



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 23 January 2013

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**Wednesday 23 January 2013**

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**INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE**

**2<sup>nd</sup> Meeting 2013, Session 4**

**CONVENER**

\*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

**DEPUTY CONVENER**

\*Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP)

**COMMITTEE MEMBERS**

\*Jim Eadie (Edinburgh Southern) (SNP)

\*Alex Johnstone (North East Scotland) (Con)

\*Gordon MacDonald (Edinburgh Pentlands) (SNP)

\*Margaret McCulloch (Central Scotland) (Lab)

\*Elaine Murray (Dumfriesshire) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Nicola Sturgeon (Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities)

Sandra White (Glasgow Kelvin) (SNP)

**CLERK TO THE COMMITTEE**

Steve Farrell

**LOCATION**

Committee Room 2



**Scottish Parliament**  
**Infrastructure and Capital**  
**Investment Committee**

*Wednesday 23 January 2013*

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

**Decision on Taking Business in**  
**Private**

**The Convener (Maureen Watt):** Good morning and welcome to the second meeting in 2013 of the Infrastructure and Capital Investment Committee. I remind everyone to switch off all mobile devices, as they affect the broadcasting system.

We have a very busy agenda this morning, so let us get started. Agenda item 1 is a decision on whether to take in private agenda items 5 and 6 to allow the committee to consider the evidence that we will hear from Sandra White on her proposed member's bill and our approach to scrutinising the Government's draft report on proposals and policies on climate change. Are members agreed?

**Members** *indicated agreement.*

**Water Resources (Scotland) Bill:**  
**Stage 2**

10:01

**The Convener:** Agenda item 2 is stage 2 consideration of the Water Resources (Scotland) Bill. We will consider a number of Government and non-Government amendments, and the intention is to complete stage 2 today.

I welcome to the meeting Nicola Sturgeon, the Cabinet Secretary for Infrastructure, Investment and Cities, and her supporting officials: Christina Phillips, bill manager; Stephen Rees, from the legal directorate; and Alex Gordon, from the office of the Scottish parliamentary counsel.

Before we start, it might be helpful in speeding along proceedings if I point out a few things. If a member does not wish to move his or her amendment, he or she should simply say so. In that event, any other member can move the amendment, but I will not specifically invite other members to do so. Assuming that no other member moves the amendment, I will simply move to the next amendment on the marshalled list. If anyone wishes to withdraw an amendment, I will put the question, "Does anyone object to amendment X's being withdrawn?" If any member objects, I will immediately put the question on the amendment.

**Section 1—Duty of the Scottish Ministers**

**The Convener:** Amendment 53, in the name of Jim Eadie, is grouped with amendments 12, 1 and 57.

**Jim Eadie (Edinburgh Southern) (SNP):** Amendments 53 and 57 are probing amendments aimed at exploring ways of strengthening the bill further to allow the views of stakeholders expressed during stage 1 to be taken on board, to reflect the committee's recommendations in its stage 1 report and to build on what is already a worthwhile piece of legislation. I am grateful to the Royal Society for the Protection of Birds Scotland for its engagement on and discussions with me about the bill and its help in taking forward my amendments.

As members have received a helpful briefing from RSPB Scotland, I will come straight to the point. Amendment 53 seeks to address criticisms made by a range of witnesses at stage 1, including the UK Environmental Law Association, the IHP-HELP centre for water law, policy and science and Scottish Environment LINK, that the sustainable development duty in part 1 is not sufficiently robust. It is also consistent with the committee's recommendation in its stage 1 report that

“all three pillars of sustainability”

deserve the same emphasis.

The amendment seeks to provide a stronger duty and is drafted in a way that is consistent with provisions in other Scottish legislation such as the Marine (Scotland) Act 2010. Under section 3 in part 2 of that act, Scottish ministers and public authorities are required to

“act in the way best calculated to further the achievement of sustainable development, including the protection and, where appropriate, enhancement of the health of that area, so far as is consistent with the proper exercise of that function.”

The amendment is also consistent with section 44(1) in part 4 of the Climate Change (Scotland) Act 2009.

Similarly, amendment 57 is designed to make clear in the bill that the development of our water resources must be carried out sustainably. As the RSPB has pointed out, a similar amendment led to the word “sustainable” being included in the long title of the Flood Risk Management (Scotland) Act 2009. The amendment makes it clear that the bill gives consideration to all three pillars of sustainability—that is, the economic, social and environmental aspects. The amendment is therefore entirely consistent with the committee’s recommendations at stage 1 and the cabinet secretary’s statement in the stage 1 debate that

“Our intention was never to drive economic benefit to the detriment of social or environmental factors, as those always need to be weighed up and balanced”.—[*Official Report*, 19 December 2012; c 14948.]

Although it is of limited legal effect, the long title acts as a description of the bill’s purpose and should reflect our strong desire to ensure that development is sustainable.

I move amendment 53.

**The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon):** I will deal with each amendment in turn.

I thank Jim Eadie for lodging his amendments, as they give us the opportunity to discuss issues in more detail.

Amendment 53 seeks to alter the duty on ministers under part 1 of the bill so that, in taking the steps that they consider appropriate for the purpose of ensuring the development of the value of our water resources, they will be required to do so in a way that is

“best calculated to further the achievement of sustainable development”.

That would expressly include

“the protection and, where appropriate, recovery of water”

resources.

I have no difficulty with the first part of the revised formulation of the sustainability duty that Jim Eadie proposes—that is, with the reference to ways that are

“best calculated to further the achievement of sustainable development”

rather than

“ways designed to contribute to the sustainable use of the resources”,

which is what is currently stated in the bill. However, I have more difficulty with the second part of the amendment, which provides that sustainable development includes

“the protection and, where appropriate, recovery of water”.

The reason for that is that water resources are already protected under the Water Environment and Water Services (Scotland) Act 2003, and ministers and the Scottish Environment Protection Agency are already obliged, when they exercise their functions under that act and under related legislation, to act in the way that is best calculated to contribute to the achievement of sustainable development. Section 22 of the 2003 act also includes provision for ministers to make provision by regulations for the remediation or restoration of the water environment.

I am not clear about what gap in the existing legislation the second part of the amendment is intended to fill, so I ask Jim Eadie to seek to withdraw the amendment. However, I would be happy to discuss with him an amendment for stage 3 that covers the first part of amendment 53. If we could come to an agreement on that, I would be happy to consider supporting such an amendment at stage 3.

My amendment 12 also relates to part 1 of the bill, in which the duty that is placed on ministers is to

“take such ... steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources”.

The amendment is intended to clarify that the concept of the value of Scotland’s water resources includes not only the economic benefit, but the social and environmental benefit. That informs what is to be regarded as the value of water resources, to avoid limiting that to their inherent value.

As I indicated during the stage 1 debate last month, I have listened carefully to the comments that a range of stakeholders have made on that point, and I am pleased to have lodged an amendment that confirms that ministers must weigh up social and environmental benefits alongside economic benefit when they take steps

to develop the value of Scotland's water resources. The amendment goes some way towards addressing the points that Jim Eadie made in speaking to his amendments.

I do not support amendment 1, which would include "peatlands" in the definition of water resources, although I understand why it was lodged. The addition of the word "peatlands" to the definition of water resources does not help to support the purpose of the bill. Part 1 of the bill is about water resources in the conventional, commonly understood sense; it is not about bogs, fens or any other type of land. In my view, adding "peatlands" to section 1 would go beyond the intended ambit of part 1. The amendment seeks to protect peatlands by artificially stretching the definition of water resources in a way that is not appropriate.

That said, the Government is committed to supporting peatlands for the many multiple benefits that they provide, such as biodiversity and potential carbon sequestration. A further Government contribution to peatland restoration was announced in the 2012 budget, and the Government and its agencies are working actively to support the protection and maintenance of those valuable lands.

The Government is committed to working with Scottish Natural Heritage and others to develop a peatland plan that recognises the valuable multiple benefits that peatlands provide. That will not only consider how we can restore damaged peatland but focus on how we can protect and are protecting the good-quality peatland that we have. That will consider all peatland across Scotland. In short, the Government is taking action to protect and maintain peatlands, but amendment 1 would not provide an appropriate way of furthering that aim.

Amendment 57 would alter the bill's long title to refer to the "sustainable" development of Scotland's water resources. Amending a long title does not affect a bill's content and would have no practical effect. As I have just described, sustainability is adequately provided for in the bill. Development of any kind is covered by the long title as it stands and the addition of the proposed adjective would be an embellishment that gave perhaps undue emphasis to one strand of development.

What counts is the meaning and effect of part 1, taken overall. The long title is simply a formal element of the bill that introduces the main topics that are included in it. As I said, amendment 12, which is in my name, will ensure that value is understood in its widest sense, so I ask Jim Eadie not to move amendment 57.

**Elaine Murray (Dumfriesshire) (Lab):** I support all the amendments in the group. I heard what the cabinet secretary said about aspects of amendment 53, but I strongly support the policy intention of all the amendments.

Peatlands and particularly peat bogs are important water resources. The inclusion of peatlands through amendment 1 would ensure that peat bog management and restoration were part of the bill's main purpose of developing Scotland's water resources to deliver environmental and socioeconomic benefits to Scotland—that is the point of the amendment.

Sustainable land management in drinking water catchments provides one example of a benefit. The report of the International Union for Conservation of Nature UK commission of inquiry on peatlands said that, when drinking water supplies arise in peatland-dominated catchments, peatland restoration can improve raw water quality, which reduces the cost of water treatment downstream.

RSPB Scotland, which was also instrumental in developing my amendments, has expressed concern that using the definition of wetlands in the 2003 act will mean that peatland habitats are not considered to be water resources. There is no doubt that peatlands—including blanket bogs, raised bogs and fens—are wetlands; they are considered as such in the Scottish Environment Protection Agency's wetland typology for Scotland, and the Ramsar convention on wetlands of international importance includes peatlands in its definition of wetlands.

Despite that, a strict interpretation of the 2003 act's definition has led to the most abundant peatlands and peat bogs being discounted as wetlands in that act's implementation. That is one reason why we are trying to ensure that the definition is okay in the bill. The situation is a consequence of the initial proposed definition of wetlands being considered too broad during the parliamentary process for what became the 2003 act. The wetlands definition was revised to become narrower and more specific but, unfortunately, that led to ambiguity about whether the definition covered all peatland types.

Amendment 1 would not change the implementation of the 2003 act, since the definition of wetlands in that act would remain unchanged. However, the amendment would ensure that sustainable management of Scotland's peatlands would be taken forward as part of the bill's purpose of developing Scotland's water resources. That would deliver great economic, environmental and social benefits for Scotland.

In paragraph 29 of its stage 1 report, the committee sought

“a response from the Scottish Government on whether peatland habitats are covered by the reference to water resources under the Bill.”

Amendment 1 would clarify that peatland habitats, including blanket and raised bogs, were considered to be water resources under the bill.

The cabinet secretary said that the Government is taking forward work on peatland resources, but there is still a long way to go to restore all Scotland’s peatlands. Having a clear reference to peatlands in the definition of water resources would ensure that they could not be discounted in the development of the value of Scotland’s water resources.

Peatland restoration is valuable on many grounds, such as water quality, biodiversity, carbon storage and climate change adaptation. The IUCN UK commission of inquiry on peatlands recognised that peatland restoration in catchments where drinking water supplies arise can improve raw water quality and reduce the costs of water treatment downstream.

**The Convener:** As no one else wants to comment, I ask Jim Eadie to wind up and say whether he wishes to press or withdraw his amendment.

10:15

**Jim Eadie:** I thank the cabinet secretary for her explanation in relation to my amendment 53. I acknowledge what she said—that no problems exist with the first part of the amendment—and I welcome her offer to give the matter further consideration with a view to lodging an amendment at stage 3. I am therefore content not to press amendment 53 to a vote. I look forward to the discussions that will take the matter forward.

I also thank the cabinet secretary for her explanation in relation to amendment 57. I will—along with other members of the committee, I am sure—reflect on the points that she made and have further discussions with stakeholders on the issue. I am therefore content not to move amendment 57.

*Amendment 53, by agreement, withdrawn.*

*Amendment 12 moved—[Nicola Sturgeon]—and agreed to.*

*Amendment 1 moved—[Elaine Murray].*

**The Convener:** The question is, that amendment 1 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

McCulloch, Margaret (Central Scotland) (Lab)  
Murray, Elaine (Dumfriesshire) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

*Amendment 1 disagreed to.*

*Section 1, as amended, agreed to.*

*Section 2 agreed to.*

### Section 3—Designation of bodies

**The Convener:** Amendment 2, in the name of Elaine Murray, is grouped with amendments 54, 13 and 3.

**Elaine Murray:** Any duties or directions for Scottish Water should extend to its subsidiaries such as Scottish Water Horizons and Scottish Water Business Stream. Section 25 introduces provisions that will allow ministers to pay grants or lend directly to subsidiaries of Scottish Water. It would be in keeping with that provision if ministers were able to give directions to Scottish Water subsidiaries for the purposes of taking forward the sustainable development of Scotland’s water resource. Amendment 2 ensures that subsidiaries are included. Amendment 3, which is consequential, provides a definition of “subsidiary” in terms of the Companies Act 2006.

I move amendment 2.

**Jim Eadie:** My amendment 54 could be a straightforward way in which to support the sustainable development of Scotland’s water resources. It is consistent with the committee’s recommendation 56, which suggested that the Forestry Commission be included in, and that the Scottish Government should consider broadening, the range of designated bodies. As members will appreciate, being listed as a designated body does not, in itself, have any ramifications until such time as ministers choose to direct the body under section 2.

Each of the three bodies that are listed in my amendment has important land management roles and can make a positive contribution to sustainable land management, particularly in drinking-water catchments. Another argument to support designating the Water Industry Commission for Scotland is that, as it is the economic regulator of Scottish Water, ministers should be able to seek advice from it on the economics or the business impacts of any steps or measures that may be taken under section 1.

**The Convener:** I ask the cabinet secretary to speak to amendment 13 and the other amendments in the group.

**Nicola Sturgeon:** I will come to amendment 13 shortly, convener. I will start with amendments 2 and 3.

I do not think that it is appropriate for subsidiaries of Scottish Water to be included in the list of designated bodies as the amendments propose. Scottish Water has deliberately set up subsidiaries to undertake commercial projects that are separate from the core business of Scottish Water. That ensures that a clear distinction is drawn between the water and sewerage services that Scottish Water undertakes as a public utility and the commercial operations such as Scottish Water Horizons.

Scottish Water carries the primary responsibility for the exercise of the function concerned, so I believe that ministers should direct themselves to Scottish Water for the achievement of any outcome. It is for the management of Scottish Water to decide whether a subsidiary is the best place to secure the desired outcome, and ministers wish to give the board the freedom to do that and to manage its affairs. The ability to direct subsidiaries would constitute undue interference in the operation of the group and, perhaps more important, it would potentially be a recipe for confusion. I therefore ask Elaine Murray to withdraw amendment 2 and not to move amendment 3.

I have a great deal of sympathy with the points that Jim Eadie made in speaking to his amendment 54. The designated bodies that are listed in section 3 are the organisations that ministers feel have a key role in participating in the development of the value of our water resources and that it might be appropriate for ministers to direct in that regard. Although the forestry commissioners and the national park authorities might well have an important role, it is not thought likely that they will require directions from ministers in that regard.

My main comment relates to the Water Industry Commission for Scotland. Ministers currently have no power to direct the commission on policy matters. I believe that it would be inconsistent with the objectives of the legislation that established the commission as an independent economic regulator if ministers were to seek such powers of direction.

Additionally, not being on the list of designated bodies is no barrier to participation in the broader hydro nation programme. Partnership working is crucial to the success of much of the agenda, and many organisations from across the sectors are already participating. Given the universal nature of

water, everyone has a role, to an extent, in contributing to the good stewardship of that resource. For those reasons—particularly my point about the Water Industry Commission—I ask Jim Eadie not to move amendment 54.

As I said at the outset, however, I have sympathy with Jim Eadie's general argument. The fact that the situation is not static and that the agenda is evolving is the reason why it is important for ministers to have the ability to add or remove organisations from the list, should it become apparent that that would be helpful. The bill provides that opportunity, and amendment 13 will extend the opportunity by allowing ministers not just to add or remove a body but to update the list if, for example, a body that is added to the list at a later date changes its name. The bill as it stands, with amendment 13, provides flexibility for organisations to be added in future should that be felt to be appropriate or necessary.

**Elaine Murray:** I am slightly puzzled by the cabinet secretary's explanation in relation to my amendment 2. I thought that it would be helpful to state explicitly that subsidiaries are covered by section 1.

Some of Scottish Water's subsidiaries will be instrumental in taking forward the development of Scotland's water resource, which is the purpose of the bill. For example, Scottish Water Horizons describes itself as using

"innovative ideas, knowledge and assets to encourage growth and renewable technologies".

To me, that fits with the aspirations of the bill and the hydro nation agenda to project Scotland as a global leader in water resources, management and expertise. Therefore, I am slightly confused as to why the cabinet secretary does not seem to want subsidiaries of Scottish Water to be covered by section 1. However, I will not press amendment 2, because I want to look into the issue in a bit more detail.

**Nicola Sturgeon:** I am happy to discuss the matter further with Elaine Murray. Subsidiaries of Scottish Water are covered by part 1, as they are part of Scottish Water. The point is that the ministerial direction would be to Scottish Water and that it would then be for Scottish Water to determine whether the best way to fulfil the content of the ministerial direction was through its core function or one of its subsidiaries. It is not as though subsidiaries are not covered; it is simply that we see the route for direction of the subsidiaries by ministers being through Scottish Water as the overall body. However, I am happy to discuss the matter further.

**Elaine Murray:** I will not press amendment 2, and we can think about the issue.

*Amendment 2, by agreement, withdrawn.*

*Amendment 54 not moved.*

*Amendment 13 moved—[Nicola Sturgeon]—and agreed to.*

*Amendment 3 not moved.*

*Section 3, as amended, agreed to.*

#### **Section 4—Reporting after 3 years**

**The Convener:** Amendment 14, in the name of the cabinet secretary, is grouped with amendments 14A to 14E and amendment 74.

**Nicola Sturgeon:** Amendment 14 relates to the requirement for ministers to report to Parliament on how they have fulfilled their duty under section 1 to ensure

“the development of the value of Scotland’s water resources”.

I have listened to the comments that have been made about the reporting period and, while I agree that there should be a requirement for ministers to report on progress, I am not sure that producing a formal annual report is appropriate or proportionate. I therefore propose an amendment that commits to producing one report within three years, after which ministers will determine the reporting periods. That will give us flexibility to consider whether there are efficiencies to be made in joining up reporting—for example, around flood risk and river basin management planning. I welcome the committee’s intention to undertake annual scrutiny of progress following commencement.

I welcome amendments 14A to 14E, introduced by Jim Eadie, because I think that they give us an opportunity before we get to the final stage of the bill to discuss whether we have the right balance of reporting. I agree that a long-term agenda needs a long-term framework that must include reporting on progress made. As I have already said, I am not yet convinced that that is always best achieved through the laying of an annual report or having a duty that exists in perpetuity. Equally, though, I think that there is a discussion to be had to see whether we have the right balance. If Jim Eadie was not to press the amendments today, I would be very happy for my officials to discuss with him further amendments that he or the Government could introduce at stage 3 to shift the balance in favour of having a regular reporting regime.

I move amendment 14.

**The Convener:** I ask Jim Eadie to move amendment 14A and speak to the other amendments in the group.

**Jim Eadie:** I welcome the cabinet secretary’s amendment 14, the positive comments that she made about the need for appropriate and regular reporting mechanisms, and the offer of discussions to take forward suggestions on how best to implement that in the bill.

I lodged the amendments in this group to see whether we could add a few extra teeth to procedures for monitoring progress. Amendment 14A’s proposal to require an annual progress report, as this committee recommended in recommendation 68 of our report on the bill, would assist our committee to undertake its annual scrutiny of the eventual act.

Amendments 14A to 14D would impose a more rigorous requirement to report every three years instead of from time to time. Amendment 14E seeks to build on our committee recommendation that thought is given to how we can integrate reporting under the eventual act with reporting on the river basin management plans under the Flood Risk Management (Scotland) Act 2009. Amendment 74 is consequential. In view of the positive contribution from the cabinet secretary, though, I am happy not to press the amendments today.

I move amendment 14A.

**The Convener:** Cabinet secretary, do you wish to wind up?

**Nicola Sturgeon:** I do not think that I need to add anything.

*Amendment 14A, by agreement, withdrawn.*

*Amendments 14B to 14E not moved.*

*Amendment 14 agreed to.*

*Section 4, as amended, agreed to.*

#### **Section 5—Qualifying abstraction**

**The Convener:** Amendment 58, in the name of Alex Johnstone, is grouped with amendments 59 to 73 and 75.

10:30

**Alex Johnstone (North East Scotland) (Con):** Amendment 58 is grouped with a rather long list of similar amendments, the net purpose of which would be to remove part 2 of the bill completely.

During stage 1, the RSPB and other witnesses highlighted a lack of clarity around the purpose of part 2 of the bill. Indeed, many witnesses—perhaps all those who had an opinion—were concerned that there had been no formal consultation on the proposals, which were a late addition to the bill.

The purpose of part 2 is particularly unclear, since it is already within the scope of ministers to authorise such abstractions under existing regulations. Regulation 20 of the Water Environment (Controlled Activities) (Scotland) Regulations 2011—better known as CAR—allows the Scottish ministers to determine

“applications under these Regulations of any class or description specified in the direction”.

In their stage 1 evidence, the UK Environmental Law Association and the Law Society of Scotland questioned the need for part 2, given the existing powers under CAR.

The Scotch Whisky Association brought to my attention the fact that regulation 15 of those regulations already requires SEPA to consider any likely social and economic impacts or benefits that are associated with a controlled activity such as an abstraction. Fears that rivers would run dry without the bill's abstraction limit are misplaced, since abstractions that damage the environment would contravene licence conditions and, as a result, bring about a fine or at least a court appearance.

Similar views have been shared by organisations such as the Association of Salmon Fishery Boards.

It is my view that stakeholders are unclear about the policy intention behind the new abstraction regime. They believe that the controlled activities regulations are preferable to the creation of an additional regulatory and cost burden on businesses. There is a deep-seated concern about the lack of consultation prior to the introduction of the bill, and the Government did not include any abstraction proposals in either of its two previous consultations. Finally, there is a general lack of understanding of the rationale behind the abstraction threshold limit of 10 megalitres a day and the list of exemptions.

There has been inadequate consultation, and part 2 has perhaps been rushed to legislation. Consequently, the best action would be to remove part 2 from the bill completely.

I move amendment 58.

**Elaine Murray:** I support Alex Johnstone's amendment, for many of the reasons that he has outlined. It is unusual to find the RSPB, the Scotch Whisky Association and the Association of Salmon Fishery Boards on the same side on a particular issue. I think that the main issue is the lack of consultation rather than the fact that people's interests are exactly the same.

Last week, one of my amendments was criticised for a lack of consultation, but here we have a whole section of a bill that has been introduced with a lack of consultation. I agree with Alex Johnstone that part 2 should be removed.

**The Convener:** My understanding is that the Scotch Whisky Association was not concerned enough to call for the removal of the section. Over to you, cabinet secretary.

**Nicola Sturgeon:** Alex Johnstone's amendments seek to remove the whole of part 2. At the outset, I say that this part of the bill is arguably the most challenging element of the legislation, so it is understandable that some people, as Alex Johnstone said, might not have fully understood its purpose.

I have commented previously on the issue of consultation. The fact that the proposal was not included in previous consultations is the reason why we have continued to speak to the interested organisations. Of course—this might be the difference between part 2 and Elaine Murray's amendment last week—the proposal has gone through stage 1 of the process, and people have had the opportunity to comment in that regard.

This part of the bill has a very important purpose. As we know, we in Scotland are fortunate to have high-quality water resources in abundance. As we live in a world of increasing water scarcity, it is prudent and appropriate that we take steps to protect that resource to ensure that its value to Scotland and the wider world can continue to be developed over the longer term.

Part 2 does that by requiring ministers' approval for future very large-scale abstractions. The idea is to give ministers the opportunity to ensure that large water abstractions that draw heavily on Scotland's water resources are in Scotland's sustained best interests. We believe that the issue will grow in importance over time as both pressures and opportunities for Scotland created by increasing international water scarcity emerge, and proposals for individual abstractions need to take account of that developing context. In future, therefore, someone who wants to undertake a large water abstraction—in other words, one that is over 10 megalitres per day—will be required not only to seek authorisation from SEPA under CAR but to make an application to ministers to set out their proposals.

Some have suggested—and Alex Johnstone has repeated these points this morning—that the CAR regime is sufficient for this purpose, but I strongly disagree. It works well for the purpose for which it was designed, which is to assess the impact of and to control abstraction on activities liable to adversely affect the water environment, but it focuses—rightly so—on environmental concerns. What about abstractions that do not have an adverse environmental impact but which might have other implications for, say, communities near the water body? Furthermore, we might need to make a determination between competing alternative demands for water that

might develop as a result of the changing views on water scarcity.

If SEPA does not consider an abstraction to have an adverse impact on the water environment, it will generally be approved under CAR. However, although SEPA can take account of wider social and economic factors in determining an application for an abstraction, it cannot set conditions on those wider social and economic issues. When granting CAR authorisations, SEPA is confined to imposing conditions it considers necessary to protect the water environment. Part 2, sitting alongside CAR, will allow us to take that wider social and economic perspective as well as the environmental perspective that SEPA is able to take under the CAR regime.

I understand the worries raised by some stakeholder groups that we are seeking to limit or curtail certain activities. I make it very clear that that is not the case: ministers will look at each application on its own merits. Ministers want—and, indeed, are obliged by part 1—to develop the value of Scotland's water resources. I expect that, as long as large-scale abstractions are sustainable and provide a sustained benefit to Scotland, ministers will grant their approval.

In deciding whether to grant permission and what conditions should be set, ministers will consider Scotland's best interests in the longer term and what represents good sustainable use of our water resources. We have also stated that ministers will bring forward regulations on the information that will accompany an application. My officials will continue to work with stakeholders as those regulations are drafted.

Later amendments will cover some of these issues but, for the purposes of this group, I ask Alex Johnstone not to press amendment 58. If he is minded to do so, I ask the committee to reject it.

**Alex Johnstone:** The inclusion of part 2 was not expected by many key stakeholders. I believe that the lack of understanding to which the cabinet secretary alludes and which I concede exists might be a direct result of the lack of consultation and the speed with which this part of the bill was introduced without the prior knowledge of many who are directly affected by it.

The general principles in part 2 cover areas that I admit will require further fine-tuning over time, but I believe that, although not perfect, the CAR regime could have been adjusted in the meantime to achieve additional objectives. That would have given us more time to consider the overall issue of abstraction and perhaps to legislate on it in future if required.

The committee requires to discuss the principle of whether section 5 should be in the bill. I have

enabled that by lodging amendment 58 and it is my intention to press it to a vote.

**The Convener:** The question is, that amendment 58 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Johnstone, Alex (North East Scotland) (Con)  
McCulloch, Margaret (Central Scotland) (Lab)  
Murray, Elaine (Dumfriesshire) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 3, Against 4, Abstentions 0.

*Amendment 58 disagreed to.*

*Section 5 agreed to.*

#### **Section 6—Prohibition arising**

*Amendment 59 not moved.*

*Section 6 agreed to.*

#### **Section 7—Exemption from approval**

**The Convener:** Amendment 15, in the name of the cabinet secretary, is grouped with amendments 16 to 20.

**Nicola Sturgeon:** These amendments all relate to part 2, which, I am glad to say, is still in the bill and concerns control of water abstraction.

Amendment 15 is a minor technical amendment that clarifies that abstractions connected with the maintenance of mines and quarries are exempt from the part 2 regime, regardless of whether the mine or quarry in question is in operation.

Amendment 16 arose as a result of some of the comments that were made at stage 1. It seeks to clarify, and emphasises that ministers, when making regulations about the method of calculation of the amount abstracted, can make provision for all or some of the water to be left out of account. The intention is that ministers will take into consideration the use of the water and, in particular, whether a significant proportion of it is returned to the water environment—for example, cooling water that is used in distillation processes. That should address the concerns of some stakeholders that large-scale but predominantly non-consumptive users of water might be unnecessarily subjected to the requirement for ministerial approval.

Amendment 17 will require ministers to consult the specified organisations, and any others that they think appropriate, about any proposal to alter the details of the abstraction consent regime, such as reducing the volume threshold above which consent is required. It is lodged in recognition that consultation is helpful for transparency and that it is helpful for stakeholders to have the opportunity to comment on a proposal to alter the regime that could affect them.

Amendment 18 inserts into the bill provisions related to corporate offending. It will mean that, where an offence is committed by a company or other corporate entity in relation to the abstraction control regime, and that offence is attributable to a corporate official such as a director or manager, that official—as well as the company itself—can be prosecuted. Abstractions subject to the part 2 regime will predominantly, if not exclusively, be made by corporations. Therefore, the possibility of personal prosecution will encourage compliance with the regime. There are examples of such provisions in other legislation.

Amendment 19 is proposed in response to comments from the Subordinate Legislation Committee. It provides that regulations prescribing additional circumstances in which ministerial approval of a qualifying abstraction may be suspended or revoked will be subject to the affirmative procedure.

Amendment 20 defines what is meant by “premises” as that term is used in part 2, which concerns the control of water abstractions. The term is used in relation to the advice that ministers receive from Scottish Water about the effect of an abstraction on its core services to premises in Scotland. It is also used in relation to Scottish Water’s exemption from the new approval regime. In both cases, the concept of premises ought to be as wide as possible, as ministers want to receive advice from Scottish Water in relation to the effects of a proposed abstraction on all premises that Scottish Water serves and want to fully exempt Scottish Water from the abstraction regime in relation to its core services.

I undertook to revisit the references to premises throughout the bill to check that they were appropriate. Amendment 20 provides an appropriate definition of premises for part 2 of the bill.

I move amendment 15.

*Amendment 15 agreed to.*

*Amendment 60 not moved.*

*Section 7, as amended, agreed to.*

### **Section 8—The relevant threshold**

*Amendment 16 moved—[Nicola Sturgeon]—and agreed to.*

*Amendment 61 not moved.*

*Section 8, as amended, agreed to.*

### **After section 8**

10:45

*Amendment 17 moved—[Nicola Sturgeon]—and agreed to.*

### **Section 9—Application for approval**

**The Convener:** Amendment 4, in the name of Elaine Murray, is grouped with amendments 5 to 7.

**Elaine Murray:** Section 9 concerns the procedure that would have to be followed when applying to the Scottish ministers for approval for a qualifying abstraction. Section 9(2) states that ministers

“may ... make provision about the procedure”

for applications. That is too ambiguous. There needs to be a clear duty on ministers to set out the procedures so that applicants are clear about what is expected of them. Section 9(3) states that “the regulations may” have to include a number of requirements relating to the process but, again, there should be a clear requirement for the regulations to set out those requirements.

Section 13 places a requirement on Scottish Water and on SEPA to give the Scottish ministers advice on any adverse impacts that might arise from the abstraction in question. However, Scottish Water and SEPA would only have to provide advice if ministers sought it. As the bill is currently drafted, ministers do not have to seek advice on the potential adverse impacts of every abstraction that qualifies under part 2. Amendment 7 requires ministers to seek advice when relevant.

At the moment, the advice will be sought only from SEPA and from Scottish Water. A wider list of relevant bodies should be included in the bill so that they are obliged to give evidence if a minister requests it. Such bodies should include Scottish Natural Heritage for advice relating to impacts on designated sites and protected species, and national park authorities and local authorities for advice on impacts relating to proposed abstractions within their administrative boundaries. Amendment 7 also requires ministers to take account of such advice when determining an application.

I move amendment 4.

**Nicola Sturgeon:** Amendments 4 and 5 would require ministers to make more detailed provision

by regulations regarding the application procedure for an abstraction approval and would also require them to ensure that all the elements listed at section 9(3) were included in the regulations. Although I agree that ministers should—and fully intend that they will—make regulations about the abstraction application process, I do not believe that reducing the flexibility over its content is sensible. I am therefore minded to support amendment 4, but not amendment 5.

Amendments 6 and 7 also seek to alter the position in the bill that ministers may seek advice about an application for abstraction consent from SEPA in relation to the environmental impact and from Scottish Water in relation to its core functions. The amendments would require ministers to seek advice from a greater number of organisations. I believe that that would hamper the application process by adding in bureaucracy that is not helpful. Ministers will of course be free to consult SNH and other bodies informally in relation to any particular application, should they consider it appropriate.

I therefore ask Elaine Murray not to move amendments 5, 6, and 7, but I indicate my support for amendment 4.

**Elaine Murray:** I press amendment 4.

*Amendment 4 agreed to.*

*Amendments 5 and 62 not moved.*

*Section 9, as amended, agreed to.*

#### **Section 10—Factors as to approval**

*Amendment 63 not moved.*

*Section 10 agreed to.*

#### **Section 11—Conditions of approval**

*Amendment 64 not moved.*

*Section 11 agreed to.*

#### **Section 12—Additional requirements**

*Amendment 65 not moved.*

*Section 12 agreed to.*

#### **Section 13—Advice from other bodies**

*Amendments 6, 7 and 66 not moved.*

*Section 13 agreed to.*

#### **Section 14—Suspension and revocation**

*Amendment 67 not moved.*

*Section 14 agreed to.*

#### **Section 15—Appeal against decision**

*Amendment 68 not moved.*

*Section 15 agreed to.*

#### **Section 16—Monitoring and records**

*Amendment 69 not moved.*

*Section 16 agreed to.*

#### **Section 17—Abstraction-related offence**

*Amendment 70 not moved.*

*Section 17 agreed to.*

#### **After section 17**

*Amendment 18 moved—[Nicola Sturgeon]—and agreed to.*

#### **Section 18—Procedure for regulations**

*Amendment 19 moved—[Nicola Sturgeon]—and agreed to.*

*Amendment 71 not moved.*

*Section 18, as amended, agreed to.*

#### **Section 19—Controlled Activities Regulations**

*Amendment 72 not moved.*

*Section 19 agreed to.*

#### **Section 20—Other definitions for Part**

*Amendment 20 moved—[Nicola Sturgeon]—and agreed to.*

*Amendment 73 not moved.*

*Section 20, as amended, agreed to.*

*Section 21 agreed to.*

#### **Section 22—Development of assets**

**The Convener:** Amendment 55, in the name of Jim Eadie, is grouped with amendments 56 and 8.

**Jim Eadie:** I do not wish to add much to what I said on the first group of amendments. Amendments 55 and 56 are suggested in light of the recommendation in paragraph 40 of the committee's stage 1 report, which calls for

“a deserved equality of emphasis to all three pillars of sustainability”.

That is about ensuring that we develop our water resources with due consideration to not just economic benefit, but environmental and social aspects. I look forward to hearing the Government's view on the amendments.

I move amendment 55.

**Elaine Murray:** Part 4 makes provisions to enable Scottish Water to enter into management agreements with land managers to protect and improve raw water quality. The inclusion of sustainable catchment management in the definition of “sustainable development” would help to take forward a sustainable catchment management approach that addresses water quality problems at source rather than relying solely on expensive end-of-pipe treatment solutions to treat water. The approach can deliver a range of benefits, including reduced water treatment costs and associated energy use and improved water quality, as well as benefits for biodiversity, climate change adaptation and recreation.

The committee’s stage 1 report made two recommendations in relation to catchment management. At paragraph 149, the committee welcomed

“the emphasis on partnership working and its reference to catchment management initiatives together with the non-legislative work that the Scottish Government intends to undertake to accompany the Bill.”

The committee stated that it would also welcome

“further details of what the non-legislative work will include, and also how the Scottish Government intends to engage with those groups that have concerns about this Part of the Bill to explain the rationale behind the provisions and their practical effect.”

In paragraph 150, the committee called on the Scottish Government

“to consider whether NGOs and catchment management groups should be specifically included in the Bill and to what extent it will include them in its non-legislative activity that will be conducted in parallel with the Bill.”

Amendment 8 would require ministers to provide guidance that sets out how Scottish Water can best take forward the sustainable catchment management approach. That could address the points that the committee raised in paragraphs 149 and 150 by clarifying how partnerships might be developed and how the relevant bodies and organisations could work together to take forward that approach.

**Nicola Sturgeon:** Amendment 55 aims to define value in the context of Scottish Water’s duty to develop the value of its assets and expertise as expressly including environmental and social benefits as well as economic benefits. That duty is in proposed new section 50A of the Water Industry (Scotland) Act 2002. The amendment would place particular emphasis on those further aspects of value. That is appropriate in the context of the duty on the Scottish ministers in part 1 of the bill to develop the value of Scotland’s water resources, but I am not so sure that it is suitable in the context of Scottish Water’s assets and expertise. Those contexts are quite different.

Scottish Water’s core functions are protected to some extent by proposed new section 50A of the 2002 act, but there could be adverse consequences from the amendment. As drafted, the amendment could distort the way in which Scottish Water should properly use and develop its assets and expertise. The resulting risk is that Scottish Water could end up with commercial disadvantages if it is forced to use and develop its assets and expertise in a particular direction. In particular, the amendment would affect the commercial operations of Scottish Water and its subsidiaries, which, given that they act in a competitive market, are understandably and properly driven by economic benefit to a large extent.

That said, the amendment has prompted us to think about the section again. Even as it stands, the reference to “other benefit” might need to be further qualified. Therefore, on reflection prompted by the amendment, we intend to look at the matter again before stage 3.

I thank Jim Eadie for lodging the amendment, but ask him to withdraw it for the reasons that I have given, on the understanding that the matter will be revisited before stage 3 and with the undertaking that I am happy to discuss further with him our developing thinking on the matter.

Amendment 56 would add a reference to achieving sustainable development to Scottish Water’s duty to develop its assets and expertise. Scottish Water’s functions are covered by section 51 of the Water Industry (Scotland) Act 2002, which already requires it, in exercising its functions, to act in the way that is best calculated to contribute to the achievement of sustainable development. The amendment is therefore not necessary and I ask Jim Eadie not to move it.

On amendment 8, Scottish Water has begun to pilot aspects of sustainable catchment management and is working in partnership with other agencies and those who live and work in particular catchments to explore the potential of a range of interventions. Scottish Water is, of course, concerned with developing all sustainable techniques to support water treatment processes and compliance with drinking water quality standards. The bill seeks to provide Scottish Water with the powers that it needs to support the sustainable management of our water resources, and it would be disproportionate to highlight one aspect of that wider sustainable approach. Sustainable catchment management will develop in importance over time and will gain definition, and I expect Scottish Water to play its part in that, but I do not consider that placing additional reporting burdens on just one of the many partners that are involved in the process to be particularly helpful. I understand Elaine Murray’s motivations

in lodging the amendment, but ask her to consider what I have said and to not move it.

**Jim Eadie:** I thank the cabinet secretary for her explanation and clarification. In particular, I understand the distinction that she has highlighted between the duty that is placed on ministers and the requirement that may be placed on Scottish Water. I welcome her commitment to revisit at stage 3 the issues that amendment 55 raises and am therefore content not to press the amendment to a vote.

*Amendment 55, by agreement, withdrawn.*

*Amendment 56 not moved.*

*Section 22 agreed to.*

#### After section 22

*Amendment 8 not moved.*

*Sections 23 to 26 agreed to.*

#### After section 26

**The Convener:** Amendment 21, in the name of the cabinet secretary, is in a group on its own.

**Nicola Sturgeon:** Amendment 21, which Scottish Water suggested, will insert a new section into the bill. Scottish Water brought to my attention an apparent inconsistency in relation to the permissible tolerances for water meter accuracy between section 54 of the Water (Scotland) Act 1980 and UK weights and measures legislation. I therefore agreed to lodge this technical amendment, as it is sensible to have consistency in such matters. For completeness, I should mention that what constitutes high and low flow rates is highly technical and unsuitable for primary legislation, so those terms will be defined in subordinate legislation. Amendment 21 expressly requires that to be the case.

I move amendment 21.

*Amendment 21 agreed to.*

#### Section 27—Steps for sake of quality

11:00

**The Convener:** Amendment 22, in the name of the cabinet secretary, is grouped with amendments 23 to 25.

**Nicola Sturgeon:** These amendments seek to make changes to part 4, which is about raw water quality. The intention is to allow Scottish Water to take a proactive approach to investigating the raw water within a catchment and determining any factors that might be impacting on its quality. Scottish Water has to treat raw water so that it meets drinking water quality standards when it becomes part of the public water supply. In some

instances, it might be cheaper to address the causes of upstream pollution through subsequent treatment. Part 4 of the bill is about empowering Scottish Water to be able to gather the information that it needs to make that assessment.

Amendment 22 will provide that raw water that forms part of a private water supply is excluded from these provisions. It would not be appropriate or necessary for Scottish Water to be able to take steps to investigate raw water that was part of a private supply, as its interest is only in water that is intended to become part of the public supply. What constitutes a private supply is to be defined in subordinate legislation, as it is likely to be done by reference to how a private supply is defined in other subordinate legislation, to which it would not be appropriate for primary legislation to refer.

Amendments 23 and 24 provide clarification that, in undertaking investigations into raw water quality, an approved person may use equipment that measures the water as well as take samples or install equipment to do so. Measurement of water will often be a necessary element of assessing raw water quality.

Amendment 25 confirms that regulations defining private water supplies for the purposes of part 4 are subject to the negative resolution procedure. I believe that that is the appropriate level of scrutiny for such orders. The amendment will bring the procedure for the two types of order that relate to the raw water provisions into a single new section in the Water (Scotland) Act 1980, into which the provisions on raw water quality will be inserted.

I move amendment 22.

*Amendment 22 agreed to.*

*Amendments 23 to 25 moved—[Nicola Sturgeon]—and agreed to.*

*Section 27, as amended, agreed to.*

#### Section 28—Agreements about activities

**The Convener:** Amendment 10, in the name of Elaine Murray, is in a group on its own.

**Elaine Murray:** The bill's provisions would enable Scottish Water to enter into agreements

“for the purpose of protecting or improving”

raw water quality. That is obviously a good thing, and management agreements will contribute to sustainable catchment management by addressing drinking water quality issues at source.

However, the provisions fail to provide the opportunity for management in drinking water catchments to deliver wider benefits and to meet in an integrated way other statutory duties—for example, those relating to the water framework

directive and sustainable flood management. The intention behind amendment 10 is to ensure that the meeting of environmental objectives under the Water Environment and Water Services (Scotland) Act 2003 and sustainable flood management objectives under the Flood Risk Management (Scotland) Act 2009 is included when management agreements are entered into.

I move amendment 10.

**Nicola Sturgeon:** Section 28 will insert new section 68A into the Water (Scotland) Act 1980, enabling Scottish Water to enter into agreements with landowners or local authorities to carry out activities that Scottish Water considers necessary to protect or improve raw water quality.

Amendment 10 would enable Scottish Water to enter into agreements with landowners or local authorities in order also to carry out activities that Scottish Water considers necessary to meet objectives under the Water Environment and Water Services (Scotland) Act 2003 and the Flood Risk Management (Scotland) Act 2009, and for the purposes of the duty in the bill to develop the value of Scotland's water resources.

The 2003 act objectives referred to in paragraph (a) of the proposed new subsection that the amendment would insert in section 28 are set by the Scottish Environment Protection Agency in accordance with the water framework directive. Scottish Water is not obliged to meet those objectives. I do not think, therefore, that there is anything to be gained by empowering Scottish Water to enter into voluntary agreements with landowners to try to achieve those objectives.

Section 28 is about agreements to improve raw water quality; it is not about flood risk management. I consider that the extensive duties in the Flood Risk Management (Scotland) Act 2009 are already sufficient, and I would argue that paragraph (b) of the proposed new subsection is unnecessary.

On paragraph (c), Scottish Water is already empowered by section 21 of the bill

“to do anything that”

it

“considers will assist in the development of the value of Scotland's water resources”.

That power is broad and, although this is not explicit, it encompasses the ability to enter into agreements with landowners, occupiers or local authorities. As such, paragraph (c) of the proposed new subsection is unnecessary.

I do not consider any of the three elements of amendment 10 to be necessary. Furthermore, I do not consider that they belong in new section 68A of the 1980 act, which concerns agreements for

raw water quality. The water framework directive and flood risk management issues have nothing to do with raw water quality. Furthermore, the amendment would not add anything to the duty that is already placed on Scottish Water under the Flood Risk Management (Scotland) Act 2009 to work with other responsible authorities

“with a view to reducing overall flood risk”.

All of that said, I would welcome further discussion with Elaine Murray on the matter ahead of stage 3 to see whether there are any issues that are worthy of further exploration. However, for now, and for the reasons that I have stated, I ask her to withdraw the amendment.

**Elaine Murray:** A primary issue in the bill is around Scottish Water's core functions regarding raw water quality. Amendment 10 was intended not to take anything away from that core responsibility, but to try to ensure that Scottish Water considered the opportunities to deliver other statutory duties, such as those under the 2003 act or the 2009 act, alongside delivery of the core function of improving raw water quality. I am prepared to withdraw the amendment on the basis that it is perhaps not the most appropriate way of achieving that objective, and that we might be able to consider some further refining before stage 3.

*Amendment 10, by agreement, withdrawn.*

*Section 28 agreed to.*

*Sections 29 to 31 agreed to.*

### Section 32—Substances generally

**The Convener:** Amendment 26, in the name of the cabinet secretary, is grouped with amendments 27 to 29.

**Nicola Sturgeon:** This group of amendments relates to part 6 of the bill, which deals with the sewerage network and any discharges into the public sewer. Under the provisions that part 6 inserts into the Sewerage (Scotland) Act 1968, an offence is committed if a person

“passes, or permits to be passed,”

fat, oil or grease into the public sewer network from trade premises.

Substances such as fats cause Scottish Water a great deal of difficulty, as they can block pipes and reduce flow rates, and they are time consuming and costly to remove. However, there are situations where a person may be permitted under part II of the 1968 act to pass fat, oil or grease into the network. It goes without saying that a person should not be committing an offence by doing that when they are permitted to do so. Although the competing rules would fall to be reconciled in practice, amendment 26 makes it explicitly clear that no offence is committed when the act in

question is done with the relevant permission. That is consistent with a similar offence already in the 1968 act. Amendment 27 is a technical change consequential to amendment 26.

Amendment 28 provides that, where Scottish Water has given its consent to the discharge, it cannot recover its costs for repairing any damage that has been caused. Amendment 29 is a technical change consequential to amendment 28.

I move amendment 26.

*Amendment 26 agreed to.*

*Amendments 27 to 29 moved—[Nicola Sturgeon]—and agreed to.*

*Section 32, as amended, agreed to.*

*Section 33 agreed to.*

### After section 33

**The Convener:** Amendment 9, in the name of Elaine Murray, is in a group on its own.

**Elaine Murray:** The purpose of amendment 9 might have been incorporated through amendment 20; I am sure that the cabinet secretary will be able to advise us whether that is the case. Amendment 9 would clarify the definition of trade premises by inserting the words

“premises used or managed by a public body or office holder (within the meaning of section 58 of the Nature Conservation (Scotland) Act 2004)”.

The bill creates an offence in relation to

“the passing of fat, oil or grease from trade premises into a public sewer or a drain”

and uses the definition of trade premises in section 59(1) of the 1968 act, which is

“any premises used or intended to be used for carrying on any trade or industry”,

which

“shall include premises used or intended to be used in whole or in part for carrying on agriculture, horticulture or scientific research or experiment, or as a hospital or ... as accommodation provided by a care home service”.

Many public sector premises, such as local authority offices, schools and further education establishments, are not covered by the 1968 act’s definition. Given the scale of catering facilities in some public sector premises, it would be sensible for the provisions on the discharge of fats, oils and grease into the sewerage network to cover them. However, as I said, amendment 9 might have been overtaken by amendment 20.

I move amendment 9.

**Nicola Sturgeon:** I thank Elaine Murray for outlining the reasons behind amendment 9. The issue is different from the one that we previously

debated, so it is fair to debate the amendment on its own merits.

Amendment 9 would bring premises that are used by certain public bodies or office-holders within the scope of the new offence that relates to the discharge of fat, oil and grease from trade premises and the new power for Scottish Water to recover expenses for any damage that is caused to sewers or drains as a result. With the exception of hospitals and care homes, premises that public bodies use are generally excluded from the new provisions and from the trade effluent consent regime in part II of the 1968 act.

The amendment raises the question whether the trade effluent consent regime would be extended to cover premises that public bodies use because, at first sight, they would be brought into that regime as a result of changing the meaning of “trade premises”. On the other hand, the definition of trade effluent would not be expanded to include waste from such premises.

The 1968 act regime works well and will be further improved by the addition, through the bill, of the provisions that expressly prohibit the discharge of fats, oils and grease into the public sewer. Those provisions complement provisions that are in the 1968 act, and I am not aware of any concerns on the part of Scottish Water because the provisions do not extend to premises that are used by public bodies generally.

I urge Elaine Murray to withdraw amendment 9, but I would be happy to discuss the issue before stage 3, in case there is a particular reason for the amendment that we have not encapsulated in the response that I have just given.

*Amendment 9, by agreement, withdrawn.*

### Section 34—Common maintenance

**The Convener:** Amendment 30, in the name of the cabinet secretary, is grouped with amendment 11.

**Nicola Sturgeon:** Amendment 30 relates to the provisions in part 6 of the bill on the maintenance of private sewage treatment works, which most commonly take the form of a septic tank. When such works are owned in common, the consent of all proprietors to any maintenance is normally required, either by title conditions or at common law. That can result in a minority blocking their fellow owners’ attempts to empty a tank or maintain it properly, which could damage the water environment and place all proprietors in breach of conditions that are imposed under CAR.

The bill seeks to address that problem by allowing any owner of works that are owned in common to undertake necessary maintenance without the consent of all the other owners and to

recover their shares of the costs from those owners. It is implicit that the provisions are intended to override any contrary common-law rules and any alternative provision in the title deeds of properties, but it is prudent to put that beyond doubt. Accordingly, amendment 30 clarifies that the provisions take precedence over any contrary rule of law or real burden.

Amendment 11 would require SEPA to publish a strategy to secure better public understanding of the statutory requirements on the registration, care and maintenance of septic tanks. The amendment aims to address concerns that have been raised about the lack of awareness of how best to maintain a septic tank, which I agree is an issue.

I understand that SEPA, Scottish Water and my officials have agreed a work plan on the subject, which has been published on the Scottish Government's website. That work plan aims to address various issues that relate to septic tanks, such as increasing the number of tanks that are registered with SEPA, sharing data on their locations and increasing public awareness of responsibilities to maintain and empty them. I am sure that SEPA and Scottish Water would be happy to provide an update on that programme of work to the committee or individual members to reassure them that the work is under way. In light of that, I ask Elaine Murray not to move amendment 11.

I move amendment 30.

11:15

**Elaine Murray:** Amendment 11 seeks to include in the bill provision on septic tank maintenance, in particular by requiring SEPA to produce

“a strategy for securing improved public understanding of the requirements ... for the registration, care and maintenance of septic tanks.”

Despite a requirement under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 for all septic tanks to be registered with SEPA, it is known that the register of septic tanks in Scotland is incomplete. A recent policy statement on rural waste water treatment recognised that

“around 40% of all tanks remain unregistered.”

That policy statement made recommendations on the better management of septic tanks, including that SEPA should raise awareness of the legal obligations on septic tank owners. It may be that the planned work to which the cabinet secretary referred is part of that awareness-raising process. Amendment 11 would take that forward by requiring SEPA to produce a strategy setting out how it will improve awareness about the registration, care and maintenance of septic tanks

in Scotland. The bill already includes provisions to improve septic tank management; the aim of amendment 11 is to build on that by including the requirement for such a strategy.

However, I understand from the cabinet secretary's remarks that a work plan is already under way, so I will not move amendment 11.

**Alex Johnstone:** I want to say a few words in support of amendment 11, although Elaine Murray has made it clear that she does not intend to move her amendment. My experience on the ground is that there is a great deal of confusion and misunderstanding surrounding the issue of registration and maintenance of septic tanks. The issue appears sporadically but quite often in my mailbag, perhaps largely due to the fact that I represent a rural area where there are a lot of private septic tanks and sewage works. The proposal may well be covered by existing regulation, but the implementation of that is not as perfect as it might otherwise be. Elaine Murray has correctly identified an issue that needs work, and I would be very supportive of any improvement in the position in future.

**Nicola Sturgeon:** I agree with Alex Johnstone that it is helpful to have the issue highlighted. That lack of awareness and understanding has prompted the work to which I referred. In asking for amendment 11 not to be moved, I recognise the issue that has been raised, but I think that it is being dealt with through the work that I described. As I said, I am sure that Scottish Water and SEPA would be happy to brief the committee further on that.

*Amendment 30 agreed to.*

*Amendment 11 not moved.*

*Section 34, as amended, agreed to.*

*Sections 35 and 36 agreed to.*

### **Section 37—Content of order**

**The Convener:** Amendment 31, in the name of the cabinet secretary, is grouped with amendments 32 to 52.

**Nicola Sturgeon:** Amendments 31 to 52 refine the operation of water shortage orders, the detail of which is set out mainly in schedule 1 to the bill. The amendments have been developed following discussion with Scottish Water and SEPA on the anticipated practical operation of the provisions. Although we do not expect to have to make water shortage orders in Scotland frequently, we want the provisions to be clear and unambiguous so that they provide a clear set of actions and a timescale for the process, including a straightforward process by which people can make representations to ministers, so that the orders are able to achieve the right result.

Amendment 31 makes it clear that a water shortage order may impose water-saving measures in relation to particular premises or property or types of premises or property. For example, the measures might apply only to premises used for particular purposes or only to particular types of buildings.

Amendment 32 provides that Scottish Water may publicise proposed water shortage orders, in addition to on its website or in a newspaper, “in such other manner as it thinks fit.”

Amendments 33 and 34 will make minor drafting clarifications. Amendment 35 provides that Scottish Water need notify affected owners about a proposed order only

“so far as reasonably practicable”.

That will avoid issues that might otherwise arise if Scottish Water cannot identify a particular owner despite its best efforts to do so.

Amendments 36 to 44 are technical amendments that clarify but do not significantly change certain details regarding the notice and representation provisions of schedule 1.

Amendments 45 and 46 will reduce from two to one the minimum number of newspapers in which Scottish Water must publish notice of a water shortage order or the extension of such an order. Those are minimum requirements, and Scottish Water may publish more widely if it thinks it appropriate to do so. In practice, I think that we can expect the national media to play their part in publicising the fact that a water shortage order has been made.

Amendments 47 and 48 are drafting clarifications.

Amendment 49 ensures that measuring equipment can be installed in premises as part of a water shortage order, where Scottish Water needs to take measurements.

Amendment 50 will ensure that, whenever Scottish Water or ministers are obliged to publish or give notice of something in connection with water shortage orders, they do so without undue delay. That reflects what is likely to be the relatively urgent context of a water shortage order and will ensure that each stage of the process is progressed promptly.

Amendment 51 adds a corporate offending provision in relation to the section 41 offence of failure to comply with a water shortage order. In a similar manner to the corporate offending provision amendment that was discussed earlier in relation to the abstraction control regime in part 2, that will allow corporate officials to be prosecuted where corporate behaviour is properly attributable to them, which will encourage compliance.

Finally, amendment 52 broadens the definition of “premises” as it applies in part 7, so that a water shortage order may apply to as broad a range of premises as possible. In the case of a shortage in the public supply, everyone, from businesses to householders, could be asked to do their bit to help reduce demand on the network, and this amendment seeks to clarify that every conceivable type of premises may be the subject of a water shortage order.

In summary, although these amendments are mainly technical in nature, they are all important to ensure the proper and effective functioning of the new system of water shortage orders that is being introduced by the bill.

I move amendment 31.

*Amendment 31 agreed to.*

*Section 37, as amended, agreed to.*

*Sections 38 and 39 agreed to.*

#### **Schedule 1—Water shortage orders**

*Amendments 32 to 50 moved—[Nicola Sturgeon]—and agreed to.*

*Schedule 1, as amended, agreed to.*

*Sections 40 and 41 agreed to.*

#### **After section 41**

*Amendment 51 moved—[Nicola Sturgeon]—and agreed to.*

*Sections 42 to 44 agreed to.*

*Schedule 2 agreed to.*

*Sections 45 and 46 agreed to.*

#### **Section 47—Other expressions in Part**

*Amendment 52 moved—[Nicola Sturgeon]—and agreed to.*

*Section 47, as amended, agreed to.*

*Section 48 agreed to.*

#### **Schedule 3—Repeal of enactments**

*Amendment 74 not moved.*

*Schedule 3 agreed to.*

*Sections 49 to 52 agreed to.*

#### **Long title**

*Amendment 57 not moved.*

**The Convener:** Amendment 75 is in the name of Alex Johnstone.

**Alex Johnstone:** Unfortunately, due to my failure to persuade the minister earlier, there is no need for this amendment.

*Amendment 75 not moved.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the bill. I thank the cabinet secretary and her officials for their attendance.

11:24

*Meeting suspended.*

11:29

*On resuming—*

## **Proposed Responsible Parking (Scotland) Bill (2)**

**The Convener:** Agenda item 3 is on the proposed responsible parking bill. We will hear from Sandra White on the statement of reasons that she lodged to accompany her draft proposal for the bill. Standing orders require any member who wishes to introduce a member's bill to first lodge a draft proposal, a brief explanation of the purposes of the proposed bill and either a consultation document or a written statement of reasons why consultation on the draft proposal is unnecessary.

This session is required as the member has chosen not to carry out a public consultation on her proposals and the Parliamentary Bureau has referred the draft proposal to this committee.

I welcome Sandra White to the meeting and ask her to make a brief opening statement.

**Sandra White (Glasgow Kelvin) (SNP):** Thank you very much, convener. You will be glad to know that the paperwork that I am carrying is not all for this; it is from a previous committee.

I thank you and the members of the committee for taking time out of a very busy schedule to allow me to put forward my reasons why, under rule 9.14.3 of the Parliament's standing orders, I believe that consultation on my draft proposal is unnecessary. I can explain why, but I know that you have a copy of my reasons. I leave it open to the committee to choose whether it wishes me to go through my reasons or whether members just wish to ask me questions, which I am happy to answer.

**The Convener:** Please explain a little of why you think that consultation is unnecessary.

**Sandra White:** Before I start on my statement of reasons, I would like to thank Joe FitzPatrick and Ross Finnie for their work in lodging their proposed bills on responsible parking and parking on raised pavements.

In October 2010, Ross Finnie lodged a proposal for a regulation of dropped kerbs and pavement parking bill. A consultation was undertaken and the results were published on 8 March 2011. Of the 123 responses that were received, 83 per cent were positive and wished the bill to be introduced.

On 28 March 2012, Joe FitzPatrick lodged a proposal for a responsible parking bill that built on the work that had been done by Ross Finnie, whose bill had fallen when he was not re-elected. I was asked to take over the proposal when Joe FitzPatrick was promoted to minister, which I was

very glad and privileged to do. The consultation on Joe FitzPatrick's proposed bill received 414 responses, 95 per cent of which were positive and in favour of introducing the bill.

I must also thank various groups who made up the responsible parking alliance, although I will not go through all of them. Some members of the groups are in the Parliament today, sitting behind me. Guide Dogs Scotland, Epilepsy Scotland and others were involved in helping me to publish the findings of Joe FitzPatrick's consultation. Those people also responded to a consultation of my own that I was doing at the time in my area of Glasgow Kelvin. Apart from the groups who are named in my statement of reasons, we contacted and received responses from the police, the fire brigade, individuals and community councils. The statement of reasons has links to consultation responses on the Parliament website.

I ask that you look favourably on my request that there should be no further consultation and I hope that we can introduce a bill that will give justice to the many people in Scotland who do not currently have justice, fairness or equality.

Most people know about pavement parking and double parking and the problems that they cause for guide dogs, young mothers with prams, elderly people and wheelchair users. Pavements are for people and roads are for cars.

I will leave it at that, although I am happy to answer any questions that members have.

**Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP):** Good morning, Sandra. How does your proposal compare with the proposal that Joe FitzPatrick lodged? Is it exactly the same?

**Sandra White:** It is exactly the same. There were suggestions that we could introduce the bill much quicker if we looked at the deregulation and criminalisation of parking, which Joe FitzPatrick looked at. That would need to be carried out by individual local authorities, so in the interests of fairness, justice and equality, it would be much better to take the issue forward for all local authorities and not treat them individually.

In that manner it perhaps goes slightly further, but my proposal is exactly the same as Joe FitzPatrick's.

**Elaine Murray:** You mentioned that there were 414 responses to Joe FitzPatrick's consultation, of which the vast majority were favourable. Did any key issues come out of that consultation and, if so, how have you taken them into consideration?

**Sandra White:** Four hundred and fourteen responses is the most responses a consultation on a member's bill proposal has had, and 95 per cent of respondents were in favour of the bill. I have also had comments from people who have come

to my constituency office with issues, some of which I have taken forward with Glasgow City Council.

I have visited areas where people have had problems. For example, there is an elderly people's home in my area, outside which cars are parked with all four wheels on the pavement—and the drivers rev up under residents' windows. Residents who use wheelchairs and walking sticks cannot get out at all, and ambulances and other emergency services cannot get in. Part of the bill is about educating drivers so that they know that parking in that way is not the done thing.

I have dealt with individual cases as they have come up, and the bill takes account of people's responses.

**Elaine Murray:** Did particular concerns emerge from Joe FitzPatrick's consultation? Did anything emerge that made you want to extend or change his proposals?

**Sandra White:** No. Any negative responses can be considered at stage 1 and I am sure that we will come to some arrangement. Some respondents said that some streets are so narrow that cars cannot park on both sides of the road. That is something that we will have to look at when it comes up at stage 1. I am sure that common sense will prevail.

I do not think that when people park in the way that I described they are deliberately being obstructive. It is about education. Anyone can see that people in wheelchairs should be able to use pavements. In one case, a man who was blind was walking along the pavement and his stick hit a car that had been parked on the pavement. The stick was broken in half, which left the man stranded on the pavement for more than two hours, because he could not move on without his stick. I am sure that the person who parked the car did not intend that to happen, but their parking was not just irresponsible but dangerous. I am glad that such cases will be talked about when we get to stages 1 and 2 of the bill.

**Alex Johnstone:** We heard that there have been consultations on the issue. Since you took on responsibility for the bill proposal, what contact have you had with stakeholders? Are you still in dialogue? Who are the significant stakeholders?

**Sandra White:** I have certainly had contact and have worked closely with Joe FitzPatrick—I had been looking at a similar proposal for Yorkhill, in my constituency, so I had spoken to Joe about that. I have had lots of meetings with people such as the Guide Dogs for the Blind Association, the responsible parking alliance—someone from the alliance is here today—and Capability Scotland. I have also talked to community councils and the individuals who have contacted me. I still keep up

that contact, of course, and I am still getting letters, emails and Twitter comments from people who have heard about the bill proposal and support it.

The consultation responses were gathered in and I worked with Joe FitzPatrick and his assistant to produce the information that is on my website. I will continue to work with stakeholders.

**Alex Johnstone:** Post-consultation, active dialogue continues.

**Sandra White:** It absolutely does, yes.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** Given that much of the legislation on parking is reserved to Westminster, what discussions, if any, have you had with the Scottish Government and others about how the bill would be implemented and enforced?

**Sandra White:** I have had meetings with the non-Executive bills unit—I still call it NEBU, but I think that it is now called the non-Government bills unit. I have also spoken to the minister, who is very supportive of the proposal and was at the launch. We think that under the Scotland Act 1998 the Parliament can consider the bill. I have had some discussions—that is probably the word—with the non-Government bills unit about ironing out some difficulties that it highlighted, but I am still insistent that the Scotland Act 1998 allows the proposed bill to be considered here. At present, as I said, the legislation is there to allow individual councils to criminalise parking. I believe that, under the Scotland Act, we can do that Scotland-wide.

**The Convener:** As there are no further questions, I thank Sandra White. We will consider what we have heard from her later in the meeting and reach a view on whether we are content with her statement of reasons.

**Sandra White:** Thank you, convener.

## European Commission Work Programme

11:40

**The Convener:** We move on to agenda item 4, which is consideration of the European Commission work programme and European Union priorities for engagement and scrutiny. I invite Jim Eadie to speak to paper ICI/S4/13/2/3.

**Jim Eadie:** Thank you, convener. This agenda item is for the committee to review the European Commission work programme and agree priorities for the coming year. The Parliament's strategy for EU engagement requires us to undertake this annual review and requires a chamber debate to be held on all the subject committees' EU priorities. Following today's consideration, the committee will write to the European and External Relations Committee to outline our priorities and that committee will compile our response together with all the other subject committees' responses before the chamber debate, which is due to take place at the end of February.

Members will see that the paper that has been circulated includes a number of priorities that are continuing from last year. Members will also see, under each priority, some suggested committee activity. Following our consideration today, if members agree, we can arrange for requests for information to be issued accordingly. In addition, the paper includes an update on the Brussels visit that took place in December 2012, which involved the European rapporteurs from across the Parliament's committees.

The paper highlights proposals in four policy areas that continue to be priorities for the committee—public procurement, water resources, broadband infrastructure and state aid. The proposals on a blue belt for a single market for maritime transport and a framework on future EU ports policy were flagged up to the committee as potentially being of interest. The proposals from the European Commission suggest that both initiatives will focus on developing the single market in those sectors. As the issues are largely reserved, the committee will wish to retain a watching brief on them but not include them as its priorities.

The committee is asked to consider and agree its priorities for scrutiny of proposals in the European Commission work programme and to note the update that has been provided on the Brussels visit.

**The Convener:** Does anyone have any comments?

**Members:** No.

**The Convener:** Do we agree to the EU priorities as set out in the paper?

**Members** *indicated agreement.*

**The Convener:** We will write to the European and External Relations Committee to detail our priorities and proposed actions, which will be debated in the chamber in the coming months alongside the other subject committees' EU priorities. In addition, we will make the information available on the committee's web pages. Is that agreed?

**Members** *indicated agreement.*

**The Convener:** As agreed under item 1, we now move into private session.

11:43

*Meeting continued in private until 11:49.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

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e-format first available  
ISBN 978-1-78307-195-1

Revised e-format available  
ISBN 978-1-78307-211-8

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Printed in Scotland by APS Group Scotland

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