

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 18 November 2009

Session 3

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

28th 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

Rhona Brankin (Midlothian) (Lab)

Jamie Hepburn (Central Scotland) (SNP)

Jim Hume (South of Scotland) (LD)

Nanette Milne (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED :

Robin Harper (Lothians) (Green)

Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment)

Stuart McMillan (West of Scotland) (SNP)

CLERK TO THE COMMITTEE

Peter McGrath

SENIOR ASSISTANT CLERK

Roz Wheeler

ASSISTANT CLERK

Lori Gray

LOCATION

Committee Room 5

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 18 November 2009

[THE CONVENER *opened the meeting at 10:02*]

Marine (Scotland) Bill: Stage 2

The Convener (Maureen Watt): I welcome everyone to the committee's 28th meeting of the year, the main purpose of which is to consider amendments at stage 2 of the Marine (Scotland) Bill. I remind everyone to turn off mobile phones and BlackBerrys, as they impact on the broadcasting system.

For agenda item 1, members should have in front of them their copy of the bill and copies of the marshalled list and the groupings. I welcome the cabinet secretary and his officials.

Sections 1 and 2 agreed to.

After section 2

The Convener: The first group of amendments is on general duties. Amendment 97, in the name of Peter Peacock, is grouped with amendments 113, 99, 100, 112, 110 and 111.

Peter Peacock (Highlands and Islands) (Lab): With the exception of amendment 100, I will speak to all the amendments in the group, which seek to create general duties sections that are designed to strengthen the bill's provisions by placing high-level duties on ministers and public authorities. They cover sustainable development, the health of the Scottish marine area, the delivery of ecosystem objectives and the mitigation of climate change. The final two amendments in the group seek to change the long title to make it clear that the bill is to do with sustainable development and the enhancement—not just the protection—of the marine environment. All the amendments in the group either pick up the detail or the spirit of the committee's stage 1 report recommendations to strengthen the bill, or try to reflect a broad consensus of interests around the consideration that the bill should be strengthened in those key ways.

Amendment 97 would require the minister and public authorities to act in ways that are

“best calculated to further ... sustainable development”.

There is nothing new in that, but the bill's only current reference to sustainable development is in part 2, on marine planning. The duty “to further ...

sustainable development” should guide the whole bill and its actions, and amendment 97 is designed to have that effect.

Amendment 113 covers the health of our seas. Many people, including myself and most, if not all, the members of this committee, regard our seas as being in a degraded condition. If the Marine (Scotland) Bill is to mean anything, it must make a difference to the long-term health of our seas, so it is vital that we require ministers and public authorities to act in ways that are best calculated to protect and enhance the health of the Scottish marine area. Amendment 113 seeks to translate into law the committee's unanimous support for that principle. The amendment also seeks to address the point that the minister made during the stage 1 debate about existing obligations under European Union or international law by making it clear that, in acting to fulfil their duty, ministers must have regard to such obligations.

Amendment 99 relates to the marine ecosystem objectives and follows the consultation on the bill, which made it clear that the policy intention of the bill is to deliver ecosystem management. However, such a duty does not appear in the bill, so amendment 99 is designed to rectify that omission. It will help to create the mechanism with which to progressively set out indicators to measure the health of the marine environment, thereby meeting another of the committee's stage 1 objectives.

Amendment 112 deals with mitigation of, and adaptation to, climate change, which will help to bring the active sections of the bill explicitly into play in support of climate change mitigation objectives. We need to address more than adaptation to climate change, and we ought wherever possible to support active measures to mitigate climate change. To mitigate would mean to relieve, alleviate, temper or lessen the effects of climate change rather than just to adapt to new physical conditions through a process of gradual adjustment.

Amendments 110 and 111 are designed to have the long title reflect changes that would be brought about by the amendments that I have spoken to.

I am interested to hear what the minister has to say about the amendments. I am aware that there is a general feeling in Government that ministers should not be put under duties, but I hope that the minister can rise above that temptation. I recognise that if the committee accepts the amendments, some tidying up would have to be done at stage 3 because some of them might duplicate others. I am also open to better ways of expressing the policy objectives that lie behind the amendments, and am happy to listen to arguments or suggestions about that. However, I am firm on the policy objectives and hope to press

them today or at stage 3, depending on what the minister and my committee colleagues say.

I move amendment 97.

Robin Harper (Lothians) (Green): I am sure that members are aware that amendment 100 is part of a suite of amendments that seek to place on Scottish ministers and public authorities various duties that are similar to those in part 1 of the Flood Risk Management (Scotland) Act 2009.

Amendment 100 would require ministers and public authorities to carry out their functions in relation to the Scottish marine area in a way that is consistent with the precautionary principle. I am aware that the committee discussed that principle at length during stage 1, but came to no consensus, so I would like to explain.

Like any principle, the precautionary principle can have a strong or weak application, but in essence, it is well settled. The precautionary principle is one of the fundamental tenets of environmental policy and thinking and forms the basis of much European and international environmental law. Specifically, it is included in the European marine strategy framework directive, which states:

"Programmes of measures and subsequent action by Member States should be based on an ecosystem-based approach to the management of human activities and on the principles referred to in Article 174 of the Treaty, in particular the precautionary principle."

In that sense, the bill is where it is most appropriate to place a duty to act in accordance with the precautionary principle. Furthermore, not to include it would be, at the very least, not in the spirit of the marine strategy framework directive.

The deploy and monitor method that has been adopted by the renewables sector is an example of how the principle is applied in the real world. If operated under precautionary principles, that method has the potential to introduce vital new technologies to our seas in an environmentally sensitive manner, and the monitoring will increase our scientific understanding, which will help us to make better judgments about risk in the future.

I hope that I have clarified some of the issues that the committee might raise about the principle's definition and application. I look forward to the minister's response to amendment 100.

Alasdair Morgan (South of Scotland) (SNP): One or two of the amendments in the group puzzle me. It is a basic principle of drafting that we should make provision only when it is necessary. Therefore, I am a bit puzzled as to why we have to state in subsection (2) of the new section that amendment 113 would insert that the minister should "have regard to" EU or international law.

Ministers have to do that anyway, so the provision is totally unnecessary.

On amendment 100, Mr Harper said that he was defining "precautionary principle" in relation to a European directive, but I am not sure that he has lodged an amendment to the bill to say what the precautionary principle means in relation to the bill. It strikes me that, given that the term is defined in a European directive and that that directive applies to us anyway, the amendment would just restate something that exists already, which I do not think we should do.

I am a bit worried about amendment 112. I can see that, in overall terms, ministers might want to act to mitigate climate change, but the amendment states that any individual function, taken in isolation, must be exercised in a way that is

"best calculated to mitigate ... climate change",

which I am not sure is possible. When we drive to Inverness, for example, is that best calculated to mitigate climate change? I suspect not. You might think that such a requirement is acceptable in the context of the totality of our behaviour, but we are not talking about the totality of our behaviour; we are talking about individual functions. I do not think that what the amendment proposes is right.

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): Ministers already have overarching responsibilities for sustainable development, biodiversity and climate change. I believe that those responsibilities, and our new duties on achieving good environmental status, are sufficient to make clear our vision for managing and improving Scotland's seas.

We are consulting on the new duties that relate to the marine strategy framework directive, which a number of members have mentioned. That will require Scottish ministers to exercise functions while having regard to protecting and preserving the marine environment, preventing its deterioration and, where practicable, restoring damaged ecosystems. That will apply to all Scotland's seas out to 200 nautical miles and will be backed up by a series of indicators that will be agreed at European Union level.

I am wary of placing on ministers a large number of potentially conflicting duties, the consequences of which are hard to foresee. Of course, in the light of previous comments, I am tempted to say that that precedent has been followed by all ministers since 1999. Our going down that road would be likely to result in work for the courts. I believe that the marine strategy framework directive provides the forward-looking and ambitious agenda for the change for which the committee is looking. It is right that that is agreed with others beyond Scotland, as our seas do not have rigid boundaries and need to be managed collectively.

Amendment 97, which Peter Peacock has lodged, proposes a new duty in relation to sustainable development. I am content to put our commitment to sustainable development beyond doubt and will accept the amendment, as the new duty will complement our new environmental duties under the marine strategy framework directive.

Amendment 113 seeks to impose a significant new duty in relation to the health of the sea. I am concerned that that would unhelpfully overlap with our new responsibilities under the framework directive, which I have already mentioned. The duty is very wide; for example, it appears that it would require enhancement of marine health even if the sea were in an untouched state. Is marine health the same as good environmental status? If it is different, in what way is it different? I understand members' desire to see a duty of that sort in the bill, but I think that it would serve only to add confusion to an already complicated issue.

10:15

Amendment 99 seeks to add a specific duty on ecosystem objectives. We cannot see the value of the amendment. Members will note that the bill will allow the national marine plan to include marine ecosystem objectives. As the purpose of any plan is to deliver its objectives, I do not see how the inclusion of a duty to deliver marine ecosystem objectives would offer anything additional. Nevertheless, I intend to lodge an amendment to section 3(3) to add the tackling of climate change to the list of objectives in the plan. I will also accept an amendment from Liam McArthur that will provide that the plan must have the list of objectives that are set out in section 3(3).

Amendment 100 would apply the precautionary principle to the exercise of any marine function. Alasdair Morgan addressed some of the wider issues that are raised by that. The application of the precautionary principle is an extremely tough test, effectively placing on a developer the onus of proving that there will be no impact. It is not possible to prove a negative impact; thus, there is a grave risk that the precautionary principle would prevent any activity in the marine area. For that reason, I oppose amendment 100.

Amendment 112 would create climate change duties, but there are already general duties of that nature in the Climate Change (Scotland) Act 2009. I see little point in duplicating what already exists. On that basis, I will resist the amendment.

Amendments 110 and 111 would amend the long title. The applicability of the amendments will obviously depend on the view that the committee takes on the other amendments in the group.

Peter Peacock: I hear what the cabinet secretary says and note his comments on amendment 97 in particular. His argument is that there is no need for such amendments because they would duplicate existing provisions. Alasdair Morgan made the same point, although I took that as a drafting point rather than a point of principle—I may be wrong about that. I do not share the cabinet secretary's view. Here is an opportunity for our Parliament in Scotland to debate and establish in Scots law how we view the marine environment. All the issues to which my amendments refer have come up consistently in the course of the evidence, the debate and all the lobbying that has gone on around the bill, which suggests that there is a need for us to state our position on the matter. Where possible, I have tried to ensure that the amendments would do that in a way that would be entirely consistent with international or wider obligations. I do not think that there is a problem in duplicating in the bill provisions that are in the Climate Change (Scotland) Act 2009. They could be viewed as reinforcing provisions rather than duplication, and the same could be said of ecosystem objectives and the health of our seas, the overlapping of which the cabinet secretary referred to.

I am not entirely persuaded by the cabinet secretary's arguments. That said, however, I hear what he says about climate change and want to reflect further on his detailed arguments. Therefore, I will press amendment 97 but will not move my other amendments in the group, although I reserve the right to lodge further amendments at stage 3 in the light of what the cabinet secretary has said.

Amendment 97 agreed to.

Amendment 113 not moved.

Amendment 99 not moved.

Amendment 100 moved—[Robin Harper].

The Convener: The question is, that amendment 100 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Morgan, Alasdair (South of Scotland) (SNP)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
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 0, Against 8, Abstentions 0.

Amendment 100 disagreed to.

Amendment 112 not moved.

Section 3—National marine plan and regional marine plans

The Convener: The next group is on requirement to prepare marine plans. Amendment 1, in the name of Elaine Murray, is grouped with amendments 6 and 7.

Elaine Murray (Dumfries) (Lab): Amendment 1 would place on ministers an obligation to prepare and adopt a national marine plan for the Scottish marine area, but would allow discretion in covering the marine area with regional plans. I heard what the minister and others said about obligations on ministers earlier today and in previous debates. However, the Royal Town Planning Institute in Scotland, which proposes a similar amendment to amendment 1, has drawn a parallel with the amendment of the Town and Country Planning (Scotland) Act 1997 by section 1 of the Planning etc (Scotland) Act 2006, which states:

“There is to be a spatial plan ... to be known as the “National Planning Framework”.”

That means that an obligation has been placed on ministers through legislation to have a national planning framework on land. Essentially, amendment 1 would treat the marine environment similarly and would place on ministers an obligation to have a national marine plan, which would align marine planning with terrestrial planning.

Section 6 will enable ministers to withdraw the national marine plan or regional marine plans. In line with amendment 1—which would place on ministers a duty to introduce a national marine plan—amendment 6 would provide for circumstances in which a national plan is removed, and would oblige ministers to replace it with a new plan as soon as is reasonably practicable. Amendment 7 is consequential on amendment 6, which would oblige ministers to replace a withdrawn national plan, so that the appropriate wording for section 6(5)(b) would be “comes into effect” rather than “may come into effect”.

I note that amendment 7 would be pre-empted by amendment 35, which will allow for the existing plan to remain in place once a national plan has been removed. To an extent, that removes the need for some of the amendments in the group. However, there is still a need to have a new national plan introduced as soon as possible if a national plan is removed, because even if the provisions of the plan that had been removed were to remain in effect until a new plan was introduced, the existing plan’s authority would have been undermined if it had been withdrawn. It is therefore

still important that a new national plan be introduced as soon as possible.

I move amendment 1.

The Convener: As Elaine Murray said, members should be aware of the note on pre-emption that is provided in the groupings list.

Richard Lochhead: I am happy to speak to amendment 1. We perhaps all agree that it is inconceivable—it certainly is to me—that there would not always be a Scottish national marine plan in existence or in preparation. However, we are prepared to support amendment 1 on the basis that it would put matters beyond doubt. We accept that it addresses a particularly important point for many stakeholders. I am therefore happy to support Elaine Murray’s amendment 1, and the two consequential amendments 6 and 7.

Elaine Murray: I thank the minister for his support.

Amendment 1 agreed to.

10:23

Meeting suspended.

10:24

On resuming—

The Convener: The next group is on marine planning: content of marine plans. Amendment 2, in the name of Liam McArthur, is grouped with amendments 19, 3, 114, 101, 102, 115, 4, 20, 10 and 11. If amendment 101 is agreed to, I cannot call amendments 102 or 115, and if amendment 102 is agreed to, I cannot call amendment 115.

Liam McArthur (Orkney) (LD): I apologise for having been out of the room, convener.

Like Peter Peacock’s amendments in the first group, my amendments in this group very much follow on from the committee’s stage 1 deliberations. Amendments 2, 4, 10 and 11 reflect our intention to make the bill’s approach consistent with that in the Climate Change (Scotland) Act 2009 and to ensure that programmes as well as policies are included within the ambit of the bill.

When the cabinet secretary spoke to the amendments in the first group, on general duties, he said that he was inclined to support amendment 115. As colleagues will observe, I appear to have trumped my own amendment 102, which I now propose not to move.

I acknowledge amendment 101, in the name of Robin Harper, but I believe that amendment 115 more thoroughly reflects the policy intention that we all agree with. Although there is some flexibility in the drawing up of marine plans, it would help

local authorities and other stakeholders in the process to set some parameters and a framework for those deliberations. Amendment 115 details those objectives, sets a kind of baseline and makes it clear how progress will be judged against it.

I will move amendment 115 at the appropriate time, and I hope that Robin Harper will consider that it better reflects the intention that, as I have acknowledged, also lies behind his amendment 101.

I move amendment 2.

John Scott (Ayr) (Con): Section 3(2) states:

“A national ... or ... regional marine plan is a document which ... states the Scottish Ministers’ policies (however expressed)”.

I am interested in hearing the reasons for using the phrase “however expressed”. I have to say that I—and, I believe, the rest of the committee—find the wording a bit inexact. We need a clearer definition. For example, does it include policies that might be expressed in letters, in conversations in the pub or what? We really need to know what it means.

Elaine Murray: I will limit my comments to amendments 3 and 114.

I am sure that we all agree that marine planning should play a major role in the three-pillar approach to nature conservation. However, as the bill stands, there is no clear link between planning provisions and provisions for marine protection and enhancement. Amendment 3 explicitly states that the national marine plan and, where they exist, regional marine plans should include

“Scottish Ministers’ policies and programmes for ... the protection and enhancement of the area to which the plan”

or plans apply.

Amendment 114 was suggested by the RTPI, which advised that the international agreements under which the United Kingdom Administrations are enacting marine planning refer to “marine spatial planning”. The term was used during the development of marine strategy and was changed because marine plans will contain a greater degree of non-spatial management policy. As the spatial element is widely regarded as bringing the greatest added value to marine management under the bill, the RTPI has suggested that it is appropriate for the bill to include reference to spatially defined content similar to that contained in the Planning etc (Scotland) Act 2006 for the national planning framework and the new generation of development plans. Again, amendments 3 and 114 are about aligning marine planning with terrestrial planning.

10:30

Robin Harper: The major difference between Liam McArthur’s amendment 115 and my amendment 101 is that my amendment would give ministers a power to include in the national marine plan economic and social objectives, but only if they were consistent with the marine ecosystem and climate change objectives. During the passage of the National Parks (Scotland) Bill, I tried to get the Sandford principle incorporated in it, but I was told that it was implicit in the bill and so did not need to be stated explicitly. I would welcome a change of heart from the minister so that we can make explicit in the Marine (Scotland) Bill a sort of marine Sandford principle. Economic and social objectives should be consistent with the marine ecosystem and climate change objectives. That is the main and important difference between my amendment and Liam McArthur’s.

Richard Lochhead: Amendment 2 would require national and regional plans to detail programmes as well as policies in connection with sustainable development. The amendment is no doubt well intentioned, but it fails to take into account what marine plans are intended to do. The plans will get their force from section 11, which requires certain decisions in a marine area to be made “in accordance with” a plan and also requires regard to be had to a plan when other decisions are made. A marine plan is not a vehicle for delivering freestanding programmes or a series of actions. The bill is not designed for that. For that reason, I ask Liam McArthur to seek to withdraw amendment 2, or for the committee to resist it and amendments 4, 10 and 11, which are closely linked.

I am not sure what the exact purpose of amendment 19 is. The phrase “however expressed” is designed to ensure that any formulation of policy is captured by the drafting. The Government sees that as an important catch-all and safeguard. One form of expression could be maps; another could be tables. I therefore wish the wording to remain as it is, and I ask John Scott not to move the amendment, or the committee to resist it.

Elaine Murray’s amendment 3 proposes that marine plans include programmes and policies with regard to “the protection and enhancement” of the marine area. In my view, sustainable development policies are about using Scotland’s seas in a manner that is best calculated to deliver Scotland’s needs, which are protecting the marine area while allowing activity to take place. As the bill provides what Scotland requires, we should resist amendment 3.

On amendment 114, I do not believe that it would be appropriate to set out in legislation the detailed content of national or regional marine

plans. That is more appropriately done in guidance. I am happy to assure Elaine Murray that the Government will issue such guidance.

Although I agree with Robin Harper that marine ecosystem and climate change objectives are important, amendment 101 seeks to give undue weight to those and to relegate economic and social objectives so that they could be included only if they were consistent with the ecosystem and climate change objectives. That would be a step too far. I am content that we should give equivalence to those issues, alongside the economic and social issues, but that is all. That goes very much to the heart of the bill and the approach that was taken throughout the consultation process.

Section 3(3) includes specific objectives that may be included in the national marine plan. The list is not intended to be exhaustive and was included to provide examples of the national marine plan objectives. However, I am content to accept amendment 102, which would change the word “may” to “must” in section 3(3), as the national marine plan will always include economic, social and marine ecosystem objectives.

As with amendment 114, the issues that amendment 115 raises are more appropriately dealt with in guidance. I am happy to commit to producing guidance on the detailed planning. I therefore ask the committee to resist amendment 115.

Amendment 20 is a Government amendment. As I have said, the list of objectives in section 3(3) was never intended to be exhaustive. Nevertheless, I am happy to accept the committee’s recommendation in its stage 1 report to extend the list to include objectives on climate change.

Alasdair Morgan: I want to comment on Liam McArthur’s amendment 2 and the similar amendments. I am glad to hear what the cabinet secretary says. Surely the programmes will be prepared after the plan is drawn up, so that they fit into it. I suspect that the programmes might have shorter lifespans than the plan, therefore it seems logical that the plan should not contain the programmes, which might not even have been drawn up at that stage. Once the plan has been developed, the programmes should be prepared so that they fit into it. There seems to be an illogicality about the amendment.

I was glad to hear what the cabinet secretary said about Robin Harper’s amendment 101. We must take account of people living on the sea board of our marine areas, and it would not be satisfactory to downgrade economic and social objectives as the amendment would.

Karen Gillon (Clydesdale) (Lab): I support Alasdair Morgan’s comments about amendment 101. I have concerns about the impact that it could have on those who depend on the seas for their livelihoods and those who live on and around our coastline.

I am, however, sympathetic to Liam McArthur’s amendment 2, and I am interested to know whether he will press or withdraw it. It deals with an important issue that should be addressed in the bill, if that is at all possible.

The Convener: Cabinet secretary, do you want to add anything?

Richard Lochhead: No. I will let Liam McArthur respond to Karen Gillon’s point. I would be happy to discuss with members between now and stage 3 any requirements for further clarity.

Liam McArthur: That has been a useful exchange. I wanted clarification on what John Scott’s amendment 19 meant, but the cabinet secretary has reassured me of his intention.

My concern about Elaine Murray’s amendment 3 is that there is no counterweight against climate change mitigation. That is largely what the cabinet secretary suggested.

It was useful to air the issue in amendment 114. Producing something under guidance might address the point and be a satisfactory response.

I heard what Robin Harper said about amendment 101. My initial remarks did not sway him. I hope that the later comments of Alasdair Morgan and Karen Gillon have persuaded him not to move his amendment. I would not support it, for the reasons that the cabinet secretary and others have given.

I perhaps misread the cabinet secretary’s intentions in the earlier exchanges. I hoped that he would be minded to support amendment 115 rather than amendment 102. I am inclined not to move amendment 102 and to move amendment 115, as I am seized of the need to ensure that there is flexibility within the system. I am not sure that that flexibility would be aided in any way by not providing a framework for what is expected of those who are tasked with the responsibility of developing the plans.

I heard what the cabinet secretary said about amendments 2, 4, 10 and 11. I note Alasdair Morgan’s suggestion of illogicality, but if it was good enough for our world-leading Climate Change (Scotland) Bill, surely it is good enough for the Marine (Scotland) Bill, therefore I intend to press amendment 2.

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gillon, Karen (Clydesdale) (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 exercise my casting vote against the amendment.

Amendment 2 disagreed to.

The Convener: Amendment 19, in the name of John Scott, was debated with amendment 2.

John Scott: I am happy with the cabinet secretary's explanation of "however expressed".

Amendments 19, 3 and 114 not moved.

The Convener: Amendment 101, in the name of Robin Harper, was debated with amendment 2. If amendment 101 is agreed to, I will be unable to call amendments 102 and 115, as they will be pre-empted.

Robin Harper: Given the views that have been expressed, I will not move amendment 101, but I urge members to vote for amendment 115.

Amendment 101 not moved.

The Convener: Amendment 102, in the name of Liam McArthur, was debated with amendment 2. If amendment 102 is agreed to, I will be unable to call amendment 115.

Liam McArthur: On the basis that it would pre-empt amendment 115, I will not move amendment 102.

Amendment 102 moved—[Alasdair Morgan].

The Convener: The question is, that amendment 102 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0. I use my casting vote in favour of the amendment.

Amendment 102 agreed to.

The Convener: Amendment 115 is pre-empted

Amendment 4 moved—[Liam McArthur].

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gillon, Karen (Clydesdale) (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 against the amendment.

Amendment 4 disagreed to.

Amendment 20 moved—[Richard Lochhead]—and agreed to.

The Convener: The next group is on marine planning: designation of whole marine area. Amendment 21, in the name of John Scott, is the only amendment in the group.

John Scott: It seems logical that, to deliver an ecosystem approach, Scottish marine regions must cover the entire Scottish marine area. Amendment 21 does not call for a duty to ensure that there is comprehensive plan coverage for each Scottish marine region—it is recognised that there may not be a requirement for all of a Scottish marine region to be planned, provided that there is full plan coverage at a national level. However, if the Scottish marine regions covered the entire Scottish marine area, there would be scope for the Scottish ministers or delegates to ensure that all areas that needed to be could be covered by a regional marine plan—for example, areas where there were conflicting uses, and planning and/or management was needed. That would also provide consistency and certainty for marine industries that operate in the Scottish marine area.

I move amendment 21.

Richard Lochhead: I appreciate the desire for Scottish marine regions to cover the whole of the Scottish marine area, but there are two essential reasons why I do not want to make that a duty. First, I am committed to consulting on the criteria

for defining the boundaries of marine regions, including the seaward boundaries of the regions. The recent report from the Scottish coastal forum outlined arguments for the boundary to extend to three, six or 12 nautical miles. I wish to explore that issue further through consultation.

Secondly, a duty of the sort proposed would require all parts of Scottish territorial waters to be included in a Scottish marine region, even the seas around Rockall, St Kilda, North Rona and other offshore islands that have no communities. A map of the offshore region shows where St Kilda and Rockall are, and it seems sensible to us to include them, because there is a strong case for saying that the national plan would be sufficient for such areas, given the lack of communities on the islands. I therefore ask the member to withdraw the amendment, or the committee to resist it.

10:45

John Scott: In light of the minister's comments, I am happy to seek leave to withdraw amendment 21.

Amendment 21, by agreement, withdrawn.

The Convener: The next group is on marine planning: relationship between marine plans and other documents. Amendment 22, in the name of the cabinet secretary, is grouped with amendments 5, 23, 23A, 23B, 103, 27, 27A, 28, 29, 29A, 30, 31, 35, 36 and 39. If amendment 22 is agreed to, I cannot call amendment 5 because of pre-emption.

Richard Lochhead: Amendments 22, 23, 27, 29, 30, 35, 36 and 39 make up a bundle of amendments that introduce the provision that the national and regional marine plans must be "in conformity" with the marine policy statement under the United Kingdom act, if the Scottish ministers have adopted that statement. Amendments 28 and 31 will expand the terms of paragraphs 8(2)(f) and 8(3)(g) of schedule 1, which list matters to which ministers are to have regard when producing the national plan or regional plans. The amendments introduce references to plans for areas outside Scotland with a view to improving cross-border co-operation.

I ask the committee to resist Elaine Murray's amendment 5. The existing drafting provides for a sufficient level of conformity between national and regional marine plans, but gives some flexibility in that conformity, which is a good thing. A national marine plan might be deficient in some way, but not sufficiently deficient to warrant its removal, and tying a regional marine plan to a national marine plan without giving any leeway would raise the possibility of inappropriate plans and planning decisions. As it will be the Scottish ministers who make the final decisions on adopting the national

and regional plans, it seems unreasonably restrictive to tie their hands so completely around the relationship between the two types of plan.

Amendments 23A, 23B, 27A and 29A would replace "in conformity" with "consistent". We are unclear about the value that such changes would bring to the bill. It might be that the amendments seek to change the language so that it mirrors terrestrial planning concepts. I see that Elaine Murray is nodding. We resist that approach, because we should be careful about importing terms that have a set meaning in the terrestrial context.

I have already referred to amendments 28 and 31, which will bring the Scottish bill into line with the UK act with regard to the compatibility of adjoining cross-border plans. Amendment 103 would place a more stringent duty on the Scottish ministers than is on the secretary of state, who would only be required to take account of Scottish inshore plans, while Scottish plans would have to be compatible with English and Northern Irish plans. I hope that the committee will understand why we resist amendment 103.

I move amendment 22.

Elaine Murray: As the minister said, amendment 5 is fairly straightforward. It would remove regional plans' discretion not to conform with the national plan. I appreciate the minister's point about the amendment being overly restrictive, but if the terminology "in conformity" was replaced with "consistent", some of that restrictiveness would be removed.

On amendments 23A, 23B, 27A and 29A, the Town and Country Planning (Scotland) Act 1997 required local plans to be "in conformity" with structure plans, but the Planning etc (Scotland) Act 2006 revised the 1997 act and replaced the term with the requirement for local development plans to be "consistent" with strategic development plans, which is a looser relationship than the requirement under the 1997 act that they must conform generally with the higher tier plan. That probably goes some way towards addressing the minister's concerns about amendment 5, although I appreciate that it will be pre-empted if his amendment 22 is agreed to. As the minister suspected, amendments 23A, 23B, 27A and 29A would align marine and terrestrial planning legislation terminology.

Amendment 103 seeks to address the Solway question. Marine management should deliver an ecosystem approach rather than follow political or demonstrative boundaries. In areas such as the Solway Firth, that requires co-operation between Governments. The amendment would enable one joint plan to be drawn up for estuaries such as the Solway, although it would, of course, be ratified

separately by ministers in each Administration. I hear what the minister says about the UK act, but it is appropriate at least to give some consideration to whether the need to co-operate should be in the bill rather than expressed through a memorandum of understanding between Governments.

Liam McArthur: I was interested to hear what Elaine Murray had to say about the rationale behind amendments 23A, 23B, 27A and 29A. It has been put to me that the proposed change from “in conformity” to “consistent” may lead to the requirement being a little less precise. She justified the change on the basis that it is consistent with the terminology that is used in terrestrial planning, but I am interested in hearing from the cabinet secretary why there is that divergence in terminology and whether he agrees that by changing “in conformity” to “consistent” there is likely to be less certainty.

John Scott: I, too, would like an explanation of the difference between “in conformity” and “consistent”, and I would like to know why the cabinet secretary perceives there to be a danger in the change, if the terminology is compatible with that in the terrestrial legislation.

Alasdair Morgan: I am a bit puzzled about the issue of “in conformity” and “consistent”. Being a mere layman, I decided to look up the 1996 “Chambers Dictionary”. I know that Chambers has ceased publishing, but I think that that was because of the development of the internet rather than the quality of the dictionary. It is interesting that the first definition given of “conform with” is to be in agreement with and the first definition given of “consistent with” is also to be in agreement with, so they appear to mean much the same thing. In that case, we should perhaps just leave the wording as it is.

On amendment 103, I am curious, because I thought—although I am subject to correction—that Scottish territorial waters also abutted those of the Isle of Man. I wonder why the Isle of Man was left out and, if the amendment is worth voting for, why the Manx Government should be omitted.

Bill Wilson (West of Scotland) (SNP): I can see the logic of amendment 103. It is clearly sensible that we have co-operation in adjoining areas, but my concern is that, if we had to be compatible with the English and Northern Irish, would that not be slightly restrictive? There would not seem to be much room for negotiation. If they decided on their marine plans and we had to be compatible with them, would that not be the end of it?

The Convener: Would the cabinet secretary like to wind up on this group of amendments?

Richard Lochhead: Can you define the word “like”?

The Convener: I mean will you wind up, please?

Richard Lochhead: Thanks, convener. There were a number of issues, and I will try to address as many of them as I can.

First, I thank Elaine Murray for her comments, and I hope that I outlined that we believe that we have a package of flexibilities that are suitable for the marine environments.

Reference was made to the Solway. The fact that we do not have any powers over the English plan for that area dictates the extent to which the bill can address the situation. As members will be aware, a concordat has been drawn up between the Scottish Government and the UK Government over the management of the Solway. I give members that reassurance once again.

We are cautious about aligning marine area concepts with the terrestrial plan, as the two have arisen from different backgrounds and over different timescales. We believe that the terminology that is used in the bill is appropriate to the marine area, and it is the result of much consultation and discussion over a long time.

Alasdair Morgan referred to the Isle of Man. It is worth noting that the Isle of Man does not have a plan and is, therefore, not subject to the legislation that we are discussing north and south of the border. That is the reason for the Isle of Man's absence from the bill.

Elaine Murray's amendment 5 addresses the relationship between the national marine plan and the regional marine plans, which was discussed in detail. I remind the committee that section 3 provides for conformity between the national plan and any regional plan

“unless relevant considerations indicate otherwise.”

The onus is on conformity, but we want the flexibility that I have just referred to so that other considerations can be taken into account. There may be occasions on which there is a good reason for a difference between the regional and national plans. We want the flexibility to be able to have such differences.

Amendment 22 agreed to.

The Convener: Amendment 5 is pre-empted.

Section 3, as amended, agreed to.

After section 3

Amendment 23 moved—[Richard Lochhead].

Amendments 23A and 23B not moved.

Amendment 23 agreed to.

The Convener: The next group is on marine planning: relationship with national planning framework. Amendment 116, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray: Amendment 116 amends the Town and Country Planning (Scotland) Act 1997 to make specific reference to the Scottish marine area. The amendment was suggested by the RTPI, which argued that the second national planning framework, which was adopted in 2009, should reflect the outcome of consultation on marine policy issues. NPFs 1 and 2 included marine-related issues in the identification of areas of marine energy potential, the role of ports and the concept of national developments within the marine area including port and energy-related developments. Amendment 116 would make the connection between the marine and terrestrial planning systems, with the national planning framework being the comprehensive spatial planning document.

I move amendment 116.

Richard Lochhead: I accept the principle of what Elaine Murray is trying to do in linking the national planning framework and the national marine plan. However, as we have discussed previously, they are separate documents having separate legal effect and being subject to different procedures as to their compilation and approval. Accordingly, it would not be appropriate to include in the national planning framework policies on the development and use of the marine area. I therefore urge the committee to reject the amendment. However, to give comfort to Elaine Murray, I reassure the committee that we will have regard to the national planning framework when we draw up our national marine plan. No doubt, over time, there will be more alignment between the national marine plan and the national planning framework. Nevertheless, we do not feel that amendment 116 is appropriate.

The Convener: Elaine, do you want to press or withdraw amendment 116?

Elaine Murray: I would like to reflect on this a bit further, so I will not press amendment 116 at this stage.

Amendment 116, by agreement, withdrawn.

Sections 4 and 5 agreed to.

Schedule 1

PREPARATION, ADOPTION ETC OF MARINE PLANS OR ANY AMENDMENT

11:00

The Convener: The next group is on marine planning: notification and consultation. Amendment 24, in the name of the cabinet secretary, is grouped with amendments 25 and 26.

Richard Lochhead: Schedule 1 to the bill details the procedures that are to be followed in preparing marine plans. In paragraph 1 of the schedule there is a requirement that the Scottish ministers notify planning authorities in Scotland of our intention to prepare marine plans if the plan is for an area adjoining that of the planning authority. However, as the bill stands, there is no requirement to notify authorities in England or Northern Ireland where planning is to be undertaken for an area adjoining English or Northern Irish waters.

Amendments 24 to 26 will rectify that anomaly and they are consistent with similar provisions in schedule 6 to the UK Marine and Coastal Access Act 2009.

The amendments will require the secretary of state to be notified when planning is starting in an area next to the English inshore area. The Department of the Environment in Northern Ireland will have to be notified when planning is starting in an area next to the Northern Irish inshore area.

I move amendment 24.

Amendment 24 agreed to.

Amendments 25 and 26 moved—[Richard Lochhead]—and agreed to.

The Convener: The next group is on marine planning: participation statement. Amendment 117, in the name of Elaine Murray, is grouped with amendments 118 to 133.

Elaine Murray: Amendment 117, along with amendments 118 to 120 and 122 to 133, would replace the term, “statement of public participation” and the abbreviation “SPP” with the term “participation statement”. That would achieve consistency with the Town and Country Planning Act 1997 and the Planning etc (Scotland) Act 2006. The existence of two different terms for the same purpose and two interrelated codes adds complexity. In addition, SPP could cause confusion with the abbreviation for Scottish planning policy, given that reference to the Scottish planning policy will be made as a material consideration in marine planning matters. The amendments would just substitute terminology.

I move amendment 117.

Richard Lochhead: I urge members to pay close attention as I try to respond to this group of amendments.

I admit that I was puzzled about the purpose of amendment 117 and the consequential amendments 118 to 120 and 122 to 131 and, in particular, about the proposed name change from “statement of public participation” to “participation statement”. I am sure that we all agree that clarity about consultation would be a step forward and that that needs to involve transparency and inclusion. I do not have a particular problem with the proposed amendments, but I am keen that we do not unwittingly create confusion.

If the amendments were accepted, I would have some unease about the consequences for our alignment in Scotland with our new powers under the UK Marine and Coastal Act 2009. If the amendments were agreed to, ministers would have to prepare a participation statement for the zero to 12 nautical mile area and a statement of public participation for the 12 to 200 nautical mile area. That would mean that we would have to be very careful about our terminology in seeking a streamlined process for both areas. Given that it is hard to see what advantage there would be in making the change as requested by Elaine Murray, I think it would be better to avoid the confusion that would result from having different terminology in the two pieces of legislation on our marine area. Although I accept the sentiments of the member’s comments, I draw the committee’s attention to the distinction between the requirement for zero to 12 miles and the requirement for 12 to 200 miles.

Amendment 121 provides a more detailed list of what should be included in the participation statement. All the things that are mentioned in the amendment would be included in a participation statement, however it was described. I am therefore happy to accept the amendment.

Elaine Murray: As I omitted to make the case for amendment 121, I am grateful to the minister for having done so. [*Laughter.*] I was obviously too excited about the change in terminology. I am pleased that the minister has accepted amendment 121.

On amendments 117 to 120 and 122 to 133, I was not aware of the consequential problem for the 12 to 200 nautical mile area and I will therefore seek to withdraw amendment 117 and not move the others.

Amendment 117, by agreement, withdrawn.

Amendments 103 and 118 to 120 not moved.

Amendment 121 moved—[Elaine Murray]—and agreed to.

Amendments 122 to 130 not moved.

Amendment 27 moved—[Richard Lochhead].

Amendment 27A not moved.

Amendment 27 agreed to.

Amendment 131 not moved.

Amendment 28 moved—[Richard Lochhead]—and agreed to.

Amendment 29 moved—[Richard Lochhead].

Amendment 29A not moved.

Amendment 29 agreed to.

Amendment 30 moved—[Richard Lochhead]—and agreed to.

Amendment 132 not moved.

Amendment 31 moved—[Richard Lochhead]—and agreed to.

Amendment 133 not moved.

The Convener: The next group is on marine planning: consideration of draft by the Parliament. Amendment 134, in the name of Elaine Murray, is grouped with amendments 32, 135, 33, 136, 34, 34A, 34B, 34C, 137 to 139 and 143. If amendment 32 is agreed to, I will be unable to call amendment 135. Members should also note that amendments 34A and 34B are direct alternatives. If the committee agrees to amendment 34A and then to amendment 34B, the latter decision will stand.

Elaine Murray: I think members will enjoy this one as well. Amendments 134 to 136, 34C, 137 and 138 all substitute the term “proposed” for the term “draft” to avoid confusion about that term, which is already used at the consultative stage of the national marine plan. The term “proposed” is also consistent with the terminology that is used in relation to the version of the national planning framework that is laid before the Parliament, so it would align the legislation that governs terrestrial planning with that which governs marine planning.

Amendment 34B seeks to amend amendment 34 by substituting “60 days” for “40 days”. The committee did, indeed, recommend a period of 40 days in its report, and that is reflected in the cabinet secretary’s amendments. However, I am advised that the national planning framework recommends a period of 60 days, so I invite the committee and the cabinet secretary to consider whether it would be worth while to extend the period to 60 days.

I move amendment 134.

Richard Lochhead: The amendments in the group concern the arrangements for finalising marine plans. It is right that we think carefully about the processes that bring marine plans into force as the plans will be important and influential documents.

After listening carefully to the committee's views on the need for clarity about the engagement of the Parliament in the national marine plan, I lodged amendments 32 and 34. The committee recommended that we should establish a minimum period of 40 days for parliamentary consideration of the national marine plan. I listened to the committee and the two amendments implement that recommendation.

Amendments 34A and 34B go beyond the committee's recommendation and propose longer periods. I am not persuaded that the additional time would be desirable. We want to create a marine planning system with pace that can set the framework for fast-growing marine developments and pressures. I am concerned that adding more time would risk delay and invite the reopening of detailed issues. There are already ample opportunities for consultation and engagement in the preparation of plans. The land use planning system is often criticised as being too slow and we need to ensure that we do not replicate its features unnecessarily.

Elaine Murray's amendments 134 to 136, 34C, 137 and 138 all change the name of the draft national plan to a "proposed" plan. We do not see that that adds any great value and I therefore ask the member to withdraw amendment 134 and not move the others. Again, I understand that, given the terminology that is used elsewhere, the amendments would mean that different terminology was used for zero to 12 miles and 12 to 200 miles.

Amendment 139, which was also lodged by Elaine Murray, seeks to ensure that the adopted plan is laid before the Parliament as soon as is reasonably practicable. I have no objection to that.

Amendment 143 seeks to ensure that the ability to adopt a marine plan cannot be delegated. The amendment is unnecessary because adoption is constituted by publication of a plan and the act of publication is clearly not delegable.

John Scott: I took a similar view to Elaine Murray and thought that the maximum possible amount of time should be devoted to the development and scrutiny of the draft version of the marine plan. However, I am prepared to accept that the minister lodged amendment 34 in recognition of the committee's concerns about the length of time. Therefore, I do not think that there is any need to move my amendment 34A.

11:15

Alasdair Morgan: Without having looked up either draft or proposed in "The Chambers Dictionary", I am still not convinced of the value of the amendments that substitute one for the other.

Elaine Murray mentioned the national planning framework in relation to amendment 34B, but that is a totally different beast from national marine plans. I do not think that the argument transfers from one to the other.

Liam McArthur: I echo Alasdair Morgan's comments on amendment 34B. We gave the issue an airing at stage 1 and the 40-day period was seen as sufficient at that stage. The demands on all of us who are involved in the national planning framework process are different from the demands in this set of circumstances. I am disinclined to extend the period further.

The Convener: Cabinet secretary, do you have anything to add?

Richard Lochhead: I have nothing to add to my previous comments, convener.

Elaine Murray: If there is an issue about having different terminology for the zero to 12-mile limit from the 12 to 200-mile limit, I would certainly be prepared to withdraw some of my amendments at this stage, so that I can look into the matter a bit further.

I am pleased that the cabinet secretary has accepted amendment 139, which would provide that the ministers must lay the national marine plan as soon as is reasonably practicable.

I was slightly confused by the cabinet secretary's argument on amendment 143, because the adoption of the regional marine plan, under section 3(1)(b) and schedule 1, is the ultimate outcome of the process of regional marine planning. It seems a bit anomalous that adoption is not included in the functions that are excepted from delegation.

I intend to withdraw amendment 134 in the light of the issues around the 12 to 200 nautical mile area. I will look at the matter further.

Amendment 134, by agreement, withdrawn.

The Convener: If amendment 32 is agreed to, I cannot call amendment 135.

Amendment 32 moved—[Richard Lochhead]—and agreed to.

The Convener: Amendment 135 is pre-empted.

Amendment 33 moved—[Richard Lochhead]—and agreed to.

Amendment 136 not moved.

Amendment 34 moved—[Richard Lochhead].

Amendments 34A, 34B and 34C not moved.

Amendment 34 agreed to.

Amendments 137 and 138 not moved.

Amendment 139 moved—[Elaine Murray]—and agreed to.

Schedule 1, as amended, agreed to.

Section 6—Withdrawal of marine plans

Amendment 6 moved—[Elaine Murray]—and agreed to.

The Convener: If amendment 35 is agreed to, I cannot call amendment 7.

Amendment 35 moved—[Richard Lochhead]—and agreed to.

The Convener: Amendment 7 is pre-empted.

Section 6, as amended, agreed to.

After section 6

Amendment 36 moved—[Richard Lochhead]—and agreed to.

The Convener: We have come to a natural break, so I suspend the meeting for five or 10 minutes.

11:20

Meeting suspended.

11:28

On resuming—

Section 7—Duty to keep relevant matters under review

The Convener: The next group is on marine planning: review of plans and delegation. Amendment 37, in the name of the cabinet secretary, is grouped with amendment 38.

Richard Lochhead: Amendment 37 is a minor amendment that will ensure that the Scottish ministers include historical and archaeological issues in their reviews in connection with preparing, adopting, amending or withdrawing marine plans. That was always our intention: the amendment has been lodged largely for the avoidance of doubt.

Amendment 38 will correct a minor mistake. The withdrawal of marine plans is not in the list of delegable functions in section 8(5) and therefore does not need to be listed as an excepted function under section 8(6). Amendment 38 will remove paragraph (e) from section 8(6).

I move amendment 37.

Liam McArthur: I declare a constituency interest and I welcome the clarification from the cabinet secretary, which is helpful.

Amendment 37 agreed to.

Section 7, as amended, agreed to.

Section 8—Delegation of functions relating to regional marine plans

The Convener: The next group is on marine planning and licensing: directions and orders to delegates. Amendment 140, in the name of Elaine Murray, is grouped with amendments 141, 142, 144 and 165. If amendment 140 is agreed to, amendment 141 will be pre-empted.

Elaine Murray: The committee expressed in its stage 1 report concern that functions that relate to a regional marine plan might be delegated to a single public authority. Stakeholders, including the Scottish Fishermen's Federation, raised the same concern with members. Amendments 140 and 165 would ensure that such functions were delegated to a group, which might include a single public authority but would also include persons who had been nominated by public authorities and by the Scottish ministers, to ensure that a partnership approach was taken to the development of regional marine plans.

I move amendment 140.

11:30

Robin Harper: The amendments in my name would add detail on the make-up of marine planning partnerships, thereby addressing an issue that the committee raised in its stage 1 report, when it said:

"we find it almost impossible to envisage circumstances where a single public authority would be an appropriate 'partnership'".

I fully agree with that comment. I would much prefer marine planning partnerships to be in charge of Scottish marine regions.

The amendments in my name would not remove section 8(2)(a), but amendment 142 would require that if the Scottish ministers made a direction to put a public authority at the head of a Scottish marine region, they would have to give reasons for doing so, and it would require the public authority to consult widely representatives of the specified interest sectors. Amendment 141 would require that if the Scottish ministers delegated their functions to marine planning partnerships under section 8, the partnerships would have to include representatives from specified sectors.

Although I understand and share the desire to keep marine planning partnerships as flexible as possible so that they can adapt to local needs, I agree with the committee that we must ensure that MPPs are not dominated by narrow sectoral interests. In drafting the amendments in my name, I tried to strike a balance between the two

concerns and to address the concern that MPPs might become so large as to be unworkable.

Amendments 141 and 142 therefore set out just three sectors from which there must be representation, which leaves flexibility about other representation. Such an approach would provide flexibility and balance. A seat at the table would have to be provided to representatives from the environmental protection community, for example, from Scottish Environment LINK or some of its constituent non-governmental organisations, and there would have to be representation from commercial interests. I stress the need for input from the renewables sector, because I cannot imagine a situation in which it would be appropriate to exclude the sector from an MPP—on the contrary, its inclusion would be essential. Finally, there would have to be representation from recreation interests. The importance of our waters for recreation purposes is often overlooked, but in Scotland we provide world-class conditions and hold world-class events in sailing, surfing, kite-surfing, kayaking and windsurfing, to name just a few sports. Given the right support, those sports could provide an economic boost for the country—especially the island communities. Representatives from the recreation community must be given a voice through MPPs.

We named sectors rather than groups so that the actual make-up can be determined by local conditions. The naming of just three essential sectors carries no risk of making MPPs too large, but would ensure that the bill makes it clear that essential sectors must be given a voice in order to avoid the risk of partnerships becoming dominated by narrow sectoral interests.

It is extremely important that marine planning partnerships be open to freedom of information requests. My understanding is that an MPP, as an entity, would not be open to FOI requests, although some of its constituent parts might be. I am interested in hearing the committee's thoughts on the matter, to which we could perhaps return at stage 3. I hope that amendment 144 will add usefully to the Parliament's ability to oversee directions from ministers.

Bill Wilson: I understand the logic behind amendment 140. My only slight concern is that there appears to be no limit on how many people the public authority could nominate, so we could end up with a situation in which the public authority nominated a large number of people and the minister nominated more people, which would create a very unwieldy body indeed. I am a bit concerned about allowing ministers and the public authority to nominate without restriction.

John Scott: I agree with Elaine Murray's interpretation and with her amendments. It is important that we agree to them.

Richard Lochhead: Amendment 140 would remove the flexibility to delegate planning functions to a single public authority. I do not wish the powers to delegate planning functions to be limited in such a way. It is not inconceivable that delegating planning functions to a single public authority might be appropriate in some circumstances—for example, delegation to one of the island councils is a possibility. If we were to delegate functions to a single public authority, I assure the committee that we would direct it to work in conjunction with stakeholders.

Amendment 141 could make it extremely difficult, if not impossible, to delegate planning functions in a case in which it was difficult to find in an area representatives from all three groups—environmental interests, recreational interests and commercial interests—that Robin Harper lists, however unlikely that might be. The amendment's approach is prescriptive, whereas the bill is more flexible, in order to meet the wide range of circumstances around the Scottish coast. Any reduction in such flexibility should be resisted.

Amendment 142 sets out in further detail what a direction to a public authority would have to include. I do not wish to go so far as to prescribe the groups that a delegate must consult, but partnerships will, of course, be expected to consult widely in performing their functions.

Amendment 144 would introduce unnecessary bureaucracy and delay into the directions process, which could limit ministers' ability to respond quickly to circumstances. On that basis, I oppose the amendment.

The bill will allow marine licensing to be delegated to a public authority or a marine planning partnership that comprises nominated persons, so amendment 165 would add no value to the bill. The amendment would also remove the requirement for the Scottish ministers to have the group's consent to undertake the delegated responsibilities. Removal of that requirement would be a backwards step. For those reasons, I oppose the amendment.

Elaine Murray: I will deal with some of the arguments. Robin Harper's amendment 141 is too prescriptive. In some planning regions, restriction to the sectors that are listed might not be appropriate and all three interests might not be represented in some planning partnership areas. I prefer my amendment 140, which would give public authorities and ministers more discretion to select the appropriate people.

The cabinet secretary argued that having one public authority as the planning partnership might be appropriate in island communities. I contend that, even if only one public authority were involved in the partnership, other stakeholders

should participate, too. Amendment 140 would enable ministers to ensure that other stakeholders were involved.

I support Robin Harper's amendment 142 and I intend to press amendment 140.

The Convener: If amendment 140 is agreed to, amendment 141 will be pre-empted. The question is, that amendment 140 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gillon, Karen (Clydesdale) (Lab)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Scott, John (Ayr) (Con)

AGAINST

McArthur, Liam (Orkney) (LD)
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 4, Against 4, Abstentions 0. I use my casting vote against the amendment.

Amendment 140 disagreed to.

Amendment 141 moved—[Robin Harper].

The Convener: The question is, that amendment 141 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Morgan, Alasdair (South of Scotland) (SNP)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
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 0, Against 8, Abstentions 0.

Amendment 141 disagreed to.

Amendment 142 moved—[Robin Harper].

The Convener: The question is, that amendment 142 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gillon, Karen (Clydesdale) (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 against the amendment.

Amendment 142 disagreed to.

Amendment 143 not moved.

Amendment 38 moved—[Richard Lochhead]—and agreed to.

Section 8, as amended, agreed to.

After section 8

Amendment 144 moved—[Robin Harper].

The Convener: The question is, that amendment 144 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)

AGAINST

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

ABSTENTIONS

Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 3, Against 4, Abstentions 1.

Amendment 144 disagreed to.

Sections 9 and 10 agreed to.

Section 11—Decisions of public authorities affected by marine plans

The Convener: The next group is on decisions of public authorities affected by marine plans. Amendment 8, in the name of Elaine Murray, is grouped with amendments 145 and 9.

Elaine Murray: I lodged amendment 8 as a probing amendment. The inclusion in section 11 of the phrase

“unless relevant considerations indicate otherwise”

appears to give public authorities the discretion to disregard marine plans. Scottish Environment LINK has sought legal advice and has been told that there is no legal interpretation of the phrase. On the contrary, the term “material considerations” is used in terrestrial planning, so if that were used in the bill, it would have the same general

interpretation that it has in terrestrial planning legislation. I invite the cabinet secretary's comments on the terminology.

I move amendment 8.

Karen Gillon: The purpose of amendment 145 is quite straightforward. It seeks to ensure that when proposals are made to depart from a marine plan, they are made for good reasons and are subject to proper examination. Amendment 145 would include in the bill a requirement for consultation of the relevant delegates, who will be designated by direction under section 8(1)(b). I believe that amendment 145 would strengthen the bill, and I am happy to support amendment 9, which, by ensuring that reasons for decisions would be published, would increase transparency for the wider public.

Liam McArthur: As Karen Gillon has indicated, there is a link between amendments 9 and 145. When a public authority takes a decision that goes against the marine plan, it will be required to state its reasons for doing so, but amendment 9 would ensure that it had to justify its decision in a published and publicly accessible document. I support amendment 145.

Richard Lochhead: Elaine Murray's amendment 8 seeks to change the basis on which public authorities take decisions that relate to a marine plan. Section 11 states that public authorities must take any authorisation or enforcement decision in accordance with the marine plan

"unless relevant considerations indicate otherwise."

Such "relevant considerations" could arise from new scientific evidence, a national emergency or the need to take into account other, supervening legislation. We believe that the flexibility to respond appropriately is necessary, so it is not necessary to change "relevant" to "material".

Furthermore, "material" is used extensively in the terrestrial planning system and has case law associated with it. As I have said in relation to other amendments, we are not convinced that importing a terrestrial planning concept into marine legislation is a sensible idea. It is better to stay in line with the terminology that will be applicable, under the UK act, to decisions in the Scottish offshore area.

Karen Gillon's amendment 145 would, in certain circumstances, require public authorities to consult before reaching a final decision, which I believe would result in additional bureaucracy, slow down decision making and increase red tape. As far as marine licensing decisions are concerned, section 20(4) contains an order-making power that will allow the listing of consultees in relation to licence applications. I am happy to give a commitment

that any delegate in a marine area where a project is to be situated will be included on the list. That removes the need to consult the relevant delegate after a decision is made, as least as far as marine licensing decisions are concerned.

11:45

Liam McArthur's amendment 9 proposes that an authority would have to "publish", rather than "state", the reasons why a decision was not in accordance with a relevant marine plan. I am not sure why it is felt necessary for a public authority to publish that reason. The authority would need to state it to those who are directly interested in the decision, and we cannot see a good argument for general publication being required by statute.

Elaine Murray: As I said before, amendment 8 is a probing amendment arising from concerns, raised by Scottish Environment LINK, that there is no legal definition or case law associated with the phrase:

"unless relevant considerations indicate otherwise."

Given the cabinet secretary's explanation, I am content not to press the amendment.

Amendment 8, by agreement, withdrawn.

Amendments 145 and 9 not moved.

Section 11 agreed to.

Section 12—Monitoring of and periodical reporting on implementation of marine plans

Amendment 10 moved—[Liam McArthur].

The Convener: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gillon, Karen (Clydesdale) (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 against the amendment.

Amendment 10 disagreed to.

Amendment 11 moved—[Liam McArthur].

The Convener: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gillon, Karen (Clydesdale) (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 against the amendment.

Amendment 11 disagreed to.

Section 12 agreed to.

Sections 13 and 14 agreed to.

Section 15—Interpretation of Part 2

Amendment 39 moved—[Richard Lochhead]—and agreed to.

Section 15, as amended, agreed to.

Section 16 agreed to.

Section 17—Licensable marine activities

The Convener: The next group is on marine licensing: licensable activities. Amendment 146, in the name of Stuart McMillan, is grouped with amendment 148.

Stuart McMillan (West of Scotland) (SNP): As convener of the cross-party group on recreational boating and marine tourism, I was asked to lodge amendment 146 on behalf of the Scottish boating alliance. The feeling of the alliance is that there are currently no references or categories in section 17 for licensing developments of the type that specifically involve a possibility of prejudice to safe navigation, which is currently dealt with under section 34 of the Coast Protection Act 1949. Amendment 146 is intended to cover that omission and to establish that such developments require to be licensed.

I move amendment 146.

Karen Gillon: Amendment 148 arises from concerns raised by the Scottish Fishermen's Federation that the bill would prohibit the use of dredging by the fishing industry. The federation takes the position that, as it has long been argued that the right to fish in Scotland is a public right, and therefore that fishing does not require a licence, fishing cannot be exempted by the use of section 17(3).

The purpose of the amendment is to seek clarification from the cabinet secretary of the policy intention behind the bill. How does he imagine that

the bill will impact on Scottish fishermen and their ability to use dredging as a form of fishing?

Bill Wilson: Could Karen Gillon clarify whether the addition of the words that she proposes to insert in section 17(2) would mean that licensing would no longer be required for all the activities listed in section 17(1), such as scuttling of boats and the use of explosives by fishermen?

Alasdair Morgan: I am a bit puzzled by Stuart McMillan's amendment. Presumably, there is legislation that deals with people conducting activity that might affect the safety of navigation; I would be grateful if the cabinet secretary would confirm whether that is the case. It seems strange to me that we should be prepared under the bill to license activity that would affect the safety of navigation, which is the implication of amendment 146. I will listen with interest to the cabinet secretary's comments.

The Convener: I invite Karen Gillon to respond.

Karen Gillon: I would like first to hear what the cabinet secretary has to say.

Richard Lochhead: Amendment 146, in the name of Stuart McMillan, seeks to make anything that impacts on the safety of navigation a licensable activity. I understand what the member is seeking to achieve, but the amendment is not appropriate. We have moved away from requiring licensing of general activities, but we believe that the specific list that we have included in the bill covers everything impacting on navigation. To give comfort to the member and the committee, I note that we can add to the list of licensable activities by order if a new activity affecting navigation emerges.

I appreciate that amendment 148, in the name of Karen Gillon, is trying to put beyond doubt the issue of whether sea fishing could be a licensable activity. I have already said on record that it is not our intention to make sea fishing a licensable activity under the bill. If there remains any doubt on the issue, I am happy to deal with that in due course by way of an exemption order, as we have a power to create exemptions. That might be a much better way forward. We do not believe that the reference to dredging in the bill includes dredging associated with sea fisheries.

Karen Gillon: The cabinet secretary's comments are helpful.

Stuart McMillan: I agree. I will not press amendment 146, but I am keen to discuss the issue again briefly at a later point.

Amendment 146, by agreement, withdrawn.

The Convener: The next group is on marine licensing: registrable activities. Amendment 147, in

the name of Karen Gillon, is grouped with amendments 15, 16, 157, 158 and 106.

Karen Gillon: Amendments 147 and 157 relate to concerns raised by the committee in relation to the environmental thresholds for registering, rather than licensing, marine activity. It is important that we are aware of and have regard to cumulative impact and how that can be taken into account when activities are registered under the controlled activities regulations. There will be different sensitivities in different areas, and the bill must be sufficiently flexible to allow for those.

In its response to the Subordinate Legislation Committee, the Scottish Government used the example of Food and Environment Protection Act 1985 licences that are issued for non-controversial outfall pipes from septic tanks to make the case for registration rather than licensing. That seems reasonable. However, there must be a mechanism for assessing cumulative impact. For example, if an enclosed sea loch is surrounded by a number of dwellings, all of which have septic tank discharges, that has the potential to have a significant effect on the species and habitats in the sea loch, depending on which species and habitats it contains. There is clearly a need for assessment of the cumulative impact of a number of registered or licensed activities.

Having looked at the amendments in detail, I am prepared to withdraw or not to move the amendments in my name in favour of amendment 158, in the name of Elaine Murray, which gives effect to the proposals in a more detailed way. However, for the moment I will move amendment 147, just in case.

I move amendment 147.

Elaine Murray: The bill allows discretion as to whether regulations under section 25(1) define or elaborate the meaning of “fall below”, “registered” and “specified threshold of environmental impact”. Amendment 15 requires ministers to specify by regulation those marine activities that are required to be registered because they fall below a specified threshold of environmental impact. Amendment 16 requires ministers to define “fall below”, “registered” and “specified threshold of environmental impact”.

Karen Gillon mentioned that amendment 158 addresses similar concerns to those that she has raised in amendment 147. Amendment 158 enables the cumulative effect of existing activities that do not require a licence but are registrable to be considered when an assessment is made of whether a new application should be licensed rather than registered. Karen Gillon gave a relevant example. It is conceivable that several small-scale activities, each of which on its own has little effect on either marine conservation or

commercial interests that rely on the marine environment, could have a deleterious effect if they exist in sufficient numbers. Amendment 158 enables ministers to assess the effect of existing activities when they consider whether a new application should be licensed or registered. Both the Scottish Fishermen’s Federation and Scottish Environment LINK have expressed concerns on the issue.

Similarly, amendment 106 requires representatives of conservation interests, representatives of commercial interests and Scottish Natural Heritage to be consulted on which activities are considered to fall below a specified threshold of environmental impact and therefore require to be registered rather than licensed. It also requires them to be consulted on the definitions of the terms “fall below”, “registered” and “specified threshold of environmental impact”.

Richard Lochhead: The provision in section 25 is a unique one that is not matched in the UK act. It seeks to build on Scotland’s experience of the controlled activities regulations that were made under the Water Environment and Water Services (Scotland) Act 2003. Section 25 introduces a simplification so that some marine activities that have environmental impacts below a given threshold can be registered instead of requiring a marine licence. The establishment of what those thresholds should be is a scientific question. On the basis of our experience with the controlled activities regulations, I am content that we can establish those thresholds. Hand on heart, however, I cannot guarantee that the science will deliver absolutely, so I am reluctant to accept a duty on the issue.

However, I reassure the committee that I am committed to delivering the registration process and I am happy for officials to keep the committee informed of progress. On that basis, I ask Elaine Murray not to move amendments 15 and 16.

I ask the committee to resist amendments 147, 157 and 158, which seek to move into the licensing system activities that would usually be registrable. I see no particular reason to have such provisions in the bill. I say to the members who lodged those amendments that one of the key purposes of the registration process is to identify cumulative impact, and once that has been done it will be possible to assess whether licensing should be introduced for the activity. Under the registration approach, if cumulative environmental impacts are identified, we can respond to that.

Karen Gillon gave some detailed scenarios and examples—case studies, if you like—of where that might occur. If it would be helpful to her, I am happy to write to the committee and respond to the scenarios that she outlined. However, we believe that the existing provisions are adequate

to enable suitable provision as to which activities should be registrable. I reassure the committee that I am committed to delivering the registration process and, as I said, I will keep the committee up to date with progress.

My position on amendment 106, in the name of Elaine Murray, is similar to that which I outlined in respect of amendment 105. I do not think that amendment 106 is necessary. Section 25(4) already requires Scottish ministers to consult such persons as they consider appropriate when they bring forward regulations under that section. I assure Elaine Murray that the groups that are mentioned in the amendment will be consulted. As a result, it is unnecessary to define in the bill who should be consulted, and I therefore ask the committee not to support the amendment.

12:00

Karen Gillon: It would be useful to get the information that the minister mentioned ahead of stage 3, as that allow us to better assess whether we should bring back the amendments at stage 3. I am still not wholly convinced by the minister's argument, but I will wait for the information that he has mentioned.

Amendment 147, by agreement, withdrawn.

Amendment 148 not moved.

The Convener: The next group is on marine licensing: considerations of Scottish ministers. Amendment 40, in the name of the cabinet secretary, is grouped with amendments 40A, 40B, 154, 155, 41, 41A, 41B, 105, 160, 161, 51A, 51B, 18, 64A and 64B.

Richard Lochhead: Amendments 40 and 41 are Government amendments that set out the matters to which Scottish ministers must have regard in adding or removing activities from the list of licensable activities or making exemptions from licensing requirements. They are a response to recommendations in the committee's stage 1 report.

I will speak to Peter Peacock's amendments 40A, 154, 41A, 160, 161, 51A, 18 and 64A together. The amendments are well intentioned, but the expression

"legitimate uses of the sea",

which is used in the bill, covers not only the concept of safety of navigation but much else beyond. It is an internationally recognised term that covers, in addition to navigational uses of the sea, its use for offshore wind farms, sea disposal operations and so on. We do not wish to accept the amendments, as they would leave Scottish ministers operating two different licensing systems, one in territorial waters, in which the

safety-of-navigation test would apply, and the other in the area between 12 and 200 nautical miles from the coast, in which the legitimate-uses test would apply. Given that stakeholders have repeatedly asked for consistency in the licensing system, that would not be sensible.

Furthermore, a number of international conventions that the committee will no doubt be aware of, such as the Convention for the Protection of the Marine Environment of the North-East Atlantic—the OSPAR convention—and the United Nations Convention on the Law of the Sea, use the legitimate-uses concept. Therefore, I urge the committee to resist the amendments.

I turn to amendments 40B, 155, 41B, 51B and 64B, in the name of Peter Peacock. Although I was content to include the need to mitigate and adapt to climate change among the marine plan objectives, I do not think that it is appropriate to include similar wording in the marine licensing provisions. I believe that the existing general duties in the Climate Change (Scotland) Act 2009 and the provision in section 20 of the bill on the need to protect the environment are sufficient, so I ask the committee to resist the amendments.

We do not think that amendment 105, in the name of Elaine Murray, is necessary. The Scottish Government has a policy of consulting extensively and all consultations are published on the Scottish Government website. I can give Elaine Murray an assurance that the groups that are set out in amendment 105 will be included in any consultation under section 24. On that basis, I ask her not to move amendment 105.

I move amendment 40.

Peter Peacock: I support amendments 40 and 41. I am grateful for what the minister has said. The purpose of my first series of amendments was to clarify how

"legitimate uses of the sea"

could be interpreted, because it seemed to be a fairly broad term, whose inclusion in the bill could indicate that existing users of the sea had a higher right to use it than potential new users—I was thinking particularly about offshore renewables. If I understood the minister correctly, he explicitly stated that that would not be the case. It would be helpful if he could confirm that when he sums up, so that I can check that I did not get that wrong.

As he has done with a number of the amendments that we have considered today, the minister identified an anomaly that would exist if the amendments in my name were agreed to, which would result in different arrangements applying to the 12-mile zone and the wider zone. On the basis of what he has said, I do not propose

to press amendment 40A or to move the other amendments on the same issue.

My second batch of amendments is on the need to mitigate and adapt to climate change and is an attempt to ensure consistency on the subject throughout the bill. I want to reflect on what the minister said, as I was not entirely convinced by his argument, but I will probably not move the amendments.

I move amendment 40A.

Elaine Murray: Like amendment 106, amendment 105 requires ministers to consult specifically representatives with a conservation interest in the marine area, those who have a commercial interest in the use of the marine area and SNH before making an order specifying activities that do not need a marine licence or that do not need a marine licence under specified conditions. The minister believes both amendments to be unnecessary, as the provisions of section 24 would overtake the amendments. Therefore, I will not move either of the amendments but will have another look at the section and see whether they are, indeed, unnecessary.

Liam McArthur: What the cabinet secretary said in response to Peter Peacock's point is helpful. I am aware of the concern that exists, particularly in the marine renewables sector, about the width of the definition of "legitimate uses". The cabinet secretary will know that such ambiguity can lead to risk. Perhaps in his closing remarks this afternoon or at stage 3 he can find a way of removing as much of the ambiguity as possible.

Richard Lochhead: I will limit my closing remarks to the issue that has been raised by Peter Peacock and Liam McArthur. I reiterate that

"legitimate uses of the sea"

is an internationally recognised concept. For the record, I state that we firmly believe that marine renewables are a legitimate use of our seas. I hope that that reassures the committee on that point.

Peter Peacock: I accept what the cabinet secretary has said. However, if anything further could be done to clarify the matter at a later stage, that would be great.

Amendment 40A, by agreement, withdrawn.

Amendment 40B not moved.

Amendment 40 agreed to.

Section 17, as amended, agreed to.

After section 17

The Convener: The next group is on marine licensing: pre-application procedures. Amendment

149, in the name of Karen Gillon, is grouped with amendments 150 and 151.

Karen Gillon: I speak to this group of amendments with a sense of foreboding, given the cabinet secretary's comment that he is not convinced that it is appropriate to import a terrestrial planning concept into the marine planning framework. Amendments 149 to 151 seek to do just that by placing in the bill a requirement for full and effective pre-application consultation for activities relating to the marine plan.

In our time as members of the Scottish Parliament, we have all learned that, in relation to any planning decision, effective pre-application consultation is vital if we are to take communities along with us. We must ensure that people have the information that they need and do not simply react to an application when it arrives by way of a notification. The amendments seek to put a requirement for that in the bill. The issue is particularly relevant in the context of renewables developments. There should be effective pre-application consultation to allow communities that have concerns about such developments to become fully engaged in the planning process. I believe that the amendments would achieve that. They will strengthen the bill and what we are trying to do, and I hope that members will support them.

I move amendment 149.

Richard Lochhead: I believe that ministers should never be too dogmatic. Although we do not want to import terrestrial planning concepts into marine planning, I am willing to make exceptions. These amendments provide for a pre-application consultation system, which is in tune with new provisions for developments on land. Indeed, I see certain similarities between what is proposed in the amendments and the new system on land. As the approach will be a new approach both on land and at sea, I am less concerned than in other cases about importing land-based precedents. I certainly agree with many of the sentiments that Karen Gillon expressed in her remarks, so I am happy to support the amendments.

Karen Gillon: I am delighted that the strength of my argument has swayed the cabinet secretary. My foreboding was indeed misplaced.

Amendment 149 agreed to.

Amendments 150 and 151 moved—[Karen Gillon]—and agreed to.

Section 18—Application for licence

The Convener: The next group is on marine licensing: application, notification, variation, suspension, revocation and transfer of licence.

Amendment 152, in the name of Liam McArthur, is grouped with amendments 153, 12, 104 and 156.

Liam McArthur: I should probably say that I have a sense of foreboding and see what happens.

Amendment 152 links to amendments 153 and 156. It suggests that the requirements for information to support applications should be in line with environmental impact assessment procedures and that the Scottish ministers must act reasonably. Unfortunately, but quite understandably, we know a good deal less about the marine environment than we know about the onshore environment, and there is a risk that we will gold plate the requirements for data to support applications. The amendment is intended to ensure that ministers act reasonably and require only data that are strictly necessary to support an application, rather than straying into the territory of seeking information that it would be nice to have but which it would be unreasonable or unrealistic to expect the applicant to provide.

Perhaps as a counterweight to that, amendment 153 sets out rather more explicitly that the Scottish ministers could require the applicant to collect extra data in support of their application in order to satisfy particular criteria.

On amendment 156, it should be possible to vary, suspend or, indeed, revoke licences. I do not think that anybody would doubt that. The question is more about the threshold and how high the bar is set. The amendment would insert the word “significant” to ensure that there is a degree of predictability and thus reduce the risk to those who seek to develop the marine environment, but it would not remove the right that ministers should quite rightly have.

In amendment 104, I seek to remove section 19(6) only because I am not clear in what circumstances Scottish ministers would not publish notice of an application. I cannot think of any such circumstances. However, if the minister can explain that, I will not move the amendment.

Amendment 12 might be regarded as another attempt to drag the bill into the 21st century. Notwithstanding the fact that access to high-quality broadband is a luxury that not all my constituents have, it might be useful for the bill to state that the information must be accessible via a website.

I move amendment 152.

12:15

Bill Wilson: I have two quick questions. I am not sure why the Scottish ministers could not do what is suggested in amendment 153 anyway.

Perhaps Liam McArthur can explain—maybe I am missing something.

On amendment 104, which seeks to omit section 19(6), I understand why the minister might occasionally have reason not to publish an application, but it seems to be a catch-all provision. Would the minister consider making a statement as to why an application would not be published or what limitation there might be on that power?

Richard Lochhead: I fear that Liam McArthur's sense of foreboding is more justified than Karen Gillon's was.

At present, section 18(3)(c) allows ministers to require an applicant to permit investigations or tests in connection with an application for a marine licence. Amendments 152 and 153 would alter the position so that investigations or tests could be required only after a process by which the applicant had tried to convince ministers that those were not needed. In our view, that would be likely to slow down the application process and it is not something that we would support.

I accept Liam McArthur's proposal in amendment 12 that the web-based publication of applications is the most efficient. It would be the Scottish Government's policy to do that in most if not all cases. However, I am not sure whether there is any need for the bill to make specific provision to that effect. If he feels strongly that that is necessary, I ask him to withdraw the amendment so that we can lodge a Government amendment at stage 3 that will reflect more clearly the provision in section 19(1) that it will not be ministers who publish notices in every case.

On amendment 104, I have stated on several occasions that we want to streamline and simplify the licensing regime as far as possible. The removal of section 19(6) would seriously constrain the ability of the Scottish ministers to make quick decisions for minor operations that had no adverse impact on others—for instance, emergency bridge or coastal road repairs or emergency operations such as the application of oil dispersants on an oil spill, in respect of which any delay could seriously affect the effect of the operation. That might result in delays when urgent action is required or it might increase the costs of a project unnecessarily. On that basis, I urge the committee to resist the amendment.

Amendment 156 would tighten up the requirements so that Scottish ministers could vary, suspend or revoke a licence only when there was a “significant” change in circumstances relating to the environment or human health, a “significant” increase in scientific knowledge or a “significant” change in circumstances affecting the safety of navigation. That would give Scottish ministers a

more restricted power to take action. On that basis, I urge the committee to resist amendment 156 as well.

Liam McArthur: I am slightly disappointed with the minister's response. Amendments 152, 153 and 156 articulate a genuine concern that the marine renewables sector has about the way in which the powers may be exercised. I noted what he said about amendments 152 and 153, but I cannot agree with him. Furthermore, I do not think that amendment 156 places the threshold unworkably high. I am, however, grateful for his comments on amendment 12 and I am happy not to move that amendment. It was interesting to get some clarification on amendment 104, and I am happy not to move it.

The Convener: The question is, that amendment 152 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gillon, Karen (Clydesdale) (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 against the amendment.

Amendment 152 disagreed to.

Amendment 153 moved—[Liam McArthur].

The Convener: The question is, that amendment 153 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gillon, Karen (Clydesdale) (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 against the amendment.

Amendment 153 disagreed to.

Section 18 agreed to.

Section 19—Notice of applications

Amendments 12 and 104 not moved.

Section 19 agreed to.

Section 20—Determination of applications

Amendments 154 and 155 not moved.

Section 20 agreed to.

Sections 21 and 22 agreed to.

Section 23—Variation, suspension, revocation and transfer

Amendment 156 moved—[Liam McArthur].

The Convener: The question is, that amendment 156 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gillon, Karen (Clydesdale) (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 against the amendment.

Amendment 156 disagreed to.

Section 23 agreed to.

Section 24—Exemptions specified by order

Amendment 41 moved—[Richard Lochhead].

Amendments 41A and 41B not moved.

Amendment 41 agreed to.

Amendment 105 not moved.

Section 24, as amended, agreed to.

Section 25—Activities below specified threshold of environmental impact

Amendment 15 moved—[Elaine Murray].

The Convener: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gillon, Karen (Clydesdale) (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 against the amendment.

Amendment 15 disagreed to.

Amendments 16, 157, 158 and 106 not moved.

Section 25 agreed to.

Section 26 agreed to.

Section 27—Special procedure for applications relating to certain electricity works

The Convener: The next group is on marine licensing: electricity works and submarine cables. Amendment 42, in the name of the cabinet secretary, is grouped with amendments 43 and 166.

Richard Lochhead: Amendment 42 is largely technical but nonetheless important. One of business stakeholders' key requirements is that the licensing system is common throughout the UK, where possible. That applies in particular to provisions such as those in section 27, which seek to create a single process for considering applications for a marine licence and for an Electricity Act 1989 consent for a related generating station. The amendment alters the bill to bring it broadly into line with the final text of section 79 of the UK Marine and Coastal Access Act 2009. I believe that that will meet stakeholders' requirements.

Amendment 43, which is required to bring the bill into line with the international law of the sea with regard to submarine telecommunication cables, seeks to provide that a licence must be given in respect of certain submarine cables entering the Scottish territorial sea from the offshore area. It makes clear, however, that Scottish ministers can place conditions on any licence that is given.

I thank John Scott for noticing that a consequential amendment was required following on from Government amendment 42 and for lodging amendment 166 as a result. However, the appropriate amendment would be to substitute what is in amendment 166 for section 42(6)(g), instead of adding it as a new paragraph. If Mr Scott is prepared not to move the amendment, I will lodge an appropriate Government amendment at stage 3.

I move amendment 42.

John Scott: I am happy to accept the cabinet secretary's analysis of amendment 166 and will not seek to move it.

Amendment 42 agreed to.

Section 27, as amended, agreed to.

Section 28 agreed to.

After section 28

Amendment 43 moved—[Richard Lochhead]—and agreed to.

Section 29—Appeals against licensing decisions

The Convener: The next group is on marine licensing: appeals against licensing decisions. Amendment 107, in the name of Robin Harper, is grouped with amendments 159 and 108.

Robin Harper: Amendment 107 is intended to deal in part with the committee's recommendation in paragraph 183 of its stage 1 report that the bill should set out

"the fundamental elements of an appeals procedure against a ... licensing decision".

It should be noted that the Subordinate Legislation Committee raised a similar concern. At this point, I stress that amendment 107 is a probing amendment that I am unlikely to press to a vote. However, I am interested in hearing the views of members and the cabinet secretary on the point.

As the bill stands, only the licensee will be able to appeal a licensing decision. I believe that that narrows standing in a licensing appeal too far, severely restricts access to the system and has the potential to be inconsistent with the Aarhus convention.

Third-party rights of appeal are always a contentious issue and the Scottish Green Party has consistently argued for their adoption on the ground of environmental justice. Communities should always be given an opportunity to appeal a decision that they believe would adversely affect their environment, their health or their way of life. However, amendment 107 is not intended to give a blanket third-party right of appeal; instead, it gives the right of appeal to an "appropriate person" who would be identified by ministers. The definition of "appropriate person" should, I believe, be made within the context of the Aarhus convention.

Under the convention, members of the public should in principle be able to challenge any violation of national law relating to the environment. Specifically, paragraph 2 of article 9 makes it clear that members of "the public concerned"—who are defined as

“the public affected or likely to be affected by, or having an interest in, the environmental decision-making”,

including non-governmental organisations—shall

“have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6”,

which means any of the activities in annex 1 of the convention. Given that, under the bill as introduced, most Aarhus annex 1 activities will require a marine license, the public concerned, as defined by the convention, should at least be given the right to appeal a licensing decision on an annex 1 activity. Bearing in mind the general duty in paragraph 3 of article 9, I argue that the appeals process should be designed to allow the public to appeal a licensing decision on the ground of violation of current environmental law. As amendment 107 seeks to require Scottish ministers to define “appropriate person”, it would be up to them to make that judgment; nevertheless, having a definition in line with the terms of the Aarhus convention is the intention behind the amendment.

I am interested to hear the response of the cabinet secretary and other members to my amendment.

I move amendment 107.

12:30

Karen Gillon: Amendment 159 relates to the work of this committee perhaps more than any other, as it is prompted by the significant difficulties that fishing communities the length and breadth of Scotland face. The amendment seeks to give a right to appeal against the granting of a marine licence to any third party who can demonstrate *prima facie* that he or she will suffer loss as a result of the granting of the licence. It is not, as some have described it, a blanket third-party right of appeal; it is a specific right of appeal that can be used in specific circumstances. The proposals that Robin Harper outlined would give a far wider right of appeal to a far wider range of individuals.

Amendment 159 is a probing amendment; I lodged it so that I could explore with the cabinet secretary how he believes that we will be able to support fishing communities and others who suffer economic loss as a result of the bill. He accepted my amendments on pre-application consultation. I am interested in how that can aid the process and in how we ensure that those who might suffer economic loss, particularly in our fishing communities, will be involved in that consultation.

Liam McArthur: I have reservations about all three of the amendments in the group, although I

note what Robin Harper and Karen Gillon said about the probing nature of the amendments. Having lived through the process in relation to a terrestrial third-party right of appeal, I am not terribly anxious to embark on a similar process in relation to the marine environment. I agree with Karen Gillon that pre-consultation is absolutely the right approach. Any effort to push the process of reconciliation and agreement to the back end is likely only to increase risks, lengthen the process and add considerable cost. I am therefore wary of accepting any of the amendments in the group.

Peter Peacock: I echo Liam McArthur's comments, as someone who is also a bit battle scarred from the process in relation to a terrestrial third-party right of appeal. There was good reason why Parliament opposed the introduction of that principle in the terrestrial planning system and put an emphasis on the early stages of planning. We wanted to get everything up front and have people understand the processes and be involved early, rather than create potentially extensive delays in projects at the end of the process, when those projects have for the most part been accepted in the decision-making process. Robin Harper's amendments 107 and 108 are drawn very widely. I accept that the Greens are long-standing proponents of a third-party right of appeal and that he stands by that but, equally, I am a long-term opponent of such a right and I stick by that.

Alasdair Morgan: I share Peter Peacock's and Liam McArthur's sentiments. On Karen Gillon's amendment 159, I am concerned that, with access to ingenious legal advice, which is never in short supply, the term “economic interest” could be extended far beyond what Karen Gillon might intend it to mean.

John Scott: I agree with Peter Peacock and Liam McArthur, although I share Karen Gillon's interest in what the cabinet secretary has to say about protecting fishermen's interests.

Richard Lochhead: I will address Robin Harper's amendments 107 and 108 and Karen Gillon's amendment 159.

As members have acknowledged, the amendments would introduce a third-party right of appeal. I, too, am battle scarred by some of the debates that have taken place in Parliament over the years on such a right in the terrestrial context. Amendments 107 and 108 would provide for an “appropriate person”, who is yet to be defined, to appeal against licensing decisions. That would broaden the appeal right well beyond a right for the applicant. In my oral evidence to the committee on 9 September, I indicated that I was against a third-party right of appeal in the marine context. The arguments are the same as those in the terrestrial context. Such a right could frustrate the progress of appropriate developments and

would open up the possibility of vexatious third-party appeals, which would slow down the process enormously, as members have just acknowledged.

The amendments on pre-application consultation to which the committee agreed will deliver a sufficient level of scrutiny.

Appeals are appropriate for people whose licence applications are rejected, but we do not want to introduce a third-party right of appeal and we will resist amendments 107, 159 and 108. We do not believe that the Aarhus convention calls for a third-party right of appeal in the context of the marine environment.

Robin Harper: The Government's interpretation of the Aarhus convention might well be open to challenge. In due course, I would welcome from the cabinet secretary a detailed analysis of how the bill will be compliant with Aarhus.

Given the responses, and given that my intention was that amendments 107 and 108 should be probing amendments that lead to clarification, I seek leave to withdraw amendment 107 and will not move amendment 108.

Amendment 107, by agreement, withdrawn.

Amendments 159 and 108 not moved.

Section 29 agreed to.

Sections 30 and 31 agreed to.

Section 32—Defences: electronic communications: emergency works

The Convener: The next group is on marine licensing: offences and enforcement. Amendment 44, in the name of the cabinet secretary, is grouped with amendment 45.

Richard Lochhead: Amendment 44 is a minor consequential amendment that arises from amendment 45. Amendment 45 will tighten up the drafting of section 32 by removing paragraph (c) from subsection (1). On further consideration it appeared that the wording of paragraph (c) did not add anything of consequence to what was provided for in paragraph (b).

I move amendment 44.

Amendment 44 agreed to.

Amendment 45 moved—[Richard Lochhead]—and agreed to.

Section 32, as amended, agreed to.

Section 33 agreed to.

Section 34—Compliance notice

The Convener: The next group is on marine licensing: compliance notices. Amendment 46, in

the name of Elaine Murray, is grouped with amendments 47 and 48.

Elaine Murray: Amendments 46 to 48, in my name, are probing amendments. I seek the cabinet secretary's advice on the difference in wording between sections 34 and 35. Under section 34, the Scottish ministers will be permitted to issue a compliance notice to a person who is carrying on an activity that

"has not caused, and is not likely to cause ...

(i) serious harm to the environment,

(ii) serious harm to human health,

(iii) serious interference with legitimate uses of the sea."

Under section 35, ministers will be able to issue a remediation notice to a person who is carrying on an activity that

"has caused, or is causing or is likely to cause ...

(i) harm"—

rather than "serious harm"—

"to the environment,

(ii) harm to human health,

(iii) interference with legitimate uses of the sea."

Sections 34 and 35 appear not to be consistent. Will the cabinet secretary explain the reasons for the difference in wording and say what criteria will be applied in relation to compliance notices and remediation notices?

Under section 46, the Scottish ministers will be able to issue a stop notice. Like section 32, section 46 refers to "serious harm" and "serious interference". I have not lodged an amendment to section 46, because it might be argued that a notice to cease activity is more drastic than a compliance notice or a remediation notice, so removing the word "serious" could lower the bar to the extent that legitimate activities, the effects of which on the marine environment might be reversible, might be prevented.

Although, depending on the cabinet secretary's response, I might subsequently seek the committee's agreement to withdraw it, I move amendment 46.

Richard Lochhead: I am happy to address Elaine Murray's amendments 46 to 48. I understand why she thought about removing the word "serious" from each of the subparagraphs in section 34(3)(b), but doing that would, in my view, unreasonably disturb the operation of the enforcement regime that is set out in part 3.

Section 34 provides for compliance notices to be used when licence conditions have been breached but when it is not likely that serious harm will be caused to the environment or to human health, or that legitimate uses of the sea will be seriously

interfered with. Compliance notices will be used for more minor and technical breaches.

In more serious situations, including situations in which the breach has caused serious harm to the environment or to human health, or serious interference with legitimate uses of the sea, enforcement officers will use a stop or emergency safety notice. If “serious” is removed from section 34, a compliance notice could be used only in cases in which an activity had not caused any harm or interference. As a result, it would be a much less useful tool for dealing appropriately with minor breaches of licensing conditions. For those reasons, we will resist Elaine Murray’s amendments.

Elaine Murray: On a point of information, why is the term “serious” not used in section 35?

Richard Lochhead: Sections 34 and 35 deal with different types of notice. We wanted to differentiate between the circumstances in which they can be used. Section 35 is about remediation. The two sections deal with different things.

Elaine Murray: I have difficulty getting my head round why you have not included “serious” in section 35, but it is an issue that might benefit from further reflection.

Richard Lochhead: Section 35 is about remediation when harm has been caused, so there is no need to qualify the provisions in the same way. One would remediate only when harm or damage had been caused.

Amendment 46, by agreement, withdrawn.

Amendments 47, 48 and 160 not moved.

Section 34 agreed to.

Section 35—Remediation notice

Amendment 161 not moved.

The Convener: The next group is on marine licensing: enforcement notices and remedial action. Amendment 49, in the name of the cabinet secretary, is grouped with amendments 50, 51, 63 and 64.

Richard Lochhead: Remediation is an issue that the committee raised at stage 1. It was not the intention to limit the issuing of a remediation notice to the purpose of protecting what is left of the environment after it has been harmed. My intention is that a remediation notice should be able to specify steps that are aimed at preventing, minimising, remedying or mitigating the effects of harm.

Moreover, when harm or interference has been caused, a remediation notice should be able to specify steps that are aimed at fully or partially restoring the situation. In cases in which it is not

possible to restore the original site, the option should be available of requiring steps to be taken elsewhere instead. In effect, such steps would be compensation for damage caused in another place.

The amendments in this group deal with the matters that I have mentioned, and I recommend them to the committee.

I move amendment 49.

Amendment 49 agreed to.

Amendment 50 moved—[Richard Lochhead]—and agreed to.

Amendment 51 moved—[Richard Lochhead].

Amendments 51A and 51B not moved.

Amendment 51 agreed to.

Section 35, as amended, agreed to.

Sections 36 and 37 agreed to.

Section 38—Fixed monetary penalties: procedure

12:45

The Convener: The next group is on marine licensing: monetary penalties. Amendment 52, in the name of the cabinet secretary, is grouped with amendments 162, 53 to 58, 163 and 59.

Richard Lochhead: Amendments 52 to 59 are minor drafting amendments that will keep sections 38 and 40 and schedule 2 in line with the equivalent provisions in the UK Marine and Coastal Access Act 2009. They will make no substantial change to the provisions that they amend.

Section 38 provides for a procedure for fixed monetary penalties that may be levied for offences under part 3 and says that a final fixed monetary penalty notice must include information about appeal rights. I am sure that amendments 162 and 163 stem from a desire to make the appellate body, or a possible range of appellate bodies, clear in the bill. The Scottish Government has said that it is considering the best body to hear such appeals and that its current preference is the sheriff court.

Amendments 162 and 163 are well intended, but the problem is that no single accepted definition of a “legally qualified person” exists. Without further definition in the bill, the meaning of that term would be less than clear. Further, it would be strange to have such provisions in relation to monetary notices but not in relation to appeals against licensing decisions under section 22 or notices under section 52.

The Scottish Government prefers to specify the appellate body for all those sections at stage 3. Our current preferred option is that appeals should go to the sheriff court. However, we will consider any further amendments that are made to part 3 before finally specifying the appellate body.

For those reasons, I ask Karen Gillon not to move amendments 162 and 163.

I move amendment 52.

Karen Gillon: The cabinet secretary's comments are helpful. Before stage 3, I want to explore with him how the process will be set out in the bill, because the fishing community in particular has expressed concern that the current situation is not ideal. In view of his comments, I will not move amendments 162 and 163, but I might lodge similar amendments at stage 3.

Richard Lochhead: I thank Karen Gillon for her comments.

Amendment 52 agreed to.

Amendment 162 not moved.

Section 38, as amended, agreed to.

Section 39 agreed to.

Section 40—Variable monetary penalties: procedure

Amendments 53 to 58 moved—[Richard Lochhead]—and agreed to.

Amendment 163 not moved.

Section 40, as amended, agreed to.

Section 41 agreed to.

Schedule 2

FURTHER PROVISION ABOUT CIVIL SANCTIONS UNDER PART 3 (MARINE LICENSING)

Amendment 59 moved—[Richard Lochhead]—and agreed to.

Schedule 2, as amended, agreed to.

Section 42—Delegation of functions relating to marine licensing

The Convener: The next group is on marine licensing: fish farming. Amendment 164, in the name of Elaine Murray, is grouped with amendments 167 and 174.

Elaine Murray: The committee, with the exception of Liam McArthur, concluded at stage 1 that licensing should come under one regime and that fish farming should be under the same licensing regime as other marine activities. We also believe that, where appropriate and where

they agree, that function could be delegated to other authorities.

Amendment 164 would enable ministers to delegate the function of granting or refusing a licence for a marine activity, such as fish farming, to a public authority. It is consistent with the recommendation of the majority of committee members about ensuring that the licensing of aquaculture is consistent with the licensing of other marine activities while enabling ministers to delegate the licensing function to a local authority where that authority wishes to take it on.

I turn to amendments 167 and 174. Section 54, which amends the Town and Country Planning (Scotland) Act 1997 in relation to marine fish farming, would be removed by amendment 167. It would be replaced by means of amendment 174, which would make changes to schedule 4. That aims to address the recommendation in paragraph 195 of the committee's stage 1 report, which states:

"adequate provision could be made for this, at a strategic level, by ensuring local input into decisions made by MPPs about what areas should be deemed appropriate for fish farming. We propose that the Bill should allow local authorities to apply to the Scottish Ministers to handle applications for licenses. The Scottish Ministers should be empowered to allow any such application on cause shown, subject to their reaching a service level agreement with the authority on how license applications are to be dealt with."

I express my gratitude to the clerks, Roz Wheeler and Peter McGrath, for finding a solution to this.

I move amendment 164.

Richard Lochhead: I appreciate that this has been a difficult issue for the committee, the Scottish Government and everyone else involved. Amendments 164, 167 and 174 would remove local authorities' controls over marine fish farming under the Town and Country Planning (Scotland) Act 1997 and replace responsibility for consents with Marine Scotland under the marine licensing regime. Amendment 164 also seeks to make special mention of marine fish farming decisions among those that can be delegated to bodies such as local authorities.

I recognise that there are requests from the aquaculture industry for greater streamlining of the consenting processes as they apply to aquaculture. I am not unsympathetic to their pleas. Nonetheless, local authorities have a role in delivering local accountability, which cannot be dismissed lightly. Of course, the committee is aware that the bill provides for the ability of local authorities to essentially delegate to Marine Scotland the licensing function as far as aquaculture is concerned.

I think that there is a way through this problem by providing for the involvement of local authorities in marine planning and demonstrating that local accountability can be safeguarded through the marine planning process. Only once we have convinced local authorities and their stakeholders that local accountability can be safeguarded would we seek to ask local authorities to consider what further streamlining for aquaculture consents can be achieved. In addition, we are aware that the consenting regime for the aquaculture industry was changed significantly in 2007. Further change might not be a sensible way forward at this time.

I appreciate the pressures behind the amendments, but I think that the issue is too complicated to simply take away existing functions from local authorities. On that basis, we will resist the amendments in the group.

Liam McArthur: Given my rebellion at stage 1, I probably ought to put on record that I stand steadfast in my support of the cabinet secretary. This is a difficult and complex issue and, to some extent, we might not have wished to start from the position that we are in. Administrative neatness is not a reason or justification for overriding local accountability. I acknowledge that some within the industry have difficulties with some of the local authorities and the approach that they have taken, but the way in which the bill is structured, which allows the delegation of powers to Marine Scotland in certain circumstances, provides a way through the concerns that the industry has expressed. I support the cabinet secretary in resisting the amendments.

John Scott: Elaine Murray has articulated well the overall view of the committee, with the notable exception of Liam McArthur. It is important that she presses her amendments.

Elaine Murray: There is a clear difference of opinion on the amendments between the cabinet secretary and our colleague, Liam McArthur, and the rest of the committee. The cabinet secretary's arguments have not pointed to any technical problem with the amendments, therefore I intend to press amendment 164.

The Convener: The question is, that amendment 164 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gillon, Karen (Clydesdale) (Lab)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Scott, John (Ayr) (Con)

AGAINST

McArthur, Liam (Orkney) (LD)
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 4, Against 4, Abstentions 0. I use my casting vote against the amendment.

Amendment 164 disagreed to.

Amendments 165 and 166 not moved.

Section 42 agreed to.

Sections 43 and 44 agreed to.

Section 45—Register of licensing information

The Convener: The next group is on marine licensing: marine licensing information. Amendment 60, in the name of the cabinet secretary, is grouped with amendments 61, 17 and 62.

Richard Lochhead: Amendments 60 and 61 are minor drafting amendments that make clear that the register of licensing information is a register of marine licensing information only.

Liam McArthur's amendment 17 deals with a similar issue to that which was raised in his amendment 12. I am happy to assure him that it is intended that the section 45 register would appear on a Scottish Government website. I doubt that that needs to be specified in the bill; nor do I think that the reference to "specified" by Scottish ministers is necessary. However, if Liam McArthur thinks that an amendment along those lines is essential, I am prepared to lodge such an amendment at stage 3.

Amendment 62 seeks to clarify the basis on which certain information can be withheld from the register of marine licensing information. Where Scottish ministers decide that the publication of information would adversely affect the confidentiality of industrial or commercial information, the amendment provides that they need not publish the information where such confidentiality is provided by law to protect a legitimate commercial interest.

I move amendment 60.

Liam McArthur: As the cabinet secretary acknowledges, my amendment 17 represents a further attempt to appeal to the minister's Twitter gene, but for the same reasons as before, I will not move the amendment.

Amendment 60 agreed to.

Amendment 61 moved—[Richard Lochhead]—and agreed to.

Amendment 17 not moved.

Amendment 62 moved—[Richard Lochhead]—and agreed to.

Section 45, as amended, agreed to.

Section 46—Notice to stop activity causing serious harm etc

Amendment 18 not moved.

Section 46 agreed to.

Sections 47 to 49 agreed to.

Section 50—Power to take remedial action

*Amendment 63 moved—[Richard Lochhead]—
and agreed to.*

Amendment 64 moved—[Richard Lochhead].

Amendments 64A and 64B not moved.

Amendment 64 agreed to.

Section 50, as amended, agreed to.

Section 51—Power to test and charge for testing certain substances

13:00

The Convener: The next group is on marine licensing: testing for substances. Amendment 65, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: As the clock approaches 1 pm, I advise that amendment 65 was lodged in error and I will not move it.

Amendment 65 not moved.

Section 51 agreed to.

Sections 52 and 53 agreed to.

Section 54—Power by order to provide marine fish farming is not “development”

Amendment 167 not moved.

Section 54 agreed to.

Section 55 agreed to.

The Convener: That ends our consideration of the Marine (Scotland) Bill for today. The committee will continue its stage 2 consideration of the bill next week when the target will be to reach the end of section 94. I thank the cabinet secretary and his officials for their attendance.

13:05

Meeting continued in private until 13:41.

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