

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 23 June 2004
(Morning)

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

17th 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 GAVE EVIDENCE:

Ross Finnie (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 23 June 2004

(Morning)

[THE CONVENER opened the meeting at 11:08]

Subordinate Legislation

Scottish Outdoor Access Code: Proposed Code (SE/2004/101)

The Convener (Sarah Boyack): I welcome committee members, witnesses, the press and members of the public. We have received an apology from Karen Gillon. I remind everyone to switch off their mobile phones; I know that people are always trying to get in touch with us during our committee meetings, but we do not want phones going off.

Agenda item 1 is subordinate legislation. Colleagues will recall that we agreed last week to defer to this week consideration of issues that we want to raise with the Justice 1 Committee in its role as lead committee on the proposed Scottish outdoor access code. The code, which was produced following the Land Reform (Scotland) Act 2003, sets out guidance on responsible exercise of the statutory access rights that the 2003 act grants.

Members have copies of the submissions that have been sent to the Justice 1 Committee. We must identify issues that we want that committee to consider when it scrutinises the code. Who would like to kick off?

Alex Johnstone (North East Scotland) (Con): What is our contribution at this stage likely to achieve? Is there scope for adjusting the proposed Scottish outdoor access code before it is agreed to? Can changes be achieved?

The Convener: As I understand it, we are looking at a draft code that Scottish Natural Heritage has produced after much consultation, dialogue and networking. The Justice 1 Committee must formally consider the code next week and decide whether it wants to recommend any changes. Is that correct?

Tracey Hawe (Clerk): My understanding is that, although the Justice 1 Committee can approve or not approve the proposed code in its entirety, it is up to the Executive to decide what it wants to do with any detailed comments that that committee

makes on the code. Obviously, if the Justice 1 Committee made substantive comments, the Executive could consider them and submit a further draft code.

Alex Johnstone: So, in essence, we are at a take-it-or-leave-it point with the proposed code. Is that the case?

Tracey Hawe: There is a further opportunity. The draft access code provides for SNH to keep the code under review. Although comments might not be taken into account for the current draft, they could be fed into further drafts under the code's review procedure.

Alex Johnstone: Are we confident that the review procedure will be on-going?

The Convener: That is set out in the process. I suppose that our role at this point, as a secondary committee, is to ensure that the Justice 1 Committee does not miss anything that we might think is important and which should be dealt with in the code. We are not the lead committee, so the key point is whether we want the lead committee to consider specific issues when it considers the proposed code.

Rob Gibson (Highlands and Islands) (SNP): Paragraph 4.7 of the proposed code—it is entitled “Respect access rights in managing your land or water”—is aimed at land managers. It states that they should not erect signs or notices to prevent people from having access. Paragraph 4.7 tells people what they should not do, but the code does not make it clear at any other point when signs should be erected.

My concern is that there has been no agreement on the kind of signs that people can erect. I hope that the Justice 1 Committee will concern itself with the wording that should appear on signs if they are erected, and with the positive stating of that wording in the access code. Problems with the wording of signs have been identified previously. For example, all sorts of signs that used extremely strong language were put up during the foot-and-mouth outbreak. Such language is not acceptable and I would like that to be sorted out. An understanding of the language that is acceptable on signs would benefit many people.

The Convener: That is a detailed suggestion. The proposed code has different sections and we must read the whole document to get an overview. We can ask the Justice 1 Committee to consider Rob Gibson's suggestion on signage that gives clear guidance and is appropriate in the context of the responsible access rights that are set out in the 2003 act.

Maureen Macmillan (Highlands and Islands)

(Lab): The submission from the Scottish Countryside Rangers Association seeks clarification in the access code of one or two issues, notably the relationship between the Land Reform (Scotland) Act 2003 and the Nature Conservation (Scotland) Act 2004. Issues around recklessness and so on have been raised previously in that context. The relationship between the two acts needs to be considered. We were clear that we had assurances that the 2004 act would not compromise the 2003 act, but perhaps the Justice 1 Committee would like to ensure that that is the case.

The Convener: That is an important point. We must have considered the Nature Conservation (Scotland) Bill around the time when the proposed access code was being finalised. It is important that the access code takes proper account of the Nature Conservation (Scotland) Act 2004.

Eleanor Scott (Highlands and Islands)

(Green): That is the point that I was about to make; it was also raised in the RSPB Scotland submission, which said that the access code refers to the Wildlife and Countryside Act 1981. The Nature Conservation (Scotland) Act 2004 has updated that act, therefore we want to know the Executive's plans for ensuring that the access code takes account of and reflects the new act.

Roseanna Cunningham (Perth) (SNP): There was a debate during the progress of the Land Reform (Scotland) Bill about commercial activity. Paragraph 2.9 of the proposed access code says that access rights will extend to activities such as a mountain guide taking a customer out hillwalking. The code is clear in that respect, but I wonder about companies that organise walking holidays and take out a group of people rather than a single customer. There is a list of exclusions from paragraph 2.12 onwards, but it is silent on what might be regarded as larger commercial operations, specifically the companies that organise walking holidays, which are a vital part of the rural economy. I am concerned that such companies should not drop through a loophole.

11:15

The Convener: That is quite an important issue, because it is not mentioned in paragraph 2.14, which outlines conduct that was specifically excluded from the Land Reform (Scotland) Act 2003.

Roseanna Cunningham: That is because the language used is singular.

The Convener: That is a good point on which to seek clarification.

Nora Radcliffe (Gordon) (LD): The point is covered implicitly in the next example, which is about a canoe instructor with a party of canoeists. The collective angle has been covered.

The Convener: We are presuming that that is all right, but SNH needs to check that.

Nora Radcliffe: The draft code says that its examples are not to be taken as exhaustive. We have to apply a degree of common sense to such matters.

The Convener: I think so, but Roseanna Cunningham's point is that a lot of people would—

Nora Radcliffe: The code talks about a guide with a hillwalker, or someone with a party of canoeists. It is implicit that a party of hillwalkers or a single canoeist are also included.

The Convener: It would not be unreasonable of us to ask for that to be clarified, though.

Roseanna Cunningham: Because such a debate took place during the process of the Land Reform (Scotland) Bill, it would be useful to clarify whether the commercial walking companies, which take out groups of walkers, will be okay in respect of the code. A number of those companies have concerns about what may happen. Nora Radcliffe is no doubt right—and no one wants any decision to be taken that would have an adverse impact on the rural economy—but it is worth the code being a bit clearer on that issue.

The Convener: All that the code would need to say is "customers" rather than "a customer". The phrasing is just slightly odd. Let us get it clarified without putting too much heat into it.

My main issue with the code is how the information will be disseminated; I was not looking so much at the detail, because I can see that there has been lots of horse-trading. The examples are pitched slightly differently; it is clear that they are meant to be printed in leaflets. The code is great, but people need to know about it. It should be accessible to all land managers and to everyone who is going to be in the countryside. We should ensure that there is a practical link to the tourism industry. I would like the committee to explore that.

Nora Radcliffe: Do we need to make specific recommendations about the width of coverage that the code should have? In my opinion, every tourist information point should have a copy of the full document. People are referred to a website, but not everyone has web access.

Roseanna Cunningham: Not when they are on holiday.

The Convener: That is what I meant when I said that the code has to be widely disseminated.

Nora Radcliffe: We do not want over-reliance on the internet, and for people to be told that all the information is there for them. As Roseanna Cunningham said, not everyone can get the information in that way at the appropriate time.

The Convener: That is why I mentioned leaflets. The code has to be disseminated practically for everyone who is likely to be in the countryside.

Alex Johnstone: Paragraph 11 of the NFU Scotland submission contains a sentiment with which I am inclined to agree strongly. It says that, regardless of whether we think that this is an appropriate Scottish outdoor access code, the time has probably come to get the code passed into law. I therefore agree with NFU Scotland's sentiment that it does not want anything to stand in the way of approval of the code at this stage. However, NFU Scotland has grave concerns, as I do, about certain aspects of the code. As a result, I am keen to ensure that we have the opportunity to continue to assess the code against the experience of its implementation.

My primary comment is not related to the comments that the committee ought to be making. As a landowner, whose land is all enclosed, my comment is about the Justice 1 Committee's responsibility, before it decides whether to approve the code, to echo concerns about liability, especially in relation to enclosed land. There continue to be a number of concerns. I am not qualified to judge concerns about liability; the Justice 1 Committee should be better qualified to do that. I ask that the Justice 1 Committee does not approve the code without satisfying itself that the liability issues have been covered appropriately.

Roseanna Cunningham: I echo that. Alex Johnstone has made a fair point; it is one that has to be made. Everyone needs to be clear on that aspect.

The Convener: Have we come up with enough issues to raise with the Justice 1 Committee under our remit? That should keep its members busy.

Sustainable Development

11:20

The Convener: Agenda item 2 is sustainable development. Colleagues have in front of them a copy of "Taking it on: developing UK sustainable development strategy together", which is the United Kingdom Government's consultation document. As part of the process of developing a revised sustainable development strategy, the UK Government seeks submissions on the consultation by the end of July. Given that we are working on sustainable development and that we have commissioned research that is being worked up, we have an opportunity to feed into that discussion.

I do not suggest that we attempt to answer all 42 of the consultation questions, but we have the chance to submit some ideas on how we think that the UK's sustainable development strategy could be strengthened. It is clear that we could comment on a number of issues. I suggest that members should give Tracey Hawe and me the job of pulling together some comments, which I will circulate to you after our discussion this morning. That will give us time to contribute to the discussion. Our recess starts at the end of next week rather than at the end of July, so the timing is not ideal, but I think that that would be the best way in which to proceed.

Rob Gibson: Some of the papers that examine our experience in Scotland indicate that the ability to permeate the economic development of the country with environmental and community interests is quite central if sustainable development is to be carried out in practice. Recently, we have heard about Scottish Enterprise leaders trying desperately not to have any responsibility for environmental issues or communities. To some extent, Highlands and Islands Enterprise has embraced those things; it has a social remit.

It is central to sustainable development that the thrust of Government through the economic agencies should be to lay down guidelines on what is expected in that regard. I hope that we can use that as a basis for our comments on the UK consultation.

The Convener: That would fit in well with the consultation question about how we should bring together environmental and social concerns at national, regional or local level. We should ensure that economic considerations are on that agenda as well, even though that changes the question that we have been asked. A series of issues that the Government needs to take on board, such as

those to do with procurement, flows from Rob Gibson's comment.

Roseanna Cunningham: If those issues had been addressed in Scotland some decades ago, we would not be in the position that we are in now. The example that I am thinking of relates to the building of houses, especially in the social sector. It is clear that a huge amount of the housing stock in Scotland was built in a highly unsustainable fashion. Anyone who knows anything about the history of council housing—in particular, the amount of energy that was needed to heat such housing and keep it in any way fit for people—will know that much council housing turned out not to be at all fit for people and so had an adverse effect on their health. That is a good example to focus on when we are talking about the need for sustainability to be at the heart of everything that we do. If we do not fit in sustainability across the board, we will have a problem.

I well remember that, when I was a solicitor for the City of Glasgow District Council, I had to defend situations that were, ultimately, pretty indefensible. That is an example of a situation that we could avoid in the future.

The Convener: Communities Scotland has probably set out in its sustainable development strategy ways of avoiding that problem in the future.

Roseanna Cunningham: That is a good example for other areas.

Eleanor Scott: It would be nice if we could draw on work that the committee has already done, as we cannot start to do anything new in the next 10 days. In relation to question 15 of the consultation paper, which the convener mentioned, our inquiry into the waste strategy might be relevant. That looked at community waste groups and the social benefits that they provide, which are not measurable in the tonnage of waste that is dealt with or the price per tonne. That issue is dear to my heart, as we have had a few problems in the Highland area.

The Convener: It is a good idea for us to feed in work that we have done in the past year. That could include the work that we have done in our waste strategy inquiry and the common agricultural policy reform work, which was about linking agricultural support into rural development to provide sustainable rural development and how the economic and social flavour is linked with the environment. There is also the work that we have done on the budget in identifying opportunities for sustainable development. Climate change, which is mentioned in one of the questions, is an issue on which we need to work at a UK as well as a Scottish level to produce a more coherent strategy.

Maureen Macmillan: I wonder whether we can look at procurement policies and how to help people to adopt sustainable procurement policies. For example, in the Highlands we cannot access recycled aggregates because there is nowhere in the Highlands that processes them. Costs are, therefore, higher and we have to use original aggregates that are being quarried. There are lots of issues around procurement that ought to be addressed.

The Convener: We might also want to respond to the question about how the different Governments in the UK work with each other on sustainable development. We will meet the UK Parliament's Environment, Food and Rural Affairs Committee next week. I hope that that will be a useful opportunity for us to exchange ideas with the UK Parliament and with local government. There are issues around debating what the different Governments and Parliaments are doing and ensuring that best practice is shared. I am not sure that that comes through in the consultation paper, but it is quite a big issue for us.

Maureen Macmillan: We should also consider the Scottish Parliament's procurement policies.

Mr Alasdair Morrison (Western Isles) (Lab): It is essential that, after five years, we liaise with the Welsh—sadly, not the Northern Irish—and the UK committees. The more such liaison we can do, the better. That should be part and parcel of our annual calendar, and there should be a formalised system to enable us to liaise at that level. *[Interruption.]*

There seems to be some hilarity among the nationalist members.

Rob Gibson: I support that.

Mr Morrison: That is encouraging.

The Convener: Do not look a gift horse in the mouth. Please carry on.

Mr Morrison: Eleanor Scott has plotted the way forward as far as this exercise is concerned. We cannot initiate any new work or engage in anything meaningful, but we should, over the next 10 days or so, draw on what members, the convener, and Tracey Hawe—with input from others—deem to be the most relevant parts of the work that we have done and present that as our response to the UK committee.

I formally thank Rob Gibson and Roseanna Cunningham for their support.

The Convener: Okay. We have had quite a good run round the topics and I do not want to prolong the discussion on the issue. I will circulate a draft note for submission to the Environment, Food and Rural Affairs Committee. There will be time for us to respond to the UK Parliament on the

consultation, as we do not have to do so until the end of July; however, we will not have time to debate the issue in the chamber. We will try to pick up the threads of this morning's discussion and one or two issues about leadership, to which we have broadly alluded, and circulate a draft note to the committee. If members have further comments, they should let us know so that they can be included.

Subordinate Legislation

Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (SSI 2004/258)

11:29

The Convener: The minister is a minute early for the next item. I think that we can cope with that.

Mr Morrison: He is allowed to be early.

The Convener: Item 3 is consideration of the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (SSI 2004/258). I remind members that Ross Finnie announced earlier in the year that it was his intention to bring forward subordinate legislation to bring us into line with the European directive on the assessment of the effects of certain plans and programmes on the environment. The regulations transpose the directive into Scots law, but it is the minister's intention also to introduce primary legislation later in the session.

We are considering the regulations under the negative procedure. The Subordinate Legislation Committee has considered the instrument and has nothing to report to us. Members will recall that we invited written evidence from key stakeholder groups to generate responses from a range of interested parties for when we had the minister with us. We also have before us an excellent briefing from the Scottish Parliament information centre, which has been circulated to members.

I invite the minister to talk through the policy objectives of the regulations, which are important not just for the Executive, but for the range of organisations that will be subject to their remit. I invite Ross Finnie to introduce his officials and to make some opening remarks.

The Minister for Environment and Rural Development (Ross Finnie): I am joined by Elspeth MacDonald, who comes from the solicitor's side of things, which is always a comfort when dealing with statutory instruments. Jon Rathjen will be in charge—I hope—of steering through both the regulations and, as you indicated in your introductory remarks, convener, the subsequent bill. I am much encouraged that you have been stirring up interest in the matter, so that you can add to the number of questions for us. That is a good procedure for any convener to be following.

I am delighted to have this opportunity to give evidence on the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004. As you pointed out to the committee, the

regulations are required so that we meet the European Union deadline for implementation of the directive, which is 21 July this year. The regulations form part of a two-stage approach by the Executive, as you indicated.

The regulations ensure that certain plans and programmes that are developed by the public sector take full account of both positive and negative environmental impacts. They also ensure that the public have a right to see and comment on plans and to have their comments taken into account. They ask that authorities consider alternative delivery strategies and make clear the environmental choices of each approach.

I believe that strategic environmental assessment should improve public services through better-informed decision making. Strategic environmental assessment will help us to understand better the potential effects of our plans on the environment, thus reducing the risk of unforeseen environmental damage being caused by late or insufficient environmental study. Strategic environmental assessment helps us to highlight both negative and positive aspects across the full range of environmental considerations, covering water, land, air quality, biodiversity, human health and the built and archaeological heritage of Scotland.

Strategic environmental assessment will, I believe, help to create a culture of more creative thinking in the public sector to find ways to avoid, or at least mitigate, environmental damage. We can ensure that monitoring takes place to gauge and control long-term impacts. Strategic environmental assessment will increase the public's access to the information on which we base our decisions, thereby improving the understanding and scrutiny of those decisions. It is central to our plans that strategic environmental assessment will deliver better environmental outcomes.

The regulations were subject to a full 12-week consultation, which was completed in March. The consultation has shown broad support for the principles of the legislation from environmental non-governmental organisations and public authorities. However, if we are to realise the many benefits of strategic environmental assessment, it is clear that we will need to ensure that the administrative process is effective and as streamlined as possible. Scotland is among the leaders in Europe in the policy area of strategic environmental assessment and we are rightly proud of that. SEA is a vital tool in our work to ensure that when we seek to introduce new public plans for change in Scotland the environment is fully taken into account, not as an afterthought, but up front in the first stages of development of any new strategy, plan or programme.

I have set out the general principles that we seek to achieve and I will deal with any detailed aspects of the policy that committee members want to consider.

The Convener: Thank you for that clear exposition of the regulations' objectives. I will kick off with the questions. The Convention of Scottish Local Authorities submission does not focus on the instrument, but raises a series of concerns about the proposed bill. For example, it raises concerns about resources and the potential overlap between different local authority processes and it focuses on planning. To what extent are you in dialogue with ministers with responsibility for planning, given that a planning bill is also being considered? I assume that the situation presents a good opportunity to avoid the problems that COSLA identifies and to introduce processes that mesh together and deliver the policy objectives that you set out.

Ross Finnie: The point that you raise picks up on my comment that, if the policy is to be effective, we must be able to persuade those who administer public bodies that an effective and streamlined procedure is in place. We have to step back slightly and recognise that we are talking about strategic—I emphasise the word "strategic"—environmental assessment, which, if it is properly executed by a public body, should by definition assist in the detailed planning application process in relation to specific projects that might arise as part of an overall plan.

The key to the concern that COSLA raises, which is not unique to COSLA, is to understand the essential nature of public education. We are saying to public bodies, "When you embark on drawing up a plan, you should consider right from the outset what the plan is for and whether it would have a significant environmental impact that you should be taking into account." I think that people have not quite understood that the legislation is not simply about adding to the process along the way; it is about a cultural change in the approach to drawing up such plans. I accept that COSLA has reservations about how that might be implemented but, in transposing the EU directive into the regulations, which will be repeated with additions in the proposed bill, we have tried hard to be explicit about what is required, as set out in schedules 1 and 2 to the regulations, with a view to allaying the fears that people tend to have that such instruments are simply bureaucratic nightmares.

The Convener: You have accurately summed up the challenge that you face.

Ross Finnie: Indeed. I would like to give the impression that I have at least thought of that aspect.

The Convener: That is partly why we elicited comments from the key bodies that strongly support the principle of strategic environmental assessment and bodies that will have to carry out such assessment. We wanted those bodies to engage with the contents of the statutory instrument and to think about how they might need to change the way in which they work and we wanted to give them an opportunity to make representations to the committee before we heard your evidence. The instrument is subject to the negative procedure, so it is a question of take it or leave it. We wanted to raise the level of debate about the matter and to encourage people to start to think about the impact that the SEA process will have on their business.

Eleanor Scott: I have been and still am keen on the principle of strategic environmental assessment. Now that the regulations are in front of us, I am finding it quite difficult to understand the process, but I welcome the principle.

COSLA also said in its submission:

"The decision on whether an SEA is required will be taken by the authority responsible for the strategy."

That is reflected in the flow chart that we were provided with, which describes the key stages of strategic environmental assessment. The question is whether a proposal is likely to have a significant effect on the environment. Will the minister assure me that the definition of a significant effect will be clear enough to the bodies that are involved and that they will not be able to avoid undertaking an assessment by saying that they did not think that a significant effect would be created?

Ross Finnie: We have had interesting discussions about that. Elspeth MacDonald and I will not bore the committee with our lengthy discussions on the ordinary "Oxford English Dictionary" use of the word "significant" and the legal definitions that have a bearing on the matter.

We must remember that if the body concerned concludes that a project will not have a significant effect, it will have to publish a justification of that. A different public process for accessibility will exist. If interested parties believe that a public authority might be taking a narrow view and trying to escape the mischief of the instrument, that authority will have to justify its decision and state reasons why it believes that a plan or programme does not meet the test.

You are right. It is possible to dodge about the issue, but I have given the subject much thought and I have difficulty in believing that, after reading the word "significant" and taking account of what is set out in schedules 1 and 2, any responsible public body could simply leap out and say that a plan was inconsequential. The word "significant" is applied to the criteria in schedules 1 and 2 and to

the information that is required. A body must also justify why it has taken the view that assessment is not required.

Maureen Macmillan: COSLA has said that because a local authority will decide whether an SEA is required, if that authority decides not to have an SEA and goes ahead with a development, it could be open to legal challenge. COSLA has given one or two examples—I do not know whether it has brought them to your attention. For instance, it says that if a local authority decided that a pupil could not be picked up by a school bus, that could be challenged on the ground that, if the pupil's family had to use a car as a result, that would have a detrimental environmental impact. Perhaps that is becoming a bit silly, but COSLA has given that example. Do you appreciate the concerns of local authorities that they will have to conduct an SEA for just about everything, in case of legal challenge?

Ross Finnie: I am disappointed by that view, although I am aware that a number of people hold it. If a local authority thinks that one child not being picked up by a school bus will have a significant environmental impact, I am disappointed. If that local authority's solicitorial and other legal advice is that it would be likely to be taken to court on the basis that that had a significant environmental impact, I would be disappointed not only by the local authority's policy, but by the advice that the decision would give rise to a legal challenge.

I am glad that you have raised the issue, because we must recognise that we are talking about environmental assessment that is strategic. That is important, because currently the strategic aspect is ignored, which means horrendous consequences from several major developments and from small developments that accumulate and produce plans and procedures that take no proper account of their impact.

I return to my introduction. We have a huge exercise in educating authorities that effects must be significant. If they are significant, we jolly well want them to be in the process at the outset and we want to know and plan for them more comprehensively and strategically than in the past. You reported what COSLA said. Giving examples that make assessments sound ridiculous is almost an attempt by local authorities to say that they will not undertake assessments. That is not justified in the context of what is in the directive and the regulations or, ultimately, what will be in the bill.

11:45

Maureen Macmillan: It also points to the fact that local authorities will need proper guidance on when they should require an SEA.

Ross Finnie: I agree. I think that guidance will be required. We are trying as hard as we can to use language in the instrument and the bill that will enable people in local authorities to form a view, but we have no doubt that guidance will be needed to clarify matters, particularly in the initial stages of such an entirely new procedure and new approach. As I said, the key issue is that there could be quite a cost if one were to go way down the process of drawing up a plan before one said, "Gosh, we'd better start taking account of the legislation." Building that approach into the process right at the outset is the real way of reducing and minimising cost.

The Convener: That is a useful answer in respect of guidance. Authorities and organisations will have to exercise judgment, but guidance to enable them to do so intelligently would be useful.

Alex Johnstone: On more general issues, will the regulations allow the Executive to conform fully to the European directive that is driving the issue?

Ross Finnie: Yes.

Alex Johnstone: You intend to introduce primary legislation subsequently. Will that legislation contain additional elements that have not been included in the regulations?

Ross Finnie: Yes. I will give a brief explanation. The matters that come within the mischief of the regulations have to arise from a regulatory or statutory requirement. The Executive's view is that that is very good, but a whole range of public policies do not necessarily emanate from a regulatory or statutory requirement. We are anxious to ensure that all plans and processes in public authorities should be brought within the mischief of the statutory environmental assessment requirement, so the bill will extend the range of plans and programmes that would become subject to that. So that we can have a comprehensive piece of legislation that addresses strategic environmental assessment, the regulations will be repealed once we get the bill through the Parliament. There would then be a more elegant piece of legislation.

Alex Johnstone: What timescale is envisaged for introducing the bill?

Ross Finnie: We do not have an absolute date at the moment, as we will be getting into the next parliamentary year, but there has been parallel consultation and we hope that the bill will be introduced relatively early, as I do not want the matter hanging about. I want a comprehensive, single piece of legislation and I hope that there will be no hiccups in introducing it. The usual vast number of bills and instruments are passing through the Parliament, but we hope that, if all goes well, we will get an early slot.

Alex Johnstone: Can I assume from what you have said that the regulations will bridge the gap between the current requirement and the bill and that, when the bill is introduced, the committee and the Parliament will have the opportunity to scrutinise not only the new measures in the bill, but the measures in the regulations that are reintroduced as part of the bill?

Ross Finnie: Absolutely. The bill will have to be treated like any other bill and will be open for discussion and debate. I hope that the due consideration that has been given to the regulations might narrow the focus of further scrutiny and debate, but it is not for me to try to fetter any committee or anybody who handles the bill—that is not my job. However, we should be clear that the provisions that are set out in the regulations will by and large be replicated in the bill, although the bill will have an extended scope. If we had not had the deadline of 21 July by which to be European directive compatible, we might have settled for just having the bill, but that was not possible in the parliamentary timetable.

Rob Gibson: I am interested in the concepts of quality and monitoring. Scottish Environment LINK has raised questions about the requirements of the directive in that regard. Flood prevention measures, for example, would require strategic environmental assessments. How will that fit in with the overall approach to climate change issues? How does the Executive inform that debate at present, given that, as we discussed previously, climate change issues are being shifted around from one place to another in the budget?

Ross Finnie: There is no doubt that a number of plans and proposals that have been drawn up and executed by local authorities have failed to take account of climate change and that there have been consequences. I would hope that, if the significant environmental impact had been considered, as required under the regulations, those consequences would have been flagged up at a much earlier stage.

The issue is not so much about budgetary requirements and the Executive directing people on climate change issues; it is more to do with us being better informed. Some of the issues to which the Executive has had to respond have come about largely from a lack of strategic planning. We cannot foresee everything that will happen in every local authority throughout Scotland, but we will have a much better handle on what is going on if local authorities and planning authorities operating under the Town and Country Planning Act 1990 are engaged in the SEA process. We will have a series of documents, the aggregation of which will give us a much better handle on Scottish Executive expenditure in this area. At the

moment, the process is terribly dependent on individual public bodies having the care to look at whether there might be an environmental impact. The new legislation will change the balance completely.

Rob Gibson: So the regulations would accelerate that process.

Ross Finnie: I am in no doubt about that. I have to be honest—I think that we will have to take responsibility for the first few plans, but the regulations will be an important tool to get us to a point where local authorities throughout the country will be able to integrate with Executive plans and work with other public bodies to understand the cumulative environmental impact of their plans.

The Convener: We received a submission from Scottish Environment LINK, which has produced a checklist of what it thinks will come under the ambit of SEA legislation. It would be interesting for committee members to get your perspective on Scottish Environment LINK's judgment. There are quite a few plans, programmes and strategies on the checklist over which it leaves question marks, but there are some for which it ticks the box to say that they will be covered and some for which it crosses the box to say that they will not be subject to SEA. Can you respond to us in writing on that? I would not dream of asking you to respond to all the plans—there are about 40 or 50 of them—but your views would aid our discussion when we reach the bill stage.

The whole process is about transparency—what will be included and what will not, how we define “significant” and how we reach a sensible judgment in relation to all the organisations that you expect to be pulled into the ambit of the legislation. Your response would help us to determine whether we are all making the right kind of assumptions about what is meant to be included.

Ross Finnie: I would be happy to do that.

The Convener: That is good. Thank you.

Nora Radcliffe: My question is along the same lines and concerns who is in and who is out. One would expect local authorities to follow the regulations, but who else are we talking about? I would think that Scottish Water and similar bodies would be included.

Ross Finnie: Indeed. The important point is that, theoretically, all public bodies could be included. Education authorities are definitely included. However, this is not about individual bus journeys but about developments that either individually or cumulatively could have an environmental impact. In the health service, too, the issue is more likely to be long-term planning of

infrastructure requirements. In those two areas, long-term infrastructural requirements should be planned. If people take that approach, when they come to seek planning permission for individual buildings or structures they ought to be in the position of having done a substantial amount of the work that is required. In the longer term, the process will have a beneficial effect and will smooth the way forward.

The regulations apply to all public bodies. As long as the regulations are in force, the plan that bodies prepare must emanate from a regulatory or statutory requirement. That will change when we introduce the proposed bill. Any plan that bodies prepare that would have a significant environmental impact will come within the mischief of the legislation.

Nora Radcliffe: So the regulatory authority will conduct the strategic environmental assessment and the people operating under the regulations will be governed by it.

The Convener: Do members have any further questions? We have asked a lot of big-picture questions, but they are fundamental to the process. Nora Radcliffe has a supplementary.

Nora Radcliffe: It is not really a supplementary. We are in the slightly awkward position of having a statutory instrument that is in force and a bill that will run parallel with, replicate and overlap with it. Are there difficulties in deciding how much effort you put into guidance now, at the expense of work on the bill?

Ross Finnie: I do not think so. Collectively, the members of the bill team have given a great deal of thought to ensuring that there is a certain consistency of approach. The drafting of the instrument formed part of that process, notwithstanding the fact that we have not quite reached the point of publishing the bill. If we take a consistent approach to the way in which we intend to apply the directive, we can be reasonably confident that any guidance that we publish will not be materially affected. We may have to think about some consequential amendments, but I do not think that the instrument will materially affect our ability to produce guidance in the first instance.

The Convener: Earlier I asked about the progress of the proposed planning bill. COSLA has identified what it regards as an overlap that will make life difficult for it. Presumably, the fact that the two bills are being developed in parallel provides an opportunity to ensure that there is clear guidance that tells authorities what they are expected to do when.

Ross Finnie: Again, we must explain in more detail precisely what we think. There are two distinct processes. The regulations are about a

plan that may allude to and ultimately call for the building of a physical structure. In that programme or planning process, we want all public bodies to have regard to whether the building will have a significant environmental impact. That will not in any way detract from the need for public and other bodies to comply with the requirements of the Town and Country Planning Act 1990, which will be further amended. The act deals with the detailed issue of the planning permission that is required for a particular building. To be honest, I do not see that there is an overlap. However, as I said a few moments ago in a response to either Rob Gibson or Nora Radcliffe, if the public body has properly assessed the building, it should be well on the way to meeting some of the detailed requirements of the Town and Country Planning Act 1990.

The Convener: That is a good place at which to leave the discussion, because the regulations are being considered under the negative procedure. I hope that the questions that members have been able to ask in the light of the representations that we have received and the minister's responses on the record will be helpful to the organisations that have concerns about what the regulations mean and to those who are seeking legal interpretations of what they must do and what is proportionate. I thank the minister and his officials.

Alex Johnstone: The minister has said that he is required under the European directive to seek these powers and that the matter will return to us in the form of a bill at some time in the future. We are content with the regulations at this stage.

The Convener: The expectation is that the bill will be the excitement after the Water Services etc (Scotland) Bill. I will say no more than that.

Are members content with the regulations and happy to make no recommendation to the Parliament?

Members indicated agreement.

Shrimp Fishing Nets (Scotland) Order 2004 (SSI 2004/261)

Agricultural Business Development (Scotland) Amendment Regulations 2004 (SSI 2004/267)

Common Agricultural Policy (Wine) (Scotland) Amendment Regulations 2004 (SSI 2004/272)

The Convener: We will now consider three further items of subordinate legislation, all under the negative procedure. They are the Shrimp Fishing Nets (Scotland) Order 2004 (SSI 2004/261), the Agricultural Business Development (Scotland) Amendment Regulations 2004 (SSI

2004/267) and the Common Agricultural Policy (Wine) (Scotland) Amendment Regulations 2004 (SSI 2004/272). All the instruments have been considered by the Subordinate Legislation Committee, which has confirmed that it has nothing to report. Do members have any comments or questions?

Maureen Macmillan: One is tempted to discuss elderberry or damson wine.

The Convener: That may be a temptation to decline on this occasion.

Maureen Macmillan: I think that I can do that.

The Convener: As no member has raised a substantive policy issue, I ask the committee to indicate that it is content with the instruments and wishes to make no recommendations to the Parliament.

Members indicated agreement.

Meeting closed at 12:01.

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