necessarily a given; it will depend on John Kinnaird's findings and recommendations.

Very few budgets in the portfolio are completely unscathed. We are clear that we very much value the importance of the surveillance network in protecting our livestock sector in Scotland, and the need to maintain a vigilant approach to animal disease and an understanding of the profile of any disease outbreaks. It is important that the service has a geographical spread.

However, there was widespread agreement that it was time for a review. We must ensure that we are getting value for money and getting the service that we want, which takes into account the needs of the 21<sup>st</sup> century and the animal health agenda.

We will have to take the review into account when we make the final decisions on how the budget is allocated and spent, but there will be a cut—that is unavoidable.

**John Scott:** When do you expect the Kinnaird review to publish its findings? I must declare an interest as a farmer. Will you ask farmers to share

the costs in future? Is that a likely outcome of the review?

**Richard Lochhead:** There are two aspects to that question. First, there is John Kinnaird's review of the surveillance network. The review has been liaising with the working group on animal health and cost and responsibility sharing, which addresses the extent to which the industry should carry some of the burden for the costs of maintaining animal health in Scotland.

The working group has not yet reported on those issues, and likewise, we await the outcome of John Kinnaird's review. I can, however, assure you that they have been speaking to each other, because those two agendas are very much interlinked and John Kinnaird is keen to take on board what is happening in the wider debate around cost and responsibility sharing.

**John Scott:** That is the next question that I was going to ask you. What is the latest position on negotiations with Westminster in that regard?

**Richard Lochhead:** I will answer that question. You also asked about the timescale for the Kinnaird review's report. That is in the hands of John Kinnaird; I have not put pressure on him to report by a certain date. However, from the latest information that I have, I expect the report early in the new year, so it is literally only weeks away.

With regard to on-going negotiations with the UK Government on the devolution of the animal health and welfare budgets, and the animal health aspect in particular, we have been keeping up the pressure on the UK Government to stick to the timetable for the end of this financial year. We must have a result.

I met Caroline Spelman, the Secretary of State for the Department of Environment, Food and Rural Affairs, and Jim Paice, the Minister of State for Agriculture and Food, in the past 10 days or so in London. I raised the issue with them and was once again given an assurance that they wish to stick to the timetable. They are adamant that we will have figures that we can work with and a signed agreement by the end of the financial year.

That would put Scotland in a position in which we could set off on our own agenda for animal health. We have a distinctive track record and agenda on animal health; there is widespread cross-party and cross-industry agreement on it. Having our own policy would bring a lot of benefits, but we need the budgets. Until we get them, we cannot reap all the advantages of having our own animal health policy. I am very hopeful that we will make progress in that regard.

**John Scott:** Forgive me; perhaps I did not hear you correctly. If the responsibility is devolved to Scotland without any real budgetary support from

Westminster, will the Scottish Government be able to finance the duties that will be imposed on it?

**Richard Lochhead:** The difficult position that we have under devolution is that we have a lot of responsibilities in relation to animal health but we do not have responsibility for the budgets. We cannot accept just any budget; we have to accept a budget that we feel is our fair share of what is currently spent across the UK on animal health issues. The sticking point has been in trying to identify the element of the UK animal health budget that is allocated or spent in Scotland. Getting credible figures that we can understand out of the Department for Environment, Food and Rural Affairs has been like getting blood out of stone. That is why the process has taken so long. Until we have those figures, we cannot make a judgment about whether we should sign up to taking responsibility for the budget.

As I have said to this committee, Parliament and the industry, the more time that passes, the more the UK budget—and, therefore, the Scottish share—will decline. I do not want this to be fudged any longer. We must bring the matter to a head and, I hope, get a fair share of the UK budget.

**John Scott:** And you believe that there is an acknowledgment, from the politicians, if not from DEFRA, that the matter should be resolved as soon as possible.

**Richard Lochhead:** Yes. In the past 10 days, I have received an assurance from the UK Government on that issue.

We also face the issue of how action on exotic diseases is paid for, which we must negotiate with the UK Government. Those negotiations will concern factors such as the contingent liability surrounding outbreaks of diseases such as foot-and-mouth disease, which are potentially extremely expensive, and the way in which the responsibility for action on such outbreaks is allocated.

**Bill Wilson:** We understood that one of the sticking points was that DEFRA was insisting that Scotland would have no access to UK Treasury money in the case of a major outbreak. Is that the case or can you not comment on that because it is part of the negotiations?

**Richard Lochhead:** It is a case of learning from bitter experience. During the previous foot-and-mouth disease outbreak—which I accept was under a different UK Administration—we faced significant costs because of the knock-on effects of the outbreaks down south, and were forced to use Scottish resources to pay compensation to agriculture interests in Scotland, particularly the sheep sector, because the UK Government refused to approach the UK Treasury for

contingency funding, as had happened during the 2001 foot-and-mouth disease outbreak.

My gut feeling is that there is no reason to believe that the new Administration south of the border would be any more inclined to approach the UK Treasury, or that the UK Treasury would give the green light to using contingency funding to compensate farmers for outbreaks of exotic diseases such as foot-and-mouth disease.

**Bill Wilson:** If there is an exotic disease outbreak in England, does the Treasury provide extra contingency funds, or are no contingency funds available at all?

**Richard Lochhead:** One of the debates that we are having with the UK Government over the devolution of animal health budgets concerns who has that liability. A debate is taking place between ourselves and the UK around the suggestion that, if there is any devolution of animal health budgets, that should carry with it the liability for the major disease outbreaks that, in previous times, were subject to a special arrangement with the UK Treasury. In other words, the funding should not come simply out of DEFRA's budget—a UK budget that covers Scotland, as the budgets are reserved—and the Treasury should step in and help, effectively. That did not happen in relation to the outbreak a couple of years ago, so I think that it is fair to assume that the policy has been changed.

**Bill Wilson:** What would your aim be? If the UK Treasury provided DEFRA with extra money to deal with an outbreak, would you be looking for a Barnett share of that, if we are no longer getting contingency funding?

**Richard Lochhead:** I do not want to go into too much detail on the matter, as we are at quite an important stage in the negotiations. However, the crux of the debate is whether, if animal health budgets were devolved to Scotland, we would still have access to Treasury contingency funds for major outbreaks. Clearly, if the UK Government's part of devolving animal health budgets for everyday animal health issues amounted to a few tens of millions of pounds, but there were a disease outbreak that cost a lot more than that—last time, it was hundreds of millions of pounds—that would not be covered by our devolved budget. We have to understand how that arrangement would work and make a decision, in consultation with our industry, about the extent to which we want to accept that liability as part of the devolution deal.

**John Scott:** Forgive me for not knowing, but—leaving aside your own views on Calman—is the issue dealt with under the Calman proposals?

**Richard Lochhead:** Yes. The Calman recommendations include the devolution of animal health budgets.

**John Scott:** Has anything been published in that regard?

**Richard Lochhead:** As I say, it is UK Government policy to devolve that budget. We are just not quite agreed on what the budget should be and on the conditions that are attached.

**Peter Peacock:** On the issue of veterinary surveillance, what are the implications of the budget reductions for the monitoring of outbreaks of European and American foul brood among honey bees?

**Richard Lochhead:** I do not envisage any direct impact. However, at this point, until we work out the detail of all our budget headings, I cannot rule out any impact. At the Royal Highland Show, we announced the steps that we are taking to work with the honey bee sector to address such diseases, and the difficulties that have been experienced in the past year or so. We are determined to follow that through.

**Peter Peacock:** So you will give it a degree of priority, to the extent that you can.

**Richard Lochhead:** Yes.

**Peter Peacock:** Last year, when you gave evidence on the budget, we heard that the exchange rate fluctuations had given rise to a windfall of European funding and there was some discussion of the co-financing rates that would be applied if that were drawn down. Given that you felt it necessary this year to reduce the domestic share that matches some of that European funding, less EU money will be drawn down. Will the fluctuation of exchange rates give rise to another windfall this year? How would you be seeking to draw that down, given the broader financial constraints that you have?

**Richard Lochhead:** You raise an important point in relation to the big role that match funding from Europe plays in my budgets. We are in a difficult position at the moment, given that the Scottish Government faces major capital cuts. I have to take my fair share of cuts and, of course, given that much of the capital expenditure within my portfolios is linked to EU funding, we will lose some match funding in the next financial year, which is covered by the Government's one-year budget.

I face some cuts in the Scotland rural development programme budgets, and the capital element will be reduced substantially. The theory is that the match funding will not be called down for that, so we will take a double hit. However, the EU funding is spread over several years, and we

also have the two years beyond 2013 in which to spend it—that is known as the N+2 rule.

Clearly, the Government wants to maximise the European allocations that we have in the coming years. Although the budget for next year shows that we will be unable to call down as much as we would like next year, because there will be less capital domestic funding—and we know that it will be tight in the subsequent years as well—the outlook is unfortunate. However, it at least gives us a breathing space in which to find as many ways as possible to call down as much funding as possible.

11:45

On the benefits in this year's budget, we were able to substantially increase the woodland grants because we are able to co-finance to a greater degree, with European funding. Our co-financing rate is now about 50 per cent for many of our SRDP schemes—I will ask David Barnes to comment shortly, because he is the expert on these issues. The co-financing rate was previously 30-odd per cent, so we have increased the European element, which has helped us to protect budgets. It has also helped our economic recovery programme, because we brought forward money from next year to this year within SRDP to help economic recovery.

**David Barnes (Scottish Government Rural and Environment Directorate):** As the cabinet secretary said, the N+2 rule is very important. It means that we do not have to draw down the entire European funding of the 2007 to 2013 programme by the end of 2013; we have until the end of 2015 to draw it down. That gives us some flexibility.

As the cabinet secretary said, the second variable that we can play with is the co-financing rate. We have already changed the proportions to bring the proportion of European funding up to 50 per cent. Of course, the impact of the exchange rate is not that more money flows to us; it is just that Europe holds a pot of euros and we spend in sterling and draw down against that pot, so the impact of the exchange rate means that we are drawing down fewer euros than previously anticipated to cover the sterling spend, so the amount left in the pot for us is bigger than anticipated.

We still have scope to increase the co-financing rate. If the committee wants to follow the matter in detail, we have a programme monitoring committee for the SRDP. It meets about once a quarter and we produce a finance paper, which is on the Scottish Government website, so you can see the kind of things that we have been saying to

the members of the programme monitoring committee.

The expectation is that we would probably need to increase the co-financing rate again to ensure that we draw down all that European money. We cannot do that unilaterally; we have to apply to the European Commission to make a formal modification of the programme to change the co-financing rate, but Europe also wants us to draw down the money and spend it in rural Scotland, so it would be very surprising if it objected in any way to our changing the co-financing rate.

**Peter Peacock:** First, is the reason for not adjusting the co-financing rate for the year that we are just coming into in order to draw the money down, even though there is less domestic spend, simply that there is not time to clear that with the Commission before 1 April 2011? Secondly, will you formally apply to get the co-financing rate changed from 50:50 to whatever in order to draw the money down? Is there a definite commitment to seek to do that by the following financial year?

**Richard Lochhead:** There is certainly a commitment to maximise the EU match funding as far as we can in next year's budget, but clearly that can only go so far, because we are reducing our own domestic funding: the EU cannot match money that does not exist.

I ask David Barnes to clarify how the regulations work in terms of changing the co-financing rates.

**David Barnes:** The expectation is that we would make another change, so we would apply to Europe sometime during 2011 to have a higher co-financing rate for 2012. The European budgets are for calendar years, so the expectation is that we would need to apply in 2011 to have a higher co-financing rate from 2012. The current 50 per cent rate was, to some extent, pitched on the high side because we had to play a game of catch-up.

As I am sure the committee remembers, there was a delay in the opening of the SDRP, at least partly because of issues in Brussels with the necessary legislation coming through, which meant that the draw-down in the first year or two of the programme was well below the planned European draw-down. Therefore, if you like, we had to almost overcompensate to catch up on the first couple of years. We have done that and, by the end of June this year, we had drawn down more than the amount that we would have needed to draw down by the end of this year to comply with the N+2 rule. At this stage, I do not think that we have made a firm commitment on a figure that we would change to. However, to give the committee a ballpark figure for the area that we are likely to be looking at, it would not be surprising if we were looking at a move from 50 to 60 per cent European funding for 2012.

**Peter Peacock:** Is there precedent from past years or from other nation states of co-financing involving 10 per cent domestic funding and 90 per cent EU funding? Is that ever experienced or is the range much closer to 50 per cent?

**Richard Lochhead:** The different axes of the SRDP allow different bands of co-financing. The maximum rate is 100 per cent. We can have high rates of co-financing, but it depends on the measures and the SRDP axis.

**Peter Peacock:** So, theoretically, even if you could not do much in the next year, which is 2012-13, in the final official year of the programme, you could draw down a much higher rate of European funding with a much lower rate of domestic funding.

**Richard Lochhead:** Theoretically, yes. The calculation of our budgets involves trying to spread the budgets over certain years. We cannot always predict what the demand will be for certain schemes. A scheme could have co-financing that is valuable to the economy, but with a low co-financing rate, but it might be unpopular, with people not applying to it, or vice versa. We are always trying to juggle those issues as the programme goes on.

**Peter Peacock:** For information, how much of the approved fund of almost €700 million has been drawn down already in the programme?

**Richard Lochhead:** I will find the figure for you; I am sure that we have it. The cumulative figure that has been drawn down so far since the programme began is €143.8 million up to end June 2010.

**Peter Peacock:** Is that what you would have expected to have drawn down by this point? That is less than a third of the total.

**Richard Lochhead:** I do not know how to answer that question, because it is a moving feast and is changing all the time.

**Peter Peacock:** So the figure is not lagging behind expectations. If it was, that would mean that you would have to draw down more than normal in the coming period.

**Richard Lochhead:** Some of the axes in the SRDP lag behind expectations and others do not. The demand for some measures has been less than expected and there has been high demand for others. The issue really depends on which measures we are speaking about. The demand for some forestry measures has been lower than we expected, but the demand for some other measures has been much higher than we expected.

**Peter Peacock:** Some of the SRDP funding comes from modulated funds. I should say that

John Scott asked me to ask this question, to save him declaring an interest—no, I am being facetious. Seriously, if all that modulated funding is not used, is there any way in which it can go back to the Scottish farmers who lost it in the first place?

**Richard Lochhead:** I do not think that that is built into the regulations. I would have to check the legality of that but, as far as I am aware, the answer is no. It is a fixed regulation.

**John Scott:** On that subject, in the unlikely event that modulated funding was not drawn down, what would happen to it? Would it just revert back to the EC or would it go into other schemes to benefit rural Scotland in some way?

**Richard Lochhead:** Our allocation of European funding comes from voluntary modulation, compulsory modulation and the European rural development regulation. I am not sure how easy it is to split that up to find out what goes to what schemes. It is not easy to say how the European funding that comes to Scotland from those three sources is then divvied up. It is not as simple as that. All the funding goes into a European funding pot and we then use it.

**John Scott:** The point that Peter Peacock and I are trying to make is that, given the low level of funding that Scotland enjoys in a European context, it would be particularly upsetting to the Scottish farming industry and environmental concerns if money that was available to Scotland was not drawn down at the end of the period, even with the N+2 rule. That would be the worst of all scenarios. Therefore, if there was any way of securing that money for Scotland at least in some way, that would surely be a better outcome than just giving the money back to Brussels because we cannot draw it down.

**Richard Lochhead:** I agree that it would be disappointing if we could not use that money. That is why I am keen on the UK Government reversing some of its budget cuts so that we can do even more to draw down money over the next few years. We can use our very high co-financing rate for the money because of modulation. That enables us to have a higher co-financing rate. There are opportunities to draw down as much money as possible over the next few years through increasing co-financing rates. We discussed that previously.

We have discussed before at committee modulation and top-slicing single farm payments, but much of the SRDP goes to farming businesses in Scotland. I am always keen to move us away from the crude argument that money is taken off farmers and given to other sectors because the agriculture sector does extremely well out of the SRDP support mechanisms. It is not right to

suggest that farmers are being top sliced and money is being lost to them and agriculture. A lot of it is recycled through the SRDP.

**The Convener:** A number of sudden changes have been made to the SRDP over the past year. The uptake of grants has been less than expected but the number of applications for grants has exceeded Government targets. There was therefore a halt in the rural priorities scheme for a while. A £200,000 limit on the value of grants under the rural priorities scheme was recently introduced. Participants in the rural leadership programme subjected David Barnes and me to questioning on that this week; I have to admit that I had to leave, and I left him to tackle the questions. Can you assure farmers and landowners that there will be no repeat of the sudden changes to the rural priorities scheme that we saw earlier this year?

**Richard Lochhead:** It is clear that the SRDP is an enormous programme that delivers all kinds of support to rural Scotland. Generally speaking, those who successfully make applications to it are very happy with it and recognise that it boosts the rural economy and their businesses. I have visited many businesses in Scotland that have benefited from SRDP grants, particularly under the rural communities heading and for business development projects. Significant grants have allowed people to expand their businesses. Generally speaking, those people think that the programme is good and fulfilling its role.

The programme was, of course, new and it had a new way of approaching delivery. It was to be outcome based; there was not to be a plethora of individual schemes. Some applications are therefore much more complicated than previous applications. I do not deny for a second that there have been teething problems with the scheme. We have discussed those problems before in the committee. However, we must balance listening to people's concerns and changing the programme to address those concerns with trying to keep stability in the programme so that people know what to expect in the months and years ahead.

I cannot rule out future changes as I think that there will be more changes. We have clearly given a commitment under the draft budget to make future rounds of funding more focused. There will be fewer of them; that in itself will be a change. We will aim to give the industry as much notice as possible.

I fully accept that one of our biggest problems is managing expectations. People see the big headline numbers for the various grants and feel that they can go ahead and submit an application and have a high chance of success. If such expectations are not managed, there will be many

disappointed applicants. We are doing our best to ensure that we give people adequate notice.

**The Convener:** There seem to be variations in how the programme is administered throughout the country. Are there lessons that your officials can learn to make it appear that the programme is more evenly distributed and administered?

**Richard Lochhead:** Many of the applications are a lot more complicated than they were before because the programme is outcome based. A person can put together an exciting project in their business, with many different elements, and there would be one application. It is clearly difficult to compare applications throughout the country and reach the conclusion that officials are taking different views. That may be a perception, but we cannot identify many cases in which it has been the reality.

We have investigated accusations that some offices deal with applications differently from others. There is a strict, criteria-based points system that is stuck to. We will always investigate a perception that there is inconsistent application handling; it is down to the fact that some applications are bespoke.

12:00

**Sandra White:** There are some concerns about the long-term fall in the capital budget. We heard in evidence last week that it will be manageable for one year, but there are worries about the long term. How does the Government expect public bodies to cope with a long-term fall in the capital budget?

**Richard Lochhead:** Under the UK's budget proposals, we in Scotland face the difficulty of a 36 per cent cut in capital expenditure over the next few years. As you can see from the draft budget, there will be a lot fewer capital projects in my portfolio than there have been in previous years. Only last week, I opened the new aquaculture and fish laboratory at Torry in Aberdeen. That is a £15 million, state-of-the-art laboratory and, luckily enough, it just got in under the wire before the capital cuts were proposed.

There will be fewer capital projects. As you know, the Scottish Government and John Swinney, the Cabinet Secretary for Finance and Sustainable Growth, are looking to alternative means of funding capital projects in Scotland. We will explore opportunities for public sector organisations that have been affected by the budget cuts in our portfolios.

**Sandra White:** The people who gave evidence expressed concern about the long term. Has thought been given to how to manage the need for one-off capital allocations in the future? The



witnesses were not so concerned about the one-offs, as about the long term. Have you looked at one-off capital programmes or is it just about getting money from other sources?

**Richard Lochhead:** There are still capital budgets, but they are substantially less than they were expected to be. There will still be capital projects. There is money in the draft budget for the Campbeltown creamery, which is a very important project. We have held that money over into the new budget because the project was slightly delayed. That is a significant contribution to an important project in a fragile part of the economy.

There will still be capital expenditure, but in some portfolios we have had to replace capital budgets with maintenance budgets. For example, the Royal Botanic Garden in Edinburgh would have liked some capital budget to build some new things, but unfortunately we have had to give it a maintenance budget because no capital funding is available.

**Sandra White:** That is one of the issues that was raised during an earlier evidence session.

Could the rules be changed to allow all public bodies to recycle capital receipts?

**Richard Lochhead:** That would have to be a Scottish Government policy decision as opposed to one that I could make for my portfolio. I am sure that John Swinney will take that on board.

**Sandra White:** I have an example. I am sure that you are very aware of it. The Forestry Commission and Forest Enterprise are permitted to recycle their capital receipts. Their capital expenditure is shown in the draft budget as net capital expenditure. If that is permissible for the Forestry Commission, is it permissible elsewhere?

I have a wee add-on to that, but I will stop there and perhaps come back later with my other question.

**Richard Lochhead:** I will ask Ross Scott to comment on public sector organisations' ability to recycle their capital receipts.

**Ross Scott (Scottish Government Finance Directorate):** All capital receipts that go to the Scottish Government increase our ability to spend on capital. It is therefore quite normal that we recycle capital receipts. For example, SNH has properties that it plans to dispose of. The capital receipts from them will boost the capital spend in the portfolio. The receipts might not necessarily be given back to SNH; they could be used elsewhere in the portfolio. Each capital receipt is considered case by case.

**Sandra White:** When we took evidence, concern was expressed about that. People have—rightly—made the point that the Forestry

Commission and Forest Enterprise are permitted to keep their capital receipts. We have heard evidence that that might relate to a UK Treasury rule. I will press you on that. If it relates to a UK Treasury rule, will the Scottish Government ask for a change in the rules?

**Ross Scott:** I am not sure to what Treasury rule you refer. Capital income is spent as capital—it increases our ability to invest in capital projects. The proceeds from disposing of assets can be spent on further capital investment.

**Sandra White:** The point that I made was that the Forestry Commission and Forest Enterprise are permitted to recycle their capital receipts. Would such a practice apply to others?

**Ross Scott:** Yes—it would apply to others if capital receipts needed to be recycled. Some public bodies' capital receipts are one-offs and no further capital investment might be required in such bodies. That is why we consider capital receipts case by case.

**Sandra White:** So public bodies apply to the Scottish Government to do what the Forestry Commission does and the decision follows that. Is that what you are saying?

**Ross Scott:** Yes.

**Richard Lochhead:** The way in which the national health service sells buildings and reinvests in new buildings shows that such a practice is perfectly possible.

**Sandra White:** So it does not involve a UK Treasury rule?

**Richard Lochhead:** It does not. We will look out the reference from whoever gave evidence to the committee—

**Sandra White:** The issue was raised.

**Richard Lochhead:** We will see whether we can answer the question.

**Karen Gillon:** What is SNH's incentive to sell a building if it receives no benefit from doing so?

**Richard Lochhead:** First, SNH can discuss with us its plans, to which we can sign up. Secondly, disposing of buildings that are older, more expensive to heat or whatever might cut revenue costs. Such a decision would be in SNH's interests and would help its budget.

**Karen Gillon:** Is there an argument that it would be more beneficial—if SNH had several buildings that it could dispose of, for example—if it disposed of those buildings and retained the capital receipts in its budget line, which would allow it to make greater savings in its budget line and therefore regenerate that into its development plan?

**Ross Scott:** I return to what I said about taking a case-by-case approach. If SNH disposes of a property—

**Karen Gillon:** I am just using SNH as an example—we can talk about whatever organisation we like.

**Ross Scott:** If a public body disposed of a property and had a capital project that it wanted to fund, we would consider whether to invest in that project rather than other projects.

**Karen Gillon:** The NHS is sitting on hundreds of thousands of pounds of potential capital receipts that it is not realising, because the money will go back to central Government.

**Ross Scott:** According to the “Scottish Public Finance Manual”, capital assets should be disposed of when they are no longer required, which is generally what happens.

**Karen Gillon:** But that is not happening.

**Ross Scott:** SNH has odd offices around Scotland that are not really disposable. It cannot say, “We can put this property on the market and sell it within three months.” Some properties might not sell for two years.

As the cabinet secretary says, it is obviously in a body’s interests to dispose of surplus assets and get away from their running costs. If further investment is made in capital developments, that increases running costs, so a cost benefit analysis is involved.

**Richard Lochhead:** The arrangements today are no different from those that have been in place for several years.

**Karen Gillon:** I am not suggesting that they are.

**Richard Lochhead:** You make a fair point. As you know, we are all constrained by the rules on capital expenditure in the bigger picture.

**Karen Gillon:** Absolutely.

**Richard Lochhead:** What you suggest is a perfectly sensible approach in some circumstances.

**The Convener:** Let us move on. Bill Wilson has some questions about flood prevention funding.

**Bill Wilson:** What change will there be in expenditure on flooding and coast protection between 2010-11 and 2011-12?

**Richard Lochhead:** There are essentially two areas of Government expenditure in that regard. The first comes under my portfolio—which is what I think you are referring to.

**Bill Wilson:** Yes.

**Richard Lochhead:** That budget line, “Natural Assets and Flooding”, covers flooding issues and other areas of expenditure such as that on noise and air policy. We anticipate the reduction being taken by the air and noise part of that budget rather than by flooding. Tackling flooding is a priority for the Government, and a lot of work is under way to implement the Flood Risk Management (Scotland) Act 2009. There is a small budget line under our portfolio for that purpose.

**Bill Wilson:** So it will effectively not take any cuts?

**Richard Lochhead:** Yes, that is right.

**The Convener:** Elaine Murray has some questions on waste management.

**Elaine Murray:** There has been an increase of £2 million in the zero waste budget. Can you advise us how much of the £24.4 million under the 2010-11 budget was allocated to local authorities to help them to meet their municipal waste targets?

**Richard Lochhead:** I do not have a figure for that here, although the figure will have been negotiated under the agreement between John Swinney and the Convention of Scottish Local Authorities. We would have to write to you on that, having asked John Swinney’s officials to provide the figure.

**Elaine Murray:** COSLA will be pleased that there is an additional £2 million, but it is uncertain how much of that £2 million it will get and how local government will access the funding.

**Richard Lochhead:** The figures in my budgets, as they are set out before you, are clearly outwith that agreement. The funding to which you are referring is for spending on zero waste projects. Much of it will be spent by local authorities.

**Elaine Murray:** So they will get a share of that additional money?

**Richard Lochhead:** Yes, they will get a share.

We are launching our new recycling campaign today—in fact, I am launching it after my appearance at this committee. Local government has asked the Scottish Government to work with it on the campaign. It will be largely funded by the Government through the zero waste budgets—under this year’s budget, not the draft budget that is before you. Virtually our whole approach towards zero waste is one of partnership between ourselves, zero waste Scotland and local government.

**Elaine Murray:** Concerns have been expressed in a recent report that local authorities will find it very difficult to meet their 2025 targets. You have described how their capital allocation has fallen.

Given that limitation on capital expenditure, have you had any thoughts as to how local authorities could be helped to achieve those targets?

**Richard Lochhead:** There are two points to make on that. First, as you will be aware, the Scottish Futures Trust is working with local government on a number of infrastructure projects. The feedback that I have been getting from local government has been very positive. There are a number of infrastructure projects in the pipeline across Scotland. I do not know how many of them will go ahead but I am confident that many of them will, and that will help to meet the infrastructure needs for reaching our targets. Over the next year or two, you will see a number of major infrastructure projects coming on stream across Scotland.

**Elaine Murray:** How will they be funded? Will the Futures Trust fund them?

**Richard Lochhead:** The Futures Trust is giving advice and working with local authorities. I understand that a number of projects will get the go-ahead, hopefully—or they will at least get support from the local authorities concerned. The funding arrangements are a matter for local authorities. That work is encouraging. I am concerned about this. Given that they face a wide range of financial pressures, we do not wish local authorities to take their eye off the ball with regard to our zero waste targets. Some local authorities have said clearly that they have no intention of taking their eye off the ball and that they are very ambitious about their zero waste targets. Others might not be quite so enthusiastic. A lot will come down to local leadership and the extent to which local councils prioritise our zero waste goals.

**Elaine Murray:** They will be permitted, I assume, to enter into public-private partnership arrangements, even if it is according to the non-profit-distributing model.

**Richard Lochhead:** There are many different methods of financing projects and I am happy to send the committee a note on some of the projects that are in the pipeline.

12:15

**Karen Gillon:** What kind of infrastructure projects are we talking about? Incinerators?

**Richard Lochhead:** We are talking about a range of different types of treatment plant, which certainly includes energy-from-waste plant. As I have said, there are a number of projects in the pipeline and I am happy to send that list to the committee.

**John Scott:** My question is more or less the same. COSLA has said in its evidence that there

is essentially no money to meet climate change targets. How are local authorities going to do that?

**Richard Lochhead:** That was certainly not the feedback that I had when I discussed the issue with a COSLA spokesperson in Edinburgh just a couple of weeks ago. I was told that a number of local authorities are taking their zero waste targets very seriously and are preparing major investments in that respect.

**John Scott:** Well, I will just read what COSLA has told the committee into the *Official Report*. It says:

“Additionally it needs to be recognised that there will be a need to meet infrastructure requirements of the Climate Change Act. There are no resources available which Councils can call on to meet these infrastructure requirements, should the burden primarily fall to Local Government to provide these. This is an area which the Committee may feel merits further answers from Government.”

Your view is that money is available and there is ingenuity out there to meet these climate change targets, while COSLA is telling us that there is no money to fund infrastructure projects to do so.

**Richard Lochhead:** I am not denying that there are challenges. All I am saying is that there are a number of projects in the pipeline across Scotland and that they will be taken forward under different funding models. Moreover, when I met COSLA a couple of weeks ago to discuss our zero waste plan, it was enthusiastic about it and confident that a number of local authorities are going in the right direction.

As I said, it all comes down to local leadership. The local government budget has largely been protected and I hope that, when the draft budget goes through Parliament and the settlements are agreed, a number of local authorities will feel confident about pressing ahead. Otherwise, they will have to pay the landfill tax and make all the other expenditure that will come from not achieving their targets. Indeed, the COSLA spokesperson I met a couple of weeks ago accepted that the cost of taking action and building infrastructure would be dwarfed by the cost of doing nothing.

**John Scott:** In fairness, the submission might well have been written before the budget was announced.

**Sandra White:** With regard to the landfill tax, which the minister has just mentioned, I have, like everyone else, read the submissions and COSLA not only welcomes the extra money for zero waste management but points out that the Scottish Government has commissioned a research project on landfill tax options in the context of the Calman recommendation that

“may identify alternative funding mechanisms”

for waste management. With the publication of the Scotland Bill, which will implement some of the Calman recommendations, how far along the line do you think we are with regard to getting money from landfill tax?

**Richard Lochhead:** Looking at the proposals, I do not think that we are very far along the line at all.

**Sandra White:** I have not read them yet.

**Richard Lochhead:** We are talking about post-2015. We need to turn Calman into something that is meaningful for Scotland and we are a long way from that at the moment. It would clearly be welcome if the Parliament had responsibility for landfill tax, as it would be another lever to help us to achieve our zero waste targets. As I say, though, that is all potentially some way away.

**Karen Gillon:** In my experience, the private sector is quite prepared to build these facilities but there is genuine concern about them in local areas. How should those concerns be balanced?

**Richard Lochhead:** If we agree that we want a zero waste society and do not want to dump our waste, which, after all, is essentially a valuable resource, into a big hole in the ground, we will have to find alternatives. If we want to do that over the next decade or two, we will have to build infrastructure plant.

It is not for me or the Government to say what technology should be used in any particular circumstance. A range of technologies exist—from anaerobic digestion to energy from waste. As members will know, energy-from-waste plant has been looked at by the regulatory bodies and by SEPA, and the Sustainable Development Commission reported on its role a year or two ago; they all find that it has benefits and a role to play in dealing with our waste. Energy-from-waste plant today is a very different creature from what it was several decades ago. It is licensed and must meet certain standards to get a licence. Clearly, being able to recover some value in terms of heat or power from waste that would otherwise be wasted and go into a hole in the ground is good, and it is good for renewable energy targets. I think that energy-from-waste plant can have a role, but the extent of that role is for consideration, on a case-by-case basis, by local authorities and others around the country.

**Karen Gillon:** How do you manage that conflict of interests, though, if the—

**The Convener:** This is not exactly budget stuff and we have a lot of questions. Can we move on?

**Karen Gillon:** But it is a budget issue, convener, because local authorities are being told that they must manage their budgets and that if they do not they will have to pay landfill tax money

and be fined—they are being pushed down that road. If they also have to make the planning decision around waste-from-energy plant—

**The Convener:** Exactly—it is a planning decision and not—

**Karen Gillon:** But they have a budget decision to make, so it is a conflict of interest. At what point does the Scottish Government provide guidance and leadership on that?

**Richard Lochhead:** Can I finish off that point, before we move on?

**Karen Gillon:** I think that it is a genuine question.

**Richard Lochhead:** The planning system and licensing system conducted by SEPA are the ways in which we regulate energy-from-waste plant or other infrastructure plant to ensure their efficiency and that they meet the criteria for being safe and environmentally friendly. There is a regulatory regime that deals with the quality of plant that will be built in Scotland and there are a variety of technologies. Each local authority or group of local authorities has the option of choosing what they feel is best for local needs.

**Elaine Murray:** The Forestry Commission for Scotland budget is decreasing by £7.4 million. A written answer provided by your colleague the Minister for Environment last week indicated that £2 million of that comes from the strategic timber transport fund and £2.4 million comes from capital. Am I correct in assuming that the remaining £3 million relates to the difference in the co-financing arrangements for the woodlands grant?

**Richard Lochhead:** Let me just get that in front of me. *[Interruption.]* The figures that you are looking at are the—

**Elaine Murray:** The figures were in an answer given by your colleague the Minister for Environment at the end of the week, which suggested that £2 million comes from the timber transport fund and £2.4 million comes from capital, and that the £3 million relates to the difference in the co-financing arrangements for the woodlands grant. Am I correct?

**Richard Lochhead:** The timber transport fund is going to be reduced from £5 million to £3 million, so that is a £2 million reduction. Many of the major projects in Scotland that had come under that particular fund are now completed, so a judgment had to be made as to what the demand might be in the future. If the demand exceeds the grant, clearly that is unfortunate, because we have had to take a cut. However, that is why that cut has been proposed in the draft budget.

**Elaine Murray:** The Forestry Commission said in its evidence that it was content with the cut

because it felt that those projects were coming to an end. However, different woodlands will produce timber at different times. My constituency has been a beneficiary of that fund in the past. It is likely that there will continue to be demand as forests become mature and timber starts being harvested in different communities.

**Richard Lochhead:** Clearly, in future budgets we will have to take that into account, but we are facing a very difficult budget, in which we have to have such expenditure cuts.

**Elaine Murray:** The good news is that you are almost trebling the amount of the woodlands grant. Do you think that that is sustainable in the long term?

**Richard Lochhead:** We want to meet our planting target, which is 10,000 hectares a year—100 million trees by 2015. Given some of the applications that we have already received, we reckon that we could be a quarter of the way towards the 2015 target within only a matter of months of that target being verified. That is good progress. We hope that the fact that we are able to increase the woodlands grant is good news for our ability to achieve our targets in the future.

**Elaine Murray:** ConFor does not think that it is enough. In its evidence to us, it states that the

“planting 8,000 hectares of new forests ... will require £46m”

per annum. Do you accept that figure?

**Richard Lochhead:** I will have to check. Clearly, ConFor has a job to do. I expect that, no matter how big my budget had been, ConFor might not have been entirely happy or thought that it was enough. However, despite the difficult backdrop to the budget, we have recognised the priority of tree planting. Meeting our climate change targets is part of that. Tree planting also supports a vital industry in Scotland on which your constituency, as well as mine, relies. That is good news, given some of the other budget cuts that we face.

**Elaine Murray:** Of what will the £2.5 million reduction in capital spending consist?

**Richard Lochhead:** The Forestry Commission will have less available to spend on new equipment, vehicles and so on. The commission accepts that, is prepared to cope with it and does not think that the impact will be too detrimental.

**Elaine Murray:** Last year the commission made £10.6 million in efficiencies from the sale of forestry land. Is that process likely to continue?

**Richard Lochhead:** I hope so. All the organisations have efficiency targets for the next year. In the past few years, they have largely exceeded all their targets, so I hope that they will

be able to keep up that good track record while maintaining a good quality of service.

**Elaine Murray:** Given that the Forestry Commission must make more efficiencies in the future, do you see sales accelerating? Are there dangers connected with that?

**Richard Lochhead:** All our portfolios face efficiency savings in the year ahead. Efficiency savings ain't going away, but it is much more productive to have them than it is to have more cuts. I hope that we can keep up that work. There are voluntary severance schemes in some organisations. The Forestry Commission has had one and various other NDPBs have had them.

**John Scott:** I return briefly to the timber transport fund and the need to meet climate change targets. You said that the fund will be reduced from £5 million to £3 million—a 40 per cent cut—which is pretty savage. Given the good work that it does, is there any flexibility in that area? I am particularly concerned about the timberLINK project between Ayrshire and Kintyre, which must save a huge number of road miles. What are the prospects for the scheme, which is demonstrably good value for money?

**Richard Lochhead:** Like every budget, this one must be balanced. Unfortunately, given the difficult backdrop, there will be cuts to many budgets. However, next year and beyond we will keep under review all budget headings, including the one to which you refer. We will continue to make adjustments to our budgets throughout the year in light of demand, underspends, future plans and changing priorities. I can give no commitment on the timber transport fund, but we monitor demand for all the schemes and support that we provide.

**John Scott:** I move on to the new entrants schemes. What will the Government do to encourage new entrants into farming? There seems to be different, almost conflicting, information about the number of new entrants and the uptake of money; perhaps it relates to more than one scheme. Can you clarify the situation for us?

**Richard Lochhead:** Various schemes in the SRDP give enhanced awards to new entrants—up to 10 per cent extra, depending on the scheme. We intend to continue that approach.

I have mentioned some of the challenging budgets—especially capital budgets—that we face in the SRDP. As a result, we have said that we will focus future SRDP rounds and our priorities under the programme. As part of that work, I am keen to ensure that we deliver benefits to new entrants. In other words, we may want to look at how we can protect the extra support for new entrants to prevent any cuts that must be made from having

an impact on new entrants. That is one way in which I intend to help them through the SRDP.

With the overall review of agriculture support in Scotland and the new common agricultural policy coming in 2013, the best way to help new entrants is to ensure that they are on an equal footing with existing recipients of single farm payments and agricultural support. Most of, if not all, the new entrants whom I speak to point to that as the one thing that could help them in the future.

12:30

**Bill Wilson:** I understand that the new entrants scheme is age limited to those under 40, or under 41, and that that is an EU rule.

**Richard Lochhead:** I am not sure whether it is an EU rule. There are some EU regulations that impact on the area, but we have a bit of leeway with others.

**Bill Wilson:** It occurs to me that, if we want more new entrants to take up the scheme, it seems discriminatory on the ground of age to deny people of, let us say, 42 the right to access it. Why do we have the age limit if we are looking for new entrants to come into farming and take up the grants?

**Richard Lochhead:** I will ask David Barnes to comment on that. We have had this debate in the past. It is partly about EU regulations, although there might be some leeway for us to make changes in other areas, so I am not totally passing the buck to Europe. I ask David Barnes to explain the age limits.

**David Barnes:** There are European definitions of a new entrant and a young farmer, and because those are set by Europe we have no choice but to comply with them. Along with the rest of the CAP, they will be up for renegotiation for the next programme post 2013, so it is open to us to try to negotiate different rules for the 2014 to 2020 programme. In the meantime, we have no choice but to stick with the definitions that we have.

John Scott talked about the difficulty of getting a grip on the precise numbers. That is also because there are two different sets of European rules. There are rules that are specifically aimed at giving enhanced payment rates to young farmers, whether or not they are new entrants; then there are separate definitions and rules about giving enhanced payment rates to new entrants. However, in both cases, those enhanced rates are given under other schemes—they are not self-contained schemes—which means that the numbers are aggregated among the total spend under the schemes in question. I agree that it is not easy to get a proper grip on the numbers.

We are clear that there are many other factors that influence how difficult it is to get into the farming sector. We do what we can through the SRDP and through spend, but the Government is looking to take other steps as well.

The other point that it is perhaps worth noting is that we have now introduced a second element of new entrant support. When the SRDP was launched, it used one of the new entrant options in the European legislation—the subsidising of interest payments on loans. One of the changes that the cabinet secretary announced on the back of the first stage review of the SRDP was that we would start using the other part of the European menu for new entrants, which is lump-sum grants, so that has been introduced as well, albeit relatively recently. That means that the SRDP now fully utilises every bit of new entrant support that the European rules permit us to apply.

**Bill Wilson:** You have certainly convinced me that the situation is fairly complex, anyway. I have an observation. If some of the money is not being used, perhaps you might care to suggest to Europe that determining that someone who is aged over 40 is ineligible for new entrant schemes might qualify as age discrimination under Europe's own rules.

**Richard Lochhead:** We will take that on board.

**Karen Gillon:** Remind me—are there other restrictions in relation to whether people qualify as new entrants? Do they have to have land or something? When I read the rules, I thought that it would be difficult for someone to become a new entrant to farming if they did not already have some connection to the sector. If someone genuinely just thought, "I would like to get into farming," it would be difficult for them to become a new entrant.

**Richard Lochhead:** Yes, there are criteria. I am happy to get back to the committee on that, because I do not have the full criteria in front of me.

**Karen Gillon:** It is a point that has struck me. I understand that people do not often just think that they would like to get into farming, but if they did I think that it would be difficult for them. We might want to look at that. Could we devise a scheme to enable a young person who genuinely wanted to get into farming to get some support? I do not think that our current scheme would do that.

**Richard Lochhead:** There are huge obstacles to getting into agriculture, as you rightly point out. Although many of the schemes are valuable and are appreciated by those who have successfully applied to them, the capital expenditure that someone would require to get going with their own farm, or even a tenancy, is a big obstacle. It is a barrier not just in agriculture but in lots of the

capital-intensive industries that we have these days. It is the same in fishing, for example.

**The Convener:** We must move on. Sandra White has questions on efficiencies.

**Sandra White:** They are mostly on the Christie commission. Earlier I asked about long-term capital and long-term plans, and the Christie commission has been set up to look at the next three years. What do you think that the rural part of the public sector should look like in the future? Do you have any ideas on that? What should be merged, what should be protected and what should disappear? You do not have to give me specifics, although it would be nice if you did.

**Richard Lochhead:** That is obviously a general question, but it is a good one because we all accept that there will be changes in the delivery of public services in the next few years. The Christie commission is now up and running, and it has the responsibility of trying to give us a blueprint for the future.

As members will all be aware, the theme in recent years has been that we have a plethora of rural public sector organisations. There is quite often duplication and inefficiency. Looking to the future, it is interesting that many of our NDPBs and other rural organisations now accept that they should work much more closely together, including on shared services. That agenda has certainly taken off in the past few years. We have the SEARS initiative—Scotland's environmental and rural services—which is about the family of rural organisations working together to follow the shared services agenda. It involves the Forestry Commission, the national park authorities, SEPA, SNH and so on, which are taking a number of steps, including on shared buildings or shared services. It is clear that that approach has to be accelerated.

In future, rural organisations will be working much more closely together, often sharing services. I cannot look too far into the future, but we have to have an open mind on issues such as whether there will be mergers.

**Sandra White:** My question also covered efficiencies, and the cabinet secretary's answer is exactly the same as the answers that SNH, SEPA and others have given about looking at efficiencies. Ross Scott referred to small outlying buildings that are not used, and they could be shared. The answers that the cabinet secretary has given are exactly the same as those that the organisations have given—that they would not so much merge as share information and staff.

**Richard Lochhead:** It is important to make the point that the SEARS initiative is about not just cost cutting but facing outward to the customer and being customer focused. A farmer, land

manager or rural business does not want to have to deal with lots of different public sector organisations. They do not want lots of different inspectors coming to the premises or lots of different places to go to. It is a question of delivering a much better service for the customer—for rural businesses and organisations.

**John Scott:** Will you be a little more specific on that suggestion? Do you have a wish list of organisations that might amalgamate to deliver the efficiencies that we all seek? Do you see any likelihood of severance payments being required for that?

**Richard Lochhead:** We must have a debate in Scotland about where we take the many organisations that exist. We are a small country of only 5 million people and we have major budget issues for the years ahead. The more closely some of those organisations work together, the better, because that can increase efficiency and make it easier for people to know whom they are dealing with. It can mean less duplication and bureaucracy. We must have that debate and, to an extent, we must keep an open mind. I cannot really add a lot, because the irony is that, even if the Government and Parliament decided to have mergers or have bodies working more closely together with more shared services—which can cost money to achieve—ironically, we would have to spend to save to get those efficiencies.

**John Scott:** Do you envisage the process being driven by Government, or by organisations saying that they could work together? There is a suggestion of such working happening in local authorities. They have budgets to work within and they are considering ways of joint working. Might that happen with NDPBs? Might such measures come from the grass roots up?

**Richard Lochhead:** That might happen to an extent. For instance, SNH and SEPA are enthusiastic and have been prepared to work together to identify synergies and get the advantages from them. That has been encouraging and it is down to leadership in those organisations and not just the Scottish Government's leadership. To an extent, we can rely on the enthusiasm within organisations, but the Government must show leadership, too.

**John Scott:** My final question is on fishing. As you would expect, the committee is particularly concerned that the fishing science is not as good as it might be. We have heard the suggestion that that is simply because of inadequate funding, so I do not cast any aspersion on the scientists. Marine Scotland faces a 10 per cent cut in funding, yet there are still significant problems with quantifying the state of the fish stocks, particularly in the white-fish sector. Do you accept that that cut in Marine Scotland's budget will make it even harder

to deliver the better science that is obviously required?

**Richard Lochhead:** The issue of fisheries science is pertinent at present. We must ensure that many of our decisions are science based, but we must also ensure that we have the right science, not flawed science. Given the nature of marine biology, that will not always be possible. However, we are proud of the scientific expertise that we have in Scotland. Marine Scotland Science has several hundred scientists working for our sea fisheries, aquaculture and freshwater fisheries sectors.

We are lucky to have that major scientific expertise, but we rely on working with countries that share our waters to gather the science, and that is not always possible. It is more possible in the North Sea, where many countries fish, than it is on the west coast, where not so many countries fish. We must work out how to plug the gaps, and we must work more closely with our fishermen to use their knowledge and experience and help them to gather data for the Government. That will help us take the right decisions jointly with the industry.

There is a big debate on the issue. Europe is currently considering the relationship between fisheries science and the industry. I hope that we get some good news from that work and that useful conclusions on how to proceed are made.

You are correct that we are taking a 10 per cent hit on the Marine Scotland budget, which will have an impact on how the science is gathered. We do not want to gather less science, but we might have to gather it differently. We will need to use our own research vessels more smartly and work better with the industry. We will perhaps have less resource available for external commissioning of scientific trips.

12:45

We want to use our European Union scientific quotas better, so that the work can be self-financing to a degree. That will allow the fishermen who participate in the scientific work and gather the data for us to sell the fish that they catch. We would not have to pay as such for people to undertake some of the surveys, as they would be able to sell their catch and get the income from that. We must be a lot smarter in the way that we do things, but we recognise the importance of ensuring that, as far as possible, we plug some of the gaps in our scientific knowledge of Scottish stocks.

**John Scott:** You do not need me to tell you that that is a particular problem on the west coast. The lack of science in that regard is most evident to us as a committee, and I would be grateful if you

could address it. This week's *Fishing News* comments that the industry may be prepared to help you by providing boats for your scientists. I would have thought that that would be well worth considering.

**Richard Lochhead:** Yes. The industry recognises that it has a role to play—it is a commercial sector, and there are commercial benefits from higher quotas for the sector. It would be enormously helpful if we could work together better to help to finance some of the scientific exercises in a time of budget constraints.

**The Convener:** I think Bill Wilson has a question on research.

**Bill Wilson:** The cabinet secretary has top-sliced 15 per cent of the budgets of the research institutes.

**Richard Lochhead:** That is not quite the case. We have gone out of our way to prioritise our main research providers and their budgets. Although the budgets will be flat—there is no increase as such—we have protected them.

The reduction in our science budgets will come in the external and ad hoc commissioning of the type of scientific work that we have undertaken in the past. If there is an initiative in my portfolios on which we need some scientific work carried out, there is normally a relatively significant budget to pay for it. That budget will be reduced, so there will be less resource available for that ad hoc commissioning of research.

With regard to maintaining the research capacity of our institutes, we have prioritised that and protected it.

**Bill Wilson:** Have you considered assisting the research institutes to find funding from other sources, such as Research Councils UK? They are not all eligible to apply at the moment, are they?

**Richard Lochhead:** There are different arrangements and different rules and regulations with regard to how each of the national research councils' budgets distribute their funds.

The very fact that we are giving significant support to our research institutes enables them to pull in additional financial support or research moneys from external sources. When I speak to any research institute that the Scottish Government helps to fund, it tells me that our funding helps it to pull in funding from elsewhere—funding that it would not get if we had not given it the core funding.

The institutes are very grateful, as you can imagine, that we are maintaining their current budgets. The principal of the Macaulay Land Use Research Institute, who spoke to you last week,



felt that it had got quite a good deal out of the budget and did not have much to complain about.

**The Convener:** Finally, will fees and charges for the agricultural sector—for farmers and rural businesspeople—rise?

**Richard Lochhead:** The short answer is yes, where that is justified. We are not adopting a specific revenue-raising policy, but we have said—we are up front about it—that, given the budget situation that we face, we feel that we are justified in recovering more of our costs in certain areas, and that that is what we will do.

Some of the fees and charges in certain sectors—in agriculture and elsewhere—have not increased for many years. That does not take into account rising energy costs over the past few years. In those commercial sectors to which we have effectively given subsidised assistance in the past, there may be a case for some modest rises in fees and charges. I am keen to ensure, however, that that occurs only where it is justified, and that any increases are modest. SEPA has said that it has no intention of raising its charges for the next year. We want to help where we can, but where we feel that raising charges is justified, we will do it.

**The Convener:** I thank you all very much for your attendance, and ask you to forward as soon as possible any written evidence that has come up during the questioning today. That concludes the public part of today's meeting. I thank everyone in the audience for their attendance.

12:50

*Meeting continued in private until 12:58.*



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