The Committee will meet at 9.30 am in Committee Room 1 to consider the following agenda items:

1. **Items in private:** The Committee will consider whether to take agenda item 5 in private.

2. **Building (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 1).

3. **Petition PE 377: Polluting Activities in Built-up Areas:** The Committee will consider a paper from the reporter.

4. **Organic Farming Targets (Scotland) Bill (in private):** The Committee will consider a draft report to the Rural Development Committee on the Bill.

5. **Work programme:** The Committee will consider its work programme.

Callum Thomson
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The following papers are attached for this meeting:

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<th>Paper</th>
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<tr>
<td>Letter from the Executive on Stage 1 of the Building (Scotland) Bill</td>
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<td><em>(Agenda item 2)</em></td>
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<td>Reporter’s Paper on petition 377</td>
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<td>Draft Report to the Rural Development Committee on the Organic</td>
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<td>Farming Targets (Scotland) Bill <em>(private paper)</em></td>
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<tr>
<td>Paper on the Committee’s work programme <em>(private paper)</em></td>
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<td><em>(Agenda item 5)</em></td>
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**Papers not circulated:**

**Agenda item 2**

In addition to the above papers, the Building (Scotland) Bill and Accompanying Documents are also relevant to this meeting. Copies of the Marshalled List of Amendments and the groupings of amendments will be available at the start of the meeting in Committee Room 1.
BUILDING SCOTLAND BILL

When giving evidence to the Transport and Environment Committee, Hugh Henry offered to write to elaborate on certain matters in detail which the Committee had raised. I thought it would be useful if I took the opportunity also to address issues which were raised both by the Committee and by Members in the debate at Stage 1. I thought some explanation may help members of the Committee prepare for the Stage 2 discussions.

Scottish Building Standards Agency

In previous discussions we have indicated that we had not yet taken a decision on the nature of the central administrative body. I can now confirm that it is our intention to establish a Scottish Building Standards Agency (SBSA) which will be an agency of the Scottish Executive and will be responsible to Ministers. The agency model, which was the subject of consultation in 2001 and 2002, met with general support.

The Bill gives responsibility and powers to Ministers. They will exercise that power through the SBSA which for legal purposes is inseparable from Ministers.
Individual members and the Social Justice Committee have asked about the potential for regulations under the Bill to address sustainable development and fuel poverty. The Bill is explicit in setting out two of its purposes as furthering the conservation of fuel and power and furthering the achievement of sustainable development. This will allow building regulations to be set to achieve those ends. Building regulations apply to new building and set the standards which have to be achieved. They already include provisions for, for instance, thermal performance of buildings. Standards improve over time to meet the prevailing needs. The extent to which the Executive will use building regulations to further its overall policy goals in relation to fuel poverty and sustainable development will be dependent on decisions to be taken on whether regulation is the most effective mechanism to be used. The Bill ensures that the regulatory route is available to underpin policy decisions in these areas.

The Bill does give powers to Ministers to require existing buildings to meet existing standards. This provision could be used to impose requirements related to fuel poverty or sustainable development. However before using the power for any such exercise, Ministers would need to consider the costs, particularly to householders, of any such use of the power. We would not envisage anything other than very sparing use of this power.

**Delegated powers**

The Subordinate Legislation Committee raised various points. It raised the question of the use of the power of relaxation. In response to this the Executive offered to bring forward an amendment to the Bill at Stage 2 to insert a provision similar to that in section 4(3) of the 1959 Act should the Committee consider it to be necessary. The Committee welcomed this and I have lodged an amendment (no. 4) to section 3 to this effect.

There is one point on which we disagree with the Committee. The Committee queried the inclusion of the section 1(5) power to modify enactments inconsistent with building regulations. We accept that this power is significant but it is for that reason that we have made it subject to affirmative resolution. However we remain of the view that the power will help us to ensure that the drive to apply ever increasing standards will not be frustrated by outdated legislation in other areas. The example which we suggested to the Subordinate Legislation Committee remains, I think, a good one. In brief that was that it would be possible for an Education Act, say in 2010, to make provisions to require particular standards for school buildings. These standards would be likely to be higher than those applied to buildings in general. However it may not take long for the building regulations as a whole to catch up, or for one aspect of the regulations (for instance relating to disabled access) to overtake the provisions contained in the primary legislation. The nature of building regulations is that they advance in different areas at different speeds and at different times. It would be unlikely that the Parliament would encourage us to bring forward amendments to primary legislation for each individual element of building regulations which had evolved beyond standards set in the primary legislation in 2010. We might therefore have a position, let’s say by 2015, where although the general standard in the 2010 Act was higher for schools than for other buildings, there were certain elements which were lower for schools and where we could not enforce the higher standard in building regulations.
I repeat that we accept that this is a significant power but it is for that reason that we have provided that it be subject to affirmative resolution.

We have considered carefully whether the Bill does strike the right balance between the use of affirmative and negative resolution procedures. We remain of the view that it does and this is in line with the report of the Subordinate Legislation Committee which limited itself to the points which I have considered above.

Fees and charges

The Transport and Environment Committee recommended that our research into fees and charges fully take into account local authorities’ concerns which include the need to recover the costs of running the system. As I said when replying to the debate at Stage 1, we are already fully engaged with local authorities and are discussing our current research into fees with them. That dialogue will continue.

Minimum standards and non-statutory status of guidance

There is, I think, some confusion here still. By their nature, standards can only ever be minimum in that they are the minimum acceptable level. There has been reference to minimal standards which suggests that we might be taking an approach based on the lowest common denominator. That is not the case. Moving to a less prescriptive system does not entail any reduction in standards. The standards which will be required to be met will be as demanding as at present. As new standards are introduced they will increase the threshold required. The reduction in prescription is not in the standards themselves but in terms of how building standards are complied with. What the guidance will achieve is illustrating how building standards can be met. It will be based on the existing mandatory technical standards and it is anticipated that the vast majority of owners will rely on this guidance. Where owners choose to use alternative methods, verifiers will remain responsible for ensuring that building standards are met. If a verifier fails to enforce the necessary standards, Ministers can take action, through the performance monitoring structure or by direction, to ensure that the verifier applies the standards correctly.

I am happy to reiterate here the undertaking given by an official when giving evidence to the Committee and that is that the expanded functional standards will set a minimum that must be met and that the Courts will be able to enforce. That minimum will be no lower than that which we set at present through regulation.

We are aware that this is of particular concern to the Disability Rights Commission and we are in contact with them and will continue to be so. We have given undertakings to them that we shall continue to consult in the development not only of the building regulations but in the development and structure of the guidance.

Accessibility and usability

This is a related concern of the Disability Rights Commission. It was also raised during the Stage 1 debate. The DRC concern relates to the use of the term “convenience” in section 1 which sets out the purposes of the Bill. We are satisfied that the purposes of the Bill which include “securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be
affected by buildings and matters connected with buildings” completely subsumes accessibility and usability which is the terminology sought by the DRC. In law, taken together, these terms will allow Ministers to set Building Regulations which will cover accessibility and usability of buildings. Existing regulations deal with these matters and there is no question of them not being within the scope of the 1959 Act. I accept that, when given the opportunity, there is merit in updating the language in a Bill. This Bill is an excellent example of that and I think a considerable improvement, in clarity and terminology, over its predecessor. However, a primary concern when drafting legislation is the need to ensure certainty in what the legislation achieves and we are content that the wording in the Bill meets the purpose and includes accessibility and usability.

Verifiers

There are 2 major points here. These are the monitoring and auditing of verifiers and the power to introduce private sector verifiers. With regard to the first of these, the Committee recommended that the Bill should include a specific commitment to establish a system for the monitoring and auditing of verifiers and that local authorities should be consulted on the details of how the system might operate in practice. As I said during the Stage 1 debate we do not believe that there is a need to establish in the Bill our commitment to introducing such a system. I repeated then our undertaking that the Executive will establish such a system and will consult local authorities fully before doing so. Indeed, the research which we are currently undertaking benefited from input from the Scottish Association of Chief Building Control Officers and CoSLA when it was being specified. The President of the Association was involved in preliminary meetings with the researchers. We shall continue to maintain that link throughout the process. That consultation will include not only the performance measures to be introduced, and the levels at which they are set, but also how it is to be introduced and the relationship between the Scottish Building Standards Agency and the local authorities in this area.

Margaret Curran gave the undertaking in the Stage 1 debate, in response to the Committee’s recommendation regarding private sector verifiers, that we would not introduce private sector verifiers until a full study had been undertaken into the potential impact and that the study would involve consultation with local authorities. We accept that the onus would be on the Executive to justify the merits of introducing private sector verification were we to pursue the policy in the future.

Certification

The Transport and Environment Committee recommended that we consider providing for a single individual to be charged with managing the process of certification of an individual project. The Committee suggested that such an individual could take an overview of the process and co-ordinate the work of the individual certifiers, thereby promoting safe design and preventing fragmentation.

We accept that good practice on any job would require co-ordination to be undertaken by competent individuals. However, there is a difference between good practice for a contractor and the mechanism for ensuring that buildings meet building regulations. There is also a tension here between the need to ensure that the regulations are met and allowing those undertaking work to adopt the most efficient approach to any project.

The question relates to the co-ordination of certification and the wish to avoid fragmentation through self-certification. Certifiers will only be approved by the SBSA when they have satisfied quality
criteria and have shown that they have the necessary expertise and experience to be able to be trusted to certify aspects of buildings. It is likely that certificates would cover individual aspects of larger buildings and that on a major project several approved certifiers might be called upon to certify individual aspects of the building. What would not be certified would be the rest of the building and the way in which individual certified parts interacted with other parts of the building or with each other. Only if the SBSA were content that a particular certifier was competent to certify firstly that the part of the building for which they were responsible met the regulations and secondly that the way it interacted with the other parts of the building or with other systems met regulations would we be content to approve them to so certify. If however we were not content that they had that experience, responsibility would rest with the verifier for ensuring that as a whole the building met building regulations. The verifier in any job is the one point of contact to ensure that the approach, however co-ordinated by the owner or developer, meets the requirements set in the regulations.

The Committee suggested that we consider requiring an individual working for the owner or developer to take responsibility for co-ordination. We would not be able to approve such an individual unless we were content that they combined all of the necessary expertise for the various areas and were competent to certify to the verifier that the interaction of the individual parts with the rest of the building met the needs of building regulations. Approval would be subject to the necessary checks and proof that they were able to meet the requirements set by the SBSA. The criteria for such a wide ranging approval would be likely to be very strict. That is not to say that we would rule out the possibility of approving certifiers to certify whole buildings. Our own view however, which is shared by many consultees, is that the occasions on which this would be justified would be rare.

That leaves just one case, that where there are several disaggregated certificates and there is no individual with the approval to certify how the certificates fit together. As I said above, we view the verifier’s role here as critical since they are the co-ordination point and it is on them that the responsibility of protecting the public interest lies. We do not see any way in which nominating an individual within the project management team would assist in ensuring that building regulations are met. The Committee saw this person taking an overview of the process in co-ordinating the work of the individual certifiers, thereby promoting safe design and preventing fragmentation. However, unless the SBSA has assessed that individual’s competence to undertake that role, then it is difficult to see any advantage here. We could not accept that individual’s word for the effect of their co-ordination since they would not have been subject to assessment as to their competence or suitability. The verifier would therefore still require to check the way in which the individual, certified elements of the building interacted with the rest of the building. It would therefore not reduce the workload or role of the verifier.

We would in effect be telling owners and developers how they should approach projects. Their approach to any project is likely to depend on the nature of the building work itself and we might be seen as trying to impose a particular model on those who are building buildings. We are content to leave it to the verifier to agree with the person responsible for the building the best way to ensure that the verifier gets the information they need at the time they need it.

I hope this has been helpful in setting out our thinking. We are, like the Committee, keen to avoid fragmentation. We are content that our proposals will do that. In the event that we were asked to approve a certifier to certify elements of a building which we did not believe should be separated
from other aspects (i.e. that we considered that certification would frustrate the purposes of the building regulations) then we would withhold certification.

**Indemnity Insurance**

Several of those who gave evidence to the Committee commented on the question of indemnity insurance. It is obviously a matter of concern to some of the professional organisations. However, it is not a question which relates directly to the Bill. It is a matter for the individual professional or the professional body to determine the circumstances in which it is appropriate to take on indemnity insurance to cover their liabilities when undertaking their professional role. The Bill makes no change to the status or function of professionals and therefore has no impact on their need for indemnity insurance. The question may arise if a professional wishes to become an approved certifier. At this point it may be that the SBSA will set as a criterion for approval the existence of indemnity insurance and may set requirements for the nature of that insurance (e.g. a period of run off insurance to cover a situation where an individual retired or a firm ceased trading). We have yet to look at the details of the likely criteria which we will set for certifiers but in setting them we will consult with key stakeholders. When those criteria have been set it would be for the individuals and organisations themselves to decide whether they wished to apply for approved certifier status. These are therefore questions for the implementation phase and are not matters to be dealt with in the Bill.

**Owner**

As we have indicated previously, we are aware that our focus on owners as the only people who can apply for building warrants and completion certificates has been unduly onerous and would introduce constraints which we and the construction sector would find unacceptable. I have therefore put forward amendments to change the approach. This will allow anyone to apply for a building warrant, as the situation is at present. Someone carrying out work on his or her own behalf, or the person on whose behalf the work is done, will be able to submit the completion certificate. This need not, but may, be the owner, although the owner will also be able to submit a completion certificate if necessary. Once the completion certificate has been accepted, enforcement provisions will, except for building warrant enforcement notices which will apply to those involved in the work as well, apply only to the owner since, as is the current practice, it is the owner who has the continuing interest in and responsibility for the building. We believe that the amendments will ensure a much more realistic approach to the processes of warrant application and submission of a completion certificate while ensuring that responsibility for the building and the process as a whole rests properly with the owner.

The amendments will also address issues raised by the Disability Rights Commission and fire interests who were concerned about the interaction of the Bill with the Disability Discrimination Act and the European Workplace Directive which place duties not on the owner but on the service provider and employer respectively. They will also address the concerns raised by Rhona Brankin about ensuring that absent owners do not slow down process and that leaseholders who wish to make general alterations are not inhibited from doing so.

**Building Standards Registers**

The Committee recommended that the building standards system be accessible to all users and I repeat Margaret Curran’s undertaking in debate that we will make all reasonable efforts to ensure
that Building Standards Registers are accessible to all users, which includes having relevant parts of the Register translated on request within a reasonable timescale. However, as the Committee said in its Report, we are keen that requirements imposed on local authorities should not be overly burdensome.

**Late applications for building warrants**

The Committee referred to the Scottish Association of Chief Building Control Officers’s support for the introduction of penalties for late applications for building warrants. The Committee asked us to clarify reasons for not introducing such penalties. Late applications are dealt with in a variety of ways. In the first place, where no application has been made and work has been started, then those involved would be guilty of an offence under section 8. That is the first disincentive to operating without a warrant. Any liability under section 8 would not be displaced by a subsequent late application. As the Executive official stated in evidence to the Committee, we might also use the fee structure to ensure that the fee for a late application was higher than that for a normal application. This might reflect the greater amount of work to be done by the verifier. The Bill’s regulatory framework provides scope to use the fee structure to set the fee at a level which was designed to discourage late applications. In addition, under section 24(4)(c) a local authority may serve a stop notice in relation to any building which is being constructed without a warrant. Also, those involved in unauthorised building work can be prosecuted and fined. We believe that these measures offer sufficient disincentives to people who seek to bypass the building warrant system.

**Definition of “building”**

Hugh Henry indicated that he would reflect on the issue of roads, access or services to the land, street lighting or signage. I can confirm that the Bill does not include those areas. I sympathise with the wish to put pressure on developers to ensure that when somebody occupies a building they have those amenities already in place and that these do not come on stream over a period of months after occupation. However, there is a tangle of legal responsibilities here and building standards have never sought to prescribe the standards of roads since that falls to other legislation. However, what building regulations can do, and do at present, is to require that a building must be near to access of a particular sort. This does not mean the specification of the detail of the road but if the road does not exist then occupation would be illegal since the requirements regarding access had not been met. In this way building standards have some influence over these areas.

**Health and Safety in and around buildings**

As you know this is a subject close to my heart since I had a particular concern about injuries in the home. The question was one of how the Bill could contribute to minimising avoidable injuries in the home. Building regulations are concerned, among other things, with the health and safety of people in buildings and they therefore already contribute significantly to the reduction of injuries in the home. An example would be the setting of standards regarding the safety of stairs to ensure that their construction causes no hazard to users. Where robust technical solutions to hazards in the home are developed the Bill would allow them to be regulated for. As part of the continuing review of building standards the Executive undertakes risk assessments for the population as a whole and for particular groups (which might include children). Should solutions to problems such as that of trapped fingers be developed, provided consultation on the proposals showed them to be widely acceptable, regulations could adapt.
During debate, members raised questions of the detail of aspects which they would like to see covered by building regulations. For instance, John Farquhar Munro asked that all commercial buildings to which the public have access be required to secure and display an electrical compliance certificate. This is not the place to discuss the merits of that question in detail but the regulatory framework which the Bill establishes can address such issues.

Kenny MacAskill asked about broadband. The Bill will allow the making of regulations to ensure that buildings have the necessary ducting and other provision to ensure that they can be connected to broadband.

**Consumer protection**

The Bill will allow verifiers to concentrate their efforts on those organisations and individuals who are more likely to risk breaching building regulations. However this is not a consumer protection measure. Consumer protection is a reserved issue and it is not the intention of the Bill to regulate the building industry. I thought it worth reiterating that point here since it has been raised recently including during the Stage 1 debate.

**HMOs**

Linda Fabiani in the Stage 1 debate asked that further powers be taken to prevent the kind of incident that led to deaths in a fire. The Bill already has a suitable power to require buildings to meet the building regulations. What is needed is an agreed regulation about when security bars may or may not be fitted. That kind of detail is for decision when new regulations are made under this Bill as enacted.

**Relaxations**

Linda Fabiani also asked that no building currently in use by the public should be granted relaxations for any aspect of any regulation that would have a direct or indirect negative impact on the accessibility or usability of the building by disabled people. As I said in the debate our expectation is that there will be far fewer relaxations since we are removing the power to relax from local authorities to the new SBSA. I should say that unless Ministers use the power in section 22 to apply current building regulations to existing buildings, the regulations (and therefore the relaxations) only apply to new buildings and building work.

**Continuing requirements**

There is one issue on which we would propose bringing forward amendments at Stage 3. That is the question of continuing requirements. As currently drafted, the Bill would not allow continuing requirements to be imposed on a building as part of the verification process. An example might be where the proposal was to install a sprinkler system to meet, at least in part, the requirements of fire safety. We would wish to ensure that where such a solution was proposed, there is a mechanism to require that the sprinkler system be serviced at regular intervals. This is achieved currently because of the detailed nature of the regulations. The new system will not seek to specify that level of detail in regulations and we therefore wish to ensure that the process allows for these necessary requirements to be imposed. This is in line with the proposals on which we have consulted and
would bring the Bill more in line with the spirit of the Explanatory Notes on section 2. We would seek to give the Committee as much notice as possible of the content of these amendments.

**Conclusion**

I hope that this letter is helpful to the Committee in its preparation for Stage 2. I have put forward a number of amendments which seek to tidy up aspects of the Bill. Some of these, for instance those to sections 1 and 3, are in response to requests and recommendations from the Committee and others. This category includes a large number which deal with the question of owners as I discussed above. Several of the amendments tidy up elements of the Bill in order to bring them in line with the effect intended in the Policy Memorandum and in discussions with the Committee and other key stakeholders.

I look forward to debating the Bill at Stage 2.

DES McNULTY
REPORTER’S PAPER ON PETITION PE377 BY MICHAEL KAYES ON POLLUTING ACTIVITIES IN BUILT-UP AREAS

Meeting No: 36th Meeting

Date: 18th December 2002

Author: Fiona McLeod MSP

Introduction

1 This paper outlines work undertaken by Fiona McLeod MSP, and the Transport and the Environment Committee as a whole, on petition PE377 on polluting activities in built up areas. The paper reviews the written and oral evidence received by the Reporter and the Committee. The paper makes recommendations from the Reporter for action in a number of areas.

Background

2 The petition expresses concern at the potential impact on the health of residents of the East End of Glasgow of toxic dumping and cattle incineration. The petition requests that the Scottish Parliament carries out an urgent investigation into these practices.

3 One of the petitioner’s primary concerns is the effect of airborne and water borne emissions from a cattle and sheep incinerator on the people living in the Carntyne area of Glasgow. The petition includes some background information regarding the specific problems which the petitioner indicates are being faced by residents at Carntyne. Further information regarding the petitioners’ concerns can be found in oral evidence they gave to the Public Petitions Committee in June 2001.

4 The following background papers are attached for members’ information:

- a copy of the petition;
- an extract from the Official Report of the Public Petitions Committee meeting in June 2001;
- a letter dated 14 May 2002 from the Convener to the Scottish Environmental Protection Agency (SEPA) and its response;
- a letter dated 26 June 2002 from the Reporter to the Minister for Social Justice and its response;
- a letter dated 20 June 2002 from the Reporter to the Minister for Environment and Rural Development, a response dated July 2002 and a further response dated 5 September 2002; and
Progress of the petition

5 The petition was considered by the Public Petitions Committee (PPC) at its meeting on 19 June 2001, at which time that Committee agreed to seek the views of SEPA on the issues raised in the petition, and on additional points raised by members. A response was received from SEPA, which was subsequently considered at a meeting of the Public Petitions Committee on 11 September 2001.

6 The Public Petitions Committee referred the petition to the Transport and the Environment Committee with the request that it responded to the wider planning issues arising from the petition.

7 Following the referral, local concern was expressed over the possibility that BSE-infected cattle may have been processed at the incinerator despite the operators not possessing the necessary license for this type of incineration. In addition, concern was expressed that BSE-contaminated waste may have been discharged into the sewage system.

8 The Transport and the Environment Committee first considered the petition, at its meeting on 6 June 2002. In recognition of the Committee’s practise not to take a view on specific local planning issues, the Committee agreed to appoint a reporter, Fiona McLeod, to examine broader questions relating to the application of the planning system and environmental regulations which arise from the petition.

9 The Committee also agreed that the Reporter should write to (i) the Minister for Social Justice and (ii) the Minister for Environment & Rural Development in respect of some of the issues raised by the petition.

Terms of Reference

10 On 26 June 2002 the Committee approved terms of reference for the Reporter as follows:

The Reporter will report back to the Committee in respect of—

- the current guidelines on location of incinerators and whether there are any proposals to review the existing guidelines;
- the methods for disposal (incineration or otherwise) of material which may be BSE-infected;
- the level of information which is available regarding the number of BSE-infected cattle which are incinerated at individual operations in Scotland.

11 At its meeting on 26 June 2002, the Committee also agreed that an appropriate course of action for the Reporter would be to undertake a site visit of the operation at Carntyne and hold a meeting with SEPA officials to discuss areas of concern.
Work undertaken by the Reporter

12 On 23 August 2002, the Reporter met with SEPA officials in Glasgow. The Reporter then visited the incinerator in Carntyne and met representatives of the owners, Sacone.

13 Following these meetings, the Reporter wrote follow-up letters to the Minister for Environment and Rural Development and the Deputy Minister for Social Justice regarding issues arising from their previous responses and the issues raised during meetings with SEPA and Sacone.

14 The Reporter also met with the petitioner, Michael Kayes, at his home in Carntyne on 7 October 2002.

15 During the investigation of the issues raised by the incinerator at Carntyne the Reporter has gained an appreciation of the dissatisfaction of local residents over the uncertainty surrounding the future operational use of the incinerator. The Reporter recognises the real concerns of the residents in Carntyne.

16 The Committee’s policy is not to focus on the particular issues related to individual cases but instead examine whether local problems are illustrative of wider problems with the planning and environmental regulations system. The Reporter believes that the experience of Carntyne highlights in particular three such issues—

- the role of planning authorities and SEPA;
- the current system for the disposal of BSE infected cattle;
- the regulation of incinerators by SEPA

The role of planning authorities and SEPA

Environmental Impact Assessment (Scotland) Regulations 1999

17 One of the main concerns raised in the petition is the proximity of the incinerator to built-up areas at Carntyne. The incinerator is situated – in terms of the local authority’s development plan - in a light industrial zone. The areas surrounding the zone are all residential.

18 A letter from the Reporter to the Minister for Social Justice dated 26 June 2002 requested information on the current planning guidelines relating to the location of incinerators. The response outlined the current planning guidelines including the Environmental Impact Assessment (Scotland) Regulations 1999.

19 Depending on the capacity of the incinerator, and the nature of the waste disposed of, the Regulations require either a mandatory EIA or a screening process undertaken by the local authority to establish whether or not an EIA is necessary which involves consideration of the potential environmental impacts of the proposed development.
20 The Deputy Minister's response notes that these Regulations were not in place when planning permission was granted for the Carntyne incinerator and that the regulations that were in force at that time (the Environmental Assessment (Scotland) Regulations 1988) did not include provisions for animal carcasses/waste. Therefore, no screening process or EIA was carried out to consider the potential environmental impacts of the incinerator when the original planning application was made.

21 The Reporter is deeply concerned that those considering the application to locate an incinerator in a light industrial zone at Carntyne were not required to consider the specific environmental impacts of an animal carcass incinerator. The Reporter is concerned that, prior to the 1999 Regulations, a similar situation may have arisen with other planning applications for animal carcass incinerators. In light of this concern, the Reporter recommends that a retrospective review be carried out on all planning permissions for animal carcass incinerators granted prior to the enforcement of the EIA Regulations 1999.

Enforcement of the EIA Regulations 1999

22 Under the present planning system, the local authority is responsible for enforcing the 1999 EIA Regulations, by carrying out an EIA or an in depth assessment to gauge whether an EIA is required, for each incinerator planning application.

23 It is the role of SEPA to consider whether a proposed incinerator will have the appropriate technology to meet emissions standards for that source material and can then set site specific licensing conditions prescribing that these standards are met. However, SEPA does not have any statutory power to withhold the granting of an operating licence where planning permission has been granted for a process which uses technology appropriate to meet emissions standards for that source material. In addition, SEPA has no statutory right to contribute to the EIA process.

24 Following the granting of planning permission, SEPA monitors substances released into the air from incinerators, the final discharge from sewage works which process discharge from the incinerators and the operating methods and equipment used during the incineration process.

25 The Reporter considers it anomalous that SEPA has no statutory right to contribute to local authority consideration of the environmental impact of proposed incinerators and yet is responsible for the regulation of the environmental impact of incinerators which are granted planning permission.

26 The Reporter notes that NPPG 10 on Planning and Waste Management provides guidance as to the respective responsibilities of the local authority and SEPA. NPPG 10 states that, for incinerators, the role of the planning authority is to deal only with the matters that are material considerations and that the regulation of the incineration process is the responsibility of SEPA.
27 The Reporter is concerned that, in enforcing the EIA Regulations 1999, local authorities are taking responsibility for certain matters within the planning application which are not purely material considerations but matters which would, in the Reporter’s opinion, be more appropriately considered in conjunction with SEPA.

28 The Reporter strongly recommends that SEPA have a greater involvement in considering the environmental impact of proposed incinerators as SEPA has specific expertise in this area. The Reporter therefore recommends that SEPA is provided with statutory powers from the Executive to become actively involved in the environmental impact assessment process as a statutory consultee.

The disposal of BSE infected cattle

29 Local authorities are currently responsible for prescribing conditions in relation to the treatment of BSE infected cattle at animal carcass incinerators within planning permissions. For example planning condition 6 for the incinerator at Carntyne states that “No special waste, clinical waste, remains from animals clinically confirmed or diagnosed as suffering from BSE, tallow or bone shall be burned at the plant”

30 Currently there is no requirement for SEPA to make provisions for the treatment of BSE infected cattle. The Environmental Protection (Prescribed Processes and Substances) Regulations 1991 (as amended) prescribes that SEPA must regulate “the destruction by burning in an incinerator of any waste, including animal remains”, but does not specifically mention the incineration of BSE contaminated carcasses.

31 The Reporter wrote to the Minister for Environment and Rural Development on 26 June 2002 requesting information on the current method adopted in Scotland for testing for BSE and the disposal of BSE infected cattle in Scotland. The Minister’s response states that the disposal of BSE infected cattle in Scotland is by incineration and is controlled by the BSE monitoring scheme which is co-ordinated by the Rural Payments Agency (RPA).

32 All tests for BSE are undertaken on behalf of the RPA. The tests specified by the European Commission take 10 to 14 days to generate a positive or negative result. The Minister’s response states that storage of the carcasses at incinerators whilst awaiting their test results would require large refrigerated units. The Minister notes that it is the Executive’s policy, for control and economic purposes, that rather than store carcasses and await tests results, it is more efficient to incinerate the carcasses quickly.

33 In a letter dated 5 September 2002, the Minister for Environment and Rural Development noted that the system outlined above had resulted in 2 BSE infected cattle being burned at Carntyne, before the BSE tests for the cattle had been processed revealing positive results, between September 2001 and March 2002.
34 It is clear to the Reporter that the current system for incinerating cattle prior to the receipt of BSE test results, at incinerators which are not licensed to burn BSE infected cattle, circumvents planning conditions.

35 The Reporter does not consider local authorities to be the appropriate bodies to enforce conditions in relation to BSE. The Reporter is of the view that, these conditions are not material considerations of relevance specifically to planning, nor do local authorities possess the infrastructure or the expertise to enforce such conditions.

36 In practice, in the case of Carntyne, SEPA has adopted the precautionary principle meaning that it has set licensing conditions which dictate the operating methods in an attempt to ensure that any BSE prion is destroyed within the incineration process (for instance, setting incinerator temperatures at a minimum of 850°C which is sufficient to destroy the BSE prion).

37 While the Reporter welcomes the pragmatic approach adopted by SEPA, she considers that the root problem is the respective statutory roles of local authorities and SEPA. The Reporter is of the opinion that there is little merit in setting a planning condition that the planning authority cannot enforce and which, in practice, SEPA enforces. The Reporter therefore recommends that SEPA should have a statutory role in the process for regulating BSE. Specifically, conditions regarding the incineration of BSE infected cattle should be licensing conditions prescribed and enforced by SEPA.

38 In addition, the Reporter does not appreciate the merit in setting planning conditions preventing BSE cattle incineration when this condition cannot be met under the current system for testing and incinerating BSE infected cattle. The Reporter recommends that SEPA should assume that all animal carcass incinerators in Scotland may be burning BSE infected cattle and license and regulate incinerators on that basis.

Availability of information regarding BSE-infected cattle incineration

39 The Rural Payments Agency collates data on all cattle that have been incinerated and have tested positive for BSE. In its response to the Convener, SEPA noted that it had requested information from DEFRA and the Scottish Executive on the number of carcasses that have been incinerated at Carntyne and have tested positive for BSE. This request was refused and only the total number of carcasses tested in Scotland and, of those, the number confirmed with BSE was provided.

40 The Reporter wrote to the Minister for Environment and Rural Development on 26 June 2002 inquiring why specific information about Carntyne had not been made available to SEPA in its role as the environmental regulator. The Minister responded in July 2002 explaining that the RPA only collated information on the origin of the BSE, not the disposal point. However, as mentioned previously, the Minister provided specific information on the number of cattle incinerated at Carntyne in a letter dated 5 September 2002.
41 The Reporter wrote again to the Minister on 2 October 2002 asking why this information was only collated and made publicly available at this stage at the request of a Committee Reporter when the organisation responsible for the environmental regulation of the incinerator requested it some months ago. The Reporter also asked whether, following the release of this information, the Executive intended to have this information collated, provided to SEPA and made publicly available on a regular basis in the future.

42 The Minister replied on 18 October 2002 informing the Reporter that he would arrange for officials to provide the relevant information to SEPA for a period of six months after the incinerator at Carntyne (which is currently closed due to an enforcement notice from SEPA) recommences operations. The Minister added that he would not commit to providing the information on a permanent basis due to the amount of work involved in the exercise.

43 The Reporter is unconvinced by the Minister’s reasoning in this matter. The Reporter recommends that the RPA should monitor the origin and the disposal point for BSE infected cattle and provide this information to SEPA on a regular and on-going basis.

The regulation of incinerators by SEPA

44 The Reporter notes that, in order to prevent the production of BSE contaminated waste from incinerators, the current system relies on SEPA enforcing the precautionary principle within its licensing conditions and incinerator operators adhering to these conditions at all times.

45 Four enforcement notices have been issued by SEPA on the incinerator at Carntyne, two of which have been complied with. SEPA wishes to emphasise that the fourth enforcement notice was only enforced due to a technical infringement and was imposed after the incinerator closed due to the third enforcement notice in March 2002. The incinerator is currently closed due to the third enforcement notice which was enforced when the incinerator exceeded emissions limits for particulates. The plant is due to reopen in the New Year once new equipment has been installed.

46 The Minister for Environment and Rural Development’s letter to the Reporter dated July 2002, acknowledged the residents’ concern regarding BSE contaminated waste. The Minister stated:-

“I realise that residents will be concerned that the poor compliance record of the plant is reflected in a less than rigorous approach by the incinerator’s operators to complying with conditions intended to ensure BSE risks are minimised. I share this concern. I would therefore expect regulators to take very seriously any incident that involved operating conditions potentially failing to meet the requirements intended to ensure the prion is destroyed.”

47 The Reporter notes that the Minister for Environment and Rural Development and that SEPA are both clearly dissatisfied with the incinerator operators’ poor
compliance record. However, the Reporter is unclear as to the division of responsibility between SEPA and the Minister in deciding a future course of action for Carntyne.

48 Representatives from SEPA have stated that ultimately the Minister has the power to direct SEPA in its actions. The Minister, in a letter dated 18 October 2002, stated that such powers of direction have never been used to intervene directly in SEPA's statutory functions in such a way, and that such action could cut across the policy interests of other areas of the Executive, setting an unwelcome precedent.

49 The Reporter considers it is unacceptable that there isn't consensus between the Executive and SEPA as to the exercise of their respective powers in situations such as the situation at Carntyne. The Reporter urges the Executive and SEPA to liaise in order to adopt a common position.

Recommendation

50 The Transport and the Environment Committee is invited to consider the conclusions and recommendations of this paper in respect of—

- the respective roles of SEPA and planning authorities in assessing planning applications for incinerators;
- the regulation of incinerators, particularly in relation to the incineration of BSE infected cattle;
- the respective powers of SEPA and the Executive in relation to the regulation of incinerators.

Fiona McLeod MSP
Reporter
To the Scottish Parliament,

We the undersigned declare that we are extremely concerned that there is an over concentration of polluting operations, such as Toxic dumping and Cattle Incineration in the East End of Glasgow, and that these operations constitute a significant Health Hazard to the local population.

The Petitioners therefore request that the Scottish Parliament carries out an urgent investigation into the practice of Toxic dumping, Cattle Incineration and other polluting activities in built-up areas, with particular reference to the dumping and other disposals currently taking place in the East End of Glasgow.

Michael Kayes  
49 Westerburn Street  
Glasgow G32 6AT.  
7th June 2001.
Polluting Activities (Built Up Areas) (PE 377)

The Convener: The next petition, PE377, from Michael Kayes, is on toxic dumping, cattle incineration and other polluting activities. I understand that Michael Kayes and Bill Malcolm are here to address the committee.

Michael Kayes: Thank you for having us here to speak on behalf of the people of the east end of Glasgow.

Three years ago, a cattle incinerator was opened in Carntyne. A cattle incinerator is out of place in a built-up area. At the time, we were assured that there would be no smoke or fallout from the incinerator but, as the pictures I have with me show, we had nothing but smoke and fallout for 18 months.

The Scottish Environment Protection Agency has let us down. I am here to ask the committee whether it can force SEPA to do something about the situation. I understand that the incinerator will reopen under new ownership in the near future. I do not see the new owners curing the problem. I live 50 yards from the incinerator and it is close to playing fields where more than 400 kids play football every weekend.

The photographs show how residential the area is. They also show new housing developments. I ask the committee to stop the plant from reopening until an investigation has been carried out into the problem as well as into dumping in the east end of Glasgow. I do not see why the incinerator problem should be allowed to add to the dumping problem.

Bill Malcolm: The Carntyne local plan was adopted in 1991 with the aim of controlling industrial development and eliminating local industrial pollution. It has singularly failed to do so. With the help of the Public Petitions Committee, the residents of the Carntyne community would like the planning permission refused retrospectively. The ground for that is that it is not an acceptable use of land that lies so close to public housing.

In an area of about 500m around the plant, there are two primary schools, a nursery, an old folk’s home and 10 football pitches where, every Saturday and Sunday, 200 to 300 kids play. The previous owners, Westcot Hides, guaranteed that no smell, smoke or vile substances would come from the plant. They failed to ensure that. On 12 occasions that we know of, SEPA had to serve the company with enforcement notices to stop its operations.

The new operator, Sacone Industries, said that it would produce a new system of burning cattle. That system will process 200 cattle on seven days of the week, for 52 weeks of the year. Smells emanate from the plant when wagons containing 20 dead cattle that have lain there for a fortnight are opened. The smell rises into the atmosphere and surrounds the area completely. Sacone Industries has assured us that that will not happen, but we do not believe that, as the previous company also made that promise. The photographs that we have presented to the committee show smoke coming out of the chimneys. The plant is located in the area shown by the white square drawn on the photographs. The rest of the area is green fields or housing.
The Scottish Office allowed this situation to develop. Glasgow City Council planning department refused planning permission to Westcot Hides, but the Scottish Office granted permission on appeal, completely against the wishes of local people. In one day, we gathered two petitions of 1,000 names—the area has not one dissenter. We ask members of the Public Petitions Committee to use the weight and power that the committee has been given by the people of Scotland to force the Intervention Board not to award the contract to Sacone Industries. At the moment, the company is repairing the plant in the hope that it will receive a contract at the end of this month. We do not want the plant to start up again. The last firm almost went bankrupt because it could not maintain guaranteed production due to stoppages. People do not want to have that happen again. With the committee’s assistance and its support of PE377, we hope that that will not come to pass. I thank the committee for giving us its attention.

**The Convener:** We do not have the power to interfere in the process of application for licences.

**Bill Malcolm:** It is support that we want.

**The Convener:** We have other powers that we can use to intervene in a situation such as the one that has been described. I repeat, however, that we cannot stop the lawful issue of licences.

**Dorothy-Grace Elder:** I declare an interest. I am one of the MSPs who works in the east end of Glasgow. Over some 25 years, I have been involved in places where dumping has occurred. The major problem in all dumping situations is SEPA’s secrecy and the way that it works. I have dealt with quangos for many years and I have never encountered a more secretive quango than SEPA, which has been in existence only since 1996.

No consultation was held with local people in Carntyne before the licence was granted. Local people organised a recent public meeting, which SEPA attended. Its answers were evasive. The agency is not trusted in the local area. People are desperate to stop the plant starting up again, as all that SEPA will do is handle individual complaints. It will not reach to the root of the problem. There is overdumping in the east end of Glasgow—the area is well worthy of special investigation by the Transport and the Environment Committee and of reference to the European Committee. We have at least five major dumping and/or incineration operations in the east end of Glasgow. Paterson’s dump, which is very near Carntyne, takes in 500,000 tonnes of toxic waste material each year. The recent public health report on Paterson’s dump noted that smells are at times literally breathtaking.

The emissions are already in the atmosphere. To add to that, the plant will again create a belching smoke plume that will distribute ash from dead cattle over the district, especially in summer weather. The smoke plume contains noxious fumes. Children in the area see terrible sights. At times, blood from the dead and half-decapitated animals that are being trucked into the plant runs down the gutters in one or two of the Carntyne streets. A built-up, residential area such as this is no place for such an operation. Such plants must be located well outside urban areas.
I am concerned about the health of the people of the east end of Glasgow. A Department of the Environment, Transport and the Regions probe is under way in London and links in parts of Glasgow. We have not yet seen the results of that probe and we have not been able to afford a full health inquiry in Glasgow. There are undoubtedly clusters of cancer and other diseases. It is not proven that they are linked to dumping, but their incidence is unusually high.

The east end of Glasgow has had quite enough problems without this plant being reopened. I appeal to the convener to write a strong letter to SEPA asking it to justify why, in view of the plant’s history, it granted the licence. Its feeble response is bound to be because planning permission was granted, but receiving planning permission does not mean that SEPA automatically has to grant a licence, particularly as permission was granted only after the application went to a Scottish Office reporter on appeal.

I ask the committee to word our communications as strongly as possible. I suggest that we pass PE377 to the Transport and the Environment Committee and to the European Committee. In view of the survey of dumping and other problems throughout the British Isles in which the Department of Health in London is a participant, I suggest that we write to that department.

The Convener: At this stage, we are meant to ask questions of the petitioners. I welcome John Farquhar Munro to the committee. Do you have any questions at this point?

John Farquhar Munro (Ross, Skye and Inverness West) (LD): Not yet.

John Scott: Was there a difference in the level of smell throughout the summer and winter months?

Michael Kayes: No. The smell was continuous. Whenever a load of cattle arrived at the plant, the smell was present day and night. SEPA served the past operators with enforcement orders. That led to the Intervention Board taking the contract away from Westcot Hides, which went out of business. We had the smell of the smoke, winter and summer, day and night. I had burning ash on the roof of my house and cattle hairs on my car. For 18 months, we had those problems day and night.

John Scott: How close is the plant to the majority of the housing?

Michael Kayes: If members look at the photographs, they will see a drawing of a wee blue box. That is the incinerator. My house is in the area marked by the yellow box. I live in a caravan site that has 32 residential caravans for retired show people. The incinerator is only 50yd from the site. A 9in boundary wall is all that stands between the plant and the playing fields, where the kiddies play every weekend. Just 150yd from that are green fields and the Cardowan Road housing. On the other side we have Old Shettleston Road housing and the new housing development. The plant is out of place. It is smack in the middle of 10,000 to 20,000 houses. That small industrial area should not be in that location.
John Scott: I was going to ask what the direction of the prevailing wind is, but that is irrelevant because the plant is surrounded by housing.

Bill Malcolm: The prevailing wind in Glasgow is south-westerly.

John Scott: There is no orientation on the map, but it does not matter: there are houses in every direction.

Michael Kayes: Also, we are in a valley. The plume goes up and falls down where we are, which is between Edinburgh Road and Tollcross. It has nowhere to go, bar on the people.

11:15

The Convener: Why are cattle being incinerated in the middle of a city?

Michael Kayes: The previous owner of the site was a hide company. When cattle that were older than 30 months had to be got rid of because of BSE, there was a market for the incinerator, although the planning application says that no BSE cattle are to be burnt at that incinerator. Starting next month, all cattle that go to an incinerator must be decapitated, have a brain-stem sample taken and have the spinal cord taken out. That must be done to all cattle, not just BSE-infected cattle. While testing is being carried out, Daisy—as I call the cattle—will have gone through the incinerator and up the chimney. However, when—10 to 14 days later—the results come back that Daisy had BSE, it will not be possible to find her, because she will have been incinerated within 24 to 72 hours. The company will be burning BSE-infected cattle without our knowing—and we will never know—despite the fact that the planning application does not allow it to burn BSE-infected cattle.

Dorothy-Grace Elder: You were concerned about the heat of the furnaces.

Michael Kayes: The furnaces cannot burn hot enough. We have an independent report that says the furnaces are not designed to burn BSE-infected cattle. I am led to believe that the furnaces burn at 850 deg C. To get rid of the BSE agent, they have to burn at 1450 deg C, but the furnaces are not designed to do that. The ash, smoke and smell are not healthy.

Dorothy-Grace Elder: Can you confirm that at a public meeting the new owner of the incinerator, Mr Batty, stated that 850 deg C is as high as the furnaces can go?

Michael Kayes: That is right. I asked him about that. I also put it to him that the incinerator would be burning BSE-infected cattle. He could not confirm that he would not be burning such cattle, because the test results would be received after the cattle had been burnt.

Dorothy-Grace Elder: That moves us into an emergency situation.

The Convener: Are there any other questions for the petitioners?
John Farquhar Munro: Before the incineration of cattle started, were there objections about the emissions from the stack as a result of the previous activity at the site?

Bill Malcolm: There was no stack then. A tanning operation was on the site, from which there was an offensive smell. It was defined as an offensive trade, but that definition has been removed from legislation. No business is called an offensive trade now, but there is still an offensive smell. In the old days, when cattle were taken in and the hides were treated to make leather, there was a strong smell, but that was in the past.

For the environment and the health of people, such places should not be in areas with a lot of housing. A foundry and Parkhead forge, which was a massive employer of 30,000 people, have been closed down. All industry has been taken out of the area and only social activities take place there. However, the incinerator was allowed because, three years ago, the Government was under a lot of pressure to get rid of dead cattle. There are still 4.5 million cattle lying around somewhere that have to be destroyed.

John Farquhar Munro: Looking at the issue objectively, it is absurd that the local authority and a public agency such as SEPA should approve an exercise such as this in such close proximity to public buildings and schools and in such an intensely built-up housing area.

Bill Malcolm: Unfortunately, the wee strip of land on which the incinerator is found, which is about half a mile wide, is designated as an industrial area because it is alongside the railway line. It is meant for light factories, such as sewing machine factories or the Carntyne knitwear factory, which are no problem. The cattle come from the Borders in refrigerated trucks and must go through the whole of Glasgow. They should be dealt with out in the countryside.

John Farquhar Munro: Although the area is classified as industrial, it is absurd to apply the designation of industrial to the function of the incinerator.

Bill Malcolm: The planning permission says that it is an industrial area, but we say that a cattle incinerator is a wrongful use of the industrial area.

John Scott: How many jobs are involved?

Bill Malcolm: Six to 10, so the managing director tells us. Two or three men will operate fork-lift trucks to put cows on to a conveyor and into the furnace and there will be a few office people. The previous firm had about 15 employees. The new owner reckons that, given the company's equipment, the number of jobs will be 10 to 20 at most. Shettleston does not need 10 jobs; it needs 10,000 jobs.

The Convener: If there are no other questions, I thank you for your evidence. We will now consider what to do with the petition. You are welcome to stay and listen to the discussion.
We must stress that we cannot interfere in the application process for licences, but we can take up the issue with SEPA. It is suggested, as Dorothy-Grace Elder said, that we ask SEPA to respond to the points that have been made in the petition and in the discussion this morning and to outline its policies and procedures for granting licences to toxic dumps and incinerators in urban areas. While we await a reply, we will send a copy of the petition to the Transport and the Environment Committee for its information. We will pass on whatever we receive from SEPA to the Transport and the Environment Committee in due course. Is that agreed?

John Scott: I agree. As Dorothy-Grace Elder, the petitioners and John Farquhar Munro have said, it is unacceptable in this day and age to have such a plant in the middle of a residential area. New planning guidelines may have to be developed for the siting of incinerators. It is logical that they should be sited in areas where the prevailing wind will blow away unpleasant smells and potentially dangerous ash. With regard to BSE, perhaps I am in a position to put the petitioners’ minds at rest. Any cattle that are known to have BSE would not be sent to that plant.

Bill Malcolm: That is correct.

John Scott: However—and I have raised this issue with the Scottish Executive with regard to foot-and-mouth—it may be that a few cattle of more than five years old that are infected with the BSE agent are being burnt at that plant and on funeral pyres and are depositing BSE-infected material all over the country. Nonetheless, I have been reassured by the Executive that the incidence of such animals is low.

Dorothy-Grace Elder: Could we ask John Scott, as a farmer, where 200 cattle a week are coming from? They are called fallen animals. That puzzles me.

The Convener: We should ask SEPA, rather than John Scott. He is not responsible for answering such questions.

Dorothy-Grace Elder: Could we also ask about the lack of public consultation?

The Convener: Absolutely. The Official Report of this meeting will be sent to SEPA, which should be asked to respond not just to what the petition says, but to the points that have been raised in discussion.

Michael Kayes: May I make one more point?

The Convener: Technically, you cannot, but I will allow it.

Michael Kayes: John Scott said that the cattle would not have BSE. Mr Norman Batty said that all the cattle that go the incinerator are checked by vets. If that is the case, why do they have to take the heads off the cattle and send them for testing?

The Convener: That is a fair point, which was also made in the back-up literature.

Helen Eadie: Like other committee members, I share the concerns that the petitioners have expressed. Not only is there an important issue about national planning policy guidelines, there is the issue of the growth in the number of
incineration plants. I can remember the case of the Bonnybridge incinerator, in which Alex Falconer, our MEP at the time, was involved. You will remember that case, convener, and the concerns that were expressed throughout Scotland. My concern is that health and safety legislation includes powers of prohibition in certain cases, but it does not include powers of prescription. It is a matter of the filters that ought to be installed when the flues are put in place. From the Westfield inquiry when an incineration plant was proposed there, I understand that research from America stated that certain dioxins get into the atmosphere because appropriate filtration is not put into plants. I would like an approach to be made to the Secretary of State for Environment, Food and Rural Affairs in London to ask whether changes will be made in legislation so that there are powers of prescription as opposed to powers of prohibition. That must be considered not only on this aspect of health and safety, but in the wider context.

The other point that I would like to make is that the Royal Commission on Environmental Pollution is in the throes of setting up a remit for an inquiry into the effects of chemicals in the environment. It might be worth your while to visit its website, as you might want to make representations to it. Organisations and communities throughout Scotland that are concerned about chemicals in the environment ought to be preparing evidence to submit to that inquiry. It is important that we tune into the work that is going on in London.

The Convener: It has been suggested that when we write to SEPA we ask it, in addition to all the other points that I have mentioned, to explain the current position in the health and safety legislation and any changes that are in the pipeline, so that we can consider that as part of further consideration of the petition. Would that be satisfactory?

Members indicated agreement.

Dorothy-Grace Elder: I have a tiny correction to what John Farquhar Munro said. He said that both SEPA and the local authority were in favour of planning permission being granted. Unusually for Glasgow City Council, it did not grant permission. That is why the matter had to go to a fight. How many more voices will it take before they are listened to? The folk in the east end are not being listened to.

The Convener: It is important to emphasise that the opening of the incineration plant was against the advice of Glasgow City Council.

Is the action agreed?

Members indicated agreement.
Dear Mr Healey

I understand that you have previously written to the Public Petitions Committee on the subject of the incinerator at Carntyne which was the subject of Petition 377. I am writing to seek SEPA’s comments on several matters relating to this subject which have been recently been raised by Dorothy-Grace Elder MSP.

While the Committee does not consider individual cases in themselves, it has a record of looking into such matters in so far as they highlight wider problems with regulatory frameworks - see for example the Committee’s recent report on the spreading of waste at Blauringone and Saline.

I understand that the operators of the incinerator are not licensed to process BSE-infected cattle but that permission does exist for the incineration of fallen cattle.

It has been alleged that there is the possibility that some of these cattle are BSE-infected. I understand that tests are carried out but that by the time the results of these tests have been received, incineration has already taken place. The implication is that licensing conditions may be being circumvented where positive tests are recorded, in that the cattle have already been incinerated at a plant which does not possess the necessary license.

I should be grateful for your comments on this matter.

You may also be aware that there is concern among local residents about the alleged prospect of waste (including the possibility of BSE-contaminated waste) from the incinerator being discharged into the sewage system. I understand that it is a matter for Scottish Water as to whether consent for such discharge is granted but I should be grateful to receive SEPA’s views on this matter.

I should like the Committee to consider the petition and the associated issues at its meeting on 5 June. To this end I should be grateful if you would respond by 29 May. I understand that this is a relatively tight timescale but would appreciate your assistance in order that the Committee can deal with this matter promptly.

I should be grateful if you would copy your response to the clerk to the Committee, Callum Thomson (e-mail: callum.thomson@scottish.parliament.uk).
Copies of this letter go to Dorothy Grace Elder MSP and Margaret Curran MSP.

Yours sincerely

Bristow Muldoon MSP
Convener
Dear Mr Muldoon

**Carntyne Incinerator**

Thank you for your letter of 14th May 2002 regarding Carntyne Incinerator. The incinerator at Carntyne is authorised by SEPA under the Environmental Protection Act 1990, Part 1 to incinerate animal carcasses at a rate not exceeding 1 tonne per hour, and the types of waste are limited by Conditions 2.1 and 2.2 of the Authorisation (copy enclosed).

The Environmental Protection (Prescribed Processes and Substances) Regulations 1991 (as amended) prescribe certain processes for regulation by SEPA. Section 5.1 Part B paragraph (a) prescribes “the destruction by burning in an incinerator of any waste, including animal remains”. SEPA has not specifically prevented the plant incinerating carcasses which are later confirmed to be suffering from BSE, as incineration of BSE contaminated carcasses is not a separately identified prescribed process under the above Regulations.

Although SEPA would find it difficult to include conditions within an authorisation to exclude potentially infected carcasses in compliance with Condition 6 of the planning permission (“No special waste, clinical waste, remains from animals clinically confirmed or diagnosed as suffering from BSE, tallow or bone shall be burned at the plant”), conditions applying the best advice available which should destroy BSE prions which have been included in the authorisation.

Schedule 4 of the Regulations prescribes certain substances for release into the air including organic compounds. The BSE prion is a protein and therefore an organic compound. SEPA can include conditions in an authorisation which require the prevention of releases of prescribed substance or, where that is not practicable, for reducing the release to a minimum and for rendering harmless any such substances which are released.

As the BSE test results are not available until after the carcasses are required to be destroyed (the timescale is dictated by the BSE Monitoring (Scotland) Regulations 2001), SEPA has used the precautionary principle and included conditions within the authorisation dictating the operating methods and parameters to ensure that any BSE prion present is destroyed within the incineration process. These conditions (3.3.1, 3.3.4 and 8.4.1) follow the advice from SEAC (Spongiform Encephalopathy Advisory Committee) dated 7 June 1996 (copy enclosed).
SEPA has no remit with regard to the contracts for disposal of animal carcasses, this is controlled by the Rural Payments Agency (formerly the Intervention Board). Additionally, all testing for BSE is undertaken on behalf of the RPA, and hence is also outwith SEPA’s control. SEPA has requested information from DEFRA and the Scottish Executive on the number of carcasses that have been incinerated at Carntyne and have tested positive for BSE. This request was refused and only the total number of carcasses tested in Scotland and, of those, the number of confirmed BSE cases was provided.

With regard to consent to discharge to the sewerage system, this is indeed a matter for Scottish Water to determine, and SEPA is only concerned with the final discharge from the sewage works. As SEPA understand it, there is no simple test that could be done to determine whether any BSE prion was present in the final discharges to the river and hence any decision would be based on the theoretical risk, and SEPA would seek advice from the Chief Medical Officer on this issue.

Yours sincerely

M PATRICIA HENTON
APPENDIX A

Sacone Environmental (Glasgow)
Authorisation APC/W/2035 – extract

SCHEDULE 2: WASTE MATERIALS AUTHORISED FOR INCINERATION

8.4 No waste materials other than those described below (hereinafter referred to as “waste”) shall be destroyed by burning in the incinerators as described in Schedule 1:

2.1.1
Animal remains, meaning whole or partial animal carcass wastes, hides, skins, including trimmings or partially treated skins, excreta, bedding and waste incidental to the animal carcass.

8.4 To prevent the generation of hydrogen chloride in the flue gas emissions the Company shall avoid the inclusion of any incidental packaging materials which may contain PVC, and, for example, polypropylene or polyethylene shall be used instead.

SCHEDULE 3: CONDITIONS APPLYING TO PROCESS CONTROL

8.4 Incinerator Combustion Conditions

3.3.1
The temperature at the point of exit from the secondary combustion chamber of each incinerator shall be maintained at not less than 850°C, including during start up of the primary combustion chamber, and for as long as there is combustible waste in the primary combustion chamber.

3.3.4
The incinerators shall be operated to ensure a minimum gas residence time of 2 seconds in their respective secondary combustion zones.

SCHEDULE 8: PLANT RE-COMMISSIONING

8.4 Tests shall be carried out to demonstrate that:

8.4.1
the gas residence time within each incinerator’s secondary combustion zones is at least 2 seconds;
Incineration

The Committee concluded that incineration, either in power stations or cement kilns (in which temperatures could reach at least 1400°C) or in dedicated incinerators which reached 850°C would be sufficient to ensure that there was no risk, either to those exposed to the smoke plume eg. those living in the neighbourhood or those living downwind of the plant or in relation to the ash which could safely be landfilled. It was noted that some ash from power stations was used in aggregate and that the method of firing cement kilns inevitably resulted in some ash being incorporated in the final product. The Committee concluded that given the nature of these processes, these and any other uses of the ash were perfectly acceptable even for ash from MBM (and tallow) derived from SBM. In summary, the Committee did not feel that there were any reasons related to BSE which militated against the use of tallow or MBM as a fuel source for either the power generation or cement industries or that required any special precautions to be taken in relation to the protection of the environment either from smoke discharges or from the resulting ash.

SEAC Statement 7 June 1996
PETITION 377: POLLUTING ACTIVITIES IN BUILT UP AREAS

At its meeting on 6 June 2002, the Transport and the Environment Committee considered Petition PE 377 by Michael Kayes on polluting activities in built up areas.

One of the concerns raised in the petition is the proximity of an incinerator to built-up areas at Carntyne in Glasgow. It is the petitioner’s view that the incinerator produces airborne emissions and releases pollutants into the water supply which are detrimental to the health of those living in the surrounding area.

You will be aware that planning approval for the incinerator at Carntyne was initially refused by Glasgow City Council. The Scottish Office then appointed a reporter to look into the planning proposal and went on to approve it at its appeal stage.

At the meeting on 6 June, the Committee agreed to appoint me as a reporter on the petition and that I should write to the Minister for Environment and Rural Development and yourself on issues arising from the petition.

Firstly, members of the Committee were interested in gaining an understanding of the types of circumstances in which decisions of planning authorities are overturned. I appreciate that you will not be able to comment on specific cases but I anticipate that, over the course of time, your officials will have identified some common reasons for successful planning appeals.

Secondly, members wished to understand the nature and status of the current planning regulations in relation to the siting of incinerators. I should be grateful if you could supply me with information on this, particularly with reference to operations which wish to burn animal remains in urban areas.

In the case of Carntyne, it has been argued that the planning permission did not allow for animals clinically confirmed or diagnosed as suffering from BSE to be burned at the plant.

However in a letter to the Committee’s convener, the Chief Executive of SEPA said that SEPA has not specifically prevented the plant incinerating carcasses which are later confirmed or diagnosed as suffering from BSE, as incineration of BSE
contaminated carcasses is not a separately identified prescribed process under the Environmental Protection Regulations.

It is argued that the planning conditions may be being circumvented, because incineration has already taken place by the time the results have been received in respect of the BSE tests. So, in cases where positive tests are recorded, cattle are being incinerated at a plant which does not possess the necessary license.

It seems to me that one of the key issues raised by the petition is the interplay between conditions set by the planning permission and the conditions set by the licensing authorisation. In the case of Carntyne, local people clearly feel that the system – in not preventing the possibility of the incineration of BSE-infected cattle – has let them down. I should be grateful for your views on this. I have also written to Ross Finnie on this point.

On the basis that the operation at Carntyne is operating in compliance with the planning permission and licensing conditions, could you let me know what plans exist for a review of planning policy in respect of the siting of incinerators in urban areas?

I should be grateful to receive a response by 19 July. Please copy your response to the clerk to the Committee, Callum Thomson.

I have copied this letter to Dorothy-Grace Elder MSP.

Yours sincerely

Fiona McLeod MSP
Reporter
Deputy Minister for Social Justice
Hugh Henry MSP

Fiona McLeod MSP
Transport and the Environment Committee
C/o Committee Chambers
EDINBURGH
EH99 1SP

Thank you for your letter of 26 June about the Transport and the Environment Committee’s consideration of Petition PE 377 by Michael Kayes concerning the operation of the animal waste incinerator at Carntyne in Glasgow. The Committee raised a number of issues to which I respond as follows:

Circumstances in which decisions of planning authorities are overturned

In your letter you state that members of the Committee were interested in gaining an understanding of the types of circumstances in which decisions of planning authorities are overturned. The planning Acts (Section 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997) require that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise. That requirement applies to planning authorities, to the Scottish Ministers and to inquiry reporters acting under powers delegated by Ministers.

The interpretation of this provision was clarified in a determination by the House of Lords in 1998 (City of Edinburgh Council v the Secretary of State for Scotland). As a result, where a proposal accords with the development plan and there are no material considerations indicating that permission should be refused, planning permission should be granted. Conversely, where the proposal does not accord with the development plan, permission should be refused unless there are material considerations indicating that it should be granted. The effect is that in deciding a planning application, priority must initially be given to the development plan, but flexibility is allowed depending on the facts and circumstances of each case.

These statutory provisions mean that where a planning proposal is being considered on appeal, the parties and the inquiry reporter focus on the relationship between the reasons given by the planning authority for the refusal of planning permission, the provisions of the development plan and the material considerations that are suggested to be relevant, both for and against the proposal. The decision-maker conducts a balancing exercise and the Courts have held for some time that the weight to be attached to any relevant material consideration in this balancing exercise is for the judgement of the decision-maker. Clearly in reaching that judgement, reasons have to be given that are sufficient to explain and justify the assessment that has been made.
Most planning appeals are dealt with by an exchange of written submissions followed by a site inspection. For these cases the success rate for appellants is typically around 28-30% in any year. A small proportion of planning appeals is determined following a public inquiry and in those cases success rates tend to be higher, typically up to 31-38%. Both the appellant and the planning authority have the right to request that the case proceed by means of an inquiry, rather than being determined by an exchange of written submissions. The higher success rate where an inquiry is held may reflect the fact that appellants use this procedure where they consider the arguments to be more finely balanced and thus susceptible to a different outcome when reviewed independently.

The Committee wishes to gain an understanding of the types of circumstances in which the decisions of planning authorities are overturned as the result of appeals being allowed. The most common such circumstance is where the decision-taker reaches a different conclusion on the appropriate balance to be struck between the provisions of the development plan and the material considerations relevant to the planning merits of the development. This difference of view is brought into sharpest focus in those cases where the planning application that is the subject of the appeal was recommended to the council for approval by the council's officers, but permission was refused by the planning authority because Members balanced that same equation in a different way. The officers' recommendation would be based on their consideration of the relationship between the proposal and their authority's development plan, together with the other factors that they considered relevant to the outcome, including the views of objectors and those who supported the development. However, in such cases and based on those same facts and arguments, the members of the planning authority reached a different view.

In a relatively few cases each year, planning authorities do not seek to defend their decision in an appeal. Even in these cases the Reporter makes a proper assessment of both the provisions of the development plan and material considerations before reaching a decision. In such cases, where the initial decision of the planning authority is found to have been appropriate, their decision would be supported and the appeal dismissed, even though the council had not lodged a defence.

Other appeals are made because the planning authority has failed to reach a decision within the period prescribed by statute. In at least some of these cases there is the possibility that the planning application would not have been refused by the planning authority and for that reason an appeal against non-determination would be likely to be successful. As with all other appeals, the decision is still taken by balancing the facts and arguments in the context set by Section 25 of the Act. This approach applies whether the decision on the appeal is taken under powers delegated by the Scottish Ministers to an individual reporter or by the Scottish Ministers themselves

Planning regulations relating specifically to the siting of incinerators

Your letter also stated that your members wished to understand the nature and status of the current planning regulations in relation to incinerators. The current
The legislative position is that there are no planning regulations relating specifically to the siting of incinerators.

*National Planning Policy Guideline 1: The Planning System* explains the requirement that planning decisions should be made in accordance with development plans unless material considerations indicate otherwise. It is crucial, therefore, to have appropriately worded policies in development plans. The preparation of these plans includes opportunities for public representation and objection during both the consultative and the public inquiry stages.

In the case of incinerators, there are 2 specific mechanisms designed to ensure that material considerations are not overlooked:

- Facilities for the disposal of refuse or waste materials (which would include incinerators) are included in the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 among a list of classes of development referred to as "bad neighbour development". This entails an additional degree of publicity and, therefore, an additional opportunity for representations to be made; and

- Waste incinerators, depending on their capacity and the nature of the waste disposed of, are included in either Schedule 1 or Schedule 2 of the Environmental Impact Assessment (Scotland) Regulations 1999 (the 1999 Regulations). In the case of Schedule 1 projects it is mandatory that environmental impact assessment (EIA) is undertaken before planning permission is granted. While EIA is not mandatory in the case of Schedule 2 projects, the screening process that has to be undertaken by the planning authority to establish whether or not EIA is necessary involves thorough consideration of the potential environmental impacts of the proposed development.

I should point out, however, that the 1999 Regulations were not in force when planning permission was granted for the Carntyne incinerator. The incinerator did not fall within the scope of the earlier Environmental Assessment (Scotland) Regulations 1988. The 1988 Regulations referred only to "controlled" waste, which does not include animal carcasses/waste, whereas the 1999 Regulations do not qualify the word "waste".

**Interplay between planning conditions and licence conditions**

*Planning Advice Note 51: Planning and Environmental Protection* gives advice on the role of the planning system in controlling pollution and its relationship to a number of environmental protection regimes. It concludes that it is the responsibility of planning authorities and the environmental protection bodies to collaborate in the task of protecting the environment, and to apply controls to that duplication is minimised and overlap is avoided whenever possible. You will also wish to be aware of *Circular 4/1998: The Use of Conditions in Planning Permissions* which sets out Executive policy on the use of conditions in planning permissions. As a matter of policy, conditions should only be imposed where they are: necessary,
relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable.

Plans for review of planning policy

We have no current plans to review our planning policy in this regard. National Planning Policy Guideline 10: Planning and Waste Management is still relevant. It will be reviewed as part of the programme of review announced recently in Review of Strategic Planning: Conclusions and Next Steps. However, NPPG 10 is not one of our immediate priorities. The related Planning Advice Note 63: Waste Management Planning was revised and updated earlier this year.

I hope that the Committee finds these comments helpful.

I have copied this letter to Dorothy-Grace Elder MSP and Callum Thomson.

HUGH HENRY
PETITION 377: POLLUTING ACTIVITIES IN BUILT UP AREAS

At its meeting on 6 June 2002, the Transport and the Environment Committee considered Petition PE 377 by Michael Kayes on polluting activities in built up areas.

One of the concerns raised in the petition is the proximity of an incinerator to built-up areas at Carntyne in Glasgow. It is the petitioner's view that the incinerator produces airborne emissions and releases pollutants into the water supply which are detrimental to the health of those living in the surrounding area.

You may be aware that planning approval for the incinerator at Carntyne was initially refused by Glasgow City Council. The Scottish Office then appointed a reporter to look into the planning proposal and went on to approve it at its appeal stage.

At the meeting on 6 June, the Committee agreed to appoint me as a reporter on the petition and that I should write to the Minister for Social Justice and yourself on issues arising from the petition.

In the case of Carntyne, it has been argued that the planning permission did not allow for animals clinically confirmed or diagnosed as suffering from BSE to be burned at the plant.

However in a letter to the Committee's convener, the Chief Executive of SEPA said that SEPA has not specifically prevented the plant incinerating carcasses which are later confirmed or diagnosed as suffering from BSE, as incineration of BSE contaminated carcasses is not a separately identified prescribed process under the Environmental Protection Regulations.

It is argued that the planning conditions may be being circumvented, because incineration has already taken place by the time the results have been received in respect of the BSE tests. So, in cases where positive tests are recorded, cattle are being incinerated at a plant which does not possess the necessary license.
It seems to me that one of the key issues raised by the petition is the interplay between conditions set by the planning permission and the conditions set by the licensing authorisation. In the case of Carntyne, local people clearly feel that the system – in not preventing the possibility of the incineration of BSE-infected cattle – has let them down. I should be grateful for your views on this. I have also written to Margaret Curran on this point.

Furthermore, I should be grateful for your views on what are the safe operating practices for the incineration, or other methods of disposal, for fallen cattle, in particular where there is a possibility of BSE-infection. Do you consider that the current Regulations are adequate in light of the comments from the Chief Executive of SEPA?

The Chief Executive also noted that SEPA had requested information from both DEFRA and the Scottish Executive on the number of carcasses that have been incinerated at Carntyne and have tested positive for BSE. This request was refused and only the total number of carcasses tested in Scotland and, of those, the number of confirmed BSE cases was provided. Why has this information not been made publicly available or, indeed, provided to SEPA when it has responsibility for setting the licensing conditions?

I should be grateful to receive a response by 19 July. Please copy your response to the clerk to the Committee, Callum Thomson.

I have copied this letter to Dorothy-Grace Elder MSP.

Yours sincerely

Fiona McLeod MSP
Reporter
Thank you for your letter of 20 June about the Transport and the Environment Committee’s consideration of Petition PE 377 by Michael Kayes concerning the operation of the animal waste incinerator at Carntyne in Glasgow. The Committee raised a number of issues to which I am happy to respond and, I hope, clarify.

The petition and your comments seem to cover 3 main concerns, namely air pollution, concerns about the way planning conditions are being applied, and risks from the BSE prion affecting residents through airborne or water-borne transmission.

Air Pollution

The petitioner expressed concern that the incinerator may be producing airborne emissions which are detrimental to the health of those living in the surrounding area. A particular point of concern was the proximity of the incinerator to built-up areas. As you know, the proposed location for the Carntyne incinerator was examined in detail by the Inquiry Reporter appointed in 1997 to determine the appeal against the refusal of planning permission by Glasgow City Council. The Reporter noted in her decision that it took account of the Scottish Environment Protection Agency’s (SEPA) evidence confirming that it had no objection to the proposal and that the incinerator would be subject to strict controls under the Environment Protection Act 1990.

In setting permit conditions for such plants, SEPA will refer to Process Guidance Notes – technical documents that seek to set a consistent standard of regulation for all similar operations across the UK. I understand that the conditions in SEPA’s authorisation for airborne pollutants comply the relevant Process Guidance Note in this case. The Environmental Protection Act 1990 allows permit conditions to be made on a site specific basis, meaning that SEPA has the power to set conditions that take account of the location of the incinerator relative to the local population.

I note that the Committee queried what dioxin levels were present at the Carntyne plant. I understand that dioxin concentrations during February this year ranged from 0.15 to <0.001 ng/m³. The Process Guidance Note applicable to the sector indicates a limit of 1 ng/m³.
I do have considerable sympathy with the petitioners, in that the compliance record of this plant is poor, and residents have clearly suffered nuisance from smoke and odour on a number of occasions. SEPA advises me that it has issued a total of four enforcement notices against the plant: two in 1999, one in October 2001 (together with a prohibition notice), and one in March 2002 (re-issued in April). The latest enforcement notice resulted from the exceedance of emissions limits for particulates. This resulted in the plant closing down for new abatement equipment to be installed.

The processes regulated under EPA90 are set out in the Environmental Protection (Prescribed Processes and Substances) Regulations 1991. As you note, the regulations do not specifically cover disposal of BSE-infected carcasses. However, they do cover “the destruction by burning in an incinerator, of any waste, including animal remains...”. This means that any such incinerator would be subject to regulation.

I believe the powers under EPA90 to set site specific conditions and the enforcement powers that exist do provide a sufficient framework to protect residents from nuisance and health risks from airborne pollution. There will clearly be a degree of judgement to be used in how these powers are exercised, and I can see that residents are frustrated that the improvements put in place in response to previous enforcement notices were not sufficient to resolve the problems. However, SEPA has advised me that emissions should be amongst the lowest for this type of plant in the UK once new abatement equipment is installed. I would note, however, that much also depends on the way the plant is operated to ensure this is the case and prevent nuisance from odours, etc.

**Compliance with Planning Conditions**

As you know, planning permission was granted subject to a number of conditions, one of which required that no remains from cattle clinically confirmed or diagnosed as suffering from BSE should be burned at the plant. Once planning permission was granted it was for Glasgow City Council, and SEPA in terms of its regulatory functions, to ensure that all conditions associated with the operation of the plant were complied with, and to take any action which they believed was necessary.

I can see that there is concern that planning conditions may be being circumvented because incineration is carried out before the BSE test results are known. I do acknowledge the point made, but it is a legal judgement for the council as to whether the way this operates is in compliance with the planning conditions set. My overriding concern is, whatever the legal judgement on this point, that local residents receive an appropriate level of protection from BSE-related risks.

The Committee may be interested to know that a decision was taken at the outset, before the BSE monitoring scheme went operational, that rather than store carcasses it would be more efficient to make it a contractual requirement that disposal was undertaken quickly. The fact of the matter is that there is not a scientifically validated test currently available that produces an instant result. The tests we are obliged to use, as specified by the European Commission, take around 10 to 14 days to generate a positive or negative result. With the volumes involved, each disposal site would need a fairly large refrigerated unit to hold the carcasses. It
is worth noting that these animals are valueless anyway as they cannot enter either the animal or human food chain. It therefore makes more sense for control and economic purposes to burn the carcass as soon as possible after the sample is removed.

You note that data was not made available on the number of cattle incinerated at Carntyne that were subsequently diagnosed with BSE. I would note that this is not the result of any reluctance on our part to release the data. Rather it is a factor of the way the data are collected. For disease surveillance purposes, the Rural Payments Agency, which operates the BSE scheme, is not interested in the disposal point but the holding of origin, to determine how and when the animal was exposed to the BSE infective agent and whether other animals were similarly exposed.

*Risks from Airborne or Water Borne Transmission of the BSE Prion*

Risks related to exposure to the BSE prion are clearly a matter of great concern to the public in general. I can therefore see why the petitioners are anxious if they feel they are being exposed to such risks by virtue of the location and operation of the Carntyne plant.

In terms of water-borne transmission of the BSE prion, Scottish Water’s position is that the screening controls at the Carntyne incinerator are more than adequate and, in fact, exceed the standards set in the “Guidelines for the Disposal of Liquid Wastes from all Premises Handling Specified Risk Material”. These guidelines were published by Water UK in 1997 and are based on advice published by the Spongiform Encephalopathy Advisory Committee (SEAC). I understand the guidelines recommend a 4 mm screen whereas, in fact, a 2mm screen is installed at the Carntyne incinerator. Site visits by inspectors from the former West of Scotland Water Authority confirmed that Sacone have adequate arrangements in place to prevent, or reduce to an acceptable level, any health risk from discharges from the plant.

The other key question is whether residents of Carntyne are being exposed to BSE risks from airborne emissions from the incinerator - you asked specifically about safe operating practices for the incineration of fallen cattle. I would note that European and domestic legislation applies a disposal hierarchy when dealing with animal waste. Incineration is at the top of this hierarchy. The minimum standard required for sites involved in the BSE programme is based on the risk assessment commissioned by the Environment Agency in 1997 in association with the UK Government’s independent advisory committee SEAC. SEPA’s authorisation therefore requires that the incinerator is operated at a minimum of 850 degrees C. This is in line with Government policy and scientific evidence that this temperature, together with a 2 second residence time, is sufficient to destroy the BSE prion. The incinerator is capable at operating at up to 1000 degrees C. Provided the Carntyne plant operates at the minimum temperatures required by SEPA in its authorisation, any airborne BSE infectivity likely to be present would be reduced to minute, non-dangerous levels after incineration.

During the Committee’s meeting on 6 June it was suggested that the plant would need to operate at 1,400 degrees C in order to destroy the BSE prion. I am not
I am aware of the study being referred to, but would be happy to investigate if you can provide further details.

I realise that residents will be concerned that the poor compliance record of the plant is reflected in a less than rigorous approach by the incinerator’s operators to complying with conditions intended to ensure BSE risks are minimised. I share this concern. I would therefore expect regulators to take very seriously any incident that involved operating conditions potentially failing to meet the requirements intended to ensure the prion is destroyed.

Summary

In summary, I am sympathetic to the concerns of the petitioners and can understand the source of their concern. They have clearly suffered nuisance from the plant at various points in time. I am, however, satisfied that powers do exist to set conditions to protect their health and take enforcement action where necessary. There is clearly a level of regulatory judgement involved in deciding the extent of improvements necessary to correct any problems once enforcement action is taken. I understand the frustration of residents that, despite previous improvements, enforcement has been required on a number of subsequent occasions to address further emissions problems. I am sure SEPA will reflect on this experience in deciding its future regulatory approach.

I hope these comments are helpful to the Committee.

I have copied this letter to Callum Thomson.

ROSS FINNIE
I refer to your letter of 20 June outlining the Committee’s concerns with regard to the operation of the animal waste incinerator at Carnyten, Glasgow. Since I provided a substantive reply to your letter on 5 July, further information had been collated that the Committee will wish to be aware of.

In view of the understandable concern of the local residents, officials were instructed to research the information collated for BSE surveillance purposes in order to ascertain the number of positive cases processed at this unit. I can now advise that, in the period between September 2001 and March of this year, only 2 of the bovine carcasses delivered to this plant for sampling and incineration were subsequently found to test positive for BSE. This figure compares well with the national average and, provided the plant operated at the required minimum temperature of 850 degrees C, would have reduced infectivity to minute, non-dangerous levels. From the information provided by SEPA, I understand that this plant has indeed observed this requirement. I trust therefore that this additional information will provide further reassurance to the Committee.

Secondly, as you will know, the plant has been the subject of enforcement action by SEPA in recent months in order to rectify problems identified with emission levels. The current position is that the incinerator remains closed pending SEPA’s determination of Sacone’s application for a variation of their license reflecting the new equipment installed at the plant. SEPA has consulted publicly on the application and is currently scrutinising the effect of the changes on the dispersal of airborne pollution. A decision by SEPA on whether to agree the variation is expected very shortly.

Yours sincerely,

ROSS FINNIE
Transport and the Environment Committee

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October 2002

PETITION 377: POLLUTING ACTIVITIES IN BUILT UP AREAS

You will recall that, in previous correspondence, the Committee requested information on the number of animals diagnosed with BSE incinerated at the Carntyne incinerator. Your response in July 2002 stated that the Rural Payments Agency collates data on the basis of the origin of the BSE infection not the disposal point and therefore this information was unavailable.

The Chief Executive of SEPA noted in correspondence to the Convener that the agency had requested information from the Scottish Executive on the number of carcasses that have been incinerated at Carntyne and have tested positive for BSE. This request was refused and only the total number of carcasses tested in Scotland and, of those, the number of confirmed BSE cases was provided.

However, in your recent letter dated 5 September 2002 you provided information on the number of animals with BSE which were processed at the incinerator in Carntyne between September 2001 and March 2002. Please could you let me know why this information has only been collated and made publicly available at this stage when the organisation responsible for the environmental regulation of the incinerator requested it some months ago? Following the release of this information do you intend to have this information collated, provided to SEPA and made publicly available on a regular basis in the future?

Turning to the licensing conditions laid down by SEPA, in your letter dated July 2002 you note the poor compliance record of the operators of the Carntyne incinerator and state that you are positive that SEPA will reflect on this experience in deciding its future approach. You also noted your sympathy with the petitioners and added that you understand the source of their concern.

In terms of SEPA taking action against the operators, SEPA representatives have stated that ultimately you have the capacity to direct SEPA in its actions. Therefore,
in light of your concern, could you let me know at what stage you would consider it necessary to become involved in the decision making process.

Finally, in light of the problems experienced at the incinerator in Carntyne, I should be grateful for your views on what, if any, are the practical alternatives for the disposal of animals to incineration.

I should like the Committee to consider the petition and the associated issues at its meeting on 30 October. To this end I should be grateful if you would respond by 22 October.

I should be grateful if you would copy your response to the assistant clerk to the Committee, Rosalind Wheeler (e-mail: rosalind.wheeler@scottish.parliament.uk).

I have copied this letter to Dorothy-Grace Elder MSP.

Yours sincerely

Fiona McLeod MSP
Reporter

cc Dorothy Grace Elder MSP
Rosalind Wheeler
Thank you for your letter of 2 October in which you raised further points regarding the Carntyne incinerator.

The first point you raise concerns the apparent contradiction between my response back in July, when the Executive indicated it could not provide details of the number of bovines processed at Carntyne which were subsequently found to be positive BSE cases, and my more recent update, sent on 5 September. The second letter contained the relevant figure for the period between September 2001 and March 2002. The explanation is that in recognition of the particular sensitivity surrounding this matter officials were instructed by Ministers to conduct a special exercise to extract the relevant information for Carntyne from the national BSE database.

As regards publication of such data in the future, again in view of the special circumstances in this case I will arrange for officials to provide the relevant information to SEPA for a period of six months after the plant recommences operations. I am not however minded to give such a commitment for a longer timescale in view of the amount of work involved in such an exercise and in fairness to the company in comparison to the position of other units across Scotland engaged in similar activities.

Although Scottish Ministers have powers to direct SEPA to withhold an authorisation from a particular operator, I believe that taking such action would be appropriate in only very limited circumstances. SEPA was set up as the statutory regulator for pollution control in Scotland and it is appropriate that the Agency is permitted to fulfil its statutory functions without direct intervention from the Scottish Ministers, and to use the powers available to it to reduce or eliminate pollution.

Powers of direction have never been used previously to intervene directly in SEPA's statutory functions in the way suggested for the Carntyne incinerator. Such action could cut across the policy interests of other areas of the Executive (in Sacone's case, for example, Food and Agriculture Group) and set an unwelcome precedent. Scottish Ministers' powers of direction are limited to requiring SEPA to use the
powers already available to the Agency. It is appropriate that reliance is placed on SEPA to use its experience and expertise to deploy these powers itself rather than Ministers intervening directly. That said, if there was a risk to public health or if I believed SEPA was failing in its duty to protect the environment, I would certainly consider the appropriateness of directing SEPA. However, I am satisfied that neither of these factors is relevant in the case of Carntyne.

I remain of the view that the powers under Part I of the Environmental Protection Act 1990 are sufficient to enable SEPA to address the risk of pollution from the Carntyne incinerator and to take enforcement action against Sacone if any condition in SEPA’s authorisation is breached. If SEPA believes that Sacone are contravening, or are likely to contravene, any condition in the authorisation, the Agency has powers to issue an enforcement notice requiring the company to take remedial action to address the contravention. SEPA has powers to require the company to cease operating until the remedial works have been completed, which it has already used, and tested to the Agency’s satisfaction. This process may be repeated a number of times – and I recognise that this is a source of frustration for residents - but I believe it is reasonable that SEPA gives Sacone the opportunity to respond to enforcement notices in order to meet the required emission standards. I firmly believe that decisions on environmental authorisations need to be based on sound science and regulatory expertise. I am, nevertheless, very conscious of the need for both SEPA and Sacone to take every step practicable to ensure that the Carntyne incinerator complies with SEPA’s authorisation. I have, therefore, asked officials to monitor the situation closely to ensure that the previous problems at the plant do not recur.

Finally, with regard to alternative disposal methods available, the new EU Animal By-products Regulation will provide for alternative methods of disposal, such as composting. Incineration however remains the most effective disposal method for high risk animal waste.

I trust this further clarification will be of assistance to the Committee on 30 October. As requested, a copy of this reply goes to the assistant clerk, and to Dorothy-Grace Elder.