

# **RURAL AFFAIRS AND ENVIRONMENT COMMITTEE**

Wednesday 19 November 2008

Session 3

£5.00

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## RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

21<sup>st</sup> Meeting 2008, Session 3

### CONVENER

\*Roseanna Cunningham (Perth) (SNP)

### DEPUTY CONVENER

\*John Scott (Ayr) (Con)

### COMMITTEE MEMBERS

Karen Gillon (Clydesdale) (Lab)

\*Liam McArthur (Orkney) (LD)

\*Alasdair Morgan (South of Scotland) (SNP)

\*Elaine Murray (Dumfries) (Lab)

\*Peter Peacock (Highlands and Islands) (Lab)

\*Bill Wilson (West of Scotland) (SNP)

### COMMITTEE SUBSTITUTES

\*Rhoda Grant (Highlands and Islands) (Lab)

Jamie Hepburn (Central Scotland) (SNP)

Jim Hume (South of Scotland) (LD)

Nanette Milne (North East Scotland) (Con)

\*attended

### THE FOLLOWING GAVE EVIDENCE:

Nick Evans (Scottish Government Directorate for the Built Environment)

Stuart Greig (Scottish Government Environmental Quality Directorate)

Lindsey Henderson (Scottish Government Legal Directorate)

Bob Irvine (Scottish Government Climate Change and Water Industry Directorate)

Louise Miller (Scottish Government Legal Directorate)

Fiona Quinn (Scottish Government Environmental Quality Directorate)

Judith Tracey (Scottish Government Environmental Quality Directorate)

### CLERK TO THE COMMITTEE

Peter McGrath

### SENIOR ASSISTANT CLERK

Roz Wheeler

### LOCATION

Committee Room 2



## Scottish Parliament

### Rural Affairs and Environment Committee

Wednesday 19 November 2008

[THE CONVENER opened the meeting at 10:01]

### Decisions on Taking Business in Private

**The Convener (Roseanna Cunningham):** I welcome everyone to the meeting. Please ensure that BlackBerrys and mobiles are switched off or at least put in non-receive mode.

Karen Gillon is a long-term absentee and Rhoda Grant is a long-term substitute, but there are no other apologies.

Agenda item 1 is about taking business in private. The committee is asked to agree to consider the draft report on its rural housing inquiry in private at future meetings and to consider its work programme in private at its next meeting. That is standard practice with the committee. Do all members agree?

**Members indicated agreement.**

### Subordinate Legislation

#### Pesticides (Maximum Residue Levels) (Scotland) Regulations 2008 (SSI 2008/342)

10:02

**The Convener:** Item 2 is consideration of a negative instrument. The Subordinate Legislation Committee has not commented on the regulations, no concerns have been raised by any member, and no motions to annul have been lodged. I therefore ask that the committee agrees not to make any recommendations in relation to SSI 2008/342, as detailed on the agenda.

**Members indicated agreement.**

10:02

*Meeting suspended.*

10:03

*On resuming—*

### Flood Risk Management (Scotland) Bill: Stage 1

**The Convener:** This is our first evidence-taking session on the bill. The format is that Scottish Government officials will explain each part of the bill in order and the committee will ask questions on each part, after it has been explained, rather than leave them in a pile to be asked at the end.

The panel of officials is welcome. Nick Evans is a principal planner in sustainable development, climate change and renewable energy; Stuart Greig is a senior flooding policy officer; Lindsey Henderson is a principal officer from the legal directorate; Bob Irvine is the deputy director of the water, air, soils and flooding division; Louise Miller is head of branch 2 food and environment; Fiona Quinn is the flooding bill manager; and Judith Tracey is the flooding policy team leader.

I invite the relevant officials to make their opening remarks, which should include an explanation of part 1. You will have to be fairly brief, so that we can get straight to the meat. You will be aware that the committee has done an extensive inquiry on flooding and is already pretty up to speed on a lot of the issues.

**Bob Irvine (Scottish Government Climate Change and Water Industry Directorate):** Thank you, convener. I will make a few introductory remarks before Judith Tracey goes over parts 1 and 2. As you say, the committee investigated flooding with great thoroughness and produced a helpful report, which was published earlier this year. We hope that the provisions that we will describe reflect how ministers took the committee's work fully into account.

The bill has eight parts—the degree of detail varies—and attempts to do five principal things, which we will describe as we go through our evidence. First, there is co-ordination and co-operation in flood risk management, which involves a new set of obligations and a clarification of responsibilities on existing bodies that relate to the assessment of flood risk and the preparation of flood risk management plans. In those provisions we have transposed the recent European directive on floods: the European Directive on the Assessment and Management of Flood Risks (2007/60/EC of 23 October 2007).

We then look at amending and clarifying local authority and Scottish Environment Protection Agency functions for flood risk management, to co-ordinate their actions and those of other relevant agencies. There is also a revised

statutory process for flood risk management schemes and the processing of them that replaces those in the Flood Prevention (Scotland) Act 1961, which have been widely thought to be unsatisfactory and not up to contemporary requirements. Finally, a more uniform approach to the enforcement of the Reservoirs Act 1975 is created. All those provisions have been extensively discussed with stakeholder groups, and that process continues. We are looking to deliver, as far as we can, the best set of provisions. Ministers are clear that they are positively disposed to suggestions that can improve the principles and provisions that we have set out in the bill.

I hope that that introductory context is helpful. I ask Judith Tracey, who led the detailed consideration from the policy point of view, to introduce and set out parts 1 and 2.

**The Convener:** Right. We wanted to go through the bill part by part and go straight to questions on each part. It would be more helpful for us to do that for part 1 before we move to part 2.

**Bob Irvine:** I am sure that Judith Tracey can break her comments at the end of part 1.

**Judith Tracey (Scottish Government Environmental Quality Directorate):** Part 1 sets out the general duty directions and guidance. It creates general duties that the Scottish ministers, SEPA and the responsible authorities must comply with when exercising their functions in relation to flood risk management. It includes a duty to exercise those functions with a view to reducing overall flood risk. It will, for the first time, place flood risk management on an equal footing with other general duties on local authorities, such as that to provide education and other services. Also for the first time, it will give Scottish Water a statutory responsibility for flood risk management. To ensure partnership working, there is a duty on the Scottish ministers, SEPA, local authorities, Scottish Water and the other responsible authorities to co-operate so as to co-ordinate their respective functions for flood risk management.

**The Convener:** Thanks. Some written evidence asks why the bill is not a bit more specific about some of the responsibilities, and some witnesses have suggested that questions about the bill must start with that. The “it depends” kind of answer will not necessarily move us much further forward if the lines of responsibility are not clear cut. Can the officials explain why we are left with that slight blurring in the bill?

**Judith Tracey:** I think that we have gone as far as we can in setting out who is responsible for each part. When we set out the proposed amendments for stage 2, we realised that we might need to strengthen in two areas who exactly

is responsible for particular things—it concerns the assessment of the drainage infrastructure; we are looking to put a specific duty for that on Scottish Water—but responsibility for general flood risk management has always been with local authorities and it remains there.

**The Convener:** So you are clear that that responsibility lies with local authorities?

**Judith Tracey:** Yes.

**Peter Peacock (Highlands and Islands) (Lab):**

Who is responsible for implementation? In a letter subsequent to the policy memorandum on the bill, the Minister for Environment indicated that he is

“considering amendments to promote a stronger link between the general duty to act to reduce overall flood risk and the implementation of flood risk management plans.”

Can you say what the Government has in mind?

**Judith Tracey:** Some concern has been raised that the bill places no duty on authorities to implement flood risk management plans. We do not want to impose a duty to implement such plans because there is no duty to implement other, similar, plans that local authorities develop. Placing a duty on local authorities purely to implement flood risk management plans would risk elevating those plans above other services that local authorities provide.

In light of the concerns that have been raised, we included the general duty at the beginning of the bill, to ensure that all local authorities, Scottish Water and the other responsible authorities have a duty to reduce overall flood risk. Combined with the power, which is provided later on, to carry out any work to reduce flood risk in their area—provided that such work is linked to a flood risk management plan—the general duty imposes a fairly strong duty on local authorities to carry out the work that is in a flood management plan. However, because those other concerns have been raised, we might try to see whether we can strengthen the duty slightly. We have not taken that any further yet, but we are open to suggestions—although we would not go as far as imposing a particular duty to implement flood risk management plans.

**Peter Peacock:** So there is no intention to impose a specific duty to implement the plans?

**Judith Tracey:** No.

**Peter Peacock:** People have made quite strong representations that the lack of a specific duty seems like an omission. One conclusion of our inquiry into flooding and flood management was the need for absolute clarity about who is responsible for what. Are the flood risk management plans that local authorities will not be

under a specific duty to implement nonetheless plans that they must agree to, along with the other partners?

**Judith Tracey:** The plans must be developed by SEPA in co-operation with all the other responsible authorities.

**Peter Peacock:** Do local authorities need to agree those plans? Will there be some process whereby, once the co-operation has taken place, all the partners involved say, "This is now an agreed plan"?

**Judith Tracey:** Yes, agreement is required.

**Peter Peacock:** But local authorities will be under no duty to implement their agreed plan.

**Judith Tracey:** There will be no duty to implement, but they will have a duty to reduce flood risk. Plus, anything that a local authority wants to do on flood risk management in its area must be related to the plan. Local authorities will have the overall responsibility. I find it difficult to accept that a local authority that has a flooding problem will not want to deal with that problem. The only way it could deal with the problem would be through the agreed flood risk management plan, unless there was an emergency.

**Peter Peacock:** You have pointed out that all local authorities will want to improve the situation in their area. Notwithstanding that, there may be aspects of the plan that they find it difficult to address at particular moments in time because of the effect on the livelihood or health or wellbeing of their residents or citizens. What provision if any does the bill make for addressing situations in which the agreed plan is not being implemented? I am not necessarily thinking about a sanction but, given that there will be no duty to implement the flood risk management plan, what would happen if the agreed plan was not being implemented?

**Judith Tracey:** Ministers have powers under part 3 to step in if a plan is not being implemented.

**Peter Peacock:** Could ministers direct the authority?

**Judith Tracey:** Yes.

**The Convener:** I want to explore the social, economic and human impact of flooding, which ministers and SEPA are required to take into account in exercising their management duty. Recommendation 4 of the report of our inquiry into flooding and flood management stated:

"The Committee recommends that the Scottish Government explore methods to ensure that the social and human costs ... of flooding can be included in future assessments of the value of proposed flood management measures."

The research that was carried out by the University of Dundee in 2007 considered some

aspects of that issue, but it did not propose any method by which such impacts could be included in an assessment. How will the Government go about making that assessment?

10:15

**Judith Tracey:** Part 2, "Principal expressions", gives a definition of flood risk. The reference to human health is intended to cover all aspects of human health, including emotional aspects such as the distress and emotional impact of flooding.

**The Convener:** What mechanisms will you use to make that assessment?

**Judith Tracey:** That needs to be developed further. A lot of work is going on in that area, not just in Scotland but in lots of other places. The Environment Agency is doing research into how you can give a value to the type of emotional distress that is caused by flooding.

**The Convener:** Will you let us have a reference to that research? It would be useful.

**Judith Tracey:** Yes.

**The Convener:** At the moment, however, the matter is still slightly in the air.

**Judith Tracey:** It is slightly in the air; it is difficult to assess at the moment.

**John Scott (Ayr) (Con):** Local authorities, SEPA and Scottish Water have raised concerns in their submissions about the requirement to co-operate and co-ordinate. What action will be taken to ensure that the roles of different organisations will be aligned to enable the successful delivery of assessment maps and plans, as set out in the bill?

**Judith Tracey:** I am sorry; I did not catch the last bit about which mechanisms will be used to—

**John Scott:** What action will you take to ensure that the roles of different organisations will be co-ordinated and that they co-operate to enable the successful delivery of assessment maps and plans?

**Judith Tracey:** Part 3 goes into a lot more detail about that. Stuart Greig may want to take over and talk about it.

**Stuart Greig (Scottish Government Environmental Quality Directorate):** We can deal with it now, or I can deal with it in more detail when we get to part 3.

**The Convener:** I will take a note of John Scott's question and he can follow it up later.

**John Scott:** When we talk about part 3, will you talk about the resolution of conflicts, and conflicts of interest, between bodies or even within organisations, or will you talk about that now?

**Stuart Greig:** We can deal with it now or when we talk about part 3.

**John Scott:** Deal with it now, then, please.

**Stuart Greig:** There is a requirement in part 3 for everyone to come together to agree the implementation aspects of local flood risk management plans. There is a clear stage when any conflicts between the priorities of the different organisations need to be met and addressed. Part 3 also provides for the establishment of advisory groups that will support the production of the plans and identification of the measures. That forum is where potential conflicts that might exist between organisations can be addressed.

Do you have a specific type of conflict in mind?

**John Scott:** Just when people cannot agree—I envisage a situation involving two local authorities in which one regards itself as a winner and the other regards itself as a loser. How will you ensure that conflicts are resolved? Forums, assessments and discussions are all very well, but they might not in and of themselves resolve an entrenched position involving SEPA and a local authority or two local authorities in one catchment area.

**Stuart Greig:** Part 3 provides that when agreement cannot be reached between all the parties involved in developing and implementing the local flood risk management plan, ministers are required to step in to agree the plan on behalf of whoever is leading that work. If outstanding issues hinder the final development of the plan, particularly if they hinder production of the wider district flood risk plan with which SEPA would be involved, ministers might need to step in to resolve such conflicts. We have not set out the steps that ministers would take, but they can step in and take appropriate action to resolve conflicts.

**John Scott:** I noticed that you use the words “co-operate” and “co-ordinate” in the bill whereas others suggest that organisations should integrate. Is that because you are afraid that you will not get sufficient co-operation and co-ordination to allow integration, or are you just hastening slowly? I appreciate that it is a play on words, but one would expect such services to be integrated rather than just to co-operate, which is slightly less well-defined language.

**Stuart Greig:** We spent quite a bit of time looking at that. The policy steer was that co-operation and co-ordination are the steps to allow integration. Integration, where appropriate, is what we are looking for. Given aspects of the particular functions that the different organisations have, it is not always possible to integrate fully. There are particular circumstances, such as emergencies, in which the system should work by itself and it should not have to be fully integrated with a longer-term planning process. Integration is the

model to use when that is appropriate, and co-operation and co-ordination help to deliver it.

**Peter Peacock:** I understand why the different elements relating to the various plans are in the bill; you have transposed the European directive. Do you have separate, sequential stages rather than a combination of elements and things being done in tandem or in parallel?

**Bob Irvine:** A sequential timetable is set out in the directive.

**Peter Peacock:** So that is an absolute requirement under the directive?

**Bob Irvine:** Yes.

**The Convener:** Let us move on to part 2.

**Judith Tracey:** Part 2 covers the definitions that are used in the bill. It provides a definition of “flood” that covers all forms of flooding with the sole exception of flooding that is caused solely by a failure of the sewerage network—Scottish Water already has statutory responsibility for maintaining the sewerage network. The bill does not, however, exclude flooding caused by heavy rainfall that leads to the sewerage network discharging; the exception lies purely with a failure in the mechanism of the sewers.

Part 2 also defines “flood risk”, to promote common understanding of the term, and covers its important role in managing floods. The reference to “human health” covers all aspects of human health, from personal damage or loss of life to the distress and emotional impact of flooding.

Part 2 sets out the responsible authorities, which are:

“local authorities ... Scottish Water, and ... such other public bodies ... as the Scottish Ministers may designate”

at a later stage.

**Peter Peacock:** The term “sustainable flood management” is not used in the long title or elsewhere. There is no definition of sustainable management in the bill. Why did you choose not to include it in the long title or elsewhere in the bill?

**Judith Tracey:** We feel that the whole bill will deliver sustainable flood management. We have drawn up the entire bill with sustainable flood management in mind—and sustainable flood management is mentioned in the bill. The definition of “flood” includes all types of flooding; it does not cover just the limited sorts of flooding that have been dealt with under previous legislation. We are confident that the whole bill will deliver sustainable flood risk management. We felt that it was not necessary to include it in part 2 because it is covered enough in other parts of the bill.



**Peter Peacock:** If the whole bill is about sustainable flood management, would it not be entirely appropriate for that term to be in the long title? I appreciate that there are difficult legal concepts and definitional problems. No doubt parliamentary counsel is wrestling with that—and no doubt you are wrestling with parliamentary counsel on the matter. Is it a drafting issue, or is it a policy question?

**Judith Tracey:** It is a drafting issue, to some extent. We are creating a framework for sustainable flood management, which is an idea that is still evolving. What sustainable flood management meant a year or two ago is different from what it means now. The definition will probably differ again in 10 years' time, when we have a better understanding of the meaning of sustainability. If we tie ourselves down too closely to a particular form of words in the bill, we run the risk of being in the same position with the legislation that we are considering now as we find ourselves in with regard to the 1961 act. The way legislation is set out might stop certain things being done. We want to make the bill as open as possible, ensuring that local authorities and other bodies can use whatever tools they have at their disposal to manage flood risk in their areas without being tied to a particular definition.

**Peter Peacock:** I understand your argument, and you take me neatly to my next point. Is there a duty on ministers to issue guidance about sustainable flood management over time?

**Judith Tracey:** We will issue guidance. The good thing about guidance is that, when things move on, we can change it. It is far more difficult to go back and change legislation.

**Peter Peacock:** Indeed, but will ministers be under a duty to issue guidance, or will they have the power to do so?

**Judith Tracey:** Ministers will have the power to issue guidance, not a duty to do so.

**The Convener:** Elaine Murray wanted to talk about surface water management. Has the minister's letter changed your view slightly, given that it addresses that issue?

**Elaine Murray (Dumfries) (Lab):** The issue has been addressed to an extent, but I would like more detail. Surface water flooding is particularly frustrating for constituents who suffer from it because many authorities are involved—Scottish Water and the roads authority, or Transport Scotland if a trunk road is involved. Also, in my experience, flooding frequently occurs from private land and it can be difficult to get action on it. Will you expand a little on how the bill will address surface water, which causes particular distress to individuals?

**Judith Tracey:** The first measure that will address surface water management is the requirement on the various organisations to work together. We seek to make it clear that, because local authorities will have initial responsibility for flood risk management, in general, the management of surface water will be their responsibility. They will have to work with the other organisations to do that. We hope that there will be a move towards better management of surface water so that it does not end up in the sewerage system, which is where it causes problems.

The consultation paper on householder permitted development, which will come out shortly, will ask whether it would be suitable to place limits on paving over front gardens for hard-standings, or to ensure that they remain porous, to stop surface water run-off. We are considering that and we hope to move towards more solutions of that type. The bill will enable the various organisations to work together in that way to provide co-operative solutions.

**Elaine Murray:** So the buck-passing that goes on at present should not happen?

**Judith Tracey:** Local authorities should no longer turn round and say, "If it's in the sewer it is Scottish Water's responsibility and if it's on the trunk road it is Transport Scotland's." That should not happen any more.

**Elaine Murray:** You mentioned guidance on new developments. Several issues arise in current developments, in urban areas and in rural areas. For example, there can be problems with field drains not being cleared, which can lead to flooding on people's properties. How will the bill deal with issues that involve surface water that originates from privately owned property?

**Judith Tracey:** The bill will require a lot of stakeholder engagement, including engagement with communities. The idea is to involve communities closely in the development of local flood risk management plans. It will be in communities' best interests to ensure that anything that can be done in their area to help prevent flooding of their houses is included in the local flood risk management plan. A lot of work will be done to raise awareness of flood risk and of what people can do to help themselves, rather than rely on others to sort out the flooding. We are all responsible for looking after our property. It is important to make the public aware of that and of the fairly simple measures that they can take to protect themselves without going as far as having flood risk management schemes.

**Elaine Murray:** We will probably return to this issue. One problem is that of water that comes off one person's property and ends up as flooding in somebody else's. Often, the individual whose

property is the source of the flooding is not all that bothered because it does not affect them. What provisions are there on that? We may return to this issue when we consider duties and responsibilities.

**John Scott:** I presume that nothing will change. The reality is that those below will receive flood water from those above—no legislation will change that. I think that that is what Elaine Murray is talking about.

10:30

**The Convener:** Is Elaine Murray suggesting that when the house above or the neighbouring property is at fault—

**Elaine Murray:** Yes—when it is at fault.

**The Convener:** Is that not a matter between the two property owners?

**Bob Irvine:** That must be right. The bill will do nothing to affect that situation.

As the minister's letter suggested, dealing with surface water is complex and difficult. We do not start from a perfect understanding of all the relevant issues in the places that are most affected. The processes and co-ordination in the bill are an important step to improving that position. We are considering strengthening the provisions, particularly to improve the reliability of the data, which are the starting point for understanding surface water and working out what to do about it. That will require significant effort by local authorities and Scottish Water.

We acknowledge that dealing with the issue is important and we are keen to get that right. We are reviewing the provisions and we have suggestions for improving them further. We will examine carefully how the committee approaches the issue and the evidence that is presented, to ensure that the bill provides the best basis for working to address the problem. It must be borne in mind that we expect the guidance to deal with quite a lot of the practical details of modelling and interactions between the various parties. We will track the developing methodology through that guidance. We expect a high level of co-operation between the responsible authorities to address the matter and take it forward from our present understanding.

**Alasdair Morgan (South of Scotland) (SNP):** The bill defines flood risk as

"the combination of the probability of a flood and of the potential adverse consequences".

A minor point is that most lay members of the public would probably think that the probability of a flood was its risk and would not go into the risk

management-speak. I do not know whether that will give you problems in any consultation with communities.

A more substantive point is that adverse consequences are not defined. That definition might vary according to people's perceptions. Did you consider fleshing that out?

**Lindsey Henderson (Scottish Government Legal Directorate):** The definition of flood risk is closely based on the definition in the floods directive, which refers to adverse consequences.

**Alasdair Morgan:** I do not know whether that fills us with confidence, but never mind.

**Lindsey Henderson:** Adverse consequences are referred to because flooding is not always a bad thing—that depends on where it occurs. Adverse consequences are associated only with flooding of people's property and with flooding that risks people's lives. In sustainable flood management, we might want actively to promote flooding in areas where it is useful for a flood to go—for example, it might be better for a functional flood plain to flood than for somewhere else to flood. I expect adverse consequences to be reasonably understandable.

**Alasdair Morgan:** If the term is reasonably understandable, why is it not defined in the bill?

**Stuart Greig:** Part 3 provides for flood risk maps, which will go into the detail of assessing the impacts. We provide that the maps should include information such as the number of people who could be affected and the economic activity that could be affected, but we have kept some flexibility to specify in regulations more matters to include in the assessment. We can add issues once we have engaged with stakeholders to understand what they want to be included, which we will have the flexibility to add. By its nature, the definition of flood risk is broad, but we can add to that over time to take on board different views.

**Peter Peacock:** In its report, the committee supported the notion that SEPA should have a significant, enhanced responsibility. However, we drew to the minister's attention, first, the need for mechanisms to ensure that SEPA is independent; secondly, SEPA's need for clear guidance on how to resolve internal disputes that arise because of its different responsibilities in relation to, for example, the controlled activities regulations and watercourses; and, thirdly, the need for an independent mechanism to review and audit SEPA's decisions and recommendations. How have those concerns been addressed?

**Bob Irvine:** Ministers' starting point is that SEPA, as a non-departmental public body, is independent and free to carry out its functions appropriately. Ministers' powers of direction under

various parts of the bill could be used to resolve the tensions that you mention between various parts of SEPA's responsibilities but, in general, ministers are confident that SEPA's management and board will properly reflect on the balance of responsibilities and reach an appropriate outcome. If that is not so, as I said, ministers can intervene.

Again, much will be developed through the guidance to SEPA and the various other parties that are involved. In the guidance, we will articulate ways in which to resolve difficulties in the areas that you have in mind and set out how to deal with them. Ultimately, if things become difficult as the plan is worked through and they are unresolved, the plan will be submitted to ministers. If there are difficulties with objections and local interests make representations for or against particular parts of the plan, ministers have a route to resolve that, because the provisions allow them to modify the plan.

**Peter Peacock:** I understand that. However, there are contemporary examples in which SEPA is objecting to local flood management plans because of its specific environmental responsibility for a watercourse—for scouring out a river, or whatever. Under the bill, SEPA will also have a duty to ensure that flooding in the area is managed effectively. Which duty will supersede or trump the other? Will SEPA's primary duty be the protection of communities, families and houses or the protection of the environment, or is it impossible to say?

**Bob Irvine:** I regret that it is not possible to say. I risk incurring the wrath of the convener, but the answer is that it all depends on the particular circumstances.

It would be difficult for ministers—or indeed anyone else—to set out an absolute set of principles to be followed in every case in which there was tension between those responsibilities. It is a fact of life that those factors have to be resolved. There is a process for allowing them to be identified and a process for consultation and discussion and, ultimately, ministers can resolve the situation if an appropriate way through it cannot be found. It would be going too far for ministers to say that SEPA must favour one responsibility or the other.

Ministers are confident in their relationship with SEPA and confident that it has the processes to identify the most appropriate balance of policies at any particular time. If things go wrong, ministers will have the opportunity to change that.

**Elaine Murray:** The bill designates certain authorities as responsible authorities and gives ministers powers to designate others in regulations. Scottish Natural Heritage seems to be under the impression that it is not designated in

the bill and will not be designated in regulations. It fears that, although it may be a consultee, it will not be involved early enough in the process and could end up lodging late-stage objections, which may extend the time that it takes to introduce flood risk management plans. Why are some responsible authorities named in the bill, why will others be designated in regulations, and why is SNH not included in either category?

**Judith Tracey:** No decisions have been made about what the other responsible authorities will be. SNH, along with others that are under consideration, may still be designated. Local authorities and Scottish Water are included in the bill because they are the main organisations that have on-the-ground responsibilities for flood risk management. Scottish Water has drainage responsibilities, and local authorities have overall responsibility for managing flood risk in their areas. The timeframes for implementation of the European directive, especially the first part of it—on flood risk assessment—are very tight.

I do not know whether you are familiar with the Water Environment and Water Services (Scotland) Act 2003, which provides for a similar set-up and responsibilities. In that case, there was the option of identifying responsible authorities, but that was done not in the bill but later, after a long, time-consuming process. The matter went out to consultation and a great deal of consideration was given to exactly what responsibilities and functions such authorities should have under the 2003 act. We will have to go through a similar consultation process when determining whether organisations such as SNH and the Forestry Commission should be designated as responsible authorities. Because local authorities and Scottish Water have on-the-ground responsibilities for flood risk management, it was obvious that they needed to be named up front, so that they could start work straight away. All other organisations will be subject to a consultation process, so that everyone has the opportunity to have an input.

**Elaine Murray:** SNH may be feeling a little nervous about the fact that it appears that to have been omitted because, at one time, it was mooted that it would be merged with SEPA. You mentioned the WEWS act. How long did it take for other responsible authorities to be designated in that case?

**Judith Tracey:** I cannot remember exactly—I think that it took about two years.

**Stuart Greig:** It took about two years. That was the first time that we had dealt with such a process, so it may be possible to complete it significantly more quickly in this instance.

You raised the issue of the engagement of SNH in the flood risk management process and the

lodging of objections. The role of the advisory groups is to ensure that all partner organisations are around the table right from the start. Even if an organisation is not a responsible authority, it will be at the table to put across its views at an early stage in the preparation of plans, so that we do not find that there are stumbling blocks at the end of the process.

**Judith Tracey:** Under the bill, responsible authorities will have a lot of duties, including a duty to reduce overall flood risk. That is an obvious duty to place on the organisations that we have already named, because there are measures that they can take to do that. It would be odd to place a duty to reduce overall flood risk on SNH, given its functions. We must examine the issue carefully.

**The Convener:** I invite Stuart Greig to introduce part 3. We will then move to questions.

**Stuart Greig:** The provisions in part 3 are lengthy, complex and technical, so it will be useful if I break them down into smaller, more manageable pieces. I will take advice from you, convener, on how quickly you would like me to go through this part of the bill.

Overall, part 3 will create the framework within which SEPA, Scottish Water, local authorities, responsible authorities and the public will work together to create flood risk assessments and maps, and to prepare plans that will set out all the measures that we need to put in place to tackle the risks that have been identified. It may be useful if I begin by summarising briefly the role of SEPA as the competent authority. I will then say something about the geographical boundaries of flood management plans and go through the provisions relating to flood risk assessments, flood hazard maps and flood risk management plans. I will finish by talking about advisory groups and consultation.

10:45

**The Convener:** As long as you do not take half an hour to do that.

**Stuart Greig:** No. I will keep it as brief as I can. The first point is that, through the combination of the duties that are placed on it, SEPA is identified as the lead authority for the work. Critically, though, SEPA will not work in isolation. It will work alongside others, local authorities in particular, in preparing the assessments. It will act as the overall national body providing strategic direction and co-ordination, but it will facilitate all the other bodies to come together and work under clear guidelines so that we get a nationally consistent approach. It will act as a facilitator, rather than holding a whip and controlling the situation.

The district plans, which SEPA will prepare, will

be along the same geographical boundaries that we have for river basin management plans. There will therefore be two plans for Scotland: a Scotland one and a cross-border plan for the Solway/Tweed area. There will be another plan for Northumbria, but only a very small part of the district covered by that plan is in Scotland. That provision will help to ensure that there is clear co-ordination between the work for the water framework directive and the work for the floods directive. It will also help to identify the opportunities where we can use the public purse to improve the environment and deliver flooding benefits as well.

SEPA will have responsibility for identifying where local flood risk management plans need to be prepared. In doing that, SEPA will have to work across catchments, which are the fundamental unit of management for flood risk management. SEPA will also be responsible for identifying what are the most appropriate catchments or sub-basins, as they are called in the bill, in order to be in line with the directive. We see it as being a catchment-based approach.

SEPA will also be responsible for preparing the flood risk assessment, which is the first-cut examination of where the most significant flood risks are in the country. We have made a set of provisions that need to be incorporated in the assessment, which is basically an assessment of where flooding has occurred in the past and what its impacts have been. The assessment will give a national picture and will culminate in an assessment of where the most vulnerable areas are. The assessment of the most vulnerable areas will need to be submitted to ministers for approval. That will be a matter for regulations because it will be an important step in the consultation process that needs to take place. There will also be regulations on some of the processes and content of the assessment of vulnerable areas. We can set that out in more detail in regulation, rather than put something fixed in the bill. We have set out the framework in the bill and can add the detail later.

SEPA will be responsible, too, for the flood risk and hazard maps, but it will need to take a lot of information and advice from local authorities and Scottish Water in the preparation of the assessments. The flood hazard map is the map of where the water goes. Particular flooding scenarios are set out that must be considered. As was discussed earlier, the flood risk assessment is the assessment of the impact of the water once it has entered the different parts of communities and so on. We have set out particular things that must be taken account of in preparing the assessments, but we have kept the opportunity to add detail to that in guidance and regulations so that we have the flexibility to take account of stakeholder views and to adapt the approach as flood management needs change over time.

We discussed surface water management issues; I think that we included some extra provisions in our submission on the stage 2 amendments that we are considering, which might help to clarify that Scottish Water is best placed to deal with sewer flooding and that it will perhaps need to have a more direct responsibility to prepare that information and provide it to SEPA. We expect local authorities, with their responsibilities for surface water, to be best placed to provide guidance to SEPA on surface water flooding problems so that SEPA can incorporate that in the wider picture of flood risks and problems for Scotland.

The most important part of the bill is on the preparation of flood management plans. The plans will have two tiers. One is the district plan and the national plan, which I described as being an overview for Scotland; the other is the local flood risk management plans. The critical provision is that the two tiers of plans need to be prepared in co-ordination because they are not two separate plans. They need to be prepared in parallel, and we have set out steps in the provisions to ensure that things such as consultation happen in tandem or closely together. We have also ensured that the plans cannot be inconsistent and that we have a set of integrated plans coming together.

To support the preparation of those plans, we have advisory groups and a set of consultation provisions, which are similar to what we had under WEWS. There will be a fairly wide-ranging set of advisory groups that can input to the process without limitations on who should be on them.

**The Convener:** By WEWS, do you mean the Water Environment and Water Services (Scotland) Act 2003?

**Stuart Greig:** Yes. We used that as a model. We have critical consultation steps for the assessment of vulnerable areas and for what happens once the plans have been prepared so that we have a full consultation process.

**Alasdair Morgan:** It will require a great deal of technical expertise to bring about all the plans, assessments and maps. The financial memorandum goes into some detail about the costs of recruiting all the required people. I know that it is not something that should be in the bill itself but, on the assumption that there are not lots of unemployed hydrologists floating around at the moment, exactly what consideration is being given to ensuring that the required number of people are available if the bill becomes an act?

**Stuart Greig:** It will be difficult. There is definitely a deficit of qualified hydrologists. However, a wide range of skills is required; we need not only hydrologists but trained engineers and people who understand how the rivers and

coastal environments function. We hope that we will be able to draw on and build on the experience that is already available, such as in-house experience in SEPA and the experience of qualified engineers in local authorities.

**Alasdair Morgan:** Would it be fair to say that no real assessment has been made yet? Some guesstimates of how many people will be needed have been made for the financial memorandum, but there is no measurement of how many of them may already be in the field doing something else that presumably will still have to be done by somebody else.

**The Convener:** Could I characterise the position as keeping your fingers crossed?

**Bob Irvine:** Yes and no, I suspect. We acknowledge that there is an issue with skills. Local authorities, SEPA and Scottish Water are registering and considering that. The financial memorandum contains the first assessment of the resource implications of the bill. If there is a shortage of particular skills, we will have to think carefully about what we can do to rectify that, such as engaging with the Scottish Further and Higher Education Funding Council and the higher education sector to provide graduate studentships in the relevant disciplines. However, at the moment, we must go with the skill base that we have and ensure that it is properly directed and focused on the key tasks. As part of the process that Stuart Greig described, we must register the key tasks, register where all the various agencies that will be engaged in them can most appropriately apply their effort and build up the knowledge and expertise as and when we have the opportunity.

**Alasdair Morgan:** Given the timescales that are involved, you will have to do some of that interaction with the funding council pretty soon. Perhaps lots of people who were considering careers in merchant banking could be usefully diverted.

**Bob Irvine:** I suspect that they might divert themselves; they might not need much encouragement.

We have opened a dialogue with the funding council, and SEPA is talking to a number of higher education institutions about the possibility of supporting studentships and graduates. An active discussion is taking place.

**Liam McArthur (Orkney) (LD):** Alasdair Morgan is talking about an overall absence of hydrologists and other skilled people. SEPA and local authorities have registered concerns about that. When it was considering the financial memorandum, the Finance Committee expressed concern about an inflation in the head count at SEPA but no apparent expansion of the required

skills in local authorities. Do you accept that if we are to move towards more sustainable flood management, the necessary hydrology and other skills will be needed most acutely in the local authorities, which, to date, have tended towards using engineering solutions to the problems that we have experienced?

**Bob Irvine:** Possibly, but I encourage you to direct that question to the local authorities.

**Liam McArthur:** They are telling us that they do not have the funding.

**Bob Irvine:** Yes, but it is important that they look at their resource requirements and the type of people they need across the range of their responsibilities.

**The Convener:** Rhoda Grant has a question on an area on which the minister has already given quite a lot of specifics.

**Rhoda Grant (Highlands and Islands) (Lab):** Yes, so it is just a very short question.

You said that there will be an amendment to restate the duties that local authorities already have for flood risk management. Is the bill really about fulfilling the planning process that is laid down by the European directive rather than about providing practical solutions to flooding? The practical solutions remain as they were and the bill is just about setting up the bureaucracy to deal with the European directive.

**Bob Irvine:** To an extent, yes, the bill is mostly about process. However, it is important to register that the bill releases some constraints that apply at present, particularly to local authorities in relation to what constitutes a flood prevention scheme. That is the point that Judith Tracey was trying to make about sustainable flood management. In devising a plan to address the flood risks that have been identified through the processes that Stuart Greig has described, local authorities can now do anything. The 1961 act was pretty specific about hard-wall and diversion structures and so on, so the bill presents an opportunity to think about and develop new approaches.

**Stuart Greig:** We know that there is a large planning process involved, and that there is an interaction between national and local plans. A lot of effort will therefore go into working out the appropriate combination of measures. That is necessary to give us the right combinations in the right places. Unfortunately, it takes a lot of up-front planning to come up with the right combinations to manage flood risk, so we have been careful to ensure that we have transposed the directive in a way that is appropriate to our organisational setup in Scotland, and particularly to the needs of local authorities. That is why we have brought in the local flood risk management plans, which are

really delivery plans that allow local needs to be accounted for. That ensures that there is the right combination of local measures at the same time as a broad overview or perspective is set out by SEPA.

**Rhoda Grant:** My next question is about planning and the bill, so it follows on quite neatly. What is the role of individuals? The bill gives quite strong planning powers so that if something ends up in the final plan, it is deemed to have received planning permission. Under normal circumstances, planning permission involves discussion with neighbours and other consultation, but there seems to be very little about public consultation in the bill. It is all about how different authorities act together but not about how the public, community councils and other folk on the ground interact with the process.

**Stuart Greig:** The consultation provisions that are set out in the bill are not intended to be limited to the bodies that are directly involved in managing flood risks. Consultation is meant to be done widely with the public and as wide a group of stakeholders as possible. Trying to get views through consultation is important. Likewise, the advisory groups are not limited to the public bodies that are directly involved in flood management; the door is open to the National Flood Forum or community representatives, for example, to be involved in the process. The consultation process is fairly flexible. Different consultation formats can be used to get messages out to as many people as possible. I hope that having fairly flexible provisions will allow that to be done.

11:00

**Rhoda Grant:** That seems to me to be an area of concern. Will there be guidance on it to local authorities and SEPA? A big human rights issue is involved if people who will be directly affected by things in a plan have not been consulted on or made aware of those things. It seems that there will be great flexibility, but surely there must be a minimum standard.

**Stuart Greig:** A useful exercise was carried out for the Water Environment and Water Services (Scotland) Act 2003. SEPA set out a consultation very early on in the process. It said how its consultation exercise would take place and what its strategy was for engaging with all the people whom it needed to engage with. A similar approach early in the process, with the involvement of local authorities, could be helpful to show exactly how the necessary level of engagement will be obtained.

**Rhoda Grant:** Would we be able to see guidance on how that would happen?

**Stuart Greig:** Yes. We can consider whether we can do something about that in the bill or whether guidance would be sufficient.

**The Convener:** The committee recommended that consideration of the resilience of the national infrastructure be part of any flood risk assessment. Will you clarify whether infrastructure resilience assessments are intended to be part and parcel of the proposed flood risk assessments? I do not think that that is specifically outlined in the bill.

**Stuart Greig:** Absolutely—that is my short and sweet answer. The issue is where the greatest flood risks are, and there are great flood risks in that context.

**The Convener:** That is fine.

**Alasdair Morgan:** Section 16 requires SEPA to consider the contribution that the alteration of natural features could make to preventing floods. I suspect that the committee would tend to favour such an approach as opposed to hard measures. Did you consider building into the bill a presumption in favour of natural flood management measures, unless there were strong arguments for not using them?

**The Convener:** The committee recommended that.

**Stuart Greig:** We certainly considered the matter. We have wanted to adhere to the principle of getting the right measure in the right place, whether we are talking about a natural flood management measure, a flood warning scheme, or a flood protection scheme. However, we are reluctant to have a presumption in favour of any particular type of flood management measure; rather, it is a matter of finding the right measure for the right circumstances.

A thorough assessment of the costs and benefits of measures that are identified in the flood management plans is needed. The benefits of measures in tackling flooding are not the only benefits that must be considered; other benefits that could result—wider environmental benefits, for example—should also be considered. We think that the approach that we have taken means that an appropriate balance will be struck in deciding the most appropriate measure.

**Alasdair Morgan:** You say that environmental benefits could be considered. That leaves things a bit optional.

**Stuart Greig:** Benefits beyond that of reducing flood risks would have to be considered. Things would depend on the type of measure that is involved. Any associated environmental benefits would need to be considered. In some instances, urban regeneration benefits would need to be brought into the mix. It is a matter of considering

the wide range of benefits and selecting the most appropriate measure.

**Peter Peacock:** I would like something to be clarified. I think that you have said in communications with the committee that you would consider the issue of natural features and natural processes. We have had representations on the matter. Will you confirm that you will consider introducing the words “processes” and “features” into the bill?

**Stuart Greig:** We can certainly consider that. That would be no problem.

**Peter Peacock:** I would like to pursue a bit further what Alasdair Morgan said. It was no accident that, having considered the presumption that he mentioned, the committee made the recommendation that it made. It did so deliberately and purposefully to try to shift from having hard engineering solutions to everything to considering more natural processes. If part of the bill’s purpose is to achieve sustainability, I presume that it would be entirely appropriate to put such a presumption in the bill for the reasons that Alasdair Morgan touched on. So that I am clear, are we talking about a policy consideration? Are you saying that you do not want to include such a presumption as a matter of policy or that it is quite difficult to capture what has been suggested in drafting terms?

**Stuart Greig:** I do not think that it is difficult in drafting terms. On policy, we want to focus on the principle of sustainability and sustainable flood management. That will entail using the right combination of measures in the right places.

Issues still arise to do with the evidence base for natural flood management approaches. To have a presumption in favour of something that is very new and fairly novel in the field of flood risk management might, we feel, shift the balance too soon. We want to build up the evidence base first. The evidence base is increasing, and steps have been put in place through some research and development work. As a result, we may find that natural approaches are the most appropriate, in which case we would hope that the focus would move towards them in flood management plans. However, such approaches should be adopted only when the evidence supports them.

**Peter Peacock:** Does your concern arise because your interpretation of a presumption is that it is something that must happen? That was not the committee’s interpretation; our interpretation was that a presumption is something that must be considered. If it were not to happen, a justification would have to be given. We did not feel that it would have to happen in all

circumstances. Is there a difference between the committee's view on a presumption and your view?

**Bob Irvine:** There possibly is a difference, Mr Peacock. As Stuart Greig said, we would find it difficult to accept that having a presumption in favour of a particular approach would be the right thing to do. However, when measures to address identified flood risks are being considered, it would be expected that all appropriate techniques—including natural flood management techniques—would be considered. If, following analysis, the natural techniques had the most to commend them, they would be pursued because they would be right—to use Stuart Greig's word.

In setting out guidance on schemes, we could certainly stress that natural flood management techniques should be considered or reviewed, and that they should be assessed relative to other techniques. However, we have reservations about capturing that idea in the bill itself.

**The Convener:** That is a useful clarification, because my next question was going to be about where, in the bill, that expectation is expressed. It would be useful if you could find a way of expressing it, even if it was in the guidance that would go along with the bill.

**Bill Wilson (West of Scotland) (SNP):** The strategic environmental assessment apparently suggested that the bill could actively promote the restoration of ecosystems, but the report also noted that the bill did not appear to do that. The Government's aim is to enhance and improve biodiversity, so it seems as if an opportunity has been missed. Was the opportunity considered? If so, why was it not taken?

**Bob Irvine:** My answer will be rather similar to those that we gave to the previous question. It may be that, in particular circumstances, the restoration or enhancement of an ecosystem would be a gain from the measures that were proposed. However, that would not apply to all schemes. As Stuart Greig has said, considerations of urban regeneration might be a stronger driver in particular circumstances. We therefore find it difficult to envisage how, in the bill, we could successfully include the thought that one particular objective should be put above all others.

We could address the restoration of ecosystems in guidance, suggesting that it is an important issue to consider when the opportunity occurs. We could also ensure that that is properly assessed in the methodologies that we were talking about earlier. However, that is different from making the issue a duty, as the report seemed to imply that we should.

**Bill Wilson:** Perhaps ideas can be tied together. If you were going ahead with sustainable

development, part of that could include a duty to enhance ecosystems. If you are taking step 1, why not ensure that you take step 2?

**Stuart Greig:** There is provision in the bill to consider conservation and environmental objectives, as set out under the Water Environment and Water Services (Scotland) Act 2003, when a measure to address flooding is identified. The steps that must be considered when measures are identified are set out. The provision for that is set out so that those needs can be balanced with flood management needs. Ultimately, you want flood protection measures that will reduce the risk of flooding, but the opportunity to deliver other things where possible should be taken as well.

There has to be close co-ordination with the 2003 act and the objectives that are set out therein, for which SEPA is responsible. There is a clear opportunity for SEPA to look at all its work on environmental improvement and tie it in with flood management measures, where appropriate.

**John Scott:** Will there be a clearly defined methodology for doing that? You talk about a cost benefit analysis, but it seems to me that it will all be rather subjective. How will an urban regeneration scheme, for example, be evaluated against the Forestry Commission's proposal for a hydraulic roughness scheme that enhances ecosystems and biodiversity?

**Bob Irvine:** That is the great challenge with all such cost benefit tools, and why they are constantly being redeveloped and re-examined. At the start of our discussion, I talked about how the health benefits are taken account of properly in methodologies. We have to find the appropriate way to do that. You are right to say that the process is complicated and difficult, but all we can do at this stage is register that those are important factors that must be taken account of and then find the best way of doing that as we go forward.

In the bill, we have the opportunity to create a relatively open-ended framework for the development of plans and schemes. We can develop and refine the guidance as people's understanding develops over time.

**John Scott:** I took the view that the Forestry Commission's thinking was far advanced on the matter, and we felt that it was worth while reflecting that in our report.

**Bob Irvine:** Absolutely; it makes an important contribution.

**Stuart Greig:** We set up advisory groups in developing the bill with representation from the Forestry Commission, SNH and all the other people who will be involved. The intention is to keep those groups in place in the long term and to



use them to develop the tools, methods and guidelines. Those measures will not be dictated because all the people who are involved are coming together to work out the best way of doing things. We can then distil that into appropriate guidance and regulation as necessary.

**John Scott:** Excellent. Thank you.

**Elaine Murray:** You referred to the length of time that it would take for some aspects of the WEWS act to come into force. The planning cycle will take time to come into force; I think that there has been talk of the first cycle beginning in 2015. What are the interim arrangements for the time between the passage of the bill and the act being enforced? How do you foresee things working in that period?

**Judith Tracey:** The legislation makes provision for transitional measures to be drawn up. We have not yet drawn them up, but there will not be a cut-off between the provisions under the 1961 act and those under the bill. We know that local authorities will continue to work on flood risk management and to develop flood plans. One of the first things that will go into any local flood risk management plan will be the work that local authorities have under way or close to the start. We need to ensure a smooth transition, but we will work out formal transitional arrangements, for which the bill makes provision.

11:15

**Elaine Murray:** Local authorities have raised concern over whether and how they will be funded for that work.

**Bob Irvine:** We recognise that concern, on which the committee has heard the minister's views a number of times. An important point is that the bill does not mean that there will be silence on the issue until 2015. The EC directive imposes successive requirements at 2011 and 2013 that will form important parts in building up the big picture from which the detailed plans will emerge at 2015. Identifying the extent of flood risk in a number of vulnerable communities and so on will provide important information to ministers and local authorities at successive spending reviews for identifying future resource requirements for addressing flood risk and flood hazard. The plans that are created will provide a pretty long-term view, as the committee recommended in its report in the summer. To all intents and purposes, they will provide a road map for planning to address those risks over the longer term.

**The Convener:** I think that Elaine Murray's other question has been covered substantially in the responses to John Scott. Does Rhoda Grant feel that her question was sufficiently dealt with in those responses?

**Rhoda Grant:** I would like some clarification on how the flood risk assessments will interact with planning policy. If a development is proposed in a flood risk area, will a full flood risk assessment be a prerequisite for planning permission? How will that work in practice?

**Nick Evans (Scottish Government Directorate for the Built Environment):** I do not think that the provisions in the bill will change the current arrangements. If a planning authority thinks that a flood risk affects a planning application, the authority consults the Scottish Environment Protection Agency. SEPA has the opportunity to require the developer to undertake a flood risk assessment, which SEPA will then consider and comment on. The planning authority takes those comments into account before determining the application. That provision is expected to continue.

**Rhoda Grant:** So that will continue as at present.

**Elaine Murray:** My constituency is probably nearer than anyone else's to the Borders, which is obviously an area that has been subject to flooding. What arrangements will be put in place to ensure effective cross-border working, given that it seems to have taken time to develop cross-border strategies under the 2003 act? According to the Macaulay Institute, there are still on-going challenges in reconciling the different regulatory frameworks and advisory networks. Who will be responsible for cross-border flooding incidents? How will risk assessments, maps and plans and so forth be developed across the border?

**Judith Tracey:** We have started talking to the Department for Environment, Food and Rural Affairs about that. We will look to develop specific regulations to deal with the cross-border areas. It is likely that we will follow broadly the plans for the 2003 act, in that SEPA and the Environment Agency will perform joint functions in the area and report jointly to Scottish ministers and to DEFRA ministers. We are aware that difficulties can arise because local authorities in Scotland have different responsibilities for flood risk management from those of local authorities in England and Wales, so the authorities in the border areas will need a much closer connection with the Environment Agency. However, we have started talking to DEFRA about that and we are working out how best to deal with those problems.

**The Convener:** Let us move to part 4. Who is dealing with part 4?

**Judith Tracey:** I am.

**The Convener:** Judith Tracey is working hard this morning.

**Bob Irvine:** As always.

**Judith Tracey:** Part 4 repeals the Flood Prevention (Scotland) Act 1961 and replaces it with new provisions. It sets out the new powers for local authorities and gives them general powers to manage flood risk, in line with our sustainable flood risk management policy. It does not limit what flood risk management local authorities can undertake, as the 1961 act did. It does not state that they have to build walls or embankments or knock things down; it leaves it open to local authorities to decide what tools to use. We have left it that way specifically because we want the legislation to last for a fairly long time and because we want local authorities to be able to implement new tools and techniques as they are developed.

Part 4 enables local authorities to take the full range of flood risk management measures—there is no restriction on the type of measures that they can take, only that they must contribute to the delivery of a local flood risk management plan. We believe that, along with the general power at the beginning of the bill, that will place a strong duty on local authorities to implement their flood risk management plans. The only exception to that is when there is an emergency—when a flood is imminent—and a local authority wants to take immediate action. It was difficult for local authorities to do that under the 1961 act. It happened, but there was no provision for them to do that under that act, and it was something that local authorities were quite keen to see included in the bill. The intention is to reduce, whenever possible, the time that is taken to implement flood risk management measures.

The bill does not require local authorities to go through a statutory process—the statutory process is set out in schedule 2—if they are comfortable that they have got local co-operation, that they have spoken to local people and that they can go ahead with whatever plans they have without having to complete a statutory process to get the coercive powers. They can go ahead and do that. There is no need for a local authority to go through a statutory process for flood risk management; they have to do it only when they want the additional powers and benefits that the statutory process will bring. If they decide to go through the statutory process, that results in deemed planning permission so that they have to go through only one process. If they do not go through the statutory process, they still have to get planning permission in the normal way.

**Peter Peacock:** I want to pick up on the question of the funding of local authorities and Scottish Water. The committee made specific recommendations about funding for the future. You could argue that that is a matter of policy, which can change from time to time, rather than a matter of law and that, therefore, there should not be anything about it in the bill. Did you consider

setting out in the bill any of the factors that ministers should have to take into account in deciding on funding for the various partners that will deliver flooding policy? Was that a consideration?

**Bob Irvine:** No. I do not see how we could do that. Ministers will look at the funding of local authorities in the widest understanding of local authority responsibilities and take all those into account. It would be strange for them to identify one particular local authority responsibility as being above and beyond any other.

**Peter Peacock:** Is it envisaged that SEPA, given its insights into the matter and its overall responsibility in this, will advise ministers formally on the funding needs into the future?

**Bob Irvine:** Certainly—so will local authorities and other agencies. As I said a few moments ago, part of the plan will provide a set of long-term priorities, schemes and activities that must be planned for and resourced in the appropriate way. There will be a much better collective picture of what requires to be done to address the priorities that have been identified by a more extensive analysis of all the relevant factors than exists at present. That will provide a much more secure basis for the collective identification and allocation of resources throughout Scotland than we have at the moment.

**Peter Peacock:** You do not envisage any formal duty on SEPA to advise ministers on an annual or triennial basis, or whatever, about the funding that will be needed to tackle flooding. You do not envisage any formal requirement for that.

**Bob Irvine:** No, because that will come out of the way in which the plans are presented. The plans have to be revised on a six-yearly basis.

**Peter Peacock:** Scottish Water has new responsibilities, which you have talked about. It will have to consider potential funding implications as part of its forward budgeting process. What will be the role of the Water Industry Commission for Scotland in that? Will the commission have to have regard to what is required under the bill, given that Scottish Water will have duties and responsibilities under the bill? The commission could be influential in relation to charging and costs.

**Bob Irvine:** The commission's role will be to look at the objectives that ministers set for Scottish Water, which, following this bill, will contain references to flooding, as well as a range of other objectives for improving the water system and customer service. The commission will determine the level of revenue that Scottish Water can collect from its customers that is necessary to meet those objectives through the business plan that it submits. It will not be for the commission to say

that this or that flooding measure is more important than another, just as it is not for the commission to say that this or that water treatment works is more important than another. It has to look to ensure that Scottish Water has the resources needed; the determination of those resources will involve significant efficiency objectives and targets for Scottish Water.

**Peter Peacock:** I was not implying that the commission should take a view about individual schemes. There is currently no constraint on the commission to consider such matters. Will its remit have to change in any respect to allow it to do so?

**Bob Irvine:** No, because the commission's remit is driven by what Scottish Water has to do and the plans that it presents to the commission, which, in turn, are driven by the objectives that ministers have set Scottish Water.

**John Scott:** The committee recommended that there should be a sort of strategic rolling roadmap that would look 25 years ahead. The Association of British Insurers also took that view, yet you have no such timescale in the bill. We took the view that there should be a rolling look ahead, so that we can anticipate what is coming. We could perhaps look ahead for longer than 25 years, given all the predictions that we have all received about climate change. Will you consider addressing that?

**Judith Tracey:** We think that the bill enables that to happen through the flood risk management planning process. Although the plans have to be produced and reviewed only every six years, we expect that they will take a long-term view, rather than limiting themselves to the six-year planning cycle. Flood risk management planning always has to be considered in the long term. The point of taking a national overview and getting a district-level plan is that we can look across Scotland and identify priorities over the next 25 to 50 years.

**John Scott:** So you could be looking at a 50-year overview or projection.

**Judith Tracey:** Yes. Given how the bill is set out, there is no limit on how long-term the plans can be. They just have to be reviewed every six years. The bill does not say that the plans have to consider only the next six years.

**Liam McArthur:** Robert Irvine has clearly picked up the same straight bat that the cabinet secretary used in relation to funding at our meeting on 8 October. As John Scott said, the ABI in its evidence to the committee suggested that flood risk could be better managed if funds for flood risk management were identified separately and ring fenced for that purpose. Leaving aside some of the policy discussions around that, do you accept that there are implications for local authorities, communities, individuals and

businesses of an assumption by the ABI and its members of a higher risk as a result of the approach that is being adopted in the bill?

11:30

**Bob Irvine:** It remains to be seen whether there is a higher risk. The cabinet secretary made it clear that during spending reviews we will continue to have discussions with local authorities about the best approach to the issue. Ministers have a strong desire to ensure that local authorities have as much opportunity and power as possible to make local decisions and to allocate local resources to what they see as local priorities. I suspect that that will continue to underpin their approach to discussions. If the present method of funding causes local authorities problems, and ministers agree that there is a better method, it will be adopted at an appropriate point in the future.

**Liam McArthur:** Do you accept that the evidence that we have received from the ABI indicates that the insurance industry, which is already in a high state of nervousness, has concerns about the approach that is being adopted? To some extent, it is the insurance industry, rather than local authorities, that needs reassurance.

**Bob Irvine:** The insurance industry can be reassured by what is happening in local authorities, where a significant effort is under way. A large number of schemes that were being planned a year or 18 months ago are in process. Nothing has changed in the progress of those schemes as a result of the change in funding that has taken place—nor would ministers expect it to. However, if matters become difficult and a better way of funding flood risk management is identified in the future, ministers will be willing to discuss that with local authorities.

**Alasdair Morgan:** The Flood Prevention and Land Drainage (Scotland) Act 1997, which will be repealed in toto by the bill, placed a specific duty on local authorities to cleanse and maintain watercourses in certain circumstances. It has been argued that that duty has been in useful in preventing floods from happening, but it will be taken away and replaced by a general enabling power. Why?

**Judith Tracey:** We removed the duty to maintain watercourses because local authorities will have an overall duty to reduce flood risk. Previously, local authorities' only duty in relation to flood risk management was the duty to assess and maintain watercourses. We thought that the overall duty encompassed that requirement. If we included in the bill a duty to maintain watercourses, that might become the overriding duty in some circumstances, because it would be

additional to the overall duty and local authorities might look at it before considering other forms of flood risk management. Such a duty might also conflict with the overall flood risk management plan, because in some areas it may be better not to maintain a watercourse and to allow it to flood, to reduce flooding downstream. Flood risk management involves a combination of measures, so an overriding duty to maintain watercourses could cause problems.

**Alasdair Morgan:** Have there been any instances of local authorities causing flooding by fulfilling their statutory duties?

**Judith Tracey:** No. However, there could be a conflict if the duty to maintain watercourses prevented implementation of a decision in a local flood risk management plan to allow a public park to flood, as part of a suite of measures to prevent flooding downstream. At the moment, the local authority would clear the watercourse, as it would not want the park to be flooded.

**Alasdair Morgan:** Surely there is a difference between a watercourse that one blocks up deliberately in order to prevent flooding and one that becomes blocked. If someone phones a local authority to ask it to clear a watercourse, because there will be a problem if that is not done, the authority will be able to get off the hook by saying that it is not required to do that.

**Judith Tracey:** We will expect a maintenance schedule or a maintenance regime to be set out in the local flood risk management plan. It is not that there will no longer be a duty on authorities to maintain watercourses, because that duty will be subsumed within the general duty. It would not make sense to have a separate duty to maintain watercourses, because that would make it seem as though maintaining watercourses was in some way more important than other measures that local authorities could take to reduce flood risk.

**Alasdair Morgan:** I do not see that at all. I struggle to see how such a duty would cause problems, unless you can produce evidence that indicates that the existing system is causing problems. I do not see why the larger picture would be thrown out the window because an authority had to dig out a couple of ditches that had become blocked.

**Judith Tracey:** Such work would be covered in the authority's maintenance schedule in the local flood risk management plan; it would be part of the authority's overall duty.

**Alasdair Morgan:** My point is that, if an authority has to dig out ditches, the maintenance schedule has clearly not worked, as the ditches have become blocked.

**Judith Tracey:** The difference is that we are changing the duty on authorities altogether. They did not previously have a duty to reduce flood risk in their area—no such duty existed. Now that we are placing a much bigger duty on them to reduce flood risk, it is not necessary to have an additional duty that is essentially also to reduce flood risk, but by a particular method.

**Alasdair Morgan:** Local authorities have a duty to maintain roads, for which they have maintenance schedules, but that does not prevent many of our constituents from damaging their cars on potholes. Surely having such a duty is the whole point of the bill.

**Judith Tracey:** Under the existing duty, local authorities inspect watercourses and assess whether they are at risk, draw up a schedule and then deal with the watercourses. They will do exactly the same under the proposals in the bill—but as part of their overall duty to reduce flood risk. The provisions in the bill will not prevent people from phoning up and saying that a ditch is blocked or prevent the local authority from dealing with the problem. It is very unlikely that a local authority would deny that it had a specific duty to do that work.

**The Convener:** You are saying that the widening of the overall duty subsumes the duty to maintain watercourses, and that the overall duty should not be construed as indicating that it excludes the duty to maintain watercourses.

**Judith Tracey:** Such work will be part of local authorities' duty to reduce flood risk. They do not need an additional duty.

**Rhoda Grant:** What would happen if Joe Bloggs phoned his local authority to say that a watercourse was blocked only to be told that it would not be cleared because doing so would not prevent flood risk as the watercourse was not going to flood? The removal of the duty would give the local authority an excuse.

**Judith Tracey:** The local authority would not have cleared any watercourse under the previous system if it was not a flood risk: the duty to maintain related entirely to the risk of flooding.

**Rhoda Grant:** So flood risk had to be proved before the council would maintain a watercourse.

**Judith Tracey:** Yes.

**Alasdair Morgan:** South Lanarkshire Council made the point that if a local authority digs out someone else's ditch, there is no provision in the bill for them to reclaim the costs of doing so from the owners of the watercourse or ditch. Will you consider putting such a provision in the bill? If an authority clears out a watercourse that is on someone else's land to maintain it properly because the landowner refuses to do so, can it

reclaim the costs from the landowner? Is there provision in the bill for that?

**Judith Tracey:** There is no specific provision in the bill for that.

**Alasdair Morgan:** Should there be?

**Bob Irvine:** We can consider that. Local authorities have the ability under a more general power to pursue landowners for interventions that they make in relation to safety and so on. That might cover a local authority in those circumstances, but let us consider the issue.

**Alasdair Morgan:** It would be helpful if you could come back to the committee on that.

**The Convener:** We have only about 10 minutes left to deal with the remaining parts of the bill but, mercifully, they are relatively short. Who will take charge?

**Bob Irvine:** Stuart Greig will deal with part 5.

**Stuart Greig:** I will be succinct.

The three main aspects of part 5 relate to SEPA providing advice to planning authorities and undertaking other assessments of flood risk, and to its flood warning functions.

On advice to planning authorities, the provisions in the bill are very similar to SEPA's existing duties under the Water Environment and Water Services (Scotland) Act 2003. The only major change relates to the definition of flood risk, as set out in the bill. That creates flexibility for SEPA. When it is asked to provide advice to a local authority, it will be able to give advice not only on where flooding might occur, but on possible associated impacts.

Section 63 provides SEPA with flexibility to undertake other assessments of flood risk that may be outside the specific assessments that have been set out to adhere to the floods directive requirements. For instance, the interactive maps that SEPA already has on its website are the type of work that would fall under the provision.

There will be a new statutory duty on SEPA to provide flood warnings, whereas at present it has a discretionary power to do so. There is flexibility in the provisions, so that SEPA will be able to decide on the most appropriate way of obtaining the information and providing it to the public.

**The Convener:** You have built in a lot of flexibility and discretionary power. Is that simply because the expertise lies in SEPA and it will be for SEPA to make decisions as and when appropriate?

**Stuart Greig:** Absolutely. The only matter on which we have not provided flexibility is that, if SEPA is aware that a flooding event is happening, it must release a flood warning. In any other

instance, it will be up to SEPA to work out the best approach and timing.

**The Convener:** We come to part 6.

**Judith Tracey:** Part 6 sets out powers of entry and compensation powers. It creates powers for local authorities and SEPA to enter land, which includes buildings, for the purposes of carrying out their functions under the bill. It also sets out the compensation provisions and provides that any disputes over compensation shall be determined by the Lands Tribunal for Scotland.

**John Scott:** As far as I can see, there is no mention of compensation to farmers when it is intended to flood land for sustainable or natural flood defences—only the use of compulsory purchase orders is mentioned. Perhaps I have misunderstood that. Will you clarify?

**Judith Tracey:** The process will be the same as at present. Local authorities will enter into discussions with landowners to try to work out by agreement the best way in which to use the land, and they will also work out the compensation arrangements. That happens under the existing legislation. If the parties cannot come to an agreement, they will go to the Lands Tribunal. If it comes down to it, authorities will be able to purchase land compulsorily, but only as a last resort, if they cannot come to an agreement. Local authorities and landowners almost always come to an agreement—either the local authority will purchase the land at a reasonable cost or it will provide compensation to the farmer when they undergo loss of the land because it floods.

**Alasdair Morgan:** You say that the power to enter land includes buildings. I take it that that power already exists. In what circumstances would SEPA want to enter a building for the purposes of the bill?

**Judith Tracey:** SEPA will not—

**Alasdair Morgan:** Well, whoever it is.

**Judith Tracey:** With local authorities, the provision is more to cover cases in which officers need to get through gates. It is more of a legal issue, so my colleagues might want to comment.

**The Convener:** Could it be for sheds and things like that?

**Louise Miller (Scottish Government Legal Directorate):** When the provision was discussed, it was suggested that local authorities carrying out scheme operations might need to flood proof a wall of a building that is also the wall of a water channel. Some buildings directly adjoin water, and a local authority might need access to flood proof a wall of such a building.

**Lindsey Henderson:** People might also have to go through a building to reach land at the back.

**The Convener:** We do not want to create unforeseen obstacles.

**Alasdair Morgan:** No, but we tend to give draconian powers in legislation to various people simply on the basis that they might come in handy at some stage. I realise that that has been going on for years, because such powers are already in legislation.

**The Convener:** I am having difficulty envisaging the SEPA storm troopers battering down doors.

**Peter Peacock:** Convener, I would like to clarify one point about the flood warning arrangements. On SEPA's duty to issue flood warnings, is the responsibility to warn individual citizens or the responsible authorities?

**The Convener:** We are going back to part 5.

**Peter Peacock:** Indeed—sorry.

11:45

**Stuart Greig:** We have not specified to whom such warnings are to be made available; they are to be made available to whomever is relevant. SEPA has different ways of making information available, and there is a new project to make information directly available to citizens. SEPA already issues flood warning information directly to category 1 respondents. It can simply make information available on its website, if that is the more appropriate or only mechanism available. It does whatever is appropriate to the circumstance.

**The Convener:** There are no questions from the committee so far about parts 7 and 8, so perhaps the witnesses could deal with them together.

**Fiona Quinn (Scottish Government Environmental Quality Directorate):** Part 7 amends the Reservoirs Act 1975, which aims to reduce the risks to the public from flooding following reservoir or dam failures. It seeks to do so by ensuring that large raised reservoirs are adequately constructed and maintained under the supervision of qualified engineers.

Part 7 will enhance the safe operation of Scotland's reservoirs through a number of changes to the 1975 act. Primarily, it provides for responsibility for reservoir enforcement to transfer from local authorities to SEPA. It also sets out transitional arrangements to ensure that that responsibility is transferred smoothly. That will involve the transfer of information and legal provision for local authorities' work.

Part 7 also binds the Crown and provides for ministers to set out detailed provisions and regulations relating to the preparation and enforcement of incident reporting. The regulations will define what constitutes an incident. Undertakers will be required to report to the

enforcement authority on incidents occurring at reservoirs. The bill provides for offences and penalty charges.

**Judith Tracey:** Part 8 is very general. Its provisions allow SEPA to obtain information about land where it requires that information for the purposes of carrying out its statutory functions. It makes provisions for the bill to apply to the Crown in Scotland. If an offence under the bill is committed by a corporate body, both the body and the individual who committed the offence may be prosecuted.

Section 82 enables Scottish ministers to make

"incidental, supplemental, consequential, transitional, transitory or saving provision"

if appropriate.

**The Convener:** There are no further questions. Thank you all for coming—I hope that it was not too painful. No doubt you will watch with interest the rest of the evidence sessions and our further deliberations.

You undertook to provide us with one or two bits and pieces of further information. I ask you to provide those directly to the clerk in due course.

**Bob Irvine:** We will do that as soon as we can.

**The Convener:** We will continue our stage 1 consideration of the bill on 26 November, when we will take evidence from two panels of witnesses representing various stakeholder groups.

## Petition

### Planning Permission (High Flood Risk Areas) (PE1207)

11:48

**The Convener:** Item 4 on the agenda is petition PE1207. The petition, by Gordon Sinclair, calls for a review of Scottish planning policy to prevent developments from being built on areas that have been designated as being at high risk of flooding.

A background paper has been circulated, which includes the Public Petitions Committee's consideration of the matter. That committee referred the petition to us for our consideration, in connection with our scrutiny of the Flood Risk Management (Scotland) Bill. The Public Petitions Committee has written to the Scottish Government and the Convention of Scottish Local Authorities, inviting their views on the issues raised in the petition. I suggest that it is appropriate to take into consideration the issues that are raised in the petition during our stage 1 consideration of the bill. Is everybody happy with that?

**John Scott:** That is a good idea.

**Members** *indicated agreement.*

**The Convener:** I thank everyone for their attendance.

11:49

*Meeting suspended until 11:54 and thereafter continued in private until 12:10.*





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