

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 4 March 2009

Session 3

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

7th Meeting 2009, Session 3

CONVENER

*Maureen Watt (North East Scotland) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

Karen Gillon (Clydesdale) (Lab)

*Liam McArthur (Orkney) (LD)

*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 ALSO ATTENDED:

Roseanna Cunningham (Minister for Environment)

CLERK TO THE COMMITTEE

Peter McGrath

SENIOR ASSISTANT CLERK

Roz Wheeler

LOCATION

Committee Room 1

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 4 March 2009

[THE CONVENER *opened the meeting at 10:01*]

Subordinate Legislation

Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2009 (SSI 2009/38)

The Convener (Maureen Watt): Good morning, ladies and gentlemen. I welcome members and members of the public to the seventh meeting this year of the Rural Affairs and Environment Committee. I remind everyone to turn off their mobile phones and pagers as they impact on the broadcasting system.

Apologies have been received from Karen Gillon, who is a long-term absentee from the committee. She is on maternity leave, during which Rhoda Grant is substituting for her.

The main item of business to be considered in public is the Flood Risk Management (Scotland) Bill at stage 2. The committee will then move into private session to consider the Climate Change (Scotland) Bill.

Agenda item 1 is consideration of the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2009 (SSI 2009/38), which is a negative instrument. The Subordinate Legislation Committee did not raise any points on the instrument, no member has made any comments on it and no motion to annul has been lodged. Do members have any comments on the instrument?

Members: No.

The Convener: Do we agree not to make any recommendation in relation to SSI 2009/38?

Members *indicated agreement.*

Flood Risk Management (Scotland) Bill: Stage 2

10:02

The Convener: Agenda item 2 is consideration of the Flood Risk Management (Scotland) Bill at stage 2. Members should have in front of them their copy of the bill and a copy of the marshalled list and the groupings.

I welcome the Minister for Environment and her officials to the meeting, and I welcome the minister to her new role. As the previous convener of the committee, she is well versed on the bill, so it will not come as a complete surprise to her.

Section 1—General duty

The Convener: Group 1 is on general duty: objectives and measures. Amendment 79, in the name of Rhoda Grant, is grouped with amendments 66 and 1.

Rhoda Grant (Highlands and Islands) (Lab): The amendments in the group take the same direction. The bill as it stands does not contain a provision to implement the flood risk management plans. When we were taking evidence, it became apparent that such a duty was needed, and that became recommendation 3 of the committee's stage 1 report. Amendment 79 is simple and straightforward, but without any duty to implement, the bill would be mainly a paper exercise.

I move amendment 79.

Peter Peacock (Highlands and Islands) (Lab): As Rhoda Grant said, all three amendments in the group seek to strengthen responsibility for implementing flood risk management plans. Each seeks to do so in a slightly different way, but they are not mutually exclusive and they could work together.

Amendment 66 seeks to place a duty on the responsible authorities

"so far as is practicable, and in so far as responsibility for implementation lies with each of them"

to secure within a specific timetable the implementation of local flood risk management plans, whereas amendments 79 and 1 focus on district plans. Amendment 66 is measured and reasonable. It may bear most heavily on local authorities, but it would give some assurance to local people that those authorities are under a duty to seek to secure the objectives of the plans that they helped to establish without tying the hands of the responsible authorities. The securing of objectives would be sought

"as far as is practicable",

which would leave a degree of discretion locally. The amendment reflects the committee's unanimous findings in its stage 1 report, which specifically recommended at recommendation 3 that all local authorities should be required to

"use their best endeavours to deliver the objectives of flood risk management plans".

I hope that the committee will support amendment 66.

The Minister for Environment (Roseanna Cunningham): Good morning, everybody.

I agree with Rhoda Grant and Peter Peacock that it is important that the objectives and measures that are set out in flood risk management plans are delivered on the ground. Although the preparation of maps and plans is an important part of flood risk management, it is, of course, the works that make the difference. If we do not implement the works, we will not secure the achievements that we want that will make the difference to flood risk management throughout Scotland.

Section 1 places a general duty on Scottish ministers, the Scottish Environment Protection Agency and responsible authorities to exercise their flood risk-related functions with a view to reducing overall flood risk and so as to secure compliance with the floods directive. Amendment 1 will ensure that those parties will also be required to

"act with a view to achieving the objectives set out in the flood risk management plan ... as approved under section 27".

I understand that Mr Peacock would like a specific reference to be made to local flood risk management plans. I want to stress two important points. First, although the duty in amendment 1 is linked to the objectives that are set out in the flood risk management plans that SEPA has prepared, the objectives that are set out in those plans will be the same as those that are set out in the local flood risk management plans. Therefore, the general duty will also apply to the local flood risk management plans.

Secondly, section 23 stipulates that measures must be identified to achieve objectives. Therefore, the new duty links across to measures and to the implementation parts of local flood risk management plans that set out how the measures will be implemented.

Amendment 1 therefore directly addresses recommendation 3 in the committee's stage 1 report. I am confident that the duty, alongside other provisions in the bill, will ensure that flood risk management is placed on a level playing field with other local authority responsibilities.

Rhoda Grant's amendment 79 is, in effect, an alternative to amendment 1. The aim of both amendments is to strengthen the link between the duty to reduce overall flood risk and delivering the objectives that are set out in flood risk management plans. I am sure that amendment 1 will have the impact that Rhoda Grant seeks to obtain with amendment 79. However, her amendment would narrow the duty to reduce overall flood risk by limiting that to the achievement of objectives. It could detract from the aim of ensuring that responsible authorities act so as to reduce overall flood risk, even if that does not yet relate to an objective that has been specified in a plan.

Peter Peacock's amendment 66, which is also an alternative to my amendment 1, would have a slightly different consequence. It would create a duty to implement the measures in local flood risk management plans, but as drafted, it would not leave much flexibility for local authorities or others to take account of changing circumstances. We have deliberately crafted the flood risk management planning process to allow for an element of flexibility to cover necessary changes in priorities, such as a need to focus on emergency work during major flooding incidents or to take account of new data that should, rightly, result in the implementation of particular measures being postponed or abandoned. The bill is about sustainable flood risk management. It would not be particularly sustainable for a local authority to continue to pursue an obsolete measure purely because there was a legal requirement for it to be implemented.

There is also the risk that placing such a specific duty on local authorities to seek to implement the measures in a local flood risk management plan would elevate flooding above all the other areas in which a local authority must provide a service and in which no similar duty exists. By focusing on reducing flood risk and achieving the objectives of district plans, amendment 1 provides for a more reliable and flexible approach.

In its report, the committee expressed concern about the possibility of local authorities implementing flood risk management measures that differ greatly from those that are set out in local flood risk management plans. Elsewhere in the bill, there are already restrictions that are intended to ensure that local authorities cannot circumvent the flood risk management planning process and pursue a different and possibly less sustainable agenda. Section 49 specifies that local authorities can use their powers to reduce flood risk only to implement the measures that are set out in local flood risk management plans. The only exceptions are in cases of emergency and where the work that is being done will not affect the implementation of the local plan. When considered

together with the existing general duties in section 1, those provisions provide a flexible way of ensuring that plans are implemented. Preserving flexibility in the context of the bill is one of our key concerns.

I ask Rhoda Grant to withdraw amendment 79 and request that amendment 66 not be moved.

Alasdair Morgan (South of Scotland) (SNP): If I understood Mr Peacock correctly, he said that all three amendments could be agreed to. I was surprised by that suggestion. The bill is a bit opaque at the best of times, but if we changed section 1 by agreeing to all three amendments it would become even more so.

On a more serious note, the minister made a point that we addressed during the discussions on our stage 1 report. Clearly, the bill places one particular duty on local authorities. However, if we concentrate only on making flood risk management an enforceable duty, disregarding all the other duties on local authorities, and the next committee that is considering a particular duty does the same, everything will become a priority, which means that nothing will be a priority. That is a step too far. The minister has made a good case for her amendment and I intend to vote for it.

Bill Wilson (West of Scotland) (SNP): Local democracy is an important issue in this context. Councils must be able to say what their priorities are at a particular time. I do not want us to be in the position of telling councils that they can have no flexibility in determining their priorities.

The minister mentioned flexibility, which is another big issue for me. We are in the middle of a period of climate change and do not know to what extent flooding patterns will change. If we tie matters down too tightly, we may find that in six or 10 years' time we have a slightly different expected pattern of flooding and that councils need to implement different sets of priorities or plans. I, too, will support the minister's amendment.

John Scott (Ayr) (Con): I note the intentions behind the three amendments. Having listened to the arguments for each amendment and the minister's detailed explanation, I think that maintaining flexibility is the most important issue. As Bill Wilson said, we may face unforeseen and uncertain circumstances during the lifetime of the bill. In this instance, I am happy to support the minister's amendment.

Rhoda Grant: I will not withdraw amendment 79, because it does not interfere with what the minister is trying to do; indeed, I think that it strengthens it. I press amendment 79.

The Convener: The question is, that amendment 79 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grant, Rhoda (Highlands and Islands) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

AGAINST

Morgan, Alasdair (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

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

There is a tie, so I use my casting vote against the amendment.

Amendment 79 disagreed to.

Amendment 66 moved—[Peter Peacock].

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grant, Rhoda (Highlands and Islands) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

AGAINST

Morgan, Alasdair (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

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

Again, there is a tie. I use my casting vote against the amendment.

Amendment 66 disagreed to.

Amendment 1 moved—[Roseanna Cunningham]—and agreed to.

10:15

The Convener: Group 2 is on general duty: environmental, economic and social impact. Amendment 2, in the name of the minister, is grouped with amendment 82.

Roseanna Cunningham: Members will be relieved to hear that I will not speak at the same length as I spoke on the previous group of amendments.

The bill places a duty on the Scottish ministers, SEPA and responsible authorities to consider the economic and social impacts of exercising their flood risk-related functions. Alongside

socioeconomic considerations, the environment is one of the three pillars of sustainability. Amendment 2 will ensure that environmental impacts are considered alongside the social and economic impacts.

The purpose of amendment 82, which John Scott lodged, appears to be to ensure that guidance on considering the social, economic and environmental impacts of exercising functions is issued. The matter is important and I recognise that the committee has asked the Government to issue guidance on how cost benefit analysis will ensure that all social and economic impacts and benefits are assessed. I reiterate the previous minister's commitment to issuing guidance on that.

Any guidance must be issued at a time that will provide the maximum benefit to all the parties that are involved. The guidance must be developed in full partnership with the bodies that will implement the bill. I am concerned that a statutory requirement to issue guidance by a predetermined date on duties under section 1(2)(a) would cut across that important work. However, I understand that the committee's concern is to ensure that guidance on the social, economic and environmental impacts of exercising functions is issued in a timely manner. I therefore ask John Scott not to move amendment 82, as we will lodge a stage 3 amendment that makes it clear that guidance on the social, economic and environmental impacts of exercising functions must be issued within two years of the relevant provision's commencement.

I move amendment 2.

John Scott: As the minister noted, amendment 82 would implement recommendation 6 in the committee's stage 1 report, which was

"that the Scottish Government produces a timetable demonstrating what work it intends to undertake in order to produce guidance on its preferred approach to the assessment of human and social costs"

in a timely fashion. My amendment would give at least a year's notice of the need to produce guidance.

I am prepared to accept that amendment 82 might be too prescriptive. I am happy that the minister will lodge a stage 3 amendment to address the committee's recommendation 6, so I will not move amendment 82.

Roseanna Cunningham: I thank John Scott for reconsidering the need for his amendment and I reiterate the commitment to lodge a suitable amendment at stage 3 in the terms that I described.

Amendment 2 agreed to.

The Convener: Group 3 is on consistency between purposes of flood risk-related functions

and other duties. Amendment 80, in the name of Liam McArthur, is the only amendment in the group.

Liam McArthur (Orkney) (LD): Amendment 80 is in essence a probing amendment. We have discussed duties and functions in considering previous amendments. Section 1(2) makes a link to the duty that is set out in section 1(1) to exercise the flood risk-related functions. Through amendment 80, I seek to probe with the minister the thinking behind section 1(2)(b), the wording of which creates confusion in relation to the general duties. I would welcome the minister's clarification of the intention behind that wording.

I move amendment 80.

Roseanna Cunningham: Amendment 80 would remove a vital qualification in the opening words of section 1(2)(b) that will ensure that the general duties—to promote sustainable flood risk management; to act with a view to raising public awareness of flood risk; and to act to contribute to sustainable development—are exercised only so far as they are consistent with the purposes of flood risk-related functions. The qualification is essential to ensure that the general duties work with flood risk-related functions under other legislation.

The flood risk-related functions in the bill are about managing flood risk, but section 1(3) allows the Scottish ministers to designate other functions as flood risk-related functions. Those might be relevant to managing flood risk, but they are unlikely to be intended primarily to deal with flooding. It is important to ensure that the general duties do not prevent responsible authorities from carrying out functions that are intended for other purposes. For instance, it would be appropriate for Scottish Water to exercise its flood risk-related functions under part 3 with a view to raising public awareness of flood risk, but it might not be appropriate to expect Scottish Water to raise awareness of flood risk when exercising its drinking water functions. In short, it is essential that flooding-related duties do not prevent bodies from exercising their other functions properly. The opening words of section 1(2)(b) are a safeguard to ensure that that situation is avoided.

For those reasons, I urge the member to withdraw amendment 80.

Liam McArthur: On that basis, I seek to withdraw the amendment.

Amendment 80, by agreement, withdrawn.

The Convener: Group 4 is on general duty: managing flood risk sustainably. Amendment 3, in the name of the minister, is grouped with amendments 83 and 65.

Roseanna Cunningham: During stage 1, as I know, there was a lot of discussion about sustainable flood risk management. The adoption of a sustainable approach to the management of flooding is central to the Government's agenda for modernising flood risk management, and sustainable flood risk management is at the heart of the bill. The bill includes a series of substantive provisions that translate concepts and principles that are at the heart of sustainable flood risk management. For instance, the bill sets out a framework for collaborative working and stakeholder engagement; establishes a long-term and catchment-focused planning process; provides for consideration of non-flooding benefits when identifying measures; and ensures that the broadest range of measures are within the flood practitioner's toolkit.

Amendment 3 will supplement the existing duty to promote sustainable flood risk management by requiring the Scottish ministers, SEPA and responsible authorities to

"act in the way best calculated to manage flood risk in a sustainable way"

when exercising their flood risk-related functions. Amendment 3 will retain rather than replace the duty to promote sustainable flood risk management. We believe that the promotion of sustainable flood risk management, which we take to include engaging with stakeholders and landowners, is an important part of sustainable approaches to managing flood risk.

Amendment 65 will change the long title so that it states that the bill makes provision about the sustainable management of flood risk. That will ensure that the long title fully reflects the provisions and purpose of the bill, which is what I think the committee wants.

Amendment 83, in the name of Peter Peacock, sets out some new provisions in relation to issuing guidance on the meaning and achievement of sustainable flood risk management. I am confident that those are unnecessary, and that they could be more limiting than the provisions that already exist. Section 2, as it is currently drafted, already gives Scottish ministers powers to issue guidance and directions on any matter that relates to the exercise of flood risk-related functions. Sustainable flood risk management is clearly one of those functions, and I intend to issue guidance on the meaning of that and its role in the implementation of the bill. The bill requires SEPA and the responsible authorities to have regard to any such guidance.

Amendment 6, which I will discuss later, requires Scottish ministers to consult SEPA and responsible authorities before issuing directions or guidance.

For those reasons, I ask the member not to move amendment 83.

I move amendment 3.

Peter Peacock: I welcome amendments 3 and 65. Amendment 83, as the minister said, gives Scottish ministers powers to issue guidance on the specific question of sustainable flood risk management. There is, as the minister indicated, a welcome change to the long title of the bill, which makes clear that the bill is about sustainable management of flood risk.

There are many interpretations of what sustainable flood risk management means, and as new thinking, technologies and experimentation emerge over time, the definition will no doubt change. Making provision for guidance on the specific meanings and achievement of sustainable flood risk management rather than seeking to define it in the text of the bill is, in general, a sensible approach; the committee made that point in its stage 1 report.

The minister argued that she would already have powers under the bill to issue guidance on that point. However, it is important to be explicit about the meaning and achievement of sustainable flood risk management, and amendment 83 empowers ministers to take care of that over time. Similar provisions are included in other pieces of legislation such as the National Parks (Scotland) Act 2000, the Land Reform (Scotland) Act 2003 and the Nature Conservation (Scotland) Act 2004.

Amendment 83 gives effect to the unanimous recommendation of the committee in its stage 1 report, which asked for the issue of sustainability to be linked to guidance. I hope that the committee will agree to the amendment.

Alasdair Morgan: It seems that amendment 83 somewhat overeggs the custard. The minister has come back and agreed to our recommendation, including the reference to sustainability, and she already has powers under section 2 with regard to issuing guidance in relation to the bill. It seems, therefore, that the matter is covered. We should not complicate legislation any more than is necessary.

Roseanna Cunningham: I want to press amendment 3. Although I understand where Peter Peacock is coming from in making his arguments, everything that he seeks will already be contained within the bill.

Amendment 3 agreed to.

The Convener: Group 5 is on general duty: co-operation. Amendment 81, in the name of Elaine Murray, is grouped with amendment 4.

Elaine Murray (Dumfries) (Lab): Amendment 81 simply inserts the words, “and integrate” into line 21 of the first page. It takes the same direction as amendment 4, in the name of the minister, which inserts into the text of the bill the capability of the responsible authorities to

“enter into agreements with each other”.

I intend to press my amendment, because it is important not just to work together, but as far as is practical—which is the wording of the bill—to integrate the authorities’ respective functions. That could apply not only to such things as integrated funding streams for certain sorts of work, but to the integration of the authorities’ functions with other functions under related directives, such as the water directive. It does not in any way negate the minister’s amendment, but it strengthens the provisions in the bill.

I move amendment 81.

10:30

Roseanna Cunningham: Co-operation and collaboration will be key to the successful implementation of the bill. The bill already includes a general duty to collaborate and a series of more specific duties to consult and agree on important matters. Amendment 4 will make it clear to the bodies involved in managing flood risk that collaboration includes entering into agreements. That could include agreements on the joint exercise of functions or on the sharing of costs.

I appreciate the intention behind Elaine Murray’s amendment 81, but concerns arise over how the word “integrate” would be construed. The integration of functions would be difficult to achieve in practice. For instance, how exactly would one expect SEPA and local authorities to integrate functions? Would it involve merging duties, staff, systems and procedures? What would integration mean, beyond co-operation or co-ordination?

The bill includes further provisions that are intended to ensure that co-operation and co-ordination underpin the implementation of the bill. For example, section 31(1)(b) includes provisions for all parties to agree, before a local flood risk management plan is finalised, on how measures will be implemented.

I accept in principle that there is a clear need for close co-operation and collaboration. The bill makes provision in section 41 for integrating with the Water Environment and Water Services (Scotland) Act 2003.

I cannot accept amendment 81 at this stage, but I ask Elaine Murray to consider withdrawing it while we consider the issue further for stage 3 with a view to finding a workable solution to the

substantive points that she raises. I understand what she is aiming for, and we could perhaps have a useful conversation before stage 3.

Elaine Murray: I have listened to the minister, and we will have an opportunity to revisit the issue at stage 3. I am therefore happy to seek leave to withdraw amendment 81.

Amendment 81, by agreement, withdrawn.

Amendment 4 moved—[Roseanna Cunningham]—and agreed to.

The Convener: Group 6 is on flood risk-related functions. Amendment 5, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: The Rural Affairs and Environment Committee agreed with the view of the Subordinate Legislation Committee that the general duty to act with a view to reducing flood risk should apply to the Scottish ministers when they exercise their powers to designate flood risk-related functions and to issue directions and guidance under part 1. I have reflected further on that issue, and am happy to amend the bill so that the general duty applies to the Scottish ministers’ functions under part 1. That is being done by adding functions under section 1(3) and section 2 to the definition of flood risk-related functions for the Scottish ministers. I trust that amendment 5 meets with the committee’s original wishes.

I move amendment 5.

Amendment 5 agreed to.

Section 1, as amended, agreed to.

Section 2—Directions and guidance

The Convener: Amendment 82 was debated with amendment 2.

John Scott: The minister will lodge an amendment at stage 3, so I will not press amendment 82.

Amendment 82 not moved.

The Convener: Group 7 is on directions: consultation. Amendment 6, in the name of the minister, is grouped with amendment 25.

Roseanna Cunningham: The committee agreed with the Subordinate Legislation Committee’s view that the bill should require Scottish ministers to consult bodies before giving them directions in relation to the exercise of their flood risk-related functions, as defined in section 1. I am happy to amend the bill so that the bodies to be directed are consulted before a direction is given.

Amendment 6 will ensure that SEPA and responsible authorities will also be consulted where they are not being directed but where the

Scottish ministers consider it appropriate to consult them.

Section 18 specifies the information that must be shown in flood hazard maps when SEPA produces them. The committee agreed with the Subordinate Legislation Committee's view that Scottish ministers should have to consult SEPA before giving it directions on the content of those maps. I have considered that point and I am happy to amend the bill accordingly. Therefore, amendment 25 requires Scottish ministers to consult SEPA before directing it to include in flood hazard maps information on coastal flooding, ground water flooding and flooding from a sewerage system.

I trust that the amendments meet the committee's wishes. In referring to amendment 6 earlier, I indicated that it applied to directions or guidance, but I clarify that it applies to directions only.

I move amendment 6.

Amendment 6 agreed to.

Section 2, as amended, agreed to.

After section 2

Amendment 83 moved—[Peter Peacock].

The Convener: The question is, that amendment 83 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grant, Rhoda (Highlands and Islands) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

AGAINST

Morgan, Alasdair (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

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

Again, there is a tie. I use my casting vote against the amendment.

Amendment 83 disagreed to.

Sections 3 and 4 agreed to.

Section 5—Responsible authorities

The Convener: Group 8 is on responsible authorities: consultation. Amendment 7, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: The committee agreed with the Subordinate Legislation

Committee's view that Scottish ministers should consult widely before making an order to designate new responsible authorities. I am therefore happy to amend the bill, so that before a new responsible authority can be designated, Scottish ministers have to consult SEPA, responsible authorities, the public bodies or office-holders that are to be designated as responsible authorities and such other persons as are considered appropriate. I hope that that meets the committee's wishes.

I move amendment 7.

Amendment 7 agreed to.

Section 5, as amended, agreed to.

Sections 6 to 8 agreed to.

Section 9—SEPA to prepare flood risk assessments

The Convener: Group 9 is on flood risk assessments: deadline for preparation. Amendment 8, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: Section 9(2) sets the deadline for preparation of the first flood risk assessments as 22 December 2011, or an earlier date that the Scottish ministers may set by direction. The flexibility to set an earlier date was originally included because it might have been helpful to produce flood risk assessments early. However, the Subordinate Legislation Committee queried the need for ministers to be able to set deadlines for SEPA to produce flood risk assessments in advance of deadlines set in the European floods directive. It has now become clear that it will not be practicable for the first flood risk assessments to be delivered before 2011, so there is no longer any need for the flexibility to change the date under section 9. Amendment 8 therefore removes the ability of the Scottish ministers to set an earlier date.

I move amendment 8.

Amendment 8 agreed to.

The Convener: Group 10 is on natural features and natural characteristics. Amendment 9, in the name of the minister, is grouped with amendments 10, 11, 17, 67, 18 to 20, 68, 69, 21 to 24, 85, 35, 37, 38, 40 to 42, 53, 57, 58, 88, 61, 63 and 64.

Roseanna Cunningham: This extensive group of amendments reflects the long and detailed conversations that have taken place on natural flood management, which has been a key topic of discussion for the committee. There are a lot of points for me to address, so I will have to spend a little time on the group. I ask members to bear with me.

Amendments 9 to 11, 17 to 24, 35, 37, 38, 40 to 42, 53, 57, 58, 61, 63 and 64 relate directly to the assessments of natural features that will be made under section 16. I will lodge separate amendments to later sections that deal with wider issues concerning the role of natural flood risk management and its relationship to sustainable flood risk management. I will refer to those amendments when I address the amendments that committee members have lodged.

We all appreciate that the evidence base supporting the use of more natural approaches to managing flooding is still limited and evolving. However, available information suggests that a number of techniques show significant promise. Furthermore, we should aim to take advantage of the added benefits that can be gained from adopting more natural approaches to managing flooding, which include environmental and social benefits.

The Government is in the process of developing a long-term research strategy to co-ordinate investment in improving our understanding of natural flood management techniques. We have also set up a stakeholder group to advise the Government on natural flood management. Those important steps will contribute to the cultural shift that, as the committee has rightly highlighted, must occur.

The Scottish Government has worked closely with stakeholders on considering the role of natural flood management and the committee's recommendations on section 16. The amendments to which I will speak have been drafted in close consultation with stakeholders, including SEPA, Scottish Natural Heritage and Scottish Environment LINK.

Amendments 18, 23 and 24 mean that the assessments that will be prepared under section 16 will consider not only natural features but how alterations or restoration of natural characteristics of river basins and coastal areas could contribute to managing flood risk. The reference to river basins indicates that the emphasis is clearly on taking a catchment-based approach.

Amendments 19 and 20 replace the examples of natural features that are set out in the bill with a new set of examples that covers natural features and characteristics of river basins and coastal areas. In setting out those examples, we have given particular consideration to ensuring that they express some of the key concepts and aims of natural flood management, including using natural features and characteristics to assist in the retention or slowing of flood water. I stress that the examples that are set out in the amendments are not intended to form an exhaustive list. In compiling them, the Government liaised closely

with key stakeholders, including Scottish Environment LINK and SEPA.

Amendment 17 sets a date—December 2013—by which assessments must be prepared. That date has been chosen to ensure that assessments can be co-ordinated with other important steps in the flood management process and with work that is being carried out under the Water Environment and Water Services (Scotland) Act 2003.

Amendments 21 and 22 are consequential on the introduction of a date and ensure that, when preparing an assessment, SEPA will give consideration to those maps and plans that are available when the assessment is made.

Amendments 9, 10, 11, 37, 38 and 53 are consequential amendments that ensure that the new terminology that is introduced in section 16 is applied elsewhere in the bill, including in section 9, which deals with flood risk assessments.

Amendment 35 gives SEPA the power to obtain information, documents and assistance under section 37 when it is preparing an assessment.

10:45

Amendments 57 and 58 make consequential changes to section 79, which as introduced would give SEPA a more limited power to obtain information when performing its functions under section 16. The new wider-ranging power will ensure that SEPA can obtain not only information about land but any other information or assistance to support the preparation of assessments, which could include seeking assistance from local authorities.

Amendment 40 applies to the bill the same definitions of a body of surface water, a loch and a watercourse as are used in the Water Environment and Water Services (Scotland) Act 2003. That is part of the integration that I mentioned.

Amendment 41 amends the definition of a sub-basin.

Amendment 42 changes the definition of a wetland to include wetlands that do not depend directly on bodies of surface water or groundwater for their water needs. That will ensure that all wetland features, including rainwater-fed wetlands that might help to slow run-off, are captured by the definition of wetland in the bill. We are trying to include as much as possible.

Amendments 61, 63 and 64 make consequential changes to the index of defined terms in schedule 4.

Amendment 88, which Rhoda Grant lodged, would amend the definition of flood protection

work for the whole bill by replacing the reference to

“the sowing or planting of vegetation or forestry”

with a reference to

“the alteration ... or restoration of natural features”.

Amendment 88 would make the definition slightly narrower than that in the bill.

The amendments that I have lodged to section 16 will ensure that

“the alteration ... or restoration of natural ... characteristics of any river basin or coastal area”

are recognised as flood protection measures when they contribute to managing flood risk. I am confident that those amendments, combined with the definition of flood protection work, which covers

“any work of construction, alteration, improvement, repair, maintenance, demolition or removal”,

will be wide enough to encompass

“the alteration ... or restoration of natural features and characteristics of any river basin or coastal area”.

For those reasons, I do not support Rhoda Grant's amendment 88 and I ask her not to move it.

Amendment 67, which Rhoda Grant lodged, and amendment 68, which Elaine Murray lodged, would require SEPA to consider natural processes and give the Scottish ministers the option to give guidance on what constitutes a natural flooding process. As I have said, the Government liaised closely with key stakeholders on the topic, including Scottish Environment LINK, SEPA, SNH and the Forestry Commission Scotland, and it quickly became clear that there is no consensus on what is meant by a natural flooding process. The simple fact that flooding is a naturally occurring phenomenon leads me to conclude that any attempt to define a natural flooding process would result in a lengthy and potentially unproductive exercise. It is difficult to identify examples of how a natural flooding process—however people choose to define it—could be restored without first physically altering a feature or characteristic of the landscape. The amendments that I have lodged will ensure that the assessments that are done under section 16 focus not only on well understood aspects of natural flood management but—critically—on catchment characteristics, which must be at the heart of adopting a more natural approach to flood management. For those reasons, I do not support amendments 67 and 68, which I ask Rhoda Grant and Elaine Murray not to move.

Amendment 69 was lodged by Elaine Murray. I agree fully that the assessments that are prepared under section 16 should be subject to consultation with local authorities, other responsible authorities

and other key organisations, including SNH. That is why the bill requires SEPA to have regard to the advice of advisory groups when preparing assessments. I assure the member that the bodies that her amendment names will need to be involved in the preparation of assessments and that SEPA will be required to have regard to their advice. To initiate a separate consultation exercise would risk undermining the important role that is envisaged for advisory groups. For those reasons, I do not accept amendment 69. The bill already makes adequate provision in that respect, therefore I ask the member not to move the amendment.

Amendment 85, which was lodged by Peter Peacock, does not relate to the content of assessments that are prepared under section 16. Instead, it relates in part to how the information that is garnered from assessments is used when SEPA sets objectives and measures to manage flood risk for inclusion in flood risk management plans. I would first like to clarify that the bill already requires SEPA to have regard to section 16, along with various other important factors, when it identifies objectives and measures.

The other aspects of Peter Peacock's amendment would require SEPA to select the most sustainable measures and to give reasons for selecting measures that are inconsistent with things that are identified through assessments that are made under section 16. On the first point, I will later discuss a proposed Government amendment that will require SEPA to select measures that will achieve objectives in the most sustainable way. On the second point, I fully support the principle that SEPA should be required to set out reasons for selecting particular measures and I believe that that principle should apply to all measures, not only to those that relate to section 16.

I ask Peter Peacock not to move amendment 85, on the understanding that I will bring forward an amendment at stage 3 to require SEPA to set out the reasons behind the selection of measures.

I move amendment 9.

Rhoda Grant: Having listened to the minister's comments, I am happy not to move amendment 67, because the Government's amendment 18 has the same purpose.

On amendment 69, the minister said that she believes that the matter has been taken care of. I think that there is an issue with our numbering—amendment 69 is mine.

The Convener: Amendment 69 is in Rhoda Grant's name, not Elaine Murray's.

Rhoda Grant: The numbering has caused confusion.

I heard what the minister said about the point being covered by other amendments and other parts of the bill, but I am not convinced of that—it is important that the authorities that are listed in amendment 69 are involved. However, given the way that voting has gone, I will not move amendment 69, although I will re-examine the bill and perhaps come back with an amendment at stage 3 if I am still not convinced by what the minister has said.

I heard what the minister said about the aims of amendment 88 being met by the bill, but I do not believe that the amendment would pull back what is available under the bill. The bill states that natural features and

“the sowing or planting of vegetation or forestry”

are allowed. My amendment would widen that definition, and I do not think that it would have a detrimental effect, so I will move it.

Elaine Murray: Unfortunately, Rhoda Grant and I were transposed at some point, which has caused a bit of confusion.

My amendment 68 obviously relates to guidance. Like many of the amendments, amendment 68 addresses substantial concerns that were raised with the committee. I am sure that the minister will remember from her previous role that there were substantial concerns about the need for a cultural change so that natural processes are understood and used wherever possible. I am still of the opinion that guidance would be helpful to responsible authorities. I appreciate, as Rhoda Grant indicated when she said that she would not move her amendment 67, that the phrase “natural flooding process” is perhaps not appropriate because of the proposed new wording of the sections concerned.

Given that stage 3 is still to come, I am inclined not to move my amendment 68 and to review the amended sections to see whether instructions on giving guidance are required.

Peter Peacock: I welcome all the minister's amendments in the group and my colleagues' comments on them. I will focus on amendment 85. As the minister rightly acknowledged, natural flood management was one of the issues that got the most attention during the committee's flooding inquiry and in its stage 1 report. There is no doubt that the committee is attracted to using more natural approaches to flood risk management. Those approaches might be more sustainable than hard engineering solutions, with the additional benefit that they can create or restore habitat, which relates to other aspects of Government policy. The committee argued that, where natural approaches can be used to remove the peaks of floods and reduce the need for hard

engineering solutions downstream, they should be considered—I stress the word “considered”.

The stage 1 report is clear that natural flood management techniques will not work in every circumstance and are therefore not a panacea. The committee was equally clear that, as others have mentioned, a change of culture is required in the consideration of future flood management approaches. If we have a system for developing flood risk management plans that is dominated by engineers—estimable people though they are, and I include John Scott in that—we should not be surprised if the subsequent debate is dominated by engineering solutions or arrangements for flood management.

Recommendation 15 in the committee's stage 1 report calls for measures that are likely to cause the shift in culture that the committee feels to be necessary, but which are not prescriptive about the use of natural flood management techniques. The committee wants to

“require responsible authorities to consider what contribution natural flood management approaches could make”,

and recommends that

“Such an amendment should stipulate that, where natural flood management approaches are assessed as being able to make such a contribution but are not proceeded with, authorities must set out the reasons for that decision.”

Amendment 27, which the minister mentioned and which we will debate later, is the Government's way of addressing the issue. However, it does not go far enough and it is not explicit enough. Amendment 85 would deliver the committee's unanimous recommendation, and I hope that it embraces the purpose of the Government's amendment 27.

Amendment 85 is both reasoned and reasonable and I urge the committee to support it. It seeks to ensure that natural flood management techniques are considered, but it would not require action using those techniques to be taken above any other action. Under amendment 85, when the contribution that natural techniques could make was considered and it was decided not to use them, the reasons for the decision would have to be set out. The amendment would not require natural flood management techniques always to prevail, which is an understandable concern of the Government. It would provide for the necessary considerations to bring about the change in culture to which the committee has referred.

I noted the minister's comments about the intention to return at stage 3 with an amendment to take care of the reporting aspects. I welcome that, but it does not deal with the central point of amendment 85—of which reporting is a part—which is the requirement to consider natural

approaches, although not necessarily to implement them. I stress that point, which would give discretion to SEPA and local bodies.

Bill Wilson: Amendment 88 would replace the phrase

“the sowing or planting of vegetation or forestry”

with different wording. It occurred to me that the amendment might exclude commercial forestry, as it might not qualify as the alteration or enhancement of, or the restoration of, a natural feature. Under the bill as it stands, commercial forestry would be included. As we are hoping to expand commercial forestry substantially, that might be a slightly negative effect.

Rhoda Grant: I argue strongly that a tree is a natural feature, whether it is privately or publicly owned.

Bill Wilson: I was not really considering whether the trees are privately or publicly owned. Commercial forests are natural in the sense that they are trees, but they might not be considered a natural feature in the sense of being part of the historic landscape or a collection of species that are part of the historic ecosystem. Therefore, they might not be considered to be entirely natural. To take an extreme example, most people would accept that the plantations in the flow country were not a particularly natural feature. Of course, I am not proposing planting in blanket bog—that is merely an example of a case in which commercial forestry might be considered not to be natural.

The Convener: Rhoda, you can come in again, but I do not want a dialogue to start.

11:00

Rhoda Grant: I apologise. I saw a dialogue taking place and was quiet for a moment.

Amendment 88 would not preclude commercial forestry at all. The planting of the flow country may have been a planning abomination, but a tree is a natural feature regardless of where it is planted, so even if it was part of commercial forestry, it would be considered a natural feature.

Liam McArthur: The committee deliberated the presumption in favour of natural processes and features for quite a while, and the evidence that we took indicated that there was confusion about the implications of that presumption. Peter Peacock’s amendment 85 would get round some of those difficulties. I acknowledge the intention of amendment 27 and what the minister said about amendments that she may lodge at stage 3, but amendment 85 would implement a central recommendation from the committee’s stage 1 report. It would facilitate the cultural shift for which we called; it would not prescribe or proscribe

particular approaches but would ensure that hard engineering is not the approach with which local authorities and SEPA naturally kick off the debate about flood risk management.

Elaine Murray: I am minded not to move amendment 68, but Bill Wilson’s comments reflect the need for guidance and the misunderstanding that might exist about what constitutes natural processes. Clearly, there is a range of approaches, from the use of a totally natural system in its normal, natural condition to the use of soft engineering solutions to promote a natural solution to a problem. His comments about the proscription of commercial forestry illustrate the need for guidance. I ask the minister to reflect on that when she considers stage 3 amendments, because the committee is clearly confused, even after all its discussions about the issue over the weeks. It is important that such confusion does not remain after the bill has completed its passage through the Parliament.

Alasdair Morgan: It strikes me that the amendments that we are already making to section 16, coupled with amendment 27—which the minister intends to move later today or on another occasion—probably implement the committee’s recommendations. It is open to members to revisit the matter once the bill has been republished at the end of stage 2. There are so many amendments to section 16 that members may have some difficulty in taking in their scope and trying to combine them in their minds, therefore I will not support amendment 85.

John Scott: I am inclined to support amendment 85. Natural flood management was central to the committee’s report and, if amendment 85 would help to deliver that, it is important. Notwithstanding the minister’s intention to introduce amendments at stage 3, amendment 85 is worthy of support.

Roseanna Cunningham: Committee members have raised a number of points and there have been some interesting conversations.

On amendment 85, I have already indicated that I would be prepared to lodge a stage 3 amendment to require SEPA to set out the reasons behind its selection of measures. We will come to other amendments that deal with other aspects of amendment 85, but I point out that section 24 already requires SEPA to consider section 16 in setting objectives and measures.

Many provisions in the bill interrelate with one another, and amendments to one section are not necessarily the only amendments that relate to a particular issue. I said right at the start that there are other amendments that relate to natural flood processes and I have said clearly that the Government has been guided all the way through

the process by our consultation with a wide variety of stakeholders. Therefore, the amendments that we have lodged are not capricious in any way.

I am a little concerned about amendment 88. We deliberately drafted the definition of flood protection work to be as wide as possible. Amendment 88 would remove part of rather than add to the definition of flood protection work and might restrict the definition, which we would not like to happen. We must take great care not to make things more restrictive. The key is to be as open and flexible as possible in our approach to the bill.

Amendment 9 agreed to.

Amendments 10 and 11 moved—[Roseanna Cunningham]—and agreed to.

Section 9, as amended, agreed to.

Sections 10 to 12 agreed to.

Section 13—SEPA to identify potentially vulnerable areas and local plan districts

The Convener: Group 11 is on local plan districts. Amendment 12, in the name of the minister, is grouped with amendment 13.

Roseanna Cunningham: It is clear that ensuring that a catchment-focused approach to managing flood risk is adopted is an important part of improving flood risk management. The existing provision in the bill would have supported the adoption of a catchment-focused approach, but we have listened to the committee's and stakeholders' concerns about that requirement not being clearly conveyed in the bill. Amendments 12 and 13 will require SEPA to use river basins, sub-basins and coastal areas in identifying the areas for which local flood risk management plans have to be prepared. I want to clarify that the plans that are prepared by SEPA will be based on flood management districts that are formed from groups of river basins and coastal areas, which means that catchments will underpin flood risk management at the district and local levels.

I move amendment 12.

Amendment 12 agreed to.

Amendment 13 moved—[Roseanna Cunningham]—and agreed to.

Section 13, as amended, agreed to.

Sections 14 and 15 agreed to.

The Convener: We shall stop for a short comfort break and so that people can recharge their coffee cups. We are managing quite well, although perhaps those will be famous last words.

11:08

Meeting suspended.

11:14

On resuming—

After section 15

The Convener: Group 12 is on Scottish Water: duty to assess flood risk from sewerage systems. Amendment 14, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: In assessing and dealing with flooding from sewerage systems, we are presented with a distinct set of challenges. Pluvial flooding—in other words, flooding as a direct consequence of rainfall—and flooding from sewerage systems are intrinsically linked. That is simply because surface run-off water enters sewers that are designed to carry rainwater and sewage. When the sewers reach capacity, the water is discharged back out, with damaging consequences.

The management of sewer flooding requires co-ordination of efforts to mitigate the impacts from such flooding, including efforts to limit the water entering combined sewers by, for instance, using sustainable urban drainage systems. The first step in managing such flooding is the preparation of reliable information on pluvial and sewer flooding. It is not possible for one organisation to make the assessments in isolation, so Scottish Water, SEPA and local authorities will need to co-ordinate their assessment and data-gathering exercises.

Amendment 14 will require Scottish Water to prepare information about the risk of sewer flooding in all areas that have been identified as potentially vulnerable to flooding. Scottish Water will also be required to prepare information for other areas that have been identified by SEPA. The provision will ensure that, where a lack of information on sewer flooding could affect the quality of future flood risk assessments that are prepared by SEPA, steps can be taken to target new data-gathering exercises to address the deficiencies.

SEPA will be responsible for determining the form of the data after consultation with Scottish Water and the responsible authorities. That will ensure that the information that is prepared by Scottish Water can be combined or integrated with other information, such as information on pluvial flooding. The assessment must be prepared by a date specified by Scottish ministers and may include other information that will be set out in regulations.

Such data gathering will not be a stand-alone exercise. The outputs from the assessment will

feed directly into other assessments and maps prepared under the bill. For instance, the information will make an important contribution to the flood hazard and risk maps prepared by SEPA. Ultimately, the information will help to identify the right combination of measures to tackle pluvial and sewer flooding.

Amendment 14 is fundamental to our ability to address such issues on an integrated basis. I think that the issue was also raised in the committee's recommendations. I am confident that amendment 14 will lead to significant improvements in how we tackle surface water and sewer flooding.

I move amendment 14.

Amendment 14 agreed to.

The Convener: Group 13 is on bodies of water and watercourses: local authority duties. Amendment 15, in the name of the minister, is grouped with amendments 36, 39, 43 to 47, 76, 48, 49, 77, 51, 54 to 56 and 62. If amendment 47 is agreed to, I will not be able to call amendment 76, as it will have been pre-empted.

Roseanna Cunningham: I will speak to amendments 15, 36, 39, 43 to 49, 51, 54 to 56 and 62. For obvious reasons, this group will take some time to deal with, so I apologise in advance for speaking at length.

The bill will give local authorities responsibilities for preparing plans to manage flood risk. Those plans need to co-ordinate actions across catchments and within urban centres. Local authorities will need reliable information on the location of bodies of water and sustainable urban drainage systems to allow them to co-ordinate their actions.

Amendment 15 requires local authorities to prepare maps of bodies of water and sustainable urban drainage systems in their area. It is not intended that local authorities should be required to map every body of water in their area, so the provision will give local authorities discretion about the scale at which they identify and map. The amendment also gives Scottish ministers powers to set out in regulations other information for inclusion in the map as well as the form of the information. The map must be reviewed from time to time and updated as necessary.

Amendment 36 ensures that SEPA and the responsible authorities provide local authorities with information so that they can carry out their duty to map and assess bodies of water when requested.

Part 3 places a duty on local authorities to make information public and to publicise the availability of the information. Amendment 39 removes the need to advertise the publication of maps of bodies of water and schedules that are prepared

under section 56. We do not want local authorities to have to publicise the availability of maps, because the maps are preliminary documents and their main purpose is to provide information to feed into the main assessments, maps and plans. It would place a disproportionate burden on local authorities if they had to advertise those too.

The maintenance of watercourses is an important function that local authorities have been carrying out since the passage of the Flood Prevention and Land Drainage (Scotland) Act 1997. It is imperative that that important work is continued; it is also essential that it is co-ordinated with other flood management work that is set out in the flood risk management plans.

Amendment 45 removes the duty to assess watercourses to determine whether they could give rise to flood risk, and replaces it with a duty to assess "bodies of water", excluding canals. As described earlier, bodies of water are now defined in the bill. Canals are excluded from the duty because British Waterways is responsible for the maintenance and improvement of canals throughout the United Kingdom. Canals will still be taken into account for flood risk management purposes under other sections of the bill.

Amendments 46 and 48 are consequential on amendment 45. They remove the term "watercourse" and replace it with the term "body of water" in section 56. In addition, amendment 49 moves the whole of section 56 to immediately after section 15, so that it sits with the new duties on local authorities to prepare maps of bodies of water.

The new term "bodies of water" replaces the term "watercourses" throughout part 3 as a result of a number of amendments, and therefore the definition of watercourse is no longer required. Amendment 51 removes the definition of watercourse from section 61.

Where local authorities determine that a flood risk exists, they must consider whether clearance or repair works could reduce that risk. That ensures that the assessments are focused on those matters that can be addressed by clearance and repair works. The bill gives local authorities responsibility for determining when that assessment should be made, and each authority, acting reasonably as a public authority must always do, will decide how frequently an assessment must be made. Amendment 44, however, allows the Scottish ministers to direct local authorities on when the assessment should be made. In most cases, we expect local authorities to retain responsibility for determining when an assessment is undertaken.

Given the important nature of maintenance works, I believe that, wherever possible, the work

should be planned. I understand that many local authorities already prepare schedules of maintenance works. Amendment 47 requires local authorities to prepare schedules for clearance and repair works, where those are defined to mean removing obstructions such as shopping trolleys from a body of surface water; removing objects or material that are at significant risk of becoming obstructions, which can include trees that fall into a river; and repairing artificial structures that form part of the bed or banks of a body of water, such as a flood wall.

I clarify that local authorities have a broad range of powers to undertake other flood protection works, including emergency works, and I stress that the new duty to prepare schedules and act on the work that is identified in those schedules does not prohibit local authorities from undertaking other maintenance-related flood management work.

After listening carefully to the committee's concerns about the replacement of the duty to undertake maintenance works by the overarching duty to reduce overall flood risk, I have lodged amendment 43, which requires local authorities to carry out the works that are described in such schedules. To ensure co-ordination with other flood risk management works, that duty will apply only where it will contribute to, or not affect, the implementation of measures that are described in local flood risk management plans.

Section 68 provides a local authority, or any person who is authorised by a local authority, with the power to enter land to carry out its functions. Amendments 54 and 55 expand the purposes for which those powers of entry may be exercised under section 68 to include performance of the new duty to prepare maps of bodies of water, the existing duty to assess watercourses—which are to become “bodies of water”—and the new duty to carry out clearance and repair works.

In addition, amendment 56 extends the duty to compensate a person who has sustained damage as a result of scheme operations carried out by or on behalf of a local authority and related activity to include damage sustained as a result of the duty to carry out clearance and repair works.

Amendment 62 is a technical amendment, which inserts “relevant body of water” into schedule 4 and identifies in which section the term is interpreted for the purposes of the bill.

The amendments address the concerns that the committee expressed and I trust that they will be supported. They deal in full with the issues that are covered in amendments 76 and 77, so I ask Elaine Murray not to move those amendments.

I move amendment 15.

Elaine Murray: The intention behind amendments 76 and 77 is to address recommendation 27 in the committee's report, that “the existing requirement for local authorities to cleanse, repair and maintain watercourses be retained”.

As the minister said, amendment 47 and amendment 76 address the same issue—indeed, amendment 76 will be pre-empted if amendment 47 is agreed to. I suspect that the purpose of amendment 77 would be satisfied by the proposed new wording in the bill. If the other amendments in the group are agreed to, amendment 76 will fall and I will not move amendment 77.

Amendment 15 agreed to.

The Convener: Group 14 is on SEPA: duty to prepare maps of artificial structures and natural features. Amendment 16, in the name of the minister, is grouped with amendments 34, 50, 52, 59 and 60.

Roseanna Cunningham: No single set of maps shows where flood defences exist. There are records of flood prevention schemes that were constructed under the Flood Protection (Scotland) Act 1961, but those records do not cover privately constructed or older defences. There is also little information about structures or natural features that play a key role in flood risk management but were not intended for that purpose.

Such information is important for the purposes of mapping flood risk and preparing flood risk management plans, and a lack of information could have direct, harmful consequences. The collection of information on structures that do not form part of formal flood protection schemes but play an important role in protecting communities from flooding will help to ensure that local authorities, through development management, or SEPA, through its regulatory role for the water environment, can intervene before plans to alter or remove structures are taken forward.

Amendment 16 will place a duty on SEPA to prepare maps

“showing artificial structures and natural features in the flood risk management district the removal of which SEPA considers would significantly increase the risk of flooding from a body of surface water”.

Bodies of surface water include rivers, lochs and the sea. SEPA will be responsible for determining whether the removal of a structure or feature could significantly increase flood risk. In doing that, the agency will be required to consult relevant local authorities. The maps must show whether structures or features were constructed by local authorities as part of a flood prevention scheme under the 1961 act or under the new powers to manage flood risk under part 4 of the bill. The maps must also include other information that is

specified in regulations by the Scottish ministers, and they must be publicly available.

Amendments 34 and 52 are consequential amendments and will extend SEPA's powers to obtain information and assistance and its powers of access in relation to the new duty. The powers will help to ensure that SEPA will have all the tools that are necessary to prepare and validate important information. Amendments 50, 59 and 60 are consequential on amendment 16 and will move the definition of the 1961 Act, so that it will apply to the whole bill.

The mapping exercise will prove valuable to people who are responsible for managing flooding as well as to the general public. I trust that the amendments will be supported.

I move amendment 16.

Amendment 16 agreed to.

Section 16—SEPA to assess possible contribution of alteration etc of natural features

Amendment 17 moved—[Roseanna Cunningham]—and agreed to.

Amendment 67 not moved.

Amendments 18 to 20 moved—[Roseanna Cunningham]—and agreed to.

Amendments 68 and 69 not moved.

Amendments 21 to 24 moved—[Roseanna Cunningham]—and agreed to.

Section 16, as amended, agreed to.

Section 17 agreed to.

Section 18—Flood hazard maps

Amendment 25 moved—[Roseanna Cunningham]—and agreed to.

11:30

The Convener: Group 15 is on flood hazard maps: definition of “medium probability”. Amendment 26, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: We can probably all agree that the language that is used to describe the likelihood of flooding can be confusing. For example, discussion of return periods can give the false impression that only one 50-year flood will occur in any given 50-year period. In recent years, it has become common practice to describe the likelihood of flooding in terms of flood probabilities rather than in terms of return periods. Amendment 26 allows for a medium-probability flood to be defined in terms of a probability of occurrence. The current reference to return periods is also

retained, thus ensuring flexibility in the terminology that is used. The amendment will ensure that the bill reflects the current terms that are used by practitioners in the field of flood risk management, which will ultimately aid future engagement with the public on this important matter.

I move amendment 26.

Amendment 26 agreed to.

Section 18, as amended, agreed to.

Section 19—Flood risk maps

The Convener: Group 16 is on flood risk maps: protected areas, conservation and sites of special scientific interest. Amendment 84, in the name of Liam McArthur, is the only amendment in the group.

Liam McArthur: An amendment in my name yet again finds itself in splendid isolation. It deals with an issue that I raised during the evidence-taking session with the minister. The bill covers sites that are designated under the habitats and birds directives, but only those that are associated with protection of the water environment under the water framework directive. It potentially excludes the mapping of flood risk and damage to sites that do not depend on water, including a number of important terrestrial sites and woodlands. Nationally important sites are also excluded from the current assessment. Amendment 84 would avoid that potential anomaly, thus ensuring appropriate protection against damage for all designated sites.

I move amendment 84.

Roseanna Cunningham: I thank Liam McArthur for his explanation of amendment 84. I note that his intention is to ensure more extensive coverage of protected areas in the flood risk maps produced under section 19.

Unlike areas that are currently covered by section 19(2), the areas that would be identified by amendment 84 do not necessarily have anything to do with water-dependent habitats and species. There is a risk that the amendment could result in our failing to prioritise sufficiently the special protection of water-dependent habitats and species, as envisaged by the floods directive. For that reason, we cannot agree to remove section 19(2)(d)(v).

However, I appreciate the points that Liam McArthur raises, and I fully understand the importance of protecting all of Scotland's key habitats and species. I also acknowledge that flood management works could place non-water-dependent sites at risk.

We will consider the issue further before stage 3, to see whether we can find an alternative form

of wording to address the points that Liam McArthur raises. The regulation-making power in section 19(2)(f) could also be used to deal with the issue.

I ask the member to withdraw amendment 84, but we will come back at stage 3 with something to deal appropriately with the concerns that he has raised.

Liam McArthur: I am happy to withdraw amendment 84 on that basis.

Amendment 84, by agreement, withdrawn.

Section 19 agreed to.

Sections 20 to 22 agreed to.

Section 23—SEPA to prepare flood risk management plans

The Convener: Group 17 is on objectives and measures: sustainability etc. Amendment 27, in the name of the minister, is grouped with amendment 28.

Roseanna Cunningham: As already outlined, the sustainable management of flood risk is at the heart of the bill. A key part of taking a sustainable approach is considering all options that are available to manage flood risk. In many cases, the most powerful tool available is to avoid flood risk in the first place, possibly through development management. Other approaches include building defences, raising awareness and looking at more natural approaches to managing flood waters. In all cases, measures must be selected based on their suitability to particular circumstances. In urban areas, it can be important to use permeable paving or other source control measures to reduce surface water run-off. In rural areas, restoring wetlands or forests may be appropriate. I can see that Bill Wilson is pleased at the mention of permeable paving.

Section 24 sets out the factors that I believe must be considered when making an informed decision about the most appropriate approaches to managing flood risk. Those factors include climate change, costs and benefits, environmental objectives under the Water Environment and Water Services (Scotland) Act 2003, development management, and the assessment of opportunities for natural flood risk management undertaken under section 16.

SEPA is responsible for identifying objectives and measures for inclusion in flood risk management plans. That work would be undertaken in close collaboration with local authorities and other responsible authorities.

Amendment 27 will require SEPA to identify measures that it considers will achieve the objectives in the most sustainable way. The same

objectives and measures form the basis for local flood risk management plans, so amendment 27 also means that local flood risk management will be targeted at the most sustainable measures.

As was discussed in an earlier debate, amendment 27 achieves the same result as would proposed section 23(4B) that amendment 85 seeks to insert into the bill. That explains my reference to duplication when we discussed amendment 85.

I am confident that amendment 27 will address the committee's concern that the bill should place greater emphasis on sustainability.

Amendment 28 deals with the scope and content of cost benefit analyses. When setting objectives and measures, the bill currently requires SEPA to consider the benefits from reducing the potential consequences of flooding. The use of the word "otherwise" is intended to capture all potential non-flooding-related benefits, which could include environmental, social or economic benefits. Amendment 28 will replace the term "otherwise" with an explicit requirement to consider other social, economic or environmental benefits that might be derived from implementing a measure.

In addition to clarifying what should be considered as part of a cost benefit analysis, amendment 28 will help to ensure that the benefits that can be gained from adopting more natural flood management measures are fully considered. I am also confident that the amendment, in combination with the amendment that requires SEPA to select the most sustainable measures, will promote a shift towards considering and adopting more natural approaches to managing flood risk. I urge the committee to support the amendments.

I move amendment 27.

Peter Peacock: The minister has made it clear that amendment 27 interplays with my amendment 85. If amendment 85 is passed today, I recognise that a change will have to be made at stage 3 because of the duplication that might occur if amendment 27 is also passed. I have no objection to amendment 27, which I will support.

I make it clear that I intend to press amendment 85, but I am more than happy to have discussions both about what the minister said she is prepared to discuss before stage 3 and about the other point that amendment 85 addresses, which is that natural flood management should be considered as well as reported on. I leave that offer on the table for discussion prior to stage 3 to see whether we can find a satisfactory, mutually agreed solution. I intend to press amendment 85 when we get to that point.

Roseanna Cunningham: Obviously, the way forward is to have a conversation with Peter Peacock after the committee has agreed the amendments to try and tease out some of the interplay that exists. We are potentially duplicating provisions in the bill.

Amendment 27 agreed to.

Amendment 85 moved—[Peter Peacock].

The Convener: The question is, that amendment 85 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Grant, Rhoda (Highlands and Islands) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Scott, John (Ayr) (Con)

AGAINST

Morgan, Alasdair (South of Scotland) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 85 agreed to.

Section 23, as amended, agreed to.

Schedule 1

MATTERS TO BE INCLUDED IN FLOOD RISK MANAGEMENT PLANS

The Convener: Group 18, which is on strategic assessment, is the final group for today. Amendment 70, in the name of Peter Peacock, is grouped with amendments 71 to 74.

Peter Peacock: Amendments 70 to 74 are designed to give effect to the committee's stage 1 report recommendations on strategic planning for flood risk management and funding. During its consideration of flooding issues during the past year or so, the committee received a lot of representations about the adequacy of and means of planning national priorities for flood protection and how those priorities are funded. The amendments seek to strengthen provisions in the bill and give effect to the committee's recommendations. I hope that the amendments achieve the right balance in requiring ministers and SEPA to consider and form views about short, medium and long-term priorities, without tying ministers' hands to specific funding allocations and decisions at any moment in time.

Amendment 70 seeks to set out in statute what the committee recommended unanimously at recommendation 12 of its stage 1 report. Amendment 71 seeks to have ministers formally

consider the national picture and whether the plans that are being developed for their approval across the country constitute an appropriate national implementation programme. If ministers do not so conclude, amendment 71 seeks to give them flexibility to modify plans or direct SEPA to make modifications.

11:45

Amendment 72 seeks to give effect to the committee's unanimous recommendation on SEPA, as set out in recommendation 12, which reflected the evidence that was given to the committee on the need for a long-term, strategic view of flood risk management and funding requirements. The amendment seeks to ensure that there is an assessment of the schemes under consideration nationally, and that priority is given to implementing them and estimating the costs and timescales involved. The amendment also seeks to provide for a review of progress on an existing plan. The creation of a national strategic assessment would allow a much more informed and open national debate about flood risk management and provide a firmer basis for ministers' consideration of priorities.

Recommendation 12 states:

"SEPA should produce a strategic assessment, endorsed by the Scottish Government, setting out a hierarchy of flood risk management projects to take priority ... and their potential funding requirements. This statement of priorities at a national level could inform Scottish Water's planning processes and future Scottish Government spending review decisions including decisions on funding allocations to local authorities."

Amendment 72 also provides for Parliament to be informed and for there to be better-informed scrutiny of the Government's attention to those important issues over time.

Amendments 73 and 74 cover the same territory. If amendment 71 or 72 is approved, I will move amendment 73 at the appropriate time, but if neither is approved, I will move amendment 74. Amendment 74, which can stand on its own, seeks to give effect to the committee's recommendations on funding. It would create a duty on ministers to

"have regard to flood risk management plans and local flood risk management plans"

in allocating funding to SEPA or any responsible authority.

The minister does not say how ministers must allocate cash or how much funding they must give, because that is ultimately a matter for them. However, the wider public need to be assured that, in considering funding, the ministers will have had regard to the various plans that exist. The amendment seeks to give assurance that ministers will, over time, be required to think about

the issues, particularly the priority that they give to the important issues of community and individual safety arising from flooding. After all, the purpose of the bill is to try to reduce the trauma that all too many people have experienced from their home or community being flooded.

The minister may well argue, as I have done in the past, that she will of course have regard to the plans, as any reasonable minister would, and that they do not need the proposed new duty. However, it is clear to me that the duty is needed to give some assurance over time that successive ministers will be required to have regard to these important issues. The minister may also argue that the duty may lift consideration of the issues to which I have referred above other funding considerations. I make it clear, though, that amendment 74 does not say that ministers should not have regard to anything else in making funding decisions. Clearly, ministers must consider a range of matters and amendment 74 would not prevent them from doing that. It would just require ministers to have regard to a particular set of issues in the decisions that they make—nothing more and nothing less. I do not believe that that would be desperately onerous because it would leave ministers considerable scope, while ensuring that they cannot ignore flood funding among wider considerations.

I move amendment 70.

Alasdair Morgan: I find Mr Peacock's arguments unpersuasive, particularly the latter one. Within a couple of minutes he argued in both directions. He argued first that it was necessary for ministers to have regard to particular functions in allocating funding and so on; then he said that that necessity would not remove any duty on ministers with regard to other functions because ministers would clearly consider them in any event. Either ministers will have to look at what SEPA does in allocating its budget or they will not. Mr Peacock's suggestion seems to fly in the face of common sense about what ministers do when they sit down and allocate a budget. Do they just pick a figure out of the air, or do they look at what SEPA has to do? I suggest that they do the latter and have regard, without it being written in any statute, to SEPA's panoply of duties. It is contradictory to argue that we can introduce a section that says that ministers must have regard to one particular duty and argue at the same time that it is not at all necessary for them to have regard to any other duties because they will clearly do that in any case. I found Mr Peacock's argument unpersuasive and I think that he must feel the same.

Bill Wilson: My concern is that amendment 70 would remove flexibility and require a long-term specification of what should be done. If global

warming changes the climate, trying to be so specific that far ahead might remove local authorities' flexibility.

In respect of the interim assessment report that Peter Peacock would like there to be if there was not going to be a full assessment within a session of Parliament, the problem could presumably be resolved by having an interim assessment and then having a full assessment a matter of months later under the new Government. We seem to be packing a lot of assessments in there. Was the original idea of the six-year period not to ensure that we were not overly compacting our assessments? I wonder whether the latter part of amendment 72 is getting away from the original idea. I am also concerned that, in the first part of amendment 72, Peter Peacock might be removing some power from the local authorities. If the local plans inform the national plans, should it not be for the local authorities to determine the immediate priorities in the local plans? Perhaps Peter Peacock can answer that question when he addresses those points.

I will not repeat Alasdair Morgan's comments, but I have some sympathy with his views on amendments 73 and 74.

Elaine Murray: I am a little surprised by some of the comments made by other members, because my recollection of our discussion of the stage 1 report is that we were concerned about the need for future planning, for SEPA to be able to assess priorities over a fairly long timeframe and for that work to inform funding decisions. As Peter Peacock made clear, this is not an argument about ring fencing—we have had arguments about that, but the amendments do not mention anything to do with ring fencing. They are about requiring a financial assessment to be made, so that when in future cycles ministers are considering the comprehensive spending review and how bodies such as SEPA and local authorities need to be funded to undertake flood prevention work, such information is available. There seems to be a slight nervousness about the intent, which surprises me a little, given the discussions that we had at stage 1.

John Scott: A distillation of all that I have heard is that these amendments are unnecessary; they would introduce more plans and more bureaucracy. SEPA already caters for these issues in its planning and there is no need for amendments 71 or 72 or the other amendments in the group.

Roseanna Cunningham: This is an interesting group of amendments and, as Peter Peacock might imagine, there has been a lot of discussion about them.

Before I turn to the amendments, I will clarify a few points about the nature of the flood risk management process that is created by the bill.

The bill requires SEPA to set out priorities for measures to manage all known flood risk and, based on that, identify which measures fall within a current cycle and which do not. In identifying priorities, SEPA will clearly need to set out a long-term list of priorities covering multiple six-year cycles. The bill does not specify the length of SEPA's long-term look, as it was felt that that could be unduly restrictive.

On amendment 70, I appreciate the committee's concerns that the bill needs to be more explicitly focused on long-term planning. In principle, I can see that advantages could be gained from amending schedule 1 to set out more clearly that SEPA must look across six-year cycles. However, I am concerned that stipulating 18 years could be overly prescriptive at this stage. Until we know the full extent of the flood risk across Scotland, it is impossible to gauge whether 12 years, 24 years or longer is a sensible timeframe. I therefore ask Peter Peacock to withdraw amendment 70 on the basis that we will lodge an amendment to schedule 1 at stage 3 that will make it clearer that SEPA must indicate whether a measure in a flood risk management plan will be implemented before the plan is reviewed, in the following six years or at some other period that must be identified in the plan.

Amendment 71 provides for ministers to look at all the flood risk management plans that are prepared by SEPA to ensure that, together, they form an appropriate national implementation programme. Amendment 72 requires SEPA to produce a strategic assessment of flood risk, which will include the setting of priorities, and to provide an estimated cost and timescale for the implementation of each measure. I believe that the amendments are unnecessary, as the requirements for high-level strategic plans and implementation strategies are already present in the bill.

Although the bill specifies that SEPA must prepare and submit a plan for each flood risk management district, in practice there is likely to be only one district plan, which will cover the majority of Scotland's landscape. There will also be one or two significantly smaller plans that will specifically cover the cross-border areas, one of which is unlikely to include any significant flooding issues. Those will be prepared in co-operation with the Department for Environment, Food and Rural Affairs and the Environment Agency. That means that the main district plan, which will be prepared by SEPA, will constitute a national strategic implementation strategy; there will not be lots of separate plans prepared by SEPA. Scottish

ministers will be expected to consider together the district-level plan and the cross-border plans that are prepared by SEPA and to consider whether, in combination, the plans appropriately address flooding issues throughout Scotland.

Scottish ministers are under the same general duties as SEPA and the responsible authorities under section 1. Those include the duty to act to reduce overall flood risk and—as a result of amendment 1—the duty to act with a view to achieving the objectives in flood risk management plans. The approval of plans is a critical role for ministers and one in which they must comply with those overarching duties. That means that implementation throughout Scotland will already be a key consideration for ministers. By building in an extra layer of additional plans and strategies, the amendments would add an unnecessary and undesirable administrative burden. For those reasons, I do not believe that amendments 71 and 72 are necessary, and I ask that they not be moved.

Amendments 73 and 74 relate more specifically to the funding of flood risk management plans. Amendment 73 would require ministers to have regard to the national implementation programme that is set out in amendment 72 when making any funding decisions in relation to SEPA and responsible authorities. Amendment 74 is, in effect, an alternative approach—as Peter Peacock said—that would require ministers to have regard to flood risk management plans and local flood risk management plans in making funding decisions. I ask members to look at section 36, which bears directly on that issue.

The bill already requires SEPA to take costs into account in selecting measures for flood risk management plans. Plans will also have to include information about how those measures will be prioritised. Prioritisation cannot be done without taking account of the costs and benefits of measures. Therefore, in drafting a flood risk management plan, SEPA will already have to have information about costs and, in approving the plan, ministers will have to take that cost information into account.

SEPA and ministers have a duty to act with a view to reducing overall flood risk. As I mentioned earlier, as a result of amendment 1, they will also have to act with a view to achieving the objectives in district plans. Ministers will therefore have to have regard to the district and local flood risk management plans in considering funding allocations to responsible authorities. However, the Government believes that it would be inappropriate for Parliament to place a statutory duty on ministers to have regard to such plans, as that would risk elevating them above any of the other functions of SEPA and responsible

authorities, which ministers need to take into consideration in determining spending priorities over a three-year cycle.

If ministers have to have regard to flood risk management functions, but there is no specific requirement to have regard to any other functions, that raises the consideration of flood risk management above everything else. That needs to be thought about. It is for ministers, in co-operation with the responsible authorities, to allocate funding across a wide range of Government responsibilities in order to meet agreed national and local priorities.

For those reasons, I believe that amendments 73 and 74 are also unnecessary and ask that they not be moved. However, as I know that the committee has considerable concerns, which I appreciate, about what could be seen as a lack of information on funding in the plans that are prepared by SEPA, the Government will undertake to look at that again and consider whether the district plans should provide more specific information on the overall costs of measures.

I will also consider introducing an amendment at stage 3 to widen the scope of the annual report that must be laid before Parliament on the implementation of the European directive to cover the bill more generally, which would mean that information on local plans would have to be considered. I hope that Peter Peacock will therefore reconsider his amendments.

12:00

Peter Peacock: I will be brief. I was astonished by Alasdair Morgan's accusation that I am facing both ways, given that he proceeded to do exactly the same. It might just be in the nature of the discussion that we sometimes have to look in different directions to find the true direction in which we want to travel. I am afraid that Alasdair is heading in the wrong direction.

It is entirely appropriate to say that a minister should have regard to the various matters that I have set out. We could argue that, if ministers are going to have regard to those matters anyway, there is no harm in a requirement to do so being in the bill. A requirement on ministers to have regard to those matters would give an assurance to the wider public. I do not share Bill Wilson's views about flexibility and leaving local authorities with freedoms. I understand his point about amendment 72, but I do not think that it would have the effect that he has concerns about.

In the light of the minister's comments about amendment 70, I will seek to withdraw it. However, I simply disagree with her about amendments 71 to 74. I note what she says about strengthening the provisions on funding, with a possible stage 3

amendment on what goes into the plans and the annual reports. I welcome that, but I disagree with her other arguments and therefore intend to move amendments 71 to 74 when the time comes.

Amendment 70, by agreement, withdrawn.

Schedule 1 agreed to.

The Convener: That ends today's consideration of the Flood Risk Management (Scotland) Bill. The committee will continue its stage 2 consideration of the bill next week, when the target will be to reach the end of section 61. I thank all members and the minister for their attention to what is a detailed bill.

That ends the public part of the meeting. I thank the members of the public who are present for attending.

12:02

Meeting continued in private until 13:10.

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