



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 28 November 2012

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**Wednesday 28 November 2012**

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**RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**  
**27<sup>th</sup> Meeting 2012, Session 4**

**CONVENER**

\*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

**DEPUTY CONVENER**

\*Graeme Dey (Angus South) (SNP)

**COMMITTEE MEMBERS**

\*Claudia Beamish (South Scotland) (Lab)  
\*Nigel Don (Angus North and Mearns) (SNP)  
\*Alex Fergusson (Galloway and West Dumfries) (Con)  
\*Jim Hume (South Scotland) (LD)  
\*Richard Lyle (Central Scotland) (SNP)  
\*Angus MacDonald (Falkirk East) (SNP)  
\*Margaret McDougall (West Scotland) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Claire Baker (Mid Scotland and Fife) (Lab)  
Willie Cowan (Scottish Government)  
Jeff Gibbons (Scottish Government)  
David Howat (Forestry Commission Scotland)  
Alastair Mitchell (Scottish Government)  
Dr James Pendlebury (Forest Research)  
Paul Wheelhouse (Minister for Environment and Climate Change)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

Committee Room 1



## Scottish Parliament

### Rural Affairs, Climate Change and Environment Committee

*Wednesday 28 November 2012*

[The Convener *opened the meeting at 10:00*]

#### Decision on Taking Business in Private

**The Convener (Rob Gibson):** Welcome to the 27th meeting in 2012 of the Rural Affairs, Climate Change and Environment Committee. Members of the committee and members of the public should turn off mobile phones and BlackBerrys, as leaving them in flight mode or on silent will affect the broadcasting system.

Agenda item 1 is a decision on taking business in private. I seek the committee's agreement to take item 5 and all future consideration of the evidence heard and draft reports on the Aquaculture and Fisheries (Scotland) Bill in private. Do members agree to do so?

**Members** *indicated agreement.*

## Subordinate Legislation

### Crofting Register (Scotland) Rules 2012 (SSI 2012/294)

### Crofting Register (Fees) (Scotland) Order 2012 (SSI 2012/295)

10:00

**The Convener:** Agenda item 2 is subordinate legislation. The committee will consider two negative instruments on the crofting register. Members should note that no motions to annul have been received in relation to the instruments. I refer members to the detailed paper that we have received. Do members have any views on that paper?

**Richard Lyle (Central Scotland) (SNP):** Yet again, I have concerns about legislation. I believe that the legislation needs to be tidied up in some ways, and I would welcome your direction on that.

**The Convener:** I have read the notes from the Subordinate Legislation Committee about the degree of confusion that exists and the letter from the minister. The subordinate legislation process is such that a motion to annul would need to have been lodged for us to do anything now. However, I think that the answer is that we want these things to happen but in an uncluttered and clear fashion. Therefore, I suggest that we agree to the two instruments but write to the minister to ask for the early laying of amending regulations, if that is possible. Are we agreed?

**Members** *indicated agreement.*

## Ash Dieback

10:02

**The Convener:** Agenda item 3 is ash dieback. I welcome Claire Baker, who is an interested member; the Minister for Environment and Climate Change, Paul Wheelhouse; and David Howat and Dr James Pendlebury, who are his officials. I invite the minister to make short introductory remarks. We have received an excellent paper from you, and we look forward to asking questions.

**The Minister for Environment and Climate Change (Paul Wheelhouse):** Good morning, and thank you, convener.

The matter that the committee has just dealt with and the reference to the Subordinate Legislation Committee are being pursued, and I hope that we will have progress on that very shortly.

Thank you for inviting me to discuss ash dieback, which is caused by the Chalara fungus.

As I said to the stakeholders whom I met in Parliament just two weeks ago, ash dieback is—regrettably—clearly present in the United Kingdom and likely to spread further. From the surveys that have been carried out, we have 241 confirmed cases in the UK, 17 of which are in nurseries, 97 of which are in recent planting sites, and 127 of which are in mature trees in the wider environment. In Scotland, we have 23 confirmed cases, including one nursery case, 18 cases in recent planting sites and four cases in sites in the wider environment. All those numbers are as at 6 pm on 27 November. It is expected that they will be updated at midday today, when the continuing laboratory tests are completed.

Last Friday, I made a private visit to one of those sites in the wider environment—it was near Eyemouth—where I learned of the difficulty in identifying mature diseased trees whose symptoms are more subtle. We have been working very closely with the UK Government and the other devolved Administrations on that problem. Earlier in the month, we undertook a rapid, snapshot survey to get a better feel for the current broad extent of the disease in Scotland. I pay tribute to all those who took part in that survey at very short notice. The survey was initiated on Thursday 1 November and completed just five days later, ahead of schedule. Indeed, Forestry Commission Scotland staff went on to help their counterparts in Northumberland.

I have taken part in the emergency COBRA meetings chaired by the Secretary of State for Environment, Food and Rural Affairs, Owen Paterson, and my officials are working closely with

colleagues in other parts of the UK to develop a Chalara control plan, which I expect to be published within the next week or so.

In the meantime, there is a ban, supported by the Scottish Government, on the import and movement of ash plants within the UK. An independent expert task force on tree health and plant biosecurity, which is led by the chief scientific adviser at the Department for Environment, Food and Rural Affairs, Professor Ian Boyd, has been appointed to advise on tree and plant disease threats and to make recommendations on how those threats could be addressed. The task force includes three experts from Scottish universities: Professor Nick Hanley from Stirling, Professor Tom Meagher from St Andrews, and Dr Steve Woodward from Aberdeen. We are expecting the task force to publish its interim report next week, with a final report being produced in spring 2013. We have also commissioned an independent consultant, Dr Rick Worrell, to produce an initial assessment of the potential ecological and economic impacts of Chalara in Scotland, and that report will be published in early December.

The Scottish summit, which I held two weeks ago and which was attended by more than 40 stakeholders, identified a number of key actions that we are taking forward. The Forestry Commission is developing advice on the management of ash, which will cover the sensitive management of mature trees, techniques that could help to slow down the spread of the disease and lessen its impact, and identification of resistant strains of ash, and the commission is also examining whether there are suitably isolated locations around Scotland that could act as a refuge for ash in the country. We also want to develop practical and affordable approaches to dealing with newly planted sites.

Although our native ash is not a major component of woods and forests in Scotland, it is an important feature of our landscape, has considerable biodiversity value and is also one of the most productive broad-leaved species with regard to timber and firewood. Although I assure the committee that we will take all reasonable steps to limit the disease's impact of this disease, ash dieback is—as you know, convener—unfortunately just one of a number of tree health problems that we face. For example, Dothistroma—or red band—needle blight is affecting pine trees, especially in the north and east of the country, and is posing a threat to the iconic Scots pine. We are also facing a range of threats from phytophthoras, including the current impact of *Phytophthora ramorum* on larch in Galloway and Argyll.

I am pleased that the committee has chosen to consider this important and worrying issue and

look forward to answering any questions that members might have at this stage. As you have said, convener, I am accompanied by David Howat, deputy director of Forestry Commission Scotland, and Dr James Pendlebury, the chief executive of Forest Research. I thank the committee for the opportunity to make these opening remarks.

**The Convener:** We are interested in looking at the issue in some detail because, as you have said and as has been pointed out in the chamber at First Minister's question time, there are a number of species—some have suggested that the number is as high as 15—that are under various threats. Perhaps our handling of the ash threat will stand as a model for how we handle some of the other threats.

Graeme Dey will kick off the questioning.

**Graeme Dey (Angus South) (SNP):** My question is perhaps best directed at David Howat. How, in practice, did Forestry Commission Scotland undertake its rapid ash survey? What did you learn through that process about your ability to respond to such developments in the forestry sector?

**David Howat (Forestry Commission Scotland):** As the minister has made clear, we initiated the survey on 1 November. We have been fortunate because we had already been carrying out a native woodland survey in Scotland and have pretty good information to begin with about the location of ash woods. From that, we were able to develop a sampling frame. Essentially, we divided Scotland up into 10km squares and visited up to four ash woods in each of those squares where such woods were present. From 1 November to 6 November, we had foresters going out across Scotland, with the exception of the northern isles and the Western Isles, and they had protocols to see whether there was any evidence of ash dieback in the ash woods. If they suspected something, they would take photographs and report their findings; more experienced surveyors would visit the sites; and if they confirmed the suspicion, they would send off samples to the laboratory for analysis.

The same approach has been taken throughout Britain and has allowed us to develop a map showing the geographical distribution of ash dieback across Britain. Scientists at the University of Cambridge are now using that map to model the disease's epidemiology and take a snapshot of where it is at the moment and, using information from the continent, modelling of air movements and so on, to pick up the best possible information about the disease's future movements.

**Graeme Dey:** How do you rate your own performance in that regard? Has the process

identified things that you could do better in future if something similar arises? Are you satisfied that you have performed well?

**David Howat:** There are always things that we can do better, and we have to think hard about how we can learn lessons. We had a meeting—I had organised it before the ash dieback problem arose, as it happens—to bring together the policy people in the Forestry Commission and those from other parts of the Scottish Government who deal with health threats to other plants such as potatoes. Also present were the chief scientific adviser for Scotland and scientists from the Scottish Agricultural Science Agency, Forest Research and the James Hutton Institute. The intention was to pool the expertise that we have in Scotland and take stock of it so that we can start thinking about how we move forward.

As the minister mentioned, the control plan for Chalara will be published next week, as will the interim report from the UK chief scientific adviser's task force. Building on those milestones, we will need to consider how we make best use of the capacity that we have in Scotland.

**The Convener:** You described how you undertook the rapid survey of ash. How did we help our colleagues in England?

**David Howat:** Essentially, we were fortunate that we managed to finish a bit early, and we were therefore able to lend staff to help in the north of England.

**Jim Hume (South Scotland) (LD):** Good morning, everybody. The minister mentioned that ash is not just an indigenous species but is a valuable species for timber. I am aware of the case of ash dieback in Eyemouth in the Borders. Committee paper 2 notes that there has been a prohibition on all imports of ash and ash saplings, but not on movements of timber, which is described as being "very low risk".

You have carried out a good survey, but it took place when the leaves were falling. With ash, as we all know, the leaves fall very early. I am concerned that ash dieback may show up as more of a problem come June or July next year when the ash leaf comes out again—again, ash is a late producer of leaves.

I am slightly concerned that ash timber—which is of value, of course—is still being allowed to move around Great Britain. I would like to know how safe that is.

**Paul Wheelhouse:** I will ask Dr James Pendlebury to address that point.

**Dr James Pendlebury (Forest Research):** On timber imports and movement, if the bark is removed from the timber, the risk of infection and transmission of infection is, from what we

understand from the literature, minimal. The bark would be removed in the timber trade, so only timber—planks and things like that—is being shipped around. It is, as Jim Hume says, the movement of bark and leaves that causes issues. In the timber trade, logs are not moved around with bark on any more; the trade involves processed timber in the main.

However, there are concerns around moving firewood from infected sites. The latest information and advice is that, if the wood is burned locally within a few kilometres of the site, there is not a huge amount of risk of transmission of the disease. However, the principal advice for large-scale timber movement is that, as it involves processed timber that is dry and does not have any bark on it, there should not be a major risk.

**Jim Hume:** Are there any estimates of the value of ash timber in Scotland?

**Dr Pendlebury:** Not that I am aware of.

**David Howat:** On that point, I suspect that the value is comparatively low. As Jim Hume says, ash is a valuable timber species, but it has not been grown on any scale as a productive species in Scotland. There will be some ash of value, but that is not comparable with the value of our main productive species such as Sitka spruce.

As the minister mentioned, we asked Dr Rick Worrell to carry out a piece of work on the economic and ecological impact of ash dieback in Scotland. We expect his report next week, so we will be able to add some facts and figures on that issue.

**Jim Hume:** That may be useful for some of us.

10:15

**Angus MacDonald (Falkirk East) (SNP):** I will pick up on Jim Hume's theme. You might be aware of my opposition to a proposed 100MW biomass electricity plant in my constituency. I was concerned to read in the stakeholders' meeting report that a potential pathway for other pathogens such as needle blight on pine, which you mentioned earlier, is the importation of biomass for energy production. I hope that you will undertake to make the Minister for Energy, Enterprise and Tourism aware of that potential threat.

**Paul Wheelhouse:** I will certainly undertake to share the scientific advice, as we get it, on the potential risks that are posed by imports of wood. Dr Pendlebury commented on the movement of sawn timber within the UK, but I take the point that imported wood presents a risk—there is a potential risk associated with the importation of any plant material to the UK. I assure the member that I will pass on any scientific advice that we have to the energy minister, Fergus Ewing.

**Angus MacDonald:** Thank you.

**Margaret McDougall (West Scotland) (Lab):** Good morning, gentlemen. Chalara was first identified in England in February and its presence was confirmed in March. The first signs of the disease in Scotland were picked up in July. What action did the Scottish Government take in the interim period to prevent the disease from spreading? I know that the fact that it is an airborne disease means that it is very difficult to prevent it from spreading, but did the Scottish Government take any such action? What would you do differently, if anything, if another disease were identified in England? What action can you take and what strategies can you put in place to ensure that you are prepared for a similar occurrence in the future?

**Paul Wheelhouse:** That is certainly a reasonable question. I welcome the opportunity to clarify what took place in Scotland.

You are correct about the timeline. The first suspected sites of the disease in England were identified in February and its presence was confirmed in March. During the period in question, the Scottish Government advised the commercial industry and other stakeholders of the risks to Scotland. Through Forestry Commission Scotland, we do regular inspections of nurseries in Scotland in which we look at the risks to the commercial nursery sector of all sorts of plant diseases, including Chalara.

In May 2012, nursery inspections specifically on Chalara were undertaken in Scotland in response to what we knew was happening in England. Unfortunately, on 9 July suspected signs of Chalara were identified on a newly planted site at Knockmountain near Kilmacolm, which I am sure the member is aware of. On 2 August, following test results, it was confirmed that Chalara was present at that site. Press releases were issued to raise awareness of the fact that Chalara was present in Scotland at Knockmountain.

Following that, a routine nursery inspection picked up signs of Chalara in a nursery in the north-east of Scotland. That was the first—and, so far, the only—recorded instance of Chalara in a nursery. In both cases, action was taken to destroy the trees. At that point, it was presumed that it was still possible to prevent ash dieback from presenting a major threat to UK trees. Unfortunately, we now realise that it is present in the wider environment to a much greater degree than had been expected.

As for what we could have done differently, I am reassured by the information that I have been provided with. From May 2010 onwards, when it first discovered that the causal agent was the pseudoalbidus, a version of the fungus's sexual

phase, rather than the albidus, which is the fungus endemic to the UK and which had been presumed to be the cause of symptoms up to that point, the Forestry Commission commissioned a Danish expert, Dr Iben Thomsen, to undertake a quick survey of the condition of ash in Scotland. At the time, 14 sites were visited and 33 samples taken, and the feedback was that only the endemic albidus fungus was found. In other words, we checked at the time whether the disease was present in Scotland and found no positive results in the sampling that was carried out.

Moreover, as David Howat has made clear, the national forest inventory, which was undertaken between 2009 and 2012, let us know the location of ash trees and gave a basic assessment of tree health and a methodology was supplied to surveyors specifically to provide an early warning of Chalara in order to gather the necessary evidence for pest-free status if something like an import ban were to be imposed in future. The methodology included many individual tree inspections. Although some ash crown dieback was observed, the Chalara ash dieback fungus itself was not identified. During that time, the Forestry Commission and Forest Research listed Chalara as “one to watch” and, since 2009, Forest Research’s website has contained a description of Chalara’s symptoms.

Our regret is that a similar survey was not being carried out at the same time to identify Chalara in the rest of the UK. As we have subsequently found, the disease is much more present in the wider environment in England. To be fair to DEFRA, because of the confusion over the non-dangerous albidus fungus and the pseudoalbidus, I do not think that it had any idea that the disease was present to such an extent. With the benefit of hindsight, I suggest that had a similar survey been carried out in the rest of the UK at the same time we might have had a better picture of whether the disease was already here and might have been able to act faster. At that point, however, we genuinely held the view that it was not present in Scotland and had no information to suggest that it had reached the rest of the UK.

**The Convener:** As is normal practice, I will give Claire Baker room to roam after committee members have asked their own questions. I note, however, that an awful lot of members seem to have questions.

**Alex Fergusson (Galloway and West Dumfries) (Con):** Convener, I believe that you said that ash dieback is but one of many diseases that have hit our forest estate in recent years. Imports have already been mentioned a lot. I want to ask about that issue, because it seems to me that it is a root cause of a lot of the diseases that have been hitting us.

Given that that is the case, it would make sense for us to grow as much of our nursery stock as we can here in Scotland. Indeed, that very point is made in a report by the Confederation of Forest Industries that I think we have all been sent, which, as I am sure you are aware, puts forward an action plan that covers a number of interesting UK-wide issues. My point, however, is this: if we are to stop the demand for imported trees, we must have a steady planting plan for future years so that nurserymen know what to grow and there is a degree of continuity in what will obviously be a long-term process. Could that be achieved? If so, what steps could the Government take to bring it about? After all, if we can grow all the stock that we need, the problem might be partly—although not wholly—solved.

**Paul Wheelhouse:** I certainly acknowledge Alex Fergusson’s point. At a recent meeting that David Howat and I had with Confor, we discussed some of the challenges with regard to European funding in the transition from the Scottish rural development programme to its replacement scheme. I am sure that we are all aware—and the committee more than most in the chamber—of on-going negotiations about the reform of the common agricultural policy and the risks of delaying agreements to budgets and the detail of successor schemes. At our meeting, Confor made the reasonable point that the industry needs a degree of certainty about planting rates and the wider policy with regard to not only funding schemes but the balance between productive and broad-leaved species and, within that, the species that we recommend be used in various schemes.

The general principle behind what you are saying is absolutely right. Where we can give certainty, we will seek to do so. Obviously, with the on-going CAP negotiations, we are aware of the risk of a drop in the amount of co-financing available to the Scottish Government in the interim period. We are taking steps to ensure that we have contingency plans in place to minimise the disruption to our ability to meet our critical—I say this as Minister for Environment and Climate Change—10,000 hectares per annum target for planting.

On imports, you are right that it would be a pretty significant or major step if we were to have wider import bans for tree saplings. Clearly, that would have consequences not only for the commercial nursery sector but for other businesses. We are keen that we examine those issues, which we hope will be addressed by the control plan and the work that is being done at UK level by Ian Boyd and others.

The nursery industry has made claims about the grants system, but the species of tree planted is ultimately the land manager’s choice. Ash is one

of the many species that are available and we are giving out advice on alternatives that can be used in existing projects and those that are due to go into the pipeline. From figures that I saw earlier on the share of broad-leaf planting, I think that more than half of the total UK broad-leaf planting last year happened in Scotland, so this is clearly a disproportionately significant issue for us to address.

**Alex Fergusson:** I have a brief follow-up question. I thank the minister for that substantive response, which I appreciate. Aside from all the CAP difficulties that the minister rightly says we have all been involved in, presumably it would be good practice for our nursery stock to be grown here in Scotland—full stop. Can the Government do anything to encourage that? Obviously, part of the answer will be certainty about the planting grants but, presumably, other incentives could be promoted to encourage our nurserymen to produce the stock that we will need in future.

**Paul Wheelhouse:** Certainly, I fully accept the point that there is potentially an opportunity for Scotland's nursery sector to grow its business. Given the Scottish Government's clear commitment to achieving our 10,000 hectares per annum planting target, there is certainty for the sector about the volume of work that will be required. If there are tighter controls on the movement of plants into the UK, clearly that regulatory change will create really good market demand, if you like, given the certainty that there will be a need to supply projects across Scotland. Of those projects, about 10 per cent are on Forestry Commission land but 90 per cent are on other landowners' property. If the committee has any suggestions about means by which we could support that process to get us to the stage where we have more availability of indigenous supply, I am all ears.

Perhaps David Howat can say whether there is anything that he believes could be used as an incentive in that process.

**David Howat:** Mr Fergusson and the minister make an important point about this being an opportunity for the nurseries. We need to work with the nursery sector to see how we can take advantage of the opportunity to produce more stock domestically rather than rely on imports.

**Nigel Don (Angus North and Mearns) (SNP):** Good morning, gentlemen. I want to continue that discussion but perhaps look at it from the other side. Everything that I have heard you say is about what the Government is trying to do to help the private sector, which I entirely respect. What is the private sector itself doing in response to this change in its environment?

**Paul Wheelhouse:** Nigel Don raises an important point. We have been giving on-going advice to nurseries. When chalara was first identified as a risk, nurseries were advised of the risk and on-going guidance about the issue has been made available, through websites and through press releases, to the wider stakeholders who purchase products from nurseries. There is an onus on the end-buyer of plants to ensure the provenance of what is brought into Scotland, so that is an important point.

Perhaps David Howat can outline what steps are being taken to work with the purchasers of tree products to ensure that they comply.

10:30

**David Howat:** There are a number of different strands of work with the private sector. We have worked closely with the nursery sector during the past two years to help a number of nurseries that had suffered from the dothistroma needle blight to produce clean stocks.

Another strand of activity has been the raising of awareness among private sector forest managers, because among other things we want eyes—not ears—on the ground, so that we can see what is happening. Therefore, as well as running seminars for our staff we have been running forest health days with forest research colleagues. We have got private sector forest managers and other interested people to come along to those days, which have taken place in different parts of Scotland.

At the more strategic level, Hamish Macleod, who is chair of the Forestry Commission national committee for Scotland and director of BSW Timber, has convened a Scottish timber market impacts group. The group is looking at future timber supply in the round, but a specific element of its remit is to look at the impact of tree health problems on the timber industry. The aim is to help the private sector to understand the potential consequences of tree health problems such as ash dieback and dothistroma, which has an impact on lodgepole pine and so on, and to consider how best to respond to such problems.

**Jim Hume:** As Alex Fergusson said, there has been a plethora of diseases. There was sudden oak death, and now ash is threatened. I used to be a trustee of Borders Forest Trust. Tree plantings would not happen unless we could get indigenous species—I am talking about very local seed production. You said that it would be good to help the local supply. As a starting point, do we know what percentage of trees that are grown in Scotland come from stock that was sourced in Scotland?

**David Howat:** It came as a slight surprise to me some months ago to learn the extent to which locally collected seed is sent to the Netherlands, for example, to be grown on and then returned. Technically, the tree is of local provenance, but actually it has been grown elsewhere and brought back.

Rick Worrell is doing a lot of phoning round nurseries and so on, to get the best possible handle on your specific question about exactly what is going on in the nursery trade. We have asked him to consider the matter as part of his impact assessment.

**The Convener:** Twenty years ago, when we started to plant our garden, we made sure that the stock came from local sources. There were stories about that, which I could go into in great detail. The point is that local people had collected the seed or saplings. Is there a labelling process in nurseries that enables us to identify where the tree has been brought on, in cases in which local seed has been sent to the Netherlands, for example? Could such a process be implemented quickly?

**Paul Wheelhouse:** That is a sensible suggestion, which we should look at. I will take it forward in discussions with DEFRA on the matter. It seems that seeds are exported to the low countries and elsewhere because they can grow faster there. It is done merely to speed up the process. That might be a simplistic explanation, but that seems to be the process—I am a relatively layperson in this matter, so the process probably surprised me more than it did David Howat.

I entirely agree that there should be something like labelling in all areas, whether we are talking about food production or plant material, to help consumers to see where products are from and to make informed choices. I will take the point forward.

**David Howat:** The convener is absolutely right. An analogy that rings a bell with me is with Scotch beef, which has to be born, reared and slaughtered in Scotland. To date, labelling is very much related to where the seeds came from and ignores the rearing of the seeds. The convener made a very good point.

**Claudia Beamish (South Scotland) (Lab):** Good morning to the minister and the two other witnesses. You asked about local seed collection projects that it might help to highlight. The Scottish Wildlife Trust drew to my attention a project in the Highlands. I hope that I will pronounce its name right, but I ask anyone who knows better to correct me. It is called the Coigach Assynt project—I think that I got that wrong, convener, but never mind.

**The Convener:** No, you were correct. That was very good.

**Claudia Beamish:** The project involves local landowners working together to collect seeds, whose provenance is assessed. Perhaps that model could be looked at and considered further.

More broadly, what is the Scottish Government's strategy for creating resilient ecosystems that can bounce back from the sort of devastation that we fear from ash dieback? In view of the concerns about a range of pathogens, how will that be funded if there is—dare I say it—any additional money?

**Paul Wheelhouse:** I very much support the model that you describe, in which, through the Scottish Wildlife Trust and other bodies, landowners and agents collect seeds. Now that we believe that, unfortunately, ash dieback is widespread throughout Great Britain—we are now aware that it is present in Northern Ireland, too—we have changed our tactics to protect as best we can mature trees in the short term, so that we can identify resilient strains of ash tree.

The evidence from the continent is that 1 to 2 per cent of trees in locations such as Denmark might well be naturally resistant to the fungus. We are working with landowners and volunteers to take a citizen science approach, which is a constructive way of identifying in a stand of trees that have signs of ash dieback one or two ash trees that show resilience to the disease. That information needs to be supplied to the Forestry Commission Scotland and other stakeholders. At the stakeholder summit, we discussed how to co-ordinate the collection of such information and provide a single point of contact. We hope to give guidance on that in the future.

The citizen science approach can help us to identify such trees and collect seeds. It is important to maintain the genetic biodiversity as best we can, so that we do not replace one problem with another problem by developing all our ash trees from one genetic set, which could leave them exposed to other diseases. We must try to get the right balance in maintaining the diversity of the genetics of our tree population and identifying commercially viable ash tree strains to supplement that.

As for resilient ecosystems, we have increased the Scottish Government funding to deal with plant health issues from £50,000 to £600,000 per annum through the spending review period. That is enabling us to do things such as aircraft and helicopter surveys of forests to look from the sky for evidence that could be followed up on the ground. We are providing additional human resource to do such work.

You are right to identify that the challenge is becoming more present. As climate change impacts, some diseases have a better chance of

getting a foothold in Scotland than they would otherwise have had. The problem is getting more severe. We have increased resources, but we will have to keep an eye on the scale of the challenge and respond with resources accordingly.

I ask James Pendlebury to comment on how we can do more to make our ecosystem resilient.

**Dr Pendlebury:** There are quite a few things to mention. The control strategy will be key to managing the disease. We hope that it will be issued in the next week or two, in association with DEFRA, stakeholders and all the scientists who are involved.

In the sector, the nursery trade is already working with us and others on the issues of breeding for resistance and how we can do that. The science indicates that ash has a fairly broad genetic base; it is not like elm, which is almost clonal—that is why white elm was vulnerable to Dutch elm disease. The current pest seems to have quite a narrow genetic base, so there might be some hope in that. The resistance indication from Denmark is that any resistance in ash is highly heritable, so there is a really good chance that we might be able to breed for resistance.

Managing the future crop of ash is about trying to maintain as many trees as we can for quite a long period of time. If we felled them all, we would have nothing to breed from. That sounds basic, but it is fundamental. Going forward, it is about diversifying the forestry crop that we put on the ground with alternative species and about management strategies for some of the diseases, such as dothistroma. There is evidence that if we open up the crop quite a bit and thin it, we get air flow through it, which reduces the incidence of the disease. There are therefore management strategies that can be developed for various crops and various diseases.

The process will be a blend of maintaining what we can of current diversity and thinking about future, alternative species that will provide some of the required specialist habitats. The Scottish Wildlife Trust raised that point, which is important for maintaining ecological diversity, in the stakeholder meeting with the minister.

A range of advice and information must be brought to the table. For example, on future management strategies, we have been working with stakeholders—arboriculturists and forest nursery managers—to work out how we manage ash in the wider environment to deal with the disease as it currently is out there. We have to bring to bear a range of different factors.

**Richard Lyle:** Good morning minister, and gentlemen. I had a lot of questions, but the Forestry Commission's paper of November 2012 has answered quite a lot of them. I have been

impressed by the action that the minister has taken in the past couple of weeks and the knowledge that he has gained on the subject.

I turn to an issue that is related to a question that Alex Fergusson asked. To my mind, timber production is an important sector in Scotland. What is being done to assess the impact of all tree diseases on timber production?

**Paul Wheelhouse:** As we indicated earlier, one of the issues that came up in the stakeholder summit was why it took a crisis such as ash dieback to bring together Government, stakeholders and environmental non-governmental organisations in one room. That is a legitimate point. The meeting was productive, but we need to maintain that communication with the sector and ensure that we have strategies to tackle diseases such as dothistroma and phytophthora. As James Pendlebury said, we need improved forestry practices to minimise the risk of diseases spreading and we can do that by thinning and allowing the air flow to go through woodlands more effectively.

As we gain understanding, we must communicate it to the sector in a channelled and focused way rather than allowing it to happen through a drip-feed of information on websites and so on. We want to keep up stakeholder engagement and maintain communication with all interested parties in a more organised way. I think that will help.

It is right to stress the diseases' potential impact on individual tree species—for example, the impact of phytophthora on larch, or the threat to native juniper trees, which may not be of commercial interest but which have an important role in our ecosystem. Dothistroma is a particular worry, given that it threatens our unique native species of Scots pine. We are clearly concerned to ensure that that issue is given high priority. To pick up on Claudia Beamish's point, we must provide adequate resource for responding to plant health issues and ensure that we communicate the information that helps the industry to improve its practices.

The point about imports was made earlier. We have to reduce the risk of imported material damaging our commercially important sector and our native woodlands. David Howat and James Pendlebury might want to talk about the specific scale of the threat.

10:45

**David Howat:** The most serious impact in Scotland is that of dothistroma needle blight on pine, and on lodgepole pine in particular. If the crop is left for too long, it turns more or less into sawdust in the forest. Forest Enterprise has done

forward surveying and we are encouraging the private sector to do that, so that it can get into the crops and harvest the timber that is still harvestable. That is the action that is being taken on that problem.

Phytophthora in the larch is not having a significant impact on timber production, but clearly it will. It has advanced a lot more down in south-west England, and we are learning lessons from there about impacts on the larch market.

As I explained, part of the job of the Scottish timber market impacts group is to look at implications of tree health on timber production. However, that is against the background of the very detailed forecast of softwood availability that was published earlier in the year, which shows that—putting aside tree health problems—we have quite a good story to tell about rising production. We do not just have to think about tree health; we have to think about issues such as accessibility to timber transport, owners' motivations and so forth. The role of the people in that group is to get their heads round the whole picture of where we are going on timber availability in Scotland.

**Richard Lyle:** Based on what has been learned from this instance, I take it that we will continue to monitor tree production, and ensure that it is safeguarded and that any disease is highlighted quickly.

**Paul Wheelhouse:** I agree with that absolutely. Although I referred to the need to improve communications, I would not want to keep having meetings with stakeholders without any defined purpose. However, one thing that came out of our meeting was a sense that there was value in such meetings, and that they might be replicated to look at wider tree health issues and to engage with the likes of the Scottish timber market impacts group, to which David Howat referred.

Bringing people together in that way was a very effective way of communicating the main scientific messages. Dr Pendlebury gave a very helpful presentation on the symptoms of chalara ash dieback. We should have a similar process of engagement with the industry if there is another threat, such as dothistroma. We should provide a similar level of advice—on the action that is being taken specifically on the disease, on how the Government and industry can improve the interactions of things such as SRDP and on how we can change our procedures so that we can address and react to the challenges of the disease.

The approach that was taken was valued by stakeholders and it could be replicated for other situations that arise. I hope that there will not be many of them, but I fear that, because of climate change, our environment will be more conducive

to pests affecting our commercially valuable timber industry.

**The Convener:** Claudia Beamish and Margaret McDougall have questions on this point.

**Claudia Beamish:** Sorry, my question is not on this point.

**The Convener:** Margaret McDougall is first in the queue, then.

**Margaret McDougall:** I will ask about imports in the private sector. In recent years there has been a huge increase in the variety of trees that we can buy in garden centres. What restrictions and checks are put in place for the likes of garden centres, to ensure that they do not import diseased plants and trees?

**Paul Wheelhouse:** The matter of import restrictions is currently reserved, so we have to work through DEFRA and UK authorities, which we are doing constructively. We are giving our views on those issues and we have made suggestions about the future scenarios to which Dick Lyle has just referred. There might need to be an examination of the implications of wider import restrictions on different species and we are keen to engage with DEFRA on that.

I will bring in David Howat on the current regulatory environment for nurseries and the sale of horticultural products.

**David Howat:** We work very much in the context of the European Union plant health regime, which, in the international hierarchy, sits under the international plant protection convention. There are also links with the World Trade Organization.

There is a tension between our desire to protect ourselves against the import of pathogens, and the principles of free trade within Europe. Under the EU plant health regime, there are possibilities for member states and parts of member states to determine disease-free areas and all the rest of it, and to impose various plant passporting regimes.

The set-up in Scotland is that the horticultural marketing unit sits within the rural payments and inspections directorate in the Scottish Government. The unit's staff go out and undertake physical inspections of nurseries, so that is the control that operates from there.

Part of the meeting on Monday, to which I referred earlier, related to the need to ensure that we have a good joined-up approach in Scotland—I am keen to do that, although it is currently pretty good anyway—between what we in the Forestry Commission do for forest trees and what our colleagues in RPID and other parts of the Scottish Government do with regard to the ornamentals

that come into nurseries, which Margaret McDougall mentioned.

**Margaret McDougall:** They come into garden centres, too.

**David Howat:** Yes.

**Nigel Don:** I want to pick up on something that the minister said earlier with regard to how we do the survey. I am concerned that if we get people out on foot, they are very close to the scene of the crime—the leaf—but they cannot go very far.

I think that I heard the minister suggest an aerial survey. Can you say a bit more about that? Presumably it involves not people in helicopters looking down, but cameras and computer analysis. That sounds quite exciting.

**Paul Wheelhouse:** That may be proved correct—I will check with Dr Pendlebury and David Howat. My understanding is that an aerial survey does not involve someone sitting at the window of a plane that is flying over and looking down; it is more scientific and involves recording aerial photographs and inspecting them to see whether there is any damage.

**David Howat:** Actually, we have found that the most efficient way to use helicopters is to get a trained eye on board.

**Paul Wheelhouse:** There we go—I have been proved wrong.

**David Howat:** Part of the challenge is to get more of those trained eyes, as at present we rely on two or three people. For phytophthora in particular we need someone in the helicopter who can spot the early signs of the disease. In a day's flight—if it is well planned—they can cover large parts of Galloway and further up the west coast. They take geo-referenced photographs, which means that the surveyors can go in and do the ground truthing.

There is the potential for developing remote sensors and all the rest, which is very exciting. If we had only aerial photographic cover, we would need people to spend a very long time going through a lot of aerial photographs to try to identify signs of the disease. We have found that it is very efficient at present to have a helicopter run and get a trained eye into the helicopter that can home in very quickly on where there seems to be evidence of phytophthora or something else.

**Nigel Don:** That tends to confirm what we have always known, which is that very little beats the mark 1 eyeball.

**The Convener:** I have been trying to bring in Claire Baker, but other colleagues keep coming up with questions. Claudia Beamish can go next.

**Claudia Beamish:** Thank you, convener. I have two quite specific questions that build on those that other members have asked.

The first relates to the fear, which the Woodland Trust Scotland has highlighted to me, of the spread of phytophthora from larch to native oak. Do you have any comments on that? I wondered whether it is a concern, so that we can be ahead of the game on that one.

Within the ash family—which I believe is *Fraxinus* in Latin—there seems to be a whole range of species. We have discussed local seeds, and I wonder how the scientists will balance the appropriateness of importing the Excelsior seed, which is shown to be resistant to dieback, against the question whether we can develop resistance in Scotland. As has been pointed out, there are ways of developing resistance. Can you comment on both those issues?

**Paul Wheelhouse:** If I may, I will direct the question on phytophthora to James Pendlebury.

On native species, I think that there is at least one other strain of ash—possibly *Fraxinus americana*—that is also resistant. Clearly, from an ecological point of view, there would be major advantages if we could identify native exemplar trees that are showing resistance and propagate from those rather than use imported species.

I will ask James Pendlebury to address the question about the transference of phytophthora to oak trees.

**Dr Pendlebury:** As everyone knows, *Phytophthora ramorum* is also called sudden oak death syndrome—in America it kills American oak, particularly where there is a laurel understory. In the UK, the early discoveries of *Phytophthora ramorum* in the south-west of England mainly affected beech, even in mixed woodlands, so in the UK oak seems to have been reasonably unaffected by it. To be honest, it was a bit of a surprise to everyone that the disease managed to jump from hardwoods into larch—there was no evidence in the literature that that would occur. I would not say that there is any complacency, but the evidence that we have to date is that in the UK oak is relatively unaffected by *Phytophthora ramorum*. We are keeping a weather eye on it.

On species selection, this is probably stating the obvious, but the issue is what you want from the site and from the forest that you are creating. There are lots of native alternatives to ash that could be planted—for example, alder for river situations—but there are limitations. Some of the alternatives such as sycamore are pretty vulnerable to grey squirrel damage, so various factors need to be taken into account. There are alternative species choices, and those are being discussed with the sector at present.

I hope that if we get together a coherent breeding for resistance programme across the UK, we will pick up trees from throughout the environment that have a degree of resistance and that we can breed from those. Obviously, we should be able to track or trace the origin of those, but it may be that we have to make the sacrifice of taking the tree not from the glen but from a neighbouring strath, if we get the resistance—I say that without being glib. It will just depend on where we pick up trees that we can breed resistance from. There will then be a management decision as to whether a tree is acceptable for a particular site.

**The Convener:** I thank Claudia Beamish for asking those questions. The next question is from Claire Baker.

**Claire Baker (Mid Scotland and Fife) (Lab):** Convener, thank you. I very much appreciate the opportunity to take part this morning.

I very much welcome the minister's comments this morning and the amount of activity that he has described that aims to tackle ash disease in Scotland, but he will recognise that the delay in identifying the disease at UK level is a matter of concern. The problem was identified in Scotland in July, yet the summit did not happen until the end of November. However, I appreciate that the minister has been in the job only since September, so that might give him some cover on that issue.

The delay led to a degree of confusion, which it is good to hear the minister has recognised in his communications with stakeholders. When I met stakeholders prior to the summit, they were receiving their information largely from the media, which we know is not always the most reliable source. They also had concerns around the way in which the public were informed of the threat. I checked the Forestry Commission website, and there was no public advice notice until the end of October or the very beginning of November—post the question from John Scott. I have concerns about the way in which the public and the Parliament were engaged.

Spring and summer—which in Scotland may seem far away at the moment—are the times of greatest infection risk. Looking forward to then, how will we improve that public awareness and parliamentary involvement? David Howat said that we can learn lessons from what has happened, which suggests that there have been mistakes. How do we improve as we look forward to spring and summer?

11:00

**Paul Wheelhouse:** I will start with that last point. With a response to a pest crisis such as this, we will learn lessons. From my view from outside

the work of Forestry Commission Scotland, and in the short time for which I have been a minister, I have been impressed by the urgency with which Forestry Commission Scotland has dealt with the issue. I would not want to give the impression that I am in any way critical of the work that has been done. I am grateful for the sacrifices that people have made in their personal lives, such as giving up a weekend to do the rapid response survey. I am grateful to the staff for the effective way in which they went about that.

Having said that, we will do a post-match analysis and work out where we can improve. As a number of members have mentioned, including most recently Richard Lyle, many pests can affect our woodlands and commercial forestry sector, so we have to learn and ensure that the process is honed and becomes more effective in future.

On communication, Forest Research and Forestry Commission staff were working at full pelt on the rapid survey, so engagement was perhaps difficult, other than through websites and press releases. That was probably the most effective way in which to get the message out quickly. Obviously, we had an input to the press releases. However, if external stakeholders say that they wanted information earlier, we will learn from that and try to ensure that it does not happen again.

The stakeholder meeting was certainly effective. Such meetings are a useful vehicle for engaging with people and giving them the opportunity to interact with not only the minister, but the experts. The expertise round the table included scientific expertise and expertise in forestry management practices, which allowed stakeholders to ask the questions that they needed to ask about issues such as what to do if they find an infected tree on their estate; how to advise people who are walking in a forest; and whether to mark off areas and prevent people from walking through them. It was a good opportunity for people from the RSPB, the SWT and other non-governmental organisations, as well as people from the commercial forestry sector, to interrogate me and my advisers and officials and to get the information in the way that they needed.

If I take a lesson from all this, it is that that process was helpful. It was helpful to me to engage with the stakeholders, but it was also helpful to them to engage with the experts round the table. I will certainly try to use that approach again. Perhaps towards the spring, in advance of the new growing season for trees, we will have another meeting to set out what symptoms we are looking for and to give an update on our knowledge of the presence of the disease. At that meeting, we can also perhaps address some of the other tree pests that we are aware of and give advice on what other things people should look for

when they do their inspections. A big lesson that I have taken from the process is that such meetings are a useful vehicle that we should perhaps use more often.

**The Convener:** The map that we have of *Chalara fraxinea* shows that, basically, the wider environment is infected, particularly in the south-east of England and in a small corridor up the east coast to Fife, and that the vast number of other areas where the disease has been found are recently planted sites. That means that, in the bulk of Britain, recent plantings are the identified issue in the spread of the disease. From what you have said, we know that there is potential for airborne spread to the areas nearest the continent. It would be useful for us all if we had an update in the spring, before we start talking about the actions that need to be taken.

To sum up what has been said, the issue is ongoing and knowledge is developing. It is useful for members to be involved in arboriculture so that we do not forget that we have an important duty to that part of the rural environment. I thank the minister for coming. We will try to make a date with you and your officials at an appropriate time, once you have received the next report on the issue.

We will have a short suspension before we consider the Aquaculture and Fisheries (Scotland) Bill.

11:04

*Meeting suspended.*

11:08

*On resuming—*

## **Aquaculture and Fisheries (Scotland) Bill: Stage 1**

**The Convener:** Agenda item 4 is stage 1 consideration of the Aquaculture and Fisheries (Scotland) Bill. In our first evidence session on the bill, we will hear from officials on the content of the bill and associated documents. I should tell the committee that it is not for officials to answer questions on policy decisions; instead, they are here to offer clarification on the bill and its associated documents. Discussions on policy aspects should be left for the minister. We intend to look at the bill in considerable detail and will take evidence from stakeholders throughout December, with a final evidence session with the minister in the new year.

I welcome to the meeting Willie Cowan, deputy director of performance, aquaculture and recreational fisheries, Alastair Mitchell, head of the aquaculture unit, and Jeff Gibbons, bill team leader.

I will kick off the questioning. The policy memorandum states that one of the bill's primary purposes is to effectively manage the interactions of farmed and wild fisheries. How do farmed fisheries currently interact with wild fisheries and what are the implications for their sustainable economic development?

**Willie Cowan (Scottish Government):** Clearly they interact with each other because they are both in the same place. Fish farming activity takes place in the freshwater and marine environments where wild fish stocks also live, and interaction happens by virtue of the fact that they are neighbours. At the moment, there is a regulatory framework for managing the siting of fish farms and considering the implications of siting individual farms in various places; Marine Scotland has an inspection regime for fish health; and the Scottish Environment Protection Agency monitors discharges into the marine environment.

**The Convener:** So there is a framework in place at the moment. In the absence of the bill, what would be the implications for wild fisheries of increasing aquaculture production in accordance with the Government's targets?

**Willie Cowan:** As you say, a regulatory framework is already in place and working well, and we have a successful aquaculture industry that has been growing for the past decade or so. The purpose of the bill is to take us to the next stage. The Government supports the aquaculture industry's ambitions to grow, and there are pressures from the European Commission and its

common fisheries policy to increase aquaculture production across the European Union, partly to become self-sufficient and reduce the importation of fish products from other parts of the world and partly to contribute to global food production, which is clearly an issue given the rising population and the limited land resources on which to grow protein.

**The Convener:** What are the implications, then, for wild fisheries?

**Willie Cowan:** The implications of growth?

**The Convener:** No—the implications of aquaculture.

**Willie Cowan:** Wherever there is an industrial input, there must be an impact of some sort. As you will be aware from the written evidence that you have been sent and various media reports—I also understand that you have been out and about visiting various stakeholders—interpretations of the actual and perceived impacts of aquaculture on wild fisheries differ. The Government is keen to ensure that any impacts are managed and mitigated to an acceptable level, and a key issue for the committee in its consideration of the evidence will be the extent to which there are actual rather than perceived impacts and the evidence base in that respect.

**The Convener:** I have anecdotal evidence from a netsman on the north coast who in the past year has caught in the region of 100 salmon that were originally from an aquaculture source. That is the impact on wild salmon as monitored by a netsman; I presume that the impact on rivers might be similar.

11:15

**Willie Cowan:** The impact of escaped farm salmon on wild stocks has recently been the subject of a study, which found no evidence of a substantial impact of one on the other. However, there continue to be concerns about introgression, mixed breeding and farmed animals taking up the space that wild fish are in.

One of the Government's key aims, which is reflected in the bill, is to reduce any potential impact of aquaculture on wild fisheries. One of the main ways to do that is to keep the fish in the cage. That is one of the key issues behind the technical standard provisions in the bill. Indeed, it is one of the key issues for the aquaculture industry as a whole, because every fish that escapes is an economic loss to the industry.

**The Convener:** The fact that, in the previous year, that same netsman caught only six fish that had come from escapes suggests that there is an urgency for the technical measures to work.

**Willie Cowan:** Yes. We can provide you with data on escapes over the past decade. You will see from that information that, generally speaking, they have reduced considerably. There was a single incident last year during the Christmas storms in which a whole fish farm in Shetland was washed away. I had interesting conversations with the then minister on hogmanay as to what we would do about that. One of the issues was that, although 300,000 fish escaped, we simply do not know how many of them escaped live into the wild environment. That skews the understanding behind the numbers, but it is clearly in everybody's interest to reduce escapes from aquaculture.

**The Convener:** We will move on to some of the different parts of the bill in a minute but, first, we will have another question related to the policy memorandum from Graeme Dey.

**Graeme Dey:** Good morning, gentlemen. Will you outline for us all why new legislation is necessary to achieve the purpose of the bill as outlined in the policy memorandum when, for example, the Aquaculture and Fisheries (Scotland) Act 2007 provides for a statutory code of practice on aquaculture? Could the measures in the bill not have been achieved by amending or replacing that code?

**Willie Cowan:** Some of them could have been but, to date, ministers have preferred that the industry have its own code and for that code to be flexible and updated, as opposed to there being a statutory code, which, by its nature, can become out of date quickly. The preference was for the industry code to continue but to introduce statutory requirements about how aspects of it should be used.

That is where the farm management area comes in. In essence, fish farms will be required to have farm management agreements or statements. In most cases just now, those or similar arrangements happen voluntarily, but the Government wanted to ensure that they happened in every instance to protect the whole industry and, indeed, the broader environment.

**The Convener:** We will move on to sustainable development issues.

**Claudia Beamish:** The assessment of sustainable development in the policy memorandum has been criticised in some of the written evidence that the committee has received. In his submission to the committee, Professor Colin Reid, who is a professor of environmental law at the University of Dundee, states:

"the assessment of the impact of the Bill for sustainable development ... is woefully inadequate. Surely many of the Bill's provisions will have a much more profound economic, social and environmental impact, especially for rural communities? The inadequacy of the consideration of

sustainable development is a widespread failing ... it does seem a real lost opportunity that the Parliament is not using this device as a means of thinking carefully about what the measures we pass today will mean for the future."

That is the assessment of one person who is at the University of Dundee, but I quote it to highlight the question to you. Is the assessment of sustainable development in the policy memorandum fulfilling its potential as a means of assessing the environmental, economic and social impacts of the bill's provisions and their alternatives?

**Willie Cowan:** Ministers consider that the policy memorandum and other documents cover the area. One of the issues is the question of what is sustainability. Ministers' position is that they want to encourage a sustainable, growing industry that minimises its impact on the broader marine environment. The economic benefits for local communities, through jobs, income and cohesion, are a by-product of getting that right. I think that what concerns most stakeholders is the question whether growth is environmentally sustainable, and I think that ministers would say that the documents that accompany the bill are perfectly adequate.

**Claudia Beamish:** Will you expand on that? What analysis was done on that in the context of the bill? You said that ministers think that the documents are adequate. It is for ministers to explain that in detail, but can you help me to understand the process of analysis? Concern has been expressed, particularly in view of the national marine plan being delayed until 2014 and the need to consider everything in the context of the EU marine strategy framework directive. I am puzzled as to why a professor at the University of Dundee, to mention but one person, would raise such concerns.

**Willie Cowan:** I think that I am right in saying that the individual in question has expressed similar concerns in relation to other bills and accompanying memoranda, so the concerns are not specific to aquaculture and fisheries.

The national marine plan is a good starting point. As you said, it has been delayed; we hope to publish the next draft in the new year. The plan will set the baseline for development in the marine environment, of which aquaculture and wild fisheries are part. The aim of the bill is to ensure that the sustainable growth of aquaculture can happen over time.

I do not think that the bill or the accompanying documents say that passing the bill will in any way guarantee sustainable growth; they say that the bill gives us the opportunity to enhance the existing framework, to ensure that, on a staged basis, the aquaculture industry can grow sustainably during the period to 2020, which is the

initial timescale for the targets that the Government supports and which will be included in the marine plan.

If at any point in the process there is evidence of issues with the sustainability of growth, there will be the opportunity to address those issues at that time.

**Jim Hume:** Good morning, gentlemen. The convener has already highlighted an example of a potential clash in the far north; I represent the far south, where the Galloway Fisheries Trust, the Nith fisheries, the Tweed Foundation, the Tweed Forum and so on have been doing a huge amount of work on wild fisheries. Of course, that work is not just environmental but economic in nature in recognition of the fact that these fisheries are large economic drivers in very rural areas. The concern, therefore, is that both the environment and the economy might be damaged not just by escapees but through certain unintended consequences such as the spread of sea lice and so on from fish farms. How many of those economic, environmental and social impacts have been taken into account in the bill's development?

**Willie Cowan:** At the most basic level, the Government's purpose is to create sustainable economic growth, and everything that the Government does and that civil servants do to support Government is viewed through that lens. Ministers absolutely recognise the economic benefits that come from wild fisheries and want them to be enhanced. The Government has made it quite clear that aquaculture growth and the protection of wild fisheries are not an end in themselves but are two areas where the sectors very often—though not all the time—share the same space. We need to consider them hand in hand when we examine the issues, the impacts and the interactions. I think that it is reasonably clear that, as part of meeting its wider social responsibilities, the aquaculture industry has in some well publicised instances been very supportive of the work of some of the wild fishery boards and trusts.

Ministers want to ensure that rural and coastal areas thrive through a mix of industry and activity, none of which should, of course, detract from Scotland's selling point: its prime clean environment and waters. Everything is viewed through that prism.

**Jim Hume:** We all share that view but what potential negative impacts have been identified in the work that you have done so far? I have already mentioned sea lice and escapees, but have you identified any others?

**Willie Cowan:** As I have said before, any activity has its risks. You have outlined two of the key issues that the aquaculture industry must

continue to work on and get better at. Evidence and research from around the world postulate the actual impact of aquaculture on wild fisheries, and we are looking at that evidence carefully, because it helps us to develop not only our policy position but the broader management and regulatory position. Although there are risks, the issue for Government and the broader government that manages and regulates the aquaculture industry is to ensure that any such risks are properly managed and mitigated.

11:30

**Jim Hume:** I will press the point for a specific answer. I listed two risks. What other risks have you identified in your research so far?

**Willie Cowan:** You identified the two key risks. More broadly, there could be other potential risks of disease. The management of disease falls under the fish health inspectorate's regime and is part of the regulatory regime that we manage.

**The Convener:** We will turn to the issue of delegated powers.

**Richard Lyle:** Good morning, gentlemen. I have no problem with the bill. It amends the Fisheries Act 1981, which is 31 years old—some of us are older than that. However, I have a problem with the delegated powers memorandum.

I will ask my question, but you might say that you are not permitted to answer it and that it is for the minister to answer. The bill introduces many delegated powers and has been criticised by stakeholders. Ministers are given almost open-ended enabling powers, and it has been suggested that some provisions should be in primary rather than secondary legislation. Why is there a strong reliance on secondary implementing legislation in the bill?

**Willie Cowan:** The primary reason why ministers seek the enabling powers is the technical nature of the provisions that will ultimately be implemented. Ministers are seeking enabling powers, on the back of which further consultation is under way even now with stakeholders on what their implementation will look like. It is not unusual for enabling powers to be used to implement something such as technical standards, which are by their nature technical and can move apace and require further amendment.

At this point, ministers think that the balance between primary legislation and enabling powers is right. The fallback is that the use of each enabling power would undergo a further round of detailed technical consultation with stakeholders before coming back to the Parliament for consideration.

**Richard Lyle:** Will we cover every section that needs an enabling power or will we have a get-out-of-jail clause?

**Willie Cowan:** I am sorry; I do not follow the question.

**Richard Lyle:** Will you cover every enabling power or will the approach be open ended?

**Willie Cowan:** The enabling powers that are being sought are specific. Ministers' policy position is that the enabling powers will be used when appropriate and when the detailed consultation and development work has been done. We will have a detailed product to bring back to the Parliament and we will say, "The purpose of this detailed secondary legislation is X, Y and Z, and this is all the work that has been done to support it." There is no suggestion of having a single enabling power to introduce sweeping regulations.

**Nigel Don:** Good morning, gentlemen. If I put section 3(1)(a) of the bill together with section 3(2)(a), I am left with the impression that the provisions are about technical requirements for the containment of fish. Most of what I have seen written down suggests that that is to do with materials for things such as pens and nets.

Like other members, I am conscious that there are lots of what might be described as pots, pans, pumps and pipework—there is all sorts of stuff out there and I suppose that some fish are even transferred in plastic containers and buckets. I do not want to trivialise the matter, but is any limit to the technical stuff intended? Is section 3 intended to be all encompassing of how fish are kept on farms?

**Willie Cowan:** In relation to the technical standards, the development process has taken place over a number of years through a sub-group of the ministerial group on aquaculture that brings together the industry, the gear manufacturers, the vets and the insurance companies. The development process is continuing with a broad church of people who are ultimately involved in making this happen.

We will come back to the extent to which the detail of a technical standard should apply in the consultation. I take the point that the end-to-end production process that begins with the eggs and goes up to the point of harvest is very long and complicated—essentially, it is a two-year process. Ministers want to put in place technical standards that provide a consistency of approach across the industry, but which are relevant to the specific locations of farms. Ministers would not want to provide a detailed bible that the industry had to follow step by step.

**Alastair Mitchell (Scottish Government):** The primary purpose of the conversations with the

industry and other stakeholders is largely to discuss equipment for the prevention of escapes.

**Nigel Don:** I think that I understand that, but I want to pursue the issue. I am grateful to Mr Cowan for pointing out that we are talking about the process from egg to finished fish. What I am trying to check is whether you believe that what is written down in the provisions in question is wide enough. It seems to me that it is if it were necessary to prescribe the tray on which the egg is first placed to hatch. I am just asking whether that is the intention—it would make perfectly good sense. I am not suggesting that everything in the bill or everything that happens out there should be regulated; I am merely asking whether the provisions are wide enough to cover that, should it be necessary.

**Alastair Mitchell:** We would move on the basis of risk, if that is the essence of the question. It is not the intention to micromanage the farming of the fish but, as with all the other elements of the incremental approach that we are taking, if a risk were identified, we would discuss that with the industry and would consider how we would deal with it.

**Claudia Beamish:** I have a question about the other issue that was highlighted as a risk—sea lice. I believe that all the councils in the aquaculture zone, SEPA, environmental NGOs and other stakeholders favoured publication of sea lice data at individual farm level. How could one take forward those concerns? Sea lice are obviously a big risk. The Association of Salmon Fishery Boards has asked for the issue to be dealt with in the bill. How can wider communities, angling associations and others in rural areas be reassured on the issue? On the back of that, I cannot understand why it is necessary for the farm-level information to be commercially secret. Perhaps you could expand on those issues.

**Willie Cowan:** The first point to make is that there are powers in the 2007 act for ministers to require the provision of environmental data, so new primary legislation is not required. After discussions with stakeholders, ministers have taken the view that there should be greater disaggregation of sea lice data. Last week, the Scottish Salmon Producers Organisation published an article on its website indicating that from 1 January 2013 the disaggregation of sea lice data would move to between 25 and 30 areas around Scotland as opposed to the current six. Ministers support that further disaggregation but recognise that in some instances there are commercial confidentiality reasons why it might not be beneficial to the industry given their responsibilities as public limited companies.

**The Convener:** I think that we are now straying into consultation stuff with regard to part 1. After

all, the issue is not just the delegated powers that we have been discussing. I believe that Alex Fergusson has a couple of questions on these matters, so it might be an idea to give him a chance to ask them and see whether we can come back to the previous point.

**Alex Fergusson:** Thank you, convener—you have given me something to ask.

Good morning, gentlemen. I wonder whether we can talk about the consultation process for a little bit. I believe that the pre-legislative consultation received a total of 1,342 responses, 1,193 of which were essentially lumped together as interest group responses. Even if those people were signing a pro forma document, we are still talking about a lot of voices with something to say about the bill. How were those voices taken into account before the legislation was introduced?

**Willie Cowan:** I will ask Jeff Gibbons to respond to that question.

**Jeff Gibbons (Scottish Government):** We certainly discussed the issue with stakeholders before the consultation was published and the responses analysed to ensure that they were aware of the methodology that was adopted, which is common across the Scottish Government. We made it very clear that, although many of the responses were tick-box exercises, they were still registering views that we took on board and reflected in the accompanying documentation. We also decided that, in our response to the consultation, we would provide further detail on how we would deal with the issues that were not going to be progressed through the bill but might be progressed through, for example, enabling powers that we already had or even voluntary means.

**Alex Fergusson:** Are you able to give examples of issues that were raised under the heading “interest group responses” that have been included in the bill?

**Jeff Gibbons:** I think that the issue was more about addressing some of the concerns that were raised. The responses raised two prominent concerns: first, the application of fixed penalty notices and the rationale behind that policy initiative; and, secondly, strict liability. In many ways, the responses merged the two proposals, which indicated some confusion about the approach that was being taken. Indeed, concerns about the application of and the rationale behind the strict liability policy enabled us to reflect on whether our existing powers were sufficient or whether there was evidence to suggest that they were not working in practice. On that basis, ministers took the decision that there was no case for progressing the matter.

As for fixed penalty notices, the vast majority of responses expressed concern about the application of the policy and the process involved. Following further discussions, we issued a very detailed notice about fixed penalties that acknowledged the concern about the policy rationale and explained how the process would work in practice, and we think that that alleviated some of those concerns.

**Alex Fergusson:** So, despite the fact that the responses were not included in the consultation analysis, you can put out the message that responding in such a way is not a waste of time. I think that it is important for people to know that.

**Jeff Gibbons:** Absolutely. Indeed, we sent the additional documentation that we produced on fixed penalty notices to individuals instead of representative bodies to ensure that the message got out and was understood.

**Alex Fergusson:** Will you talk me through the process by which the Government decided not to deal in the bill with some of the key issues that were raised and were included in the analysis? As Claudia Beamish mentioned, one major negative impact of fish farming is sea lice. It seems to me that the opportunity has been passed by to include provisions in the bill on, for instance, collecting data on sea lice and on deaths and movements of fish, and to include powers to prescribe a lower sea lice threshold. I imagine that there was a considerable response to the consultation on those issues, but that opportunity seems to have been passed by.

11:45

**Jeff Gibbons:** It was self-evident that many of the individuals who took the time to respond to the various proposals in the consultation were not clear that the proposals did not all relate to primary legislation. We acknowledge that we needed to get that point across. There was some confusion and a belief that the natural progression would be for the proposals to move to primary legislation. However, some of the questions in the consultation were about how we could proceed using existing powers, or whether we needed to use existing powers or could achieve the level of data that we might require using alternative means.

As a consequence, we thought it appropriate to use the summer period to get out and about to engage more directly with stakeholders. We established a stakeholder reference group to explain some of the proposals in more detail and the rationale behind some of the objectives, and to allow us to understand some of the responses more fully. For us, a key element was that the postcard responses, if you like, that we received

did not really give the required level of detail about the concerns. In some ways, the responses reacted to other responses that we had received.

We took a considerable amount of time to reflect on those provisions. As I said, we thought that, to inform everybody about the process, it was important to set out in our consultation response additional information about why we were not looking to progress matters through primary legislation—where that was the case—and what we were looking to do as an alternative. We signposted existing legislation that we think can be used to achieve some of the objectives and where we might use voluntary means. For example, on data collection—in the round, rather than just on sea lice—the aim is to progress using voluntary means, rather than legislation, in the spirit of openness and transparency, which is one of the key messages in the bill. Ministers have made it clear that they do not want to legislate unless they have to.

On sea lice, the other part of the SSPO's announcement last week was on progressing the recommendations in the healthier fish working group about additional information. That is a step forward on the data and people's ability to assess how the process will work in practice. Our response to the consultation reflects the level of reflection that we had on the original proposals.

**Alex Fergusson:** Can you say that the bill as lodged and in the form that we now have it has changed much from what you originally envisaged because of the consultation responses?

**Jeff Gibbons:** I can, because we did not consult on the bill. That was one of the issues. We consulted on proposals. There was initial confusion about that. Although there was not a bill in its understood form, people thought that the proposals constituted a bill, but that was not the case.

**Willie Cowan:** That is a key point. The bill is part of a package. We have the existing regulatory framework and the propositions in the bill. If the powers in the bill are granted, we will have further detailed consultation on secondary legislation. We can use existing powers and regimes differently to achieve different outcomes and, where appropriate, we have the potential to put in place voluntary measures, rather than legislation. The bill is part of a package; it is not the only thing.

**Alex Fergusson:** That is useful. Thank you.

**The Convener:** We will move on to issues regarding part 1 of the bill. Angus MacDonald will kick off.

**Margaret McDougall:** Sorry, convener, but can I ask a question on that last point for clarification?

**The Convener:** Yes.

**Margaret McDougall:** For my personal clarification, are you saying that, rather than include provisions in the bill, you will rely on information on sea lice and the like coming voluntarily?

**Willie Cowan:** We are saying that in relation to data on sea lice and data generally, there are currently powers in the 2007 act for ministers to make regulations to require data to be provided. Ministers have taken the view that no other primary legislation is required for that purpose and that their preferred way forward is the voluntary provision of information in order to try to encourage openness and transparency between neighbours. That is the approach that ministers have chosen to take at this point in time but there are powers within the 2007 act for ministers to come back to the Parliament and seek regulation if that is necessary.

**Margaret McDougall:** Is that voluntary provision approach working at the moment?

**Willie Cowan:** That is the point that I and Jeff Gibbons just raised. There have obviously been discussions between Government and stakeholders on what could be put in place. A proposition is out there now that is subject to further discussion. As stage 1 of the bill progresses and we get towards stage 2, what the proposition is and what will be provided will become clearer. Stakeholders will have the opportunity to take a view on whether that is appropriate from their perspective and then the debate will continue. So we are in the process, but we do not have the final product just now.

**Claudia Beamish:** Does the proposition include a question about whether it would be more appropriate in the view of stakeholders to see the issues around sea lice, disaggregation and so on within the bill?

**Willie Cowan:** No, because as I said, there is existing primary legislation that provides powers for ministers to come back to Parliament for regulation, so from the Government perspective there is no need for further primary legislation in order to do any of that. The issue for Government and for Parliament generally is whether the voluntary approach that is being advocated provides stakeholders as a whole with a solution that is acceptable or whether we need to come back and consider that through further regulation.

**Alastair Mitchell:** It is probably worth adding that we welcome what the SSPO put forward last week. We see that as a constructive development. In that context, the voluntary way forward seems to be working but clearly we will keep an eye on that.

**The Convener:** We will now move to questions on part 1 of the bill.

**Angus MacDonald:** The bill proposes to introduce a legal requirement for fish management agreements or fish management statements for all fish farms. It also provides for inspections of farms and the taking of samples, or whole fish, to determine the origins of fish escapes. What are the main differences between the FMAs and FMSs in the industry code of practice and those proposed in the bill?

**Willie Cowan:** The industry code of practice contains provision for farm management areas to be put in place amongst their members in a non-legislative way, if I can put it like that. So although the majority of production in Scotland is covered by people who are signed up to the code of practice, not all of it is. The bill seeks to put that element on a statutory basis so that every fish farmer, irrespective of whether they are a member of the SSPO, is required to have an agreement or a statement and those statements must have as a minimum the items that are specified on the face of the bill. It takes what is essentially the non-statutory basis that the majority of farmers currently sign up to and puts it on a statutory basis that requires all fish farmers to sign up.

**Angus MacDonald:** If the bill goes through, will there be a strict timescale for signing up?

**Willie Cowan:** We have to consider transitional arrangements, as we do with all new legislation. Given that the majority of fish farmers currently undertake that type of arrangement, we do not anticipate that for the majority it will be a huge burden to revise their agreements so that they comply with the new law. We will work with the industry to understand the gap for farmers who currently have no agreement and the timescale for putting one in place.

At a practical level, it is about co-ordination of stock, treatment and harvesting, so if the bill is passed it will probably make sense for the requirements to come into effect at the beginning of the next production cycle in each area.

**Angus MacDonald:** Part 1 provides for the possibility of setting legal technical requirements for fish farms and for measures to be put in place to control and monitor wellboat operation. In the financial memorandum, the modifications that are needed to wellboats were identified as accounting for some of the most significant costs. What modifications are proposed? Are the costs proportionate?

**Willie Cowan:** The key aspect of the wellboat provision is the installing of a filter that will stop sea lice going back into the marine environment, whatever their stage of development. Ball-park figures suggest that retrofitting a wellboat with a filtering system could cost in the order of £500,000. In recent years, some wellboats have

been built with the capability to retrofit such a system; other, older wellboats do not have that capability. In Norway, some wellboats are being built with the equipment installed.

From an environmental management perspective, the logic is pretty straightforward: if we manage to capture a pest, let us not recycle it back into the environment.

**Angus MacDonald:** If we are commissioning new wellboats, it makes sense that they should have filtering equipment. You said that modification could cost £500,000. Off the top of your head, how much does a new wellboat cost?

**Willie Cowan:** In the order of £12 million to £15 million.

**Angus MacDonald:** I hope that some will be built in Scotland in future and not just in Norway.

**Willie Cowan:** That would be welcome economic development.

**Angus MacDonald:** In its submission to the committee, Europharma Scotland said:

"I wish to bring to your attention that—contrary to the implications of section 55 of the Policy Memorandum ... in Norway the genotyping methodology for traceability of farm escapes is not the only approach being taken, and recommend that Scotland also evaluate the alternative method being trialled there: physical tagging of fish."

Has the Scottish Government considered that alternative approach to tracking escapes?

**Willie Cowan:** The Government, through Marine Scotland Science, will consider the best way of achieving the policy intention. The provision in the bill is about getting the specimen; what is done with the specimen downstream will be subject to technological advances. There is not a one-stop-shop approach, whereby we say, "We'll take the specimen and do this and only this with it." We will take the specimen and consider the best way of identifying where the fish came from, given what has been developed and is in place in the market.

12:00

**The Convener:** We are discussing the technicalities of the bill at the moment and it is very useful to have your views. We will get stakeholders' views in due course. Let us move on to part 2, which deals with salmon and freshwater fisheries.

**Margaret McDougall:** Part 2 deals with governance by the district salmon fishery boards. It includes provisions to allow the introduction of a carcass tagging scheme, which would make it an offence to sell salmon that are not tagged. It allows for inspectors to enter salmon fisheries to take samples of fish, to tag fish or to carry out

monitoring or analysis. It also gives ministers more powers in relation to conservation measures, to rules on baits and lures and to annual close times. In addition, part 2 provides for the possibility for Scottish ministers to change the rules on consenting introductions, under particular circumstances.

Concerns have been expressed by the Association of Salmon Fishery Boards that the details of section 2 were not

"consulted upon or agreed with by the majority of consultation respondents".

Was enough information provided in the consultation on the planned provisions?

**Willie Cowan:** The consultation on part 2 was largely in two parts. The first part was on improvement of management arrangements, carcass tagging and that kind of stuff. It went into that in some detail. The second part was on good governance, openness and transparency in the operation of boards. The consultation paper was not as detailed as the bill, but we struggle to identify where the requirements in the bill are any more onerous than the requirements on other public bodies or bodies that have been created by statute.

The general principle was to improve openness and transparency in management of the sector—given that the boards are, to all intents and purposes, public bodies or bodies that are created by statute. The Government's assertion is that they should be able to display certain commitments in relation to that. It is reasonable to say that we did not consult on the exact detail of every provision, but we consulted on the principles of good governance, openness and transparency. What has come into the bill reflects what people would expect of statutory and public bodies.

**Margaret McDougall:** Have you had any follow-up from those bodies in response to that?

**Willie Cowan:** Yes. The ASFB is on the stakeholder reference group for the bill. We have met it both as part of that group and separately, and we have heard the same concerns that have been outlined to you. You have also received a couple of responses from individual boards, but I do not think that any great concern has been expressed in those. There are concerns at the margins about the practical implications of some of the proposed provisions for some of the smaller boards, but the Government's position is that, for a statutory body with a number of powers at its hand, what is suggested in the bill is entirely reasonable.

**Margaret McDougall:** As part of the consultation process, was any consideration given to the proposal from netsmen's organisations that

their management be transferred to inshore fisheries groups?

**Willie Cowan:** That issue did not form part of the consultation process. However, as you will be aware—it is stated in the policy memorandum—the Government is committed to doing more work on the management arrangements for the wild fish sector. I expect that questions about the movement of particular sectors, or sectors within sectors, will form part of that consultation. I expect that the Government will want to take views on the matter during the next stage of the process.

**Margaret McDougall:** There is a conflict between river fishermen and netsmen, who feel that they would be better managed within inshore fisheries groups than by the fishery boards.

**Willie Cowan:** Yes.

**Margaret McDougall:** Why did you decide not to include that in the bill?

**Willie Cowan:** The first and primary reason was that it was not specifically consulted on in the consultation paper last year. The consultation paper was based on three things. In relation to the management of fisheries, the issue was what work had been undertaken that would enable us to propose legislation. For example, a lot of what is in the bill came out of the mixed-stock fisheries working group recommendations. Work had been undertaken that enabled us to take a view, consult on that view and come to Parliament with it. The second area for consultation was what could be done to improve openness and transparency in the operation of the boards as statutory bodies. The third issue on which we consulted was the Government's commitment to do more in this area within the lifetime of the current Parliament. The questions were what we could do in the consultation paper at that point in time, what we could bring into the bill and what other issues regarding the sector might be covered in the second stage of the process.

**Margaret McDougall:** You said that you will consult on the issue that the netsmen's organisations have raised regarding their management. When are you likely to do that?

**Willie Cowan:** I said that the Government is committed to a two-stage process in the sector. The next stage is to consider what further areas need to be looked at in relation to management of wild fisheries, and the place of the netsmen within that management regime is an area that I expect ministers will want to look at. However, we have not yet discussed with ministers the scope of the review. Given that it is a key issue for the netsmen, which has been raised with the committee both during your visits and in evidence, I expect that ministers will want to look at it. I

cannot commit the ministers to that today, but that is what I anticipate.

**Margaret McDougall:** When will that happen? When will they look at it?

**Willie Cowan:** I think that we will scope out what the review might look like during stages 1 and 2 of the bill, taking account of the views that have been expressed. I suspect that there will be a consultation in the latter half of next year, with a proposition for a bill coming after that. This session of Parliament runs until 2016, and I expect the first part of the process to kick off during the bill's passage through Parliament.

**Alex Fergusson:** I will return to salmon fishery boards. There is undoubtedly a school of thought, if I can put it that way, that the way in which further regulation of the salmon fishery boards is covered in the bill is almost along the lines of saying, "We're bringing in further regulation of the aquaculture industry, so we'd better do something about the other sector as well to balance up the regulatory programme." I am not saying that it is a widely held view. What is it about that sector, specifically, that makes you believe that it needs further regulation? Many people believe that it works reasonably well.

**Willie Cowan:** The main issue from ministers' perspective is that those bodies are established by statute and have powers given to them by that statute. The question then is to what extent ministers, Parliament and the general public can be assured that the powers are being used appropriately and that the boards are undertaking the responsibilities that have been assigned to them through the statutory provisions.

One reason for committing to further work is simply the age of much of the legislation that is involved and the fact that it has been consolidated many times—most recently in 2003. There are questions about how fit for purpose the existing legislative regime is for the sector. The main reason behind the drive for openness and transparency relates to whether, in a modern society, it is right that a statutory body is not required to do what is set out in the bill.

**Alex Fergusson:** I am grateful for that explanation. I have a number of reservations, but they are probably better addressed at stage 2 and through amendments rather than now. Thank you for that explanation; I appreciate it.

**Nigel Don:** I will pursue that matter. I entirely respect the idea that any organisation or individual that has a statutory power is responsible for how that power is exercised and needs to be accountable for it. However, I am conscious that some of the river boards are very small. I am getting the message that, if we come along and say, "This is the way it's going to be regulated.

You need to do X, Y and Z, and if you don't, you might finish up in jail"—I am exaggerating slightly—people will say, "Actually, I already do this more or less voluntarily. This isn't worth the candle. I'm going away." The small boards might simply cease to exist. Is that understood to be a possible consequence of what is proposed?

**Willie Cowan:** As with everything in the bill, ministers want to be proportionate; this is not about imposing disproportionate burdens on small organisations. Ministers fully recognise that many boards are very small and that the work is undertaken voluntarily by people who have an interest in trying to improve fisheries in their areas, as is the purpose of the boards.

There is no intention to try to put the smaller boards out of business, but there is an intention to try to raise the bar, in that a lot of what is covered in the bill is carried out by the better boards. The bill is about raising the bar so that everybody adheres to minimum levels in relation to what they do, how they do it and transparency. Ministers do not want to impose a regulatory burden that would make it impossible for those guys to improve the fisheries, which is their statutory purpose.

**Nigel Don:** Two little technical points arise immediately from pages 18 and 19 of the bill. First, there is mention of "audited accounts". Some organisations can find it incredibly expensive to get audited accounts and it can be a complicated process.

Secondly, how is one to send a copy of the notice to salmon anglers and attendant netmen? One could probably find the netmen, but how on earth is one supposed to send a notice to salmon anglers when one may not have a clue who they are?

12:15

**Willie Cowan:** That is a technical aspect of the bill that we are happy to examine. You could simply put a notice up on a website.

**Nigel Don:** In which case, people would be grateful if that simple solution was set down and made clear.

**The Convener:** What submissions were made on openness of salmon fishery boards when you were making up your mind about how to proceed with that section?

**Willie Cowan:** Yes, well. [*Laughter.*]

You will be completely unsurprised to hear that there were differing views. Some stakeholders suggested that some boards operate essentially as closed shops and take no account of needs of local stakeholders and users. Others said that they do those things already, so the provision is of no

consequence to them because they recognise it as good practice.

As has been acknowledged already, there is within certain stakeholders a degree of friction between operations and management. Ministers certainly hope that having a more transparent regime will facilitate more informed discussions, as opposed to less informed fist fights.

**The Convener:** I look forward to discussing that with stakeholders, and I thank you for that hint.

We will move on to part 3 of the bill, on which Richard Lyle has a question.

**Richard Lyle:** Part 3 deals with sea fisheries and will bring Scotland into line with the rest of these islands in terms of marine enforcement powers. It makes it possible for sea fisheries officers to detain foreign vessels in port in cases of alleged offences, and allows enforcement officers to inspect and seize objects that are connected with commercial sea fisheries where an offence is suspected.

Few consultees responded to the proposals on sea fisheries. Have any further concerns been raised about the provisions in part 3 of the bill?

**Willie Cowan:** We met fisheries representatives from the Scottish Fishermen's Federation and the Fishermen's Association two weeks ago; there are no issues of concern around that part of the bill from the sea fishing industry.

**The Convener:** Part 4 deals with shellfish and will amend the Water Environment and Water Services (Scotland) Act 2003. Are any difficulties expected in the transposition of the shellfish water directive provisions into the WEWS act?

**Willie Cowan:** No—it is a straightforward transposition. For reasons that we do not fully understand, the European Commission has decided to let a regulation lapse. Although it will probably be replaced in time, it leaves a gap in management of shellfish waters, which is not healthy for our industry or the environment. Ministers are taking the opportunity now simply to transpose what is currently in an EU regulation into domestic law, which should be relatively straightforward. Again, no issues of concern have been raised in relation to that.

**The Convener:** What effects will the amendments to the shellfish-related order-making powers have on wild shellfish harvesting and shellfish farming?

**Willie Cowan:** The effect is to continue the existing protections that are in place—it is not to bring in any new protections obligations. It is simply to ensure that the existing framework can continue when it drops out of the Commission's regulation.

**The Convener:** We will move speedily on to part 5, on which Graeme Dey wants to ask you a question.

**Graeme Dey:** We have already covered the generality of my intended question, but I would like to ask about a specific case. Anglers have expressed concern that rod licensing could be introduced through secondary legislation, using the powers that are contained in section 50. Regardless of whether that is a policy that the current Government might pursue, would it be possible for such charging to be introduced?

**Willie Cowan:** As I understand it, ministers would have to change the whole management regime for angling to enable that to happen. What you describe is, essentially, what happens through the Environment Agency in England, where there is a completely different management regime.

I do not know whether such charging could be introduced. I will ask my lawyers and get back to you in writing. I would say, however, that it is unlikely that that would happen.

**Graeme Dey:** Clarity on that would be helpful.

**Nigel Don:** We understand that there have been no prosecutions of aquaculture businesses under existing rules. In that case, why is there a need for the fixed-penalty notice provisions?

**Jeff Gibbons:** There are instances of non-compliance at one level or another. The move creates an additional disposal option for compliance officers and the extension will ensure a consistent approach. There is no suggestion that a raft of fixed-penalty notices will suddenly be issued; the move is simply a natural progression from an existing disposal option that our compliance officers have, under their current powers.

**Willie Cowan:** The move is not an extension of the fixed-penalty scheme to aquaculture; it is an extension of the fixed-penalty scheme to other marine activities, including aquaculture.

**Nigel Don:** Is it fair to suggest that the fixed-penalty notice is one where the person who is not complying has to opt out rather than opt in? In other words, it is perhaps not so easy to get the evidence that you want to have in order to bring a criminal prosecution but, if you use a fixed-penalty notice, the person who receives it has to think in default about how they are going to get out of it. Is that the case?

**Jeff Gibbons:** That is not at all the case; it was one of the concerns that was raised about the original proposal. The leaflet that we forwarded is clear about the level of evidence. There is no dilution of the evidence that will be required and it will be up to an individual whether to accept it. Thereafter, reporting processes are followed, up to

the level of the procurator fiscal. There is no question of there being a lesser standard of evidence or of a confetti approach being taken. The notice is an option.

**Willie Cowan:** The key issue is that individual inspectors would not and could not hand out fixed-penalty notices on the spot. If an inspector uncovers an instance of non-compliance that they think warrants a report, they send a report to a central unit that considers reports from across Marine Scotland's activities. That unit identifies whether there is sufficient evidence to enable a report to be made to the procurator fiscal. That is the first test. If there is sufficient evidence, the question is whether to submit a report to the procurator fiscal or to offer a fixed-penalty notice. It is only after a matter has passed the test of whether there is sufficient evidence to submit a report that we move to the question how it should be dealt with.

**Nigel Don:** That brings me back to the original point. If there have been no prosecutions, why are we expecting circumstances in which the new provisions might apply?

**Jeff Gibbons:** The new provision is not pre-empting a raft of fixed-penalty notices, as I said earlier. That is not to say that cases have not necessarily been reported to the procurator fiscal, and the procurator fiscal has chosen not to progress them. Procurators fiscal have the option of choosing a fixed-penalty notice or another disposal. The move provides to our compliance officers a common set of options across the range of Marine Scotland's work. It provides an alternative that is almost accepted practice elsewhere in the criminal justice system. It is a stepping stone towards deciding whether the offence is sufficient to go to the procurator fiscal.

The key point that some people have forgotten is that, before the fish health inspectorate became part of Marine Scotland, it reported directly to the procurators fiscal and could go directly to them. The bill aspires to put things in step with how non-compliance is dealt with elsewhere, which involves an option for a compliance team to issue a fixed-penalty notice, after due consideration of evidence.

**Willie Cowan:** Over the past couple of decades, there has been adopted the general policy position of moving to non-court disposals wherever feasible in order to free the justice system from having to deal with the more minor regulatory aspects of non-compliance.

**The Convener:** Thank you for your evidence. As the officials in charge of the bill, you have provided us with a lot of bait and lures to play in front of the forthcoming sets of witnesses. It is useful to know the technical background, and we

appreciate your efforts to enlighten us. We will follow up the issues with gusto.

We have now come to the end of the public part of the meeting. We are glad that so many members of the public find this an interesting subject, and we expect to see them all back here again when we speak to the next set of witnesses.

We will now clear the room of people in the cheap seats.

12:26

*Meeting continued in private until 12:37.*



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