

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 18 May 2005

Session 2

£5.00

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

14th 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 ALSO ATTENDED:

Mr Brian Monteith (Mid Scotland and Fife) (Con)

THE FOLLOWING GAVE EVIDENCE:

Mary Bradley (Scottish Executive Environment and Rural Affairs Department)
Malcolm Chisholm (Minister for Communities)
Ross Finnie (Minister for Environment and Rural Development)
Elspeth MacDonald (Scottish Executive Legal and Parliamentary Services)
Lewis Macdonald (Deputy Minister for Environment and Rural Development)

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 18 May 2005

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

10:32

Meeting continued in public.

Subordinate Legislation

Horse Passports (Scotland) Regulations 2005 (SSI 2005/223)

The Convener (Sarah Boyack): I welcome members and members of the public and press to the meeting. I also welcome three visiting members: Jeremy Purvis is here as a substitute for Nora Radcliffe; Janis Hughes is here as a substitute for Karen Gillon; and Brian Monteith is here because of his interest in the discussion that we are about to have on horse passports.

Brian Monteith has lodged a motion on the Horse Passports (Scotland) Regulations 2005 (SSI 2005/223) that invites the committee to recommend that nothing further be done under the regulations. I welcome Lewis Macdonald, the Deputy Minister for Environment and Rural Development, and his officials. As we have done previously, I propose to have a question-and-answer session to allow members to clarify issues and to ask for further information and explanations of detail from officials. We will not be able to ask the officials questions once we move on to the formal debate, so we will move on only when we are satisfied that we do not require any more clarification or explanations of detail.

The minister will make some brief opening remarks about the purpose of the regulations and why they are before us.

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): As the committee will know, the regulations were made on 21 April and came into force on 16 May. Horse owners will have until 16 June to apply for passports if they do not already have them. The restrictions on the movement of horses without passports will not apply until 16 August. The regulations meet our obligations under European law and our obligation under the Scotland Act 1998 to implement European Union directives and decisions.

The new horse passport scheme replaces an earlier scheme that was introduced by the Horse Passports Order 1997. That legislation applied only to horses—such as pedigree animals or racehorses—that were registered with a registered breed society or sporting organisation. The objective of the legislation was to facilitate trade in and movement of such animals by ensuring that they were accompanied by a passport when moved. Once traded, they would therefore be eligible for entry into the studbook or the register of the relevant society or sporting organisation in the country of final destination, wherever in Europe that might be.

The new horse passport measure is, on the contrary, primarily a public health measure that has been introduced to protect those who eat horsemeat. Although it might not be on many Scottish menus, the horse is a food-producing animal in European terms and, as such, is subject to European Union rules and regulations covering veterinary medicines that are administered to food-producing animals. Because the focus of the regulations is on public health, the need for a passport now applies to all equines—in other words, to crossbreeds as well as to thoroughbreds and to donkeys and mules as well as to horses and ponies.

The new regime effectively prevents any of those animals from being sold for human consumption if certain veterinary medicines have been administered, and requires owners to make a declaration on the passport as to whether the horse is intended for human consumption. The section where that declaration is made should also record the details of veterinary medicines that have been administered. The regulations also require each passport to carry a unique equine life number.

Owners will be required to obtain a passport and make a declaration for each animal the first time that it is moved for breeding or competitions, to receive veterinary treatment or, most pertinently, for export or sale, but they will be required to do so only once in the horse's lifetime. A declaration that a horse is or is not intended for human consumption cannot be reversed.

Passports will be obtained from passport-issuing organisations that are recognised in Scotland by the Scottish Executive Environment and Rural Affairs Department or from duly recognised passport-issuing organisations in other parts of the United Kingdom or other member states. There are currently nine such organisations in Scotland, including, for example, the Shetland Pony Stud-Book Society, the Clydesdale Horse Society and the Scottish Sports Horse Association, which covers sports horses. The PIOs will set and collect the charges that they need to cover their costs.

We expect the average cost to be approximately £25 plus a veterinary fee—if required by the PIO—of perhaps an additional £45.

Mr Alasdair Morrison (Western Isles) (Lab): I ask for clarification from the minister and his officials on paragraph 3 of the note from the Subordinate Legislation Committee—I do not know whether the officials have that note—which says:

“The Executive has explained”—

I assume that that means “explained to the Subordinate Legislation Committee”—

“that, while the Directive also applies to wild horses, there is no need for the Scottish Regulations to make provision for this as there are no wild horses in Scotland.”

How does that apply to Eriskay ponies?

Lewis Macdonald: I believe that, although Eriskay ponies run wild, they are privately owned. There is a recognised owner in each case and by putting an obligation on the owners of horses, the regulations place obligations on the owners of Eriskay ponies. Of course, my department recognises Comann Each nan Eilean and the Eriskay Pony Society as passport-issuing organisations.

Mr Morrison: I thank the minister for his clarification.

Maureen Macmillan (Highlands and Islands) (Lab): Are there any statistics on how many horses in Scotland end up as horsemeat? Is it done openly or do people take their horses on holiday to France, let them have an accident and then sell them for sausages?

Lewis Macdonald: It can happen that, when a horse goes overseas—not for a planned accident but for competition purposes, for example—it can be destroyed because it has had an accident or for some other reason.

On traceable exports, there are no slaughtering facilities in Scotland for horses that are intended for human consumption, but there are two slaughterhouses in England that are specifically for horses that are intended for human consumption. They dispose of about 60,000 to 80,000 horses a year. Those horses end up mainly exported to European countries for consumption or, on occasion, for sale in delicatessens in the United Kingdom, which is perfectly lawful, although there is not a large market for horsemeat—certainly not north of the border.

Maureen Macmillan: Do we know how many of those horses come from north of the border?

Lewis Macdonald: No, although we imagine that some do, but because there is no tracing regime it is not possible for us to put our finger on

a figure. However, we know that there is a significant export trade from England.

Maureen Macmillan: Do people get paid a lot of money for a horse that is for human consumption?

Lewis Macdonald: It varies a bit. I think that it would not be a huge sum. A large horse might fetch £400 and a Shetland pony might fetch £80, if it is for human consumption. That is the sort of price that we are talking about.

Mr Brian Monteith (Mid Scotland and Fife) (Con): I would like to ask the minister a number of questions. Could he explain how the policing of passports will be made effective? I can well understand how it is easy to identify riding schools, where there will be a large number of horses, but what process will there be for spot checks on individuals who have their own horses? Will not that be rather expensive?

Lewis Macdonald: It will be the responsibility of local authorities to carry out the enforcement measures that are required, which are specified under the regulations. Guidance that has been issued to local authorities suggests that they should adopt a reasonable and pragmatic approach to the enforcement of the regulations. The regulations specify that a horse passport and declaration are required at the time of first movement, but we clearly would not expect that to be interpreted as moving a horse from one field to another on the same property, for example, or even to a neighbouring property. However, if veterinary medicines are to be administered to a horse, or if the horse is to be moved for sale or for competition, the passport and declaration would be required. That is a critical point, because it is the point at which the horse goes somewhere where it might suffer an accident or be sold or slaughtered. It is at that point that we would expect enforcement to take place.

Mr Monteith: I move on to the issue of burying horses, which is a matter of particular concern to those who keep just one or two horses and consider them family pets rather than horses for human consumption. The European Union animal by-products regulation allows member states to apply various derogations regarding the disposal of animal by-products, and the Government has applied the derogation to permit the burial of dead pet animals among other things. However, there appears to be some confusion or lack of clarity in the definition of pet animal. With the introduction of a compulsory passport for horses and a declaration on whether they are for human consumption, horses could be classified with sheep, cattle, pigs, goats and poultry, and might fall outwith the definition of pet animal. If that were the interpretation, it could be argued that, not being pets, horses, ponies, donkeys and all equines could not be buried on an owner's land.

That is a concern to owners who would like to dispose of their horse or pony by burying it on their land, adjacent to their house or stables. Can you clarify whether horses with horse passports, even if they have been declared as not being for human consumption, could be buried on the owner's land and be considered as pets?

Lewis Macdonald: I think that the only impact that the regulations will have in relation to the questions that you raise is that the passport-issuing organisation must be notified of the death of a horse within 30 days of the death taking place. That is really the only change that will be introduced. The regulations do not attempt to provide any direction on the disposal of a horse. That remains at the discretion of the owner, except that the owner must make a declaration early on in the horse's life on whether it is intended for human consumption. What is done to dispose of an animal that is not intended for human consumption is not directly affected in any way by the regulations.

Mr Monteith: You may not be able to do so now, but is there any impediment to your being able to clarify that point in future with further regulations from the Executive if it becomes a cause of genuine concern in the light of experience?

Lewis Macdonald: That could be addressed should such a concern arise, but I do not feel that the regulations that are before the committee today should impact in a way that would give cause for concern. My department will keep a weather eye on that, as on other matters.

10:45

Mr Mark Ruskell (Mid Scotland and Fife) (Green): The minister said that the nearest slaughterhouses that slaughter horses for human consumption are in England. Do the regulations have animal welfare implications? If more horses are intended for human consumption, will more horses have to make long journeys to England before being dispatched?

Lewis Macdonald: Given the way in which the market currently stands, if more horses are used for human consumption, more horses will have to travel to England. However the regulations have no direct impact on whether there is an increase or reduction in the use of horses for human consumption. I suppose that a net effect of the regulations might be a reduction, because horse owners will be required to say, when the passport is issued, whether the animal is intended for human consumption. Therefore, an owner who initially does not intend that but who then fancies getting a price for their animal at the end of its life will not be able to send the animal for human

consumption. However, the regulations have no direct impact on the matter.

The Convener: What is the difference between options I and II, which are set out in the regulatory impact assessment? According to the RIA, option II

"would not meet the legal requirements",

whereas option I would do so. Why was option II considered, if it could not satisfy the requirements of EU legislation? Given that option I met the requirements fully, option II did not do so and option III did not attempt to meet them at all, did the Executive have much choice about what to do?

Lewis Macdonald: There were clear, practical advantages to option I, which was for complete implementation in the way for which the regulations provide. The approach removes doubt, which is important. It is important to understand that a consequence of introducing the regime is that we can protect the ability of veterinary surgeons to administer medicines and the ability of horse owners to obtain medicines for their beasts. The regime is comprehensive and effective and allows a record to be kept of the veterinary medicines that are administered to all horses in Scotland, the United Kingdom and the EU. The advantage of that is that we need not worry that horses in which there are illegal residues of medicine will enter the human food chain at any point, which secures the future safety of the administration of veterinary medicines.

If we had gone for option II, in essence we would have said that horses that are bred for human consumption should be issued with a passport—that is the key difference between options I and II—but given that no horses are bred for human consumption in Scotland and many other parts of the EU, that approach would have been too narrow. The purpose of the exercise was to exclude from the human food chain all horses that contained illegal residues, and the comprehensive approach that we took provided the best way of doing that.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I seek clarification of regulation 17, on restrictions on the movement of horses without passports. I represent the area in which the Lauder and Selkirk common ridings are held, which I think are the two largest equine events in Europe. Regulation 17(a) provides that a horse that is not accompanied by its passport will not be able to be moved

"for the purposes of competition".

Are common ridings or the free racing that is associated with the ride-outs at common ridings excluded from the provision?

Lewis Macdonald: That is a good question, on which I look to Mary Bradley for an answer.

Mary Bradley (Scottish Executive Environment and Rural Affairs Department): A common riding is a competition of sorts, at which an animal might become injured and be given medicines or be destroyed at the place of injury and their carcase taken away to be disposed of. In such circumstances, the options would be for the vet to administer the appropriate veterinary medicines or for the animal to be taken to the slaughterhouse if it is intended for human consumption. Therefore, we expect such animals to be accompanied by their horse passports.

Jeremy Purvis: May I pursue the implications of that? You will be aware of the way in which common ridings operate. The gatherings take place at various times of the week and can involve up to 600 riders. There will be a considerable bureaucratic burden on the licensing authority with regard to checking, and there could be movement of horses without passports, given that the majority of riders do not own the horses that they ride.

Lewis Macdonald: In practical terms, we expect it to be in the interests of all horse owners to have a passport for their beast whenever it is moved away from its original farm or stable. That applies to common ridings just as it applies to other reasons for taking horses off the premises. What you say is right, but the purpose of the regulations is to ensure that all horses are covered whenever they are in a situation in which they might end up requiring veterinary treatment, being sold or being destroyed as a result of an accident. Our intention is not that local authorities should overspecify or be overbureaucratic in their enforcement but that horse owners should take responsibility and ensure that their horse has a passport whenever they take it off their premises.

Jeremy Purvis: Regulations that state that common ridings would be viewed as a competition will cause alarm. A secondary issue is the fact that most riders do not own the horses that they ride. Will there be a duty on people who rent a horse—either for one event or for a week—to be in possession of its passport if it is taken on to the new keeper's land or on to common land?

Lewis Macdonald: It is important to understand that once a passport has been issued to an animal, that is all that it needs. It is a lifetime document. If the owner of a horse has obtained a passport for the animal, that passport is valid and would be expected to be available for inspection regardless of whether the owner or another person is the keeper of the horse at any given time.

Jeremy Purvis: For clarification, the implication is that there will need to be considerable

communication at large events such as common ridings. Regulation 17 states that

"no person shall move a horse ... for the purposes of competition ... unless the horse is accompanied by its passport."

Anyone who rents a horse will have to be in possession of the passport for the duration of the rental period.

Lewis Macdonald: The horse owner should make sure that the passport is available whenever they lend the horse to another person. Clearly, if a horse is normally stabled at one premises but is at another premises for a weekend and is not engaged in the activities that we have described, we would not expect any requirement for enforcement. However, when the horse is away from the farm or premises, the owner should ensure that it is accompanied by its passport.

Jeremy Purvis: The regulations will inevitably put greater burdens on some local authorities than on others, especially as the Borders, Dumfries and Galloway, South Lanarkshire and East Lothian have ride-outs. I presume that the Scottish Executive will consider financial support for areas that have such events, including, for example, equine events that are the largest in Europe.

Lewis Macdonald: If difficult issues arise around enforcement, we would need to look at them, but I expect that the vast majority of horse owners will take a responsible approach and that there will not be a major challenge in enforcement.

The Convener: I have a question about the definition of a keeper. Is somebody who borrows a horse and temporarily looks after it on behalf of the owner regarded as its keeper? I am driving at the point that Jeremy Purvis asked about. I presume that, whenever a horse is moved off its original owner's land, it needs a passport. Is that interpretation correct?

Lewis Macdonald: Yes. In line with Jeremy Purvis's questions, when AN Other uses a horse for the purpose of a show, racing or common riding, they will be regarded as the horse's keeper and will be asked for a passport if that needs to be asked for.

The Convener: That has inspired a series of questions.

Alex Johnstone (North East Scotland) (Con): When a horse is stabled at a place that makes its money from stabling other people's horses, who is responsible for keeping the passport—the owner of the stable or of the horse?

Lewis Macdonald: Responsibility for the passport lies with the horse's owner, but the circumstances may differ when a horse is stabled regularly elsewhere.

Mary Bradley: The owner would probably want the passport to stay with the keeper for inspection if that was required.

Lewis Macdonald: The responsibility would remain with the owner.

Alex Johnstone: In essence, the passport accompanies the horse.

Lewis Macdonald: It is sensible to keep the passport where the horse is. The passport will interest an enforcement officer only when an animal receives medical treatment or is put down.

Mr Monteith: Can we be more definite than saying “probably”?

Lewis Macdonald: Which “probably” was indefinite?

Mr Monteith: It was said that the passport would probably stay with the stable owner. Will it stay there?

Lewis Macdonald: The passport should be with the stable owner—probably because we expect stable owners to be responsible and to abide by the rules.

Mr Monteith: I was asking not about that use of the word “probably” but about the previous use. However, that is fine.

Maureen Macmillan: Regulation 18 refers to the situation in which

“a veterinary medicinal product is administered to a horse in relation to which a passport has not yet been obtained or is not available”.

Do you envisage that such situations might arise? In such cases, the owner or keeper will have to enter the information on a passport as soon as possible and sign a declaration that the horse is not intended for human consumption if the medicine would make that impossible. What prevents an owner or keeper from not complying with that? The owner or keeper is told to put the information on the passport, but the passport is unavailable. The owner or keeper may sign the declaration even when a horse is for human consumption and not do their duty afterwards. How do you check that?

Lewis Macdonald: That is another enforcement issue, for which responsibility lies with enforcement officers. A passport-issuing organisation will exist.

You asked in what circumstances veterinary medicine might be administered when a passport did not exist. That would happen when a horse that required treatment—probably in an emergency—had not been moved off its owner's premises or had not otherwise required a passport. Medical treatment would not be delayed for a passport to be obtained, but the requirement

to have a passport because veterinary medicine had been administered would be recognised. Having a passport is an obligation, so it has the same status as other obligations on the owner. Regulation 19 lists duties on owners, which apply in those circumstances as in others.

Mr Monteith: To avoid doubt, rather than clarifying which equines should have a passport, will you say which will not need a passport?

Lewis Macdonald: The short answer is hardly any. If an animal has moved off its original premises, it will require a passport.

Mr Monteith: I suspected that that would be your answer. I asked the question because it is still possible that an equine might receive veterinary medicine on the premises, without being moved off, and therefore not have a passport.

Lewis Macdonald: That is possible and relates to Maureen Macmillan's question about regulation 18. Whenever an animal is to receive veterinary medicine, it should have a passport. In some emergencies, a horse will require treatment before a passport has been obtained. Maureen Macmillan asked what follows from that. One trigger for requiring a horse passport is movement, but others are sale and the administration of veterinary medicine.

11:00

The Convener: I do not see anyone else bursting with questions, so we will move to the formal debate. I invite Brian Monteith to speak to and move motion S2M-2781.

Mr Monteith: I lodged the motion that is before the committee because I believe that we can meet our obligations without these compulsory passports. As committee members' questions have shown, the passports will clearly pervade the ownership of horses.

I have no particular objection to the existing passport system. The minister spoke of a public health measure to deal with the reasonable concern that veterinary medicines administered to horses and other equines could pass into the food chain. I am sure that members know that pigs, chickens, turkeys, sheep, lambs and ducks do not have passports, even though they can have various medicines administered to them and can pass into the food chain. Members will also know that there are passports for cattle, but they may not know that those passports contain no record of the drugs that may have been administered to the cattle. Therefore, for cattle—an obvious part of the food chain—there is no control equivalent to that which is proposed for horses.

If the cattle passport is to be considered as an example of how the horse passport might be

administered, we should also consider this: according to the Public Accounts Committee at Westminster, one in five cattle is officially missing. That is 1.2 million cattle, and the committee described the situation as “chaos”.

The Westminster Government previously had a different proposal for horse passports. By the admission of the Department for Environment, Food and Rural Affairs, the present proposal will cost £17.5 million a year to administer; the previous proposal, which did not go as far as the regulations that we are now considering, would have cost only £300,000 a year. It would have required passports only for horses that were to be slaughtered for human consumption. That proposal could have met with unanimous support.

Some groups and organisations that are involved with horses have welcomed the move towards horse passports, but members should bear in mind that those people have a financial incentive in the administering of the passports. Therefore, the objectivity of their support is lost.

In their questions to the minister, committee members elicited some answers that led to even more questions. Any Government of any colour that proposed these regulations would be gold plating a European Union decision—and it is a decision, not a directive. There is no need for gold plating. It will lead to significant costs and disruption. It goes too far and it could be avoided by introducing less demanding regulations. I ask members to support my motion.

I move,

That the Environment and Rural Development Committee recommends that nothing further be done under the Horse Passports (Scotland) Regulations 2005 (SSI 2005/223).

The Convener: The clerk has asked me to ask everyone to check their mobiles. A strange noise has been coming through the sound system and somebody's mobile might be affecting it.

I invite the minister to respond to Mr Monteith's motion.

Lewis Macdonald: As I have said, it is important to recognise that the regulations are being introduced as a public health measure and will provide a degree of certainty for all those involved with horses, such as owners and those who use or keep horses.

It is also important to acknowledge that the situation in relation to horses is different from the situation in relation to some of the other animals to which Brian Monteith referred. Many of those other animals are kept primarily as food-producing animals and so certain requirements are in place for them that are not in place for horses. In the United Kingdom, horses are not normally food-

producing animals and most medicines that have been authorised for use on them here have not been through the necessary tests to show that they are safe to be used on food-producing animals. Around three quarters of veterinary medicines that are used in the United Kingdom carry a warning that they should not be administered to a horse that is intended for human consumption. The purpose of the regulations is to provide a degree of safety and the guarantee that passports can provide that animals have not been administered those veterinary medicines. That is the reason for going down this road.

The suggestion has been made that horse societies and associations that are responsible for maintaining records of horse pedigrees and so on have a financial incentive to support the scheme, but that is not why they support it. The costs that they will charge a horse owner are intended simply to cover their costs and are not intended to do anything else.

It is worth noting that the cost of a horse passport for an animal's entire lifetime in most cases will be in the order of £25. That compares with the typical cost of keeping a horse for a year of £2,500—indeed, costs are considerably more than that in some cases. The £25 cost of obtaining a passport for an animal's lifetime—plus perhaps the £40 cost of vet fees—is infinitesimally small compared with the overall cost of keeping a horse. The benefits that the horse owner and the horse-owning community at large will obtain and the benefits to public health in countries in which horsemeat is eaten will far outweigh the costs that are associated with the scheme.

Mr Ruskell: I support the regulations and understand that they are an attempt to stop veterinary medicines that are not cleared for consumption getting into the food chain. The chain may be predominantly French rather than Scottish, but the protection of consumers is the issue. The argument has been made that the regulations will not be particularly onerous on horse owners or horse keepers. Therefore, I support them and will vote against Mr Monteith's motion.

Jeremy Purvis: I support the regulations, understand the benefits that will accrue and recognise that horse owners are responsible. Horse owners care not only for their animals and their communities, but for public health. In my constituency, the common riding season is approaching and I do not want there to be unnecessary burdens on the local authority or on responsible owners and users of horses at those historic and culturally extremely important events for Scotland. I see the minister nodding and appreciate that that is certainly not the Scottish Executive's intention. With that caveat, I support the regulations.

Alex Johnstone: On what Mark Ruskell in particular said, I, too, realise that the purpose of the regulations is to ensure that veterinary medicines that render horses unsuitable for human consumption when they are administered should not enter the human food chain. However, as Brian Monteith said, the Government has considered alternative routes that would have much the same effect but would cost less and would have less impact on people who traditionally use horses for a range of purposes but do not intend them to go into the human food chain. There is a viable alternative, so I support the motion.

The Convener: As no other members have comments, Brian Monteith may now make a brief summation.

Mr Monteith: A great deal has already been said. There is certainly an issue of public health, but, yet again, heavy-handed regulations are being introduced to deal with it. Further, decisions are being taken about whether to put VAT on top of the horse passports. The instrument is an example of overregulation and overtaxation. The measure is incremental and there is no necessity for it, given that the Government had less invasive alternatives. Therefore, I press the motion.

The Convener: The question is, that motion S2M-2781, in the name of Brian Monteith, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Johnstone, Alex (North East Scotland) (Con)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Gibson, Rob (Highlands and Islands) (SNP)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Purvis, Jeremy (Tweddale, Ettrick and Lauderdale)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Motion disagreed to.

The Convener: Therefore, the committee is content with the regulations and will make no recommendation to the Parliament. We will record the result of the division in the committee's report to the Parliament on the regulations.

There has been much discussion of what the regulations will mean in practice, and it has been useful to draw out the issues. The real challenge for the minister is to make all horse owners aware of his interpretation of the regulations so that people can follow them properly.

Lewis Macdonald: Members may be interested to know that one of Mr Monteith's colleagues has lodged a parliamentary question, which will allow me to say a little more tomorrow about how we intend to advertise the impact of the regulations.

The Convener: I thank Brian Monteith, the minister and his officials. I suspend the meeting briefly to allow them to leave.

11:12

Meeting suspended.

11:13

On resuming—

Land Management Contracts (Menu Scheme) (Scotland) Regulations 2005 (SSI 2005/225)

The Convener: The Land Management Contracts (Menu Scheme) (Scotland) Regulations 2005, which are subject to the negative procedure, relate to policy issues of which the committee has been aware for some time and to work that we did on the reform of the common agricultural policy. The Subordinate Legislation Committee has considered the regulations and drawn our attention to several points. Members have an extract from the Subordinate Legislation Committee's 19th report of 2005. Paper ERD/S2/05/14/3c is a response that we have received from the Minister for Environment and Rural Development to questions about the regulations that we raised at last week's meeting.

Do members have any questions or comments on the regulations?

Alex Johnstone: I will follow up briefly on the comments that I made last week. My interpretation of paragraph 1 of the minister's response—although others may interpret it differently—is that while, as the minister makes clear, the regulations relate to schemes that will run for up to five years beyond the current year, there is an opportunity to fine tune the regulations. I have been contacted by farmers who believe that certain aspects of the regulations require fine tuning. Given my interpretation of paragraph 1 of the minister's letter, I am content with the regulations. When the scheme is up and running, I will take up any issues that are raised with me directly with the minister, in writing, and will ask him to consider any changes that are requested. In general, I would have liked a more extensive and better-funded arrangement, but that is a policy issue that can be taken up at a later date. Therefore, I believe that we should simply note the regulations.

The Convener: The paragraph to which Alex Johnstone referred in the minister's letter also

states:

"The research should also identify potential improvements to the measures and the scheme design."

I hope that those who deal with the scheme will have the opportunity to suggest amendments that the minister can consider.

The minister's letter is helpful, so I am glad that last week's meeting allowed colleagues to raise issues such as organics and what tier 3 implementation will mean in practice. With those words, I hope that we can agree to the regulations. Are members content to make no recommendation on the regulations to the Parliament?

Members indicated agreement.

The Convener: We now have a 15-minute gap because the minister has to attend a Cabinet meeting and cannot be with us until half past 11. That is slightly longer than our usual gap, but I suspend the meeting until then. Members may go away and use the time for other business, as long as they are back here for 11.30.

11:16

Meeting suspended.

11:32

On resuming—

Farm Business Development (Scotland) Variation Scheme 2005 (SSI 2005/219)

The Convener: Item 4 on the agenda is also subordinate legislation. We have one affirmative instrument to consider. I welcome Ross Finnie, the Minister for Environment and Rural Development, and his officials.

Parliament must approve the instrument before it can come into force. A motion in the name of the minister invites the committee to recommend to the Parliament that the instrument be approved. The Subordinate Legislation Committee was consulted and has made no comments on the instrument, which is worthy of record.

Before we have a debate on the motion, we have the opportunity to clarify any purely technical matters or to allow the minister and his officials to clarify any points of detail. We cannot do that once we go on to the formal debate.

I ask the minister to introduce his officials and to make opening remarks on the instrument.

The Minister for Environment and Rural Development (Ross Finnie): Good morning. Thank you, convener. I am joined this morning by Russell Hunter, from the solicitors division and by Henry Snedden, who has more to do with the day-to-day implementation of the grant scheme.

The farm business development scheme is, as members will be well aware, a capital grant scheme that is funded by the Scottish Executive budget. Its legal basis is SSI 2001/259 and it operates within the ambit of the EU rural development regulation, Council regulation EC 1257/1999.

The changes that I propose will be introduced with effect from 1 June, subject to the committee's approval. They comply fully with articles 4 to 7 of the rural development regulation, which cover support for investment in agricultural holdings.

When the scheme was designed, it was agreed that the priority for the farming community was to generate additional income for farming families. For that reason, until now, the scheme has focused exclusively on promoting and supporting diversification. However, from the outset we agreed with our partners that the list of eligible measures would be reviewed throughout the lifetime of the scheme. We have done that and, following the latest review, I plan to extend the range of eligible measures that are supported by the farm business development scheme.

In the light of the recent common agricultural policy reforms, and following detailed consultation with partner and stakeholder organisations, I believe that the time is now right for coverage of the scheme to be extended to provide support to eligible farmers who plan to restructure or reorient their agriculture business. The new measures will enable farmers to invest in capital projects such as new or improved waste management facilities, livestock accommodation, infrastructure and technology. In parallel, the farm business development variation scheme will continue to promote and support farming families that want to diversify. The new measures are additional to and not instead of diversification measures; they support such measures. The higher grant ceiling of £30,000 will apply to diversification measures as well as to the new measures. The changes will offer farmers in lowland Scotland similar opportunities to those that are available in the counterpart agricultural business development scheme in the Highlands and Islands area.

In summary, the scheme will include variable rates of grant support for specific capital investment measures related to the restructuring or reorientation of an agriculture business; an increase in the grant ceiling from £25,000 to £30,000 for single applications and £35,000 for collaborative ventures; and the provision of limited financial assistance of up to a maximum of £400 towards the cost of the preparation of a business plan.

The FBDVS budget of £26.9 million will be spread over this and the next two financial years. The sum will cover both investment in holdings

and diversification measures. However, I emphasise that the scheme is cash limited and competitive, which means that not every applicant who applies for FBDVS grant will be successful.

I hope that my statement summarises the position and will enable the committee to support approval of the instrument.

The Convener: Thank you, minister. I open up the floor to questions and points of clarification from colleagues.

Mr Ruskell: In the list of consultees, the minister has not included the Scottish Agricultural Organisation Society. Why is that, given that the scheme very much relates to collaborative ventures?

Ross Finnie: The Scottish Agricultural Organisation Society, to which we provide considerable funding, is very much in the business of helping farmers to develop their business plans. The organisation seeks opportunities to give assistance on an individual basis, for which there is a charge. Perhaps the SAOS should have had some say on the provision, level and extension of grants for diversification at an earlier stage, but it was aware of the SSI. I appreciate that the SAOS perhaps should have been consulted formally, but we talk to its chief executive and its officers regularly, and they were well aware of what we were doing. We have not had any comments from them on the operation of the scheme.

The Convener: If there are no other questions, we move to the debate on the motion.

Motion moved,

That the Environment and Rural Development Committee recommends that the Farm Business Development (Scotland) Variation Scheme 2005 (SSI 2005/219) be approved.—[*Ross Finnie.*]

The Convener: Would any other colleagues like to speak on the motion?

Members: No.

The Convener: We do not need a summing-up speech. I think that the minister can take the lack of comments as assent, but I will test that by putting the question.

Motion agreed to.

The Convener: We will report that decision to the Parliament. I thank the minister for bringing the SSI before us this morning.

Environmental Assessment (Scotland) Bill: Stage 1

11:39

The Convener: We move on swiftly to our next agenda item—I see the Minister for Communities is arriving quietly at the back. This is our last evidence-taking session at stage 1 of the Environmental Assessment (Scotland) Bill. I again welcome Ross Finnie, the Minister for Environment and Rural Development, and Malcolm Chisholm, the Minister for Communities. You have brought various officials with you, whose name plates are being set out. The officials have very big files, so they must be the bill team. I invite the ministers to introduce their officials and to give us brief opening statements.

Ross Finnie: I am accompanied by Elspeth MacDonald from the solicitors division and Jon Rathjen, who is the bill team leader.

The Minister for Communities (Malcolm Chisholm): I am accompanied by Cara Davidson and Michael Lowndes from the planning division.

Ross Finnie: Malcolm Chisholm and I are pleased to be present at the committee's final evidence-taking session at stage 1 of the Environmental Assessment (Scotland) Bill. From reading the *Official Reports* of all the committee's evidence sessions so far, I am struck by the broad and—if I might say so without any sense of bias—at times almost fervent support for the bill's principles that has been enunciated by some witnesses. I believe that that is largely because there is widespread agreement that the bill will enhance protection of Scotland's environment, encourage public participation—which I regard as being very important—and make a substantial contribution to plan making and policy making.

There has been support for the Executive's having widened the scope of what was envisioned in the original European directive and for our strategic environmental assessment gateway, the templates and our pathfinder exercises, which have been developed in collaboration with the Convention of Scottish Local Authorities. All are designed to ensure that, if the bill is passed, it will result in satisfactory implementation and an effective and efficient regime.

I will address a few of the issues that were raised in evidence, because it might be helpful to members to hear our reflections on them. Concerns were expressed about the bill's potential for increasing bureaucracy. We are clear that the bill's provisions are designed to keep bureaucracy to a minimum. We believe that, by having pre-screening and screening, we will ensure that SEAs

will be targeted only at plans that could have significant environmental effects. Advice will be provided not only by consultation authorities, but by the gateway and through guidance.

The fact that we are building on existing good practice in the current regulatory regime means that the bill's provisions do not constitute entirely new burdens. In a sense, the introduction of SEA has been measured, in that the bill has been preceded by the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004, which implemented the European directive last July. There are opportunities for SEA to offer savings because up-front identification of environmental problems will allow for earlier and less expensive preventive or remedial action.

I turn to issues that arise from pre-screening. I note the view that pre-screening might not be sufficiently transparent because there will be no public notification of cases that are screened out. The point of pre-screening is to reduce bureaucracy by empowering responsible authorities to screen out of the SEA process plans that have no, or minimal, environmental effect. I must stress that pre-screening is a limited provision—it applies only to additional plans to which section 5(4) relates which have no, or minimal, environmental effect, so it is not a get-out-of-SEA-free card, as some people have suggested. However, in the light of what was said in evidence, I will be glad to give further consideration to the operational aspects of pre-screening, including notification and registration of cases.

The committee's witnesses expressed views on quality control and enforcement. I consider that the bill, along with administrative initiatives such as the gateway, the guidance and the templates, provides a robust framework for compliance and consistent high quality. The bill has a sharp set of enforcement teeth. The Scottish ministers can call for sight of any plan to direct that an SEA must be performed. In addition, no qualifying plan may be adopted unless it complies with the bill.

11:45

Some witnesses offered views on the need for case evaluation of strategic environmental assessment. That will be achieved by the pathfinder project that we are currently undertaking with the Convention of Scottish Local Authorities. My officials are working actively with COSLA to agree the project plan and I expect the project to begin this summer, which means that it will be dealing with actual cases—not theoretical cases—that come within the ambit of the statute and will provide ample evidence to test the process. That project will begin in the summer, so we will be able to get results from it soon.

Regarding civil emergencies, national defence, financial and budgetary plans, I stress that the bill does not exempt the Ministry of Defence per se but exempts some types of plans for which the MOD might be responsible. Indeed, for reasons of safety and national security, the bill will not apply to national defence or to civil emergency plans that any authority develops.

The bill will also not apply to financial plans. That exemption is for sound practical reasons, as there would be no practical or meaningful outcome from a strategic environmental assessment that examined the top line of a budget figure. Rather, we want to examine plans that have an impact on the ground. Proposed strategic actions that arise from financial plans could give rise to significant environmental effects; therefore, strategic environmental assessment is more meaningful at that point.

As has been discussed in the committee's meetings, the bill excludes plans that relate to individual schools because the bill is targeted at strategic level. I am satisfied that plans that relate to individual schools do not constitute strategic matters but would be addressed by individual plans, which are under the control of planning legislation.

As has been pointed out, the bill does not provide for an independent strategic body. My view, which the majority of consultation respondents supported, is that the strategic environmental gateway offers by far the most cost-effective option for advice provision, quality support, liaison with consultation authorities and information management systems. Therefore, I consider the gateway to be a more than adequate method of supporting strategic environmental assessment.

Although some details of the bill will benefit from further consideration, the value, validity and good sense of the underpinning principles have been widely endorsed. The bill aims to protect the environment and improve public decision making with the absolute minimum of bureaucracy. The effect is to ensure that the environment is better protected and that Scotland will take the lead in embracing the principles of strategic environmental assessment more broadly. I am determined that Scotland should not repeat many of the environmental mistakes of the past, and I believe that the Environmental Assessment (Scotland) Bill is a good way of ensuring that.

I am happy to respond to questions, but Malcolm Chisholm might wish to say a few words first.

The Convener: Thank you. I invite Malcolm Chisholm to give the planning perspective.

Malcolm Chisholm: Like Ross Finnie, I enjoyed reading the evidence and noted the degree of

consensus on the principles of the bill. I share enthusiastically in that consensus generally and with particular reference to the planning system, which is what you wish me to discuss.

As members know, a white paper on planning reforms will be published soon. We have been open about the fact that we want to enhance the role of development plans and the national planning framework, so I will talk about those two in my opening remarks, because both will be subject to strategic environmental assessment. As Ross Finnie said, that will allow us to avoid the mistakes of the past and it will enhance the role of planning as a key part of environmental protection.

All levels of plan—local, city-region, which is what we propose for the future, and national—will require a strategic environmental assessment. The key stage, about which the committee knows but which is worth repeating briefly, is the publication of an environmental report alongside a consultative draft plan as the basis for public consultation. I regard public consultation as being a particularly important part of the wider planning agenda of improving public involvement. Alternative options must be assessed and a statement must be made about how environmental considerations have been taken into account, which is crucial.

The requirements will also apply to future versions of the national planning framework. Therefore, SEA will play an important part in the preparation of the second national planning framework by ensuring that environmental considerations are taken into account at the highest level in the planning system. The precise details of the process are yet to be finalised, but all the key stages in the SEA process, which I mentioned, will be involved. The method will build and draw on the experience of environmental appraisal that was gained during preparation of the first national planning framework, which of course happened prior to the introduction of the SEA regulations. The SEA process that will be adopted for the second national planning framework will be tailored specifically to the national spatial scale; it will address key strategic spatial choices and it will involve, again, full public consultation. NPF 2 will draw on and pull together other strategic policy statements and documents, for example national strategies on transport or waste, which will themselves be subject to the requirements of the bill. SEAs that have already been prepared for such strategies will contain a considerable amount of material on which the NPF assessment will be able to draw.

I acknowledge that a principal concern of the committee is to assess the effect of extending the SEA regime through the bill. First, we should acknowledge that consideration by planners of the

likely environmental consequences of their development plans is not an entirely new concept. Such consideration was the normal practice in the planning system prior to implementation of the SEA directive. SEA formalised the process and gave it a clear structure by introducing into the planning system new requirements to undertake environmental assessment systematically and transparently. The introduction of the SEA regulations in July 2004 put planning authorities at the forefront of development of the techniques and methods that are required. Prior to July 2004, planning authorities could take highly varying approaches to assessing the environmental impact of development plan policies. The regulations introduced a common basis for such work.

Planning authorities are already applying the requirements of the regulations. Furthermore, more than half the SEA cases that are in progress concern development plans. The planning system is therefore something of a pioneer in Scotland in the implementation of SEA. To assist authorities, we issued guidance that relates specifically to the application of SEA to development plans. We do not therefore expect enactment of the bill to add significantly to the existing SEA requirements that apply to planning authorities.

I entirely welcome the new requirements that the SEA regime introduces. The requirements to carry out environmental assessment systematically and to engage in early and effective public consultation accord closely with the principles that underpin our proposals for modernisation and reform of the planning system.

The Convener: Thank you. Your opening remarks were helpful in setting the context and it is good to know that you have been reading the reports of our evidence sessions. I particularly welcome the hint that the Executive's position on pre-screening is moving—we will follow that up and reflect on the matter.

Mr Ruskell: How do the ministers envisage the SEA process applying to decisions on whether to go ahead with new nuclear power stations in the UK or Scotland?

The Convener: Which minister wants the first stab at that question? There is nothing like a closed question, is there?

Ross Finnie: We should be clear about the fact that there is no proposal in the bill to repeal the provisions of the Electricity Act 1989 and I am not aware that my colleagues are contemplating any such proposal. Nuclear development will therefore continue to require planning permission, which means that it will come within the mischief of the bill. A strategic view can be taken, but plans would

still have to be adopted locally. The answer is simple; the bill's provisions will apply.

Malcolm Chisholm: I repeat what I said at question time last week about the planning aspects. There are no proposals in anything that we are considering in relation to planning reform to change the arrangements that exist at present for approval of nuclear power stations. We need to get that off the park, because it has been banded about for the past month or so and it is an absolute fabrication that is based on absolutely no evidence. There are many issues to discuss in relation to planning reform, but nuclear power stations are not affected by anything that we are doing on planning reform.

Mr Ruskell: There are clearly difficult decisions that must be taken on nuclear power, and decisions will have to be taken at some level. My question is this: will SEA apply to such decisions? Will the decision on the balance of different types of technologies that we need to produce our electricity be subject to SEA at that strategic level?

Ross Finnie: There were two questions there. The phrase "strategic environmental assessment" is one that will now have two slightly different meanings. One will be governed by legislation that is the subject of the Westminster Government—the instrument that that Government passed to bring into effect the European directive on strategic environmental assessment. That is in place, and the decision to which Mr Ruskell alluded on the balance of electricity generation is a reserved matter. The decision on developing energy policy—the nature and determination of the balance of the energy need and therefore the nature and the recommendation of that energy policy—is a reserved matter. However, whether it is reserved or not, you still have in place in the Westminster Parliament a statutory instrument that brings into effect the European directive on strategic environmental assessment.

Mr Ruskell: Will that apply to the decision on whether to go for nuclear generation or some other mix of generation? That decision will clearly have an impact on Scotland. Will the UK legislation apply to that decision?

Ross Finnie: It would be improper for me as a minister in the Scottish Executive to pronounce on that with absolutely clarity. I am quite clear that that legislation is in force and I am quite clear that, in determining the mix, which is reserved, ministers will have to bear in mind the considerations that you raise. The legislation will apply at two levels: I agree that it will apply at the level at which strategic decisions are taken, but even if a view is reached at that level, pronouncements on any particular project will fall within the mischief of both the Scottish planning system and the bill.

Mr Ruskell: So the decision at UK level will be subject to SEA.

Elsbeth MacDonald (Scottish Executive Legal and Parliamentary Services): It is not for us to presume on that matter, as the minister said, but I can confirm that there are UK-wide regulations that apply also to plans for England, Wales and Northern Ireland. We cannot prejudge assessment of the situation and it would be improper for us to do so, but legislation that is equivalent to our existing legislation is in place in the rest of the UK.

Mr Ruskell: I am just trying to get some clarity on the matter, because it is pretty important to understand where the bill stops and starts. The decision on different types of energy generation will clearly have an impact on Scotland, so it is important to understand at what level that decision will be made.

Ross Finnie: I think that we are aware of the level at which it takes place. It would be disingenuous not to acknowledge that the determination of energy policy is a reserved matter. The matters over which we have powers in Scotland are matters such as the promotion of alternative energy. The Scotland Act 1998 does not give us responsibility or powers over the determination of energy policy per se, so that is a reserved matter. If the question is how the reserved matter will be determined, the answer is that it will be determined by the Westminster Parliament. I can add only that the Westminster Parliament has passed the statutory instrument that brings into effect the European directive on strategic environmental assessment. As you are aware, the Environmental Assessment (Scotland) Bill goes beyond that and will apply only to matters that are within the purview of the Scottish Executive.

12:00

The Convener: Before I take an avalanche of questions on this issue, I ask you to reflect on whether you want to give us that information—on the limits of our bill and of the UK legislation—in writing. It is important for us to work out how widely the bill will have effect and there are clearly requirements on you, as the Minister for Environment and Rural Development, as to how the bill will actually kick in. I do not want the committee to spend all morning discussing the boundaries of the legislation.

Ross Finnie: I am happy to put that information in writing. I am quite clear about the distinction that I have drawn. Determining the shape of policy is a reserved matter for the Westminster Government. Will there be consideration of strategic environmental assessment? It is for the

Westminster Government to apply the provisions—

The Convener: May I interrupt you, minister? I do not want to spend all morning discussing this because your helpful clarification—

Ross Finnie: Okay. Well, neither do I, but I do not want there to be an impression that we are unclear about the matter.

The Convener: Yes, but equally I can sense the rest of the committee wanting to come back and explore the issue in more depth.

Ross Finnie: Okay. I am happy to produce that information in writing.

Richard Lochhead (North East Scotland) (SNP): It is a major issue.

The Convener: I am not disputing that it is a major issue. I am disputing whether we should spend the whole morning debating the limits of the legislation. If we can get straightforward evidence in writing from the minister, we can look at it before we return to the matter next week.

Mr Morrison: May I make a helpful suggestion in relation to the points that were raised by Mark Ruskell? First, I suggest that he writes to his local member of Parliament, who sits at Westminster. Secondly, I suggest that he writes to the UK Minister for Energy, Mr Malcolm Wicks MP. I understand what both ministers have said and, frankly, I do not see that there is a need for anything to be put in writing. What has been articulated here is perfectly clear from my perspective.

The Convener: The next person on my list is Alex Johnstone.

Alex Johnstone: Successive Governments have been accused of gold plating European directives—indeed, I have accused Ross Finnie of doing so many times. In his opening remarks, he referred to “widening the scope” of the directive. Is the minister confident that that is not simply gold plating? Further to that, will the minister comment on whether he believes that the bill will put further financial and administrative burdens in the way of achieving the aims that he has often set out to the committee? I give the specific example of the programmes that Scottish Water is conducting. Are the terms of the bill proofed against adding cost, administrative burden and delay to such programmes?

Ross Finnie: In answer to the first part of that question, I hope that members are well aware that the provisions of the European directive call for plans to come within the mischief of strategic environmental assessment only if they stem from a regulatory requirement. The Executive’s view is that there is no logic to that. A major plan or

proposal may emanate from any source. What is the difference between a plan that comes from a regulatory requirement and a plan that comes from a policy requirement of a Government that is concerned about the environment? I see no logic in such a distinction, and it is to remove that illogical approach that we are widening the provision. That is why the bill says that plans do not have to emanate from a regulatory requirement to be subject to it; it applies to all public policies that are developed by all public agencies. That gives us a logical framework and not a situation in which a plan arising from a regulatory requirement comes within the mischief of the bill but any major policy that is developed by Government falls outwith it. That illogical situation is why we introduced the bill.

On the question about cost, I am bound to say that I note the language that Alex Johnstone uses, in which anything that seems to be of an environmental nature is just a burden. That approach is wholly wrong; we can all think of example after example of attempts to remedy major environmental damage long after it has happened. When we embark on major plans that are of strategic significance, our first thought when we put pen to paper should be, “What, if any, will be the strategic environmental impact of the policy that we are about to develop?” That is the mindset that we must create. Once we have that, we will remove great burdens of cost and inefficiency that are inherent in our policy development process.

Alex Johnstone: The Scottish Water programme is obviously designed to achieve aims that we have discussed many times. A further layer of administration, bureaucracy and regulation might slow that process. Is a balance sought?

Ross Finnie: As Scottish Water starts more often than not from the policy aim of delivering an environmental benefit and not causing a problem, it will be much better able to meet the pre-screening and screening tests. It will also be much better placed for an environmental assessment, if required, because a heavy environmental burden is placed on those who develop the policy by the legislation that governs and regulates Scottish Water.

Rob Gibson (Highlands and Islands) (SNP): I understand that some aspects of plans and programmes that relate solely to national defence and civil emergencies and financial and budgetary plans and programmes will be excluded from the bill’s scope. I am interested in the idea of high-level resource allocation as a starting point. When the Government decides on an allocation, it suggests that a policy is about to be applied. How does the Government machine take that allocation decision to the point at which we find out when strategic environmental assessment will kick in?

Ross Finnie: Are you talking solely about national defence issues?

Rob Gibson: No.

Ross Finnie: Are you talking about all financial plans?

Rob Gibson: Many matters are excluded, but we are talking about your powers over cash decisions in the Scottish budget—about items for which you as a minister have full responsibility.

Ross Finnie: That applies not just to me.

Rob Gibson: The question applies to both ministers.

Ross Finnie: The whole Executive is involved, because of collective responsibility. If a matter is described purely in budgetary terms, it does not fall within the mischief of the bill. If a financial allocation is first expressed purely as a reserve—an allocation of funding—nothing kicks in. The minute that preparation and proposal start of a plan that will use that resource and will have a strategic environmental impact, the plan will fall within the mischief of the bill. If a plan is made before finance is allocated, it is caught anyway. However, while a resource is simply a provision of finance for an undeveloped possibility, it is not subject to the bill. As soon as it gives rise to a practical proposition that is being developed as a policy instrument, it falls within the mischief of the bill.

Rob Gibson: If you decide to allocate cash to a plan, in which part of the Executive does the process to apply strategic environmental assessment start?

Ross Finnie: That happens in the part of the Executive that draws up the plan that will use the financial provision for practical implementation.

Rob Gibson: Scottish Enterprise gave evidence that the SEA process should be implemented in the context of the new planning legislation. Will the minister who is responsible for planning comment on how what I have asked about relates to the planning process?

Malcolm Chisholm: You will have to go into more detail, because I thought that I answered your question in my opening statement. How the bill applies to development plans is fairly clear—SEA already applies under the regulations, so the bill will not make an enormous difference to the existing position under the regulations, although there will certainly be more clarity on the need for a full SEA of the national planning framework. That is an important development and we intend it to enhance the status of the framework. The SEA will draw on SEAs that may already have been developed for the constituent parts of the

framework. If I have missed your point you will have to ask your question again.

Rob Gibson: I am trying to take this step by step. Leaks have suggested that some things will be designated as being of national importance. The Executive may therefore decide not to put some bits of the budget through the same process as other more regular bits of the budget. Are there items in the national planning framework that will not follow the process that we are discussing this afternoon?

Malcolm Chisholm: Certainly not. The reason that I so much welcome SEA is that it will be an enhancement. The whole point of SEA is to improve the environmental aspects of plans and to improve public consultation. SEA is therefore completely the opposite of what has been said in the spin that other groups have put on planning issues. The national planning framework will lead to more consultation and more environmental assessment. The status of the framework will be enhanced.

I therefore cannot see anything that would bear the interpretation that you are putting on it. What you are implying about the budgets is not clear to me. I do not follow your line of argument.

Rob Gibson: I wanted to understand the process if you have a budget and decide to spend money on a particular project. However, you have just confirmed that the national planning framework will be subject to SEA and I was very pleased to hear that. It is essential that the public are involved as early as possible. That was the point that I wanted to be clear on.

The Convener: I want to follow up on Rob Gibson's other question on finance. From what the ministers have said, it sounds as if a spending review—which will allocate money for projects and particular budget lines—will be covered by SEA. Is my interpretation right?

Ross Finnie: If all we are doing—and I mean all—is allocating finance and making a financial provision, then that is not covered. Rob Gibson approached the question from the direction of allocating finance; he was concerned about what would happen when there was a simple allocation of finance. However, you could approach the question from the other direction. You could declare that X was a matter of policy and you could start to prepare a plan. In that situation, the first thing that you would be doing would not be sorting out the finance but committing yourself to a policy development. That development might be a Scottish Water plan, or a waste plan, or whatever. If you come at the question from that direction, you are within the mischief of the bill as soon as you start to develop a policy that will have a strategic environmental impact. You may not have made

your financial provision and you may not have a budget line, and that is a matter that you would have to deal with. However, making the financial provision does not, of itself, come within the mischief of the bill. What comes within the mischief of the bill is the development of a policy—by any Government body or department—that could have a strategic environmental impact.

The Convener: So the SEA will have been done before you get to the spending review.

Ross Finnie: In many cases, yes. Rob Gibson envisaged the situation in which we might simply be making a financial provision. In that situation, we would not be within the mischief of the bill. However, as soon as we say that we will use the finance for a particular purpose, we are within the mischief of the bill if that purpose is being developed and will have a strategic environmental impact.

The Convener: Okay. I just wanted to tease that out from both angles.

12:15

Maureen Macmillan: Perhaps we could consider some details of the bill that have confused people who have given us evidence. For example, there seems to be a lack of clarity about the role of the responsible authorities. The main concern was whether private bodies that exercise public functions will be required to carry out SEAs on plans and programmes that qualify under section 5(4) of the bill, which is our gold-plated section. Private bodies are included in section 2(1), so why are they not included in section 5(4)?

Ross Finnie: Elspeth MacDonald will listen carefully to my response. The fundamental distinction is that, where a private company carries out what we might previously have regarded as a regulated public function, that function will come within the mischief of the bill. Any other function that that company takes upon itself to perform will not come under the bill; a similar function carried out by any other private company would not come under the bill either. I will use a utility as an example. If a private company conducts a regulated activity, matters that come under that activity will come within the mischief of the bill. Any other service that the company has developed and provides, and which comes within its private and unregulated activity, will not come within the mischief of the bill, as it would not for every other private company.

Maureen Macmillan: Will clear guidance be given with the bill about that? The public utilities did not seem to be aware of the distinction.

Ross Finnie: Yes.

The Convener: In your introductory comments, you talked about the overwhelming support that

there has been for the bill, but there has also been a lot of nervousness about how it will be introduced and how people will implement it. I want to focus on two related things: the gateway and training. We have received a lot of evidence on the need for flexibility with the gateway and for it to monitor the impact of the application of strategic environmental assessment. Will you say a little more about the long-term need for a gateway? We have debated whether the gateway needs statutory effect in the bill and how it relates to the guidance that will be used to implement the bill, but almost everybody who has appeared before the committee has highlighted its importance and the need to see it as a long-term means of implementing the legislation, although its character may change over time. Will you comment on that?

Ross Finnie: A related issue to improving the understanding of those who must apply the legislation is that it has perhaps taken a little longer than we had hoped to get the pilot projects running—I think that COSLA's evidence mentioned those—but, as I have said, we are much closer to that occurring. I suppose that there is a slight advantage in the delay, in that the exercise will not be theoretical but will deal with applications that have arisen from the introduction of the statutory instrument. There will be general piloting and an attempt to inform people who must apply the legislation this summer; I hope that that will benefit not only me, but everyone, including the committee and potential users and applicants.

With all due respect to Elspeth MacDonald, I am reluctant to have lawyers trying to define the exact nature of the gateway. If it has a dynamic and develops, it seems to me that it would be better to allow that to happen rather than putting it in the straitjacket of a legislative framework. I totally accept that we must change people's thinking and I acknowledge that there is hesitation about how the bill will impact on people, which is why we have been at pains to develop the material that we have.

Members will have seen the guidance on the existing statutory instrument that we prepared jointly with DEFRA and other Administrations. We plan to produce a revised and updated version that will encompass all the provisions in the bill. We will address the issue through a combination of preparing further material, dealing with and informing the people who will have to apply SEA and ensuring that the gateway works. I am reasonably confident on the matter, although I in no way diminish the initial need for us to improve the level of education and understanding. I am confident that, once we have the tools in place, we will have an effective implementation.

The Convener: What role do you envisage for the gateway in training? It is fairly obvious from the

evidence that we have had that expertise exists in the planning community. Are there proposals to learn the lessons from the past year of implementation of SEA through the existing regulations? I have seen the guidance on those regulations—it is pretty extensive, but if I was a mainstream officer in an organisation, I am not sure that it would help me to apply the legislation, unless there was a coherent programme to take me through it. The issue is about changing the culture. Communities Scotland was up front about the need to change the culture and the need for a long-term programme for all staff. Do you have any comments on that?

Ross Finnie: We regard the gateway as embryonic, even in its present state, and we are committed to developing its role and to responding to the lessons that have been learned from the operation of SEA in practice. The Executive is committed to the bill's implementation, because we regard the bill as an extremely important change in the way in which we approach such matters. Therefore, we cannot simply drop the issue after the bill has been passed and say that we have ticked that box; instead, we will have to ensure that the gateway continues to develop.

The guidance is comprehensive, although I accept that, for certain issues or policy development areas, authorities will want the guidance to be amended, developed or produced in various subsets. We envisage that there will be a dynamic, but all that we can claim at present is that we have set down a framework that should enable us to implement the bill. However, we are conscious that, as time moves on, we will have to be alert to any need to develop the material.

Mr Ruskell: You said that you did not want to define the exact nature of the gateway in the bill. I understand the reason for that—you want to build in flexibility for the future—but do you agree that we need to define the monitoring of the SEA gateway in the bill? There are concerns that the gateway's role will change over time, which may disadvantage some responsible authorities. Surely a robust monitoring process might address some of those concerns.

Ross Finnie: Obviously, I am happy to reflect on that point. However, once we have the principles of a bill and some details of how it will be implemented, I am always slightly reluctant to commit to the bill every aspect of the matter. As the convener said, we are dealing with changes in behaviour and in the way in which those who are currently charged with the heavy responsibility of developing policies approach that task. I am not sure that human behaviour is always best addressed through legislative wording. We need to get the detail of the bill right for matters that will arise. However, although I am open to argument

on the notion that we should include in the bill measures on how we provide material assistance for and develop the gateway, I am reluctant always to determine human behaviour through administrative burden.

Mr Ruskell: I understand that point, but my question was about how we monitor the cultural change and ensure that the gateway helps to develop it. It might be useful to include a provision in the bill to ensure that adequate monitoring takes place.

Ross Finnie: I take that point. We have expressed our views. We shall soon know whether we have major problems with attitudes not changing. That would make it difficult to process the applications, because it would become difficult to determine them if the mindset and approach are such that people do not provide adequate answers to the questions about environmental impacts. I hear what you are saying.

The Convener: I would like to raise one of the issues that the Finance Committee asked us to explore with you at this stage. It is a question for both ministers. The Finance Committee stated in its report that

“there is an urgent need for work on this Bill and on planning reform to be co-ordinated in terms of assessing the overall implications for local authorities.”

That committee was particularly keen to examine the changing relationship between local authorities, and it was looking for integration between planning reform and strategic environmental assessment. What has been done to date to help that integration and to ensure that it happens?

Malcolm Chisholm: SEA is certainly being taken fully into account in planning reform. We know what is already required by the regulations and we obviously know the contents of the bill as well. The Finance Committee was concerned that that was not happening, so all that I can do is assure the committee that it certainly is happening and that I very much welcome SEA. It enhances the planning system in the directions that I have suggested by placing more emphasis on the environment and on additional public consultation, and that is something that I welcome in the planning system. I do not think that there is any question of those of us who are involved in developing the planning reforms being unsighted of that or in any way ignoring it. In general terms, that is the answer, but I do not know whether people are seeking more specific reassurance.

The Convener: A specific issue that was raised with us directly was the shortage of qualified planners. Do you have a view on that?

Malcolm Chisholm: We put out some money recently for extra resources for planning. We have

also recently commissioned research to examine comprehensively the level of financial and staff resources that are devoted to the planning service, and we shall also examine training and supply issues. We shall use the evidence from that work to determine whether further resources are required. It is obviously an issue, and that is why I recently announced some funding for improving capacity in the planning system. That was a more general announcement, but it certainly covers the area of planning as well.

Rob Gibson: One of COSLA's main concerns during the first evidence session was about the funding and resources that will be available to implement SEA. Given the role that local authorities are likely to play as responsible authorities, have disagreements over funding been clarified or resolved?

Ross Finnie: I am well aware of the evidence that COSLA gave to the committee. I am also well aware of the meetings that we had with COSLA in the preparation of the bill. I can understand that COSLA remains nervous that the bill will give rise to a huge burden of work, and we are sympathetic to that. We need to ensure at the outset that local authorities and other producers of planning at all levels understand the points that the convener articulated about needing to change mindsets and attitudes when beginning the process of producing a plan that has regard to the potential for strategic environmental impact.

We believe that if people address those issues at the outset, they will realise that the new process does not require them to do everything completely differently, but it does require them to start thinking, "Might this have been subject to an environmental impact assessment?", rather than waiting until the end of the process when it is too late and they have to revisit the whole process. There are opportunities not only for doing a bit more at the outset but for relieving oneself at the end of the process of the need to go back to the very beginning to address issues that should have been considered at the start. The bill completely turns on its head the way in which people have to approach those issues.

We are not agreed, but we are not falling out either. I appreciate the evidence that you have taken. The Minister for Finance and Public Service Reform is well aware of the request. Malcolm Chisholm has, as he has just pointed out, commissioned work on planning and its impacts and he will obviously reflect on that work, which will also help to integrate the bill and the planning bill that he will introduce.

12:30

Rob Gibson: I have a supplementary question for the Minister for Communities on his

responsibilities. The current responsibilities for administering and monitoring EIA lie within your department. What actions have you taken to ensure that SEA and EIA complement each other successfully?

Malcolm Chisholm: The dividing line between the two is fairly clear. EIA has been going for several years now and questions have been raised about the quality of some of that work. However, the research on that was Europe-wide rather than focused specifically on Scotland, so we have commissioned our own research to examine the implementation of the EIA regulations in Scotland, how they are working in practice and the extent to which they deliver on environmental issues. We are not complacent about EIA—we want to ensure that the regulations are operating effectively and we want to enhance the quality of environmental statements—but we do not think that the dividing lines between EIA and SEA are unclear.

Rob Gibson: It is just a general question. Because of your department's competence, it is your responsibility to ensure that those strategic and tactical approaches mesh and complement each other. If you do not think that there is an issue, that is fair enough, but we shall see when we monitor it ourselves.

The Convener: That is a notice of intent for the committee's future work programme.

Maureen Macmillan: There seems to be confusion about the relationship between SEA and EIA. We took evidence on that. Scottish Water was worried about duplication of effort and Historic Scotland did not think that there would be any efficiencies from SEA being the first line of defence for the environment, although other witnesses thought that the introduction of SEA would mean that there would be no need to have such wide-ranging work done for EIAs. What guidance will accompany the bill to clarify those matters?

Ross Finnie: Some guidance might be required, but the discussion is starting to go round in a circle, as we are now focusing on the need for the individual parties that will find their plans subject to SEA to think slightly out of the box about what they do. When it comes to individual planning applications or individual plans and processes that are part of them, I find it difficult to believe that it will not become immediately apparent to a body—it does not matter whether it is Scottish Water or another body—that addresses properly the bill's provisions and meets its requirements in producing plans, as it will have to do, that having gone through the overarching process of fulfilling the bill's requirements will have significantly improved its ability to meet the requirements of an environmental impact assessment. We might have

to produce some guidance, and I would be happy to do so, but I would be very disappointed if it was not easier for a body that had gone through SEA to fulfil some of the detailed requirements of an EIA.

Mr Ruskell: If SEA was applied to a strategy for transport infrastructure development and it was found that the developments led to conflict with a national target on, for example, traffic stabilisation, would you expect the responsible authority to amend the strategy in light of the conflict?

The Convener: You need not respond by making reference to any particular project, minister.

Ross Finnie: So, just to clarify, the question is what would happen if a responsible authority came forward with a transport plan that was in conflict with—

Mr Ruskell: A national target.

Ross Finnie: It seems to me that your question is not a trick question, but gets to the heart of the matter. In the past, the various proposals, including transport proposals, were not integrated. Under the bill, if a responsible authority is promoting a plan and has set some other strategic objective, which might also have been subject to SEA, it seems to me that SEA will highlight matters in a way that might not have been done properly under the previous process and procedures. I think that the result will be that the conflict has to be resolved in the strategic environmental assessment.

Mr Ruskell: So, SEA could be a way of ironing out potential conflicts.

Ross Finnie: Yes, I think that it could be—I certainly hope that that is the case.

The Convener: One of our previous witnesses said that, although SEA would neither provide solutions nor give the environment more weight than other considerations such as economic and social factors, it would ensure that environmental considerations were heard and taken account of in the decision-making process. Do you agree with that interpretation?

Ross Finnie: SEA will give a far greater focus on the sustainable development agenda in all our policy and planning processes. It will ensure that environmental impact is given the equal weight that it ought to be given. If the bill is approved, we will have a statutory basis on which to ensure that that is the case.

The Convener: I thank both ministers for coming before the committee and for being prepared to be grilled by us this morning.

I seek members' agreement to take our discussions on the committee report on the bill in

private until such time as we are ready to publish the report. Is that agreed?

Members indicated agreement.

The Convener: Thank you, colleagues. Our next meeting is at 9.45 am next Wednesday.

Meeting closed at 12:37.

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