ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 22 March 2006

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE
10th Meeting 2006, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)
*Rob Gibson (Highlands and Islands) (SNP)
*Richard Lochhead (North East Scotland) (SNP)
*Maureen Macmillan (Highland and Islands) (Lab)
*Mr Alasdair Morrison (Western Isles) (Lab)
*Nora Radcliffe (Gordon) (LD)
*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)
Trish Godman (West Renfrewshire) (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:

Ross Finnie (Minister for Environment and Rural Development)

THE FOLLOWING ALSO ATTENDED:

Rhona Brankin (Deputy Minister for Environment and Rural Development)
John Farquhar Munro (Ross, Skye and Inverness West) (LD)
Dr Elaine Murray (Dumfries) (Lab)
Mr John Swinney (North Tayside) (SNP)

Clerk to the committee
Mark Brough

Senior assistant clerk
Katherine Wright

Assistant clerk
Jenny Goldsmith

Location
Committee Room 5

Scottish Parliament

Environment and Rural Development Committee

Wednesday 22 March 2006

[THE CONVENER *opened the meeting at 09:32*]

Animal Health and Welfare (Scotland) Bill: Stage 2

The Convener (Sarah Boyack): Good morning and welcome to our 10th meeting of 2006. Before we kick off, I record the news that Margaret Ewing died yesterday. I am sure that colleagues will want us to send our sympathies to Fergus Ewing, to her family and to her SNP colleagues. Margaret served on the Rural Development Committee, which was our predecessor in session 1, and made a great contribution to debates in Parliament during that time.

Item 1 is our second day at stage 2 of the Animal Health and Welfare (Scotland) Bill. We expect John Farquhar Munro to attend, and Elaine Murray is with us. I welcome Rhona Brankin, the Deputy Minister for Environment and Rural Development, and her officials. Colleagues should have a copy of the bill, the marshalled list of amendments that was published on Tuesday and the groupings of amendments. I hope that everybody has the paperwork; otherwise, they should speak to the clerks quietly. My script for the meeting is voluminous. We will see how we get on as we work our way through stage 2. We must finish by the end of next week, but we will see how we get on this morning.

Section 4—Tests and samples

The Convener: Group 1 is on tests and samples. Amendment 28, in the name of the minister, is grouped with amendments 29 to 32.

The Deputy Minister for Environment and Rural Development (Rhona Brankin): The amendments stem from Professor Julie Fitzpatrick's written response to the committee. As director of the Moredun Research Institute, she is concerned that the reference to the detection of diseases through the identification of antibodies in proposed new section 6E of the Animal Health Act 1981 is too simplistic. To address those concerns, ministers have lodged amendments 28, 29, 30, 31 and 32, to which I ask the committee to agree.

I move amendment 28.

Amendment 28 agreed to.

Amendments 29 to 32 moved—[Rhona Brankin]—and agreed to.

The Convener: Group 2 is on further testing and procedure. Amendment 119, in the name of Nora Radcliffe, is grouped with amendment 120.

Nora Radcliffe (Gordon) (LD): Amendments 119 and 120 would require notification of farmers whose animals were being used to screen or test for diseases other than those for which they were first submitted for testing, which does not seem to be unreasonable. It may be important that a farmer is aware of the disease profile of animals in assisting on-going herd management or breeding programmes. That knowledge could also assist in improving the health of the national herd. Such benefit would be ancillary to the main point that it is not unreasonable to suggest that farmers should be notified if their animals are to be used to screen or test for other diseases. Farmers should also be able, on request, to get the results of those tests in writing.

I move amendment 119.

Rhona Brankin: To give ministers the ability to reuse samples that are collected during the course of statutory surveys and programmes will provide a number of obvious benefits to the Scottish livestock industry at significantly reduced cost, compared to the present. Reuse of samples is most likely to be for research or surveillance purposes, so it is likely that it will not be possible to notify individual animal owners or keepers of the test results because reuse of samples would generally be anonymous. Given that the objective of reusing samples is not to take action at individual farm level and that the results will be anonymised, it is considered that no useful purpose would be served by notifying individual owners or keepers of the intention to submit samples to further tests. Reuse will not be for diagnostic purposes, and I assure the committee that no use will be made of samples that would act against the interests of individual producers. For those reasons, I recommend that the committee reject amendments 119 and 120.

Nora Radcliffe: Can I ask a question?

The Convener: Yes, if it helps.

Nora Radcliffe: If the information is useful in a general collective sense, it might be useful in an individual sense to the person whose animals are being tested. If the intention is efficiency, in that more use than one is being made of a set of samples—the original use plus the Executive's use—cannot we get a third benefit through farmers' being given the information so that they can make use of it?

Rhona Brankin: The identity of the farm concerned will not be known by the researcher, so

it would not be practical to inform the original owner. There could be occasions on which a sample had been in store for some time and the information that linked it to the premises of origin was not relevant to the current owner of the herd or the flock. The key point is that we want to be able to reassure keepers that we will not act in any way that is contrary to the interests of individual producers.

Nora Radcliffe: I am not worried about possible negative effects; I just think that an additional positive effect could be won.

Rhona Brankin: Excuse me while I confer with my officials.

The Convener: Officials are not allowed to speak during this part of the process, so if we can get a swift answer, I will take it.

Rhona Brankin: The chief veterinary officer has just advised me that any research that is done might not be in a form that would enable us to go back and inform an individual farmer of the results. What is important is that the broader information is shared with the industry as a whole. If Nora Radcliffe has particular concerns, I can provide her with specific information. She may want to raise the matter again at stage 3, but I will be more than happy to discuss it with her.

Nora Radcliffe: It sounds as though the situation is not as clear cut as I had thought.

The Convener: You have obtained the commitment that we will get more information on the subject.

Amendment 119, by agreement, withdrawn.

Amendment 120 not moved.

Section 4, as amended, agreed to.

Section 5—Animal gatherings

The Convener: Group 3 is on the definition of an animal. Amendment 33, in the name of the minister, is grouped with amendments 34, 35, 39 to 44, 50, and 94 to 97.

Rhona Brankin: I will speak briefly to the amendments in the group. Amendments 33, 34 and 35 have been lodged to make it explicit that Scottish ministers will be able, by order, to make provision for licensing of bird gatherings as well as licensing of animal gatherings. I ask the committee to agree to the amendments.

Amendments 39 to 44 are technical amendments that will ensure that Scottish ministers have powers to seize the carcases of animals, birds or amphibians, things that have been obtained from or produced by those creatures and items that have been used in connection with them, with a view to preventing the spread of disease. I ask the committee to agree to the amendments.

Amendment 50 will extend the scope of proposed new sections 28C to 28H of the Animal Health Act 1981 so that they cover all animals that could be infected with the specified diseases. I ask the committee to agree to amendment 50.

Amendments 94 to 97 are technical amendments that will widen the definition of animals that is given in section 87 of the 1981 act and will ensure that the definition of disease is not restricted to the one that is given in that act. The aim is to bring the relevant provisions into line with the wider focus on disease prevention that the bill will establish. I ask the committee to agree to amendments 94 to 97 inclusive.

I move amendment 33.

Amendment 33 agreed to.

Amendments 34 and 35 moved—[Rhona Brankin]—and agreed to.

09:45

The Convener: Group 4 is on animal gatherings. Amendment 36, in the name of the minister, is grouped with amendments 121 and 122.

Rhona Brankin: Amendment 36 will clarify the conditions that may be imposed when granting or renewing a licence for an animal gathering. The purpose is to remove doubt about the conditions that may be imposed when licensing animal or bird gatherings. Amendment 36 will put beyond doubt the question whether conditions can be imposed to require a licensee to take measures to prevent the spread of disease. I ask the committee to agree to amendment 36.

On amendment 121, our intention is that disease risk assessments should be a matter for the state veterinary service on behalf of Scottish ministers. It is important that, in the context of the amendment, there is no proposal to charge for either the assessment or licence. That remains our position, whether for granting or renewal of a licence. That said, it is unreasonable to commit to such undertakings in the bill. Future Administrations would find that illogical; we, as legislators, should be flexible in our thinking.

On amendment 122, I do not fully understand the reasoning behind it. It would require Scottish ministers to consult Parliament on the list of persons who are to be consulted before the ministers could make an order on licensing of animal gatherings. That would be an unusual level of involvement in such a detailed procedural matter. Under section 5, proposed new section 8A(8) to the 1981 act will provide that an order

under proposed new section 8A(1) will be subject to negative resolution, or class 5, procedure. It appears that that would provide adequate parliamentary scrutiny at a level that is consistent with effective use of parliamentary time.

When our officials consult on a proposed order for licensing of animal or bird gatherings, they will do so with a large range of interested organisations, including the Institute of Auctioneers and Appraisers in Scotland, the National Farmers Union, the National Farmers Union of Scotland, the Road Haulage Association, the British Veterinary Association, appropriate sectoral bodies and numerous others.

I recommend that the committee reject amendments 121 and 122.

I move amendment 36.

Nora Radcliffe: I will speak only to my amendment 121. It is important that our approach to licensing animal gatherings has as light a touch as possible. Small agricultural shows and game fairs are important parts of the rural economy, and most already operate at the fringes of financial viability. The minister has stated that the Executive does not intend to charge for assessments or licenses, but it is important that people have confidence that that will be the case in the future. We will have to rely on people to notify the authorities of small animal gatherings, because there is no way that the authorities will know where all of them will take place. Any provision that would give confidence that people will not be charged for assessments and licences would be an important addition to the bill. There should be no inhibition on notifying the authorities about animal gatherings—amendment 121 would give people that confidence.

Richard Lochhead (North East Scotland) (SNP): I am sympathetic to Nora Radcliffe's amendment 121 and I urge the committee to support it. She has eloquently laid out the reasons why it should be agreed to.

The purpose of amendment 122, which is in my name, is to involve Parliament in scrutiny of the list of relevant interests and experts that the Government would consult before making an order in relation to animal gatherings. I lodged the amendment for two reasons. First, if a disease outbreak was suspected, one of the first actions that ministers would likely take would be to make an order in relation to animal gatherings. I hope that Parliament's scrutiny of the list of experts whose advice ministers would seek at that early stage would be reflected in subsequent measures that ministers might take. Secondly, it is important to get the right advice in such circumstances; Parliament's early scrutiny of, and comments on, the list of experts would add legitimacy to ministers' subsequent actions. I urge the committee to support amendment 122.

Maureen Macmillan (Highlands and Islands) (Lab): Can the minister assure us that if a future Administration wanted people to pay for the granting of licences, that proposal would come before Parliament in the form of a statutory instrument that would have to be approved?

Rhona Brankin: My understanding is that such a proposal would be required to be approved by Parliament. I take the opportunity to reiterate that the current Administration has no intention of charging for assessments or licences.

The Convener: Members have no further comments, so do you want to wind up the debate, minister?

Rhona Brankin: No.

Amendment 36 agreed to.

Amendment 121 moved—[Nora Radcliffe].

The Convener: The question is, that amendment 121 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Radcliffe, Nora (Gordon) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 121 agreed to.

Amendment 122 moved—[Richard Lochhead].

The Convener: The question is, that amendment 122 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 122 disagreed to.

The Convener: Group 5 is on the definition of premises. Amendment 37, in the name of the minister, is grouped with amendments 38, 55, 59, 73 and 76.

Rhona Brankin: Amendments 37, 38, 55, 73 and 76 will delete from the definition of premises an unnecessary word and will ensure that a consistent definition is used throughout the bill. Amendment 59 will ensure that the same definition is used in section 9. I ask the committee to agree the amendments.

I move amendment 37.

Amendment 37 agreed to.

Section 5, as amended, agreed to.

Section 6—Treatment

Amendment 8 not moved.

Amendment 38 moved—[Rhona Brankin]—and agreed to.

Section 6, as amended, agreed to.

Section 7—Seizure of carcases etc

Amendments 39 to 44 moved—[Rhona Brankin]—and agreed to.

The Convener: Amendment 123, in the name of Ted Brocklebank, has been debated with amendment 106.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I ask for your guidance, convener. If I do not move amendment 123, can I lodge another amendment on the issue at stage 3 so that I can come up with more appropriate wording?

The Convener: Yes. All amendments are subject to approval by the Presiding Officer, but he would know that you had not moved the amendment at this stage.

Amendment 123 not moved.

The Convener: Amendment 124, in the name of Ted Brocklebank, has been debated with amendment 106.

Mr Brocklebank: I am trying desperately to find it in my notes.

The Convener: It was debated last week.

Amendment 124 moved—[Ted Brocklebank].

The Convener: The question is, that amendment 124 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 124 disagreed to.

Section 7, as amended, agreed to.

Section 8—Specified diseases

Amendment 45 moved—[Rhona Brankin]—and agreed to.

Section 8, as amended, agreed to.

Section 9—Deliberate infection of animals

The Convener: Group 6 is on deliberate infection. Amendment 46, in the name of the minister, is grouped with amendments 47 to 49 and 51 to 54.

Rhona Brankin: Amendments 46 and 48 will ensure that the offences that will be created in relation to deliberate infection extend to a person who keeps anything that is obtained from, produced by or used in connection with an infected or suspected infected animal, bird or carcase, and not just to a person who acquires those items.

Amendments 47 and 49 are technical amendments that will clarify the extent of the relevant offence provisions. They will mean that the offence is no longer proven by reference to what a person suspects but, rather, by what that person knows or ought to know.

Amendments 51 to 54 will ensure that, when a person is convicted of an offence under proposed new section 28C of the 1981 act, that person will be deprived of entitlement to compensation that would be payable under the 1981 act, to which they would otherwise be entitled.

I ask the committee to agree to amendments 46 to 49 inclusive and 51 to 54 inclusive.

I move amendment 46.

Amendment 46 agreed to.

Amendments 47 to 55 moved—[Rhona Brankin]—and agreed to.

10:00

The Convener: Group 7 is on evidence by veterinary surgeons. Amendment 56, in the name of the minister, is grouped with amendments 58, 62, 81, 82, 85 and 92.

Rhona Brankin: All seven of the amendments are concerned with veterinary surgeons and their role in providing evidence that deals with the deliberate infection of animals and post-conviction orders.

Amendments 58 and 92 simply define the term "veterinary surgeon" and make it clear that it means a person who is registered in the register of veterinary surgeons or the supplementary veterinary register kept under the Veterinary Surgeons Act 1966.

Amendments 56, 62, 81, 82 and 85 are identical. Before a court can make an order for an animal to be destroyed, the bill as drafted requires a veterinary surgeon to appear in court to give evidence that the destruction of the animal would be in its interests. That might not be the most efficient use of such an expert's time, particularly when there is no dispute. The amendments therefore enable a veterinary surgeon to provide evidence in writing, by appearing personally or in a number of other ways. That will mean that they do not necessarily have to attend court.

I move amendment 56.

Amendment 56 agreed to.

The Convener: Group 8 is on appeals against orders. Amendment 57, in the name of the minister, is grouped with amendments 64 to 67 and 87 to 91.

Rhona Brankin: The amendments in this group make minor and technical changes in relation to the making of deprivation and seizure orders under both the health and the welfare parts of the bill. In particular, they relate to the appeals process and the making of interim orders.

I move amendment 57.

Amendment 57 agreed to.

Amendments 59 and 58 moved—[Rhona Brankin]—and agreed to.

The Convener: Group 9 is on deprivation and disqualification orders. Amendment 60, in the name of the minister, is grouped with amendments 61, 83 and 84.

Rhona Brankin: The bill already makes provision for a person to be disqualified from undertaking a number of activities, namely owning and keeping animals, dealing in animals and transporting animals.

There can be other circumstances in which it is possible for a disqualified person to take charge or control of an animal. It is generally considered to be inappropriate for a disqualified person to work with or have possession or control of animals, even for a short period of time. However, provision should be made for exemptions in certain circumstances.

Amendments 60 and 83 will give the court the power to prohibit persons from undertaking virtually every activity in which they could have charge or control over an animal, particularly riding horses, operating animal businesses or having various other types of involvement with animals.

Amendments 61 and 84 recognise that there may be exceptional circumstances in which the only person who is available to provide help has been disqualified from taking charge of animals. Therefore, limited exceptions are provided. First, when no alternative arrangements for the animal's care are reasonably available, and with the owner's consent, a disqualified person may care for the animal on a temporary basis—for example, when a person in a remote community is admitted to hospital and the only person who is available to look after their pet has been disqualified from having charge or control of animals. Secondly, when an animal is suffering, a disqualified person can care for the animal for the purpose of alleviating its suffering. I ask the committee to accept amendments 60, 61, 83 and 84.

I move amendment 60.

The Convener: No colleagues wish to speak. They seem sensible, detailed amendments on which representations have obviously been made.

Amendment 60 agreed to.

Amendments 61 and 62 moved—[Rhona Brankin]—and agreed to.

The Convener: Group 10 is on interim orders. Amendment 63, in the name of the minister, is grouped with amendments 86 and 93.

Rhona Brankin: These three amendments relate to the making and undertaking of interim orders. An interim order is intended to deal with possession of an animal pending final determination of a summary application for a seizure order. The summary application process can take six to nine months or more to complete.

Amendment 63 relates to the making of seizure orders under proposed new section 28G of the 1981 act. As it stands, the bill does not make provision for dealing with animals during the period between court proceedings for a seizure order being raised and those proceedings being finally determined. Such an omission would mean that the courts could not ensure that animals were

dealt with properly in that interim period. Amendment 63 seeks to resolve that situation.

In a nutshell, the first part of amendment 63 allows the court to make an interim order as to the keeping of an animal until such time as the application for a seizure order and any appeal are determined. The second part of amendment 63, by reference to the other provisions being inserted by the bill, sets out certain matters that the court must take into account before making an interim order and provisions that the court may include as to the carrying out of such an order. The amendment also enables the court to require reimbursement of the costs of carrying out such an order.

Amendment 86 is similar to amendment 63 and makes similar provision in relation to section 37, which provides for the making of seizure orders for welfare reasons.

Amendment 93 is consequential to amendment 86. Amendment 86 makes provision for an interim order to be made as to possession of an animal between the making a summary application for a seizure order and that application being determined. Amendment 93 extends the offence of intentional obstruction to make it an offence intentionally to obstruct a person in carrying out such an interim order. I ask the committee to accept amendments 63, 86 and 93.

I move amendment 63.

Amendment 63 agreed to.

Amendments 64 to 67 moved—[Rhona Brankin]—and agreed to.

Section 9, as amended, agreed to.

Section 10—Livestock genotypes: specification, breeding and slaughter

Amendment 68 moved—[Rhona Brankin]—and agreed to.

The Convener: Group 11 is on transmissible spongiform encephalopathies, or TSEs. Amendment 69, in the name of the minister, is grouped with amendment 70.

Rhona Brankin: Amendment 69 has been drafted to clarify that not all the restrictions and requirements specified in subsections (6) to (8) of proposed new section 36P of the 1981 act need to be specified on every TSE-related restriction notice that is issued, but only those that are relevant to the person receiving the notice. Amendment 70 is a technical amendment to clarify the extent of the relevant offence provisions. I ask the committee to agree to amendments 69 and 70.

I move amendment 69.

Amendment 69 agreed to.

Amendments 70 to 73 moved—[Rhona Brankin]—and agreed to.

Section 10, as amended, agreed to.

Section 11—Powers of entry

Amendments 74 to 77 moved—[Rhona Brankin]—and agreed to.

Section 11, as amended, agreed to.

Sections 12 to 14 agreed to.

Section 15—Protected animals

The Convener: Group 12 is on part 2 definitions. Amendment 78, in the name of the minister, is grouped with amendment 125.

Rhona Brankin: Amendment 78 simply gives a definition of British islands. The definition is provided in schedule 1 of the Interpretation Act 1978, which states that

"'British Islands' means the United Kingdom, the Channel islands and the Isle of Man."

Amendment 125 is unnecessary. The Executive is already committed to providing detailed guidance for animal keepers and enforcers on the new legislation. Not only will guidance be available, but detailed animal welfare codes will be produced, which will provide more detailed information for commonly kept species of animals. I think that amendment 125 seeks to provide further clarification, but to single out in the bill just a few issues in connection with which guidance must be issued is likely to confuse, rather than clarify.

In the vast majority of cases, it will be crystal clear whether an animal is a protected animal, whether a person is responsible for an animal, and who that person—or persons—will be. An animal is a vertebrate other than man; I see little room for confusion there. I accept that the question whether the animal is protected will depend on the individual circumstances. The meaning of protected animal is clear in the context of each provision in which it appears but, in practice, it will be possible to determine whether an animal is protected in light of the facts and circumstances of individual cases. Detailed guidance, including examples, will be provided for enforcers and animal keepers.

Amendment 125 seeks to be prescriptive with respect to the guidance that is to be provided under the bill. My concern is that, by being so prescriptive about the three terms specified in the amendment, we could limit the scope of the guidance. We believe that it is essential that both the bill and the guidance provided under it are sufficiently flexible. A mandatory requirement to produce guidance is unnecessarily bureaucratic

and unwieldy. I ask the committee to accept amendment 78 but, as the Executive is already committed to providing detailed guidance on the bill, I ask the committee to resist amendment 125, which is unnecessary.

I move amendment 78.

10:15

Rob Gibson (Highlands and Islands) (SNP): I hear what the minister says about the definitions, but I refer to the confusion that arose from the evidence that the committee took from Ross Finnie and his civil servants. It is clear that the bill does not contain the kind of absolute definition that would allow me to be happy that guidance on the definitions of the terms "animal", "protected animal" and "responsible for an animal" should not be provided for in the bill.

For example, a protected animal is defined in section 15 as an animal that is

"(b) under the control of man ... or

(c) not living in a wild state."

However, in an example that John Paterson, an official from the Scottish Executive's Legal and Parliamentary Services, gave in answer to questions about those definitions, he compared feeding birds from a bird table with the way in which deer are fed. To be frank, the provision is not clear enough; it concerns me that it is rather unclear. On the point at which animals stop being self-sufficient in feeding themselves and humans begin to feed them, he said:

"There might be a short transitional phase during which someone is still feeding them, but essentially they are wild."——[*Official Report*, *Environment and Rural Development Committee*, 11 January 2006; c 2631.]

That leaves a gap in the definition. Moreover, it is not possible to say whether fish in a stocked pond are covered by the phrase

"under the control of man",

as that will depend on the circumstances.

The evidence leads me to believe that there is a need to explain the terms "animal", "protected animal" and "responsible for an animal" more thoroughly in the bill. We must bear in mind the relationship of the bill's proposals to biodiversity and habitat changes that are taking place due to climate change, and ask whether it is possible to accept, as the minister said at the beginning of the discussion, that we have to take a pragmatic approach. I do not believe that a pragmatic approach would best serve the measures and I believe that amendment 125 would allow the definitions to be clarified in a way that is better than what the minister has offered.

Mr Brocklebank: I shared some of the misgivings that Rob Gibson and others had on the issue. It seemed to me that the bill was vague about when an animal might be in care and when it might be construed as having been abandoned. However, some progress has been made in the wording of the bill and I hear what the minister says about not being too prescriptive. By that, I think that she meant that, if the definitions are too tight, some examples might slip through the net. It is perhaps better not to be too prescriptive, but I will support amendment 125 at this stage and might revisit the issue at stage 3.

The Convener: I have a question for clarification, minister. You said that there will be guidance and animal welfare codes; will those be laid before the committee? Quite a few witnesses raised the issue at stage 1, and I am grateful to Rob Gibson for raising it at stage 2 because we need to revisit it. I was not 100 per cent clear about it myself but, if there were to be proper guidance and codes that we were able scrutinise, I would be happy.

I think that practical examples are essential. People who look after animals expressed concern that they would be put in a position in which they would be breaking the law inadvertently. People who must ensure that the law is implemented properly said that they wanted to know what the ground rules were. At the moment, I do not think that we are all clear about that. I would be happy for there to be guidance, but I would want to know that the committee could consider it and could enable stakeholders to test it to ensure that everyone understood what it meant.

I now ask the deputy minister to wind up and to address all the points that members have made.

Rhona Brankin: I reiterate that we are committed to providing detailed guidance for animal keepers and enforcers. The animal welfare codes that will be produced will be subject to consideration by the committee under the affirmative procedure.

The Convener: Where does that guidance sit in the hierarchy of guidance? At stage 1, we were concerned about the priority that would be attached to its production. Do you have a date? Will there be much of a time lag between when the bill comes into force and when we will get the codes?

Rhona Brankin: The guidance will be a top priority, but the information in the codes will be dependent on which species they concern.

The Convener: Do you wish to respond to any of the other comments that have been made?

Rhona Brankin: No.

Amendment 78 agreed to.

Section 15, as amended, agreed to.

Section 16 agreed to.

Section 17—Unnecessary suffering

The Convener: Group 13 is on the prevention of poisoning by injurious weeds etc. Amendment 102, in the name of Elaine Murray, is grouped with amendments 103, 154 and 104.

Dr Elaine Murray (Dumfries) (Lab): Amendments 102 and 103 seek to extend the provision on causing suffering by omitting to act beyond the person responsible to others such as landowners who allow ragwort to grow on land adjacent to pastures that are grazed by vulnerable animals or are used for the production of forage.

As I read section 17(3), in the hypothetical situation in which the minister's horse or my horse stuck its long neck across the fence of a field and consumed some ragwort on someone else's land, she or I would be committing an offence rather than the person who had failed to control the ragwort. However, I appreciate that amendments 102 and 103 contain fairly broad provisions, which could have unintended consequences. I look forward to hearing the minister's comments on them.

Amendments 154 and 104 represent another bite at the same cherry. Amendment 154 seeks to amend section 20 in such a way as to ensure that someone who, by failing to control an injurious weed such as ragwort, allowed a protected animal to consume it would be covered by the offence of administering a poison as defined in the Weeds Act 1959. The application of the proposed provision on the poisoning of a vulnerable animal by an injurious weed would extend to the person who owned or occupied the land on which the weed was growing. I think that amendment 154 is fairly innocuous, in that it merely seeks to clarify existing provision and would have no unintended consequences.

Amendment 104 relates to the animal welfare codes that were discussed during consideration of the previous group of amendments. It would enable ministers to provide guidance on the prevention of poisoning of animals. In particular, I am thinking of the prevention of poisoning by injurious weeds. I draw members' attention to the "Code of Practice on How to Prevent the Spread of Ragwort", which was introduced by the minister for the horse in England—I am sure that Rhona Brankin is the equivalent minister in Scotland. Amendment 104 would not force ministers to provide such guidance, but it would enable them to do so. The British Horse Society has drawn attention to the need to educate horse owners and landowners about injurious weeds. Guidance would be helpful in providing such education. Amendment 104 is specific but it would be harmless and would make things clearer.

I am prepared to withdraw amendment 102 and not to move amendment 103, if the minister feels that they are far too broad. However, I hope that she will accept amendments 104 and 154, or that she is prepared to consider alternatives—in which case I will not move them, although I might lodge them again at stage 3. I look forward to hearing the minister's comments.

I move amendment 102.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): I welcome the intention behind Elaine Murray's four amendments, which is to protect horses, but I am concerned about their wider implications. Landowners are already required to control weeds such as ragwort. One of the wider implications of the amendments would be that many weeds defined by the Weeds Act 1959 could become extinct in Scotland. If that happened, there would obviously be an impact on biodiversity. We have to bear that in mind.

I will be interested to hear the minister's plans for codes of practice or guidance and for voluntary measures. However, I am concerned about amendments that could have serious implications for biodiversity in Scotland.

Richard Lochhead: I am interested in this issue and have a lot of sympathy with the amendments. However, I presume that any endangered weeds are protected by other legislation. Will the minister comment on that?

Rhona Brankin: Amendments 102 and 103 aim to bring the offence in section 17(1) into line with the offence in section 17(2), so that the offence of causing unnecessary suffering to a protected animal for which no one is responsible can be caused either by an act or by an omission. In other words, it would be an offence to cause unnecessary suffering by failing to take action.

The changes suggested in amendments 102 and 103 would have unintended and undesirable consequences and they would be virtually impossible to enforce. I will explain the difference between sections 17(1) and 17(2). Section 17(1) deals with the relationship between everyone and protected animals, whereas section 17(2) deals with the relationship between a person who has responsibility for a protected animal and that animal. Amendment 103 would make it an offence to cause unnecessary suffering by a failure to act if a person

"knew, or ought reasonably to have known,"

that failure to act would cause an animal to suffer. In other words, it could be an offence not to feed a feral cat or not to take a stray dog to an animal welfare centre.

As drafted, section 17 makes it an offence to kick a stray cat but does not make it an offence to fail to feed it. Allowing a feral cat to go hungry, or failing to report a stray dog to the authorities, will certainly not be good for the animal, but it would not be realistic to make those failures offences. Such a provision would be virtually impossible to enforce. I therefore ask the committee to resist amendments 102 and 103.

Amendment 154 seeks to provide that a landowner or occupier would be held responsible for poisoning an animal if the animal consumed poisonous weeds that were not controlled on their land. Amendment 104 seeks to include specific reference to the prevention of poisoning in the list of purposes for which regulations can be made under section 23, which is entitled "Provision for securing welfare".

As Elaine Murray knows, I have a great deal of sympathy with the issue that she wishes to deal with—the unnecessary suffering of horses that are poisoned with ragwort. However, I believe that the bill already deals satisfactorily with the problem. A specific provision in section 20 will make it an offence to cause poison to be taken by a protected animal. In addition, section 22 will require a person responsible for a horse to ensure that it is not kept in a field in which ragwort is not adequately controlled.

Further, section 34 will allow the Scottish ministers to issue a statutory code of practice on ragwort control in areas where horses are kept, if that is deemed necessary. The code of practice could be targeted at land managers and would be statutory guidance, similar to that provided in England and Wales under the Ragwort Control Act 2003. Section 23, which amendment 104 seeks to supplement, will allow the Scottish ministers to make regulations on ragwort poisoning, if necessary, under subsection (3)(a), which mentions "the prevention of suffering".

10:30

Amendment 154 is neither necessary nor desirable. It would place an unrealistic burden on landowners or occupiers, who would not necessarily be responsible for the protected animal in question or even know that it was using their land. Section 22 will place the responsibility on the owner or keeper of the animal to ensure its welfare, which is appropriate and proportionate.

Amendments 102, 103, 154 and 104 are all unnecessary and I urge the committee to reject them.

In response to Elaine Murray's question, ministers will be able to issue a statutory code of practice on ragwort control similar to the code that the Department for the Environment, Food and Rural Affairs has introduced. I will certainly consider doing that. On the concerns that other members raised, I am satisfied that existing legislation can be used to deal with other weeds, although I acknowledge the concerns about biodiversity, which we must keep in mind. A statutory code of practice might be helpful in that regard, too.

Dr Murray: On the point that Mark Ruskell raised, I point out that the intention is not to eradicate the weeds. I know that the organisation Buglife—the Invertebrate Conservation Trust tries to portray those who are concerned about the control of ragwort and the weed's effect on protected animals as attempting to eradicate the weed. I have no intention whatever to attempt to eradicate ragwort, as I am sure that it is an important habitat in the right place. My intention is to ensure that people control ragwort if it could be a danger to protected animals.

I accept the minister's comments on amendments 102 and 103, so I am prepared to withdraw amendment 102 and not to move amendment 103. I will not move amendments 104 and 154, but I want to consider what the minister said and I may bring them back at stage 3. I will read the *Official Report* of the meeting and contemplate the minister's comments further.

Amendment 102, by agreement, withdrawn.

Amendment 103 not moved.

The Convener: Group 14 is on the meaning of suffering and unnecessary suffering. Amendment 161, in the name of Nora Radcliffe, is grouped with amendments 164 and 149.

Nora Radcliffe: The aim of amendment 161 is to explore why the word "legitimate" is used in section 17(4)(c) rather than the word "lawful". The paragraph deals with one issue that will be taken into account in the determination of whether unnecessary suffering has occurred, namely whether the conduct in question was for legitimate purposes. Two examples are given. I wonder whether the word "legitimate" is appropriate, as it is subjective. In similar contexts elsewhere in the bill, the word "lawful" is used—for example section 22(2) refers to "lawful activity" and "lawful purpose". It seems to me that the word "lawful" is a more appropriate term to deal with a potential defence in a criminal case. "Lawful" is more clearly understood than "legitimate", which is more subjective. I would welcome the minister's explanation of why the word "legitimate" is used in this context and not the word "lawful", which would be a tighter definition and would make it easier to prosecute.

I welcome amendment 149, which makes explicit the fact that suffering includes physical and mental suffering. That is a useful clarification.

I move amendment 161.

Mr Brocklebank: My amendment 164 makes a small point on a matter that the minister can perhaps clarify. I do not see the distinction between the meaning of suffering and the meaning of unnecessary suffering in the bill. On most occasions, the bill talks about unnecessary suffering; therefore, I propose that the section should use the phrase "unnecessary suffering" instead of simply the word "suffering".

Excuse me—I seem to be frogging up.

The Convener: Do you want a second?

Mr Brocklebank: Yes. I think that is better.

Elsewhere, the bill talks about unnecessary suffering. All that I seek is consistency, and I propose that the word "unnecessary" be inserted before the word "suffering" in section 23(3)(a).

Rhona Brankin: The dictionary definition of legitimate states that legitimate means authorised, or in accordance with law or rules, and includes action that can be defended as logical or justifiable. The definition of lawful is allowed, recognised or sanctioned by law; therefore, lawful is a much narrower term and I do not consider its use to be appropriate in this context. We should not include a term that is too narrow and restrictive, as we could risk criminalising well-motivated action for a good purpose.

Amendment 161 could lead a court to consider that, because an act is not specifically allowed, recognised or sanctioned by law, the court should be influenced against finding that the suffering was necessary. In legislation, the exact word that is used can have a significant effect, as courts work on the premise that each word is selected deliberately over available alternatives. I therefore ask the committee to reject amendment 161.

Amendment 164 would have a detrimental narrowing effect on the scope of regulations that could be made under section 23. By qualifying the example of the prevention of suffering with the term "unnecessary", Mr Brocklebank would significantly limit the power to make regulations under the section. The overriding purpose of section 23 is to enable the Scottish ministers to make regulations to secure the welfare of animals for which a person is responsible, and the progeny of such animals. There may, indeed, be occasions on which the Scottish ministers would seek to regulate something that would secure the welfare of animals and may involve necessary suffering—for example, medical treatment or animals risking suffering in order to protect people, as search-and-rescue dogs do.

Although the list of matters to which requirements and prohibitions may relate in regard to regulations that are made under section 23 is not exhaustive, in the eyes of a court the inclusion of the term "unnecessary" could narrow the scope of possible regulations. I therefore ask the committee to reject amendment 164.

I expect that many people—including the committee—will be pleased to see amendment 149. There was consensus among witnesses at stage 1 that such an amendment should be introduced. Strictly, the amendment is not required, as a bare reference to suffering includes suffering of any kind; however, we accept that the elaboration will aid users of the legislation. Amendment 149 expressly specifies that suffering in part 2 includes both physical and mental suffering. I ask the committee to agree to amendment 149.

Nora Radcliffe: I recognise that the tighter definition could have perverse consequences, so I seek leave to withdraw amendment 161.

Amendment 161, by agreement, withdrawn.

The Convener: Group 15 is on the destruction of a pet animal. Amendment 153, in the name of Mark Ruskell, is the only amendment in the group.

Mr Ruskell: Amendment 153 centres on the right of owners, under the bill, to destroy their animals in an appropriate and humane manner. There are questions about what is appropriate and humane, so we need some better definitions in the bill. An excellent definition is in the European Convention for the Protection of Pet Animals, which covers what is appropriate and humane. The convention states:

"Only a veterinarian or another competent person shall kill a pet animal"

and that

"killing shall be done with the minimum of physical and mental suffering".

It continues:

"The method chosen … shall … cause immediate loss of consciousness and death".

It also states:

"The person responsible for the killing shall make sure that the animal is dead before the carcass is disposed of."

More important, the convention prohibits certain methods of killing animals—for example, drowning, the use of a poisonous substance or drug, and electrocution. Members might think that, in 21st century Scotland, most people have a sense of what is appropriate and humane; however, that is not the case. In recent years, there have been a number of horrific situations. In Airdrie, when the greyhound stadium closed, 19 greyhounds were drowned. In the Western Isles, there have been a couple of cases of farm dogs that have come to the end of their working lives being put down by having a rock tied to their neck and being thrown into water and drowned. In Fife,

an owner decided to kill a dog by throwing it off a viaduct, but the dog survived. There is a need for guidance about what is appropriate and humane.

In some situations, it would be possible to say that the method that has been chosen has led to unnecessary suffering and is, therefore, prosecutable under the law. However, in the case of drowning, it is sometimes difficult to get a prosecution on the ground of unnecessary suffering. For that reason, we need some clarity and guidance in the bill. The European convention provides excellent guidance and I am interested in the minister's views on it.

I move amendment 153.

The Convener: Do any other colleagues want to speak in the debate?

Elaine Smith (Coatbridge and Chryston) (Lab): Can we speak after the minister if we wish? I would like to hear what the minister has to say, first.

The Convener: If you want to ask about points of detail after the minister has spoken, that is fine.

Rhona Brankin: We believe that amendment 153 is unnecessary. Section 17(5) provides that it would not be an offence to destroy an animal appropriately and humanely. However, the infliction of suffering over and above that which is caused necessarily by appropriate and humane destruction is not exempt. It is for the Scottish courts to interpret what is appropriate and humane, having regard to all the circumstances of the case and the prevailing views and attitudes of society at the relevant time. The further qualification that is offered by Mr Ruskell's amendment is, therefore, simply not needed. I ask the committee to reject amendment 153.

The Convener: Elaine, do you have a question for clarification?

Elaine Smith: No, that is fine.

10:45

Mr Ruskell: I am disappointed that the minister has not given a commitment to provide further clarification on the issue. In particular, it is unclear whether someone who drowned a dog could be prosecuted on the ground of causing unnecessary suffering. We need to make it explicit that such methods of killing animals are inappropriate and inhumane and are defined as such in the European Convention for the Protection of Pet Animals. I do not see why we should not make that explicit on the face of the bill.

I will press amendment 153.

The Convener: The question is, that amendment 153 be agreed to. Are we agreed?

Members: No.

FOR

Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 153 disagreed to.

Section 17 agreed to.

Section 18—Mutilation

The Convener: Group 16 is on mutilation. Amendment 129, in the name of the minister, is grouped with amendments 126, 126A, 3, 130, 131, 131A, 131B, 131C and 131D. If amendment 129 is agreed to, amendment 126 will be pre-empted.

Rhona Brankin: Tail docking of dogs is one of the most controversial issues in the bill and sincere views are held by those who are for and against the provision of an exemption for the tail docking of working dogs. The amendments in the names of John Farquhar Munro and Ted Brocklebank, which would permit the tail docking of puppies if a veterinary surgeon certified that the dog was likely to be used as a working dog, are doubtless intended to protect the welfare of such dogs, but I am not convinced that the case has been made for an exemption for working dogs. The committee's stage 1 report questioned whether such an exemption was necessary.

I appreciate that collecting evidence on tail damage in working dogs is difficult and that there is a lack of scientific studies on tail damage. I am aware of the views both for and against tail docking, but I believe that it is significant that the veterinary organisations have taken a very firm stance, which the Royal College of Veterinary Surgeons has even reaffirmed in recent weeks. In addition, it is significant that the RCVS, the British Veterinary Association and the British Small Animal Veterinary Association all oppose tail docking except for therapeutic reasons. In other words, the veterinary organisations believe that tail docking should be undertaken only after a tail has been injured or diseased. It is also relevant that veterinary surgeons in countries where tail docking has been banned are not pressing for a resumption of docking to avoid tail injuries, even for working dogs.

I am aware that Westminster narrowly voted in favour of an exemption for working dogs, but I

believe that it was wrong to do so. We are taking the right approach and Scotland is leading the way on this welfare issue. Docking a dog's tail just because the dog might injure its tail later in life cannot be justified. Such reasoning cannot be used to defend a practice that is opposed by the leading veterinary organisations in the country and the vast majority of practising vets. The fact that an unacceptable procedure is allowed in England is no reason to permit it in Scotland.

Like the committee, we believe that an exemption would be difficult to operate in practice and could be open to abuse. The Royal College of Veterinary Surgeons, which is also concerned about how the exemption would work, highlighted two areas of concern. First, the amendments propose that, to certify a dog, a veterinary surgeon would need to take a view on the likelihood of future events that would depend on the decisions of the dog's current and future owners. However, a veterinary surgeon's professional training is in the prevention, diagnosis and treatment of animal disease; it does not extend to judging the intentions of third parties. When the puppy is less than five days of age, the veterinary surgeon will not be able to judge whether it will prove suitable for working and, further, to judge which puppies from a litter of docked puppies will be used for working.

The RCVS is concerned that the exemption would leave open the possibility that a dog of any breed or type could become a certified working dog. For those reasons, I ask the committee to reject amendments 126, 126A and 131A.

I also ask members to reject amendments 3 and 131D. Although they accurately reflect the Executive's policy of a total ban on the tail docking of dogs, we will put that ban on the face of the bill. The approach that is proposed in amendments 3 and 131D is wrong. We should have the flexibility to be able to make exceptions to the general ban on mutilations by regulations. Such an exemption would be made only after full and detailed consultation and approval by Parliament. That approach should be adopted for all mutilations. As has been stressed a number of times, I consider it important that as our knowledge of animal welfare develops, we can reflect those changes in our legislation and ensure that it is kept up to date with our thinking.

That approach would give us the possibility of reviewing the policy on tail docking if it becomes apparent that there has been an increase in tail damage in working dogs. I do not expect that there will be an increase in tail damage that could give rise to a requirement for that power to be used. However, full and detailed consultation will take place before any exemption is presented to the Parliament for its approval. Not to have flexibility would remove that possibility. For those reasons, I ask members to reject amendments 3 and 131D. I stress that in arguing for that flexibility, I do not expect that there will be an increase in tail damage and thus a requirement to use the power.

Amendments 129, 130 and 131 are all related. Indeed, amendments 129 and 130 are ancillary to the making of amendment 131. Amendment 131 amends the power of the Scottish ministers to create exceptions, which was previously contained in section 18(3). That provision enabled the Scottish ministers to make regulations only by reference to "circumstances", a term that is not considered broad enough to encompass, for example, the specification of a particular procedure. The amendment makes provision in new subsection (5) for the Scottish ministers to specify by regulations the purpose for which a mutilation may lawfully be carried out, the manner in which it may be carried out and any conditions under which it may be undertaken.

To ensure proper consultation of all relevant interests, it is provided that the Scottish ministers must undertake a consultation before those regulations are made. That brings section 18 into line with regulation-making powers in other sections of part 2. I ask the committee to accept amendments 129, 130 and 131 and to reject amendments 3, 126, 126A, 131A, 131B, 131C and 131D.

I move amendment 129.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): The minister has made a strong case against my amendments, but I am equally as determined to promote the case for them.

My amendments are supported by the vast majority of people who use working dogs in their daily lives and have done so over many years. The tails of working dogs are docked not simply for cosmetic purposes; they have been docked traditionally for the benefit and welfare of the animal. The practice has been traditional for centuries and now the Scottish Parliament is trying to change it. However, dogs are no worse off as a result of tail docking.

Amendments 126, 131A and 131B would introduce measures that would be strictly controlled. The veterinary profession would determine which dogs were to be working dogs and, provided that the animal was no more than five days old, would carry out the procedure of tail docking. The amendments would ensure that tail docking was done professionally and that the animal did not come to any harm. The case has been made strongly. I am aware that the committee took evidence on the subject and I heard that no evidence of tail injuries was

presented. There is a good reason for that. All working dogs have had their tails docked and as a consequence there is no record of damage to the animals. That will not be the case if tail docking is abandoned.

Amendment 131A suggests that approval be given to tail docking of dogs up to five days old and amendment 131B outlines the conditions that would apply. I ask the committee to agree to the amendments, simply because tail docking is traditional and there has been no history of damage to the animals.

If the amendments are not agreed to, there will be a vast amount of cross-border traffic. As the minister said, tail docking has been approved at Westminster for England and Wales. I foresee fleets of Land Rovers, carrying gamekeepers and their dogs, heading across the border to have the animals' tails docked in England. That would be quite absurd. I ask the committee to consider the amendments sympathetically and to agree to them.

Mr Brocklebank: I fully support John Farquhar Munro's amendments and the eloquent way in which he presented his argument. The principal question here, which we have been grappling with since the start of the bill's passage, is "Why is tail shortening done?" In my view, the answer is that it is done not for cosmetic or similar purposes, but because the people who use working dogs see it as the best welfare for the dogs involved. We are speaking mainly about spaniels and working gun dogs. I do not understand why it is impossible for vets to make the decision whether to shorten an animal's tail when it is at an early age. Vets know where litters are going. Country vets are aware of the damage that could be caused to dogs whose tails are not shortened. The minister made much play of the fact that various veterinary organisations have come down against tail shortening, but the profession is very much split. A great number of country vets do not agree with the view of the RCVS.

I received a letter this morning on behalf of six vets working in the Borders, all of whom are members of the RCVS. I shall read one or two relevant parts of the letter that I think answer some of the minister's points. The letter claims that they

"currently only dock working gun dogs, mostly cocker & springer spaniels, at a few days old."

The chap goes on to say:

"At the end of January, I was out shooting near Castle Douglas. On the final drive, I met a springer spaniel, blood spattered from a chronic tail tip injury. His vet had declined to tail dock the litter at a few days old despite most of the pups going to working homes."

He continues:

"If working dogs are not exempted from this new legislation, we are going to see a vast increase in tail tip injuries; in this country area, I would expect up to 50% of all working spaniels to damage tail tips. Please ensure an exemption to permit vets to continue to tail dock working dog breeds, otherwise we will see much more suffering from tail injuries in adult dogs, a condition which is very difficult to manage."

11:00

Those comments come from a working vet, who speaks on behalf of six of his colleagues in a practice in the Borders. We have received many similar reports. We are saying to the minister that there is no cosmetic reason behind the practice: it is being done for animal welfare reasons. If the Parliament overturns the knowledge of country people, built up over generations, about how best to work with dogs, it will take a step that will have very serious repercussions for the animals.

I take John Farquhar Munro's point. Given that the Westminster legislation will include such an exemption, there is no doubt that if our legislation does not there will be traffic across the border. That will be extremely difficult to police.

The purpose of my amendment 131B is to offer some protection to vets who might have to carry out any shortening if John Farquhar Munro's amendment is accepted. In supporting John Farquhar Munro's amendment, I ask the minister and the committee to approve my amendment, which states that vets are the right people to make such judgments and that they should be given some protection.

Mr Ruskell: Most committee members recognise that tail docking is an illogical tradition. In 21st century Scotland, we should not enshrine illogical traditions in legislation. Working dogs such as German pointers have their tails docked, whereas English pointers do not. Breeds such greyhounds and Labradors, which are particularly vulnerable to tail injuries, do not have their tails docked. There is no logic to the practice.

That is one reason, among many others, why organisations such as the British Veterinary Association, the British Small Animal Veterinary Association and the Royal College of Veterinary Surgeons are coming out against tail docking and in favour of a complete ban. It is not acceptable to say that those prestigious organisations are just a bunch of town-based vets who do not understand country traditions. They are robust organisations and their positions have a scientific basis. They understand the nature and physiology of animals. I do not believe that they arrive at their positions lightly.

The amendments propose exemptions that would create a huge loophole in the bill. I agree with the minister that the decision in England was wrong. The loopholes will be large. If John Farquhar Munro's amendment 131B were to be

passed, it is clear that if I wanted to have a litter of puppies' tails docked I could just join a shooting club and get a shotgun licence. I could exploit a loophole to ensure that their tails were docked.

There are other problems with the proposed exemption. When a litter of puppies has just been born, how could someone tell which of the puppies would have the correct temperament to become a working dog? It is impossible to select them at that age. Police dogs are in adulthood when they are selected to work as sniffer dogs—they are not selected when they are puppies.

John Farquhar Munro suggests that an animal that has its tail docked should be brought back two months later to be microchipped. How would we know that it was the same dog? The situation that has emerged in England is ridiculous and the exemption will be unworkable.

I would like to give the committee the option to say that we believe that a full ban of tail docking of all dogs, including working dogs, is the right way to go. If there is no welfare case for working dogs to be exempted, I do not see how the situation would change in the next one, two or three years. I do not envisage that the BVA, the RCVS and the BSAVA will change their positions on the matter during the next few years. There is a robust case for a full ban. If a full ban is the policy intention, the bill should make that clear.

Richard Lochhead: The issue has been difficult for the committee. We heard much conflicting evidence and I found it hard to reach a conclusion. We must do what is right for Scotland and not pay too much heed to what happens south of the border—that is why there is a Scottish Parliament. The committee's primary consideration must be welfare and the arguments that we heard seem to boil down to the need to balance the unnecessary suffering caused by tail docking against the suffering caused by injured tails that we are told might arise if docking is not done, particularly among working breeds. Welfare seems to be the crux of the matter—indeed, section 18 is in the part of the bill that deals with animal welfare.

I wrote to about a dozen rural veterinary practices in my area to seek views. Four practices replied, each of which has three or four veterinary surgeons. The first reply said:

"We do not believe that working dogs should be exempt from the docking ban".

The second reply said:

"We are all comfortable and resolute in an 'anti-docking' stance and indeed our practice simply refuses to carry out such a procedure unless there is evidence of an injury which would require docking to repair".

The letter continued:

"there are many working retrievers and working labs and we really do not see injuries to their tails during work."

The third reply, which came from a vet who is a gamekeeper's grandson, said:

"The fashion of docking certain breeds, esp working dogs has, I'm afraid, passed its sell by date … The truth is that very few dogs injure their tail and if they do it's rarely to do with work, most often someone shutting a door on their tail or a dog banging it against a wall with over exuberant wagging when they get excited."

The fourth reply said:

"I don't predict a huge increase in cases if tail docking is banned … I don't dock puppies and I do think it causes unnecessary pain".

John Farquhar Munro's amendments would place the onus on vets to make the decision about which dogs to dock. I hope that he will tell the committee to what extent he consulted vets about their willingness to accept that responsibility.

I ask the minister to explain again why the Executive wants to delete subsection (3) of section 18, given that she said she would keep the door open to the possibility of regulations to make exemptions should injuries increase. Will she also explain how she intends to monitor the situation? What further research will be done if her amendments are agreed to and other members' amendments are not agreed to? How will she monitor the number of injuries to tails, particularly in working dogs? It would be useful for the committee to know that. At this stage, I am sympathetic to the minister's stance, although I accept that docking is a difficult issue.

Elaine Smith: I agree with Mark Ruskell and I say to John Farquhar Munro that if a tradition is wrong we should change it. In evidence that we took at stage 1, we heard that tail docking takes away a dog's dogginess. My cat has injured its tail a few times, but it uses its tail to communicate, so I do not think that I would ever want the tail to be docked.

John Farquhar Munro said that all working dogs' tails are docked. That is not what the committee heard in evidence; we heard that traditionally only some dogs' tails have been docked. Given that many dogs' tails are not docked, tail injuries are relatively rare. It is not acceptable to dock the tails of large numbers of puppies to avoid a small number of tail injuries in adult dogs. I am pleased that the minister has taken a decisive stance on the matter. It is reasonable to legislate in favour of dogs and their tails. It would also be reasonable to reassess the situation if a horrendous number of tail injuries were to ensue. I, too, am interested in hearing how the situation will be monitored. From what we heard, I do not think that there will be a horrendous number of injuries. Tail docking should be banned as the minister proposes, because it is a cruel and unnecessary practice. I support the minister's stance.

Nora Radcliffe: We have all wrestled with this issue and I fully accept that many people, including vets, are genuinely concerned that working dogs will suffer painful injuries if tail docking is banned. However, the difficulty is that there is a lack of evidence, even though a large number of working dogs already have docked tails. I come back to the comment that was made early in our consideration of the bill—in relation to another issue, I should add—that common practice is not necessarily good practice.

The minister said that there would be full and detailed consultation. Perhaps a more practical way of resolving the difficulties with lack of evidence would be for the Scottish Executive to commission some formal evidence. Assuming that we agree to ban tail docking completely, we have time before the bill comes into force to identify a litter of working dogs that will still have their tails docked and use that as a control group when monitoring litters that, under the legislation, will not be docked. That will provide an evidence base to clarify either that concerns about an increasing incidence of painful tail injuries are well founded or that we are right to ban tail docking. After all, we can reverse our decision if evidence suggests that we have been wrong.

I think that the right decision is a complete ban on tail docking, but I will feel much more comfortable if the Executive commissions formal research that follows what happens after the bill is enacted. As I said, that will provide an evidence base on which we can take swift action, if required.

The Convener: As colleagues have said, this issue has been difficult, because animal welfare arguments have been made on both sides. However, after considering the evidence, I am persuaded by the views that have been expressed by veterinary and animal welfare organisations. As Richard Lochhead and Nora Radcliffe pointed out, just because a practice has been carried out traditionally, that does not mean to say that it has to be carried out for ever. Indeed, I agree with the minister that we need to ban this practice.

I welcome the fact that the minister has listened to the stage 1 evidence on the matter. We were concerned that the initial proposals would be difficult to implement, and most members remain of that view. I remember finding among the huge amounts of evidence that we received from people in Scotland evidence from outwith the United Kingdom suggesting that the world trend was to ban practices such as tail docking. I am not aware that any country has rescinded such decisions as a result of experience.

I agree with Nora Radcliffe that, if we decide to support the Executive, it would be appropriate and sensible to monitor the implementation of the provisions in the same way that the bill's other provisions will be monitored.

Those who support the minister and, indeed, those who argued at stage 1 that we should take a harder position do not take the decision lightly. Richard Lochhead said that he had talked to the vets in his area and, as he pointed out, it is clear that different vets hold different views; however, we should not simply ignore the views of the main veterinary organisations. The case has been made for deciding in favour of the minister's suggestions, and I do not agree with the recommendations that John Farquhar Munro and Ted Brocklebank made. If the minister says that she is prepared to monitor the position over time, I believe that that would be a responsible approach.

The problem with taking the Westminster line on the issue, as in other issues, is that we must consider the principles. After all, if we simply followed the first Government or Administration that took a decision, that would negate the point of devolution.

We have considered the arguments that have been put to us. We do not all agree and we will express that disagreement in voting on the amendments. The minister has considered the evidence that we received at stage 1, for which I am grateful. With the caveat that we will monitor the situation over time, I think that we are taking the right approach.

Normally at this point I would invite the minister to respond, but Richard Lochhead asked John Farquhar Munro a couple of direct questions and I want to give him the opportunity to answer them before we take the vote.

11:15

John Farquhar Munro: Richard Lochhead asked whether I had consulted the veterinary organisations. I have not done so, but I have consulted many people who use working dogs in their daily lives. The evidence from them—this is also my experience—is that tail docking is not detrimental to the animal's welfare but is beneficial. I have seen that demonstrated in the use of the animals. The gamekeepers to whom I have spoken have suggested the same thing. There is a strong body of evidence that tail docking is a necessary part of the treatment and welfare of the animal.

There seem to be strong objections in the committee to what I am proposing. However, I have detected a ray of light: the minister will consider any fresh evidence that comes to her on the matter. If that is the case, I suggest that it might not be too late to take professional evidence from people who have spent their lives with working dogs. You could also take evidence from

a cross-section of the veterinary profession. We heard from Ted Brocklebank that vets in the Borders are suggesting that we do what I propose. Richard Lochhead has solicited a different view from vets in his area. There are mixed feelings on the matter.

I am not sure what I should do now.

The Convener: You should close at this point. I wanted to let you respond to Richard Lochhead's comments, but you do not need to make a long speech.

Rhona Brankin: I will try to respond to as many questions as I can.

John Farquhar Munro implied that there will be a large amount of traffic in dogs over the border, given that there will be a difference in the law between England and Wales and Scotland. We take the view that that will not happen in practice. English vets will have to be sure that the animals are going to be used as working dogs, but it will be difficult for them to ascertain that if they do not know the litter or the breeder. We do not think that traffic in dogs will be a huge problem.

Another cross-border issue that has not been mentioned but which could arise relates to the showing of dogs at shows. I realise that there will be a theoretical anomaly, because it will be an offence to show docked working dogs in working dog classes at a show in England, but not in Scotland. That could have an effect on the showing community. I will therefore consider the need for an amendment for a prohibition on the display of docked dogs at dog shows in Scotland.

Richard Lochhead asked about section 18(3). Subsection (3) is deleted, but then replaced by amendment 131. It is simply a matter of rephrasing the wording of the section.

I want to respond to the claims that the measure is an anti-countryside action. As someone who has lived most of their adult life in the country, I refute that absolutely; it is a false assumption. We know that only 10 per cent of vets tail dock, which means that 90 per cent do not, many of whom are country vets. If the profession is split on the practice, only a very small minority support it. The council of the Royal College of Veterinary Surgeons was unanimous in its recent decision on tail docking. It is important that I put that on the record.

The Convener: The question is, that amendment 129 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Boyack, Sarah (Edinburgh Central) (Lab)
Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Smith, Elaine (Coatbridge and Chryston) (Lab)

AGAINST

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)

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

Amendment 129 agreed to.

The Convener: As members are aware, that pre-empts amendments 126 and 126A.

Amendment 3 not moved.

Amendment 130 moved—[Rhona Brankin].

The Convener: The question is, that amendment 130 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Boyack, Sarah (Edinburgh Central) (Lab)
Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Smith, Elaine (Coatbridge and Chryston) (Lab)

AGAINST

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)

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

Amendment 130 agreed to.

Amendment 131 moved—[Rhona Brankin].

Amendment 131A moved—[John Farquhar Munro].

The Convener: The question is, that amendment 131A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Smith, Elaine (Coatbridge and Chryston) (Lab)

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

Amendment 131A disagreed to.

Amendments 131B, 131C and 131D not moved.

The Convener: The question is, that amendment 131 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Boyack, Sarah (Edinburgh Central) (Lab)
Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Smith, Elaine (Coatbridge and Chryston) (Lab)

AGAINST

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)

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

Amendment 131 agreed to.

The Convener: I hope that members found that straightforward; I was following my script carefully. I am glad that we have got through that.

Section 18, as amended, agreed to.

Section 19 agreed to.

Section 20—Administration of poisons etc

Amendment 154 not moved.

Section 20 agreed to.

After section 20

The Convener: Group 17 is on electric collars. Amendment 9, in the name of Maureen Macmillan, is the only amendment in the group.

Maureen Macmillan: Amendment 9 seeks to make it an offence to use an electric-shock collar or to possess, advertise for sale and so forth such collars. I ask the minister to explain how the use of electric-shock collars fits in with the purpose of the bill, given that they train dogs through the use of painful stimuli. That is at odds with what we are trying to achieve. Recently, in relation to sections 22 and 23, we discussed the need to treat animals in a way that prevents suffering. The Executive's amendment 149 states:

"references to suffering include physical or mental suffering."

The use of electric-shock collars is incompatible with what we are trying to do, particularly as there is no monitoring of who uses them and no regulation. People can buy such collars freely by mail order or on the internet. They are banned in Denmark, Australia, Germany, Switzerland and Slovenia and soon they will be banned in Austria.

I ask the minister whether the Executive has any thoughts on the matter. If the Executive is willing to enter into dialogue and to consider the matter further at stage 3, I will be prepared to withdraw the amendment.

I move amendment 9.

Mr Brocklebank: I accept that, as we said in our previous discussion on tail docking, what applies south of the border should not necessarily apply here in devolved Scotland. Nonetheless, Ben Bradshaw, the UK Minister for Local Environment, Marine and Animal Welfare, states in a letter:

"Defra scientists consider that the current scientific evidence is ambiguous."

He does not believe that there is conclusive evidence that electric-shock collars have a harmful impact on an animal's welfare. That is also my understanding. I do not think that the evidence is conclusive and, for that reason, I do not support Maureen Macmillan's amendment.

Rhona Brankin: Amendment 9 aims to introduce a ban on the possession and sale of electric collars and their use to control and train animals. The definition of electric collars is wide and is open to interpretation.

I am aware that there are sincerely held views both for and against electric training collars and I agree that the acceptability of such devices is a legitimate subject for debate. Many believe that such devices are unnecessary tools in the training of animals and that the desired goals can be achieved through patience and positive training methods. Others believe that electronic training aids have a role to play, particularly when an animal has proved to be unresponsive to other training techniques.

There is conflicting evidence from people who are professionally involved in training and studying the behaviour of animals on the effectiveness of such training aids and there is disagreement about whether they impact on the animal's welfare. A number of scientific studies of the devices have been conducted but Government veterinarians are of the opinion that the studies are not sufficiently robust to support a definitive conclusion. I am also aware that individual owners say that they have successfully used the devices to prevent their pets from coming to harm or causing harm—for example, by persistently running into the road—when other methods have failed.

Colleagues at DEFRA instigated an open competition and sought proposals to assess the effects of electronic pet training aids—including static pulse training systems—on the welfare of dogs. A single proposal was received in response to the call, but after both external and internal peer reviews it was rejected because it did not satisfactorily meet the advertised requirements.

Since the research call in August 2005, we have become aware of additional research in the area. DEFRA is reviewing that research and considering whether to readvertise the call through a different type of competition.

I have made it clear that we cannot ban activities without clear supporting evidence that they do not meet acceptable animal welfare standards. Nevertheless, I reassure Maureen Macmillan that if such evidence becomes available on electronic pet training aids, it will be possible for the Scottish ministers to ban such equipment by making regulations under section 23. It is therefore unnecessary to include a specific provision in the bill.

I undertake to update the committee on any developments with research on the matter. I agree that we need to keep it under review and to take the most up-to-date advice. I might be able to come back to the committee with more information at stage 3, but I urge the committee not to support the amendment today.

11:30

Maureen Macmillan: I am grateful to the minister for her remarks. I realise that the research is inconclusive, but I am glad that there is a chance that the provision could be introduced by regulation if the evidence becomes conclusive. I am also grateful to the minister for her offer to have more discussions on the matter before stage 3. I therefore seek leave to withdraw my amendment.

Amendment 9, by agreement, withdrawn.

The Convener: I timetabled two hours for our consideration of the bill at stage 2. We have used just over two hours and, clearly, we have not finished. There is no prospect of our finishing today, so I will end our stage 2 discussion at this point. I thank colleagues for their speeches and for their co-operation on the amendments. Our target is to finish stage 2 next week. On the basis of today's work, I am confident that we can do that. Any further amendments to the remainder of the bill should be lodged by 12 noon on Friday 24 March.

I thank the minister and her officials for their presence this morning. I suspend the meeting briefly to allow them to leave and to allow us to set up the next item.

11:32

Meeting suspended.

11:40

On resuming—

Subordinate Legislation

Seeds (Fees) (Scotland) Amendment Regulations 2006 (SSI 2006/70)

Water Services Charges (Billing and Collection) (Scotland) Order 2006 (SSI 2006/71)

Water and Sewerage Charges (Exemption and Reduction) (Scotland) Regulations 2006 (SSI 2006/72)

The Convener: Agenda item 2 is subordinate legislation. We have three instruments to consider under the negative procedure. The Subordinate Legislation Committee has considered the instruments and has made no comments. Do members have any comments to make?

Nora Radcliffe: I welcome the third instrument and the initiative for affordable charging for low-income households. We all have constituents for whom that will be an important concession that will help them to manage their budgets better, so it is to be commended.

The Convener: If there are no other comments or questions, are members content with the instruments and happy to make no recommendations to the Parliament?

Members *indicated agreement*.

11:41

Meeting suspended.

11:43

On resuming—

Scottish Water

The Convener: We have been joined by the Minister for Environment and Rural Development for item 3, and we shall now consider the governance of Scottish Water.

The committee previously discussed the recent resignation of the chair of Scottish Water, Alan Alexander, and focused on the implications of his resignation for the investment programme that Scottish Water is undertaking, so we agreed to take oral evidence from the minister. Members should have in front of them an executive summary of Scottish Water's business delivery plan, a briefing from the Scottish Executive and a short briefing from the Scottish Parliament information centre. I invite the minister to introduce his officials and to make some brief opening remarks.

The Minister for Environment and Rural Development (Ross Finnie): I am accompanied by William Fleming and Andrew Fleming, from our water division, and by John Mason, head of the environment division.

I hope that the committee found the Executive's briefing note of 16 March helpful in trying to understand better the nature of the Executive's concerns about the original version of Scottish Water's delivery plan. You have confirmed, convener, that members of the committee have seen the executive summary of that delivery plan. I firmly believe that anyone who reads it will readily discern, both in substance and in tone and attitude, why the Executive was concerned and why we ultimately could not have confidence in the plan as the basis for delivery of our objectives over the next four years.

11:45

I know that there are concerns about what is to happen in the interregnum after Alan Alexander's resignation. Following a competition that was run in compliance with guidance from the Scottish commissioner for public appointments, we may shortly be in a position to announce a new interim chair of Scottish Water. With the commissioner's agreement, the interim chair will be appointed for up to one year. Whoever is appointed will have the task of ensuring that Scottish Water can deliver all the objectives that have been set within the financial limits that the Water Industry Commission set. The chair will begin by ensuring that the fundamental problems with the original delivery plan are addressed. That will be challenging.

We have worked to identify candidates who have a track record of successful delivery in the water industry and other utilities. I regret that that exercise has taken somewhat longer than I might have wished, but that does not necessarily mean that Scottish Water's investment programme has been delayed. The committee will understand that, as with any large capital programme, elements of work remain to be completed at the end of the current investment period. Scottish Water's immediate task is to complete an estimated £280 million of projects beyond the end of this month.

Pending the appointment of the interim chair, Scottish Water is discussing with the Executive our concerns about Scottish Water's delivery plan. Similar discussions are taking place between Scottish Water and its regulators. Scottish Water will take all those discussions into account.

I hope that the result of those efforts will be that we have a continuum to a conclusion and, much more important, that we move towards having a plan. I appreciate all the concerns and I welcome the opportunity to assist the committee in looking into some of our concerns and to allay any fears that members have about how we proceed with Scottish Water. I look forward to the discussion and questions.

The Convener: A range of committee members wish to speak. We are also joined by John Swinney MSP, whom I will call with everybody else.

Rob Gibson: It is important to start by asking what resources you made available to Scottish Water to remove development constraints, which are at the heart of its development plan crisis.

Ross Finnie: My answer has two elements. As you know, we held an extensive consultation. When we arrived at the original global sum, the consultation resulted in an allocation between the three essential elements—development constraints, the need to comply with the immediate requirements of the drinking water quality regulator for Scotland and the need to comply with environmental requirements. The timing for complying with the environmental requirements was perhaps a little more flexible, because not all the requirements were regulatory.

I will check what the total number was. William Fleming may have it. We also had regard to local authorities' input and to the overall housing plan, which talks about the total number of properties. The provision was to unblock the constraint for about 120,000 homes in that period.

Rob Gibson: Given that paragraph 12 of the Executive note says that the Executive was concerned about how Scottish Water would deliver increased strategic capacity to overcome

development constraints, why did you take three months to decide to act to speed up progress?

Ross Finnie: One of the very disappointing features of the quality and standards programme was that the consultation failed to reveal adequately the level of requirement for development constraint. Indeed, it was most unfortunate that some local authorities did not respond to that consultation.

We were very anxious that that serious error should not be repeated. Therefore, when we ended that consultation and submitted to Scottish Water a clear message of what we were requiring, we had no reason to believe that Scottish Water, which had been part of the process, was going to run up against a problem and decide that there would be difficulties. We were not immediately aware of the concerns that I set out in that minute.

Rob Gibson: Can you tell me why, on 7 February, the water commissioner, Sir Ian Byatt, said that he welcomed an early meeting that you planned to have with a high-level group led by a senior civil servant? What was that group going to achieve in the midst of this crisis?

Ross Finnie: It was an attempt to understand better where the disjunction was arising. Clearly, it was a matter of grave concern to us that a body that we, effectively, fund and that is in public ownership for good reasons, was, apparently, entering caveats into its response to the Water Industry Commission's determination. That caused us great concern. The matter was extremely serious and we wanted to understand fully the nature of where we were and why those caveats were being entered. That led on to further concerns about the nature of Scottish Water's response to the Water Industry Commission's determination in relation to its delivery plan.

Mr Ruskell: In *The Scotsman* of 22 February, you said that you would not want to replace Professor Alexander with a yes man. Presumably, therefore, the person who will replace him will occasionally say no or maybe to elements of Q and S III and the investment programme.

My question is about priorities. It appears to me that you have three difficult decisions. The first is about charges. If charges go up, that will not be acceptable to the WIC. The second is that if you reduce the investment in the environment, you might break European Union directives and end up in court. The third is about development constraint and the ambitious plans of local authorities. Striking a difficult balance between those elements is at the heart of sustainable development. On what areas are you prepared to compromise with the incoming chair?

Ross Finnie: We could explore that, but I am not sure that I have to make any initial compromise. The Water Industry Commission's determination looked at the issues that we submitted, following the extensive consultation to which I referred earlier, and we made clear that the ministerial objectives were in exactly those three difficult areas and that we expected Scottish Water to produce a delivery plan that could meet those objectives. In major terms, that appeared to be the case. The biggest difference was that the Water Industry Commission decided that the plan could be met in full for a substantially lower sum and without compromising the Scottish Executive's objectives in terms of development constraint, the environment and the drinking water quality directives. That is an extremely important point.

When we started the consultations, we had many objectives. By going through an iterative process and holding discussions with Scottish Water, we started to move from the impossible towards a plan that, although Scottish Water had to work it up, could be managed within the timeframe and which would be capable of delivery. I am not suggesting that the objectives were anything other than very difficult for Scottish Water or anyone else to reconcile, but there was no point at which the commissioner advised me that the plan was not capable of delivery. The most fundamental disagreement was about the price at which it could be delivered.

Mr Ruskell: I hear what you are saying. That is very much the WIC's view. You are effectively saying that there is no room for failure or revision within the Q and S III process.

Ross Finnie: I am not saying that. It is obvious that practical issues will arise. This plan has not been drawn out of thin air. I would be open to that criticism if we had not had such an extensive consultation and so much paperwork.

Mr Ruskell: I have a question for you on development constraint. There are local authorities in Scotland that are competing against each other to get more economic development and more people to live in their areas. Fife Council is an example of that. That competition is causing tension in places such as north-east Fife, where some communities are set to double their populations and people are worried about the infrastructure, including sewerage. They are greatly concerned about the development plans.

Is there not a case for telling local authorities that they need to prioritise the areas of development constraint that they want to alleviate, and that simply going along with the aspirations of, for example, Fife's structure plan vastly to increase the population is not sustainable and will result in water charges going up or the breaking of EU directives? Something will have to give because we simply cannot do everything.

Ross Finnie: The questioning so far has been about the delivery plan as a whole, and there are issues about why I am concerned about that. We are now drilling down to the relationship between Scottish Water and local authorities. Rob Gibson asked me where the figures came from. The figure of 120,000 homes was not plucked from the air; it has a real relationship to local authority evidence and to the overall Scottish housing plan.

You are absolutely right about priorities. The sums are allocated over the piece and we are dealing with development constraint. In my view there are concerns about the nature of the relationship between Scottish Water and local authorities, but Scottish Water has resources for the four-year period because of our input.

There is no question but that there is a need for a dialogue about prioritisation—Mark Ruskell mentioned the problem I have juggling three problem issues—but it does not matter what you do because the next problem is that we cannot simply switch a capital investment programme on and off. I apologise for that terrible pun, but I cannot think of a better phrase. Capital development programmes are in place and Scottish Water has to deliver them. I agree, though, that there has to be prioritisation.

We set development constraint as a key concern that was not properly addressed previously. I continue to be extremely concerned by repeated stories on this point. John Swinney in particular has correctly drawn attention to a range of issues. He has several villages that are under constraint. Saying that this is about the order of priority and how to address it seems to be a bit of a blank answer. If, within my four-year programme, we appear to have allocated both numbers and amounts, there is an issue about how we prioritise. I remain deeply concerned about that.

Mr Ruskell: That is an issue for Scottish Water to discuss with local authorities.

Ross Finnie: Yes, but it is also for me to express concerns about the matter on behalf of the owners of Scottish Water, who are the people of Scotland. It causes me real concern.

12:00

Mr Brocklebank: I have a general question and a specific one. Given that you say that you have deep concerns about aspects of Scottish Water's operation, which I imagine are shared by large sections of the public, will you share your thoughts about the weekend stories that the Chancellor of the Exchequer would like to privatise Scottish Water?

Ross Finnie: That is a bit like asking, "When did you last meet the Chancellor of the Exchequer and what issues did you discuss?" I have not met the Chancellor of the Exchequer, and I have not discussed the matter with him. The question should be addressed to the Chancellor. The Scottish Executive has no plans to privatise Scottish Water. It may not come as a surprise to the committee—its predecessor oversaw the passage of the Water Industry (Scotland) Act 2002, which formed Scottish Water—that primary legislation of the Parliament would be required to change Scottish Water's status. I cannot say why the story about the Chancellor appeared, nor on what information it was based.

Mr Brocklebank: So there is no truth to the story that discussions on the issue have taken place between the First Minister and the Chancellor of the Exchequer.

Ross Finnie: That is an even more speculative story. The question may be answered for the second time at First Minister's question time tomorrow. I am unaware of any such discussions. More fundamentally, although the story is interesting, it overlooks the type of legislation that would be required to change Scottish Water's status.

Mr Brocklebank: My specific question relates to the departure of Professor Alexander. I am interested in the background to the Executive's contractual obligations to Professor Alexander, particularly in relation to the ex gratia payment to him of £27,000 when he resigned. The term "ex gratia" suggests that you did not have to make the payment, but did so voluntarily. Will you give us the background to that?

Ross Finnie: In my position as the minister with responsibility for the water industry, I must work on a professional basis in dealing with the chairman, so personalities and other issues are completely and utterly irrelevant. From time to time, profound disagreements can arise. On this occasion, the disagreement was over the nature of the delivery plan and what had to be done in the best interests of the Scottish public and consumers. As would any company that has to deal with such matters, we believed that it was appropriate to acknowledge that Alan Alexander acted entirely honourably in the dispute and to recognise the contribution that he has made to the water industry. Our action was entirely in line with the way in which corporate bodies of a similar size deal with the resignation of a chairman.

Mr Brocklebank: Did his contract stipulate that he should be paid such a sum if he decided to resign?

Ross Finnie: No. The discretion is in the Water Industry (Scotland) Act 2002, which allows ministers to require Scottish Water to make such a payment.

Mr Brocklebank: Thank you, minister.

The Convener: I am relieved that you have finished, Ted, because I was going to stop you after four questions.

Richard Lochhead: I will pick up on Ted Brocklebank's theme. We were keen to have the minister before the committee because of the fear of instability in Scottish Water as a result of the circumstances and timing of the chairman's resignation. Is it the case that, had Professor Alexander not resigned, you would have moved for his dismissal?

Ross Finnie: That is entirely speculative. He resigned and I did not have to think about that matter. I do not intend to answer the "What if?" question. We had a profound disagreement and Alan Alexander decided to resign.

Richard Lochhead: I am puzzled about the timing. Our briefing from the Scottish Parliament information centre says, "The letters were exchanged" between the two of you "from 1-14 February 2006." On 2 February, the Executive had already commissioned recruitment consultants to find an alternative chairperson. You will understand that the perception is that, behind the scenes, you were moving to have the chair of Scottish Water replaced. Is it fair to assume that you would have sacked him if he had not resigned?

Ross Finnie: No. In the run-up to the receipt by the Executive of Scottish Water's delivery plan, although we had not seen the plan in total, we were aware of emerging difficulties. Alan Alexander is a well-known public figure who holds very strong views, and we were aware that there was a potential—I stress potential—difficulty. I am perhaps a little overcautious, but I do not like to run my department on the basis of having to face surprises for which I have not prepared myself. The signs were concerning, although I still firmly believed that matters were capable of resolution. However, there were clear signals that things might get quite difficult. As a matter of prudence and precaution, I wanted to know what the options were and what the position was. That seemed to be prudent on my part, but it did not close my mind to matters turning out very differently.

Richard Lochhead: Clearly, it is going to be difficult to shed light on that episode.

My second question relates to the fear that Scottish Water's programme will be delayed in some shape or form as a result of recent events. Are you able to put your hand on your heart and say that there will be no delay in delivering Scottish Water's programmes, particularly in areas such as the releasing of development constraints, and in addressing the issues that have arisen as a result of what has happened over the past few weeks?

Ross Finnie: Let us be clear that, although I regard the disagreement between ourselves and the chairman and Scottish Water about the content of the programme over four years as a very serious matter, Scottish Water nevertheless has some highly professional people among both its executive directors and its employees. We should be careful not to assume that, simply because the chairman has resigned, the employees of Scottish Water have gone home to sip cups of tea as they await the new interim chair. They continue to perform their duties in a highly professional way.

Those who are charged with delivering the capital programme are in no way inhibited or prevented from so doing. Indeed, quite the reverse is the case. We know that the employees are continuing to work on capital programmes. It will be enormously helpful to resolve the issue of the chairmanship and, more particularly, the determination of the plan. I could not deny that that needs to be sorted, and that is why I am concerned about it. I am not anticipating—and, given what I have just said, I have no reason to anticipate—that any major delays should occur as a result of what has happened.

On development constraints, there is no particular reason why we should not deliver. However, as I firmly made clear in my response to Mark Ruskell, I am concerned about the fact that we still appear to have a lack of rapport and understanding between Scottish Water and the relevant local authorities that submitted their evidence on the development of the plan. That needs to be bottomed out by both the chief executive and the new interim chair.

Mark Ruskell was making a point about that situation resulting in some degree of prioritisation so that, over the four-year period, the provision for unblocking about 120,000 houses from development constraint can be addressed. I do not necessarily think that that could be affected by matters around the appointment of the interim chair, but I am certainly concerned at the continuing disjunction between Scottish Water and the local authorities.

Richard Lochhead: I will take that as your not being able to put your hand on your heart and say that there will be no delays.

Ross Finnie: I would be a foolish minister to try to anticipate that. I do not run Scottish Water; I try to give direction and to ensure that the interests of the Scottish public are represented in this matter. I have received serious representations from all sorts of MSPs on the matter, including from John Swinney.

Mr John Swinney (North Tayside) (SNP): I appreciate the opportunity to ask questions, even though I am not a committee member.

Will the minister set out what dialogue took place among the Water Industry Commission, the drinking water quality regulator and the Scottish Environment Protection Agency between 30 November 2005 and 1 February 2006?

Ross Finnie: Those bodies had several meetings, which I did not attend and at which my officials were not necessarily always present. Given that the delivery plan ultimately had to meet the requirements of those regulators, it was clearly important for Scottish Water to be in dialogue with them. That is what one would expect.

Mr Swinney: What was the purpose of that dialogue?

Ross Finnie: The purpose of such dialogue should be—I and my officials are not necessarily privy to those conversations—to ensure that Scottish Water is clear that the delivery plan that it is preparing will meet the requirements of the regulators. As we know, at the end of the day that was sadly not the case. The situation was also influenced by the fact that ministers had made it explicit to Scottish Water that it would be important that the delivery plan that it presented to us had the approval of the regulators.

Mr Swinney: If, in Scottish Water's discussions with the Water Industry Commission, the commission offered it a mechanism whereby slippage could be allowed on specific environmental projects that were, in the minister's words, not driven by regulation—projects that were welcome developments rather than absolute requirements—would it have been reasonable for Scottish Water to conclude that it had the commission's tacit agreement that it could present a business plan to ministers that met ministerial objectives in a way that, in advance of the February discussions, had been refined by the room for compromise that the minister talked about?

Ross Finnie: As both John Swinney and I are acutely aware, speculating on what might be a reasonable conclusion would require that one knew both what question was asked and what answer was given. As I was not present, I know neither what question was asked nor precisely the answer. However, what I do know—I realise John Swinney's direction of travel here—is that the letter that we delivered to the chairman stated expressly and clearly that we required the delivery plan to have been approved by the regulators beforehand. My point is that, even if such discussions took place—I cannot say whether they did, as I was not privy to any—one would have expected Scottish Water's management, as a matter of course, to have presented the final delivery plan to the commission for its approval before giving it to ministers. That did not happen.

Mr Swinney: In his written evidence, the minister states that he concluded on 1 February that the business plan that Scottish Water submitted fell short of the required ministerial objectives that needed to be achieved. However, as Rob Gibson has highlighted, the minister's officials convened a high-level group on 7 February to discuss the development of the Scottish Water business plan. Was it appropriate for the Executive to have acted as abruptly as it appears to have done while that dialogue was continuing on how a credible business plan that delivered ministerial objectives might be achieved?

12:15

Ross Finnie: There is slight confusion about the purpose of the meeting on 7 February. It covered a range of issues. We were in no doubt that the plan had not been approved by the regulators as we had required. The meeting of officials on 7 February was important because a worrying situation was emerging and we wanted our officials to be clear about what was happening and wanted to look beyond, to where we were going, given that we did not have a plan that had been approved in the terms that we were seeking. Also, that was the day on which the Water Industry Commission responded to the letters, saying that the plan did not meet its requirements. A lot of issues were bubbling up at that time. I do not think that we came to a precipitate view on the plan.

Mr Swinney: My objective is to ensure that there is no interruption to Scottish Water's investment plan, because it affects my constituency. I have been raising the issue for 18 months and I am bored senseless by having to raise it again.

You said that a business plan that fell short of the requirements was submitted to you on 1 February. That was a matter of days before the investment plan was supposed to commence operation and no credible business plan was in place. When did the Executive believe that it had a problem with the business plan? I want to get to the bottom of that question, because there seem to have been a number of different stages. You told me that there was growing concern about development constraints, which was raised in the Parliament on countless occasions but never really came to a head within the Scottish Executive. I want to understand why, if it was such a problem, ministers allowed the issue to drift for so long. Why was action not taken earlier to ensure that constituencies such as mine are not exposed to the fear of delay that they now face?

Ross Finnie: If we are talking about the development constraint difficulties that came to light or emerged—whatever phrase you want to use—and should perhaps have been part of Q and S II—

Mr Swinney: They could not have been in Q and S II, because it was formulated years ago.

Ross Finnie: Indeed, but one of the difficulties with Q and S II was, as I explained in an earlier answer, the extremely unfortunate failure of a large number of local authorities to respond to the consultation. There is no doubt that the sums that were allocated to Scottish Water for Q and S II did not adequately respect that.

Mr Swinney: I know, but I am asking—

Ross Finnie: You are asking a simple question.

Mr Swinney: I am asking about Q and S III, minister, where those issues are supposed to be addressed.

Ross Finnie: Yes—

The Convener: One at a time, please.

Ross Finnie: Those issues will not be solved in a day. Q and S III starts on 1 April. The matters are addressed in it and they are part of the next four-year problem. It is regrettable that a number of issues that are in Q and S III ought properly to have been in Q and S II and I am not denying that. I have never denied it; I have only said that it is regrettable that the consultation that took place four years ago had some unfortunate results. The issues have to be addressed and are in the Q and S III plan, which, as I said to Rob Gibson, removes the constraint on 120,000 new homes.

Mr Swinney: Richard Lochhead asked for a guarantee that there would be no impact on investment plans as a result of the chaos that we now have at the head of Scottish Water. Do we have assurance that there will be no interruption to the investment plans, whatever they happen to be?

Ross Finnie: Curious though it may seem, my interests in the matter are not in any way different from yours. As a member for the West of Scotland constituency, I have an interest in housing development constraints, as do others. I also have an interest as a minister and my aim is not to do anything other than ensure that the plan is realised and the development constraints removed. There is nothing between our positions on that. However, I had a fundamental difficulty with Scottish Water's plan because it appeared to enter a number of caveats, which gave us good reason to lack confidence in the ultimate delivery of the plan. I had to challenge Scottish Water and say that the plan was not acceptable. We are appointing an interim chair to ensure that we can deliver on all three elements of the plan within the timeframe.

Mr Swinney: When will the revised business plan be available?

Ross Finnie: I have not been advised of that. However, I repeat that we are dealing with professional people within Scottish Water, who are not constrained from making preliminary plans and delivering on the tail-end. There is no professional need for them to stop what they are doing. I understand and share Mr Swinney's concern about the matter and I want to move as quickly as I can to fill the vacuum. However, I do not think that it would have been proper for me, as a minister, to accept a plan that had fundamental caveats. In the final analysis, no matter what Mr Swinney said in his first question—though I do not dispute where that came from—the plan was not approved by any of the regulators.

Maureen Macmillan: I want to ask about integration between Q and S II and Q and S III. The Water Industry Commission came to the Parliament a few months ago to do a question-and-answer session with MSPs, who obviously raised their concerns then about Scottish Water's proposed delivery plan. One of the matters that was complained about was double counting. The example that was given, as I recollect, was that projects in Q and S II were appearing again in Q and S III. I asked whether projects in Q and S II that were not completed would be included in Q and S III, and the commission rather implied that they would not. I am concerned therefore that some capital projects might be left dangling because the commission would not allow Scottish Water to include them in Q and S III. I may have picked that up wrongly, but I certainly did ask that question of the commission and got a rather unsatisfactory answer about what would happen to some projects. I wonder whether you can give me any information on how Q and S II and Q and S III will integrate, if there are unfinished projects when Q and S III begins.

Ross Finnie: As I indicated earlier in response to Richard Lochhead's question about delays and whether the programme came to a shuddering halt, there are some £280 million-worth of Q and S II projects. Those simply have to carry on because they must be delivered. The money is there and there is no reason for those projects not to continue. I am slightly surprised by what Maureen Macmillan said about projects being double counted. That is not my understanding of the position, which is that Q and S II must get finished. Notwithstanding the hiatus in the delivery of the Scottish Water plan and the question of its chair, there is no reason why Scottish Water cannot pursue and prosecute those projects—that is what it must do. For the move into Q and S III, there are

separate allocations and those funds are available to Scottish Water to deliver on the projects.

The Convener: I have a few questions. Having listened to colleagues, I want to take a slightly different tack and ask about assumptions that were made in the delivery plan and concerns that the Executive has expressed in the paper that was presented to the committee today.

I am interested in the idea that Scottish Water is expected to perform more effectively for less than the money that has been allocated to it. I am interested in the notional effectiveness that you think is going to be wrung out of the system. Do you have a notional target for performance? Is it a financial calculation? Is it a percentage calculation? I notice that the target is set by the WIC. To what extent is Scottish Water meant to perform, and what is meant by "an incentive based approach"? Who benefits from the incentive? Is it meant to be the managers of Scottish Water? Is the incentive to do with the allocation of future funds?

There is a fundamental issue, which has come up in your comments today, about the tone of the Scottish Water delivery plan being tentative and the plan not signing up to the directions given by ministers. I would like you to talk about your criticism of Scottish Water for overestimating the risks that it perceives in implementing the programme. I wonder whether it would be unwise for Scottish Water not to identify potential risks. I accept that the issue would then arise of how those risks would be managed or avoided, but it would surely be remiss of Scottish Water not to identify the potential blockages that it will have to tackle.

The issues that I was struck by in the delivery plan were issues such as the cost of capital goods. Does that refer to the pipework and the contracts that will be negotiated and agreed by Scottish Water to deliver the investment programme? I note that if the cost of capital goods exceeded the costs that are anticipated by the Water Industry Commission, Scottish Water would be expected to manage those costs down. What is the process by which that would happen? The issue of electricity costs has been flagged up by Scottish Water. If electricity costs continue to rise, Scottish Water is expected to manage those costs. How will it manage those costs down when some of them are external costs that are not within its control? Do you still expect Scottish Water to sign the contract with Scottish Water Solutions on 1 April, as is anticipated in the plan? To what extent is that crucial to the implementation of the plan?

I know that I have taken a different tack. I want to explore the point at issue, and I want to get the Executive's perspective. Nobody else has asked those questions this morning, although I think that they are fundamental.

Ross Finnie: Absolutely. Some of them depend on understanding also what the Water Industry Commission does in its economic assessment of the performance of Scottish Water. It is tasked with looking at comparable companies in the sector and adjusting the comparisons, as nothing is identical. There are geographic and topographical considerations in Scotland that prevent direct comparisons from being made. While picking on one or two companies because of the size and scale of their operations, the economic regulator is expected to be cognisant of the fact that direct comparisons cannot be made.

Although water industry regulation and the commission are relatively new here, the regulatory bodies have developed over the years following the privatisation of public utilities. Therefore, there are established methodologies—developed through the Office of Water Services, the Office of Gas and Electricity Markets, and all the rest—which are applied. Regulation is about giving the managers and owners of the regulated businesses incentives to improve performance in their efficiencies. It involves setting them targets that, following that examination, they believe can be exceeded on the understanding that the benefits from that out-performance are there for the duration of the regulatory period and that the targets for the next period are based on the extent of that out-performance.

The beneficiaries of that are, essentially, the consumers. Given the fact that the commission is an economic regulator, the whole purpose of this is to ensure that not only do we get delivery, in terms of quality and the removal of development constraints, but the price that domestic and non-domestic consumers pay is adequately reflected in the process. The commission adopted that approach in setting charge limits, which the Executive and Scottish Water welcomed as being in the consumer interest. Such incentivisation is well accepted and is common practice in the regulated utility industry.

12:30

The second issue that the convener raised relates to the fact that Scottish Water should identify risks and relationships in any delivery plan. I do not dispute that at all. However, when we formulated the original objectives and Scottish Water produced its first plan, which was the subject of the determination, the relative risks, rewards and problems were all well known. Our concern was that, although the circumstances had not changed, there appeared to be new caveats and concerns in the response to the commission's determination that were different from those raised

in the first plan, which was the subject of the determination. The regulators share that view.

The Convener: That is a general answer. I asked specific questions about assumptions, which you did not answer.

Ross Finnie: I apologise.

The Convener: I am just trying to get to the heart of what this means in practice.

Ross Finnie: There are provisions in the regulations whereby if entirely unforeseen events occur, Scottish Water can apply to the commission for an interim determination on the matter. Elsewhere, bodies do not anticipate that, but they know that the provisions are there and that they have the absolute right to apply to the regulator for a revision if there are material changes in their circumstances. Therefore, their plans do not start to hint at this or that happening. They know that if events occur that are entirely outwith their hands, they have the right to apply for an interim determination. That applies to the delivery plans from comparable companies in similar sectors and in the utility industry as a whole.

What the commission finds unusual is that Scottish Water set out what might happen in its delivery plan, which suggested almost that the plan was incapable of being delivered unless there was an interim determination. That is an unusual, extraordinary way for a public utility to respond to a commission determination.

The Convener: I am still wondering about issues such as electricity costs and the cost of capital goods, which are not necessarily within the control of the organisation. If those costs exceed expectations and if Scottish Water is not in a position to manage them down, could it do anything other than go back to the commission to put its case? Given how electricity prices have risen over the past couple of years, is it expected to assume what future price increases will be and accommodate them in the plan? How are such issues meant to be dealt with, given that price increases could be significant?

Ross Finnie: On the cost of capital, the commission's assessment takes account of what is being done in industries and companies that are as comparable as possible and demonstrates, both in terms of management and in terms of prices being obtained or potentially being obtained, where Scottish Water's delivery plan meets expectation. It was that calculation that brought about the opinion of the commission that, taking the plan as a whole, there could be a substantial reduction in the overall cost. However, if prices change materially for reasons that are wholly outwith the control of Scottish Water, there is a right of appeal.

I do not think that there is any doubt about the way in which the Scottish Water Solutions contract has been constructed. Scottish Water needs to have access to an external additional provider of resource. During the early months of its existence, it was clear that Scottish Water's delivery of a £2.5 billion programme over four years—which, in crude terms, involves trying to put something like £50 million of investment into the ground every month—would be a challenging task and one that would be at the top end of what could be achieved. Scottish Water needs the capacity to do that, so it will need to have that contractual arrangement. As for the timing of the signing of the contract, I am not familiar with the state of play, but we know that Scottish Water must have that contractual arrangement and we recognise that the commission has raised issues relating to the determination of corporate governance issues. If those issues are resolved, there is unlikely to be any difficulty in signing the contract.

The Convener: It is because people have concerns about getting ahead and getting that huge investment programme going that I asked about the target date of 1 April for signing the contract. Colleagues had concerns about the process being delayed, so I wanted clarity about the fact that there was, in principle, no obstacle to that going ahead just because the chair has moved on.

Ross Finnie: There are separate governance issues that have been raised by the commission, but the need for Scottish Water to have that delivery vehicle is clearly understood.

Nora Radcliffe: I would like to ask about Scottish Water Solutions. Would Scottish Water be free to sign a contract before the delivery plan is signed off? What influence does the WIC have on the terms of that contract?

Ross Finnie: Irrespective of the final shape of the plan, you will see if you look carefully at the structure of Scottish Water that it clearly requires access to contractual and delivery experience. The commission's determination highlighted issues to do with where the balance of risk lay between Scottish Water and Scottish Water Solutions and who, in determining that balance of risk, controlled the final cost determination and where that determination fell. Those issues have to be, and are being, addressed, because they are critical to the nature of a contract that Scottish Water might enter into with Scottish Water Solutions. It is acknowledged that there were issues that needed to be resolved, and we understand that they are being resolved. That does not prevent Scottish Water from entering into a relationship to ensure that it has such a delivery vehicle.

The Convener: Everyone has been able to ask their questions, some of which were quite searching. That was appropriate, given the nature of the issue. I thank the minister and his officials for coming along this morning and for providing us with information in advance.

12:39

Meeting suspended.

12:40

On resuming—

Accountability and Governance Inquiry

The Convener: Item 4 is the Finance Committee's inquiry into accountability and governance. I put the item on the agenda at this point because I did not want to prejudge the discussion about Scottish Water that we have just had with the minister. The committee received correspondence from the Finance Committee, which invites us to consider questions of accountability and governance in relation to the operation of parliamentary commissioners and ombudsmen in areas within this committee's remit. I thought that it would be appropriate to include the matter on the agenda, given that the previous item was partly about accountability and governance. Members have a paper from the clerk and if there are no further issues that members want to raise in response to the Finance Committee's letter and if members are happy for me to do this, I will write to the Finance Committee to give details of our scrutiny of the Water Services etc (Scotland) Bill, as is suggested in the paper. Given the comments that members made during the previous item, I do not know whether anyone wants to raise further issues.

Nora Radcliffe: The Finance Committee's evaluation of the situation is very much in line with our view on the Water Industry Commission for Scotland.

The Convener: I want to be sure that we are all singing from the same hymn sheet.

Rob Gibson: The WIC came into being at an advanced stage of the development of Q and S III, when issues remained to be debated about the delivery of Q and S II. It seems that the WIC is not prepared to comment on such issues, which makes it difficult for us to believe that it can be held to account for its regulation of the water industry. As we heard, issues about Q and S II are continuing into the Q and S III phase. I want to put on the record my slight concern about that overlap. It might be germane for the Finance Committee to consider the matter as part of its inquiry.

The Convener: Given the discussion that we had under the previous agenda item, I am inclined to respond to the Finance Committee in the terms that Mark Brough suggests and to attach to our response the *Official Report* of today's discussion. There are governance issues and some of the issues that we raised during our discussion are to do with scrutiny of the minister and the WIC and how accountability works in practice. That would

enable us to pick up on the issue that Rob Gibson raised without repeating the discussion that we just had. The approach would allow the issues that we raised to remain on the agenda and to be passed to the Finance Committee for consideration. Shall we proceed on that basis?

Rob Gibson: Yes.

Mr Brocklebank: The list of commissioners in the Finance Committee's letter does not include the Scottish information commissioner. Is there a particular reason for that omission?

The Convener: We could ask the Finance Committee why Kevin Dunion's office is not included in the list.

Nora Radcliffe: The omission might be because the information commissioner is appointed by the Executive and not the Parliament.

The Convener: The clerk is telling me that the Finance Committee does not intend to consider everything about commissioners; it has chosen to mention certain commissioners in its letter to this committee.

Mr Brocklebank: I am interested to know why the Scottish information commissioner is not included.

Nora Radcliffe: I am fairly sure that the reason is to do with who appoints the commissioner. The letter refers to "parliamentary-appointed commissioners". I think that the information commissioner is appointed by the Executive. Perhaps we could check that.

Mr Brocklebank: The letter says:

"The Committee is … interested not only in parliamentary-appointed commissioners but also Audit Scotland and other regulatory bodies".

Mr Ruskell: The Scottish information commissioner has a role in relation to environmental information that is slightly separate from his role in relation to freedom of information in the wider sense. That is relevant to this committee's work.

The Convener: If members have no further suggestions about how we should respond to the Finance Committee, I will write to the committee and attach a copy of the *Official Report* of today's meeting, which will provide a good example of how we scrutinise the work of the WIC in relation to the Water Services etc (Scotland) Act 2005.

We move into private session, as we agreed at our last meeting, to discuss a draft report on our inquiry into current developments in the biomass industry.

12:45

Meeting continued in private until 12:49.

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