

# **ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE**

Wednesday 27 April 2005

Session 2

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## ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

### 12<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:

Geoff Aitkenhead (Scottish Water)

Professor Alan Alexander (Scottish Water)

Dr Dan Barlow (Friends of the Earth Scotland)

Liz Bogie (Scottish Enterprise)

Dr John Hartley (Hartley Anderson Ltd)

Lewis Macdonald (Deputy Minister for Environment and Rural Development)

Dr Keith MacLean (Scottish and Southern Energy)

Anne McCall (RSPB Scotland)

Craig McLaren (Communities Scotland)

Gordon Wilson (Communities Scotland)

#### CLERK TO THE COMMITTEE

Mark Brough

#### SENIOR ASSISTANT CLERK

Katherine Wright

#### ASSISTANT CLERK

Christine Lambourne

#### LOCATION

Committee Room 4



## Scottish Parliament

### Environment and Rural Development Committee

*Wednesday 27 April 2005*

[THE CONVENER *opened the meeting at 09:48*]

### Subordinate Legislation

#### Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2005 (Draft)

**The Convener (Sarah Boyack):** Good morning. I welcome committee members and members of the press and public to this morning's meeting. I remind everyone to switch their mobile phones to mute. I have received apologies from Alex Johnstone.

Agenda item 1 is subordinate legislation. The draft Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2005 are an affirmative instrument, which means that they must be approved by Parliament before they can come into force. Motion S2M-2684, in the name of Lewis Macdonald, the Deputy Minister for Environment and Rural Development, invites us to recommend to Parliament that the regulations be approved. I welcome Lewis Macdonald and his officials to the meeting. I should say that we have received no comments from the Subordinate Legislation Committee on the regulations.

I invite colleagues to ask any technical questions or seek clarification on purely technical matters. The minister and his officials are able to answer such questions now, but will not be able to do so during the debate.

**The Deputy Minister for Environment and Rural Development (Lewis Macdonald):** It might help to pre-empt some questions if I make a few introductory comments.

These amendment regulations relate to the Producer Responsibility Obligations (Packaging Waste) Regulations 1997, which place an obligation on businesses to recover and recycle packaging waste and set targets for every year up to 2008. A key feature of the scheme is that businesses' compliance must be evidenced by packaging recovery notes, which may be issued only by waste reprocessors that have been accredited by the Scottish Environment Protection Agency. That ensures that obligations are matched by genuine recovery of packaging waste.

Until 2003, there was no statutory force behind the process. However, the regulations were amended in 2003 to give the provisions statutory force and to regularise the process. That measure, which had effect from January 2004, has been welcomed. Today, we seek to amend the statutory regime that was introduced at that time in order to remove from the accreditation system the deadline by which reprocessors should submit applications, which is an unnecessary piece of red tape. At the moment, they are required to apply by 30 September for the whole of the following calendar year. That provision reflects the process that existed before the statutory regime was introduced. However, although a non-statutory deadline was helpful in the former regime, SEPA has found that a statutory deadline limits its flexibility in dealing with applications and is clearly unwelcome in practice. Such a deadline also means that delays can occur for new reprocessing companies that seek accreditation. In order to reach our targets, we need to increase national reprocessing capacity in Scotland and throughout the UK and do not want to set any unnecessary obstacles in the way of that. Taking away the deadline's statutory force and allowing packaging waste reprocessors to become accredited any time they see an opportunity to enter the market will increase our ability to meet those targets and allow things to proceed more quickly.

**The Convener:** Those remarks have helped to clarify the purpose of the regulations. Do members have any questions?

**Members indicated disagreement.**

**The Convener:** Having read the regulations and heard your opening remarks, we seem to feel that this is one of those occasions when the purpose of an instrument is quite clear. We move to the debate on the motion.

*Motion moved,*

That the Environment and Rural Development Committee recommends that the draft Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2005 be approved.—[*Lewis Macdonald.*]

**The Convener:** I invite colleagues to contribute to the debate.

**Nora Radcliffe (Gordon) (LD):** Is it sensible just to say that the regulations seem like—

**Maureen Macmillan (Highlands and Islands) (Lab):** —a good thing.

**The Convener:** I think that, having examined the issue of waste before, we would all agree that the regulations are a good thing.

*Motion agreed to.*

That the Environment and Rural Development Committee recommends that the draft Producer

Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2005 be approved.

**The Convener:** I thank the minister and his officials for attending this morning's meeting. Because the regulations are affirmative, we simply wanted you to be here to answer any questions that we might have had.

**Lewis Macdonald:** It was a pleasure.

**The Convener:** If all business were like that, our meetings would be quick.

## Environmental Assessment (Scotland) Bill: Stage 1

09:55

**The Convener:** I welcome our first panel to the second of four evidence sessions on the Environmental Assessment (Scotland) Bill at stage 1. Our three panels today include representatives of environmental organisations and organisations that have undertaken, or are likely to undertake, environmental assessments.

Following on from last week, additional written submissions have been circulated to colleagues. They include the submission by the Convention of Scottish Local Authorities to the Finance Committee, which was mentioned last week and at which we said that we wanted to have a look.

I welcome the members of panel 1. Anne McCall is planning and development manager at RSPB Scotland and Dr Dan Barlow is head of policy research at Friends of the Earth Scotland. Thank you for your written submissions, which we have read. My colleagues will now ask questions.

**Nora Radcliffe:** Will you elaborate on your reservations about the pre-screening process? If there was a registration scheme for anything that had been pre-screened out, would that mitigate what you might consider to be the downside of having a pre-screening process?

**Anne McCall (RSPB Scotland):** Essentially, our point of view is that pre-screening is a little pointless. The stated function of pre-screening is to try to reduce the administrative burden. From talking to a number of the responsible authorities that will produce the plans, programmes and strategies, I know that there seems to be an assumption among those that are enthusiastic about SEA that they will probably use the pre-screening mechanism just to verify decisions that they have already made. The extent to which pre-screening will reduce the perceived administrative burden is probably quite modest. Our concern is that the mechanism would be used and exploited as a loophole by those who do not want to have to do SEA. Given that the bill is based on consultation and transparency, pre-screening stands out as an odd mechanism, in that a responsible authority will be able to evaluate its own plan, programme or strategy, decide that it does not have to do SEA and then not tell anyone about that decision, which there will be no opportunity to challenge.

The second part of your question was about registration. As you will know from our submission, we are keen either that the SEA gateway should have wider functions or that a separate arm's-

length body should be established, perhaps along the lines of the Scottish Executive inquiry reporters unit. As part of its functions, that body should keep a register that is available for public scrutiny, on which would be placed all plans, programmes, strategies and environmental reports, along with all ministerial directions and decisions on pre-screening. That would significantly improve transparency. If we were to have a pre-screening process that involved evaluation against criteria and the publication of decisions, the difference between that and screening would be academic. That is why we regard pre-screening as a pointless exercise.

**Dr Dan Barlow (Friends of the Earth Scotland):** I concur. As it stands, the pre-screening proposal would be counter to the aspiration that SEA should be an open and transparent process, particularly as there would be no opportunity to challenge pre-screening decisions and no information would have to be provided on why such decisions were taken. Pre-screening is not necessary, given that the screening process can fulfil its purpose.

**Maureen Macmillan:** My question has probably partly been covered. I was rather alarmed to read your criticism of the present system of environmental impact assessments, which you say are

“hugely variable in quality and reliability.”

You claim that because they are

“produced primarily by private developers,”

they

“result in significant duplication of effort”.

I thought that that was rather a sweeping statement, and I do not know what evidence you have for that. I have not heard evidence to suggest that EIAs are so worthless, but that seems to have coloured what you think about the bill. It is perhaps a side issue, but I would be keen to know what you think the problems are at present that need to be addressed.

10:00

**Anne McCall:** My judgment is based partly on personal experience and partly on a five-year review that the European Commission undertook into how the EIA directive was being rolled out in every member state.

I oversee all the RSPB's involvement with planning applications throughout Scotland. At the moment, we are looking at between 200 and 300 different planning applications. There are some incredibly good environmental impact assessments and there are some incredibly poor ones. There have been a series of legal

challenges, largely in England, and a large number of planning decisions have been thrown out because of poor environmental impact assessments. Essentially, my written evidence presents the conclusions of the Commission's EIA review.

The quality of EIAs is a problem. Given the fact that the SEA directive and the bill apply to public bodies with a duty to deliver best value, we are particularly concerned that we get an administrative process that ensures that the same problems do not occur again.

**Maureen Macmillan:** As you said to Nora Radcliffe, you feel that having an independent body to oversee the process would be part of the answer.

Let me ask you about definitions. You want to remove the phrase “minimal effect” from the bill. Do you feel that such phrases are too subjective? What criteria would you use instead?

**Anne McCall:** Essentially, the problem with the concept of minimal effect is that it has not been used in legislation before. Environmental impact assessment legislation has been debated at length because of the concept of significant effect, and how we define “significant effect” has become an Achilles' heel of environmental impact assessment work. The same burden would be placed on defining “minimal effect”. Our recommendation is that, rather than try to define “minimal effect”, which will mean all things to all men, you should simply remove the requirement for pre-screening, so that you no longer have to define “minimal effect”.

**Maureen Macmillan:** You think that that would solve the problem.

**Anne McCall:** It would solve one of the definitional problems, yes.

**Dr Barlow:** I concur with that. If you take out the pre-screening process, you will no longer have concerns about different interpretations of such a definition, which does not seem to have been tested in law previously.

**Maureen Macmillan:** However, even if there is no pre-screening—or any kind of screening—somebody will come up with the answer that there is minimal effect; and if everything is screened, there will still be minimal effect in some way. If “minimal effect” cannot be defined before screening, how can it be defined afterwards?

**Anne McCall:** The concept of minimal effect is introduced in the bill only for the pre-screening exercise. In the screening exercise, what is sought is significant effect. We already have one definitional problem with the phrase “significant effect”; the bill would add another difficult-to-define term relating to environmental effects.

**Maureen Macmillan:** I just do not see your problem with minimal or insignificant effect. I presume that, if what is significant can be defined, what is not significant can also be defined.

**Anne McCall:** I would criticise the use of the term “significant” as well, as it is problematic. However, it is in the directive, and to meet the obligations of the directive the bill has to cover what is in the directive. Our concern about the phrase “minimal effect” is that it has not been tested in law, whereas there is a significant amount of guidance and advice relating to significant effect. We also think that the phrase “minimal effect” is attached to a process that is essentially pointless. You could get rid of both a definitional problem and a pointless administrative exercise by getting rid of pre-screening.

**Dr Barlow:** At the screening stage, there is a requirement to publish an explanation of why a decision has been taken and an opportunity for that decision to be challenged whereas, at the pre-screening stage there is not. Someone could decide that something had a minimal effect, but they would not have to give information on why they had made that judgment and there would be no opportunity for someone to challenge the decision. At the screening stage, that information has to be made available, and if someone disagrees, they can challenge the decision.

**Maureen Macmillan:** Surely, at the pre-screening stage, it could be decided that something had a minimal effect and it could be put on a register that the decision had been made.

**Dr Barlow:** I agree that we could reach a compromise and at least have a register outlining which strategies, plans and programmes had been considered and pre-screened. Many strategies, plans and programmes might come up again in future and it would be useful to have an idea of how they had been considered previously.

**Maureen Macmillan:** Yes—we do not want people to do work that is obviously unnecessary.

**Rob Gibson (Highlands and Islands) (SNP):** I am concerned that we should get to the heart of this now. We are setting up a superstructure for an important part of environmental proofing, but other bodies—such as the Executive’s sustainable development directorate—already exist. You want a series of ways in which to register and monitor the SEA process, but that will have to relate to the work of the sustainable development directorate. Should the monitoring process drive the work of the directorate, or should the directorate have some part in the monitoring arrangements?

**Dr Barlow:** We have questioned the current proposals for the SEA gateway because of our concerns about independence and transparency. Many of the current programmes and plans have

come from groups within the Executive. If one body decides how satisfactory an SEA has been, and the same body decides whether something can or cannot be challenged, issues of transparency and independence arise.

SEAs should be used to ensure that any plans, programmes or strategies are compatible with national, European and international targets and obligations. That is lacking at the moment. An SEA must cross-reference to a set of indicators—either indicators produced by the Scottish Executive or ones that have already been agreed to. When an SEA is undertaken, we will have to assess the extent to which it contributes to, or hampers, nationally agreed commitments. Many of those commitments have, of course, been driven by, or monitored by, the sustainable development directorate.

**Rob Gibson:** Have they? The directorate is at such an early stage of development that it is hard to say.

The Scottish Government has to make proposals and it has to be transparent, but another part of the Government can be monitoring what is going on. Are you seriously suggesting that we need another body, separate of Government, to oversee the process of SEA?

**Anne McCall:** You cut right to the heart of the issue when you suggested at the beginning that we are setting up a process that could bring enormous environmental benefits. It could also save us an enormous amount of money. On the last page of my written evidence, you will see our estimate of the cost of rectifying the environmental damage done by the planting in the flow country. It is a very conservative estimate, but we think that it will cost around £41 million. That figure excludes the cost of land acquisition and it is likely to double in the next five years. That is an example from one policy decision in one policy area; if we extrapolate, we can see that the potential savings are gigantic.

We are focusing on the management of the SEA process because the process will stand or fall on the effectiveness of that management. At the moment, there is the very welcome proposal to have the SEA gateway. That is great; it is a quantum leap from the proposals of the Office of the Deputy Prime Minister. In England and Wales, there is no equivalent of the gateway; as a result, all the responsible authorities and all the consultation bodies are having significant problems in co-ordinating their activities.

The gateway proposal is good, but it is, in essence, administrative. We draw a comparison with the community planning task force. The task force provided a great deal of support to local government but was ended only 12 months after



its inception. The community planning task force website and the support that the task force provided are no longer available. My concern is that that might happen with the gateway, because the proposal is purely administrative and is not enshrined in legislation.

To investigate how SEA is being managed elsewhere, we commissioned a report from the University of Strathclyde. The committee heard evidence last week from Elsa João, who co-wrote that report. From that examination of how Canada, the Netherlands, Latvia and a host of other countries are implementing SEA effectively, it became clear that four main tasks must be undertaken if SEA is to work. We do not want a pointless box-ticking exercise. We need a body that provides guidance and advice; a body to arbitrate disputes; a body that can monitor quality; and a publicly available register, so that people know what is going on.

If those functions were secured in the gateway and the gateway was secured in legislation, we would be two thirds of the way towards creating a system that we know would deliver the bill's intention.

**Rob Gibson:** Are you saying that we need an authority for SEA as well as the sustainable development directorate?

**Anne McCall:** Yes.

**Rob Gibson:** You are beginning to suggest the creation of a plethora of bodies that will attempt to do the same sorts of tasks. All right—someone must initiate policy, but a department will do that. Would developing the sustainable development directorate to monitor the process not be far better than creating the separate body that you propose?

**Anne McCall:** The proposal concerns the functions. As long as the body in which the functions lie has some distance from decision makers and that body undertakes the functions, putting it in the sustainable development directorate might be an option.

**Dr Barlow:** I will draw an analogy. The Scottish Executive inquiry reporters unit offers a similar function in planning as a separate entity, but it is part of the Executive, which has a commitment to deliver on planning issues. A similar body could fulfil the requirement for a high-quality SEA administrative and co-ordinating body.

**The Convener:** I question that. The reporters unit exists because planning is a quasi-judicial issue. That is not necessarily what we are considering. With our witnesses last week, we explored where we are now, where the bill will take us and the process of going from kicking off with the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 just last

year to aspiring to an all-singing, all-dancing bill that will require all public authorities to implement SEA on everything. How is the knowledge captured? How do we push people ahead?

I am attracted to the witnesses' discussion with Rob Gibson about the gateway advising people and the sustainable development directorate or another part of the Executive monitoring and evaluating work and pushing knowledge round the system. The strong message from COSLA last week was that we start from a low level. People are doing many environmental things, but not in the rigorous, process-orientated way that the bill will require. Is building the capacity to deliver the bill an issue? If we create too many extra organisations at the start, we might make it more difficult for the system to start and to deliver on our objectives.

**Anne McCall:** Our evidence is based largely on the four key functions that we think are needed. Dividing those functions among separate bodies may have advantages, because an arbiter does not necessarily want to provide advice. It is critical for the four functions to be enshrined in the bill as part of the bill's delivery mechanism. Otherwise, the underpinning administrative process that we need will not exist. We must have a public register, an arbiter, someone who monitors and controls quality and someone who can provide guidance and advice.

The three consultation authorities are already initiating training programmes and are following different procedures. Co-ordination with the SEA gateway is difficult because resources are limited and some duplication is involved. That is the situation eight or nine months after the regulations came into force. It would be unfortunate not to note that and to take action now.

**The Convener:** That does not automatically lead to an independent process, does it?

**Anne McCall:** There are many attractions to having an independent process, especially if it involves an arbitration function.

10:15

**Dr Barlow:** I agree entirely that we need to think about how to administer the key functions. There might be some compromise that does not involve setting up an entirely separate unit but, to our mind, that would be the best way to ensure efficient co-ordination and ensure accountability and transparency so that, if there were questions on a judgment, it would be clear that there was a level of independence. It would also be the best way to ensure that there is strong independent monitoring of the reports that have been produced. As we have heard previously, that is necessary to

avoid some of the issues that have arisen with the EIA process.

**Rob Gibson:** You said that there were issues with, and court cases on, the EIA process in England, but you did not say that there had been any issues in Scotland.

**Anne McCall:** They were English decisions, but the Executive sent an advisory note to all heads of planning detailing the nature of the decisions and indicating that, because the legislation is essentially the same in England, the decisions also applied in Scotland and, therefore, the heads of planning should be cognisant of them when they make planning decisions.

**The Convener:** It might be useful to have a look at the European Union review to which you referred—I do not think that we have seen it. We could examine the gap between SEA and EIA and consider what lessons could be plugged into the bill. That would be useful.

**Mr Mark Ruskell (Mid Scotland and Fife) (Green):** The bill provides for a number of exemptions—for example, financial programmes and the Ministry of Defence are exempt—and I am interested in your thoughts on those. In particular, it seems at the outset to be quite difficult for the Ministry of Defence to apply SEA, but is that the case?

**Anne McCall:** We have not commented specifically on it in our written evidence, but I took part in the Ministry of Defence's strategic environmental assessment of the strategic defence review. In that review, the MOD was considering what to do with the defence estate and used SEA as a mechanism to help it to make better environmental decisions about what to do with its land, so it found the process quite useful. That was the MOD's choice; there was no obligation on it to do that.

Our reticence about mentioning the Ministry of Defence in our written evidence was due to an appreciation of the slight complication that defence is not devolved and a lack of confidence that we could predict what MOD functions could be covered if the bill could be extended. However, much like last week's witnesses, I cannot see any logical reason to exclude the MOD, given that it has clearly decided to use SEA.

**Dr Barlow:** I can think of no reason why financial and budgetary plans should automatically be exempted. Such plans should be subject to the same screening process. The Executive has already committed itself to considering the sustainable development implications of the spending review, and I would have thought that undertaking an SEA or a similar assessment would complement that commitment.

**Mr Ruskell:** Is it, in essence, a matter of applying SEA to the financial and budgetary plans that are derived from policies or is it the other way round—that is, a matter of budgets setting out the framework whereby policies can be introduced? There seems to be a chicken and egg question—a bit of confusion about what comes first and how we analyse it.

**Dr Barlow:** That is right. Spending plans often make specific commitments and have a huge influence on the plans that are developed at the next step down, so if a decision has already been made at a spending level, some steps have been taken towards influencing the plan, programme or strategy that will be developed. Therefore, it would be appropriate to do strategic environmental assessment at a higher level on some occasions.

**Anne McCall:** I imagine that having an SEA of any budget proposals would enhance parliamentary scrutiny by making the decision-making process a little clearer. I find the Executive's budgetary process somewhat impenetrable, and having an SEA of it would help me to understand better how decisions have been made.

**Mr Ruskell:** That is a challenge with which the committee has had to wrestle on numerous occasions.

My last question concerns private sector bodies that are undertaking public functions. Does the bill capture plans and programmes that have public character but are delivered by the private sector?

**Anne McCall:** No. One of the surprising differences between the regulations and the bill is that the bill introduces SEA for all strategies, plans and programmes that are developed by public sector bodies, but excludes private bodies that undertake public functions, unless they are subject to the mandatory requirements of the directive. I checked with the Executive and that is the policy intention. It is probably easier to illustrate that with an example, but you will hear from Keith MacLean from Scottish and Southern Energy later and I am sure that he will give you more evidence on this.

From our reading and interpretation of the bill and the Executive's policy intention, it appears that bodies such as SSE, which is proposing a series of transmission upgrades, will not have to undertake SEA for their proposals. For example, SSE's recent consultation would not be subject to SEA whereas Scottish Water, because it is a public body, will have to make most of its strategies, plans and programmes subject to SEA until a time when it might be privatised, when large chunks of what it does would no longer be subject to SEA. There is a large gap; many private bodies undertake functions that are public in nature, but

from our detailed reading of the bill it seems that they are excluded.

**Mr Ruskell:** Why is that? Is it because they do not fit into the form of words about the setting of a framework for development consent? Is that how those plans and programmes are exempted? I do not understand at what level the decision is made.

**Anne McCall:** It is a bit technical. There is a definition of public, which is broad, and there is a definition of public bodies, which is narrower and specifically excludes private bodies that undertake public functions. The bill moves beyond the mandatory requirements of the directive to cover all the strategies that are captured by the partnership agreement commitment, but private bodies that undertake functions of a public character, such as SSE and ScottishPower, are excluded. Obviously, there is lots of mandatory SEA activity in the energy sector, but, as you say, the key test is whether a strategy sets a framework for future development consents. I argue that a strategy that comes from SSE, as a private body, does not set a framework for development consents. It sets out a list of things for which it may seek development consent from someone else, but SSE is not setting a policy framework. The wording in the bill seems specifically to exclude private bodies that have public functions.

**Mr Ruskell:** So, for example, the decision to upgrade the Beaulieu to Denny transmission line does not constitute a framework from which specific planning proposals can flow.

**Anne McCall:** The individual project will be subject to project EIA, but the decision to upgrade that line as opposed to other lines will not be subject to SEA. It will get some scrutiny from the Office of Gas and Electricity Markets, which is the regulator, but under the bill there is no obvious obligation for the decision to upgrade the line to be subject to SEA.

**The Convener:** That is a good example. We can use it as a test or a case study and see whether other witnesses give us the same answer. That will tell us whether everyone understands the bill in the same way. We will speak to Keith MacLean from Scottish and Southern Energy later and we will have the minister in front of us in a couple of weeks' time. There is an issue about where SEA stops and environmental impact assessment starts. We want to get to the heart of the question about duplication: how does SEA help the process up front, so that inquiries and decisions are not duplicated? We need to test that.

You both criticise the bill for not including among the consultation authorities organisations that you regard as relevant, particularly in relation to health. You do not state who would be the consultation

authority on health; in the absence of any other suggestion, my guess is that it would be health boards. Do you agree? How could they carry out that work in addition to all the other things that they do?

**Dr Barlow:** I have concerns because the consultation bodies are currently limited to the Scottish Environment Protection Agency, Scottish Natural Heritage and the Scottish ministers—who cover the function of Historic Scotland—but the list in schedule 2 to the bill of impacts that are supposed to be considered includes health and transboundary impacts, for example. It would be useful if a body—whether or not it was the co-ordinating gateway or independent body—had the capacity to draw in additional consultation bodies when, for example, it thought that a proposed plan, programme or strategy should involve consultation with a body on a health issue. It would be useful to ask SEPA about the extent to which it is comfortable with covering the health remit. I mean no disrespect to SEPA, but my provisional discussions with it suggest that it has limited resources and limited capacity to cover such issues, and it would be useful if a body such as Health Protection Scotland—which now exists in statute—could be consulted on proposals. I understand that that would be necessary in order to demonstrate that the requirement to consider the issues that are listed in schedule 2—which include health and transboundary impacts—has been fulfilled.

It would be useful to be able to consult a body that is based outside Scotland on transboundary impacts, particularly on the delivery of environmental justice. If, for example, a plan or programme for coal-fired power stations was developed in Scotland and the effects of acidic deposition or fallout were going to be felt more heavily in other countries, it would be useful to seek advice from those countries on how their ability and commitments to protect their environment or even to meet EU or international targets and objectives, for example, might be compromised. It would be useful if the co-ordinating body could seek input from additional consultation bodies on specific plans, programmes or strategies when it thought that that was appropriate.

**The Convener:** Would the Executive not pick that up by following its own sustainable development indicators? That particular example would be picked up by EU environmental regulations on carbon emissions.

**Dr Barlow:** There is a commitment to look at the Community's wish that the directive should consider EU and United Kingdom objectives, but I am concerned that there is no commitment to ensure that commitments and targets at the

Scottish level are assessed. The impact of meeting some objectives might be considered, but I am not convinced that that is enough. For example, if there were to be a major transport programme that would particularly affect urban areas, would the current assessment be enough to determine whether that programme would have a detrimental impact on health as a result of increased concentrations of PM10 in a particular area? If there were a requirement to consider whether EU limit values would be exceeded and it was therefore possible to veto a plan, programme or objective on that basis, that would assist, but that possibility does not exist at the moment. We should consider the compatibility of the programmes that we are drawing up with the commitments that we have made, for example to EU directives on air quality and climate.

**The Convener:** You mentioned human health, and population has been mentioned too. Why is that?

**Dr Barlow:** In schedule 2, the impact on population is one of the characteristics that plans, programmes and strategies must be assessed against. There was a question in my mind about which authority it would be appropriate to consult about that. I am not sure that SNH, SEPA and Historic Scotland alone would be able to provide the required input. I cannot give an example off the top of my head of a strategy, plan or programme that would be affected, but if that is one of the criteria that must be considered as a result of the directive, I am not sure what body would be best placed for consultation.

**The Convener:** Okay. We will probably have to raise one or two issues with the minister. For example, I have not heard of Health Protection Scotland.

**Dr Barlow:** Apparently it was set up very recently—within the last year.

**The Convener:** That makes me feel not so bad.

As no other members have questions, I thank the first panel for attending and for going into such depth in their submissions. Having those submissions in advance was useful.

We will have a break for a couple of minutes to allow the second panel to take their seats. Members of the first panel are welcome to stay if they want to hear the rest of the evidence.

10:29

*Meeting suspended.*

10:31

*On resuming—*

**The Convener:** I welcome our second panel of witnesses: Professor Alan Alexander, chair of Scottish Water; Geoff Aitkenhead, asset management director at Scottish Water; Craig McLaren from the Scottish centre for regeneration at Communities Scotland, where he is director; and Gordon Wilson, who is a corporate planner at Communities Scotland.

Thank you for all the information that you sent us in advance and for your comments on the bill. As I said to the previous panel, it is really helpful to be able to read that material in advance. I know that some of you have given evidence to other committees. It is this committee's practice to go straight to questions on your evidence rather than inviting opening statements. Mark Ruskell has the first question.

**Mr Ruskell:** I understand that Scottish Water has a statutory duty to deliver sustainable development. Is that correct?

**Professor Alan Alexander (Scottish Water):** Yes.

**Mr Ruskell:** Why, then, are you not already undertaking SEA?

**Professor Alexander:** It is important to point out immediately that we have a statutory obligation to do that, but that we have to take into account the environmental impact of everything that we do in relation to the planning process. I would argue, first, that the individual environmental impact statements that we have to make for every planning application amount to assessing the environmental impact of the entire programme. Secondly, and perhaps more important, there is a sense in which our capital investment programme—the most significant programme in this context—is actually not owned by Scottish Water. We are the delivery company for it, but it is owned by a much broader group of stakeholders, including the regulators and the Scottish Executive.

Our view would be that if there has to be an SEA on our whole programme—and we accept, in principle, that there should be—that should be in the ownership of the stakeholder group that defines our programme. It is important to point out that we are a tightly regulated company. Out of the process by which our capital programme is determined comes a set of outputs and programmes over which we have little control and in respect of which we have little flexibility. There is a sense in which assessment ought to be done as part of the regulatory process that leads to the creation of our capital programme. Geoff Aitkenhead may want to add to that.

**Geoff Aitkenhead (Scottish Water):** The only other thing that I would say is that you will be aware that we have raised concerns in our submissions about duplication of effort. We could argue at this stage that elements of the SEA philosophy are already being practised, and we need to be clear as we go forward about the added value of SEA and about what is already happening through the quality and standards process, through the forthcoming water framework directive processes, particularly the river basin management plans, and through the development of structural and local plans. We must ensure that we all have a common understanding of what SEA adds to those.

**Mr Ruskell:** Obviously, there are plans and programmes into which other stakeholders, including ministers, have input. What is your involvement in those plans and programmes? Do you assist in the making of decisions regarding, say, infrastructure plans and programmes? Do you have an opinion on certain elements of those plans and programmes?

**Geoff Aitkenhead:** Yes. We played a full part in the quality and standards III process that was set up by the Executive and which involved a wide range of stakeholders, in particular SEPA, which was the promoter of the environmental improvement programme that we implement, and the drinking water quality regulator, which was the promoter of the public health programme.

Our role in that process was to analyse the capability of Scottish Water's assets to comply with forthcoming requirements. That means that, whenever changes in European legislation or changes in the requirements of the Scottish regulators come down the track, we need to do some detailed work. That is what we have been doing over the past year and a half in relation to the new standards.

Where we can foresee a gap in capability, we come forward with investment proposals. We prepare the detail of those proposals and cost them.

**Mr Ruskell:** Presumably, that will throw up options that will have differing environmental impacts. Unless you apply SEA to your own thinking, how do you know what the environmental impact of different choices would be?

**Geoff Aitkenhead:** So far, a lot of that work has been done at a project level, project by project. As Alan Alexander has already said, we routinely carry out environmental assessments and prepare reports for planning authorities in particular, and conduct full environmental impact assessments when we are required to do so.

One of the key questions in terms of moving into SEA is the level at which we set the bar, by which

I mean the degree to which we assess programmes and plans rather than individual projects.

**Mr Ruskell:** Presumably, though, by the time that you get to an EIA stage, you have already determined the route that you are going to go down. At that point, the issue will be to do with the detail of that project and the choices that you will be able to make at a project level about the mitigation measures that will be put in place and so on. I am asking about your decision to go for a particular route. That is beyond the EIA and is pushing more towards SEA again. How do you analyse the environmental consequences of your decision to go for something like a development in the first place?

**Geoff Aitkenhead:** It is important to understand the roles of the various players. As we said in our submission, we believe that the quality regulators have the initial role in terms of the cost-benefit analysis.

Under quality and standards III, ministers set objectives for Scottish Water and the Scottish water industry. For example, one of those objectives is to improve stretches of coastal and riverine waters in Scotland totalling 530km. SEPA translates that objective into specific investment needs. That is the starting point for Scottish Water. SEPA has translated that objective into a requirement to improve approximately 160 waste water treatment works. The strategic environmental assessment needs to be part of the cost-benefit analysis that relates to the question of the benefit of improving 530km of coastal and riverine waters.

**The Convener:** That makes sense. It replicates the points that were made in the discussion that we had with the previous panel about the need to work out who does SEA and at which point the environmental impact assessment comes in, so that people are not duplicating the same process. Your understanding would be that SEA would kick in at the point at which the policy framework requirements—or, in your case, the quality and standards III objectives—are set and that at that point, you would run every outcome through an EIA process.

**Professor Alexander:** It is important to emphasise that nothing that is put in place at the strategic level relieves us of our obligation to conduct EIAs in respect of specific projects. I emphasise again that we are concerned that if we do not get the differentiation between the two levels right there will be duplication of effort and greater expenditure than is necessary. As a tightly regulated business, we do not have anything in our regulatory settlement to pay for more than what we are statutorily obliged to pay for.

**The Convener:** We will check that understanding with the Minister for Environment and Rural Development when we hear from him. We have private and public sector comparators and we want to ensure that everyone has the right understanding of the bill.

**Maureen Macmillan:** As you might have heard from my questioning of the previous panel, I was concerned that they had said that the environmental impact assessments were not robust enough. What is the use in having SEA if the EIAs are not doing the job properly? I would like you to comment on that and on the pre-screening process, which I see that you are in favour of. You argue about definitions, but from the opposite perspective to that of the previous panel. You say that the word “significant” needs to be defined properly, but you are quite happy with the word “minimal.” Do you think that it is possible to know what a minimal impact would be, but not to know what a significant impact would be?

**Geoff Aitkenhead:** I will start with the question about the robustness of EIAs, which are carried out to allow us to understand fully the environmental impact of a project and to explore ways of delivering a particular output. The EIAs of which we have experience are produced by specialists—we always employ specialists to do such work for us—and are subject to what I believe is robust scrutiny through the planning process. In our view, the environmental impact assessments that we carry out are sufficiently robust for the purpose for which they are intended.

We believe that pre-screening is of value within the SEA process. On the definitions, one of the things on which we would like clarity is the way in which positive benefits are handled. A lot of what Scottish Water does is to improve the environment. The needs are defined by ministers and translated into more specific outputs by SEPA and we deliver them to huge environmental benefit. In implementing SEA we need to understand how those significant environmental benefits are brought into the equation, as well as the potential detrimental impacts of short-term construction activity, for example.

**Maureen Macmillan:** How many strategies or plans would fall at the pre-screening stage? How often do you think that there would not be some kind of screening, because something was thought to be of minimal impact?

**Geoff Aitkenhead:** That is difficult to foresee, but I suspect that it would not happen often.

**The Convener:** I kick that question across the table to get the perspective of the Communities Scotland witnesses. Do you have a take on the pre-screening issue and on where SEA and EIAs kick in?

**Gordon Wilson (Communities Scotland):** We see pre-screening as a positive step forward from the point of view of asking organisations to consider programmes and provide an internal audit trail as a justification for their actions. We appreciate that there are issues about the definitions, which you have discussed in detail this morning. The pre-screening process would certainly help us to integrate the SEA principles into the organisation as more staff take on the idea of reviewing the environmental impact being the important issue that the bill aims to ensure that it becomes.

10:45

**Craig McLaren (Communities Scotland):** I will touch on the crossover between EIA and SEA. Communities Scotland is very different from Scottish Water and many other organisations in that, as an executive agency, we must deliver ministerial policy. We do that not directly but through a range of other organisations. Our housing functions are delivered mainly through registered social landlords and our regeneration functions are generally delivered through community planning partnerships. We manage, monitor and set criteria for programmes, but because we do not deliver the programmes on the ground, EIA does not directly affect us.

**The Convener:** Do you anticipate that SEA will kick in for you?

**Craig McLaren:** Yes. We carried out pre-screening on our corporate plan, for example, and concluded that it would be subject to SEA.

**The Convener:** Gordon Wilson said that the benefit of pre-screening is that it provides “an internal audit trail”, whereby organisations must justify why they are not including a plan or strategy in the SEA process. Would you have a problem with such information being logged in a register, so that people could see what was included and what was not?

**Gordon Wilson:** We would have no problem with that. We recently had to come to terms with the coming into force of the Freedom of Information (Scotland) Act 2002, and we are building more and more freedom of information into the organisation’s activities.

**Rob Gibson:** In its submission, Communities Scotland says:

“Our national remit covers a diverse range of functions, as a funder, advisor, facilitator and regulator as we implement Ministerial policy.”

Ministerial policy dictated what Scottish Water would do on each of its programmes. Does ministerial policy dictate what you must do in your programmes?

**Craig McLaren:** Obviously, ministerial policy is set by ministers. Our job is to work with ministers to ascertain how we can implement policy. It is our job to come up with solutions for the implementation of policy locally, in conjunction with the range of different partners that I mentioned. Our role is to do with the practical implementation of policy, rather than the development of policy.

**Rob Gibson:** Is that what differentiates Communities Scotland from Scottish Water? You expect to undertake SEA and you say that you are already doing so. How and by whom is that activity being monitored?

**Craig McLaren:** We are still in the early stages. We are monitoring the process, to ascertain the resources that it will need. The first thing that we did was consider whether some of our key plans would be subject to SEA, which is why we carried out pre-screening on the corporate plan. The process is on-going.

**Rob Gibson:** What stage is the SEA process at in your corporate plan?

**Gordon Wilson:** The corporate plan was exempt from the SEA regulations, because discussions around it started prior to their coming into force, but as the corporate plan developed, we were very aware of the SEA principles. The plan is being published today and will be available to members through the Scottish Parliament information centre in the next couple of days.

**Rob Gibson:** You are at such an early stage that I cannot envisage how we might question—

**Gordon Wilson:** Sorry, but may I add a comment about housing policy? The setting of ministerial policy would involve discussions between us and Scottish Executive colleagues about principles of policy to do with affordable housing and homelessness, for example. We would then work with Executive colleagues to consider how to meet the prime targets over the next three years.

**Rob Gibson:** Will your revised sustainable development policy be subject to SEA?

**Craig McLaren:** It is likely to be.

**Rob Gibson:** Is that as much as you can say just now?

**Craig McLaren:** We are at a very early stage, to be honest.

**The Convener:** I think that witnesses from both organisations have picked up on the impact of the bill on staffing, given that staff will have to undertake the process, make the right decisions and be accountable for their decisions. To what extent will guidance or the SEA gateway help you to make internal, strategic decisions about staffing

in relation to the delivery of SEA? What resources will you need to allocate, to ensure that staff are geared up to implement the bill? You made cautionary remarks along the lines of, "We know that resources will be needed, but we do not know how much." Have you thought about how you will implement the provisions of the bill when it comes into force, and is timing an issue? We got the impression from COSLA that it would help if the training was required later rather than sooner. You have clearly thought in great depth about how the bill will apply. What is your conclusion about how you can make it work?

**Professor Alexander:** In a sense, later is always better than sooner, especially when people are operating in a tightly regulated environment. I make that point seriously. Any additional work that the bill will lay on Scottish Water will fall mainly on our operating budget, if we get the levels right. If the SEA were done at the strategic level by the stakeholder group, much of the implementation would be done at our level. We need guidance to tell us how much we will be involved, which is why we are in favour of pre-screening. We need to reduce the amount of work that our people do.

We are not in a position to say how much extra work it will be likely to require because, until we know what the guidance is and what the administrative processes are, it is difficult to make that estimate. However, we will have to make a case to our economic regulator for that to be part of our permitted operating expenditure, and we need some clarity on that. My guess is that getting that clarity will take some time.

**Gordon Wilson:** I tend to agree with what has been said. We have not assessed the impact, in pounds and pence, on staff time, but we realise that, to be sure of implementing SEA as intended across the raft of programmes and plans, the whole organisation will need to adopt the principle, so that it becomes second nature to staff and is not something that is imposed once a year or whatever, but is intrinsic to their work as they carry out their various roles. We are conscious that we will need to take a broad-based approach and that, initially, we will have to work closely with Scottish Executive policy colleagues. Therefore, there will also be an impact back within the Executive. It is difficult for us to cost that because discussions are at an early stage.

**Nora Radcliffe:** I have a resource-related question. Both your organisations have obviously thought a lot about implementation of the bill. How far do you see it as being an in-house function and how far do you feel that you will have to bring in consultants? Related to that, do you have any feel for the training opportunities for your staff and whether there are courses available that would allow you to train your staff to take up these responsibilities?

**Geoff Aitkenhead:** As I said earlier, our experience of environmental impact assessments to date is at a more detailed level, with regard to planning applications. To date, we have used external consultants and specialists to carry out that sort of work. I think that that will continue in future, until we understand fully our role in SEA and can give some consideration to building the capability within the business. In the short term, I see such work being externally resourced, but training opportunities may well flow, in the future, if we think that we need to build capability within the business.

I return to the earlier part of your question, on the benefits of guidance and the gateway. We will look to guidance to give us the clarity that we need on the areas of potential duplication that we see and to clarify Scottish Water's role and the role of SEPA, the drinking water quality regulator and the Executive, as the promoters of much of the work that we do. Until we have that clarity, it is difficult for us to firm up on the quantity of resources and the skills base that we will need.

**Craig McLaren:** I will answer the question on training. As Gordon Wilson says, we are trying to mainstream SEA across the organisation. We are trying to ensure that our staff are more aware of environmental and sustainable development issues, and we have piloted some training on that, along with colleagues in Scottish Natural Heritage, Scottish Enterprise, SEPA and other organisations. There is a one-day pilot programme to increase awareness of environmental issues and sustainable development.

We have another role in trying to use the sustainable development policy that we are developing as a basis for considering our internal mechanisms and determining how we can make sustainable development work internally as well as externally. Training will be considered as part of that review process.

Thirdly, the department that I am responsible for in Communities Scotland has a role in ensuring that people, including the organisation's staff, are properly skilled and have awareness of regeneration issues, which will obviously include the environment and sustainable development. We are trying to do a bit more work on those matters.

**Gordon Wilson:** As far as consultants are concerned, we are conscious of our current budgetary restrictions and are looking to carry out as much of the work as we can in-house. When we set off down the road of SEA, we thought that it would be too much for anyone to get into. Although there might be external options that we could consider, what happens is that the person who reads up on such matters almost becomes the in-house expert on them.

We must take stock of what SEA means for the organisation's internal mechanisms. Until that happens, we will not be able to determine fully whether we need to get the work done externally. However, we certainly think that we will cover most aspects internally to the best of our ability. Specific aspects of the work might well be sent out to consultants, or our review of the process could be assessed externally to ensure that what we are doing is on the right lines.

**Nora Radcliffe:** I do not know whether this is related, but are you concerned about the collection or availability of data to underpin all your environmental assessments?

**Geoff Aitkenhead:** That is a significant issue for Scottish Water, because much of what we do results in long-term benefits to the aquatic environment. Measuring the prospective benefits of a piece of work and monitoring its actual benefits require some extremely complex water-quality modelling work of the marine environment and inland waters. We look to SEPA in that regard, because it has a particular skill and competence in such work. The data requirements are quite significant.

**Gordon Wilson:** That might also be an issue for Communities Scotland. Because we are very much geared up for reporting on ministerial targets both internally and back to the Scottish Executive, we have well-honed internal processes for those specific areas. However, as we pointed out earlier, our work cuts across quite a range of relationships and we might well have to gather data to validate whether we are implementing the SEA directive effectively or will meet our statutory obligations at a later date.

**Mr Ruskell:** I want to pursue Nora Radcliffe's point about costs. I appreciate that SEA and EIA can be conducted on different tiers and that SEA needs to be conducted at the level of the stakeholder groups that you work with. However, you seem to be concerned about costs. Regardless of whether SEA is initiated by a stakeholder group or is conducted in-house, the costs of implementing it might well be similar. After all, you will still have to feed into the process significantly.

**Professor Alexander:** That issue must be considered from the perspective of how we control costs which, as a regulated business, we must do. Our economic regulator sets tough targets, which means that we have to minimise the cost of everything we do. Although things have to be done effectively, they must also be done as economically as possible. As a result, we have an interest in ensuring that Scottish Water does not do anything more in-house than it has to do. I am being as blunt about it as I can.



Furthermore, when we have to do something, we have to decide about the best way of doing it. Is it best to do it in-house or is it best to employ short-term consultants to do it for us? Such a judgment must be made almost on a case-by-case basis. One of my colleagues from Communities Scotland said that his first assumption would be that his staff could take on the work in addition to what they already do. However, given the cost pressures that we have been under, that would not be our working assumption. Given what we already have to do, we simply could not do that as well.

The committee will know that we have already taken 30 per cent out of opex; we will have taken 40 per cent out by next year and we expect that we will be given further targets in the next regulatory period. Both of those decisions are crucial. We must do only what is clearly ours to do and we must make case-by-case decisions on the best way to resource it.

11:00

**Mr Ruskell:** You will be aware that, under the Water Services etc (Scotland) Act 2005, the water industry commission will have to have regard to the sustainable development guidance that is issued to Scottish Water by the minister. Surely the WIC is going to view your sustainable development duty within that context.

**Professor Alexander:** I hope so. The determining principle is funding; if we are funded to do something, we will do it, but if we are not funded to do it, we cannot do it. You are right; if economic regulation works as it should, all the obligations that fall on Scottish Water should be funded, but we need to be sure that we are obliged to do only the things that we are statutorily obliged to do.

**The Convener:** So the key thing in relation to the bill is to work out whether Scottish Water is carrying out a ministerial function or is a consulting authority.

**Professor Alexander:** Absolutely.

**The Convener:** Therefore the guidance will be absolutely critical; it will not be in the bill. There will have to be discussion between the Scottish Executive and all public sector bodies about training, how the guidance will work and how we equip agencies to pick up the guidance and run with it.

**Professor Alexander:** Yes, and until we have clarity, it is difficult to answer the kind of questions that Maureen Macmillan and Nora Radcliffe were asking about what it will cost us. We just do not know.

**The Convener:** We will attempt to find that out from the minister.

**Maureen Macmillan:** I seek clarification. When Q and S III and priorities were being discussed, was SEA never mentioned as being part of what would have to be included?

**Geoff Aitkenhead:** Yes, there was a discussion about SEA in the early stages of the Q and S III programme.

**Maureen Macmillan:** Of the possible financial implications as well?

**Geoff Aitkenhead:** They were not discussed in great detail, perhaps because of the lack of understanding of the things that we have been discussing this morning.

**The Convener:** Thank you all for giving us your submissions in advance. It has been helpful to hear about work in progress and to see how you are beginning to think about how the bill will work and how you might make it be of benefit. That was one question that we did not ask you; do you think that the bill will be helpful and worthwhile, given that you already have regulations? No one has come out and said no, although you have had the opportunity.

**Professor Alexander:** Any concerns that we might have are procedural rather than substantive. We are very much in favour of the principles behind the bill.

**The Convener:** It sounds as if Communities Scotland is doing the work already and the question is just how best to do it in the context of the new bill.

Thank you. The session has been really helpful. We will try to test those questions and the clarity issues later on in the process as part of our scrutiny of the bill.

11:03

*Meeting suspended.*

11:05

*On resuming—*

**The Convener:** I welcome the third panel, which comprises Dr Keith MacLean, head of sustainable development at Scottish and Southern Energy; Dr John Hartley, director and principal consultant at Hartley Anderson consultants; and Liz Bogie, senior manager of knowledge management at Scottish Enterprise. Thank you for the helpful written submissions that you have provided.

**Richard Lochhead (North East Scotland) (SNP):** I apologise for being late.

The Scottish Enterprise submission states that SEA

“must not undermine the Executive’s top priority of economic growth.”

I thought that the top priority was sustainable economic growth. Why did Scottish Enterprise not include the word “sustainable”? Does Liz Bogie see a conflict between SEA and economic growth?

**Liz Bogie (Scottish Enterprise):** I do not see a conflict between sustainable development and economic growth. There will be many win-win situations, and the forthcoming green jobs strategy will highlight some of those situations. That strategy has also strengthened the smart, successful Scotland strategy by emphasising the positive links.

The comment on economic growth is based on our concern that we must avoid adding to the process delays or excess bureaucracy that might slow down decision making. We are conscious that we are operating in a global environment; therefore, we need to be nimble and move quickly. We are concerned to ensure that SEA is undertaken in a smart way and at the appropriate level, and that we get as many environmental benefits as possible from it. However, we do not want SEA to become a hurdle to making progress on the economic agenda.

**Richard Lochhead:** If it serves only to add bureaucracy, is SEA required?

**Liz Bogie:** The Scottish Enterprise submission makes it clear that we are very supportive of SEA and that we welcome its introduction and expansion in Scotland. We think that it will bring significant environmental benefits. If SEA is carried out at strategy, programme and plan level, it will introduce the environmental focus at the right level. It will also ensure that a range of options are considered at the early stages of development. Therefore, retrofits, which were sometimes required in the past, will be avoided.

However, while we are supportive of SEA, this gold-plated approach is new. We must make sure that we learn as we go forward and that we do not build in too many hoops and hurdles as we progress. That is the message we are trying to put across.

**Mr Ruskell:** There seems to be some difference between Dr MacLean’s submission and the RSPB Scotland submission. Dr MacLean seems to say that Scottish and Southern Energy is a body that exercises functions of a public character and which would therefore be captured by SEA. Is that correct?

**Dr Keith MacLean (Scottish and Southern Energy):** The submission made the point that SSE

would like to have the clarity to which Sarah Boyack referred. With regard to the directive, the work of SSE is largely that of a private company carrying out a public function. We are not totally clear how the bill will extend requirements to SSE, but there is a potential issue for us, particularly for the transmission and distribution work that SSE carries out.

We want clarity and to avoid the duplication of effort that other speakers have mentioned. There is already a clear requirement for environmental impact assessment of work in certain areas. SSE believes that that is appropriate for the type of project work that it carries out.

**Mr Ruskell:** You make a distinction in your submission between the policy of the renewables obligation Scotland scheme and the project-based EIA proposals that are put forward as part of planning applications. I will ask you about the Beaulieu to Denny power line, which we have already touched on, as an example of such a project.

There seems to be a big gap between the policy being set that because renewable energy is being developed, an upgrade of the transmission line is required, and the specific project that you put forward, in respect of which specific details of routes—whether the line goes to the west or east of Stirling, for example—are dealt with by the environmental impact assessment.

What role have you had between the establishment of the policy and that specific project? For example, when did you say, “Yes. We want to develop a pylon line as opposed to an underground cabling system”? Did you have a role in that decision?

**Dr MacLean:** You raised a lot of points there.

There is a gap, which we highlighted in our submission. In the case of renewable energy development for Scotland, it would have been appropriate for a strategic environmental assessment to have been carried out when the renewables obligation Scotland scheme was being developed. That would have made the implementation of individual projects easier. A reflection of our difficulty, as a transmission company, is that we must react to the market in generation and make proposals that satisfy the requests that are made of us to provide a connection to generators. We must put forward appropriate schemes, but they are determined in their size and location by the generation schemes, which—apart from the few that we develop ourselves—are outwith our control. We are very reactive in that sense. We must put together a proposal to respond to the market and then carry out the environmental impact assessment within that framework.

**Mr Ruskell:** Is your specific proposal for a Beaulieu to Denny pylon line upgrade derived from a plan on how you will upgrade transmission networks in Scotland?

**Dr MacLean:** The proposal is derived from the need to provide additional capacity to deal with the applications that have been made. Many projects are now being built because they have had permission to proceed. According to our licence condition, we have to provide connection and capacity if projects request that of us.

**Mr Ruskell:** Does that provide a framework for development proposals that then go through the planning system?

**Dr MacLean:** No. The process is still entirely reactive: we cannot control it ourselves. We believe that an SEA would be appropriate and have been pushing for that. We believe that it is important that aspects such as transmission, which are in effect ancillary developments to many of the generation projects, are taken into account in the production of a policy that is assessed for its environmental impact. In the absence of that happening, we try to include some strategic assessment in our project-specific EIA, in that it covers the needs case, which refers back to the policy and the market that is driving the developments.

**Maureen Macmillan:** I am still not clear about what an SEA would do. If the statement were made: "There shall be an upgrade of the grid and these are the environmental implications", what detail would you expect an SEA to go into? Would it go into details such as whether cables should be put underground or go through settlements, for example, or would it be much more general?

I know that you have done a lot of work on the environmental impact of the line going overhead, underground or undersea and of it coming in at Ullapool or Dounreay. How much of that work would you expect to be done by an SEA? Would you expect an SEA to decide where the transmission lines should go?

11:15

**Dr MacLean:** I would not expect it to decide in detail where transmission lines should go. The policy aspiration in Scotland is to generate 40 per cent of energy through renewables by 2020, although the detail is as yet undefined. That is pretty much where it stops. The environmental implications of that policy in terms of its effects on generation projects throughout Scotland—particularly the follow-on consequences of the transmission developments that will be required to support the policy and of any other infrastructure requirements—have not been determined.

As Mark Ruskell said, there is a gap that we are trying to fill. That is why we support SEA being carried out up front, because it provides a framework against which one can align individual projects and carry out specific environmental impact assessments. An EIA would examine issues such as whether the line should go east or west or underground, overground or undersea, and it would weigh up those options for delivering projects, as opposed to examining issues such as the strategic aim of locating, in this example, generation in Scotland.

**Rob Gibson:** You are saying that an SEA should have been performed on the renewables obligation Scotland scheme.

**Dr MacLean:** Had the legislation been in place, the ROS would have fallen under it. That would have resulted in a more detailed policy that took the issues into account up front, rather than one that required them to be taken into account over time. SEA would have been appropriate for that policy and made it better.

**Rob Gibson:** So it would be possible to perform a strategic environmental assessment now on wave and tidal power, before people become involved in developing it.

**Dr MacLean:** I believe that the Executive is looking at carrying out SEA work on marine developments at the moment.

**Rob Gibson:** How do you view your position in comparison with that of Scottish Water, which commented on the receiving of instructions and the fact that it is a tightly regulated organisation? In many ways the functions that you carry out are similar, because you have to deliver services in what is almost a monopoly.

**Dr MacLean:** In many ways, we are as heavily regulated as Scottish Water is in carrying out our transmission and distribution activities. We support Scottish Water's position that the environmental impact assessment of individual projects is its direct responsibility. If we were involved in policy development, we would expect, as part of a wider stakeholder group, that that work would be covered by SEA. However, when it comes to the delivery of a project on the ground, there is already more than adequate coverage of environmental impacts through EIA legislation.

**Rob Gibson:** So the bureaucratic burden could become onerous.

**Dr MacLean:** That is our big fear.

**Rob Gibson:** To sum up, you fear the wrong organisation undertaking SEA at the wrong stage of development.

**Dr MacLean:** Yes. We also share Scottish Enterprise's view with regard to ensuring that we

do not allow a bureaucratic process to get in the way of development.

We, too, are interested in the concept of the pilot introduction of SEA to ensure that there is no overload. There was much talk earlier about consultants. There is a shortage of appropriately skilled capacity in the EIA work that is being done at the moment. We do not want to add to that. Phasing will be necessary if we are to move from no SEAs to SEAs for everything. Several projects are proceeding without SEAs, so introducing pilots would be sensible.

**Dr John Hartley (Hartley Anderson Ltd):** I echo what was just said. The policy decision was to promote renewable energy development in Scotland. When that decision was made, an SEA should have been done. That would have flagged up the key issues such as access to the grid and capacity. It would not have fixed the precise route or construction methods, but it would have flagged up the range of issues, which would have allowed the public to have an input. EIA deals with the detail of the routing and the construction method. Perfectly adequate legislation is in place for that.

**The Convener:** I will move on to the scale on which SEA should operate. Scottish Enterprise's submission talks about the need to ensure that SEA is undertaken at the right level. In her first response, Liz Bogie said that she did not want to do anything that would prevent Scottish Enterprise from being a nimble organisation and expressed reservations about gold plating Scottish Enterprise's work.

Liz, I would like to press you on your submission, which expresses the concern that

"it will be difficult in practice to undertake a meaningful SEA of high level strategies, plans and programmes which cover a broad range of issues"

and refers to "A Smart, Successful Scotland". Is the legislation to introduce SEA not meant to force or encourage such an approach?

**Liz Bogie:** We have examined SEA for the past two years and tried to get our heads round it and to understand its benefits and how we will implement it in the network. A document such as our operating plan, which might be a natural subject for SEA, covers a huge range of activities and geographies. One of our concerns and uncertainties is that most experience of SEA relates to land use and land planning. When we move on to matters such as the skills and learning agenda, careers guidance and business development, it becomes more difficult to find case studies and to consider how SEA might be applied.

We have a range of uncertainties on which we would like to do pilots. We have waited for guidance. Each iteration of the SEA process has

been accompanied by more guidance from the Scottish Executive, such as the explanatory notes that accompany the bill, and further guidance will be forthcoming. We are reaching the stage at which we probably have enough information to start undertaking pilots on the less traditional matters, which are the concern for us. We are reasonably comfortable with how SEAs might be done in the more traditional land planning work and our physical infrastructure work, but we are less comfortable about some other parts of our work, which are big chunks of enterprise network activity.

We are interested in examining and learning from plans that are following the process, such as the Communities Scotland corporate plan. Uncertainty exists over high-level strategies and how a sensible SEA is performed for the less traditional matters, for which the gut instinct might be in some cases that they do not have a significant environmental impact, unlike other matters.

**The Convener:** Listening to Communities Scotland made me think that it was taking ownership and trying to work out how SEA will become a benefit to its work, whereas SEA comes across as being much more of a threat or a potential threat for Scottish Enterprise. How do you turn that round? One of your comments is that emphasis should be placed

"on those strategies, plans and programmes where most environmental benefit can be secured."

That makes a lot of sense, but I presume that you must also consider environmental disbenefits and how you work the circle around. The committee is in the middle of a climate change inquiry, for which carbon emissions are a huge issue. SEA provides an excellent opportunity to run such issues through all sorts of organisations, and Scottish Enterprise is critical to that.

**Liz Bogie:** We are supportive of SEA. We have been considering it for a couple of years and have had sessions with other public sector organisations and Elsa João from the University of Strathclyde to try to get the best understanding that we can. However, there comes a point when we must decide whether we have enough information to do some sensible pilots that will help us to move forward or whether we still have too little information and too many uncertainties. Until reasonably recently, we felt that there were too many uncertainties for us to be able to do anything helpful. However, we are getting to the tipping point at which we have a level of comfort, but there are still issues with definitions and exactly how many of our plans, programmes and strategies will be covered by SEA.

There are also issues with the less traditional areas; there is a lot of learning to be done in those areas, but we want to be able to share that and learn from others as part of the process, and it would be great if the gateway or another body could help us to do that.

**The Convener:** You suggest that we should establish a strategic steering committee—no one else has made that suggestion, although there is clearly a big issue with how everybody takes SEA on board and learns from one another. Such a committee would provide a way for all the key public sector organisations to share their expertise and work with the gateway, but would a formal committee be necessary, or is it more a matter of networking and having a regular opportunity to raise problems and challenges and to work out how to solve them? Will you say a bit more about that proposal? It is an interesting idea.

**Liz Bogie:** We come at the proposal from two angles. One is the need for a good practice network in which to share issues, problems and solutions. A natural group for us to share issues with would be the regional development agencies in England but, because of differences in SEA legislation, there would be limits to how well we would be able to learn from one another. The strategic steering committee would be very much about sharing good practice, sharing knowledge and tackling issues together. The witnesses from Communities Scotland mentioned training, and the steering committee would also be about joint training programmes on sustainable development, such as those in which some of the public sector has already been involved.

The other angle is the need for a strategic steering committee to take an overview of SEA and consider how it fits in the wider context of economic policy, social policy and the forthcoming sustainable development strategy. That is necessary to ensure that sustainable development is considered in the round, that any points are addressed early on and that the potential for joining things up is realised early on. We are not precious about whether that is achieved through a committee or by some other means, but we thought that it would be useful to have a way of getting a wider range of voices to have conversations on SEA, how it fits into the broader context and how we make it work well in Scotland.

**The Convener:** That fits in nicely with a previous comment that the gateway could provide guidance and have an overview while the Scottish Executive's sustainable development directorate could perform a monitoring role. Is your point simply that somebody is required to fill those roles so that bodies can be brought into the SEA process?

**Liz Bogie:** That is right.

**Mr Ruskell:** Do you envisage the Executive's sustainable development directorate filling that role? You talk about the need to bring together the environmental aspects with the economic and the social. That is what sustainability means, so would it make sense to bring a strategic steering committee under the remit of the sustainable development directorate?

**Liz Bogie:** It might well make sense. We would need to consider how best to bring to the table all the key players that need to be round it, but I am not in a position to comment on whether the sustainable development directorate could do that or whether it would be a useful function for the directorate. However, we need to ensure that all the voices are heard and that all three legs of the sustainable development stool are represented so that we have a nice steady stool, not a shooglie one.

**Mr Ruskell:** Your written submission seemed to be defensive on economic growth. I presume that you are talking about gross domestic product rather than any other sustainable measures.

**Liz Bogie:** GDP is one of the measures that we used. It is a headline indicator for us and we accept its imperfections, but CO<sub>2</sub> emissions are also an indicator.

**Mr Ruskell:** The convener pointed out that you highlighted the need to focus on the plans that have the most environmental impact, but surely we also need to consider those that have the least environmental impact. My understanding is that SEA is about the need to understand the environmental impacts of the direction in which the Government is pushing continued economic growth. Are you keen for all plans to be assessed?

**The Convener:** Before you answer, Ms Bogie, I should point out that I was quoting from the submission, which talks about environmental benefits. My point was that we need to consider the full impact of plans and not only the benefits.

**Mr Ruskell:** The submission says that you

"believe that the legislation should place emphasis on those strategies, plans and programmes where most environmental benefit can be secured."

I wonder whether we should look at things the other way round, and consider the plans and programmes that offer the least environmental benefit. We should at least be aware of what the impacts will be before we decide to go ahead with a plan.

**Liz Bogie:** Behind the statement that you quoted lies the desire to find where we can make the most difference. We are saying that, if a plan or programme could have negative environmental impacts, how could SEA spin it towards positive impacts? If we could do that, we could make a

huge difference. If the impacts were already reasonably positive, SEA might make only a marginal difference. We want to focus on where we can make the most difference.

11:30

**Mr Ruskell:** Is it still important to consider the plans and programmes that will have a negative environmental impact?

**Liz Bogle:** Absolutely. We were not saying that we should not do that; we were saying that we should focus on where we can make the most difference. We are not saying that we should simply focus on the plans and programmes that will have positive impacts anyway. We want SEA to lead to the biggest changes and the most positive outcomes.

For example, there can be environmental impacts in the skills and learning agenda. Off the top of your head, it is difficult to think of significant impacts, but that does not mean that you will not find significant impacts as you go through the process. Off the top of your head, it seems like an area in which there might be fewer environmental impacts than there would be in, for example, a cluster strategy in a business agenda.

**The Convener:** You might not get instant answers, but it is worth while going through the process.

**Nora Radcliffe:** Surely, if you incorporate environmental awareness in all your skills and learning training, it will have a huge impact. We are not asking people to go down the traditional route; the bill tries to make people think about many different routes. That is the whole point. We need to consider the big impacts and the little impacts. If we think about climate change, we need to consider every improvement that we can get.

What is Scottish Enterprise doing to address the skills gaps that we have been hearing about in the environmental area?

What do all the panellists feel about the timescales? Are the timescales that have been imposed realistic? Should timescales be imposed where they have not been imposed?

**Liz Bogle:** Just over a year ago, we mapped out the environmental industries in Scotland. We wanted to get a feel for how many companies there were, how big they were, what issues they thought were important, where they saw growth potential and where they saw barriers. We specifically wanted to find out about skills issues, but very little information came back.

There is a forum called the UK forum for the environmental industries. It brings together all the

English RDAs, and we are a member as well. We are also a member of a specialist sub-group on skills within the forum. The sub-group has been working with the sector skills councils on how to embed skills throughout the range of training areas. Forward Scotland is actively involved in that sub-group.

We have not yet heard of major skills problems, but we hear a lot of anecdotal evidence. Our survey covered about 800 companies. We talked in detail with a couple of hundred of them, and we talked to 30 industry experts from different sectors, but skills did not emerge as a big issue. However, we pushed the issue, because we felt that it was important.

**The Convener:** That is interesting. In evidence that we heard on climate change, environmental skills in housing were often mentioned. I suppose that it depends on what question is asked.

**Liz Bogle:** It also depends on the definition of environmental industries.

**The Convener:** Nora Radcliffe asked about timescales. Dr Hartley, you mentioned timescales and consultations. Can we square the circle?

**Dr Hartley:** I am sensitised to the issue because industry often looks for precise guidance on how long it will take before it knows the direction in which it is going, and whether such-and-such a project will get the go-ahead. The way in which the bill is drafted leaves it rather too open. There is Cabinet Office guidance on the duration of the public consultation period, which is 90 days. I do not suggest that you just accept that without thinking through what it means, but from an industry standpoint it would be helpful to define the normal consultation period for a plan or programme.

Echoing the rest of our conversations, I do not see SEA as an end in itself. There is a danger of it being applied mechanistically. The idea that there is some screening group that says, "In our judgment, there won't be significant environmental effects from this plan, programme or strategy, and therefore, for these reasons, we're not proposing that an SEA is done", does not mean that the environment has not been considered, because quite clearly it has been. The process should be documented so that it is transparent. However, there is a danger of overloading competent authorities, such as Government organisations, the people doing SEAs, the people who are supposed to be reviewing and making feedback, the public and SEA stakeholders. Let us try to ensure that there is a streamlined process that goes for the important policies and programmes and ensures that their environmental implications are adequately assessed.

**The Convener:** That is a good point on which to finish. I thank the final panel of witnesses for coming in this morning, and being prepared to pick up all the questions that we have been testing out on everyone else, to see whether you would come up with the same answers.

The session has been useful. We touched on the importance of guidance and of clarifying the legislation, particularly in relation to the definition of a minimal impact. We touched on the level of SEA, how high up it goes, whether there is a gap between SEA and EIA, and how we can avoid unnecessary duplication. We touched, in that final point, on the danger of taking a mechanistic approach and on how making the process less mechanistic should not make it less accountable and auditable. We touched on how the gateway works, the issue of pre-screening, the ability to monitor and issues of transparency. We also touched on the culture shift, which seems to me to be the big issue and which you all picked up on.

Our next session on the bill will be with the three consultation authorities that are named in the bill; the session will involve representatives from SEPA, SNH and Historic Scotland, who will have a different perspective.

11:38

*Meeting suspended.*

11:39

*On resuming—*

## **Subordinate Legislation**

### **TSE (Scotland) Amendment Regulations 2005 (SSI 2005/173)**

**The Convener:** We have one instrument to consider under the negative procedure. The Subordinate Legislation Committee considered the instrument and determined that it did not need to draw it to the committee's attention. Do members have any comments on the instrument?

**Members:** No.

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

**Members** *indicated agreement.*

**The Convener:** In that case, I shall quit while I am ahead.

11:39

*Meeting continued in private until 12:34.*





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