



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

HEALTH AND SPORT COMMITTEE

Tuesday 11 December 2012

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HEALTH AND SPORT COMMITTEE

34th Meeting 2012, Session 4

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Mark McDonald (North East Scotland) (SNP)

*Aileen McLeod (South Scotland) (SNP)

*Nanette Milne (North East Scotland) (Con)

*Gil Paterson (Clydebank and Milngavie) (SNP)

*Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*Drew Smith (Glasgow) (Lab)

David Torrance (Kirkcaldy) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Richard Lyle (Central Scotland) (SNP) (Committee Substitute)

Dr David Snowball (Health and Safety Executive)

Pam Waldron (Health and Safety Executive)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 6

Scottish Parliament

Health and Sport Committee

Tuesday 11 December 2012

[The Convener *opened the meeting at 09:45*]

Decision on Taking Business in Private

The Convener (Duncan McNeil): Good morning and welcome to the 34th meeting in 2012 of the Health and Sport Committee. As usual at this point, I remind those present to switch off mobile phones and BlackBerrys, as they often interfere with the sound system.

Agenda item 1 is to decide whether to take in private item 3, which is to consider, once again, the approach to our inquiry on access to new medicines. Are members agreed?

Members indicated agreement.

Health and Safety Executive

09:46

The Convener: Item 2 is a one-off evidence session on the Health and Safety Executive. I am pleased to welcome to the committee Pam Waldron, head of operations, and Dr David Snowball, director, Scotland and Northern Ireland, Health and Safety Executive. I invite Dr Snowball to make an opening statement.

Dr David Snowball (Health and Safety Executive): May I correct you, convener? I am the director of Scotland and northern England.

The Convener: So you are.

Dr Snowball: I would like it to be Scotland and Northern Ireland.

Thank you for the invitation to attend. I will make a few opening remarks that I hope will contextualise the conversation and questions that will come later.

The Health and Safety Executive is the Great Britain independent regulator for work-related health and safety. We have approximately 270 staff in Scotland based in four offices in Edinburgh, Glasgow, Aberdeen and Inverness. We work directly with Scottish stakeholders, many of whom are independent or semi-independent of their counterparts south of the border and, in some cases, we work on topics that are unique to Scotland, such as matters that impact on promoting healthy lifestyles. We respond both to MSPs and Scottish MPs on Scottish matters relevant to health and safety.

Health and safety law is the same across the whole of Great Britain but, in Scotland, Health and Safety Executive inspectors report matters that they have investigated directly to the Crown Office and Procurator Fiscal Service, and the procurator fiscal decides whether criminal proceedings should be brought in the public interest. In 2009, the Lord Advocate established a specialist health and safety division in the COPFS.

In comparison with other European countries, Scotland has a low rate of fatal injuries at work, and the geographical variations that we see in Scotland compared with other parts of Great Britain are driven by occupation rather than by geography.

Our strategic aims as the regulator are to ensure several key things. The regulator is only part of the picture, so those who create the risks must take responsibility and do the right thing to manage those risks, act proportionately and focus on the things that make a difference.

Finally, we are not the sole regulator of health and safety in Scotland: the activities of the 32 Scottish local authorities cover approximately 45 per cent of the workforce.

Dr Richard Simpson (Mid Scotland and Fife)

(Lab): We are living in a time of austerity, and I assume that your budgets, along with everybody else's, have been cut. The Löfstedt review invited the HSE to make a number of changes, one of which is, I think, to reduce the number of regulations by 50 per cent. Reducing the number of regulations at the same time as maintaining people's safety seems to be a difficult circle to square. How are you surviving under the austerity regime? How much of a cut have you had to take? Where are the cuts being made? Are they to front-line inspectors? How are you progressing Professor Löfstedt's report given the cuts?

Dr Snowball: The HSE is required to make a 35 per cent cut—that is the headline figure. We are deliberately attempting to protect the front line by not cutting into the muscle at the front line. The Löfstedt review reported about a year ago and Professor Löfstedt is about to review how far he thinks we have got. I believe that that will take place next month.

There is an important point to make about regulation in general. Even a casual observer of the health and safety regulatory landscape would be struck by the age of some of the regulations that sit on the statute books. The key piece of regulation remains the Health and Safety at Work etc Act 1974, from which much good has flowed over the years. In some sectors, such as the mines and explosives sectors, regulations have accumulated slowly and steadily over the years. In the explosives sector, a key piece of regulation dates back to 1875, which is a mark of its longevity and its integrity at the time.

In relation to reducing the number of regulations that remain on the statute books, as part of our attempt to make regulation fit for the modern world, much older regulation—I do not use that description in a derogatory sense—is not always doing the business as well as it might. A goal-setting ethos permeates the 1974 act and reads forward into much modern regulation.

An important point about the Löfstedt review is that it has given us a valuable opportunity to reshape the regulatory landscape. That will mean that some old pieces of legislation that are no longer fit for purpose will be wiped from the statute books, but it will not and cannot—because section 1 of the 1974 act does not allow us to do it—lead to a reduction in the protection that is offered to people at work.

Dr Simpson: Are you really saying that you can make the 35 per cent cut without affecting front-

line staff or reducing your work? That would indicate an organisation that is replete with a surrounding of fat. If you can sustain a 35 per cent cut without any effect on the front line, that is extraordinary. If the cut was 10 per cent, that would be difficult enough; local authorities are taking cuts of more than that—of 15 per cent—and the situation in Scotland is the same. However, some muscle, bone and other suitable strength organs must be damaged by a 35 per cent cut.

Dr Snowball: We are heading down the route of an abattoir analogy, are we not?

You are absolutely right. Some of the gap will be made up by the fee for intervention arrangements that have come into place. The HSE can now recover costs for some of the work that we do when we find material breaches in workplaces.

Another point to bear in mind is that, as members would expect, the HSE has had to make hard decisions GB-wide about where we have offices and the extent to which we are locked into lease arrangements in buildings that we can no longer afford. We have had to make quite tough decisions about closing offices. We would not just want to reduce the head count, although a voluntary early release scheme gave us early advantages on that. I do not want to give the committee a sense of complacency about the extent to which a 35 per cent cut might ultimately cut into the important front-line muscle, which is an issue that we must take seriously.

Under our fee for intervention arrangements, we are allowed to recover costs, but the amount that we can recover is capped for the next three years. The arrangements will make a difference and might mean that, over that period, the 35 per cent does not end up being 35 per cent.

As you are right to point out with your gentle rebuke of me, it would be silly to defend a 35 per cent cut as something that any organisation could willingly absorb. We do not have a lot of fat to cut; to pretend otherwise would be wrong.

Dr Simpson: We went through the Stockline case in Scotland, which was difficult for us and led to debate about corporate manslaughter. I know that you have had to inspect all underground gas pipes, which was a major undertaking to deal with something that was not previously a concern. I would be concerned if the cuts were sufficient for people to say that, if another issue of the Stockline type arose and you thought that you should look at something that you had previously regarded as safe, you could not look at it, because you did not have the resources. However, you are saying that that will not happen.

Dr Snowball: I will answer in a different way. Like any public organisation, we are often driven by events. Occasionally, priorities have to be

reorganised to respond to events. I would not use absolute terms such as “low risk” and “poor performance”; I would use phrases such as “lower risk”, “higher risk” and “poorer performance”.

The fallout from ICL Plastics, as you rightly say, led to a comprehensive assessment of the integrity of underground liquefied petroleum gas pipes. We did that in quite an efficient way—we did not visit everybody who had an underground pipe. We carefully triaged the sites that we needed to visit. When we went to them, we had a high return on what I call enforcement yield. When our inspectors eyeballed the people who had LPG tanks and LPG underground pipes and identified failures in control, we served enforcement notices in about a quarter to a third of the situations that we encountered. I am looking at Pam Waldron to confirm that estimate and she is nodding. That suggests that we got our priorities right in terms of identifying where we thought the problems might be most acute. When we showed up, we did the right thing—we followed it through properly and we made sure that we got a proper result at the end of it.

Bob Doris (Glasgow) (SNP): I want to dig down a little bit further on what a 35 per cent cut to the budget means. First, over how many years is the 35 per cent cut?

Dr Snowball: It will be over a four-year period covering the 2012 public spending round.

Bob Doris: So it will be from 2012 for four years. What does that mean UK-wide in cash terms?

Dr Snowball: I will come back to you with the detail on that. I do not want to provide figures that may turn out to be incorrect. I can give a detailed breakdown in a note after the meeting if that would be helpful.

Bob Doris: Yes, that would be helpful. I will continue to ask other linked questions—you may have to come back with more information in response to them as well.

Dr Snowball: Of course.

Bob Doris: I am keen to know what the cash budget is before the 35 per cent cut and what it will be over the four-year period—not just at a United Kingdom level but in terms of the Scottish spend. Can you tell us the proportions?

Dr Snowball: We will be able to tell you that, of course.

Bob Doris: Do you have a figure just now for the Scottish percentage of the global budget?

Dr Snowball: Not in front of me, no.

Bob Doris: It would be helpful if you could provide that information to the committee as well.

How many inspectors do you have on the ground within the UK and also within Scotland specifically, because the number is meaningless unless we know how many inspectors Scotland has vis-à-vis the UK?

Dr Snowball: We have 173 inspectors of health and safety in Scotland, of whom 162 are front-line inspectors. That is 13 per cent of the GB-wide front-line inspector total.

Bob Doris: So we are fairly well represented.

Dr Snowball: Yes.

Bob Doris: That figure becomes meaningful when we know what it is in percentage terms as that gives us some basis for comparison. How is that figure arrived at? Is Scotland seen as a more dangerous place? Is it just because of the geography of Scotland? Why do we have a higher pro rata number of inspectors?

Dr Snowball: It is because of two things. My area covers north-east and north-west England and Yorkshire and Humberside. Some of the statistics in those regions are every bit as worrying to us in terms of fatal and major injuries as they are in Scotland. Our analysis of the reasons for the fatal injury rate in Scotland shows that it is mainly to do with occupation. For example, 20 employees lost their lives at work in Scotland in 2011-12. Every year, if we break those statistics down and ask which sectors those injuries occurred in, the same sectors appear over and over again—agriculture, construction, and waste and recycling, for example. The figure is a reflection of the workforce composition in the particular region. For example, it may be that 40 per cent of fatal injuries in any one year involve agriculture in Scotland, but the Scottish workforce represented in agriculture is only 4 per cent. That is mirrored across the whole of the UK.

Our statisticians have obviously been asked exactly that question—to what extent is geography or occupation a precursor for a fatal accident rate that is worrying or not worrying? Over the whole of the UK, that picture tends to repeat itself. It is the character of the occupation rather than the geography in which it is carried out that is the main determinant of those fatal injury outcomes.

Bob Doris: You look at the industrial landscape to determine what the risks are, and that feeds into what level of inspectors you would have in any particular part—

Dr Snowball: It feeds into how we make our inspection base priorities. One thing that you have in common with many other—let us say it the polite way—formerly heavily industrialised areas is the legacy of such things as asbestosis, mesothelioma and other asbestos-related disease.

Bob Doris: I assume that you have a workforce plan to go from 162 inspectors. Is that number going to stand still or is it going to be cut? How will it be managed?

10:00

Dr Snowball: We are aiming to protect the front line as far as we can.

Bob Doris: When you say that you will do that as far as possible, does that mean that, according to your four-year projections, 162 inspectors will be retained?

Dr Snowball: It depends on whether we can recruit new staff. Obviously we will lose people through retirement.

Bob Doris: But that would happen in any industry or sector. I assume that you were doing the same five, 10, even 20 years ago.

Dr Snowball: Yes.

Bob Doris: Are you telling us that there are no cash pressures with regard to retaining those 162 inspectors? I do not want to put words into your mouth but are you saying that, even with the 35 per cent cut over four years, you are confident that you will retain 162 inspectors in Scotland, assuming, of course, that you can recruit inspectors?

Dr Snowball: Yes.

Bob Doris: Given the economic climate, I do not think that you will have any problem with recruitment.

You say that your new powers have been capped for the next three years. What amount of cost recovery money are your projections based on?

Dr Snowball: We have been told that, in 2011-12, we can keep £10 million; in 2012-13, £17 million; and in 2013-14, £23 million.

Bob Doris: You say that you can keep that money, but I assume that you get that money if the sector itself has committed a breach.

Dr Snowball: If inspectors encounter a duty holder in material breach of the legislation and we then decide that we can recover costs for HSE intervention, which would be either investigation or inspection, we are allowed to recover our costs at the rate of £124 an hour.

Bob Doris: Has that always been the case? Is it just that you can retain the money now?

Dr Snowball: The cost recovery measure, which is called fee for intervention, came in on 1 October. It is new territory for us, although I point out that, under the safety case and permissioning regimes, we have been recovering costs in the

offshore and onshore major hazard sectors for many years.

Bob Doris: That is interesting. So, because you have not really done this yet, it is all hypothesized.

Before I give my colleagues the chance to come in—I might ask some more questions later—I assume that the £10 million, the £17 million and the £23 million are UK-wide figures.

Dr Snowball: Yes.

Bob Doris: Given the higher prevalence of risk in Scotland with regard to industrial injuries, accidents and fatalities as a result of the industrial landscape, can we assume that companies in Scotland are more likely to be fined in that respect vis-à-vis the rest of the UK?

Dr Snowball: I would characterise the situation in a slightly different way. If our inspection priorities are based on going into high-risk sectors where we expect to find poorer performers and where we are also investigating incidents that occur more frequently in Scotland, inspectors might be crossing the threshold of premises in Scotland at a rate that bears interesting comparison with their English and Welsh counterparts. I hesitate to say that we expect to recover more pro rata in Scotland—it remains to be seen how all of this will pan out—but what I will say is that the important thing is that we are prioritising our reactive and proactive work in exactly the same way across the whole of the UK. The pattern in Scotland of how we intervene and the sorts of premises that we intervene on will not be a million miles away from the pattern of intervention in the rest of the UK.

Bob Doris: It would be really helpful to the committee if we could get more information on that. I might come back in later, convener, but I just wanted to tease out what the 35 per cent cut will mean.

Gil Paterson (Clydebank and Milngavie) (SNP): Dr Snowball, you said that you would provide some figures to the committee. Could you also include the total number of staff in the UK and, in particular, those south of the border to allow us to make some comparisons? You have already referred to front-line and other staff.

Dr Snowball: Yes, we will.

Gil Paterson: You also said that the number of inspectors in Scotland amounted to 13 per cent of the total. Are the figures for Scotland relatively higher because a disproportionate number of the people on the ground inspect the oil industry? Does that skew the figures in some way? Indeed, I imagine that it will also skew the figures per head of population.

Dr Snowball: As you rightly point out, a significant proportion of all our offshore inspectors are based in Aberdeen. We will provide the committee with a breakdown of the onshore and offshore major hazards work compared with the non-onshore and offshore major hazards work.

Gil Paterson: I was not intending to ask for those figures, but I think that they will provide us with a fuller picture and allow us to understand where we are.

I have some questions about asbestos-related diseases, particularly mesothelioma—it has taken me years to get that word out. Having been involved with campaigners on asbestos-related issues in my constituency, I know that one of their major concerns is the increased number of teachers who are coming forward with asbestos-related diseases.

I know that you are partnered very well in Scotland with the local authorities—

Dr Snowball: Yes.

Gil Paterson: Do you have the same model of close partnership with local authorities in the front-line service in England, or do you have a different model there?

The main thrust of my question is around one of the issues that are currently being raised—compiling a register of properties under local authority control where asbestos is present. Some authorities, such as Highland Council, have a really good register, but in other areas the register is very sparse. What are your views on that? Would it be a good thing for your organisation?

Dr Snowball: That is a good and valid question. We have to be clear about where the duty to control asbestos lies. We have a precise set of regulations, the Control of Asbestos Regulations 2012—or the duty to manage regulations, which gives away what they do. Given the sheer scale on which asbestos used to be used, we reckon that there are about half a million commercial properties in the UK—and an unknown number of domestic premises—where there may be asbestos.

Contrary to popular belief, our advice is often that you should not disturb it if it is not damaged, but you have to know that it is asbestos. You cannot wander in, start chipping away at it and then discover to your surprise that it is asbestos. In the commercial sector, the duty to manage asbestos has been around for some time. It is inked into the regulations that if you have asbestos, you have to be able to say where it is, what condition it is in and whether it needs to be removed. That is the critical point at which building owners, commercial landlords, local authorities and so on have to be able to put their hands on

something tangible and say, “This is my register and, on the basis of that, this is the extent to which we need to leave asbestos untouched and this is the extent to which we need to remove it.”

We have noticed that there is often an understandable enthusiasm, given the prominence of asbestos-related stories in the press, about removing asbestos when it does not need to be removed. Our core message to people is that if the asbestos is in good condition and it looks okay, leave it where it is. Pam Waldron might want to add to that.

Pam Waldron (Health and Safety Executive):

Yes. The point is that people need to know whether there is asbestos in the building. If they have had no surveys done, they have to assume that asbestos may be present. Left undisturbed, there is no risk. If any work is carried out, particularly by the plumbing and telecommunications trades—the kind of work that tends to go into ceiling voids, ducts and the like—that is when any asbestos can be disturbed.

It is about knowing whether there is asbestos in the building, which is where the asbestos register comes in, and then ensuring that that is communicated to any tradespeople who will be working in the building. That communication issue is key. We advocate that tradespeople have asbestos awareness training and the anecdotal evidence is that tradespeople who know the likelihood of the presence of asbestos are much more cautious and ask the right questions. We are coming at it from both sides—the owner or occupier of the building knowing where the asbestos is and the tradespeople being much more aware of the potential for asbestos and asking the right questions. That is the way forward.

Gil Paterson: Are local authorities obliged to compile an asbestos register? When we entered our office, we had to prove the non-existence of asbestos. Is that measure in place for existing properties if you are a tenant—in a school, for example—or is it only when a change takes place?

Pam Waldron: Every occupier or owner of any building that is used in that way has a legal duty, under the duty to manage regulations that David Snowball spoke about. The introduction of the regulations was a significant step. Until then, asbestos legislation had been about controlling the removal of asbestos and had been very much about asbestos in manufacturing. The 2012 regulations are a key set of regulations, which deal with the fact that so much asbestos is still in buildings, because it is a good product, which is safe if it is left undisturbed or removed in a very controlled manner.

Gil Paterson: That is interesting. You are saying that a register should be in place, which is good news. Maybe the task is easier than I thought it was.

Does the same model operate in England as operates in Scotland, where the HSE works in close partnership with councils?

Dr Snowball: We have relationships with councils in two ways. We have relationships with local authorities as fellow regulators, as I said, because we enforce the Health and Safety at Work etc Act 1974 in different sorts of premises.

We also have relationships with local authorities as duty holders, in a combination of ways. There might be ways in which we can reach certain groups of duty holders much more efficiently through local authorities. Waste and recycling offers a good example in that regard. Given that local authorities have to set out contracts with waste and recycling companies, and given that we have decided, on the basis of statistics, that waste and recycling is a worrying area for us in relation to accidents and ill health, the sensible approach is not to visit all the waste and recycling companies but to go through the contracts that are set through local authorities and to try to influence things through the supply chain. That is a much more intelligent and informative way of getting to more people more quickly. It still leaves out people who are outside the supply chain, but it reduces the population that is outside the supply chain.

To be perfectly honest—in the absence of Pam Waldron disagreeing with this—we will have relationships with anyone if that will be productive. The basis on which we seek to improve health and safety standards in Scotland and the rest of Great Britain is through working in partnership, where we can do, to achieve mutually beneficial ends. We would be daft not to do that.

Gil Paterson: I know that you cannot comment on this in detail, but who would take the front-line role in a cooling tower incident such as happened here, when there seemed very much to be a partnership and the local authority acted swiftly, which we were pleased about? Who would have the authority to act in England? Is the system exactly the same?

Pam Waldron: In England there is exactly the same model. The Health and Safety (Enforcing Authority) Regulations 1998 set out whether health and safety enforcement rests with HSE or with the local authority. When it comes to public health matters, local authorities have the lead. Our evidence to the committee in the summer—when Colin Sibbald from the City of Edinburgh Council environmental health department was here—gave a flavour of how we worked as a multi-agency team with Health Protection Scotland and NHS

Lothian. We visited various premises, according to the enforcing authority allocation, depending on whether it was local authority or HSE-enforced health and safety legislation, but the local authority had the lead in relation to public health. We work very much together, which we cannot do unless we communicate well. During that incident we worked very much as a team and I think that the approach worked well.

Gil Paterson: I hope that we can make the system even better. On the surface, the process seemed to be swift and effective.

Pam Waldron: It was. You might recall that all members of the team got together on the Sunday and we were carrying out inspections with local authority colleagues the following day.

Gil Paterson: Thank you.

The Convener: We appreciate that there is a criminal investigation, but can I ask in general terms what post-incident analysis has taken place? Have you identified areas for improvement in relationships, or are you broadly—or very—content about how the incident was managed? Are there lessons to be learned that you can discuss with us?

10:15

Pam Waldron: There are two things to say. First, the investigation is on-going. As you know, we are working with Lothian and Borders Police and the COPFS on that. If we set that aside and look at how the outbreak team works, you will recall that an interim report was published. A final report is due to be published this month, to which we have contributed. We have, you will recall, certainly discussed with the committee some of the lessons that were learned about communication with residents in the area, and about how we work together as a team. You will find that we reflect on a number of issues in the final report. I do not have a date for when it will come out, but I expect it to be this month. We will always review how an outbreak team operates and there will always be things that we can learn from that.

The Convener: I look forward to that report.

Following on from Gil Paterson's questions, a couple of questions spring to mind about the register of properties that may have asbestos in their construction, the duty to manage regulations and a third aspect that you mentioned, which is that once you compile the register, everybody wants the asbestos out of there. It is a politically sensitive issue and there are issues to with communicating and dealing with a community. Is that a barrier to compiling an extensive register? Is the compiling of the register left up to local

authorities, when we know that all those pressures are on them? For example, if a school was identified as having asbestos in it, there might be a boycott of the school.

If we believe that the register should be compiled, are we confident that it is resulting in progress? How do we monitor that and have we identified the problems that I have suggested, such as significant communication problems or the political problems that may arise from identifying asbestos use? Are you satisfied that that work is progressing?

Dr Snowball: The first thing to say is that in the absence of a register, the situation would look a lot more worrisome. The second point is about the delights of risk communication. As a regulator of what we believe to be occupational safety and health, we see a broad range of stories; let us use press stories on health and safety as an example.

At one extreme we have the crazy health and safety stories. If you look at our website, you will see that we have started the 12 myths of Christmas, which are gifted to us annually by the press. The first two myths were published yesterday and today. Yesterday's myth was that people in workplaces are not allowed to put up Christmas decorations for health and safety reasons, and today's myth is that if you have Christmas decorations, you must have all your lights PAT—portable appliance testing—tested.

Those myths come around every year and sit on the end of the risk spectrum at which miscommunication is trivialised, which is very annoying for us, although it has become a fact of life, I am afraid. It undermines what we do and it makes our lives much more difficult, as it does the lives of those in local authorities and of anybody else who is involved in health and safety in a professional capacity.

The other extreme is that health and safety ought to be properly managed in businesses, because if it is not managed there are horrible consequences for which people should be held to account, which is why the law exists and why we are trying to improve the basis on which the law is written, implemented and so forth.

There is a great big gap in the middle; that area is often empty. As you rightly implied, convener, if you go to a school that has a worried parent-teacher association, for example, and say, "We understand that there is a register that demonstrates that this school has asbestos in it. What are you going to do?", it would take a very brave person to stand up and say "We're going to leave it there, because it's not a problem." A slightly more subtle communication would be required there, such as saying, "On the basis of expert advice from whoever, we know that the

asbestos will not, if left undisturbed, release fibres." The trouble is that the conversation does not always get to that point.

If you are asking whether communication is constantly a problem on something as emotive as asbestos, the answer is yes, but I would much rather try to have the conversation than pretend it was not worth having in the first place.

The Convener: That was poor communication on my part. I am thinking about a local authority's duty to manage—as a public authority and as an employer—and at its inspection role. Who inspects the local authority?

Pam Waldron: The HSE inspects local authorities.

The Convener: Are you confident that none of the difficult communication issues are holding back progress on the register of properties that include asbestos in their construction?

Pam Waldron: We enforce the regulations in relation to local authorities because, obviously, they cannot enforce them in relation to themselves. Local authority schools and independent schools come to the HSE for enforcement.

Over recent years, we have undertaken a number of exercises examining asbestos in schools. As David Snowball said, rather than visit individual schools, we talked to local authorities about how they managed their school estates, what information they had about the presence of asbestos and how they dealt with it.

We have made interventions in relation to asbestos in schools—not only public schools, but private schools—over a number of years. Therefore, we are reasonably confident that we have had the right conversations with all the local authorities and that they understand that they need to have registers for their premises and a mechanism for ensuring that, if work is done, that information is communicated.

The Convener: Are all local authorities in Scotland making equally good progress in registering public properties and properties in their areas that may have asbestos in them? Are you completely content that nobody is lagging behind?

Pam Waldron: That is a tall order. I would not say that all authorities are equally good. However, the requirement has been in place for some years—it is not new—and we have had a couple of iterations of the information. I am confident that everybody knows the duty and requirement. From that point of view, I would say that there is a good level of awareness in the local authorities.

The Convener: What information could you share with us about the progress that is being made across the country?

Dr Snowball: What would you like? What would be most useful to you?

The Convener: Given the fact that a duty to manage registers is in place, I would have thought that you would be able to access that internal information and that it would not necessarily need an inspection.

Pam Waldron: That is right.

Dr Snowball: Yes.

The Convener: I would have thought that you would be able to view that information online. All that I am looking for is some reassurance that, when you reviewed the information that was available in all local authorities, there were no red flags. If you tell me that the situation is fine, I will accept your word on it.

Pam Waldron: That is what we have done. That process started probably about four years ago—I am just trying to remember when the regulations came out. It started some years ago and we have had another iteration. We did exactly what you said: we asked local authorities for the information about all their properties and we were reassured. Where we felt that there was less reassurance than we would have liked, we spent more time and did some sample inspections.

Dr Snowball: There was a particular design of school that led to particular problems.

Pam Waldron: They are called CLASP buildings.

Dr Snowball: I cannot remember what CLASP stands for. We did specific, targeted follow-up visits to those schools as well.

To go back to something that I said at the beginning, one of the foundations on which the regulatory regime is based is that the duty holder must profile their own risks properly. Local authorities are all doing a broad variety of similar things and I suspect that, if we asked them the order of priority in which they classify specific risks—such as waste and recycling, asbestos and procurement services—a more academic exercise might reveal some of the insight that you seek.

Drew Smith (Glasgow) (Lab): I apologise for being late and draw attention to my entry in the register of members' interests as a past member of the general council of the Scottish Trades Union Congress.

In an earlier answer to Bob Doris, the witnesses made it clear that they think that the primary risk factor for accidents in Scotland has been the character of the trade in which people are

involved. Do you accept that there is also a link with economic deprivation, in that there are more accidents in areas that suffer from economic deprivation?

Dr Snowball: I am afraid that we do not have the research base on which to answer that. Across the country as a whole, many legacy health issues are direct consequences of the industrial past. As I said, I can see obvious comparisons between the situation in Scotland and that in the north of England, which would not be mirrored further south. I do not want to speculate further on the extent to which social deprivation determines the pattern of workplace ill-health and fatal injuries.

Drew Smith: Bob Doris discussed with you the particular issues in Scotland. You said that we have a decent number of inspectors, compared to the rest of the UK, and we know that we have more accidents. I presume that that means that we have more prosecutions.

Dr Snowball: If you are asking me to give you the figures for Scotland compared to the rest of the UK, I do not have those in front of me, but we can provide them. We have a high success rate through working with the Crown Office. As I said, the situation in Scotland differs from that in the rest of Great Britain. In England and Wales, inspectors can, through their line management chain, have a prosecution approved and see it right through the system. Inspectors in Scotland cannot do that. The Crown Office and Procurator Fiscal Service provides an important and, for us, welcome level of oversight and challenge, which means that for cases that we get to court, we have a 94 per cent conviction rate, which in my view is pretty impressive.

Drew Smith: Evidence to the Scottish Affairs Committee has suggested that there is a danger that the specialist service in the Crown Office and Procurator Fiscal Service will slow things down rather than target the resource in the way that we would hope. You say that you do not have the figures on prosecutions in Scotland. Does that mean that you do not have the exact detail, but you know whether the figure is slightly higher or lower or whether there is a wide difference?

Dr Snowball: The summary statistics for Scotland show that, in 2011-12, inspectors in Scotland issued 852 improvement and prohibition notices and we prosecuted 33 cases, of which 31 led to convictions. Those are the raw data.

Another point to make about the Crown Office is that although sometimes the wheels of justice grind slowly, they grind exceedingly small. That is a valid criticism and one to which we are extremely attuned. Because of the level of proof that is required in court and the level of sophistication that is required in evidence gathering, to an

observer it might look as though inspectors or fiscals, or their offices, are often dragging their feet. We have learned to our cost in court how difficult it sometimes is to get the level of proof that we want. We therefore have to be careful that we put the right level of proof before the court in order to give ourselves the best possible chance of getting a conviction.

Drew Smith: Do you accept that, perhaps because of the Stockline incident and the effort that has been made in the Crown Office, and because we have a slightly more inspectors compared to the rest of the UK, we should have more prosecutions? What would prevent a higher level of prosecutions from flowing from that situation?

Dr Snowball: The logic that is implicit in the question is that, if we go to higher-risk sectors and look at poorer performers and we look for examples of where they fail to manage and control risk, we would expect that to follow through in the level of enforcement, either in notices or prosecutions.

Drew Smith: That is helpful. Could you give us that information in writing?

Dr Snowball: Yes—we will give you data on that.

Drew Smith: Thank you.

Am I right in thinking that construction and agriculture are the two most dangerous sectors?

Dr Snowball: They are two of the three most dangerous sectors. The third is the waste and recycling sector.

Drew Smith: How many inspections will there be in Scotland this year and next year in construction and agriculture?

Dr Snowball: Can we come back to you on that and give you the data in detail? There are 73,000 premises in Scotland where the HSE is the enforcing authority for health and safety legislation. In 2011-12, we undertook 3,700 inspections in Scotland. That is the overall figure, but I have not broken that down by sector, because I do not have the data. However, I emphasise that we have two different intervention approaches in the agriculture and construction sectors. Would you like me to explain a bit about those?

Drew Smith: My question is whether the inspections are reactive. Do they happen when a complaint is made?

Dr Snowball: No—they are proactive inspections.

Drew Smith: Is that the case across the three sectors that you mentioned?

Dr Snowball: The 3,700 proactive inspections were across those three sectors and in other sectors that we inspect. The reactive inspections would follow the reactive workload that is generated by the industrial landscape as a whole.

Drew Smith: So that figure of 73,000 is all the proactive inspections in Scotland.

Dr Snowball: I am sorry. Which figure are you asking me to confirm?

Drew Smith: Did you give a figure of 73,000?

Dr Snowball: I said that we did 3,700 proactive inspections in Scotland in 2011-12.

Drew Smith: Right—out of the 73,000 premises.

10:30

Dr Snowball: I point out that we do not have inspection-led interventions in agriculture. Unfortunately, experience has shown us that there is often an age-related pattern of fatal and serious injuries in agriculture. Agricultural deaths tend to happen to very young farmers or to very old farmers for reasons that we can hypothesise or surmise are to do with the pattern of how smallholdings and holdings are passed on through the generations.

We have said for many years that the most effective way of intervening in the farming community is not through face-to-face, one-to-one conversations. Instead, we have run safety and health awareness days in agriculture for many years, of which we run about four a year in Scotland. We aim to get between 200 and 300 farmers along to each of them, for which Lantra, which does training for the agriculture industry, creates a series of workplace scenarios. We walk the farmers through basic workplace hazard situations and tell them what they should do, for example, when they go on a roof or when they handle bales or pesticides.

That might sound like an inspection-light approach, but we get positive feedback from those safety and health awareness days, the most recent of which we ran in Stranraer last month. Like people in other groups, farmers are much more likely to listen to other farmers than they are to an inspector. Indeed, farmers are often more likely to listen to their wives than to anybody else. We have therefore made efforts in the past to influence farmers through reaching out to the National Federation of Women's Institutes and so on.

Agriculture presents us with a unique set of problems, because farmers are what we euphemistically call a hard-to-reach group. We

therefore must come up with interesting ways of solving their particular problems.

Drew Smith: That is interesting and it makes a lot of sense. I suppose construction is quite different from agriculture in that, although there is a large seasonal workforce in agriculture, there is some stability around the business.

Dr Snowball: Yes.

Drew Smith: However, a construction workplace is, in essence, brought together in a completely different way every time something is built.

Dr Snowball: The unique characteristic of construction is that every construction worker has a unique opportunity on a daily basis to adapt their workplace. Again, we do not hit—or visit—everywhere across the construction landscape. In construction, the very small sites generally have fewer than 15 people. Our statistics and intelligence tell us that people are more likely to have serious accidents in particular areas in construction but primarily in refurbishment, so that is where we focus our efforts.

We often—I was going to say “blitz”, but that is not the right word—go to a particular area for a sustained period and look at all the refurbishment jobs in that area. We do not want just to visit, then walk away; we want to visit and create some kind of momentum and gearing, which we often get.

Our intelligence also suggests that bigger jobs are generally better run. However, there are situations that are unique to large projects. For example, we are already having conversations with major contractors about the Commonwealth games in 2014 to see what major construction work is likely to take place for that. This far out, we are starting to talk with the main contractors to try to avoid having to visit them later in the process. We want to ensure that they are getting their safety management plans together so that we will not have to visit them.

If we regard a sector as a complete entity, the way in which we slice it up and intervene depends very much on the problems that we perceive need to be dealt with at the time, which is why we have different approaches for different sectors.

Drew Smith: That makes sense. You said that each worker on a construction site has the opportunity to make their workplace safer. In other parts of Europe that more generally have a partnership model in the workplace, there is much more of a culture of safety representatives and of people doing things voluntarily. For example, I think that there is a system in Sweden in which people can serve notices on their employers that something is causing concern and can point out that legislation says that it is wrong. People can

formally inform their employer of a problem and, if the employer can fix it without having to involve inspectors or a regulatory agency, they can do so. Given the declining number of inspectors here and the reduction in resources, is there an opportunity to consider doing more through such partnerships? The HSE has traditionally been quite hostile to that approach and has not necessarily envisaged trade unions fulfilling a function in that regard.

Pam Waldron: We think that trade unions have a vital role in relation to workplace representation. Nowadays we visit a lot of workplaces that have no trade union representation, which is unfortunate.

Employee involvement is the key for us, whether it comes through trade unions or other worker representation. When I was head of construction up here some years ago, you might recall that we had a trial of workplace safety advisers, who were selected from the workplace and who visited construction sites. The approach had varied success. What is key is worker involvement, because workers need to understand the risks. Particularly in construction, workers tend to see risk differently from how you or I see risk. When we talk to a construction worker about taking a risk, they are often thinking about the risk of being caught rather than the risk of falling, for example. That takes us back to David Snowball's point about risk recognition.

The bigger sites are better at getting more worker involvement. Not just in construction but throughout sectors, including the public sector, if the workforce is involved in risk identification and control of risk, we get much better solutions.

Drew Smith: Thank you.

Mark McDonald (North East Scotland) (SNP): Ms Waldron, you said that you had had “reassurance” from local authorities on asbestos. Did you mean that you are reassured that all local authorities in Scotland have a formal register in place or that you are reassured that all authorities know where the asbestos is in their areas? The two are not the same.

Pam Waldron: I want to be sure that I am giving you the right answer, so I will check what questions we asked and come back to you in writing. My understanding is that the two go together. Unless authorities are assuming that asbestos is in a building, they must have a register to show where it is.

We know that asbestos will not have been used in more modern buildings and that we are talking about a particular age of building. However, asbestos might have been used until the 1990s, which is perhaps surprising. I will respond in writing, but I am fairly comfortable in saying that

authorities know where the asbestos is and that if there are buildings that contain asbestos, they will have a register, which should be on site.

Mark McDonald: When the duty to manage regulations were introduced, was a timescale set within which local authorities were expected to compile registers? I realise that the task is difficult for larger authorities, which have a huge area to cover.

Pam Waldron: We allow people time to implement new legislation, but I think that the work was done swiftly, so we are talking about registers that will have been in place for some years. June Cairns, who is in the public seats, will remember when the duty to manage regime originally came in. It was in about 2004. At the time, we would have accepted an action plan from authorities, but now that it is 2012 we expect the work to be done, and we would take enforcement action if it had not been done.

Mark McDonald: Are penalties applicable to local authorities that are not compliant and still have no register of asbestos?

Dr Snowball: It would be unreasonable for a local authority to say in 2012 that it has not got a duty to manage asbestos register.

Mark McDonald: Okay.

The convener talked about the difficult balancing act around public perception. I should be honest and admit that at times the issue is fuelled by politicians. I come from a council background and I remember a discussion about a school in which we were looking to co-locate pupils. The school contained asbestos and a councillor described it as a “death trap”, which was not helpful language.

What efforts are you making to educate not just the general public but politicians? Our comments are picked up by the papers, so we have a duty to be responsible in how we talk about health and safety more widely. You have mentioned some of the nonsensical health and safety stories that are out there, which are often fuelled by politicians repeating myths that a cursory check on the internet would have demonstrated to be completely untrue. What efforts are you making to ensure education, so that politicians do not stand up and talk about health and safety having gone mad when that is clearly untrue?

Dr Snowball: This meeting provides a fine opportunity, because here we have a roomful of people who I hope will have been persuaded of at least a different approach to dealing with health and safety the next time that an issue lands on their desk, even if they do not agree with everything that Pam Waldron and I have said.

We are fighting a tough battle, because the popular press like to kick somebody and they have

been at “elf and safety” for quite some time. We have two approaches. We measure the impact of our regulatory activities by the wrongs that we put right and by the people who think that we have done the right thing on their behalf. In a civilised society, people should not go to work and be injured, harmed or made ill. If they go home in that state, we should take steps to put that right. An element of that is securing a proper regulatory outcome in the form of justice that people recognise exists.

Two things that have been done in the past year are relevant to the extent to which we engage with, legitimise or otherwise support the more nonsense stories. We have a myth-busters panel, which is exactly what it sounds like it is. If people think that there is a silly piece of health and safety nonsense, they can take it to that panel, to which the HSE website has a quick link. The panel will then say whether a case makes sense.

The difficulty is that some stories are dressed up in the guise of health and safety. For many years, we have suspected—and often proved—that health and safety is used as a convenient and often lazy excuse for something else.

If people feel disgruntled about health and safety regulatory decisions by local authorities or the HSE, they can go to our regulatory challenge panel. To give members a flavour of that, the number of approaches to the myth-busters panel is in the tens, whereas the regulatory panel has had no approaches as far as I am aware.

Most regulatory decisions that involve HSE and local authority inspectors are made properly. Unfortunately, many of the myths pervade. Some classic stories come round every year, such as the conkers story, which comes round at horse chestnut time, and the Christmas tree lights story, which comes round at this time of year. When we have the first heavy snowfall, there will be something about not putting salt or grit on the roads outside people’s houses.

We have fairly broad backs in relation to such stories, but they are extremely frustrating. If members would like to do anything to help us to prick some of the nonsense bubbles, that would be magnificent.

Pam Waldron: Such matters detract from the key issue—the things that injure people and make them ill at work. Unfortunately, the press are not as interested in our traditional activities and in what happens to people; they are more interested in the silly stories. The sillier and funnier stories are, the more papers they seem to sell.

Mark McDonald: I was pleased to hear you tell my colleague Bob Doris that you expect to be able to maintain the number of front-line inspectors in Scotland, but local authorities also have budgetary

pressures. When local authorities design their budgets for the coming year or when they develop three or five-year plans, what direct consultation do they have with you about the effect on their health and safety budgets and staffing? If they make decisions and they do not speak to you, there could be a potential disconnect. Are you confident that local authorities are consulting you about the health and safety aspects of their budget-setting processes?

Pam Waldron: We do not have discussions at that level. We have a central local authority unit, which has discussions at a high level about priorities for local authorities, but it is very much for local authorities to ensure that they are adequately resourced to deal with their duties as enforcing authorities under the 1974 act. We do not have detailed local discussions about local authority budgets for their health and safety enforcement duties.

10:45

Dr Snowball: As a regulator, we are faced with a potentially vast agenda. One of the hardest sets of regulatory decisions to make—of which I hope that I have given you a flavour in the past hour or so—is about where we think that we will make the biggest impact. We must be brutal about which sectors we go to, which activities we focus on and the extent to which we do things at the obvious and transparent expense of other work. Over the years, we have learned to our cost that not doing that is much more dangerous than doing things badly.

We must make tough decisions. I am cautious about using phrases that suggest that there might be whole swathes of manufacturing or other activity that are out of the inspection scope—that is not the case—but decision lines are drawn that, for the next 12 months for example, will push us towards a certain pattern and shape of premises and activities that might not be the same the year after. That sort of discipline is necessary, whether regulation is taking place in the HSE or a local authority context.

The Convener: Continuing on that theme, I want to explore some of the relationships, as we need to establish a marker for any such sessions in the future. There are many issues that I would like to think have been discussed with the Scottish Government—such as the cut that you are experiencing—because they will have an impact on Scottish local authorities.

On the HSE website, I read some time ago that, although health and safety is a reserved area, there are good relationships with the Scottish Government, and staff exchanges and meetings with ministers have taken place. I want to explore

how you understand that relationship and what areas are discussed and covered.

Dr Snowball: First, it is an essential relationship. Right at the beginning of the meeting, I said that there are some unique circumstances that arise in the Scottish context that we ignore at our peril. One such issue for us—I invite Pam Waldron to add to this—is the overlap in the various healthcare-related areas. That includes the extent to which we are involved in inspecting the national health service and the extent to which the various issues that arise in the NHS might be characterised as health and safety rather than care issues. We have a strong partnership through the partnership on health and safety in Scotland, and strong links with the Scottish Trades Union Congress.

My impression is that, given the size of Scotland, we have a very heavy level of partnership in comparison with what exists in equivalent areas south of the border. First, long may that work continue, to the benefit of working people in Scotland. Secondly, are there any specific points that you would like to throw back for us to consider in more detail?

The Convener: I do not know when there was last engagement; whether such engagement takes place between officials and you or between you and ministers; or when the most recent ministerial engagement took place. Have you discussed the impact in Scotland of the 35 per cent cut in your budget? What risk does that present to how we manage risk in Scotland?

The most recent legislation directed HSE to divert all local authority health and safety inspections to itself. Was that in the Löfstedt review?

Dr Snowball: That was part of the Löfstedt review, and it is still work in progress.

The Convener: What discussions and progress are there on those issues with the Scottish Government?

Pam Waldron: In the main, we deal with that through routine briefings and discussions with officials, although we are contacted directly by members of the Scottish Parliament and members of Parliament in Scotland.

We try to ensure that we provide routine briefings on anything that the Scottish Government would want to be alerted on. For example, we have had discussions, and there has been quite a lot of correspondence, about the legionnaire's disease outbreak.

The Convener: But there has been no discussion such as the one that we have had this morning about the fact that there has been a 35 per cent cut—

Dr Snowball: No.

Pam Waldron: Not specifically about the cuts, no.

The Convener: There is new legislation in place that will affect the Scottish context and the relationships between partners. There is some general concern about the reliance on local authorities' responsibility for inspection and their duties that complement yours given that they are experiencing a cut and you are experiencing a 35 per cent cut. What will that mean? The idea that you have not reassured the Scottish Government in that context is, if not concerning, surprising.

Pam Waldron: We have regular discussions directly with the local authorities.

The Convener: Are the discussions between you and the Convention of Scottish Local Authorities?

Pam Waldron: The discussions are through COSLA but they are also directly through our partnership arrangements with the local authorities through the senior officer groups. The code that you are talking about, which came out of the Löfstedt review, is currently being developed and does not come into play until April next year. There will be discussions about that here in the same way as we are discussing it with local authorities south of the border.

The Convener: Dr Snowball alluded to the protocol and the safeguards that are in place between you and Social Care and Social Work Improvement Scotland—the care inspectorate. How is that going? Also, there is apparently a letter of understanding about Healthcare Improvement Scotland as well. Can you say something about that?

Dr Snowball: The regulatory landscape is quite complicated. I am probably putting it mildly, convener. It is very complicated.

The Convener: It is crowded, it would seem.

Dr Snowball: We seem to invest a huge amount of effort around it. It is interesting when you talk about memoranda of understanding—generally the situations in which the memoranda have to be applied pass all understanding, really. We have some quite animated conversations with colleagues on other regulatory bodies about the extent to which something is or is not a health and safety issue.

It goes back to something that we talked about earlier on, to do with the context in which health and safety at work is often appropriated for health and safety anywhere but work. The conversations that we have with the care inspectorate, for example, are often to do with areas in which we do not think health and safety at work legislation

should be applied, because care of patients and so on is the appropriate mechanism.

I want to leave you in no doubt that in terms of our regulatory activity, we must maintain and foster those relationships for the wellbeing of us all, otherwise we could easily be blown off course in all sorts of areas where we have multiple regulators that are all competing for the regulatory space.

The Convener: So the protocols and the letters of understanding are the first steps in trying to do that.

Dr Snowball: That is right.

The Convener: Do we have encouragement from the Scottish Government for that happening?

Dr Snowball: Yes.

Pam Waldron: Oh yes, very much so. There will always be grey areas in any overlapping legislation and sometimes those just have to be dealt with case by case. However, we are clearer than we have ever been before about who takes the lead in a particular area. We also publish quite extensive guidance, which was updated fairly recently, on the extent to which health and safety issues as opposed to care issues would be HSE's lead rather than the care regulator's.

The Convener: Is that an on-going process in all settings, not just in residential care but in the community?

Pam Waldron: Absolutely.

The Convener: We know from our casework that health and safety can become a bit of an obstruction to providing care in someone's home, for instance.

Pam Waldron: We cannot become the regulator of last resort. It is right that we define what responsibilities we have and how they interface with the responsibilities of others. We have got much better at that in recent years and the memorandum of understanding that I signed in the summer with the new care inspectorate was far clearer about our respective responsibilities than it has been in the past.

The Convener: I just want to get these points on the record. My last point is on the asbestos liaison group. Does it help to inform the Scottish Government about possible impacts on the health budget, for example from people presenting because of asbestos? Are such discussions going on?

Pam Waldron: I am sorry, I do not know whether such direct discussions have taken place. However, we could certainly find out and let you know if that is the case.

The Convener: How often does the asbestos liaison group meet?

Dr Snowball: We are looking puzzled on that.

Pam Waldron: We are. [*Interruption.*] My colleague thinks it is every three or four months but we will give you the detail on that.

The Convener: Thank you. We would be interested in that.

I call Bob Doris.

Bob Doris: Dr Bill Wilson, a former MSP, sought to introduce a system of equity fines—if the expression is wrong, I apologise to the committee. The concern was that, when the HSE fines a company for a breach of health and safety, the fine must be commensurate with the company's ability to continue to trade, because the fine could penalise the workers who were at risk. I think that the ICL/Stockline experience prompted Dr Wilson to shine a light on that.

I thought about that while I was listening to the evidence. You will need to issue fines via the FFI process over the next three years, over which time they will bring in up to £50 million. Is there a concern that you must balance those fines for breaches with the ability of certain companies to trade? I assume that health and safety is absolute and that, if there is a risk for which a company faces enforcement and it does not comply, it is closed down, but will you tell me your thoughts on fines being proportionate? The workers who are at risk could be affected if a fine is disproportionate.

Pam Waldron: A fee for intervention is not a fine. It is a matter of recovering the costs for regulating a material breach of the legislation. It is not based on the ability to pay, as a fine might be in some cases. The important thing is that, if there is a failure to comply with the law that, in the inspector's opinion, is so significant that it requires some written notification by way of letter, enforcement notice or prosecution, the HSE is required to recover its costs. It will recover the costs for the visit and any associated follow-up work, including letter writing.

Bob Doris: Thank you. I apologise for the terminology that I used. I was thinking about the principle of the money going from the company for the costs that you incur. However, £50 million is not an insignificant sum. Will you give me an idea of what that could mean for an individual company? You must have done some modelling on that.

Pam Waldron: We have. The money that we expect to get back through cost recovery is based on the number of inspections that we typically do in a year and the number of places in which we find a material breach.

We are not driven by cost recovery. We operate in the way that we always have done, although we are improving our targeting and intelligence so that we go to the places to which we need to go: the places that need our interventions, that are higher risk and where performance is poorer than in the rest of the industry.

The indication is that we are likely to find a material breach in about 60 per cent of the places to which we go. That is a rough guesstimate for financial planning. We are acutely aware that, when we are in those places, we need to operate as efficiently as possible so that we do not incur costs unnecessarily for the companies.

It is early days for us on cost recovery. In the next six months, we will review its impact on us as a regulator and, of course, on industry. There will be a bigger review after 12 months.

Bob Doris: The committee would appreciate getting an idea of what kind of costs are recovered from which industries and which types of firms.

My second question concerns the consolidation of health and safety regulations. I am surprised that none of us has asked about that before now. It is quite a meaty target to reduce the number of health and safety regulations by 50 per cent by 2015.

11:00

I could be an irresponsible politician and say, "This is outrageous. It means that we're going to have an unsafe workplace," but rather than make a judgment I will ask you to give the committee a flavour of what it may mean. You must have already looked at areas where you could consolidate legislation. Will you give an example of where two or three pieces of health and safety legislation could be consolidated into one, more efficient piece? That would make it more meaningful for us and stop us going down the road of saying, "Less regulation—that might not necessarily be a good thing." It is about effective regulation rather than the amount of regulation.

Dr Snowball: That is absolutely right. I will contextualise the issue. As I said at the beginning, the Health and Safety at Work etc Act 1974 is the foundation stone of all health and safety legislation in Great Britain. Section 1 of the act says that you cannot replace anything covered by the act with a lower standard—so that is an initial trigger.

We will write to the committee to confirm the number of pieces of legislation in the mines and explosives sectors. There are significant numbers of individual pieces of legislation in those sectors and policy colleagues are working on ways of bringing them together into a better package.

There are two reasons for doing that. Before the 1974 act was passed there was a tendency for rule-makers to write legislation to stop the most recent accident. It tended to be very prescriptive legislation to say, "We've had an accident and we've learned lessons. Let's stop that by making sure that that never happens again." Of course, such legislation requires perfect forethought to cover every possible eventuality and means that you get prescriptive legislation that says, "You cannot do A," which inevitably leads to prescriptive legislation that says, "and you cannot do B, C, D, E, F, etc," either.

In the UK's goal-setting legislative framework, which has been built on the back of the 1974 act, where possible we should state the standards to which industry should aspire. When we have prescriptive legislation, people are tempted to go up to a kind of stop point and say, "Well, we have got that far. There's no need to go further." Goal-setting legislation helps us break through that.

I hope that the titles of many of the pieces of legislation that fall into the mines and explosives sectors—we will provide you with further detail on them—will reassure you that legislation is not being screwed up into a ball and thrown into a waste basket.

Bob Doris: So there may be an opportunity for regulation to improve through the process.

There seems to be a lot of furious scribbling going on in the public gallery, so I think that there will be a lot of updating of the committee following this meeting. When you update the committee I would be interested to know what discussions you have with trade unions and other workers representatives, because it is fundamental to get trade unions to buy into the principle of better regulation.

Dr Snowball: Of course. We would be failing in our responsibility as a regulator if we did not properly negotiate regulatory changes with trade unions.

Drew Smith: I want to raise two or three things, but one is quite specific. What is the position on silica dust in Scotland? There is some suggestion that there has been an increase in cases of silicosis. Will you give us a flavour of your involvement in that and how extensive you think that problem is?

Pam Waldron: I have no specific information on that. I assume that we are talking about the construction industry. Again, that is something on which we will have to write to you later with some specific information, if that is okay.

Drew Smith: That is fine. It is quite a specific question.

Pam Waldron: The usual initiatives have taken place in relation to control of dust. I am sure that we could give you a much better reply in writing.

Drew Smith: Sure; that is great.

My question goes back to the point that the convener raised about scrutiny and following the different parts of the system. I have the impression that local authorities—given that they are subject to the cost pressures that you, they and every other part of Government are subject to—have a desire to pull back from their role in health and safety. There is an impression that they may be doing that. What is your role to stop that from happening? How do you encourage local authorities to continue or extend their role in health and safety and make sure that that is appropriate to their area?

Given the possibility of further cuts to the HSE, how do inspectors whistleblow? How do inspectors at environmental health level in local authorities or HSE inspectors themselves hold their hands up and say, "We used to have two inspectors in quarries. Now we have one and I am struggling to do the work," or whatever the example is?

Dr Snowball: The key issue for any regulator is to demonstrate, to the appropriate level of proof, that it understands the context in which it operates, that it has made sensible priorities about what it can do based on its resources and that those resources are applied to the areas that most need regulatory activity. Unfortunately, that might mean that a regulator cannot do everything that it would like to do, but it will certainly be focused on the things that it must do.

I can boil down the issue of regulatory integrity and regulatory purpose to three things—for me, it is that simple. For regulatory bodies such as the HSE or local authorities, someone who is in a position of responsibility must be able to answer three questions: are they going to the right places, are they doing the right things and are they finishing what they start? If those questions are not answered in the affirmative and in a sensible way, the obvious follow-up questions are: what is their regulatory strategy and what are they trying to achieve?

Evaluations are terribly difficult in health and safety, because we cannot prove to a reasonable level of understanding the extent to which we have prevented people from being injured or hurt. However, we can use proxies. We can say that we got 250 farmers together at a safety and health awareness day at which we showed them what good practice looks like, and we did not do that with a big regulatory stick. We can say that, because we did an intense campaign of refurbishment inspections in the construction

industry in Dundee in a couple of weeks in February—or whenever it happened to be—we drew attention to unsafe and unsatisfactory practices. I would approach the question in that way.

You asked about whistleblowing. That depends on the extent to which people are persuaded—or otherwise—that regulators have a programme that makes sense to the lay observer.

Pam Waldron: We have a partnership team that covers Scotland and northern England and that has regular quarterly meetings with our local authority counterparts to discuss issues such as the types of premises that they visit and how they ensure that they concentrate their resources on the industries or sectors with a higher risk profile. There is a healthy two-way dialogue between us and our local authority counterparts.

Drew Smith: In that setting, you seem to have the useful role of using your expertise and sharing what is going on throughout the country, and perhaps saying that a certain sort of inspection is not the best way in which to deal with a problem. Is that also the forum in which you point out that a local authority is, for budgetary reasons, no longer exercising a range of responsibilities that it used to exercise? The Scottish Government is involved, because it sets the local authority budgets. We need an awareness of whether the level of regulation and inspection and all the other work is appropriate, or whether local authorities are cutting health and safety work because that is an easy cut to make.

Pam Waldron: There are pressures, just as there are on the HSE, but local authorities have a regulatory responsibility under the Health and Safety at Work etc Act 1974. To that extent, that work continues to be resourced, and it must be. For a number of years, we have been assisting local authorities with the framework that they need to deliver their responsibilities to enforce health and safety legislation. That approach works well. We provide support to local authorities through our specialist expertise, and we provide training in particular areas.

For example, with the LPG programme that we talked about, local authorities and the HSE took the same approach to the premises for which they were responsible, and there was a joint training package. In the same way, we will take a joint approach to the legionella work that we have just commenced in the west of Scotland. We will work jointly with our local authority colleagues to inspect premises with cooling towers in the area. We very much work together. We have not had a local authority tell us that it does not want to work with us and that it does not have sufficient resources to do that.

Drew Smith: The previous Scottish Executive at some point funded a Scottish health and safety action plan. I was slightly surprised by your point that there has not been direct engagement between the HSE and the Minister for Public Health, who I think is the health and safety lead in the Scottish Government.

I note that in its written evidence to the Scottish Affairs Committee, the STUC said that there was a role for the Scottish Parliament in providing more scrutiny in the area, which might be through the laying of reports, as appropriate—although perhaps not formally, given that the legislative function is reserved. There are issues in relation to which we have responsibility and could assist you in the context of enforcement.

Does the issue cause difficulties for you or are you relaxed about it? You have an opportunity to tell the committee whether you think that over a parliamentary session we should regularly examine the devolved aspects of issues.

Pam Waldron: We are keen to be open and honest with you. We want you to see that we are—I hope—responsible regulators. Although the function is not devolved, as you know, it is so clearly linked with your interests and the work of the Scottish Government that we want there to be as much transparency as possible—hence our taking up your invitation to give evidence today.

I am not quite sure what you mean by parliamentary scrutiny, but I guess that we are always happy to be scrutinised. We hope to be able to give sensible answers to your questions or, if we cannot immediately answer a question, to come back to you with the facts and figures that you need.

Drew Smith: That is helpful, thank you.

Dr Simpson: We are all operating in a context of austerity and, in periods of contraction in funding, maintenance budgets tend to be significantly affected. The committee discussed the budget in the context of the Audit Scotland report that showed that the maintenance backlog in the health service in Scotland has doubled, from £500 million in the previous session of the Parliament to £1 billion now. Although we have received assurances that more than half of that represents non-urgent repairs, a repairs backlog of £400 million remains outstanding.

That worries me, as a politician and a doctor. In the context of your function in relation to the health service, have you had discussions about how the service is prioritising its backlog in relation to health and safety?

Pam Waldron: We have had a recent meeting. The issue is how we get the best coverage

quickly. Our best route in is through the facilities managers group—

Dr Simpson: Do you mean Health Facilities Scotland?

Pam Waldron: Yes. One of my colleagues has had recent discussions with HFS about the issues. The HSE has taken enforcement action in relation to a number of maintenance issues during the past 12 months, so there was a discussion about why that was and whether there was targeting of the NHS in Scotland. The answer was that there is no particular targeting, but issues need to be addressed.

We have made it clear to the facilities managers that there is a crying need for priorities in relation to health and safety, and I think that the group is entirely in agreement with that. That was our most recent discussion.

Dr Simpson: That is helpful.

The Scottish Public Services Ombudsman has said that the complaints that he has received over the years have not changed much and that there has not been much action. I do not think that many complaints relate to health and safety, but have you had conversations with the ombudsman?

Pam Waldron: No.

Dr Simpson: Finally, I raise two specific issues. I have been pressing for the removal and replacement of swan-neck taps, which seem to be associated with an increased risk of legionella and other infections. I have been assured that such taps are replaced when there is refurbishment, but there is no active programme of replacement. I am not looking for an immediate answer, but perhaps you can provide information on that.

Can you also provide information about the enforcement action in the health service in the past year? Is there a link to a website in that regard?

Dr Snowball: Yes. You can go to the HSE website and then to the press notices page—actually, you can scroll through all the prosecutions in Scotland in the past 12 months, in the COPFS—

Pam Waldron: They are in the prosecutions database.

Dr Snowball: Yes, but we will provide that information for you.

11:15

Dr Simpson: That is good of you.

The Green MSP Alison Johnstone lodged a motion in the Parliament on 10 December, which referred to

“research led by Professor Andrew Watterson at the University of Stirling that says that there is ‘strong evidence’ that women employed in the plastics industry are exposed to workplace chemicals that can raise their risk of breast cancer and reproductive abnormalities”.

The motion goes on to call on the Parliament to note with concern

“that the UK Government is directing the Health and Safety Executive away from active inspections of sectors such as plastics to concentrate on reactive visits”.

Before I sign up to the motion, I would like to hear from you whether what it says about the UK Government is correct and whether you have comments on the Watterson report.

Dr Snowball: I will take your points in sequence. When I talked about devoting efforts to priority sectors, I deliberately talked about lower risk and higher risk, rather than low risk and high risk. No sector is ever taken out of the inspection menu. Currently it is true that our inspection decisions mean that the standard industrial classification that covers plastics falls on the other side of the line. That is a management decision that HSE has taken, in order not to exceed the total number of inspections that we have been told that we should be doing. We have to cut the coat according to the cloth.

Do you have a specific question on the Watterson report?

Dr Simpson: I did not know whether you were aware of it and whether it would—

Dr Snowball: Are you talking about the report, “Regulating Scotland”?

Dr Simpson: I do not know whether it is a UK-wide report or a Scottish one—that is not clear from the motion—but Professor Watterson happens to be at the University of Stirling. I have not read the report yet, but it occurred to me that it might lead to your reviewing the plastics element of your—

Dr Snowball: I am aware of the report that is specifically about cancers. As I hope that both Pam Waldron and I have tried to convey during the meeting, although it is important that everybody is convinced that we make sensible and proportionate decisions, occasionally events come along that cause us to re-evaluate our decisions and consider whether they were right. That is the context in which I would answer your question.

The Convener: I thank both witnesses on behalf of the committee for their time and their evidence. We move into private session, as previously agreed.

11:17

Meeting continued in private until 12:15.

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