

# **ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE**

Wednesday 20 April 2005

Session 2

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## ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

† 11<sup>th</sup> Meeting 2005, 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 (Tweeddale, Ettrick and Lauderdale) (LD)  
Eleanor Scott (Highlands and Islands) (Green)

\*attended

### THE FOLLOWING GAVE EVIDENCE:

Kathy Cameron (Convention of Scottish Local Authorities)  
Councillor Alison Hay (Convention of Scottish Local  
Authorities)  
Dr Elsa João (University of Strathclyde)  
Paul Neison (Scottish Executive Environment and Rural  
Affairs Department)  
Professor Colin T Reid (University of Dundee)  
John Rennilson (Convention of Scottish Local Authorities)  
Linda Rosborough (Scottish Executive Environment and  
Rural Affairs Department)  
Iain Sherriff (Society of Chief Officers of Transportation in  
Scotland)  
David Tyldesley (David Tyldesley & Associates)

### CLERK TO THE COMMITTEE

Mark Brough

### SENIOR ASSISTANT CLERK

Katherine Wright

### ASSISTANT CLERK

Christine Lambourne

### LOCATION

Committee Room 1

† 10<sup>th</sup> Meeting 2005, Session 2—held in  
private.



# Scottish Parliament

## Environment and Rural Development Committee

*Wednesday 20 April 2005*

[THE CONVENER *opened the meeting at 10:31*]

### Environmental Assessment (Scotland) Bill: Stage 1

**The Convener (Sarah Boyack):** Good morning. I welcome members, members of the public who are with us this morning and representatives of the press. I remind everyone to turn off their mobile phones. We have received apologies from Alex Johnstone.

Our first agenda item this morning is the first of our oral evidence sessions at stage 1 of the Environmental Assessment (Scotland) Bill. We are the lead committee, so it is our job to report to the Parliament on the principles of the bill. We have a series of witnesses lined up for the next few weeks and we intend to finish considering evidence on 18 May, when we will have Scottish ministers in front of us—I think that we have called Ross Finnie.

There is an open call for evidence on the bill. Indeed, evidence is coming in as we speak. It will be passed directly to members and will also be published on the committee's web page so that people can see how the debate flows.

I welcome our first panel. Colin Reid is professor of environmental law at the University of Dundee, Dr Elsa João is director of research at the graduate school of environmental studies at the University of Strathclyde and David Tyldesley is principal of David Tyldesley & Associates. Thank you all for giving us your evidence in advance. It was useful to be able to read it before you came along this morning. We do not take opening statements from our witnesses, but we will address the comments that you made in your submissions.

**Mr Mark Ruskell (Mid Scotland and Fife) (Green):** What features should the strategic environmental assessment gateway have if the bill is to be successful?

**David Tyldesley (David Tyldesley & Associates):** The gateway could have a range of roles, but the bill would require to be amended to allow for some of them. At the moment, the gateway is largely administrative. As you will have seen from my submission, I believe that that administrative role is crucial. The gateway is an

efficient way of dealing with the link between the responsible authorities and the consultation authorities and I understand that it is working well. I commend the Executive for putting it in place. There is no equivalent in England, where the system does not work nearly as efficiently. The administrative role is important.

I believe that the gateway should go further and be proactive about disseminating good practice, monitoring training and developing SEA in Scotland, particularly in relation to the wider range of plans, programmes and strategies that are to be considered. I know that others think that it should go even further and become a monitoring, auditing and enforcing body. I am not so sure that that is right at this point. I would not rule it out in the future, but to fulfil that role the gateway would have to take on a completely different shape and be a statutory body with enforcing powers—if it did not have such powers, there would be no point in monitoring the enforcement of the legislation. I am a strong supporter of the gateway carrying out administration, promotion and good practice training, but it should stop short of adopting a formal enforcing role. The auditing probably lies somewhere in the middle.

**Mr Ruskell:** Who should undertake the formal analysis of the process?

**David Tyldesley:** We have had 15 years or so of environmental impact assessments for projects and nobody is carrying out enforcement, so the first question is whether that is essential for SEA or whether the system is self-policing, as it is for the EIA projects. There is an important role for the gateway—or another body—to play not in carrying out an official audit of every environmental report that comes through, but in monitoring and disseminating good practice in the decisions taken by responsible authorities and consultation authorities. That is the role that the gateway can play. The idea of auditing and enforcing is completely different and we have not had it for projects with EIA.

**Dr Elsa João (University of Strathclyde):** I agree with most of what David Tyldesley has said. It is great that the gateway exists, but its role could be improved and widened. There should be a transparent register, which could be set up easily on a web page and which could set out the plans that were coming through screening and scoping and the answers that were being given.

The auditing of the quality of SEA reporting and the SEA process overall is important and either the gateway or another body needs to do it. If such an audit is not carried out, what is the point of our doing SEAs? If we are doing SEAs because we want better plans, policies or strategies, we should check that the mitigation and enhancement measures are working and see whether we are

getting better plans, whether human health and biodiversity are improving and whether air pollution is decreasing. We want to achieve those things, but if we are just producing reports and not checking them out, what is the point?

It is important that we monitor whether mitigation and enhancement measures are working. I like to talk about mitigation and enhancement, because I see the SEA process as a way of improving the policies, plans and programmes—not just as a way of mitigating negative impacts, but also as a way of improving positive impacts. Who will carry out that monitoring? Will it be the SEA gateway or someone else? The monitoring role is important and we should not postpone it, because it is about gathering the data and starting the process. Someone has to do it.

The Institute of Environmental Management and Assessment has carried out monitoring of EIA, albeit informally. Consultants who want to be registered with IEMA say, “Aren’t we brilliant, aren’t we doing a great job?” and they submit environmental impact statements. Those statements are classified and graded by two independent people, who say, “You’re doing really well,” or, “You’re not doing so well.” That can work well for the consultants, who want to attract more jobs. The process is slightly different with SEA, because often SEAs will be carried out by the responsible authority alone. We have to consider how to monitor that. There is not really competition. Many consultants carry out monitoring of projects with EIA and there is some competition with that.

**Mr Ruskell:** So you mean that self-policing is harder with SEA than with EIA.

**Dr João:** Exactly. For project EIA, consultants undertake the EIA reports and they compete for tenders, so the quality issue is important. How will that apply when, most of the time, responsible authorities alone will undertake SEA? Someone must perform that important role.

**Professor Colin T Reid (University of Dundee):** I support what my colleagues said. The gateway could fulfil several roles, which include the supportive role—the advice and guidance role, the simple administrative role of co-ordination and the role of monitoring and auditing. Does the auditing role sit easily in the same body—the same place—as the supportive role? Problems with relationships could arise.

How strong people want the auditing and monitoring role to be depends partly on their vision for what should happen. The role is not undertaken for projects; because projects are more specific, it has been easier to rely on legal challenges as a way of coping when people think that the process has gone badly wrong.

I have concerns about the more strategic environmental assessments, for which legal challenges may be harder, because of issues of standing, for example. The committee may want to make the monitoring and auditing element stronger, especially because, as Dr João said, the same market does not exist. Because fewer players are involved, bad practice or a consensus on how to operate that is not ideal could build up more quickly. Because different people in different places at different times work in the project base, diversity is greater and that feeds off itself.

**Nora Radcliffe (Gordon) (LD):** The discussion on the gateway has led us to talk about monitoring and auditing. Will the bill provide a tool for better decision making? If so, should the decision rather than the tool be monitored and audited?

**Dr João:** The bill should deal with both. The tool must work well, but you are right: we want better decision making. That is what is special about SEA. It provides a way in which to make policies, plans and programmes better. It should be closely integrated with the decision-making process. SEA will affect processes that are being undertaken by—I hope—making them better. We want to ensure that we get things right. Many times, we predict that, if a mitigation measure is taken, human health will improve, for example. We want to monitor that and to say whether the mitigation measure is doing what it is supposed to do. Two years down the line, we might find that it is not working and that people still have poor health, so we will have to ask what we can do.

Monitoring raises all those issues. If a mitigation or enhancement measure is not working as we think it should, do we act before a plan is revised? If a plan is for five years, we can take into account results only when we revise it. That is all about thresholds, too. If things go really badly in relation to what we predicted, do we have a warning system that says that a plan is not working and tells us to act earlier? Who will monitor the data and say that a plan needs to be changed because it is not working?

**Professor Reid:** Problems may also arise with determining what constitutes better decisions, given that the environmental component is just one aspect of the decision making by bodies for which political accountability is often meant to provide the way of making better decisions. Issues arise with what is monitored and how that is done. It can be argued that monitoring at the environmental assessment stage is more objective—it will never be completely objective—and provides quality control, as it is easier to apply without going into complicated political decisions and trade-offs between environmental and other benefits.

**The Convener:** I presume that we want monitoring at two levels. Individual monitoring of decisions should be undertaken by the authority that produced a plan, which should have a robust monitoring mechanism. Then there is your point about whether the bill will make a difference and how the SEA gateway or the Executive will monitor its impact throughout Scotland. We are almost trying to do two things—we are trying to get an overview of what SEA has achieved, but we also want to ensure that there is an incentive for the authorities that carry out the SEA to check their own process. That cannot all be done centrally. Presumably there has to be a mix.

10:45

**David Tyldesley:** Experience tells us that the legislation will need to be reviewed and perhaps amended in future, just as all environmental legislation has had to be amended over long periods. The bill is a great step forward, but it is not the be-all and end-all. I am sure that it is not the final word on SEA in Scotland.

We should also bear in mind the fact that, unlike project EIA, monitoring is a statutory requirement of the regulations and the bill. There is a big difference between our experience of enforcing and monitoring EIA on projects and the statutory monitoring that we will have under the bill and regulations. We should not rush into a formal auditing and enforcement monitoring system yet. Let us see how things go. Of course IEMA is doing a great job. I agree entirely with Elsa João that things are different with SEA, but we should not rush into a formal mechanism of audit and enforcement. I would much sooner see how things go. We should see what is necessary in future and give the responsible authorities the chance to police the system themselves and to raise standards in response to the bill.

**Rob Gibson (Highlands and Islands) (SNP):** I would like to tease out the relationship between SEA and existing attempts to place sustainable development at the core of Government policy. Professor Reid, how do you see the bill more fully integrating environmental considerations in the decision-making process?

**Professor Reid:** The bill is a big improvement, because it will ensure that the environmental component is properly considered. The difficulty that I foresee is that the final weighing up of the various elements of sustainability will inevitably involve different considerations that have been developed by different processes. That may lead to the same problem arising as there is in the planning system, in which the reporter's conclusions can be overturned by Scottish ministers.

Because the public inquiry part of the process—in this case, the environmental assessment—is public, there will be a lot of participation. People will see the evidence and how the input to the decision making is working. However, the other elements—in this case, the social and economic aspects—will not be developed in such a public way. When people see the environmental evidence being outweighed by social and economic arguments, they may think that the decision is not a good one, because they will be unable to judge those arguments in the same way as the environmental part of the inquiry, in which they have participated. They may think that the decision maker ignored the environmental side rather than carefully weighed it and put it in the balance.

**Dr João:** It is an interesting point that, thanks to SEA, we may need to raise the quality of economic and social evaluations. On the link between SEA and sustainability appraisal, the English approach integrates the two systems. My instinct tells me that that might not be such a good idea, because the environment might lose out. I like the idea that Scotland is pursuing at present, which is to keep SEA as a separate process and to make the process more transparent.

When we come to make decisions, we cannot just consider the environment. The issues are interlinked, so in some cases we have to consider social and economic issues. Indeed, the directive is not exclusively biophysical; it covers human health, material assets and other social and economic issues. It also mentions as one of its aims sustainable development. Things are not very clear. At this stage, those who are involved in academic research are waiting to see what will happen; they are especially keen to see how the English system works out. It is not clear to people whether it is a good idea to mix the two processes or to keep them separate. Is the environment going to lose out or will that approach make for an efficient system?

**David Tyldesley:** The question is absolutely critical in the context of the bill. If you are going to go down the route of sustainability appraisal, you will have to do it now and not at some point down the line. In my view, the wider sustainability appraisals tend to tell responsible authorities what they already know. They are already promoting the plans for social and economic reasons—that is often their role—and they understand those factors well. Experience shows that it is perhaps the environmental implications of the plans and programmes that are less well understood. That is where SEA plays an absolutely vital role in sustainable development. Although the social and economic aspects are obviously important, they are better understood and the plans often promote them in the first place.

More than half the appraisals that have been carried out on Scottish local plans and development plans have been full sustainability appraisals—they have not been limited to SEA. I see nothing in the bill that precludes a local authority from carrying out a sustainability appraisal. The only difference between the English and Scottish systems is that the Planning and Compulsory Purchase Act 2004 requires all the plans of local authorities in England to go through the sustainability appraisal process. I believe that any responsible authority that feels the need to carry out a full appraisal of the socioeconomic effects as well as the environmental ones can and will do that—the evidence is that authorities will do that.

**Rob Gibson:** You are saying that SEA is a catalyst to make the whole range of environmental regulation work in an integrated way.

**David Tyldesley:** Yes, it is a part of that.

**The Convener:** That is an interesting point, which brings us back to the purpose or the benefits of the bill as a whole—why we need it and what it will do in practice. It will effectively ensure a much more rigorous, coherent environmental assessment and a tiered approach, but with the SEA report and the consultation it will push up the bar on decision making more generally.

Do you have views on the resource intensiveness of the process? Our next witnesses are from the local authorities and one of their core issues is the need for funding to make the process work—whether that is funding for training or staff time—and the need for more time in which to make decisions. How can we get a virtuous circle on that instead of delaying everything, incurring huge costs and making it difficult to carry out the process?

**David Tyldesley:** As a practitioner in the field for many years, I have my views on that question. I believe, as I said in my written submission, that the cost estimate in the papers that I have read underestimates the resources that will be required to service what the bill will provide for. There is no doubt in my mind that the bill will cost responsible authorities more than is being anticipated. However, I still say that that is worth while as an environmental insurance policy for the future and that the costs are justified. The costs are not unjustified, but they will be higher than anticipated.

My greatest fear is that the estimates have concentrated far too much on the environmental report stage. My experience shows that the screening and scoping stages—and, although it has yet to be tried, the statement that responsible authorities must produce on the adoption of a plan or programme—will be substantial documents. They will not be a side of A4; they will need to be

documents of five or 10 pages, for example, and will require a time input that I think is being underestimated.

I fully understand the concerns of the responsible authorities about resources. Nonetheless, the evidence is that they have been successfully completing environmental appraisals and sustainability appraisals in Scotland for approximately the past 10 years. I sympathise on the resource issue and accept that the costs are being underestimated. However, that will not bring the system to a grinding halt or delay plans and programmes, as might be feared. There is no evidence of that happening in recent years when similar procedures have been followed.

The only caveat to add is that it is clear that the programming of a plan is more likely to be delayed by SEA in those areas that do not currently have in place the rigorous statutory procedural arrangements that apply to local authority development plans, for example. Therefore, the effect will not be at the development plan end; it will occur in regard to other plans and projects where, as my submission states, new procedural steps might be required. That will be a resource issue.

**Dr João:** That is very interesting. I accept that there will be a resource issue; the question is how large it will be. While David Tyldesley has more experience than I have on the issue, my instinct is that local authorities sometimes get in a bit of a panic and feel that the problem is much bigger than it actually is. One of the problems for local authorities is that they think that they will need a lot of data. The reality is that one can carry out SEA without data. Data must not be a stumbling block to undertaking SEA.

A key area in carrying out SEA is deciding what issues need to be analysed. One can still carry out an analysis without data. As an example, one of the key issues in an assessment might be human health. Even without data, one can still evaluate the situation and conclude, for example, that an increase in the use of cars might affect people's health. It might be possible to make that link without health data, by using qualitative-type knowledge.

There need not necessarily be a huge data collection exercise before one can undertake SEA. In her book "Strategic Environmental Assessment in Action", the practitioner Riki Therivel says that the first SEA carried out for a local authority could be an exercise in finding out what kind of data needs to be collected in the future. The directive states that one will often undertake SEA with data gaps. The environmental report must point out the data gaps and suggest possible links between different evidence. The report might note that any link discovered had been estimated qualitatively,



but also that in the future it might be possible to obtain quantitative data. Therefore, monitoring would be recommended so that, for example, five years from now data would have been collected. The SEA process can indicate what kind of data may need to be collected in the future.

In some cases, people are panicking unnecessarily and are thinking, "Oh my goodness, we are going to have to hire all these consultants." However, that is not necessary. Indeed, SEA cannot be done by just passing it 100 per cent to consultants, as that will not help a plan. It can be done hand in hand, as a mixed team, with the consultant and local authority working together on improving a plan. However, it should not be passed completely to consultants.

**Professor Reid:** As the introduction of project-based EIA showed, there were transitional problems in those areas that had not had a structured plan-making process. We must encourage organisations to consider which of the documents they produce are plans, programmes or strategies and then think back to how they produced them or at what stage they would put in the appropriate assessment or consultation period. In areas such as planning, it was easy to slot in the EIA, because procedures already existed. However, for other areas, such as forestry, slotting in the EIA was a huge problem and we were many years late—we had several false starts—in coming up with a process that fitted the European Community requirements.

11:00

**Dr João:** I should point out that not all local authorities think alike. An interesting case study is provided by the SEA that was carried out by Falkirk Council in, I think, July 2004. When I asked the council whether resources had been an issue, I was told that no extra resources were required for carrying out the SEA. It was simply part of best practice and the council did not view SEA as an extra burden.

**The Convener:** However, the bill will clearly mean a change from business as usual. It will require people to do things differently and to think about them differently. The accounting process will also require people to be transparent about what they do. We can perhaps ask the Convention of Scottish Local Authorities about the transitional process for going from where we are now to where the bill will require us to be. The regulations have been in place for a year, but the bill will up things substantially. How we manage that process is a subject that we will come to.

**Maureen Macmillan (Highlands and Islands) (Lab):** The tension between environmental and socioeconomic matters is an issue that has been

raised not only by local authorities. The business community believes that the bill tips the balance too far in favour of the environment and is anxious about the bill going beyond the directive's requirements. What is the value of going further than is required by the directive and further than the rest of the United Kingdom has gone? What are the implications of that? Will we be faced with two sets of regulations, one of which will cover the whole of the UK and the other of which will cover only Scotland?

**David Tyldesley:** I have heard, and I understand, the argument that the bill will tip the balance too far in favour of the environment. However, we can look at the experience of what happened in the first 10 to 15 years of project environmental impact assessments—which are a slightly different process—between the mid-1980s and the point at which the range of projects that were required to be assessed was increased by the amendment to the directive. The research that we carried out in the early 1990s showed that almost a third of all environmental statements that were submitted to planning authorities were unnecessary in terms of the law. In other words, various sectors of industry saw the EIA process as beneficial to their projects: it was seen as beneficial to the decision maker because it helped to show that a project was environmentally benign or acceptable. Therefore, I do not hold to the idea that the bill will tip the balance. There is no evidence to show that the weight given to socioeconomic aspects by decision makers has diminished in any way because of environmental assessment of any kind.

I believe that the bill will add value. From my perspective, the greatest value that the bill will add is that it will widen the range of strategies, plans and programmes that will be subject to the environmental assessment process. That key added benefit will mean that Scotland's environment will be better protected in the future from decisions that are made in good faith but with a poor understanding of their environmental implications.

**Dr João:** I agree with David Tyldesley, in that I disagree with the idea that the bill will tip the balance, for the simple reason that the SEA process does not make decisions but simply informs them. Ultimately, decisions will still be made by the decision maker; SEA just puts the facts on the table. As Colin Reid suggested, perhaps we need the quality of our economic and social assessments to match up to that of environmental assessments.

I do not like the idea that the environment goes against the socioeconomic when we make decisions. The two do not necessarily fight against each other. A decision that is good on

environmental grounds may be good overall. We can have a win-win situation, in which something that is good for the environment is also good for economic reasons. There are many examples in which that is the case. If we insulate buildings so that they lose less energy, that is good for both the environment and the economy. We can think of many decisions like that and many people say that that the process should be about creativity and about thinking, "This is a good decision; this is great." It need not be a fight; it is a question of working together and coming to a better decision overall.

On broadening the plans, programmes and policies, I think that the fact that Scotland is going to include the policy level is fantastic. That is what SEA should be doing. The SEA directive is obviously short-legged, and because different countries could not agree about including policies, they thought that, rather than postpone the directive any further, it would be better to produce a directive that was essentially incomplete and would cover just plans and programmes. That should not have happened; the directive should also have covered policies. However, that was done so that discussion of the directive did not go on and on. In fact, it was discussed for so long that, at one point, the EIA directive was going to cover SEA as well. That tells you that it has been discussed since the 1980s.

I believe that a pragmatic decision was reached that it was better for the directive to come out now, even if it does not include policies, than to postpone it any further. My gut feeling is that, sooner or later, when the directive is revised, it will include policies. When that happens, Scotland will be far ahead, because it is already doing what is needed.

**Professor Reid:** I would add only that many of the plans and programmes that have been covered will ultimately lead on to individual projects. If the plan and programme are dealt with, that should make the later stages a lot easier—you will not have to consider some of the more radical alternatives because the framework will be set up already. That means that you will be able to be much more focused at a later stage and that there will be savings later on. When a number of assessments have been done, there should be some cross-fertilisation, some data and some arguments that can be used to tie things together and to ease the process, rather than ignoring the process and then hitting the buffers when you come across something that is caught by a project EIA. If authorities and the people who are making proposals to authorities are thinking along those lines, that should help you towards a more integrated approach that will ease decision making later on when proposals come up against other controls.

**Nora Radcliffe:** What are your views on pre-screening? Pre-screening is intended to take everything out that need not be included and to cut down on bureaucracy, but I think that David Tyldesley was suggesting the need for a register. It seems to me that that might pre-empt a lot of work on freedom of information requests to local authorities that were pursuing information—they would see that the information was benign, if you like, if they had a register. Could you expand on why you thought that a register was a good idea?

**David Tyldesley:** Quite simply, I have indicated that I cannot think of a better pre-screening system than the one that is proposed in the bill. Therefore, I am not suggesting that there should be a different pre-screening procedure. However, what I am saying is that, when the bill is passed, all over Scotland there will be responsible authorities taking possibly dozens and dozens of decisions—hundreds over the years—screening out strategies, plans and programmes that they honestly believe will not have an environmental effect. I am suggesting that we will never have a record of those decisions. Nobody will ever know what is being screened out, because the responsible authorities will just make a decision and that will be the end of the matter.

We have to be a little bit cautious. We have already talked about resources and there will sometimes be a tendency for responsible authorities to say, "It's a very marginal decision and we won't do an SEA because of the resource implications." That may well happen. However, much more important than monitoring those decisions is having a public record of what responsible authorities across Scotland have decided will have minimal or no significant effects or will be unlikely to have effects. That would save responsible authorities from reinventing wheels. If it is clear from such a register that three similar bodies have already looked at a similar kind of plan and have concluded that it would have no significant effects on the environment, it seems to me that it would be helpful for a fourth responsible authority to have the benefit of that information.

I have already indicated that I think that the bill is the first step and that the legislation will have to be reviewed in future. If we do not establish proper recording systems now, how will we assess the efficacy of the bill that the committee is now considering?

I believe that we should put in place a simple registry system at the very beginning. After all, it would not take any effort or cost anything simply to register with the SEA gateway a decision that says that such and such a strategy was considered by such and such a responsible authority and that it was decided to screen it out because it would have no significant effects on the environment. I am talking about a record.

**The Convener:** Do the other witnesses agree?

**Dr João:** Yes. It is crucial to have a register. Indeed, such a transparent system will save resources, because it is all about learning from one another and finding out what people are doing.

To me, pre-screening is really screening. I find the concept of pre-screening slightly strange because, after all, screening is an established process in project EIA and SEA. As with scoping, its key purpose is to screen out things that have no implications. The environmental impact assessment process should be about saving resources while concentrating on the things that matter. As a result, the most important thing is to have a register of what has been screened out because, as David Tyldesley and I have said, people can choose to carry out an SEA even if they do not have to. Doing so might simply be best practice. Although for various reasons a particular industry might not be required to carry out an SEA, it might be a good idea to do so. For example, Scottish Power has carried out SEAs because it thought that that was good for the decision-making process.

**The Convener:** Do members have any other comments? I think that we have already covered quite a lot.

**Mr Ruskell:** I want to ask about exemptions to the bill, which defines responsible authorities as

“any person, body or office-holder exercising functions of a public character”.

Should the Ministry of Defence be classed as a responsible authority under that definition? I am concerned about how the MOD's plans and programmes in Scotland can be captured by SEA.

I am also interested to hear the witnesses' views on the exemption of financial programmes and budgets. Given that policies and programmes will be analysed anyway, is such a measure relevant or appropriate?

**Professor Reid:** There are additional problems with the MOD because of the question of devolved and reserved matters and the extent to which any cross-border policy can be classed as reserved. What the MOD does clearly has an environmental impact. Indeed, the relationship involving national security, the MOD, the Crown and environmental protection has been a long-running element in a wide range of environmental issues. The general trend has been towards including those matters more and more as part of the planning system, but essentially it all comes down to a political decision about where the boundary lies.

On financial exemptions, we come back to the point that the process is largely incremental. This is not going to be the final word on the role of

environmental assessment. Ideally, we should reach a point at which environmental assessment legislation is not necessary at any stage, because people automatically carry out such assessments. After all, no company or authority would do anything without thinking about the economic implications of its plans, and there is no need for legislation that expressly tells them to do that. Ideally, environmental thinking should be so embedded in everyday thinking that legislation is not needed. Indeed, we could get rid of all this legislation in due course if people learned certain lessons.

The question is how far you want to push matters up the chain. Financial decisions and allocations will clearly play a huge role in moulding strategies, plans and programmes, because no authority will make plans that it knows are completely unfeasible. One could argue that, in the same way that individual projects are shaped by plans and programmes, plans and programmes are shaped by budgetary and other allocations. As a result, they should also be subject to the legislation. However, the question is whether the incremental process has reached the stage at which we can push matters. Will doing so be counterproductive? Do we have the depth of experience and expertise to do that properly now or should we think about making that the next stage?

**Dr João:** I agree that financial plans and budgets are crucial in determining what comes next. If there is no SEA at that level and if how things should be is imposed, when people get to the next stage, they will be constrained and their hands will be tied as far as considering alternatives is concerned—they cannot think about them because they have to take a certain approach. As soon as the alternatives that can be considered as a means of achieving objectives are determined at a higher level, people will be constrained in their innovation. They should be thinking of innovative ways of achieving the objectives of the plan, while at the same time minimising environmental impacts and maximising improvements in human health and so on. That is what an SEA should do. It is not a good idea when the alternatives are constrained because the decisions have been made earlier. It seems obvious that an SEA should be done of budgets and financial plans.

11:15

**Mr Ruskell:** How can the role of the MOD be captured?

**Dr João:** The same point applies. Why should the MOD be excluded? The activities that it undertakes will obviously have environmental implications, and perhaps those should also be

considered. The matter of defence is excluded from the SEA directive; I reckon that that is why defence has also been excluded from the bill. When the countries involved sat round the table, they could not come to an agreement, so it was easier just to decide to exclude certain areas. All the different countries that came up with the SEA directive agreed to exclude those matters, but in terms of the principle the area should be included.

Certain activities of the MOD might be included, but I am not certain which, as that is a legal matter. If land has two purposes—if it is used by the MOD and for recreational purposes—there might not be an exemption: it might be necessary to do an SEA because the land has a recreational use. However, I am not 100 per cent certain about that, so do not quote me on it.

**David Tyldesley:** I agree with what both Colin Reid and Elsa João have said.

I did not comment on the issue of exemptions in my written submission, because I could see that the bill reflected the directive. However, now that I am asked the question, I see no reason why there should be exemptions for the majority of what the MOD does or for any defence or civil emergency requirement. An SEA will not alter the decisions that must be taken about defence and emergency planning, but it will inform us about the environmental implications. There is no logic to excluding those matters from the bill, but such exemptions reflect the directive. There may have to be restrictions on some of the information that is available to the public in respect of some aspects of the MOD's work that may have implications for national security. I do not have any difficulty with that, but a great deal of what is done by the MOD and other bodies that deal with civil emergencies has significant effects on the environment, so a blanket exclusion is not appropriate. It is in the public interest for those effects to be properly considered. That will not change what needs to be done, but it will inform the public about the implications of those decisions.

On finance and budgets, I confess that I do not have considerable expertise on those matters—I do not think that any of us has much experience of that area. However, that is one of the reasons why we need to monitor pre-screening carefully and why I suggested that there should be a register. We need to know if finance and budgets are being used as a reason for not taking plans, projects and strategies through the process. I agree that often finance and budgets will determine what flows out by way of, for example, a programme of capital works.

**Nora Radcliffe:** Perhaps my thinking on the finance and budget issue is a bit simplistic but my view is that by doing strategic assessment the assessment is being done at a level at which the

strategy will inform the budget. The budget is not a separate entity; surely it is tied to a policy or strategy. We do not say, "This is the budget" and then make the policy. Surely the sensible approach is to assess the policy or strategy, rather than try to make a strategic assessment of the budget. I cannot get my head round how you would assess the budget in that way.

**Professor Reid:** The process is multi-layered. If you decided, for example, that Scottish Natural Heritage's budget next year would be £1 million, your financial decision would clearly affect all the organisation's plans, projects and strategies. However, if you said, "We won't give any money to schools next year because we are giving all the money to SNH so that it can make the environment perfect," your financial decision would have a huge impact on the organisation's strategies. However, as you said, in reality the two areas feed off each other all the time. Throughout the process there is an issue, particularly for areas in which there are no formal decision-making processes and where plans and strategies have emerged from a mixture of evolving elements, with different elements coming and going. Now that there must be a more formal process in some areas, there is a degree of thinking to be done about how we integrate the formal elements with those that are less structured.

**The Convener:** I do not see any member who is desperate to ask a question, so I thank the witnesses not just for being prepared to answer many questions, not all of which might have been anticipated, but for the extremely useful written evidence that you supplied before the meeting, which helped us to think about the issues that we would follow up with you today. Thank you for taking the time to come and make your contribution. You are welcome to stay on in the public seats to hear what the next witnesses say.

11:21

*Meeting suspended.*

11:23

*On resuming—*

**The Convener:** I thank our second panel of witnesses for coming and for their written submissions, which were extremely useful to us as we thought about the issues and what we might want to ask. I welcome Councillor Alison Hay, who is the Convention of Scottish Local Authorities' spokesperson on the environment, sustainability and community safety; John Rennilson, who is the director of planning and development at Highland Council; Kathy Cameron, who is the policy manager at COSLA; and Iain Sherriff, who is the head of transportation at Dundee City Council, but

who is here to represent the Society of Chief Officers of Transportation in Scotland. We will not take opening statements, given that we have read your submissions. The witnesses bring a range of expertise and experience to the meeting and I invite members to kick off with questions.

**Maureen Macmillan:** I had better not ask the witnesses whether they are panicking, as a previous witness suggested.

What is your experience of SEAs under the current regulations? I note from Highland Council's submission that just one of its departments expects to have to commence a minimum of three SEAs in the forthcoming financial year. That contrasts with the Executive's suggestion that each local authority will have to carry out about three SEAs per year in total. Do local authorities agree with the Executive on the number of SEAs that they will have to deal with?

**Councillor Alison Hay (Convention of Scottish Local Authorities):** The Executive has underestimated the number of SEAs that councils will have to undertake. Like the Highlands, Argyll and Bute is a devolved area and most of our policies and programmes will have to be scrutinised. The process of scrutinising all the documents and deciding whether to proceed to a full SEA will take time and will be resource intensive. I know that Argyll and Bute Council is undertaking an SEA for its local plan, which will take us quite some time and will cost us a considerable amount of money. Different councils have different views on the number of SEAs that they will have to undertake, but Highland Council has done some detailed work in that area.

**The Convener:** It is my understanding that it has for many years been standard practice for some level of EIA to be done for structure plans and local plans. John Rennilson might want to comment on that. Is there, as I presume there is, such expertise in local authorities?

**John Rennilson (Convention of Scottish Local Authorities):** There is some expertise, especially in the planning service, but that is not necessarily true of all council departments and services. A whole range of plans, policies and strategies, including local housing strategies, renewable energy strategies and schools estate strategies will be caught by the bill. We believe that the Executive underestimates the number of SEAs that will have to be produced.

We started a Wester Ross local plan before the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 came into force and we hope that it will be adopted before 2006, so the production of an SEA was not mandatory, but we have done it. The process has been time consuming and, in sub-council areas,

acquisition of relevant data has proved to be difficult. We have worked with the people who will be the consultation authorities, but they do not collect material on the basis of the geographic areas to which the council has devolved much of its organisation; they collect a wide range of environmental data on river basin areas or sites of special scientific interest, for example. That means that even when data are available, they have to be reworked. It is stretching things too far to say that we have done it all. Very few authorities would be honest enough to admit that their monitoring of material that they collect on structure and local plans is not as good as it might be. That is another area in which there will be underestimation in the Executive's financial figures.

**Councillor Hay:** I want to add something about the capacity of local authorities to undertake such work. Local authorities vary in size. Some local authorities, such as Highland Council, have done the work in-house, which is fine; Highland Council has built up that knowledge in-house. Other councils that are pretty lean as far as staffing is concerned have found that they just do not have the staff to do the work in-house and have therefore had to use consultants. The ability of councils to build up expertise varies widely.

**Maureen Macmillan:** I wonder whether either of the other two witnesses want to respond to my question. You mentioned that there would be resource implications, but you were vague about what it takes to do such an assessment. Can you give us figures on the resource implications?

11:30

**Councillor Hay:** The resource implications would depend on what sort of SEA you are talking about. The costs will not just be confined to our planning department, but will be cross-departmental at strategic level across the council. Education, social work and the other big departments—transportation particularly—will all be involved. The problem that some councils experience is that it is difficult to convince departments—other than planning departments—that this will affect them. Once they have become convinced of that, we face a problem in getting staff to understand the process that they have to go through. Planners are fairly familiar with the processes, but other staff are not.

**Maureen Macmillan:** Will there have to be a culture change in local authorities before the change can be delivered? Will such a change be difficult to achieve?

**Councillor Hay:** That is what I am saying, to some extent. One of the previous speakers mentioned sustainability: councils are now particularly aware of the need to consider

sustainability when they assess their plans and projects. We are aware that we have to consider the implications for the environment of our policies and plans and, for example, whether we will use up a resource that we should not use. However, for the rest of the council, there will have to be a culture change.

**Iain Sherriff (Society of Chief Officers of Transportation in Scotland):** I would like to say something in relation to transportation. I emphasise that I speak on behalf of the Society of Chief Officers of Transportation in Scotland, not on behalf of Dundee City Council. I say that because my elected-member colleague cannot reach me to hit me if I say something that is contrary to our basic statements.

Transportation is at the root of environmental issues—I say that as a transportation professional. We in transportation have been incorporating a level of environmental assessment over many years. We now have the Scottish transport appraisal guidelines and the “Design Manual for Roads and Bridges”, for example. It could be said, however, that a bit of a box-ticking approach has been taken to such issues. For example, we once resolved a noise problem when we were constructing a new road by giving people double or triple glazing. I do not think that that is the kind of solution that we would consider if we were constructing a new road today.

The essence of the bill is welcome, but there will be resource implications for transportation. I do not want to stray too far from the agenda, but as we move towards regional transport partnerships in the next 18 months to two years, many of the current responsibilities and powers of local authorities might shift to RTPs. However, as has been said, the skills base that exists in local authorities might not transfer to the RTPs. I do not mind admitting that I am panicking a bit; it might just be fear of the unknown, but an awful lot is going on in transportation. Although I welcome the bill, I am not sure that the full focus should be on the bill at this point.

**Mr Ruskell:** Maureen Macmillan asked about resources and about the need for a culture change. I would like to pursue those issues.

The COSLA submission talks about the need for pilot projects before the legislation is introduced. We have had the regulation for a number of months and quite a few local authorities are engaging with it and are submitting plans for SEA analysis. Does not that constitute a pilot project? Are local authorities learning from that experience?

**Councillor Hay:** When we spoke to the minister nearly a year ago, we suggested that there should be pilot projects. At that point, we thought that it

would be wise to examine the possible problems and benefits of the proposal in a structured way. We thought that if we ran a small number of pilots—we suggested two, but three councils have offered to run them—we could work with those councils in a way that would ensure that we could examine the process, the pre-screening and the gamut of activities that the bill asks us to do. Both sides would gain experience from the process and we could have rolled out the proposal across Scotland in a more measured and structured way. We felt that that would be of benefit to us and to you.

**Mr Ruskell:** Are you working with the local authorities that have submitted plans under SEA?

**Councillor Hay:** We are working with some. Orkney is one but I cannot remember the other two.

**Kathy Cameron (Convention of Scottish Local Authorities):** Orkney Islands Council, West Dunbartonshire Council and West Lothian Council have offered their assistance. In some cases that assistance is through their existing work on SEAs and in some cases it is through work that is about to start on specific strategies that the councils will promote.

**Mr Ruskell:** How is that experience being rolled out to other local authorities?

**Councillor Hay:** It is not being rolled out to other authorities because the pilots have not started yet. We have had only one meeting with the Executive to discuss the matter and we are starting to move forward.

**John Rennilson:** The committee should be aware of how stretched the planning service already is. Planning applications in Scotland are at a record high across the board. At the moment, we are working with the 2004 regulations on delivery in relation to planning transport. Recruitment is exceedingly difficult right across the planning service. With a planning bill coming before the Parliament shortly, there is significant difficulty in meeting our requirements to fulfil the 2004 regulations without spreading that expertise across colleague services such as housing, waste, the education estate, school-catchment planning and so on. This will be a new field for such staff to consider from an environmental, rather than social or financial, point of view.

**Mr Ruskell:** What kind of practical assistance would you require?

**John Rennilson:** There are not enough planners coming out of planning schools to fill the vacant posts. There is an argument for going step by step: let us have complete competence in delivering on the requirements of the 2004 regulations and direction, and let us roll that out

stage by stage. The approach that is suggested by the bill seems to be a scattergun approach—everything will be covered and we will then look back and remove whatever is deemed to be unnecessary. That means that SEA is in danger of having to go ahead in an unsatisfactory way, and none of us wants that.

**The Convener:** What would you take out of the bill to encourage a more transitional approach? Previous witnesses talked about an incremental approach that starts off at a base point; we would learn from experience. If there is too much in the bill as it stands, which sections would you delete?

**Councillor Hay:** It is not a question of there being too much in the bill; it is about our being able to work through what is in the bill with one or two authorities in order to find out what we need to exclude or to add. Once we have been through that process, we can see where we are and we can consider rolling the legislation out while taking the necessary action to address the problems that we come up against during the pilot period.

We welcome the bill—it will add to environmental benefit. However, there is a problem with the slightly scattergun approach, as John Rennilson said. If we could concentrate on a couple or three councils for a time and allow them to work through the bill, that would make life easier for everyone concerned. The minister certainly seemed to be enthusiastic about that when we suggested it to him.

**The Convener:** Can you clarify what you mean? Should we consider the experience of three authorities, say, but not implement the rest of the bill—

**Councillor Hay:** We should work through the bill with two or three authorities and tease out what might be problems for them, in conjunction with the consulting authorities.

**The Convener:** Would you therefore put the bill on ice for one or two years?

**Councillor Hay:** We cannot put the bill on ice; we are where we are. That said, we have been making the point to the minister for the best part of a year and a half to two years that there needs to be some structure to the bill and that local authorities need to know where they are going. If the minister wants to get the best out of local authorities and the public sector, we will all have to work through the process bit by bit. We have to consider what local authorities need by way of training, resources and so forth.

**Karen Gillon (Clydesdale) (Lab):** I suppose that the follow-up question to that is this: if you have been working through this with the minister for a year and a half, why have you not been considering those matters?

**Councillor Hay:** What do you mean?

**Karen Gillon:** If you have, with the minister, been working through the content of the bill and where you think the bill should go, and given that you knew the bill was coming, why has work on training needs and gaps not been done by now?

**Councillor Hay:** We met the minister a year and a half ago, when we offered the pilots, but we have not got much further forward.

Although councils offered themselves for the pilots—as my colleague Kathy Cameron said—we managed to get only one meeting with Executive staff. That was it. We are doing our best to co-operate. It is not an us and them situation; the local authorities are willing to co-operate with everyone. We can see the benefits and we want to try to make the process work, but we can work only with people who are willing to work with us and who want to progress matters fairly swiftly. However, swiftness has not been at the top of the Executive's priority list.

**Karen Gillon:** To be honest, if you offered the pilots to the Executive a year and a half ago and, as you said earlier, you are enthusiastic about SEAs, surely it is slightly contradictory that we do not have the pilots by now?

**Councillor Hay:** It is not contradictory; that is how long such things take.

**Karen Gillon:** If the Executive wanted to go for the pilots, surely it would have included them in the bill? Surely the Executive would have written into the bill that there would be a pilot for a year and that that would be followed by different implementation dates for the other authorities?

**Councillor Hay:** The pilots are written into the documents.

**Karen Gillon:** I am not saying that COSLA is not talking about the pilots. However, if the minister had been enthusiastic about them, surely the pilots would have been part of the process that he put in place?

**Councillor Hay:** The pilots are part of the process.

**Kathy Cameron:** The pilots are referred to in the explanatory notes. Our difficulty was in engaging with staff in the Executive to initiate discussions on them.

**Karen Gillon:** Perhaps we can clarify with the Executive where it is with those discussions and whether the pilots form part of the minister's plans.

**The Convener:** We have had the best part of a year's practical experience of the regulations. Has COSLA undertaken any monitoring of its members in respect of the impact of the regulations on different local authorities? Is not the basis of our

new expertise the fact that local authorities have been undertaking the process for a year?

**Councillor Hay:** I might be speaking out of turn, but local authorities have been doing that for the past year only as far as the planning authorities are concerned. The bill is meant to have a great impact not only on the planning process but on other parts of council policies and strategies, but that has not been happening.

**John Rennilson:** It is also fair to say that, in the absence of a response from the minister, other environmental legislation has appeared in the intervening period. I am thinking of natural heritage legislation and the access provisions of the Land Reform (Scotland) Act 2003, both of which have placed on local authorities new duties that relate to environmental issues. New duties are coming into effect on the preparation of core path network plans and so forth, and we have also had to keep our eye on this statutory ball. While this bill has been working its way through the system, we have had to move forward on other areas.

**Karen Gillon:** On education, most authorities have embarked on a fairly radical programme—at least, such is the case in the local authority area that I represent—of school building. Has environmental assessment taken place as part of that process? If so, could it not be assessed as part of this process or have people just said, “It doesn’t really matter.”

**Kathy Cameron:** We have received no reports of any such exercise.

**The Convener:** That does not mean that it has not happened; only that it has not been reported to COSLA.

11:45

**Rob Gibson:** We discussed with the previous panel how sustainable development as a concept from Government feeds into strategic environmental assessment processes. Highland Council is concerned that an opportunity has been missed because the bill fails to take socioeconomic factors into account in environmental reports. I presume that you would be more at ease if the Government had done more work on SEA policy before you were presented with work about which you complain that you do not have the staff to deal with. Will you expand on your idea that sustainable development, which is becoming a cornerstone of public sector policies and planning, is only a part of the process? If SEA is a catalyst for the process, should it be properly funded from the top and its impact on councils properly estimated?

**John Rennilson:** There is an argument for the social element to be better specified. To put the

matter in a planning context, the environmental considerations suggest that we should cut car travel and that we concentrate population and communities but, in a place such as Wester Ross, the counterargument to that is that we want to keep smaller communities alive. To do so, we need housing and we need to keep small schools, but that might involve greater travel. There is a conflict between the two objectives. If we were to take environmental considerations in isolation, we would concentrate as much of the population as possible in larger communities, which would be cost effective. There is a dichotomy in that situation, and we face that dichotomy in responses from the Scottish Executive: its planning division tells us one thing in “Scottish Planning Policy 15: Planning for Rural Development”, but the response on individual planning applications and environmental impact assessments that accompany planning applications for roads is different and seeks concentration. That tension will not be resolved simply by introducing an SEA into the policy, because it needs to take account of the social dimension and overall sustainability.

**Iain Sherriff:** Yesterday, I was at a meeting in London on future technologies in transportation. Like all transportation professionals, I get excited about the thought of new urban traffic-control systems. The discussion at that meeting kept coming back to the environment, carbon emissions and how to stop them. One speaker got an extremely hard time—which was a shame—because he used the phrase “a sustainable car journey” because the vehicle to which he was referring did something like 82 miles per gallon. Two or three years ago, nobody would have picked him up on that, but transportation professionals are now picking people up on such comments.

Land use is critical. The transportation agenda is about protecting the environment. The strategy must come from the highest level to start with and the guidelines have to be clear about priorities. The message that came from my meeting yesterday is that we do not have time to wait for improvements in the environment; we need to take strategic decisions that protect the environment now.

**The Convener:** That, I presume, is what the bill is about.

**Iain Sherriff:** SCOTS fully supports the bill. I agree with my colleagues from COSLA to an extent but, in transportation, we start from a different level because, by default, environmental considerations are embedded in the process, although not in the structured way in which they are in the bill. In some areas, SEA is embedded and understood; in other areas, there will be nervousness, because it is not only about



transportation or land-use planning, but about education, housing and joining everything up. That is where the problems arise. One of the earlier speakers said that they hoped that such legislation would not be required in 10 years because SEA would be a natural process that people would go through. That was a profound comment.

**Rob Gibson:** You say that different documents suggest contradictory aims and approaches—John Rennilson spoke about SPP15 and the roads issue. Has COSLA raised such concerns in its discussions with the Executive?

**Councillor Hay:** Time and again.

**Rob Gibson:** What has the response been?

**Councillor Hay:** We keep hearing, “Yes, we understand.”

We keep saying that we would like policies to be joined up and under one umbrella, so that we know where we are. As it is, the policies keep coming at us from all directions. I do not know how many times we have mentioned to the minister that it would be nice if environmental legislation could be wrapped together, so that we know from guidance and criteria exactly what is expected of us. The minister is sympathetic, but here we are.

**Rob Gibson:** This is a period of development for environmental legislation, so there could not be a definitive statement at the moment. We all live with that.

**Councillor Hay:** Yes.

**Rob Gibson:** However, you know of specific examples of the Government making things very difficult by being contradictory in what it is asking you to do.

**Councillor Hay:** Yes.

**Kathy Cameron:** I would like to reinforce what John Rennilson said. The driving force behind the current review of planning legislation is to make the process faster, thus satisfying the public's need for applications to be dealt with quickly, notwithstanding any other considerations. However, there is a potential—I emphasise that it is only a potential—for the review to contradict the need to speed up the process. That has to be acknowledged.

**Mr Ruskell:** I want to ask Iain Sherriff whether the Scottish transport appraisal guidance is somehow at odds with SEA. Is more guidance needed?

**Iain Sherriff:** Not particularly. Assumed weightings tend to be used. I am from an engineering background and I always like two and two to make four. It should be as simple as that, but once we get into the abstract territory of using weightings, we have to consider different effects.

For example, is it worth having an impact on the environment just to allow someone's journey time to their work or leisure to be two or three minutes less? A lot of value judgments have to be made.

Such matters are political. In my authority area, if we had a possible inward investment of 1,000 jobs that would cause an environmental impact because of increased congestion, increased journey times and, as a result, increased use of fossil fuels, I know what the politicians would say. They would say, “Take the 1,000 jobs.”

Political decisions have to be made. As professionals, we can provide information, but this is the kind of area where you guys have to make the hard decisions.

**Mr Ruskell:** So you believe that clear weightings should be established through the STAG process, so that if trade-offs are required, we can make the right decisions. Ideally, however, we should be looking for win-wins.

**Iain Sherriff:** Win-wins are obviously utopia. That is what we all want. Articulating the guidelines would be a very difficult political process. An example would be the Edinburgh congestion charge. I am not calling Edinburgh people turkeys, but turkeys were not going to vote for Christmas, were they? The effects have to be quantified and articulated, but the decisions thereafter have to be political.

**The Convener:** I want to ask about the SEA gateway, which is the process round which the bill hinges. How useful will the gateway be to you, in terms of guidance, training and the overall implementation of the bill's provisions?

**Councillor Hay:** I have agreed with some of what previous speakers have said. The gateway could give local authorities a lot of support. It is always helpful to have a single point of contact. The dissemination of good practice is vital, because we tend to live in little shells. We talk to one another quite a lot, but when it comes to the nitty-gritty of policies, it would be useful to exchange information and find out what others are doing because that might help us to improve what we do. The previous panel talked about quality and monitoring, and I think that that would be a good role for the gateway—that would be helpful to both councils and other public authorities that have to do SEA. The previous panel also mentioned auditing, but I have a slightly different view of the auditing process. All councils are subject to a best-value process, and I think that SEA should perhaps be subject to such a process too, but that is a matter for discussion.

**Nora Radcliffe:** To me, the issue that stood out from your submissions was the staff implications. Someone mentioned capacity building. Setting aside all the practicalities, will you comment on the

desirability of doing the work in-house rather than putting it out to consultants? What is the value of embedding it rather than handing it over?

**Councillor Hay:** In an ideal world, we would want to do the work in-house. I agree that we want to build up in-house capacity. As Kathy Cameron said, it needs to become part of what we do without even thinking about it, and that will happen only if we can build up staff to do the work in-house. However—and it is a big however—councils vary in size, they cover different geographical areas and they have different staffing levels. To be slightly parochial for a moment, my council is pretty tight as far as staffing is concerned and we have had to go out to consultancies. That is useful in itself, because they are experts in their field and they can provide the support that our staff need. They can teach our staff and give them an insight into how our staff should be doing SEA. Ideally, we would like it to be done in-house, but sometimes that is not possible because of the nature of councils, so consultants have a role to play.

**John Rennilson:** We try to keep SEA in-house wherever possible so that we develop our staff. For some time, we have had a sustainable development officers group, which is trying to drive forward the council's overall sustainability agenda.

**Kathy Cameron:** That position is reflected in the views that we have had from individual authorities. In managing the resources that they have, they would prefer to operate SEA in-house, but given the lack of experience in departments other than planning and development, they may be forced to go outside. However, I hope, and they hope, that they will eventually achieve their own expertise so that they can manage the process in-house.

**Iain Sherriff:** SCOTS agrees with that. You will recall that in my written evidence I gave an example of what Dundee City Council is doing to try to embed the process. Earlier, the committee heard about culture change, and it is only by engaging and developing our own staff and addressing their training needs that we can get that culture change so that it is instinctive for staff to think environmentally as well as financially, technically and professionally.

**Mr Ruskell:** We talked about the cost of implementing SEA. I presume that in the long run money can be saved. For example, if you make the correct decisions to reduce congestion, that will save you money and improve health. What cost savings will you make from SEA? Do you believe that they could be substantial?

**Kathy Cameron:** Analysis will be done of that, but it cannot be done until we have a clearer idea of what action has to be taken by authorities, and the jury is still out on that. Until we get that

information, it will be difficult to identify the longer-term savings that can be made. I agree that, in principle, that should be possible. However—we have been making this point for some time—it is difficult from a standing start for those departments and services other than development and planning to have an idea of what actions they will have to take, what impact that will have on strategies and programmes and, as you have said, what the longer-term savings might be.

12:00

**Mr Ruskell:** You will not know that until councils start to implement SEA. Each council is different, and it would be difficult for you to take one example of a pilot project and say that it applied to another council. You are not really going to know what the savings are until you bite the bullet and start implementing the bill at a local level.

**Kathy Cameron** *indicated agreement.*

**Councillor Hay:** I would not use the phrase "bite the bullet". As I keep repeating, we are happy to enter into this process and we have already started to do that. However, until we are further down the line and have a few years under our belts, we will be unable to measure definitively how much we are saving. We are signed up to the policy—there is no doubt about that. We just need to think out how we do it properly.

**Iain Sherriff:** The term "savings" is being used in a financial sense, but everybody in the transportation profession knows that we cannot afford not to have full environmental assessments and costs taken into account when we are doing things. It is not a saving; we cannot afford not to be doing things.

**The Convener:** That is a good point on which to finish. In the context of the committee's climate change inquiry, which we are pursuing with our other hats on, we know about the target to reduce carbon emissions by 60 per cent by 2050. At some point, that will have to start to be addressed, and I presume that the bill provides a framework for that. I thank you for giving your evidence this morning.

A range of issues has been raised. Those include the benefits of the bill; the nature of the SEA gateway and the support that it may provide for implementing authorities; the issue of resources, which we will have to tease out with other witnesses and the minister; issues of transparency and the extent to which the proposals can lead to better decision making; and the relationship between SEA and sustainable development. There was a bit of a discussion on exemptions, to which we will want to return, and a fundamental question was raised at the end of COSLA's evidence about where we want to go in

terms of the aspirations of the bill and concerns about its deliverability in practice.

There are two issues on which it would be useful to get some follow-up information. The first is the question of pilot work and the gathering of existing expertise, which COSLA raised. The second is the need to tease out a bit more on the planning authorities recruitment question, as that particular burden may have been exacerbated by the introduction of regulations last year. It would be useful for us to have more information on that as we go forward.

I thank all our witnesses for the evidence that they have given this morning and for the written papers that they submitted in advance of the meeting, which have been extremely useful.

12:02

*Meeting suspended.*

12:04

*On resuming—*

## **Subordinate Legislation**

### **Agricultural Subsidies (Appeals) (Scotland) Amendment Regulations 2005 (SSI 2005/117)**

### **Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) Amendment Order 2005 (SSI 2005/140)**

### **Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005 (SSI 2005/143)**

**The Convener:** Item 2 is subordinate legislation. There are three instruments to consider under the negative procedure.

The Subordinate Legislation Committee has considered the instruments and drawn our attention to points in the Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005. An extract from that committee's report has been circulated to members. It made no comment on the other two instruments.

I will give some brief background information. We have previously considered the implementation of common agricultural policy reform both through our report on the subject and again in detail in January when we took oral evidence from the Minister for Environment and Rural Development on the whole package of instruments to implement CAP reform, after we received the first of the expected instruments. The policy area is important and we are to consider a substantial instrument, so I asked the clerks to get Scottish Executive officials in front of us in case members had technical questions. I am conscious that the documents are lengthy and that members may have questions.

Linda Rosborough is head of the CAP management division at the Scottish Executive Environment and Rural Affairs Department; John Brunton works in the CAP reform implementation branch at SEERAD; and Paul Neison is an assistant chief agricultural officer at SEERAD. We might not ask the witnesses questions but, given the substantive nature of the documents and the fact that the negative resolution procedure applies to the instruments and there are time constraints, I wanted space for members to be able to do so. Do members have any comments to make on the instruments?

**Richard Lochhead (North East Scotland) (SNP):** I have a couple of brief questions on the

Agricultural Subsidies (Appeals) (Scotland) Amendment Regulations 2005. A couple of nights ago, I met farmers just outside Inverurie, and the appeals procedure was the first thing that they wanted to discuss. They were concerned about the fact that very few appeals are successful. Do you have any statistics on the number of appeals that are lodged for internal and external review and on how many are successful?

**Linda Rosborough (Scottish Executive Environment and Rural Affairs Department):** If I do not have the figures that you want, I will need to send you a note of them. I have figures for the 2003 calendar year in a report that I have to hand. During that year, we received 251 appeals at stage 1 and we resolved 58 of those pre-review. We upheld 15 appeals and rejected 122 at review. The independent element is brought in at stage 2. We received 21 stage 2 appeals during the year, determined 23—two of them pre-review—and rejected 21. We will produce a 2004 report in the early summer.

**Richard Lochhead:** Okay. I realise that you cannot comment on policy issues, but are there any plans to change the appeals procedure in the light of concerns that have been expressed by NFU Scotland and others?

**Linda Rosborough:** The appeals procedure has been working for some time, and it is obvious that people who have been unsuccessful will be disappointed. However, in general, people who have taken part in the procedure have said that they are happy with it and that they get a fair hearing in the stage 1 and stage 2 processes.

There is the option of a stage 3 appeal, which involves taking the appeal to the Scottish Land Court. However, not many cases have gone there because it has taken time for cases to progress and the Scottish Land Court has been busy with other matters. Ultimately, there is the test of a full independent review of our decisions by the Scottish Land Court, but there have been no determinations by it yet. That is the ultimate test of the appeals system, but it has yet to be made. The answer to your question is therefore that we do not have plans to change the procedure at the moment.

**Richard Lochhead:** Finally, a transition is under way from the old system to implementing the reforms and the single farm payments, and a number of farmers are concerned that there might be an increase in errors as a result of introducing the new system with all its complexities. Will such things be taken into account to try to avoid the need for appeals in the first place? Will flexibility be built into the payment schemes?

**Linda Rosborough:** Ultimately, the new systems are simpler, so less scope should exist

for the errors that have occurred in the past, because we do not have all the rules about retention periods and suchlike. The ability for simple errors to mean that people break the rules will be lessened.

We have also taken that into account in the design of the Scottish beef calf scheme, which tries to avoid the problems that have led to errors in the past. For example, we have no closing date, so people can apply beyond the end of a year. That prevents people from falling foul of rules that give a closing date. We have taken those matters into account as far as possible.

**Paul Neison (Scottish Executive Environment and Rural Affairs Department):** The issue was one of our primary concerns. We were aware of several difficulties with the previous bovine schemes. Features that Linda Rosborough identified, such as closing dates, retention periods and other bits and pieces, have been avoided where possible, to simplify schemes. It is hoped that simplification of schemes and the arrangements that we have made will prevent farmers from falling foul of the rules.

**Mr Alasdair Morrison (Western Isles) (Lab):** Will Richard Lochhead list in detail the NFU concerns to which he referred?

**Richard Lochhead:** That takes us into policy issues. The farmers' concern was that the appeals system could be seen as a bit of a sop, because so few appeals succeeded. They were concerned about the statistics, which is why I wanted them to be clarified.

**Mr Morrison:** It is obvious that anyone who does not secure victory from an appeal system will be disappointed. I am looking for detail about the mechanisms and the reform that you were advancing on the NFU's behalf.

**Richard Lochhead:** Alasdair Morrison does not seem to have questions for the panel, so can I ask the panel more questions?

**The Convener:** I do not want us to have an open-ended discussion. Alasdair Morrison asked you a question, but you do not have to answer.

**Richard Lochhead:** I have lots of questions to ask the panel. I would prefer to ask my questions than to take up time in answering questions.

**The Convener:** I do not want lots of questions to the panel.

Members have no more questions on the Agricultural Subsidies (Appeals) (Scotland) Amendment Regulations 2005.

Having read the background papers on it, I am keen to see the Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) Amendment Order 2005, which is sensible. The timescale is

important because of developments around the rest of the UK.

Members have no questions or comments on the Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005.

As members have no questions or comments on the three instruments and have considered all the paperwork, are they content with the instruments and happy to make no recommendation to the Parliament?

**Members** *indicated agreement.*

**The Convener:** I thank the witnesses for attending. We did not know how many questions members would have, but we wanted to enable them to ask questions. The session was useful to put on record the appeals issue, given that concerns have been expressed. I take the point about future monitoring and the simplification of the system, which is important to record. We will pick that up in future.

As agreed at our meeting on 22 February, we will move into private to discuss the draft report on our inquiry into climate change.

12:13

*Meeting continued in private until 13:07.*



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