



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

ECONOMY, ENERGY AND TOURISM COMMITTEE

Wednesday 29 May 2013

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ECONOMY, ENERGY AND TOURISM COMMITTEE

17th 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:

Roger Burton (Scottish Natural Heritage)

Garry Clark (Regulatory Review Group)

Riddell Graham (VisitScotland)

Professor Russel Griggs (Regulatory Review Group)

Martin Tyson (Office of the Scottish Charity Regulator)

CLERK TO THE COMMITTEE

Jane Williams

LOCATION

Committee Room 4

Scottish Parliament

Economy, Energy and Tourism Committee

Wednesday 29 May 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 17th meeting in 2013 of the Economy, Energy and Tourism Committee. I remind everyone who is present to turn off or, at least, to turn to silent all mobile phones and other electronic devices.

We have received no apologies.

Item 1 on the agenda is to ask members whether they are content that we take in private item 3. Is that agreed?

Members *indicated agreement.*

Regulatory Reform (Scotland) Bill: Stage 1

09:31

The Convener: Item 2 is commencement of our scrutiny of the Regulatory Reform (Scotland) Bill. I welcome Professor Russel Griggs and Garry Clark, who are both members of the regulatory review group that the Scottish Government set up in 2004.

We have received a written submission from Professor Griggs. He does not want to add anything to it at this stage, so we move straight to questions. I remind members to keep their questions short and to the point. If we could also have responses that are as short and to the point as possible, that will help us to get through the broad range of issues that we want to cover in the time that is available.

I will begin by asking about the inconsistent application of regulation across Scotland, which is at the heart of what the bill is trying to do. Can you give examples of difficulties that have been experienced as a result of inconsistent application?

Professor Russel Griggs (Regulatory Review Group): Yes. I will start by referring to our most recent report, which we have just published on our website: our review of the knife dealers licensing scheme. Where the Government has put in place legislation that gives councils a power, as opposed to a duty, to take action, it is left to the councils to figure out how to do that, which means—in the case of the knife dealers licensing legislation—that some councils license entities that others would not license. That is particularly the case for councils that cover rural areas, where retailers sell knives to people who go out on the hills to do all sorts of things. Different views are taken of the issue.

We also experienced such a situation three or four years ago with alcohol licensing. For companies such as Tesco, the form that has to be filled in to apply for a licence in Aberdeen can be completely different from the one that has to be filled in in Dumfries and Galloway.

The position that we have reached is to ask not about the democratic process and the thing that councils should do, which is make decisions, but about why different processes are needed in different parts of Scotland when it comes to filling in all the forms that have to be filled in.

I apologise, because I am already giving a long answer; let me try to be brief. The Convention of Scottish Local Authorities has a thing called the regulatory forum, on which we sit. About three

years ago, it formed a number of little theme groups, one of which was on consistency. I chaired that group. The unanimous view from the practitioners out in the councils—the people who do licensing, planning, trading standards and environmental health—is that a move towards more consistent processes would benefit them because it would enable them to exchange information much more easily, to look at best practice and to talk to clients about what they have done.

Inconsistency is a disbenefit not just to business, but to practitioners in councils, who must deliver. There have been myriad examples in planning and licensing in relation to the fees that are charged across Scotland. We have had representation over the years from street traders and from the Scottish Showmen's Guild about variations in licences. We understand why the variations exist, but there is a general inconsistency around how legislation is implemented.

When we all agree that it is sensible—that is how we must preface this—we should have a national standard for how a process is done.

Garry Clark (Regulatory Review Group): Russel Griggs has summed the situation up. People have come before us at the RRG and have explained how they operate in different areas and how different processes and fees apply. An example that was brought to my attention outside the RRG is that it is cheaper to license a zoo through South Ayrshire Council than it is to license a kennel.

The Convener: And there are lots of zoos in South Ayrshire, obviously.

Garry Clark: Clearly.

Chic Brodie (South Scotland) (SNP): Don't go there, convener.

Garry Clark: It is 25 times more expensive to license a kennel in South Ayrshire than it is to do it in Glasgow. There are some pretty stark differences across the country, as far as application of regulation is concerned. The reasoning is that it is supposed to represent the cost of the process in the different areas. However, if we look at some of the stark differences between parts of the country, we begin to question how the process is being applied.

The Convener: We want to explore those matters in more detail. Members have other questions on the conflict between national standards and local decision making. In your view, setting of national standards would not impede local decision making in any way, would it?

Professor Griggs: Indeed, it would not. You could speak to practitioners—licensing clerks, for

example—about the opportunity to have one set of forms throughout Scotland. We have managed to get it down to 13 forms. People have to apply for alcohol licences throughout Scotland. A licensing committee's being able to look at a form from elsewhere that is the same as theirs would help that committee to make a better democratic decision. It could consider what was done elsewhere, and it could see what happened at the other committee. It is a matter of process; it is not about trying to influence a committee's decision. It is just a matter of suggesting that we could all fill in the same forms to create consistency in what we do.

The Convener: That is interesting. Some committee members met informally with various stakeholders last week. Another issue that came up was taxi licensing. There are very different standards in different local authorities for licensing taxis and private hire cars, which has caused a major problem for companies that operate across a range of local authorities. That might be caught by the bill.

Professor Griggs: It will be. We always recall the very first example that we came across, which was the window cleaner's licence. Someone who wants to be a window cleaner can get a licence in one local authority, but would have to get 31 other licences to do the same job in the rest of Scotland. That strikes me as odd. If we accept that a window cleaner can clean windows in South Lanarkshire, why can they not clean windows everywhere else? Some sort of regularisation of the process would help us all, and could cut out an awful lot of resource that is wasted through inconsistency.

The Convener: That is very interesting—I did not even know that a window cleaner had to have a licence. I will need to check with my window cleaner, next time he comes round, whether he has a licence. I am rather concerned that he might not have one.

Professor Griggs: He does not need a licence to do your windows; he does need a licence to clean the windows of a public building.

The Convener: Ah. Thank you.

Dennis Robertson (Aberdeenshire West) (SNP): I will stay with consistency, which is one of your five principles. I find it slightly strange that, although we are looking to achieve consistency through a national standard, you are at the same time advocating local autonomy. Could you explain that a wee bit more for me?

Professor Griggs: There are differences. In doing anything in business—never mind in the public sector—two things must be taken into account: the process of getting things to the point at which you can make a decision, and the local conditions that can come into play. I cite as an

example an alcohol licensing situation on Paisley Road in Glasgow. The Tesco at one end of the road applied for a licence and got it, but the Tesco at the other end applied and did not. The influence of the democratic process was quite correct, because the licensing committee's judgment was that although the process was the same, the second Tesco's alcohol licence would have added no value to the retail economy in that part of Paisley Road. If the same issue were to be considered in another part of Scotland, the view would be totally different; you have to give local authorities the benefit of factoring local conditions into their decisions. I am certainly quite clear about the difference between process and local decision making.

In most cases—in planning, for example—people can appeal decisions if they so wish, but the fact is that local circumstances vary. To go back to the Scottish Showmen's Guild example that Garry Clark and I mentioned, I should say that the reasons for some of the various licensing charges across Scotland are quite interesting. In order to get a specific event going, some councils deem it necessary for the person to turn up with the rides and so on and so charge a very minimal fee. Their view is that it is very much part of tourism and other economic development that they want in their areas. However, in parts of Scotland where such things are not as important or as critical, councils might make different decisions on what they charge. I do not have a problem with that because people will always make the decision that is pertinent to their local area. Of course, that does not mean that the process should be different.

Dennis Robertson: I spoke last week to environmental health officers, who expressed concern about the potential for national standards to be diluted, and suggested that cities such as Glasgow, Edinburgh and Aberdeen have very high standards in, for example, licensing street traders such as fast-food mobiles and so on. Do you share that concern?

Professor Griggs: No. The point is that practitioners such as our environmental health officers should be used properly to help us to put national standards together. A good example of that is the national building standards, which were put together by practitioners. Everyone agrees that the measure is very good and that there has been no dilution in expertise or standards. As with everything, if you do these things properly, there should be no dilution of standards.

Garry Clark: A more international example is the current debate in Europe about health and safety standards in the oil and gas industry. There was a very real prospect that Europe would come up with its own standards and apply them to the

North Sea, which is its leading oil and gas production area. Instead, Europe has—sensibly, in my view—looked at developments in health and safety in the UK and the North Sea oil and gas area that the industry, unions and so on have been piecing together over recent years, and is now considering whether to apply those standards in the rest of Europe instead of coming up with new standards of its own. Work with the industry to arrive at a set of standards that have a more general application would be a welcome move and is certainly something that we would advocate.

Professor Griggs: I suppose that my retort to the environmental standards people—with whom, I should point out, we work closely and have a good relationship—is that national standards would set boundaries on the resources that each local authority would have to put them in place. For some time now, we have been concerned about whether Scotland has enough environmental health and trading standards officers; we strongly believe that those officers should enable business rather than enforce things, and that there is a real difference between the two. A good set of national standards would mean that each local authority—and people at national level—would have to think about the type and level of resource that would be needed.

09:45

Dennis Robertson: Are you therefore content that the bill meets your principle of consistency?

Professor Griggs: Yes—if we all go through the process and decide that standards should be set nationally before the bill is passed. After all, it should be done at the beginning rather than at the end.

Dennis Robertson: Should there be a sixth principle of better regulation, which would be that it must be effective?

Professor Griggs: That is an interesting question: let me ponder it.

I suppose that it all depends on what is meant by effective regulation, which brings us back to our point about enabling and enforcing. Either you can be a policeman and simply tell a company when it has got something wrong, or you can help it not to get it wrong in the first place. In that case, regulation becomes effective only if there is an effective regulator who is an enforcer when he needs to be but who is first and foremost an enabler who works with businesses to change their mindset and to ensure that they understand the rationale behind all this. On Garry Clark's health and safety example, one of the challenges over the past two decades has been that the system has been based on ensuring that businesses comply instead of on ensuring that

they understand the benefits that compliance can bring.

Dennis Robertson: Thank you very much.

The Convener: I bring in Chic Brodie—who probably wants to ask about opening a zoo in South Ayrshire.

Chic Brodie: At least you did not say that South Ayrshire is a zoo, convener.

The regulatory review group has existed since 2004; it is now 2013 and we are looking at this bill. Can you cite a major example of good regulation that you have effected as a result of which the Government has enjoyed substantial economic benefit?

Professor Griggs: There are a number of examples; you need only compare where the Scottish Environment Protection Agency is now with where it was in 2004, when the RRG was established.

The RRG advises the Government on how it might change the things that it does and take a different approach. Initially, our main role was to ensure that, as I have mentioned, regulators were enablers and not enforcers, so we have changed things in that respect. In fact, SEPA, which is covered in the bill, is giving evidence elsewhere in Parliament about how it has changed. I think that it stands as a good example of where we have had an influence.

We have also influenced the way in which Government works and how parties work together. Ages ago, we recommended this wonderful thing called multilateral consultation, which means getting everyone in a room to discuss a subject. That has become mandatory in certain areas of planning including offshore, wind and wave and other large-scale projects.

The business regulatory impact assessment, which has to be carried out for every bill that affects business and requires civil servants to talk to the businesses that will be affected, has also had a real economic impact, as have the changes that were made after the review of the alcohol licensing legislation. Similarly, with regard to our friends in SEPA, if you operate as an enabler rather than as a policeman, you are much more likely to find a good solution for the company in question. After all, if you are acting as a policeman, it usually means that the company has done something wrong.

We have, therefore, influenced how people work. We have had other specific influences. For example, we proposed what became a section—I think that it is section 17—of the Public Services Reform (Scotland) Act 2010. A challenge for Government was that if a piece of legislation was seen to be silly and needed to be changed, it

could take an awful long time to find a hook to hang it back on. Section 17 allows that if a section of an act or a rule offends one of the five principles of better regulation, a minister can change it through a Scottish statutory instrument.

All those little bits added together mean that Scotland now is seen internationally as being ahead of the game on better regulation. Because of that, about four weeks ago, Joe Brown, who is the lead civil servant on RRG, and I were asked to present to the Regulatory Policy Committee in London on how we deal with such issues in Scotland, and we will go to Europe in July to present on the same thing. That is because we have concentrated on better regulation, rather than on more or less regulation. We have concentrated on the process of ensuring that what we deliver in Scotland works for Government and for business.

Chic Brodie: We are perhaps looking at the bill in isolation, and we do not know what may or may not happen in September 2014.

How much attention is paid to competition law, whether European law or law that is gold plated by the UK Government? You talked about regulation by SEPA, and so on. When you are reviewing regulation, how much attention to do you pay to competition law?

Garry Clark: Competition law is certainly something that the RRG has discussed fairly regularly. We fed into the various committees or commissions that looked into the gold-plating of European legislation at both Scottish and UK levels over the past few years.

We foresee a stronger role if Scotland were to achieve some sort of constitutional change over the next few years that would allow it greater power and, therefore, greater responsibility.

Chic Brodie: That is interesting. Two weeks ago, I attended a David Hume Institute lecture about competition in a new Scotland. There are tangential points at which regulation and regulatory reform will impact on that, which is significant.

I am not sure which of the five principles cover economic growth, which—in my view—has to be a substantive element of whatever we do. I am very concerned that we are talking about national standards that do not reflect the view of consultation respondents, 70 per cent of whom were in favour of setting more local standards in exceptional circumstances—although I do not know what they are. I fail to understand how you measure, intend to measure or have measured regulatory reform's impact on creating substantial economic growth.

Professor Griggs: I will try to answer. In our last annual report, which is now on our website, we have a big section on how we believe regulation is now a key part of international competitiveness. I will give you some examples. For the past 18 months, we have been chairing in Grangemouth a forum that works with all the chemical companies there, the local council, SEPA, Transport Scotland and everybody else to look at how we can ensure that the cluster of chemical companies in Grangemouth remains competitive in the international environment.

In many ways that is down to regulation. We have been discussing things such as flooding and how the flooding regulations will impact on Grangemouth. At the beginning of the exercise, the companies were very worried that they would have to be involved heavily. The gentlemen who run Ineos in Grangemouth want to put a proposal to its owners in China for a £1 billion investment. The first thing the investors will want to know is that all of it will be spent on investing in the company and not on building flood defences.

We have also looked at how the industrial emissions directive, which brings together a number of European directives into one, will impact on Grangemouth. At the end of the exercise, we now have a much more competitive way of dealing with regulation areas for that cluster of chemical companies, which allows them to have much more certainty about how they compete and how they can bid for money, because most of them are internationally owned.

In many ways, that is how businesses see competition. We have been working on a regulatory framework for carbon capture and storage since the Longannet proposal, so Scotland is now the only place in the world that has in place a regulatory framework that means that if a company wants to set up a carbon capture and storage plant in Scotland, we can tell it exactly how long it will take and who will do the regulation. You have to go through 63 different regulations to set up a carbon capture and storage plant, but we know how to do it and we will work in parallel with all the regulators, so we are internationally competitive. Indeed, an institute for carbon capture and storage held its conference in Scotland last week, because we are seen as being competitive.

We must understand that regulation is an integral part of international competition; it is almost as important as money. We have recognised that in regulation of a range of industries in Scotland, but that does not mean that we are making it easier.

For example, in the meat processing industry it is more expensive to run a business in Scotland than it is anywhere else in the UK, but that is okay because it is driven by the farming community's

desire to retain the premium on Scottish meat. That desire came out of the foot-and-mouth crisis back in 2001, when the farming community said that it never wanted something like that to happen again. We therefore have higher standards for our abattoirs and rendering plants in Scotland in order to protect our farmers and the meat that comes out of such plants. We probably need to have higher standards in Scotland to maintain our international competitiveness in that marketplace.

Chic Brodie: That certainly did not help us with Hall's of Broxburn.

Professor Griggs: It probably did not.

The Convener: Before I bring in Rhoda Grant, I will follow up on Chic Brodie's first question. You have made a lot of recommendations to the Government since 2004. How many of your recommendations have been rejected?

Professor Griggs: Not many of our recommendations have been rejected. I can think of one or two that are still in process, if I can put it that way, but the Government has generally done what we have recommended.

In the forthcoming planning legislation, which I am sure will come before Parliament at some point over the next year, our drive towards getting bilateral communication out and multilateral communication in is at the core of where Derek Mackay and his team want to go. They want to make it understood that the best way to reach a proper decision is to get everybody who would be involved in the decision round the table at once, rather than to have discussions with each, one at a time. That approach will save a huge amount of resource.

A regulatory change that we made about five years ago took three years off the planning time and meant that the resources that were used by companies, councils and everybody else were reduced significantly. Such reductions have an economic impact.

Rhoda Grant (Highlands and Islands) (Lab): I come back to the issue of local versus national. You gave the example of the Scottish Showmen's Guild. Some local authorities might charge very little for a licence because they are trying to encourage showmen in as part of an event. In other, more lucrative areas, where showmen might want to set up because they would make a lot of money, the charge might be higher.

It could be that the same principle applies to the situation with kennels and the like. South Ayrshire Council might think that the area is overprovided with kennels, so it is more expensive to get a kennel licence than it is to get a licence for a zoo. Who decides what is local and what is prescribed as charging through the bill?

Professor Griggs: In some areas I would like to leave it to councils to decide on the charge. For example, in the north-east the fees for licences for members of the Scottish Showmen's Guild are fairly low, but that is because a lot of the fairs and events that showmen go to are an intrinsic part of the community and the council wants to keep them.

I would like to see more transparency about how the fees are put together. It is very difficult across Scotland to figure out how the fees are worked out. For example, I think that showmen are charged £25 to have a licence for the Kirkcaldy fair, which as you know goes on for a week, whereas they would be charged £2,000 for a licence for a fair in Edinburgh. It is up to the local council to decide on the amount of money, but it is not clear how it reaches that decision—and that is what we get most complaints about.

Although the difference in charging is a factor, people's primary concern is that they do not know how the council works out the charge in the first place. There should be more transparency nationally so that we all can agree on a way of showing people how we reach such decisions. Garry Clark was correct to say that the process is supposed to be a neutral cost, but one of the challenges is that local authorities all work out their cost bases differently.

10:00

I have no issue with local councils deciding, for economic reasons, that they want to charge people one amount while another council charges something else—that is a decision for the councils to make—but the way in which they do that underpins a lot of the complaints that we get. There is a lack of understanding about how local councils make those decisions.

Garry Clark: That is right. Some of the bodies that have appeared before us have gone to local authorities to ask why something is 10, 20 or 100 times more expensive in one local authority area than in another, when it is supposed to be clear what it costs a local authority to process a licence application.

In the circumstances described, where a local authority may actively be seeking to incentivise a certain type of business to come to its area, it is understandable that the amount would differ. If the Scottish Showmen's Guild were aware that certain local authorities are keen to get the shows into their areas and that there is a preferential rate, the difference would be understandable. As has been said, the difficulty arises when people are given the same message by every local authority in Scotland while the fee structure remains so varied.

Rhoda Grant: The bill as it stands allows the Scottish ministers to prescribe the fees level. Who decides what can be done with a local decision to encourage a fair? Who decides whether there needs to be an alcohol licence or a dog licence, for instance? Who decides which decisions remain local and are made for local reasons, and who decides what is part of the better regulation agenda and therefore subject to national symmetry?

Professor Griggs: My understanding is that the minister and Councillor Stephen Hagan have already put in place a memorandum of understanding between COSLA and the Scottish Government to work through those processes before a bill ever gets to Parliament. When we all start thinking about something and discussing whether more prescription is required—

Rhoda Grant: There will not be a bill before Parliament, but a statutory instrument, which is not open to the same scrutiny.

Professor Griggs: It could be anything. I have not seen all the words, but I understand that there is now a memorandum of understanding between COSLA and the Scottish Government about how the procedure will operate and not reach the stage that you are talking about. They will have decided and agreed all that stuff before the matter is ever dealt with, whether through a statutory instrument, guidance or whatever.

There will be much more discussion. COSLA now sits on the RRG and is an active part of our membership. We discuss all those issues with COSLA, and both of us are comfortable with our own positions. Neither of us will go out and do anything that we feel has not been part of good discussion and consultation. As I said, I have not seen it, but I gather that the minister and Councillor Hagan now have a memorandum of understanding between them and a protocol for how the process will work.

Rhoda Grant: I turn to forms, which are currently designed locally. The bill gives powers to prescribe what forms are completed. Could a one-page form turn into a 16-page form because different local authorities need different information to reflect local circumstances, or do you ignore local circumstances and prescribe the information on which they can base their decisions?

Professor Griggs: Our experience covers all sorts of forms, although we have done most work on the alcohol licensing form. About 95 per cent of forms contain information that everybody needs, and the differences tend to be at the margins. We have now agreed a set of 13 individual forms for alcohol licences, which cover the whole raft of different things someone has to do when they are in charge of licensing.

To answer your question, I do not think that a one-page form will become a 16-page form. If we can get the practitioners who design the forms into a room together, they will come up with something. I cannot think of a form for which less than 90 per cent of it was not a common standard. There are things at the margins, but they tend to be at the margins.

Rhoda Grant: Yes, but if each local council had 10 per cent of the form that was unique to them, that could make for quite a big form—it could double its size.

Professor Griggs: It could do, but I have not seen anything that suggests that that would happen.

Rhoda Grant: Okay. Given what you have said about your work on changing regulations and making them more streamlined, do we need legislation on the issue? Should work not be done on it along the lines of how you worked previously: speaking to people, negotiating and coming up with best practice? Do we need a bill to enforce that?

Professor Griggs: I think that the answer to your question is yes. A local council official was asked the same question recently and he said that we can all agree that something is a good thing to do but that knowing that we have to do it makes it certain that we will do it.

One of the issues that the official talked about, which is covered in the bill, is the desire to make sustainable economic development a duty for people to consider. His comment was interesting, because he said that we report on things that we have a duty to report on but we do not necessarily discuss all the other things that might be of interest to us or report on them. He said that having it in writing that we have to report on certain things would make it much easier for him as an official to do so.

We do not get consistency if we do not have something in legislation. I am not sure that the bill is a harsh or, indeed, difficult piece of legislation. All it says is that, from time to time, when all of us think that we need to introduce national processes and standards on a certain issue, we will do so. The legislation does not give any Government the blanket power to do that all the time, because there has to be consultation. As I said a minute ago, the minister and COSLA now have in place a way of proceeding.

The legislation allows us to say, "Here is a way of doing things." That legislative power will allow local authority practitioners to get involved in the preparation of bills a lot earlier than they do. One criticism that we have heard for a long time is that, for some bills, the officials who will implement them become involved only at the end rather than

at the beginning. If we put in a national standard, it will come to the Parliament to be approved, and those who are to deliver it—the practitioners—will have to be involved at an early stage.

Therefore, yes, I think that we sometimes need legislation to get us to a point where something becomes part of the way in which we do things, which is usually governed by rules.

Rhoda Grant: What about the public who must live by that regulation? For example, we have listened to suggestions that having a pan-local authority taxi licensing regime would create difficulties for people who operate in rural areas who would have to gold plate everything to the urban standard. Is it not the case that everything will be gold plated to the highest standard and will not reflect local concerns and circumstances?

Professor Griggs: Again, I have not seen that. We have talked to practitioners who work in a host of areas over Scotland, and when they sit round a table and try to do something nationally they do not reach the point of saying "Well, we'll do everything for the central belt. We'll not do things for rural areas." They tend to come up with what I would call a very sensible way of doing things that covers everybody. I have not seen any reflections in actuality that would substantiate what you describe.

Margaret McDougall (West Scotland) (Lab): Good morning, gentlemen. If the minister both sets the national standards and deals with any exceptions or appeals, do you have a view on the potential for conflict?

Professor Griggs: I suppose that that comes back to the difference between process and decision making.

The national standard will be only about the process. For example, in the case of a planning application, the standard will apply only to the process of taking the application to the local planning committee. If the local planning committee makes a decision that people want to appeal, they will appeal the decision rather than the process. There will be no conflict that I can think of, although Garry Clark might want to comment on the issue.

Different bodies of people can make a different judgment on the information that comes to them, depending on the circumstances in which they do that. All that we are saying is that the standard should detail the process that brings the information to them. The standard is not about trying to force people to make a particular decision.

Garry Clark: Thinking back to my previous life as a solicitor, I recall that one of my tasks was to deal with licensing applications for a supermarket

in various parts of Scotland. From our point of view, matters would have been a lot easier if there had been one set of forms. Notwithstanding that, one can anticipate that issues will be raised about a planning application, which will be either accepted or rejected at the local licensing committee. Dealing with those issues should be a matter of fact, and the bill will just make the process of reaching that point a lot easier. Any challenges that are made will probably be on the basis of the decision that is made rather than on the application of the process.

The Convener: Another issue of interest in the bill is the economic duty and how that will interrelate with the other duties on the various regulators. I think that Alison Johnstone wants to ask about that.

Alison Johnstone (Lothian) (Green): I notice that the RRG's various submissions on the bill do not touch on the economic duty. Were you surprised to see that in the bill? Was that something that the RRG discussed previously?

Professor Griggs: We discussed that issue many times, but we discussed many duties and not just the economic one.

I guess that my view is the one that I expressed following what I heard from the local authority official. The economic duty is about ensuring that people take economic development seriously. I must say that I was surprised when I heard this, but the local authority official said that, because there is a duty to consider health issues for an alcohol licence, local authorities will report on that when they make a decision. However, because there is no duty to consider the economic impact, that might be discussed only sometimes.

For me, the great thing is to have the right balance. The economic duty is not about saying—I say this quite firmly—that the economic impact should take preference over everything else in some kind of hierarchy; rather, the duty is about demonstrating visibly that the economic impact has been considered. I think that that is why the Government wants to include such a duty.

We have looked at the issue in discussions with regulators over the years about the balance between the economic impact and the effect on the environment, health and safety and so on. Given that the current Government has sustainable economic development at the heart of its policy, I guess that the economic duty shows that it wishes to see the effect on economic growth considered formally in any decision that is made on licensing, planning and all sorts of others things. I have no issues with the proposal, and I have even fewer issues now that I have heard from people in local authorities about how the duty will make them have to consider it.

I go back to my comparison—this was a true case—of the decisions on two licensing applications for Tesco stores on Paisley Road. The gentleman from Tesco said that it would have been a lot simpler to understand the decision if the written judgment included details on why the decision had been made on economic grounds. Because the decision mentioned only the health grounds, which were the only duty that was required to be considered, Tesco could not understand why different decisions had been made. If the economic argument had been included, the difference would have been understandable. I think that the duty will make the issue more visible.

Alison Johnstone: In last year's annual report, the RRG made it very clear that it thought that regulators were making great progress in working towards an enabling culture. Given your answer to Rhoda Grant about legislation making it certain that such issues will be covered, I assume that you feel that the same will happen in this case.

On a fact-finding meeting last week, Dennis Robertson and I heard from someone who was involved in environmental and trading standards. He did not see the point in having the economic duty in the bill and felt that it would be better deleted, given that there are already concordats in place that cover economic impact. He pointed out that no environmental health officer would want to see a restaurant, for example, closed down for more than a day; the officials understand that people's livelihoods and businesses are involved. However, you seem to want to see that issue covered in legislation.

10:15

Professor Griggs: Yes—but it would be extremely unfair of me to say that that view is held by everyone at the RRG as it is not. We have people who feel exactly the same as that environmental health officer.

As chair, I was moved—although not all the members were—to say that including a duty will bring greater visibility. However, I agree that the issue of economic benefit already exists and has been part of the argument on many changes in regulation over the last 20 or 30 years. Given that it is felt that we want to have the balance visible, if I can put it that way, it needs to be put through in legislation.

The same principle applies as to matters in the bill that relate to SEPA, such as the way that it wants to alter its fee structure. Unless SEPA has the legislative power to do that, it will not be able to carry out some of the enabling that it wants to achieve. If we are going to allow good people to pay less and require bad people to pay more, we

need to have visibility and the structures in place to do that. In the world of government and legislation, the only way that we can ensure that things are seen to be done is to legislate.

Alison Johnstone: Obviously, there are those who believe that a conflict exists. That includes organisations such as Scottish Natural Heritage, and we have received a submission from Professor Colin Reid. There are also debates about what sustainable economic growth means. In your earlier response you spoke about economic development. Do you think that there are any risks, given that there are different views about what sustainable economic growth actually means?

Professor Griggs: I will start and then pass the subject to Garry Clark.

The answer to that question is no—not as long as we are all sensible human beings.

The Convener: If only that were possible.

Professor Griggs: One thing we raised in the long discussion about the balance between the economy and the environment is how we apply common sense. A simple answer is that, as long as we continue to apply common sense, a conflict should not exist.

Garry Clark: There is a need to achieve some degree of cultural change in order to make better regulation a reality throughout Scotland.

As a group we have often held up SEPA as an example of positive change in that respect. That change has been a result of sensible practices, strong leadership and a change in focus away from being the policeman, as Russel Griggs has suggested, and towards working with businesses to achieve compliance and better results. That is one reason why we need a legislative approach. SEPA is a big organisation; it requires a lot to get that particular ship to change tack.

Let us take the example of the planning system. Before the Planning etc (Scotland) Act 2006 came into force, there was a lot of talk about changing the culture in planning. It required legislation to get that change in motion. We are still working on the system and, obviously, aspects of this bill continue that path towards changing planning culture. Some sort of legislative imperative for a cultural change, as well as a legislative focus on the economy, is central to what we are doing.

Alison Johnstone: Do you feel that in cases in which a contentious decision has to be made—for example, the decision on the Menie estate, as a result of which a site of special scientific interest has become a golf course—politicians are, by relying on bodies such as SNH to weigh up the pros and cons of environmental sustainability against economic benefits and to take a view

instead of doing that work themselves, almost saying, “I’d rather someone else made the decision”?

Professor Griggs: I am not sure what is wrong with asking your experts to make a decision.

Alison Johnstone: So you do not feel that there is any conflict between making such decisions and, say, protecting the environment.

Professor Griggs: No. Over the years, we have discussed some very sensitive issues with Government bodies such as SNH, SEPA, and the Royal Society for the Protection of Birds, as well as with non-governmental organisations. We have had very sensible discussions about that balance and sometimes it comes down on the environmental side and sometimes it comes down on the economic side. Let me put it this way: I have not seen that conflict—or rather I have not seen it not be resolved in a sensible way that satisfied people on both sides of the fence.

The Convener: Dennis Robertson has a supplementary question.

Dennis Robertson: It is just a point of clarification, convener.

If I understand you correctly, Professor Griggs, you are advocating legislation. That is absolutely fine, but you are also suggesting that it be open to interpretation.

Professor Griggs: No, I do not think that I said that. Did I?

Dennis Robertson: I have to say that I am bit confused. At times, you have said that there are occasionally ifs, buts and maybes; that there is a local process as well as national standards; and that some of the regulatory reforms could be open to interpretation because of the move from national to local. Am I wrong?

Professor Griggs: You would have to give me an example of where I said that.

Dennis Robertson: I got a bit confused when in response to Alison Johnstone’s question you said that people might have to apply common sense at times. That suggests to me that individual aspects might be open to interpretation.

Professor Griggs: Let me rephrase what I meant. The question was about whether legislation pushes people in one direction rather than another. In response to that, I think that I would now say: no, as long as you apply common sense in the interpretation of legislation. If the legislation is good, you will not get into those conflicts and there should be fewer differences; after all, if we think about it sensibly, good legislation should drive us all in the same direction. As a result, I do not see that kind of conflict or misinterpretation arising.

Dennis Robertson: Thank you for that.

The Convener: Chic Brodie, too, has a brief supplementary question.

Chic Brodie: I have to say that I am struggling with the same issue. We have dwelt on the idea of consistency, but what of the conflict that might arise if a minister involved in determining national standards listens to applications for exceptions to them and advice that, as Professor Griggs suggested, might go down the economic or environmental route? How do we achieve consistency, particularly given the need that you have suggested for national standards?

Professor Griggs: It all comes back to where we started: we are discussing national standards and the particular process that they represent.

I remind members of Garry Clark's example of a lawyer putting forward evidence to a judge or court. Each of us in this room could look at the same piece of information and come up with a different interpretation. That is the decision part of standards, and the bill says nothing about how people make decisions. National standards are about process and saying that the way we do things in certain areas should be the same across Scotland.

Chic Brodie: But surely they are the backdrop to a decision being made.

Professor Griggs: I do not think that that is the case at all. Process is about bringing forward the information that you require to make a decision. All we are saying is that, in certain issues, it would be useful if that information were brought forward in the same way across Scotland.

Chic Brodie: Thank you.

Marco Biagi (Edinburgh Central) (SNP): I want to go back to the duty on sustainable economic growth. The bill will provide that regulators must contribute to sustainable economic growth, except to the extent that it would be inconsistent with the exercise of other functions. Does that make it almost a secondary duty? If so, is that a good or bad thing?

Professor Griggs: If anything, it will make it an equal duty. It will raise it to a duty, rather than a power—although we could go on forever about the difference between duties and powers. It will not make it higher or lower.

Garry Clark: Anything that will encourage regulators to take a more holistic view has to be positive. Russel Griggs mentioned the business and regulatory impact assessment, which has been successful in ensuring that Government takes a more holistic view of business in the application of a regulation. Anything that will give

an incentive to take a more holistic view has to be welcomed.

Professor Griggs: It was interesting to look at how the first and second round of business and regulatory impact assessments have worked and the feedback on them that we had from businesses and Government officials, which was positive. When the RRG started BRIAs, they were a means to an end. The end was about getting officials and businesses to talk more about what they want to do before they do it. BRIAs now make that mandatory and are a good example of how a rule takes you to the consequence.

All of us in the RRG have said that we want to get to a position in which a BRIA is not needed because, when officials look at a new piece of policy, they routinely find 12 companies on which it will impact, and then have a conversation with them. We have had to make it a rule, because sometimes the only way to get a horse to go to water and understand that it is good to drink is first to put in place a rule that allows you to go down that road. That is what BRIAs are all about.

The businesses that have replied said that the process was very time consuming but really interesting. They did not think that it was a waste of time at all, because they now understand where the policy maker comes from, as much as where the business comes from. We want to encourage a much greater exchange of information between Government and businesses on regulation and rules and how we do everything. Sometimes, we have to first put in place a rule to get people to understand what we are trying to get to.

Marco Biagi: Some advisory bodies that feed into the planning process already have duties to consider economic impact, although I do not know whether those are formalised in statute. For example, controversial developments in heritage properties can be justified on economic grounds. Is that model similar to the one that we will see in regulators and advisory bodies more widely?

Professor Griggs: Yes, I think so. SEPA already has that for things such as small hydro schemes. Interestingly, as such schemes have gone through that licensing process, the balance has been about 50:50 between those that have been turned down for environmental reasons and those that have been told yes for economic reasons. The answer to your question is probably yes.

Marco Biagi: To illustrate the benefits of the new duty, you referred to Tesco a few times, which shows the clear benefit on explanatory grounds. Can you suggest an example of where a decision would be different as a result of the duty?

Garry Clark: An example that springs to mind is the fire safety regulations from two or three years back.

Professor Griggs: You should talk about that, Garry, because you remember more about it than I do.

Marco Biagi: Is that when there was an issue with bed and breakfasts?

Professor Griggs: Yes.

Garry Clark: At an early stage, it was detected that the application of the regulations was particularly onerous on smaller business such as B and Bs and small hotels and that the regulation far outweighed the risk in some of those instances. The RRG went back and looked at the area and the Government made some changes to the regulations. If that impact had been considered earlier, we might have ended up with better regulation in the first place that allowed businesses to comply with a relevant set of standards, and we might not have had to re-examine things later.

10:30

Professor Griggs: Garry Clark is right. Indeed, one of the consequences of that work, which was led by little Jimmy Campbell of the fire service, was an understanding that, as Mr Campbell himself pointed out, both the legislation and the guidance were not awfully clear on the matter. He said, "You're trying to get fire officers to do something that they are not trained to do," which was to make a risk assessment of a B and B and ask sensible questions. As a result, what was required was not just a change in regulation, but a change in the training of those who were going to have to implement the regulation. After knocking on someone's door and asking, "Are you a B and B?", a fire officer should then ask, "And how often are you a B and B?" because if the response is, "Only when the Open golf championship comes to my area," that establishment should be treated differently from a B and B that takes in three people every week.

As I said, Garry Clark is correct. The combination of the change in the legislation and the change in the training process has moved things forward a long way. That is a very good example and I thank Garry for it.

The Convener: Before I bring in Mike MacKenzie, I want to discuss the interface between national standards and local discretion. You said that national standards are very much a process, but I note that section 1(1) of the bill says:

"The Scottish Ministers may by regulations make any provision which they consider will encourage or improve

consistency in the exercise by regulators of regulatory functions."

However, the term "regulatory functions" is defined *inter alia* in section 1(5)(a)(ii) as

"setting standards or outcomes in relation to an activity".

If the regulatory functions include setting outcomes, does that not go beyond process?

Professor Griggs: No. Going back to the issues of alcohol licensing, knife crime and the RRG's focus on where the economic impact might be felt, I note that, when the Government formulates a policy, it starts by asking "What?" or in other words, "What are we trying to achieve from a bill?" With the alcohol licensing legislation, the aim was to impact on the amount of alcohol that was being taken and the number of knife crimes.

The legislation that is introduced is the how, and one thing that the RRG tries to do all the time is to find out whether the how gives us the what. In many instances, that is not the case. People will probably start throwing things at me in a minute for saying this, but I am not sure that, with the legislation that aimed to address alcohol licensing and knife crimes, the how satisfied the what, if I can put it that way. It is important in a bill to understand at the beginning the outcome that you are trying to achieve. If the bill gives the Scottish Government the ability to put in place hard outcomes that will drive the other processes, the result, one would hope, will be that processes that give a different outcome from the one that the Government is trying to achieve will not be put in place. If we start off with no outcomes, we will wander merrily all over the place. I understand what you are saying, convener, but I am not sure that the definition that you highlighted is totally inconsistent with the rest of the bill.

Mike MacKenzie (Highlands and Islands) (SNP): If we were able to effect a better regulatory regime, would it be possible to achieve enhanced sustainable economic growth while safeguarding the environment, communities and individuals' quality of life?

Professor Griggs: Yes. An example is our work with the chemical companies in Grangemouth, which I mentioned. At the start of our meetings, companies were sceptical about how some of the balances could be achieved, but at our meeting a couple of weeks ago one of the gentlemen who run Ineos said, "The great thing about meeting in multilateral forums to discuss the issues is that now I understand better how everyone else round the table operates, so that when we have wider conversations about why I am concerned about paying for flood defences, I can understand what the council and SEPA's views are."

An interesting discussion emerged in that regard, which SEPA is taking forward. One issue that can be fairly contentious is how regulators and Governments portray information on their websites. Ineos said that when one of its analysts in China starts to evaluate its business plan, they will scan Government websites. Indeed, the representative from Scottish Development International said that it is fairly common for people to scan Government and regulator websites across the world. Therefore, how things are depicted is important. Currently, the only flood map on the SEPA website shows Grangemouth under 10 feet of water, because SEPA is legally bound to show only a map of a one-in-200-years event. By the end of the year, that will not be the case; SEPA will have three maps on its site, to show what is likely to happen, what is a really extreme event and what is less likely to happen. There will be maps showing medium, high and low likelihood.

It is about explaining to people that changing some of the minor things that they do can have an impact on competition and economic development. The example that I have given is one of the best recent examples of a simple and easy way in which the RRG and others have been able to have an impact in that regard. SEPA said, quite justifiably, "That is not what we are there to do." Industry replied, "We agree, but that is not how others see you. If everyone is to work together to ensure that we present the best possible case, we must think about how we strike a balance."

Mike MacKenzie: I am looking for a one-word answer to this question. If the bill is implemented, do you expect it to increase sustainable economic growth?

Professor Griggs: Yes.

Mike MacKenzie: Thank you.

We have talked about geographical consistency and so on, but we have not talked about proportionality, which is a big area of concern for me, not least because some commentators suggest that recovery, when it comes, will come from the small business sector.

We took informal evidence directly from small businesses, which was interesting. We often hear from lobby groups and representative organisations, but we do not often get the chance to hear directly from small businesses. An interesting request from the small businesses, which I think that we are bound to go along with, was that we preserve their anonymity. That struck a chord with me, because I hear all the time from small businesses that are struggling, not just with the complexity of regulation but with the culture in which it is implemented.

How far will the bill advance proportionality? It is not clear to me what mechanisms there are in the bill to achieve that end, although it is one of the bill's stated aims.

Garry Clark: Engagement between business and Government and the regulator has brought the best results over the past few years in relation to various aspects of better regulation. The bill has the potential to increase such engagement. That brings me back to what the business and regulatory impact assessment process has achieved. We are on a path towards better regulation. It is easy for business organisations to say, "Regulation bad," but I do not think that too many of us say that any more. The issue is not about the number of regulations out there, and it is not a numbers game; it is about ensuring that we have the best possible regulation and engagement so that we have a process—

Mike MacKenzie: Can I stop you there? I am not sure that the word "engagement" appears anywhere in the bill. On the issue of proportionality, are there specific teeth there? I absolutely agree with you about the concept of engagement, which is a virtuous concept, but where in the bill are the mechanisms that will lead us to more proportionate implementation of regulation?

Garry Clark: Even the very fact that we are looking at national standards on processes must be a benefit for a number of businesses, particularly those that trade across local government areas. In Ayrshire there are potentially three different authorities to deal with and, depending on what a business is looking for, three different sets of forms to fill out. Even the simple process of having one standard form that can be—

Mike MacKenzie: Can I perhaps tell you a wee story that will illustrate what I am getting at?

The Convener: Can you make it quite a short story, please?

Mike MacKenzie: I often hear the complaint from constituents that regulators seem to almost look the other way or have reasonable and understandable relationships with public sector organisations that they have to regulate—I am thinking about SEPA and Scottish Water—or big business. Those guys have at least a reasonable and equal chance of being able to deal with regulators and getting through the minefield of regulation, whereas the small business labours under a huge degree of complexity and sometimes a culture that is less enlightened than any of us would wish to see.

Professor Griggs: I do not think that any bill will ever solve that. I have been involved in small business and was chair of the small and medium-sized enterprises council of the Confederation of

British Industry for five years, so I know that that is a perennial problem. I do not think that you will ever make every small business happy with legislation.

Since the RRG started in 2004, it has continually asked businesses to come forward with regulations that they are unhappy with. However, without taking my socks off to count, I could probably tell you the number of specific cases that people have raised over the past 10 years or so.

One challenge that we have with small firms is ensuring that the process that we have works for them. You are correct in what you say. Last year, we looked at a case to do with new EU regulations on biocides, which were being put together by organisations such as BASF—huge chemical companies. There would have been a huge impact on a load of SMEs across Scotland but, working with the Health and Safety Executive, we have mitigated a lot of that.

I do not think that any bill will ever deal with the question that you raise. The challenge with teeth is that you have to figure out who you want to bite.

Mike MacKenzie: Sometimes it is just about having them.

Professor Griggs: We had a discussion about that with SEPA years ago. Imagine that SEPA came to you and said, “You know what this new regulation means and you know how to enact it. We will trust you to go away and implement it and we will come back and audit you from time to time to make sure you do it.” If you have teeth as a policeman, you ask, “Will you please show me how you have obeyed the law?” That is different, and probably the wrong way to go with a company. We have tried hard to move to the former, rather than the latter, if I can put it that way.

Mike MacKenzie: My final question is an easy one. Part of the bill is about enhanced planning fees. There is a suggestion that planning authorities that do not provide a quality service will perhaps lose the ability to charge the enhanced fees, so there will be a financial penalty.

I am a Highlands and Islands regional member, so I interface with a number of planning authorities that have obviously different performance or quality standards. However, they all seem capable of generating report cards for themselves that give 97 per cent ratings. Bearing in mind that planning is a highly contentious area, how on earth will we manage to assess the quality of standard between one planning authority and the next?

10:45

Garry Clark: That is a difficult question for us to answer.

The Convener: You were assured that it would be an easy one.

Garry Clark: In general, our members are reasonably comfortable with the prospect that an increase in planning fees would be accompanied by an increase in performance. If our members are assured that they will get something for their money, they will be relatively comfortable with that. There is an issue with business rates, in that we are being asked to pay 22 per cent more over the current spending period without anything material in return. That is a different story. However, on planning, if we can be assured that there will be material changes for the better in return for increased planning fees, most of the members to whom I have spoken would be relatively comfortable with that.

You are right that it is difficult to compare performance between different planning bodies. That will have to be squared before the new rules can really bite.

Professor Griggs: The last thing that the RRG would want is to set up a regulator to do that. We must be careful that we do not create little industries to go away and do some of those things. Both of us understand your concern on that, Mr MacKenzie.

Chic Brodie: Professor Griggs said that it depends on who you want to bite. On achieving a level playing field between large and small business, I want to make sure that we bite. At a conference that I was at, the managing director of Oxera suggested that we could either be lumpers or splitters, with lumpers being those who prefer a single organisation to take charge of not only regulation, but competition law.

I ask that, when you consider how we apply regulation, you consider not only the impact on international competitiveness, but the fairness of competitiveness between big business and small. We will certainly do that.

Professor Griggs: Yes, we will. We are already doing that. On biocides, which I used as an example earlier, we are already trying to influence in Europe. Basically, the European authorities go to trade associations. However, we have made it clear in our BRIA process that we do not think that trade associations are the right bodies to ask; we must ask individual businesses. The trade associations tend to be staffed by large organisations, because they tend to have the people and resources to do that. Therefore, we are pressing hard to ensure that the voice of small businesses is heard in that process. That issue is challenging and not without its difficulties, but we are 100 per cent on your side on that.

Chic Brodie: Thank you.

The Convener: I draw this evidence-taking session to a close. I thank Professor Griggs and Garry Clark for coming. They have given us a lot to consider over the coming weeks. I am grateful to them for their time.

We will have a short suspension to allow the changeover of witnesses.

10:48

Meeting suspended.

10:53

On resuming—

The Convener: We come to our second panel on the Regulatory Reform (Scotland) Bill. I welcome Roger Burton, who is the programme manager for wildlife and social and economic development programmes at Scottish Natural Heritage; Riddell Graham, who is director of partnerships at VisitScotland; and Martin Tyson, who is head of registration at the Office of the Scottish Charity Regulator.

Before we get into questions, I invite the witnesses to provide a short introduction to their evidence. We will start with Roger Burton.

Roger Burton (Scottish Natural Heritage): We are pleased to have the opportunity to present our evidence to the committee. We welcome the bill's overarching purpose of achieving a range of social, economic and environmental benefits by improving regulatory functions. Our written submission sets out the basis of our evidence, and I will not repeat it. I will be pleased to answer any questions that members might have that would help them to understand the role that we play in the wider regulatory framework and how we approach it.

Riddell Graham (VisitScotland): I am delighted to be here and to provide evidence. I will give some context to VisitScotland's work and my role in particular. My team is responsible for all the external partnership working that VisitScotland needs to do to deliver its overarching objective, and it engages with a very wide range of external partners. More specifically, my team delivers our world-leading quality assurance scheme, which covers accommodation and visitor attractions. It is linked to a very strong advisory and signposting service. We also engage with businesses commercially to sell commercial marketing opportunities.

In the past 12 months, I have led a piece of work to create a new national tourism development framework, which is aimed at influencing the planning system nationally, regionally and locally in relation to tourism, given

the planning system's importance to the tourism economy.

As an organisation, we are not a statutory regulatory body.

Martin Tyson (Office of the Scottish Charity Regulator): We are glad to be here and to have the opportunity to give evidence. The Office of the Scottish Charity Regulator regulates more than 23,000 charities in Scotland. It is a highly diverse sector. We welcome the regulatory principles that are set out in the bill. They are largely the same principles as those that underpin the Charities and Trustee Investment (Scotland) Act 2005, which provides the legal framework for our activities.

I will not repeat what is in our written evidence. As far as our main observations are concerned, we have some questions. We are slightly unclear about how directly the bill has a bearing on our activity and to what extent it replicates powers that are already contained in the legislation that controls us.

The Convener: Thank you.

Some of you will have heard the tail end of the previous evidence session. There are a number of areas that are of particular interest to committee members. One is the issue of national standards, the opt-out and how that will work in practice. We are also interested in the resource implications for regulators and public bodies, and whether there is a conflict between the economic duty and the other duties on regulators—for example, in relation to environmental issues. We will tease some of that out as we go through the questions.

As we have three distinct viewpoints on the panel, it would be helpful if, rather than throwing out general questions, members could direct their questions to a specific member of the panel. If any of the panellists would like to respond to a question that has been asked of someone else, they should catch my eye and I will bring them in. Because we have three different interests represented on the panel and a wide range of subjects to cover, I ask members to ask short and focused questions. If we could also have short and focused answers, that will help us to get through the issues in the time that is available.

We will start with the issue of national standards.

Margaret McDougall: Good morning, gentlemen. This is a general question for all of you. Does the power need to be directed at bodies such as VisitScotland, SNH and OSCR?

Riddell Graham: In my opening remarks, I referred to quality assurance and the planning work that planning authorities carry out in relation to tourism. The quality assurance function that we have carried out for more than 30 years has

worked extremely well on a voluntary basis. Our quality scheme has the highest penetration level of any part of the United Kingdom. Funnily enough, our colleagues in Northern Ireland, where quality assurance had involved a compulsory element, have adopted our scheme in the past 12 months, and we are delivering it on their behalf. They found that a compulsory element does not really work in raising standards.

As far as the planning framework is concerned, what has been encouraging from my point of view is that we have engaged with all the local authorities in Scotland in developing it. We were clear that we wanted to work with them rather than impose anything on them as part of the plan and the framework. That has been welcomed immensely by COSLA and by 30 of the 32 local authorities that responded. The principle of working in partnership rather than imposing things works extremely well from a tourism perspective in those two areas.

Martin Tyson: OSCR is a national regulator of charities across Scotland so we find it harder to see how the driver of getting consistency across several bodies doing the same kind of regulation in different geographical areas applies to us. I understand the driver for that across local authorities, but it is not clear to us how it applies to us as a national regulator. Turning that around, we have an interest in things such as the licensing of public benevolent collections—shaking tins on the street—which is largely done by local authorities, and we are glad to see anything that will enable the regulation of that to be more consistent.

11:00

Roger Burton: I would make the same point, as SNH is a national body that plays a role at local and national levels. There are aspects of the bill that we hope will have little bearing on SNH. There will always be issues within larger organisations of consistency at the individual level, but we have put in place processes to address that. We also play a role in providing guidance in the planning system, and there are areas in which we can see the bill having potential benefit by providing added weight to that guidance in the process.

Margaret McDougall: SNH's submission says:

"We hope that the proposals for planning authorities' functions: charging and fees will allow them to develop their own capacity without increasing their expectations on ourselves, for example, in terms of response times."

Why should SNH be exempted in that way?

Roger Burton: I do not think that SNH should be exempted from that, but our resources are constrained. If there is a vast increase in throughput, we will have to look carefully at how we can play our part in the system. If that

throughput is being resourced by increased capacity in local authorities that are getting additional resources and fees, which allows them to process planning applications faster, we will have to look closely at the level of input that we can provide to those planning applications so that we can manage within our fixed resource.

Margaret McDougall: Staying on the point about national standards and opt-outs, do you think that there is sufficient scope for local opt-outs from the national standards in the bill?

Roger Burton: I am not certain how far the bill goes in that way. That is where we see a code of practice having a significant role to play in defining how to deal with local decisions that need to properly reflect local circumstances in national standards.

Margaret McDougall: Yes. The bill is not clear on the exact criteria for opt-outs, so do you think that they should be better defined?

Roger Burton: I am not sure that I can answer the question about whether the bill should go there. There is always a question as to how far we go with the legislation and how far issues can be dealt with through codes of practice and other mechanisms.

Margaret McDougall: Do any of the other panel members have a view?

Riddell Graham: I do not really have a view. Our day-to-day work is not close enough to those issues. The new national tourism development framework is at a very early stage. We have just been through the consultation process and are just pulling together the final version of the framework.

How this would work effectively in relation to tourism and planning is by working closely at a local level with the right people around the table. Having them make decisions that are right for the local economy would make it work. As we all know, every part of Scotland is different and that should be reflected in the way in which the bill operates for planning at the local level.

Martin Tyson: Our involvement with planning is marginal; it tends not to be much at all.

Mike MacKenzie: My questions are for Mr Tyson. OSCR is a regulatory body, but it is unusual in the fact that it is non-ministerial. I suppose that OSCR has drawn attention to itself because of the strong sense in its submission that it should not be in schedule 1. Why do you think that is the case?

Martin Tyson: I do not think that we have a particularly strong sense of that. As I said at the beginning, it is more that we are querying how directly some of the bill bears on us. As we are a

national regulator, it is not clear how the geographical consistency issue bears on us.

The other issue is the way in which we were established. We were established as a non-ministerial department, which is probably still a fairly rare beast. Looking back to how that was done and the consultation that surrounded it, I think that there was a driver for having a regulator that stood slightly to the side of Government and whose regulatory decisions and operational processes could be seen as independent. Specific mechanisms are set out in the 2005 act that the Parliament considered when it was thinking specifically about charity regulation. Ministers have the levers to consider how regulation should be done and to tweak how it should be done, if that seems sensible. We are concerned about how it might be perceived if there was a more open-ended power to influence how we go about our regulatory business.

Mike MacKenzie: Yes, but that begs a question that is often asked about regulators and which is particularly apt in your case. Who regulates the regulator? Who regulates OSCR?

Martin Tyson: In our case, it is Parliament. We account to Parliament for how we go about our normal business. Obviously, on the financial side, as a public body, we account to ministers for the money that we get, but we report to Parliament on our regulatory activities.

Mike MacKenzie: Okay.

One of the stated principles in the bill is proportionality. I take it that you would sign up to that principle.

Martin Tyson: Very much so. Proportionality was also one of the regulatory principles that was built into the 2005 act.

Mike MacKenzie: From your written submission, I get the impression that you really do not want to be part of the process, as you are already doing pretty much everything that the bill suggests.

Martin Tyson: We would not in any way suggest that we are perfect or that we are there. We have a strong consciousness of the need to be proportionate and consistent. Obviously, there is sometimes a tension between the two, as there is between the other principles, such as fairness, and the targeting of activity, which goes along with proportionality.

Although they are not necessarily directly to do with accountability, there are mechanisms for challenging our decisions. There is the procedure for internal review and there is the Scottish charity appeals panel. Our decisions can eventually be appealed at the Court of Session.

On proportionality, I am thinking about the cases that we have had at the Scottish charity appeals panel, which very much holds us to account and tests us on proportionality. The same applies to consistency. Consistency is one of the key things that any of our regulatory decisions will be tested on. We will be asked, "Is the decision the same as the one that you made last year in similar circumstances? Is it consistent with legal precedent?"

Mike MacKenzie: I question the effectiveness of that, given the number of complaints that I have received about OSCR from very small charities that have charitable status only because funding agencies often make that a prerequisite for receiving funding. In fact, the situation seems so bad that a number of those very small charities have asked me not to raise the issues formally with you because they are so frightened of OSCR.

The evidence that I have suggests that, far from being removed from schedule 1, OSCR should be there at least twice. It gives me great concern that your approach is, "No, no. That shouldn't apply to us; we don't want to be part of it." Do you have any advice for very small charities that feel that they have been disproportionately dealt with by OSCR on minor housekeeping issues, or made to feel like criminals absconding with large amounts of charitable proceeds? What mechanism is there for them to seek redress?

Martin Tyson: Where we have made decisions that are reviewable, people can ask us to review them; we then move to more formal mechanisms. We look increasingly to go out and engage with small charities. I was in Orkney last week, talking to a lot of small charities in the islands: local development trusts, village halls and the like.

Life is very difficult for the trustees of small charities, for all sorts of reasons. We do not intend regulation to be something that makes life more difficult for them. There are certain basics in charity law and charity regulation with which charity trustees must comply. However, we are concerned to have a proportionate approach. In the past, we have recommended to Scottish ministers that they make regulations that will enable the approach to be more proportionate. We gave an example of that in our written evidence about charity reorganisation, which can be a burden for small trusts. For instance, outdated trust deeds can make life very difficult for trustees; sometimes they cannot recruit new trustees or use their money in the way that they might want to.

Similarly, we have tried to simplify the submission of charity accounts and annual returns. A couple of years ago, we reduced the annual return to, essentially, one page of A4. We are alive to the concerns of trustees of small charities. I am concerned that those issues have

been raised with you. The first thing that we would say to trustees who are feeling like that is that they should speak to us.

Mike MacKenzie: As I have explained, a lot of them are so intimidated that they do not want even me to raise matters with you formally. That concerns me because, as I am sure you will agree, the social enterprise sector is a growing sector in our economy. Many, if not all, social enterprises tend to be charities. There can be an economic effect of regulation not being proportionate, and it can inhibit people from getting involved in charities.

Martin Tyson: The social enterprise aspect is interesting. Some social enterprises fall squarely within the charitable sector. There are social enterprises at the other end of the spectrum that do not; rather, they are businesses that have a social conscience, if you like, but which do not want to be charities. We sometimes have an issue with the boundary of what is charitable and what is social enterprise and how those interact.

The best that we can do is to be out there, speaking to social enterprises and to the people who represent these sectors, so that we can try to tailor the kind of regulation that we do to their needs.

Mike MacKenzie: I have one final question. Prior to OSCR being set up, charities were regulated by Her Majesty's Revenue and Customs. Are you aware of any areas of conflict between HMRC and your office?

Martin Tyson: We tend to work quite closely with HMRC and our working relationships are good. There is a fundamental issue there, which is that, in recognising charities and deciding whether charities get tax reliefs, HMRC uses English tax law. That is very similar to Scottish law and to what is in the 2005 act, but it is not quite the same. There can be areas around the edges, such as social enterprise, development trusts and the like, where English law is not quite the same as Scots law and a tension arises.

11:15

Rhoda Grant: I have a supplementary question on this subject, which goes back to why OSCR is included in the bill. Is it not the case that OSCR demands that organisations report annually in certain ways, and that that can coincide with the need for organisations that are registered as companies to report in that respect, too? Is there not scope for OSCR to work with the other organisations to streamline regulations, so that people just need one form of accounting? I am aware that some people have to prepare different returns for different organisations, which creates

more work. They have to conform to different sets of regulations.

Martin Tyson: The requirement to report annually to OSCR is a legislative one. It is not something that we have made up.

Rhoda Grant: But you could streamline it with other reporting agencies to ensure that people can put together one set of reports, rather than several.

Martin Tyson: We work with the likes of Companies House and other regulators such as the Scottish Housing Regulator to streamline things where we can.

The other development in the past few years is the Scottish charitable incorporated organisation. That is a regulatory form—a form of incorporation—that is specifically aimed at charities, so that they do not have to be registered with Companies House. The only return that they produce is to us. Many of the very small, unincorporated charities and trusts report only to us. We have tried as hard as we can to streamline the content and form of the report and to allow them to report online, thus reducing the burden for them where we can.

Rhoda Grant: Is the scope of the bill not to streamline the reporting to different organisations? That is what we have been hearing very clearly—the real aim of the bill is to simplify the procedures that currently involve people completing different forms for different organisations. Would it not be helpful to have OSCR involved in that?

Martin Tyson: Yes, but we do that already. We have a memorandum of understanding with Companies House and with the Scottish Housing Regulator—we have a big overlap with its work. There is scope in the bill for us to delegate some of our functions, for instance with the churches, as some denominations are designated religious charities, and there is scope for us to withdraw from some of our functions in respect to those charities. We do that to the extent that we can.

There is a limit to that, as different regulators do different jobs. There is a minimum requirement on us to do what we are required to do in our regulatory role, which is not quite the same as that of Companies House—it is a registrar of companies, and is interested in the role of directors and in people fulfilling their fiduciary role as directors, whereas we have a slightly different slant on regulation, as we are interested in trustee duties and in people complying with the charity test.

The Convener: Let us move the discussion on a bit and consider some other issues around resource implications and infrastructure questions.

Dennis Robertson: I will start with VisitScotland, but I also seek the views of SNH and OSCR. Does the bill have a resource implication for VisitScotland? If so, how do you intend to address it?

Riddell Graham: As far as I can see, the answer to that is no. In relation to quality assurance, the scheme is voluntary, so we adjust the resource depending on the engagement with businesses. People pay to be assessed and the resources are allocated accordingly. We have more than 30 years' experience of running the scheme, so we are pretty well in the line in that regard.

Your question is an interesting one as far as the national tourism plan is concerned. A number of people have said, "Fine—you might have produced the plan, but how are you going to implement it?" My team includes a series of regional directors who, although they engage predominantly with local authorities, also engage with local stakeholders and there are a number of mechanisms—area tourism partnerships, of which there are a number of good ones in Scotland; existing community planning arrangements; and local forums—that we can use to bring the plan to life. We would play more of a facilitation role and ensure that the right people are round the table to turn the plan's fine words into action on the ground.

In response to your question, however, as I see things right now, there are no immediate resource implications in the two areas for which I am responsible.

Dennis Robertson: Even being a facilitator will require resources. Are you content that the bill will impose no additional resource burdens?

Riddell Graham: Yes. As far as the plan is concerned, I think that it gives my team a much more focused reason for engaging with local authorities. At the moment, our relationship centres on the airways that we have in relation to funding for marketing activity. The national tourism development framework's relationship with planning will have a much greater impact on local economic activity as well as a much greater general economic impact than the current straightforward relationship. It will give my existing staff a much better local role than they have at the moment, but I do not see any additional burden on our current resources.

Dennis Robertson: And there will be no additional economic impact on you.

Riddell Graham: None at all.

Dennis Robertson: Excellent. What does SNH have to say?

Roger Burton: Details have still to emerge and we do not know how the code will work but, as far as we can tell at present, we do not think that the bill will have any material implications for our resources. We might do a bit more in certain areas, but as we are already doing much of that work in some shape or form, it will simply complement or displace what we are doing through our team Scotland approach and our work in planning reform, forums and so on.

Another slight uncertainty relates to reporting requirements under the new economic duty. Under the Public Services Reform (Scotland) Act 2010, we already have a duty to report on sustainable development. A separate reporting requirement could add some complexity, but the issue is at the edges rather than being substantive.

Dennis Robertson: So you are fairly content that the bill will have no adverse impact on your current operations. Will it help you to focus?

Roger Burton: It might. A number of areas in the bill might help with the way in which we are travelling. For example, ensuring that our guidance is consistent and understood might help us to manage things within our resources, which might then help to offset the sorts of pressures that Margaret McDougall mentioned, which we wanted to put a little marker against.

Martin Tyson: Likewise, I see no great resource impact or implications for OSCR. You are not too far out of line with where we are at present.

Dennis Robertson: I am sure that we are all content that the bill will have no adverse effects on your organisation's resources. Thank you for that.

The Convener: Chic Brodie will start off our next line of questioning, which is on the impact of the new economic duty.

Chic Brodie: Good morning. What do you think we mean when we talk about sustainable economic growth?

Riddell Graham: Our pretty clear view of sustainable economic growth can be explained through the three-legged stool analogy. In other words, economic sustainability on its own just does not work. It needs the social and environmental elements.

Chic Brodie: Where do you place the emphasis, among the three elements?

Riddell Graham: They must all be in balance; one affects the other. If we encourage far too many tourists to an area, there is great economic benefit but the environment is destroyed, which is no good. If the community does not accept the additional impact from visitors, that is no good either. There are few areas in Scotland where I think that—

Chic Brodie: What do you do when there is conflict between any two of the three? Where does your priority lie?

Riddell Graham: The economic benefit is important to Scotland, but if that takes precedence over the other elements, there is a chance that the benefit will not be sustainable in the long term, and sustainability is about the longer term—

Chic Brodie: That was not my question. My question was this: as far as you are concerned, if the elements are in conflict, what side is your organisation on? I understand the desire for balance, but life is not perfect. Where is the priority?

Riddell Graham: At the end of the day, VisitScotland is an economic development agency that is responsible for generating revenue to the Scottish economy, but that is not at all costs. It is important to recognise the social and environmental impact. The reason why people come to Scotland on holiday is because they love the landscape and the countryside. They also like to engage with local people. The social and environmental elements are really important and we ignore them at our peril in our thinking about long-term growth in Scottish tourism.

Roger Burton: I agree with a lot of what Riddell Graham said. We see sustainable economic growth in the context of the Government's purpose to make Scotland a more successful country, with "opportunities for all to flourish."

That sets the context, and the national performance framework provides the balancing mechanism for all the different interests that need to be recognised if growth is to be sustainable.

Chic Brodie: We have discussed process and we are talking about planning frameworks. Some of us would like to see outcomes. How do you report meaningfully on performance in relation to the economic duty that your organisations have?

Roger Burton: The reporting that we do on the sustainable development duty highlights areas in which our work contributes particularly to economic development. There will be wider areas where it contributes less directly. We highlight our work in the planning system—

Chic Brodie: How do you report?

Roger Burton: How do we report? There is a separate annex in our annual report, which is laid before the Parliament.

Riddell Graham: VisitScotland reports in our annual report in relation to the return on investment that our marketing activity generates in the United Kingdom and internationally. We also report on the added value that comes from our other activities. For example, you might wonder

what impact our quality assurance work has, but in fact it has a significant impact on businesses investing in and improving the quality of their product. That is a direct result of our involvement and engagement with partners. However, the main reporting is on return on investment from marketing activity.

Chic Brodie: And you know how much investment you make, or the whole industry makes.

Riddell Graham: No—let me be clear about what we measure. We measure the impact of VisitScotland's investment in relation to the benefit to the Scottish economy. The wider involvement of individual businesses is something that we measure overall on an annual basis, but our direct involvement is measured through the ROI work that we do—

Chic Brodie: I will come back to that, if I may, in terms of what teeth you have in relation to regulation.

Martin Tyson: We also report annually. Under the Public Services Reform (Scotland) Act 2010, we have a duty to report on sustainable economic growth. That is what we have done, in relation to our activities as a public body and as a regulator. As Roger Burton said in the context of his organisation, some of our activity has a bearing on sustainable economic growth. However, much of what charities do does not have such a direct relationship, so it is—

11:30

Chic Brodie: I am the convener of the cross-party group on social enterprise. Your name has never come up with regard to help and guidelines. Do you have a database of all social enterprises, community interest companies or charity organisations?

Martin Tyson: CICs cannot be charities. We have a register of charities—that is one of our main functions. The problem is that social enterprise is a sort of label rather than a form of organisation. A lot of different kinds of charities that call themselves development trusts or community bodies will have a social enterprise element to them. There is a difficulty in pinning down what is a social enterprise and what is not.

Chic Brodie: You are the charity regulator and many of those are charities.

Martin Tyson: Yes, indeed.

Chic Brodie: My view is that we do not know how many there are out there, so how can you be regulating them?

Martin Tyson: We know how many charities there are. We are a charity regulator, not a social

enterprise regulator. A lot of charities have a social enterprise element. Part of what they do will be a social enterprise that fundraises for the directly charitable activity. They would not necessarily describe themselves as social enterprises. It is not a definite or hard-edged label or concept.

Chic Brodie: Should it be, under new regulations?

Martin Tyson: Should social enterprises be regulated as social enterprises?

Chic Brodie: Yes.

Martin Tyson: That would be quite difficult, for the very reason that it is hard to pin down what they are. Some bodies would definitely describe themselves as social enterprises, whereas some would say that they are a charity that does a bit of social enterprise—

Chic Brodie: —and is treated as a charity.

Martin Tyson: They are treated as charities because they are on the register and are therefore subject to charity regulations.

Chic Brodie: However, there are some that are not on the register.

Martin Tyson: That is exactly right. One thing that is being done by the Scottish Council for Voluntary Organisations is a database of the larger voluntary sector, which includes non-charities and some social enterprises.

Chic Brodie: Do you accept that there are organisations that are treated as charities and that, although you are the charity regulator, you do not know all of them?

Martin Tyson: We know all the charities that are on our register.

Chic Brodie: I would disagree with you. I cannot even get—

The Convener: That is not really relevant—

Chic Brodie: I think that it is relevant to regulation.

VisitScotland talked about regulations and how well tourism and planning work together. There was a comment about South Ayrshire that was not particularly relevant. I will give you a comment that is relevant. I know that VisitScotland has responsibility for signposting. Why is there no regulation that allows planning authorities or VisitScotland to get brown tourist signs, which is a fundamental aspect of achieving your objectives?

Riddell Graham: Just to be really clear on that—

Chic Brodie: It is left to the construction company or road company.

The Convener: I am not sure that that is entirely relevant to the Regulatory Reform (Scotland) Bill.

Chic Brodie: I will come to the final point in a minute.

The Convener: Mr Graham, perhaps you can try to answer the question.

Riddell Graham: I will be absolutely clear on brown signposting. VisitScotland's role is simple. It is to communicate how people can apply for brown signs and to acknowledge whether they are in a quality assurance scheme. The responsibility for erecting, manufacturing and approving signs sits with either the local authority or the trunk roads authority.

As I speak, a seminar is taking place on brown and white signposting, involving all local authorities and a significant number of industry people. I am looking to improve the situation. Our role is only to acknowledge whether people are quality assured. The responsibility for turning down applications for signs—for whatever reason—lies with the local authority or the trunk roads authority.

Chic Brodie: My last question is for SNH. It is interesting that, yesterday, the Public Petitions Committee discussed wild land and conflict. As is mentioned in the schedules, SNH will have significant input to the Regulatory Reform (Scotland) Bill. What happens when you make recommendations? What is your view on the potential conflict for ministers in making determinations, based on your recommendations, on applications for exemptions from the national standards? Do you feel that you have teeth and that you are a doer, or are you just there to think?

Roger Burton: I hope that I am interpreting those roles correctly. I cannot possibly cover the whole range of situations in which we might provide advice, but when we do that, the advice will have a different status depending on whether it relates to international designations or some nationally recognised important feature. In relation to wild land, we are in national, not international, territory, so our advice is just that. In planning terms, we are not the decision taker. Others are required to balance the range of interests in their decision. When they reach that decision, we do not then take a view on how we feel about it. It is their decision.

Chic Brodie: Do you measure how many of your recommendations to ministers for regulation or changes are successful?

Roger Burton: We could probably provide an answer to that question in relation to ministers, but I am not certain whether we could quickly extract that information from our systems in relation to

local authorities. We have been updating them over the years to meet changing needs, but I am not certain whether I could give you that answer.

Chic Brodie: Mr Graham, would you like to comment?

Riddell Graham: In relation to wild land?

Chic Brodie: No, in relation to the recommendations that you make to ministers. What happens if a potential conflict arises for ministers in determining from either your advice or your recommendations what national standards should be? In what circumstances can applications be made to circumvent or be exempted from them? How many of your recommendations are accepted and how many are rejected?

Riddell Graham: It will vary depending on the advice that we have been asked for. We provide advice on a range of issues affecting tourism. In most cases, our recommendations are taken into account, but ultimately we must recognise that there is a democratic system in place that may overrule them. We can certainly find that information for you if you require it.

Chic Brodie: How much do all three witnesses think they will influence the Regulatory Reform (Scotland) Bill? My emphasis is on the word "influence".

Riddell Graham: I would look at it the other way round. I would look at how the bill has influenced VisitScotland as an organisation. We have never really been directly involved in the planning system, and the tourism development plan and framework have been developed on the back of the work that Russel Griggs led in developing the bill. As you know, Professor Griggs is a board member of VisitScotland, and when he sought advice from colleagues round the table and the VisitScotland board, planning was one of the key issues that they identified as requiring a more consistent approach. As an organisation, we have not been involved in that historically, and now we are directly involved in pulling the plan together and encouraging a more consistent approach and a greater focus on local economic development for tourism through the planning system. That would not have happened had the bill not been going through Parliament.

Roger Burton: I was going to say a similar thing. SNH is thinking much more about how the bill impacts on us, rather than how far we can influence the bill or have influenced it. We responded to the consultations with relatively minor points of detail, and we see that input working its way through. We think that we can contribute to some of the codes of practice that will follow from the bill, but not to the bill itself. The

bill's impact on us is to reinforce the direction in which we are travelling.

Martin Tyson: Likewise, OSCR sees the question in terms of the bill's influence on us. As we say in our written submission, we are keen to be involved in the preparation of the codes of practice and the nitty-gritty of how the bill will work.

The Convener: Alison Johnstone also has some questions on the new economic duty.

Alison Johnstone: My questions are for Roger Burton. Has SNH's statutory balancing duty helped with its core purpose of protecting Scotland's natural heritage?

Roger Burton: I firmly believe so. Indeed, in recent years, we might have given greater weight to that duty and we see considerable benefits from embracing it. Natural heritage and the quality of our landscapes and nature are not only at the core of sustainable development but a huge asset to the country, and the need to look after them is recognised. They certainly contribute to sustainable economic growth.

Alison Johnstone: Do you see SNH's role as being to balance environmental and economic priorities?

Roger Burton: In some situations. Of course, we are not always the decision taker, but balancing is an important activity with regard to our policies and we certainly need to do it in the situations where we are the decision taker. I come back to the fact that balancing allows us to more effectively secure the conservation and enhancement of our natural heritage, the need for which has been recognised, as I have said.

Alison Johnstone: Do you see the new economic duty as duplication or double counting of what you are already doing?

Roger Burton: It could be seen as such. However, if that is the case, the provision in—I think—section 2(4) would mean that the new duty might not apply. If it does, we think that it will simply add to and reinforce our existing duties.

Alison Johnstone: But you do not think that the duty will impact on your ability to give independent advice on any conflict.

Roger Burton: No, because the bill is clear that in certain situations the duty should not override a public body's primary purpose or duties.

Alison Johnstone: Finally, are you clear that there is an understanding of what "sustainable economic growth" means, and not just what it means to SNH?

Roger Burton: I am quite sure that, in the wider world, there is a range of views on what is meant by that phrase. I think that I have already given the

committee our views on it with regard to the Government's purpose. I acknowledge that a much more esoteric—or, for all that I know, more practical—debate is going on, but I do not want to get into that here.

Alison Johnstone: Would you prefer the term “sustainable development” to be used instead?

Roger Burton: We do not have a strong view on the matter. There is a lack of clarity over the potential overlap between the new duty and our existing duty to report on sustainable development, and I am not entirely clear how we would tease those apart.

The Convener: I will slightly rephrase what Alison Johnstone was trying to get at in a question for all three of you. What difference, if any, will the new economic duty make to the current operation and delivery of your services?

Roger Burton: I do not think that it will make any difference, given that we are already working towards the national performance framework within which it sits. It is high up on the pyramid that the framework is building.

Riddell Graham: My response almost mirrors Mr Burton's. However, I am encouraged by the fact that, in the consultation exercise for the new national planning framework, a reference to sustainable economic development appeared for the first time ever. That is a really positive step and we need to take some credit for influencing it.

Interestingly, when we speak to local authorities they will, in almost every instance, tell us that tourism is a really important part of the local economy. However, when we delve below plans to see whether tourism and economic development are being brought together, we quite often find that both are missing. The thinking behind the national tourism development framework is to ensure that tourism is seen as a key sector in the local economy and that it is key to sustainable economic growth. That has not necessarily been the case in the past and I am delighted that all local authorities have now signed up to the approach that is set out in the plan that we have developed. As I said, I think that we influenced that recognition.

Martin Tyson: The duty will not make much difference to certain areas of our work and certain types of charity. Instead, it might focus more on the regeneration, development and social enterprise type charities that Mr Brodie mentioned and will feed into and facilitate the work that we are already carrying out with some of the umbrella bodies in those areas.

The Convener: Unless there are other members who have not caught my eye and who wish to ask a question, I think that we have

reached the end of our evidence session. I thank the witnesses for their very helpful evidence.

We now move into private session.

11:45

Meeting continued in private until 12:00.

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