ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 9 June 2004
(*Morning*)

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE
15th Meeting 2004, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

*Eleanor Scott (Highlands and Islands) (Green)

COMMITTEE MEMBERS

Roseanna Cunningham (Perth) (SNP)
*Rob Gibson (Highlands and Islands) (SNP)
*Karen Gillon (Clydesdale) (Lab)
*Alex Johnstone (North East Scotland) (Con)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Mr Alasdair Morrison (Western Isles) (Lab)
*Nora Radcliffe (Gordon) (LD)

COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)
Janis Hughes (Glasgow Rutherglen) (Lab)
Jim Mather (Highlands and Islands) (SNP)
Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)
Mr Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING ALSO ATTENDED:

Susan Deacon (Edinburgh East and Musselburgh)

THE FOLLOWING GAVE EVIDENCE:

Duncan McNab (Scottish Executive Environment and Rural Affairs Department)
Mrs Mary Mulligan (Deputy Minister for Communities)
Allan Wilson (Deputy Minister for Environment and Rural Development)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Chris Berry
Catherine Johnstone

LOCATION

Committee Room 1

Scottish Parliament

Environment and Rural Development Committee

Wednesday 9 June 2004

(*Morning*)

[THE CONVENER *opened the meeting at 10:03*]

Petitions

Waste Water Treatment (PE517 and PE645)

The Convener (Sarah Boyack): Good morning everyone. I welcome members of the committee and other members, witnesses and members of the press and the public. Apologies have been received from Roseanna Cunningham, who will not be at the meeting, and from Eleanor Scott, who will leave early. I remind everyone to switch off their mobile phones so that we do not have an embarrassing interruption.

Under agenda item 1, the committee has two petitions to consider—PE517 and PE645—both of which relate to noxious odours from waste water treatment works. Background information on the petitions has been circulated. We discussed the petitions on 21 April and we wanted to bring the matter back to the full committee and to discuss it with the ministers with responsibility for the environment and rural affairs and communities, as they have an interest in the topic.

We are delighted that the Deputy Minister for Environment and Rural Development, Allan Wilson, and the Deputy Minister for Communities, Mary Mulligan, are here. I welcome them and their officials to the meeting. I ask the ministers to introduce the officials whom they have brought with them and to give the committee brief opening statements in the light of our previous correspondence.

The Deputy Minister for Environment and Rural Development (Allan Wilson): Thank you, convener. I will start, if that is okay. I apologise in advance for my fairly detailed opening statement, which is considerably longer than usual because of the complexity of the legislative background and because I am aware that there are problems relating to odour nuisance with a small number of sites in Scotland.

I am accompanied by Kevin Philpott and Duncan McNab from the Scottish Executive Environment and Rural Affairs Department. Mary Mulligan will speak about planning concerns.

Members will be pleased to learn that I do not propose to reiterate the entire history of statutory nuisance policy development, as it has already been comprehensively covered. However, the major point must be stressed that, although the Executive is fully aware of the issues that have been raised in the Public Petitions Committee and the Environment and Rural Development Committee, it is not the Executive's role to enforce legislation—that is clearly the role of the regulatory authorities, principally the Scottish Environment Protection Agency and local authorities. That said, the Executive has considered various options for improving the current situation with the Department for Environment, Food and Rural Affairs. To underline the Executive's position, I would like to discuss some occurrences so as to address the committee's specific concerns.

The Executive did not follow DEFRA's lead in launching, in December 2002, a consultation on odour controls, because an English High Court appeal on the applicability of the statutory nuisance legislation to waste water treatment works was lodged in January 2003. The Executive decided to await the outcome of that case, as it is not necessary to introduce new legislation in a particular area when adequate legislation is already in place. However, the Executive contracted a consultant in March 2003 to produce a draft regulatory impact assessment for odour control at waste water treatment plants in Scotland in preparation for a consultation or other course of action, if required. Members probably know that the English High Court decided on 23 May 2003 that the current legislation was applicable to waste water treatment works. That judgment would be persuasive in any case on the point before a Scottish court.

The water company that was involved in the appeal case—Thames Water—then sought leave to appeal against the decision to the House of Lords. The Executive again decided to postpone holding a consultation until a definitive ruling from the House of Lords on the applicability of the current legislation was made. It must be noted that DEFRA also decided to withhold the results of its consultation until the House of Lords delivered its opinion, and it has still to announce its results.

In the interim, the Executive decided with DEFRA that a voluntary code of practice on nuisance control from waste water treatment works should be produced, which could be utilised regardless of whether further legislation was deemed to be required. Officials from the Executive and Scottish Water sit on the steering group and a feasibility research study was commissioned from consultants.

On 5 March 2004, Thames Water's appeal to the House of Lords was withdrawn—I presume

that the committee knows that. The English High Court's decision therefore stands.

In respect of the current status of the voluntary code of practice, things have taken longer than expected as a result of technical difficulties in the production of the initial consultant's report. That led to new consultants being contracted to produce a more constructive report, leading to the production of draft best practice guides and, ultimately, a voluntary code of practice this summer.

On receipt of the United Kingdom code of practice, Executive officials will work with industry regulators, enforcement agencies, Scottish Water and whoever is working for it, and the consultant who produced the original RIA, to produce a draft voluntary code of practice, fit for purpose in Scotland, which will be subject to public consultation later this summer.

With the committee's permission, I will read some sections from the letter that was issued last month by my officials. They are principally about statutory nuisance, but they also relate to other enforcement measures. The letter states:

"There has been some doubt in recent years as to the applicability of the statutory nuisance regime in Part III of the Environmental Protection Act 1990 … to waste water treatment works. However the position appears to have been clarified by a recent English case, (London Borough of Hounslow v Thames Water Utilities Limited) in which it was decided that waste water treatment works were "premises" within the meaning of section 79(1)(d) of the 1990 act. This is persuasive authority in Scotland for the view that odour from waste water treatment works could constitute a statutory nuisance. This would allow local authorities to use the powers under the statutory nuisance regime to tackle this problem.

Local authorities therefore have a duty under Part III of the 1990 act to investigate a complaint of a statutory nuisance made by a person living within the local authority area. Where it is satisfied that a statutory nuisance exists or is likely to occur or recur, it must serve an abatement notice, requiring the abatement of the nuisance or the prohibition or restriction of the occurrence or recurrence of the nuisance, or the execution of such works and the taking of such other steps as may be necessary for any of these purposes. A person who contravenes an abatement notice without reasonable excuse is guilty of an offence.

A local authority also has the power, where an abatement notice has not been complied with, to abate the nuisance or take any steps necessary in execution of the notice. A local authority is empowered to take this action whether or not proceedings have been taken in relation to an offence. A local authority also has the power to bring proceedings in any court of competent jurisdiction where it is of the view that proceedings for an offence would afford an inadequate remedy in the particular case.

Part III of the Act therefore gives local authorities various powers to take action to prevent or abate nuisance.

On a separate matter, it might be worth clarifying what enforcement action can be taken to abate odour at waste water treatment works in Scotland by the two regulatory bodies concerned; local authorities and the Scottish Environment Protection Agency (SEPA). The legislative provisions for regulating odour from waste water treatment plants are governed by several factors. These include the capacity of the plant, whether sludges are disposed of or recovered, and whether the sludge is imported from another plant.

The respective roles of SEPA are as follows:

Certain categories of waste water treatment plants (e.g. those with a capacity exceeding 50 tonnes per day that import non-hazardous waste which then undergoes treatment and the resultant sludges are disposed of) will fall within the scope of the Pollution Prevention and Control (Scotland) Regulations 2000. In these cases SEPA would be able to impose the odour control provisions contained in the PPC Regulations.

Other waste water treatment plants (e.g. those with smaller capacities or those that do not dispose of sludges) will not fall within the scope of the PPC Regulations. It is the Executive's understanding that most waste water treatment plants do not dispose of sludges. Some sludge goes for recovery under an exemption from the Waste Management Licensing Regulation 1994, as amended, in which case SEPA may generally consider odour control measures when deciding whether to register the activity. Some sludge is used in accordance with the Sludge (Use in Agriculture) Regulations 1989, which do not include provisions controlling odour. In that instance the controls would be under the statutory nuisance regime. A great deal of sludge in Scotland is currently co-incinerated for energy production.

If a waste water treatment plant is currently regulated under Part 1 of the Environmental Protection Act 1990 (IPC and LAPC controls), SEPA's authorization can include conditions to control odour. However, the Executive understands that no waste water treatment plants in Scotland currently fall within the scope of Part 1.

If a waste water treatment plant is only regulated under the Control of Pollution Act 1974, only discharges to water are regulated. In that case SEPA would be unable to regulate odour. Instead, that function would fall to local authorities under statutory nuisance controls.

Waste management legislation empowers SEPA to control odour from plants treating waste but the Controlled Waste Regulations 1992 prescribe that sewage treated within the curtilage of a waste water treatment works as an integral part of the operation of the works is not treated as industrial or commercial waste. Consequently, SEPA does not have powers to control odour from these plants. Odour from these plants would be controlled through statutory nuisance legislation regulated by the local authorities and, where relevant, through use and effective enforcement of appropriate planning conditions related to the development itself. But planning conditions should not be used to control matters more appropriately regulated by other legislation.

Where sewage sludge is imported for treatment from another works it is no longer exempt from the waste categories referred to above. In the case of larger plants where the amount of sludge brought into the works exceeds 10,000 cubic metres per annum, there is a requirement that that part of the plant taking imported sludge must have a waste management licence under part II of the Environmental Protection Act 1990. This licence can include conditions relating to the treatment of malodorous air from the plant such that it does not give rise to offensive odour outwith the site boundary. If the quantity of sludge brought into the works in any 12-month period does not exceed 10,000 cubic metres the activity can be registered exempt from the full waste licensing regime

under the Waste Management Licensing Regulations 1994. Odour from plants to which the full Regulations apply may be controlled through the licence. If an exemption applies, it may be open to SEPA to take a view on odour control when considering whether to register the exemption."

10:15

It is appropriate, as we discussed, to put that on the record. The letter concludes:

"In summary, SEPA has powers under the Environmental Protection Act 1990 and the PPC Regulations to control offensive odours. SEPA does not control odour from premises falling within the scope of the Controlled Waste Regulations 1992 or regulated under the Control of Pollution Act 1974. In these cases, SEPA relies on local authorities to exercise statutory nuisance powers to regulate odour.

Incidents of odour problems are relatively few compared to the number of sewage works throughout Scotland, but when problems occur they can have a significant and prolonged impact on local residents. For this reason an apparent lack of effective enforcement requires to be addressed as a matter of urgency. Following the clarification of the applicability of the statutory nuisance regime in Part III of the 1990 Act to sewage treatment works, the Scottish Executive now propose to produce a Code of Practice for the control of odour, to which local authorities would be required to have regard when exercising their functions under Part III of the 1990 Act."

I stress that the terms that are expressed in the letter cannot be regarded as authoritative; they are intended merely to be helpful. It is for local authorities to take advice on the exercise of those powers in a particular situation.

I turn to the specific case of Seafield waste water treatment works. My officials are in contact with the City of Edinburgh Council and Scottish Water on the matter. I understand that the operator, Stirling Water, has, in consultation with Scottish Water, developed a number of relatively short-term potential odour mitigation proposals that are currently being investigated and/or being implemented. Those measures include, among others, the chemical dosing of sewage before it reaches Seafield and ways of managing flow at the inlet to Seafield to minimise the rise of septic sewage build-up. Stirling Water is investigating and implementing a number of odour abatement options, and my officials will continue to liaise with the City of Edinburgh Council and Scottish Water to ensure that the abatement programme is expedited. My colleagues here can be questioned on that process.

As far as Kirkcaldy waste water treatment works is concerned, Scottish Water advises that considerable work has been undertaken during 2002 and 2003 to improve odour control—apparently after the petition that is before the committee was compiled—and that it continues to work closely with Fife Council to monitor performance.

With reference to the committee's concerns regarding landfill sites, the process of migrating all landfill sites from waste management licences to pollution prevention and control permits will allow SEPA to require best practice in odour control. It is unlikely that any system will be perfect, but effective methods of odour control are available to the industry. As we discussed last year, the Landfill (Scotland) Regulations 2003 require that measures be taken to minimise nuisances and hazards arising from odours, as well as other problems such as noise, vermin and insects.

Following the clarification of the applicability of the statutory nuisance regime of the 1990 act to waste water treatment works and the proposed code of practice for the control of odour, I feel that we have adequate legislation and measures in place to tackle the problem. This, together with on-going research into the relationship between planning and environmental controls, which Mary Mulligan will talk about, and research into nuisances from landfill sites, such as insects, will ensure that the issue receives due priority.

An issue for all members, the general public and the industry is the on-going quality and standards III exercise and forthcoming consultation, which will also examine a range of investment needs, including those relating to odour issues. The consultation will inform ministers' decisions on the establishment of an affordable and deliverable investment programme for the industry, including measures to control odours from waste water treatment works. However, it must be recognised that it is inevitable that difficult decisions will have to be made about the range of priorities that have to be addressed over the period of the quality and standards III exercise between 2006 and 2014. We must also consider how we fix charges in relation to who pays for the delivery of the programme for the shorter periods between 2006 and 2008 and 2006 and 2010.

The Convener: Thank you. That was a lengthy presentation and I hope that people find it useful to have it on the record.

Before I ask Mary Mulligan to set out the relevant communities and planning issues, I make the observations that it has taken the minister 20 minutes to set out the situation and that an average member of the public would find it hellishly complicated to work out which of the regulations apply where. Perhaps we could discuss that later.

The Deputy Minister for Communities (Mrs Mary Mulligan): I will try to keep my comments brief, but I must answer the questions that have been asked and I want to put the planning issues in perspective.

New waste water treatment works and landfill sites require planning permission. Because of their potential implications, planning authorities advertise those applications in the local press and invite written comments before they come to a decision. Waste water treatment works and landfill sites are also listed in the schedules of our environmental impact assessment regulations, which require an assessment to be carried out if there is likely to be a significant effect on the environment.

The Town and Country Planning (Scotland) Act 1997 requires that decisions are made in accordance with the terms of the development plan for the area unless material considerations indicate otherwise. We expect that the proposed location for developments such as waste water treatment works would already have been identified in the local plan and would, therefore, have been subject to public consultation before any planning application was submitted.

There is a long-standing principle that the land-use planning system should not duplicate other controls, as Allan Wilson said, or be used to secure objectives that would be more appropriately achieved by other legislation. Nevertheless, the dividing line between the roles of planning and environmental controls might not always be clear in practice. In that regard, we commissioned research into the interaction between the planning system and the major environmental regulatory systems that are operated by SEPA, such as the pollution prevention and control system, waste management licensing and effluent discharge consents. Through the study, we want to identify whether—and, if so, how—planning and environmental regimes can work more effectively and efficiently together to protect the environment while, importantly, still facilitating development. We expect to receive the research during the summer.

I mention the importance of facilitating development because that is a key role of the planning system. We must provide waste treatment and disposal facilities—waste must go somewhere. Planning is charged with enabling such development to happen and, sometimes, hard decisions have had to be made about the most appropriate locations. Of course, planning permission can be refused if a development proposal is unacceptable.

The Environment and Rural Development Committee asked whether a minimum distance could be set for waste water treatment works, to ensure that no such development would take place in close proximity to residential properties. I fully understand the point of the request and the principle seems to be reasonable. However, I caution that there are reasons why such an approach might not be appropriate.

When a development proposal is received for a facility such as a waste water treatment works, the proximity to and potential impact on neighbouring property is considered carefully before a decision is reached. That is a standard feature of the planning process. The absence of a statutory or nationally recognised minimum distance does not mean that proximity and potential effects are not considered; such issues are considered as a matter of course, not only when there is a proposal for a new waste water treatment works or waste facility, but when there is a proposal for a new residential development on a site that is close to such a facility.

When the siting and design of new waste water treatment works are considered, several factors that might affect neighbouring properties must be taken into account. Those factors include the size of the works; the topography of the area; the prevailing winds; the design and layout of the facility; the use of technology to mitigate the effects of odour; and the routes and timing of traffic movements. Different factors come into play depending on the location and the scale and type of works that are proposed, so each case must be considered on the basis of its individual characteristics.

Given that range of factors, it would be inappropriate to set a minimum distance for all cases, as that would introduce awkward inflexibility into the system. It would certainly be difficult to calculate what the minimum distance should be. I note from the committee's previous discussions that 500m has been suggested as an appropriate minimum distance. However, the setting of a significant minimum distance from residential property in all circumstances would greatly limit the land that would be available for development and, in many urban areas, it might mean that no such land was available. I imagine that the starting point would have to be a short minimum distance, which would leave each case to be considered on its merits—as currently happens anyway.

The potential for odour problems can be addressed by planning authorities when new development proposals are considered, especially when an environmental impact assessment is performed as part of the planning application process. There are opportunities to address such issues through pre-application discussions to ensure that the matter is addressed in the design before the application is lodged, or by attaching conditions to the planning permission, perhaps by specifying that particular equipment must be installed or by requiring particular parts of the

development to be screened or located in a certain area of the site.

The power to attach conditions to a planning permission must be exercised carefully. Conditions must be necessary and they must relate to clear land-use objectives. They must not control anything that would be dealt with more appropriately under other legislation. Conditions that are attached to a planning permission can be effective only if they are enforceable and a range of planning enforcement powers exists to enable local authorities to ensure that conditions are complied with. If odour became a problem in a development that complied with the terms of its planning permission, there would be no breach of planning control to enforce. The odour would have to be dealt with by the more appropriate controls that are in place.

To summarise: the planning authorities can help with the control of odour by directing necessary development to the most appropriate locations; by addressing necessary design and equipment issues; and, where appropriate, by refusing applications. Authorities may attach conditions to planning permission that relate to the physical aspects of the development and ensure that those conditions are complied with. However, other, more appropriate powers are available to ensure that facilities meet the appropriate technical standards and to deal with the impact of odour on the environment.

I am pleased to have had the opportunity to set out our position to the committee and my colleague and I are happy to take questions.

Karen Gillon (Clydesdale) (Lab): I have some difficulty with the two presentations that we have heard. We have had a full statement about all the legislation and all the planning conditions and controls that exist, but we are considering petitions about actual waste water treatment facilities that have been built under all those planning conditions within the framework of all that legislation and are still stinking people out of their houses. Two ministers have come here today, but they have not offered us any practical solutions. To be frank, I find that disappointing.

I do not buy the argument that everything in the garden is rosy and that nothing needs to change, because something definitely needs to change. I hear about voluntary codes of practice and about the ministers sitting down with Scottish Water and doing this and that, but surely to God that has all been happening, because the issue is not new. Seafield has been stinking people out for a while and we have been dealing with the issue for nearly two years. If the ministers could sit down with Scottish Water and sort the problem out through a voluntary code of practice, that should have been done, but if it has been done, it has not worked. Somebody somewhere must take responsibility for that.

10:30

I am interested in the idea of a minimum distance. Allan Wilson said that there is no such thing as an odour-free waste water treatment works, which is absolutely right, and Mary Mulligan said that we cannot have a minimum distance from residential developments because, if we did, we would not be able to build in the cities. That is very nice for somebody who does not live near the location of a proposed treatment works, but people's lives are being affected by such works, and nobody is prepared to take responsibility and tell the developers that they have to deal with the problem. We talk about Q and S III and Scottish Water is talking about the standardisation of its developments and how it will improve them, but Scottish Water did not mention to us how it will control odour and the minister has not mentioned whether odour control will be one of the top priorities in the development process. We need to know about that.

If the planning system works, why are people who live adjacent to waste water treatment works suffering as they are? If the regulatory regime works, why are people complaining to the Parliament? They are not complaining about one waste water treatment works. If everything is right, why are we getting petitions?

Allan Wilson: I will respond first, and then Mary Mulligan will answer the planning questions. I would certainly not seek to suggest that everything in the garden is rosy—far from it—and I thought that I had expressed fulsomely the fact that we share residents' concern about the small number of waste water treatment works where odour nuisance is a problem. I stress the relative nature of the problem: Scottish Water operates something like 1,500 facilities and, as we know, the problems are confined to relatively few within that total operational base. That is not to minimise in any way the problems that some localities face.

I referred to Q and S III because it gives the committee, as elected representatives, and others more generally the opportunity to ask where odour control features in Scottish Water's forthcoming investment programme and who should pay for it, which is important. It is safe to say that, as with many other problems in our water infrastructure, odour control has suffered from an historical lack of investment over 20 years. Even in the immediate past, Scottish Water has not been funded to put odour control systems into waste water treatment works except where one was required as part of the construction of a new works by virtue of the planning system or under waste management licences. I talked about those

licences, which are specified by SEPA, at some length. However, Scottish Water has responded to customer issues at existing facilities where that has been possible within the constraints of its budget. It has an operational maintenance and capital budget of £4 million, which it can use to address such problems.

The Q and S II process, which determined the basis for the current round of investment in the water infrastructure, did not have representation from politicians, the public or industry in relation to the priority to be afforded to odour control as part of the general tasks facing the water industry in updating its infrastructure—whether those tasks are to improve drinking water quality, bathing water quality or any other environmental standards that prevail. There was very little representation on the division of responsibility between businesses—large and small—and domestic customers as to who should pay. That situation has changed over the past four years. People are now much more aware that the forthcoming investment programme will bear heavily on such issues as odour control and new waste water treatment development. I would expect to see a more vigorous response to the current consultation than has historically been the case.

I dwelt at length on the matter of the regulatory responsibilities of the various agencies. We take responsibility for the legislative regulatory regime that is in place. I have outlined who has responsibility where. We would expect local authorities and/or the Scottish Environment Protection Agency, where it has responsibilities to control and affect the regulatory regime, to ensure that those responsibilities are effected to the satisfaction of the regulatory bodies. That might not always be to the satisfaction of everybody concerned, but the actions of the bodies involved should certainly be regulated to the letter of the law.

Mrs Mulligan: If I gave the impression that I did not think that there was an issue to address, I can only apologise. I recognise that this is an issue for many people. I was trying to show the part that the planning process plays, how we can respond to issues prior to the development of waste water facilities and how we can impose conditions to ensure that the maximum protections are afforded in the areas concerned.

Karen Gillon raised two points about planning. First, on the issue of minimum distance, I recognise that such a condition might seem an attractive option. In my opening remarks, however, I suggested that other issues need to be considered alongside having a minimum distance, including topology and prevailing wind direction. Such factors can have an effect. Although they might in some ways seem subsidiary, such factors must be taken into account with respect to the availability of land for developments when we are ensuring that the necessary facilities for our communities are provided. A number of issues, and not just that of distance, need to be taken into consideration.

Without wanting to be flippant, I would say that there is a danger that, by imposing a minimum distance, we might be suggesting that that is an appropriate distance. In some cases, it might not be, and the distance might need to be greater. That might be overlooked if the necessary consideration was not being given to all the factors. We think that having a minimum distance is important, but we also think that, in setting a statutory minimum distance, we would remove the planning system's often useful flexibility for dealing with particular developments.

In providing a waste water treatment facility, we would expect that local communities had been consulted through the development plan and that an environmental impact assessment had been carried out, which would cover issues around how odour might travel. We would consider the equipment that needed to be put in place, with the most up-to-date provision of facilities so as to minimise the risk of odour. We would need to keep up to date with such work, along with the planning condition, to try to prevent the spread of odours.

We are aware that odour is a problem, but it is covered by other regulatory regimes, which is why we have commissioned the planning and environmental regulation research to which I referred, which is looking at how planning and the other regimes can work more closely and effectively together to address the issue. We are not saying that we think that everything is perfect at the moment. There may be areas in which we can co-operate more effectively to resolve some of the issues, which is what we will seek to do.

The Convener: Do you have a timescale for the publication of that research?

Mrs Mulligan: It will be published in the summer.

The Convener: But there is no date yet.

Mrs Mulligan: I do not have a precise date. It will be published shortly.

Maureen Macmillan (Highlands and Islands) (Lab): My questions are for the Deputy Minister for Environment and Rural Development. You said in your introduction that local authorities could now tackle the problem. You also said that there were few instances of odour nuisance, but you will be aware that a lot of coastal communities are affected by odour nuisance because of the chemical reaction that takes place when salt water mixes with sewage. Can local authorities tackle

such situations? Can they investigate and serve abatement notices?

How can it be decided whether there is a significant odour? In the past, the problem has been that some people have said that a smell is not too bad. There seems to be no way of measuring the offensiveness of a smell, although I heard on the radio this morning that Lancaster University has produced something that can measure odour. The point is important, because there are times when one is aware that there is a terrific stink, but there are also marginal cases that require some form of measurement.

Allan Wilson: I agree with your last point. We all agree that sewage treatment emits odour, but given that we can have no waste minimisation policy for sewage, we have to deal with it, which, by definition, will create odour in certain circumstances.

To help better to inform Scottish ministers about that problem and, more important, about investment decisions that require to be taken over the next four-year period and the relative priority of odour control within the vast array of other priorities that face us in upgrading our water network, Scottish Water is carrying out work to collate root-cause and site data on odours and to produce solutions. That is part of the process to which you refer in some of the island communities on the west coast, with which I am particularly familiar. Scottish Water is also working with the water industry commissioner to agree a standard odour measurement. That work will inform costings for the level of investment that will be required in the final investment programme.

In both areas, work is under way with Scottish Water and between it and the water industry commissioner better to identify odour concerns and address them in the future investment programme. The issue is partly technical, and there are technical solutions to the ingress of seawater into the system, which creates the odour. That requires further investment in existing plant, or building such solutions into new plant specifications. That work is presently under way.

Maureen Macmillan: My other question was whether local authorities now have the power to tackle such situations.

10:45

Allan Wilson: Sorry, yes. One of the reasons that I made such play of the historical context of the debate around the duties and responsibilities of the various regulators was—I hope—to make it clear that local authorities have the powers to address statutory nuisance. Indeed, the Seafield waste water treatment works is currently the subject of a court action in respect of an Environmental Protection Act 1990 abatement notice, which was issued by the City of Edinburgh Council in September last year. Such action addresses in part what you said about the situation on the west coast and what Karen Gillon said more generally about the regulatory framework. As I said, an abatement notice is currently going through the courts.

Rob Gibson (Highlands and Islands) (SNP): Will you state, for the record, how the system has failed the residents who live close to the Seafield plant and the Kirkcaldy works? It is important that the lay person understands the point at which the regulatory regime has not worked. As the convener said, the complicated statement that you made was important in setting the issue in context. However, can you say, in a few simple sentences, how you think that the system failed at the statutory level and also at the regulatory level in respect of local government action?

Allan Wilson: I will do my best. The member will appreciate that, as the action to which I referred is subject to appeal in Edinburgh through the courts, the details are sub judice. The sludge treatment operation is regulated by the waste management licence. SEPA could contribute, but it has advised that, as the problem is with the cleaning out of the primary settlement tanks, a consequential responsibility arises through the local authority's statutory nuisance powers. The background to the regulatory regime is that the division between the two regulatory bodies is significant. Of course, the determination of responsibility between the parties is currently sub judice.

Mrs Mulligan: I am not aware that Seafield is in breach of any planning regulations at the moment. I do not want to say much more than that because, as you know, if there were to be a breach, it would come before Scottish ministers and I would not want to prejudice the situation. The committee will also be aware that planning restrictions cannot be imposed retrospectively. We have a planning agreement for Seafield and, as I said, I am not aware of any breach of that agreement.

Rob Gibson: I understand the stage that we have reached, but I do not believe that some of the facts, all of which are well known, need to be regarded as sub judice. That makes it very difficult for the committee to try to probe the issues. As my knowledge of what to ask next is limited, convener, I will rest there.

The Convener: I will move on to Susan Deacon, who I suspect will not find it difficult to know what to ask next. This is not the first time that you have been before this committee, Susan. I am not sure whether you feel that we have moved forward on the issue today. I am seized by the minister's last comments, however, about the abatement notice and about the fact that enforcement actions are

under way. Given that, as the local member, you are still dealing with the problem, I wonder what your take on all of that is.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): We are certainly still dealing with the problem. I deeply regret the fact that I have heard little this morning that suggests that we will do anything other than continue to deal with the problem for some time to come. On the specific point about the abatement notice, I am very pleased that the City of Edinburgh Council took enforcement action.

I return to the Deputy Minister for Environment and Rural Development's comments. I do not accept that the issue is simply one of the need for improved enforcement. If that had been the case, we would have seen a solution to the Edinburgh situation considerably sooner that we expect that to happen. I accept that, as the minister said, the abatement notice that was served by the City of Edinburgh Council in September last year continues to be locked in protracted legal dispute between the council, Scottish Water and Stirling Water, which operates the plant. That reinforces the point that I made at previous meetings and to which Karen Gillon and others have alluded this morning. How and when can we ever achieve some end point in these situations?

I seek the committee's indulgence for a second. On the way here today, I vividly remembered the petition being presented to the Parliament and to the previous convener of the Public Petitions Committee. I remember it so well because I waddled to the meeting as I was just about to give birth to my second child. That child is two years old today. In that time, I have watched my child grow up and I have filled three lever arch binders—at least—with paperwork from ministers, a pile of parliamentary processes, papers from agencies and so on. However, I have seen precious little practical progress at Seafield waste water treatment works and I understand the frustration and disappointment among local people who hoped that their elected members would do more to address their concerns, given the amount of time that has elapsed and the lack of resolution to the situation.

I have a couple of questions to ask in that context. As other members have said, other communities throughout the country are looking to the Seafield and Kirkcaldy petitions in the hope that practical action will be taken. Does the Deputy Minister for Environment and Rural Development not accept the fundamental point that if the statutory and regulatory regime in this area was as effective as he suggests it is, the problems would have been resolved by now? Surely the test of any regulatory regime is whether it works.

The convener made a very incisive observation that if it takes 20 minutes to describe that regime to a parliamentary committee, what hope is there for local communities to make use of the protection of those regulatory measures if they do not have access to the information that we have? Minister, can you tell me whether you seriously think that the regime works? At the very least, is there not scope for simplifying, if not strengthening, the legislative position?

Given that the only action of substance that the minister has suggested today—and it is not a new measure—is the publication of a voluntary code, is there any prospect of that being given statutory underpinning at some point in the future? Can he give us a commitment on when we will see the draft voluntary code? As I have noted before at the committee, I have answers to parliamentary questions that promise the draft in late 2003 and spring 2004, and it is now almost officially summer 2004.

Further, does the minister accept that there are technical solutions that will greatly improve the situation? I will not get into a debate about whether we can eliminate the problem totally, but I contend that odour from waste water treatment works can be virtually eliminated, as has been evidenced by action taken in other countries and, closer to home, in England. Action has been taken in places such as Liverpool in recent years in response to precisely the same problems as we are witnessing. Do you accept that there are technical solutions?

I am grateful to the convener for letting me go on. May I raise a final point?

The Convener: As long as it is really your final point.

Susan Deacon: I promise that it will be. I would like the minister to address the point that I raised about the public having confidence that the problem will be acted on. I stress that I do not believe that he has given us that confidence. If the problem is to do with affordability—he has referred to hard decisions, which we all understand—can we not just be up front about the situation and have a debate about relative investment priorities rather than fob people off with more letters and processes that will not move things forward? I would like him to answer that last point directly, because I do not want to be sitting here a year from now having the same discussion.

Allan Wilson: I assure Susan Deacon that I do not want that, either. A range of questions was asked and I will try to answer the questions one by one.

It took 20 minutes not to summarise the regulatory background, but to lay out the history of the dispute in law about who had the regulatory responsibility. As you know, until as recently as March this year, the matter was still the subject of

an appeal in the House of Lords. Only one year previously, the issue was tested in the English courts.

The outcome of those processes has been that the position that ministers took has been vindicated. The responsibility has been placed with local authorities—which was where I said it lay—to address nuisance that arises from odour in their localities. A summary of the position could take 30 seconds—the explanation of the dispute in law was what took so long. Where responsibility for enforcement action lies is now clear. I suspect that that is one reason why the case is now proceeding through the courts in Edinburgh.

Our proposed voluntary code of practice, to which Susan Deacon referred, will be a valuable addition for local authorities, local residents and others. It will be an agreed code of practice to which those who are responsible for waste water treatment should adhere to ensure that odour is minimised, if not eradicated. Personally, I favour giving that code statutory force, but any proposed amendment would be subject to the approval of the Cabinet sub-committee on legislation. Unfortunately, I cannot tell the committee precisely how we would effect that statutory underpinning, but I assure Susan Deacon and her constituents that we wish that code to be given statutory force, so that if issues go to court, complainants can refer to the code and any failings to adhere to it in support of their case.

I offer Susan Deacon further light at the end of what I appreciate has been a long tunnel for her and her constituents. There are technical solutions to the odour control problems that can arise at sewage treatment works, whether on the west coast or the east coast. Like everything else, those solutions cost substantial sums of money. We have made the biggest single public sector investment ever in improving water infrastructure. That constitutes a massive amount of the nation's total civil engineering capacity.

We are consulting on the next four-year programme to add to the £1.8 billion programme that is under way to improve sewerage infrastructure. I have no doubt that part of that will be devoted to odour control problems in the east and the west. As I said, the consultation on quality and standards III is all about determining the exact investment priorities.

The west coast example is a case in point. We can almost—if not totally—eliminate odour from sewage treatment works if the necessary investment is made in the right place at the right time. However, that must be paid for. How such investment is paid for and who pays for it are questions that will arise in the consultation. As Susan Deacon and the convener know, an almost infinite amount of resource could be spent in new investment to improve waste water treatment and the quality of water—whether it is bathing or drinking water—so we must prioritise in the investment programme. In relation to improving drinking water quality and bathing water quality, odour control will be to the forefront of investment priorities, as will be the important issue of who pays for those improvements.

As I said, I suggest that there is light at the end of the tunnel. It is possible through technical and other means to minimise odour nuisance. Local authorities have a responsibility to regulate odour nuisance at Seafield. I will not comment on the specific details of the situation at Seafield to which Susan Deacon referred, except to say—as I pointed out in my preamble—that, as I am sure she will agree, measures have been taken to dose the sewage chemically before it reaches Seafield, to manage flows and to minimise odours. I know that those measures have not eradicated the problem and that additional measures will need to be taken. The issue will be part of discussions with Scottish Water on the next investment programme.

Members will be pleased to learn that the code of practice will be ready for consultation by September. It will be published in July and will take account of best practice in relation to developments both here and in the rest of the UK. We are conscious of the fact that south of the border there is expertise in this matter. One reason that we are moving forward jointly with DEFRA is to ensure that we get the benefit of its research and expertise when drawing up our code of practice.

11:00

The Convener: It is useful to get on the record when the voluntary code of practice will be available. First you mentioned September as the date for consultation and then you said that the code would be out in July. Can you clarify that?

Duncan McNab (Scottish Executive Environment and Rural Affairs Department): As the minister outlined, there have been delays with DEFRA and the steering group of experts. However, I have received an assurance from DEFRA that the draft code will be with us by July. Once we have adapted it to the Scottish water industry and legislative position, it will be ready for consultation by September.

The Convener: That is useful clarification.

Minister, you said that you are keen for the debate on statutory underpinning to be pursued and that a Cabinet sub-committee will ultimately decide on that. For the record, can you indicate which sub-committee?

Allan Wilson: I was referring to the Cabinet sub-committee on legislation. We will have to determine the appropriate vehicle for the committee and, ultimately, the Parliament to consider the measure to give it statutory effect to the measure. It is my clearly expressed wish that that should happen.

The Convener: You have put that on the record twice this morning.

Allan Wilson: I am sure that that will not have gone unnoticed.

Nora Radcliffe (Gordon) (LD): I want to explore further the technical difficulties with the voluntary code. Were those administrative difficulties or difficulties in setting and applying standards?

Duncan McNab: The difficulties resulted from a combination of those factors. DEFRA appointed a firm of consultants to do the initial feasibility studies, which finally came through in December last year. Subsequent investigation by DEFRA officials and by us, as part of the steering group, revealed that there were still large gaps, especially on technical issues and the feasibility of arriving at workable solutions. Another firm of consultants has been appointed to work with DEFRA. I have received assurances from DEFRA that it is close to producing the first draft code, which will be checked by the steering group. I will, with the various legislative and regulatory authorities in Scotland, adapt the code for Scottish purposes. There have been unfortunate delays.

I am unable to go into too much detail, because formal announcements are still to be made. Those include the announcement by DEFRA to the UK Parliament of the results of its consultation.

Allan Wilson: The matter is subject to political purdah, because of tomorrow's elections.

Nora Radcliffe: How confident are you that you can overcome the technical difficulties that are associated with measuring and controlling odour nuisance? Do we have technical solutions that will allow us to measure and quantify odour nuisance or is much more work needed? If more work needs to be done, who will pick up the tab for it?

Allan Wilson: As I said, Scottish Water is working with the water industry commissioner on calibration of odour nuisance. I have clarified the legislative background, but it is important to point out that the statutory provision does not apply only when all else fails. Local authorities are at liberty to investigate—for themselves or on behalf of residents who have complained—whether a statutory nuisance exists. That responsibility and power always applies; local authorities do not have to wait until everything has collapsed and failed before they investigate.

There is a process to go through. Scottish Water is considering the matter in preparation for its submission to us for the forthcoming investment period. Undoubtedly, the company will say that to address odour nuisance generally or in specific locations, it will require X amount of revenue, which will have to come from borrowing or charge income. We must set the charge limits—the commissioner will advise us on how the work will be paid for by charge payers. The process is under way. As I said, Q and S III gives communities the opportunity to contribute to the process and, potentially, to secure the investment that is required to eradicate or minimise odour nuisance in their area.

Nora Radcliffe: Did quality and standards II cover odour?

Allan Wilson: I have discussed that point.

Nora Radcliffe: I am sorry—I must have missed that in all the detail.

Allan Wilson: Little representation was made in respect of a range of issues under the Q and S II exercise. I asked officials about the matter earlier—my understanding was that there was surprisingly little about the need for investment in odour control. I say for Susan Deacon's benefit that that may or may not be the case, but it is the case that Q and S III gives us the opportunity to make such representations. A range of issues will arise, notably the division of responsibility for charging between big and small businesses and between domestic and commercial customers. Those issues were not particularly to the fore in the previous exercise, but they will be to the fore in the present exercise.

Nora Radcliffe: So Q and S III will be much more informed by external input, which I imagine will mean that odour will move up the agenda.

Allan Wilson: I think so. Investment in the public water infrastructure has risen up the political agenda in the intervening period. I expect greater public and political interest in the outcome of the Q and S III process than was the case for the Q and S II process.

Nora Radcliffe: Perhaps the answer is that the question is not who will pay, but what will take longer if we make odour more of a priority. That is self-evident.

The Convener: We may wish to return to that point. I am conscious that Mary Mulligan has only about five minutes before she has to leave and that we have a few questions that we still need to ask her. Do you have anything to add, Nora?

Nora Radcliffe: I hope that having a minimum distance would not preclude treatment of every case on its merits and that it would mean simply that there would be an irreducible minimum below which we would not go. I am conscious of the dangers of taking that line, but it could be made

clear that everything else must be taken into account, as well.

The Convener: I, too, was going to come in on that point. We discussed minimum distances at length when we dealt with landfill and we talked about comparable distances for opencast coal mining. The principle has been debated before.

We focused closely on the burden of evidence. You were absolutely right to say that issues such as topography, wind speed and the nature of the plant and how it is designed could be critical, but I was struck by what you said about how planning is meant to work. The local plan is meant to be where all the available sites are considered and where discussion is held about where, in principle, it would be best to put new housing or new sewage facilities. However, if the local plan is not in place and an application is received, the same discussion is not held, but the merits of that application are debated. The committee was convinced of the need to push for that discussion so that proper debate would take place on the best place for such facilities, rather than a facility ending up at the only site option that is before those who are debating the details of the application.

We were seized of the need to try to get the location right in the first place, rather than try to make proposals fit one site. The local plan system works as you described it only if the local authority has kept its local plan up to date. If the plan is not up to date, communities find out about applications only when they hit the individual proposal stage. That does not protect a community's right to engagement in the wider discussion.

We shall certainly consider your comments on proximity, but I still feel that there is a need for a tougher burden. People should have to demonstrate why siting a facility closer than, let us say, 500m would be appropriate, rather than a planning committee simply debating the merits of a specific application. Colleagues on the committee are convinced that there is a real debate to be had about such issues.

Mrs Mulligan: I understand the concerns that have arisen during the debate and I understand why a minimum distance might seem to be an attractive option. I caution the committee to recognise that other factors must also be taken into account, and that it would not be correct to assume that one issue could resolve the problems. However, in considering the location of a plant, it is likely that the local authority that is considering a planning application will take into account the plant's proximity to communities or to other developments.

I know that the committee is well aware of it, but I think that it is worth saying that we are currently consulting on planning issues, particularly on development plans and how they can be used more effectively. It is no secret that some of our development plans throughout Scotland are fairly old and therefore may not satisfactorily take into account some of the developments that might be needed. Following the consultation, and in the light of the responses that we get, we intend to look into that matter. We need to ensure that development plans are renewed regularly and that factors such as where facilities need to be placed are taken into account early.

The most important element is the involvement of communities in consultations on development plans. Too often in the past, development plans have been a heap of papers that people have looked at and thought, "There's no way I want to get involved in that." That has meant that people have not taken the issues on. However, we feel that it should be possible for people to be more involved in development plans and for them to form a better view about what is being included in them. Otherwise, when it comes to looking at individual applications it is difficult to argue against something that has already been agreed in the development plan. That puts people in an unfair position when they argue against proposals.

I said in my opening comments that, at the end of the day, it is open to a local authority to refuse an application for a development if it feels that the location is inappropriate. Local authorities do that only if the development plan has flagged up exactly what locations would be appropriate or inappropriate, so the development plan is important in providing the framework under which such developments would take place. It is appropriate that the convener referred to that, because it will play a crucial part in future developments of that kind—either waste water treatment plants or landfill sites.

The Convener: I suppose that the caveat is that such decisions can be made only if the local plans exist. The discussion must be about what is the best location rather than about the location that is proposed in an application that is before a planning committee. It is difficult for a planning committee to knock back an application for an urgently needed facility if there is no other application that might be approved. It is essential that we change the kind of choice that planning committees are presented with.

Mrs Mulligan: I understand the pressures that local planning committees face, but we are talking about facilities that are necessary if we are to maintain hygiene standards. However, if planning committees have relevant up-to-date development plans that have been fully consulted on and which are responsive to the local community, they can make the most appropriate decisions at the time.

11:15

Karen Gillon: Part of the problem is that that is not the case at the moment, so planning committees have to decide on applications when they receive them. If applications had to go through a local plan process, communities would at least have the right to have their views heard by a reporter who would scrutinise the matter independently. If communities lose an objection to a planning application, they have no right of appeal. That is an important factor in such issues, given that the objectors may be the people who will have to live with the implications of the planning application.

On the minimum distance, I agree with the minister that distance is only one factor and that topography and prevailing winds should also be taken into account. However, topography and prevailing winds are taken into account for landfill and opencast sites, yet we stipulate minimum distances for both those types of development. If landfill sites must meet a minimum distance requirement while taking into account other factors, why cannot similar criteria apply to waste water treatment works? That would not jeopardise anything.

Mrs Mulligan: I will make two brief points. I will confirm this in writing, but I am not aware that there is a minimum distance requirement for landfill or opencast developments. As someone who has both types of development in her constituency, I have not heard that argument being made before. However, I will respond to the committee in writing.

I acknowledge the points that Karen Gillon made about the need to keep development plans up to date and about communities having a right of appeal. As the convener is aware, we are consulting on extending the rights of appeal—I am sure that similar points will be made in that consultation.

The Convener: For the record, let me clarify that there are minimum distances for opencast developments, although those can be overruled by ministers—I say that with knowledge. The committee debated landfill issues in our discussions on the national waste plan and we felt that a minimum distance criterion would also be appropriate for landfill developments. The committee must consider all sorts of difficult developments, but we think that the current situation is not where we need things to be. We can take that point further.

Mrs Mulligan: I will be happy to confirm with the committee what the exact requirements are.

Maureen Macmillan: I want to follow up on an issue that we discussed some time ago. How do we ensure that decisions are, ultimately, enforced once people have been through the whole system right up to a court decision? For example, if Scottish Water does not have the money to carry out the treatment, will there be a contingency fund, given that local authorities can now seek abatement notices? How will decisions be enforced?

The Convener: Before Allan Wilson answers that question, I thank Mary Mulligan for attending this morning's meeting. I am conscious that she must appear as a witness before another committee. We may not have reached 100 per cent agreement with her, but we have exhausted our questions, so I am more than happy to let her escape. I thank her for giving evidence and look forward to the written response that she promised.

Mrs Mulligan: Thank you. Before I go, let me just be sure that Maureen Macmillan's question was not about enforcement of planning decisions.

Maureen Macmillan: No. It was about enforcement of abatement notices.

The Convener: The question was for Allan Wilson, who has now been given a couple of minutes in which to develop his answer. Mary Mulligan may leave.

Allan Wilson: Leaving aside existing issues at Seafield, the relatively simple answer is that it is for Scottish Water and its contractors to implement local authority abatement notices in respect of statutory nuisance. Incidentally, we are increasing the maximum fine for failure to comply with such notices from £20,000 to £40,000. Therefore, there will be a greater incentive for people to comply and to do so timeously.

The Convener: Two members have final points for the minister.

Allan Wilson: That is fine.

Karen Gillon: I have a statement.

The Convener: If you want to make a statement in front of the minister, make it brief.

Karen Gillon: It is really just a statement to back up what the minister said. A number of committee members have said in the past, and will say again, that the voluntary approach has not worked, and that there needs to be a statutory underpinning to any code of practice. Other members and I would support your proceeding with that statutory basis at the earliest possible legislative opportunity.

Allan Wilson: That is my stated view, and I welcome the committee's support for it.

The Convener: Okay; it is good to have that on the record.

Susan Deacon: I have several points of clarification on Q and S II and Q and S III. First, to many lay people who take an interest in the issue

and read the *Official Report* and so on, the quality and standards process might not leap out at them as being a mechanism that is accessible to them. Will you clarify, in practical terms, why you think that that mechanism is so important that it could make a difference here?

Secondly, given that you have put a lot of emphasis on people making representations to the quality and standards process, how and when does that need to be done? Thirdly, do people need to make separate representations in that process in order for their concerns on odour and so on to be taken on board? It would not be unreasonable of communities—or, for that matter, politicians—to assume that if they have made representations to a combination of Scottish Water, ministers and parliamentary committees, their concerns would be taken on board and woven into the process anyway.

Allan Wilson: That would not be an unreasonable assumption. In fact, the work that you have undertaken in respect of Seafield and that which Marilyn Livingstone has undertaken on Kirkcaldy, in conjunction with the work that the committee has done, has pushed the issue of odour control from waste water treatment works up the political agenda. The Executive is largely aware of the issues, not just about Seafield and Kirkcaldy, but in relation to odour control more generally. When we look at Scottish Water's investment plans, we will consider closely how much Scottish Water says that it will require to deal with odour-control problems generally, as well as odour control in those locations. As a consequence of your efforts and those of the committee, we are well aware of the importance of odour control as a priority in future spending.

We will publish the consultation in July, so we have the summer—as ever—to listen to responses to it. There are big issues: it is not so much a question of our not being aware of concern but, as you will be well aware, of how resources are balanced and prioritised and, at the end of the exercise, what priority we place on odour control. Importantly, it is also about who pays for tackling the problem. The only sources of funding would be increased Executive borrowing or increased funding from the charge payer. As constituency members, you will receive, as I do, representations from charge payers who do not wish to pay excess amounts for such services.

The Convener: That is useful clarification. The code of practice will come to you in July and will be made public in September.

Allan Wilson: Yes.

The Convener: When will the consultation on Q and S III begin formally?

Allan Wilson: It will start in early July.

The Convener: When will the consultation close?

Allan Wilson: We are trying to get the consultation out before Parliament goes into recess. The consultation closes 12 weeks from then, so it should close at the end of September.

The Convener: So the Parliament will meet again before the consultation is issued.

Allan Wilson: Yes.

The Convener: That is very useful.

I thank the minister for coming this morning. We have fired an awful lot of questions at you, but that is because this is an important issue to the people who submitted the petitions. There are also wider policy issues that we are tussling with round the table. Thank you for putting such a lot on the record—we will come back to that in due course.

Allan Wilson: Thank you. The meeting has been useful and informative.

11:24

Meeting suspended.

11:27

On resuming—

The Convener: Okay, colleagues. Let us reconvene. That was a pretty useful session. I do not feel that we are at the stage at which we need to close our consideration of the petitions. There is work still to do. I will suggest a few things and see what members' reactions are.

We need further points of clarification from Mary Mulligan, the Deputy Minister for Communities. We would like to explore the issues with her in a bit more depth. We have had a relatively clear statement from the Deputy Minister for Environment and Rural Development on the timescales. That lets us take the issue further over the summer. We have received the ministerial view today. As Allan Wilson made clear at the start of his presentation, it is also for other organisations to address the issues. He referred to SEPA, local authorities and Scottish Water. I would like to get their perspective on the matter over the summer so that, when we next discuss it in the autumn, we will have the full picture.

One of the key issues is that there are different perspectives on what odour standards are, which standards should be applied, how they should be applied and how quickly they should be applied. I would like to hear the views of the organisations that have to implement the regulations. We had a 20-minute explanation from the minister's perspective of how we got to where we are. I would like feedback from Scottish Water, SEPA

and the Convention of Scottish Local Authorities over the summer. I suggest that we write to them.

After the recess, we should be in a position to consider the draft code that will be published in September. I would like that to come to the committee. I would also like us to consider the issue of quality and standards III. The point could not have been made more forcefully to us that this is our chance to raise the issue in an effective way with the minister. I would like us to do that after the summer recess. I suspect that, at that stage, it would also be no bad thing to go back to the petitioners to seek their views, given that the committee has now had three discussions of the petitions. We are still dealing with the initial evidence on the petitions that we received from the petitioners. That is my suggestion. Have I missed out anything?

11:30

Karen Gillon: We need to flag up the issue of statutory underpinning as soon as possible—in other words, now. We should tell the First Minister that we think that that might well be a legislative priority.

The Convener: It is clear that that is not an issue only for the Environment and Rural Affairs Department; it is a priority that cuts across the Executive.

Nora Radcliffe: The other point that has emerged from all the discussions is that we can have the most wonderful standards, regulation and enforcement in the world but, in the end, cases have got to be brought to court. For two years, the Seafield case has been bogged down in arguments about who is responsible. Who is considering how we get swift and effective enforcement—of environmental matters, in particular—through the court system?

The Convener: Part of the reason for writing to Scottish Water, SEPA and COSLA is that there has not been implementation because legal challenges have been made. If such legal challenges were not made and the code was accepted, some of the issues in question might not go to court. I suppose that there are two issues that we need to consider.

Nora Radcliffe: There is the question of how to deal with matters before people go to court, but the long stop has to be effective legal action when it is required. Accomplishing that seems to be extraordinarily difficult.

The Convener: Once someone is in that legal position, they are in it. It would be good to cut through that process by getting the code implemented in the first place. That would avoid people being put in that position. Susan Deacon's point is that, X months on, she is now stuck. Abatement notices have been served, but they are being challenged.

Rob Gibson: Can we ask Scottish Water for ballpark figures on the cost of sorting out such matters? The amount of borrowing that is required comes into play. Given that the issue is rising up the agenda, the priorities that the minister mentioned for how the money is spent must be challenged. We must ask Scottish Water whether it is prepared to get on with such work quickly. From the Finance Committee's reports, it seems that the money should be available. We should underpin our remarks by asking how much the work will cost, given that it might need to be done quickly.

The Convener: On a previous occasion, we discussed the fact that incorporating the relevant features in the design of new sewage treatment works might be less costly in the long run. We are keen to ensure that that is a benchmark in Q and S III.

Rob Gibson: That is a matter for the future; the Executive might have to sort out the problems of Q and S II first.

The Convener: I am just saying that there are two issues on which we want clarification.

Alex Johnstone (North East Scotland) (Con): Although the petitions have been useful in raising the issue and allowing us to develop our thinking on it, my concern is whether, now that we are considering whether to ask Scottish Water and SEPA for their views on the matter, we have any way of assessing the scale of the problem. Is there a problem at only a handful of sewage works or is it the case that the problem exists all over Scotland and that it simply has not been drawn to our attention? I am concerned that it might be difficult to find out that information, because the judgment is so subjective that, if we were just to ask people whether there was a bad smell coming from their sewage works, the answer would probably be, "Yes, there is." We must be careful about how we establish that information.

The Convener: You are absolutely right, but you will note that paragraph 32 of the briefing paper on the petitions contains an assessment of SEPA's requirements, which 66 of the 600 waste water treatment plants in Scotland have not met. The Executive's target is to have fewer than 70 works that do not comply but, as we have observed, the existence of only three works that do not comply is a problem for the communities affected.

We have some ballpark figures. For example, we are told:

"Scottish Water plans to reduce the numbers of works not in compliance to less than 45 by 2006."

However, although we have some of the background information, which gives us a sense of the scale of the task, we do not have a sense of how much it would cost. I presume that Scottish Water's plans for 2006 are in a budget and that it is working on that. What would it cost to bring the other plants into compliance and how much of a challenge would that represent?

Maureen Macmillan: Moreover, what happens if local authorities serve abatement notices on all the plants that Scottish Water had not intended to make compliant?

Nora Radcliffe: I want to throw a pebble in the pool. Does the phrase "quality discharges" refer to odours as well as to whatever can be classed as a regulated discharge?

The Convener: One of the issues that we have to explore in more depth with SEPA is how it makes its inspections. After all, the minister said that some inspectors base their judgment simply on the smell.

Nora Radcliffe: As well as examining the costs of infrastructure and plant, we should also consider management practices, because improving the management of the plants sometimes has a significant bearing. If managers are aware that they will be pulled up on odour, they might manage their processes differently.

The Convener: Only last night, my colleague Christine May alerted me to operational issues at Methil. Although the people in charge are trying to manage the plant, they are not finding it easy to meet the targets.

Susan Deacon: I very much welcome the committee's direction of travel on these areas of investigation. I want to make what I hope are helpful suggestions about other information that members might factor into their deliberations. First, I wonder whether the committee would want to seek a local authority view on the matter. I have not discussed it with—

The Convener: COSLA was on my list.

Susan Deacon: I beg your pardon. I was also thinking that it might be useful to hear about the City of Edinburgh Council's specific experience of dealing with the problem.

The Convener: We could do that as well.

Susan Deacon: Committee members might also find it useful to consider some pieces of work that—after much wailing and gnashing of teeth—Scottish Water decided to carry out in order to address some of the Seafield issues. At the meeting on 21 April, I mentioned that a consumer research survey had been conducted in the community to assess how the smell impacted on the community over different distances. Although I thought that I knew a lot about that matter, I learned a lot from the survey and think that members would find that robust piece of work interesting.

Scottish Water has also commissioned WRc plc to carry out an independent report. I have to say that stage 1 of that research, which seeks to get to the root cause of the odour problems at the Seafield plant, was due to have been completed and published by last November. I am told that it is expected any day now. I know that every sewage plant is different, but I feel that the report will tell us quite a lot about what causes the smells and about the different parts of the production process that come into play. Stage 2 of the research, which still has to be initiated, centres on the key question that Rob Gibson highlighted: what needs to be done to fix the problem? That will take us into the realms of how much the work will cost and so on. Some work is under way. On the assumption that Scottish Water is willing to share it with the committee—as I am sure it would be—I believe that members might find it interesting.

The Convener: We can certainly write to Scottish Water about that. Susan Deacon has provided valuable background information that we could examine over the summer. We must also consider the research, the regulation and the planning system that Mary Mulligan referred to. I believe that the minister also mentioned research from Lancaster University.

Rob Gibson: It was Maureen Macmillan.

Maureen Macmillan: Oh yes. I did.

The Convener: Over the summer, we have to do a bit of information gathering and make some requests for information. We have had a good discussion on the matter and, if members have no other points to raise, I will simply say that I will report back to the committee when we receive further information.

Subordinate Legislation

Framework Guidance on Preparing a National Park Plan (SE/2004/98)

Horticultural Produce (Community Grading Rules) (Scotland) Revocation Regulations 2004 (SSI 2004/245)

11:39

The Convener: For the second item on our agenda, we have to consider two pieces of subordinate legislation under the negative procedure. The Subordinate Legislation Committee has considered both instruments and has commented only on the first. We have circulated a copy of that committee's report. Do members have any comments to make?

Members: No.

The Convener: Are members therefore content with the instruments and happy to make no recommendation to the Parliament?

Members *indicated agreement*.

The Convener: Thank you, colleagues. I shall see you all next week.

Meeting closed at 11:40.

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ISBN 0 338 000003 ISSN 1467-0178