The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

ECONOMY, ENERGY AND TOURISM COMMITTEE

Wednesday 19 June 2013

Session 4

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ECONOMY, ENERGY AND TOURISM COMMITTEE
20th Meeting 2013, Session 4

CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

DEPUTY CONVENER

*Dennis Robertson (Aberdeenshire West) (SNP)

COMMITTEE MEMBERS

*Marco Biagi (Edinburgh Central) (SNP)
*Chic Brodie (South Scotland) (SNP)
Rhoda Grant (Highlands and Islands) (Lab)
*Alison Johnstone (Lothian) (Green)
*Mike MacKenzie (Highlands and Islands) (SNP)
*Margaret McDougall (West Scotland) (Lab)
*David Torrance (Kirkcaldy) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Fergus Ewing (Minister for Energy, Enterprise and Tourism)
Susan Love (Federation of Small Businesses)
David Martin (Scottish Retail Consortium)
Andy Myles (Scottish Environment LINK)
Belinda Oldfield (Scottish Water)
Claire Orr (Accountant in Bankruptcy)
Claire Tosh (Scottish Government)
Paul Waterson (Scottish Licensed Trade Association)
David Watt (Institute of Directors Scotland)
Gareth Williams (Scottish Council for Development and Industry)

CLERK TO THE COMMITTEE

Jane Williams

LOCATION

Committee Room 4

Scottish Parliament

Economy, Energy and Tourism Committee

Wednesday 19 June 2013

[The Convener *opened the meeting at 09:30*]

Decision on Taking Business in Private

The Convener (Murdo Fraser): Good morning, ladies and gentlemen. Welcome to the Economy, Energy and Tourism Committee's 20th meeting in 2013. I remind everyone to turn off or at least turn to silent all mobile phones and other electronic devices. We have received apologies from Rhoda Grant.

Item 1 is a decision on taking business in private. Does the committee agree to take items 5 and 6 in private?

Members *indicated agreement.*

Regulatory Reform (Scotland) Bill: Stage 1

09:31

The Convener: Under item 2, the committee is continuing our scrutiny of the Regulatory Reform (Scotland) Bill at stage 1. We have two panels. On our first panel, I welcome Susan Love, policy manager for Scotland, Federation of Small Businesses; Andy Myles, parliamentary officer, Scottish Environment LINK; David Watt, executive director, Institute of Directors Scotland; and Gareth Williams, head of policy, the Scottish Council for Development and Industry. Good morning, all.

We will go straight to questions, as our time is slightly constrained. As ever, I remind members to keep their questions concise and to the point. Concise responses will help us to get through the broad range of issues that we want to cover in the time available. If members direct their questions to a particular individual, that will help. If anyone on the panel would like to respond to a question that is directed to somebody else, just catch my eye and I will bring you in as best I can.

You will all be familiar with the bill. A number of issues are of interest to members. There is the broad issue of why we need better consistency of regulation and how that will work in practice in relation to local variation; how opt-outs might work; and the duty to promote sustainable economic growth. There are questions about the code of practice; about planning and the proposal to reduce planning fees in the event of poor performance by planning authorities; and about the licensing of mobile food businesses. We will try to cover those questions if we can, as time allows.

The bill is designed to improve regulatory performance. Why is greater consistency needed across Scotland? Can you highlight an example of a particular problem that needs to be addressed? That is a general question. We will start with Susan Love from the FSB.

Susan Love (Federation of Small Businesses): The committee may be aware that the FSB has done quite a lot of work on consistency of regulation. However, most of that work relates to local regulation and local regulatory frameworks, and I appreciate that the bill applies to regulation in the round.

Last year, we published a paper that looked at aspects of local regulation in Scotland and how we felt that it could work better. We highlighted a degree of inconsistency in how certain regulations

are applied, in particular by local authorities—we set that out in our paper.

We included case studies in our written evidence to the committee, to set out how those inconsistencies manifest themselves. That relates largely to processes, procedures and conditions—if they were applied more consistently across the country, it could be simpler for businesses to understand what is required of them. The instances that we have highlighted relate to issues that are not really to do with local circumstances—they are largely to do with custom and practice—so we think that consistency could be achieved and that the bill is a way to achieve it.

The Convener: As you mentioned local circumstances, can you give an example of an area where local circumstances would justify local standards as opposed to national ones?

Susan Love: Sure. We do not suggest in our evidence that the goal should be consistency to the extreme of putting consistency above all the other principles of better regulation. Better regulation is about achieving a balance among the different principles to achieve effective regulation. It is understandable that there are occasions when different approaches are required to achieve a balance between consistent regulation and proportionate regulation.

For example, in liquor licensing, we have highlighted that it is understandable that there could not be a national approach on opening hours, because there will need to be different opening hours and different conditions attached depending on a place's situation and geography. The issues that we have highlighted relate more to procedural matters.

The Convener: That is very helpful.

Andy Myles (Scottish Environment LINK): I agree with a considerable amount of what Susan Love said. I add that consistency is needed not only on local issues but at the national level.

Scottish Environment LINK is very pleased to support the measures in the bill, which we have discussed with the agencies and others as they have been developed, to ensure that there is a consistent playing field for business across environmental regulation. It is important that we all understand that businesses have a level playing field. We are assured that those provisions will mean that the agencies concerned will come down like a ton of bricks on those who create inconsistency by cutting corners and that we will allow businesses that are playing by the rules to carry on, promote the economy and do all the other aspects of their work.

We are very much in favour of such consistency and better regulation. As members will have seen from our written evidence, where we have a problem with the proposals is that we think that there should also be consistency in the law and that there is a danger of serious inconsistency and confusion over the duty in respect of sustainable economic growth.

The Convener: We will come on to that shortly.

David Watt (Institute of Directors Scotland): I agree with the comments made by other witnesses. The key issues for us relate to the implementation of legislation and the promptness of the response to inquiries. That applies across a number of areas.

Obviously, planning is often talked about at length, and we will provide some examples on that later, but consistency and the speed of response from agencies are also issues in other areas. As you asked for specific examples, I will give you an example of a builder who cannot develop a building site on which 50 houses are planned to be built, because Scottish Water and the Scottish Environment Protection Agency cannot decide what the best form of drainage is. That sort of delay does not help anybody; delay means costs. Even when planning permission and everything else have been agreed to allow the project to go ahead, that fairly sizeable technical delay is causing problems. That example is of a real case, but such delays are not unknown and have happened more than once.

We consider that to be a high priority; I will come back to sustainable economic growth. The issue is consistency—it is important that businesses know exactly where they stand. The bill could help to address that, although we are never very keen on legislation as a whole. If ministers are empowered to ensure that bodies sing from the same hymn sheet and act more promptly, that will be a step in the right direction.

Gareth Williams (Scottish Council for Development and Industry): As an organisation that represents not only businesses but regulators, we recognise the benefits of greater consistency for both. We welcome the changes that have been made to the bill since the initial consultation. We had concerns about the imposition of inflexible national standards and we think that the bill now takes into account some of those concerns.

The FSB's submission highlights a number of specific examples. When we sought evidence from our members, it seemed as though many of the concerns were more at the scale of small and medium-sized enterprises. We tend to represent larger businesses, although not exclusively so, and the concern that they raise most frequently is to do with the planning system, as David Watt highlighted.

The Convener: We will come on to that in due course. That was just a softball to warm you up—now we will get into the hard stuff. I will bring in Chic Brodie.

Chic Brodie (South Scotland) (SNP): I am not sure whether that is appropriate, convener.

I will challenge the notion of consistency. We all agree that there needs to be consistency, yet we have talked about local variations. Where do we draw the line between the two?

The Convener: Who is that question to?

Chic Brodie: It is to all the witnesses.

The Convener: Start with someone, then.

Chic Brodie: I will start with Susan Love.

Susan Love: It is inconceivable that we could achieve national standards without a collaborative approach. The examples that we have given of where there could be national standards concern issues on which we envisage the regulators, the regulated, the Government and local government sitting down together to agree the balance.

Chic Brodie: We have tried that and it has not happened, has it?

Susan Love: I do not think that we have tried it.

Chic Brodie: So you believe that there is anarchy out there in how local authorities and other bodies interpret regulations.

Susan Love: No. At the moment, the local implementation of regulations has a presumption in favour of a principle being passed by the Scottish Parliament and then all the details being more or less left up to the local authority to determine. There is a limited number of examples of discussion taking place between the Scottish Government and local authorities to attempt to agree on more consistency in how primary legislation is implemented. As we set out in our submission, in most cases implementation is left up to each local authority. A sensible way forward would be to have a process that compelled everyone to sit down and agree on which parts of the implementation process they could all do in the same way and which parts should be left up to local discretion.

Andy Myles: On consistency, I speak up for the system as it stands. The level of consistency in our planning and regulatory systems is relatively good. It could be improved but, if we improve it, developers will still say that there is inconsistency. Inconsistency rather depends on where we start from. A developer will tell you—

Chic Brodie: I am sorry to interrupt, but are you telling me that you believe that, in the current system, there is consistency in approach even between neighbouring councils on, for example, wind farms?

Andy Myles: No, I am not suggesting that at all; I am suggesting that there is relative consistency. I was going to go on to say that, if a renewable energy developer is developing an in-stream hydro generation product and there happen to be freshwater pearl mussels in the river where the development is to take place, the approach might not be consistent with that to the river in the next glen, which does not have freshwater pearl mussels. A businessman or businesswoman would be likely to be aggrieved because there would be an inconsistency in the system.

I am suggesting that a great deal of the points that we hear about inconsistency are in fact caused by the facts of the matter and where the developments are. I will not join my colleagues on the panel in saying simply that we have the most terribly inconsistent system. There are glitches but, however much the committee improves the system, people will still come to members to tell them about inconsistencies. That is a moveable feast.

09:45

Chic Brodie: Surely the whole point of having meaningful regulation is to minimise the confusion in the system, which currently leads to inconsistency about issues such as dealing with pearl mussels, which were discussed yesterday in the chamber.

The way that I see it is that you are trying to have it two ways. You are saying that the system almost works, although there are some inconsistencies, and that there is therefore no need to regulate. Is that what you are saying?

Andy Myles: No. I am in favour of regulation, particularly environmental regulation to protect freshwater pearl mussels. However, the regulation is not consistently applied to every stream in Scotland.

David Watt: I well understand the need for local democratic input into choices and decisions that are made, and it is perfectly understandable that something might be seen as being more suitable for one area of Scotland than another. I can best illustrate the point by giving an example.

A significant hotel development company had two meetings in one day in two cities that shall remain nameless for the purposes of this discussion, but which are not far apart. The meetings concerned a proposal to build a 200-bedroom hotel. At one meeting, the company was told, “We are delighted to have you here. We are here to see how we can do this as quickly as possible and in a way that is as suitable as

possible for you and for us." At the other meeting, the company was told, "Oh, I don't know if we can do that. It may be 18 months before we can even talk about it." That is not a consistent approach, and that lack of consistency is not good for Scotland or for either of those cities—it puts people off. That is a factual case. I can give members the details off the record.

Another point is that there appear to have been more planning call-ins to ministers. That might suggest—following on from the point that Chic Brodie just made—that there is a bit less consistency in the system, which means that developers are not sure what they will face when they try to develop in various areas of Scotland.

Chic Brodie: I suspect that I know what your answer will be to my next question, Mr Watt, but it will be interesting to hear the reactions of the other members of the panel. In the panoply of what we are trying to achieve, where do you put economic growth versus economic development, or sustainable growth versus sustainable development, in any planning decision?

David Watt: Truthfully, in life and in business, I would that say I am visionary. We absolutely must drive forward. I must say that I find some of the debate that is going on to be quite arcane. We need to have a clear vision that Scotland needs sustainable economic growth. I am happy to discuss the semantics of the word "sustainable", but I am not sure whether that will get us far.

My members—1,700 of them in businesses across Scotland, large and small—are working 24/7 to grow businesses that will bring money to this country, to their communities and to their employees. The people in this building, the Government and the Government's agencies should work with them to do that. That is the number 1 thing that can be done for the benefit of this country and for employees and their children. To be blunt, politicians can decide how to spend money—that is how the system works—but we need to earn the money first.

I am not suggesting that businesses should be able to earn that money in an unrestrained way. I understand that some regulation is needed, because some people will otherwise bend the rules, to put it mildly. However, the fundamental thing is that, if our members do not have the opportunity to make the money, we do not have it to spend. Therefore, we are all going in the same direction. Surely everyone in this building and this country must believe that. What annoys me about the debate is that some people do not appear to realise that.

We can fine tune the wording that we use, but we must focus on what I described, from which we all benefit. How the benefits are shared out is for you guys to decide, not me. It is for me to help my members to work with you to create the wealth, which you can decide how to allocate to members of our society. The situation is not very complicated. That is where we are trying to go.

Chic Brodie: I have some sympathy with that view.

Gareth Williams: On national standards, we seek a change in emphasis. There should be a presumption for national standards but, when evidence can be put forward in favour of local flexibility, that should be available.

Our remit is to do with promoting sustainable economic growth, so we welcome the proposed duty. I think that it makes sense, given the Government's overarching purpose for public services.

I agree with much of what David Watt said. I simply add that, like many economies in the western world, we in Scotland have over the past 10 to 15 years had economic growth rates that have been very low, historically. We are still in that position. A number of long-term spending commitments and entitlements have been based on growing the economy so, if we want to be able to afford them, we need economic growth. That is one reason why we believe that that needs to be emphasised across a range of Government functions.

Chic Brodie: So you believe that we need to have sustainable economic growth—if anyone wants a definition of that, I have several—to underpin things such as sustainable development. Is that what you are saying?

Gareth Williams: Some people's interpretation of sustainable development perhaps emphasises the sustainability of a given project. When we talk about sustainable economic growth, we can look at the totality of a range of developments and how each contributes to meeting longer-term targets. The inclusion in the bill of a duty on sustainable economic growth is important because it will change the emphasis not at the top level in regulators; it will give a signal throughout regulators that supporting sustainable economic growth is a priority for the Government. It could change the relationships that regulators have with businesses.

Chic Brodie: Does Mr Myles agree?

Andy Myles: I am not quite sure that I understand what I am being asked to agree with.

Chic Brodie: Well, let me try to help you. Where does the priority lie in regulation when it comes to sustainable economic growth versus sustainable development?

Andy Myles: I see sustainable economic growth as a subset of sustainable development; I do not think that they are different things.

Chic Brodie: So we disagree.

Andy Myles: We disagree.

Chic Brodie: Thank you.

Dennis Robertson (Aberdeenshire West) (SNP): I have a question for Mr Myles. Is there a conflict between environmental issues and sustainable economic growth, or are you content that the reform that the bill proposes meets your objectives?

Andy Myles: When it comes down to it, fundamentally, members of Environment LINK will follow the scientific evidence. It is a fundamental ecological principle that every species exploits its environment. If a species exploits its environment sustainably, it will survive and thrive, but if it exploits its environment unsustainably, it will be on the way to the exit—to extinction. That applies to the human species as much as it applies to any other species.

Our belief in sustainable development follows from discussions that have taken place at global level and in the European Union, United Kingdom and Scots law contexts. A long and distinguished scientific background says that our development—whether economic, social or environmental—should be sustainable and that we should not drive ourselves over the cliff of climate change, for example, or any of the other environmental disasters that we might press ourselves towards through the blind pursuit of economic growth.

I am not saying that the environment movement opposes economic growth, because it does not, but it definitely opposes unsustainable economic growth. Distinctions need to be made and regulators need to be present to ensure that, alongside the sustainable economic growth, we fight unsustainable economic growth and maintain the balance with the social and environmental developments that we need if we are to maintain a state of sustainability.

Dennis Robertson: That was a long answer, but I am not quite sure whether you told me whether the regulatory reform meets your objectives.

Andy Myles: Do you mean the regulatory reform that is proposed?

Dennis Robertson: Yes.

Andy Myles: The regulatory reform in the bill would meet our objectives very nicely but for the duty in respect of sustainable economic growth.

Dennis Robertson: I think that the first part of your answer was fine. [*Laughter*.]

The Convener: As we have moved on to the issue of sustainable economic growth, I will bring in a couple of other members who want to ask about it, starting with Alison Johnstone.

Alison Johnstone (Lothian) (Green): Good morning, panel. In the evidence that we have taken over the past few weeks, we have heard from the Scottish Trades Union Congress, which believes that the bill is not necessary, and Scottish Natural Heritage, which believes that the imposition of a duty to promote sustainable economic growth will not affect what it does at all and will not make any difference. We have had some debate about whether the duty is necessary. I know that Scottish Environment LINK strongly opposes the introduction of such a duty and that the SCDI cautiously welcomes it, stating:

> "As sustainable economic growth is not defined within the legislation, duties of 'the same effect' are open to interpretation."

How do you see the economic duty sitting alongside other core functions and duties that are already placed on regulators?

Andy Myles: I will try to follow the issue through and say what will happen if you pass the bill with the duty in respect of sustainable economic growth. First, good relationships have been building up between environment and conservation groups and others at local and national level across many years. Many of our members have worked with many developers on many projects to ensure that problems are ironed out, and we have worked with the regulators and Government officials to ensure that developments can go ahead smoothly. We are interested in continuing that process rather than creating any bad blood between us and developers. We are not in the business of dashing into conflict at the first opportunity. We understand the need for economic development along with other development.

The second practical point is this. You might have noticed that, in the evidence that we presented, we included a flow chart on what might happen. Duties in relation to sustainable development are already placed on all the regulators. They come from a clear background of international law and are already in EU law, UK law and Scottish law. However, sustainable economic growth has no connection with international law.

We could go into all the arguments about what "sustainable" means, which are sometimes called semantic arguments, although I believe that they are fundamental. However, the danger of the proposed statutory duty is that different parts of the Scottish community will have different perceptions of the law. That will end up in the courts. If developers think, "We're trying to promote economic growth, but we're not getting it

because an environmental protection agency is trying to protect the environment," the tendency will be for them to take the matter and challenge it in court. If an environmental group sees an economic development that it believes is unsustainable, it will say, "The developer has a duty of sustainable development," and it will take the developer to court. Either way, we will end up with the courts deciding, and the courts in Scotland have a reputation for not taking a decision on the substance but merely deciding on the merits.

We do not know what will come out at the end of the process. The one thing that I would suggest is that, at a practical level, you will end up without the clarity that businesses and environmental groups need. You will pass a law that is confused and unclear. That is the danger at a practical level: that instead of decreasing conflict in the system of business developing the economy and environmentalists trying to protect the environment, we in fact will have created less clarity and more chance for conflict. I would not like to see that, neither would the members of Environment LINK.

10:00

Alison Johnstone: May I ask the same question of Mr Williams?

Gareth Williams: I agree with Andy Myles about the positive relationships that have been developed at a local level between businesses and environmental groups. That has facilitated developments in a better way than would otherwise have happened. In our written evidence, we raised concerns about how the duty would be applied and about the definition. I understand that the minister has sought to provide information on how sustainable economic growth will be defined. We commented on the need to ensure that the duty does not undermine the regulator's statutory objectives or the principles of regulation.

The point that I was trying to make earlier was that, in recent years, we have seen SEPA and SNH work more closely with business and play a more positive role as new industries have emerged. They have encouraged innovation.

We recognise the positive role that regulation can have in the economy. Our members still raise concerns, however, about how regulations are applied at a more operational level. Andy Myles would say that that will depend on practices by businesses. Our members say to us that they have challenges because of regulators; that is why we believe that this new duty could have a positive effect and encourage the growth that we need.

Andy Myles: I want to add a point to my answer to Alison Johnstone.

I would hate it to be thought that this is just the environmental organisations coming along and having a wee greet on this issue. I think that you will find that the argument that I am making about the consistency and clarity of the law is substantially backed by the Law Society of Scotland and the UK Environmental Law Association in their submissions, which I have seen from the Rural Affairs, Climate Change and Environment Committee—I do not know whether they were also submitted to this committee.

Alison Johnstone: We heard earlier about the example of the hydro scheme and the freshwater pearl mussel. In a case like that, how would compliance with the duty be monitored and failure to comply addressed? If there is a case where a developer feels that something is not being allowed because there is a particularly important species in that area, how will the regulator's performance be monitored, by whom will it be monitored, and how will any concerns be addressed?

Andy Myles: Apart from anything else, it is Parliament's job to scrutinise and monitor the regulators as agencies of Government, so I hope that this committee and the other committees of Parliament will be able to scrutinise the performance.

On the freshwater pearl mussel, it is not always a case, for instance, of a hydro scheme coming along and wrecking the pearl mussel. In Mary Scanlon's parliamentary debate a few weeks ago, she highlighted the case of a Scottish distillery that worked in conjunction with academics and an environmental non-governmental organisation and, because of a freshwater pearl mussel colony in the river, redirected the outflow from a new distillery that was planned. That distillery is now going ahead and will call its whisky "the pearl of Speyside". That is an example of making the quality of our environment a feature in promoting sustainable economic growth, because the development took account of what biodiversity was present.

The environment is not a block on business or development. Vast amounts of our economy depend on the quality of our environment and its sustainable development, and I just hope that, in scrutinising agencies and in their work over the short, medium and long term, MSPs remember that the environment is where we all live, work and attempt to make our livelihood.

Mike MacKenzie (Highlands and Islands) (SNP): Mr Myles's reading of the bill makes me very curious. I would have thought that he would welcome those aspects that seek to free up resources for environmental regulators, take them away from some of the petty things and allow them to deal with the bigger problems that they

seem incapable of dealing with at the moment. As an illustration of that, my mailbox invariably gets filled up with communications from very small businesses that—to use Mr Myles's metaphor—get a ton of bricks falling on their heads for very minor infringements; equally, members of the public write to me about big organisations that seem to be able to pollute the environment with impunity and about regulators lacking the teeth or resources to deal with them. Do you not welcome the bill's refocusing of resources as a better way of protecting the environment?

Andy Myles: Yes—and we have done so in our written evidence and the work that we have done with SEPA and elsewhere. We are very much in favour of better regulation. After all, we believe in environmental regulation and want it to be as good as possible. If that means working with and assisting business to ensure that it flows in the right direction and that firms observe environmental regulations and follow the law perfectly, that is fine. As I said in my opening statement, agencies can then come down on the other businesses.

Mike MacKenzie: We have a lot of business to get through this morning, Mr Myles, and your first word—yes—answered my question.

Do you not accept that, sometimes and for the best of intentions, regulation can overlap and that businesses can be stuck in a difficult place between one regulator saying, "You have to do A," and another saying, "You have to do B," and can find themselves unable to proceed because of a lack of clarity? Do you not welcome the aspects of the bill that seek to deal with that situation? Do you understand their frustration?

Andy Myles: Yes, because our members can find themselves in the same situation. One agency will tell them one thing about a European regulation or piece of legislation and another will tell them something else. As I have already said, I am totally in favour of dealing with that lack of clarity, but that does not mean that I am in favour of a sustainable economic growth duty.

Mike MacKenzie: You said earlier that you thought that a sustainable development duty would be all right, but not a sustainable growth duty, but I have to say that I am struggling to think of a practical application to illustrate the principle that you are talking about. We could argue the theory and semantics of this for weeks but, as Mr Watt said, we would be no better off and it might help us to understand what you mean if you were able to give a practical example to illustrate the point.

Andy Myles: I thought that I had already given you a very practical example. There was an unsustainable development that destroyed a freshwater pearl mussel colony in Glen Lyon and there is another that is producing sustainable economic growth. I think that that is a fairly practical example of exactly what I am talking about.

Mike MacKenzie: I am struggling with that example because, as I understand it, the freshwater mussel has been protected for a long time by legislation. The fact that people might break the law does not seem to take the case that you are trying to make forward. Unfortunately, people will on occasion break the law, but I do not see how that impacts on the bill, because its focus is to free up the regulators so that they can provide resources where it really matters, such as in protecting the freshwater mussel.

Andy Myles: I am struggling to understand whether we are dealing with the bill as a whole or with parts of the bill. In general, Environment LINK is perfectly happy with the bill and has been involved in its development and discussions on it. We are not here to oppose the bill, although you seem to be saying that we are opposed to it.

Mike MacKenzie: No—I am suggesting that you perhaps misunderstand the point and effect of the bill. I take you back to the question that I asked. The freshwater mussel does not illustrate the point at all well, as it has been protected by legislation for a long time. If the regulators are not doing or cannot do their job, that is a separate issue. I asked you to give me a specific example that illustrates the point that the application of the principle of sustainable economic growth, rather than the principle of sustainable development, leads to a problem. Give me a concrete example of where the problem lies.

Andy Myles: I am sorry, but I fail to understand. Could you explain why there is a difference between the two? I have said clearly that, from our point of view, the key word is "sustainable". I have made a distinction in saying that sustainable economic growth is a subset of sustainable development, but without separating them into two opposing things. You seem to believe in that, but I do not. I thought that the exchange with Mr Brodie in which, in effect, we agreed to disagree had said that. The same applies here—we will just have to agree to disagree. We believe that there is unsustainable growth, and the Parliament has already passed legislation saying that it is against unsustainable growth.

Mike MacKenzie: We are possibly talking at cross-purposes. I have a final question on the point, because it is important that we get the issue correct. Are you suggesting that you have no problem with sustainable economic growth?

Andy Myles: I would not say that. We have no problem with the idea of sustainable economic

growth, but that is not the same as putting a duty in the bill. The distinction that I make is that, with the duty of sustainable development, which has been put into law by the Parliament in other bills and is in the foundational duties for many regulators including SNH and SEPA, the sustainable development that is talked about is developed from the Brundtland commission, the Rio de Janeiro treaty and down the line of international law—

Mike MacKenzie: Sorry, Mr Myles, but I think that you are making the point about a legal definition. You have made that point already.

Andy Myles: No, that is not the point that I am trying to make.

Mike MacKenzie: Okay—sorry.

Andy Myles: The point is that sustainability is about ensuring that, when we consider such matters, we look at economic, social and environmental development together and that, within reasonable terms, there is a balance between them. If we start saying that one bit of sustainable development—economic development—is the most important bit because, for example, we are in the middle of an economic crisis, unfortunately, that is trying to divide up a concept that cannot be divided. It is not divisible. Sustainable development means achieving balance, and that cannot be done by imposing imbalance.

Mike MacKenzie: I am sorry, but you will have to help me out here. Can you point to the part of the bill where there is a suggestion that there will be greater emphasis on any part of the term or that the word "sustainable" is to be discarded in future?

Andy Myles: No, but by saying "sustainable economic growth" you are saying that economic growth is somehow more important. If I told you that, to balance that up within the concept of sustainable development, you had to take all the legislation for Highlands and Islands Enterprise, Scottish Enterprise and Scottish Development International and give those bodies, on top of their existing duties, a specific duty to respect environmental limits, that would be the equivalent of what you are doing in imposing a duty in respect of sustainable economic growth on the environmental agencies without reference to the duties in respect of sustainable development.

10:15

Mike MacKenzie: Thank you very much. You have more than answered the question.

The Convener: Before we leave this point, I will ask Susan Love and David Watt about it, because they have been quiet. In its written submission, the Federation of Small Businesses welcomed the duty to promote sustainable economic growth. Is that correct?

Susan Love: Yes.

The Convener: What is the IOD's position?

David Watt: We very much welcome it. I am at a bit of a loss to say why anybody would be against it. That is another issue and perhaps a separate discussion.

To go back to the point that was made about vision and focus, putting the term in the bill focuses people's attention on sustainable economic growth. It is fine to say that we are all focused on it. However, in truth, I am not convinced that local authorities are. If we look at our town centres and ask whether the town centre has been the focus over the past 25 or 30 years, the answer is that it has not. Is it the focus in the City of Edinburgh Council when it puts my parking charges up by 80 per cent every so often? That is not sustainable economic growth. It does not help the shops in John Street. There are some issues there.

The Convener: Do we need a definition of sustainable economic growth?

David Watt: Personally, I would prefer not to have one. However, I agree with Mr Myles that there is a possibility that we could end up in court if we do not have one. We could sit here and discuss the word "sustainable"—we have already started—and the difference between growth and development all the time. To be blunt, the term is self-explanatory: it is sustainable, it is economic and it is growth. It is pretty simple to me, but perhaps I am just pretty simple.

Susan Love: Reflecting on the conversations that have taken place about it, I am not convinced that the definition of sustainable economic growth is really the problem. There are various definitions floating around, but they more or less equate to the same principles. The difficulty is the parameters within which the duty will apply, regardless of the definition. Will it apply at a strategic level? Is it about regulators having the correct procedures and processes in place to demonstrate that they are complying with the principles of better regulation and, therefore, contributing to a supportive business environment, or is it about individual operational decisions that could be challenged if they are felt to go against the definition that is agreed for sustainable economic growth? I am not sure that a definition takes us much further forward. The debate is about the parameters of the duty and the extent to which the code of practice will sort those out and reach a suitable conclusion. I agree that there are concerns about that.

Marco Biagi (Edinburgh Central) (SNP): To follow up on that reference to operational decisions, one of the examples that were given about where there might be such a challenge was an instance in which a supermarket development was refused and the company was able to argue that the decision was against the principle of sustainable economic growth because the development would create jobs. Do you have any concerns that smaller businesses might not have the same ability as larger businesses, which have generally been better at fighting their corner on regulation, to challenge such decisions or take them to court?

Susan Love: I agree that, if the parameters within which the duty applies are not clarified and there is any uncertainty in law, it might be an unintended consequence that larger companies with deeper pockets will use the duty to challenge decisions. However, I come back to the point that it is about the parameters within which the duty applies. I envisage that the planning authority would have to demonstrate that the correct balance had been struck and that it had put in place procedures to consider the economic impact. I do not think that there is any suggestion that the duty means agreeing to any economic growth and any jobs at any cost.

Margaret McDougall (West Scotland) (Lab): There is provision for opt-out in the bill, but the criteria are not clear. Do the witnesses think that there is sufficient information on opt-out in the bill?

Susan Love: It is not clear in the bill, but my understanding is that that will be worked out as part of the code of practice with the group that has been set up to discuss that. In the discussions on how this will work, it has been envisaged that the opt-out would be for situations where there is a clear local circumstance that requires a different approach. Again, how that is defined will be up for discussion, but it comes back to the issues that we spoke about before; for instance, there could be an opt-out if something was particularly related to a particular place or community and a different approach was clearly required. Certainly, in the scenarios that we have envisaged, it is fairly easy to see where an opt-out would be asked for and where it might be granted.

The Convener: Do not feel that you have to contribute unless there is anything in particular that you want to say. Andy Myles?

Andy Myles: Environment LINK would not be particularly keen to see an opt-out in the code of practice.

On a more practical level, following on from the discussion and from the question, one question has to be asked. Would it not be better if clear direction could be given to the regulators in the grant in aid letters rather than by putting it into law? As I understand it, the clear political direction on the need for economic growth and the need to take into account local circumstances could quite easily be put in the text of a grant in aid letter, so there are alternatives to creating this whole challengeable structure within the law of Scotland.

Margaret McDougall: If Scottish ministers are setting the regulations and also deciding where there should be exemptions from them, is there a potential conflict of interest?

Susan Love: Coming back to how we hope the bill can be used in relation to local regulation, I think that Parliament has tended not to take a view on the kind of matters on which an opt-out would be granted, so I am not sure that there would be a conflict for Scottish ministers if they were making a judgment on an opt-out. Again, it is my hope that it would be a collaborative process.

The Convener: On a couple of technical matters, section 1 has provisions about compliance with and enforcement of regulations. Does anyone have any concerns about that?

Also, does anyone have any concerns about the code of practice on regulatory functions and procedure to be followed in issuing the code—for example, about the level of consultation—or are you all quite happy with that?

Andy Myles: On behalf of Environment LINK, I expressed concerns to the Rural Affairs, Climate Change and Environment Committee that various caps were being put on penalties and that those were questionable. I refer this committee to the detailed evidence that I gave to that committee.

The Convener: Okay, thanks. Are there any concerns about the code of practice?

Susan Love: Various aspects of it are unclear at the moment, but a process is set up to determine what it will look like. We certainly have our view on what we hope the code of practice will contain and what it will achieve, but we are happy with what is set out. However, if others feel that the consultation is not wide enough as set out in the bill, we are quite happy for that to be looked at.

Andy Myles: It is difficult to make any comment on the code of practice without seeing a draft of it, and it must be difficult to create legislation on the matter without seeing the code of practice first.

Chic Brodie: On that point, I understand what you are saying, but I think that the question is the principle. Some might say that collaboration is difficult because the code of practice, which the minister will issue, will ask regulators to comply with certain practices. Do you disagree with the principle?

Andy Myles: Of the code of practice?

Chic Brodie: Yes.

Andy Myles: No.

The Convener: We have heard a lot of evidence so far on planning fees, and particularly the proposal to, in effect, penalise poorly performing planning authorities by reducing the planning fees that they can charge. Margaret McDougall was going to ask about that, I think.

Margaret McDougall: I wanted to get the panel's views on whether the proposal to sanction underperforming planning authorities is a good idea. I know that you commented on that in your submissions, but it would be useful to have your views on the record. Also, how would you define unsatisfactory performance?

David Watt: I have been unusually quiet, so I will jump in first.

I welcome the penalising of poor performance. The number 1 problem that people come to speak to me about is still the banks, but pretty close behind that is planning—I suspect that MSPs hear about it a lot as well—and the number 1 problem with planning is delay. There is sometimes confusion about the interpretation of regulations and so on, but delay is the biggest issue. People would rather hear an early, "No,"—although they might have a problem with that—than hear, "Oh, it might be okay," as that means that they are unsure about what will happen, which can be frustrating.

Inconsistencies are frustrating for developers who seek to develop in various parts of Scotland—I mentioned the example of the 200-bedroom hotel earlier. Obviously, there are local variations—different staffing levels or opposing political views on councils—but there should not be a massive difference between areas. That is not acceptable and it is not good for the whole country. Therefore, I am very much in favour of penalising poorly performing planning authorities.

Planning is still a big issue. The previous planning bill began to change the culture, but I feel that planning departments still do not feel that they are part of the effort to develop the country through sustainable economic growth. They are not there to constrict the country; they are there to develop the country in a sensible and sustainable way, and to do so as quickly as they can, in a positive way.

Margaret McDougall: Would you define an effectively performing planning authority as one that processes applications quickly, rather than one that emphasises the quality of the process?

David Watt: Quality is quite hard to judge. I work in this city now and I cringe when I look at some of the buildings that have been approved in the past. Quality is hard to define in retrospect, when you actually look at physical buildings. I am not quite sure who would be the judge of quality. The time that is taken, however, is an absolutely key factor.

I am not suggesting that we rush through bad decisions. However, when a development is proposed, we should ask how we can do it, not whether we can do it. If we decide that we cannot go ahead with the development because it breaks the rules and regulations, damages the environment or is not going to be worth while, we should make that decision early on, or should move the development to another location that might be more suitable. That is fine. However, we should approach the proposal in a positive and timeous way, because business loses interest when there are delays.

We could sit here all day talking about delays in the process, but you do not need me to tell you about them. I am sure that you get complaints about them all the time. If you do not, I will start sending you some.

Andy Myles: I agree with David Watt that there is a problem here. If there is differential performance between planning authorities, that is not just a problem for developers; it is a problem for everyone. Some planning authorities are very good and some are less good.

In our submission, we suggested that we are not sure that the evidence suggests that imposing fines and taking money away from the poorly performing planning authorities will solve the problem. Indeed, it might add to the problem by causing corner cutting.

Environment LINK supported the single outcome agreements that the Scottish National Party Government introduced several years ago, which are negotiated regularly between the Government and each local authority. They might be a much better mechanism for improving performance than putting into law—through the bill—a provision that is more clunky and legal than it is administrative and admonitory. The process of Government and local authorities working together to improve their performance is more likely to work than is using a mechanism that might have consequences that are unforeseen or which make the problem even worse.

10:30

Gareth Williams: This is the area of the bill that we have most concern about. We warmly welcome the principle of linking fees with performance, but we are concerned that what is proposed is a bit of a blunt instrument. We would prefer it if there was a link between certain milestones being achieved through the process and overall customer satisfaction. Our concern

with reductions in planning fees is that that would reinforce a cycle of underperformance, which would have negative consequences for the areas in question.

We are also concerned about how the provision would be applied. The time that is taken to reach decisions is an extremely important aspect, but it is not the only one. It is more of an output than an outcome, and we want the right outcome in the planning system. We are conscious that how long such processes take is not simply in local authorities' hands so, on the face of it, it would be unfair to penalise local authorities for every delay.

In addition, we worry that emphasising the time that is taken might reduce the resources that are devoted to other areas, such as the pre-application process, which is very important for business and can lead to developments that are better from both perspectives. Some other areas of the planning system might be deprioritised as a result of not being covered by the proposed change.

Susan Love: I completely concur with what Gareth Williams has said.

The Convener: Mike MacKenzie has a brief supplementary.

Mike MacKenzie: I am concerned about a number of misapprehensions. From my reading of the bill, my understanding is that the framework for monitoring the performance of planning authorities is the planning performance framework that has been drawn up by Heads of Planning Scotland; it has not been drawn up by the Government. Time is one aspect of that.

I am interested to hear what Susan Love has to say, because the FSB's submission makes the very important point that small businesses are often rooted in their communities, which means that they are not in the position of bigger developers who want to build wind turbines or whatever, who can look around the whole country to see where they might do that. Because small businesses tend to be rooted in their communities, they do not have that choice.

Susan, I note that you suggest that although you might not be dead against it, you are a wee bit unsure about using the stick of a reduction in planning fees to improve a badly performing planning authority. How do you suggest that we should tackle the problem? When we look at the first national report on planning performance, it is evident that although there are some good planning authorities, there are undoubtedly some that are very bad. How could we tackle that?

Susan Love: I wish I had a great answer to the planning problems. The type of things that we would regard as being good-quality planning for small businesses are recognising small business applications, recognising the additional consultation and checking that might be required at early application stage, and recognising the specific financial constraints that a small business might have, with regard to delays between planning permission and construction. Those things tend to be about culture and processes, and we are not sure that they will be assisted by penalising the authority in which a business is based. We just do not see the connection—how reducing an authority's fees will bring about the changes that we would like to see. I do not have a magic answer to how to do it, but we are not convinced that doing that is the answer.

Mike MacKenzie: David Watt made a very good point about town centres, where regulators have not adapted sufficiently quickly to changing economic trends or circumstances. Would flexibility in the planning system allow the kind of adaptation that is required to keep pace with economic times?

The Convener: I am not sure that that is relevant to the provisions of the bill.

Mike MacKenzie: It is pertinent to the general discussion, convener.

The Convener: I am afraid that we do not have time for a general discussion.

Mike MacKenzie: Okay.

The Convener: Does anybody want to make another specific point on reducing fees and the impact that that might have on local authorities?

David Watt: Although I understand some of my colleagues' reservations, I have not seen any other impetus that has produced the goods in certain situations. This is a massive business frustration, and that should not be underestimated. Not only that: I cannot quote specific examples, but I have heard of a number of cases of certain areas in Scotland losing businesses and employment because of the slowness of planning. We cannot accept that the situation is okay—it is not okay and it must improve. I can understand the reservations about saying that cost is the only factor, but it is a factor and it is not unfair to say that some local authorities have looked at fees on that front, as an income earner. There are issues around that.

Reducing fees is probably quite a sensible step. It might not solve the whole problem, but it is a step in the right direction. We should not underestimate the crucial importance of improving the process. It is simply not good enough at the moment.

Dennis Robertson: This is probably a fairly straightforward question, and I will start with Susan Love. A proposal in the bill would allow the

issuing of a single certificate, which would let mobile food traders move from authority to authority. Do you agree with that proposal or do you have any concerns about it?

Susan Love: I completely agree with it. It is a sensible solution that has been worked out after a problem was reported to the regulatory review group. It is a sensible solution that highlights the kinds of problems that exist and how we need to tackle them.

I am aware that others have had concerns about the need to continue to enable inspections in whichever area businesses operate; that issue is completely understood and no one has ever argued against it.

Dennis Robertson: In principle, you are saying "Absolutely," and that local inspection of food hygiene is probably still an essential factor.

Susan Love: Yes, and I do not think that anyone has disagreed with that.

Dennis Robertson: Does anyone else have any comments on that? No. That is fine.

The Convener: I would like to ask Andy Myles about section 40, which is on marine licence applications. In its written submission, Scottish Environment LINK raises some concerns about marine licensing, in particular the question of the appeals process and the legal framework around that. Will you say briefly what your concern is?

Andy Myles: The concern is that we are getting another ad hoc solution, piled on top of an ad hoc solution. What we really need is a more comprehensive solution.

We believe that there will be consultation on the possibility of an environmental tribunal or court or at least changes to the system to allow for a comprehensive solution to environmental law that would give everyone more clarity.

Section 40 amends the Marine (Scotland) Act 2010. It turned out that, because Marine Scotland was not an entity separate from Government ministers, ministers would be hearing appeals against their own decisions, and because it was felt that that would cause problems, a complicated structure was put in place to deal with the situation. However, the structure has not been used; indeed, we do not know whether the solution set out in the 2010 act has been broken and therefore whether it needs to be fixed. A new system is coming in, but we think that there are better ways of dealing with the issue either through court reform or through reform of the overall structure of environmental law and environmental courts law reform.

There are also a number of serious problems that we highlighted in discussions with civil servants during the business regulatory impact assessment. For a start, we think that the Aarhus convention might be seriously damaged, particularly with regard to the time limits for appeals. Although we understand exactly what the Government is trying to do, we think that this is definitely the wrong way to go about doing it. It is also not necessary because the provisions in the 2010 act have still to be brought in and we need to find out whether or not they actually work.

The Convener: As members have no more questions, we will draw this session to a close. I thank the panel for their evidence; your views will be helpful to the committee.

Are members happy to move item 5 up the agenda and discuss it now?

Members *indicated agreement.*

10:42

Meeting continued in private.

11:04

Meeting continued in public.

The Convener: We move on to our second panel of witnesses. I welcome David Martin, who is head of policy at the Scottish Retail Consortium; Belinda Oldfield, who is regulation general manager at Scottish Water; and Paul Waterson, who is chief executive of the Scottish Licensed Trade Association. Our witnesses are happy to move straight to questions.

We would like to touch on a number of areas, including consistency in interpretation of regulations, opt-outs and how they are to be administered, the duty to promote sustainable economic growth, the code of practice, planning fees, street traders' licences and primary authority partnerships, in which I know the SRC is particularly interested.

We are a little tight for time this morning as we have a busy agenda, so I ask members to direct their questions at specific witnesses. If witnesses would like to respond to a question that has been directed at somebody else, they should catch my eye and I will bring them in as best I can.

I begin with a question on the bill's general purpose to improve regulatory consistency. Will it achieve that? Is there a fundamental need for better regulation?

Paul Waterson (Scottish Licensed Trade Association): Regulation is very difficult in our area of the world, which is licensing. Our members have more than 17,000 licenses and their businesses include hotels, pubs, nightclubs, supermarkets and other types of off-sales. About

70 per cent of those outlets are individual-owner operated and each has its own operating plan. Even since the Licensing (Scotland) Act 1976, consistency has not been something that we have found within licensing. Also, we have all the different licensing boards. Some local authorities have more than one board, and they compete.

We really need consistency—probably in three areas. There are problems with policy, which is bad enough, but we also hope that the bill will help to improve the position with the fees, paperwork and processes, and with definitions. We certainly need that. In many ways, the Licensing (Scotland) Act 2005 did not learn from the 1976 act. It gave a lot of power back to local licensing boards, which did not help.

Belinda Oldfield (Scottish Water): Scottish Water is intensely regulated economically and in relation to the quality of drinking water and the environment. Consistency of regulation and national measures have featured highly across all the Scottish Government consultations on better regulation in the past year. As the largest single organisation that is regulated by the Scottish Environment Protection Agency, we have worked closely with it to ensure that we have clarity and consistency. We will welcome any additional consistency that the bill brings.

David Martin (Scottish Retail Consortium): We welcome the bill for two main reasons. First, better regulation is incredibly important for achieving equivalence across Scotland for Scotland-wide and UK-wide retailers. If we have clarity in regulation, it enforces competition law and means that our businesses can operate more effectively and competitively.

The second reason why the bill is important is that there are problems; as Paul Waterson mentioned, there is a problem with alcohol licensing legislation. There are a range of issues around the 2005 act and the Criminal Justice and Licensing (Scotland) Act 2010.

We have also had problems with the definitions of domestic and non-domestic knives. The SRC developed guidance on that but, being guidance, it has not been adopted by all local authorities, which emphasises the need for legislation.

We have also had problems around the tobacco-display ban. Again, there has been inconsistent interpretation of how members should comply with that. There are problems with a raft of other things, including video games and sell-by dates. I could go through a list of issues that my members have had.

The Convener: Thank you. We want to consider local opt-outs and how that will work in practice.

Margaret McDougall: The bill states that there will be opportunities to opt out, but there is no definition of the criteria. Should there be?

David Martin: If the legislation is to achieve consistency across the areas in which we want that, the criteria for opt-outs need to be clear. Given that we are looking at national standards for processes, we could get into a debate about whether national standards are about binding local decisions or about creating consistency in processes and in enforcement of national legislation. To be honest, from an SRC perspective, we would like to see as few opt-outs as possible, because that will ensure greater consistency. Our proposals on primary authority feed into that approach.

Belinda Oldfield: Opt-outs are not really an option for Scottish Water. We welcome a consistent national approach allied with the ability to be more flexible when local factors need to be taken into consideration.

Paul Waterson: We would have to see the detail of proposed opt-outs to gauge how we feel about them. However, given that we seek consistency, we want as few opt-outs as possible.

Margaret McDougall: Yes, but flexibility and the opportunity to take a collaborative approach would also be useful.

Paul Waterson: There is always room for local input, but use of it will depend on what it is.

Margaret McDougall: Do you have any concerns about Scottish ministers setting the regulations and also deciding who should be exempt?

David Martin: We do not have a problem with that proposal. However, it perhaps highlights one of the disadvantages of national standards, as they have been defined, in terms of what the bill is trying to achieve. The fact that a top-down approach is being taken to driving consistency means that the Government decides on the standard and drives the process. In our submission we propose the primary authority principle, which means that the approach is very much business-led, although businesses obviously work in co-operation with the regulators and with local authorities, so a bottom-up approach would be taken.

In principle, I have no problem with ministers running the system if we have national standards, but the point highlights one of the defects of national standards being used to drive consistency.

Paul Waterson: David Martin is correct in respect of national standards, but when we are dealing with individual operators the situation

becomes a bit more difficult. We must look at the issue in more detail.

The Convener: One aspect of the bill that has generated quite a lot of heat among other witnesses is the duty on public bodies to promote sustainable economic growth, so we have questions on that.

Alison Johnstone: My question is for Belinda Oldfield. Scottish Water's submission seems to suggest that you are content with the introduction of the duty to promote sustainable economic growth as long as it is taken in its proper context. However, the Law Society of Scotland is less content and its submission points to the

"uncertainty of what this phrase means".

It also states that

"It is unsatisfactory for legislation to impose a legal duty where there is so little clarity as to its meaning, regardless of the intention to provide guidance on the issue."

Furthermore, it suggests that

"it is unclear what yet another duty on public bodies will achieve and how it is to fit with their other statutory duties. This raises questions of legal enforceability".

How will Scottish Water manage to balance duties that may from time to time be in conflict?

Belinda Oldfield: Section 38 of the bill introduces a general purpose for SEPA to carry out its statutory function of

"protecting and improving the environment"

and contributing, as far as is consistent with its functions, to improving

"health and well being"

as well as

"achieving sustainable economic growth."

I understand from previous evidence that the provision has introduced some confusion, but our view remains that no negative implications should arise from it.

We believe that the bill makes it clear that SEPA must act in a way that is consistent with its main aim, which is first and foremost to protect and improve the environment. There are regulatory instruments around the water framework directive, for example, that involve economic tests. That means that SEPA can use economic tools such as disproportionate-cost assessment to ensure that investment in the environment is proportionate.

11:15

SEPA should use those tests whenever the legislation allows, and our interpretation of the bill is that the incorporation of the additional aim of achieving sustainable economic growth gives SEPA additional permission to do that. Our view is that there is a hierarchy: first and foremost, SEPA has to protect the environment and public health; then, as a regulator, it has to implement the regulations; and then it should consider supporting the economy, as far as that is compatible with those other two. However, given the confusion, it would perhaps be helpful if guidance or additional clarity were given.

Alison Johnstone: Other witnesses have suggested that the bill is a lawyers' charter and that if we put environmental concerns above the duty to promote sustainable economic growth—clearly, we have had a lot of debate about what that means—we might leave ourselves open to legal challenge. Do you have any concerns about that?

Belinda Oldfield: I am not legally qualified to comment on that. Scottish Water sees the approach as a balancing of all the duties.

The Convener: It would be fair to ask the SRC and the SLTA whether they have a view on the measure and whether they support the principle of having a duty, whether or not the term "sustainable economic growth" is sufficiently well defined.

David Martin: We support the duty in principle and what it is trying to achieve. Most regulators that we come across do such balancing of economic considerations daily. However, pragmatism is not always guaranteed, whereas legislation is a guarantee. We see the duty as concentrating minds on that purpose and on the approach that regulators should take.

I agree that there is a degree of vagueness about how the duty will play out in practice. For example, we have five licensing objectives in the Licensing (Scotland) Act 2005 and we are considering the interplay between them and the new duty. Some people have suggested that there should be a sixth objective, which would be on economic growth. Would the duty become a de facto sixth objective?

The Convener: Is the term "sustainable economic growth" properly understood? Should it be defined in law?

David Martin: I think that it is absolutely properly understood. It fits into the narrative that the Scottish Government has had for about four years. Everybody is pretty clear on what is meant by "sustainable economic growth".

Paul Waterson: David Martin touched on the Licensing (Scotland) Act 2005, which exists to control sale and supply of alcohol. If we start to put economics and economic growth into that, we will have problems. People can gain a competitive advantage by being irresponsible and can perhaps use economic growth as an excuse. If economic

growth were a sixth objective, it would be difficult to balance it with the other five. That is our experience. Licensing board decisions that are based on the objectives have been successfully challenged. It is a difficult balancing act to get the economics right and to adhere to the objectives.

The Convener: Is the term "sustainable economic growth" well enough defined?

Paul Waterson: It has to be clear to everyone. Part of the problem is that everyone has their own interpretations of definitions. How do we define anything concisely and clearly without people having their own interpretation? [*Interruption*.]

The Convener: That noise of bottles clinking will make you feel at home.

Paul Waterson: Yes—I have heard that noise a lot. Somebody is busy.

Chic Brodie: The World Bank defines sustainable economic growth as follows:

> "To be sustainable, economic growth must be constantly nourished by the fruits of human development such as improvements in ... knowledge and skills along with opportunities for their efficient use: more and better jobs, better conditions for new businesses to grow, and greater democracy at all levels of decision making."

Part of what we are struggling with here is that there is probably too much flexibility at local level, which flies in the face of the World Bank's definition.

Have you any ideas how we might—apart from with this bill—secure consistency and allow some flexibility while taking account of the overlay of the code of practice that the minister or any regulatory body can invoke?

David Martin: In terms of how the duty sits with the desire for consistency through national standards, it is useful to consider the example of knife licensing. The committee will be aware that when that legislation came in there was ambiguity around the definition of domestic and non-domestic knives. The SRC co-operated with the Government, the Crown Office and Procurator Fiscal Service, the police and trading standards officials, and guidance was developed that provided that definition. The Cabinet Secretary for Justice recommended the guidance to local authorities and to trading standards officers to follow, in terms of the definition. We have just had a report from the regulatory reform group saying that very few organisations have followed the guidance.

Guidance is just that: it is a suggestion, or advice. That emphasises why we need such guidance to be enshrined in legislation, so that we have something more robust. Legislation is important if we want to achieve consistency. I understand that that is why the proposed duty is in the bill.

Our experience, by and large, is that regulators consider sustainable economic growth and the impact of their decisions on the economy. I say "by and large" because it does not happen all the time; just as in the knife-guidance case, they can take it or leave it. If, however, a duty is in statute, they cannot take it or leave it. A duty in legislation concentrates minds and focuses attention on something that has to be done.

Chic Brodie: Perhaps you can all answer my next question.

You mentioned the RRG. How effective do you think that group has been in terms of providing meaningful guidance that will be followed?

David Martin: I should declare that the SRC sits on the RRG, so I will have a slightly biased opinion. I think that the RRG's work is very good. We have joined it only recently, but historically—with cases it has dealt with concerning knives and alcohol, for instance—it has been pretty effective in analysing the legislative landscape and how effective legislation is. We do not have a better regulation delivery office such as exists in England and Wales; the RRG is the closest thing in Scotland. In terms of cascading down guidance, the only example that I can think of where we have required that is knife licensing. The SRC took up the mantle in that case.

Belinda Oldfield: From the perspective of Scottish Water, the RRG has been reasonably effective. We are quite intensely regulated on all fronts. We welcome consistency of approach to the principles of better regulation being cascaded down at every opportunity. We like to see developments in regulation coming through from the regulatory reform group.

Chic Brodie: In the preamble to this discussion, however, each you mentioned lack of consistency, although to varying degrees. I am not suggesting that the RRG is a talking shop, but if it was effective we might have a bit more consistency and might have to look at what we are trying to do with the bill.

David Martin: On the RRG driving consistency, the best that it can do is offer guidance and, as I discussed with the knife example, guidance does not achieve much in our experience. We need legislation or a new structure that is underpinned by statute, such as primary authority, but it is not within the RRG's gift to establish that. It does as much as it possibly can as far as it has powers.

Paul Waterson: I will go back to the original question and consider varying degrees of inconsistency.

For example, take the argument on overprovision and that on hours. There is a never-ending debate about the hours that licensed premises should be open. The best bodies to determine that are local licensing boards. Overprovision considers whether there are too many licences in an area. That power was simply handed to local licensing boards and, really, they do not know what it means, so it would be far more helpful for that to be considered nationally.

Licensing boards get into all sorts of trouble when they try to define overprovision. What does it mean? If there are two good pubs in a village and a third one is added, will there be three bad ones or three good ones? We could end up with three bad pubs and all the problems of alcohol abuse, overcompetition and prices being lowered.

It depends on the issue. Overprovision should not have been handed back under the guise of local democracy and decision making.

The Convener: The bill covers a couple of fairly technical matters. Sections 5 and 6 deal with a code of practice on regulatory functions, the procedure to be followed in issuing that code and, for example, the level of consultation on it.

Section 7 gives ministers the power to modify the list of regulators who are attached to the bill. Those that are currently excluded are Historic Scotland, Transport Scotland and Marine Scotland.

Do any of the witnesses have concerns about the code of practice or the ministerial powers to modify the list of regulators affected?

David Martin: I do not have any concerns about the code of practice. It is going in the same direction of travel as we see elsewhere in the UK and the EU, so it seems to be quite a sensible approach.

Belinda Oldfield: We feel the same as David Martin.

The Convener: We move on to discuss planning fees—in particular, the proposal that, when planning departments perform unsatisfactorily, planning fees might be reduced.

Margaret McDougall: What are the witnesses' views on the proposal to reduce fees for a planning authority that underperforms? What is underperforming and what would be a well-performing planning authority?

Belinda Oldfield: Since 2010, Scottish Water has made 291 full planning applications across the various planning authorities in Scotland. We do not see a difference in performance across the planning authorities when it comes to full planning applications. We see slight variation when we make applications for a permitted development, but nothing to which we would want to draw attention.

Therefore, we are not best placed to comment on a penalty regime in which there would be a reduction in fees for poor performance. That is not our experience of the planning authorities since 2010.

David Martin: At the time of the consultation, because retail was one of the sectors that was being singled out as a special case and was going to have the cap on fees increased dramatically—off the top of my head, I think that it was an increase of 18 or 20 times the original fee—my members who operate larger retail buildings and infrastructure felt that there had to be some assurance of quality in the system, because they were being asked to stump up so much extra for a planning application. Certainly my larger members were seeking something of a quid pro quo; they were saying, "If you are going to ask us to pay so much more for the planning process, we will need to see something in return." Unfortunately, I can offer only anecdotal evidence but, from our perspective, performance in processing times for applications and so on has been patchy.

11:30

Margaret McDougall: Obviously you are looking at this from the point of view of having to pay more fees, but would it help if the planning authority itself were penalised for underperforming?

David Martin: To be honest, we can see both sides of the argument, although I appreciate that that response might not provide the degree of clarity that you would like. I can see that withdrawing funding from an already underperforming authority might seem slightly counterintuitive, but on the other side my larger members and some property developers with whom we are in contact tell us that many of the problems are not by and large about money. The issues are structural, and money will not necessarily solve them.

Going back to our discussion about duties and sustainable economic growth, I believe that there is an economic imperative for the planning system to be swift, prompt and clear; if it is not, business and developers are penalised and the wider economy suffers. Perhaps there needs to be some incentive, but I can also appreciate the stick approach.

Margaret McDougall: Do you consider a well-performing planning authority to be one that processes applications quickly, or is the quality of the finished article more important?

David Martin: Quality is important, but quality that is provided with a degree of efficiency is ideal. We do not want planning authorities just to speed up their processes and rush through decisions, but there are examples of best practice and authorities that balance quality and speed.

Dennis Robertson: My question, which is probably directed at Paul Waterson, is perhaps not contentious; it certainly did not seem contentious when I raised it with the previous panel. With regard to mobile food trading licences, the bill proposes to issue a single certificate to enable traders to move from authority to authority instead of their having to apply to individual authorities. Do you agree with that principle, or do you have any concerns about such a move?

The Convener: Is that issue of interest to licensed premises?

Paul Waterson: If we are talking about having one application to one level, such a move is to be welcomed. We certainly do not have any problem with it.

David Martin: The principle is eminently sensible. We keep hearing about the primary authority principle at the margins, but this proposal effectively embodies that principle and reflects how the primary authority system itself works. We fully support what we think is a pretty sensible principle, which I believe operates incredibly well throughout the UK.

Dennis Robertson: Good. Thank you very much.

The Convener: On that very point, I note that the Scottish Government has indicated that it is minded to lodge an amendment at stage 2 to introduce the primary authority principle. In evidence last week, the trade unions expressed concern about such a move and suggested that it would lead to people shopping around to find the most lenient local authority, hooking on to it and ensuring that it was regarded as the primary authority with a subsequent race to the bottom in standards across the country. How do you respond to that? Do you have any evidence of how things have worked in practice south of the border?

David Martin: I completely disagree with that view, for three reasons. First of all, the primary authority system is policed and governed by the better regulation delivery office, which is part of the Department for Business, Innovation and Skills. The office has oversight of what happens and has a group that brings everyone together.

Secondly, there is no evidence that what has been suggested is happening. The majority of my large members are in a primary authority partnership; indeed, 700-plus businesses and 109 UK local authorities are involved in those partnerships and if you speak to businesses they will give you several reasons for picking a primary authority.

For example, Home Retail Group, which includes Argos, Habitat and Homebase, told me that it picked Hampshire County Council for fire safety because it is known to be the most robust and the most difficult to get assured guidance through. The company knows that if it is compliant in Hampshire it will be compliant everywhere else. It is not in the business's interest to do what has been suggested; indeed, the whole principle of the process is about showing a willingness and due diligence to comply, not about cheating the system.

Finally, an independent report on the issue that was undertaken by Rand Europe in 2010 found no evidence of abuse or of a rush to the lowest common denominator; instead, it highlighted the efficiency savings that were made as a result of the approach.

The Convener: We have received follow-up evidence from Unison, which gave evidence last week. It says that it has had feedback from some members about a potential conflict of interest. If, for example, a company decided to withdraw from an agreement with the local authority that was the primary authority, there would be a loss of funding; as a result, there might be a conflict of interest with regard to the financial inducement to the local authority. Do you have a view on that?

David Martin: No such conflict of interest should arise, because local authorities should not be funding services from the fees that are derived from the primary authority system. As the statute makes clear, primary authority should be run on a cost recovery principle, which means that authorities should charge only for the cost of that service. Moreover, the European services directive also mandates that such services be undertaken on the principle of cost recovery; indeed, the R (Hemming and Others) v Westminster City Council case has crystallised views about local authorities delivering services on a cost recovery principle. All of that is incredibly pertinent for us in Scotland, given the situation with alcohol fees.

The Convener: As members have no more questions, I thank the witnesses for their evidence.

As we are a bit ahead of the clock, I suggest that we continue in private for our discussion on agenda items 6 and 8. Are we agreed?

Members *indicated agreement.*

The Convener: Thank you very much.

11:37

Meeting continued in private.

12:01

Meeting continued in public.

Subordinate Legislation

Debt Arrangement Scheme (Scotland) Regulations 2013 [Draft]

The Convener: Item 3 is evidence taking on the draft Debt Arrangement Scheme (Scotland) Regulations 2013. I welcome Fergus Ewing, the Minister for Energy, Enterprise and Tourism, who is joined by Chris Boyland, head of strategic reform, and Claire Orr, executive director of policy and compliance, from the Accountant in Bankruptcy; and Claire Tosh, who is from the Scottish Government's legal team. Thank you for coming.

Minister, would you like to say something by way of introduction?

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): Yes, thank you, convener. Good morning.

I am pleased to be here to speak to the changes in the debt arrangement scheme regulations, which will benefit the debtor by freezing the interest that they owe on their debts up to six weeks earlier than happens under the current legislation.

The date of freezing will be brought forward from the current date—which is the date of approval of the application for a DAS—to the date of the application itself. That will be a modest but significant improvement for many debtors in Scotland. A potential benefit that that change will have is that it may ameliorate the accrual of high-interest costs that, typically, are incurred under short-term loans such as payday loans and credit card debts.

The success of DAS speaks for itself. The Association of British Credit Unions Ltd welcomes its use in preference to debt relief products. It is better that, if people can pay their debts, they do pay them. The alternative is those debts simply being written off.

The number of people who access DAS continues to grow at an unprecedented rate—it rose by a further 40 per cent in 2012-13, which means that it has increased tenfold in the past six years. The number of debt payment programmes that have been approved rose from 442 in 2007-08 to 4,632 in 2012-13. That shows that this vehicle is being used, is popular, is working and should be encouraged for those for whom it is appropriate.

The need for the change speaks for itself. DAS is an adaptable solution that is designed to respond to market changes. It is clear that we need to make some adjustments—one of which I have mentioned; there are others of a more technical nature—so that we do what we can, within the limited powers that the Scottish Parliament has in this area, to help people whose debt burden might have built up since DAS was last updated in 2011, partly as a consequence of high-interest lending.

The changes speak for themselves; others have already spoken for them. I am pleased by the broad welcome that our changes have received from organisations such as Citizens Advice Scotland, which has said that our amendments

"should have a beneficial effect"

on its bureaux and its clients.

Of course, that is not the whole story. Last week, the Scottish Government introduced its Bankruptcy and Debt Advice (Scotland) Bill, which will deliver significant reform to bankruptcy legislation in Scotland and will help to deliver our vision of a financial health service to provide rehabilitation to people who are struggling under the burden of debt.

The debt arrangement scheme is not the whole story, convener, but it is an important part and is an area in which I expect to see continued growth. For example, later this summer we are going to run a further television advertising campaign for DAS, and we expect that to increase even further the number of people who will benefit from this important and successful scheme.

The Convener: I know that members have a lot of questions. I remind them to keep their questions relevant to the draft regulations before us.

Chic Brodie: All of the changes are welcome. Clearly, they underpin what we would like to see in terms of debt arrangements.

Under the 2011 regulations, broad classes of people could become approved money advisers. In 2012, the Accountant in Bankruptcy recognised that the lack of access to an approved money adviser may play a part in the uneven uptake of DAS across local authority areas. Are you content with the level of qualification that the Accountant in Bankruptcy is pursuing in relation to finding acceptable money advisers? I am concerned by the fact that, according to the list of the top 10 money advice organisations in the Scottish Parliament information centre briefing, one particular organisation looks after more than one third of the debt payment programmes.

Fergus Ewing: As a matter of general principle, it is important that those people who face debt problems—which usually entail difficulties in relation to work, family and health, as those issues

are part of a syndrome—are made aware of the need for appropriate advice.

I would like to pay tribute to the quality of advisers that we have in the money advice world: in our citizens advice bureaux, in our local authorities and in the professional world. We are blessed with high-quality advisers.

Of course, every case is different and everybody needs to be dealt with not as a number but as a human being—one unit, one person, one family. It is important to clearly state that principle, because it is easy to forget that part of what we are doing. I think that Mr Brodie would acknowledge that.

Organisations such as StepChange, whose offices opened recently in Glasgow, provide a marvellous service for tens of thousands of people with debt problems throughout the country, as do other organisations, some of which are run on a not-for-profit basis. Of course, the difficulty is to ensure that there is a reasonable geographic spread across the country. I think that that, in part, is what Mr Brodie is referring to.

We seek to address that issue in every way that we can, working with the community to which I have referred. It has been a particular problem in the past. My officials might be able to give you a bit more information about where we stand at the moment, but I wanted to start off by setting out the principled response that we recognise that the whole system of the civilised management of debt and of finding the right and appropriate solutions—not the inappropriate solutions—rests on the reasonable availability of qualified and suitable debt advisers.

Claire Orr (Accountant in Bankruptcy): When we made the changes to the regulations in 2011, the driver was very much about widening access to DAS through the provision of a larger group of money advisers. That was when the decision was taken to introduce the provision in the fee-charging sector, both to provide greater access across the country and to give those who are in need of advice the opportunity to choose where to go for that advice and allow people that flexibility of approach.

Chic Brodie: So they have a choice.

Claire Orr: Yes.

Margaret McDougall: The draft regulations propose that it will be possible for money advisers to become approved if they work for an organisation that is working towards accreditation. However, the organisation might not have a timescale for becoming accredited, so people might use a money adviser who is not accredited.

Can that position be firmed up in the proposals so that an organisation will have to have been accredited or that there is at least a timescale for it being accredited and that, if it does not meet that timescale, it will be removed from the list?

Fergus Ewing: I have the answer, but I think that Claire Orr can probably provide more detail.

Claire Orr: We recognise that ensuring that there is good-quality advice is extremely important, but it is also important to say that there will not be automatic approval of organisations that are working towards the national standards. The AIB will have in place a robust process to look at factors such as the timescale—Margaret McDougall referred to that—in which people intend to achieve the qualification. It will be different from automatic approval; there will be a process for considering what is appropriate. We will be happy to develop clear guidance on that.

Margaret McDougall: So the issue that I raised will be addressed in the guidance.

Claire Orr: We can make the guidance clear so that people understand what criteria will be important for us in considering approval.

Margaret McDougall: I have a question on a different topic. More women seem to find themselves in debt now than was the case previously. Can anything be done to address that situation? For example, the proposed six-month payment break does not cover the full statutory maternity leave period. Could that issue be looked at?

Fergus Ewing: The current provision under DAS is that the maximum payment holiday is six months. The regulations do not change that: they introduce a degree of flexibility to make it clear that the period can be shorter than six months, but the period is not extended beyond six months.

When the measures were introduced—incidentally, they were introduced in Scotland ahead of their introduction in England—they were widely supported by debt advisers and the debt advice world, because it was felt that six months is a reasonable period for a payment holiday. The measure was primarily designed—to answer Margaret McDougall's question—for those who become redundant and perhaps need a period of up to six months to find another job and get on their feet again. That was the prime policy driver of the measures.

I believe that a witness, or someone who submitted written evidence, also referred to the length of the maternity period in relation to the payment holiday, so perhaps we can revisit that issue at another time and take evidence on it. If there was a need for further flexibility, we would need to look at the issue on a policy ground.

Ultimately, of course, the decision is based on the balance between the interests of the debtor and those of the creditor. A payment holiday is just

that and should not last for ever; it is of a temporary nature and is designed to introduce flexibility and cater for life events. On that basis, a case can be made along the lines that Margaret McDougall suggested. I would be happy to consider that issue further in due course but, as I understand it, it is not part of the current regulations.

I do not know whether Claire Orr has anything to add.

Claire Orr: I have nothing to add. What the minister said is correct.

Mike MacKenzie: The committee received written evidence from witnesses who suggested that it would be worth while freezing interest on debts at an earlier point in the process. I think that they were referring principally to the difficulty of the high rates of interest charged on payday loans. Does the minister feel that the Westminster Government ought to deal with that issue?

12:15

Fergus Ewing: Yes. I have made it clear to my counterpart in the UK Government that we believe that there is a strong case to be considered in relation to regulation of payday loans, to limit the amount of interest that can be charged and the way that it is charged. We have made that very clear in debates and in correspondence, but unfortunately we have not been able to pursue that case successfully with the UK Government.

My understanding is that although welcome steps have been taken on investigatory work of a number of companies that may bring about action—I do not want to prejudice those investigations, but the fact that they are taking place is welcomed by everybody—the fact is that, as matters stand under the UK Government's current course of action and in accordance with the timetable of action envisaged with the new financial authority that is being set up, it is unlikely that there could be any regulation for three years. I do not think that that is fully understood. Three years is an awful long time for people who have payday loans, and it is an awful long time for more serious problems to arise if the number of people who take out payday loans grows. That is my answer to the general point.

The specific point was whether we could have brought the date of freeze of interest rates further forward than the date of application. We were grateful to the Carrington Dean Group for that suggestion, which we considered carefully. However, we rejected it for a number of reasons that we believed to be solid.

Our research shows that, in 41 per cent of cases, debtors who intimate their intention to apply to DAS do not go on to enter a DPP. Carrington Dean suggested that we bring the date of freeze forward to the date of intimation of intention rather than the date of application. However, 59 per cent of debtors who intimate an intention to apply to DAS do not go on to enter a DPP. If a DPP was, in effect, set up with freezing, and a debtor then decided not to apply to DAS—or the DPP was not entered into for whatever reason—in theory the freeze would have to be reversed and interest and charges would have to be reapplied. That would be a complex process that may have a negative impact on the debtor, as it is possible that several weeks' worth of fees and charges would be reapplied at once.

Therefore, although on the face of it there is a certain logic and desirability in limiting high interest accruing under payday loans or credit card debts—to take two examples—we believe that in practice it would be liable to cause even more problems, given that only 41 per cent of debtors who intimate an intention to apply to DAS take up DPPs and, indeed, that the majority of debtors who go through the situation with a debt adviser decide not to go into a DAS.

I hope that that clarifies our thinking to the committee, because I appreciate that that is a serious and obvious option.

Alison Johnstone: The minister rightly noted the expected and occurring increase in DAS applications, which is to be welcomed because it shows that people are seeing DAS as an alternative to unmanageable debt and bankruptcy.

Citizens Advice Scotland says in its submission:

"We welcome the re-introduction of composition into the regulations. However, we are concerned about the length of time for a debtor to become eligible for this relief."

The Accountant in Bankruptcy figures suggest that people will not be eligible for that relief for 12 years, and yet the average debt payment programme seems to take six years and eight months to complete.

Why are the criteria for composition set at 12 years and 70 per cent of debt, given that the average duration of a DPP is much shorter than that? Does that not mean that very few people will benefit from it?

Fergus Ewing: That is a perfectly reasonable question. We pondered carefully the issue of when a debtor under a DPP should be entitled to seek a composition. A composition in the legal sense is the right of a debtor to seek to be relieved of a remaining proportion of a debt and reach a settlement on that basis.

When we asked in the consultation document what the fixed period should be, the majority of the respondents answered, "12 years". When we

asked in the consultation what the percentage of debt due to be paid before composition became available should be set at—in other words, if the total debt is £100, what percentage has to be paid before the debtor can enter into a composition—we gave the options of 50, 60 and 70 per cent. Of the respondents who answered the question, five stated that it should be 50 per cent, one stated that it should be 60 per cent and 30 stated that it should be 70 per cent, with 11 stating that it should be another amount. To answer the member's question, we chose 70 per cent because we listened to the views in the consultation.

Once again, the issue is a balance between the interests of debtors and those of creditors. The purpose of DAS is for debtors to pay off their debts. If we were to move to a composition after two years, for example, it would not really be a debt arrangement scheme any longer; it would be a form of quasi-debt relief. As a country, we want people who can pay their debts to pay them.

A related issue is that, under the Bankruptcy and Debt Advice (Scotland) Bill, there will be a common financial tool so that the debtor will be paying the same from income, whether the debtor enters a trust deed or bankruptcy. In other words, the approach is not inconsistent as regards how much should be paid from income. There should be a common approach—that is sensible as a matter of principle.

If, at the moment, some debtors are paying a total of X pounds and entering a trust deed, for example, but almost all of that money—90 per cent, for example—could in effect be used in a DAS to go to creditors, it is sensible that that money should go to creditors under a DAS rather than the debtor going into a trust deed and suffering the consequences, as regards financial status, that that entails.

For all of those reasons, a majority of the consultation respondents supported the 12 years and the 70 per cent. For those reasons, as well as the principle that I have tried to set out, we felt that that was the way to go, albeit it is quite a long period. It is longer than the average DAS, which is much shorter than that—six and a half years.

Alison Johnstone: Given that repaying debt can have such a devastating impact on families, is the minister willing to keep an eye on the situation and review it at some point in the future for those who show willing and pay off a large percentage of their debt?

Fergus Ewing: We always want to respond to changing circumstances in society as a whole, but in this case we have responded to the majority view that was expressed in the consultation. Plainly, some offered a different view, but we have responded to the majority view and it seems that the tenfold growth of DAS from 442 to 4,632 indicates that it is working fairly well at the moment without composition.

Many people would say that 12 years is a long time to be paying off a debt under DAS. Perhaps Claire Orr or Chris Boyland could advise the committee—or, if we do not have the statistics at hand, we could write to the committee—as to the number of debt arrangement schemes that exceed 12 years—in other words, the number that currently might fall into the category in which composition becomes possible. We could write to the committee about that, but DAS is not designed to form a backdoor method of debt relief. It is a debt payment management tool.

The Convener: In its evidence, ABCUL suggested that lenders who charge interest up front have an unfair advantage, because they will not be affected by the requirement to freeze interest when a debtor enters a debt payment programme. Has the Scottish Government considered that issue, and are there any plans to take action to address it?

Fergus Ewing: The proposal is interesting and indeed is similar to policy proposals that we have already considered. Having looked into these matters in a legal sense—Claire Tosh is present this afternoon in her capacity as a solicitor for the Government—we felt that such measures reached beyond the effect of debt enforcement and a scheme such as DAS, and interfered in detail with how lenders charge for and levy interest on loans.

I also regret to say that, because of the question of competence and vires, it is not clear whether the Parliament could give effect to such a proposal; the issue might be partly reserved. Perhaps Claire Tosh can tell me whether that is the case.

Claire Tosh (Scottish Government): That is correct.

Fergus Ewing: The proposal is interesting and merits consideration but it might be outwith the Scottish Parliament's current powers.

The Convener: Is there a concern about the law of unintended consequences? For example, if we—rightly—legislate or pass regulations to protect debtors, creditors will find it harder to recover their money and will therefore be much less likely to lend. As a result, debtors will be driven into the hands of the loan sharks.

Fergus Ewing: I am not aware of any evidence that what you have suggested has happened or that creditors' lending practices have changed as a result of DAS. The figures speak for themselves. Were there any evidence, I would be surprised if it did not show that creditors saw DAS as a good

thing; after all, it means that they get paid. They receive at least 90 per cent of the total sum due, albeit there is the element of freezing of interest on charges.

I appreciate that in considering this whole area one must be aware of the potential consequences of what one does. I would certainly ascribe to that sensible approach and we bear it in mind when considering all kinds of debt reform.

The Convener: As members have no other questions, we move to the formal debate on motion S4M-06896. I ask the minister to speak to and move the motion.

Fergus Ewing: I was pleased to have the opportunity to make an opening statement in which I briefly set out my reasons for commending these regulations to the committee and believing that they should be approved. I will therefore stand on my earlier remarks.

I move,

That the Economy, Energy and Tourism Committee recommends that the Debt Arrangement Scheme (Scotland) Regulations 2013 [draft] be approved.

Motion agreed to.

The Convener: I thank the minister and his officials for their attendance. We now move into private session.

12:28

Meeting continued in private until 12:32.

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