

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 11 March 2009

Session 3

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CONTENTS

Wednesday 11 March 2009

Col.

FLOOD RISK MANAGEMENT (SCOTLAND) BILL: STAGE 2	1517
EUROPEAN UNION ISSUES.....	1548

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

8th 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 4

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 11 March 2009

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

Flood Risk Management (Scotland) Bill: Stage 2

The Convener (Maureen Watt): I welcome everyone to the eighth meeting in 2009 of the Rural Affairs and Environment Committee. I remind everyone to switch off their mobile phones and pagers because they have an effect on the broadcasting system.

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

The main item of business to be considered in public is stage 2 of the Flood Risk Management (Scotland) Bill. The committee will also consider an update on European Union issues before moving into private to consider the rural housing inquiry report.

Sections 1 to 23 and schedule 1 to the bill were agreed at last week's meeting, so we begin today's consideration at section 24. The aim for today is to consider up to the end of section 61. Members should have in front of them copies of the bill, the marshalled list and the groupings.

I welcome the minister and her officials.

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

Section 24—Flood risk management plans: objectives and measures

The Convener: Group 1 is on objectives and measures: assessment of costs. Amendment 86, in the name of Bill Wilson, is the only amendment in the group.

Bill Wilson (West of Scotland) (SNP): The aim of the bill is to produce a more sustainable form of flood management. In order to do that, we have to move away from considering only financial costs and towards considering environmental and social costs. That is what amendment 86 seeks to ensure.

I move amendment 86.

The Convener: That was short and sweet.

Bill Wilson: I could go on for five minutes.

The Convener: No, that was a good start. I hope that we continue in that vein.

Roseanna Cunningham: I think that I can be as short and sweet. Amendment 86 is quite closely aligned to the Government's thinking in relation to benefits. For that reason, I am happy with the principle underlying the amendment. However, the Government may require to introduce a consequential amendment to section 24. On that basis, I am happy to support amendment 86 and to come back at stage 3 with the appropriate consequential amendment.

The Convener: Bill Wilson, do you want to press or withdraw amendment 86?

Bill Wilson: I will press the amendment.

John Scott (Ayr) (Con): I think that the minister was offering to deal with the issue via a later amendment if you withdraw amendment 86.

Bill Wilson: As I understood it, the minister was saying that the amendment was acceptable.

Roseanna Cunningham: I accept the amendment. I simply made the point that we will have to come back with a consequential amendment at stage 3.

Amendment 86 agreed to.

Amendment 28 moved—[Roseanna Cunningham]—and agreed to.

The Convener: Group 2 is on objectives and measures: surface run-off water and urban drainage. Amendment 29, in the name of the minister, is grouped with amendment 33.

Roseanna Cunningham: The management of surface water flooding presents particular challenges, not least of which is the need to co-ordinate closely the work of local authorities and Scottish Water. Floods are defined in the bill so as to include flooding from all sources, which means that surface water flooding must be included in flood risk assessments, maps and, critically, flood risk management plans. Surface water management will therefore be an integral part of the flood risk management plans that are prepared under the bill.

I have considered the concerns that the committee raised at stage 1, particularly the recommendation that the bill should include a requirement to prepare surface water management plans. As I have outlined, the bill as drafted will require consideration of surface water management alongside other forms of flooding. It is essential that different sources of flooding are considered together if we are to deliver an integrated approach to managing flooding. A separate set of plans to tackle surface water

management would not only add an extra, undesirable administrative burden, but have the potential to cut across the flood risk management planning structure that the bill will create. As it is clear that flooding from different sources can interact, it would be inappropriate to consider one type of flooding in isolation. Amendment 29 will make it clear that the Scottish Environment Protection Agency must consider the management of surface run-off water and urban drainage when setting objectives and implementing measures.

Amendment 33 relates to local flood risk management plans. Section 29 will require local flood risk management plans to contain an implementation part that describes who is to be responsible for implementing the measures that are set out in the plan and when the implementation will take place. Amendment 33 will require the implementation part of local plans also to describe how the different bodies that are involved would co-ordinate their functions when implementing measures. The amendment will also require particular attention to be paid to co-ordinating the implementation of measures to manage surface run-off water and urban drainage.

Amendments 29 and 33 will help to deliver a collaborative approach to managing surface run-off water. I am confident that they address the committee's concerns on that, so I trust that they will be supported.

I move amendment 29.

Amendment 29 agreed to.

The Convener: Group 3 is on objectives and measures: civil contingencies. Amendment 30, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: The committee raised a concern at stage 1 that the emergency services tend to wait for a flood to become an emergency, rather than take positive action once SEPA has issued a flood warning. The Civil Contingencies Act 2004 requires category 1 responders, including the emergency services and SEPA, to put in place plans to deal with emergencies. Category 1 responders also have a duty to assess the risk of an emergency and to plan. In Scotland, there are eight strategic co-ordinating groups, which are led by the chief constable in the area and local authority chief executives. The groups plan and prepare for dealing with a wide variety of emergencies. The plans that they produce show how the emergency services will respond to an emergency situation such as a serious flooding event. The plans are exercised regularly and all groups have experience of dealing with different types of emergencies.

Emergency plans in the strategic co-ordinating group areas are based on duties in the Civil

Contingencies Act 2004, including those on communicating with, warning and informing people. The plans include details of which organisation will take the lead in delivering messages about particular types of emergency. To ensure that everything runs smoothly during a flooding event, it is therefore important to establish and manage links between the emergency plans and flood risk management. Amendment 30 will create a direct link between the emergency planning and flood risk management planning processes. I am confident that it will provide an appropriate mechanism to ensure that actions to manage flood risk are co-ordinated appropriately with actions to respond to flooding.

I move amendment 30.

Amendment 30 agreed to.

The Convener: Group 4 is on objectives and measures: structural and non-structural measures. Amendment 31, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: As I have outlined, a key part of taking a sustainable approach is to consider all the options that are available to manage flood risk, and then to select the measures that are most appropriate to a particular range of circumstances. The bill as introduced requires SEPA to consider structural and non-structural measures when setting objectives and measures. Amendment 31 clarifies what should be considered as structural and non-structural measures. All flood risk management measures fall into one of those categories.

Structural measures are described in the amendment as "flood protection work". Section 84 states:

"'flood protection work' means any operation on land for the purpose of protecting any land from flooding".

Examples of such operations include:

"work of construction, alteration, improvement, repair, maintenance, demolition or removal"

and

"the sowing or planting of vegetation".

The definition and the examples that are provided have been carefully considered to ensure that they cover not only traditional engineering work but also all work that falls under the banner of natural flood management. For instance, reconnecting flood plains involves manipulating the land, including by removing embankments; realigning river channels involves altering land; and creating wetlands or forests typically involves altering or improving land and the sowing or planting of vegetation.

Non-structural measures are all other measures, including flood warnings, non-structural land

management operations, awareness raising and the preparation and review of development plans.

The amendment will provide clarification to all those bodies that are responsible for implementing the bill on the range of flood management options that should be considered.

I turn to the culture shift that is needed to move us away from a single focus on traditional engineering. That culture shift towards sustainable flood risk management will not happen overnight—we would probably all agree with that—but I believe that the bill, accompanied by the steps that I am already taking to invest in the research base underpinning natural flood management, will support the changes that are necessary for delivering a modern and sustainable approach to managing flood risk.

Natural approaches aim to work with the sources and pathways of water as it drains from our landscape. Those are undoubtedly complex elements of the environment to model and understand, and those complexities mean that we might never have the same level of confidence in the more natural approaches to managing flood risk as we have in traditional defences. However, the potential benefits that can be delivered through adopting more natural approaches—those of reducing flood risk and those of restoring the natural character of Scotland's landscape—mean that we must focus on those approaches wherever we believe that we can make a difference.

While it is vital that those who are responsible for managing flooding continue to employ traditional engineering solutions, it is imperative that those same organisations take all practical and reasonable steps to manage the sources and pathways of floodwaters by adopting more natural flood management measures.

I am confident that amendment 31, in combination with other aspects of the bill that I have already described—and together with the amendments to require SEPA to select the most sustainable measures to achieve objectives, as discussed last week—will contribute to those important endeavours.

I move amendment 31

Amendment 31 agreed to.

Section 24, as amended, agreed to.

Section 25—Flood risk management plans: publicity of drafts etc and consultation

The Convener: Group 5 is on flood risk management plans: consultation. Amendment 87, in the name of John Scott, is the only amendment in the group.

John Scott: The amendment simply seeks to

give ministers the opportunity, should they wish to use it, to advise SEPA in case SEPA has forgotten to consult someone. It gives ministers the option to intervene, if they wish, at an earlier stage in proceedings. That is it, in a short and sweet way.

I move amendment 87.

10:15

Roseanna Cunningham: Amendment 87 would amend section 25 by giving the Scottish ministers a role in deciding who should be consulted on a draft flood risk management plan before the plan is submitted. That was clearly John Scott's exposition. The difficulty that we have with that is that it would be difficult for the Scottish ministers to advise on who should be consulted on a plan before they had considered its scope and content, so there is a slight timing issue with the amendment.

Section 26 allows ministers to direct the Scottish Environment Protection Agency to take action on consultation and publication once a plan is submitted. However, I appreciate that it might be more helpful to set that out more clearly in the bill and, if John Scott agrees to withdraw amendment 87, I will lodge an amendment at stage 3 that will do that but will iron out the slight technical issues that arise from the drafting of amendment 87.

Amendment 87, by agreement, withdrawn.

Section 25 agreed to.

Section 26 agreed to.

Section 27—Flood risk management plans: approval and publication

Amendment 71 moved—[Peter Peacock].

The Convener: The question is, that amendment 71 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.

I use my casting vote for the first time today, and vote against the amendment.

Amendment 71 disagreed to.

Section 27 agreed to.

Section 28 agreed to.

After section 28

Amendment 72 moved—[Peter Peacock].

The Convener: The question is, that amendment 72 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.

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

Amendment 72 disagreed to.

Section 29—Local authorities to prepare local flood risk management plans

The Convener: Group 6 is on local flood risk management plans: supplementary and implementation parts. Amendment 125, in the name of Peter Peacock, is grouped with amendments 32, 123 and 126.

Peter Peacock (Highlands and Islands) (Lab): Amendment 125 follows on directly from amendment 85, which I moved last week and to which the committee agreed. It seeks to make similar provision in relation to local authorities and local plans on natural flood management and would require local authorities to undertake an assessment of the potential for natural flood management in local flood risk management plans. That would add further information to the national assessment of natural flood management that SEPA would carry out under section 16 and deal with the issue of scale that the committee raised in its stage 1 report.

Assessment under amendment 125 would be based on SEPA's national assessment but would have the advantage that local authorities would be able to identify further scope for potential natural flood management within their local areas. Therefore, it would provide the level of detail required for the consideration of natural flood management at a more local level. That detail would also help local authorities to work with

farmers and other landowners on plans and help to assess the costs that are associated with natural flood management. That, in turn, would assist with determining compensation to farmers and other land managers for changed land use. That is similar to what amendment 74 may also help to do.

Amendment 126 would simply require that, if an assessment showed that natural flood management techniques could play a part but were not used, the reason for that would be explained.

I support amendment 32, even though it does not go as far as I would like it to go to ensure that the level or scale of the assessment of the potential for natural flood management is appropriate. The interpretation of "further information" is wide and does not directly deal with the issue of scale that the committee's stage 1 report tried to address. Perhaps the minister would reflect on that before we get to stage 3.

I move amendment 125.

Roseanna Cunningham: During last week's stage 2 discussions, I spent some time describing the links between the flood risk management plans prepared by SEPA and the flood risk management plans prepared by local authorities. As I said then, the objectives and measures described in the plans prepared by SEPA will form the basis of local flood risk management plans. However, that does not mean that the process will be top-down, with local authorities having to work within constraints set unilaterally by SEPA. Instead, the intention is for the SEPA and local authority plans to be prepared in parallel, with local authorities, Scottish Water and others directly informing the content of SEPA's plans. Advisory groups will play a key role in that process.

Likewise, the plans prepared by local authorities will not simply be a description of the relevant objectives and measures set out in the plan prepared by SEPA. Instead, it is expected that local plans will contain further and more detailed information on the measures that they will take. The plans will of course include a description of how the measures will be implemented.

Amendment 32 sets out examples of the type of supplemental information that should be incorporated in local plans—namely maps and further information on measures. The term "maps" could include detailed maps to assist in the planning or co-ordination of measures to manage surface run-off water; and the term "further information" could include more detailed information on ways to measure surface run-off water, or on measures that will use natural flood risk management techniques to alter, enhance or restore natural features or characteristics in the local plan district.

I believe that amendment 32 directly addresses one of the questions raised by the committee at stage 1 on the level of detail expected from the assessment prepared under section 16, and on the requirement on local authorities to prepare their own assessment of how restoring natural features and characteristics could contribute to lowering flood risk.

Amendment 32 clarifies that local authorities will be expected to set out further information on all measures, including measures that relate to restoring or enhancing natural features. It is also likely that some measures will focus on data-gathering efforts. Obtaining detailed information on opportunities to reduce flood risk through the adoption of more natural approaches would be an important part of that work.

Amendment 32 applies to all measures identified in the plans prepared by SEPA. It will therefore require local plans to include further information about natural flood risk management measures alongside further information on measures to avoid flood risk through development management or through management of surface water run-off.

Amendments 123 and 125 are similar in scope and intent. They would require lead local authorities to carry out assessments of natural features and characteristics. However, as there are no follow-up provisions on how those assessments would tie into other elements of the flood risk management process, it is difficult to understand what the information generated is intended to achieve. For instance, because neither amendment refers to measures, there is nothing to ensure that the assessments would have any effect on the flood-protection work that would be carried out by local authorities.

Elaine Murray's amendment 123 would impose a new duty on lead authorities to assess the contribution that natural features and characteristics could make to flood risk management in the local plan district, but that would not be an assessment of how enhancing or restoring those natural features or characteristics could be used to manage flood risk.

Peter Peacock's amendment 125 would, in effect, create a new duty on the lead local authority to undertake an assessment of the potential contribution that restoring natural features and characteristics could make to the management of flood risk in a local plan district. However, section 16 of the bill already includes a requirement on SEPA to prepare such information for the flood risk management districts. Local authorities will be involved in that work. Clearly, amendment 125 would therefore create duplication. It would impose an unnecessary administrative burden on the bodies that would have to carry out the duplicate assessment.

It is important to consider where the assessments envisaged by amendments 123 and 125 would sit within the overall flood risk management planning process. The preparation of local plans is the last stage in each six-year flood risk management planning cycle. By the time those plans are finalised, flood risk assessments will have been carried out, the options will have been considered and flood risk management measures will have been selected to deliver objectives. It does not appear logical to carry out yet another assessment at the end of the planning process.

I understand that the amendments are intended to ensure that the assessment prepared by SEPA under section 16 is complemented by a more detailed assessment to support the identification of measures. Local authorities will already feed in their contributions to the section 16 assessments through the advisory groups. Furthermore, the bill does not specify the level of detail that SEPA should go into when preparing assessments under section 16 and there would be nothing to prevent SEPA and local authorities from collaborating on assessments with different levels of detail depending on flood risk management needs.

For the reasons that I have set out, I believe that the amendments lodged by Elaine Murray and Peter Peacock are not only unnecessary but risk creating parallel or duplicate processes in the bill. As a result, I urge the committee not to support them. That said, I want to ensure that the assessment prepared by SEPA under section 16 forms an integral part of flood risk management. For that reason, I am willing to work with Elaine Murray and Peter Peacock on developing an amendment at stage 3 that makes a clearer link between measures described in local flood risk management plans and section 16 assessments. I therefore ask Peter Peacock to withdraw amendment 125 and Elaine Murray not to move amendment 123.

Before examining the detail of Peter Peacock's amendment 126, I stress again that there will be a close link between the plans prepared by SEPA and those prepared by local authorities. In short, there will not be two sets of independent plans; indeed, the bill states clearly that local plans must be consistent with the plans prepared by SEPA. Advisory groups will clearly play a key role in ensuring that the plans are closely co-ordinated.

Amendment 126 is similar in purpose to amendment 85. As a result of that amendment, which the committee agreed to at last week's meeting, SEPA will be required to set out reasons for not including measures for altering or restoring natural features and characteristics identified through the assessment prepared under section 16. As I have already committed to working with

Peter Peacock on finding some way of resolving the interplay—and, as we all agreed, duplication—between amendment 85 and the other amendments that relate to objectives and measures, I find it difficult to understand what amendment 126 is trying to achieve. Indeed, I am very concerned that it will create another layer of unnecessary burden and bureaucracy for local authorities. Local authorities will, of course, have discretion in how they implement measures, but that does not mean that local plans can pursue alternative objectives and measures.

Finally, as I have previously stressed, the bill is about sustainable flood risk management, which means considering all the options that are available to manage flood risk, including flood warning, managing sewerage systems, raising awareness and avoiding flood risk through development control. Given the broad range of measures that are available to those responsible for reducing flood risk, requiring local authorities to explain why measures set out in the implementation part of a local flood risk management plan do not involve the restoration of natural features and characteristics seems unduly burdensome. For instance, why would a local authority need to consider natural approaches to flood management when setting out measures to tackle sewerage flooding or to raise awareness of flooding problems?

I believe that the bill, as amended by amendments agreed to at last week's meeting, will ensure that information is prepared on why measures are selected, including information on why opportunities to restore natural features and characteristics are not being pursued. For those reasons, I urge Peter Peacock not to move amendment 126.

Elaine Murray (Dumfries) (Lab): Section 29 requires the lead authority to prepare a flood risk management plan consisting of a summary part and an implementation part. Amendment 123, which is linked to what SEPA is already required to do at a national level, seeks to require the authority to include in the plan a more detailed assessment of the contribution that natural features and characteristics could make to flood risk management. Indeed, recommendation 15 in the committee's stage 1 report requested that the Government lodge an amendment requiring responsible authorities to consider the contribution that natural flood management processes could make.

10:30

In her comments on amendment 31, the minister mentioned the need for a culture shift. Amendment 123 would address the need to increase our understanding of the contribution that natural

processes can make and of how such processes can be used. Assessment would allow better costing of the use of natural processes compared with other techniques. Local knowledge could be incorporated into the national assessment, and minds would be concentrated on the contribution that natural processes can make. Identification of areas in which natural processes might be important would enable early consultation with farmers, land managers and foresters on possible schemes and compensation payments.

The minister said that there was no relationship between the assessments that are proposed in amendment 123 and any measures that might be taken. If amendment 123 is agreed to, further amendment at stage 3 could take account of that issue. She also said that local authorities will feed into the assessment that will be done under section 16. If that is so, what I am proposing would not place a huge additional burden on local authorities, which will have to do the work anyway.

I appreciate that amendment 32 is intended to achieve similar objectives, but the provision in that amendment is insufficiently detailed to achieve the culture change that is required.

Alasdair Morgan (South of Scotland) (SNP): During the stage 1 debate, I remember having a general grin about the increasing complexity of modern life as a result of legislation that Governments have passed, although I accept that legislation to deal with flood management is probably necessary.

We should be careful to legislate only to the extent that is absolutely necessary. The minister said that amendments 123, 125 and 126 would overcomplicate the situation and probably duplicate provisions that are in the bill. Overcomplication and duplication of any kind will increase bureaucracy and costs to local authorities that are already overburdened with duties and finding it difficult to fulfil all the statutory obligations that we have put on them. It is difficult to justify the imposition on authorities of more, unnecessary duties, especially given that it would bring no discernible advantage.

Peter Peacock: I heard the minister's detailed arguments. However, amendment 32 does not go far enough, although I am happy to support it.

It was helpful of the minister to set out the difficulty that amendments 123, 125 and 126 would potentially cause in relation to follow-up. However, that should not prevent us from agreeing the amendments. As Elaine Murray said, we can address such issues at stage 3.

On the point that Alasdair Morgan made, which the minister also made to some extent when she talked about the duties that are imposed on SEPA in section 16, there is a danger that SEPA's

assessments might be at quite a high level, although they will be helpful. That is why the more local approach that is advocated in amendments 123, 125 and 126 would complement, rather than duplicate SEPA's work. The additional assessment would provide a greater degree of detail, which would enable local authorities to interact with all the land users with whom they would require to interact. That would be a helpful part of the local process.

On the point about bureaucracy, this bill is by its nature extremely bureaucratic. I am not sure that the proposed approach would add significantly to that. We are about to consider extraordinarily bureaucratic amendments about a register for flood management schemes; amendments 123, 125 and 126 offer a light touch by comparison.

The Convener: The question is, that amendment 125 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.

I use my casting vote to vote against amendment 125.

Amendment 125 disagreed to.

Amendment 32 moved—[Roseanna Cunningham]—and agreed to.

Amendment 123 moved—[Elaine Murray].

The Convener: The question is, that amendment 123 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, and I vote against the amendment.

Amendment 123 disagreed to.

Amendment 33 moved—[Roseanna Cunningham]—and agreed to.

Amendment 126 moved—[Peter Peacock].

The Convener: The question is, that amendment 126 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 vote against the amendment.

Amendment 126 disagreed to.

The Convener: Group 7 is on local flood risk management plans: consultation etc. Amendment 90, in the name of the minister, is grouped with amendments 91 and 92.

Roseanna Cunningham: Before I speak to the group, I reiterate my offer to discuss with Elaine Murray and Peter Peacock a potential stage 3 approach to the issues that they have identified, notwithstanding the fact that their amendments have not been agreed to.

Section 29(6) allows the Scottish ministers to specify additional matters for inclusion in local flood risk management plans. The committee agreed with the Subordinate Legislation Committee's view that the bill should require Scottish ministers to consult local authorities and other appropriate bodies before making regulations under section 29(6). I am happy to amend the bill to that effect.

Amendment 90 will require the Scottish ministers, before making regulations under section 29(6), to consult

“(a) SEPA,

(b) every responsible authority, and

(c) such other persons as they consider appropriate.”

I trust that the amendment meets the committee's recommendation.

I turn to amendments 91 and 92. Co-ordinating the publication and consultation exercises for the plans that are prepared by SEPA and the plans that are prepared by local authorities will be essential to delivering an integrated flood risk management planning process. The bill, as drafted, could result in the draft plans that are prepared by local authorities being published for consultation up to six months after the flood risk management plans that are prepared by SEPA. The amendments will ensure that the local plans and the plans that are prepared by SEPA are published at the same time. That is achieved by amending section 30(1) to ensure that the deadline for publishing the supplementary part of a local flood risk management plan is tied to the period covered by the plans that are prepared by SEPA.

I move amendment 90.

Amendment 90 agreed to.

Section 29, as amended, agreed to.

Section 30—Local flood risk management plans: publicity and consultation

Amendments 91 and 92 moved—[Roseanna Cunningham]—and agreed to.

Section 30, as amended, agreed to.

Sections 31 to 33 agreed to.

Section 34—Local flood risk management plans: joint working

The Convener: Group 8 is on local flood risk management plans: joint working. Amendment 89, in the name of Bill Wilson, is the only amendment in the group.

Bill Wilson: The bill will require considerable co-operation between local authorities. Amendment 89 makes it clear that local authorities can use any means possible to work together, including structures that already exist.

I move amendment 89.

Roseanna Cunningham: Like Bill Wilson and, I am sure, the rest of the committee, I believe that close collaboration, including, where appropriate, joint working, will be essential to delivering the bill. That is particularly true when measures need to be co-ordinated across catchments that cross local authority boundaries.

The bill includes a series of provisions that are intended to support collaborative working. Those include the requirements to establish advisory groups under sections 42 and 43, and the overarching duty in section 1 to co-ordinate the

exercise of flood risk-related functions. Last week, I committed to looking again at amendment 81, in the name of Elaine Murray, on integrating functions. Furthermore, amendment 4—a Government amendment that was agreed to last week—makes it clear that SEPA and the responsible authorities “may enter into agreements” to support the exercise of their flood risk-related functions.

On amendment 89, I recognise the potential role of joint boards, but I am not convinced that adding a reference to a particular aspect of the Local Government (Scotland) Act 1973 is necessary, because the powers in that act, including the power to create joint boards, will be available anyway. Local authorities are experienced in creating and using boards, such as those to manage bridges and to oversee the joint delivery of police services.

Local authorities have wide-ranging powers to support joint or collaborative working. They include powers for one authority to exercise functions on behalf of another authority; powers for authorities to discharge their functions jointly; and powers to establish joint committees to discharge the functions of several authorities. Those general powers will apply to all the local authority functions under the bill, so cross-referring to them is unnecessary. In many cases, those powers might provide a simpler and more flexible framework for joint working than the creation of a board.

The proposed reference to one power would have little—if any—legal effect, but it could create confusion, because it would apply only to the preparation of local plans and not to all the other functions of local authorities under the bill. However, as co-operation and co-ordination are central to the bill, if Bill Wilson is willing to withdraw amendment 89, I will commit to issuing guidance to local authorities and the other bodies that are responsible for implementing the bill on how the powers that are available under other legislation might be exercised to support a collaborative and partnership-focused approach to flood risk management. I ask him not to press his amendment.

Bill Wilson: Ministerial guidance would meet the same objectives as would agreeing to amendment 89, so I am happy to withdraw it.

Amendment 89, by agreement, withdrawn.

Section 34 agreed to.

Section 35 agreed to.

Section 36—Duty to have regard to flood risk management plans and local flood risk management plans

Amendment 73 not moved.

Amendment 74 moved—[Peter Peacock].

The Convener: The question is, that amendment 74 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.

The vote is tied, so I vote against the amendment.

Amendment 74 disagreed to.

Section 36 agreed to.

After section 36

The Convener: Group 9 is on development plans and individual planning decisions. Amendment 75, in the name of Rhoda Grant, is grouped with amendment 127.

Rhoda Grant (Highlands and Islands) (Lab): Amendment 75 would ensure that, when drawing up local or strategic development plans, a planning authority had regard to flood risk management plans, giving them the same statutory impact as have regional transport strategies and housing strategies, which are mentioned in the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 (SSI 2008/426).

The amendment also takes into account the committee's recommendation 16, which was that amendments

"should require local development plans to take account of flood risk management plans."

I move amendment 75.

10:45

Peter Peacock: Amendment 127 deals with individual planning applications. In its evidence to the committee's inquiry into flooding issues last year, SEPA said that a planning application should not be decided on before the completion of a flood risk assessment that has been determined to be required. The amendment would put beyond doubt or interpretation the fact that a flood risk

assessment is a material consideration when it meets the test that is set out in the amendment.

When the minister speaks, I rather anticipate that she might suggest that advice from SEPA is already a material consideration. However, if that is the case, it is open to interpretation. If she does so argue, I urge her to set out clearly why that is the case and why amendment 127 would not offer clarification. I look forward to hearing what she has to say before I decide whether to press my amendment at this stage. I shall, of course, be absolutely delighted if she says that the amendment is perfect in every respect, but that would be a first.

Roseanna Cunningham: Section 36 requires all public bodies to have regard to flood risk management plans. That duty requires planning authorities to take account of flood risk management plans when they prepare development plans. In our view, there is no gap in the bill at present that could result in development plans being prepared without reference to flood plans.

The Scottish Government has committed to introducing a proposal to update the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 once the bill is enacted to reflect the changes that it brings about. That work will focus on adding flood risk management plans to the list of plans and strategies to which authorities must have regard when preparing local development plans and strategic development plans.

It is likely that further consequential amendments to the development planning regulations might be required as a result of the bill and other legislation. Rather than taking forward separate amendments to the new planning legislation, such as amendment 75, we suggest that it would be preferable to make those changes in a single amending statutory instrument so as to limit the volume of planning legislation and avoid potential confusion for planning authorities.

Amendment 127 appears to replicate an existing duty. It would require planning authorities to have regard to assessments carried out under paragraph 1(1) of schedule 5 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (SSI 2008/432) when determining an application for planning. However, the amendment, as drafted is technically defective because paragraph 1(1) does not involve the carrying out of assessments.

If amendment 127 is intended to ensure that when SEPA has been consulted and has made comments on an application for planning permission, the comments must be considered by the planning authority, it is not necessary, because

planning authorities already have to take account of advice from SEPA. That is because regulation 25 of the regulations will prevent the planning authority from determining a planning application until it has given consultees, such as SEPA, time to respond.

On that basis, I ask Rhoda Grant to withdraw amendment 75 and Peter Peacock not to move amendment 127.

The Convener: Does Rhoda Grant want to press or withdraw her amendment?

Rhoda Grant: I beg the committee's indulgence and ask the minister to give me an assurance that when the statutory instrument that will amend the planning legislation is drawn up, the aims of amendment 75 will be included in that instrument.

Roseanna Cunningham: I have no difficulty in giving that assurance.

Amendment 75, by agreement, withdrawn.

Amendment 127 not moved.

Section 37—Power of SEPA to obtain information, documents and assistance

Amendments 34 and 35 moved—[Roseanna Cunningham]—and agreed to.

Section 37, as amended, agreed to.

Section 38—Power of lead authorities to obtain information, documents and assistance

The Convener: Group 10 is on sections 38 and 81: minor drafting points. Amendment 93, in the name of the minister, is grouped with amendments 94 and 117.

Roseanna Cunningham: As the convener indicated, the amendments deal with minor drafting points of the kind that arise at stage 2. Amendments 93 and 94 clarify that lead authorities cannot serve notices on SEPA or responsible authorities to require them to provide information. Section 38(3) already has the same effect, but the current wording is less explicit.

Lead authorities will not need the power to serve formal information request notices on SEPA or responsible authorities because they have wider powers to seek information and assistance from such bodies. SEPA and responsible authorities also have general duties to co-operate under section 1.

Amendment 117 is a technical amendment to correct a minor typographical error in section 81.

I move amendment 93.

Amendment 93 agreed to.

Amendment 94 moved—[Roseanna Cunningham]—and agreed to.

Section 38, as amended, agreed to.

The Convener: I suggest that we suspend for a couple of minutes to recharge our cups.

10: 51

Meeting suspended.

10:56

On resuming—

After section 38

Amendment 36 moved—[Roseanna Cunningham]—and agreed to.

Sections 39 to 41 agreed to.

Section 42—District flood risk advisory groups

Amendment 37 moved—[Roseanna Cunningham]—and agreed to.

Section 42, as amended, agreed to.

Section 43—Sub-district flood risk advisory groups

Amendment 38 moved—[Roseanna Cunningham]—and agreed to.

The Convener: Group 11 is on sub-district advisory groups: representation. Amendment 95, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: Advisory groups will play a central role in ensuring that flood risk management is founded on co-operation and collaboration. The intention had been to leave the membership of sub-district advisory groups as flexible and open as possible, thereby ensuring that the make-up of the groups reflected local needs, but I have listened to concerns that have been raised by some organisations, stakeholders and the committee that the bill does not go far enough to specify who should be represented on sub-district advisory groups.

Amendment 95 means that SEPA, in setting up sub-district advisory groups, will need to ensure representation of the following interests: responsible authorities, Scottish Natural Heritage, national park authorities and other persons with an interest in flood risk management. That replicates the interests that must be represented on the district flood risk advisory group under section 42 and will ensure that all key parties are involved.

I move amendment 95.

Amendment 95 agreed to.

Section 43, as amended, agreed to.

Sections 44 and 45 agreed to.

Section 46—Availability of documents for public inspection

Amendment 39 moved—[Roseanna Cunningham]—and agreed to.

Section 46, as amended, agreed to.

Section 47 agreed to.

Section 48—Interpretation of Part 3

Amendments 40 to 42 moved—[Roseanna Cunningham]—and agreed to.

Section 48, as amended, agreed to.

Section 49—General power to manage flood risk

11:00

The Convener: Group 12 is on land management orders. Amendment 128, in the name of Elaine Murray, is grouped with amendment 129.

Elaine Murray: Amendments 128 and 129 deal with provisions for the management of land for flood risk management carried out by individual land managers. Local authorities would be permitted to enter into agreements with farmers, land managers and foresters, and compensation could be provided where land is used for flood risk management purposes. The bill currently allows responsible authorities to enter into voluntary agreements with landowners but, if such agreements cannot be reached, time-consuming and costly alternatives, such as compulsory purchase, might need to be undertaken.

The amendments would enable local authorities to apply to the Scottish ministers for land management orders for the purpose of flood risk management. The Nature Conservation (Scotland) Act 2004 allows the Scottish ministers to make land management orders in similar circumstances to ensure appropriate management of sites of special scientific interest. The amendments offer one way to address the complications that might arise if voluntary agreement is not achieved. I will be interested to hear the minister's response before deciding whether to press amendment 128.

I move amendment 128.

Roseanna Cunningham: Amendments 128 and 129 would insert into the bill provisions relating to land management orders under the Nature Conservation (Scotland) Act 2004. As I understand it, the purpose of the land management orders would be to enable local

authorities to require certain work to be carried out on land. As the bill already includes a local authority-led process for sanctioning the carrying out of operations on land, I do not believe that the amendments are necessary.

The proposed amendments would create two parallel procedures to enable local authorities to undertake flood risk management works in the absence of agreement by the landowner. Furthermore, there is no indication of which processes are meant to be used under which circumstances. That cuts across one of the original recommendations by the committee in its flooding inquiry report, which was that we should streamline the process for undertaking flood risk management works.

It might help if I clarified a couple of points on the nature of flood protection work under the bill and state how it differs from the old-style flood protection schemes under the Flood Prevention (Scotland) Act 1961.

Section 49 gives local authorities the power to do anything to manage flood risk in their area—there is no restriction on the measures that a local authority can take to manage flood risk. That means that local authorities are not restricted to hard engineering in the same way as they were under the 1961 act—that was one of the main things that we wanted to move away from.

To ensure that flood risk management can be taken forward in the most efficient manner possible, the bill places no restrictions on how local authorities should take forward particular measures. For example, a local authority can enter into agreements with landowners about changing the way in which land is managed. In most cases, we would expect any land management methods to be undertaken in co-operation with the landowner but, if a local authority could not proceed by agreement, it could include land management operations in a flood protection scheme. In order to undertake a flood protection scheme, a local authority must follow a statutory process, at the end of which the local authority will be able to carry out certain work on land.

Under section 68, any person who is authorised by a local authority may enter any land on which flood protection scheme operations, associated temporary works, emergency flood protection work or maintenance operations are to be carried out. Section 71 obliges local authorities to compensate anyone who sustains damage as a result of scheme operations or subsequent maintenance that is carried out by or on behalf of the local authority, and any question of disputed compensation will be determined by the Lands Tribunal for Scotland. In effect, that means that, if a local authority completes the statutory process, it

will have the coercive powers that are required for it to enter land to carry out scheme operations and will be required to compensate the landowner accordingly. Those powers relate not only to one-off flood protection works but to on-going maintenance.

In addition, section 68 will give powers of entry to a local authority to maintain flood protection work that it previously carried out without the need to go through the scheme process again. Therefore, there will be the same incentive for landowners to agree to changes in land use that there would be if local authorities could issue a land management order.

I appreciate that it may be helpful to clarify the breadth of operations that local authorities can carry out under section 49, and I am happy to lodge an amendment at stage 3 to achieve that. That clarification will deal with Elaine Murray's wish to ensure that there is a mechanism to implement changes in how land is managed over the long term without the need for the two different processes that her amendments would introduce.

I ask Elaine Murray to withdraw amendment 128 and not to move amendment 129 on the basis that we will lodge an amendment at stage 3 that will put beyond doubt the fact that the operations that local authorities can carry out under section 49 extend beyond hard engineering measures to include other land management techniques and work that falls under the banner of natural flood management.

The Convener: I invite Elaine Murray to wind up and to say whether she wants to press amendment 128.

Elaine Murray: I would like to read the *Official Report* of the meeting and reflect further on what the minister has—

The Convener: I am sorry to stop you, but John Scott wants to comment.

John Scott: I am sorry that I did not make it clearer that I wanted to speak.

I have a huge amount of sympathy with what Elaine Murray is trying to achieve, but I accept what the minister said about local authority provision. I welcome the fact that the minister will lodge an amendment at stage 3, because there is a lack of provision in the bill for compensating farmers. I declare an interest in that respect, although I would never be a beneficiary of such compensation.

There is a lack of long-term funding in the bill, and it will be difficult for farmers in negotiations to pursue matters through the Scottish Land Court if they do not agree with a local authority. Something more must therefore be done in the bill to allow the process to be gone through more quickly than it

might be gone through if people have to go through the protracted Scottish Land Court hearings process too. I look forward to seeing the amendment that the minister proposes to lodge at stage 3.

Liam McArthur (Orkney) (LD): I shall be brief. I share many of Elaine Murray's concerns but think that the parallel processes that the minister referred to would be unlikely to serve the interests of anyone involved. The minister's willingness to lodge an amendment at stage 3 is welcome in that regard.

Roseanna Cunningham: In response to John Scott's concerns, I should reiterate that the Lands Tribunal for Scotland, which is specifically mentioned in the bill, is not the same as the Scottish Land Court.

I am not sure that our stage 3 amendment will necessarily satisfy what John Scott is looking for in respect of compensation, and he may wish to consider a proposal for stage 3 if he has a concern about that. It could be difficult to put specific compensation provisions in the bill in the way that he may be suggesting, so it would be useful to have a conversation with him about what he is really looking for. I have resolved to lodge an amendment at stage 3 that will deal with Elaine Murray's amendments, but it will not necessarily resolve John Scott's concerns, about which there would need to be a further conversation.

The Convener: I invite Elaine Murray to wind up.

Elaine Murray: I was called a little early before.

In my amendments, I was attempting to find a system in which land management orders could be used for the purpose of flood risk management to permit appropriate compensation to be offered to landowners and to allow payments to farmers for the use of their land as wetlands or flood plains while in use for farming. LMOs could also incorporate other features of land management, such as soil management, erosion control and keeping winter stubble to reduce winter run-off.

As I said earlier, I would like to reflect on the *Official Report* of the meeting and what the minister has said. I would also like to consider any further Government amendments that are lodged at stage 3. I will not press amendment 128, although I still wish to pursue the matter in some way at stage 3.

Amendment 128, by agreement, withdrawn.

Section 49 agreed to.

After section 49

Amendment 129 not moved.

Sections 50 and 51 agreed to.

After section 51

Amendment 43 moved—[Roseanna Cunningham]—and agreed to.

Section 52—Flood protection schemes

The Convener: Group 13 is on flood protection schemes: consultation. Amendment 96, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: The committee agreed with the Subordinate Legislation Committee's recommendation that the Scottish ministers should consult local authorities and their representatives prior to amending schedule 2 by order. Amendment 96 will place a duty on the Scottish ministers to consult local authorities and various bodies that would receive direct notification of flood protection schemes prior to the making of an order under section 52(4). We think that that will satisfy the Subordinate Legislation Committee.

I move amendment 96.

Amendment 96 agreed to.

Section 52, as amended, agreed to.

Schedule 2 agreed to.

Section 53 agreed to.

After section 53

The Convener: Group 14 is on registers of flood protection schemes. Amendment 97, in the name of the minister, is grouped with amendments 98 and 99.

Roseanna Cunningham: Amendments 97 to 99 insert a new provision into the bill. The bill requires local authorities to send direct notification of a proposed flood protection scheme to any person who has an interest in land that might be affected by the scheme or on which scheme operations would be carried out. Local authorities are also required to make documents that relate to a proposed scheme available to anyone who wants to inspect them.

Such an approach should ensure that existing owners and tenants receive notification of proposed schemes, but it is unlikely that anyone who is considering or negotiating the purchase of land would receive notification. Although schedule 2 provides for other forms of notification, such as an advertisement in the local press, it would be relatively easy for a prospective purchaser to remain in ignorance until the purchase had been completed and the local authority bulldozers turned up, especially if he or she was not based locally at the time of the purchase.

The problem might not seem new, given that there has never been a register of flood prevention schemes under the Flood Prevention (Scotland) Act 1961, but prospective purchasers would have found out about a proposed scheme under the 1961 act because an application for planning consent would have shown up in the local authority search. Section 54 will allow for "deemed planning permission" for future flood protection schemes, so there will be no need for a planning application, which will remove a mechanism that would make purchasers aware of what might happen.

Amendment 97 will place a duty on each local authority to create a register of flood protection schemes that it is taking forward and schemes that are being taken forward by another local authority but involve operations in its area. The local authority must make the register available for public inspection and may make a reasonable charge for doing so.

Section 59 will create a new criminal offence of "intentionally or recklessly" damaging flood protection work that was carried out by a local authority, and amendment 102, if agreed to, will extend the offence to include schemes that were constructed under the 1961 act. In that context, amendment 98 will require local authorities to include on their registers details of schemes that they made under the 1961 act. The approach will help to ensure that purchasers are aware that the land that they intend to buy includes part of a flood prevention scheme, which they cannot knowingly damage or alter without committing an offence.

Amendment 99 allows ministers to make regulations that set out, among other things, the content and availability of a register. It allows ministers to require that the contents of registers are shared with specified third parties to facilitate searches of local authority registers to be made alongside other searches of various kinds that relate to the purchase of a property. This is one bureaucratic measure that we feel must be inserted into the bill for the sake of protecting individuals who set out to purchase land.

I move amendment 97.

11:15

Rhoda Grant: On a point of clarification, if someone is selling a piece of land or property, will they have to disclose certain things to potential buyers? At present, people have to disclose issues such as antisocial behaviour and noisy neighbours. If someone does not disclose something prior to concluding a sale, will they be in breach of the conditions of sale? Is the amendment required for that purpose?

Peter Peacock: I express my deep disappointment at what the minister said—it removed my one opportunity to rant about excessive bureaucracy.

Bill Wilson: You could go ahead anyway.

Peter Peacock: No.

Roseanna Cunningham: I am sorry but, talking to my advisers, I missed that interchange

The Convener: Peter Peacock was going to have a rant at you about bureaucracy, but he cannot do that because of what you said.

Roseanna Cunningham: Oh, that was it. Perhaps this is an occasion on which I was able to predict what Peter Peacock might say as opposed to his predicting what I might say.

Rhoda Grant's point is reasonable. The issue is that, if the disclosure is not made, a purchaser would have to pursue things by way of civil proceedings. Anyone who knows anything about the workings of the civil courts knows that that can be a long and arduous process. The way that we have set out the provision makes the issue much sharper and harder, and the things that might otherwise happen will not happen.

The provisions are designed to protect individuals and ensure that they do not buy land without realising the scale of the issues involved. In such cases, people might inadvertently do something that damages flood protection works.

John Scott: Essentially, the aim is to make potential purchasers aware of existing burdens.

Roseanna Cunningham: Absolutely.

The Convener: It looks like a necessary piece of bureaucracy.

Amendment 97 agreed to.

Amendments 98 and 99 moved—[Roseanna Cunningham]—and agreed to.

Section 54 agreed to.

Section 55—Acquisition of land

The Convener: Group 15 is on acquisition of land: exemption of Crown land. Amendment 100, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: I will be brief. Amendment 100 seeks to exclude all Crown land from the power of local authorities compulsorily to acquire land under section 55. The amendment will not prevent local authorities from acquiring such land; they will have to do so by agreement.

I move amendment 100.

Peter Peacock: There is something deeply ironic in it falling to Roseanna Cunningham of all people to move an exemption for the Crown. It demonstrates the burden of high office and collective responsibility; having been there, I empathise deeply with her. Her speech in moving the amendment was one of the shortest and least convincing that I have heard from her, which leads me to wonder whether the minister was using some sort of code. The dilemma for me is now to do what she suggests we should do or do what I think might be in her heart.

Roseanna Cunningham: I am not saying a single other word.

Amendment 100 agreed to.

Section 55, as amended, agreed to.

Section 56—Assessment of watercourses etc

Amendments 44 to 46 moved—[Roseanna Cunningham]—and agreed to.

Amendment 47 moved—[Roseanna Cunningham].

The Convener: If amendment 47 is agreed to, amendment 76 will be pre-empted.

Amendment 47 agreed to.

Amendment 48 moved—[Roseanna Cunningham]—and agreed to.

Section 56, as amended, agreed to.

Amendment 49 moved—[Roseanna Cunningham]—and agreed to.

Section 57—Recovery of expenses

The Convener: Group 16 is on recovery of expenses, damage to flood protection work and powers of entry: schemes under 1961 act. Amendment 101, in the name of the minister, is grouped with amendments 102 and 106.

Roseanna Cunningham: I will be relatively brief. Under section 59, any person who intentionally or recklessly damages any part of a flood protection scheme will commit an offence. However, that will leave flood prevention schemes that were built under the Flood Prevention (Scotland) Act 1961 without similar protection. It is unreasonable to treat damage to scheme works as criminal in one case but not in another purely because of the date when the works were completed. Amendment 102 will therefore extend the criminal offence in section 59 to damage to schemes that were constructed under the 1961 act. The offence will not be retrospective and will apply only to damage that is done after the section comes into force.

Similar issues arise with sections 57 and 68(2), which deal with local authorities' ability to recover expenses and their powers of entry. Without amendment 101, local authorities will be unable to recover from a landowner or occupier the cost of repairing and reinstating 1961 act scheme works when damage is caused by that person's actions. Similarly, amendment 106 will enable local authorities to enter land to maintain scheme works that were constructed under the 1961 act.

I believe that amendment 102 represents the first criminal offence that I have created.

I move amendment 101.

Amendment 101 agreed to.

The Convener: Group 17 is on recovery of expenses: maintenance of watercourses. Amendment 130, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray: Amendment 130 would make it clear that if a landlord was not maintaining watercourses such as field drains adequately, such that a flooding risk was created, the local authority could claim its expenses for cleansing, repairing or maintaining the watercourses to prevent flooding. My interest in the matter arises from some of my constituents' experience of the current legislation. Their homes were flooded due to inadequate maintenance of watercourses on private land and because the local authority was unable or unwilling to act to prevent the flooding of their properties.

The amendment reflects concerns that Jim Moodie of Fife Council expressed to the committee. He said:

"The bill contains a mechanism to allow local authorities to recover costs when the repairs are due to damage or reinstatement of flood prevention works, but there is no mechanism to allow the authority to be reimbursed for work to clear from private land debris such as fallen trees or timber. There are instances of landowners walking away when they find that they cannot develop land because it is on a flood plain. Under the 1997 amendment to the 1961 act, the local authority has a duty to go in and clear out the water courses, which often costs thousands of pounds—it is not just a £500 job to remove some debris from a burn.

In our written submission, we express hope that the committee will get into the bill a mechanism that will give councils at least a chance of recouping some costs when they deal with private landowners."—[*Official Report, Rural Affairs and Environment Committee*, 10 December 2008; c 1274.]

I am interested in the minister's comments on whether the wording of the bill allows local authorities to reclaim for that type of work. Whether I press the amendment will depend on her on-the-record comments.

I move amendment 130.

Roseanna Cunningham: At the risk of watching John Scott beginning to fizz gently, I must say that we have considerable sympathy with Elaine Murray's sentiments. Amendment 130 would extend local authorities' cost-recovery power to cover

"any cleansing, repairs or maintenance of watercourses required under section 56".

We accept that it is anomalous that local authorities can recover the cost of repairing and reinstating scheme works from the owner or occupier of the land when the damage was caused by the action of that person, but that authorities cannot recover the cost of maintaining watercourses when the need for maintenance was caused directly by the actions of the owner or occupier of the land.

As several amendments have already been made to section 56 and associated provisions, we would like to come back at stage 3 with an amendment to local authorities' powers to recover expenses that ties in with the new requirements for local authorities to produce and implement schedules of clearance and repair works. I therefore ask Elaine Murray to withdraw amendment 130, on the basis that we will introduce a suitable amendment at stage 3.

John Scott: I associate myself with Elaine Murray's remarks, which were entirely reasonable. If an amendment is introduced at stage 3 that better defines the intention, I will in all probability be likely to accept it. Such legislation might encourage landowners to be more neighbourly than they have perhaps been, as Elaine Murray suggested. There is an absolutely reasonable obligation that they should be so.

Elaine Murray: I thank the minister and John Scott for their comments. The intention of my amendment 130 is not to make landowners responsible for flood prevention schemes that were determined by somebody else, but to make them responsible for dealing with situations in which their inaction causes or might cause distress to other people. As the minister has indicated her willingness to introduce an amendment for that purpose at stage 3, I seek to withdraw amendment 130.

Amendment 130, by agreement, withdrawn.

Section 57, as amended, agreed to.

Section 58 agreed to.

Section 59—Damage to certain flood protection work

Amendment 102 moved—[Roseanna Cunningham]—and agreed to.

Section 59, as amended, agreed to.

**Section 60—Repeal of Flood Prevention
(Scotland) Act 1961**

Amendment 50 moved—[Roseanna Cunningham]—and agreed to.

Section 60, as amended, agreed to.

Section 61—Interpretation of Part 4

Amendment 77 not moved.

The Convener: Group 18 is on statutory undertakers and undertakings. Amendment 103, in the name of the minister, is grouped with amendments 104 and 119 to 122.

Roseanna Cunningham: I will be brief. Amendments 103, 104 and 119 to 122 are technical amendments that will enable the same bodies that are treated as statutory undertakers for the purposes of the Flood Prevention (Scotland) Act 1961 to continue to be treated as statutory undertakers under the bill. The effect will be that the protection that is given to statutory undertakers from interference with their property and undertakings under section 51 will apply to the bodies that are listed in amendment 103.

I move amendment 103.

Amendment 103 agreed to.

Amendments 104 and 51 moved—[Roseanna Cunningham]—and agreed to.

Section 61, as amended, agreed to.

The Convener: That ends today's consideration of the Flood Risk Management (Scotland) Bill, dead on time—I congratulate you all on that. The committee will continue its stage 2 consideration next week, when the target will be to reach the end of the bill. I thank the minister and her team.

11:30

Meeting suspended.

11:32

On resuming—

European Union Issues

The Convener: Under agenda item 2, we will consider the paper that has been provided, which highlights a proposed new approach to scrutiny by the European and External Relations Committee and provides information on issues relating to this committee's remit at European level. I remind members that we are going to Brussels shortly. I invite comments on the paper.

Liam McArthur: The European and External Relations Committee was at pains to point out that its approach would not cut across this committee's remit on issues such as the common fisheries policy and reviews of the common agricultural policy. However, the question was rather left hanging as to how preparatory fact finding would be undertaken, who would be spoken to and on what basis, and how information would be fed back to this committee. The committee will wish to consider such advance engagement. When it was here recently, the European Parliament Committee on Agriculture and Rural Development invited us to feed in our views in a more timely fashion. If a mechanism could be found to make that work, that would be fine, but I am not entirely clear what that mechanism would be.

Peter Peacock: I am glad that Liam McArthur said that, because I had similar reservations when I read the paper. The intention is not to duplicate work, and I can understand why the European and External Relations Committee wishes to be involved, but there is a danger of duplication arising. It should be the role of this committee to highlight things and do the fact finding, rather than have a rapporteur do it. The relationship between this committee and the European and External Relations Committee is not entirely clear to me. I have similar reservations to those of Liam McArthur, but I am comparatively relaxed about the situation, so long as a way can be found to address them.

John Scott: I share those reservations, although I welcome the intention. There is no question but that having an input to pre-legislative elements is vital—we are certainly lacking in that in the Scottish Parliament. The intention is absolutely fine, if a way can be found to make things work.

Like Liam McArthur and Peter Peacock, I have reservations that, instead of reporting to us, the European and External Relations Committee would feel obliged to take action on subjects that should definitely be reserved to this committee. As two out of the three issues that the European and

External Relations Committee intends to monitor relate to this committee's work, I would like to see a more fleshed-out description of how the proposal would work.

Alasdair Morgan: The proposal reflects a difficulty that the European and External Relations Committee has: as soon as it gets into any substantive issue other than one that is simply about the processes within the European Union, it cuts across the remit of some other committee. There is a limit to how long it can consider processes within the EU but, as soon as it moves outside that envelope, it is bound to get into that kind of difficulty. Having been a member of the European and External Relations Committee, I sympathise with its problem.

John Scott: There is a lot of expertise on the CFP and CAP among the clerks and, indeed, the members of this committee. Some of us have spent three years—or, in my case, much longer—considering them. I am apprehensive that, notwithstanding the European and External Relations Committee's best intentions, it will somehow go beyond what is proposed and cause overlap and duplication. What is the point of that? However, if we can achieve a way of flagging up issues and allowing this committee to input into prelegislative proposals, that would be welcome.

Bill Wilson: Would it be possible for the European and External Relations Committee to act like a secondary committee and provide us with a report on which we could act? That would ensure that it did not bypass us but still got the chance to play the role that it wants to play.

Rhoda Grant: I have sympathy with what the European and External Relations Committee is trying to do, but there would be a big danger of two committees of the Parliament speaking with different voices and commenting differently on the same issues. We might take a different line from the European and External Relations Committee.

I have sympathy with Bill Wilson's suggestion. Perhaps we could ask the European and External Relations Committee to give us private reports, on which we could act with the reporter. It is important that we take the lead on agriculture and fisheries. If members of another committee spoke on issues on which we took a different line, mixed messages could come out of the Parliament, which could be dangerous.

The Convener: It could be the other way round: the report could be from us to the European and External Relations Committee.

Alasdair Morgan: The letter refers to "an EERC Reporter". When only one individual is involved, an extra danger is that the balance of opinions might not be reflected in their conclusions.

Liam McArthur: From my experience of dealing with EU issues, the European Commission in particular tends to play one side off against the other if there is not complete overlap in what is said. Rhoda Grant is right to pick up on that. On fisheries, we found that the Scottish fishing industry was told one thing but Scottish Government officials were told something slightly different. Different member states have different agendas, so it would be unfortunate in the extreme if the Scottish Parliament appeared not to speak with a unified voice.

The Convener: How about if I meet the convener of the European and External Relations Committee, thrash those issues out and report back to this committee? I agree that we should be the lead committee on agriculture and fisheries. I suspect that they form a big part of the European and External Relations Committee's business.

Members indicated agreement.

The Convener: This might be a good point to discuss our visit to Brussels. Members were sent a proposed agenda, which we will discuss later. Do you wish any information or background papers from the Scottish Parliament information centre in relation to this before we go to Brussels?

John Scott: What do you mean by "in relation to this"?

The Convener: I mean any of the subjects that we are going to bring up on the visit and that may come up in our meetings. I would like background information on the CFP and perhaps a short briefing on less-favoured areas, although I have been trying to read up on that subject.

Liam McArthur: The fact that the CFP green paper coincides with our visit leapt out at me. The Commission has been fairly vocal on a number of issues, not least the possible end of relative stability, which is crucial to our industry. I assume that there will be briefing papers on issues that are on the agenda anyway.

The Convener: We will get a briefing on the CFP.

John Scott: I am afraid that I have missed the proposed agenda for our trip to Brussels, but a short briefing on all the issues would be beneficial to us. I am talking not about 10 or 20 sides of A4, but about one or two, if that is possible.

The Convener: Okay.

Elaine Murray: The agenda for the day's visit is tight and rather packed. Perhaps we could have suggested lines of questioning so that we can focus our questions. That would be helpful, given the amount of work that is on the agenda for the visit.

Liam McArthur: What level of involvement will Scottish Government officials have in the preparation of the briefings? If we take a different approach from the Government in our lines of questioning, we should at least be aware of the Government's line. The team Scotland approach has long been identified as a strength and an asset, so we want to play along with it.

John Scott: That is a good point.

The Convener: We will ensure that the Government's line is included in the briefing.

That ends the public part of the meeting. I thank the public for attending.

11:42

Meeting continued in private until 12:35.

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