

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 17 May 2006

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

17th 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 (Moray) (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 ALSO ATTENDED:

Mr John Swinney (North Tayside) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Joyce Carr (Scottish Executive Environment and Rural Affairs Department)

Rhona Brankin (Deputy Minister for Environment and Rural Development)

Bob Perrett (Scottish Executive Environment and Rural Affairs Department)

David Williamson (Scottish Executive Environment and Rural Affairs Department)

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 17 May 2006

[THE CONVENER *opened the meeting at 10:05*]

Water Environment and Water Services (Scotland) Act 2003

The Convener (Sarah Boyack): Good morning, colleagues. I welcome everyone to our 17th meeting in 2006 and our second meeting this week. I thank all those—including the minister—who attended Monday's meeting in Inverness. Congratulations on your stamina.

We have received a couple of apologies. Richard Lochhead has a constituency engagement and Elaine Smith is ill.

The first item on the agenda is consideration of the annual report on the Water Environment and Water Services (Scotland) Act 2003. When the committee debated the original bill, it agreed that the Executive should report to us on the annual implementation of the water framework directive. As it has done in the past couple of years, the committee will take evidence on the report.

Written submissions on this item have been circulated to members. I should point out that some of them refer to the two sets of regulations on private water supplies that we will deal with later in the meeting. As members will see, there is a bit of cross-over in the agenda. Finally, I note that John Swinney has joined the meeting to discuss this item, in particular.

I welcome to the meeting Rhona Brankin, the Deputy Minister for Environment and Rural Development. I invite the minister to introduce her officials and to make some introductory remarks. After that, we will proceed to questions from colleagues.

The Deputy Minister for Environment and Rural Development (Rhona Brankin): I am accompanied this morning by Joyce Carr and Ruth Gilpin.

I am pleased to present the third annual report to Parliament on the implementation of the Water Environment and Water Services (Scotland) Act 2003. Members will see from the report that there has been considerable progress during 2005, most notably the introduction of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (SSI 2005/348) and the associated charging scheme.

I am absolutely committed to ensuring that, in our work on this matter, we achieve the right balance between protecting and improving the water environment and supporting the social and economic interests of water users from both large and small businesses. As a result, work with water users has been an essential element in developing the regulations and the charging scheme.

In recent months, I have met stakeholders from key sectors, including the hydro-power sector and the whisky industry. Those meetings have provided valuable opportunities for discussing how we can work together with Scottish businesses to implement the 2003 act in the context of our wider economic, energy and environmental targets. I welcome those opportunities for discussion and look forward to continuing those constructive relationships.

We are now in an excellent position to move forward. In providing a single framework of proportionate controls for all activities that pose a risk to the water environment, the controlled activities regulations—CAR—make regulation considerably simpler for water users. Their timely introduction also provides businesses with certainty in planning for the future.

The annual report highlights two other achievements in 2005 that will support the future protection of our water environment. First, the consultation on a strategy for tackling diffuse pollution from rural land use outlines key measures to tackle an important pressure on our water environment. Secondly, the Scottish Environment Protection Agency's strategy for river basin management planning sets out how it will work with stakeholders to plan water resource management in Scotland. Central to both strategies is our commitment to work closely with water users.

I am happy to answer members' questions on the content of the annual report.

Nora Radcliffe (Gordon) (LD): First, I wish to ask about a tiny point of detail. The final paragraph on page 7 of the annual report, under the heading "Working with other policy areas", mentions many areas, but not leisure. There are recreational users of water and I do not know whether they are included in one of those policy areas.

Secondly, it occurred to me while I was travelling by rail that railways run alongside and across watercourses and I wondered whether Network Rail is to be designated as a responsible authority. That would impose duties on the company.

Thirdly, what progress has been made on sustainable flood management? There is some concern that that aspect of the WEWS act has not progressed as quickly as it might. There is also some concern that financial support for flood

management solutions is being allocated on the basis of the Flood Prevention (Scotland) Act 1961, rather than the principles of sustainable flood management that were brought in with the WEWS act.

Finally, is the minister confident that we have sorted out water abstraction charges to farmers who need to irrigate vegetables and potatoes?

The Convener: There are three big questions there. Let us take them one at a time, and I might take supplementaries as well. Nora Radcliffe's first point was about the designation of Network Rail.

Rhona Brankin: I understand that, for legal reasons, Network Rail is not able to be designated as a responsible authority.

Joyce Carr (Scottish Executive Environment and Rural Affairs Department): We certainly looked into it with our lawyers; that was one of the key issues that helped us to decide who should be designated. Network Rail was considered and consulted upon but, for legal reasons, it could not be designated.

The Convener: The next question was about sustainable flood management.

Rhona Brankin: The Executive has set aside a large amount of funding for implementing flood management measures. As members will be aware, several flood defence proposals have been brought to the Executive and have already been funded. The Executive currently provides 80 per cent of the funding for flood management, and there will be an announcement tomorrow about the White Cart water flood management proposal and the support that that is getting from the Executive.

I am confident that the money is there. The challenge is for local authorities to come up with flood defence measures. That procedure is often very complex because it involves complex systems of consultation and can also involve local inquiries.

The national technical advisory group on flooding has been considering sustainable flood management. We need to be able to take advice from that group in the future. We are very conscious of the fact that we have a commitment to sustainable development and it makes sense to consider sustainable measures for dealing with flooding in future.

In relation to the charging schemes—

The Convener: May I stop you there, minister? There might be a couple of supplementary questions on flooding.

Maureen Macmillan (Highlands and Islands) (Lab): I am aware that some reassessment of flood risk is going on, particularly in the Conon

valley, although I do not know about elsewhere. Because that is happening, or has happened—no one is quite sure which—it is leading to uncertainty in the planning departments about what their responses should be to planning applications and about what development can take place. Can you give us any information about the new risk assessments?

10:15

Rhona Brankin: I have no specific information about the Conon valley, but I would be happy to provide the member with information about that.

Maureen Macmillan: Are new risk assessments happening, even if not specifically in the Conon valley?

Rhona Brankin: Any new flood prevention scheme will require authorisation under the controlled activities regulations. If you can give me more information about the perceived issues, I would be happy to respond to you on those. Other than that, I am not sure what is meant by the concern to which you refer.

Maureen Macmillan: I will get back to you on the matter. I have been given only vague hints that something is happening. I wondered what that was.

The Convener: The minister has given a commitment to write back on the issue. You made a fairly specific geographical reference, so we will get more information on that.

I have a follow-up question about the links between the 1961 act and the 2003 act. It has been mentioned to quite a few members that there is concern about the definition of sustainable flood management. I was told that there was a possibility of a consultation on the matter, but there has been none. Do you have plans to produce a timescale for that? There is a real need to join up the dots between the traditional approaches to flood management and a more sustainable approach, which we were keen to see in the 2003 act.

Rhona Brankin: There is a draft definition, along with measurable objectives and principles that have been set out for flood management, which have been produced by the national technical advisory group on flooding issues. That work will help to inform the decision-making process. There is an intention to consult on the outcome later in 2006. I am happy to give the committee more information on that.

The Convener: So the consultation will take place this year.

Rhona Brankin: Yes.

The Convener: I am concerned that it has not moved forward, but it is useful to have your

comments on the record, so that people can gear up for the consultation. A couple of other members have questions about flood management.

Mr John Swinney (North Tayside) (SNP): Minister, a moment ago you said that local authorities were under an obligation to work up flood management schemes, which is of course the case, that the money was available in the Scottish Executive for us to be able to afford adequate flood prevention measures, and that local authorities have the complex job of putting together flood management schemes. Are you absolutely satisfied that the Executive is in no way a road block to pursuing some schemes? It strikes me that there is a disparity between your comments and what we hear from local authorities, which frequently report difficulties in getting the Executive promptly and speedily to handle the applications that they make for flood prevention schemes. I certainly hear that from local authorities in the area that I represent.

Is the Executive dealing with the issues promptly enough? Can you give us an idea of how many schemes are progressing on an annual basis? When I think about the schemes in Brechin in my constituency and what I heard about the Elgin flood prevention scheme when I was up in Morayshire during the recent parliamentary by-election, it strikes me that the Executive is not exactly pushing such schemes through with a great sense of urgency.

Rhona Brankin: I would be interested to know what the particular concerns are. The Executive works very closely with local authorities on drawing up schemes. It is undoubtedly a complex process. If you can provide me with information about concerns that exist in respect of particular schemes, I will be happy to look into those.

Glasgow City Council has come forward with a scheme for White Cart water, which has been given the go-ahead although the detail has not been finalised. Moray Council and East Ayrshire Council have submitted schemes for Forres—the Burn of Mosset—and Galston. The scheme for Forres has been referred to a public local inquiry; East Ayrshire council is looking to resolve objections to the Galston scheme. Aberdeen City, Perth and Kinross, Angus, Falkirk, Argyll and Bute, Highland and Renfrewshire Councils are all likely to produce schemes. Since the previous spending review, schemes in Aberdeen, East Dunbartonshire, Kilmarnock, Largs, Linlithgow, Portpatrick and Rothesay have been funded.

The Convener: It would be useful to receive a note on that, as the information is in front of you. We would like a sense of the timescales. I know that in my area—Edinburgh—we still await a final outcome. Rather than your listing all the schemes, a note would be helpful.

Rhona Brankin: I am happy to provide that. The flooding issues advisory committee is considering how the 2003 act sits with earlier legislation. We are conscious of the length of time that the process can take. John Swinney made a separate point that implied that the Executive has been slow to respond; I am happy to respond to specific questions.

We have inherited a system that may be cumbersome. We are considering how the 2003 act relates to the planning framework and how we can speed the process. I am happy to provide the information.

The Convener: I will call John Swinney, but as every committee member wants to speak, I ask him to be brief. I do not want to prolong the discussion unnecessarily.

Mr Swinney: I suggest that the note for which the convener asked should contain timelines on when proposals were first mooted, when they were submitted and when local authorities started to consult. Such timelines would give us a flavour of the blockages in the system.

Rhona Brankin: I would be happy to provide that. We have also been waiting for some councils for a considerable time. I accept that we need to be clear about where the blockages are and what we need to do to unblock them.

Nora Radcliffe: I want to be clear that there is no bar on applying funding made available under the 1961 act to measures such as land acquisition or compensation to landowners for flood mitigation that allows flooding further upstream. That might all be dealt with more holistically when we start to consider river basin management planning.

Rhona Brankin: Absolutely. An holistic approach is a part of sustainable flood management.

Nora Radcliffe: So there is no bar on using funds in the way that I described.

Rhona Brankin: Not to my knowledge, but I will have to confirm that.

Nora Radcliffe: I do not imagine that there is, but I wanted to clarify that.

Rhona Brankin: I do not think that a bar exists, because some schemes include such measures. I will confirm that.

The Convener: Nora Radcliffe also asked about charges for water abstraction on farms.

Rhona Brankin: Farmers expressed concern and SEPA undertook a stakeholder process to consider charges for various users. Considerable discussion took place with the agriculture sector and it is true that that sector had several concerns. A key concern was irrigation for potato growing.

The committee will be aware that discussions took place with SEPA until quite a late stage, and SEPA has made significant changes to the fee structure.

In defining the thresholds between the bands, SEPA underestimated the volume of water that is extracted by an irrigator, so the bands in the charging scheme were amended to reduce the subsistence charge for an irrigator from £2,230 to £446. It is important that the consultation was conducted. Significant changes have resulted from it.

Nora Radcliffe: It is good that the system worked well and that the exchanges from the consultation has that result, but I am still concerned that the peripatetic nature of potato growing is not recognised. If people incur a new charge every time that they change the field that they use for potato growing, the cost will be almost punitive.

Rob Gibson (Highlands and Islands) (SNP): My question is also on proportionate costs, such as the adjustment for irrigation for potato growing that the minister mentioned. For the disposal of sheep-dip, some of the least well-off producers in the country are now faced with bills running to the £540 mark. SEPA's charges cut across the support given to agriculture in our most deprived areas. As the minister might recall, during the debate on the rural development programme I pointed out that it was estimated that a profit of only 59p per ewe would be generated in a scheme that was being worked up in Lewis and Harris. In that context, to charge the smallest users £542 for the disposal of sheep-dip is disproportionate. Has the minister taken on board the fact that, unless we take a joined-up approach, although we might clean up the water on the one hand, on the other we will have nobody left who can use it?

Rhona Brankin: Agriculture and crofting are hugely important. That is why SEPA rightly took time to work with stakeholders to ensure that the regulations were appropriate and did not impose too high a burden on the stakeholders but struck the right balance in protecting the environment from dangerous chemicals. The relatively small increase of £370 was due primarily to SEPA incurring increased regulatory costs, but the new charges apply only to those farmers and crofters who do not already have a licence. Consequently, only a small number of farmers—24 in 2004-05 and decreasing thereafter—are affected. The charges are in line with the polluter-pays principle. As the statistics that I have given show, the impact of the charges is relatively small. We believe that the regulation is proportionate given the potential danger to the environment.

Rob Gibson: It will be interesting to measure how many people leave sheep farming over the

next period. I wonder whether that might be partly due to those charges, but I will ask a separate question on that later.

Rhona Brankin: A lot of factors could be involved, but SEPA will continue to work closely with farmers and crofters.

Joyce Carr: The application fees apply only to new people starting. Existing situations should not be affected.

Rhona Brankin: I do not know where Rob Gibson got his estimates from, but I will certainly be interested in any statistics that he might have. Given that the fees apply only to new people coming in, I fail to see how they will have such an effect.

Maureen Macmillan: I want to ask about the transfer of planning powers over fish farming from the Crown Estates to local authorities. I note what the report says, but can the minister give us some details on what training is being given to local authority planners on how to tackle planning in the marine environment? I am a bit worried that there will be no strategic approach to planning in the marine environment if permissions are granted or refused on a case-by-case basis, rather than with reference to the whole picture.

Rhona Brankin: I have no information with me on training, but I am happy to provide that to the committee.

Like Maureen Macmillan, I am conscious that we need to ensure that we get this right. In the context of the aquaculture and fisheries bill that will be introduced later this session, we need to ensure that aquaculture regulation is as light touch as possible. We also need to ensure that local authorities have that capacity before any handover takes place. I am aware of concerns on that and I know that some local authorities have taken steps to deal with the issue. I will provide more detail on that.

Maureen Macmillan: I would be grateful for that.

10:30

Rob Gibson: One subject that took up a lot of time when we discussed the annual report last year was how the risk to river catchment areas is assessed. We spent about two hours grilling the then minister—the present minister has now inherited the subject. It was argued that we should assess the risk to rivers, for example, from the whisky industry, before we license. In the light of your report, do you have any comments to make on that? One argument was about the measurement at the point of abstraction of water, given that much of the water in the whisky industry is returned to the river system. We are all behind

the idea of full catchment area management, but an issue arises about the proportionality of the effect on an industry that relies on clean water. We all have concerns about that. Have you updated your views on the issue?

Rhona Brankin: We must ensure that the regulations are proportionate. I have had discussions with the whisky industry and visited distilleries. SEPA plans to review all licences that have been issued under the CAR in a process that is expected to take about two years and which will start later this year, in autumn 2006. The intention is for SEPA to assess the risks that are posed by all operations that are licensed in the context of other pressures and impacts on the relevant water bodies. The review will take into account the first tranche of environmental standards that are to be introduced during 2006, which will set standards that operators will be required to meet by 2012. SEPA is developing its plans for carrying out the review of licences, including the plans for carrying out risk assessments.

Rob Gibson: Basically, as I have said before, the licensing is done first and the risk assessment follows it. Is that the proper way round?

Rhona Brankin: We have asked SEPA to ensure that borderline cases are assessed at an early stage of the review process, to reduce uncertainty and unnecessary costs to businesses. I have spoken to the whisky industry about that. The projected costs are not high. SEPA estimates that the average annual subsistence cost to distilleries for an abstraction licence will be in the region of £2,000. However, we continue to explore with SEPA mechanisms through which the operational procedures can be adjusted to minimise any impact on Scotland's key sectors, such as the whisky industry. I will obviously keep in close touch with the whisky industry and SEPA on how the matter is progressing.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I want to follow up some of the points that Rob Gibson raised. Because of the tiered nature of the charging scheme, the costs appear to fall on large-volume water users, regardless of the environmental risks that they pose. Is that a fair summation?

Rhona Brankin: No, not necessarily. As I explained to Rob Gibson, we need to be able to make an early assessment of the borderline cases. The key point is to keep the regulations and costs to a minimum.

Joyce Carr: In developing the proposals for the charging scheme, volume was one factor that SEPA took into account—it is a proxy for risk—although it is not the only factor. SEPA worked with stakeholders to devise a range of factors so that volume was not the only parameter taken into

account. For example, adjustments are made for the amount that is returned to the water course and any environmental benefits. Volume is a factor, but it is not the sole factor.

Mr Brocklebank: Are you satisfied that the whisky industry has a major impact on the water environment and are you sure about the extent to which the licensing scheme will impact on those businesses?

Rhona Brankin: There is an initial concern about the potential risk, which is why we want to be able to carry out the risk assessment, so that we can assess whether there is a risk, how big it is, what sort of risk it is and what the impact on the environment could be. The risk assessment will be absolutely key.

Mr Brocklebank: Are you convinced that a licensing scheme is really necessary for industries such as the whisky industry and the hydroelectric companies and that that is the right way to go?

Rhona Brankin: We would not be introducing it if we were not convinced that that is the appropriate way to go.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): Obviously it is welcome that Scottish Water now has a duty to deliver sustainable development. Looking at the guidance that you have issued to Scottish Water, I notice that it states:

“Scottish Water's main contribution to achieving sustainable development will be to deliver Ministerial objectives within the charge caps set by the Water Industry Commission.”

Is not it the case that really the charge cap comes first and sustainable development comes second?

Rhona Brankin: No, absolutely not. The water industry, Scottish Water, has been issued with guidance on the sustainable development duty under section 51 of the Water Industry (Scotland) Act 2002. The decision that the water industry commissioner makes on the funding that is appropriate for Scottish Water for it to meet its ministerial objectives will take that into consideration. If issues come up in the course of the funding period that have not been anticipated and which have major implications, it will be for Scottish Water to go back to the Water Industry Commission to make the case for further funding. However, as I said, Scottish Water has recently been issued guidance on exercising its sustainable development duty.

Mr Ruskell: So, when the Water Industry Commission is setting the charge cap, in what way does it have regard to sustainable development?

Rhona Brankin: The commission must ensure that sustainable development is taken into consideration and the guidance ensures that the

requirements of Scottish legislation in respect of biodiversity and sustainable flood management, for example, are fulfilled. Those requirements are in place and if anything unexpected were to come up Scottish Water would be able to return to the Water Industry Commission.

Mr Ruskell: What does the WIC actually get? What sort of guidance and material on sustainable development would ministers give it? You mentioned biodiversity duties and something else, but does the WIC actually get guidance in the same way as Scottish Water does, or does it get something different?

Rhona Brankin: It will have a copy of the guidance that Scottish Water has, under section 51 of the Water Industry (Scotland) Act 2002.

The commission has a duty to ensure that Scottish Water has sufficient financial resources to exercise effectively at reasonable overall cost the core functions that I have described, including those in respect of sustainability, biodiversity and sustainable flood management. It is up to the commission to decide how to satisfy that duty, including Scottish Water's functions in respect of sustainable development under section 51 of the Water Industry Scotland Act 2002. I am satisfied that that duty is on the commission. It is up to the commission to ensure that Scottish Water has the financial resources to exercise its core functions, including those on sustainability.

Mr Ruskell: So the commission gets the same guidance as Scottish Water.

Rhona Brankin: Yes. That is my understanding of the situation.

Mr Ruskell: Let us return to sustainable flood management. To what extent do you consider a whole catchment management approach? Given that bids are coming in from individual local authorities, I imagine that they reflect political boundaries rather than catchment boundaries. For example, if a bid came in from Perth and Kinross Council, it would be reasonable to assume that there might be an impact on the coast of Fife. Do you encourage local authorities to work together? How do you ensure that the approach is joined up?

Rhona Brankin: I am happy to give you specific examples of where that is happening.

The Executive gets advice from the European Union, which has agreed a communication on flood risk management. As part of that, an action programme will be developed over the next few months. The particular areas of focus in the action plan include the kind of issues that you have raised, for example improving co-operation and co-ordination through the development and implementation of flood risk management plans for each river basin and coastal zone.

The river basin management plans that are required under the Water Environment and Water Services (Scotland) Act 2003 are intended to protect the water environment from human impacts and to contribute to mitigation of the impact of floods and drought. Currently, we are in a transitional situation because work is on-going on how we can best develop sustainable flood management. We will expect flood management schemes to be developed in the future, but the schemes that are currently in place will not be as advanced as those.

I will be happy to give the committee information about where we are on the development of sustainable flood management and which particular schemes have been able to incorporate the new thinking that is emerging from Europe and from the Executive.

Mr Ruskell: That would be useful.

The Convener: In the section of the annual report on implementation, there is quite a large section about the progress that is being made on diffuse pollution in the agricultural sector. It is recognised that particular action must be taken in different sectors rather than having a one-size-fits-all strategy on diffuse pollution. There have been about six years of action in the agricultural sector. What impact has that had on reducing diffuse pollution? Are there measurements?

Rhona Brankin: You will be aware that there was a consultation on diffuse pollution in 2005. A huge amount of work has been done with farmers and land managers on how they can take the matter forward.

Joyce Carr: On the progress to date, we have tended to give more consideration to the inputs. The nature of diffuse pollution means that it is difficult to quantify success in such a short period of time, but the issue is being examined. We can provide specific information on progress over a certain period, if that is what you are interested in.

10:45

The Convener: There is quite a lot on the problems of diffuse pollution and on the particular impact of increased use of fertilisers for example. There are issues to do with phosphates. It is a matter of trying to pin down how measurable that is. I am conscious that the Department for Environment, Food and Rural Affairs has put in place initiatives specifically to deal with sensitive farming and to consider the issue from a catchment perspective. In the annual report, there is a reference to land management contracts providing support for farmers in respect of the water environment, but a slightly different approach is being taken down south of giving capital grants specifically targeted at diffuse

pollution measures. Is that a practical way forward, given that we do not have any measurements of success over the past six years?

Joyce Carr: The diffuse pollution strategy is still at a fairly early stage of development. We are keeping an eye on everything that is happening down south to see how effective and efficient that approach is. We will be taking that forward over the next few years.

The Convener: We could come back to the issue. I am conscious that work has been on-going in the Executive with NFU Scotland and interested parties for more than six years. We hope to see the benefits coming through, both to the farming community and in the quality of our water environment.

Rhona Brankin: The consultation was going on throughout 2005. It is still being considered, but I am happy to give you an update on where we are on that.

Nora Radcliffe: I have a small point of detail about measures to control diffuse pollution and the fencing off of water courses. I wonder whether there is an opportunity to combine that with the core path network, which might be a useful funding stream. If farmers are fencing off water courses, they might be creating paths. It strikes me that there is an opportunity for some joined-up thinking.

The Convener: We will let that one sit in the *Official Report*.

Maureen Macmillan: In the past, shellfish farmers have been concerned about diffuse pollution into the marine environment and about water quality. What contact have you had with the shellfish growers, minister? Do they think that progress has been made on diffuse pollution?

Rhona Brankin: I have been in contact with shellfish farmers and, as you are aware, there are specific issues for them. In some cases, it is difficult to be certain where the pollution arises from. I have had meetings with Lewis Macdonald and the Food Standards Agency because we need to ensure that we have accurate information about the source of the problems in some shellfish-growing areas. I am happy to give the committee more information about where we are on that. In broad policy terms, I am very aware of the issues that face shellfish growers in some parts of Scotland. I am in contact with them and we will continue to try to tackle the problem. However, we need to be clear about what that problem is and to continue to ensure that we have the most up-to-date research on that. Research is on-going.

Mr Swinney: Has all the information that is required by those who will have to apply under the arrangements for water abstraction charges been published and issued to all relevant parties?

Rhona Brankin: That information has gone out to all relevant parties.

The Convener: I thank the minister for answering our questions. We have asked for a raft of supplementary information, which we very much look forward to receiving.

10:49

Meeting suspended.

10:51

On resuming—

Subordinate Legislation

Private Water Supplies (Notices) (Scotland) Regulations 2006 (Draft)

The Convener: Agenda item 2 is subordinate legislation. We have one affirmative instrument to consider today—the draft Private Water Supplies (Notices) (Scotland) Regulations 2006. Parliament must approve the draft instrument before it can be formally made. We have a motion in the name of the Minister for Environment and Rural Development, Ross Finnie, inviting the committee to recommend to the Parliament that the instrument be approved.

The Deputy Minister for Environment and Rural Development is here to move the motion. I welcome Rhona Brankin and her officials. The Subordinate Legislation Committee has considered the instrument but has made no comment.

Maureen Macmillan: That is amazing!

The Convener: I do not think that you necessarily want that noted.

Before we debate the motion, we will have a session to enable any purely technical matters to be clarified, or to allow us to drill into the details while we have Executive officials at the table. Once we get into the debate and the motion is moved, officials cannot participate. I invite the minister to introduce her officials and to make any opening remarks that she wishes to. It would be helpful to the committee if those remarks covered the two negative instruments on private water supplies that we will discuss under item 3 as well.

Rhona Brankin: I introduce David Williamson and Kirsty Stevens from the Executive.

I am pleased to be here to discuss the draft Private Water Supplies (Notices) (Scotland) Regulations 2006. Together with the Private Water Supplies (Scotland) Regulations 2006, they implement the revised European drinking water directive in respect of private water supplies.

The overriding objective is to ensure the provision of clean and wholesome drinking water and to ensure significant health benefits to those who use such supplies. The draft regulations modify provisions of the Water (Scotland) Act 1980 to provide an enhanced regime to regulate private water supplies. They place a duty on local authorities to serve a notice specifying the steps to be taken to ensure a wholesome supply and provide for a sanction in the case of non-compliance with the terms of a notice.

The draft regulations ensure that the requirements of the drinking water directive are enforceable and they respond to feedback from local authorities regarding barriers to the effective discharge of their functions under the current regulatory regime.

The Private Water Supplies (Scotland) Regulations 2006 implement the main provisions of the revised drinking water directive in respect of private supplies, as well as key recommendations in World Health Organisation guidelines on drinking water quality, and the 2001 report by the Scottish E coli 0157 task force.

Both sets of regulations are founded on the principles of better regulation. They are proportionate, targeted and risk based.

The Private Water Supplies (Grants) (Scotland) Regulations 2006 were laid at the same time as the others. They establish a scheme to be administered by local authorities to assist users of private supplies to bring those supplies up to modern standards. They help to ensure that rural consumers are not financially disadvantaged and fulfil a commitment in “A Partnership for a Better Scotland”.

The three sets of regulations, and the educational material that I will mention in a moment, should be seen as an integrated package of measures intended to deliver real and lasting improvements in private supplies. They will update the existing regulatory framework, to improve significantly the protection of the public health of not just the 150,000 men, women and children who rely daily on private supplies but the tens of thousands of visitors—young and old—who use those supplies occasionally.

There is a popular perception that Scotland has an ample supply of natural, clean water, so people might think that we are addressing a problem that does not exist. However, in reality the quality of water from Scotland's private water supplies is highly variable and poor water quality can and has caused significant health problems. Health Protection Scotland estimates that people who are served by private supplies are 10 times more likely to become ill from drinking contaminated water than are people who are served by the public supply.

The Executive consulted widely on the draft regulations last year and I am pleased that they have been adjusted to increase the focus on risk assessment, so that chemicals or other substances will be monitored only when that is required. Therefore, monitoring can be reduced when that is justified, which will generate substantial and on-going reductions in the financial implications for rural communities and businesses.

The regulations will give rise to capital costs if private supplies require improvement. Such costs

will vary widely, depending on the state of the water supply and the risks to which people are exposed. I understand that improvement costs could be a burden on individuals and businesses and I am pleased that the Executive will consider making a significant contribution by making available grants under the Private Water Supplies (Grants) (Scotland) Regulations 2006. The scheme offers non-means-tested grants to eligible persons, and after consultation we have increased the maximum grant from £650 to £800 per premises.

Regulations alone will go only part of the way towards improving private supplies, which is why the Executive will support the strengthened regulatory regime by developing educational and awareness raising material for owners and users of private supplies. Local authorities will distribute the material, which will include information on simple measures that consumers can take to reduce the risks from their water supply. Information about the grants scheme and how to apply for grants will also be included.

The draft regulations modify the Water (Scotland) Act 1980 in its application to private supplies to provide a mechanism for compliance with the requirements of the revised European Commission drinking water directive 98/83/EC. The directive is primarily transposed through the draft regulations.

I am happy to answer questions on the draft regulations.

The Convener: Thank you. Members are queuing up to ask questions.

Nora Radcliffe: I welcome the draft regulations and in particular the grants—

The Convener: I am sorry to interrupt you, but I should have said that I was inviting technical questions. We will move on to the policy debate later.

Nora Radcliffe: The committee has received submissions from the Scotch Whisky Association and the Scottish Environment Protection Agency. SEPA suggests that a single, unified register should cover drinking water and abstraction, which seems sensible. The SWA says that under the Water Environment (Controlled Activities) (Scotland) Regulations 2005—CAR—regime, there is an option for commercially sensitive material to remain confidential. It asks for a similar option to apply to the private water supplies that many distilleries use. Can those two requests be met?

Rhona Brankin: We are keen to be as open as possible. I am aware of the Scotch whisky industry's concern. During the consultation, we made it clear that the register of private water

supplies would include details of supplies that are used for distillation purposes, although those supplies are not subject to the provisions of the strengthened regulations. SEPA will draw on that information in exercising its responsibilities to protect the wider water environment.

As I understand it, no response to the consultation—including that of the Malt Distillers Association of Scotland—mentioned commercial confidentiality. We want to be as open as possible, but we will keep the matter under review and we will continue to keep in touch with the SWA.

David Williamson (Scottish Executive Environment and Rural Affairs Department): We are looking to work towards having a single register. Health Protection Scotland has started the ball rolling by collating information about infections from private water supplies.

11:00

Mr Brocklebank: I want to raise a couple of technical points on behalf of the various organisations who have approached me, which include the Scottish Tourism Forum and the Association of Scotland's Self-Caterers. They are extremely concerned that the £800 that will be made available will be nowhere near enough to cover costs, which in some cases could run into many thousands of pounds. How do you respond to that fear?

Rhona Brankin: We have responded by upping to £800 the maximum grant available, which we think will meet the average costs of implementing individual solutions. Of course, costs can vary hugely and there will be cases in which the supply requires work whose costs exceed the proposed limit. In such cases, it will be the responsibility of the user to meet the additional costs. However, there is a possibility that local authorities will be able to provide support. The scheme will be administered by local authorities, which will have to agree that the expenditure is necessary. The Executive will refund local authorities for expenditure that is reasonably incurred in providing grants.

David Williamson: Small businesses, particularly bed and breakfasts, can employ a number of basic measures to improve the quality of their supply. For example, they can employ ultraviolet treatment, which will kill the bugs that cause the major problems with contaminated supplies, and small sediment filters to take out the sediment before the water receives the treatment. Those basic measures can be delivered within the £800 for individual premises. The Private Water Supplies (Grants) (Scotland) Regulations 2006 and the guidance that will be issued to local authorities to accompany them will encourage a number of premises to work together to deliver

what I would call a whole-supply solution. Failing that, they have the fallback position of fixing the drinking water tap in particular premises.

Mr Brocklebank: The grant does not cover the £635 test costs, which appear to be high. Such costs will be forced on people, whether they like it or not. Could not testing be introduced on a voluntary basis?

Rhona Brankin: We think that that cost is proportionate. I emphasise the potential risks that people who drink water from private water supplies face.

David Williamson: The ballpark figure that is quoted is the worst-case scenario, in which every chemical or biological parameter that is listed in the schedule to the regulations has to be tested for. As the minister said, we responded to the consultation by placing an increased emphasis on risk assessment in the regulations so that we ask local authorities to test only for chemical parameters that are likely to be present in the supply at a level that might be harmful. The figure that is quoted is the worst-case scenario. We expect that the on-going monitoring costs for the majority of supplies will be substantially less than that and we have done what we can to reduce them in implementing the regulations within the constraints of the drinking water directive.

Rhona Brankin: VisitScotland is supportive of the regulations. It is cognisant of the increased risk that users of private water supplies have and of the fact that if there were to be an incident in which tourists suffered as a result of contaminated private water supplies, that would be potentially damaging to the Scottish tourism industry. We must be able to consider supporting people, through grants, if they will find it difficult to implement the regulations because it will cost them a significant amount of money, but we must also bear in mind the importance of getting private water supplies up to an acceptable standard.

Mr Brocklebank: I totally sympathise with the desire to improve water safety, which is important to everyone.

My final point is another one on which you could give an explanation. Some businesses might have more than one private water supply. For example, some businesses in Mid Scotland and Fife have 14 separate suppliers. How will they cope under the regulations?

David Williamson: Will you clarify that a little bit more please?

Mr Brocklebank: I understand that many businesses have more than one private supply of water. I know of one particular case in the area that I represent—Mid Scotland and Fife—that has 14 different sources of supply. How will that be handled under the regulations?

David Williamson: We are interested only in water that is being used for human consumption such as drinking, washing or preparing food, cleaning teeth and that sort of thing. Are those 14 separate supplies to individual houses?

Mr Brocklebank: I understand that it is a small catering complex that draws water from 14 different sources within its area.

David Williamson: If it is a catering complex, it will also be caught by the food hygiene legislation. From the information that you have given me, I think that each of those individual premises would have to have what food hygiene legislation refers to as a clean and potable supply of water, and the potability must be in line with the wholesome provisions of the regulations. All those individual premises would have to comply.

Mr Ruskell: Further to that, I wanted some clarification about how local authorities would go about implementing the regulations for different premises, as Ted Brocklebank said. I have some personal locus with this subject because, about 12 years ago, I became very ill through drinking from a private water supply. I did not own that supply; I was renting a cottage that was supplied by a landowner who had several different water supplies on his land. My concern is about how to chase up the landowners and not just the tenants. We tried to get the landowner to fit a UV filter to the water supply, but we found that difficult. How do local authorities interface with those who are responsible for the private water supplies?

David Williamson: If the regulations are to be successful, we have to educate and inform the owners and users of private water supplies. As the minister said, the education and awareness package is designed to raise general awareness of the various issues that you have just described.

The regulations set out the regulatory framework that governs private water supplies in Scotland. However, underneath that will sit a very detailed technical manual that local authorities will be given in time for the regulations to come into force and which will detail how the regulations should be applied in practice. The ultimate sanction for a relevant person who fails to comply with the remedial action instructed by the local authority is the serving of a notice under section 76(g) of the Water (Scotland) Act 1980. Failure to comply with the terms of that notice is now an offence, which is introduced by the regulations that members have in front of them.

Rob Gibson: I have had representations from a small self-catering accommodation business in the Highlands that has had to spend about £6,000 on filtration systems to reduce high iron and manganese content and get rid of fine particulate matter. Such things will not be covered by the UV treatment that has been discussed. Does the

minister have any estimate of how many such jobs will have to be done on private water supplies that might not be covered by the grants that have been decided?

Rhona Brankin: I do not have that information with me.

David Williamson: Are you talking about people having to meet the shortfall and to remove excess levels of naturally occurring minerals?

Rob Gibson: Yes.

David Williamson: There is provision in the regulations for the owner of the supply to apply for a temporary departure in that scenario. It is recognised that it will take a significant amount of time to resolve a specific problem such as excess levels of naturally occurring minerals.

The local authority will grant departures of as short a time as possible up to a maximum of three years. If the problem has not been resolved by that time, the period can—in very exceptional circumstances—be extended by a further three years; in the worst cases, the matter can be referred to the European Commission for the authority to grant a derogation of up to a maximum of nine years. However, during those periods, the local authority and the owner should be working towards a solution to the problem.

Rob Gibson: Indeed. The business that I mentioned has spent £6,000 on trying to resolve the problem, which is far more than the amount of grant available. As the owners are still paying off that sum, they are concerned that any further costs will damage their small business. Given that much of the water in the Highlands has a high mineral content, many small businesses that have private water supplies could be similarly affected.

Rhona Brankin: The regulations contain discretionary provision to allow local authorities to make larger grants when the maximum grant is insufficient to cover costs and undue hardship could justify more assistance. If the member will give me details of the case that he has highlighted, I will seek advice on whether the business in question is accessing all the available support.

Rob Gibson: That advice might well be valuable to many people who are affected by these regulations.

Rhona Brankin: Yes; I am happy to provide information about the extent to which people with private water supplies face such issues. I simply do not have those details with me at the moment.

The Convener: That information would be a very useful follow-up to this evidence session.

Mr Swinney: How much money has the Scottish Executive made available to local authorities for the grant arrangements?

Rhona Brankin: We have made available £8 million a year for two years.

David Williamson: I should point out that that is just for the current spending review period.

Mr Swinney: So the assumption is that there will be a rolling programme of funding to pay for the grants.

David Williamson: Yes.

Mr Swinney: When the grant level was calculated, why did you decide to have a fixed amount instead of basing it on the proportionate cost of the upgrade work?

David Williamson: We had a number of options to choose from. Although we could have taken a percentage approach and based the amount on the proportionate cost of upgrade work, we decided that the majority of cases would involve upgrading supplies to small, single houses that, for example, might be in a valley and take their water from a burn. In such cases, £800 should be more than enough to install the required basic protection measures.

The economic assessment that we carried out to support the regulations and the regulatory impact assessment suggested that the costs of upgrading a supply range from £500 to £10,000. However, in certain cases, spending £10,000 might still not lead to a satisfactory solution.

We decided to introduce a maximum capped level because we felt that, with such a health-driven initiative, it was the best way of delivering the maximum health protection to people in Scotland who are dependent on private supplies. Although we considered a percentage approach, the responses to the consultation were not in favour of that.

Rhona Brankin: I emphasise that the economic assessment was conducted by an independent source. I should also point out that the most important health benefits are usually gained from ultraviolet filters, the cost of which varies between £550 and £650. The maximum grant of £800 was calculated on the basis that it would meet, or make a substantial contribution towards, the costs that the majority of users would face.

Mr Swinney: Is the maximum fee for a local authority inspection £630 per visit?

David Williamson: The maximum that local authorities can charge is £630, the bulk of which is made up of laboratory analysis costs for testing the water. Under the revised regulations, the fee that a local authority can charge to cover the time that its staff use to prepare for a visit, go to a supply, take samples and do any follow-up work is only £70.

11:15

Mr Swinney: So other assessment costs are involved.

In a letter to me on 23 February 2006, the minister said:

“The risk assessment approach will allow monitoring and sampling frequency to be reduced where a history of compliance can be demonstrated.”

Exactly how will that approach be administered? If a private water supply is inspected in March next year and no problem is found, what would be the implications for 12 months’ time? Would another £630 be required?

David Williamson: Not necessarily, but I cannot give an exact figure because the cost will depend on the circumstances of the individual’s supply and the risks to which it is exposed.

Mr Swinney: If the water supply is tested in March 2007 and is all clear, what would happen then?

David Williamson: What do you mean by “clear”? Do you mean wholesome?

Mr Swinney: I mean that it is all fine.

David Williamson: A minimum level of monitoring—which is referred to as check monitoring—will be required, the charge for which will be £75 plus the cost to the local authority of getting people out to do the sampling and so on. On the audit monitoring provisions, which account for the big lump of £435, I doubt whether all the chemical parameters that are in the schedule can be removed, but risk assessments will enable local authorities to reduce the number of tests on things in supplies that could cause risk to health.

Mr Swinney: So any inspection of a private water supply in the type A category is likely to cost £145—the £70 plus the £75—at the very minimum to ensure that it is all right. Would that be on an annual basis?

David Williamson: That would be on an annual basis at least. For larger supplies to commercial premises, which the regulations refer to as type A supplies, I think that check monitoring is required four times a year because people will have to look for bugs and the possibility of E coli in the water. We all know the potential consequences of such things. However, the regulations allow for reducing such quarterly monitoring if there is a history of compliance.

The Convener: Going into such detail on the matter is interesting because individuals, proprietors and companies need a sense of what your calculations have been in drafting the regulations. I would certainly like to take up the minister’s offer of further information, and I recognise the commitment to information

education. The crucial issue of how discretionary provision could work was raised earlier.

Mr Brocklebank: I have a tiny supplementary question on a matter that I am grateful to Maureen Macmillan for mentioning to me. I asked about somewhere in Mid Scotland and Fife that has 14 water sources and was told that all those sources would have to comply. Does that mean that all 14 sources would be eligible for a grant?

David Williamson: That depends. Grants are to be used for water that is used for human consumption purposes. I do not know the details of the 14 premises that you are talking about, so I do not know the answer to your question. The grant regulations would allow each of the premises to be eligible for a grant if the water was used for human consumption purposes.

Rhona Brankin: Without the specific information—

Mr Brocklebank: I will provide specific information.

Rhona Brankin: I am sure that you will.

The Convener: It sounds as if the information will wing its way to the minister forthwith.

The exchange has been useful, and more information will come back to us. I do not see anybody else wanting to speak—indeed, I am looking down at my papers to avoid seeing anybody. I invite the minister to move motion S2M-4300 before we debate it.

Motion moved,

That the Environment and Rural Development Committee recommends that the draft Private Water Supplies (Notices) (Scotland) Regulations 2006 be approved.—[*Rhona Brankin.*]

Mr Brocklebank: I have come late to the matter, because I am a relatively new member of the committee, but I am concerned about the regulations. I am as keen as anybody else to ensure the wholesomeness of water from private supplies but I am concerned that the regulations would simply gold plate existing EU legislation and that what they aim to achieve would happen over a period of time in any case.

In addition, I am concerned that there is a very low level of awareness about the regulations among small businesses in particular and that they will come as an expensive shock to many businesses. I hope for a more gradual approach and a flexible and slower implementation of the EU law to allow businesses more time. The provisions should be implemented only where there is a real danger to human health. Otherwise, many small self-catering tourism operators could face an extremely nasty financial shock. We should take that into account.

Mr Swinney: I will make a few remarks on the regulations based on representations that I have received from a number of constituents, mainly those who are involved in tourism-related businesses in the rural parts of my constituency.

Unless my ability for mental arithmetic has departed me or my Forrester high school education has let me down, which I do not think is the case, the level of grant that is being talked about for the upgrade work will ensure that, annually, 10,000 water supplies will be able to be upgraded. I have no idea how many private water supplies there are in Scotland or how many possible applicant individuals or organisations there might be, but I would appreciate it if the minister, in the remarks that she will make in a moment, would give a sense of whether that number is adequate. If businesses have an obligation to comply with the regulations, ministers should provide adequate resources to ensure that the upgrade work can be undertaken.

I appreciate the answers that David Williamson gave me about the composition of the £630 compliance charge and the fact that the lion's share of that charge covers scientific testing, which might not be required at every visit. However, such a compliance charge is the type of cost that alarms businesses nowadays. They feel that they will have additional burdens that do not require to be undertaken because of the possibility of overzealous implementation of the regulations by local authorities. I raised the point from the minister's letter that

"The risk assessment approach will allow monitoring and sampling frequency to be reduced where a history of compliance can be demonstrated"

to put on record the fact that it needs to be spelled out to local authorities that, if businesses and individuals comply, are co-operative and take reasonable measures to ensure that they are protected, the local authorities need to reflect and respect that. Those who comply should not have to face the maximum charge for assessment of water supplies, which looks like being £630 a quarter. I am with Ted Brocklebank: I do not want anybody to be in jeopardy because of the quality of their water supply, but equally I do not want businesses in rural Scotland to find that they have additional expenditure of £630 a quarter on top of all the other costs that they have to pay.

My final point is about awareness. A number of my constituents have approached me in some panic about the regulations because they were largely unaware that the regulations were coming. The Executive and local authorities have an obligation to ensure that people are properly advised about the issues that are at stake.

Local authorities must be properly supported and educated to ensure that the regulations are

not implemented overzealously, which would increase burdens and costs. I reiterate that I am—obviously—dead keen on our having a good-quality water supply; I do not question that in the slightest. However, I inject a note of caution that the Executive should take on board my constituents' concern that the regulations could be applied overzealously, which could undermine businesses by significantly increasing recurring compliance costs or by requiring them to meet enormous costs to upgrade private water supplies, for which I think—unless my mental arithmetic has let me down—that the grant will be inadequate or might be unavailable.

Rob Gibson: Water was tested annually in the past and the increased regularity of testing will increase costs. In the Highlands and Islands, travel distances are long, which adds to the cost of taking tests, so that could affect disproportionately the areas that I represent.

I mentioned that a person added a filtration system at greater cost in the past. The minister made sympathetic noises about considering the costs on such people and other people who are affected, but I see nothing in the regulations that would allow costs that people have incurred in the past to be met now.

Nora Radcliffe: I welcome the regulations and the grant assistance, because the north-east probably has the highest concentration of private water supplies in Scotland. Have the disproportionate costs that will fall on councils such as Aberdeenshire Council in fulfilling their duties under the new regulations been recognised? Has additional financial support to local authorities been considered?

The Convener: The minister will sense from the nature and tone of the questions that everybody is signed up to the principle of ensuring that private water supplies are safe for people to use for drinking and health purposes. The committee very much supports that.

The key points are implementing the regulations proportionately; the information that accompanies the regulations; and the extent to which enterprise companies such as Highlands and Islands Enterprise can work with communities, businesses and the tourism industry to ensure that people are equipped to know their obligations and—crucially—the opportunities that are available to take up grant provision.

I am happy to support the regulations, but I am keen for their implementation to be monitored and for quite a lot of thought to be put into the guidance that local authorities are given on implementing the regulations. The key issues are how often monitoring takes place, the risk assessment process and what the Executive is

looking for. We want to ensure that health problems are addressed and that financial support is allocated.

Local authorities need to be given effective advice so that they have a sense of our discussion and so that the grant mechanisms can be plugged in to let people—particularly those who operate businesses with small profit margins and who do not have access to big loans—have access to grant assistance that will let them comply with the legislation. At the high level, everyone agrees that the regulations are important, but the question is how they will be implemented.

Many concerns have been raised with you, minister. I ask you to give us a sense of how the issues will be addressed in practice.

11:30

Rhona Brankin: I am happy to do that.

As I said, our approach to charging was devised following extensive consultation and independent economic assessment, but I accept that we must keep a close eye on how the scheme works in practice.

The regulations are founded on the principles of better regulation and the convener is right to say that they must be proportionate and targeted. We are confident that they are risk based. All members of the committee agree that it is hugely important that we protect human health and there is recognition of the potential risks that are posed by private water supplies. In addition, we must implement and comply with the drinking water directive. We have no choice about the timing, but we can ensure that we monitor the implementation closely and provide detailed guidance. I will be happy to give the committee information about the educational and awareness-raising material that we are developing.

There are a large number of private water supplies in Scotland and we need to ensure that water quality is the best that it can be. The drinking water quality regulator will have a role in ensuring that the regulations are enforced. The key is to ensure the safety of private water supplies and that the regulations are applied proportionately. We will monitor their implementation.

The Convener: The question is, that motion S2M-4300 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)
Macmillan, Maureen (Highlands and Islands) (Lab)

Radcliffe, Nora (Gordon) (LD)
Ruskell, Mark (Mid Scotland and Fife) (Green)

AGAINST

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

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Motion agreed to.

That the Environment and Rural Development Committee recommends that the draft Private Water Supplies (Notices) (Scotland) Regulations 2006 be approved.

The Convener: We will report to the Parliament on the regulations. I thank the minister and her officials.

11:32

Meeting suspended.

11:33

On resuming—

Private Water Supplies (Scotland) Regulations 2006 (SSI 2006/209)

Private Water Supplies (Grants) (Scotland) Regulations 2006 (SSI 2006/210)

Land Management Contracts (Menu Scheme) (Scotland) Amendment Regulations 2006 (SSI 2006/213)

Croft House Grant (Scotland) Regulations 2006 (SSI 2006/214)

The Convener: We will now consider four Scottish statutory instruments, all of which are subject to the negative procedure. The Subordinate Legislation Committee has considered the four sets of regulations and commented on the Private Water Supplies (Scotland) Regulations 2006 and the Croft House Grant (Scotland) Regulations 2006. Members have the relevant extracts from the Subordinate Legislation Committee's reports and additional information on the Croft House Grant (Scotland) Regulations 2006.

Bob Perrett, who is the head of the crofting branch in the Scottish Executive Environment and Rural Affairs Department, has joined us. I asked the clerks to invite him to the meeting because the croft house grant scheme has come up in the committee's discussions about crofting during the past few weeks and I thought that it would be helpful for members to be able to ask him any detailed questions about the scheme that they might have—I am not assuming that members have questions, but the opportunity is there to ask them.

I invite questions from members on the Private Water Supplies (Scotland) Regulations 2006 and the Private Water Supplies (Grants) (Scotland) Regulations 2006. Having already agreed to recommend approval of the draft Private Water Supplies (Notices) (Scotland) Regulations 2006 under the affirmative procedure, it might be wise for members also to agree today to make no recommendation on the Private Water Supplies (Grants) (Scotland) Regulations 2006. I think that we all agree about that.

Does anyone have any comments on the Land Management Contracts (Menu Scheme) (Scotland) Amendment Regulations 2006?

Members indicated disagreement.

The Convener: What about the Croft House Grant (Scotland) Regulations 2006?

Rob Gibson: The Executive's additional memorandum to the regulations says that

"An external panel was set up to determine the geographical areas appropriate to the 3 levels of grant".

Will Bob Perrett explain to us the composition of the panel and tell us how it made that determination? I think I am correct in saying that there was some question about whether to consult the Crofters Commission, which I would have thought was perfectly normal. I invite him to comment on that too.

Bob Perrett (Scottish Executive Environment and Rural Affairs Department): I have a note of the membership of the panel, which comprised: Mairi Ross, a member of staff at Communities Scotland; Nicholas Gubbins, a member of staff at Highlands and Islands Enterprise; Di Alexander, who used to work for Highland Small Communities Housing Trust; Dr Maggie Bochel, who was formerly employed by Highland Council and who is now with another council; and Norman MacDonald, a councillor at Western Isles Council.

The panel was asked to identify the areas of greatest need for additional support and those where least support was needed to encourage people to build houses. The purpose of the croft house grant scheme is to make it possible for people to build houses where there are factors that might prevent them from doing so.

Rob Gibson: The panel's work is an important indicator of the areas of most pressing need. Is there any measure of how that work is panning out?

Bob Perrett: The panel did an assessment before the scheme came into operation and produced a map that showed the areas to be targeted. It tried to gather together information to enable it to make some assessment of need, but it was not particularly successful because, although

it came up with and eventually published a set of parameters and mapped them according to postcodes, that proved difficult.

The panel no longer exists and it is not even certain that another one will be set up. We propose to look again at geographical targeting at some point in the future to see whether we got the right result. That will happen in 2007, but whether we will use a panel or another method is still to be decided.

Rob Gibson: Through my remarks, I am simply allowing you to realise that it is a priority for us to ensure that the targeting is accurate.

Mr Alasdair Morrison (Western Isles) (Lab): I whole-heartedly endorse the way in which the Executive went about dealing with targeting. I speak from the narrow perspective of my constituency, where the Executive got it absolutely right. Pulling together the panel to deal with all the geographical sensitivities was a very good idea.

My question relates to the review that will be undertaken next January. I said in the chamber recently that the level of intervention must be considered. No one could argue that the croft building grants and loans scheme and the current scheme have been sensationally successful, but as the Executive is well aware, the cost of building a house in 2006 is not the same as it was in 1996, never mind 1966. I seek an assurance from Mr Perrett that costs and the level of intervention will be among the matters discussed during the forthcoming review.

Bob Perrett: The minister indicated that she was going to review the targeting, but she did not indicate that any other aspect of the scheme would be examined at that time.

The scheme is not intended to provide subsidies. It is intended to provide payments to encourage people to build houses. The amount paid has never been assessed in terms of relative costs.

Mr Morrison: On what basis is it assessed? What do you mean when you say that it is not meant to be a subsidy? What on earth does that mean?

Bob Perrett: We are not making a payment that is designed to meet a specific part of the cost of building a house; it is designed to encourage people to build houses. The payment is sufficient to ensure that someone who might not otherwise do so builds a house.

Mr Morrison: That is exactly the point that I am making. You can call it whatever you want: a subsidy or an encouragement—let us call it an encouragement. Why is it not possible, during the review of the geographic targeting, to assess whether the level of encouragement is sufficient to allow appropriate numbers of houses to be built?

Bob Perrett: We will do that, but the payment is not linked to the cost of the house.

Mr Morrison: That is classic civil service.

Bob Perrett: In any particular area, the cost of houses varies across the board, because the house size is determined by the person who builds the house.

Mr Morrison: Can I start again? I am obviously misunderstanding something, and I think that Mr Perrett is misunderstanding what I am trying to say. In the review that the Executive will conduct in 2007, will the Executive examine the level of encouragement, to use your word—bawbees or pounds—that will be available post-2007?

Bob Perrett: My understanding was that the undertaking was to look at the targeting, not at the amounts involved.

Mr Morrison: Is that your understanding or is it a definitive answer?

Bob Perrett: My recollection is that the minister said that we would examine the targeting in 2007. I cannot commit the minister to doing anything other than that.

Mr Morrison: I would not expect you to do so.

The Convener: Given that this is one of the issues that has come up during our consideration of evidence on the Crofting Reform etc Bill, it would be appropriate for the committee, as part of its scrutiny of the Croft House Grant (Scotland) Regulations 2006, to ask the minister to consider those points. We should ask her to consider the effectiveness of the scheme in the light of the increase in building costs throughout our communities. Rather than interrogate Mr Perrett, who is not allowed to give us the correct answer—that is how I am interpreting his answers to Alasdair Morrison's questions—we should directly ask the minister to consider the issue in the light of the representations made by Alasdair Morrison. Would that help?

Mr Morrison: That would certainly be a starting point. We do not have to call it a scheme now, as I think that the civil servant called it a system of encouragement. We might get a different explanation from the minister, but the convener is right: it is ultimately an issue for the politicians to decide and determine.

The Convener: Are colleagues happy for me to make those representations to the minister on the committee's behalf?

Members indicated agreement.

The Convener: Does anyone have any other questions or comments?

Mr Morrison: I have one more comment. It is a welcome departure to see that the scheme is now being administered from the island of Tiree and that good civil service jobs are being relocated. Although it is not in my constituency, that relocation is part of a policy that has been hugely successful in other parts of Scotland. I am delighted for those who are getting gainful employment on the island of Tiree under this system of encouragement.

The Convener: I will not ask Mr Perrett to come back in on that.

Maureen Macmillan: I visited the staff on Tiree to see the new building and was very impressed. People were happy to be working there and there was no sense that they had been forced to go to Tiree. They did not need crofters building grants and loans to get themselves a house.

The Convener: As there are no further points, I thank Mr Perrett for coming along and answering our questions.

Are members content with the four sets of regulations and happy to make no recommendation on them to the Parliament?

Members indicated agreement.

The Convener: We will take up with the minister the point about the cost of building houses.

As agreed at our previous meeting, we will now discuss in private our draft report on the Crofting Reform etc Bill. I invite the press, the public, any visiting members, the official reporters and the broadcasting staff to leave.

11:44

Meeting continued in private until 12:27.

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