

# **ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE**

Wednesday 15 December 2004

Session 2

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## ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE 30<sup>th</sup> Meeting 2004, Session 2

### CONVENER

\*Sarah Boyack (Edinburgh Central) (Lab)

### DEPUTY CONVENER

\*Mr Mark Ruskell (Mid Scotland and Fife) (Green)

### COMMITTEE MEMBERS

\*Rob Gibson (Highlands and Islands) (SNP)  
\*Karen Gillon (Clydesdale) (Lab)  
\*Alex Johnstone (North East Scotland) (Con)  
\*Richard Lochhead (North East Scotland) (SNP)  
\*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 (Tweddale, Ettrick and Lauderdale) (LD)  
Eleanor Scott (Highlands and Islands) (Green)

\*attended

### THE FOLLOWING GAVE EVIDENCE:

Sandy Cameron (Scottish Executive Environment and  
Rural Affairs Department)  
Ross Finnie (Minister for Environment and Rural  
Development)

### THE FOLLOWING ALSO ATTENDED:

Susan Deacon (Edinburgh East and Musselburgh) (Lab)  
Lewis Macdonald (Deputy Minister for Environment and  
Rural Development)

### CLERK TO THE COMMITTEE

Mark Brough

### ASSISTANT CLERKS

Chris Berry  
Catherine Johnstone

### LOCATION

Committee Room 4



## Scottish Parliament

### Environment and Rural Development Committee

*Wednesday 15 December 2004*

[THE CONVENER *opened the meeting at 10:24*]

### Water Services etc (Scotland) Bill: Stage 2

**The Convener (Sarah Boyack):** I welcome members of the press and the public, as well as pretty much the entire bill team—so I am told—for the Water Services etc (Scotland) Bill and the Deputy Minister for Environment and Rural Development, Lewis Macdonald.

This is our second day of stage 2 consideration of the Water Services etc (Scotland) Bill. If members have no relevant interests to declare, I ask them to check that they have with them copies of the bill as introduced, the second marshalled list of amendments and the groupings of amendments. The clerks have spare sets of everything if members need them.

As with previous stage 2 consideration, I will call the amendments in strict order from the marshalled list. It is my intention to complete consideration of stage 2 today—at the moment, I do not think that there is anything that might throw us off course.

#### **Section 12—Water and sewerage services subsidiary**

**The Convener:** The first group of amendments is on the establishment of Scottish Water's business undertaking. Amendment 37, in the name of the minister, is grouped with amendments 38 to 43, 45 to 53 and 70.

**The Deputy Minister for Environment and Rural Development (Lewis Macdonald):** All the amendments in the group relate to the retail undertaking that Scottish Water will be required to establish under section 12 of the bill to allow it to take part in the licensed retail provision of services to non-domestic customers. We want Scottish Water to have flexibility in the way in which it establishes its own retail undertaking to ensure that it has the best chance of success.

As the bill is phrased, Scottish Water may choose to establish a subsidiary. Amendment 37 provides that Scottish Water is not tied to the subsidiary model, but free to create a subsidiary or a partnership or to make some other

arrangements to put the undertaking in place. Under section 25 of the Water Industry (Scotland) Act 2002, Scottish Water already has powers to use all the structures that amendment 37 envisages, so the amendment simply makes the bill's provision for the retail provider consistent with the previous legislation on Scottish Water as a whole. Of course, whichever model Scottish Water chooses to use to establish its retail provider will be subject to ministerial approval. Amendment 37 also provides flexibility for the arrangements for, and the timing of, the setting up of the undertaking, by allowing ministers to require certain steps to be taken at certain times rather than requiring that everything be done at once.

Amendment 40 is slightly different. I referred to it last week, when the committee agreed under amendment 6 to the removal of ministers' general power to alter the licence application procedure that is set out in schedule 2. As I promised last week, amendment 40 provides that ministers may instead make an order to modify the procedure in respect of only the first application for a licence by Scottish Water's retail undertaking. The amendment makes it more specific that that power relates to the initial application. It is appropriate to streamline the process in that way because Scottish Water retail might be licensed in advance of any other retailer entering the market and will take on functions that are currently delivered by Scottish Water. We have narrowed the definition of the power to respond to concerns, which the Subordinate Legislation Committee raised, that the provision should be precise and specific about its purpose in the bill.

Amendments 45 and 50 are simply drafting refinements to two subsections of the bill and restate in slightly stronger terms provisions that are in the bill already. They are intended to place beyond doubt Scottish Water's duty to comply with the requirements that ministers place on it under subsections (1) and (5) of section 13 in regard to the transfer of staff, property and liabilities to Scottish Water retail. Amendment 70 is also connected to that and requires Scottish Water to include in its annual report details of steps that are taken to comply with any such requirements. Together, amendments 45, 50 and 70 ensure that ministers must give Scottish Water and its staff clarity on the actions that are required of them once arrangements for the retail undertaking have been agreed.

Amendments 38, 39, 41 to 43, 46 to 49 and 51 to 53 are consequential amendments that replace the term "subsidiary" with "undertaking" to reflect the change made by amendment 37. I seek the committee's support for all the amendments in the group.

I move amendment 37.

*Amendment 37 agreed to.*

*Amendments 38 to 43 moved—[Lewis Macdonald]—and agreed to.*

*Section 12, as amended, agreed to.*

#### **After section 12**

**The Convener:** Group 2 is on Scottish Water's business undertaking and covers financing, borrowing and guarantees. Amendment 44, in the name of the minister, is grouped with amendment 71.

10:30

**Lewis Macdonald:** Amendment 44 relates to the funding of Scottish Water's retail undertaking. The amendment is designed to provide flexibility to allow Scottish Water's retail undertaking to receive funding directly from ministers—if appropriate—by grant, by loan or by a guarantee of a financial obligation such as an overdraft. That flexibility will allow ministers to decide which funding mechanisms are the most appropriate in the light of their approval of the exact form that the retail undertaking will take.

The amendment provides that the mechanisms are available subject to an order-making power for ministers. That will provide additional control and parliamentary scrutiny.

The financial provisions that are being put in place are similar to those that exist for Scottish Water under the Water Industry (Scotland) Act 2002, to ensure accountability to Parliament for public money used in regard to Scottish Water—in this case Scottish Water retail—and to ensure the repayment of the sums with interest.

Amendment 71 is consequential to amendments 40 and 44. It provides that orders under the appropriate sections will be subject to the negative parliamentary procedure.

I move amendment 44.

**Alex Johnstone (North East Scotland) (Con):** Amendment 44 provides ministers with the right to advance money to Scottish Water retail. Will there be a requirement under the bill to ensure that such an advance gives them no commercial advantage over any other retailer?

**Lewis Macdonald:** Yes. The bill establishes a level playing field. That is not affected by the provisions that are proposed in the amendment.

*Amendment 44 agreed to.*

#### **Section 13—Transfer of staff etc to the subsidiary**

*Amendments 45 to 53 moved—[Lewis Macdonald]—and agreed to.*

*Section 13, as amended, agreed to.*

#### **Section 14—Scottish Water to provide certain services**

**The Convener:** Group 3 covers Scottish Water's duties as regards the continuation and discontinuation of water and sewerage services. Amendment 54, in the name of the minister, is grouped with amendments 55 to 60 and 72.

**Lewis Macdonald:** The amendments relate to trade effluent within the context of sewerage services. The bill currently provides for certain circumstances in which Scottish Water might cease to provide water services, but for obvious public health reasons there is no general provision to allow the discontinuation of sewerage services. However, there is clearly a distinction between trade effluent and other types of sewage. The amendments relate to trade effluent. As I say, the exclusion of sewerage services is due to public health considerations.

Amendments 54 and 60 make provision for trade effluent services to be treated in the same way as water services. In other words, they can be discontinued under certain circumstances. However, whatever the circumstances, any such discontinuation is conditional on there being no risk to public health. That remains firmly the case in the provisions that are proposed in the amendments and the provision of other sewerage services to those premises or any other premises must not be affected.

Amendment 60 also makes it clear that the provision is without prejudice to the main statutory provisions in the Sewerage (Scotland) Act 1968, which govern trade effluent consents and agreements.

The other amendments in the group are consequential amendments or drafting refinements that support amendments 54 and 60.

I move amendment 54.

*Amendment 54 agreed to.*

*Section 14, as amended, agreed to.*

#### **Section 15—Continuation of provision of services**

*Amendments 55 to 57 moved—[Lewis Macdonald]—and agreed to.*

*Section 15, as amended, agreed to.*

#### **Section 16—Discontinuation of supply of water**

*Amendments 58 and 59 moved—[Lewis Macdonald]—and agreed to.*

*Section 16, as amended, agreed to.*

### Section 17—Disconnections code

*Amendment 19 moved—[Lewis Macdonald]—and agreed to.*

**The Convener:** Group 4 is on consultation on the disconnections code. Amendment 20, in the name of the minister, is in the group on its own.

**Lewis Macdonald:** Amendment 20 will add the drinking water quality regulator for Scotland to the list of statutory consultees that the water industry commission will consult on the disconnections code under section 17.

I move amendment 20.

*Amendment 20 agreed to.*

*Section 17, as amended, agreed to.*

### After section 17

*Amendment 60 moved—[Lewis Macdonald]—and agreed to.*

### Section 18—Scottish Water's charges for water and sewerage services

*Amendment 21 moved—[Lewis Macdonald]—and agreed to.*

**The Convener:** Group 5 is on charges. Amendment 22, in the name of the minister, is grouped with amendments 61 to 64.

**Lewis Macdonald:** The amendments will make small changes to the charge determination procedures and respond to several issues that Scottish Water has raised with us. They will ensure that, in calculating Scottish Water's income for the purposes of producing a charge determination, the water industry commission takes into account only resources that are reasonably available to Scottish Water.

Amendments 62 and 63 provide for departures from charges schemes for higher or lower charges than those that are specified in the relevant scheme. They will give the commission scope to consent to a higher charge when a customer requires water that is treated to an enhanced standard, which increases the cost to Scottish Water. The amendments will ensure that the bill does not prevent Scottish Water from working in partnership with customers to meet requirements that are beyond even the high standards that apply across the board.

Amendment 22 will make a drafting refinement to section 18.

I move amendment 22.

**The Convener:** Amendment 61 contains the term "reasonably". How will that be interpreted? Why is reasonableness an issue?

**Lewis Macdonald:** The intention is that the determination of charges should be based on the resources that are actually available for the purpose. We do not want to run a risk, although we regard it as remote, so it is appropriate to provide a legal safeguard. Without a test of reasonableness, in theory, a customer might challenge Scottish Water on the basis that it owned property that it ought to sell and lease back, because that way it would have a bit more money from another source and could therefore keep its charges down. We recognise that there are things that it is reasonable for Scottish Water to do on a long-term basis and we would expect the interpretation of "reasonableness" to reflect that.

**The Convener:** Thank you for that.

*Amendment 22 agreed to.*

*Amendments 61, 23, 24, 62, 63 and 64 moved—[Lewis Macdonald]—and agreed to.*

*Section 18, as amended, agreed to.*

### Schedule 3

#### CERTAIN PRE-EXISTING AGREEMENTS AS TO CHARGES

**The Convener:** Group 6 is on charges and pre-existing agreements. Amendment 65, in the name of the minister, is grouped with amendment 66.

**Lewis Macdonald:** Amendments 65 and 66 refer to pre-existing agreements or "relevant agreements", as they are described in the bill—special arrangements between Scottish Water and a number of generally large commercial customers, which reflect their use of water and exist prior to the bill coming into force. The amendments intend to make it clear that the provision that allows those agreements to run their course should apply not only to agreements entered into by Scottish Water per se but to agreements entered into by predecessor bodies, whether the water authorities that existed immediately before the creation of Scottish Water or other water providers in the past that have made agreements with customers. We wanted to ensure that there was clarity that all the existing agreements were protected in the same way, regardless of which authority had entered into them. That is the essence of the amendments.

I move amendment 65.

*Amendment 65 agreed to.*

*Amendment 66 moved—[Lewis Macdonald]—and agreed to.*

*Schedule 3, as amended, agreed to.*

**Section 19—Scottish Water's functions:  
powers of the Scottish Ministers**

*Amendments 25 and 26 moved—[Lewis Macdonald]—and agreed to.*

*Section 19, as amended, agreed to.*

**After section 19**

**The Convener:** Group 7 is on qualification of Scottish Water's duties to provide services. Amendment 67, in the name of the minister, is in the group on its own.

**Lewis Macdonald:** Amendment 67 clarifies the relationship between Scottish Water's duties under existing legislation and the duties placed on it under the bill. One of the strengths of the bill is that it clarifies the roles and responsibilities of key players in the industry. It provides for ministers to set down a clear policy framework detailing what we expect from Scottish Water when it is carrying out its core functions and how we wish different customer groups to contribute to the cost of that through charges. It gives the water industry commission the task of making the calculations required to translate that into a scheme of charges. That is set out in section 18, which amends and inserts new provisions into the Water Industry (Scotland) Act 2002.

Amendment 67 is designed to support that framework by ensuring that the strategic direction set by ministers is reflected in Scottish Water's key statutory duties. It therefore ensures that the duties under the Sewerage (Scotland) Act 1968 and the Water (Scotland) Act 1980—to provide water and sewerage and to make connections to the public network—are to be exercised without prejudice to compliance with ministers' policy requirements.

As members will know, Scottish Water faces competing demands for its services and amendment 67 makes it clear that the strategic direction for its activities should be set by ministers according to the framework that is laid out in the bill, not by Scottish Water or customers. Of course, the framework is intended not to be inflexible but to establish a system that ensures that ministers accountable to Parliament set the priorities and that financial priorities should reflect their strategic direction.

I move amendment 67.

*Amendment 67 agreed to.*

10:45

**The Convener:** Group 8 is on sewerage nuisance. Amendment 68, in the name of the minister, is grouped with amendments 69 and 73.

**Lewis Macdonald:** This group of amendments responds to points that committee members and

other MSPs have raised. The amendments insert provisions enabling us to issue codes of practice on sewerage nuisance that local authorities will be required to enforce.

I know that the committee has discussed odour from sewage treatment works and other parts of the public sewerage system and that it has discussed two petitions on the matter and the draft code of practice that the Executive has published. The amendments seek to address the concern that the code of practice should be placed on a statutory footing.

Amendment 68 gives ministers the power to make an order containing a code of practice on sewerage nuisance, which will set out the best practicable means of assessing, controlling and minimising such nuisance and the circumstances in which compliance or non-compliance with the code would be assessed. Although the headline issue is odour from sewage treatment works, other sources of nuisance, such as insects, might arise from time to time. As a result, we have framed the powers and the definition of "sewerage nuisance" more widely to ensure that they cover more than odour. That said, the issue of odour is at the heart of the policy.

Once issued, a sewerage code would apply to Scottish Water in the exercise of its core functions with regard to sewerage and to any person acting on its behalf or under its authority, such as the operator of a sewage treatment works used by Scottish Water as the public sewerage provider. There is an express requirement on all those persons, including other operators, to comply with the code. Ministers will also be required to consult on the code and will, along with local authorities, be required to publicise it.

It might seem technical, but I should explain that subsection (9) of the new section that amendment 68 seeks to insert exempts from the requirements of a code the parts of the public sewerage system that are regulated by the Scottish Environment Protection Agency through the permit regime under the Pollution Prevention and Control (Scotland) Regulations 2000 (SSI 2000/323). I should point out that that provision refers only to a single, very large sewage works that is currently regulated under the PPC regime. The fact that those works will still be covered by that regime is an exception to the wider picture. Ministers will retain their existing statutory powers to direct SEPA to apply the sewerage code to the parts of the public sewerage system that it regulates. In other words, we will leave in place the PPC regime that will govern those particular works, but will have the power to direct SEPA to implement the code.

Amendment 69 sets out the monitoring and enforcement provisions for sewerage codes. It is



important that any code that is put on a statutory footing has force and power. Local authorities will be required to monitor compliance, to investigate complaints of sewerage nuisance and to serve an enforcement notice if they are satisfied that there is or is likely to be material non-compliance with the code. That enforcement notice can set out the steps that must be taken to secure compliance with the code and the timescales for taking those steps. Contravention of an enforcement notice will be an offence and councils will be given powers to pursue that, as well as powers to undertake work to secure compliance with an enforcement notice. If a council undertakes such work, it will be able to recover its costs, if required.

Finally, the amendments provide for parliamentary scrutiny of the code by requiring it to be made through an order that is subject to the negative procedure.

The package offers a coherent basis for constructive and considered action. We will work in partnership with Scottish Water and local councils to resolve issues when they arise. I urge members to support the amendments.

I move amendment 68.

**The Convener:** More than half the committee members want to say something on the group, which is not surprising, given that sewerage nuisance was one of the big issues at stage 1 and that we have received a lot of petitions on the issue from members of the public.

**Karen Gillon (Clydesdale) (Lab):** Amendments 68 and 69 are probably a significant step forward on an issue that the committee has been pursuing. I have a couple of practical questions. Subsection (4) of the new section that is proposed in amendment 68 states that the term “practicable” refers to, among other matters, “financial implications”. What does that mean? I assume that Scottish Water will not be allowed to use such implications as an excuse for not carrying out necessary works.

Subsection (4)(b) of that proposed new section states that the term “means” refers to

“the design, installation, maintenance and manner and periods of operation of plant and machinery”.

The minister will be aware that Scottish Water plans a number of new developments. I assume that Scottish Water will be expected to ensure that, when it builds new sewage works, it takes account as far as possible of smell nuisance.

Finally, what practical difference will amendments 68 and 69 make to the people who have petitioned us on the subject?

**Lewis Macdonald:** I think that “practicable”—

**The Convener:** Hang on, minister. I will let you back in when the other members who wish to

speak have done so. I imagine that you will want to respond to all the questions and comments.

The next speaker will be Susan Deacon, who is not a committee member but has been with us on numerous occasions to give her constituents’ views on the issue.

**Susan Deacon (Edinburgh East and Musselburgh) (Lab):** When I arrived at the committee this morning, one of my colleagues greeted me with the comment, “If it’s Susan, it must be sewage.” I hope that the Executive’s amendments 68 and 69 on the subject will allow me to move on. I am pleased that the amendments have been produced in response to the committee’s concerns, as well as mine and those of other MSPs. However, I would like to clarify a number of aspects.

Subsection (1) of the new section that is proposed in amendment 68 uses the term “may”. The amendment will give ministers the power to introduce a code, but will the minister give a commitment that he intends to produce a code, subject, obviously, to the completion of the consultation process that is under way?

Subsection (3) of that proposed new section also uses the word “may” in relation to the provisions in the code. Will the minister clarify the use of the term “may”, because it seems that, given the rather broad nature of the provisions that are laid out in subsection (3), they would almost certainly be contained in any code, irrespective of the outcome of the consultation?

Subsections (3) and (5) of the proposed new section lay out to whom the code will apply. Will the minister confirm that the phrase “any other person” will include those whom Scottish Water contracts or subcontracts to operate waste water treatment works on its behalf, including those who are contracted under the terms of a private finance initiative contract?

Karen Gillon has asked the question that I had about financial provisions. In relation to subsection (9) of the new section, will the minister clarify which large sewage works he was referring to in the context of exemption?

I have a couple of questions about amendment 69. Should I ask them now?

**The Convener:** Yes, because amendment 69 is in the same group as amendment 68.

**Susan Deacon:** On local authority monitoring and enforcement, can the minister clarify how the provisions that amendment 69 contains will alter the existing powers and practices of local authorities as set out in the Environmental Protection Act 1990? For example, how will the enforcement procedure for issuing abatement notices be affected? How does he envisage that

the Executive will work with local authorities to ensure that monitoring and enforcement are effective? I accept that that goes beyond the scope of amendment 69.

**Richard Lochhead (North East Scotland) (SNP):** I am sure that many communities—not least the community in Aberdeen, which is the minister's home city, where there is an on-going dispute about the Nigg plant at Torry—will welcome the minister's amendments, especially amendment 68, which will ensure that the code is embedded in statute.

I have three quick questions. The Nigg plant experience has taught me that PFI arrangements mean that it is highly complex to identify exactly who is responsible for preventing sewerage nuisance. Amendment 68 says that the code will apply to Scottish Water and other appropriate persons. How easy will it be to identify who is responsible? I have sat around a table with the three organisations involved in running the Nigg plant and it has not been that easy to identify where responsibility lies.

Amendment 69 says that a contravention of the code will lead

“to a fine not exceeding £40,000.”

Where did that figure come from? Why has a figure of £40,000 been used rather than one of £100,000 or whatever? Has the minister considered placing an obligation on plants that contravene the code to pay compensation to the local communities that have suffered for a long time as a result of their failures?

**Mr Mark Ruskell (Mid Scotland and Fife) (Green):** I welcome the minister's approach to sewerage nuisance, which is an issue that has concerned many members and communities for a long time. If the minister had not inserted a code of practice in the bill, we might have had to wait a long time for another legislative vehicle to come along that would allow us to implement a statutory code.

I do not have much to add to that. I had some requests for clarifications that were similar to those that Karen Gillon made. I would like to hear what the minister has to say about them.

**Maureen Macmillan (Highlands and Islands) (Lab):** I will follow up Karen Gillon's remarks. Subsection (4)(a)(ii) of the new section that amendment 68 seeks to insert refers to

“the current state of technical knowledge”.

Can the minister assure us that there will be active research into what is available so that we do not just rely on what has always been used? Not just in Scotland, but in other countries quite a lot of work is probably being done on dealing with odour

from sewage works and other places. I am a great listener to the radio as I drive up the road and I have become a dustbin of useless information. I heard a discussion about the use of chemical sprays for piggeries; I thought that the same technique could easily be transferred to sewage works. I seek assurances that every avenue of technical knowledge will be investigated.

**The Convener:** Have you finished?

**Maureen Macmillan:** That is it.

**Nora Radcliffe (Gordon) (LD):** I will be even briefer. I just want to put on record how welcome it is that odour nuisance is being seriously tackled.

**The Convener:** The whole committee shares that sentiment. The reason why we have flown through our consideration of the amendments today is that, in effect, the minister has done what we wanted him to do.

Members have asked several technical questions and requested clarification on a number of points. I invite the minister to work his way through them. Members might have brief supplementaries.

11:00

**Lewis Macdonald:** I will take the questions broadly in order, although one or two were similar, so I might jump back and forth.

Karen Gillon asked about the term “practicable”. In a sense, there is a parallel with the discussion that we had a few minutes ago about reasonable charge setting. Practicable means are what can actually be done. No matter how much power is devolved to the Scottish Parliament, we cannot stop sewage producing an odour. The question is how we manage and control the system in the best possible way.

We will ensure that we have explored every technical avenue, as Maureen Macmillan asked. The word “practicable” is meant to reflect that we will use every means that can be deployed to manage the problem. Clearly, we also want to learn lessons from elsewhere about how to do that.

Karen Gillon also asked about means. Again, we expect new plant to be built in the light of the introduction of the code. The design of the plant and machinery should reflect the requirements of the code. The code will also apply to existing plant. We expect local authorities to work with Scottish Water and others to ensure that existing plant is brought up to the standards set in the code as quickly as practicable.

Susan Deacon, who has campaigned on the issue for some time, asked a pertinent question about whether we will introduce a code. The

answer is yes. We intend that the code should be in force by April 2006, which will allow time for the consultation process to take place. However, if the committee agrees to the amendments, Scottish Water and others will be aware as of today that the code is coming into force and we will expect them to take that into account in any of their decisions.

The code will apply to subcontractors and other contractors whether they are at Nigg bay in Aberdeen or elsewhere. I do not think that the local authorities will have any difficulty in establishing on whom to serve a notice should that be required. The legal position will be very clear. Scottish Water has an overall responsibility and other operators will be acting on its behalf.

Daldowie is the plant that currently operates under the PPC regime. That will continue. Daldowie is largely a sludge treatment plant, which is why it is regulated slightly differently.

The amendments will extend the powers of local authority enforcement officers to cover sewerage nuisance. Those powers do not exist at the moment, but, as subsection (8) of the new section proposed by amendment 69 makes clear, the new powers will operate

"without prejudice to section 82 of the Environmental Protection Act 1990."

In other words, the powers of local authorities to deal with nuisance continue, but they are reinforced and extended.

The fine levels are not arbitrary; they are consistent with the existing statutory nuisance regime. They are therefore parallel to other such fines.

I repeat that the new sections will operate without prejudice to section 82 of the Environmental Protection Act 1990. Subsection (7) of the new section proposed by amendment 69 disapplies certain provisions and replaces them with the new enforcement powers. My official, Barry McCaffrey, drew that to my attention in case I misled the committee.

I think that that answers all the technical questions. On community compensation, the power to seek compensation currently exists and will not be changed. Of course, the aim is to minimise nuisance. As I said at the outset, there is nothing that any Government can do to stop sewage producing an odour, but the aim is to create a regulatory regime that minimises the effects as far as is practically possible.

*Amendment 68 agreed to.*

*Amendment 69 moved—[Lewis Macdonald]—and agreed to.*

## **Section 20—Meaning of "eligible premises"**

*Amendments 27 and 28 moved—[Lewis Macdonald]—and agreed to.*

*Section 20, as amended, agreed to.*

*Sections 21 to 23 agreed to.*

*Schedule 4 agreed to.*

*Sections 24 and 25 agreed to.*

## **Schedule 5**

### AMENDMENTS TO ENACTMENTS

*Amendments 29 to 33, 70, 34 and 35 moved—[Lewis Macdonald]—and agreed to.*

*Schedule 5, as amended, agreed to.*

*Section 26 agreed to.*

## **Section 27—Orders and regulations**

*Amendments 71 to 73 and 36 moved—[Lewis Macdonald]—and agreed to.*

*Section 27, as amended, agreed to.*

*Sections 28 to 30 agreed to.*

*Long title agreed to.*

**The Convener:** I am delighted—as I am sure members are—that that completes stage 2 consideration of the bill, which will now be reprinted as amended. The new version should be available tomorrow—which is impressively swift—from the document supply centre. If any member wishes to lodge a stage 3 amendment, they may do so with the committee clerks. There will be a notice to that effect in tomorrow's *Business Bulletin*. The deadline for lodging amendments will be announced as soon as the exact timetable for stage 3 is known.

I thank the minister and all his officials for helping the committee through today's proceedings and for their previous help. I also thank colleagues. A lot of detailed scrutiny took place before stage 2—people who read the *Official Report* should know that a lot of work was done before today, which let us fly through the agenda item. I hope that those who have submitted petitions will read the *Official Report* of today's meeting and will be happy with the position that we have reached.

There will be a short suspension to allow the minister and his officials to leave.

11:09

*Meeting suspended.*

11:17

*On resuming—*

## Subordinate Legislation

### Agricultural Holdings (Fees) Scotland Order 2004 (SSI 2004/496)

### Agricultural Holdings (Forms) Scotland Order 2004 (SSI 2004/497)

### Control of Volatile Organic Compounds (Petrol Vapour Recovery) (Scotland) Regulations 2004 (SSI 2004/512)

### Water Environment (Register of Protected Areas) (Scotland) Regulations 2004 (SSI 2004/516)

**The Convener:** We might get through item 2 before the Minister for Environment and Rural Development arrives; we will see how we get on. We have four instruments to consider under the negative procedure. The Subordinate Legislation Committee has considered all the instruments and has commented only on the Agricultural Holdings (Forms) Scotland Order 2004—members have an extract of its 43<sup>rd</sup> report. I take it that it has no comments on the others. Do members have comments on the instruments?

**Nora Radcliffe:** On the Control of Volatile Organic Compounds (Petrol Vapour Recovery) (Scotland) Regulations 2004, it seems to me that if the Executive is looking for a derogation for small petrol stations, the owners of which have known since 1996 that they would have to comply with the legislation, it is opening the stable door after the horse has been shod. If people have taken steps to comply with the regulations, but we are saying at the last minute that they do not have to, that defeats the object of the exercise. Were the people who would be affected by the derogation made aware of it in time to benefit from it? Things were done late in the day. Owners of small petrol stations knew from 1996 that they would be required to comply, so they might well have taken steps to do so; yet at the end of the period in which they were required to comply, we are saying, "You've got a derogation, so you're okay, chaps."

**The Convener:** We cannot answer that specific question. We are considering the instruments under the negative procedure. I suggest that we write to the minister to ask that question.

**Nora Radcliffe:** I presume that the matter has been consulted on, so that people are aware that the derogation is likely. However, if someone is

told within days of their having to comply that they do not need to, that is a bit late.

**The Convener:** The paperwork includes a final regulatory impact assessment, so I presume that previous assessments were made. I imagine that the process was lengthy. We will ask the question. Mark Brough says that we can return to the regulations on 12 January if members would like a delay to wait for an answer.

**Nora Radcliffe:** A delay is not needed, because we want the derogation to come into force. However, if it comes into force after people have complied, that is a bit late.

**The Convener:** We will not return to the regulations, but we will ask the question of the minister. I was struck by the figures, which concentrate the mind on the need to address the ozone issue. In huge parts of south-east England the levels for vegetation and, to a lesser extent, for human health are exceeded.

We can return to the Water Environment (Register of Protected Areas) (Scotland) Regulations 2004 on 12 January if necessary. I have questions about the resources to implement the regulations and about how they fit in with the Water Environment and Water Services (Scotland) Act 2003. I know that concerns are felt about sustainable flood management and about progress with sub-basin management strategies, how they are produced and the timescales involved. Will we ask the minister about those issues and return to the regulations on 12 January?

**Members indicated agreement.**

**Nora Radcliffe:** I would also like to raise part II of the schedule to the regulations, which refers to

"A description of the body of water constituting the protected area as either a body of surface water or a body of groundwater."

Wetlands and coastal waters are not mentioned. Should they be?

**The Convener:** No one else has detailed questions for the Executive and, from reading members' body language, I do not think that anyone has problems with SSI 2004/496 or SSI 2004/497, which are the two negative instruments dealing with agricultural holdings, so we have nothing to recommend on them. We are also happy to let through the Control of Volatile Organic Compounds (Petrol Vapour Recovery) (Scotland) Regulations 2004. We would like to bring the Water Environment (Register of Protected Areas) (Scotland) Regulations 2004 back to the committee on 12 January. It would be super if the clerks could note that.

The minister is just arriving to discuss sustainable development. We will turn off the

microphones for a couple of minutes until he comes in.

11:24

*On resuming—*

11:22

*Meeting suspended.*

## **Sustainable Development**

**The Convener:** I welcome the Minister for Environment and Rural Development and Executive officials. Members will recall that in September we published a report of commissioned research entitled “Is the Scottish Executive Structured and Positioned to Deliver Sustainable Development?” We sought a response from the Executive, on which we agreed that we would take evidence from the minister. We have now received the Executive’s response together with an additional response from the Sustainable Development Commission, both of which have been circulated to members. I invite the minister to introduce his officials and to make a brief opening statement.

**The Minister for Environment and Rural Development (Ross Finnie):** I am joined this morning by Sandy Cameron and Tom Davy, from the sustainable development directorate, as it is now somewhat grandiloquently described.

I do not want to take up much time with an opening statement as I think that now is the time for the committee to build on what was originally reported to it together with our response and the response from the Sustainable Development Commission. We welcome the committee’s interest in this matter and found the initial report from your external consultants helpful in pointing us in some directions. In relation to some of the issues, we believe that the particular circumstances of the Scottish Executive did not require some of the action suggested, but I hope that our response gives a constructive view.

The issue relates partly to process but it is also about ensuring delivery, which is the essential element. We believe that, in broad terms—and subject to the refinements that are referred to in my letter—it is important to have a minister driving the issue on a day-to-day basis and relating daily with the sustainable development directorate. We regard it as hugely important that the First Minister should chair the Cabinet sub-committee on sustainable Scotland, as that gives that sub-committee both projection and a sense of importance, and that the sub-committee has three external members who can provide objective advice. Also important is the fact that we link with our own sustainable development forum, that we have two Scottish commissioners on the Sustainable Development Commission and, crucially, that we have a parliamentary committee that can scrutinise the process and hold everyone to account, which brings a degree of rigour to the

process. Part and parcel of that is the fact that we are already engaged with the United Kingdom Government in terms of the next stage of the UK's overarching sustainable development strategy. Within that, we will be preparing a Scottish sustainable development strategy that ought to complement the actions that are being taken by the UK Government.

I will be happy to pursue some of the matters that were raised in the report and to expand on the response that I sent the committee.

**The Convener:** We regard this process as on-going work both for the Scottish Executive and for the Parliament. We are therefore keen to take up your offer of focusing on issues on which members would like more information or which we think we could progress further.

**Mr Ruskell:** I welcome the opportunity to talk to the minister about sustainable development. In some ways, however, it is symptomatic of the way in which sustainable development is treated by the Executive and Parliament that we are talking to the Minister for Environment and Rural Development rather than the First Minister. As you know, minister, sustainable development is about the economy and social justice as well as the environment.

In your response to the CAG report, you say that the sustainable development directorate's current location

"reflects the strong linkages between sustainable development and related policies in the environment field, such as on climate change."

How does the directorate work with other sections of the Executive on economic policy? What influence do you and your directorate have on mainstream economic policy—not just the green jobs strategy—in the Executive's programme?

11:30

**Ross Finnie:** I will deal with the general position before dealing with the specifics. I regard responsibility for sustainable development as being entirely cross cutting; I do not regard it as just an add-on to the environment. The sustainable development directorate, which was created over the past two years, was established specifically because we recognised that.

Our experience of developing governance over the past five-and-a-half years is that, whether it is a cross-cutting issue or an issue that affects only one department, the day-to-day relationship between a minister and the civil service is far and away the best way of ensuring that matters are progressed systematically. The First Minister has an enormous role to play, but a First Minister's role is very different from that of the ministers in his

Cabinet to whom he has delegated the day-to-day responsibility of managing the process. I said in my opening remarks that I regard the fact that the First Minister chairs the Cabinet sub-committee as hugely important, as that stresses to the rest of the Executive the importance that we attach to sustainable development. The fact that other European leaders take similar positions in their countries is important in terms of the interface with the wider world. However, I have to say that my experience is that a specific minister is needed if that interface is to happen properly, and that the location of the directorate is important.

On our interface with other departments, that is what we do; it is our job. As I think the committee will be aware, each minister was required to produce a little statement of how they were going to bid in the financial round, the sustainable development impact of that work and the elements within each portfolio. I am currently engaged in a round of bilaterals. This is not the first time that we have done that, but this is a new round, and we are quite specifically going down the range of policies within each department, seeking to tease out areas in which a sustainable development impact is already acknowledged and areas in which we collectively believe that more attention ought to be paid to sustainable development issues. More important, we are asking whether departments have a number of economic outcomes and targets. In our bilateral discussion with the Minister for Enterprise and Lifelong Learning only yesterday, for example, we asked how his targets would integrate with the sustainable development targets in the new plan.

**Mr Ruskell:** I would be interested to know how many bilateral meetings you have had with other ministers, particularly in relation to the Executive's mainstream economic development policies, and what kind of practical engagement the sustainable development directorate has with officials in the Enterprise, Transport and Lifelong Learning Department to ensure that those policies reflect the sustainable development balance.

**Ross Finnie:** I will give as an example two documents that have recently been published by the economic division—the "Framework for Economic Development in Scotland" and "A Smart, Successful Scotland". There is no doubt that the final definition in those documents of economic development, which was collectively agreed and is completely different from the old-fashioned definition that was less susceptible to communicating even a trace of the sustainable development agenda, was influenced greatly by my officials and me in the discussions that we had with officials in the economic division at every stage in the production of those documents.

**Mr Ruskell:** What specific policies are we talking about? It is fine to acknowledge

sustainable development in a document but I would like to know about specific policies. As the CAG report noted, programmes that are delivered in other areas of the Executive might well undermine environmental programmes that you are trying to deliver.

**Ross Finnie:** Sandy Cameron might want to highlight a specific area of engagement.

**Sandy Cameron (Scottish Executive Environment and Rural Affairs Department):** We in the sustainable development directorate do not have different economic policies from our colleagues in the Enterprise, Transport and Lifelong Learning Department. We engaged in a dialogue on green jobs and other initiatives and we regard that as a useful step towards sustainable development.

**Ross Finnie:** I have thought of a specific example. One of the instruments that the Enterprise, Transport and Lifelong Learning Department uses to encourage businesses to develop, through the enterprise network, is regional selective assistance. We have had serious engagement with the department about the criteria for regional selective assistance and the fact that proposals for developments should contain elements that are wholly consistent with sustainable development, such as a company pursuing a particular energy policy. Such things are fed into the thinking process as a direct result of the sustainable development team being engaged with our economic development colleagues.

**Rob Gibson (Highlands and Islands) (SNP):** I would like to dwell on recommendations 3 and 4, which suggest that

"the Executive should ensure more integrated sustainability appraisal of its policies and legislation early in their development"

and their systematic monitoring and review. A practical example of your job in rural development is your forward strategy for agriculture. Will you talk us through that strategy? Has sustainability proofing been built into it? What monitoring is being done of the development of that strategy?

**Ross Finnie:** The issue is partly about striking the right balance between sustainability and pure agriculture. One of the thrusts of the strategy is to make agriculture more market focused: it is about trying to get better returns and therefore, in a purely economic sense, about making farms more sustainable. However, that was not good enough, because the same strategy document recognised that farmers are the stewards of 75 per cent of the land in Scotland and therefore, in seeking the sustainable management of that land, both the environmental imperative and the socioeconomic dependence of communities are important.

The forward strategy is made up of three integral parts: the interrelationship between the economic and socioeconomic dependence of rural communities in which agriculture occurs; the need to deal with the performance of the individual unit; and the need to optimise the stewardship that is exercised by individuals. On that basis, I submit that the strategy does not take a single view about how particular farmers should operate. It takes an overarching view about how we manage the countryside in a genuinely sustainable way and it uses those three factors as a starting point.

On monitoring and effect, in so far as the recommendations in the strategy document were designed to deliver the overarching strategy, the implementation group was engaged in monitoring the delivery of the agriculture strategy. The implementation group was broadly based and drew members from a wide range of interests, including environmentalists, community people, commercial people and farmers.

**Rob Gibson:** How can there be any practical audit of the strategy? A major thread in your approach to farming is the need for an overview, as you say, rather than just the monitoring of individual farms. How can Parliament get a handle on the effectiveness of the strategy? We will need regular information to enable us to audit the process.

**Ross Finnie:** I suppose that that can happen at several levels. However, I am not quite sure what happens to the outcome of the implementation group's work and I do not think that the officials who are present have that information.

**The Convener:** Perhaps we could receive supplementary information—

**Ross Finnie:** I was merely suggesting that the agriculture strategy implementation group has responsibility for trying to ensure that the strategy is delivered across a broad spectrum of interests. I do not quite know how we aggregate the data; there is a danger of excessive bureaucracy and we must find a more imaginative way of proceeding than by imposing burdens on individual farmers and asking them to tick boxes on forms. It is not as if the strategy were not being monitored; it is being monitored, and the implementation group is charged with that responsibility. Perhaps I can inform the committee after the meeting about the information that is made available for that process.

**Rob Gibson:** The agriculture strategy is a clear example of a Scottish policy that has a very Scottish perspective. However, the Sustainable Development Commission said that much of the work on a sustainable development strategy

"will be developed as a result of the review of the UK Government".

In response to the committee's recommendation 3, on monitoring, the Executive says:

"we can mirror the indicators used by the other UK Administrations".

You said that you could give the committee more details about how the success of the Executive's agriculture strategy is being monitored, but surely we need a mechanism to monitor the strategy that has been developed to suit our circumstances, rather than one that mirrors the approach of other parts of the UK.

**Ross Finnie:** I said only that we can use such indicators. There is a common interest in having a common measurement, given that there is a European set of sustainable development indicators. There would be no great merit in reinventing the wheel for the sake of it. The intention behind the phrase that you quoted was to suggest that in relation to some of the broader, higher-level indicators it would be helpful from a European perspective—and indeed generally—to try to ensure that we are all heading in the right direction.

If what underlies your question is a concern that our current set of indicators needs to be revised to take account more particularly of Scottish policies, I agree with you. When I published my first set of indicators I made it very clear that they represented a preliminary view, because when I inherited the post of Minister for Environment and Rural Development and subsequently took responsibility for sustainable development we had already been talking about the matter for two years. People kept telling us that we could refine the indicators in this way or in that way, which was always an excuse for not publishing them and not setting ourselves targets, so I was determined to put the indicators in place and then build on them. As we revise the sustainable development policy, we must first get a handle on how we align our broad, strategic indicators with the revised suite of European indicators and then we must ascertain what other indicators would be sensible and more specifically directed to Scottish issues, as you rightly suggest. That will be part of the process. Mark Ruskell has also asked about indicators. I accept that having put the broad indicators in place we must consider revising the Scottish indicators.

**Rob Gibson:** I am not talking about reinventing the wheel, but the indicators should mesh with the UK and European indicators. Some knowledge of how that will roll out would be helpful.

11:45

**Ross Finnie:** Perhaps I could give a brief indication of the process. We understand from discussions that the UK is doing two things in

parallel. We are engaged with the UK on the overarching sustainable development statement, in which we clearly have an interest in order to ensure cohesion throughout the United Kingdom and integration with Europe. We understand that the Department for Environment, Food and Rural Affairs and others will then develop a strategy for publication. We expect the broad strategy to be published early next year.

**The Convener:** Is that 2005?

**Ross Finnie:** Indeed. I am not happy about developing a strategy internally—that is not the style of the Executive or this Parliament. I am keen to take the broad overarching strategy and have some broad statements, on which we can consult Parliament and a wide range of stakeholders, and then to proceed quickly to develop a Scottish strategy. As part of that process, we will have to be clear about the Scottish indicators and the overarching indicators. That is the timescale for the process.

**Rob Gibson:** I look forward to seeing that.

**Richard Lochhead:** I am disappointed to learn from the Sustainable Development Commission's letter of 25 November that you are putting together a strategy and action plan only because of what the UK Government is up to.

**Ross Finnie:** Richard Lochhead puts an interesting gloss on the matter, but that is not my understanding of the position. We integrate with the UK Sustainable Development Commission. I appreciate that your political position is that you would not do that, but we do. Therefore, we are trying to act in concert by having an overarching plan within the UK. We said when we published our first stab that we would revise it, which is what we are doing.

**Richard Lochhead:** It was not I who said that you are putting together a strategy and action plan only because of what the UK Government is up to; it was the Sustainable Development Commission that said that.

I have two questions. One is in reference to your comment that you have bilateral meetings with other departments. You said that one of your objectives is to tease out policies that are not compatible with sustainable development. Does a list exist of all the policies, department by department, that are not compatible with sustainable development? Such a list would help the committee.

**Ross Finnie:** No—there is no such list. The problem is in trying not to burden the process through ministers exchanging volumes of paper. We are trying to talk more and write less in order to speed up the process. I am frustrated by how long it takes to move the issue forward. We are



having bilaterals. We have the broad policy portfolio of each minister; however, we have not produced a document. We are trying to get the process to move more quickly. Everyone is frustrated by how slowly people get moving and by how slowly progress is shown in sustainable development.

**Richard Lochhead:** I appreciate that it is a big task and a challenge, and that such a list would not be the easiest thing to put together, but it would be helpful in that it would show the committee that sustainable development is being taken seriously. Otherwise, all that we have is the word of various ministers that they are taking the matter seriously. It would help the committee to hold the Government in Scotland to account if we could see individual departmental policies and any audit that has taken place.

Secondly, even if Government departments have sustainable development policies, they are often implemented by quangos or non-governmental bodies. I am thinking of the announcement from the Minister for Communities of about a month ago on the multimillion pound investment in housing. What attempt is made to ensure that money is spent in a way that is compatible with sustainable development? For instance, tens of thousands of houses are to be built in the next few years, thanks to the Government's policy that was announced a few weeks ago, but will those houses be built from sustainable materials? To what extent do you pursue the impact of policies and of how the money is spent?

**Ross Finnie:** I will not pretend to the committee that every part of every policy in every place is carried out sustainably—if that were the case, we would not need this discussion. However, we are trying hard to achieve that. We want to make it clear in housing and cities announcements that we are imposing standards with the aim of meeting the sustainable development criteria. A group is considering improvements to the building standards. As members know, we have changed the building control regulations twice in the life of the Parliament in order to start to improve, through statutory enforcement, the way buildings are erected.

The issue relates to public procurement across the spectrum of Government and its non-departmental public bodies. I do not claim that we are 100 per cent there; we are not, but the issue is on the agenda and the situation must be monitored constantly. Public procurement could play a huge role in improving the situation.

**Richard Lochhead:** I am trying to get an insight into how Government works in this respect. A few weeks ago, the Deputy Minister for Environment and Rural Development led a debate on forestry.

A theme that came across as being important in the speeches of members from all parties was that one way forestry could be supported would be to encourage building more timber-frame buildings and sustainable buildings, especially for housing. Given that the Minister for Communities had previously announced huge investments in housing, I wonder whether the Deputy Minister for Environment and Rural Development left the chamber thinking that that was a good idea that has cross-party support. Perhaps he decided to investigate whether the Minister for Communities intends to attach conditions to the announced investment in housing. How does the system work? How do the issues tie together?

**Ross Finnie:** The generality of housing building is not all in our hands. The Executive discusses such matters with architects and specifiers of contracts, but meets with varied responses, particularly from the private sector. A number of architectural bodies and specifiers see the issue as important and are anxious to talk to us, but others are driven by a different agenda and do not see matters the same way. In relation to forestry development and specification, we have been encouraging an architectural project.

**Sandy Cameron:** We are doing a lot on the issue. We are developing an internal group to bring together people from building control, architecture and planning as well as people from the Scottish Executive Environment and Rural Affairs Department. We are funding a major project at the Lighthouse in Glasgow. Sustainable designs exist, but we need to roll them out for greater use. Much work is going on; I can provide other examples for the committee.

**Richard Lochhead:** I am still quite confused. I am aware that all those initiatives are happening. Were there any bilateral discussions involving your department and the Development Department in relation to the housing investment announcement?

**Ross Finnie:** There were no such discussions on the day of the announcement. Announcements do not happen in a day; they are made on a day to MSPs, but preparation for announcements takes a long time. The process is regular. We have expanded greatly the sustainable development directorate to give us sufficient capacity. The directorate started off with three or four people, which was inadequate to tackle the sort of issues that Richard Lochhead raises. We now have in the directorate a solution capacity that enables us to engage with other departments on policy development that might ultimately lead to a policy announcement. Therefore, sustainable development is part of most of our policies. I am not suggesting that we have covered every quarter, but we certainly have better capacity to address the issue.

**The Convener:** I read through your answers to our questions, the response to the CAG Consultants' report and the response from the Sustainable Development Commission and it seems to me that there is general acknowledgement that there has been a significant gearing up of staffing and resources for sustainable development. However, there is still a sense that there is an awful lot more to do. It is a question of how you expect the Cabinet sub-committee on sustainable Scotland to provide political leadership on sustainable development and how that will be picked up by the civil service through administrative action. The issue is training and development.

I will ask a question from a parliamentary perspective. What do you intend to do to train bill team leaders to address sustainable development issues? The CAG Consultant's report certainly made us think about how we do that in parliamentary scrutiny of bills. We lack the cross-cutting capacity to scrutinise Executive bills for sustainable development issues, so to what extent is the Executive geared up to provide in-house capacity for that? Perhaps there should be more independent scrutiny of the Executive's work along the lines of scrutiny of the National Assembly for Wales and the Welsh Assembly Government. Perhaps Audit Scotland needs to mirror such work so that, for this committee's scrutiny process and for the Government, there would be constant scrutiny to track the effectiveness of the huge amount of work that is going on and to provide focus and bite.

**Ross Finnie:** I appreciate that the discussion is about sustainable development; you could pursue that argument and apply it to a range of Executive activities. It could be suggested that we have completely independent scrutiny, rather than parliamentary scrutiny, for a raft of policies. However, I am not sure that doing that would necessarily produce better results. I think that we have learned a lot in the past five years about what we need to do. I am not claiming that we are anywhere near getting the sustainable development policy right, but we are getting somewhere in providing the necessary skill sets and resources.

I accept the point about independent scrutiny, but the real solution is for the Environment and Rural Development Committee to employ expertise—or to engage with it and have its support—that would allow the committee to hold us seriously to account. From your—or my—perspective, all parliamentary committees need that resource in order adequately and perhaps better to scrutinise policies in respect of sustainable development. I am not suggesting that this committee should do a batch of such scrutiny work. I sympathise with the committee's problem

because there are complex issues and the committee must have access to adequate resources to deal with them.

I would be instinctively reluctant to have an external body scrutinising and passing on reports to a parliamentary committee. It seems to me that that would make the process overly bureaucratic. I am sympathetic to the notion that we need a high level of resource to scrutinise the Executive adequately, but I do not know whether adding another layer of bureaucracy is the right answer or whether the committee could get access to outside work for its purposes.

**The Convener:** We will try in January to do sustainable development scrutiny for the climate change inquiry. We have kicked off that in the light of SEERAD's work. Our scrutiny will cut across different departments, although SEERAD is leading the strategy. However, I am thinking in terms of having a more focused monitoring and review process and I wonder to what extent the Executive does that. The procurement issue, for example, has been identified as an area in which we lead the way in Scotland. However, the Sustainable Development Commission has commented that we need to be more focused and explicit in monitoring the rate of progress and how that links into the modernisation agenda, which your department is not leading. There is recognition that good work is beginning to happen.

That brings me back to the question of who does the monitoring and what is the catalyst that will push things on to the next stage. Clearly, although a lot of good work is in progress, the question remains about how things are monitored and brought to the attention of everyone who is engaged in the agenda—the people who can help to raise standards and work through the difficult issues.

12:00

**Ross Finnie:** There are two things that I can mention in answer to the question, although the convener might consider them to be an inadequate response. Parliamentary scrutiny is extremely important, which is why I am sympathetic to the view that people should have access to that resource. The Cabinet sub-committee on sustainable Scotland plays two roles: one is to take forward the day-to-day agenda and the other is to try to form a view on whether we are addressing issues adequately. Although it is unusual to have external members on such a committee, their contribution is totally justifiable and extraordinarily valuable. We engage with the three external members of the sub-committee not only at our meetings, but by sending them draft papers and other material that is under development, and inviting their

comments. That allows us to get an external view; we might otherwise become a bit myopic about our policy delivery and lose sight of elements of the sustainable development theme.

Given that we have that balance at the moment, the question remains of how to manage it. How many people do we need to progress things without ending up having a team auditing the auditors who are auditing the auditors and so on? I take the convener's point, but the question is about how to strike a balance between the number of people involved in monitoring a process that is already quite complex and the need not overly to burden it.

**The Convener:** I was not suggesting more layers—or even four layers—of people. I suggest simply that the people who are doing the work should be able to see how their work adds to the whole and to track it. I leave that suggestion with the minister.

**Maureen Macmillan:** Although the convener has covered a number of the points that I was going to raise, I have one or two areas still to cover. I return to what Richard Lochhead said about the forestry debate, which I thought was quite a good issue to raise in the context of the housing announcement. In the plenary debate on forests, we heard that the forestry industry would be greatly helped as a result of the announcement. That said, I think that the issue was about not timber-framed but timber-clad houses. The issue of timber-clad houses is slightly different, given that we build timber-framed houses at the moment.

I attended a rural housing conference not long ago, at which it became apparent that the big problem was not the minister with responsibility for housing but the planners who do not give planning permission for timber-clad houses. Links to sustainable development need to be made through, for example, a new planning bill. I hope that the bill will include a provision that would lead planners to give more weight to sustainable development, the use of local materials and so on. That is just one example of a measure that could be applied in different parts of the country.

There is a big role for education and for enhancing people's knowledge and training not just in the Executive, but further down the chain. How, if at all, is that progressing?

I also want to ask the minister about procurement rules. What is the interface with Europe? How do the EU procurement regulations sit with our wish for sustainable procurement?

**Ross Finnie:** I will deal with the last part of the question first. Although it sits with sustainable procurement, procurement can cause a slight awkwardness in that the more one puts into a

specification, the more difficult it is for people to meet that specification. We must also consider the budgetary consequences of elements that may be introduced into contracts.

The procurement rules are not necessarily the biggest impediment to sustainable procurement. The bigger constraint relates to the point that Maureen Macmillan made, which is the extent to which professionals in the building trade and industry, and planners and people in the architectural sphere are comfortable with the specification of materials. Those are the people who have genuinely to believe that materials are fit for purpose.

One of the issues about timber cladding is the lack of unity of belief that timber cladding is an appropriate material that is fit for purpose in certain climatic conditions. There is a difficulty in that and I cannot second-guess the architects' and other professions' views on that. Given that I have a son who is an architect, I have to be careful about doing so. If he were to hear me say anything of that sort, I might get a very bad time when I return home.

However, the issue is really about whether the Executive has taken a view on the use of such materials. The Forestry Commission has rightly said that it would be hugely helpful if we were to do so. At the same time, we must recognise that if planners and architects in certain areas do not believe that timber is the appropriate material for a job, they will not, on professional grounds, recommend the use of timber cladding.

As Rob Gibson or Richard Lochhead also mentioned, the broader thrust of the question is about education. I am in no doubt that, if we are to achieve a more general understanding of, concern about, belief in and buy-in to the sustainable development process, we must involve education in a major way. That debate is part of our discussions with the Minister for Education and Young People and others in further and higher education. We are engaging with them not only on management of their estates—which is a separate issue—but on how to achieve educational content that will lead to better understanding of sustainable development and therefore to greater receptiveness to it.

**The Convener:** You have probably exhausted us after the debate on this issue and our discussion earlier this morning on the Water Services etc (Scotland) Bill. The committee will have to return to this and decide how we want to progress the matter thereafter. It would be useful if we had a sense of the work that is being done across Executive departments. It is easier to discuss sustainable development if we can discuss practical issues such as the links between housing, forestry and rural development, for

example. The subject can become a bit airy-fairy if we look only at the overarching issue of sustainable development. It is nice if we can come up with some crunchy topics.

**Ross Finnie:** Although we do not produce a detailed analysis such as Richard Lochhead would like, I will see whether it will possible for us to produce something. I apologise in advance that it might have to be a summary, but we could give the committee an indication of connectivity between departments and policy elements. That might help the committee in developing its thinking.

**The Convener:** That would be helpful in terms of best practice, as we are also looking at the issue in terms of climate change. A summary would give us a sense of how the Executive is doing things in practice. We recognise that the issue is subject to on-going work, both for the committee and the minister. However, I am still attracted to the idea of getting something that would provide more effective parliamentary scrutiny. We may need to return to the issue, so I will not seek your advice on that question, minister.

**Ross Finnie:** Absolutely not.

**The Convener:** Thank you. We will let you depart.

**Ross Finnie:** Thank you.

## Item in Private

12:07

**The Convener:** We move to item 4. Members will recall that, at our meeting of 10 November, we agreed that we would hold an inquiry into rural development before the summer recess of 2005. By early in the new year, we should be in a position to consider detailed options for the remit and programme for that inquiry. I seek members' agreement to hold the discussion at that time in private. Given that we will be batting about the names of potential witnesses in terms of to whom it would be best to talk, do members agree to discuss the item in private?

**Members** *indicated agreement.*

**The Convener:** We have no meeting next week; our next meeting will be in the new year. So that members of the public can note the date in their diaries, I advise them that the meeting should take place on 12 January.

*Meeting closed at 12:08.*

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