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Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 2 March 2011

Session 3

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
6th Meeting 2011, Session 3

CONVENER

*Maureen Watt (North East Scotland) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

*Karen Gillon (Clydesdale) (Lab)
*Liam McArthur (Orkney) (LD)
*Elaine Murray (Dumfries) (Lab)
*Peter Peacock (Highlands and Islands) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)
*Bill Wilson (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Rhona Brankin (Midlothian) (Lab)
Jim Hume (South of Scotland) (LD)
Jamie McGrigor (Highlands and Islands) (Con)
Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Bruce Beveridge (Scottish Government Rural and Environment Directorate)
Roseanna Cunningham (Minister for the Environment and Climate Change)
Chris Graham (Scottish Government Rural and Environment Directorate)
Heather Holmes (Scottish Government Rural and Environment Directorate)
Stuart Hudson (Scottish Government Rural and Environment Directorate)
Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment)
Louise Miller (Scottish Government Legal Services Directorate)
Neil Ritchie (Scottish Government Rural and Environment Directorate)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 6

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 2 March 2011

[The Convener *opened the meeting at 09:30*]

Decision on Taking Business in Private

The Convener (Maureen Watt): Good morning. I welcome everyone to the committee's sixth meeting in 2011. I remind everyone to turn off their phones and BlackBerrys, as they impact on the broadcasting system.

The first item of business is consideration of whether to take item 17 in private. Item 17 is consideration of the approach paper for our legacy report. Do members agree to take item 17 in private?

Members *indicated agreement.*

Land Reform (Scotland) Act 2003 (Post-legislative Scrutiny)

09:30

The Convener: The second item is evidence from the Government on the research that the committee commissioned into the Land Reform (Scotland) Act 2003. I welcome to the meeting Roseanna Cunningham MSP, Minister for the Environment and Climate Change, and, from the Scottish Government, Barry McCaffrey, from the legal directorate; Helen Jones, head of the national parks and outdoor recreation team; Heather Holmes, head of the community assets branch; and Bruce Beveridge, deputy director of the rural communities division.

The Minister for the Environment and Climate Change (Roseanna Cunningham): I welcome this opportunity to contribute to the committee's consideration of the research report "Post Legislative Scrutiny of the Land Reform (Scotland) Act 2003". I was particularly interested in the commissioning of the research and in contributing to the discussion on the implementation of the act. As members may know, I have said elsewhere that it is important that on-going dialogue on the provisions continues, that lessons are learned and that new approaches are considered.

I therefore welcome the report, which will help to develop further our understanding of how the provisions are working and the barriers to their wider use, and to identify options for change. I am pleased that the report recognises that the enabling approach of the 2003 act in relation to the access provisions is working well and that there appears to be little desire among stakeholders for any significant changes.

The majority of the research participants had something positive to say about the community right to buy and the crofting community right to buy. However, they had a number of criticisms, particularly in relation to the complexity and limited flexibility of those right-to-buy provisions. Those are pertinent points. The researchers have made a number of suggestions that would help to move the provisions forward, and I read them with interest.

On the access provisions, I note that a number of the suggestions for change are already included in the legislation, while others are provided in guidance or are being addressed. The same can be said for the two community rights to buy. Members will recollect that the community rights to buy were intended to be a first step and that, in the course of time, they would be revisited. This is an opportune time to review the legislation relating to

those rights, with the intention of making things easier and faster for communities.

I agree that community groups should not be put through unnecessary red tape to get them through the rights to buy. Equally, the legislation has to be transparent, legally sound and compliant with the European Convention on Human Rights. A review of the provisions should ensure that they are fully considered and appropriate.

Since I became minister in February 2009, I have had under consideration only about 10 applications under the community right to buy and the crofting community right to buy. My direct experience therefore does not encompass an enormous number of applications but my guess is that that was roughly the average for such a period. The exception is the hostile buyout in the Western Isles, which is pending and, I think, is the first of its kind.

The Convener: Thank you, minister. I ask Bill Wilson to kick off, with questions on access.

Bill Wilson (West of Scotland) (SNP): When the legislation was introduced, it was almost a hope that part 1 would enable a cultural change, for instance by encouraging links between the access provisions and the health and planning agendas or between access and transport. Is there much evidence of such a cultural change having occurred?

Roseanna Cunningham: Yes. There is significant evidence. The problem is that you would have to range across all the portfolios to begin to gather it in. I have been involved in a number of initiatives, particularly ones that relate access to health and mental health.

Equally, the whole idea behind developments such as those in the national planning framework, including the central Scotland green network, is to link access not just to health and wellbeing, but to development and all the rest of it. There are significant ideas out there that are strongly based around the notion of access and the outdoors and which permeate a number of different portfolios. In transport, for example, the most interesting developments are those that are taking place in the cycling sphere.

Although, I dare say, everyone around the table would share with me a desire for it all to be rolled out and sorted immediately, the fact of the matter is that there are quite a lot of developments around Scotland already, which are part and parcel of what was done in the 2003 act.

Bill Wilson: So you would say that there is still evidence of continuing innovation—we have not lost steam since the passing of the 2003 act. There is still evidence of new, innovative ideas coming forward. Is the framework working as effectively as it might do? For instance, is there any evidence that access is not being taken as responsibly as it might be?

Roseanna Cunningham: There will always be occasional concerns and complaints about certain issues. Everybody here is probably aware that there is a specific hotspot on the east bank of Loch Lomond. I am not going to pretend that everybody who exercises their right to access does so responsibly, but I cannot imagine that, in 2003, any of us expected that no concerns would ever be expressed. The issue for us is to find ways of managing such situations, as I suspect that they may never go away completely. The answer is not to revoke people's access rights; the answer is education coupled with some form of management process that means that people exercise their right to access more responsibly.

On innovation, some parts of the 2003 act relating to access are still being implemented. I do not know whether another committee member is going to raise the issue of core paths, but that aspect of the act is still in the process of being delivered. Although it seems a long time since 2003, when the act was passed, it is seven years since it was passed by Parliament and about six years since it came into force, so there has not been an enormous amount of time and aspects are still being delivered. As I said with regard to the right to buy, bits of the legislation are only just being tested and we are in a learning process.

John Scott (Ayr) (Con): Concern was raised at the outset of the bill about access being taken by people with dogs to their own endangerment, especially among cows with calves. Has any further thought been given to how that problem might be resolved? I am not sure whether people in Scotland have lost their lives as a result of the problem, but people in England have lost their lives as a result of it since the 2003 act was passed—not that the two events are in any way related.

Roseanna Cunningham: No. We would not want to be alarmist about it would we, Mr Scott?

John Scott: No. I am not being alarmist—it is a real problem and I wonder whether you have given any further thought to it.

Roseanna Cunningham: My immediate feeling is that the issue is more about responsible dog ownership than about access rights. The many people who access the countryside with dogs—although that tends to be in and around communities rather than in much wilder places—will know that they must keep their dogs under control, especially when there are other animals around. The solution is partly education about dog ownership. The Parliament is considering related

issues and has just passed legislation that will enable some aspects to be dealt with.

I do not think that there are easy answers. I suppose that the owner of the cows could provide some helpful signage to warn people that there are cows around the corner. That might be useful. I hope that landowners are thinking about that. They must not be fake signs, though, as those lead to people ignoring signage. They must be real signs that give people due warning that they could be about to face a herd of cows. That would be helpful in letting people know that they should put their dog on a lead at that point.

Bill Wilson: I do not dispute that there is some irresponsible access, but I believe that most people are entirely responsible. Is the evidence anecdotal? Is any comprehensive evidence gathered on whether access is responsible or otherwise?

Roseanna Cunningham: We do not have any statistical evidence on the issue. There is anecdotal evidence and it would be wrong to suggest that irresponsible access does not happen when we know perfectly well that it does. The most documented incidents of access causing real difficulties relate to camping on the east bank of Loch Lomond, which most members will be well aware of. One or two other potential hotspots have also been drawn to my attention, such as an area in the Borders where there is a bit of an issue. In the main, however, the issues can be managed on a much more local basis. That is where they need to be dealt with rather than here, at the ministerial level.

John Scott: As you anticipated, I would like to ask about core paths. What difficulties have access authorities had in implementing core path plans? Why have some been able to take a more progressive approach than others? Has any estimate been made of the cost of maintaining core paths throughout Scotland?

Roseanna Cunningham: A lot of local authorities are working quite hard on that and we are still getting core path plans through. My officials tell me that 20 are already complete, which is helpful, but not every local authority is going through the process. Some local authorities are finding the process a bit more difficult to handle and some local authorities are dealing with more objections than others. It is difficult to read across from one local authority's experience to all local authorities' experiences. Nevertheless, I am content that all the local authorities are working on it.

I was concerned about what we might call connectivity. I could see a core path network developing that was based around the central part of a local authority but less likely to deal with the peripheral areas, meaning that the joined-upness of the core path network might go missing. I therefore asked officials to do a bit of work on that and I am pleased to say that some work has been commissioned by Scottish Natural Heritage—it has not yet been published, but I am sure that SNH will not mind my mentioning it—that shows that the majority of core paths appear to interconnect across local authority boundaries. However, there are still areas where there could be more interconnectedness and we hope to encourage that to take place. It would be a shame if we ended up with a set of clumped core paths that did not link up across local authority boundaries.

John Scott: In the 12 local authorities that have yet to implement core path networks, is there an obvious barrier to the development of those networks that we would want to know about?

Roseanna Cunningham: No. We are not picking up on any specific barrier that may be a problem. I mentioned the fact that some local authorities seem to have to deal with more objections than other local authorities, which slows things up. The more objections there are, the longer it will take to go through the process. That may be a factor in some areas, but we are not picking up a specific issue that is holding back any particular local authority.

John Scott: Given the current spending climate, is there any difficulty in maintaining established core path networks? How is that likely to be dealt with in the future?

09:45

Roseanna Cunningham: The maintenance of core path networks is for the local authorities to manage. They need to think about how that is to be worked through. The local authority settlement will also encompass that potential.

Most local authorities, and certainly those with which I have had contact, are perfectly well aware that a good core path network is often key to any tourist offer that they are going to make. If they want the tourists to continue to come, they know that they will have to make sure that that aspect of the tourist offer is well maintained.

There is no ring fencing for that—there is no ring fencing for anything. Local authorities have to manage within the budget that they have agreed. At the moment, I do not detect any significant difficulties. If there are any in the future, I have no doubt that they will be drawn to our attention in the usual way.

John Scott: So core paths are on track, in a manner of speaking.

Roseanna Cunningham: Well, yes.

John Scott: It just came out.

Roseanna Cunningham: I suppose that someone had to say it.

The Convener: Since the core path network was established, we have also had coastal paths, pilgrim ways and so on. Are you content that the coastal path network is progressing at a reasonable speed? What about pilgrim ways?

Roseanna Cunningham: I am a great supporter of long-distance footpaths, which is why I specifically queried the connectivity of core paths. The core path network can be part and parcel of a long-distance route.

Yes, work is going ahead. SNH is working hard to develop a long-distance route strategy. Again, that is a very big part of a tourist offer. An enormous amount of money can be had from people who like to walk on their holidays. Generally, they are folk who like to stay in comfortable bed and breakfasts and small hotels, and who spend money in local restaurants. There is a lot of tourism potential there.

Long-distance route networks are important in any country, but that is particularly true for Scotland. SNH and all the local authorities recognise that as well.

John Scott: On the success of the coastal path network, in a debate some years ago, in which I spoke, your colleague Alasdair Morgan raised the roll-out of that network as a way of linking many of the maritime local authorities. Have you any views on an around-Scotland coastal path network? How is the network working?

Roseanna Cunningham: I know that quite a lot of it is in place already. As with any path, whether it be short or long, there will always be small issues. For example, specific ownership issues might mean that there is still a bit of joining up to do. However, we are well on track with that. I understand that Alasdair Morgan is leaving Parliament this year; I am sure that he will be happy to see the coastal paths come to fruition.

Stewart Stevenson (Banff and Buchan) (SNP): Within the 2003 act there is no definition that supplants the previous definition of curtilage. The definitions of curtilage and privacy are two key definitions that matter in this context, and neither of them appears to have been significantly challenged or tested in the courts. Is that an issue for the taking, restricting or providing of access?

In relation to the influence of privacy and curtilage over access, is there a role for Government? In light of some of the work that has been done on arbitration, is there a role for arbitration in sorting out the difficulties that can arise?

Roseanna Cunningham: I would never want to dismiss the potential for arbitration, but like mediation, arbitration has to involve two willing partners, and that is where it can sometimes break down. At the time, Parliament made a conscious decision not to try to define those issues. The report that the committee commissioned said that that was probably the right thing to do—I think that Dr Calum Macleod said that to the committee—because the minute that we start to define such things, we get into all sorts of trouble.

There was considerable nervousness around the first big case, which happened to emanate from my constituency, and the decision in that case. That was of course followed by a second case that did not go exactly the same way. That suggests that each case will be judged very much on its specific merits, which is the right way to proceed. There is guidance in the Scottish outdoor access code on land that is exempted from access rights. The issue takes us back to the responsible taking of access. Most people who are out walking know perfectly well that tramping past somebody's bedroom window is hardly responsible access—people taking access in those circumstances would be considered to be in the wrong, and rightly so.

For most folk, it is pretty obvious what the private part of any property is and what is not private. However, in relation to judicial guidance, we have had only a couple of cases. That suggests that, in the main, the legislation is working fine, but it also tells me as a lawyer that we cannot yet draw very much from those cases.

The Convener: We move on to part 2, which is on the community right to buy.

Liam McArthur (Orkney) (LD): Minister, you acknowledged in your opening statement that concerns have been raised about the complexity and lack of flexibility of the community right to buy. We are probably all heartened to hear what you said about the need to put in place a system that is easier and faster and meets the needs of communities that want to pursue that route. You will be aware that, in the written evidence that we received from the researchers, following on from their oral evidence, they suggested a number of ways in which an easier and faster approach might be achieved. They talk about

"Increasing the flexibility of what constitutes eligible 'community bodies', simplifying ballot arrangements, recasting time-frames associated with the process in favour of community organisations and reducing the burden of mapping requirements".

All those were suggested by participants in the study that the researchers carried out. You have commented on the issue in general, but it would be helpful for the committee to hear whether you

have specific views on where improvements can and should be made.

Roseanna Cunningham: Yes, I do, in some cases—this is probably the point at which some of my officials might wish to search for pencils under the table. The process, which was probably constructed with the best possible intentions, has become so convoluted and arcane that fairly experienced people find it difficult to navigate. I said that I have dealt with about 10 applications in the two years since I became minister—[*Interruption*.] I have somehow lost the list that I had drawn up, but about three or four of the 10 were late applications. They were late because the land had already been put on the market. There are a variety of reasons why an application might be late, but it seems to me that we have made the process difficult for many communities, as they discover the potential only when something comes on the market.

I understand why the process was set up in that way, but it creates a difficulty for communities. In effect, we ask them to go through a procedure that involves formalising their situation to register the right to buy based on an entirely speculative possibility that, at some indeterminate point in the future, a piece of land might or might not come up for sale. In many communities, it might be possible to ascertain through the grapevine that that might happen but, in many other communities, that is not possible, particularly if the owner of the land happens to be resident outside Scotland.

We need to look closely at that to see whether we can allow communities a simpler process for forming the initial formal community, if you like, or slightly more leeway on when they must submit an application for the right to buy. The process has two stages.

Liam McArthur: I do not remember whether you were still the committee's convener or whether you were a minister when the committee expressed concerns about the reregistering process, but you will recall that discussion.

Roseanna Cunningham: I remember it.

Liam McArthur: Registration is onerous, arduous and complex enough, but the reregistration process layers more complexity on top.

Roseanna Cunningham: I think that I was the convener when that was discussed.

Liam McArthur: I think that perhaps you were.

Our attempts to address the issue when it was previously before the committee did not necessarily meet with the success that we would have liked. Has further thinking been done about how to streamline the process in a way that meets the legal requirements but does not add to the burden?

Roseanna Cunningham: The difficulty is in ensuring that we meet the legal requirements and do not inadvertently end up being challenged on another set of methods.

Heather Holmes (Scottish Government Rural and Environment Directorate): When we examined reregistration initially, we considered whether the legislation provided scope for making the process easier and simpler or whether parties had to follow the whole registration process again, five years on. After our previous visit to the committee, we put in place an administrative system to get the parties through the reregistration process a bit more easily.

One year before a registration is to expire, we send letters to the community body and the landowner to say that a year of registration is left. At that point, we try to get the community body thinking about whether it wants to reregister an interest and about how things have changed for the community. We hope that the body will think through what it wants to do and will come back to us.

Nine months before registration expires, we send the body a copy of all the documentation that it submitted for its registration and a blank application form in which we populate the section that relates to the basic land in which the body has registered an interest. The body can start work on the form then—or before then, if it wishes. Six months before expiry, we tell the body that—as the legislation says—it can reapply to register its interest in the land. By that time, we are usually in close contact to find out whether a body wants to reregister. We give bodies a year's window.

Five community groups have had the opportunity to reregister their interests. Off the top of my head, I think that one body decided that it would not reregister, one is reregistering and another has reregistered its interest. I think that two groups have missed their deadline. Their first registrations have lapsed, so they are making new applications to register their interests in the same land.

Liam McArthur: I appreciate that that sample is small and is a bit of a snapshot, but it suggests that the efforts that have been made to streamline the process have produced a mixed bag at best and that more work needs to be done.

10:00

Roseanna Cunningham: To be honest, we are a little bedevilled by quite small samples when we consider such issues. It must be accepted that not reform, perhaps, but changes can be done in two

ways. They can be made in the context of existing legislation, but some tasks might require the legislation to be revisited—in effect, a land reform (Scotland) act mark 2 or a land reform etc (amendment) (Scotland) act would have to be produced.

If you were to ask me at this stage, I would say that my feeling is that the latter is probably going to be what is needed. In the current set-up, we end up having to go through the process that Heather Holmes has just tried to describe when, instead, we might want to carry out a slightly more radical consideration of how community bodies are constituted in the first place and whether it should be made easier for existing community bodies to turn themselves into potential land-buying bodies.

To be fair to all of us and to the Government of the day, in 2003, some of the issues are things that we could not have understood in advance. Often in such situations, it is only as we try to work through the existing processes that we realise how difficult they have become.

It is also fair to say that, in that period of time, we have all become more defensive about challenges.

Liam McArthur: We have been told that

"to some extent the momentum and the political momentum has drained away from community land ownership and asset ownership."—[*Official Report, Rural Affairs and Environment Committee*, 9 February 2011; c 3842.]

I will not ask whether you think that that is true. However, it tends to support the view that, rather than a mend-and-make-do approach, what is needed is a more comprehensive and overarching consideration of the legislation.

Roseanna Cunningham: I currently have two applications pending, or three, if we count—

Heather Holmes: There are three sitting in the office.

Roseanna Cunningham: And they have not come to me yet.

Heather Holmes: That is correct. They will come to you in the next week.

Roseanna Cunningham: I can only go by the ones that reach my desk, of course.

I indicated roughly how many I had dealt with since I became minister in February 2009 just to flag up the issue and to give you an idea of what the process has been like—that was not the official statistic; we have official statistics for the four-year period. Given the number of pending applications, it looks like the process is steady.

Those who were looking for much faster and bigger change as a result of the legislation might be disappointed. However, it looks as though the legislation, as it is currently designed, is never going to deliver much faster change. It is difficult to say whether it is the complexity of the process that is putting people off. We have not conducted an analysis in that regard—you would have to go around all the communities that had not formed themselves into bodies and made registrations to ascertain why they had not. In some communities, it is not the legislation that is the problem but the fact that, often, what is required is a couple of key, dynamic individuals to make the running. That is where the reregistration process is interesting because, in some cases, the original dynamic individuals have moved away and some of the stuffing goes out of the desire.

Liam McArthur: However, it is fair to assume that the general perception of the complexity and lack of flexibility of the process is certainly not going to encourage people to engage in the process.

Roseanna Cunningham: Absolutely, which is why I mentioned that in my opening remarks. I am conscious that there are some people who are involved in the process who have considerable experience of dealing with vast bureaucracies and are still having problems. That tells us that the process cannot possibly be ideal. Again, it was put in place with absolutely the right intentions but it is only when you begin to crunch through the bureaucracy that you realise that what you have erected is not delivering quite what you want.

I want to consider closely the question of how we define what a community body is. Two processes are involved: one involves a group becoming the kind of community body that can get engaged in the process; and the other involves the registering of an interest. Usually, those two processes have happened at the same time, as the desire to get a bit of land triggers the establishment of the community body as well as the race to submit the registration with regard to the right to buy within what is perceived to be an ideal timeframe. I suspect that the fact that communities are trying to deal with the two things at the same time will not have helped the situation.

If we could separate things out, it would help communities and might lead to fewer late applications. The process of getting from zero to 10 in a short time is often what defeats communities, leaving them having to argue that a late application should be accepted.

Stewart Stevenson: I wanted to pick up on something that the minister said about the owner of land being outwith Scotland. In such cases, real difficulties can arise in making contact. Is it time for the Parliament and the Government to consider whether it should be required that the owner of land, if not resident in Scotland or the United Kingdom, have a contact point or an agent within

that jurisdiction, so that the owner can be contacted by communities that might want to buy the land? That issue goes well beyond the issue that the committee is considering today, but it touches on it.

Roseanna Cunningham: Many landowners will have agents, factors, or what have you, and people in communities will know who they are. There are different kinds of landowners, including institutional owners and absentee owners, and it would be very helpful if all were required to have a known point of contact. That would help everybody, including us. Off the top of my head, I cannot see how that could give rise to legal problems. I do not see how it could be challenged, and I think that it is a perfectly legitimate issue for us to raise. It would make a big difference.

Stewart Stevenson: In one case in my constituency, it took us five years to find that there was an agent for an owner who was resident in Panama. We then had to correspond with him in Spanish. The land in question was simply a piece of ground on the high street of a village, on which was a derelict cottage that the community wished to do something about. I imagine that that sort of case will be repeated elsewhere.

Roseanna Cunningham: I suspect that that is an extreme case, but it nevertheless makes the point that some change to the present situation would be advisable. I would certainly want that to happen.

John Scott: Bruce Beveridge will know that the land in question might receive integrated administration and control system payments or single farm payments through the Scottish Government rural payments and inspections directorate. All the phone numbers are available. When I had to be contacted because of foot-and-mouth, I was contacted on the afternoon of Easter Sunday by mobile phone. They can find you when they want to.

Bruce Beveridge (Scottish Government Rural and Environment Directorate): In the vast majority of cases in which a residential property has become derelict, the details are registered with the Registers of Scotland and are publicly accessible. Ninety-nine per cent of the time, one has a contact address for the registered proprietor, even if they are not in Scotland, and even if it is not an IACS case.

Heather Holmes: Out of the 128 registrations currently in place with us, in only two cases are the landowners not known. In those cases, we cannot go through the legislative process.

Roseanna Cunningham: That is a small number, but it should not exist; there should never be a situation in which one cannot act because an owner or an agent cannot be contacted. That is not the biggest issue. The bigger issues are to do with the timescales, the deadlines and the speed with which people have to act to meet deadlines. We can look directly at those matters and consider whether we can do something about them.

We might also need to look again at the length of time that we allow people to raise the money, because the deadline comes soon after the completion of the other end of the process. When there is a successful application, people then have to get the money. Money is not easy to get these days and the timescales are quite short.

I can understand why the timescales were set as they were, because land prices were rising as fast as anything else, but I am not sure that the current situation justifies having the same timescales that were set in 2003. I would like there to have been a slightly more flexible approach. The difficulty with the legislation is that not much flexibility was built into it, so making any changes to it requires us to go back to primary legislation. It is maybe an object lesson about not being too prescriptive in a piece of legislation, because it ties you up when you realise that something is not working as well as it might.

Elaine Murray (Dumfries) (Lab): As you know, part 2 applies only to rural communities of fewer than 10,000 people. Is there a case for the community right to buy being extended to larger communities?

Roseanna Cunningham: That is a bigger question, of course, but I am perfectly open to the suggestion.

When we were originally considering the legislation, the figure was going to be 6,000 people, which would have made it even more difficult to qualify. The figure of 10,000 could be increased, but the difficulty is that a process of education of the public has to take place. They have to understand that the fact that they live in the middle of a small town does not mean that they might not have a right under the act, so we have to impress on people that it also applies to them. In some small towns, people would probably be surprised to know that, because they think of land reform as something that happens out there in the green part and not in even a small town.

A bit of work has to be done on our part to get people to understand that, but the figure could be increased above 10,000 people or the definition of community could be changed slightly so that it allows the community to be defined over a wider area, because I know that in some parts of Scotland—I live in one of them—although people live in a small town or village and there is quite a strong small-town or village identity, they nevertheless identify themselves as living in the strath and they think of the strath as the

community that they live in. It might help that there are other ways in which we can look at the concept of community.

Elaine Murray: We also heard evidence that Highlands and Islands Enterprise has been pivotal in enabling communities in the Highlands and Islands to exercise the right to buy. Those of us who represent the rural south of Scotland often look at HIE with rather envious eyes. Does Scottish Enterprise have sufficient powers and a wide enough remit to assist communities in the south or is there an issue with its remit?

Roseanna Cunningham: I sympathise with your frustration. Most of rural Scotland outwith the Highlands and Islands has probably cast envious eyes on HIE's powers from time to time. The fact is that Scottish Enterprise does not have the same set of powers, so we would have to consider whether enabling Scottish Enterprise to do what HIE does would be advisable. I would certainly like to see an equivalent of HIE that covered most of rural Scotland. I know that HIE does not extend to Ayrshire.

John Scott: It extends to Arran, though.

Roseanna Cunningham: Yes, Arran.

Significant parts of rural Scotland lie outwith HIE's remit. There is also a psychological issue. Many people in Scotland think of land reform as a Highlands and Islands issue—I have spoken to people in the Highlands and Islands who think of it in those terms as well—and tend to forget that there is an opportunity for the whole of rural Scotland to be part of it. However, some parts of rural Scotland do not have quite the same psychology.

10:15

John Scott: Just as a matter of interest, given your enthusiasm for extending powers similar to HIE's to Scottish Enterprise and the rest of Scotland, do you have any figures for what that might cost?

Roseanna Cunningham: As you well know, that is not part of my portfolio. It would take a good bit of consultation and an estimate of how it would work in practice would have to be included in that. Scottish Enterprise covers big, urban areas. I have not pressed my colleague the Minister for Enterprise, Energy and Tourism on such an extension in the short span for which I have been in the Government.

The Convener: We will leave that point because we need to move on.

Elaine Murray: Minister, you have already spoken about the relative success of late applications under the 2003 act. As well as that, quite a number of communities settled completely outwith the act. Is the act an enabler; does it concentrate minds so that communities find other ways of acquiring the land? Is it possible that the other methods work with late applications?

Roseanna Cunningham: I am not sure that we have enough information to be able to say that with certainty. The bit of the report that I found interesting was the enabling scenario. The researchers said that the existence of the legislation had allowed communities to have conversations with landowners that they otherwise would not have had. In some cases, landowners have simply gifted land—we saw a recent example of that at Scalpay. Not all community land ownership has been mediated through the legislative processes that are laid down in the 2003 act. It is great that we have created the climate in Scotland whereby that can happen outwith legislation.

There is a formal process for late applications. A late application is not necessarily a fatal application, if you see what I mean; it can be taken into consideration. Indeed, I have given different determinations depending on specific circumstances. The problem often occurs—this goes back to the earlier part of the conversation—when a community is not under the apprehension that a piece of land will ever be sold and then suddenly discovers that it is on the market. The law says, in effect, that there is nothing that the community can do about it at that point.

In some cases, there have been liquidations or landowners have gone into administration. In others, land has suddenly come on the market without any warning or prior understanding. I wonder whether there is an issue in and around that about which we need to think. It seems to me that one way for a landowner to frustrate the act is to keep pretty quiet about their intentions for their land, so that the first that anybody knows about what those intentions are is an advert in one of the posh magazines. I worry a little bit about that.

The other issue, which has arisen more in recent years for obvious reasons, is companies going into administration. That immediately presents a different problem that we did not envisage when the bill went through the Parliament. I want to look closely at how we consider that scenario.

Sometimes, an application is late simply because it has taken a long time to get through the processes, although one has to say that the majority of applications are made in time. We need to look quite carefully at the reasons for lateness and decide whether people have just been dilatory or whether there have been factors that would have been difficult to get round other than through a late application.

The Convener: We need to move on. I ask people to keep their questions and answers brief. We will move on to the crofting community right to buy.

Peter Peacock (Highlands and Islands) (Lab): Like Liam McArthur, I welcome what you said in your opening remarks about now being a time for review. If you think that part 2 is complicated, it ain't nothing compared with part 3. Some interesting points arise because of the complexity of the crofting community right to buy. In theory, it is a very powerful and radical provision that is there to deal with a particular set of circumstances, but it is being used more as an enabling tool than as a legal tool. The fact that it exists might concentrate the minds of some landowners at particular times, but is it sufficient for it just to be a mechanism to help to concentrate minds, or must it become a workable legal tool?

Roseanna Cunningham: I believe that it must become a workable legal tool. I do not think that you include a huge part of an act on the basis that it might have a galvanising effect; you intend it to work in practice. The crofting community right to buy is another provision that, in practice, has not delivered what we might have expected, and we must look very closely at why that is. You are absolutely right that the complexities that are involved in the straightforward community right to buy are as nothing compared with the complexities that are involved in the crofting community right to buy.

I have to be a little careful about what I say here, because I have such a case pending. The demands of the act are quite onerous and they create enormous challenges for any community. I am not sure that, at the time, they were understood to be as onerous as they have turned out to be. It probably seemed quite a straightforward idea at the time but, in practice, that is not the case in the way in which the provision has been progressed.

There is a big difficulty because, as usual when an application comes in, it has to be looked at in the context of the current legislation. In order to simplify things, we will have to revisit the legislation. I do not think that there is any way round it. If we are to do something about part 3, I think that it must be revisited.

Peter Peacock: An interesting thing that emerged from the evidence that we took was that, although there is extremely limited experience of communities trying to use part 3, that experience shows that it is virtually unworkable from a community point of view. It takes a huge amount of time and effort just to get the application to a satisfactory conclusion. An experienced former civil servant—I suspect that it might be the same person of whom you are aware—has been driven almost demented trying to deal with some of this stuff.

You have had to approach the matter not from a community point of view but from that of a minister receiving advice. I have no doubt that you will have to choose your words carefully, but I guess that the provision is difficult to work from a ministerial point of view because the nature of the complexity on the community side is such that, if anything is in any way wrong, any ministerial decision could be challenged by the kind of landowner who wants to challenge such things and take them to their ultimate conclusion. In other words, the provision is just as challenging from a ministerial point of view as it is from a community point of view.

Roseanna Cunningham: Yes. On the ministerial side, it is necessary to be extremely careful and to make it crystal clear why you are delivering whatever decision you deliver. That does not mean that it will not be challenged. My belief is that that was probably always going to be the case, given the kind of hostile buyout that was envisaged by the act but, because we have not dealt with a large number of cases, the reality of that has not necessarily penetrated.

I am hopeful that we can effect reform that makes part 3 more workable. It is ironic that crofting communities have bought crofting estates under different legislation, which seems to be easier to work with in that regard. Of course, the landlords were more willing to sell in those cases.

Peter Peacock: Given that there is some, if limited, experience in that regard, can you point to the areas of law that are particularly difficult with regard to part 3 and cause the complexities that must be addressed?

Roseanna Cunningham: I am getting a bit uncomfortable, because there is a current, contentious case that I must determine and I am a little concerned that anything that I say could be construed as a comment on that case.

Peter Peacock: I understand.

On timescales for the review, are officials working up the review stuff just now?

Roseanna Cunningham: I would want to consult on a review within the year.

Peter Peacock: That is helpful.

John Scott: I want to talk about the mapping system and why it is regarded as being so onerous. Is the right balance being struck between safeguarding the rights of landowners and enabling crofting communities to exercise the right to buy? How could the processes be simplified? Again, if you feel that you cannot comment

because you have pending announcements or judgments to make, we respect that.

The Convener: There may be another way of phrasing the question. Before the Crofting Reform (Scotland) Act 2010 and the mapping exercise, were boundaries causing difficulties for communities that wanted to buy their land? Is there now a more onerous situation in that regard?

Bruce Beveridge: I can comment from a basic land purchase and sale point of view. Ordnance Survey map detail is far more patchy in rural Scotland, which has long been an issue that is more complex for rural land transactions than it is for those involving land that has transferred more regularly or land that is in a more tightly defined mapping system. It is fair to say that there have always been boundary or mapping issues with rural land and property.

John Scott: Is it a matter of scale? Is the situation improving or deteriorating? Is this one of the barriers or not?

Bruce Beveridge: It is fair to say that as much improvement as the map scale on that base can stand has been made. My view is based on recollections from my previous role and I am not an expert on the current state of the OS mapping. However, the question of scale is an issue. In addition, the frequency of updates of the map base tends to peter out for less-populated areas because less detail change needs to be recorded for that base. However, drills and arrangements are in place so that any changes are recorded. It is just that the scale is sometimes an issue as well as the frequency of detail change. That is my recollection from my previous role.

Roseanna Cunningham: It might be helpful if members think of what is presented in part 3 as part of compulsory purchase rather than as being analogous to the other parts of the act. Members will know that compulsory purchase is incredibly complex. It must be more complex at one level, because it is compulsory purchase and not the same as the other land reform that we are dealing with.

Heather Holmes: I have an additional point on mapping that might help to clarify a number of issues, including why the mapping is so complex. In my branch, we have recently looked at the mapping requirements in terms of compulsory purchase requirements. If you look at compulsory purchase mapping requirements for local authorities and other bits of central Government, such as transport, you will find that there are similar principles. When the legislation was being drawn up, mapping requirements were pooled from what was already available from other areas in relation to compulsory purchase.

10:30

Stewart Stevenson: A case that is in the public domain that illustrates some of the difficulties in mapping was where Highlands and Islands Airports Ltd was required to improve the security fence at Benbecula airport. The map that was in the ownership records for the land was sufficiently imprecise that, when the line that was drawn in big blue pencil between the crofters' land and the airport was resolved down to scale it was 50m or perhaps even 100m wide on the ground. There ended up being a significant court case about that, because of course the crofters thought that the fence had been put in the wrong place. The resolution of the case is irrelevant; the point was that the problem was entirely down to mapping. Would the minister or an official care to agree that that is illustrative of some of the very real difficulties in using maps that were put in place for one purpose in another age for a purpose that requires substantially greater precision, for all sorts of reasons?

The Convener: That issue occupied us a great deal when we were discussing the Crofting Reform (Scotland) Bill.

Roseanna Cunningham: The difficulty is that we are expecting community bodies to be able to deliver what we have imposed, which is taken from bureaucratic requirements elsewhere. We have said that the community bodies have to be able to do the same thing; that is where the problem lies.

Peter Peacock: I understand the arguments about the nature of this step—we are talking about compulsorily removing land from a present owner, which is a significant step. However, that was the firm intention of Parliament and it should happen in certain circumstances.

Given what you said about the current law simply replicating to some degree current compulsory purchase mapping rules, will there be scope to find rules that would simplify things sufficiently to meet the tests that you are rightly setting out? Community bodies will have to deliver this. In a crofting context, the boundaries might, to say the least, be historically imprecise. For every imprecision, there is a potential court challenge by somebody who wants to take the matter to court. Are you confident that what you are proposing can be done?

Roseanna Cunningham: As some members know—and perhaps some do not—we are already in a judicial review on aspects of this, which is why I am a little bit concerned about how far we go in what we are saying.

The Convener: It is difficult for the minister to answer your question, Mr Peacock, as you probably know.

Roseanna Cunningham: Bruce Beveridge has reminded me that the compulsory purchase regime itself is under review. There is an understanding that the processes that Governments have taken as the norm have become very complex; they have probably grown over the years and need to be looked at again.

The Convener: I thank the minister and her officials. The minister is staying with us, but I will suspend the meeting briefly to allow the officials to change over.

10:33

Meeting suspended.

10:36

On resuming—

Subordinate Legislation

Water Environment (Controlled Activities) (Scotland) Regulations 2011 (Draft)

The Convener: Item 3 is the first of a number of pieces of subordinate legislation. The minister has remained with us for this item. I also welcome the officials who are supporting her: Derek Wilson is a policy officer on the water environment team; Stuart Foubister is a divisional solicitor from the solicitors economy and transport division; and Neil Ritchie is branch head of natural assets and flooding. This agenda item enables members to ask questions about the content of the instrument before we move to the formal debate on it. Officials can speak under this item but cannot participate in the debate.

The Subordinate Legislation Committee has commented on the draft Water Environment (Controlled Activities) (Scotland) Regulations 2011; those comments have been circulated to all committee members with the agenda and papers. I invite the minister to make a brief opening statement.

Roseanna Cunningham: Scotland's rivers, lochs, estuaries and seas are an invaluable resource. They are key to our health and wellbeing, provide a water supply for drinking water and hydro power generation and support key industries including salmon farming, angling, tourism and whisky production. In the previous session, Parliament approved the Water Environment (Controlled Activities) (Scotland) Regulations 2005, which are colloquially known as CAR. Through CAR, the Scottish Environment Protection Agency can control activities that are likely to have an adverse impact on our water environment.

Continued protection of our natural resources is a key aim of the Parliament and, since 2007, a number of amending instruments reflecting continued policy developments have been approved. I am now making further amendments, all with the aim of further supporting our better regulation agenda. The latest amendments will deliver three key objectives. They will improve the transparency and operational effectiveness of CAR, introduce fast-track provisions that will enable prompt authorisation to be granted in a range of emergency situations, and absorb the requirements of the environmental impact assessment directive in respect of agricultural irrigation into CAR and remove them from the planning system. Collectively, the changes will improve effectiveness and transparency while

reducing regulatory burdens for operators. Stakeholders generally welcome the changes.

The changes, along with all the preceding amendments, have now been drawn into a single consolidated version of CAR, which I bring before the committee for approval. Convener, I am happy to answer any questions that you or committee members may have on the draft regulations.

John Scott: What will be the costs of the regulations? You may have dealt with that—if so, I apologise for not being here to hear all of your opening remarks.

Roseanna Cunningham: There is a schedule of cost implications.

John Scott: We are told that the costs were looked at before, which implies that one should know, but I am not entirely sure what they are.

Roseanna Cunningham: Which specific costs are you looking for? I can give you the average cost of an authorisation by SEPA.

John Scott: Paragraph 9 of the Executive note states that a regulatory impact assessment

"was prepared to accompany the 2005 Regulations, and this noted that the full costs of compliance with"

the water framework directive

"requirements would only emerge once environmental objectives were set later on in the River Basin Management Planning process."

If you do not have any actual costs, do you have any indicative measure of the costs?

Roseanna Cunningham: We have information on the average cost per application. The cost will depend on the complexity of the application. We have some other figures, but perhaps Neil Ritchie can say something on that.

Neil Ritchie (Scottish Government Rural and Environment Directorate): There are no costs associated with the proposed amendments because they are in a deregulatory framework. That is why we have not seen it as appropriate to undertake a business and regulatory impact assessment. They will reduce the costs of compliance with the requirements of the water framework directive rather than introduce a new burden on producers beyond the requirements in CAR, which Parliament previously agreed.

John Scott: Okay, I will leave it at that.

The Convener: No other members have questions, so we move to the formal debate on the draft regulations. I remind everyone that officials cannot participate in the debate. I invite the minister to move motion S3M-7873.

Motion moved,

That the Rural Affairs and Environment Committee recommends that the Water Environment (Controlled Activities) (Scotland) Regulations 2011 be approved.—[*Roseanna Cunningham*.]

Motion agreed to.

The Convener: I suspend the meeting for no more than five minutes to allow the Cabinet Secretary for Rural Affairs and the Environment and his officials to take their seats. I thank the minister and her officials.

10:41

Meeting suspended.

10:45

On resuming—

Marine (Scotland) Act 2010 (Transitional and Consequential Provisions) Order 2011 (Draft)

Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 (Draft)

Marine Licensing Appeals (Scotland) Regulations 2011 (Draft)

The Convener: We resume with consideration of more subordinate legislation. We will take evidence on three instruments that are subject to the affirmative procedure and a single question will be put on each of the instruments in turn. I welcome to the committee Richard Lochhead MSP, the Cabinet Secretary for Rural Affairs and the Environment; Matt Cartney, from the marine planning and policy division; David Palmer, branch head from the marine planning and policy division and the acting deputy director of marine planning; and Stuart Foubister. As before, this agenda item enables members to ask questions about the content of the instruments before we move to the formal debates on them. The Subordinate Legislation Committee has made no comments on any of the instruments. I invite the cabinet secretary to make a brief opening statement.

Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment): Thank you, convener. I will speak to the first instrument, which is the draft Marine (Scotland) Act 2010 (Transitional and Consequential Provisions) Order 2011.

In the Scottish inshore region, certain activities such as the disposal of dredged material, construction and the placing of moorings are licensed under the Food and Environment Protection Act 1985 and the Coast Protection Act 1949. That will change on 6 April with the

commencement of marine licensing under the Marine (Scotland) Act 2010. At the time of transition, licences under the FEPA and the CPA will still be current, and the draft order, which is made under section 164 of the Marine (Scotland) Act 2010, provides for those licences to be deemed licences under that act. The licence application process is, by necessity, a time-consuming and relatively costly one, so the draft order is required to avoid unnecessary repetition of that process for both applicant and regulator.

My officials and I will be happy to answer any questions that the committee may have on the draft order.

The Convener: Do committee members have any questions?

Members: No.

The Convener: I take it that you have spoken to just one of the instruments, cabinet secretary.

Richard Lochhead: Yes.

The Convener: Would you like to go on to the second one, as there are no questions on the first one?

Richard Lochhead: Sure.

Section 32 of the Marine (Scotland) Act 2010 provides that Scottish ministers may specify by order that certain activities will not require a marine licence. The draft Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 specifies those activities. Activities that are exempted under the draft order include those that are covered by other legislation and which, therefore, do not require further regulation, such as fish farming and carbon capture and storage. Also exempted under the order are commonplace activities with a very low environmental impact, such as the launching of vessels and the placing of moorings by harbour authorities. The draft order also exempts certain activities for which the time-consuming licence application process would not be appropriate, such as firefighting and salvage activity for the purposes of ensuring the safety of a vessel or to prevent pollution.

The order is vital to ensure that activity in the Scottish inshore region is appropriately regulated but is not burdened with unnecessary regulatory procedure. It was developed with assistance and advice from Marine Scotland, SEPA, Scottish Natural Heritage and others, who have been involved at all stages of its development. The order was subject to public consultation, and 46 responses were received, including from SEPA, SNH, Scottish Environment LINK, the Scottish Fishermen's Federation, the British Marine Federation, ports and harbours authorities and the renewable energy industry. The draft order has received general support, although several changes and additions that were suggested were made to the order following the consultation. Examples of changes include the exemption of removal of biological growth from the hulls of vessels, the requirement that exempted scientific instruments must not represent a danger to navigation and the exemption of approved harbour maintenance only if the activity is carried out within the existing boundaries of the works being maintained.

I am happy to take questions on the order.

Liam McArthur: This is not so much a question as an observation. The cabinet secretary will recall the objective of putting in place a proportionate and appropriate system of regulation, which took up a fair amount of our time during consideration of the bill. My observation is simply that there has been further discussion on the detail. I welcome the further modifications that have been made. The broad consensus that exists and the way in which much of the detail around the legislation has been brought together under the stewardship of the present Government and the previous Executive can only bode well for the operability of the provisions.

Stewart Stevenson: Could the cabinet secretary confirm that what he said about the relocation of moorings in no way relieves harbour authorities or anyone else from any environmental designations that may exist for areas where moorings are located? I am referring to sites of special scientific interest, Ramsar sites and so on.

Richard Lochhead: No—such sites still come under the remit of existing environmental legislation. The exemption lies with the licensing regulations under the Marine (Scotland) Act 2010.

The Convener: I invite the minister to move on to the draft Marine Licensing Appeals (Scotland) Regulations 2011.

Richard Lochhead: The Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009, a UK act of Parliament, provide a range of statutory notices, which Scottish ministers can use to regulate licensable activities. Those notices allow action to be taken where an operator is in breach of their licence, or where there is a risk to human health, the environment or other legitimate uses of the sea.

The draft regulations make provision for a person to whom a statutory notice has been issued to appeal against a notice to the sheriff court. The provision for appeal is necessary to ensure that the new enforcement tools are used fairly and proportionately. The sheriff court provides an independent and impartial forum for such appeals.

The regulations are made under sections 38 and 61 of the 2010 act and sections 73 and 108 of the 2009 act. They were drafted with advice and assistance from the Scottish Court Service, and were subject to full public consultation. The consultation indicated general support from industry and other users of the marine environment.

I am happy to take any questions on the draft regulations.

The Convener: There are no questions from members on the regulations.

We move to the formal debates on each of the three instruments. I will ask the cabinet secretary to move motions S3M-7885, S3M-7884 and S3M-7886 one at a time. Officials may not participate in any of the debates.

Motions moved,

That the Rural Affairs and Environment Committee recommends that the Marine (Scotland) Act 2010 (Transitional and Consequential Provisions) Order 2011 be approved.

That the Rural Affairs and Environment Committee recommends that the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 be approved.

That the Rural Affairs and Environment Committee recommends that the Marine Licensing Appeals (Scotland) Regulations 2011 be approved.—[*Richard Lochhead*.]

Motions agreed to.

The Convener: I thank the cabinet secretary and his officials for their time.

10:54

Meeting suspended.

10:56

On resuming—

Radioactive Substances Act 1993 Amendment (Scotland) Regulations 2011 (Draft)

The Convener: Item 9 is consideration of an affirmative Scottish statutory instrument. Again, the Subordinate Legislation Committee has made no comment on the draft regulations. The Cabinet Secretary for Rural Affairs and the Environment is still with us, but with a different set of officials. They are Louise Miller from the legal directorate; Helen Gordon-Smith, who is a policy officer on radioactive waste; Elizabeth Gray, who is the team leader on radioactive waste; and Stuart Hudson, who is a specialist adviser on radioactive waste.

I invite the cabinet secretary to make a brief opening statement.

Richard Lochhead: Thank you, convener.

As the committee will be aware, everything is naturally radioactive to some degree. The draft regulations form part of a UK-wide revision of the regulation of very low-risk radioactive substances. The Radioactive Substances Act 1993, which I will refer to as RSA 93, regulates the use of radioactive material and the disposal of radioactive waste, and amending regulations are needed to modernise the framework for regulating very low-risk radioactive material and waste. The framework determines whether a substance or article falls within the scope of the act or is exempt from the need for a permit. The amendment regulations will remove the need to regulate the use of very low-risk radioactive material and the disposal of very low-risk radioactive waste. They will not alter regulation of the use of higher-risk radioactive material or the disposal of higher-risk radioactive waste, which will still be subject to robust regulation.

The changes are a response to requests for modernisation of the legislation from, for example, hospitals and universities that use radioactive material and produce radioactive waste. They told us that the previous regulatory framework, which remains essentially unchanged since the original Radioactive Substances Act 1960, puts undue burdens on them. Those views were reinforced by the regulators, who assessed the regulation of very low-risk radioactive material and waste as unnecessary. Hospitals, for example, have had to dispose of some waste as radioactive waste even though the radioactivity has decayed away, often in hours or days. Even though the radioactivity could no longer be detected, the waste was classed as radioactive under the legislation. Such an approach is both unnecessary and costly, so in the future such waste can be disposed of through conventional waste routes, which will reduce the regulatory burden and cost.

At present, all man-made radioactive substances and very low-level naturally occurring radioactive substances are regulated, regardless of the level of risk. That is not proportionate. It has been clear for some time that the definitions of radioactive material and radioactive waste have needed to be modernised. The 1960 act recognised that low-risk items such as clocks and watches should be exempt from regulation, so over time a piecemeal exemption system built up. The 18 exemption orders, some of which were laid as far back as the 1960s, remove the need for the Scottish Environment Protection Agency to issue permits to use certain radioactive material and waste, but we now need a simpler system that is based on risk. For example, because they use a variety of radioactive substances for study or in experiments, universities have to use many of the 18 exemption orders. In the future, some of those

substances might not require regulation and, if they do, the new single order can be used.

11:00

Since 2006, we have been working closely with users and regulators on reviewing the legislation and permitting arrangements. The draft regulations and the Radioactive Substances Exemption (Scotland) Order 2011, which is being laid before Parliament as a separate instrument, are the result of extensive stakeholder engagement, including a UK-wide public consultation in 2009. The amending regulations will clarify what lies within the scope of regulation by updating the definitions of radioactive material and radioactive waste, and because the updated definitions will exclude substances that it is impractical or unnecessary to regulate for, RSA 93 will be brought into line with modern, risk-based regulatory practice.

The exemption for clocks and watches in RSA 93 will be repealed by the regulations and replaced by the provisions in the order. The regulations and the order will have the effect of creating a modern and simplified regulatory framework that will provide efficiencies for both regulators and users: the estimated net savings for users and regulators in Scotland will be in the region of £1.28 million over the next 10 years or so.

Convener, I am happy to answer any questions that you or committee members might have.

Liam McArthur: This is all clearly part of a UK-wide consultation. You might have implied the answer to my question in your concluding remarks, but I note that paragraph 5.5 on page 11 of the business and regulatory impact assessment says:

"Businesses were concerned to ensure regulatory consistency across the UK."

I take from what you have said that the process will develop a UK-wide approach, but it would be helpful if you could confirm that. Secondly, were there any specific issues relating to the Scottish dimension of the consultation that opened up any differentiation from issues that were being explored elsewhere in the UK?

Richard Lochhead: I can confirm that a UK-wide approach is being taken in order both to ensure that we have regulations that people can better understand and that have been simplified and written in modern English, and to identify very low-risk substances for exemption. As far as I am aware, a very similar approach is being taken across the whole of the UK.

Perhaps my officials might be able to say whether any specific Scottish dimension has arisen in the consultation process.

Stuart Hudson (Scottish Government Rural and Environment Directorate): Broadly speaking, we have not seen any significant differences. You might, for example, highlight the oil and gas industry, which is a significant industry that is primarily based in and more unique to Scotland, but such work is also carried out in England and Wales.

Liam McArthur: So, it is more a matter of emphasis with regard to industries that are more prevalent in Scotland than elsewhere than of a pattern of usage or impact that is different in Scotland for some other reason.

Stuart Hudson: That is right.

Liam McArthur: That is helpful.

Stewart Stevenson: I take it that the reference to clocks and watches is to do with luminous paint, which is also widely used on the compasses that are used by hillwalkers and others, and on the instrumentation for certain modes of transport. Do the provisions as they now stand extend in an even way to all these different but basically very similar uses?

Richard Lochhead: I will ask Stuart Hudson to comment in a moment, but you are right to pinpoint the use of luminous paint on clocks and watches.

Stuart Hudson: As the 1993 act applies only to industry, it does not affect the use of, say, compasses by individuals. I also point out that luminous articles are already exempt and where possible we have carried them over into the new regime.

Stewart Stevenson: If the act applies only to industry, is it possible for certain restoration projects seeking to restore to their original state instruments or compasses in vessels or yachts of one sort or another using luminous paint to continue or are they now excluded?

Stuart Hudson: There will be no change to the impact on that kind of project, to my knowledge.

Bill Wilson: You said that the regulations cover hospitals and universities. Do they cover the Ministry of Defence?

Richard Lochhead: I would not expect so, but I will ask Stuart Hudson to give you an exact answer.

Stuart Hudson: The changes that we are making do not make any change to the coverage of the Radioactive Substances Act 1993 with respect to the Ministry of Defence, which is

exempt under section 40, or thereabouts, of the 1993 act.

Bill Wilson: Just so that I can be absolutely clear, are you saying that when the Ministry of Defence decides to dispose of depleted uranium shells in Scottish waters—they dishonestly claim that they are harmless when there is solid evidence that they are harmful—no one regulates that, and the Ministry of Defence is a law unto itself when it comes to disposing of radioactive material in Scottish waters?

Stuart Hudson: There are no formal powers under the Radioactive Substances Act 1993 for SEPA to authorise the disposal of radioactive waste or the use of radioactive materials by the Ministry of Defence. There are letters of agreement under which, for example, Faslane operates.

Richard Lochhead: The main point is that the MOD has Crown immunity from all the regulations. As you know, the Scottish Government strongly opposes the Ministry of Defence's testing of depleted uranium shells on Scottish soil. That is our policy. However, the regulations will not affect that activity because of Crown immunity.

Bill Wilson: The MOD continues to be a law unto itself. Thank you, cabinet secretary.

John Scott: I think that a political point was being made there. I will resist the temptation to rise to it. An election is coming; that is what it is about.

I want to ask the minister about the disposal of low-level, low-risk radioactive waste. What practices will change in the future as a result of the regulations? In what way will they change?

Richard Lochhead: Clearly, special arrangements have to be made for the collection and disposal of materials or waste that are classified as radioactive under the 1993 act and are not exempt. The changes are that those materials and waste that are exempt, such as those that might be found in hospitals and universities, can be disposed of using conventional routes because they will not be classified as radioactive substances under the regulations. The radioactivity can decay in a matter of hours in these substances, so they just become the same as any other waste.

John Scott: So, was one hitherto meant to dispose of a watch or clock that had a luminous face in a different way?

Richard Lochhead: The history of such items is that they were exempt.

Stuart Hudson: The act was in place for businesses and their undertakings. It did not apply to individuals anyway, and that has not changed.

The Convener: As there are no more questions, we will move to the formal debate on the regulations. I invite the cabinet secretary to move the motion.

Motion moved,

That the Rural Affairs and Environment Committee recommends that the Radioactive Substances Act 1993 Amendment (Scotland) Regulations 2011 be approved.—[*Richard Lochhead*.]

Motion agreed to.

The Convener: The next item is a vote on the Waste Management Licensing (Scotland) Regulations 2011. Cabinet secretary, would you like to move the motion? [*Interruption*.]

I beg your pardon; I am on the wrong page of my brief. I understand that the cabinet secretary needs different officials for the next item on the agenda. I suspend the meeting for a short time.

11:09

Meeting suspended.

11:11

On resuming—

Waste Management Licensing (Scotland) Regulations 2011 (Draft)

Waste (Scotland) Regulations 2011 (Draft)

The Convener: Agenda item 11 is consideration of a further two affirmative instruments. The cabinet secretary will give evidence on both of them, alongside his third set of officials for the day. Louise Miller is still with us. She is joined by Chris Graham and Gary Gray, both of whom are from the Scottish Government's zero waste delivery team. The Subordinate Legislation Committee made no comments on the regulations.

I invite the cabinet secretary to make a brief opening statement.

Richard Lochhead: I will speak to both sets of regulations. There are two main policy drivers for the changes that are introduced through the regulations. The changes are intended to improve the effectiveness and accessibility of the legislation and to implement amendments that are required by the European Commission and the European Court of Justice.

The original Waste Management Licensing Regulations 1994 have been amended on several occasions since they were introduced. As a result, the legislation is fairly cumbersome and it might be difficult to work out the current status of some of the provisions. The 1994 regulations set out the

conditions with which those who treat, transport or dispose of controlled waste must comply. They also specify the activities that are exempt from the requirement to hold a licence. The waste management licensing system is in place to ensure that waste management facilities do not cause pollution to the environment, cause harm to human health or become seriously detrimental to the amenities of the locality.

The main effect of the draft Waste Management Licensing (Scotland) Regulations is to consolidate the existing regulations into one up-to-date document, which will allow regulators and operators alike easier access to the relevant current law. As part of the joint better waste regulation exercise that was conducted by the Scottish Government and SEPA, we are also introducing amendments that will make the waste management licensing system more flexible and efficient. We have extended the range of activities that are potentially eligible for exemption from a full waste management licence, thereby reducing operator and regulator costs. For example, we have removed the restriction that only meat-free kitchen and canteen waste can be used in small-scale composting under an exemption. Appropriate controls on that already exist under the animal by-products legislation.

The other drivers for the amendments are the introduction by the European Commission of a revised waste framework directive and a judgment by the European Court of Justice relating to waste carriers. Members of the committee will be aware that failure to take the necessary steps to ensure that the requirement of the revised directive is properly transposed into Scots law runs the risk of infraction proceedings being instigated. Although the essence of the revised waste framework directive remains the same as the previous version, greater emphasis is now placed on waste prevention and the hierarchy of waste treatment activities.

The draft Waste (Scotland) Regulations 2011 transpose those aspects of the revised directive that are not covered by waste management licensing regulations. They also amend the relevant primary and secondary legislation to allow for a more flexible waste management licensing process, in line with our commitment to the principles of better regulation. The ECJ judgment to which I referred is another reason for introducing the regulations. It relates to the registration of waste carriers, which means professional collectors and transporters of waste as well as businesses that might do that as a normal part of their activities, such as joiners, plumbers and landscape gardeners.

The court judgment followed a case brought against Italy, and it ruled that all undertakings that regularly carry waste as part of their normal business activities must be registered with SEPA. Previously, the requirement to register had been applied only to businesses whose main activity was the transportation of waste and not to businesses that simply transported their own waste. It is, of course, open to the business simply to contract with a waste management company to transport and dispose of its waste. It would then not have to register.

11:15

Members will have noted that the deadline for transposing the requirements of the revised directive was 12 December 2010. It is unfortunate that we failed to meet that target, but I should make it clear that none of the UK Administrations and few member states, we understand, achieved it. The current timeline allows for a coming into force date at the end of March, which is consistent with the rest of the United Kingdom.

The introduction of the regulations will not in itself have a major impact on the operation of the waste management industry in Scotland. The revised directive requires a number of additional changes to current practice, including the separate collection of waste streams and the publication of waste prevention plans, but it requires those changes to be introduced over a longer timeframe. Where they require legislation, those changes, which are in line with the zero waste plan for Scotland that we published last year, will be introduced through other regulations, which we have consulted on over the past three months. The consultation proposed a rolling programme of regulations over the next six years in Scotland to introduce the separate collection of specific waste streams so that they can be reused or recycled; banning those waste streams from disposal to landfill; and restricting the input to energy-from-waste plants so that only genuinely residual waste can be burned. It will be for the next Administration to consider the responses to the consultation and bring amending legislation before Parliament.

My officials and I are happy to answer any questions on the two sets of draft regulations.

Stewart Stevenson: I have a procedural point for the committee. The SSI designation forms that are in front of us show—in error, I think—the Justice Committee as the lead committee. It seems to make sense for the SSIs to be before the Rural Affairs and Environment Committee. Perhaps we should confirm that they should be before this committee. That would seem to be proper.

The Convener: Yes. That is correct. Thank you.

Liam McArthur: Cabinet secretary, you touched on the importance of the hierarchy of

waste treatment activities. I think that everybody would subscribe to the notion that we need to direct more effort to reducing the overall amount of waste that we create, but it is inevitable that waste will be created. It is also fair to say that, historically, the ways in which we have introduced, implemented or enforced waste regulations have not always been helpful in maximising the opportunities for businesses, for example, to innovate in using waste as a resource and attaching a value to it. I took from your comments—certainly on the first set of regulations—that you are looking at a more flexible and efficient approach. What reassurance can you offer the committee that the way in which the regulations will be enforced will address the issue of waste without shutting off opportunities for markets to develop to deal with waste and reduce the overall cost to the taxpayer?

Richard Lochhead: You make a fair point. We have made the argument, as all the parties that are represented in the Parliament have, that it is in the interests of businesses to address Scotland's waste and the waste that they produce. It is clear that businesses can cut their costs. They can recycle and recover value from what they have previously regarded as simply waste.

You are right. We must ensure that we carefully plot the road ahead. Many of the measures that are proposed in the zero waste plan for Scotland will be introduced over a number of years. We have just consulted on a number of them, and local authorities and businesses have clearly made the point to us that they want a degree of flexibility and the availability of a number of options to them to address the big issues in moving towards zero waste.

Liam McArthur: From conversations that I have had with the chairman and chief executive of SEPA, I know that they acknowledge that there have been problems with the way in which we have defined waste in the past. That has closed off options for dealing with waste in the way in which other member states appear to have been able to do, entirely in keeping with the spirit and letter of the law, which has enabled them to develop industry sectors that, as you said, allow value to be extracted from the waste while still meeting the other objectives. In your view, have lessons been learned from what has happened in the past? Will the way in which these regulations and others will be taken forward allow us to maximise opportunities?

Richard Lochhead: The feedback that I have received from the business community and other organisations such as the National Farmers Union Scotland suggests that, in the past four years, there has been a sea change in attitudes in SEPA and other agencies. We all welcome that. However, I will not say that everything is completely fine, because I am aware that there are some on-going issues that we must continue to investigate. Just a few days ago, an individual indicated to me that they felt that they were being prevented from using waste oils to recover value and were having to send them south of the border. Clearly, that is causing me some concern in my role as minister. I am investigating the matter at the moment. I will not say that there is not still some way to go to help businesses to recover value from waste and to ensure that we are not gold plating some European regulations. We must strike a balance, but I will not say that there is not a lot more to be done.

Liam McArthur: We have had correspondence in the past on the impact of separation rules, especially on the catering sector. Waste disposal units have been introduced in cafes, restaurants, hotels and so on that may no longer comply with rules on separation. If that is the case, the impact on those businesses could be significant. Can you offer us reassurances about how any change in the rules might be introduced to mitigate that impact or to allow it to be spread over a period?

Richard Lochhead: I can give you an assurance that we are determined to be proportionate and to take into account the need for a transition period. The separate collection of different wastes is one area in which we must be flexible and take our time, but it is really important that we go down that road—and not just because the European directive obliges us to look at the options. I remind the committee that Scotland produces 2 million tonnes of food waste a year, 500,000 tonnes of which goes straight into landfill. That is not good for the environment and it is a waste of a valuable resource. We are losing the opportunity to recover heat or electricity from that through the use of anaerobic digestion or whatever. It is important that we move as quickly as we can, but I take on board your point that we must work with the business community on a transition period.

Karen Gillon (Clydesdale) (Lab): You will be aware of the public concern around some of these issues. We must balance the business interest with that public concern and ensure that we are getting people the right information. The note that accompanies the regulations states:

"The Regulations also include new activities eligible for exemption from full waste management licensing".

You gave us one example, which concerned food waste from schools. That is a good, positive example with which none of us has problems. Can you identify the other activities that will be eligible for exemption from full waste management licensing? It is important that we get the balance right. I know that business always wants to push

the boundaries, but we must always be clear that we are not including in new regulations anything that might push the boundary on public health, where there are concerns at the margins.

Richard Lochhead: The impact on public health is always a primary consideration for all these treatment processes. You are right that there is public concern about that. We all know that from media coverage of particular issues in Scotland at the moment. I spoke to an individual last night from the waste sector who said that, in some Scandinavian countries, the dirtiest word that you can use is landfill; everything is fine as long as it does not go to landfill or waste. Of course, we have a slightly different debate in this country, where other forms of treatment are perhaps viewed as not as palatable. However, I believe that most rational people think that we must avoid landfill for waste treatment. My officials can give more examples of what has been exempted, to give you some comfort in that regard.

Chris Graham (Scottish Government Rural and Environment Directorate): There are a couple of examples. The activities might not necessarily be particularly new; it might be a refinement of the definition of the scale of activities that makes the change in the legislation. At the bottom of page 64 of the Waste Management Licensing (Scotland) Regulations 2011, a few items are listed:

"The treatment of waste organophosphate sheep dip ... with an enzyme preparation, provided that no more than two tonnes of such waste is treated in any one day ... The mixing of ash from the incineration of pig or poultry carcasses at its place of production with manure for the treatment of land as specified in sub-paragraph (2)."

On the facing page, we have:

"anaerobic digestion of biodegradable waste which is agricultural waste or waste from a distillery."

Those are all subject to the same public health concerns and legislation that you would expect.

Karen Gillon: Thank you. I suppose that my second question, which is about the removal of the legal requirement for a certificate of technical competence, follows on from that. It seems quite strange that we would want to remove from an operator, particularly one that is operating an incinerator, the requirement for a certificate of technical competence. I understand that you believe that that system exceeds the requirements of the revised waste framework directive, but why would you not want someone to have a certificate of technical competence?

Richard Lochhead: That is one of the issues that arose during the consultation. Our view is that while the certificate is clearly a valuable and valid indicator of an individual's competence, or of his or her employer's commitment to training and development, it is not in itself a guarantee that the terms of a waste management licence will always be complied with. The revised framework does not oblige us to retain the certificate as a legal requirement, so we felt that to do so in all cases would be gold plating and that it would place an unnecessary administrative and financial burden on operators.

Karen Gillon: So it enhances the training that a company gives to an individual and their competence, but we do not think that it is worth while for companies that operate serious pieces of kit. That is not gold plating, minister—it is good practice.

Richard Lochhead: The question is simply whether the certificate should be a legal requirement. I think that the committee would criticise me for gold plating European regulations, if I proposed to do so. We always pay attention to that issue.

Chris Graham: Someone would still be unable to get a licence to operate an incinerator or any other comparable facility without first satisfying SEPA of their competence. We are saying that the certificate is not the only way in which to guarantee competence.

Karen Gillon: I asked SEPA on Monday what checks would have to be undertaken before a company was considered to be fit in that regard: the checks are very basic. The certificate of technical competence is not gold plating. In Scotland, we must decide whether to remove the requirement for the certificate because it is an undue burden or whether to retain it because it enhances a company's training provision and the management of a facility—I think that it enhances those areas.

11:30

Richard Lochhead: I do not think that anybody is arguing with that.

Karen Gillon: But we are taking it away, minister.

Richard Lochhead: No. Officials can correct me if I am wrong, but I think that SEPA can make it part of its conditions that it wants that requirement to be satisfied.

Karen Gillon: But why would we transfer the burden from an elected minister to an unelected quango? We have the legislation and regulation from an accountable Parliament and committee, so why would we transfer the burden to an unelected quango?

Richard Lochhead: At the moment, we have a regulator in SEPA.

Karen Gillon: But we have the provision in legislation. As an elected parliamentarian who has regulations before me, why would I want to transfer the responsibility from Parliament to an unelected regulator?

Richard Lochhead: That is your interpretation of what is happening. We are simply saying—

Karen Gillon: But that is what is happening; it is not my interpretation.

Richard Lochhead: In transposing a directive into Scots law, we took the view not to gold plate. That does not mean that SEPA cannot take into account the factors that we are talking about in issuing licences to any operator. SEPA has a very good record in being stringent about whom it issues licences to. Anyone who operates any major waste infrastructure project in Scotland will have to adhere to the highest standards. SEPA will take all that into account before it awards a licence to operate. I am not aware of any examples where it has not done so.

Karen Gillon: But those operators are operating under the current licensing regime, in which they would be required to have a certificate of technical competence. If we pass the regulations, they would be operating under a different licensing regime, in which they would not be required to have a certificate of technical competence.

Chris Graham: But they would still be required to demonstrate that competence to SEPA.

Karen Gillon: Yes, but they would not be required to have a certificate of technical competence.

Chris Graham: No, but the certificate is only one possible way of demonstrating technical competence to SEPA.

Elaine Murray: You said that operators would be required to demonstrate competence to SEPA. Would they be required to do so by law or it is just that SEPA would expect to have competence demonstrated to it? Is there a legislative requirement to demonstrate competence to SEPA?

Louise Miller (Scottish Government Legal Services Directorate): Yes. Any applicant for a licence has to satisfy SEPA that it is technically competent. The regulations really just affect what SEPA is able to take into account as evidence of technical competence or otherwise. They get rid of one prescribed list of purely national qualifications and allow SEPA to consider whatever it thinks appropriate as evidence of competence. One obvious example might be an equivalent qualification obtained outside the UK, in the case of an operator that was not necessarily based here. That is just one example.

Elaine Murray: I move on to the revised waste framework directive, which was supposed to come in at the end of last year. It requires separate collection of waste and restricts the amount of energy from waste.

Five years ago, Dumfries and Galloway Council signed a 25-year agreement with a company, which will now be in contravention of the directive, because the waste is all collected together and brought to a plant, where it is separated. The paper and the plastics are turned into fuel and burned. That will be in contravention of the directive, so the council will have to do something about its contract with the company to address that.

I am aware that there are quite a number of waste incineration and other planning applications around. What sort of guidance is going out publicly to ensure that when councils consider applications at the moment, they are thinking about how they will deal with their waste? When the legislation is fully effected, there are certain things that councils will not be able to do. Some of the applications that are drifting around at the moment would seem to be in contravention of the new waste directive.

Richard Lochhead: Zero waste Scotland has been working closely with our local authorities and, over the past couple of years, we have put in a great deal of effort to ensure that guidance and expertise are shared between local authorities, the Scottish Government and zero waste Scotland. The submission from the Convention of Scottish Local Authorities to our consultation on waste regulations that has just closed, which was circulated to either members of the committee or party spokespeople, welcomed that close co-operation on these issues.

I am confident that local authorities are well aware of the expectations and demands and breadth of the directive and the Scottish Government's policies in terms of moving towards a zero waste society.

Elaine Murray: If you thought that a local authority had passed an application that would be in contravention, would you call it in?

Richard Lochhead: I cannot answer that question, as that is a planning issue. In any case, I would not call that in personally; that would be a matter for ministers with responsibility for planning. It would depend on the circumstances.

John Scott: The minister will be aware of the growing environmental crime of illegal waste disposal, which is connected to illegal activities such as money laundering and drug dealing. He will also be aware of the need for new regulation in that regard in the next session of Parliament.

Does the opportunity that is before us at this point help us to deal with the emerging and massive problem of illegal waste disposal? Has there been a missed opportunity in that regard, or does the issue require to be dealt with through separate and different legislation?

Richard Lochhead: That is a good issue to highlight, as it is a huge blight and has an appalling impact on our environment. My view, however, is that this legislation is not directly related to that issue. There are other areas of Government that should be working on environment crime, and Parliament in the next session might wish to consider whether our current legislation is sufficient in terms of deterring it.

John Scott: From the presentation that was made in Parliament last week by SEPA, it would seem to be evident that it is not—I am sure that you are aware of SEPA's view.

Richard Lochhead: That is one view. I am saying that I would be sympathetic to Parliament considering reviewing the penalties for environmental crime in Scotland. I think that that would have a lot of public support. Of course, there would need to be a debate over whether that would make any difference to the people who are involved in that kind of crime—in some areas, you are talking about organised crime. You say that the problem is that the legislation is insufficient, but we do not know whether changes to the legislation would change the behaviour of organised criminals. However, that is something that Parliament should investigate.

Karen Gillon: I am somewhat confused by the answer that you gave with regard to the certificate of technical competence issue. On one hand, you say that SEPA can still require it or its equivalent but, on the other hand, you say that it is gold plating.

The Executive note on the instrument says:

"The Scottish Government believes that this system exceeds the requirements of the revised Waste Framework Directive".

What are those requirements and in what ways does the certificate of technical competence exceed them?

Richard Lochhead: I was merely making the point that I can see no reason why SEPA cannot take that into account when considering whether any operator is fit and proper to run a facility, irrespective of whether there is a legal requirement on all operators to hold that particular certificate. SEPA considers a range of factors and is stringent with regard to who gets a licence to operate such facilities.

Karen Gillon: If your rationale for getting rid of it is that it exceeds the requirements of the waste framework directive, can you say what the requirements of the waste framework directive are in this regard and how the certificate of technical competence exceeds them?

Richard Lochhead: I will ask my officials to give you those details.

Louise Miller: It would be very unlikely that any European directive would specifically mandate something like the COTC provisions that we have now, because what we have now is one list of qualifications that are exclusively UK qualifications. It is extremely unlikely that any directive would say to member states, "Go away and create a set of conditions for getting a permit that you can obtain only by training and qualifying within your member state." There is an obvious—

Karen Gillon: How can you say definitively that the requirements under the COTC exceed the requirements under the waste framework directive?

Louise Miller: The waste framework directive just does not contain any provision like that.

Karen Gillon: So it does not retain any requirement for staff to be appropriately trained, for them to have continuous training and for the company to have appropriate training mechanisms? That is what exists under the COTC.

Louise Miller: The COTC requires operators to demonstrate that they have very specific qualifications, which are named qualifications and which they can get only in the UK. There is a list that refers to a specific set of UK qualifications for waste management. No European directive would ever specifically authorise or mandate a member state to go away and do that.

I am not saying that there is necessarily an internal market problem with what we have done legally. So far as I am aware, we have never come under any pressure from the Commission on the matter, but it is not obviously internal market friendly and it is not something that would ever—

Karen Gillon: Does the problem perhaps lie in the wording of the Executive note, which states that

"the Scottish government believes that this system exceeds the requirements of the revised waste framework directive"

and in your statement regarding the regulation being gold plated? It seems to me that if you gold plate a regulation, you are asking for something over and above the requirements of the regulation. However, if the regulation does not include anything on training requirements, we cannot be gold plating it in respect of such requirements. I

suspect that we are not gold plating it, because we should be requiring staff who work in the industry to be properly trained. That is not gold plating but good practice. I expect that the Health and Safety Executive also expects us to do that.

Louise Miller: That is still the case. Applicants for a licence will still have to demonstrate to SEPA that they are technically competent to hold that licence. The only change is that SEPA will be able to consider evidence other than named UK-only qualifications on one specific list.

Karen Gillon: Perhaps the problem is how you framed this piece of advice to the committee.

Richard Lochhead: Perhaps the wording is not perfect, but the key point is that SEPA will issue licences only to those who are competent to operate these facilities in Scotland. We should recognise that a very professional approach is taken to that.

Stewart Stevenson: If we were to leave certificates of technical competence as a way of meeting a particular requirement, I wonder whether that would open the door—I think of my own circumstance, as a degree in mathematics that I gained in the 1960s would not sensibly qualify me to be a mathematician today because I have forgotten almost all of it—to people who have qualifications but have not necessarily retained up-to-date knowledge and improved their knowledge seeking judicial review because they have met a certification requirement.

If we go down a different road, SEPA will have the opportunity to require very up-to-date and specific knowledge to be demonstrated and in place. The approach that you recommend therefore ensures that we are not required to authorise people who may have undertaken qualifications some considerable time ago but can instead have a regime that is up to date and relevant to requirements.

Richard Lochhead: I am happy to speak to SEPA about the general issue that the committee has raised regarding on-going training, skills and qualifications. The committee raises a fair issue. My point is that, in terms of the statutory instrument, it is perhaps a matter that we can discuss separately with SEPA.

11:45

The Convener: As the committee's questions are exhausted, we move to the formal debates on the Waste Management Licensing (Scotland) Regulations 2011 and the Waste (Scotland) Regulations 2011. I remind everyone that officials cannot participate in the debates. I invite the cabinet secretary to move motions S3M-7834 and S3M-7835.

Motions moved,

That the Rural Affairs and Environment Committee recommends that the Waste Management Licensing (Scotland) Regulations 2011 be approved.

That the Rural Affairs and Environment Committee recommends that the Waste (Scotland) Regulations 2011 be approved.—[*Richard Lochhead*.]

Motions agreed to.

The Convener: I thank the cabinet secretary and all his officials for being in attendance throughout our heavy schedule of affirmative instruments. I suspend the meeting briefly while the cabinet secretary and his officials take their leave.

11:46

Meeting suspended.

11:46

On resuming—

Brucellosis (Scotland) Amendment Order 2011 (SSI 2011/51)

The Convener: Item 13 is consideration of a negative instrument. The Subordinate Legislation Committee made no comment on the Brucellosis (Scotland) Amendment Order 2011 and no motions to annul have been lodged. Do members have any points to make on the order?

Members: No.

The Convener: Does the committee agree that it has no recommendations to make on the order?

Members *indicated agreement.*

The Convener: That concludes the public part of our meeting. I thank everyone for their attendance.

11:47

Meeting continued in private until 12:31.

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